OFFICIAL RECORDS

OF THE

DIPLOMATIC CONFERENCE
ON THE REAFFIRMATION AND DEVELOPMENT
OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE
IN ARMED CONFLICTS

GENEVA (1974 -1977)

VOLUME X

INTRODUCTORY NOTE

Volume I contains the Final Act, the resolutions adopted by the Conference, and the draft Additional Protocols prepared by the International Committee of the Red Cross. Volume II contains the rules of procedure, the list of participants, the *Désignation aux différents postes de la Conférence**, the *Liste des documents**, the report of the Drafting Committee and the reports of the Credentials Committee for the four sessions of the Conference. Volumes III and IV contain the table of amendments. Volumes V to VII contain the summary records of the plenary meetings of the Conference. Volumes VIII to X contain the summary records and reports of Committee I. Volumes XI to XIII contain the summary records and reports of Committee II. Volumes XIV and XV contain the summary records and reports of Committee III, and volume XVI contains the summary records and reports of the *Ad Hoc* Committee on Conventional Weapons. Volume XVII contains the table of contents of the sixteen volumes.

The Official Records of the Conference are published in all the official and working languages of the Conference. In the Russian edition, as Russian was an official and working language of the Conference only from the beginning of the second session, the documents of which no official translation was made in Russian are reproduced in English. The Arabic edition of the Official Records contains only the documents originally issued in Arabic and those translated officially into Arabic after Arabic became an official and working language at the end of the third session. The Final Act only has been translated into Chinese.

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Federal Political Department
Bern, 1978

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OF THE

DIPLOMATIC CONFERENCE ON THE REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

CONVENED BY THE SWISS FEDERAL COUNCIL
FOR THE PREPARATION OF TWO PROTOCOLS ADDITIONAL
TO THE GENEVA CONVENTIONS OF AUGUST 12, 1949
PROTOCOL I RELATING TO THE PROTECTION OF VICTIMS
OF INTERNATIONAL ARMED CONFLICTS
PROTOCOL II RELATING TO THE PROTECTION OF VICTIMS
OF NON - INTERNATIONAL ARMED CONFLICTS

HELD AT GENEVA ON THE FOLLOWING DATES:

20 FEBRUARY – 29 MARCH 1974 (FIRST SESSION)
3 FEBRUARY – 18 APRIL 1975 (SECOND SESSION)
21 APRIL – 11 JUNE 1976 (THIRD SESSION)
17 MARCH – 10 JUNE 1977 (FOUTH SESSION)

PREPARATION

OF THE TWO PROTOCOLS ADDITIONAL
TO THE GENEVA CONVENTIONS OF 1949,
PROTOCOL I RELATING TO THE PROTECTION OF VICTIMS
OF INTERNATIONAL ARMED CONFLICTS
PROTOCOL II RELATING TO THE PROTECTION OF VICTIMS
OF NON–INTERNATIONAL ARMED CONFLICTS

REAFFIRMING AND DEVELOPING THE FOLLOWING FOUR GENEVA CONVENTIONS:

GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITONS OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD OF AUGUST 12, 1949

GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF WOUNDED, SICK AND SHIPWRECKED MEMBERS OF ARMED FORCES AT SEA OF AUGUST 12, 1949

GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF AUGUST 12, 1949

GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR OF AUGUST 12, 1949

VOLUME X

REPORTS OF COMMITTEE I

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REPORTS OF COMMITTEE I

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FIRST SESSION

(Geneva, 20 February - 29 March 1974)

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COMMITTEE I

REPORT

I. INTRODUCTION

1. At its seventh plenary meeting, on 1 March 1974, the Conference elected the following officers of Committee I:

Chairman:	Mr. E. Hambro	(Norway)
Vice-Chairmen:	Mr. B.A. Clark	(Nigeria)
	Mr. K. Obradovic	(Yugoslavia)
Rapporteur:	Mr. M. Marín-Bosch	(Mexico)

2. At its ninth plenary meeting on 4 March, the Conference decided to assign to Committee I the following articles of the two draft Protocols prepared by the International Committee of the Red Cross (ICRC) (CDDH/1): the Preamble and articles 1 to 7 and 70 to 90 of draft Protocol I, and the Preamble and articles 1 to 10 and 36 to 47 of draft Protocol II (CDDH/5/Rev.1). It was likewise agreed that, according to the progress of the work, articles 63 to 65 and 67 to 69 of draft Protocol I, which the Conference had assigned to Committee III, could be transferred to Committee I for study in relation to articles 6 to 10 of draft Protocol II. It was decided that the Chairmen of Committees I and III would confer on that matter.

3. Committee I held 16 meetings, from 7 to 26 March 1974. The summary records of those meetings (CDDH/I/SR.1 to 16) give the views expressed by the representatives who spoke during the debates.

4. Two legal experts of the ICRC attended the meetings - Mr. Antoine Martin and Mrs. Danièle Louise Bujard, who were asked to introduce the texts proposed by the ICRC in connexion with Protocol I and Protocol II, respectively. Miss Françoise Perret, a legal expert of the ICRC, served as Secretary to the Committee.

II. WORK PROGRAMME OF THE COMMITTEE

5. At the first meeting of the Committee, the Chairman proposed that, in accordance with the proposals in document CDDH/4, it simultaneously examine corresponding sections of each of the two draft Protocols in the following order:

A. Provisions relating to application

1. Articles 1 to 7 of draft Protocol I
2. Articles 1 to 5 of draft Protocol II

B. Executory provisions

3. Articles 70 to 79 of draft Protocol I
4. Articles 36 to 39 of draft Protocol II

C. Final provisions

5. Articles 80 to 90 of draft Protocol I
6. Articles 40 to 47 of draft Protocol II

D. Humane treatment of persons in the power of the parties to the conflict

7. Articles 6 to 10 of draft Protocol II

E. Preamble

8. Draft Protocol I
9. Draft Protocol II

6. The Chairman's proposal, after a brief discussion in which it was supported by numerous delegations, while others felt that the two draft Protocols should be examined separately, was adopted by 46 votes to 9, with 8 abstentions.

III. PROPOSALS AND AMENDMENTS

7. From the second to the fourteenth meetings (CDDH/I/SRs.2 to 14) the Committee examined articles 1 to 5 of draft Protocol I prepared by the ICRC, together with relevant proposals and amendments.

Article 1 of draft Protocol I

8. With regard to the ICRC text, the following proposals and amendments were submitted:

Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Morocco, Poland, Union of Soviet Socialist Republics, United Republic of Tanzania: CDDH/I/5 and Add.1 and 2

Algeria, Australia, Arab Republic of Egypt, Burundi, Cuba, Democratic Yemen, Guinea-Bissau, Ivory Coast, Kuwait, Libyan Arab Republic, Madagascar, Morocco, Nigeria, Norway, Pakistan, Senegal, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, United Republic of Cameroon, Yugoslavia, Zaire:	CDDH/I/11 and Add.1 to 3
Argentina, Austria, Belgium, Federal Republic of Germany, Italy, Netherlands, Pakistan, United Kingdom of Great Britain and Northern Ireland:	CDDH/I/12 and Add.1 and Corr.1
Romania:	CDDH/I/13
Algeria, Arab Republic of Egypt, Bangladesh, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Chad, Congo, Cuba, Czechoslovakia, German Democratic Republic, Ghana, Guinea-Bissau, Hungary, India, Indonesia, Iraq, Ivory Coast, Jordan, People's Democratic Republic of Korea, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Madagascar, Mali, Mauritania, Mongolia, Morocco, Nigeria, Pakistan, Poland, Qatar, Romania, Saudi Arabia, Senegal, Sri Lanka, Sudan, Sultanate of Oman, Syrian Arab Republic, Togo, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Cameroon, United Republic of Tanzania, Yemen, Yugoslavia, Zaire, Zambia:	CDDH/I/41 and Add.1 to 7
Turkey:	CDDH/I/42
Argentina, Honduras, Mexico, Panama, Peru:	CDDH/I/71

9. Most sponsors of amendment CDDH/I/11 and Add.1 to 3 subsequently withdrew their sponsorship and, together with other delegations, presented amendment CDDH/I/41 and Add.1 to 7. The proposals in documents CDDH/I/5 and Add.1 and 2 and CDDH/I/13 were subsequently withdrawn by their sponsors, who said that they would support the amendment in document CDDH/I/41 and Add.1 to 7.

10. The great majority of delegations were in favour of article 1 mentioning that the international armed conflicts referred to in article 2 common to the four Geneva Conventions of 1949 included those armed conflicts in which peoples, in the exercise of their right to self-determination, fight against colonial domination and alien occupation and against racist régimes. Other delegations did not share that view. The various opinions expressed on the subject appear in the summary records of the second to the fourteenth meetings of the Committee (CDDH/I/SRs. 2 to 14).

11. At its sixth meeting, the Committee decided to refer the proposals in documents CDDH/I/11 and Add.1 to 3, CDDH/I/12 and Add.1 and Corr.1, CDDH/I/41 and Add.1 to 7 and CDDH/I/42 to a Working Group whose task would be to explore the possibility of submitting a single amendment ot article 1. The Working Group, with the Rapporteur as Chairman, consisted of the delegations which had sponsored those amendments and other delegations wishing to take part; it met on 19 and 20 March. It had not proved possible, however, to reach agreement.

12. At its thirteenth meeting on 22 March, the Committee put to the vote the proposals and amendments to the ICRC text of article 1. It was decided to give priority to amendment CDDH/I/71, as amended orally. A vote was taken by roll-call and amendment CDDH/I/71 was approved by 70 votes to 21, with 13 abstentions. The result of the vote was as follows:

In favour: Albania, Algeria, Arab Republic of Egypt, Argentina, Bangladesh, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Cuba, Chad, Czechoslovakia, China, Cyprus, Democratic People's Republic of Korea, Democratic Yemen, El Salvador, Finland, Gabon, German Democratic Republic, Ghana, Guinea-Bissau, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ivory Coast, Jordan, Khmer Republic, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Madagascar, Mali, Morocco, Mauritania, Mexico, Mongolia, Nigeria, Norway, Pakistan, Panama, Peru, Poland, Qatar, Republic of Viet-Nam, Romania, Saudi Arabia, Senegal, Sri Lanka, Sudan, Sultanate of Oman, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Venezuela, Yemen, Yugoslavia, Zaire, Zambia.

Against: Belgium, Canada, Denmark, Federal Republic of Germany, France, Israel, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Portugal, Republic of Korea, South Africa, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstaining: Australia, Austria, Burma, Brazil, Colombia, Chile, Greece, Guatemala, Holy See, Ireland, Philippines, Sweden, Turkey.

13. At the thirteenth and fourteenth meetings various delegations made statements in explanation of their votes.

14. The text of the amendment approved was as follows:

Amendment to draft additional Protocol I

Article 1

Amend the title and text of the article to read as follows:

"GENERAL PRINCIPLES

"1. The present Protocol, which supplements the Geneva Conventions of 12 August 1949 for the Protection of War Victims, shall apply in the situations referred to in article 2 common to these Conventions.

"2. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations 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.

"3. The High Contracting Parties undertake to respect and to ensure respect for the present Protocol in all circumstances.

"4. In cases not included in the present Protocol or in other instruments of treaty law, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

Article 2 of draft Protocol I

Sub-paragraphs (a) and (b)

15. At the seventh meeting the following proposal was submitted in connexion with the above sub-paragraphs:

Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America: CDDH/I/36 and Corr.1

16. After a very short debate and in view of the remarks made by the ICRC legal expert, the sponsors of the above amendment, which they described as being of a methodological nature, agreed to its being referred to the Drafting Committee. The Committee decided to leave it to the Drafting Committee to take the amendment into account as it saw fit.

Sub-paragraph (c)

17. The following amendments were submitted:

Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America:	CDDH/I/36 and Corr.1
Syrian Arab Republic:	CDDH/I/62
Senegal:	CDDH/I/72

18. After a short debate, it was decided to defer consideration of sub-paragraph (c) of article 2 until other relevant articles, in particular article 74 of draft Protocol I, had been dealt with.

Sub-paragraphs (d) and (e)

19. The following amendments were submitted:

Poland:	CDDH/I/29
Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America:	CDDH/I/36 and Corr.1
Algeria, Arab Republic of Egypt, Democratic Yemen, Jordan, Kuwait, Libyan Arab Republic, Morocco, Nigeria, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, Uganda, United Arab Emirates:	CDDH/I/44 and Corr.1
Austria, Finland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland:	CDDH/45
Syrian Arab Republic:	CDDH/I/62

20. At the seventh meeting, it was decided to defer consideration of sub-paragraphs (d) and (e) until the Committee came to article 5.

New Sub-paragraphs (f) and (g)

21. The following amendment was submitted.

Brazil: CDDH/I/38

22. At its seventh meeting, the Committee decided not to consider the above amendment for the addition of two new sub-paragraphs to article 2, pending a decision on the text of article 1 of draft Protocol I.

New article 2 bis

23. The following amendment was submitted:

Pakistan: CDDH/I/20

24. At the Committee's eighth meeting, the sponsor of the amendment suggested that its consideration be deferred and that it be studied together with the amendments in documents CDDH/I/28, CDDH/I/27 and CDDH/I/25 concerning articles 7, 7 bis and 7 ter, respectively. The Committee decided to adopt that procedure.

Article 3 of draft Protocol I

25. The following amendments were submitted:

Paragraph 1

India: CDDH/I/46

Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Yugoslavia: CDDH/I/48 and Add.1 and Corr.1 and Add.1/Corr.1

Paragraph 2

Uruguay: CDDH/I/14

Syrian Arab Republic: CDDH/I/47

Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates: CDDH/I/48 and Add.1 and Corr.1 and Add.1/Corr.1

United States of America: CDDH/I/49

Paragraph 3

Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Yugoslavia	CDDH/I/48 and Add.1 and Corr.1 and Add.1/Corr.1
United States of America:	CDDH/I/49

New paragraph 4

Israel:	CDDH/I/45
India:	CDDH/I/46
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Yugoslavia	CDDH/I/48 and Add.1 and Corr.1 and Add.1/Corr.1

26. At its ninth meeting, the Committee approved the Chairman's suggestion that the delegations which had sponsored the amendments in documents CDDH/I/45, CDDH/I/46, CDDH/I/47, CDDH/I/48 and Add.1 and Corr.1 and Add.1/Corr.1, and CDDH/I/49, and the ICRC legal expert should meet informally with a view to producing a revised version of article 3. At the tenth meeting, the delegations which had attended those informal meetings submitted a revised text for paragraph 1 of article 3, which was reproduced in document CDDH/I/63 and Corr.1. With regard to paragraphs 2 and 3 of article 3, and the proposed new paragraph 4, the sponsors were unable to reach an agreement. After a short debate, the Committee decided to postpone the vote on the choice between the two basic texts proposed for paragraph 1 of article 3, i.e. the ICRC draft and the proposal in document CDDH/I/63 and Corr.1.

Article 4 of draft Protocol I

27. The following amendments were submitted:

Australia:	CDDH/I/34
Norway:	CDDH/I/43

Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/52
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Romania, Sudan, Sultanate of Oman, United Arab Emirates:	CDDH/I/59 and Add.1 and 2
Senegal:	CDDH/I/73

28. During the debate, it became evident that many delegations were not prepared to discuss article 4 until the field of application of the Protocol had been definitely established in article 1.

New article 4 bis

29. The following amendment was submitted:

Romania:	CDDH/I/15

30. Following a brief discussion, the amendment proposed in CDDH/I/15 was withdrawn by the sponsor, who reserved the right to revert to the provisions suggested in that document - provisions which, he considered, should be included in draft Protocol I.

Article 5 of draft Protocol I

31. The following amendments were submitted:

Republic of Viet Nam:	CDDH/I/9
Romania:	CDDH/I/18
Pakistan:	CDDH/I/24
Greece:	CDDH/I/31
Italy:	CDDH/I/50
Australia:	CDDH/I/51
Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/52
Brazil	CDDH/I/54
Bangladesh:	CDDH/I/61

Syrian Arab Republic:	CDDH/I/62
United States of America:	CDDH/I/64
Belgium, Netherlands, United Kingdom of Great Britain and Northern Ireland:	CDDH/I/67 and Add.1
India:	CDDH/I/68
Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/70 and Corr.1
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Sudan, Sultanate of Oman, United Arab Emirates:	CDDH/I/75
Republic of Korea:	CDDH/I/76
Spain:	CDDH/I/77
Argentina, Austria, Brazil, Holy See, Ireland, Liberia, Philippines, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon	CDDH/I/80 and Add.1

32. At the eleventh meeting, the Committee initiated its consideration of article 5, which it had decided to study together with sub-paragraphs (d) and (e) of article 2, which provide definitions of the terms "Protecting Power" and "substitute". In the ensuing debate, which covered only paragraphs 1 and 2 of the text of article 5 proposed by the ICRC, many delegations expressed their views on the appointment of Protecting Powers and their substitute and these views can be found in the summary records of the relevant meetings (CDDH/I/SRs.11 and 12).

IV. OTHER MATTERS

33. In connexion with the question of the protection of journalists engaged in dangerous missions in areas of armed conflict, which the Secretariat of the Conference had referred to Committee I, the following proposal was submitted:

Australia, Lebanon, Morocco:	CDDH/I/60

34. At its ninth meeting, the Committee decided to refer to the plenary meeting of the Conference the draft resolution contained in document CDDH/I/60. With respect to that document, the following amendment was submitted:

Switzerland: CDDH/I/69

35. In connexion with the work of the Committee, the delegations of Canada and New Zealand submitted document CDDH/I/78. However, this document was not pressed to a vote by the co-sponsors since the text of the proposal became out of date after the Committee's decision on amendment CDDH/I/71 at the thirteenth meeting.

36. At its sixteenth meeting, the Committee decided, by 51 votes to 23, with 9 abstentions, to include in its report the following:

Recommendation of the Committee

37. The Committee recommends the text of article 1 of draft Protocol I, as contained in paragraph 14 of the present report, for adoption by the Conference.

*

* *

38. At its sixteenth meeting the Committee approved the present report by 59 votes to none, with 22 abstentions.

ANNEX

Amendments to articles not yet discussed by Committee I

Draft Protocol I

Article 6

Romania:	CDDH/I/17
Philippines:	CDDH/I/40
Brazil:	CDDH/I/55
Bangladesh:	CDDH/I/66
Republic of Korea:	CDDH/I/76

Article 7

Romania:	CDDH/I/16
Pakistan:	CDDH/I/28
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Yugoslavia:	CDDH/I/48 and Add.1 and Corr.1 and Add.1/Corr.1
Syrian Arab Republic:	CDDH/I/62
Bangladesh:	CDDH/I/65

Article 7 bis

Pakistan:	CDDH/I/27

Article 7 ter

Pakistan:	CDDH/I/25

Article 70

Syrian Arab Republic:	CDDH/I/74

Draft Protocol I (continued)

New article to be inserted after article 70

Philippines: CDDH/I/19

Bangladesh, Federal Republic of Germany, Finland, Ghana, Greece, Guatemala, Hungary, Iran, Iraq, Jordan, Mauritania, Monaco, Nigeria, Philippines, Poland, Romania, Yugoslavia: CDDH/I/39 and Add.1 and 2

Article 74

Philippines: CDDH/I/57

Article 75 bis

Pakistan: CDDH/I/22

Article 76

Syrian Arab Republic: CDDH/I/74

Article 77

Republic of Viet-Nam: CDDH/I/8

Syrian Arab Republic: CDDH/I/74

Article 79

Philippines: CDDH/I/57

Article 84

Syrian Arab Republic: CDDH/I/74

Article 85

Syrian Arab Republic: CDDH/I/74

Article 90

Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics: CDDH/I/53

Syrian Arab Republic: CDDH/I/74

Draft Protocol I (continued)

Preamble

Philippines: CDDH/I/56

Amendment to the draft code of international crimes and procedure contained in the report on the study by the XXIInd International Conference of the Red Cross of the draft Additional Protocols to the Geneva Conventions of August 12, 1949 (CDDH/6, page 52) (for inclusion in draft Protocol I)

Philippines: CDDH/I/57
CDDH/I/58

Draft Protocol II

Article 1

Republic of Viet-Nam: CDDH/I/7

Pakistan: CDDH/I/26

Romania: CDDH/I/30

Indonesia: CDDH/I/32

Spain: CDDH/I/33

Canada: CDDH/I/37

Brazil: CDDH/I/79

Article 2

Romania: CDDH/I/21

Canada: CDDH/I/37

Brazil: CDDH/I/79

Article 3

Brazil CDDH/I/79

Article 4

Romania: CDDH/I/23

Draft Protocol II (continued)

Article 5

Australia: CDDH/I/35

Article 6

Canada: CDDH/I/37

Article 7

Canada: CDDH/I/37

Article 8

Republic of Viet Nam: CDDH/I/6

Canada: CDDH/I/37

Article 9

Canada: CDDH/I/37

SECOND SESSION

(Geneva, 3 February - 18 April 1975)

COMMITTEE I

REPORT

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COMMITTEE I

REPORT

I. INTRODUCTION

1. As at the first session in 1974, Mr. E. Hambro (Norway) was Chairman of the Committee, while Mr. B.A. Clark (Nigeria) and Mr. K. Obradović (Yugoslavia) performed the duties of Vice-Chairmen. At its seventeenth meeting, on 7 February 1975, Committee I elected Mr. A. de Icaza (Mexico) as Rapporteur, to replace Mr. M. Marín-Bosch (Mexico), who was not present at the second session.

2. Two legal experts of the International Committee of the Red Cross, Mr. A. Martin and Mrs. D.L. Bujard, attended the meetings in order to introduce the texts proposed by the ICRC in connexion with draft Protocol I and draft Protocol II, respectively. Mr. J. de Salis and Mr. J.J. Surbeck, jurists of the ICRC, served as secretaries to the Committee.

3. The Committee held twenty-five meetings, from 7 February to 15 April 1975. The views expressed by the representatives during the discussions appear in the summary records of those meetings (CDDH/I/SR. 17 to 41).

4. The Committee adopted the following articles;

Article 2 (d) and (e); articles 3, 4, 5, 6 and 7 of draft Protocol I
Articles 1, 2, 3, 4 and 5 of draft Protocol II
Articles 70, 70 bis, 71, 72 and 73 of draft Protocol I
Articles 6, 6 bis and 8 of draft Protocol II
Additional article concerning journalists

The Committee also gave preliminary consideration to articles 7, 9 and 10 of draft Protocol II.

II. CONTINUATION OF THE WORK OF COMMITTEE I

5. At the seventeenth meeting of the Committee on 7 February 1975, the Chairman recalled that, in accordance with the decisions taken at the first session, the Committee would resume its work at the precise point where it had left off in 1974 and would consider the two draft Protocols simultaneously, Part by Part (see document CDDH/I/201).

6. The Chairman suggested that the Committee should complete its consideration of Part I of draft Protocol I and then go on to Part I of draft Protocol II.

7. The programme of work of the Committee (CDDH/4/Rev.1) had originally provided for articles 6 to 10 of draft Protocol II (Part II) to be considered after the final provisions of the two draft Protocols had been studied. It was decided to consider them immediately after the study of Part I of draft Protocol II.

8. The question whether Committee III should refer articles 63 to 65 and 67 to 69 of draft Protocol I, and article 32 of draft Protocol II to Committee I having remained undecided for a long time, those articles were finally assigned to Committee I. Since, however, Committee III had made more rapid progress in its work than Committee I, several delegations in the latter Committee urged that the articles in question should be sent back to Committee III. As the question was not settled, the Committee decided to leave those articles aside for the time being.

9. At the suggestion of its Chairman, the Committee set up two Working Groups. The first, Group A, was established at the nineteenth meeting on 11 February 1975 and was at first instructed to deal only with paragraph 3 of article 5 of draft Protocol I. Later, the Committee referred all the articles of draft Protocol I to Group A after they had been considered by the Committee. Mr. A. de Icaza (Mexico), Rapporteur of Committee I, was Chairman of Working Group A.

10. At its third meeting, on 17 March 1975, Working Group A set up a Sub-Working Group to carry out informal consultations among delegations, whenever an article created serious difficulties for the Working Group. Mrs. K. Hjertonsson (Sweden) was the Chairman of this Sub-Working Group.

11. The second Working Group, Group B, was set up at the twenty-second meeting on 14 February 1975, and was instructed to deal with all the articles of draft Protocol II as and when they were referred to it by the Committee. Mr. K. Obradović (Yugoslavia), Vice-Chairman of Committee I, was Chairman of this second Working Group.

11 bis. Working Group B set up consultative sub-groups to draft texts for the following articles of draft Protocol II:

Article 1, presided by Mr. K. Keith (New Zealand)
Article 2, presided by Mr. J. de Breucker (Belgium)
Article 6, presided by Mr. M. Hussain (Pakistan)
Article 8, presided by Mr. N. Rechetniak (Ukrainian Soviet Socialist Republic)
Articles 9 and 10, presided by Mr. J. de Breucker (Belgium)

12. Working Group A held twenty-six meetings, from 11 February to 9 April 1975. During the twenty meetings held from 11 February to 13 March, it considered articles 2 to 7 of draft Protocol I (Part I) before sending them back to the Committee for adoption (see document CDDH/I/235/Rev.1). During the six meetings, held between 3 and 9 April, the Working Group considered articles 70 to 73 of draft Protocol I before sending them back to the Committee for adoption (see document CDDH/I/285/Rev.1).

13. Working Group B held thirty-two meetings, from 19 February to 11 April 1975. During the eighteen meetings held between 19 February and 13 March, this Group considered articles 1 to 5 of draft Protocol II (Part I) before sending them back to the Committee for adoption (see document CDDH/I/238/Rev.1). During the fourteen meetings held between 19 March and 11 April, the Working Group considered articles 6 to 10 of draft Protocol II (Part II) before sending articles 6, 6 bis and 8 back to the Committee for adoption (see document CDDH/I/287/Rev.1).

14. With regard to the drafting of the texts adopted, the Committee took three decisions:

(a) The titles of the articles are not considered to have been adopted. The Drafting Committee will be responsible for the titles.

(b) The articles as adopted are equally authentic in the four languages in which they were adopted. The Drafting Committee will be responsible for ensuring, without altering the substance, that the wording is equivalent.

(c) In view of the fact that article 1, paragraph 2 of draft Protocol I, extended the field of application of that Protocol, the question whether the word "parties" in the various articles approved should or should not be written with an initial capital letter was referred to the Drafting Committee.

III. PROPOSALS AND AMENDMENTS

15. At its seventeenth to twenty-first meetings (from 7 to 13 February 1975) the Committee considered articles 2 to 7 of draft Protocol I prepared by the ICRC, together with relevant proposals and amendments.

Article 2, sub-paragraphs (a) and (b), of draft Protocol I

16. At its seventh meeting on 15 March 1974, the following amendment was submitted in connexion with the above paragraphs:

Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America: CDDH/I/36

17. In the light of its decision at the first session to refer these paragraphs to the Drafting Committee (see the report of Committee I - CDDH/48/Rev.1, para. 16), the Committee did not deal with them at the second session.

Article 2, sub-paragraph (c) of draft Protocol I

18. The following amendments were submitted:

Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America: CDDH/I/36

Syrian Arab Republic: CDDH/I/62

Senegal: CDDH/I/72

19. As the Committee decided at the first session to defer consideration of paragraph (c) of article 2 until article 74 of draft Protocol I had been dealt with (see the report of Committee I (CDDH/48/Rev.1, para. 18)), it has not yet considered that paragraph.

Article 2, sub-paragraph (d) of draft Protocol I

20. The following amendments were submitted:

Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America: CDDH/I/36

Austria, Finland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland: CDDH/45

Syrian Arab Republic: CDDH/I/62

21. At its twenty-first meeting on 13 February 1975, the Committee referred sub-paragraph (d) to Working Group A.

22. At its meeting on 11 March 1975, Working Group A agreed on a text which it sent back to the Committee. The Committee considered that text and approved it, unamended, by consensus, at its twenty-sixth meeting on 13 March 1975.

23. Text of sub-paragraph (d) as adopted:

"(d) 'Protecting Power' means a neutral or other State not a Party to the conflict, which has been designated by a Party to the conflict and accepted by the adversary party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol."

Article 2, sub-paragraph (e) of draft Protocol I

24. The following amendments were submitted:

Poland:	CDDH/I/29
Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America:	CDDH/I/36 and Corr.1
Algeria, Arab Republic of Egypt, Democratic Yemen, Jordan, Kuwait, Libyan Arab Republic, Morocco, Nigeria, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, Uganda, United Arab Emirates:	CDDH/I/44 and Corr.1
Syrian Arab Republic:	CDDH/I/62

25. At its twenty-first meeting, on 13 February 1975, the Committee referred sub-paragraph (e) to Working Group A.

26. At its meetings held on 28 February and 3 March 1975, Working Group A agreed on a text which it sent back to the Committee. The Committee considered that text and adopted it, unamended, by consensus, at its twenty-sixth meeting on 13 March 1975.

27. Text of sub-paragraph (e) as adopted:

"(e) 'Substitute' means an organization acting in place of a Protecting Power in accordance with article 5."

Article 3 of draft Protocol I

28. The following amendments were submitted:

Paragraphs 1, 2 and 3

Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Yugoslavia:	CDDH/I/48 and Corr.1, and Add.1, and Add.1/Corr.1
Australia:	CDDH/I/213

Paragraph 1

India:	CDDH/I/46
Working Group of Committee I:	CDDH/I/63 and Corr.1
Ukrainian Soviet Socialist Republic:	CDDH/I/215

Paragraph 2

Uruguay:	CDDH/I/14
Syrian Arab Republic:	CDDH/I/47
United States of America:	CDDH/I/49

Paragraph 3

United States of America:	CDDH/I/49

New paragraph 4

Israel:	CDDH/I/45
India:	CDDH/I/46
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Yugoslavia:	CDDH/I/48 and Corr.1 and Add.1, and Add.1/Corr.1

29. At its twenty-first meeting on 13 February 1975, the Committee referred article 3 to Working Group A.

30. The Working Group considered article 3 at meetings held on 3 and 4 March, and agreed on a text which it sent back to the Committee. The latter considered the text and adopted it, unamended, by consensus, at its twenty-sixth meeting.

31. Text of article 3 as adopted:

"Without prejudice to the provisions which shall be implemented at all times:

1. The Conventions and the present Protocol shall apply from the beginning of any situation referred to in article 1 of this Protocol.

2. The application of the Conventions and the present Protocol shall cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except for those categories of persons who continue to benefit from the relevant provisions of the Conventions and this Protocol until their final release, repatriation or re-establishment."

Article 4 of draft Protocol I

32. The following amendments were submitted:

Australia:	CDDH/I/34
replaced by:	CDDH/I/214
Norway:	CDDH/I/43
Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics: (The sponsors withdrew this amendment in favour of CDDH/I/59 and Add.1 and 2).	CDDH/I/52
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Romania, Sudan, Sultanate of Oman, United Arab Emirates, Yugoslavia:	CDDH/I/59 and Add.1 and 2
Senegal:	CDDH/I/73

33. At its twenty-first meeting on 13 February 1975, the Committee referred this article to Working Group A.

34. Working Group A considered article 4 at meetings held on 3 and 10 March. Several delegations expressed a preference for a text worded on the lines of article 5, paragraph 5 of draft Protocol I. Since, however, some other delegations expressed support for joint amendment CDDH/I/59 and Add.1 and 2, the Working Group was unable to reach an agreement and sent back to the Committee a text which contained two passages in square brackets as follows:

> "The application of the Conventions and of the present Protocol, as well as the conclusion of the agreements therein provided, shall not affect the legal status of the Parties to the conflict /or of any territory, including occupied territory./ /Neither the occupation of a territory, nor the application of the Conventions and the present Protocol thereto shall affect the legal status of the territory in question./"

35. At its twenty-sixth meeting on 13 March 1975, the Committee voted on the two passages between square brackets in the text submitted to it by Working Group A, and adopted the second passage by 46 votes to 11, with 14 abstentions, after which article 4 as a whole was adopted by consensus.

36. Text of article 4 as adopted:

> "The application of the Conventions and of the present Protocol, as well as the conclusion of the agreements therein provided, shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory, nor the application of the Conventions and the present Protocol thereto shall affect the legal status of the territory in question."

Article 5 of draft Protocol I

37. The following amendments, relating to article 5 as a whole, were submitted:

Pakistan:	CDDH/I/24
Syrian Arab Republic:	CDDH/I/62
Belgium, Netherlands, United Kingdom of Great Britain and Northern Ireland:	CDDH/I/67 and Add.1
Spain:	CDDH/I/77

38. In the course of the first session the Committee had heard, at its eleventh meeting, on 20 March 1974, the views of several delegations on paragraphs 1 and 2 of article 5. In the course of the second session, the Committee considered the remaining paragraphs, 3 to 6, at its eighteenth and nineteenth meetings, on 10 and 11 February respectively, before referring the whole article to Working Group A.

39. Between 13 February and 7 March 1975, Working Group A devoted sixteen meetings to article 5 before finally reaching agreement on a compromise text which it returned to the Committee.

Article 5, paragraph 1, of draft Protocol I

40. Paragraph 1 as reproduced below did not exist in the ICRC draft. It was proposed at the meeting of Working Group A held on 5 March; the Working Group accepted it and returned it to the Committee as part of article 5. The numbering of the paragraphs of that article as it appears in the ICRC draft and as it appears in the following text and in the article adopted by the Committee (see below) is therefore different.

41. At its twenty-seventh meeting, on 14 March 1975, the Committee adopted paragraph 1 without change by 72 votes to 1 with 2 abstentions.

42. Text of paragraph 1 as adopted:

"1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and the present Protocol by the application of the system of Protecting Powers, including inter alia their designation and acceptance, in accordance with the following paragraphs. Such Powers shall have the duty of safeguarding the interests of the Parties to the conflict."

Article 5, paragraph 2, of draft Protocol I

43. The following amendments were submitted:

Romania:	CDDH/I/18
India:	CDDH/I/63
Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/70 and Corr.1

(See also amendments CDDH/I/24, CDDH/I/62, CDDH/I/67 and Add.1, CDDH/I/77)

44. Working Group A considered paragraph 2 at its meetings from 19 to 24 February 1975 and finally adopted a text which it returned to the Committee which considered it and adopted it by consensus, without change, at its twenty-seventh meeting.

45. Text of paragraph 2 as adopted:

> "2. From the beginning of a situation referred to in article 1 of the present Protocol, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and the present Protocol and shall without delay and for the same purpose permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party."

Article 5, paragraph 3, of draft Protocol I

46. The following amendments were submitted:

Romania:	CDDH/I/18
Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/70
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Sudan, Sultanate of Oman, United Arab Emirates:	CDDH/I/75

(See also amendments CDDH/I/24, CDDH/I/62, CDDH/I/67 and Add.1, CDDH/I/77)

47. Working Group A also considered paragraph 3 at its meetings from 19 to 24 February 1975 and finally adopted a text which it returned to the Committee.

48. The Committee considered it at its twenty-seventh meeting on 14 March 1975. Two delegations had suggested a different wording for the last part of the paragraph (see document CDDH/I/235/Rev.1).

49. The Spanish delegation maintained its proposal, which was worded as follows:

> "(The International Committee of the Red Cross) ... shall offer its good offices to the Parties to the conflict with a view to the designation, without delay, of Protecting Powers to which the Parties to the conflict consent, without prejudice to the action that might be undertaken by other impartial humanitarian organizations."

50. This proposal was rejected by 20 votes to 13, with 37 abstentions. The Swiss delegation did not press its proposal to a vote, but expressed the wish that the Drafting Committee should find a suitable form of words to underline the priority of the ICRC as regards good offices.

51. A separate vote was requested on the last sentence of paragraph 3; it was adopted by 61 votes to none, with 4 abstentions. The rest of the paragraph was then adopted without change by 65 votes to none, with 3 abstentions.

52. Text of paragraph 3 as adopted:

"3. If a Protecting Power has not been designated or accepted from the beginning of a situation referred to in article 1 of the present Protocol, the International Committee of the Red Cross, without prejudice to the right of any other impartial humanitarian organization to do likewise, shall offer its good offices to the Parties to the conflict with a view to the designation without delay of Protecting Powers to which the Parties to the conflict consent. For that purpose it may, inter alia, ask each Party to provide it with a list of at least five States which that Party considers acceptable to act as Protecting Power on its behalf in relation to another Party to the conflict and ask the other Party to provide a list of at least five States which it would accept to fulfil this function; these lists shall be communicated to it within two weeks following the receipt of the request; it shall compare them and seek the agreement of any proposed State named on both lists."

Article 5, paragraph 4, of draft Protocol I

53. The following amendments were submitted:

Republic of Viet-Nam:	CDDH/I/9
Romania:	CDDH/I/18
Greece:	CDDH/I/31
Italy:	CDDH/I/50
Brazil:	CDDH/I/54
Bangladesh:	CDDH/I/61
United States of America:	CDDH/I/64
replaced by:	CDDH/I/205

Byelorussian Soviet Socialist Republic,
Ukrainian Soviet Socialist Republic,
Union of Soviet Socialist Republics: CDDH/I/70

Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Sudan, Sultanate of Oman, United Arab Emirates: CDDH/I/75

Republic of Korea: CDDH/I/76

New paragraph 4 bis

United States of America: CDDH/I/205

Norway (article 5 bis): CDDH/I/83

(See also amendments CDDH/I/24, CDDH/I/62, CDDH/I/67 and Add.1, and CDDH/I/77)

54. After lengthy negotiations, the Working Group finally agreed upon a compromise text for paragraph 4, which it sent to the Committee.

55. At its twenty-seventh meeting on 14 March 1975, the Committee considered the text of paragraph 4 received from the Working Group, and adopted it by 53 votes to 10, with 8 abstentions.

56. Text of paragraph 4 as adopted:

"4. If, despite the foregoing, there is no Protectiong Power, the Parties to the conflict shall accept without delay an offer which may be made by the International Committee of the Red Cross or by any other organization which offers all guarantees of impartiality and efficacy, after due consultations with the said Parties and taking into account the result of these consultations, to act as a substitute. The functioning of such a substitute is subject to the consent of the Parties to the conflict; all efforts shall be made by the Parties to facilitate the operation of a substitute in fulfilling its tasks under the Conventions and this Protocol."

