

OFFICIAL RECORDS

OF THE

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

GENEVA (1974 -1977)

VOLUME IV

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.

*Document circulated in French only.

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VOLUME IV

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OFFICIAL RECORDS

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 (FOURTH 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 IV

TABLE OF AMENDMENTS TO THE DRAFT ADDITIONAL PROTOCOLS

Part Two

AMENDMENTS TO DRAFT ADDITIONAL PROTOCOL II,
ANNEXES I - IV TO THE TABLE OF AMENDMENTS
AND INFORMATION DOCUMENTS

CONTENTS

AMENDMENTS TO THE DRAFT ADDITIONAL PROTOCOLS

Part Two

AMENDMENTS TO DRAFT ADDITIONAL PROTOCOL II

	<u>Page</u>
Introduction.....	v - vi
I. Protocol II - Comparative Table of titles of Articles.....	vii - xv
II. Amendments to Draft Additional Protocol II.....	1 - 121
III. Annexes to the Table of Amendments....	123 - 293
IV. Information Documents.....	205 - 293
V. Index to the Table of Amendments to draft Additional Protocol II	295 - 301

INTRODUCTION

THE TABLE OF AMENDMENTS is a compilation of the draft amendments to the International Committee of the Red Cross (ICRC) draft Additional Protocols to the Geneva Conventions of August 12, 1949; it contains all the draft amendments that were submitted formally in writing during the four sessions of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

The Table of Amendments comprises volumes III and IV of the Official Records of the Conference. Volume III, part one of the table, contains amendments submitted to draft Protocol I and the Annex thereto, and volume IV, part two of the table, amendments submitted to draft Protocol II, four annexes to the Table of Amendments containing particular amendments to the draft Additional Protocols and a number of information documents. An introduction and a comparative table of the titles of the articles of the draft Protocol is included in each volume. In the first part of the comparative table, the numbers and titles of the articles of the ICRC draft Additional Protocols are set out against those of the corresponding articles proposed or approved by the main Committees and of those of the articles adopted in the Final Act, and in the second part the titles of the articles of the Final Act are listed against those of the ICRC draft or of the proposed new articles in which they originated.

The amendments are reproduced under the titles of the articles to which they were submitted, either those of the articles of the draft Additional Protocols or those of new articles proposed during the Conference. To facilitate the use of the table, whenever articles in the Final Act bear a different number or title from those first proposed for them, the number or title in the Final Act is given in a footnote.

The amendments are arranged in the chronological order in which they were submitted. In some cases, where articles were radically changed or replaced by new articles in the course of the Conference, explanatory notes have been added to facilitate the identification of the amendments and the articles to which they relate.

The names of the countries sponsoring amendments are those borne by the countries concerned at the time the amendments were submitted.

In volume IV, the Philippines proposal for a draft code of international crimes and procedure in violations of the Conventions and the Protocol is reproduced as an annex (Annex I to the Table of Amendments) in compliance with the request of the Philippines delegation (CDDH/I/346).

Annex II to the same volume contains the amendments submitted by the Republic of Viet-Nam; Annex III contains proposed amendments to draft Protocol I submitted by the Democratic Republic of Viet-Nam, and Annex IV amendments to draft Protocol II as a whole submitted by Canada.

The four Annexes to the Table of Amendments have been placed in chronological order according to the date of submission of the first amendment in the annex (Annexes I and II) or the date when the proposal was made (Annexes III and IV).

The Annexes are followed by a number of information documents submitted for the attention of the Conference by various governments, governmental and non-governmental organizations, and other bodies.

In the Russian version of the table, as in the other volumes of the Official Records of the Diplomatic Conference, documents submitted at the first session are reproduced in English, since Russian was not an official working language until the second session of the Conference. As there was no official translation into Russian of the ICRC draft Additional Protocols, the titles of the ICRC articles also are given in English.

An index of the titles in English of the articles in the ICRC draft Additional Protocols and the Final Act and of the articles proposed or adopted in the main Committees is included in the English version of the Table of Amendments and in volume XVII of the Official Records of the Conference.