57. In the Working Group, the sponsor of amendment CDDH/I/83 and the co-sponsors of amendment CDDH/I/75 agreed, in a spirit of compromise, to combine their proposals in a new paragraph 4 bis.

58. Text of paragraph 4 bis:

> "If the discharge of all or part of the functions of the Protecting Power, including the investigation and reporting of violations, has not been assumed according to the preceding paragraphs, the United Nations may designate a body to undertake these functions."

59. Some delegations expressed agreement with this text subject to minor changes. Other delegations, on the other hand, stated that if the paragraph were approved, it would jeopardize the hard-won compromise reached on article 5 as a whole. The Working Group therefore decided to refer paragraph 4 bis to the Committee.

60. At its twenty-seventh meeting on 14 March 1975, after hearing the views of a large number of delegations on paragraph 4 bis, the Committee rejected it by 32 votes to 27, with 16 abstentions.

Article 5, paragraph 5, of draft Protocol I

61. The following amendments were submitted:

Romania:	CDDH/I/18
Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/52
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Sudan, Sultanate of Oman, United Arab Emirates:	CDDH/I/75

(See also amendments CDDH/I/24, CDDH/I/62, CDDH/I/67 and Add.1, and CDDH/I/77)

62. Working Group A considered paragraph 5 at its meetings on 20 and 25 February and 7 March 1975, and reached agreement on a text which it referred to the Committee while keeping the opening phrase of the paragraph, "In accordance with article 4," in square brackets.

63. At its twenty-seventh meeting on 14 March 1975, the Committee considered this text and adopted it by consensus after agreeing to the removal of the square brackets.

64. Text of paragraph 5 as adopted:

"5. In accordance with article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and the present Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory."

Article 5, paragraph 6 of draft Protocol I

65. The following amendments were submitted:

Romania: CDDH/I/18

India: CDDH/I/68

(See also amendments CDDH/I/24, CDDH/I/62, CDDH/I/67 and Add.1, and CDDH/I/77)

66. Working Group A considered paragraph 6 at its meetings held on 20 and 26 February and 7 March 1975, and reached agreement on a text which it returned to the Committee.

67. The Committee considered the proposed text at its twenty-seventh meeting on 14 March 1975, and adopted it by consensus subject to a clarification proposed by the United Kingdom delegation, which was referred to the Drafting Committee, replacing the words "according to the Vienna Convention on Diplomatic Relations" by the words "in accordance with conventional or customary rules of international law relating to diplomatic relations". (see document CDDH/I/271, page 3).

68. Text of paragraph 6 as adopted:

"6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a party's interests and those of its nationals to a third State according to the Vienna Convention on Diplomatic Relations does not constitute an obstacle to the appointment of Protecting Powers for the purpose of applying the Conventions and the present Protocol."

Article 5, paragraph 7 of draft Protocol I

69. The following amendments were submitted:

Romania: CDDH/I/18

Australia: CDDH/I/51

Argentina, Austria, Brazil, Holy See, Ireland, Liberia, Philippines, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon: CDDH/I/80 and Add.1

(See also amendments CDDH/I/24, CDDH/I/62, CDDH/I/67 and Add.1, and CDDH/I/77)

70. Working Group A also considered paragraph 7 during its meetings on 20 and 26 February and 7 March 1975 and reached agreement on a text which it referred to the Committee. The Committee considered it at its twenty-seventh meeting on 14 March 1975, and adopted it without change or discussion by consensus.

71. Text of paragraph 7 as adopted:

"Whenever hereafter in the present Protocol mention is made of a Protecting Power, such mention also includes any substitute."

72. After the adoption of this paragraph, article 5 as a whole was adopted by consensus at the same meeting.

73. The ICRC made a declaration at the twenty-seventh meeting regarding the role it would be prepared to assume in the context of this article. At the twenty-eighth meeting of the Committee, on 17 March 1975, a number of delegations explained their vote on article 5 as a whole.

Article 6 of draft Protocol I

74. The following amendments were submitted:

Romania: CDDH/I/17

Bangladesh: CDDH/I/66

Paragraph 2

Republic of Korea: CDDH/I/76

(See also amendments CDDH/I/17 and CDDH/I/66)

Paragraph 4

Brazil: CDDH/I/55

German Democratic Republic: CDDH/I/84

(See also amendments CDDH/I/17 and CDDH/I/66)

New paragraph 5

Philippines CDDH/I/40

75. At its nineteenth meeting on 11 February 1975, the Committee heard statements by a number of delegations concerning article 6, which was then referred to Working Group A.

76. Working Group A considered article 6 at its meetings on 10 and 11 March 1975. It quickly reached agreement on paragraphs 1, 2 and 4, and accepted paragraph 3 subject to a drafting change in the Russian version, to include the words "if they deem it necessary" at the end of the paragraph. The article was then returned to the Committee.

77. At its twenty-sixth meeting on 13 March 1975, the Committee considered the wording of article 6 and adopted each paragraph separately. Paragraphs 1, 2 and 4 were adopted by consensus while paragraph 3, as drafted by the Working Group, was adopted by 67 votes to 1, with 4 abstentions. This was followed at the same meeting by explanations of vote.

78. Text of article 6 as adopted:

"1. In peacetime the High Contracting Parties shall endeavour with the assistance of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of the present Protocol, and in particular the activities of the Protecting Power.

2. The recruitment and training of such personnel lies within the national competence.

3. The International Committee of the Red Cross will hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.

4. The conditions governing the employment of such personnel outside the national territory shall, in each case, form the subject of special agreements between the parties concerned."

Article 7 of draft Protocol I

79. The following amendments were submitted:

Romania: CDDH/I/16

Pakistan: CDDH/I/28

Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Yugoslavia:	CDDH/I/48 and Corr.1 and Add.1 and Add.1/Corr.1
Syrian Arab Republic:	CDDH/I/62
Bangladesh:	CDDH/I/65
United Kingdom of Great Britain and Northern Ireland:	CDDH/I/210

80. At its twentieth meeting on 12 February 1975, the Committee briefly considered article 7 before referring it to Working Group A.

81. Working Group A considered article 7 at its meeting on 11 March 1975 but failed to reach agreement, some delegations supporting amendment CDDH/I/210, and a large number of other delegations supporting amendment CDDH/I/48.

82. The Working Group thereupon referred the following text to the Committee:

> "The depositary of the present Protocol shall convene a meeting of all the High Contracting Parties at the request of one or more of the said Parties and upon the approval of /_two-thirds_/ /_a majority_/ of the said Parties, to consider /_general_/ problems concerning the application /_of the Conventions and_/ of the present Protocol."

83. At its twenty-eighth meeting on 17 March 1975, the Committee voted on each of the phrases in square brackets in turn.

84. The words "a majority" were adopted by 35 votes to 29, with 8 abstentions. The word "general" was adopted by 42 votes to 24, with 6 abstentions. The words "of the Conventions and" were adopted by 62 votes to none, with 10 abstentions.

84 bis. The amendment to article 7 submitted by Pakistan under symbol CDDH/I/28 was not considered as a whole. Paragraph 1 was withdrawn by the sponsor in favour of the text of Working Group A. Consideration of paragraphs 2, 3 and 4 was deferred until draft article 79 bis came up for study.

84 ter. Amendments CDDH/I/27 and CDDH/I/25 submitted by Pakistan proposing articles numbered 7 bis and 7 ter were not discussed, at the request of their sponsor; consideration was deferred until draft article 79 bis came up for study (see documents CDDH/I/241 and CDDH/I/267).

85. Following this series of votes, article 7, as a whole, as amended, was adopted by the Committee by consensus at the twenty-eighth meeting.

86. Text of article 7 as adopted:

"The depositary of the present Protocol shall convene a meeting of the High Contracting Parties at the request of one or more of the said Parties and upon the approval of a majority of the said Parties to consider general problems concerning the application of the Conventions and of the present Protocol."

Article 1 of draft Protocol II

87. The following amendments were submitted:

Proposed new article

Canada:	CDDH/I/37

Article 1

Pakistan:	CDDH/I/26
Brazil:	CDDH/I/79
Philippines:	CDDH/I/216
Norway:	CDDH/I/218
Australia:	CDDH/I/219
Philippines:	CDDH/I/231

Paragraph 1

Romania:	CDDH/I/30
Indonesia:	CDDH/I/32
Spain:	CDDH/I/33

German Democratic Republic: CDDH/I/88

Republic of Viet-Nam: CDDH/I/7
replaced by: CDDH/I/91

Ukrainian Soviet Socialist Republic: CDDH/I/217

Lebanon: CDDH/I/222
(see also amendments CDDH/I/26 and CDDH/I/79)

Paragraph 3

Romania: CDDH/I/30

German Democratic Republic: CDDH/I/90
(see also amendments CDDH/I/26 and CDDH/I/79)

88. At its twenty-second, twenty-third and twenty-fourth meetings on 14, 17 and 18 February 1975, respectively, the Committee heard statements by several delegations on article 1 of draft Protocol II. At its twenty-fourth meeting, it decided, on the Chairman's proposal, to refer article 1, together with the whole of Part I of draft Protocol II, to Working Group B.

89. Working Group B spent the greater part of fifteen meetings discussing article 1. At its fourth meeting, it set up a Sub-Working Group, under the chairmanship of Mr. K. Keith (New Zealand), to carry out informal consultations among delegations with a view to agreeing a text for article 1.

90. The Sub-Working Group met six times and submitted the result of its work to Working Group B at its meeting on 12 March. After considering the substance, the Working Group decided by consensus to approve the text submitted to it by the Sub-Group. Canada's proposal (CDDH/I/37) to insert a new article before article 1 was not discussed in the Working Group.

91. At its twenty-ninth meeting on 17 March 1975, the Committee adopted article 1, by consensus, without discussion, and then heard the explanations of vote by a number of delegations.

91 bis. The Committee decided to insert the following explanatory note in the report:

"In this Protocol, so far as the armed forces of a High Contracting Party are concerned, the expression 'armed forces' means all the armed forces - including those which under some national systems might not be called regular forces - constituted in accordance with national legislation under some national systems; according to the views stated by a number of delegations, the expression would not include other governmental agencies the members of which may be armed; examples of such agencies are the police, customs and other similar organizations."

92. Text of article 1 as adopted:

"1. The present Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by article 1 of Protocol I and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement the present Protocol.

2. The present Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."

Article 2 of draft Protocol II

93. The following amendments were submitted:

Canada: CDDH/I/37
replaced by: CDDH/I/220

Philippines: CDDH/I/216

Paragraph 1

Romania: CDDH/I/21

Paragraph 2

Romania: CDDH/I/21

New article 2

Brazil: CDDH/I/79

94. At its twenty-second, twenty-third and twenty-fourth meetings, on 14, 17 and 18 February 1975, the Committee heard statements by a number of delegations on article 2 of draft Protocol II. At its twenty-fourth meeting, it decided to refer the article, with the whole of Part I, to Working Group B.

95. Working Group B devoted four meetings to a discussion of article 2. At its meeting on 3 March, it set up a Sub-Working Group, under the chairmanship of Mr. J. de Breucker (Belgium), to draft the text of article 2.

96. After three meetings, the Sub-Group submitted a text to Working Group B which adopted it by consensus at its meeting on 13 March. The Working Group agreed, however, to keep the words "the protection of articles 8 and 10" in square brackets until those articles had been adopted by Committee I.

97. At its twenty-ninth meeting, the Committee adopted article 2 of draft Protocol II by consensus. There was no discussion, and only two explanations of vote.

98. Text of article 2 as adopted:

"1. The present Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as 'adverse distinction') to all persons affected by an armed conflict as defined in article 1.

2. At the end of the armed conflict, all the persons whose liberty has been restricted for reasons relating to such conflict, as well as those whose liberty is restricted after the conflict for the same reasons, shall enjoy / the protection of articles 8 and 10 / until the end of such restriction of liberty."

Article 3 of draft Protocol II

99. The following amendments were submitted:

Philippines: CDDH/I/223

Argentina: CDDH/I/232

New article 3

Brazil: CDDH/I/79

100. A number of delegations spoke on article 3 at the twenty-third and twenty-fourth meetings of the Committee. At its twenty-fourth meeting, the Committee referred article 3 to Working Group B, with the whole of Part I of draft Protocol II.

101. At its meetings on 3 and 12 March, Working Group B agreed to adopt the draft article proposed by ICRC, subject to the deletion of the final phrase.

102. At its twenty-ninth meeting, on 17 March 1975, the Committee adopted by consensus the text of article 3 which Working Group B had referred to it. There was neither discussion nor any explanation of vote.

103. Text of article 3 as adopted:

> "The application of the provisions of the present Protocol, or of all or part of the provisions of the Geneva Conventions of August 12, 1949, and of the Additional Protocol relating to the protection of victims of international armed conflicts brought into force in accordance with Article 38 or by the conclusion of any agreement provided for in the Geneva Conventions and their additional Protocols shall not affect the legal status of the parties to the conflict."

The attention of the Drafting Committee is drawn to the slight differences between the texts of the various languages.

Article 4 of draft Protocol II

104. The following amendments were submitted:

Romania: CDDH/I/23

Iraq, Nigeria, Venezuela: CDDH/I/239

New paragraph 3

India: CDDH/I/240

105. At its twenty-fourth meeting, on 18 February 1975, the Committee heard statements by some delegations on article 4 before referring it, with the whole of Part I of draft Protocol II, to Working Group B.

106. At its meetings on 4 and 5 March 1975, Working Group B agreed on a text which it adopted by consensus before referring it back to the Committee. It should be mentioned, however, that it adopted only the English version of article 4 and left it to the Drafting Committee to prepare the other language versions.

107. At its twenty-ninth and thirtieth meetings, on 17 and 18 March 1975, the Committee considered the text of article 4 referred back to it by Working Group B. Two delegations (Nigeria and India) then informed the Committee of their intention each to submit a new amendment to article 4. They were requested by the Chairman kindly to do so in writing at the following meeting.

108. At its thirtieth meeting, the Committee heard the views of several delegations on the two amendments submitted. Mexico proposed that article 4 be referred to Working Group B, but the proposal was rejected by 23 votes to 9, with 31 abstentions. The Chairman then put to the vote the amendment which had been submitted by Nigeria and subsequently co-sponsored by Iraq and Venezuela. The Nigerian amendment (to delete the words "by other States", at the beginning of paragraph 2) was adopted by 50 votes to none, with 16 abstentions.

109. Passing then to the other amendment, the Chairman and the representative of India had an exchange of views on procedure, whereupon India agreed not to press its amendment to the vote but reserved the right to take it up later.

110. Still at its thirtieth meeting, the Committee finally adopted article 4 by consensus as submitted by Working Group B, that is to say in its English version, the task of preparing the other language versions being entrusted to the Drafting Committee.

111. Text of article 4 as adopted:

> "1. Nothing in the present Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
>
> 2. Nothing in the present Protocol shall be invoked as a justification for intervening, directly or indirectly for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs."

Article 5 of draft Protocol II

112. The following amendment was submitted:

Australia: CDDH/I/35

113. At its twenty-fourth meeting, on 18 February 1975, the Committee very briefly considered article 5 before referring it to Working Group B with the whole of Part I of draft Protocol II.

114. At its meeting on 6 March 1975, Working Group B approved draft article 5 as proposed by ICRC, subject to drafting changes in the English version. It then referred it back to the Committee.

115. At its thirtieth meeting, on 18 March 1975, the Committee adopted by consensus the text submitted to it by Working Group B.

116. Text of article 5 as adopted:

"The rights and duties which derive from the present Protocol apply equally to all the Parties to the conflict."

Article 70 of draft Protocol I

117. The following amendments were submitted:

Democratic Republic of Viet-Nam:	CDDH/I/281
New article to be inserted before article 70	
Syrian Arab Republic:	CDDH/I/74
New article to be inserted after article 70	
Philippines:	CDDH/I/19
Poland:	CDDH/III/103
Bangladesh, Federal Republic of Germany, Finland, Ghana, Greece, Guatemala, Hungary, Iran, Iraq, Jordan, Mauritania, Monaco, Nigeria, Philippines, Poland, Romania, Yugoslavia:	CDDH/I/39 and Add.1 and 2
New article 70 bis	
Australia, Bangladesh, Canada, Czechoslovakia, Denmark, Federal Republic of Germany, Finland, German Democratic Republic, Ghana, Greece, Guatemala, Hungary, Iran, Iraq, Jordan, Lebanon, Libyan Arab Republic, Liechtenstein, Mauritania, Monaco, Netherlands, Philippines, Poland, Saudi Arabia, Spain, Sudan, Sweden, Switzerland, Union of Soviet Socialist Republics, Yugoslavia:	CDDH/I/263 and Add.1

(This replaces amendment CDDH/I/39 and Add.1 and 2 referred to above)

118. At its thirty-seventh meeting on 2 April 1975, the Committee briefly considered article 70 of draft Protocol I before referring it, at the end of the meeting, to Working Group A together with articles 70 to 73 of draft Protocol I.

119. At its meeting on 4 April 1975, Working Group A considered article 70 and agreed on a text which it then returned to the Committee.

120. At its thirty-eighth meeting on 9 April 1975, the Committee considered and adopted by consensus the text of article 70 received from Working Group A; it decided, however, to retain in square brackets the words "and the Parties to the conflict" since it could not be adopted until article 84 of draft Protocol I and the amendments relating thereto had been considered.

121. Text of article 70 as adopted:

> "1. The High Contracting Parties /and the Parties to the conflict/ shall without delay take all necessary measures for the execution of the obligations incumbent upon them under the Conventions and the present Protocol.
>
> 2. The High Contracting Parties /and the Parties to the conflict/ shall give orders and instructions to ensure observance of the Conventions and the present Protocol and shall supervise their execution."

122. Also at its thirty-seventh meeting on 2 April 1975, the sponsors introduced amendment CDDH/I/263 and Add.1, proposing that a new article 70 bis should be inserted in draft Protocol I. After discussing this draft article, the Committee referred it to the Working Group.

123. At its meetings on 3 and 8 April, Working Group A discussed the draft article at length before agreeing on a final text which it then sent back to the Committee.

124. At its thirty-eighth meeting, the Committee considered and subsequently adopted by consensus the text of article 70 bis received from Working Group A.

125. Text of article 70 bis as adopted:

> "1. The Parties to the conflict shall grant to the International Committee of the Red Cross all facilities within their power so as to enable it to carry out the humanitarian role assigned to it by the Conventions and the present Protocol in order to ensure protection and assistance to the

victims of conflicts; the International Committee of the Red Cross may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned.

2. The Parties to the conflict shall grant to their respective Red Cross (Red Crescent, Red Lion and Sun) organizations the facilities necessary for them to carry out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and the present Protocol and the fundamental Principles of the Red Cross as formulated by International Conferences of the Red Cross.

3. The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the assistance which Red Cross (Red Crescent, Red Lion and Sun) organizations and the League of Red Cross Societies will extend to the victims of conflicts in accordance with the provisions of the Conventions and the present Protocol and with the fundamental Principles of the Red Cross as formulated by the International Conferences of the Red Cross.

4. The High Contracting Parties and the Parties to the conflict will make as far as possible similar facilities as those mentioned in paragraph 2 and paragraph 3 available to the other humanitarian organizations referred to in the Conventions and the present Protocol which are duly authorized by the respective Parties to the conflict and are performing their humanitarian activities in accordance with the provisions of the Conventions and the present Protocol."

Article 71 of draft Protocol I

126. The following amendments were submitted:

Brazil:	CDDH/I/265
Democratic Republic of Viet-Nam:	CDDH/I/282

127. At its thirty-seventh meeting on 2 April 1975, the Committee heard statements by a number of delegations concerning article 71, which it then referred to Working Group A.

128. At its meetings on 4, 5 and 7 April, Working Group A discussed the article at length and finally reached agreement on a generally acceptable text, which it then referred to the Committee.

129. At its thirty-eighth meeting, on 9 April 1975, the Committee considered, and subsequently adopted by consensus, the text of article 71 referred to it by Working Group A.

130. Text of article 71 as adopted:

> "The High Contracting Parties at all times and the parties to the conflict in time of armed conflict shall ensure that legal advisers shall be available as necessary to advise military commanders at the appropriate level on the application of the Conventions and the present Protocol and on the appropriate instruction to be given to the armed forces on this subject."

Article 72 of draft Protocol I

131. The following amendment was submitted:

Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics: CDDH/I/283

132. At its thirty-seventh meeting, the Committee heard statements by a number of delegations on article 72, which it then referred to Working Group A.

133. At its meeting on 7 April 1975, the Working Group finally agreed on a text for paragraphs 1 and 2 of article 72. Paragraph 3, however, caused some controversy and many delegations asked for its deletion. Since other delegations objected to this, the Working Group thought it best to place the wording of this paragraph in square brackets and return it to the Committee so that it could take a vote on it.

134. At its thirty-eighth meeting the Committee considered the proposals submitted to it by Working Group A. It adopted the first two paragraphs of article 72 by consensus. Paragraph 3 was adopted by 22 votes to 17, with 19 abstentions. At the request of one delegation, article 72 as a whole was then put to the vote and adopted by 49 votes to none, with 10 abstentions. Several delegations then explained their vote. The USSR delegation reserved the right to come back to paragraph 3 of article 72 in plenary Conference.

135. Text of article 72 as adopted:

"1. The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and the present Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population.

2. Any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and the present Protocol must be fully acquainted with the text thereof.

3. The High Contracting Parties shall report to the depositary of the Conventions and to the International Committee of the Red Cross at intervals of four years on the measures they have taken in accordance with their obligations under this article."

Article 73 of draft Protocol I

136. No amendment to article 73 was submitted.

137. At its thirty-seventh meeting on 2 April 1975, the Committee very briefly considered article 73 before referring it to Working Group A.

138. At its meeting on 7 April, Working Group A was soon able to adopt a text which it sent to the Committee.

139. At its thirty-eighth meeting, on 9 April 1975, the Committee adopted the text of article 73, submitted to it by Working Group A, by consensus and without discussion.

140. Text of article 73 as adopted:

"The High Contracting Parties shall communicate to one another, as soon as possible, through the depositary of the Conventions and, in case of need, through the Protecting Powers, their official translations of the present Protocol, as well as the laws and regulations which they may adopt to ensure the application thereof."

Article 6 of draft Protocol II

141. The following amendments were submitted:

Canada: CDDH/I/37

Paragraph 2

Poland: CDDH/I/92

Finland: CDDH/I/93

Paragraph 3

Belgium: CDDH/I/244

142. At its thirty-second meeting, on 19 March 1975, the Committee heard statements on article 6 by a large number of delegations. It subsequently referred the article to Working Group B.

143. At its meeting on 24 March 1975, Working Group B set up a Sub-Working Group, with Mr. M. Hussain (Pakistan) in the Chair. The Sub-Working Group was asked to work out a text for article 6. The Sub-Group succeeded in agreeing on a text which it sent back to Working Group B.

144. At its meetings of 7 and 8 April 1975, Working Group B resumed consideration of this text and adopted it by consensus before sending it back to the Committee.

145. At its thirty-ninth meeting, on 11 April 1975, the Committee considered article 6. It first adopted paragraph 1 by consensus.

146. The Committee then voted on the last phrase, placed in square brackets, in paragraph 2 (a), i.e., the words (proposed in English) "or any form of bodily harm". Those words were rejected by 7 votes to 2, with 42 abstentions.

147. The Committee voted next on the first phrase placed between square brackets in paragraph 2 (a), i.e., the words "or any form of corporal punishment". Those words were adopted by 46 votes to 2, with 11 abstentions. Paragraph 2 (a) as a whole was then adopted by consensus.

148. Paragraph 2 (b) was adopted by consensus.

149. Paragraph 2 (c) was adopted by consensus, after the words "in the form of acts of violence committed against those persons" had been deleted by a vote of 26 votes to 17 with 19 abstentions.

150. Paragraphs 2 (d), (e), (f) and (g) were adopted by consensus, it being understood that the word "pillage" in paragraph 2 (f) would be translated into Russian by the word "grabioge" and that in paragraph 2 (g) the word "threat" had been placed in the plural and had become "threats" in all languages.

151. Text of article 6 as adopted by consensus:

"1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, their honour and their religious convictions and practices. They shall in all circumstances be treated humanely, without adverse distinction.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder, and cruel treatment such as torture and mutilation or any form of corporal punishment;

(b) taking of hostages;

(c) acts of terrorism;

(d) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(e) slavery and the slave trade in all their forms;

(f) pillage;

(g) threats to commit any of the foregoing acts.

/3. Measures of reprisals against the persons referred to in paragraph 1 are prohibited/".

152. Paragraph 3 of the article adopted is in square brackets because the Committee decided, at the suggestion of the Working Group, to postpone consideration of the question until the third session of the Conference (see also paragraphs 179 and 180 below relating to the question of prohibiting reprisals).

153. After a lengthy discussion on paragraph 3 of article 6, Working Group B decided to remove it from the article and make it a separate article 6 bis to be inserted after article 6. It then sent the paragraph back to the Committee.

154. At its thirty-ninth meeting, on 11 April 1975, the Committee considered the proposed new article 6 bis and adopted it by consensus, subject to deletion of the word "all".

155. Text of article 6 bis as adopted:

> "In addition to the protection conferred by article 6, women and children shall be the object of special respect and shall be protected against rape, enforced prostitution, and any form of indecent assault."

Article 7 of draft Protocol II

156. The following amendments were submitted:

Canada:	CDDH/I/37
United States of America:	CDDH/I/257

157. At its thirty-second meeting, on 19 March 1972, the Committee briefly considered article 7 before referring it to Working Group B.

158. At its meeting on 21 March 1975, Working Group B decided to postpone consideration of paragraph 1 of article 7 until Committee III had taken a decision on the corresponding provision of draft Protocol I, i.e. article 38 (1) (Safeguard of an enemy hors de combat and giving quarter). As to article 7, paragraph 2, the Working Group decided to transfer it to article 8 (Persons whose liberty has been restricted), where it would constitute a new paragraph 5.

Article 8 of draft Protocol II

159. The following amendments were submitted:

Canada:	CDDH/I/37
Finland:	CDDH/I/94
Federal Republic of Germany:	CDDH/I/236
Belgium:	CDDH/I/264

Paragraph 3

Holy See: CDDH/I/247

Paragraph 5

Republic of Viet-Nam: CDDH/I/6

Byelorussian Soviet Socialist Republic,
Ukrainian Soviet Socialist Republic,
Union of Soviet Socialist Republics: CDDH/I/245

New article 8 bis

Canada: CDDH/I/250

160. At its thirty-second and thirty-third meetings, on 19 and 20 March 1975, respectively, the Committee had a long discussion on article 8 before referring it to Working Group B.

161. At its meeting on 26 March 1975, Working Group B set up a Sub-Working Group on article 8 under the chairmanship of Mr. N. Rechetniak (Ukrainian Soviet Socialist Republic).

162. At its meetings between 2 and 10 April 1975, the Sub-Group debated at length the various paragraphs of article 8. Though it reached agreement on a large part of the text of article 8 it had to send certain phrases back to the Committee in brackets. To gain time, the Sub-Group sent the results of its work back to the Committee directly, instead of to Working Group B. Its proceedings were, however, validated by Working Group B when the latter approved its own report (CDDH/I/287/Rev.1) to the Committee, at its meeting on 11 April 1975.

163. At its thirty-ninth meeting, on 11 April 1975, the Committee in turn considered draft article 8 returned by the Sub-Group. It proceeded to vote on each of the phrases in brackets.

164. Paragraphs 1 (a) and 1 (b) were adopted by consensus.

165. In paragraph 1 (c), the words "they shall be allowed to receive individual or collective relief" were adopted by 28 votes to 23, with 7 abstentions.

166. In paragraph 1 (d), the words "and, if requested and appropriate, receive spiritual assistance from persons, such as chaplains, performing religious functions" were adopted by consensus, on the understanding, however, that the French version of the text would be reconsidered by the Drafting Committee with a view to its being replaced by a wording more accurately reflecting the language in which the proposal was made.

167. Paragraph 1 (e) was adopted by consensus.

168. Paragraph 1 as a whole was then adopted by consensus.

169. Paragraphs 2 (a), (b), (c) and (d) were adopted by consensus.

170. In paragraph 2 (e), the words "they shall be allowed to receive individual or collective relief" were automatically rejected on being adopted in paragraph 1 (c).

171. Paragraphs 3 and 4 were adopted by consensus.

172. On reaching paragraph 5, the Committee voted on a proposal for its deletion. The proposal was rejected by 34 votes to 4, with 21 abstentions.

173. The second of the alternative versions proposed in the report of Working Group B (CDDH/I/287) was then put to the vote and adopted by 42 votes to 11, with 6 abstentions. The first of the alternative versions proposed was consequently rejected.

174. Finally, the Committee adopted by consensus article 8 as a whole, as thus amended.

175. Text of article 8 as adopted:

> "1. In addition to the provisions of article 6, the Parties to the conflict shall respect at least the following provisions with respect to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:
>
> (a) the wounded and the sick shall be treated in accordance with articles 12 and 12 bis;
>
> (b) the persons referred to in paragraph 1 shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and dangers of the armed conflict;
>
> (c) they shall be allowed to receive individual or collective relief;
>
> (d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

(e) they shall, if subjected to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. The Parties to the conflict shall also, within the limits of their capabilities, respect the following provisions with respect to the persons referred to in paragraph 1 above:

(a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;

(b) they shall be allowed to send and receive letters and cards. The parties to the conflict may limit their number if they deem it necessary;

(c) places of internment and detention shall not be located close to the combat zone. The persons referred to in the opening paragraph of paragraph 1 above shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out in adequate conditions of safety;

(d) they shall have the benefit of medical examinations.

3. Persons who are not covered by the opening paragraph of paragraph 1 above but whose liberty has been restricted in any way whatsoever for reasons relating to the armed conflict shall be treated humanely in accordance with article 6 and with sub-paragraphs 1 (a), 1 (c), 1 (d), 2 (b) and 5 of the present article.

4. The Parties to the conflict shall endeavour to facilitate visits to the persons referred to in the opening paragraph of paragraph 1 and in paragraph 3 by representatives of an impartial humanitarian organization.

5. Should a Party to the conflict decide to release persons whose liberty is restricted for reasons relating to the armed conflict, it must take the necessary measures to ensure their safety."

175 bis. The attention of the Drafting Committee is drawn to the form of words "in the opening paragraph of paragraph 1" which was not felt to be satisfactory.

Articles 9 and 10 of draft Protocol II

176. The following amendments were submitted:

Article 9

Canada:	CDDH/I/37
replaced by:	CDDH/I/250
Poland:	CDDH/I/95
Brazil:	CDDH/I/248
Belgium, Netherlands, New Zealand:	CDDH/I/262
Paragraph 2	
German Democratic Republic:	CDDH/I/89
Paragraph 3	
United States of America:	CDDH/I/258

Article 10

India:	CDDH/I/249
Nigeria:	CDDH/I/252
Canada:	CDDH/I/259
Sweden:	CDDH/I/261
Belgium, Netherlands, New Zealand:	CDDH/I/262
Paragraph 4	
Poland:	CDDH/I/96
Brazil:	CDDH/I/248
Paragraph 6	
Italy:	CDDH/I/251
New Paragraph 7	
Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Democratic Republic of Viet-Nam:	CDDH/I/260

177. At its thirty-third and thirty-fourth meetings, on 19 and 20 March 1975, respectively, the Committee heard statements on articles 9 and 10 by numerous delegations. It then referred the articles to Working Group B.

178. At its meeting on 26 March, Working Group B considered the substance of the articles at length. It then decided to pursue its consideration on the basis of the proposal submitted by Belgium, Netherlands and New Zealand (CDDH/I/262), which was designed to merge articles 9 and 10 into a single provision. A Sub-Working Group was set up under the chairmanship of Mr. de Breucker (Belgium) to give the problem further consideration on the basis of the document mentioned. In view of the short time available, however, the Sub-Group was unable to meet, and any further consideration of these articles on the above basis will have to await the third session of the Conference.

Question of prohibiting reprisals

179. The question of prohibiting reprisals had been taken up by Working Group B when article 6 was being considered (see paragraph 146 above). Having failed to reach agreement on either the substance or the form of the notion of "reprisals", the Working Group set up a Sub-Working Group under the chairmanship of Mr. K. Keith (New Zealand) to consider the matter.

180. In view of the difficulties which emerged during the Sub-Group's discussions, Working Group B decided, first, to take no decision on the matter at the present session but to resume consideration of it at the third session of the Conference, and, second, to request the ICRC and all delegations to study the question before the third session of the Conference.

IV. OTHER QUESTIONS

Protection of journalists engaged in dangerous missions in zones of armed conflict

181. On the subject of the protection of journalists engaged in dangerous missions in zones of armed conflict, which had been allocated to Committee I by the Conference Secretariat, a proposal had been submitted at the first session by Australia, Lebanon and Morocco and is reproduced in document CDDH/I/60.

182. At its ninth meeting, on 18 March 1974 (first session), the Committee had decided to transmit the draft resolution contained in document CDDH/I/60 to the Conference for its consideration in plenary.

183. At the second session of the Conference, Committee I considered the question again at its twenty-fifth meeting on 28 February 1975. The Chairman proposed that an Ad Hoc Working Group should be set up to submit recommendations to the President of the Conference or to its Secretary-General on the manner in which the question should be treated. He also invited two representatives of each regional group together with the States which had sponsored United Nations General Assembly resolutions 3058 (XXVIII) and 3245 (XXIX) and any other delegations which so wished, to participate in the Working Group's discussion.

184. At its first meeting, on 6 March 1975, the Ad Hoc Working Group on the Protection of Journalists engaged in Dangerous Missions elected Mr. G. Sperduti (Italy) Chairman by acclamation.

185. Between 6 and 12 March 1975 the Working Group considered a draft resolution and a draft article for insertion in draft Protocol I and prepared a model of identity card for journalists on dangerous missions.

186. At its meeting on 12 March 1975, the Working Group adopted unanimously the three documents mentioned above (see document CDDH/I/237 and Corr.1 and 2) before submitting them to the Committee for approval.

187. At its thirty-first meeting, on 18 March 1975, Committee I began its consideration of the report of the Ad Hoc Working Group. Several delegations spoke suggesting changes in the proposed texts.

188. At its thirty-fifth meeting on 21 March 1975, the Committee resumed its consideration of the report of the Ad Hoc Working Group and discussed two amendments to that report submitted respectively by Nigeria (CDDH/I/246) and Venezuela (CDDH/I/242).

189. The delegation of Nigeria withdrew its amendment and the delegation of Venezuela did not press for a vote on its amendment, but reserved the right, however, to re-submit it to the Conference in plenary.

190. At the close of the discussion, the Committee adopted by consensus and without change the recommendations contained in the report of the above-mentioned Ad Hoc Working Group, as well as the three documents annexed thereto. It approved, inter alia, the suggestion of the Ad Hoc Working Group that the Secretary-General of the Conference should be authorized to inform the United Nations Secretary-General of the results achieved at the second session of the Conference.

190 bis. In draft Protocol I, after article 69 add a new article reading as follows:

"Journalists who are engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of paragraph 1 of article 45. They shall be protected as such under the Conventions and the present Protocol, provided that they take no action affecting their status as civilians and, without prejudice to the right of war correspondents accredited to the armed forces, to the status provided under Article 4 (A)(4) of the third Convention. They may obtain an identity card similar to the annexed model. This card, which shall be issued by the government of the State of which they are nationals or in which they reside or in which the news medium for which they work is located, shall attest to the holder's status as a journalist."

190 ter. Draft resolution adopted by Committee I:

"The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts,

Considering resolution 3058 (XXVIII) of 2 November 1973, by which the General Assembly of the United Nations requested the Diplomatic Conference to submit its comments and advice on the draft Convention on the 'protection of journalists engaged in dangerous missions in areas of armed conflict',

Considering resolution 4 (I) of 28 March 1974 by which the Diplomatic Conference decided to include the examination of the question of journalists engaged in dangerous missions as a matter of priority in the agenda of its second session,

Considering resolution 3245 (XXIX) of 29 November 1974, by which the General Assembly of the United Nations expressed the wish that the Diplomatic Conference submit its observations and suggestions on the subject to the General Assembly at its thirtieth session,

Being desirous of complying with that request,

Noting with concern that too frequently journalists engaged in dangerous professional missions in areas of armed conflict do not enjoy adequate protection,

Having studied with close attention the draft articles which have been submitted to it,

1. Decides to add to Additional Protocol I to the Geneva Conventions an article concerning the protection of journalists engaged in dangerous professional missions in areas of armed conflict, which is based on the same guiding principles, and regards the matter from a purely humanitarian point of view, the text of which is annexed to this resolution;

2. Requests the Secretary-General of this Conference to transmit the text of this resolution to the Secretary-General of the United Nations."

Recommendation of the Committee

191. The Committee recommends the text of the above-mentioned resolution for adoption by the Conference.

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192. At its forty-first meeting, on 15 April 1975, the Committee adopted the present report as amended.

ANNEX

Amendments to articles which have not yet been discussed by Committee I

Draft Protocol I

Article 2 bis

Israel:	CDDH/I/286

Article 65*

Finland:	CDDH/III/99
Poland:	CDDH/III/100
Spain:	CDDH/I/224
Netherlands, Switzerland:	CDDH/I/225 and Add.1
Democratic Republic of Viet-Nam:	CDDH/I/226
Belgium:	CDDH/I/234

Article 66

Finland:	CDDH/III/101

Article 67*

German Democratic Republic:	CDDH/III/86
Poland:	CDDH/III/102
Democratic Republic of Viet-Nam, Democratic People's Republic of Korea:	CDDH/I/227

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*/ Because it was undecided for a long time to which Committee articles 63 to 65 and 67 to 69 of draft Protocol I and article 32 of draft Protocol II would be allocated (see paragraph 8 of this report), a certain number of amendments to these articles were given symbols indicating that they had been allocated to Committee III, while a number of other amendments were allocated to Committee I.

Article 68*

Chana:	CDDH/III/28
Democratic Republic of Viet-Nam:	CDDH/I/228

Article 74

Philippines:	CDDH/I/57
German Democratic Republic:	CDDH/I/85
Australia:	CDDH/I/253

Article 74 bis

France:	CDDH/I/221

Article 75

Australia:	CDDH/I/254

Article 75 bis

Pakistan:	CDDH/I/22

Article 76

Syrian Arab Republic:	CDDH/I/74

Article 77

Republic of Viet-Nam:	CDDH/I/8
Syrian Arab Republic:	CDDH/I/74
Australia:	CDDH/I/255

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*/ Because it was undecided for a long time to which Committee articles 63 to 65 and 67 to 69 of draft Protocol I and article 32 of draft Protocol II would be allocated (see paragraph 8 of this report), a certain number of amendments to these articles were given symbols indicating that they had been allocated to Committee III, while a number of other amendments were allocated to Committee I.

Article 78

Australia:	CDDH/I/256
Belgium:	CDDH/I/266

Article 79

Philippines:	CDDH/I/57
France, Mali, Switzerland:	CDDH/I/279

Article 79 bis

Denmark, New Zealand, Sweden:	CDDH/I/241
Pakistan:	CDDH/I/267

New Section III of Part V

Philippines:	CDDH/I/57 CDDH/I/58 and CDDH/56/Add.1

Article 84

Syrian Arab Republic:	CDDH/I/74
Democratic Republic of Viet-Nam, Qatar:	CDDH/I/229 and Add.1
Algeria, Arab Republic of Egypt, Australia, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Democratic People's Republic of Korea, Democratic Republic of Viet-Nam, Finland, Ghana, Hungary, Ivory Coast, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Madagascar, Mali, Mauritania, Mongolia, Netherlands, New Zealand, Norway, Qatar, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Yugoslavia:	CDDH/I/233 and Add.1 and 2

Article 84 bis

Norway:	CDDH/I/86
Democratic Republic of Viet-Nam:	CDDH/I/230

Article 85

Syrian Arab Republic:	CDDH/I/74
German Democratic Republic:	CDDH/I/87

Article 88

Algeria, Arab Republic of Egypt, Australia, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Democratic People's Republic of Korea, Democratic Republic of Viet-Nam, Finland, Ghana, Hungary, Ivory Coast, Jordan Kuwait, Lebanon, Libyan Arab Republic, Madagascar, Mali, Mauritania, Mongolia, Netherlands, New Zealand, Norway, Qatar, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Yugoslavia:	CDDH/I/233 and Add.1 and 2

Article 90

Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/53
Syrian Arab Republic:	CDDH/I/74

Preamble

Philippines:	CDDH/I/56

Draft Protocol II

Article 32*

Romania: CDDH/III/12

Ghana: CDDH/III/28

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*/ Because it was undecided for a long time to which Committee articles 63 to 65 and 67 to 69 of draft Protocol I and article 32 of draft Protocol II would be allocated (see paragraph 8 of this report), a certain number of amendments to these articles were given symbols indicating that they had been allocated to Committee III, while a number of other amendments were allocated to Committee I.

Geneva, 3 February - 18 April 1975

REPORT TO COMMITTEE I ON THE WORK OF WORKING GROUP A

Working Group A has held 19 meetings in all, from 13 February to 11 March 1975. It has completed its work on the following articles of Protocol I :

Article 2, sub-paragraphs (d), (e), (f) and (g)
Article 3
Article 4
Article 5
Article 6
Article 7

At its third meeting, the Working Group set up a Working Sub-Group to hold informal talks among the delegations. The members of the Sub-Group elected Mrs. K. Hjertonsson, the representative of Sweden, as its Chairman.

In the course of its work, the Working Group met with some problems of translation in the texts under consideration; this explains any possible discrepancies in some of the texts according to the language in which they are drafted. As the meaning of the articles is identical in all four languages, it will rest with the Drafting Committee to find th appropriate wording, without altering the substance. It is understood that the texts in all four languages are equally authentic.

Article 2 (Definitions)

Article 2, sub-paragraph (d). The Working Group adopted this sub-paragraph at its 19th meeting:

> "'Protecting Power' means a neutral or other State not a Party to the conflict, which has been designated by a party to the conflict and accepted by the adversary party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol."

Article 2, sub-paragraph (e). The Working Group adopted this sub-paragraph at its 13th meeting:

> "'Substitute' means an organization acting in place of a Protecting Power in accordance with article 5."

Article 2, sub-paragraphs (f) and (g). These two new proposals, which were originally introduced as an amendment by Brazil (CDDH/I/38), were withdrawn by their sponsor at the 19th meeting of the Working Group.

Article 3 (Beginning and end of application)

It was the view of some members of the small working sub-group that an amendment would be necessary to article 38 dealing with sick, wounded and shipwrecked and persons hors de combat, in order to ensure that those persons also received protection beyond the close of general military operations.

Text of article 3 adopted at the 17th meeting of the Working Group:

"Without prejudice to the provisions which shall be implemented at all times:

1. The Conventions and the present Protocol shall apply from the beginning of any situation referred to in article 1 of this Protocol.

2. The application of the Conventions and the present Protocol shall cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except for those categories of persons who continue to benefit from the relevant provisions of the Conventions and this Protocol until their final release, repatriation or re-establishment."

Article 4 (Legal status of the parties to the conflict)

Several delegations were in favour of a text reproducing the wording of article 5, paragraph 5. Other delegations, however, expressed a preference for amendment CDDH/I/59 submitted by the Arab countries, Yugoslavia and Romania, and supported by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic.

Not having been able to reach agreement, the Working Group decided to submit the following text to the Committee:

"The application of the Conventions and of the present Protocol, as well as the conclusion of the agreements therein provided, shall not affect the legal status of the parties to the conflict. /or of any territory, including occupied territory./ /Neither the occupation of a territory, nor the application of the Conventions and the present Protocol thereto shall affect the legal status of the territory in question./"

Article 5 (Appointment of Protecting Powers and of their substitute)

After lengthy negotiations (more than ten meetings), a very large number of delegations expressed themselves in favour of the text of article 5 which had been evolved mainly as a result of a compromise achieved within the Working Sub-Group. The author of document CDDH/I/83 and the co-authors of document CDDH/I/75 have agreed, in a spirit of compromise, to amalgamate their proposals in a new paragraph 4 bis, and some delegations accepted this subject to a few changes. The Working Group heard a statement made by the representative of the Secretary-General of the United Nations on this matter. Other delegations, on the other hand, stated that if that paragraph was approved, it would jeopardize the hard-won compromise reached on article 5. The Working Group therefore decided to refer the text of the additional paragraph to the Committee and to recommend that it should vote on the matter before even discussing the remainder of article 5.

Text of paragraph 4 bis

"If the discharge of all or part of the functions of the Protecting Power, including the investigation and reporting of violations, has not been assumed according to the preceding paragraphs, the United Nations may designate a body to undertake these functions."

Text of article 5 adopted by the working group:

Paragraph 1*

"It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and the present Protocol by the application of the system of Protecting Powers, including inter alia their designation and acceptance, in accordance with the following paragraphs. Such Powers shall have the duty of safeguarding the interests of the Parties to the conflict."

Paragraph 2

"From the beginning of a situation referred to in article 1 of the present Protocol, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and the present Protocol and shall without delay and for the same purpose permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party."

Paragraph 3

"If a Protecting Power has not been designated or accepted from the beginning of a situation referred to in article 1 of the present Protocol, the International Committee of the Red Cross, without prejudice to the right of any other impartial humanitarian organization to do likewise,** shall offer its good offices to the Parties to the conflict with a view to the

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* The German Democratic Republic and the Democratic Republic of Viet-Nam expressly reserved their position with regard to this paragraph.

** Several delegations expressed reservations regarding the phrase "without prejudice to the right of any other impartial humanitarian organization to do likewise". The delegation of Switzerland proposed that the passage in question should read: "...the International Committee of the Red Cross or, failing that Committee, some other impartial humanitarian organization shall offer...". The delegation of Spain proposed the deletion of the passage in question and the following amendment: "...shall offer its good offices to the Parties to the conflict with a view to the designation, without delay, of Protecting Powers to which the Parties to the conflict consent, without prejudice to the action that might be undertaken by other impartial humanitarian organizations."

designation without delay of Protecting Powers to which the Parties to the conflict consent. For that purpose it may, inter alia, ask each Party to provide it with a list of at least five States which that Party considers acceptable to act as Protecting Power on its behalf in relation to another Party to the conflict and ask the other Party to provide a list of at least five States which it would accept to fulfil this function; these lists shall be communicated to it within two weeks following the receipt of the request; it shall compare them and seek the agreement of any proposed State named on both lists."

Paragraph 4

"If, despite the foregoing, there is no Protecting Power, the Parties to the conflict shall accept without delay an offer which may be made by the International Committee of the Red Cross or by any other organization which offers all guarantees of impartiality and efficacy, after due consultations with the said Parties and taking into account the result of these consultations, to act as a substitute. The functioning of such a substitute is subject to the consent of the Parties to the conflict; all efforts shall be made by the Parties to facilitate the operation of a substitute in fulfilling its tasks under the Conventions and this Protoool."

Paragraph 5

"/In accordance with article 4,7 the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and the present Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory."

Paragraph 6

"The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State according to the Vienna Convention on Diplomatic Relations does not constitute an obstacle to the appointment of Protecting Powers for the purpose of applying the Conventions and the present Protocol."

Paragraph 7

"Whenever hereafter in the present Protocol mention is made of a Protecting Power, such mention also includes any substitute."

Article 6 (Qualified persons)

Article 6, which was considered by the Working Group at its 17th and 18th meetings, was adopted in the following form:

Paragraph 1

"In peacetime the High Contracting Parties shall endeavour, with the assistance of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of the present Protocol, and in particular the activities of the Protecting Powers."

Paragraph 2

"The recruitment and training of such personnel lies within the national competence."

Paragraph 3

"The International Committee of the Red Cross will hold at the disposal of the High Contracting Parties lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose."

Paragraph 4

"The conditions governing the employment of such personnel outside the national territory shall, in each case, form the subject of special agreements between the parties concerned."

Article 7 (Meetings)

Many delegations expressed support for the text submitted in document CDDH/I/210, which combined the substance of several amendments. This text reads as follows:

"The depository of the present Protocol shall convene a meeting of the High Contracting Parties at the request of one or more of the said Parties and upon the approval of two-thirds of the said Parties to consider general problems concerning the application of the present Protocol."

A considerable proportion of the delegations, however, expressed a liking for amendment CDDH/I/48, which reads as follows

"The depositary of the present Protocol shall convene a meeting of the High Contracting Parties at the request of one or more of the said Parties and upon the approval of a majority of

the said Parties, to consider problems concerning the application of the Conventions and the present Protocol. It may also convene such a meeting at the request of the International Committee of the Red Cross."

Having failed to reach agreement, the Working Group submits to the Committee the following text:

"The depositary of the present Protocol shall convene a meeting of all the High Contracting Parties at the request of one or more of the said Parties and upon the approval of /two-thirds/ /a majority/ of the said Parties, to consider /general/ problems concerning the application /of the Conventions and/ of the present Protocol."

Some delegations urged the inclusion in the report of a statement to the effect that article 7 should be considered in relation to article 86 of Protocol I.

For lack of time, the amendment to article 7 submitted by Pakistan under the symbol CDDH/I/28 could not be considered in its entirety. Paragraph 1 of that amendment was withdrawn by its sponsor in favour of the text sent back to the Committee by the Working Group. Paragraphs 2, 3 and 4, could not be considered, however and it was therefore decided to put them in square brackets after the draft of article 7 submitted by the Working Group.

These paragraphs read as follows:

Paragraph 2

/"On request of the International Committee of the Red Cross the depositary shall convene a meeting of the High Contracting Parties in order to consider the prohibition of weapons, projectiles, substances, methods and means which uselessly aggravate the suffering of disabled adversaries or render their death inevitable in all circumstances. A meeting of the High Contracting Parties shall also be convened by the depositary on the request of the International Committee of the Red Cross, with the object of specifying and prohibiting weapons and methods of warfare which are likely to affect combatants and civilians indiscriminately."/

Paragraph 3

/"The Protecting Powers or the International Committee of the Red Cross shall bring to the notice of High Contracting Parties serious and continuing breaches of the Conventions and Protocol.

The High Contracting Parties shall endeavour to bring the Parties to the conflict back to an attitude of respect for the Conventions and the Protocol."/

Paragraph 4

/"In cases where the conciliation procedure common to the Conventions and Protocol has failed, the Protecting Power may, if it considers the question of interpretation or application sufficiently important, request the depositary to convene a meeting of the High Contracting Parties to resolve the disagreement. The depositary shall immediately circulate this request to the High Contracting Parties, and shall convene such a meeting if desirable. A meeting of the High Contracting Parties, so convened, shall take appropriate steps to settle the disagreement."/

Conclusion

The Working Group considered in depth the articles set forth and, although there are certain points on which it was unable to reach a consensus, there are grounds for hoping that the necessary decisions can be taken, and that the articles will be adopted by Committee I without further detailed discussion.

Geneva, 3 February - 18 April 1975

REPORT TO COMMITTEE I OF THE AD HOC WORKING GROUP ON THE PROTECTION OF JOURNALISTS ENGAGED IN DANGEROUS MISSIONS

The Ad hoc Working Group on the Protection of Journalists met for the first time on 6 March 1975 under the chairmanship of Mr. E. Hambro.

Mr. Sperduti (Italy) was elected chairman of the group by acclamation and started work immediately.

The group had before it a draft resolution and drafts of an article for insertion in draft Protocol I, prepared by the delegations of France, Canada and the United States of America respectively. These drafts were discussed in the Ad hoc Working Group between 6 and 12 March 1975 with the participation of representatives of the regional groups, of the co-sponsors of the draft Convention submitted to the United Nations General Assembly, and of a number of representatives of other countries. 1/

The Working Group held several meetings during which it considered the draft resolution and the draft article, and also the establishment of a draft model of identity card for journalists engaged in dangerous professional missions.

This model identity card was prepared by a sub-group consisting of the representatives of the Byelorussian Soviet Socialist Republic, Canada, Finland, France and the United States of America, with the invaluable assistance of the Conference Secretariat.

At its meeting on 12 March 1975, the Working Group unanimously adopted the three documents reproduced in the annexes to this report.

1/ This paragraph incorporates CDDH/I/237/Corr.2.

This last meeting was attended by representatives of the following countries:

Australia, Austria, Byelorussian Soviet Socialist Republic, Canada, Finland, France, Iran, Italy, Japan, Lebanon, New Zealand, Turkey, United States of America and Venezuela.

The Director of the United Nations Division of Human Rights was also present.

The Working Group also held an exchange of views on the most appropriate procedure for informing the United Nations of the work done by the Conference on Humanitarian Law on the subject of journalists engaged in dangerous missions in areas of armed conflict.

One of the possibilities contemplated was that the Conference should authorize its Secretary-General to transmit to the Secretary-General of the United Nations information on the work done on this subject at its second session.

Lastly, the Working Group requested its Chairman to inform the Chairman of Committee I of the outcome of its deliberations.

ANNEX I

Draft Addition to Protocol I

In draft Protocol I, after article 69 add a new article reading as follows:

"Journalists who are engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of paragraph 1 of article 45. They shall be protected as such under the Conventions and the present Protocol, provided that they take no action affecting their status as civilians and without prejudice to the right of war correspondents accredited to the armed forces to the status provided under Article 4(A)(4) of the Third Convention. They may obtain an identity card similar to the annexed model. This card, which shall be issued by the government of the State of which they are nationals or in which they reside or in which the news medium for which they work is located, shall attest to the holder's status as a journalist."

ANNEX II

Draft resolution: Journalists engaged in dangerous missions

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts,

Considering resolution 3058 (XXVIII) of 2 November 1973, by which the General Assembly of the United Nations requested the Diplomatic Conference to submit its comments and advice on the draft Convention on the "protection of journalists engaged in dangerous missions in areas of armed conflict",

Considering the resolution of 28 March 1974 by which the Diplomatic Conference decided to include the examination of the question of journalists engaged in dangerous missions as a matter of priority in the agenda of its second session,

Considering resolution 3245 (XXIX) of 29 November 1974, by which the General Assembly of the United Nations expressed the wish that the Diplomatic Conference submit its observations and suggestions on the subject to the General Assembly at its thirtieth session,

Being desirous of complying with that request,

Noting with concern that too frequently journalists engaged in dangerous professional missions in areas of armed conflict do not enjoy adequate protection,

Having studied with close attention the draft articles which have been submitted to it,

Decides to add to Additional Protocol I to the Geneva Conventions an article concerning the protection of journalists engaged in dangerous professional missions in areas of armed conflict, which is based on the same guiding principles, and regards the matter from a purely humanitarian point of view, the text of which is annexed to this resolution,

Requests the Secretary-General of this Conference to transmit the text of this resolution to the Secretary-General of the United Nations.

ANNEX III

DRAFT MODEL OF IDENTITY CARD
FOR JOURNALISTS ENGAGED IN DANGEROUS MISSIONS
IN AREAS OF ARMED CONFLICT

Remarks

The card should be made out in the languages of the present Protocol, in the language of the country issuing the card and, if possible, in the language of the region in which the armed conflict is taking place. Actual size of the card: 13 cm x 10 cm.

The covering page of the identity card, in the French, Spanish and Russian versions, should read:

CARTE D'IDENTITE DE JOURNALISTE
EN MISSION PROFESSIONNELLE PERILLEUSE

TARJETA DE IDENTIDAD DE PERIODISTA
EN MISION PROFESIONAL PELIGROSA

УДОСТОВЕРЕНИЕ ЖУРНАЛИСТА,
НАХОДЯЩЕГОСЯ В ОПАСНОЙ ПРОФЕССИОНАЛЬНОЙ КОМАНДИРОВКЕ 1/

It should be a small booklet like a passport with a title cover in the various languages and identifying the country by which it is issued.

1/ This paragraph incorporates CDDH/I/237/Corr.1.

(Name of country issuing this card)
(Nom du pays qui a délivré cette carte)
(Nombre del país que expide esta tarjeta)
(Название страны, выдавшей настоящее удостоверение)

IDENTITY CARD FOR JOURNALISTS
ON DANGEROUS PROFESSIONAL MISSIONS

CARTE D'IDENTITE DE JOURNALISTE
EN MISSION PERILLEUSE

TARJETA DE IDENTIDAD DE PERIODISTA
EN MISION PELIGROSA

УДОСТОВЕРЕНИЕ ЖУРНАЛИСТА,
НАХОДЯЩЕГОСЯ В ОПАСНОЙ КОМАНДИРОВКЕ

Issued by (competent authority)
Délivrée par (autorité compétente) . . . . . .
Expedida por (autoridad competente)
Выдано (компетентными властями)

Photograph of bearer
Photographie du porteur
Fotografía del titular
Фотография предъявителя

Place
Lieu . . . . . .
Lugar
Место

Date
Date . . . . . .
Fecha
Дата

(Official seal imprint)
(Timbre de l'autorité délivrant la carte)
(Sello oficial)
(Официальная печать)

. . . . . (Signature of bearer)
(Signature du porteur)
(Firma del titular)
(Подпись владельца)

Name
Nom . . . . . .
Apellidos
Фамилия

First names
Prénoms . . . . . .
Nombre
Имя, Отчество

Place & date of birth
Lieu & date de naissance . . . . . .
Lugar y fecha de nacimiento
Дата и место рождения

Correspondent of
Correspondant de . . . . . .
Corresponsal de
Корреспондент

Specific occupation
Categorie professionnelle . . . . . .
Categoría profesional
Род занятий

Valid for
Durée de validité . . . . . .
Valida por
Действительно

Height
Taille
Estatura . . . . . .
Рост

Eyes
Yeux
Ojos . . . . . .
Глаза

Weight
Poids
Peso . . . . . .
Вес

Hair
Cheveux
Cabello . . . . . .
Волосы

Blood type
Groupe sanguin
Grupo sanguíneo . . . . . .
Группа крови

Rh factor
Facteur Rh
Factor Rh . . . . . .
Rh-фактор

Religion (optional)
Religion (facultatif)
Religión (optativo) . . . . . .
Религия (факультативно)

Fingerprints (optional)
Empreintes digitales (facultatif)
Huellas digitales (optativo)
Отпечатки пальцев (факультативно)

(Left forefinger)
(Index gauche)
(Dedo índice derecho)
(Левый указательный палец)

(Right forefinger)
(Index droit)
(Dedo índice izquierdo)
(Правый указательный палец)

Special marks of identification
Signes particuliers
Señas particulares
Особые приметы

. . . . . .
. . . . . .
. . . . . .

NOTICE

This identity card is issued to journalists on dangerous professional missions in areas of armed conflict. The holder is entitled to be treated as a civilian under the Geneva Conventions of 12 August 1949, and their Additional Protocol I. The card must be carried at all times by the bearer. If he is detained, he shall at once hand it to the Detaining Authorities, to assist in his identification.

AVIS

La présente carte d'identité est délivrée aux journalistes en mission professionnelle périlleuse dans des zones de conflit armé. Le porteur a le droit d'être traité comme une personne civile aux termes des Conventions de Genève du 12 août 1949 et de leur Protocole additionnel I. La carte doit être portée en tout temps par son titulaire. Si celui-ci est arrêté, il la remettra immédiatement aux autorités qui le détiennent afin qu'elles puissent l'identifier.

NOTA

La presente tarjeta de identidad se expide a los periodistas en misión profesional peligrosa en zonas de conflictos armados. Su titular tiene derecho a ser tratado como persona civil conforme a los Convenios de Ginebra de 12 agosto de 1949 y su Protocolo Adicional I. El titular debe llevar consigo, en todo momento, la tarjeta. En caso de ser detenido, la entregara inmediatamente a las autoridades que lo detengan a fin de facilitar su identificación.

ПРИМЕЧАНИЕ

Настоящее удостоверение выдается журналистам, находящимся в опасных профессиональных командировках в районах вооруженного конфликта. Его обладатель имеет право на обращение с ним как с гражданским лицом в соответствии с Женевскими Конвенциями от 12 августа 1949 г. и Дополнительным Протоколом I к ним. Владелец настоящего удостоверения должен постоянно иметь его при себе. В случае задержания он немедленно вручает его задерживающим властям для содействия установлению его личности.

(Name of country issuing this card)
(Nom du pays qui a délivré cette carte)
(Nombre del pais que expide esta tarjeta)
(Название страны, выдавшей настоящее удостоверение)

IDENTITY CARD FOR JOURNALISTS
ON DANGEROUS PROFESSIONAL MISSIONS

CARTE D'IDENTITE DE JOURNALISTE
EN MISSION PERILLEUSE

TARJETA DE IDENTIDAD DE PERIODISTA
EN MISION PELIGROSA

УДОСТОВЕРЕНИЕ ЖУРНАЛИСТА,
НАХОДЯЩЕГОСЯ В ОПАСНОЙ КОМАНДИРОВКЕ

Issued by (competent authority)
Délivrée par (autorité compétente)
Expedida por (autoridad competente)
Выдано (компетентными властями) . . . . . .

Photograph of bearer Photographie du porteur Fotografia del titular Фотография предъявителя

Place
Lieu
Lugar
Место . . . . . .

Date
Date
Fecha
Дата . . . . . .

(Official seal imprint)
(Timbre de l'autorité délivrant la carte)
(Sello oficial)
(Официальная печать)

. . . . . (Signature of bearer)
(Signature du porteur)
(Firma del titular)
(Подпись владельца)

Name
Nom
Apellidos . . . . . .
Фамилия

First names
Prénoms
Nombre . . . . . .
Имя, Отчество

Place & date of birth
Lieu & date de naissance
Lugar y fecha de nacimiento . . . . . .
Дата и место рождения

Correspondent of
Correspondant de
Corresponsal de . . . . . .
Корреспондент

Specific occupation
Categorie professionnelle
Categoría profesional . . . . . .
Род занятий

Valid for
Durée de validité
Valida por . . . . . .
Действительно

Height
Taille
Estatura
Рост

Eyes
Yeux
Ojos
Глаза

Weight
Poids
Peso
Вес

Hair
Cheveux
Cabello
Волосы

Blood type
Groupe sanguin
Grupo sanguíneo
Группа крови

Rh factor
Facteur Rh
Factor Rh
Rh-фактор

Religion (optional)
Religion (facultatif)
Religión (optativo)
Религия (факультативно)

Fingerprints (optional)
Empreintes digitales (facultatif)
Huellas digitales (optativo)
Отпечатки пальцев (факультативно)

(Left forefinger)
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(Index droit)
(Dedo indice izquierdo)
(Правый указательный палец)

Special marks of identification
Signes particuliers
Señas particulares
Особые приметы

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Geneva, 3 February - 18 April 1975

REPORT TO COMMITTEE I
ON THE WORK OF WORKING GROUP 'B'

Between 14 February and 13 March 1975, Working Group "B" held a total of 13 meetings. It completed its work on the following articles of draft Protocol II:

Article 1

Article 2

Article 3

Article 4

Article 5

Article 1 - Material field of application

At its fourth meeting, the Working Group set up a working sub-group and gave it the task of undertaking informal consultations among the delegations, on the basis of all the proposals that had been submitted to it, in order to arrive at the formulation of a text for article 1. The Sub-Group, of which Mr. K. Keith, the representative of New Zealand, was the Chairman, met six times, and a total of 28 delegations participated in its work. The results were submitted to Working Group "B" at its meeting of 12 March by Mr. Keith, who introduced document CDDH/I/GT/56.

Working Group "B", having noted this next and considered its substance, approved the following text by consensus:

"1. The present Protocol, which develops and supplements article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by article 1 of Protocol I and which take place in the territory of a High Contracting Party between its armed* forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement the present Protocol.

2. The present Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."

The delegation of Brazil, however, drew attention to its amendment CDDH/I/79 relating to a new article 2 - Beginning and end of application - which contained a criterion that Brazil would have liked to see embodied in article 1, having agreed to the withdrawal of the new article itself.

The Brazilian delegation therefore requested that the following text be incorporated in article 1, paragraph 1, after the words "... Protocol I":

"... recognized as such by the High Contracting Party in whose territory the armed conflict is considered to exist ...",

in place of the words "and which take place in the territory of a High Contracting Party".

Some delegations supported the proposal.

The Federal Republic of Germany proposed the addition of the following words at the end of article 1, paragraph 2:

"... within the meaning of paragraph 1."

The above-mentioned delegations stated that, without dissociating themselves from the consensus reached on article 1, they nevertheless wished to reserve the right to re-introduce the proposals at a plenary meeting of Committee I.

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* The phrase "armed forces" was used in article 1 in preference to other suggestions. It was understood that a passage to the following effect be included in the report of the Chairman of Working Group B to the plenary of Committee I:

In this Protocol, so far as the armed forces of a High Contracting Party are concerned, the expression "armed forces" means all the armed forces - including those which under some national systems might not be called regular forces - constituted in accordance with national legislation under some national systems; according to the views stated by a number of delegations, the expression would not include other governmental agencies the members of which may be armed; examples of such agencies are the police, customs and other similar organizations.

Article 2 - Personal field of application

At its meeting of 3 March 1975, Working Group B set up a Sub-Group, with the Belgian representative, Mr. J. De Breucker, in the Chair, to work out a draft for article 2. The Sub-Group held three meetings. After the second, Working Group B, having heard Mr. De. Breucker's report and considered document CDDH/I/GT/43, adopted the following text as paragraph 1 of the article:

"1. The present Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as 'adverse distinction') to all persons affected by an armed conflict as defined in article 1."

Working Group B requested the Sub-Group to give further consideration to paragraph 2 of the article. After a third meeting, held on 13 March 1975, the Sub-Group was able to submit to Working Group B document CDDH/I/GT/58, in which the following text was proposed for paragraph 2:

"At the end of the armed conflict, all the persons whose liberty has been restricted for reasons relating to such conflict, as well as those whose liberty is restricted after the conflict for the same reasons, shall enjoy [the protection of articles 8 and 10] until the end of such restriction of liberty."

This text was adopted by Working Group B by consensus on the same day. However, the Working Group agreed that the words "the protection of articles 8 and 10" should be placed in square brackets until those articles were adopted by Committee I.

The text of article 2 will therefore read as follows:

"1. The present Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as 'adverse distinction') to all persons affected by an armed conflict as defined in article 1."

"2. At the end of the armed conflict, all the persons whose liberty has been restricted for reasons relating to such conflict, as well as those whose liberty is restricted after the conflict for the same reasons, shall enjoy /the protection of articles 8 and 10/ until the end of such restriction of liberty".

Article 3 - Legal status of the parties to the conflict

After studying the draft article prepared by the ICRC, the Working Group decided, at its meeting on 4 March, to retain the French version, but place square brackets around the last part of the sentence, concerning territories; it also decided to prepare a new English verion to tally with the French text.

After adopting article 1, the Working Group decided, at its meeting on 12 March, to delete the reference to territories.

Article 3, likewise adopted by consensus, will now read as follows:

The application of the provisions of the present Protocol, or of all or part of the provisions of the Geneva Conventions of August 12, 1949, and of the Additional Protocol relating to the protection of victims of international armed conflicts brought into force in accordance with article 38 or by the conclusion of any agreement provided for in the Geneva Conventions and their additional Protocols shall not affect the legal status of the parties to the conflict".

Article 4 - Non-intervention

At its meeting on 4 March, Working Group B decided to establish a Working Sub-Group to prepare a fresh version of article 4. The Sub-Group met the same day and, in informal fashion, elaborated the text given in CDDH/I/GT/40. The text was presented by Mr. A. Cristescu, representative of Romania, and then studied by Working Group B at its meeting on 5 March: the Working Group made a few changes in it.

The text on which Working Group B reached a consensus is given in document CDDH/I/GT/42 and reads as follows:

"1. Nothing in the present Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

2. Nothing in the present Protocol shall be invoked by other States as a justification for intervening, directly or indirectly for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs."

The Working Group approved the English version of this article and decided to refer it to the Drafting Committee for drafting in the other languages.

Article 5 - Rights and duties of the Parties to the conflict

At its meeting on 6 March 1975, Working Group B approved the text proposed by the ICRC, subject to amendments to the English version in conformity with amendment CDDH/I/35.

The approved text therefore reads as follows:

"The rights and duties which derive from the present Protocol apply equally to all the Parties to the conflict."

Conclusion

The question of the titles of the articles of the Protocol had been raised at the first meeting of Working Group B, when it was decided that since the matter was of such a general nature, affecting all the texts drawn up by the Diplomatic Conference, it did not fall within the terms of reference of the Working Group and would probably have to be considered later in plenary.

Moreover, Working Group B was a highly-representative unit which had done its work thoroughly and in a note-worthy spirit of co-operation; it therefore hoped that the results would be favourably received by the Committee and that the articles would be adopted by the Committee without further detailed discussion.

Geneva, 3 February - 18 April 1975

REPORT OF WORKING GROUP A TO COMMITTEE I ON ARTICLES 70 TO 73 OF DRAFT PROTOCOL I

Working Group A met under the chairmanship of Mr. A. de Icaza (Mexico) from 3 to 9 April 1975. It met on five occasions to consider articles 70, 70 bis, 71, 72 and 73 of draft Protocol I.

Article 70 - Measures for execution

At its meeting on 4 April, the Working Group adopted the following text for article 70:

Paragraph 1

"The High Contracting Parties /and the Parties to the conflict/*/ shall without delay take all necessary measures for the execution of the obligations incumbent upon them under the Conventions and the present Protocol."

Paragraph 2

"The High Contracting Parties /and the Parties to the conflict/*/ shall give orders and instructions to ensure observance of the Conventions and the present Protocol and shall supervise their execution."

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*/ Working Group "A" and the Committee decided to retain this phrase provisionally in square brackets, its adoption being linked to the consideration of article 84 of draft Protocol I and the amendments relating thereto.

Article 70 bis Activities of the Red Cross and other humanitarian organizations

With regard to draft article 70 bis submitted by 29 sponsors in document CDDH/I/263 and Add.1, Working Group A requested Mrs. K. Hjertonsson (Sweden), Chairman of the Working Sub-Group, to hold informal consultations with a view to reaching agreement on a text for article 70 bis. After lengthy negotiations, the Sub-Group reached agreement on a text, which it sent back to Working Group A. The Working Group adopted it by consensus at its meeting on 8 April.

The following is the text of article 70 bis:

Paragraph 1

"The Parties to the conflict shall grant to the International Committee of the Red Cross all facilities within their power so as to enable it to carry out the humanitarian role assigned to it by the Conventions and the present Protocol in order to ensure protection and assistance to the victims of conflicts; the International Committee of the Red Cross may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned.

Paragraph 2

"The Parties to the conflict shall grant to their respective Red Cross (Red Crescent, Red Lion and Sun) organizations the facilities necessary for them to carry out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and the present Protocol and the fundamental Principles of the Red Cross as formulated by the International Red Cross Conference.

Paragraph 3

"The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the assistance which Red Cross (Red Crescent, Red Lion and Sun) organizations and the League of Red Cross Societies will extend to the victims of conflicts in accordance with the provisions of the Conventions and the present Protocol and with the fundamental Principles of the Red Cross as formulated by the International Red Cross Conferences.

Paragraph 4

"The High Contracting Parties and the Parties to the conflict will make as far as possible similar facilities as those mentioned in paragraph 2 and paragraph 3 available to the other humanitarian organizations referred to in the Conventions and the present Protocol which are duly authorized by the respective Parties to the conflict and are performing their humanitarian activities in accordance with the provisions of the Conventions and the present Protocol."

Article 71 - Legal advisers in armed forces

The Working Group followed the same procedure for article 71 as for article 70 bis. The Working Sub-Group soon agreed upon a text accepted by all the delegations. When the article was submitted by the Sub-Group, Working Group A considered it and approved it in four languages at its meeting on 7 April 1975.

Text of article 71:

"The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisers shall be available as necessary, to advise military commanders at the appropriate level on the application of the Conventions and the present Protocol and on the appropriate instruction to be given to the armed forces on this subject.

Article 72 - Dissemination

At its meeting on 7 April 1975, Working Group A agreed to approve article 72, as follows:

Paragraph 1

"The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and the present Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population."

Paragraph 2

"Any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and the present Protocol must be fully acquainted with the text thereof."

Paragraph 3*/

/The High Contracting Parties shall report to the depositary of the Conventions and to the International Committee of the Red Cross at intervals of four years on the measures they have taken in accordance with their obligations under this article."/

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*/ Since the Working Group was unable to reach agreement on the adoption of this paragraph, it decided to submit this paragraph to the Committee in square brackets so that the Committee could take a vote on it.

Article 73 - Rules of application

At its meeting on 7 April 1975, Working Group A approved without difficulty the following text of article 73:

"The High Contracting Parties shall communicate to one another, as soon as possible, through the depositary of the Conventions and, in case of need, through the Protecting Powers, their official translations of the present Protocol, as well as the laws and regulations which they may adopt to ensure the application thereof."

Geneva, 3 February - 18 April 1975

REPORT TO COMMITTEE I
ON THE PROCEEDINGS OF WORKING GROUP B

Between 19 March and 11 April 1975, Working Group B devoted a total of 14 meetings to Part II of Protocol II. It completed its work on the following articles:

Article 6
Article 6 bis
Article 8

Article 6 - Fundamental guarantees

At its 2nd meeting, the Working Group set up a working sub-group which was asked to carry out informal consultations with delegations on all the proposals submitted, with a view to working out a text for article 6. This sub-group met under the chairmanship of Mr. M. Hussain, the representative of Pakistan, and after holding one meeting, achieved the result set out in document CDDH/I/GT/65, which was presented to Working Group B at its meeting on 25 March 1975. The Working Group decided, however, to discuss that text later, after it had concluded its discussion on Part II as a whole.

The Working Group resumed its consideration of document CDDH/I/GT/65 at its meetings on 7 and 8 April 1975; after studying the text and considering its substance, it approved the following wording by consensus:

"1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, their honour and their religious convictions and practices. They shall in all circumstances be treated humanely, without adverse distinction.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder, and cruel treatment such as torture and mutilation / or any form of corporal punishment / / or any form of bodily harm /;

(b) taking of hostages;

(c) acts of terrorism / in the form of acts of violence / committed against those persons;

(d) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(e) slavery and the slave trade in all their forms;

(f) pillage;

(g) threats to commit any of the foregoing acts.

/ 3. Measures of reprisals against the persons referred to in paragraph 1 are prohibited. /"

This text calls for some explanation, however.

Paragraph 2 (a)

Certain delegations stated that it was desirable that corporal punishment should be expressly prohibited. The Working Group agreed that such punishment should be described in the words "or any form of corporal punishment", the term "corporal punishment" having been taken from the Geneva Conventions. That part of the sentence, however, remains in square brackets, and it will be for the Committee to decide whether it is to be retained in the final text of the article.

Paragraph 2 (c)

Two Spanish-speaking delegations asked that the words "in the form of acts of violence" should be deleted, since acts of violence are implicit in the notion of acts of terrorism.

Paragraph 2 (d)

The wording of this sub-paragraph had been taken from Article 27 of the Fourth Geneva Convention. One delegation pointed out in that connexion, that there was a difference between the English and French texts of that paragraph; the French text read "et (and) tout attentat...", whereas the English version of that phrase began with the word "or". The Working Group calls the Drafting Committee's attention to that point.

Paragraph 3 (former paragraph 4), in square brackets.

Since the Working Group had decided to propose to Committee I that it should postpone consideration of that question to the third session of the Conference, the Finnish delegation, which had submitted an amendment (CDDH/I/93) proposing that the prohibition of reprisals should be included in the article, decided not to insist on that paragraph being put to the vote in Committee I at this stage of its work.

Article 6 bis

After a lengthy discussion on paragraph 3 of article 6 sub mitted in document CDDH/I/GT/65, the Working Group decided by consensus to remove it from article 6 and make it a separate article reading:

"In addition to the protection conferred by article 6, women and children shall be the object of special respect and shall be protected against rape, enforced prostitution, and any form of indecent assault."

The Working Group also proposed that Committee I should recommend the competent committee of the Conference to include an explicit reference to women in the context of paragraph 1 of article 32 (Part V, Chapter III of draft Protocol II) based on article 6 bis.