I. PROTOCOL II - COMPARATIVE TABLE OF
TITLES OF ARTICLES

1.	Draft Additional Protocol II (ICRC) - Committee texts - Final Act.....	ix-xii
2.	Final Act - Draft Additional Protocol II (ICRC).....	xiii-xv

PROTOCOL II

COMPARATIVE TABLE OF TITLES OF ARTICLES

1. International Committee of the Red Cross draft Additional Protocols
- Committee texts - Final Act

<u>ICRC</u>	<u>COMMITTEE</u>	<u>FINAL ACT</u>
Article 1 - Material field of application	Material field of application	Article 1 - Material field of application
Article 2 - Personal field of application	Personal field of application	Article 2 - Personal field of application
Article 3 - Legal status of the Parties to the conflict	Legal status of the Parties to the conflict	
Article 4 - non-intervention	Non-intervention	Article 3 - Non-intervention
Article 5 - Rights and duties of the Parties to the conflict	Rights and duties of the Parties to the conflict	
Article 6 - Fundamental guarantees	Fundamental guarantees	Article 4 - Fundamental guarantees
Article 7 - Safeguard of an enemy <u>hors de combat</u>	Article 22 bis - Safeguard of an enemy <u>hors de combat</u>	
Article 8 - Persons whose liberty has been restricted	Persons whose liberty has been restricted	Article 5 - Persons whose liberty has been restricted
Article 9 - Principles of penal law		

ICRC

COMMITTEE

FINAL ACT

Article 10 - Penal prosecutions	Penal prosecutions	Article 6 - Penal prosecutions
Article 11 - Definitions	Definitions	
Article 12 - Protection and care	Protection and care	Article 7 - Protection and care
Article 13 - Search and evacuation	Search and evacuation	Article 8 - Search
Article 14 - Role of the civilian population	Role of the civilian population and of relief societies	
Article 15 - Medical and religious personnel	Protection of medical and religious personnel	Article 9 - Protection of medical and religious personnel
Article 16 - General protection of medical duties	General protection of medical medical duties	Article 10 - General protection of medical duties
Article 17 - Medical units and transports	Protection of medical units and transports	Article 11 - Protection of medical units and transports
Article 18 - The distinctive emblem	The distinctive emblem and signals	Article 12 - The distinctive emblem
Article 19 - Prohibition of reprisals		
Article 20 - Prohibition of unnecessary injury	Prohibition of unnecessary injury	
	Article 20 bis - Protection of cultural objects and of places of worship	Article 16 - Protection of cultural objects and of places of worship

ICRC

COMMITTEE

FINAL ACT

Article 21 - Prohibition of perfidy	Prohibition of perfidy	Article 13 - Protection of the civilian population
Article 22 - Quarter	Quarter	Article 14 - Protection of objects indispensable to the survival of the civilian population
Article 23 - Recognized signs	Recognized signs	Article 15 - Protection of works and installations containing dangerous forces
Article 24 - Basic rules	Basic rules	Article 17 - Prohibition of forced movement of civilians
Article 25 - Definition	Definition	Article 4 - Fundamental guarantees
Article 26 - Protection of the civilian population	Protection of the civilian population	Article 18 - Relief societies and relief actions
Article 27 - Protection of objects indispensable to the survival of the civilian population	Protection of objects indispensable to the survival of the civilian population	
Article 28 - Protection of works and installations containing dangerous forces	Protection of works and installations containing dangerous forces	
Article 29 - Prohibition of forced movement of civilians	Prohibition of forced movement of civilians	
Article 30 - Respect and protection	Civil defence	
Article 31 - Definition		
Article 32 - Privileged treatment	Privileged treatment	
Article 33 - Relief actions	Relief societies and relief actions	