Article 7 - Safeguard of an enemy hors de combat

At its meeting on 21 March 1975, the Working Group decided to suspend its consideration of paragraph 1 of article 7 until Committee III had taken a decision on the corresponding article of draft Protocol I, namely, article 38, Part III, Section I - Methods and Means of Combat.

The Working Group decided that paragraph 2 should be transferred to article 8 - Persons whose liberty has been restricted - of which it should form a new paragraph 5.

Article 8 - Persons whose liberty has been restricted

At its meeting on 26 March 1975, the Working Group, after a general discussion on this article, set up a Working Sub-Group under the chairmanship of Mr. N. Rechetnjak, representative of the Ukrainian Soviet Socialist Republic.

This widely-representative sub-group held six meetings and succeeded in drafting a text based on document CDDH/I/GT/69, which reads as follows:

"1. In addition to the provisions of article 6, the parties to the conflict shall respect at least the following provisions with respect to persons deprived of their liberty for reasons relating to the armed conflict, whether they are interned or detained:

(a) the wounded and the sick shall be treated in accordance with articles 12 and 12 bis;

(b) the persons referred to in paragraph 1 shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygience and protection against the rigours of the climate and dangers of the armed conflict;

(c) /they shall be allowed to receive individual or collective relief;/

(d) they shall be allowed to practice their religion /and receive spiritual assistance from persons, such as chaplains, performing religious functions/;

(e) they shall, if subjected to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. The parties to the conflict shall also, within the limits of their capabilities, respect the following provisions with respect to the persons referred to in paragraph 1 above:

(a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;

(b) they*/ shall be allowed to send and receive letters and cards. The parties to the conflict may limit their number if they deem it necessary;

(c) places of internment and detention shall not be located close to the combat zone. The persons referred to in the opening paragraph of paragraph 1 above*/ shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out in adequate conditions of safety;

(d) they shall have the benefit of medical examinations;

(e) /they shall be allowed to receive individual or collective relief/.

3. Persons who are not covered by the opening paragraph of paragraph 1 above but whose liberty has been restricted in any way whatsoever for reasons relating to the armed conflict shall be treated humanely in accordance with article 6 and with sub-paragraphs 1 (a), 1 (c), 1 (d), 2 (b) and 5 of the present article.

4. The parties to the conflict shall endeavour to facilitate visits to the persons referred to in the opening paragraph of paragraph 1 and in paragraph 3 by representatives of an impartial humanitarian organization.

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*/ The attention of the Drafting Committee is drawn to this form of words which was not felt to be entirely satisfactory.

5. /~A party to the conflict may not release persons deprived of their liberty in circumstances which would endanger their health or safety/~ regarding their return to the adverse party or their homes./~/~

5. /~Should a party to the conflict decide to release persons whose liberty is restricted for reasons relating to the armed conflict, it must take the necessary measures to ensure their safety. ~/"

The text of article 8 also calls for some explanations:

Sub-paragraph 1 (c)

In response to the wishes of a number of delegations to have this rule put in paragraph 2, the Working Group decided to include this provision, in brackets, in paragraphs 1 and 2, and to leave it to the Committee to decide where it should finally be placed.

Paragraph 1 (d)

Some delegations would like to see this provision, with the brackets removed, in paragraph 2.

Paragraph 2 (d)

A majority of delegations in the Working Group were against this provision.

Paragraph 5

Since the Working Group was unable to reach a consensus on any one text for this paragraph, the choice rests with the Committee.

In the first alternative, the amendment proposed by one delegation is in brackets, and it will be for the Committee to reach a decision on that amendment before dealing with the alternative as a whole.

Two delegations, however, were of the opinion that paragraph 5 should be deleted.

Article 9. Principles of penal law and
Article 10. Penal prosecutions

After a lengthy discussion on the substance of these provisions, the Working Group, at its meeting on 26 March, resolved to consider the matter further on the basis of the proposal submitted by Belgium, the Netherlands and New Zealand (CDDH/I/262), which was designed to merge these two articles into a single provision. The Working Group set up a Working Sub-Group to give the problem further consideration

on that basis; Mr. J. De Breucker was appointed Chairman of the Sub-Group. In view of the short time available, however, this Sub-Group has not met and the consideration of these articles will be continued during the third session of the Conference, on the above-mentioned basis.

Question of prohibiting reprisals

The question of prohibiting reprisals had been taken up when article 6 was being considered. Having failed to reach agreement either on the substance of that idea or on its form, or even on the position that such a provision should occupy in Part II, or even in Protocol II, the Working Group set up a Sub-Group under the chairmanship of Mr. K. Keith, representative of New Zealand. The Sub-Group submitted document CDDH/I/GT/74 to Working Group B; after a discussion and consultations among a number of delegations, the document was amended by document CDDH/I/GT/79, reading as follows:

"If one party to the conflict does not respect the provisions of the present Protocol, that fact does not in any circumstances authorize the non-compliance by the other party with the provisions of this Part, even for the purpose of inducing the adverse party to comply with its obligations."

Although this proposal (CDDH/I/GT/74) had been drawn up by a working Sub-Group of 15 delegations, and although it was subsequently supported by a number of delegations in an amended form (CDDH/I/GT/79), there were lengthy discussions in Working Group B on the substance of the proposal, some delegations objecting that it covered too broad a field. A number of delegations then put forward new proposals. In the circumstances, the Working Group took the following decisions:

(a) to propose to Committee I that it take no decision on the matter at the present session but resume consideration of the problem at the third session of the Conference;

(b) to request the ICRC and all delegations, in order to facilitate future work, to study the question before the next session of the Conference, such study being based in particular on the new proposals put forward in the course of the discussion and set out in the annex of this report.

ANNEX

The idea of prohibiting reprisals

New proposals

Iran (original: FRENCH)

"Acts of vengeance likely to affect the humanitarian rights conferred upon persons protected by this Part are prohibited."

Philippines (original: ENGLISH)

"Failure of one Party to the conflict to comply with the provisions of the present Protocol shall not authorize the other party to employ counter measures for the purpose of enforcing the provisions."

Pakistan (original: ENGLISH)

"Isolated cases of disrespect of the provisions of the present Protocol by one party shall not in any circumstances authorize the non-compliance by the other party with the provisions of this Part, even for the purpose of inducing the adverse Party to comply with its obligations."

Canada (original: ENGLISH)

"If a Party to the conflict persistently violates the provisions of the Protocol and refuses to comply with those provisions after being called upon to do so, then, except concerning the persons protected by articles ...[1/], the adverse Party may nevertheless resort to measures which are in breach of the Protocol, provided it had warned the offending party that such action will be resorted to if the offensive acts are not terminated within a specified time.[2/]

1/ These would be the articles that concern, in particular, the protection of persons within the power of one of the Parties to the conflict.

2/ As is clear from the language of the proposal, this is intended to be of general application affecting the entire Protocol.

Italy (original: FRENCH)

"The provisions of the present Part must be observed at all times and in all circumstances, even if the other Party to the conflict is guilty of violating the provisions of the present Protocol."

THIRD SESSION

(Geneva, 21 April - 11 June 1976)

COMMITTEE I

REPORT

CONTENTS

COMMITTEE I

REPORT

I. INTRODUCTION

1. Mr. E. F. Ofstad (Norway) was elected Chairman of Committee I by acclamation at the thirty-first plenary meeting of the Conference, and Mr. K. Obradović (Yugoslavia) and Mr. B. A. Clark (Nigeria) continued to serve as Vice-Chairmen. Mr. A. de Icaza (Mexico) continued to act as Rapporteur.

2. Four legal experts of the International Committee of the Red Cross, Mrs. D. L. Bujard, Mrs. S. Junod, Mr. C. Pilloud and Mr. B. Zimmermann, attended the meetings and introduced the texts submitted by the ICRC for draft Protocols I and II. Mr. J. F. Kammer and Mr. L. Stämpfli, served as Legal Secretaries to the Committee.

3. The Committee held eighteen meetings between 22 April and 17 May 1976 and six meetings between 3 and 9 June, making a total of twenty-four. The views expressed by representatives during the discussions appear in the summary records of those meetings (CDDH/I/SR.42-65).

4. The Committee adopted the following articles:

Article 74 of draft Protocol I, adopted on 3 June 1976, by consensus. For the text of the article as adopted, see paragraph 78 of the present report.

Article 76 of draft Protocol I, adopted on 3 June 1976, by consensus. For the text of the article as adopted, see paragraph 83 of the present report.

New article 10 of draft Protocol II, adopted on 4 June 1976, by consensus. For the text of the article as adopted, see paragraph 95 of the present report.

Article 36 of draft Protocol II, adopted on 4 June 1976, by consensus. For the text of the article as adopted, see paragraph 101 of the present report.

Article 37 of draft Protocol II, adopted on 4 June 1976, by consensus. For the text of the article as adopted, see paragraph 106 of the present report.

Article 38 of draft Protocol II, adopted on 4 June 1976, by consensus. For the text of the article as adopted, see paragraph 110 of the present report.

Article 39 of draft Protocol II, adopted on 4 June 1976, by 34 votes to 17, with 2 abstentions. For the text of the article as adopted, see paragraph 114 of the present report.

The Committee also considered new article 74 bis, article 75, new articles 75 bis and 76 bis, articles 77 and 78, new article 78 bis, article 79 and new article 79 bis of draft Protocol I, and new article 10 bis of draft Protocol II. The Committee will have to give further consideration to new article 10 bis (see paragraphs 97, 97 bis and 98 of the present report).

5. At the thirty-first plenary meeting of the Conference, on 21 April 1976, it was decided that articles 63 to 65 and 67 to 69 of draft Protocol I and article 32 of draft Protocol II should be allocated finally to Committee III.

6. At the forty-second meeting of the Committee, on 22 April 1976, the Chairman submitted, in his introductory statement, the programme of work of the Committee (CDDH/I/301) and stated that the first article to be considered would be article 74 of draft Protocol I.

7. Working Group A, established at the nineteenth meeting of the Committee, on 11 February 1975, was requested to continue consideration of the articles of draft Protocol I after they had been discussed in plenary. Mr. A. de Icaza (Mexico), Rapporteur of Committee I, continued to serve as Chairman of the Working Group.

8. Working Group A held eleven meetings between 3 May and 2 June 1976.

9. Working Group B, established at the twenty-second meeting of the Committee, on 14 February 1975, was likewise instructed to continue consideration of the articles of draft Protocol II. Mr. K. Obradović (Yugoslavia), Vice-Chairman of the Committee, continued to serve as Chairman of the Working Group.

10. Working Group B held fourteen meetings between 4 May and 4 June 1976.

II. CONTINUATION OF THE WORK OF COMMITTEE I

A. Discussion of articles by the Committee

Article 74 of draft Protocol I

11. When the Conference resumed work at the third session, the following amendments to article 74 had been submitted:

Philippines:	CDDH/I/57
German Democratic Republic:	CDDH/I/85
International Committee of the Red Cross:	CDDH/210/Annex 2
Australia:	CDDH/I/253

The following amendments were submitted at the third session of the Conference:

Switzerland (for sponsor's introduction, see CDDH/I/SR.43):	CDDH/I/303
Poland (for introduction, see CDDH/I/SR.46):	CDDH/I/304
United Kingdom of Great Britain and Northern Ireland, United States of America (for introduction, see CDDH/I/SR.46):	CDDH/I/309
Algeria, Egypt, Iraq, Jordan, Lebanon, Libyan Arab Republic, Palestine Liberation Organization, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates:	CDDH/I/311
Mongolia, Uganda, United Republic of Tanzania (for sponsor's introduction, see CDDH/I/SR.47):	CDDH/I/313 and Add.1

12. Together with the other articles in draft Protocol I, Part V, Section II, article 74 was the subject of a general debate at the forty-third, forty-fourth and forty-fifth meetings on 23, 26 and 27 April 1976 (CDDH/I/SR.43, 44 and 45).

13. The debate on article 74 in particular took place at the forty-fifth meeting on 27 April, at the forty-sixth meeting on 28 April and at the forty-seventh meeting on 29 April 1976.

14. At the forty-third and forty-fifth meetings, the representative of ICRC introduced article 74 and in particular the new text contained in document CDDH/210/annex 2.

15. At the end of its debate, the Committee decided to refer the ICRC draft and the amendments listed above to Working Group A.

New article 74 bis of draft Protocol I

16. New article 74 bis was submitted by France (CDDH/I/221). A revised proposal (CDDH/I/221/Rev.1) was submitted at the forty-sixth meeting on 28 April 1976.

17. The Committee considered this proposal at the forty-sixth meeting on 28 April 1976, the forty-seventh meeting on 29 April 1976 and the forty-eighth meeting on 30 April 1976. At the same time, the Committee considered new article 70 bis submitted by Poland (CDDH/III/103). These questions were then referred to Working Group A.

Article 75 of draft Protocol I

18. An amendment to article 75 (CDDH/I/254) had been submitted by Australia at the second session. At the third session the following amendments were submitted:

Switzerland (for sponsor's introduction, see CDDH/I/SR.43):	CDDH/I/303
United States of America (for introduction, see CDDH/I/SR.49):	CDDH/I/305
Canada, Federal Republic of Germany, Nicaragua, Philippines (for introduction, see CDDH/I/SR.49):	CDDH/I/314

19. The representative of the ICRC introduced article 75 at the beginning of the forty-ninth meeting on 3 May 1976. The general debate on article 75 was completed at the same meeting.

20. At the forty-ninth meeting one delegation proposed that the Committee should immediately vote on amendment CDDH/I/314 and that it should refer article 75, together with the other amendments, to Working Group A. The proposal was adopted by 38 votes to 22, with one abstention (see CDDH/I/SR.49).

21. When put to the vote, amendment CDDH/I/314 was rejected by 43 votes to 5, with 21 abstentions.

New article 75 bis of draft Protocol I

22. New article 75 bis had been proposed by Pakistan at the first session (CDDH/I/22). The Committee examined it and referred it to Working Group A.

Article 76 of draft Protocol I

23. Article 76 submitted by the ICRC had already been the subject of an amendment by the Syrian Arab Republic (CDDH/I/74). At the third session, the following amendments were submitted:

Switzerland (for sponsor's introduction, see CDDH/I/SR.43):	CDDH/I/303
United States of America (for introduction, see CDDH/I/SR.50):	CDDH/I/306

24. Article 76 was introduced by the ICRC at the fiftieth meeting on 4 May 1976. The Committee considered the article together with the related amendments at the same meeting and also at the fifty-first meeting on 5 May. Working Group A was then requested to study the article in greater detail.

New article 76 bis of draft Protocol I

25. At the fiftieth meeting, new article 76 bis (CDDH/I/307) was introduced by its sponsor - the delegation of the United States of America. This proposal was also referred to Working Group A.

Article 77 of draft Protocol I

26. Article 77 submitted by the ICRC was the subject of the following amendments:

Syrian Arab Republic:	CDDH/I/74
Australia:	CDDH/I/255
Switzerland (for sponsor's introduction, see CDDH/I/SR.43):	CDDH/I/303
United States of America (for introduction, see CDDH/I/SR.51):	CDDH/I/308

27. The Committee considered article 77 at the fifty-first meeting, on 5 May 1976 and the fifty-second meeting 6 May 1976. Article 77 and the amendments thereto were referred to Working Group A.

Article 78 of draft Protocol I

28. Article 78 submitted by the ICRC was the subject of the following amendments:

Australia (this amendment was withdrawn by the sponsor at the fifty-third meeting on 7 May 1976):	CDDH/I/256
Belgium:	CDDH/I/266
Switzerland (for sponsor's introduction, see CDDH/I/SR.43):	CDDH/I/303
United Kingdom of Great Britain and Northern Ireland, United States of America (for introduction, see CDDH/I/SR.53):	CDDH/I/309
Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Democratic Republic of Viet-Nam, German Democratic Republic, Hungary, Poland, Republic of South Viet-Nam, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/310 and Add.1

Philippines: CDDH/I/315

29. Article 78, which was introduced by the representative of the ICRC at the beginning of the fifty-third meeting, was discussed at the same meeting, the fifty-fourth meeting and the fifty-fifth meeting. The Committee decided by 27 votes to 26, with 11 abstentions, to refer article 78 to Working Group A (CDDH/I/SR.55).

New article 78 bis of draft Protocol I

30. The new article 78 bis (CDDH/I/312 and Add.1) was proposed by Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Democratic Republic of Viet-Nam, German Democratic Republic, Hungary, Mongolia, Poland, Republic of South Viet-Nam, Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics. The new article was introduced at the fifty-third meeting (CDDH/I/SR.53).

31. At the fifty-fifth meeting the Chairman of the Committee proposed that new article 78 bis, together with articles 78 and 79, should be referred to Working Group A. As the suggestion was objected to, the Chairman proposed that a vote should be taken on the referral of article 78 bis to Working Group A. The proposal to refer article 78 bis to Working Group A was rejected by 29 votes to 23, with 12 abstentions.

Article 79 of draft Protocol I

32. Article 79, as proposed by the ICRC, was the subject of the following amendments:

Philippines: CDDH/I/57

France, Mali, Switzerland: CDDH/I/279

Switzerland (for sponsor's introduction, see CDDH/I/SR.43): CDDH/I/303

33. Article 79 was discussed at the fifty-third, fifty-fourth, fifty-fifth and fifty-sixth meetings and was referred to Working Group A at the last mentioned meeting on 12 May 1976.

New article 79 bis of draft Protocol I

34. A proposal for a new article 79 bis was made by Denmark, New Zealand, Norway and Sweden (CDDH/I/241 and Add.1); another proposal for a new article 79 bis was made by Pakistan (CDDH/I/267), and an amendment to the proposal in CDDH/I/241 and Add.1 was submitted by Japan (CDDH/I/316).

35. The new article 79 bis was discussed at the fifty-sixth, fifty-seventh and fifty-eighth meetings of the Committee on May 12, 13 and 14, 1976. The ICRC representative explained the ICRC's position at the fifty-sixth and fifty-eighth meetings. Finally the proposals for a new article 79 bis and the amendment were referred to Working Group A.

Article 36 of draft Protocol II

36. There were no amendments to article 36.

37. At its fifty-ninth meeting on 17 May 1976 the Committee took cognizance of article 36 of draft Protocol II, introduced by the ICRC, and proceeded to consider the text of the article. At the end of the discussion the Committee decided to refer the text of the ICRC draft to Working Group B.

Article 37 of draft Protocol II

38. Article 37 was the subject of the following amendment:

Brazil:	CDDH/I/319

39. At its fifty-ninth meeting, the Committee considered article 37 of draft Protocol II, after its introduction by the ICRC.

40. At the close of the general discussion the Committee decided to refer the text of the ICRC draft, together with the amendment submitted, to Working Group B.

Article 38 of draft Protocol II

41. Article 38 was the subject of the following amendment:

United Kingdom of Great Britain and Northern Ireland:	CDDH/I/318

42. After the introduction of article 38 of draft Protocol II by the ICRC, the Committee considered the article at its fifty-ninth meeting. It then decided to refer article 38, together with the above-mentioned amendment, to Working Group B, for more detailed consideration.

Article 39 of draft Protocol II

43. There were no amendments to article 39.

44. The Committee considered article 39 of draft Protocol II at its fifty-ninth meeting, after its introduction by the ICRC. The Committee then referred article 39 to Working Group B for more detailed consideration.

B. Results of the work of Working Groups A and B

Article 74 of draft Protocol I

45. Working Group A was asked to examine article 74 with a view to submitting a draft article to the Committee. The Group completed the consideration of the list of possible grave breaches in five meetings, on the basis of a working document by the Chairman and of other documents submitted.

46. At its meeting on 21 May, Working Group A formed a Sub-Group under the Chairmanship of Mr. J. M. Hussain (Pakistan), to give more detailed consideration to the drafting of a text of article 74. The Sub-Group held seven meetings, and the results are given in its report to Working Group A.

47. At its meetings on 1 and 2 June Working Group A took note of the report of the Sub-Group, and adopted the text and notes, as set forth in the report of the Group (CDDH/I/324).

Article 75 of draft Protocol I

47 bis. After consideration by Working Group A the text of this article was included in article 74, paragraph 3 (f) (see CDDH/I/324).

Article 76 of draft Protocol I

48. Working Group A considered draft article 76 at its meetings on 24 and 25 May. On 2 June it adopted the text given in its report (CDDH/I/324, para. 11).

Articles 9 and 10 of draft Protocol II

49. In accordance with the decision taken on 26 March 1975 at the second session of the Conference by Working Group B (see the report of Committee I on its second session - CDDH/219/Rev.1, para.178), the Working Sub-Group, already established, met on 22 April 1976 under the chairmanship of Mr. J. de Breucker (Belgium), to consider the question on the basis of amendment CDDH/I/262. This was a proposal by Belgium, the Netherlands and New Zealand to amalgamate articles 9 and 10 into a single provision.

50. The Sub-Group held five meetings from 22 to 30 April 1976, and submitted its report to Working Group B at its meeting on 4 May.

51. Working Group B met four times between 4 and 10 May to study the report of the Sub-Group and adopt a redrafted text. The results of its work are set forth in its report (CDDH/I/317/Rev.2) recommending the adoption of a new article 10.

52. Working Group B met on 2 June to adopt its report (CDDH/I/317/Rev.2).

New article 10 bis of draft Protocol II

53. In accordance with the request made at the second session by Working Group B (see CDDH/I/219/Rev.1, para. 180), the ICRC had prepared a report on the problem of reprisals in the context of Protocol II (CDDH/I/302), to which were appended the amendments and proposals submitted in the Main Committees at the first and second sessions of the Conference.

54. Working Group B, having heard the introduction of document CDDH/I/302 by the ICRC on 12 May 1976, devoted its meetings on 12, 13 and 14 May to the study of that document. The Working Group decided at its meeting on 14 May to reconstitute a Working Sub-Group, under the chairmanship of Mr. K.J. Keith (New Zealand) to prepare a text of the article.

55. The Working Sub-Group met on 17 and 18 May, and submitted a report to Working Group B.

56. Working Group B took note of the report of the Sub-Group, at its meeting on 19 May, and prepared its report to Committee I (CDDH/I/320/Rev.2). At its meeting on 2 June Working Group B adopted the report with some changes. In particular, it decided to replace the word "reprisals" throughout by a reference to new article 10 bis.

Article 36 of draft Protocol II

57. Working Group B considered article 36 of draft Protocol II at its meeting on 20 May, and adopted a slightly redrafted text. The result of its work is given in its report to the Committee (CDDH/I/323).

58. At its meeting on 4 June Working Group B adopted its report and transmitted it to the Committee.

Article 37 of draft Protocol II

59. At its meeting on 20 May 1976 Working Group B considered article 37 of draft Protocol II, and the amendment to it, and prepared its report to the Committee (CDDH/I/323).

60. At its meeting on 4 June Working Group B adopted its report (CDDH/I/323) and transmitted it to the Committee.

Article 38 of draft Protocol II

61. At its meetings on 20 and 24 May Working Group B considered article 38 of draft Protocol II and the amendment to it. The result of its work is given in its report (CDDH/I/323) to the Committee.

62. On 4 June 1976 Working Group B adopted its report (CDDH/I/323) with some corrections. Some delegations pointed out that, in accordance with a decision taken in the Working Group, the word "shall" in the English text should be replaced by the word "should".

Article 39 of draft Protocol II

63. Working Group B examined article 39 of draft Protocol II at its meeting on 25 May 1976. As it was unable to reach any conclusion, the Group decided to establish a Working Sub-Group under the chairmanship of Mr. S. Ben Rejeb (Tunisia) to prepare a text for article 39.

64. The Working Sub-Group met on 26 and 28 May 1976, and examined various working proposals without, however, reaching any agreement.

65. The Working Sub-Group then decided to dissolve and to make an oral report, through its Chairman, to Working Group B. Working Group B resumed consideration of article 39, to which it devoted two meetings, on 31 May and 1 June 1976.

66. The results of its work are given in its report (CDDH/I/323) to the Committee. The Working Group met on 4 June 1976 to adopt its report.

67. A number of delegations asked that various changes should be made in the report, which was reissued on 7 June 1976 in its redrafted form under the symbol CDDH/I/323/Rev.1. In addition Working Group B transmitted the proposed text of article 39 in its report to the Committee.

C. Results of the work of the Committee

Article 74 of draft Protocol I

68. Following the discussion in Committee I, and in the light of the notes included in the report of Working Group A (CDDH/I/324), the following comments appear necessary:

69. A change was made in paragraph 2. A reference to article 42 bis was inserted.

70. With regard to paragraph 3, a number of delegations pointed out that the acts or omissions defined in article 11, paragraph 4, ought not, technically speaking, to create a grave breach if committed against a country's own nationals. The delegations concerned asked the Chairman of the Committee to raise the matter with the Chairman of Committee II.

71. One delegation asked at the sixtieth meeting, on 3 June 1976, for the insertion in paragraph 3 of article 74 of a new sub-paragraph worded as follows:

> "(g) the use of weapons prohibited by the law of war, such as asphyxiating, poisonous or other gases and analogous liquids, materials or devices, dum-dum bullets, and those weapons that violate the traditional principles of international law and humanitarian rules, such as biological weapons, blast and fragmentation weapons."

Several representatives approved this proposal. Others, while approving it in principle, were not in entire agreement with the wording of the draft. Still others who indicated objections, also expressed their sympathy with the humanitarian aims that led to its introduction. After a full discussion it was suggested that no decision should be taken on this proposal at the present session, it being understood that the question of including in Protocol I a provision for the treatment of such violations as grave breaches could be taken up at the fourth session. With this understanding the proposal was not pressed to a vote at the present session.

72. Several delegations objected to the reference to the principle of proportionality in article 50, paragraph 2 (a) (iii) in the context of dangerous forces in paragraph 3 (c) of article 74.

73. With regard to paragraph 3 (d), some delegations wanted the words "as defined in articles 52 and 53" added at the end of the sentence. One delegation expressed reservations concerning this sub-paragraph, particularly with regard to the inclusion of "demilitarized zones".

74. One delegation expressed reservations regarding the words "and other protective signs" in paragraph 3 (f).

74 bis. One delegation dissociated itself from the consensus on paragraphs 4 (a), (b) and (c).

75. While many delegations supported the wording of paragraph 4 (c) as reproduced in this report, two delegations objected to its inclusion and a few delegations preferred the following alternative draft:

> "The practice of discrimination in the form of distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin involving outrages upon personal dignity and manifestations such as inhuman and degrading treatment and related practices of apartheid."

76. Paragraph 4 (d) was amended by substituting the clause "for example within the framework of a competent international organization" for the wording proposed by the Working Group: "either within the framework of a competent international organization or, if the party concerned so chooses, directly with the adverse party".

77. One delegation considered that the provisions of paragraph 5 did not prejudge the question whether or not acts covered by article 74 constituted crimes against humanity. Several other delegations pointed out that the term "war crimes" as used in article 74, paragraph 5, was alien to the terminology of the Conventions and the present Protocol. Several other delegations questioned the desirability of such a paragraph and objected to it. The latter delegations expressed reservations to paragraph 5.

78. Article 74 was adopted paragraph by paragraph, at the sixtieth and sixty-first meetings and the article as a whole by consensus, at the sixty-first meeting held on 3 June 1976. It reads as follows (see also CDDH/I/326*):

> Article 74 - Repression of breaches of the present Protocol
>
> "1. The provisions of the Conventions relating to the reppression of breaches and grave breaches, supplemented by the present section, shall apply to the repression of breaches and grave breaches of this Protocol.
>
> 2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons protected by article 42, 42 bis or 64 of this Protocol, or against wounded, sick or shipwrecked persons of the adverse party protected by this Protocol, or against medical or religious personnel, medical units, or medical transports under the control of the adverse party protected by this Protocol.

3. In addition to the grave breaches defined in article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(a) making the civilian population or individual civilians the object of attack;

(b) launching an indiscriminate attack affecting the civilian population or civilian objects with the knowledge that such attack will cause excessive loss of life, injury to civilians, or damage to civilian objects, as defined in article 50 (2) (a) (iii);

(c) launching an attack against works or installations containing dangerous forces with the knowledge that such attack will cause excessive loss of life, injury to civilians, or damage to civilian objects, as defined in article 50 (2) (a) (iii);

(d) making non-defended localities and demilitarized zones the object of attack;

(e) making a person the object of attack with the knowledge that he is hors de combat;

(f) the perfidious use of the Red Cross, Red Crescent, Red Lion and Sun signs and other protective signs recognized by the Conventions or the present Protocol in violation of article 35 of the present Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs of this article and in the Conventions, the following shall be regarded as grave breaches of the Protocol when committed wilfully and in violation of the Conventions or the Protocol:

(a) the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside of this territory, in violation of article 49 of the fourth Convention;

(b) unjustifiable delay in repatriation of prisoners of war or civilians;

(c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

(d) making clearly recognized historic monuments, places of worship or works of art which constitute the cultural heritage of peoples and to which special protection has been given by special arrangement, for example within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse party of article 47 bis (b) and when such historic monuments, places of worship and works of art are not located in the immediate proximity of military objectives.

(e) depriving a person protected by the Conventions or by paragraph 2 of this article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes."

Article 75 of draft Protocol I

79. Article 75 was included in paragraph 3 (f) of article 74. (See the report of Working Group A (CDDH/I/324, para.8)).

New article 75 bis of draft Protocol I

80. The new article 74 also takes into account the grave breaches defined in the new article 75 bis (CDDH/I/22), proposed by Pakistan.

Article 76 of draft Protocol I

81. At its sixty-first meeting on 3 June 1976, the Committee had before it the report of Working Group A on article 76 (CDDH/I/324).

82. At its sixty-first meeting, the Committee adopted by consensus article 76 as proposed by Working Group A, with a drafting change consisting of the insertion in the second paragraph of the English text of the words "should have" after the words "if they knew or had information which" and, moreover, the addition of a suffix in the Russian text.

83. The text of article 76, as adopted, is as follows (see also CDDH/I/325*):

Article 76 - Failure to act

"The High Contracting Parties /and the Parties to the conflict/ shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or the present Protocol, resulting from a failure to act when under a duty to do so.

The fact that a breach of the Conventions or of the present Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility as the case may be, if they knew or had information which should have enabled them to conclude in the circumstances at the time that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

It will be for the Drafting Committee to decide whether to include the words in square brackets in the first paragraph.

Articles 9 and 10 of draft Protocol II

84. For the general consideration of articles 9 and 10 of draft Protocol II, reference should be made to the report of Committee I on its second session (CDDH/219/Rev.1, paragraph 177).

85. The Committee considered the new article 10 at its sixty-third meeting, on 4 June 1976, on the basis of the report of Working Group B (CDDH/I/317/Rev.2).

86. Working Group B on articles 9 and 10 took the view that it was not called upon, under its terms of reference, to consider the question of collective penalties referred to in paragraph 2 (b) of document CDDH/I/262 and that the subject should be dealt with in an appropriate article in draft Protocol II.

87. The preamble to paragraph 2 was adopted by consensus, together with sub-paragraphs (a), (b) and (f). Sub-paragraphs (d) and (e) were also adopted by consensus after the word "everyone" had been changed into "anyone" in the English text at the insistance of one delegation. A vote was taken on sub-paragraph (c) because one delegation thought that the expression "national law" might give rise to serious problems of interpretation. Sub-paragraph (c) was maintained as it stood by 35 votes to 3, with 4 abstentions.

88. Paragraph 3 of new article 10 was adopted by consensus.

89. The Committee decided by consensus to delete former paragraph 4, and to add to the end of paragraph 5 (former paragraph 6) the words "In no such case shall a death penalty be carried out until the end of the armed conflict".

90. One delegation requested that the words "and mothers of young children" in paragraph 4 (former paragraph 5) be put to the vote separately. The Committee decided to retain those words by 37 votes to 2, with 9 abstentions. Paragraph 4 was then adopted by consensus.

91. Paragraph 5 (former paragraph 6), with the addition mentioned above, was adopted by consensus, together with paragraphs 6 and 7 (former paragraphs 7 and 8).

92. One delegation pointed out that Working Group B had not provided any title for this article and suggested that it be entitled "Prosecution and punishment of criminal offences" and that paragraph 1 be deleted. Another delegation suggested that new article 10 should bear the same title as the former ICRC draft of article 10, i.e. "Penal prosecutions". Yet another delegation suggested that article 10 should bear the same title as the former ICRC draft of article 9: "Principles of penal law". This last delegation did not press its proposal, but reaffirmed the necessity of retaining paragraph 1.

93. The Committee decided to retain paragraph 1 and that the Drafting Committee should finally decide on the definitive title of the new article.

93 bis. Some delegations expressed reservations concerning new article 10.

94. The new article 10 was then adopted as a whole by consensus at the sixty-third meeting on 4 June 1976.

95. The text of the article as adopted is as follows (CDDH/I/331*):

New article 10

"1. This article applies to the prosecution and punishment of criminal offences relating to the armed conflict.

2. No sentence shall be passed or penalty executed on a person found guilty of an offence except pursuant to a conviction pronounced by a tribunal offering the essential guarantees of independence and impartiality. In particular:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed; if, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of time-limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons below eighteen years of age at the time of the offence and shall not be carried out on pregnant women and mothers of young children.

5. In case of prosecutions carried out against a person only by reason of his having taken part in hostilities, the court, when deciding upon the sentence, shall take into consideration, to the greatest possible extent, the fact that the accused respected the provisions of the present Protocol. In no such case shall a death penalty be carried out until the end of the armed conflict.

6. Anyone sentenced shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

7. At the end of hostilities the authorities in power shall endeavour to grant amnesty to as many as possible of those who have participated in the armed conflict, or those whose liberty has been restricted for reasons in relation to the armed conflict, whether they are interned or detained."

Article 10 bis of draft Protocol II

96. For particulars of past work relating to the problem of the prohibition of reprisals within the framework of Protocol II, reference should be made to the report of Committee I on its second session (CDDH/219/Rev.1, paras. 152 and 179).

97. The Committee took note of the report of Working Group B, and also took note of the fact that, since Committee III had still to make the relevant decisions on Part V of draft Protocol II, it was not yet able to reach a final decision on the matter, and decided that, when Committee III had taken those decisions, it would, in accordance with paragraph 4 of the report of Working Group B (CDDH/I/320/Rev.2) return to the matter.

97 bis. Working Group B adopted the following text:

"The provisions of /Parts II, III and V/ shall not, in any circumstances or for any reason whatsoever, be violated, even in response to a violation of the provisions of the Protocol."

98. The Committee further instructed its Chairman to inform the Chairman of Committee III of its decision.

Article 36 of draft Protocol II

99. At its sixty-second meeting, on 4 June 1976, the Committee considered article 36 of draft Protocol II as proposed in the report of Working Group B (CDDH/I/323).

100. The Committee adopted article 36 by consensus at its sixty-second meeting.

101. The text of article 36 as adopted is as follows (CDDH/I/327*):

Article 36 - Measures for execution

"Each Party to the conflict shall take the necessary measures to ensure observance of this Protocol by its military and civilian agents and persons subject to its control."

Article 37 of draft Protocol II

102. At its sixty-second and sixty-third meetings, on 4 June 1976, the Committee considered article 37 of draft Protocol II as proposed in the report of Working Group B (CDDH/I/323).

103. Some delegations considered that paragraph 1 of the French text should be amended to read "en temps de paix", instead of "dès le temps de paix", to bring it into line with article 72 of draft Protocol I. It was so decided. Some delegations pointed out that article 37, paragraph 2, should read "their ... agents", and "their control", instead of "its ... agents", and "its control". The Committee approved that change.

104. One delegation requested the deletion from paragraph 1 of the words "and in particular to include the study thereof in their programmes of military instruction, and to encourage the study thereof by the civilian population". The decision to delete these words was taken by 30 votes to 25, with 2 abstentions. Paragraph 1 was adopted by consensus at the sixty-second meeting.

105. Article 37 of draft Protocol II was adopted in its new version by consensus at the sixty-third meeting.

106. The text of article 37 as adopted is as follows (CDDH/I/328*):

Article 37 - Dissemination

"1. The High Contracting Parties undertake to disseminate the present Protocol as widely as possible in time of peace, so that it may become known to the armed forces and to the civilian population.

2. In time of armed conflict, the parties to the conflict shall take appropriate measures to bring the provisions of the present Protocol to the knowledge of their military and civilian agents and persons subject to their control."

Article 38 of draft Protocol II

107. At its sixty-third meeting, the Committee considered article 38 of draft Protocol II, as proposed in the report of Working Group B (CDDH/I/323), on the understanding that the English text of paragraph 1 should read "should", and not "shall".

108. Some delegations entered express reservations regarding the proposed article.

109. Article 38 of draft Protocol II was none the less adopted by consensus at the sixty-third meeting.

110. The text of article 38 as adopted is as follows (CDDH/I/329*):

Article 38 - Special agreements

"The Parties to the conflict should endeavour to bring into force by means of agreements or mutual declarations all or part of the provisions of the Geneva Conventions of 12 August 1949 and of the Additional Protocol relating to the Protection of Victims of International Armed Conflicts."

Article 39 of draft Protocol II

111. At its sixty-third meeting, the Committee considered article 39 as proposed in Working Group B's report (CDDH/I/323).

112. After a prolonged discussion on procedure, the Chairman proposed that the Committee vote solely on the second sentence of the proposed article 39 without the words in square brackets, i.e. "The International Committee of the Red Cross may offer its services to the Parties to the conflict". The Chairman's ruling was put to the vote and endorsed by 23 votes to 22, with 6 abstentions.

113. The above quoted text was then put to the vote and adopted by 34 votes to 17, with 2 abstentions.

114. The text of article 39 as adopted is, therefore, as follows (CDDH/I/330*):

Article 39 - Co-operation in the observance of the present Protocol

"The International Committee of the Red Cross may offer its services to the Parties to the conflict."

Articles and amendments to be considered at the fourth session

115. The Working Groups will have to study the following articles and amendments at the fourth session:

Draft Protocol I

New article 7 bis

Pakistan:	CDDH/I/27

New article 7 ter

Pakistan:	CDDH/I/25

New article to be inserted before article 70

Syrian Arab Republic:	CDDH/I/74

New article 70 bis

Poland:	CDDH/III/103

New article 74 bis

France:	CDDH/I/221 and Rev.1

New article 76 bis

United States of America:	CDDH/I/307/Rev.1

Article 77

Syrian Arab Republic:	CDDH/I/74
Australia:	CDDH/I/255
Switzerland:	CDDH/I/303
United States of America:	CDDH/I/308

Article 78

Belgium:	CDDH/I/266
Switzerland:	CDDH/I/303
United Kingdom of Great Britain and Northern Ireland, United States of America:	CDDH/I/309

Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Democratic Republic of Viet-Nam, German Democratic Republic, Hungary, Poland, Republic of South Viet-Nam, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/310 and Add.1
Philippines:	CDDH/I/315

Article 79

Philippines:	CDDH/I/57
France, Mali, Switzerland:	CDDH/I/279
Switzerland:	CDDH/I/303

New article 79 bis

Denmark, New Zealand, Norway, Sweden:	CDDH/I/241 and Add.1
Japan:	CDDH/I/316
Pakistan:	CDDH/I/267

ANNEX

List of articles and amendments which have not yet been considered by the Committee (with a note of the symbols indicating amendments submitted up to the end of the third session)*/

Draft Protocol I

Preamble

Article 2, sub-paragraph (c)

Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America:	CDDH/I/36
Syrian Arab Republic:	CDDH/I/62
Senegal:	CDDH/I/72

New article 2 bis

Pakistan:	CDDH/I/20
Israel:	CDDH/I/286

Article 84

Syrian Arab Republic:	CDDH/I/74
Democratic Republic of Viet-Nam, Qatar:	CDDH/I/229 and Add.1
Algeria, Australia, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Democratic People's Republic of Korea, Democratic Republic of Viet-Nam, Egypt, Finland, Ghana, Hungary, Ivory Coast, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Madagascar, Mali, Mauritania, Mongolia, Netherlands, New Zealand, Norway, Poland, Qatar, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Yugoslavia:	CDDH/I/233 and Add.1 to 3

*/ This list is purely descriptive.

New article 84 bis

Norway:	CDDH/I/86
Democratic Republic of Viet-Nam:	CDDH/I/230

Article 85

Syrian Arab Republic:	CDDH/I/74
German Democratic Republic:	CDDH/I/87

Articles 86 and 87

Article 88

Algeria, Australia, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Democratic People's Republic of Korea, Democratic Republic of Viet-Nam, Egypt, Finland, Ghana, Hungary, Ivory Coast, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Madagascar, Mali, Mauritania, Mongolia, Netherlands, New Zealand, Norway, Poland, Qatar, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Yugoslavia:	CDDH/I/233 and Add.1 to 3

Article 89

Article 90

Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics:	CDDH/I/53
Syrian Arab Republic:	CDDH/I/74

Draft Protocol II

Preamble

Part I - Scope of the present Protocol

Brazil: CDDH/I/79

New article before article 1

Canada: CDDH/I/37

New article 8 bis

Canada: CDDH/I/250

Articles 40 to 47

Geneva, 21 April - 11 June 1976

REPORT TO COMMITTEE I ON THE WORK OF WORKING GROUP B ON THE NEW ARTICLE 10 OF DRAFT PROTOCOL II

Working Group B considered the new article 10 between 4 May and 10 May 1976; the group held four meetings in all.

Previously, a Working Sub-Group, under the chairmanship of Mr. de Breucker, which had been set up at the second session of the Conference (see report of Committee I, CDDH/219/Rev.1, paragraph 178), had met five times between 22 April and 30 April to prepare a text on the basis of the proposal submitted by Belgium, the Netherlands and New Zealand (CDDH/I/262).

The results of the Sub-Group's work are set out in document CDDH/I/GT/88, attached hereto.

After taking note of that document, the Working Group adopted the following text, which it has the honour to submit to the Committee:

New article 10

"1. This article applies to the prosecution and punishment of criminal offences relating to the armed conflict.

2. No sentence shall be passed or penalty executed on a person found guilty of an offence except pursuant to a conviction pronounced by a tribunal offering the essential guarantees of independence and impartiality. In particular:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed;[1] nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed; if, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) everyone charged with an offence is presumed innocent until proved guilty according to law;

(e) everyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of time limits within which they may be exercised.

4. The death penalty pronounced against a person convicted of an offence other than a war crime or a crime against humanity[2] shall not be carried out until the end of the armed conflict.

5. The death penalty shall not be pronounced on persons below eighteen years of age at the time of the offence and shall not be carried out on pregnant women /and mothers of young children/.

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[1] Several delegations, not very satisfied with the present wording of this text, taken from article 15, paragraph 1, of the International Covenant on Civil and Political Rights, considered that it should be amended. Instead of the phrase "under national or international law", one delegation suggested the words "under the applicable law". Other delegations said they could accept that wording with the addition of the words "domestic or international", as follows: "under applicable domestic or international law". Some delegations declared that they would prefer the deletion of sub-paragraph (d) to its maintenance as here worded.

[2] Some delegations expressed reservations regarding this provision, particularly on account of the words "other than a war crime or a crime against humanity".

6. In case of prosecutions carried out against a person only by reason of his having taken part in hostilities, the court, when deciding upon the sentence shall take into consideration, to the greatest possible extent, the fact that the accused respected the provisions of the present Protocol. 3/

7. Anyone sentenced shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

8. At the end of hostilities, the authorities in power shall endeavour to grant amnesty to as many as possible of those who have participated in the armed conflict, or those whose liberty has been restricted for reasons in relation to the armed conflict, whether they are interned or detained."

With reference to paragraph 2, one delegation expressed the view that its proposal concerning the presence of observers of a humanitarian organization at the trial of any accused person might be reconsidered later in relation to a more general article of the Protocol, such as article 35.

The Working Group considered that the question of collective penalties should be dealt with, not in this article, but, since its scope was more general, in a provision to be incorporated in article 6.

During the Working Group's discussions, the following amendments were considered:

CDDH/I/GT/81
CDDH/I/GT/83
CDDH/I/GT/84
CDDH/I/GT/85
CDDH/I/GT/87

It should be noted that consequential changes have been made in the numbering of the paragraphs of the article.

3/ During the discussion of the report the Swedish delegation, supported by others, stated that if no agreement were to be reached on paragraph 4 and if that paragraph were not to be adopted, a sentence should be added to the end of paragraph 6 as follows:

"In no such case shall a death penalty be carried out until the end of the armed conflict."

WORKING GROUP B
DRAFT PROTOCOL II,
SECTION II,
Articles 9 and 10

WORKING PAPER OF THE SUB-GROUP ON
DRAFT PROTOCOL II, ARTICLES 9 AND 10 COMBINED

Provisions approved by the Sub-Group.

"1. This article applies to the prosecution and punishment of criminal offences relating to the armed conflict.

2. No sentence shall be passed or penalty executed on a person found guilty of an offence except pursuant to a conviction pronounced by a tribunal offering the essential guarantees of independence and impartiality. In particular:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;[1/]

(b) no person shall be convicted of an offence in relation to the armed conflict except on the basis of individual penal responsibility; [2/]

(c) [3/]

[1/] See point 1 of the comments in the Annex

[2/] See point 2 of the comments in the Annex

[3/] See point 3 of the comments in the Annex

(d) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(e) everyone charged with an offence is presumed innocent until proved guilty according to law;

(f) everyone charged with an offence shall have the right to be tried in his presence.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of any time limits within which they may be exercised.

3 bis. /The death penalty pronounced against a person convicted of an offence shall not be carried out until the end of the armed conflict./

5. The death penalty shall not be pronounced for an offence in relation to the armed conflict committed by persons below eighteen years of age at the time of the offence and shall not be carried out on pregnant women./4

6. In case of prosecutions carried out against a person only by reason of his having taken part in hostilities, the court, when deciding upon the sentence, shall take into consideration, to the greatest possible extent, the fact that the accused respected the provisions of the present Protocol.

/4 See point 4 of the comments in the Annex

6. bis. Anyone sentenced shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

7. At the end of hostilities, the authorities in power shall endeavour to grant amnesty to as many as possible of those who have participated in the armed conflict, or those whose liberty has been restricted for reasons in relation to the armed conflict, whether they are interned or detained."

COMMENTS

1. It was agreed not to include the proposal contained in CDDH/I/GT/81 dated 22 April 1976, but to allow it to be reconsidered in relation to a more general article of the Protocol, perhaps Article 35.
2. The first proposal in document CDDH/I/262 has been re-worded. As to the second proposal relating to the prohibition of collective penalties or sanctions, the sub-group considered that it was not relevant to paragraph 2 of the present article; it is therefore referred to Working Group B to be placed where that Group consider it appropriate.
3. Sub-paragraph 2 (c) of document CDDH/I/262 has not been retained by the sub-group, either on grounds of substance or for reasons of formal expression inherent in the ambiguity of the situations in view.
4. Some delegations considered that the death sentence should not be pronounced upon a pregnant woman; other delegations also considered that the death sentence should not be pronounced or executed in the case of the mother of young children.

Geneva, 21 April - 11 June 1976

REPORT TO COMMITTEE I ON THE WORK OF
WORKING GROUP A ON ARTICLE 76 OF PROTOCOL I

The Working Group, under the chairmanship of Mr. de Icaza Gonzalez, in two meetings considered article 76 of Protocol I on failure to act, and adopted the following text of the article:

"The High Contracting Parties /and the Parties to the conflict/ shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or the present Protocol, resulting from a failure to act when under a duty to do so.

The fact that a breach of the Conventions or of the present Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility as the case may be, if they knew or had the possibility of knowing 1/ in the circumstances at the time that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

1/ After the meetings some delegations informed the Chairman that they wished to have the words "or had the possibility of knowing" in the second paragraph replaced by the words "or had information on the basis of which he should have concluded".

Geneva, 21 April - 11 June 1976

REPORT TO COMMITTEE I ON THE
WORK OF WORKING GROUP B CONCERNING
ARTICLES 36 to 39 OF DRAFT PROTOCOL II

Working Group B held five meetings at which the following articles were considered:

Article 36 - Measures for execution
Article 37 - Dissemination
Article 38 - Special agreements
Article 39 - Co-operation in the observance of the present Protocol

Article 36

Article 36 was not discussed at length by the Working Group.

The article submitted by the ICRC was adopted with some slight changes and is worded as follows:

"Each Party to the conflict shall take the necessary measures to ensure observance of this Protocol by its military and civilian agents and persons subject to its control."

Article 37

Article 37 was the subject of more substantial discussion. In the opinion of one delegation supported by several others, it appeared desirable to simplify the proposed text and to replace it by the text of amendment CDDH/I/319.

After an exchange of views, the majority of delegations accepted a proposal designed to bring the text into line with the wording of article 72 of Protocol I, while adapting it to the demands of Protocol II.

The changes made in the original ICRC text consist in replacing the words "and civil" in paragraph 1 by the words "and promote the study thereof by the civilian population", and in substituting in paragraph 2 the word 'control' for the word "authority", so that the wording should correspond to that of article 36 already adopted.

The text as redrafted reads as follows:

"1. The High Contracting Parties undertake to disseminate the present Protocol as widely as possible in time of peace, and in particular to include the study thereof in their programmes of military instruction, and to encourage the study thereof by the civilian population, so that it may become known to the armed forces and to the civilian population.

2. In time of armed conflict, the Parties to the conflict shall take appropriate measures to bring the provisions of the present Protocol to the knowledge of their military and civilian agents and persons subject to their control."

It should, however, be recorded that some delegations remained of the opinion that a better wording for this provision was that proposed in amendment CDDH/I/319.

Article 38

Article 38 was also the subject of lengthy debate. One delegation tabled amendment CDDH/I/318, designed to qualify the words "shall endeavour". After a debate on this amendment, the Working Group decided to change the word "shall" to "should" in the English text, whereupon amendment CDDH/I/318 was withdrawn.

On the other hand several delegations expressed their doubts as to the advisability of such a provision, fearing that it might be used for political propaganda purposes.

Nevertheless, as the majority considered the proposed provision desirable, those delegations did not object to the search for a compromise solution, and submitted several proposals designed to give the text greater flexibility.

The Working Group finally reached agreement on the following wording:

"The Parties to the conflict should endeavour to bring into force by means of agreements or mutual declarations all or part of the provisions of the Geneva Conventions of August 12, 1949 and of the Additional Protocol relating to the Protection of Victims of International Armed Conflicts."

Article 39

The Working Group gave prolonged consideration to article 39, occupying three meetings.

After several amendments had been submitted within the Working Group (see CDDH/I/GT/98 to 101), the Working Group decided to form a Sub-Group under the chairmanship of Mr. Ben-Rejeb (Tunisia) with a view to elaborating a draft text.

The Sub-Group met on two occasions without reaching agreement. In view of this situation, the Chairman of the Sub-Group made an oral report to the Working Group suggesting that the discussion should be resumed within that Group. Two predominating tendencies emerged in the course of a new and very lively debate in the Working Group, marked by extremely divergent expressions of opinion.

One of these reflects the opinion of a considerable number of delegations who believe it essential that Protocol II should include a provision embodying the idea of the ICRC's draft article 39. There were several oral proposals, one of which was submitted in writing (CDDH/I/GT/103). None of these proposals succeeded in obtaining the consensus of delegations, given that the other tendency reflected the opinion of a sizeable number of delegations who were in favour of the simple and total deletion of any provision based upon the idea of ICRC's article 39.

In these circumstances, the Working Group was unable to reach any general agreement on a text for submission to the Committee as the basis for a compromise. Without prejudging the opinions of the various delegations, the following text was, however, submitted for action by the Committee.

/ /"The Parties to the conflict may /jointly/ call upon /a body offering all guarantees of impartiality and efficacy, such as/ the International Committee of the Red Cross /or the national Red Cross, Red Crescent, Red Lion and Sun Societies/ to assist in the observance of the present Protocol./ / /A body such as/ the International Committee of the Red Cross may also offer its services to the Parties to the conflict."/ /

This text, as set out above, does not reflect an agreement within the Working Group, but gives the Committee the opportunity to pronounce on the contents of a possible article 39.

A brief discussion took place on the procedure to be followed in Committee.

The question was whether the Committee was to decide on the principle itself of article 39, and then come to a finding as to its content; or whether it was desirable instead to study the possibilities of elaborating a text, and once this had been done, to come to a decision as to its retention or rejection.

The Chairman of the Working Group ruled that there were no grounds for proposing any procedure whatever to the Committee, since decisions on procedure appertained to the Committee.

To give a faithful picture of the situation, it must be made clear that several delegations hope that the Committee will give its verdict in the first place, on the retention or otherwise of an article 39.

Geneva, 21 April - 11 June 1976

REPORT TO COMMITTEE I ON THE WORK OF
WORKING GROUP A

1. Working Group A held eleven meetings under the chairmanship of Mr. de Icaza. Its task was to consider articles 74 to 79 of draft Protocol I and the related proposals.

2. Article 74 proposed by ICRC was the subject of the following amendments:

CDDH/I/57	Philippines
CDDH/I/85	German Democratic Republic
CDDH/210/Annex 2	ICRC
CDDH/I/253	Australia
CDDH/I/303	Switzerland
CDDH/I/304	Poland
CDDH/I/309	United Kingdom and United States
CDDH/I/311	Algeria, Egypt, Iraq, Jordan, Lebanon, Libyan Arab Republic, Palestine Liberation Organization, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates
CDDH/I/313 and Add.1	Mongolia, Uganda, United Republic of Tanzania

3. At the meeting on 3 May, it was decided that in order to make progress the discussion on article 74 should begin with a general debate on possible grave breaches. For that purpose the Secretariat and ICRC should be asked to prepare a working paper recapitulating the grave breaches mentioned in the different texts that had been proposed.

4. At the meeting on 11 May, four working papers were submitted to Working Group A in response to that request:

CDDH/210	ICRC document (redistribution)
CDDH/I/GT/89	reproduction of the full texts of the various proposals submitted to the Committee
CDDH/I/GT/90	working document submitted by the Norwegian delegation
CDDH/I/GT/91	list of the various grave breaches proposed, drawn up by the Chairman of Working Group A.

5. The Working Group also had before it document CDDH/I/GT/93 submitted by the Philippines delegation, containing a detailed list of grave breaches.

6. At its meeting on 18 May, the Working Group decided to take document CDDH/I/GT/91 as a basis for discussion, while duly taking into account the other documents submitted. The Group completed the consideration of the list of possible grave breaches in five meetings. A Sub-Group was formed, under the chairmanship of Mr. M. Hussain (Pakistan), to consider the grave breaches discussed with a view to submitting a draft article 74 to the Working Group. The report of the Sub-Group (CDDH/I/GT/102/Rev.1) is annexed.

7. At its meetings on 1 and 2 June, the Working Group took note of the report of the Sub-Group and adopted the following text and notes:

Article 74

"1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by the present section shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons protected by article 42 or 64 of this Protocol, or against wounded, sick or shipwrecked persons of the adverse party protected by this Protocol, or against medical or religious personnel, medical units, or medical transports under the control of the adverse party protected by this Protocol.

3. In addition to the grave breaches defined in article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(a) making the civilian population or individual civilians the object of attack;

(b) launching an indiscriminate attack affecting the civilian population or civilian objects with the knowledge that such attack will cause excessive loss of life, injury to civilians, or damage to civilian objects, as defined in article 50 (2) (a) (iii);

(c) launching an attack against works or installations containing dangerous forces with the knowledge that such attack will cause excessive loss of life, injury to civilians, or damage to civilian objects as defined in article 50 (2) (a) (iii);

(d) making non-defended localities and demilitarized zones the object of attack;

(e) making a person the object of attack with the knowledge that he is hors de combat;

(f) the perfidious use of the Red Cross (Red Crescent, Red Lion, and Sun) signs and other protective signs recognized by the Conventions or the present Protocol in violation of article 35 of the present Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs of this article and in the Conventions, the following shall be regarded as grave breaches of the Protocol when committed wilfully and in violation of the Conventions or the Protocol:

(a) the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside of this territory, in violation of article 49 of the Fourth Convention;

(b) unjustifiable delay in repatriation of prisoners of war or civilians;

(c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

(d) making clearly recognized historic monuments, places of worship or works of art which constitute the cultural heritage of peoples and to which special protection has been given by special arrangement either within the framework of a competent international organization or, if the party concerned so chooses, directly with the adverse party, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse party of article 47 bis(b) and when such historic monuments, places of worship and works of art are not located in the immediate proximity of military objectives.

(e) depriving a person protected by the Conventions or by paragraph 2 of this article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes."

NOTES

1. Some representatives would like to add in paragraph 2 a reference to article 42 bis and to some categories covered by article 65.

2. One delegation objected to the inclusion of the clause "and if they result in death or cause serious injury to body or health" in the introductory part of paragraph 3.

3. With respect to the same introductory part of paragraph 3, a number of delegations pointed out that the acts or omissions defined in article 11, paragraph 4, ought not, technically speaking, to give rise to a grave breach if committed against own nationals. The delegations concerned asked the Chairman of the Committee, through the Chairman of the Working Group, to raise the matter with the Chairman of Committee II.

4. Several delegations objected to the reference to the principle of proportionality in article 50 (2) (a) (iii) in the context of dangerous forces in paragraph (c).

5. With regard to paragraph 3 (d) some delegations would like to add the reference "as defined in articles 52 and 53" at the end of the sentence.

6. One delegation requested deletion of the reference to the other protective signs in paragraph 3 (f).

7. While a large number of delegations and the twenty delegations of the Arab Group supported the text of paragraph 4 (c) given in the report, two delegations opposed the inclusion of any such paragraph, and a few delegations preferred the following alternative draft:

   "The practice of discrimination in the form of distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin involving outrages upon personal dignity and manifestations such as inhuman and degrading treatment and related practices of apartheid."

8. With respect to paragraph 4 (d), the delegations of the Arab countries reserve the right to speak again at a plenary meeting of the Committee.

9. With respect to paragraph 4 (e), some delegations considered that there should also be a specific reference to article 42 and 42 bis. Others thought that it would create an undesirable precedent to refer to articles that had not yet been adopted. Many representatives thought the paragraph should be in square brackets.

10. Very few delegations expressed disagreement with paragraph 5.

11. The oral proposal by Sweden (see CDDH/I/GT/102/Rev.1, Annex B) was discussed at length, but was ultimately withdrawn by the sponsor, for lack of support. The corresponding proposal in paragraph 3 (f) of the document by the Chairman of the Sub-Group (see CDDH/I/GT/102/Rev.1, Annex A) was also dropped, for the same reason.

12. The oral proposal by the Holy See (see CDDH/I/GT/102/Rev.1, Annex C) was discussed at length; the sponsor then withdrew it with a view to resubmitting it at a more propitious moment."

8. Article 75 as proposed by ICRC was the subject of the following amendments:

CDDH/I/254	Australia
CDDH/I/303	Switzerland
CDDH/I/305	United States of America
CDDH/I/314	Canada, Federal Republic of Germany, Nicaragua and Philippines

The article was included in sub-paragraph 3 (f) of article 74.

9. The new article 74 takes into account the grave breach proposed in the new article 75 bis (CDDH/I/22) proposed by Pakistan.

10. Article 76 as proposed by ICRC was the subject of the following amendments:

CDDH/I/74	Syrian Arab Republic
CDDH/I/303	Switzerland
CDDH/I/306	United States of America

11. At its meetings on 24 and 25 May, and on 2 June, the Working Group considered article 76, and adopted the following text:

"The High Contracting Parties /and the Parties to the conflict/ shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or the present Protocol, resulting from a failure to act when under a duty to do so.

The fact that a breach of the Conventions or of the present Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility as the case may be, if they knew or had information which enabled them to conclude in the circumstances at the time that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

It will be for the Drafting Committee to decide whether to include the words in square brackets in the first paragraph.

12. Working Group A was unable to consider articles 74 bis, 76 bis, 77, 78, 79 and 79 bis.

WORKING GROUP A
DRAFT PROTOCOL I
PART V
Article 74

REPORT OF SUB-GROUP A OF COMMITTEE I ON ARTICLE 74

The Sub-Group having been asked to discuss article 74 of Protocol I dealing with "Grave Breaches" held 7 meetings in all, which were attended by about 50 delegations. Mr. Justice Mushtaq Hussain (Pakistan), Chairman of the Sub-Group, drew up a working paper (see Annex A) and presented it to the Sub-Group at its first meeting held on 24 May 1976. It was decided to treat it as a working paper and make it the basis of the Sub-Group's deliberations. The Chairman stated that the working paper covered most of the amendments which had been tabled and all those which met with substantial support during the discussions at the meeting of the Working Group. He made it clear that this did not debar the sponsors of the remaining amendments from pressing them before the Sub-Group. Amendments moved orally during the last meeting of the Group were duly reduced into writing, circulated and discussed.

The following text was adopted for being submitted to the Working Group, subject to the reservations contained in the footnotes:

Article 74

"1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by the present section shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons protected by article 42 or 64 of this Protocol, or against wounded, sick or shipwrecked persons of the adverse party protected by this Protocol, or against medical personnel, medical units, or medical transports under the control of the adverse party protected by this Protocol.[1/]

3. In addition to the grave breaches defined in article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:[2/]

(a) making the civilian population or individual civilians the object of attack;

(b) launching an indiscriminate attack affecting the civilian population or civilian objects with the knowledge that such attack will cause excessive loss of life, injury to civilians, or damage to civilian objects, as defined in article 50 (2) (a) (iii);

(c) launching an attack against works or installations containing dangerous forces with the knowledge that such attack will cause excessive loss of life, injury to civilians, or damage to civilian objects as defined in article 50 (2) (a) (iii);[3/]

(d) making non-defended localities and demilitarized zones the object of attack;

(e) making a person the object of attack with the knowledge that he is hors de combat;

(f) the perfidious use of the Red Cross (Red Crescent, Red Lion, and Sun) signs and other protective signs recognized by the Conventions or the present Protocol in violation of article 35 of the present Protocol.[4/]

4. In addition to the grave breaches defined in the preceding paragraphs of this article and in the Conventions, the following shall be regarded as grave breaches of the Protocol when committed wilfully and in violation of the Conventions or the Protocol:

(a) the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside of this territory, in violation of article 49 of the Fourth Convention;

(b) /unreasonable/ / /unjustifiable/ delay in repatriation of prisoners of war or civilians;

(c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

(d) making clearly recognized historic monuments, places of worship or works of art which constitute the cultural heritage of peoples /and to which special protection has been given by special arrangement/ the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse party of article 47 bis (b) and when such historic monuments, places of worship and works of art are not located in the immediate proximity of military objectives.5/

(e) depriving a person protected by the Conventions or by paragraph 2 of this article of the rights of fair and regular trial.6/

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes."7/

NOTES

1. Some delegates would like to add in this paragraph a reference to article 42 bis and some categories covered by article 65.
2. One delegation objected to having the last part of the sentence ("and causing death or serious injury to body or health") in the "chapeau" of paragraph 3.
3. Four delegations objected to the reference to the principle of proportionality in article 50 (2) (a) (iii) in the context of dangerous forces.
4. Paragraph 3 (f) makes old article 75 obsolete.
5. Corresponding to the wish of very few delegations, the whole paragraph should be put into brackets.
6. Some delegations were of the view that a specific reference should be made to articles 42 and 42 bis also. Others thought that reference to articles not so far adopted is an undesirable precedent. A large number of delegates thought the paragraph should be in square brackets.
7. Very few delegations did not agree with this paragraph.
8. The oral proposal of Sweden (Annex B) was discussed at length but was ultimately withdrawn by the sponsor as it failed to elicit support. The corresponding proposal in paragraph 3 (f) was also dropped for the same reason.
9. The oral proposal of the delegate of the Holy See (Annex C) was discussed at length whereafter the sponsor withdrew it with a view to moving it at some more appropriate occasion.
10. While a large number of delegations and the twenty delegations of the Arab Group supported the text of paragraph 4 (c) given in this report, two delegations opposed the inclusion of any such paragraph while few delegations preferred the following alternative draft:

"The practice of discrimination in the form of distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin involving outrages upon personal dignity and manifestations such as inhuman and degrading treatment and related practices of apartheid."

ANNEX A

Working Paper for Sub-Group A

Article 74 - Repression of Breaches

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by the present section, shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons protected by article 42 or 64 of this Protocol, or against wounded, sick or shipwrecked persons, medical personnel, medical units, or medical transports of the adverse party protected by this Protocol.

3. In addition to the grave breaches defined in articles 11 and 75, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of this Protocol, and causing death or serious injury to body or health:

(a) making the civilian population or individual civilians the object of attack;

(b) launching an indiscriminate attack causing destruction of civilian property or of works and installations containing dangerous forces or affecting the civilian population or civilian objects knowing that such attack will cause excessive loss of life, injury to civilians, or damage to civilian objects, as defined in article 50 (2) (a) (iii);

(c) making non-defended localities and demilitarised zones the object of attack;

(d) making a person who is hors de combat the object of attack;

(e) the use of methods and means of combat prohibited by the Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs of this article and in the Conventions, the following shall be regarded as grave breaches of the Protocol when committed wilfully and in violation of the Conventions or the Protocol:

(a) the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside of this territory in violation of article 49 of the Fourth Convention;

(b) unreasonable delay in repatriation of prisoners of war or civilians;

(c) discrimination, distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin involving outrages upon personal dignity in all its forms and manifestations including humiliating and degrading treatment and apartheid.

ANNEX B

Oral proposal of Sweden in the context of the use of methods and means of combat prohibited by the Protocol

(e) Systematically making foodstuffs, food producing areas, crops, livestock and drinking water supplies indispensable to the survival of the civilian population the object of an attack in contravention of Article 48, para. 2.

ANNEX C

Oral proposal by the delegation of the Holy See submitted at the close of the discussion on document CDDH/I/GT/91 by Working Group A

Any act (whether of commission or omission) which conflicts gravely with the human conscience, which deliberately causes serious damage to the physical or mental integrity of protected persons or violates their dignity.

FOURTH SESSION

(Geneva, 17 March - 10 June 1977)

COMMITTEE I

REPORT

CONTENTS

COMMITTEE I

REPORT

I. INTRODUCTION

1. As in the preceding year, Mr. E. F. Ofstad (Norway) was Chairman of the Committee, and Mr. K. Obradović (Yugoslavia) and Mr. B. A. Clark (Nigeria) continued to serve as Vice-Chairmen. Mr. A. de Icaza (Mexico) continued to act as Rapporteur.

2. Four legal experts of the International Committee of the Red Cross (ICRC), Mrs. D. L. Bujard, Mrs. S. Junod, Mr. C. Pilloud and Mr. B. Zimmermann, attended the meetings and introduced the texts submitted by the ICRC for draft Protocols I and II. Miss S. Martin and Mr. F. Camponovo served as Legal Secretaries to the Committee.

3. The Committee held fourteen meetings between 14 April and 21 May 1977. The views expressed by representatives during the discussions appear in the summary records of those meetings (CDDH/I/SR.66-79).

4. The Committee considered the following drafts:

the Title and the Preamble, together with the following articles of draft Protocol I:

Articles 2, 2 bis (a), 2 bis (b), 7 bis, 7 ter, new article to be inserted before or after Article 70, Articles 70 bis (b), 74 (g), 74 bis, 75 bis, 76 bis, 77, 78, 78 bis, 79, 79 bis, new Section III of Part V, Part V bis, Articles 80, 81, 82, 83, 84, 84 bis (a), 84 bis (b), 85, 86, 86 bis, 87, 88, 89 and 90;

the Title and the Preamble, together with the following articles of draft Protocol II:

New article to be inserted before Article 1, Articles 6, 8 bis, 10 bis, 40, 41, 42, 43, 44, 44 bis, 45, 46 and 47.

5. The Committee adopted the following articles:

Protocol I: Article 2, new article before (or after) Article 70, Articles 76 bis, 77, 79, 79 bis, new article to be inserted before Article 80, Articles 80, 81, 82, 83, 84, 86, 86 bis, 87, 88, 89, 90;

Protocol II: Articles 6, 10 bis, 40, 41, 42, 43, 44, 44 bis, 45, 46, 47.

6. The Committee also adopted the Titles and Preambles of draft Protocols I and II.

7. At the sixty-sixth meeting of the Committee on 14 April 1977, it was decided that Working Group A should consider Articles 76 bis, 77, 78 and 79 of draft Protocol I. At its sixty-seventh meeting on 25 April, the Committee also referred to Working Group A the new Part V bis of draft Protocol I. Mr. de Icaza (Mexico), Rapporteur of the Committee, continued to serve as Chairman of the Group.

8. Working Group A held seven meetings between 15 April and 26 April 1977, and submitted its report (CDDH/I/338/Rev.1 and Add.1) at the sixty-ninth and seventieth meetings of the Committee on 27 and 28 April, respectively.

9. At the sixty-sixth meeting of the Committee, it was decided that Working Group B should consider Articles 7 bis, 7 ter, 70 bis, 74 bis and 79 bis of draft Protocol I, and Articles 6 and 10 bis of draft Protocol II. Mr. Obradović (Yugoslavia) continued to serve as Chairman of the Group.

10. Working Group B held twelve meetings between 15 April and 4 May 1977, and it submitted its report (CDDH/I/349/Rev.1 and Add.1) at the seventy-second and seventy-third meetings of Committee I on 13 and 15 May, respectively.

11. At the sixty-sixth meeting, on the initiative of the Chairman, the Committee set up a Working Group C to consider the Titles, Preambles and Final Provisions of draft Protocols I and II, as soon as they were submitted in Committee (articles and amendments). The Chairman proposed that the Committee should waive discussion of the articles and amendments submitted, and that these should be passed on direct to the Working Group. The Committee adopted this procedure. Mr. M. Hussain (Pakistan) was elected Chairman of Working Group C.

12. Working Group C held thirteen meetings between 29 April and 17 May 1977, and submitted its report (CDDH/I/350/Rev.1 and Add.1/Rev.1) at the seventy-sixth and seventy-seventh meetings of the Committee on 17 and 18 May, respectively.

II. CONTINUATION AND COMPLETION OF THE WORK OF COMMITTEE I

DRAFT PROTOCOL I

Article 2 - Definitions

13. The Committee had adopted sub-paragraphs (a) and (b) of Article 2 at the first session of the Conference. Sub-paragraphs (d) and (e) were adopted by the Committee at the second session. The Committee had yet to express its views on sub-paragraph (c). There were three amendments on that sub-paragraph:

CDDH/I/36	Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America
CDDH/I/62	Syrian Arab Republic
CDDH/I/72	Senegal

14. The sub-paragraph had been considered at the twenty-first and twenty-seventh meetings of the Committee on 13 February and 14 March 1975, respectively. At the seventy-fourth meeting, on 16 May 1977, the Committee again considered sub-paragraph (c). Amendments CDDH/I/62 and CDDH/I/72 were withdrawn.

15. At its seventy-fourth meeting, the Committee deleted sub-paragraph (c) of Article 2 by consensus.

16. At its seventy-fourth meeting, the Committee adopted Article 2 as a whole by consensus. The text of Article 2, as adopted, is given in Annex IV to this report.

Article 2 bis (a) - Respect for the Conventions and the Protocol

CDDH/I/20	Pakistan

17. At the seventy-fourth meeting of the Committee, the above proposed new article (CDDH/I/20) was withdrawn.

Article 2 bis (b) - Red Shield of David

CDDH/I/286	Israel

18. At the seventy-fourth meeting of the Committee, the above proposed new article (CDDH/I/286) was withdrawn.

Article 7 bis - Enquiry procedure concerning an alleged violation of the Conventions

CDDH/I/27 Pakistan

19. At the seventy-seventh meeting of the Committee, the above proposed new article (CDDH/I/27) was withdrawn.

Article 7 ter - Settlement of disagreements

CDDH/I/25 Pakistan

20. At the seventy-seventh meeting of the Committee, the above proposed new article (CDDH/I/25) was withdrawn.

New article before (or after) Article 70 - Grave violations

Article 70 bis (b) - Reprisals

Article 74 bis - Exceptional measures in the event of grave breaches

CDDH/I/74 Syrian Arab Republic

CDDH/III/103 Poland

CDDH/I/221/Rev.1 France

CDDH/I/348 Norway

21. At the forty-sixth, forty-seventh and forty-eighth meetings of the Committee on 4, 5 and 7 April 1975, respectively, the new article before (or after) Article 70, Article 70 bis (b) and Article 74 bis were discussed and then referred to Working Group A. At the sixty-sixth meeting of the Committee, these articles were passed on to Working Group B.

22. As the three proposals related to the same problem, i.e. the question of reprisals in international armed conflicts, Working Group B decided to consider them together.

23. Four meetings of Working Group B were devoted to this question. Several proposals were put forward.

24. France submitted two new proposals in succession, the second of which (CDDH/I/GT/107/Rev.1) is incorporated in the report of Working Group B (see Annex II to this report).

25. The delegations of Poland and the Syrian Arab Republic having succeeded in combining their proposals in a single text, the new proposal (CDDH/I/GT/113) was placed before Working Group B.

26. Working Group B was unable to reach a consensus on a single text and referred two texts between square brackets (CDDH/I/GT/107/Rev.1 and CDDH/I/GT/113) to the Committee. Both texts are given in the report of Working Group B (see Annex II to this report).

27. At its seventy-second meeting, on 13 May 1977, the Committee took note of the report of Working Group B.

28. France then withdrew its proposed Article 74 bis, as given in document CDDH/I/GT/107/Rev.1.

29. Poland likewise withdrew its proposed new article before (or after) Article 70, which formed paragraph 1 of the proposal in document CDDH/I/GT/113. Paragraph 2, originally proposed by the Syrian Arab Republic, was then considered by the Committee at its seventy-second meeting on 13 May and adopted by the Committee by 41 votes to 18, with 17 abstentions. The Committee decided that the position and title of this new article should be determined by the Drafting Committee.

30. This paragraph, as adopted, is the new article before (or after) Article 70 and is reproduced in Annex IV to this report.

Article 74 - Repression of breaches of the present Protocol

CDDH/I/347/Rev.1 Philippines

31. This proposal to insert a sub-paragraph (g) had already been discussed at the sixtieth and sixty-first meetings of the Committee on 3 June 1976. Pursuant to the decision taken by the Committee and reflected in paragraph 7 of its report on the third session (CDDH/234/Rev.1), proposal CDDH/I/347/Rev.1 was considered at the seventy-seventh and seventy-eighth meetings of the Committee. After a lengthy discussion, the delegation of the Philippines, in a spirit of compromise, did not press for a vote on its proposal in the Committee.

Article 75 bis - Repatriation on close of hostilities

CDDH/I/22 Pakistan

32. This new proposed Article 75 bis was discussed at the fiftieth meeting of Committee I on 4 May 1976, and then referred to Working Group A. At the seventy-eighth meeting of the Committee, on 18 May 1977, the delegation of Pakistan withdrew its proposal on the grounds that since paragraph 2 of the proposal had been incorporated in Article 74, paragraph 1 was no longer indispensable.

Article 76 bis - Duty of commanders

CDDH/I/307/Rev.1 United States of America

33. This new proposal for Article 76 bis was discussed at the fiftieth meeting of Committee I and then referred to Working Group A. At its meeting on 19 April 1977 the Working Group considered the new Article 76 bis proposed by the United States of America (CDDH/I/307/Rev.1) and approved, with certain amendments, the text that appears in the report of that Working Group (see Annex I to this report).

34. At its seventieth meeting on 28 April 1977 the Committee adopted the whole of Article 76 bis paragraph by paragraph. Paragraph 1 was adopted by 69 votes to none with 1 abstention. Paragraph 2 was adopted by 72 votes to none with 2 abstentions. After a motion to retain the last phrase ("and, where appropriate, to initiate disciplinary or penal action against violators thereof") had been carried by 56 votes to 1, with 11 abstentions, paragraph 3 was adopted by 70 votes to none with 3 abstentions. Article 76 bis as a whole was adopted by 72 votes to none with 3 abstentions. The text of Article 76 bis as adopted, appears in Annex IV to this report.

Article 77 - Superior orders

35. This article and the amendments thereto were discussed at the forty-third, forty-fifth and fifty-first meetings of Committee I on 23 and 27 April and 5 May 1976, which then referred them to Working Group A. The amendments were:

CDDH/I/74	Syrian Arab Republic
CDDH/I/255	Australia
CDDH/I/303	Switzerland
CDDH/I/308	United States of America

36. Several delegations having stated at the outset their opposition to the inclusion of the principles set forth in the article, Working Group A decided to continue its work and not to consider the objections to the retention of Article 77. The delegations in favour of including in draft Protocol I an article relating to "Superior Orders" thus supported a text in which several words between square brackets were to be voted upon separately at the Committee stage. That text appears in the report of Working Group A (see Annex I to this report).

37. The wording of Article 77 proposed by Working Group A reflected the view of one group of delegations, another group having opposed the inclusion of an article of that kind in draft Protocol I. At its sixty-ninth meeting, Committee I took a roll-call vote on a motion to retain the principle of an article on "Superior Orders" in draft Protocol I. The result was 34 votes in favour and 9 against, with 35 abstentions. The voting was as follows:

In favour: Belgium, Bulgaria, United Republic of Cameroon, Canada, Chile, Cyprus, Costa Rica, Cuba, United States of America, Finland, France, Greece, Hungary, Ireland, Israel, Japan, Mexico, Mongolia, Norway, Netherlands, Peru, Philippines, Poland, Portugal, German Democratic Republic, Democratic People's Republic of Korea, Socialist Republic of Viet Nam, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Holy See, Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Zaire.

Against: Saudi Arabia, Australia, India, Iran, New Zealand, Oman, Pakistan, Syrian Arab Republic, Switzerland.

Abstaining: Afghanistan, Algeria, Germany (Federal Republic of), Argentina, Austria, Brazil, Colombia, Ivory Coast, Denmark, Egypt, United Arab Emirates, Spain, Ghana, Indonesia, Iraq, Italy, Socialist People's Libyan Arab Jamahiriya, Jordan, Kuwait, Lebanon, Madagascar, Mali, Mauritania, Mozambique, Nigeria, Panama, Qatar, Republic of Korea, Romania, United Kingdom of Great Britain and Northern Ireland, Senegal, Sudan, Tunisia, Turkey, Democratic Yemen.

After a motion to retain the word "grave" had been carried by 35 votes to 15, with 13 abstentions, paragraph 1 was adopted by 36 votes to 19, with 15 abstentions at the seventieth meeting of the Committee on 28 April 1977. After a motion to add the word "mere" and to delete the word "wilfully" had been carried by 44 votes to 1, with 18 abstentions, and a motion to retain the word "grave" had been carried by 41 votes to 12, with 15 abstentions, paragraph 2 was adopted by 40 votes to 9, with 28 abstentions at the seventieth meeting.

38. Article 77 as a whole was adopted at the seventieth meeting by 38 votes to 22, with 15 abstentions. The text of Article 77 as adopted appears in Annex IV to this report.

Article 78 - Extradition

Article 79 - Mutual assistance in criminal matters

39. Articles 78 and 79 were discussed at the forty-third, forty-fourth, forty-fifth, fifty-third, fifty-fourth, fifty-fifth and fifty-sixth meetings of the Committee on 26 and 27 April, and 7, 10, 11 and 12 May 1976, respectively. They were then referred to Working Group A.

40. In Working Group A, many delegations expressed the view that it would be superfluous to include in the Protocol a provision concerning extradition, such as that in Article 78 proposed by ICRC, since Article 74, paragraph 1, as adopted at the third session, made the provisions of the Conventions relating to the suppression of breaches applicable to this Protocol. Consequently, each High Contracting Party will be under the obligation to "search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned provided such High Contracting Party has made out a prima facie case". The same delegations considered that amendment CDDH/I/310 and Corr.1 and Add.1 and 2 should be considered at the same time as Article 79, since it was more closely connected with mutual assistance in criminal matters than with extradition. Consequently, the Working Group adopted a compromise text for Article 79.

41. Some delegations expressed reservations about paragraph 2 of Article 79 as adopted, which, they considered, was not in the right place and was inadequate in substance to deal with the problem of extradition. The same delegations, which favoured the insertion in the Protocol of a provision relating to extradition, proposed a text in which the two paragraphs in square brackets and their retention in Protocol I should be the subject of separate votes in Committee. The two texts proposed to Committee I are shown in the report of Working Group A (see Annex I to this report).

42. The Committee, at its seventieth meeting, first decided the order in which it would express its views on Articles 78 and 79. By 41 votes to 4, with 14 abstentions, it decided to begin with Article 79 and then to go on to Article 78. At its seventieth meeting, on 28 April 1977, Committee I adopted the whole of Article 79 paragraph by paragraph. Paragraph 1 was adopted by 69 votes to none, with 3 abstentions. Paragraph 2 was adopted by 65 votes to 2, with 3 abstentions. Paragraph 3 was adopted by 70 votes to none, with 1 abstention. Article 79 as a whole was adopted by 70 votes to none, with 3 abstentions.

43. A technical error had appeared in the French, Spanish and Arabic texts, on which a vote had already been taken. In paragraph 3, the words "pour l'exécution d'une demande d'entraide" and their Spanish and Arabic equivalents had not been deleted. However, since the text had been the one on which the Working Group had reached a compromise, it was decided to retain the English version as the original, and to align the other versions accordingly.

44. Article 78 was rejected paragraph by paragraph. Paragraph 1 was rejected by 27 votes to 7, with 39 abstentions. Paragraph 2 was rejected by 41 votes to 1, with 29 abstentions.

45. The text of Article 79 as adopted is given in Annex IV to this report.

Article 78 bis - Treatment of convicted prisoners of war

CDDH/I/312 and Add.1 — Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Democratic Republic of Viet-Nam[1/], German Democratic Republic, Hungary, Mongolia, Poland, Republic of South Viet-Nam[1/], Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics

46. At the seventy-fourth meeting of Committee I on 16 May, this proposed new article (CDDH/I/312 and Add.1) was withdrawn.

1/ The Democratic Republic of Viet-Nam and the Republic of South Viet-Nam became the Socialist Republic of Viet Nam on 2 July 1976.

Article 79 bis - International Fact-Finding Commission

CDDH/I/241 and Add.1	Denmark, New Zealand, Norway, Sweden
CDDH/I/267	Pakistan
CDDH/I/316	Japan

47. These proposals concerning a new Article 79 bis were considered by Committee I at its fifty-sixth, fifty-seventh and fifty-eighth meetings on 12, 13 and 14 May 1976, and then sent to Working Group A. At the Committee's sixty-sixth meeting it was decided to transfer these proposals to Working Group B.

48. Three new proposals concerning draft Article 79 bis were submitted to Working Group B (Pakistan; Austria, Denmark, Japan, Norway, New Zealand and Sweden; United States of America). At its eighth meeting, a new proposal, introduced by the sponsors of the three original proposals, was submitted to Working Group B.

49. From the outset a group of delegations was against the very principle of a fact-finding commission with mandatory jurisdiction. For the reasons already given at the third session of the Conference (CDDH/I/SRs. 56, 57 and 58), and in a spirit of compromise, the delegations in question said that they were ready to accept a provision of that nature on condition that it was an optional provision to draft Protocol I.

50. The other delegations, which accepted the principle of a mandatory jurisdiction for the fact-finding commission, concentrated on the contents of the proposals submitted. The sponsors of the various proposals have thus succeeded on the one hand in converting the different drafts into one text and, on the other, in submitting, following the suggestions made, a new version (CDDH/I/GT/114).

51. During a new attempt at compromise the delegations of the German Democratic Republic and of France each submitted a new proposal (CDDH/I/GT/117 and CDDH/I/GT/118).

52. In view of the number of interventions involving proposed amendments to document CDDH/I/GT/114, it was suggested to the Chairman of Working Group B that all the proposals between brackets, should be regrouped in a working paper, taking as a basis document CDDH/I/GT/114. With the agreement of the German Democratic Republic its proposal was included in that text (CDDH/I/GT/119). Working Group B was, however, unable to reach a consensus on that version and referred back the three texts within brackets to the Committee in order that it might take a decision: CDDH/I/GT/114, CDDH/I/GT/118 and CDDH/I/GT/119 (corrected). These texts appear in the report of Working Group B (see Annex II to this report).

53. At the seventy-second meeting of the Committee on 13 May 1977, a proposal for a new title - "Standing International Fact-finding Commission on the Application of Humanitarian Law" was rejected by 44 votes to 18, with 16 abstentions. The Committee then adopted Article 79 bis as a whole paragraph by paragraph, and took a decision on proposal CDDH/I/GT/119 (corrected). Committee I adopted paragraph 1 by 70 votes to 3 with 5 abstentions, after the following decisions had been taken: in sub-paragraph (b) the word "the" before the words "High Contracting Parties" was maintained by 20 votes to 17 with 24 abstentions. In sub-paragraph (d) the words "the High Contracting Parties" were retained by 50 votes to 6, with 10 abstentions. Committee I adopted paragraph 2 in the form proposed by the German Democratic Republic, as amended orally by the United States of America, by 41 votes to 30 with 11 abstentions (see summary record CDDH/I/SR.72). The Committee adopted paragraph 3 by 65 votes to none with 10 abstentions, after the following decisions had been taken: in sub-paragraph (a) (i), the phrase "and who are nationals of States having diplomatic relations with the Parties to the conflict," was rejected by 50 votes to 3 with 21 abstentions. The words "with the agreement of the Parties concerned" were rejected by 42 votes to 28, with 12 abstentions, and the words "following consultation with the Parties to the conflict" were adopted by 39 votes to 28, with 14 abstentions. Sub-paragraph (b) was adopted by 43 votes to 15, with 15 abstentions. After the rejection by 50 votes to 13, with 15 abstentions, of a proposal to maintain the last phrase, Committee I adopted paragraph 4 by 69 votes to none with 9 abstentions. Committee I adopted paragraph 5 by 49 votes to none with 21 abstentions, after the following decisions had been taken: the deletion of the last part of sub-paragraph (a) was rejected by 45 votes to 19, with 9 abstentions; sub-paragraph (c) was adopted in the form proposed by the Swiss delegation by 29 votes to 25, with 16 abstentions, following the rejection of the French proposal by 26 votes to 24, with 16 abstentions (see document CDDH/I/349/Rev.1). Committee I adopted paragraph 6 by 64 votes to 1, with 10 abstentions. After a proposal to retain the words "which made declarations under paragraph 2" had been adopted by 37 votes to 24, with 13 abstentions, Committee I adopted paragraph 7 by 48 votes to 2 with 20 abstentions.

54. The article as a whole was adopted by 40 votes to 18, with 17 abstentions.

55. After the adoption of that text, it was no longer necessary for Committee I to consider document CDDH/I/GT/118.

56. The text of Article 79 bis, as adopted, appears in Annex IV to this report.

New Section III of Part V - Code of International Crimes in Violation of the Geneva Conventions of 1949 and the draft additional Protocols

CDDH/56/Add.1/Rev.1 Philippines

57. This proposal for a new section was submitted at the sixty-fifth meeting of Committee I on 9 June 1976. By reason of the considerations set forth in document CDDH/I/346, Committee I decided, at its seventy-fourth meeting, that proposal CDDH/56/Add.1/Rev.1 should become a Conference document available for consultation and subsequent study.

New Part V bis - Obligation to make reparation for breaches of the present Protocol

58. Part V bis was proposed by the delegations of the Socialist Republic of Viet Nam, Algeria and Yugoslavia (CDDH/I/335 and Add.1 and 2). At its sixty-seventh meeting Committee I referred the proposal to Working Group A.

59. At its meeting on 26 April 1977 Working Group A gave consideration to the new Part V bis. The text of the new Part V bis as approved by the Group is given in its report (see Annex I).

60. At its seventieth meeting, on 28 April, Committee I adopted by consensus the amended text of the proposed new Part V bis. The Drafting Committee will decide on both the title of the new article and its place in the Protocol.

61. The text of Part V bis (or new article to precede Article 80), as adopted by consensus, is given in Annex IV to this report.

Article 80 - Signature

62. No amendment was submitted to Article 80 as proposed by the ICRC, and it was referred to Working Group C at the sixty-seventh meeting of Committee I on 25 April 1977.

63. Working Group C approved the text of Article 80, which appears in its report (see Annex III to this report). At its seventy-sixth meeting the Committee adopted Article 80 by consensus. The text of Article 80 as adopted appears in Annex IV to this report.

Article 81 - Ratification

64. No amendment was submitted to Article 81 as proposed by the ICRC, and it was referred to Working Group C at the sixty-seventh meeting of Committee I. After consideration, Working Group C approved without debate the text of Article 81 as it appears in Annex III to this report.

65. The text of Article 81 as adopted by consensus at the seventy-sixth meeting of Committee I appears in Annex IV to this report.

Article 82 - Accession

66. No amendments were proposed to the ICRC draft of Article 82, which was referred by the sixty-seventh meeting of Committee I to Working Group C.

67. Working Group C approved the text of Article 82 in the form in which it had been referred to it. At its seventy-sixth meeting the Committee adopted Article 82 by consensus, in the form in which it appears in Annex IV to this report.

Article 83 - Entry into force

68. No amendments were proposed to the ICRC draft of Article 83, which was referred by the sixty-seventh meeting of Committee I to Working Group C.

69. When Article 83 was considered by Working Group C, some delegations proposed that the words "or accession" should be inserted after the word "ratification" appearing in the ICRC draft. Working Group C approved the text of Article 83 which appears in its report (see Annex III to this report).

70. At its seventy-sixth meeting, Committee I adopted by consensus Article 83 as a whole, in the form in which it appears in Annex IV to this report.

Article 84 - Treaty relations upon entry into force of the present Protocol

71. Article 84 as proposed by the ICRC was the subject of three amendments:

CDDH/I/74	Syrian Arab Republic (new paragraph 3)
CDDH/I/229 and Add.1	Socialist Republic of Viet Nam, Qatar (paragraph 2)
CDDH/I/233 and Add.1 to 4	Algeria, Australia, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Cyprus, Czechoslovakia, Democratic People's Republic of Korea Democratic Republic of Viet-Nam, Egypt, Finland, Ghana, Hungary, Iraq, Ivory Coast, Jordan, Kuwait, Lebanon, Madagascar, Mali, Mauritania, Mongolia, Netherlands, New Zealand, Norway, Poland, Qatar, Saudi Arabia, Socialist People's Libyan Arab Jamahiriya, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Yugoslavia.

72. At the sixty-seventh meeting of Committee I, Article 84 and amendments CDDH/I/74 and CDDH/I/229 and Add.1 were referred to Working Group C.

73. On the proposal of one of the sponsors of amendment CDDH/I/233 and Add.1 to 4 concerning paragraph 3 of Article 84, it was decided at the sixty-seventh meeting, by 57 votes to 4, with 14 abstentions, to retain the proposal before the Committee; later, at the same meeting, it was accepted by 50 votes to none, with 14 abstentions.

74. Working Group C, after consideration, approved paragraph 1 of Article 84.

75. In order to improve the text, it was proposed to delete the words "to the conflict" in the English version of Article 84, paragraph 2, of the ICRC text, and to replace them by the word "thereto". The proposal was accepted without opposition.

76. Paragraph 3 having already been adopted by 55 votes to none with 14 abstentions at the sixty-seventh meeting of Committee I, it was not further considered in Working Group C. The text of Article 84, as approved by Working Group C, appears in the report of that Group (see Annex III to this report).

77. At its seventy-sixth meeting on 17 May 1977, Committee I adopted by consensus Article 84 as annexed to this report (see Annex IV).

78. Given the text of Article 84 as adopted, Committee I decided to delete the square brackets, i.e., to retain the phrase which still remained in Article 70 of draft Protocol I. The text of Article 70 is annexed to the present report (see Annex IV).

Article 84 bis (a) - Special agreements and declarations during hostilities

CDDH/I/86 Norway

79. At the sixty-sixth meeting of the Committee proposal CDDH/I/86 for a new article was withdrawn.

Article 84 bis (b) - Cases not covered by the Conventions or by the present Protocol

80. At the sixty-eighth meeting of Committee I on 26 April, the delegation of the Socialist Republic of Viet Nam withdrew amendment CDDH/I/230, in view of the fact that the cases not covered by the Conventions or by draft Protocol I were dealt with in Article 1, paragraph 4, adopted by the Committee at its thirtieth meeting on 18 March 1975.

Article 85 - Reservations

81. Article 85, proposed by the ICRC, was the subject of two amendments:

CDDH/I/74 Syrian Arab Republic

CDDH/I/87/Rev.1 German Democratic Republic

82. At the sixty-eighth meeting of Committee I, Article 85 and the amendments thereto contained in documents CDDH/I/74 and CDDH/I/87/Rev.1 were referred to Working Group C.

83. In the Working Group opinions were divided as to whether an article on reservations was really necessary or whether it might not be better simply to refer to the general rules of international law concerning reservations.

84. A small informal group proposed a text on reservations. Two other texts were proposed by other delegations. Working Group C decided to submit to Committee I the proposal for the deletion of Article 85 and, if that article were retained, to take a decision on the text proposed by the small informal group.

85. Working Group C's consideration of this article is described in its report (see Annex III to this report).

86. At its seventy-sixth meeting on 17 May 1977, Committee I decided, by 47 votes to 34, with 4 abstentions, not to have an article on reservations.

Article 86 - Amendment

87. At the sixty-eighth meeting of the Committee, no amendments were proposed to Article 86 submitted by the ICRC and it was sent to Working Group C. In the Working Group, it was pointed out that, since Committee II had, at its seventy-ninth meeting on 4 June 1975, adopted by consensus a specific provision for revision of the Annex to Protocol I (Article 18 bis), the words "or its Annex" in Article 86 should be deleted.

88. After a discussion in which several representatives participated, Working Group C adopted a text for Article 86 in which the words "or its Annex" appeared in square brackets. This text appears in the report of Working Group C (see Annex III to this report).

89. At its seventy-sixth meeting, the Committee adopted Article 86 by consensus. The retention of the words "or its Annex" in square brackets in Article 86, paragraph 1, will have to be decided by the Drafting Committee.

90. The text of Article 86, as adopted, appears in Annex IV to this report.

Article 86 bis

CDDH/I/340 and Add.1-3 Bolivia, Ecuador, Egypt, Guatemala, Honduras, Iran, Iraq, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Spain, Sudan, Venezuela, Yugoslavia

91. At its sixty-ninth meeting on 27 April, Committee I decided, after a procedural debate, to refer this amendment to Working Group C.

92. After a lengthy discussion, the Working Group decided to propose to Committee I that Article 86 bis should be deleted and that, if it was decided to retain it, a decision should be taken on a text which had been submitted to Working Group C by an informal sub-group. Details of the discussion on that article appear in the report of Working Group C (see Annex III to this report).

93. At its seventy-seventh meeting on 13 May 1977, Committee I proceeded to take a roll call vote on the first proposal of Working Group C, namely the deletion of Article 86 bis. The result of the voting was as follows: the proposal to delete the article was rejected by 40 votes to 30 with 13 abstentions.

Those in favour of the deletion of Article 86 bis were: Australia, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Cuba, Czechoslovakia, Denmark, France, German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, India, Indonesia, Israel, Italy, Ivory Coast, Japan, Mongolia, New Zealand, Netherlands, Poland, Portugal, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United States of America.

Those against the deletion of Article 86 bis were: Afghanistan, Algeria, Austria, Cyprus, Ecuador, Egypt, Ghana, Guatemala, Honduras, Iran, Ireland, Jordan, Kenya, Kuwait, Lebanon, Madagascar, Mexico, Mozambique, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Republic of Korea, Romania, Senegal, Socialist People's Libyan Arab Jamahiriya, Spain, Sri Lanka, Syrian Arab Republic, Sweden, Switzerland, Uganda, Uruguay, Venezuela, Yugoslavia, Zaire.

Abstaining: Argentina, Brazil, Chile, Colombia, Democratic People's Republic of Korea, Finland, Holy See, Mali, Morocco, Mauritania, Socialist Republic of Viet Nam, Turkey, United Arab Emirates.

94. Committee I voted on the phrases in brackets contained in the text submitted by Working Group C:

the words "Consultative Board" were rejected by 40 votes to 2, with 37 abstentions;

the words "the Conventions or" were adopted by 40 votes to 6, with 31 abstentions;

the words "and adopt recommendations regarding" were adopted by 40 votes to 13, with 23 abstentions;

the words "and the Committee itself" were adopted by 27 votes to 14, with 31 abstentions;

the words "on the basis of Article 33 of this Protocol" were adopted by 40 votes to 1, with 36 abstentions;

the words "that may cause superfluous injuries or have indiscriminate effects" were adopted by 40 votes to 2, with 31 abstentions;

the number "31" was adopted by 39 votes to none, with 34 abstentions;

the words "if it should consider it necessary" were adopted by 18 votes to 3, with 52 abstentions;

the words "and shall elect its Chairman" were adopted by 20 votes to none, with 48 abstentions;

the words "the depositary Government, in consultation with any State Party or Parties that may wish to invite ... may convene a special Conference" were adopted in an amended form by 17 votes to 16, with 40 abstentions;

the words "that implement the principle that the Parties to the conflict do not have an unlimited right of choice of means of combat" were adopted by 43 votes to none with 33 abstentions.

95. Article 86 bis as a whole was adopted by 50 votes to 27, with 13 abstentions.

96. Article 86 bis as adopted appears in Annex IV to this report.

Article 87 - Denunciation

97. No amendments were suggested to Article 87 as proposed by the ICRC and it was referred to Working Group C at the sixty-seventh meeting of Committee I.

98. When Article 87 was considered in Working Group C, it was pointed out that the reference therein to Article 2 common to the Conventions was inopportune, since the Conference had adopted Article 1 of Protocol I as amended. It was agreed that the words "2 common to the Conventions" should be deleted in paragraph 1 and replaced by the words "1 of this Protocol".

99. It was suggested that, in order to bring the text into line with other articles of the Protocol, it would be advisable to insert the word "final" before the word "release" in paragraph 1, replace the word "and" before "establishment" by the word "or", and, in the English text, to use the word "re-establishment" instead of the word "establishment".

100. The Working Group accepted those suggestions without difficulty, together with paragraphs 2 and 3.

101. One delegation proposed the addition of a paragraph 4 which, with slight changes, was approved by Working Group C.

102. Working Group C approved the text of Article 87 as published in its report (see Annex III to this report).

103. At its seventy-sixth meeting, the Committee adopted Article 87 as a whole by consensus, as it appears in Annex IV to this report.

Article 88 - Notifications

104. Article 88 proposed by the ICRC was the subject of an amendment:

CDDH/I/233 and Add.1-4	Algeria, Australia, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Democratic Republic of Viet-Nam, Egypt, Finland, Ghana, Hungary, Iraq, Ivory Coast, Jordan, Kuwait, Lebanon, Madagascar, Mali, Mauritania, Mongolia, Netherlands, New Zealand, Norway, Poland, Qatar, Saudi Arabia, Socialist People's Libyan Arab Jamahiriya, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Yugoslavia.

105. At the sixty-ninth meeting of Committee I, Article 88 proposed by the ICRC was referred to Working Group C. Amendment CDDH/I/233 and Add.1 to 4 was adopted at the sixty-seventh meeting of the Committee, when amendments relating to Article 84 of draft Protocol I were introduced (see paragraph 73 of this report).

106. After consideration, Working Group C approved the text of Article 88. Sub-paragraph (d) had already been adopted at the sixty-seventh meeting of the Committee by 55 votes to none with 14 abstentions.

107. The text of Article 88 approved by Working Group C appears in the report of Working Group C (see Annex III to this report).

108. At its seventy-sixth meeting, the Committee adopted Article 88 as a whole, by consensus, as it appears in Annex IV to this report.

Article 89 - Registration

109. No amendment was introduced to Article 89 proposed by the ICRC, and at the sixty-seventh meeting of Committee I it was referred to Working Group C.

110. After considering the text of Article 89, Working Group C approved it without discussion, as it appears in the report of that Group (see Annex III to this report).

111. At its seventy-sixth meeting, Committee I adopted Article 89 as a whole, by consensus, as it appears in Annex IV to this report.

Article 90 - Authentic texts and official translations

112. Four amendments were proposed to the ICRC draft of Article 90:

CDDH/I/53	Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics (paragraph 1)
CDDH/I/74	Syrian Arab Republic (paragraph 2)
CDDH/I/339 and Add.1	Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Peru, Spain, Uruguay, Venezuela
CDDH/I/341	Algeria, Bahrain, Democratic Yemen, Egypt, Iraq, Jordan, Kuwait, Lebanon, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Socialist People's Libyan Arab Jamahiriya, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen.

113. At the sixty-seventh and sixty-ninth meetings of Committee I, Article 90 and amendments CDDH/I/53, CDDH/I/339 and Add.1 and CDDH/I/341 were referred to Working Group C. Amendment CDDH/I/74 had been withdrawn earlier.

114. Following an explanation by the Swiss delegation during the consideration of Article 90 by Working Group C, it was agreed that a reference to the Chinese text should be inserted in paragraph 1. The text of Article 90 as approved by Working Group C appears in its report (see Annex III to this report).

115. At its seventy-sixth meeting on 17 May 1977, the Committee adopted by consensus Article 90 as a whole, in the form in which it appears in Annex IV to this report.

DRAFT PROTOCOL II

New article to be inserted before Article 1 - Respect for the Protocol

CDDH/I/37 Canada

116. At the seventy-sixth meeting of Committee I, this proposal for a new article (CDDH/I/37) was withdrawn.

Article 6 - Fundamental guarantees

117. The text of Article 6 had been adopted by consensus at the thirty-ninth meeting of Committee I, on 11 April 1975.

118. In paragraph 86 of the Committee's report at the third session (CDDH/234/Rev.1), attention had been drawn to the question of "collective penalties". No provisions prohibiting such penalties had been included, although they had originally appeared in Article 9 of the ICRC draft of Protocol II and in paragraph 2 (b) of document CDDH/I/262.

119. After a discussion, the Working Group decided to provide for the prohibition of collective penalties in paragraph 2 (b) of Article 6, and to renumber the following sub-paragraphs.

120. Following upon the letter from the Chairman of the Drafting Committee to the Chairman of Committee I, dated 14 April 1977, Working Group B reconsidered the concept of "convictions". Committee III having decided not to qualify the word "convictions" in any way, so as to cover all types of convictions, whether political, religious or philosophical (see CDDH/III/369, p. 6), Working Group B decided at its tenth meeting to give this work the same interpretation in Article 6 of draft Protocol II.

121. The text of Article 6 submitted by Working Group B appears in its report (see Annex II to this report).

122. At its seventy-third meeting, the Committee adopted by consensus Article 6 as a whole, as it appears in Annex IV to this report.

Article 8 bis - Interned families

123. Since the delegation of Canada, sponsor of amendment CDDH/I/250 concerning Article 8 bis, decided not to press its proposal, Working Group B decided to delete the item from its programme of work.

124. The Committee took note of the withdrawal of the proposal for a new article (CDDH/I/250).

Article 10 bis

125. Working Group B resumed its consideration of the text proposed in document CDDH/I/320/Rev.2 in the light of the work of Committee III on Part V.

126. Working Group B decided at its fifth meeting to refer to the Committee the text of Article 10 bis incorporating a reference to Parts II and III and Article 26, together with a proposal in square brackets for the inclusion of references to other articles of Part V, namely, Articles 26 bis, 27 and 28. This text appears in the report of Working Group B. The Committee was to take a decision on the inclusion of references to the articles in square brackets in the text of Article 10 bis.

127. The consideration of this article is dealt with in the report of Working Group B (see Annex II to this report).

128. At its seventy-third meeting, after the adoption by 29 votes to 11, with 39 abstentions, of a motion to retain the figures "26 bis, 27 and 28", Article 10 bis as a whole was adopted by 33 votes to 15, with 28 abstentions.

129. The Committee decided that the position and title of the article would be left to the Drafting Committee.

130. The text of Article 10 bis, as adopted, appears in Annex IV to this report.

Article 40 - Signature

131. There were no amendments to the ICRC draft of Article 40, and it was referred to Working Group C at the sixty-seventh meeting of Committee I.

132. After considering the article, and in the light of the corresponding article in draft Protocol I, Working Group C approved the text of Article 40 as contained in its report (see Annex III to this report).

133. At its seventy-sixth meeting the Committee adopted Article 40 by consensus, as it appears in Annex IV to this report.

Article 41 - Ratification

134. There were no amendments to the ICRC draft of Article 41, and it was referred to Working Group C at the sixty-seventh meeting of Committee I.

135. After considering the article, and in the light of the corresponding article in draft Protocol I, Working Group C approved the text of Article 41 as contained in its report (see Annex III to this report).

136. At its seventy-sixth meeting the Committee adopted Article 41 by consensus, as it appears in Annex IV to this report.

Article 42 - Accession

137. There were no amendments to the ICRC draft of Article 42, which was referred to Working Group C at the sixty-seventh meeting of Committee I.

138. After consideration, and bearing in mind the corresponding article of draft Protocol I, Working Group C approved the text of Article 42 as it appears in its report (see Annex III to this report).

139. At its seventy-sixth meeting, the Committee adopted by consensus the text of Article 42 as it appears in Annex IV to this report.

Article 43 - Entry into force

140. There were no amendments to the ICRC draft of Article 43, which was referred to Working Group C at the sixty-seventh meeting of Committee I.

141. Despite the reservations of some delegations concerning the number of instruments of ratification or accession required, and bearing in mind the corresponding article of draft Protocol I, Working Group C approved the text of Article 43 as it appears in its report (see Annex III to this report).

142. At its seventy-sixth meeting, the Committee adopted by consensus Article 43 as a whole, in the form in which it appears in Annex IV to this report.

Article 44 - Amendment

143. There were no amendments to the ICRC draft of Article 44. It was referred to Working Group C at the sixty-seventh meeting of Committee I.

144. After consideration of the article, and bearing in mind the corresponding article in draft Protocol I, Working Group C approved the text of Article 44 which appears in its report (see Annex III to this report).

145. At its seventy-sixth meeting, the Committee adopted by consensus Article 44 as it appears in Annex IV to this report.

Article 44 bis - Denunciation

146. Working Group C expressed the view that a denunciation clause was as necessary for Protocol II as for Protocol I, and that there was no reason not to draft one.

147. Working Group C approved the text of Article 44 bis as contained in its report (see Annex III to this report).

148. At its seventy-sixth meeting, the Committee adopted by consensus Article 44 bis as a whole, as it appears in Annex IV to this report.

Article 45 - Notifications

149. No amendments were submitted to the ICRC draft of Article 45. It was referred to Working Group C at the sixty-seventh meeting of Committee I.

150. After considering the article, and taking into account the corresponding article in draft Protocol I, Working Group C approved the text contained in its report (see Annex III to this report).

151. At its seventy-sixth meeting, the Committee adopted Article 45 by consensus as it appears in Annex IV to this report.

Article 46 - Registration

152. No amendments were submitted to the ICRC draft of Article 46. It was referred to Working Group C at the sixty-seventh meeting of Committee I.

153. After considering the article, and taking into account the corresponding article in draft Protocol I, Working Group C approved the text contained in its report (see Annex III to this report).

154. At its seventy-sixth meeting, Committee I adopted Article 46 as a whole by consensus as it appears in Annex IV to this report.

Article 47 - Authentic texts and official translations

155. Two amendments were submitted to the ICRC draft of Article 47:

CDDH/I/336 and Add.1	Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Socialist Republic of Viet Nam, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.
CDDH/I/341	Algeria, Bahrain, Democratic Yemen, Egypt, Iraq, Jordan, Kuwait, Lebanon, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Socialist People's Libyan Arab Jamahiriya, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen.

Article 47 and amendments CDDH/I/336 and Add.1 and CDDH/I/341 were referred to Working Group C at the sixty-ninth meeting of Committee I.

156. After considering the article, and taking into account the corresponding article in draft Protocol I, Working Group C approved the text contained in its report (see Annex III to this report).

157. At its seventy-sixth meeting, Committee I adopted Article 47 as a whole by consensus as it appears in Annex IV to this report.

TITLE OF AND PREAMBLE TO DRAFT PROTOCOL I

Title

158. There were no amendments to the title of draft Protocol I, and at the thirty-fifth plenary meeting of the Conference on 14 April 1977, it was referred to Committee I, and then to Working Group C.

159. The suggestion by the Chairman of Working Group C that the word "draft" should be deleted was accepted.

160. Some delegations considered that the words "First Protocol" in the English title might give the wrong impression that there were also other Protocols on the subject. Both the Chairman and one delegation considered that the word "First" meant only that it was Protocol I to the Conventions, as indicated in the title, and that the word "and" coming after "1949" meant that "First" did not relate to the subject.

161. It was then proposed that in French, instead of using the corresponding word for "First", the words "Protocol I", in brackets, should be placed at the end of the title.

162. It was agreed to approve the drafting of the English title as indicated by the Chairman, and in the other languages to use the wording suggested, leaving it to the Drafting Committee to ensure, if necessary, that all the language versions were equivalent.

163. The text of the title approved by Working Group C is given in its report (see Annex III to this report).

164. At its seventy-sixth meeting Committee I adopted the title of draft Protocol I by consensus, subject to inspection of the various language versions.

165. The text of the title, as adopted, is given in Annex IV to this report.

Preamble

166. The ICRC draft of the Preamble was the subject of two amendments:

CDDH/I/56 Philippines

CDDH/I/337 and Add.1	Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Democratic People's Republic of Korea, German Democratic Republic, Hungary, Mongolia, Poland, Socialist Republic of Viet Nam, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics

167. The Preamble and the amendments in documents CDDH/I/56 and CDDH/I/337 and Add.1 were referred to Working Group C at the sixty-seventh and sixty-ninth meetings of Committee I.

168. The text of the Preamble adopted by Working Group C appears in its report (see Annex III to this report).

169. The consideration of the Preamble is dealt with in the report of Working Group C.

170. At its seventy-sixth meeting Committee I decided by consensus to delete the Martens clause appearing in square brackets since it was already included in Article 1 of draft Protocol I.

171. The text of the Preamble, as adopted by consensus by the Committee appears in Annex IV to this report.

TITLE OF AND PREAMBLE TO DRAFT PROTOCOL II

Title

172. No amendment was submitted to the title of draft Protocol II. The Conference, at its thirty-fifth plenary meeting, referred the title to Committee I, which referred it to Working Group C.

173. After considering it, and having taken into account the title adopted for draft Protocol I, Working Group C adopted the title of draft Protocol II as reproduced in its report (see Annex III to this report).

174. At its seventy-sixth meeting, Committee I adopted by consensus the title of the Preamble to draft Protocol II as reproduced in Annex IV to this report.

Preamble

175. At the sixty-seventh meeting of Committee I no amendment had been submitted to the Preamble proposed by the ICRC, which was referred to Working Group C.

176. Working Group C examined the text of the Preamble to draft Protocol II. Several delegations were against a Preamble to this Protocol. Working Group C accordingly referred the ICRC text in brackets to the Committee. The text of the Preamble, approved by Working Group C, appears in the report of that Group (see Annex III to this report).

177. With regard to the discussion on this Preamble, reference should be made to the report of Working Group C.

178. At its seventy-sixth meeting Committee I first rejected by 32 votes to 19 with 27 abstentions a proposal for the deletion of the Preamble.

179. The Committee then decided to retain the last phrase of paragraph 4 ("and the dictates of the public conscience") by 35 votes to 21 with 21 abstentions.

180. Committee I further decided to leave to the Drafting Committee other possible changes of wording as proposed in paragraph 37 of the report of Working Group C (see Annex III to this report).

181. The Preamble as a whole was adopted by consensus, as it appears in Annex IV to this report.

III. ADOPTION OF THE COMMITTEE'S REPORT

182. Committee I adopted its report at the seventy-ninth meeting on 21 May 1977.

ANNEXES

ANNEX I

REPORT OF WORKING GROUP A*

1. Working Group A under the chairmanship of Mr. A. de Icaza (Mexico), Rapporteur of Committee I, held six meetings. Its task was to consider Articles 76 bis, 77, 78 and 79 of draft Protocol I and the associated proposals.

2. Article 77 proposed by the ICRC was the subject of the following amendments:

CDDH/I/74	Syrian Arab Republic
CDDH/I/255	Australia
CDDH/I/303	Switzerland
CDDH/I/308	United States of America

and of working paper CDDH/I/GT/96 submitted by

Germany (Federal Republic of), New Zealand, Nigeria and the United Kingdom of Great Britain and Northern Ireland.

3. At the meeting on 15 April 1977, a number of delegations stated from the outset that they were against the inclusion in Protocol I of the principles set forth in Article 77. In order that the work might continue it was decided to proceed as though there were no objections to the retention of Article 77.

4. At the meeting on 18 April, the Chairman submitted an amended version of Article 77 based on the oral and written proposals submitted by representatives participating in the Working Group. Those in favour of the insertion in Protocol I of an article relating to "Superior Orders" supported a text in which the words placed between square brackets should be put to a separate vote in Committee. Other delegations continued to oppose the inclusion in Protocol I of a provision relating to "Superior Orders". The text is as follows:

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* Circulated under symbol CDDH/I/338/Rev.1.

Article 77

"1. The High Contracting Parties undertake to ensure that their internal law penalizing disobedience to orders shall not apply to orders that would constitute /grave/ breaches of the Conventions and this Protocol.

"2. The fact of having acted /wilfully/ pursuant to an order of an authority or a superior does not absolve an accused person from penal responsibility, if it be established that in the circumstances at the time he knew or should have known that he was committing a /grave/ breach of the Conventions or of this Protocol. It may, however, be taken into account in mitigation of punishment."

5. At the meeting on 19 April 1977 the new Article 76 bis, proposed by the United States of America (CDDH/I/307/Rev.1) was introduced. A number of delegations supported the text but proposed amendments to the wording.

6. After consultation between the Chairman and some delegations, the Working Group adopted the following text:

Article 76 bis

"1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and this Protocol.

"2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.

"3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or the present Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof."

7. The following amendments were submitted to Articles 78 and 79 as proposed by the ICRC:

CDDH/I/266	Belgium
CDDH/I/303	Switzerland
CDDH/I/309	United Kingdom of Great Britain and Northern Ireland, United States of America
CDDH/I/315	Philippines
CDDH/I/57	Philippines
CDDH/I/279	France, Mali, Switzerland
CDDH/I/310 and Corr.1 and Add.1 and 2	Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Socialist Republic of Viet Nam, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

8. During the meetings on 20, 21 and 22 April, many delegations expressed the view that it would be superfluous to include in the Protocol a provision concerning extradition such as that in draft Article 78, since Article 74, paragraph 1, as adopted at the third session made the provisions relating to the suppression of breaches applicable to this Protocol. Consequently, each High Contracting Party will be under the obligation to "search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case".

9. The same delegations considered that amendment CDDH/I/310 and Corr.1 and Add.1 and 2 should be considered at the same time as Article 79 since it was more closely connected with mutual assistance in criminal matters than with extradition. Consequently, at the meeting on 21 April a compromise text was adopted, taking into account the fact that the delegations which objected to the word "grave" and to the second sentence of Article 79 had, in a spirit of conciliation, withdrawn their objection.

10. Some delegations expressed reservations about paragraph 2 of Article 79 as adopted, which they considered was not in the right place and was inadequate in substance to deal with the problem of extradition. The same delegations, which favoured the insertion in the Protocol of a provision relating to extradition, proposed a text in which the two paragraphs in square brackets and their retention in Protocol I should be the subject of separate votes in Committee. In the event of the text being adopted by Committee I, it would be for the Drafting Committee to decide on the order and the place in which Articles 78 and 79 should be inserted.

The text is as follows:

Article 78

"1. [[The Conventions and this Protocol may at the option of the requested High Contracting Party be considered as the legal basis, if such a basis is required, for extradition in respect of grave breaches. Extradition shall be subject to the other conditions provided by the law of the requested High Contracting Party.]

2. [Nothing can prejudice, however, the right of any State not a Party to the Conventions and this Protocol to grant extradition in respect of the trial of its own nationals outside its own territory.]]"

11. The majority of the delegations which adopted the compromise text of Article 79 to which paragraph 9 refers decided that the text should read as follows:

Article 79

"1. The High Contracting Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of grave breaches of the Conventions or of the present Protocol.

2. Subject to the rights and obligations established in the Conventions and in Article 74, paragraph 1, of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate on matters of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred.

3. The law of the High Contracting Party requested shall apply in all cases. The provisions of the preceding paragraphs of this article shall not however affect the obligations arising from the provisions of any other treaty of a bilateral or multilateral nature which governs or will govern the whole or part of the field of mutual assistance in criminal matters."

ADDENDUM TO THE REPORT OF WORKING GROUP A

REPORT ON THE WORK OF WORKING GROUP A*

1. At the meeting on 26 April 1977, a study was made of the new Part V bis proposed by the Socialist Republic of Viet Nam, Algeria and Yugoslavia (CDDH/I/335 and Add.1 and 2).

2. Some delegations felt that it would be superfluous to include in the Protocol the provisions of paragraph 2 of that amendment, since they reproduced existing provisions in the Geneva Conventions: namely, Article 51 of the first Convention, Article 52 of the second, Article 131 of the third and Article 148 of the fourth.

3. In order to achieve a consensus, and in a spirit of conciliation, the sponsors of the amendment accepted the proposal of those delegations. The text thus adopted, whose place in the Protocol will have to be decided by the Drafting Committee, reads as follows:

"A Party to the conflict which violates the provisions of the Conventions or of the present Protocol 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."

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* Circulated under symbol CDDH/I/338/Rev.1/Add.1

ANNEX II

REPORT OF WORKING GROUP B*

1. Working Group B, under the chairmanship of Mr. K. Obradović (Yugoslavia) held twelve meetings between 15 April and 4 May 1977, and completed its work on the following articles:

Draft Protocol I

New article before Article 70
Article 70 bis
Article 74 bis
Article 79 bis

Draft Protocol II

Article 6
Article 8 bis
Article 10 bis

2. In view of the statement by the delegation of Pakistan concerning amendments CDDH/I/27 and CDDH/I/25 relating to Articles 7 bis and 7 ter of which it was the sponsor, Working Group B decided to resume the discussion on those articles at a later stage of its work, should that still be necessary.

Draft Protocol I

New article before Article 70 - Grave violations
Article 70 bis (b) - Reprisals
Article 74 bis - Exceptional measures in the event of grave breaches

3. As draft Articles 70 bis (b) and 74 bis concerned the same problem, namely, the question of reprisals in international armed conflicts, Working Group B decided to consider them together. There were two proposals:

CDDH/III/103	Poland
CDDH/I/221/Rev.1	France

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* Circulated under symbol CDDH/I/349/Rev.1.

4. At the request of the Syrian Arab Republic and by agreement with Working Group A, it was decided that the proposed new article before Article 70 (CDDH/I/74) should be discussed in Working Group B simultaneously with Articles 70 bis (b) and 74 bis of draft Protocol I.

5. Working Group B devoted four meetings to this question. Two main schools of thought emerged during the debate.

6. In the course of a very sustained debate, in which nearly forty-five delegations took part, a number of proposals were made:

CDDH/I/GT/107 France

CDDH/I/GT/109 United States of America

CDDH/I/GT/107/Rev.1 France

7. The delegations of Poland and the Syrian Arab Republic having succeeded in combining their two proposals, Working Group B had before it a new proposal, contained in document CDDH/I/GT/113.

8. Working Group B failed to arrive at a consensus on a single text.

9. It is therefore for Committee I to take a decision. The two texts on which a decision is required are the following:

10. CDDH/I/GT/107/Rev.1 France

/"Article 74 bis - Exceptional measures in the event of grave breaches

1. In the event that a Party to a conflict commits grave, manifest and deliberate breaches of its obligations under the provisions of Articles 46, 47, 48, 49 and 50 of this Protocol, and a Party victimized by these breaches considers it imperative to take action to compel the Party violating its obligations to cease doing so, the victimized Party shall be entitled, subject to the provisions of this article, to resort to certain measures designed to repress the breaches and induce compliance with the Protocol, but which would otherwise be prohibited by the Protocol.

2. The measure described in paragraph 1 of this article may be taken only when the following conditions are met:

(a) The measures may be taken only when other efforts to induce the adverse Party to comply with the law have failed or are not feasible, and the victimized Party clearly has no other means of bringing the breach to an end;

(b) The decision to have recourse to such measures must be taken at the highest level of the government of the victimized Party; and

(c) The Party committing the breach must be given specific, formal, and prior warning that such measures will be taken if the breach is continued or renewed.

3. If it proves imperative to take these measures, their extent and their means of application shall in no case exceed the extent of the breach which they are designed to end.

/ These measures shall be of the same nature as those taken by the adverse Party in violation of the provisions referred to in paragraph 1 of this article. /

These measures shall not include any of the actions which may not be taken against the categories of persons and against the objects protected by the Geneva Conventions of 1949 and by this Protocol.

The measures must cease, in all events, when they have achieved their objective, namely, cessation of the breach which prompted the measures." /

11. CDDH/I/GT/113 Poland, Syrian Arab Republic

/ "New article before (or after) Article 70

1. Measures of reprisals against persons and objects protected by the Conventions and by the present Protocol are prohibited.

2. In situations of grave violations of the Conventions and the present Protocol the High Contracting Parties undertake to act jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter." /

12. The Norwegian delegation submitted a new proposal (CDDH/I/GT/115) on Article 70 bis, to Working Group B. In view of the state of progress of its work, Working Group B decided, in order not to hold up its report, that the Norwegian delegation should submit its proposal to Committee I directly. The document concerned is accordingly now submitted as document CDDH/I/348.

Article 79 bis - International Enquiry Commission

13. Three new drafts were submitted to Working Group B: CDDH/I/GT/105 (Pakistan) (revision of CDDH/I/267), CDDH/I/GT/108 (Austria, Denmark, Japan, New Zealand, Norway, Sweden (replacing documents CDDH/I/241 and Add.1 and CDDH/I/316)) and CDDH/I/GT/110 (United States of America).

14. After a first meeting in which the three proposals were discussed, Working Group B asked the delegations sponsoring the various drafts to try to agree on a single text.

15. At its eighth meeting, therefore, a new proposal (CDDH/I/GT/112) was submitted to Working Group B by the sponsors of the three original proposals (CDDH/I/GT/105, 108 and 110).

16. One group of delegations had from the start opposed the basic principle of an Enquiry Commission with compulsory competence. For reasons already explained at the third session of the Conference (see Summary records CDDH/I/SR.56, 57 and 58), and in a spirit of compromise, the delegations concerned stated that they were willing to accept a provision of that kind provided it was an optional provision in draft Protocol I.

17. The other delegations, which accepted the principle of compulsory competence by a fact-finding commission, concentrated on the content of the proposals submitted. The sponsors of the various proposals were therefore able to merge the various drafts into a single text (CDDH/I/GT/112) and, in the light of suggestions, to submit a new version (CDDH/I/GT/114).

18. In a new endeavour to reach a compromise, the delegations of Iraq, the German Democratic Republic and France proposed working papers (CDDH/I/GT/116, CDDH/I/GT/117 and CDDH/I/GT/118, respectively).

19. Since CDDH/I/GT/116 seemed to be a solution for the two schools of thought in the Working Group on the question under consideration, that proposal was discussed first. One group of delegations stressed the merits of the proposal, but several delegations still did not altogether understand it. After insisting at the end of the discussion that its proposal should in no case be voted on in the Committee, the Iraqi delegation agreed to give explanations in writing in the form of an explanatory memorandum annexed to its proposal in document CDDH/I/GT/116. Working Group B decided, in agreement with the Iraqi delegation, that the memorandum should, at the option of that delegation, either be an addendum to the report of Working Group B or be submitted directly by the Iraqi delegation in Committee I.

20. The proposal by the German Democratic Republic (CDDH/I/GT/117) consisted of an amendment to replace the original paragraph 2 of document CDDH/I/GT/114 by a new paragraph 2.

21. The French proposal (CDDH/I/GT/118) was considered by some to provide a means of settling the question of a fact-finding Commission, and by others as nothing more than a repetition of the article common to the four Geneva Conventions, namely Article 52 of the first Convention, Article 53 of the second Convention, Article 132 of the third Convention and Article 149 of the fourth Convention.

22. The Working Group was therefore unable to obtain any consensus on that text.

23. Since there were so many statements making amendments to proposal CDDH/I/GT/114, it was suggested to the Chairman of Working Group B that all the proposals should be combined in square brackets in a working paper taking document CDDH/I/GT/114 as a basis.

24. The new working paper (CDDH/I/GT/119) was also the subject of a discussion, which made it possible to include definitively some of the proposals made in the original text (CDDH/I/GT/114). It was still not possible, however, to obtain a consensus of the Working Group on that text.

25. The proposal by the delegation of the German Democratic Republic (CDDH/I/GT/117) has now, with the consent of that delegation, been incorporated in document CDDH/I/GT/119.

26. In order accurately to reflect the positions expressed in Working Group B, it should be mentioned that during the discussions four delegations suggested that Committee I should first decide on a motion to the effect that there should be no provision for a fact-finding commission in draft Protocol I. It is not for the Working Group to make such a suggestion to Committee I, however; the Committee must itself take a decision on that proposal if and when it is made in the Committee.

27. According to what was said, it is for Committee I to take a decision on the following texts.

28. CDDH/I/GT/114 Austria, Denmark, Japan, Norway, New Zealand, Pakistan, Sweden, United States of America.

/"International Humanitarian Fact-Finding Commission

1. (a) A permanent International Humanitarian Fact-Finding Commission consisting of fifteen members of high moral standing and acknowledged impartiality shall be established.

(b) When this article has become applicable among not less than twenty High Contracting Parties, the depositary shall then, and at intervals of five years thereafter, convene a meeting of representatives of those High Contracting Parties for the purpose of electing the members of the Commission. At the meeting, the representatives shall elect the members of the Commission by secret ballot from a list of persons to which each of those High Contracting Parties may nominate one person.

(c) The members of the Commission shall serve in their personal capacity and shall hold office until the election of new membership at the ensuring conference.

(d) At the election, the electors shall ensure that the persons to be elected to the Commission individually possess the qualifications required and that, in the Commission as a whole, equitable geographical representation be assured.

(e) In the case of a casual vacancy, the Commission itself shall fill the vacancy having due regard to the provisions of the preceding sub-paragraphs.

(f) The depositary shall make available to the Commission the necessary administrative facilities for the performance of its functions.

2. The functions of the Commission, which shall be performed at the request of a Party to the conflict, are to:

(a) enquire into any facts alleged to be a violation of the Conventions or this Protocol;

(b) facilitate, through its good offices, repression or prevention of breaches and restore an attitude of respect for the Conventions and this Protocol.

3. (a) All enquiries shall be undertaken by a Chamber consisting of seven members appointed as follows:

(i) five members of the Commission, not nationals of a Party to the conflict, appointed by the President of the Commission, on the basis of equitable representation from the geographical areas, /following consultation with the Parties to the conflict/; and

(ii) two ad hoc members not nationals of a Party to the conflict, one to be appointed by each side.

(b) Upon receipt of the request for an enquiry, the President of the Commission shall specify an appropriate time limit for setting up a Chamber. If any ad hoc member has not been appointed within the time limit, the President shall immediately appoint such additional member or members of the Commission as may be necessary to complete the membership of the Chamber.

4. (a) The Chamber set up under paragraph 3 to undertake an enquiry shall invite the Parties to the conflict to assist it and to present evidence. The Chamber may also seek such other evidence as it deems appropriate and may carry out an investigation of the situation in loco.

(b) All evidence shall be fully disclosed to the Parties, which shall have the right to comment on it.

(c) Each Party shall have the right to test the veracity of the evidence presented to the Chamber and to rebut such evidence.

5. (a) The Commission shall submit to the Parties a report on the findings of fact of the Chamber with such recommendations as it may deem appropriate.

(b) If the Chamber is unable to secure adequate evidence for factual and impartial findings, the Commission shall state the reasons for that inability.

/(c) The Commission shall, after an appropriate period notified to the Parties, publicly report its findings unless all the Parties to the conflict have requested the Commission not to publish the report./

6. The Commission shall establish its own rules, including rules for the presidency of the Commission and the presidency of a Chamber. Those rules shall ensure that the functions of the President of the Commission are exercised at all times and that in the case of an enquiry they are exercised by a person who is not a national of a Party to the conflict.

7. The administrative expenses of the Commission shall be met by contributions from the High Contracting Parties. The Commission shall be reimbursed by the Parties to the conflict equally in respect of the expenses incurred by a Chamber unless the Commission specifies otherwise." /

29. CDDH/I/GT/118 France

"1. At the request of a Party to the conflict, an enquiry shall be undertaken, in accordance with a procedure to be established by the Parties concerned, into any alleged violation of this Protocol.

2. If no agreement is reached on the procedure for the enquiry, the Parties shall agree on the choice of an arbitrator, who shall decide on the procedure to be followed.

3. Once the violation has been established, the Parties to the conflict shall ensure its speedy termination and repression."

30. CDDH/I/GT/119 (corrected)

/ "International Fact-Finding Commission / Standing International Fact-Finding Commission on the Application of Humanitarian Law / 1/

"1. (a) An International Fact-Finding Commission consisting of fifteen members of high moral standing and acknowledged impartiality shall be established.

(b) When this article has become applicable among not less than twenty High Contracting Parties, the depositary shall then, and at intervals of five years thereafter, convene a meeting of representatives of those / the / 2/ High Contracting

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1/ Proposal by the delegation of Zaire for a new title. Several delegations supported this proposal.

2/ Proposal by the delegation of France for the replacement of "those" by "the".

Parties for the purpose of electing the members of the Commission. At the meeting, the representatives shall elect the members of the Commission by secret ballot from a list of persons to which each of those High Contracting Parties may nominate one person.

(c) The members of the Commission shall serve in their personal capacity and shall hold office until the election of new membership at the ensuing conference.

(d) At the election, the electors /the High Contracting Parties/ 3/ shall ensure that the persons to be elected to the Commission individually possess the qualifications required and that, in the Commission as a whole, equitable geographical representation be assured.

(e) In the case of a casual vacancy, the Commission itself shall fill the vacancy having due regard to the provisions of the preceding sub-paragraphs.

(f) The depositary shall make available to the Commission the necessary administrative facilities for the performance of its functions.

2. The functions of the Commission, which shall be performed at the request of a Party to the conflict, are to:

(a) enquire into any facts alleged to be a /grave/ grave breach /grave/ grave breach or other serious violation /violation/ violation 4/ of the Conventions or this Protocol;

(b) facilitate, through its good offices, repression or prevention of breaches and to restore an attitude of respect for the Conventions and this Protocol;

3/ Proposal by the delegation of France for the replacement of "the electors" by "the High Contracting Parties".

4/ Proposal by the Australian delegation that the Committee be requested to choose one of the possibilities by voting.

/ (b) encourage, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol /. 5/

/ 2. (a) The competence of the Commission comprises any enquiry concerning alleged violations of the Conventions or this Protocol which the Parties to the conflict refer to it.

(b) The High Contracting Parties may at any time declare that they recognize ipso facto and without special agreement, in relation to any other State accepting the same obligation, the competence of the Commission to:

(i) enquire into any facts alleged to be a grave breach or other serious violation of the Conventions or this Protocol;

(ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol.

(c) The declarations referred to above shall be deposited with the depositary of this Protocol, who shall transmit copies thereof to the High Contracting Parties.

(d) The provisions of this article shall come into force when twenty States Party to this Protocol have made declarations under paragraph 2 of this article. / 6/

3. (a) All enquiries shall be undertaken by a Chamber consisting of seven members appointed as follows:

(i) Five members of the Commission, not nationals of a Party to the conflict, / and who are nationals of States having diplomatic relations with the Parties to the conflict / 7/ appointed

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5/ Proposal by the Iranian delegation for the amendment of paragraph 2 (b).

6/ Proposal by the delegation of the German Democratic Republic for the amendment of paragraph 2 (CDDH/I/GT/117).

7/ Proposal by the delegation of Israel for the insertion of an additional clause in paragraph 3 (a) (i).

by the President of the Commission /with the agreement of the Parties concerned_7 8/ on the basis of equitable representation from the geographical areas, /following consultation with the Parties to the conflict_7;

(ii) two ad hoc members not nationals of a Party to the conflict, one to be appointed by each side.

/(b) Upon receipt of the request for an enquiry, the President of the Commission shall specify an appropriate time limit for setting up a Chamber. If any ad hoc member has not been appointed within the time limit, the President shall immediately appoint such additional member or members of the Commission as may be necessary to complete the membership of the Chamber._7 9/

4. (a) The Chamber set up under paragraph 3 to undertake an enquiry shall invite the Parties to the conflict to assist it and to present evidence. The Chamber may also seek such other evidence /_7 10/ as it deems appropriate and may carry out an investigation of the situation in loco. /It may also seek such other evidence as it deems appropriate and may, subject to the consent of the Party exercising control over the territory in question, carry out an investigation of the situation in loco. _7 11/

(b) All evidence /_7 10/ shall be fully disclosed to the Parties, which shall have the right to comment on it to the Commission.

(c) Each Party shall have the right to contest such evidence /_7. 10/

8/ Proposal by the delegation of France for the insertion of a phrase.

9/ Proposal by the delegation of France for the deletion of paragraph 3 (b).

10/ Proposal by the delegation of France for the replacement of the word "témoignages", in the French text, by the word "preuves".

11/ Proposal by the delegation of Australia for the redrafting of the last sentence of paragraph 4 (a).

5. (a) The Commission shall submit to the Parties a report on the findings of fact of the Chamber with such recommendations as it may deem appropriate. 12/

(b) If the Chamber is unable to secure adequate evidence for factual and impartial findings, the Commission shall state the reasons for that inability.

/ (c) The Commission shall, after an appropriate period notified to the Parties, publicly report its findings unless all the Parties to the conflict have requested the Commission not to publish the report. /

/ (c) The Commission shall not publicly report its findings unless all the Parties to the conflict have requested the Commission to do so. / 13/

/ (c) The findings of the Commission shall not be the subject of any publicity unless the Parties consent thereto. / 14/

6. The Commission shall establish its own rules, including rules for the presidency of the Commission and the presidency of a Chamber. Those rules shall ensure that the functions of the President of the Commission are exercised at all times and that in the case of an enquiry they are exercised by a person who is not a national of a Party to the conflict.

7. The administrative expenses of the Commission shall be met by contributions from the High Contracting Parties / which made declarations under paragraph 2 /. 15/ The Commission shall be reimbursed by the Parties to the conflict equally in respect of the expenses incurred by a Chamber unless the Commission specifies otherwise. /"

12/ The delegation of France still pressed for the deletion of the phrase: "with such recommendations as it may deem appropriate".

13/ Proposal by the delegation of Switzerland for the amendment of paragraph 5 (c).

14/ Proposal by the delegation of France for the amendment of paragraph 5 (c).

15/ Proposal by the delegation of the German Democratic Republic for the insertion of a new clause in the first sentence of paragraph 7. This proposal is linked with proposal CDDH/I/GT/117 (incorporated in document CDDH/I/GT/119).

Draft Protocol II

Article 6 - Fundamental guarantees

31. The text of Article 6 was adopted by consensus at the thirty-ninth meeting of Committee I, on 11 April 1975.

32. In paragraph 86 of the report of Committee I (CDDH/219/Rev.1), the Committee's attention was drawn to the question of "collective penalties". No steps had been taken for their prohibition, which was first mentioned in the ICRC text of Article 9 of draft Protocol II, and in paragraph 2 (b) of document CDDH/I/262.

33. In the light of the above-mentioned paragraph 86 of the report, the Working Group agreed to consider the matter. After a sustained debate on the notion of "collective penalties", Working Group B decided, by consensus, that it was in no way related to penal law. The Working Group accordingly thought it advisable to introduce the prohibition of collective penalties into Article 6, paragraph 2 (b), and to change the numbering of the following sub-paragraphs accordingly.

34. In view of the letter from the Chairman of the Drafting Committee to the Chairman of Committee I, dated 14 April 1977, Working Group B reconsidered the notion of "convictions".

35. The question was not solely one of form, but concerned substance too, since in adopting Article 6 Committee I had not discussed the significance of the word "convictions". Working Group B therefore decided to adjourn its discussion on the question until, in the similar context of Article 65 of Protocol I, Committee III had reached a conclusion on the notion of "convictions".

36. Following Committee III's decision to avoid placing any adjectives in front of the word "convictions", so that all types of conviction would be covered, whether political, religious or philosophical (cf. CDDH/III/369, p.6), Working Group B decided, at its tenth meeting to give the word the same interpretation in Article 6 of draft Protocol II.

37. Article 6 thus reads as follows and Committee I will have to come to a decision regarding the inclusion of sub-paragraph (b) of paragraph 2 - "collective penalties":

"Article 6 - Fundamental guarantees 1/

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour, convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) collective penalties;

(c) taking of hostages;

(d) acts of terrorism;

(e) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(f) slavery and the slave trade in all their forms;

(g) pillage;

(h) threats to commit any of the foregoing acts.

[3. 2/ Measures of reprisals against the persons referred to in paragraph 1 are prohibited.]".

1/ Adopted by Committee I, on 11 April 1975, in four languages (English, French, Russian and Spanish). For the text as adopted, see the report of Committee I (CDDH/219/Rev.1, para. 151).

2/ Paragraph 3 of the article adopted is in brackets because the Committee decided, on the suggestion of the Working Group, to postpone consideration of the question until the third session of the Conference (see report of Committee I (CDDH/219/Rev.1, para. 152)).

Article 8 bis - Interned families

38. As the Canadian delegation, sponsor of amendment CDDH/I/250 to Article 8 bis did not insist on its proposal, Working Group B decided to remove the question from its programme of work.

Article 10 bis

39. The Working Group resumed consideration of the text proposed in the report of Working Group B at the third session (CDDH/I/320/Rev.2) in the light of the work performed by Committee III on Part V.

40. Although two schools of thought emerged in Working Group B, one of which favoured reference to the whole of Part V in Article 10 bis, whereas the other was opposed to any mention of Part V in it, it became clear, as discussion developed, that the listing of certain articles might constitute a compromise.

41. After a decision had been postponed in order to allow of consultations, Working Group B decided at its fifth meeting to refer the text of Article 10 bis, incorporating a reference to Parts II and III and Article 26, to the Committee, with a proposal between square brackets to include in it a reference to other articles of Part V, namely Articles 26 bis, 27 and 28.

42. Committee I has still to decide, therefore, whether a reference to the articles placed in square brackets should be included in the text of Article 10 bis:

> "The provisions of Parts II and III and of Articles 26 [26 bis, 27 and 28] shall not, in any circumstances or for any reason whatsoever, be violated, even in response to a violation of the provisions of the Protocol."

43. The delegation of Mexico reiterated its formal objection to any provision that would authorize reprisals either directly or a contrario. With regard to that position and to other opinions along the same lines, see paragraph 6 of document CDDH/I/320/Rev.2.

44. In view of paragraph 5 of document CDDH/I/320/Rev.2, which reads as follows:

> "The positioning of any such provision in the Protocol will have to be determined. The majority of representatives were of the opinion that such a provision was not in the right place in Part II of Protocol II, but would be better placed in Part VII.",

the Committee will have to take a decision on the positioning of that provision in draft Protocol II. The Committee must also give the article a title, on the understanding that the Drafting Committee will take a general decision on all the titles of draft Protocol II.

ADDENDUM TO THE REPORT OF WORKING GROUP B

REPORT ON THE WORK OF WORKING GROUP B*

1. During the discussion of paragraph 27 of the report of Working Group B in the course of the procedure for the adoption of the report, the delegation of the United States of America announced, at the meeting of the Working Group held on 10 May 1977, that a new proposal for Article 79 bis, on which a consensus might be reached, was being prepared. The Chairman suggested that the report should first be adopted, and that Working Group B should then be asked whether it wished to re-open the discussion on that article. It was so agreed.

2. After its report had been adopted, Working Group B decided that no new proposals should be considered. It was understood, however, that the delegation of the United States of America (and the other delegations participating in the new proposal) would have the opportunity to submit a new proposal likely to obtain a consensus directly to Committee I.

3. This addendum is deemed to be an integral part of the report of Working Group B and therefore has the same legal validity.

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* Circulated under symbol CDDH/I/349/Rev.1/Add.1.

ADDENDUM TO THE REPORT OF WORKING GROUP B

REPORT ON THE WORK OF WORKING GROUP B ON ARTICLE 10 BIS OF DRAFT PROTOCOL II*

1. The Working Group, in three meetings, took up the question of Article 10 bis in Part II of Protocol II, a question which had been held over from the second session of the Conference (see CDDH/I/287/Rev.1, p.6 and CDDH/219/Rev.1, para. 180). The Group had the advantage of a report prepared, at its request, by the ICRC (CDDH/I/302). The question was also considered in a Sub-Group, under the Chairmanship of Mr. Keith (New Zealand), whose report is attached.

2. The Working Group has adopted the following text:

> "The provisions of /~Parts II, III and V~/ shall not, in any circumstances or for any reason whatsoever, be violated, even in response to a violation of the provisions of the Protocol."

3. The Working Group has adopted the text on the understanding that the Committee or Working Group will return to a consideration of the provision when Committee III has acted on the relevant pending provisions of Part V. Some delegations are able to agree to a text of the kind proposed only if provisions of Part V are appropriately included. Committee I or the Working Group will then consider only the impact of the decisions of Committee III on the text.

4. It is proposed that the Chairman of the Committee bring the text to the attention of Committee III, noting that Committee I will complete its work on this matter when Committee III has taken the relevant decisions on Part V of the Protocol and that that work will be limited to the impact of those decisions on the text proposed above.

5. The positioning of any such provision in the Protocol will have to be determined. The majority of delegates were of the opinion that such a provision was not in the right place in Part II of Protocol II, but would be better placed in Part VII.

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* Circulated under symbol CDDH/I/320/Rev.2.

6. During the discussion of the report in Working Group B concerning this question, the delegation of Mexico, noting that it had not been present at the meeting of the Working Group at which the text of the proposed article had been adopted, stated that it was categorically opposed to the final phrase, namely, "even in response to a violation of the provisionssof the Protocol". At the same meeting two delegations specifically confirmed that they could not support the provision in question if it was to be interpreted as prohibiting reprisals. The delegations in question considered it unacceptable that there should be any reference whatever to reprisals in Protocol II. In order to avoid any misunderstanding on that point, the title of the report appearing in document CDDH/I/320/Rev.1, which had been proposed tentatively by the Chairman of Working Group B, has been reworded in its present form.

ADDENDUM TO THE REPORT OF WORKING GROUP B

REPORT OF SUB-GROUP ON REPRISALS IN DRAFT PROTOCOL II*

The Sub-Group was charged by Working Group B with considering the above question on the basis of working paper CDDH/I/GT/79 of 8 April 1975, proposal III submitted by the ICRC in document CDDH/I/302 of 23 April 1976 and the working document submitted by Iraq and Switzerland - working paper CDDH/I/GT/92. Other proposals were submitted in the course of the discussions, particularly working paper CDDH/I/GT/94 which, in accordance with a decision of the Sub-Group, was prepared by the Chairman taking account of the various proposals (particularly that submitted by Iraq and Switzerland) and the discussions. The Sub-Group met on 17 and 18 May 1976, more than thirty delegations taking part in its work.

As a result of that work, the following text is submitted:

> "The provisions of Parts II and III and of articles ... shall not, in any circumstances or for any reason whatsoever, be violated, even in response to a violation of the provisions of the Protocol."

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* Circulated as Working Group document CDDH/I/GT/95.

This text was widely supported in the Sub-Group, but as the following notes 1-3 indicate, some delegations have not yet accepted it.

Notes

1. Some delegations supported the inclusion, at the beginning of the text, of the phrase "Because of the humanitarian character of the present Protocol,".

2. On the one hand, some delegations suggested the deletion of the final phrase ("even in response to a violation of the provisions of the Protocol."), while, on the other, a number suggested the replacement of those words by the phrase at the end of working paper CDDH/I/GT/79 ("even for the purpose of inducing the adverse party to comply with its obligations").

3. The proposed text and the work of the Sub-Group are without prejudice to any relevant decisions that might be taken concerning Part V of the Protocol. The effect of any such decisions could be appropriately reflected in the text of the above proposal by including references to the relevant provisions where indicated by the dots.

4. The positioning of any such provision in the Protocol will have to be determined. There was no opposition to the view that it was no longer appropriate for inclusion in Part II nor to the suggestion that it be included in Part VII.

ANNEX III

REPORT OF WORKING GROUP C ON FINAL CLAUSES*

1. At its sixty-seventh, sixty-eighth and sixty-ninth meetings held on 25, 26 and 27 April 1977, respectively, Committee I referred the following to Working Group C for consideration:

Protocol I	Protocol II	Title
The Preamble and amendment CDDH/I/337 and Add.1 (Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Democratic People's Republic of Korea, German Democratic Republic, Hungary, Mongolia, Poland, Socialist Republic of Viet Nam, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics)	The Preamble	
Article 80	Article 40	Signature
Article 81	Article 41	Ratification
Article 82	Article 42	Accession
Article 83	Article 43	Entry into force
Article 84 and CDDH/I/74 (Syrian Arab Republic) and CDDH/I/229 and Add.1 (Socialist Republic of Viet Nam and Qatar)		Treaty relations upon entry into force of this Protocol
Article 85 and CDDH/I/74 (Syrian Arab Republic) and CDDH/I/87/Rev.1 (German Democratic Republic)		Reservations

* Circulated under symbol CDDH/I/350/Rev.1.

Protocol I	Protocol II	Title
Article 86	Article 44	Amendment
Article 87		Denunciation
Article 88 and CDDH/I/233 and Add.1 to 4 (Algeria, Australia, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Cyprus, Democratic People's Republic of Korea, Egypt, Finland, Ghana, Hungary, Iraq, Ivory Coast, Jordan, Kuwait, Lebanon, Madagascar, Mali, Mauritania, Mongolia, Netherlands, New Zealand, Norway, Poland, Qatar, Saudi Arabia, Socialist People's Libyan Arab Jamahiriya, Socialist Republic of Viet Nam, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Yugoslavia)	Article 45	Notification
Article 89	Article 46	Registration
Article 90 and CDDH/I/53 (Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics) and CDDH/I/74 (Syrian Arab Republic) and	Article 47 and CDDH/I/336 and Add.1 (Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Socialist Republic of Viet Nam, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics) and	Authentic texts and official translations

Protocol I	Protocol II	Title
CDDH/I/339 and Add.1 (Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Peru, Spain, Uruguay, Venezuela) and CDDH/I/341 (see under Article 47)	CDDH/I/341 (Algeria, Bahrain, Democratic Yemen, Egypt, Iraq, Jordan, Kuwait, Lebanon, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Socialist People's Libyan Arab Jamahiriya, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen)	
Article 86 bis and CDDH/I/340 and Add.1 to 3 (Bolivia, Ecuador, Egypt, Guatemala, Honduras, Iran, Iraq, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Spain, Sudan, Venezuela, Yugoslavia)		

2. The Working Group held eleven meetings from 29 April 1977 to 10 May 1977 and completed the consideration of the Final Clauses and the Preambles. Article 86 bis was not taken up for consideration in these meetings because of the decision taken by Committee I at the time it was referred to this Working Group which required that the Working Group should first consider all the other provisions referred to above and adopt a report on them before taking Article 86 bis into consideration.

3. At its first meeting, the Working Group accepted the proposal of the Chairman to discuss the provisions referred to in the following order:

Articles 80 to 84 and 86 to 90 (excluding 86 bis) of Protocol I
Articles 40 to 47 of Protocol II
Preamble to Protocol I
Preamble to Protocol II
Article 85 of Protocol I on reservations.

4. Egypt opened the discussion on Article 80 by proposing that the Protocol should be open for signatures immediately on the termination of the Conference. Several delegations supported the proposal and wanted a time limit of twelve months.

5. France proposed that "the Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and shall remain open for a period of six/twelve months".

6. A large number of countries supported the French proposal mainly on the ground that different and complicated procedures had to be gone through under the national laws and it would not be possible for most countries to complete the formalities in less than the time proposed by France. The following text was adopted by consensus:

Article 80 - Signature

"The Protocol will be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months."

7. Article 81 having then been taken up for discussion, Indonesia proposed the deletion of the words "as soon as possible" based on the constitutional procedures in several countries. However, the Working Group adopted by consensus the text as follows:

Article 81 - Ratification

"This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Government, depositary of the Conventions."

8. Article 82 having been opened for discussion, Japan raised certain questions relating to Articles 82 and 83 and suggested that the date when the Protocol would be open to accession should be specified. Jordan then proposed that the words "six months after the signature of the Final Act" be inserted after the word "accession" in the ICRC text. A lively debate followed in which most of the representatives participated. Jordan, supported by Japan, Australia, and a large number of other delegations, was of the view that in the modern theory and practice of international law, accessions could be made even before entry into force, and the latter could take place on the basis of a certain number of accessions without there being any ratification.

9. A number of other delegations disagreed with that proposition and were of the view that a country could accede only to a treaty which had come into "existence" and that a specified number of ratifications was a condition for that, wherefore they opposed the adoption of the amendment.

10. The Chairman discussed the matter with the sponsors of the amendment and the latter having agreed with him that their purpose could be achieved without amending Article 82, by amending Article 83, Jordan consequently withdrew the amendment and the following text was adopted by consensus:

Article 82 - Accession

"This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary of the Conventions."

11. Article 83 was then opened for discussion. Jordan, Japan and Australia proposed the addition of the words "or accession" after the word "ratification" appearing in the ICRC draft of Article 83. In view of the debate on Article 82 at the preceding meeting the amendment was accepted and Article 83 was adopted by consensus as follows:

Article 83 - Entry into force

"1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession."

12. Article 84 was taken up for consideration. Paragraph 1 was adopted by consensus.

13. Thereafter the Socialist Republic of Viet Nam proposed the replacement of the second sentence of paragraph 2 by the following:

"They shall furthermore be bound by the present Protocol in relation to the said Party, unless the latter, after a reasonable period, declares that it refuses to apply it or does not in fact apply it".

This proposal was discussed at length, and sympathy was expressed with the idea underlying it. Representatives were, however, of the view that a negative concept envisaging the possibility of "refusal to apply" was not desirable in the context of humanitarian law and was liable to be misunderstood as an invitation to do so.

The delegation of the Socialist Republic of Viet Nam withdrew the amendment in view of the understanding shown by most delegations.

14. It was proposed that the words "to the conflict" appearing in paragraph 2 of Article 84 of the ICRC text be deleted and the word "thereto" be substituted to make the text more elegant. The suggestion was accepted without difficulty.

15. Some thought that the words "accepts and" appearing in the last line of the ICRC draft were redundant as the only method of signifying acceptance was by applying the provisions of the Protocol, and suggested that those words be deleted. That suggestion, however, did not find favour and was dropped. The delegation of the Syrian Arab Republic spoke on the amendment contained in CDDH/I/74.

16. Paragraph 3 having already been adopted by the Committee, CDDH/I/233 with its addenda was, therefore, not considered. Paragraphs 1 and 2 of Article 84 were thus adopted as follows by consensus:

> Article 84 - Treaty relations upon entry into force of this Protocol
>
> "1. When the Parties to the Conventions are also Parties to this Protocol, the Conventions shall apply as supplemented by this Protocol.
>
> 2. Although one of the Parties to the conflict may not be bound by this Protocol, the Parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to the said Party, if the latter accepts and applies the provisions thereof."

17. Article 86 was then introduced. It was pointed out that a separate provision for the amendment of the Annex having been adopted by consensus at the seventy-ninth meeting of Committee II on 4 June 1976, under Article 18 bis, the words "or its Annex" appearing in Article 86 should be deleted.

18. Several representatives took part in the discussion that followed and it was decided to place the words "or its Annex" in square brackets and Article 86 was adopted as follows:

Article 86 - Amendment

"1. Any High Contracting Party may propose one or more amendments to this Protocol /or its Annex/. The text of any proposed amendment shall be communicated to the depositary of the Conventions which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.

2. The depositary of the Conventions shall invite to this conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol."

19. It was agreed that the Drafting Committee should decide the question whether the words "or its Annex" should be retained and, if so, whether the text should not be in the plural.

20. Article 87 having been introduced, it was pointed out that reference in it to Article 2 common to the Conventions was out of place in view of the adoption by the Conference of Article 1 of this Protocol in its amended form. It was agreed that the words "2 common to the Conventions" should be dropped from paragraph 1 and replaced by "1 of this Protocol".

21. It was suggested that in keeping with the phraseology used in other articles of the Protocol, it would be appropriate to add the word "final" before the word "release" occurring in paragraph 1, the word "and" appearing before "establishment" being replaced by the word "or", and that instead of the word "establishment", the expression "re-establishment" should be used in the English text only.

22. These suggestions were readily accepted as were paragraphs 2 and 3.

23. The United Kingdom delegation proposed that the following be added as paragraph 4:

"Any denunciation under paragraph 1 of this article shall not affect the obligations already incurred under this Protocol by such denouncing Party before this denunciation becomes effective."

24. It was suggested that the words "by reason of the armed conflict" be inserted after the word "incurred" appearing in the proposal. It was further suggested that the words "in respect of any act committed" be inserted after the word "Party".

25. This proposal found all-round support and Article 87 was thus adopted as follows:

Article 87 - Denunciation

"1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in one of the situations referred to in Article 1 of this Protocol, the denunciation shall not take effect before the end of the armed conflict or occupation and not, in any case, before operations connected with final release, repatriation or re-establishment of the persons protected by this Protocol have been terminated.

2. The denunciation shall be notified in writing to the depositary of the Conventions, which shall transmit it to all the High Contracting Parties.

3. The denunciation shall have effect only in respect of the denouncing Party.

4. Any denunciation under paragraph 1 of this article shall not affect the obligations already incurred by reason of the armed conflict under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective."

26. Article 88 was adopted without a debate. Paragraph (d) having already been adopted by the Committee when CDDH/I/233 was adopted by consensus, the paragraph appearing under the letter (d) was renumbered as (e). Article 88 was thus adopted as follows:

Article 88 - Notifications

"The depositary of the Conventions shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of the following:

(a) signatures affixed to this Protocol and the deposit of the instruments of ratification and accession under Articles 81 and 82;

(b) the date of entry into force of this Protocol under Article 83;

(c) communications and declarations received under Articles 73, 85 and 86;

(d) declarations received under paragraph 3 of Article 84, which shall be communicated by the quickest methods;

(e) denunciations under Article 87."

27. Article 89 was adopted by consensus, as follows:

Article 89 - Registration

"1. After its entry into force, this Protocol shall be transmitted by the depositary of the Conventions to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary of the Conventions shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol."

28. Article 90 was considered along with documents CDDH/I/53, CDDH/I/74, CDDH/I/339 and Add.1 and CDDH/I/341. Switzerland submitted that it was in contact with the Chinese authorities and in view of the fact that Chinese is both an official and a working language of the Conference, it should find mention in paragraph 1 of this article. The Working Group was informed by the delegation that it was actively engaged in making arrangements for the translation of the Protocols into Chinese in collaboration with the Chinese authorities and results were expected within a reasonable time.

29. It was decided by consensus that Article 90 should read as follows:

Article 90 - Authentic texts and official translations

"1. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary of the Conventions, which shall transmit certified true copies thereof to all the Parties to the Conventions.

2. The depositary of the Conventions shall arrange for official translations of this Protocol to be made into ...".

30. The Working Group then began consideration of the Final Provisions of Protocol II.

31. Article 40 was adopted as follows, on the basis that the corresponding article of Protocol I, having been adopted already, a fresh debate on the former was not called for:

Article 40 - Signature

"The Protocol will be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months."

32. For the same reasons, Articles 41, 42, 43, 44, 45, 46 and 47 were similarly adopted as follows:

Article 41 - Ratification

"This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Government, depositary of the Conventions."

Article 42 - Accession

"This Protocol shall be open for accession by any Party to the Convention which has not signed it. The instruments of accession shall be deposited with the depositary of the Conventions."

Article 43 - Entry into force

"1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession."

(Note: The delegation of Iraq and other delegations expressed their reservation about the number of instruments of ratification or accession required in this article. Iraq stressed the need for making a larger number a condition precedent for the entry into force of Protocol II)

Article 44 - Amendment

"1. Any High Contracting Party may propose one or more amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary of the Conventions which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.

2. The depositary of the Conventions shall invite to this conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol."

Article 45 - Notifications

"The depositary of the Conventions shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of the following:

(a) signatures affixed to this Protocol and the deposit of the instruments of ratification and accession under Articles 41 and 42;

(b) the date of entry into force of this Protocol under Article 43;

(c) communications and declarations received under Article 44."

Article 46 - Registration

"1. After its entry into force, this Protocol shall be transmitted by the depositary of the Conventions to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary of the Conventions shall also inform the Secretariat of the United Nations of all ratifications and accessions received by it with respect to this Protocol."

Article 47 - Authentic texts and official translations

"1. The original of this Protocol of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary of the Conventions, which shall transmit certified true copies thereof to all the Parties to the Conventions.

2. The depositary of the Conventions shall arrange for official translations of this Protocol to be made into ...".

33. The Preamble to Protocol I was taken up for consideration. The co-sponsors of CDDH/I/337 and Add.1 introduced document CDDH/I/GT/120 in which the draft text of the second, fourth and fifth paragraphs of the Preamble was proposed. A lengthy debate ensued about the purpose of a Preamble and what could be included in its text.

34. Document CDDH/I/GT/121 based on the merger of the text in CDDH/I/GT/120 and the remaining paragraphs of the ICRC draft was presented to the Working Group as a result of the debate. It was argued by some that paragraph 3 of the ICRC text should in any case be included in any draft of the Preamble as it reflected the Martens clause. Although this opinion was shared only by a small number of delegations, it was decided to add this paragraph to CDDH/I/GT/121 in square brackets for consideration by the Committee.

35. Since, however, the last paragraph of CDDH/I/GT/121 did not meet with the approval of a large section of the Working Group, the co-sponsors of document CDDH/I/GT/120 undertook another exercise and produced the following paragraph to replace the former:

> Reaffirming further that the provisions of the Geneva Conventions of 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict."

36. This was readily accepted by all delegations present and it was decided to send the following draft to the Committee by consensus, paragraph 3 of the ICRC text having been placed at the very end in square brackets:

Preamble - Protocol I

"The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary nevertheless, to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement those measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict,

/Recalling that, in cases not covered by conventional or customary international law, civilian population and the combatants remain under the protection of the principles of humanity and the dictates of the public conscience,/

Have agreed on the following:"

37. The Preamble to Protocol II came up for consideration at this stage. A number of delegations took part in the debate. It was argued that Protocol II did not need a Preamble. Others thought that it should have one as well. Nigeria proposed the deletion of the first paragraph of the draft Preamble to Protocol II. In case the proposal was not acceptable, the delegation wished the word "enshrined" appearing in this paragraph to be replaced by "contained". It further suggested that the words "constitute the foundation" be replaced by "provide the basis". It also proposed the insertion of "well-established" before "principles" in the last paragraph and would like the sentence to end after "humanity" so that "and the dictates of the public conscience" would be deleted. It was decided to submit the following text in square brackets to the Committee:

Preamble - Protocol II

/"The High Contracting Parties,

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

Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of those armed conflicts,

Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience,

Have agreed on the following:"/

38. It was suggested that a "Denunciation Clause" was as necessary for Protocol II as it was for Protocol I and there was no reason why one should not be drafted. In deference to the wishes of the Working Group, the Chairman presented the following draft text which was approved by consensus:

Article 44 bis - Denunciation

"1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect six months after receipt of the instrument of denunciation. If, however, on the expiry of six months the denouncing Party is engaged in the situation referred to in Article 1 of this Protocol, the denunciation shall not take effect before the end of the armed conflict. Persons who have been deprived of liberty, or whose liberty has been restricted, for reasons related to the conflict shall nevertheless continue to benefit from the provisions of this Protocol till their final release.

2. The denunciation shall be notified in writing to the depositary of the Conventions, which shall transmit it to all the High Contracting Parties."

39. Article 85 on reservations gave rise to a debate on the question whether there was any need for such an article as international law took care of it in any case. The Working Group was divided into two sections, one favouring this view and the other arguing that it was essential to have an article containing a list of such articles that could not be the subject matter of reservations. Amendment CDDH/I/74 proposed by the Syrian Arab Republic, from which the proposal to delete this article had already been suppressed, came up for consideration. Egypt supported the Syrian amendment but suggested that the list of articles enumerated in the first paragraph of that proposal should be extended to read as follows:

"1-7, 33, 35, 38, 41, 42, 42 bis, 42 quater, 43-51, 63, 65, 66, 74 and 84".

40. This was objected to by others as being a very long list and it was opined that only one with a minimum number of articles in it could be acceptable.

41. Turkey proposed the following text for Article 85:

"1. Any State, when signing, ratifying, accepting or approving this Protocol or acceding thereto, may formulate reservations provided that such reservations are not incompatible with the object and purpose of the Protocol.

2. Each reservation shall be operative for five years from the entry into force of this Protocol in respect of the High Contracting Party formulating the reservation. Any reservation may be renewed for successive periods of five years subject to a declaration being sent to the depositary of the Conventions three months prior to the expiry of the said period. A reservation may be withdrawn at any time by notification addressed to the depositary of the Conventions."

42. Zaire proposed that Article 85 should read as follows:

"1. The High Contracting Parties may not formulate reservations to those articles of this Protocol which relate to fundamental humanitarian obligations, and more particularly to Articles 1-7, 33, 35, 38, 41, 42, 42 bis, 42 quater, 43-51, 63, 65, 66, 74 and 84.

2. Each reservation shall be operative for five years from the entry into force of this Protocol in respect of the High Contracting Party formulating the reservation.

3. Reservations may be renewed by tacit agreement for the same successive periods.

4. Reservations may, however, be withdrawn at any time by notification addressed to the depositary of the Conventions and of this Protocol."

43. The debate did not produce any results and a small informal group was convened with Mr. Graefrath (German Democratic Republic) as the convenor. Despite lengthy discussion, this group did not produce any solution which could be accepted by consensus.

44. The German Democratic Republic at this stage withdrew its proposal to delete Article 85 (paragraph 1). The delegation of the United States of America, however, formally adopted this proposal.

45. It was therefore decided to submit the following to the Committee:

"/Delete Article 85./"

In case the article is not deleted it should be reformulated as follows:

/"Article 85 - Reservations

The High Contracting Parties may not formulate reservations which are incompatible with the humanitarian object and purpose of this Protocol and in particular to Articles 1, 3, 5, 10, 20, 33, 41, 42, 42 bis, 42 quater, 46, 47, 47 bis, 48, 48 bis, 49, 65, new article to be inserted before Articles 70, 74, new article to be inserted before Articles 80, 84, paragraph 3."/

(Note: The submission of the above text was suggested by the small informal group.)

46. Article 85, paragraph 2, was the subject of serious criticism from a large number of delegations and was deleted by consensus.

47. The delegation of the Syrian Arab Republic thereupon withdrew its proposal for a paragraph 2 in Article 85 as contained in amendment CDDH/I/74.

48. The title of Protocol I was considered for adoption and the suggestion of the Chairman to drop the word "draft" from it was accepted.

49. Some representatives were of the view that the word "Additional" should be deleted but that proposal did not find favour with a large number of delegations.

50. It was agreed to adopt the following title in English:

> "First Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts".

51. Some delegations thought that the word "First" could give a false impression that there were other Protocols also on that subject. The Chairman, with whom the United Kingdom delegation agreed, was of the view that the word "First" only connoted that it was the first Protocol to the Conventions named in the title and because of the word "and" used after "1949" it did not relate to the subject.

52. France, however, on an objection by the delegation of the United Republic of Cameroon, proposed that in French, the word "First" should not be used and instead (Protocol I) should appear at the end of the title in parentheses. It was decided to draft the English title as agreed to by the United Kingdom delegation and in other languages as proposed by France and to leave it to the Drafting Committee to co-ordinate them if necessary.

53. On the same basis, the title of Protocol II was approved as follows:

English:

> "Second Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflicts"

French:

> "Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés non internationaux (Protocole II)"

ADDENDUM TO THE REPORT OF WORKING GROUP C

REPORT ON THE WORK OF WORKING GROUP C* ON ARTICLE 86 bis OF DRAFT PROTOCOL I

1. Having adopted its report the Working Group proceeded to consider Article 86 bis (document CDDH/I/340 and Add.1-3). In the debate which followed, interventions were restricted to 5 minutes each because there were about fifty delegations which had expressed their desire to participate.

2. The debate revealed the following points of view:

(a) The laudable humanitarian motives which led the co-sponsors to submit the article were praised by all and sundry and there were felicitations all round.

(b) While the need for continuing the work aimed at "prohibition or restriction of the use of conventional weapons that may cause superfluous injuries or have indiscriminate effects" was manifest, the proposed committee was neither a useful nor a proper forum for that purpose, particularly as the General Assembly of the United Nations was shortly to hold a special session for discussing the problems of disarmament, including the subject covered by the proposed article, and the possibility of the convening of a World Conference on Disarmament after that could not be ruled out.

(c) Some thought that the Ad Hoc Committee on Conventional Weapons would also achieve positive results, which might best be carried further by a special conference for the purpose.

(d) The adoption of a resolution by this Conference could achieve the desired result without going through the expensive exercise of setting up the proposed committee.

(e) Some delegations felt that without discounting the value of the work carried out by the Conference up to the present in identifying areas of agreement, or disagreement, a legal link must be established between the possible prohibitions or restrictions of the use of conventional weapons that may cause superfluous injuries or have indiscriminate effects and the principles laid down on that subject in draft Protocol I. A special mechanism is therefore necessary whereby the relevant provisions of Protocol I can be developed and implemented, whatever the immediate follow-up of the Ad Hoc Committee's work may be.

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* Circulated under symbol CDDH/I/350/Rev.1/Add.1/Rev.1.

(f) Some delegations held the view that while the adoption of such a resolution was necessary with a view to the short-term follow-up of the work of the Ad Hoc Committee, the incorporation of an article basing itself on the principles contained in Article 86 bis was desirable in order to find solutions to the more long-term problems of weaponry within the framework of international humanitarian law applicable in armed conflicts, in line with the historical precedent of the Declaration of St. Petersburg of 1868 to the Effect of prohibiting the Use of certain Projectiles in Wartime.

3. The co-sponsors agreed to meet to discuss the revision of the text with like-minded delegations and submit it to the Working Group.

4. The following revised text having been received from them, the Working Group decided to submit the following alternative proposals to the Committee:

"(a) Delete the proposed Article 86 bis.

"(b) /"/86 bis/ /7 bis/ /33 bis/

1. A Committee /Consultative Board/ of States Parties to /the Conventions or/ this Protocol shall be established to consider /and adopt recommendations regarding/ any proposal that one or more States Parties /and the /Committee/ /Board/ itself/ may submit /on the basis of Article 33 of this Protocol/ for the prohibition or restriction, for humanitarian reasons, of the use of certain conventional weapons /that may cause superfluous injuries or have indiscriminate effects/.

2. The Committee /Board/ shall consist of representatives of /21/ /31/ States Parties elected for 3 years on the basis of equitable geographical distribution by the States Parties to /the Conventions or/ this Protocol, by means of notifications addressed to the depositary Government. The depositary Government /if it should consider it necessary/ may convene a meeting of the States Parties to elect the members of the Committee /Board/. The Committee /Board/ shall meet whenever one-third of its members so requests; it shall adopt its recommendations /take its decisions/ by majority /and shall elect its Chairman/.

3. The International Committee of the Red Cross shall participate in the work of the Committee /Board/ referred to in this article, and shall provide the necessary secretarial facilities.

4. On the basis of the Committee's recommendations /the Board's decisions/, a special Conference may be convened /the depositary Government, in consultation with any State Party or Parties that may wish to invite ... may convene a special Conference/ with a view to adopting agreements /that implement the principle that the Parties to the conflict do not have an unlimited right of choice of means of combat/"/."

ANNEX IV

ARTICLES ADOPTED BY COMMITTEE I

Draft Protocol I
Part I - General Provisions

Article 2 - Definitions *

For the purposes of this Protocol:

(a) " First Convention", "Second Convention", "Third Convention" and "Fourth Convention" mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of August 12, 1949; the Geneva Convention relative to the Treatment of Prisoners of War, of August 12, 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 1949; "the Conventions" means the four Geneva Conventions of August 12, 1949, for the protection of war victims;

(b) "rules of international law applicable in armed conflict" means the rules applicable in armed conflit set forth in international agreements to which the Parties to the conflict are parties and the generally recognized principles and rules of international law which are applicable to armed conflict;

(c) "Protecting Power" means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol;

(d) "substitute" means an organization acting in place of a Protecting Power in accordance with Article 5.

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* After a consensus agreement to delete sub-paragraph (c), this Article was adopted at the seventy-fourth meeting on 16 May 1977 in five languages (Arabic, English, French, Russian, Spanish). This Article was adopted in part by Committee I on 13 March 1975 and reviewed by the Drafting Committee on 5 April 1977. See this report, paras. 13 to 16.

Draft Protocol I
Part V - Execution of the Conventions and of this Protocol
Section I - General Provisions

New Article* before (or after) Article 70

In situations of grave violations of the Conventions and the present Protocol the High Contracting Parties undertake to act jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.

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* Adopted by 41 votes to 18, with 17 abstentions, at the seventy-second meeting on 13 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, paras. 29 and 30.

Draft Protocol I
Part V - Execution of the Conventions and of this Protocol
Section I - General Provisions

Article 70 - Measures for execution*

1. The High Contracting Parties and the Parties to the conflict shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol.

2. The High Contracting Parties and the Parties to the conflict shall give orders and instructions to ensure observance of the Conventions and this Protocol and shall supervise their execution.

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* At the seventy-sixth meeting on 17 May 1977, it was decided by consensus to retain the words "and the Parties to the conflict" in paragraphs 1 and 2. This Article was adopted by Committee I on 9 April 1975 and was reviewed by the Drafting Committee on 2 April 1977. See this report, para. 76.

Draft Protocol I
Part V - Execution of the Conventions and of this Protocol
Section II - Repression of breaches of the Conventions and of this Protocol

Article 76 bis - Duty of commanders*

1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and this Protocol. 1/

2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol. 2/

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* Adopted as a whole by 72 votes to none, with 3 abstentions, at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 34.

1/ Adopted by 69 votes to none, with one abstention, at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 34.

2/ Adopted by 72 votes to none, with 2 abstentions, at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 34.

3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or the present Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof. 3/

3/ After a motion to retain the last phrase "and, where appropriate, to initiate disciplinary or penal action against violators thereof" had been adopted by 56 votes to one, with 11 abstentions, this paragraph was adopted by 70 votes to none, with 3 abstentions, at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 34.

Draft Protocol I
Part V - Execution of the Conventions and of this Protocol
Section II - Repression of breaches of the Conventions and of this Protocol

Article 77 - Superior orders*

1. The High Contracting Parties undertake to ensure that their internal law penalizing disobedience to orders shall not apply to orders that would constitute grave breaches of the Conventions and this Protocol. 1/

2. The mere fact of having acted pursuant to an order of an authority or a superior does not absolve an accused person from penal responsibility, if it be established that in the circumstances at the time he knew or should have known that he was committing a grave breach of the Conventions or of this Protocol. It may, however, be taken into account in mitigation of punishment. 2/

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* Adopted as a whole by 38 votes to 22, with 15 abstentions, at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 38.

1/ After a motion to retain the word "grave" had been adopted by 35 votes to 15, with 13 abstentions, this paragraph was adopted by 36 votes to 19, with 15 abstentions, in five languages (Arabic, English, French, Russian, Spanish) at the seventieth meeting on 28 April 1977. See this report, para. 37.

2/ After a motion to add the word "mere" and to delete the word "wilfully" had been adopted by 44 votes to one, with 18 abstentions, and a motion to retain the word "grave" had been adopted by 31 votes to 12, with 15 abstentions, this paragraph was adopted by 40 votes to 9, with 28 abstentions, in five languages (Arabic, English, French, Russian, Spanish) at the seventieth meeting on 28 April 1977. See this report, para. 37.

Draft Protocol I
Part V - Execution of the Conventions and of this Protocol
Section II - Repression of breaches of the Conventions and of this Protocol

Article 79 - Mutual assistance in criminal matters*

1. The High Contracting Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of grave breaches of the Conventions or of the present Protocol. 1/

2. Subject to the rights and obligations established in the Conventions and in Article 74, paragraph 1, of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate on matters of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred. 2/

3. The law of the High Contracting Party requested shall apply in all cases. The provisions of the preceding paragraphs of this Article shall not however affect the obligations arising from the provisions of any other treaty of a bilateral or multilateral nature which governs or will govern the whole of part of the field of mutual assistance in criminal matters. 3/

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* Adopted as a whole by 70 votes to none, with 3 abstentions, at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 42.

1/ Adopted by 69 votes to none, with 3 abstentions, at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 42.

2/ Adopted by 65 votes to 2, with 3 abstentions, at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 42.

3/ Adopted by 70 votes to none, with one abstention, at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 42.

Draft Protocol I
Part V - Execution of the Conventions and of this Protocol
Section II - Repression of breaches of the Conventions and of this Protocol

Article 79 bis* - International Fact-Finding Commission**

1.1/ (a) An International Fact-Finding Commission consisting of fifteen members of high moral standing and acknowledged impartiality shall be established.

(b) When this article has become applicable among not less than twenty High Contracting Parties, the depositary shall then, and at intervals of five years thereafter, convene a meeting of representatives of the High Contracting Parties for the purpose of electing the members of the Commission. At the meeting, the representatives shall elect the members of the Commission by secret ballot from a list of persons to which each of those High Contracting Parties may nominate one person.

(c) The members of the Commission shall serve in their personal capacity and shall hold office until the election of new membership at the ensuring conference.

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* Adopted as a whole by 40 votes to 18, with 17 abstentions, at the seventy-second meeting on 13 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 54.

** The title of the article was adopted at the seventy-second meeting in five languages (Arabic, English, French, Russian, Spanish) consequentially to the rejection by 44 votes to 18, with 16 abstentions of a title in square brackets. See this report, para. 53.

1/ Paragraph 1 was adopted by 70 votes to 3, with 5 abstentions, at the seventy-second meeting in five languages (Arabic, English, French, Russian, Spanish) after the following decision had been taken: in sub-paragraph (b) the word "the" before "High Contracting Parties" in the fourth line was retained by 20 votes to 17, with 24 abstentions; in sub-paragraph (d) the words "the High Contracting Parties" were retained by 50 votes to 6, with 10 abstentions. See this report, paras. 53 and 56.

(d) At the election, the High Contracting Parties shall ensure that the persons to be elected to the Commission individually possess the qualifications required and that, in the Commission as a whole, equitable geographical representation be assured.

(e) In the case of a casual vacancy, the Commission itself shall fill the vacancy having due regard to the provisions of the preceding sub-paragraphs.

(f) The depositary shall make available to the Commission the necessary administrative facilities for the performance of its functions.

2.2/ (a) At the request of a Party to the conflict, the Commission shall institute an enquiry with the consent of the other Party or Parties concerned in relation to any alleged violation of the Conventions or of this Protocol.

(b) The High Contracting Parties may at any time declare that they recognize ipso facto and without special agreement, in relation to any other State accepting the same obligation, the competence of the Commission to:

(i) enquire into any facts alleged to be a grave breach or other serious violation of the Conventions or this Protocol;

(ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol.

(c) The declarations referred to above shall be deposited with the depositary of this Protocol, who shall transmit copies thereof to the High Contracting Parties.

(d) The provisions of this article shall come into force when twenty States Party to this Protocol have made declarations under paragraph 2 of this article.

2/ Paragraph 2 was adopted as proposed by the German Democratic Republic and as amended by the United States of America, by 41 votes to 30, with 11 abstentions, at the seventy-second meeting on 13 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 53.

(e) Subject to the foregoing provisions of this paragraph, the provisions of Article 52, Article 53, Article 132 and Article 149 common to the Conventions shall continue to apply to any alleged violation of the Conventions and shall extend to any alleged violation of this Protocol.

3./ (a) All enquiries shall be undertaken by a Chamber consisting of seven members appointed as follows:

(i) five members of the Commission, not nationals of a Party to the conflict, appointed by the President of the Commission on the basis of equitable representation from the geographical areas, following consultation with the Parties to the conflict;

(ii) two ad hoc members not nationals of a Party to the conflict, one to be appointed by each side.

(b) Upon receipt of the request for an enquiry, the President of the Commission shall specify an appropriate time limit for setting up a Chamber. If any ad hoc member has not been appointed within the time limit, the President shall immediately appoint such additional member or members of the Commission as may be necessary to complete the membership of the Chamber.

3/ Paragraph 3 was adopted by 65 votes to none, with 10 abstentions, at the seventy-second meeting on 13 May 1977, in five languages (Arabic, English, French, Russian, Spanish) after the following decisions had been taken: in sub-paragraph (a) (i) the words "and who are nationals of States having diplomatic relations with the Parties to the conflict" were rejected by 50 votes to 3, with 21 abstentions; the words "with the agreement of the Parties concerned" were rejected by 42 votes to 28, with 12 abstentions, and the words "following consultation with the Parties to the conflict" were retained by 39 votes to 28, with 14 abstentions; sub-paragraph (b) was adopted by 43 votes to 15, with 15 abstentions. See this report, para. 53.

4.4/ (a) The Chamber set up under paragraph 3 to undertake an enquiry shall invite the Parties to the conflict to assist it and to present evidence. The Chamber may also seek such other evidence as it deems appropriate and may carry out an investigation of the situation in loco.

(b) All evidence shall be fully disclosed to the Parties, which shall have the right to comment on it to the Commission.

(c) Each Party shall have the right to contest such evidence.

5.5/ (a) The Commission shall submit to the Parties a report on the findings of fact of the Chamber with such recommendations as it may deem appropriate.

(b) If the Chamber is unable to secure adequate evidence for factual and impartial findings, the Commission shall state the reasons for that inability.

(c) The Commission shall not publicly report its findings unless all the Parties to the conflict have requested the Commission to do so.

4/ After a motion to retain the last phrase had been rejected by 50 votes to 13, with 15 abstentions, this paragraph was adopted by 69 votes to none, with 9 abstentions, at the seventy-second meeting on 13 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 53.

5/ Paragraph 5 was adopted by 49 votes to none, with 21 abstentions, at the seventy-second meeting on 13 May 1977, in five languages (Arabic, English, French, Russian, Spanish) after the following decisions had been taken: the deletion of the last phrase in sub-paragraph (a) was rejected by 45 votes to 19, with 9 abstentions; sub-paragraph (c) was adopted as proposed by the delegation of Switzerland by 29 votes to 25, with 16 abstentions, after the proposal of France had been rejected by 26 votes to 24, with 16 abstentions. See this report, para. 53.

6.6/ The Commission shall establish its own rules, including rules for the presidency of the Commission and the presidency of a Chamber. Those rules shall ensure that the functions of the President of the Commission are exercised at all times and that in the case of an enquiry they are exercised by a person who is not a national of a Party to the conflict.

7.7/ The administrative expenses of the Commission shall be met by contributions from the High Contracting Parties which made declarations under paragraph 2. The Commission shall be reimbursed by the Parties to the conflict equally in respect of the expenses incurred by a Chamber unless the Commission specifies otherwise.

6/ Paragraph 6 was adopted by 64 votes to 1, with 10 abstentions, at the seventy-second meeting on 13 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 53.

7/ After a motion to retain the words "which made declarations under paragraph 2" had been adopted by 37 votes to 24, with 13 abstentions, this paragraph was adopted by 48 votes to 2, with 20 abstentions. See this report, para. 53.

Draft Protocol I
Part V bis - Obligation to make reparation for breaches of the present Protocol

New Article to precede Article 30*

A Party to the conflict which violates the provisions of the Conventions or of the present Protocol 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.

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* Adopted by consensus at the seventieth meeting on 28 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 61.

Draft Protocol I
Part VI - Final provisions

Article 80 - Signature*

The Protocol will be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 63.

Draft Protocol I
Part VI - Final provisions

Article 81 - Ratification*

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Government, depositary of the Conventions.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 65.

Draft Protocol I
Part VI - Final provisions

Article 82 - Accession*

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary of the Conventions.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 67.

Draft Protocol I
Part VI - Final provisions

Article 83 - Entry into force*

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, paras. 69 and 70.

Draft Protocol I
Part VI - Final provisions

Article 84 - Treaty relations upon entry into force of this Protocol*

1. When the Parties to the Conventions are also Parties to this Protocol, the Conventions shall apply as supplemented by this Protocol.

2. Although one of the Parties to the conflict may not be bound by this Protocol, the Parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to the said Party, if the latter accepts and applies the provisions thereof.

3. The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in paragraph 2 of Article 1 of the present Protocol may undertake to apply the Conventions and the present Protocol in relation to that conflict by means of an unilateral declaration addressed to the depositary of the Conventions. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects: 1/

(a) the Conventions and the present Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;

(b) the said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and present Protocol;

(c) the Conventions and the present Protocol are equally binding upon all Parties to the conflict.

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* Adopted as a whole by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, paras. 71 to 77.

1/ Adopted by 50 votes to none, with 14 abstentions, at the sixty-seventh meeting on 25 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 73.

Draft Protocol I
Part VI - Final provisions

Article 86 - Amendment*

1. Any High Contracting Party may propose one or more amendments to this Protocol / or its Annex_7. The text of any proposed amendment shall be communicated to the depositary of the Conventions which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.

2. The depositary of the Conventions shall invite to this conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 89.

Draft Protocol I
Part VI - Final provisions

Article 86 bis*

1. A Committee of States Parties to the Conventions or this Protocol shall be established to consider and adopt recommendations regarding any proposal that one or more States Parties and the Committee itself may submit on the basis of Article 33 of this Protocol for the prohibition or restriction, for humanitarian reasons, of the use of certain conventional weapons that may cause superfluous injuries or have indiscriminate effects.

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* Adopted as a whole by 50 votes to 27, with 13 abstentions, at the seventy-seventh meeting on 18 May 1977, in five languages (Arabic, English, French, Russian, Spanish), after the following decisions had been taken: the words "Consultative Board" were rejected by 40 votes to 2, with 37 abstentions; the words "the Conventions or" were retained by 40 votes to 6, with 31 abstentions; the words "and adopt recommendations regarding" were retained by 40 votes to 13, with 23 abstentions; the words "and the Committee itself" were retained by 27 votes to 14, with 31 abstentions; the words "on the basis of Article 33 of this Protocol" were retained by 40 votes to one, with 36 abstentions; the words "that may cause superfluous injuries or have indiscriminate effects" were retained by 40 votes to 2, with 31 abstentions; the number "31" was retained by 39 votes to none with 34 abstentions; the words "if it should consider it necessary" were retained by 18 votes to 3, with 52 abstentions; the words "and shall elect its Chairman" were retained by 20 votes to none, with 48 abstentions; the words "the depositary Government, in consultations with any State Party or Parties that may wish to invite ... may convene a special Conference" were retained in an amended form by 17 votes to 16, with 40 abstentions; the words "that implement the principle that the Parties to the conflict do not have an unlimited right of choice of means of combat" were retained by 43 votes to none, with 33 abstentions. See this report, paras. 94, 95 and 96.

2. The Committee shall consist of representatives of thirty-one States Parties elected for three years on the basis of equitable geographical distribution by the States Parties to the Conventions or this Protocol, by means of notifications addressed to the depositary Government. The depositary Government if it should consider it necessary may convene a meeting of the States Parties to elect the members of the Committee. The Committee shall meet whenever one-third of its members so requests; it shall adopt its recommendations by majority and shall elect its chairman.

3. The International Committee of the Red Cross shall participate in the work of the Committee referred to in this article, and shall provide the necessary secretarial facilities.

4. On the basis of the Committee's recommendations the depositary Government may convene a special Conference, in consultation with any State Party or Parties that may wish to invite such a Conference with a view to adopting agreements that implement the principle that the Parties to the conflict do not have an unlimited right of choice of means of combat.

Draft Protocol I
Part VI - Final provisions

Article 87 - Denunciation*

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in one of the situations referred to in Article 1 of this Protocol, the denunciation shall not take effect before the end of the armed conflict or occupation and not, in any case, before operations connected with final release, repatriation or re-establishment of the persons protected by this Protocol have been terminated.

2. The denunciation shall be notified in writing to the depositary of the Conventions, which shall transmit it to all the High Contracting Parties.

3. The denunciation shall have effect only in respect of the denouncing Party.

4. Any denunciation under paragraph 1 of this Article shall not affect the obligations already incurred by reason of the armed conflict under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 103.

Draft Protocol I
Part VI - Final provisions

Article 88 - Notifications*

The depositary of the Conventions shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of the following:

(a) signatures affixed to this Protocol and the deposit of the instruments of ratification and accession under Articles 81 and 82;

(b) the date of entry into force of this Protocol under Article 83;

(c) communications and declarations received under Articles 73, 85 and 86;

(d) declarations received under paragraph 3 of Article 84, which shall be communicated by the quickest methods.1/

(e) denunciations under Article 87.

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* Adopted as a whole by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 108.

1/ Adopted by 55 votes to none, with 14 abstentions, at the sixty-seventh meeting on 25 April 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 106.

Draft Protocol I
Part VI - Final provisions

Article 89 - Registration*

1. After its entry into force, this Protocol shall be transmitted by the depositary of the Conventions to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary of the Conventions shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 111.

Draft Protocol I
Part VI - Final provisions

Article 90 - Authentic texts and official translations*

1. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary of the Conventions, which shall transmit certified true copies thereof to all the Parties to the Conventions.

2. The depositary of the Conventions shall arrange for official translations of this Protocol to be made into ... .

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 115.

Draft Protocol II
Part II - Humane treatment of persons in the power of the Parties to the conflict

Article 6 - Fundamental guarantees*

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour, convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) collective penalties;

(c) taking of hostages;

(d) acts of terrorism;

(e) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(f) slavery and the slave trade in all their forms;

(g) pillage;

(h) threats to commit any of the foregoing acts.

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* Adopted by consensus at the seventy-third meeting on 16 May 1977, in five languages (Arabic, English, French, Russian, Spanish) after the following decisions had been taken: this article having been referred to Committee I by the Drafting Committee (see document CDDH/CR/RD/18), paragraph 1 in all languages was aligned on the Spanish text; a new sub-paragraph (b) was added; paragraph 3, which was in square brackets, was deleted. This article had already been adopted by consensus at the thirty-ninth meeting of Committee I on 11 April 1975 and had been reviewed by the Drafting Committee on 23 March 1977. See this report, paras. 117 to 122.

Draft Protocol II
Part II - Humane treatment of perons in the power of the Parties to the conflict

Article 10 bis*

The provisions of Parts II and III and of Articles 26, 26 bis, 27 and 28 shall not, in any circumstances or for any reason whatsoever, be violated, even in response to a violation of the provisions of the Protocol.

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* After a motion to retain the reference to Articles 26 bis, 27 and 28 had been adopted by 29 votes to 11 with 39 abstentions, the Article as a whole was adopted by 33 votes to 15, with 28 abstentions, at the seventy-third meeting on 16 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 128.

Draft Protocol II
Part VIII - Final provisions

Article 40 - Signature*

The Protocol will be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 133.

Draft Protocol II
Part VIII - Final provisions

Article 41 - Ratification*

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Government, depositary of the Conventions.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 136.

Draft Protocol II
Part VIII - Final provisions

Article 42 - Accession*

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary of the Conventions.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 139.

Draft Protocol II
Part VIII - Final provisions

Article 43 - Entry into force*

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 142.

Draft Protocol II
Part VIII - Final provisions

Article 44 - Amendment*

1. Any High Contracting Party may propose one or more amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary of the Conventions which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.

2. The depositary of the Conventions shall invite to this conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 145.

Draft Protocol II
Part VIII - Final provisions

Article 44 bis - Denunciation*

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect six months after receipt of the instrument of denunciation. If, however, on the expiry of six months, the denouncing Party is engaged in the situation referred to in Article 1 of this Protocol, the denunciation shall not take effect before the end of the armed conflict. Persons who have been deprived of liberty, or whose liberty has been restricted, for reasons related to the conflict shall nevertheless continue to benefit from the provisions of this Protocol till their final release.

2. The denunciation shall be notified in writing to the depositary of the Conventions, which shall transmit it to all the High Contracting Parties.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 148.

Draft Protocol II
Part VIII - Final provisions

Article 45 - Notifications*

The depositary of the Conventions shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of the following:

(a) signatures affixed to this Protocol and the deposit of the instruments of ratification and accession under Articles 41 and 42;

(b) the date of entry into force of this Protocol under Article 43;

(c) communications and declarations received under Article 44.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 151.

Draft Protocol II
Part VIII - Final provisions

Article 46 - Registration*

1. After its entry into force, this Protocol shall be transmitted by the depositary of the Conventions to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary of the Conventions shall also inform the Secretariat of the United Nations of all ratifications and accessions received by it with respect to this Protocol.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 154.

Draft Protocol II
Part VIII - Final provisions

Article 47 - Authentic texts and official translations*

1. The original of this Protocol of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary of the Conventions, which shall transmit certified true copies thereof to all the Parties to the Conventions.

2. The depositary of the Conventions shall arrange for official translations of this Protocol to be made into .... .

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 157.

Draft Protocol I

Title adopted by Committee I*

First Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, paras. 164 and 165.

Draft Protocol I

Preamble*

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary nevertheless, to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement those measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the Conflict,

Have agreed on the following:

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* Adopted as a whole by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish) after a consensus agreement had been reached to delete the last preambular clause. See this report, paras. 170 and 171.

Draft Protocol II

Title adopted by Committee I*

Second Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflicts.

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* Adopted by consensus at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 174.

Draft Protocol II

Preamble*

The High Contracting Parties,

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

Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of those armed conflicts,

Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience,

Have agreed on the following:

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* After a motion to delete the words "and the dictates of the public conscience" had been lost by 35 votes to 21, with 21 abstentions, the Preamble was adopted as a whole by 32 votes to 19, with 27 abstentions, at the seventy-sixth meeting on 17 May 1977, in five languages (Arabic, English, French, Russian, Spanish). See this report, para. 181.