ICRC

COMMITTEE

FINAL ACT

Article 34 - Recording and information	Recording and information	
Article 35 - National Red Cross and other relief societies		
Article 36 - Measures for execution	Measures for execution	
Article 37 - Dissemination	Dissemination	Article 19 - Dissemination
Article 38 - Special agreements	Special agreements	
Article 39 - Co-operation in the observance of the present Protocol	Co-operation in the observance of the present Protocol	
Article 40 - Signature	Signature	Article 20 - Signature
Article 41 - Ratification	Ratification	Article 21 - Ratification
Article 42 - Accession	Accession	Article 22 - Accession
Article 43 - Entry into force	Entry into force	Article 23 - Entry into force
Article 44 - Amendment	Amendment	Article 24 - Amendment
Article 45 - Notifications	Article 44 <u>bis</u> - Denunciation Notifications	Article 25 - Denunciation
Article 46 - Registration	Registration	Article 26 - Notifications
Article 47 - Authentic texts and official translations	Authentic texts and official translations	Article 27 - Registration
		Article 28 - Authentic texts

PROTOCOL II

2. Final Act - International Committee of the Red Cross draft Additional Protocols

FINAL ACT

Article 1 - Material field of application
Article 2 - Personal field of application
Article 3 - Non-intervention
Article 4 - Fundamental guarantees
Article 5 - Persons whose liberty has been restricted
Article 6 - Penal prosecutions
Article 7 - Protection and care
Article 8 - Search
Article 9 - Protection of medical and religious personnel
Article 10 - General protection of medical duties
Article 11 - Protection of medical units and transports
Article 12 - The distinctive emblem

ICRC

Article 1 - Material field of application
Article 2 - Personal field of application
Article 4 - Non-intervention
Article 6 - Fundamental guarantees
Article 32 - Privileged treatment
Article 8 - Persons whose liberty has been restricted
Article 10 - Penal prosecutions
Article 12 - Protection and care
Article 13 - Search and evacuation
Article 15 - Medical and religious personnel
Article 16 - General protection of medical duties
Article 17 - Medical units and transports
Article 18 - The distinctive emblem

FINAL ACT

Article 13 - Protection of the civilian population

Article 14 - Protection of objects indispensable to the survival of the civilian population

Article 15 - Protection of works and installations containing dangerous forces

Article 16 - Protection of cultural objects and of places of worship

Article 17 - Prohibition of forced movements of civilians

Article 18 - Relief societies and relief actions

Article 19 - Dissemination

Article 20 - Signature

Article 21 - Ratification

Article 22 - Accession

Article 23 - Entry into force

Article 24 - Amendment

Article 25 - Denunciation

Article 26 - Notifications

ICRC

Article 26 - Protection of the civilian population

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

Article 28 - Protection of works and installations containing dangerous forces

Article 29 - Prohibition of forced movements of civilians

Article 33 - Relief actions

Article 37 - Dissemination

Article 40 - Signature

Article 41 - Ratification

Article 42 - Accession

Article 43 - Entry into force

Article 44 - Amendment

Article 45 - Notifications

FINAL ACT

Article 27 - Registration

Article 28 - Authentic texts

ICRC

Article 46 - Registration

Article 47 - Authentic texts and official translations

II. AMENDMENTS TO DRAFT ADDITIONAL PROTOCOL II

DRAFT PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS
OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION
OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS

PREAMBLE

(adopted by Committee I at the fourth session
and by the Conference
at the fifty-fourth plenary meeting, on 7 June 1977)

No amendments were submitted to the Preamble.

PART I - SCOPE OF THE PRESENT PROTOCOL*

CDDH/I/79

Brazil

21 March 1974

Original: French

Replace the words "PART I - SCOPE OF THE PRESENT PROTOCOL" by the words "PART I - GENERAL PROVISIONS".

* Title in Final Act: PART I - SCOPE OF THIS PROTOCOL.

NEW ARTICLE BEFORE ARTICLE 1
- RESPECT FOR THE PROTOCOL
(withdrawn)*

CDDH/I/37

Canada

14 March 1974

Original: English

At the beginning of the Protocol insert a new article reading as follows:

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

(b) Each Party to an armed conflict to which this Protocol applies is responsible for ensuring compliance with this Protocol by all persons subject to its control."

(This amendment was withdrawn at the seventy-sixth meeting of Committee I, on 17 May 1977.)

* Provisional title proposed by the Secretariat.

ARTICLE 1 - MATERIAL FIELD OF APPLICATION
(adopted by Committee I at the second session
and by the Conference
at the forty-ninth plenary meeting, on 2 June 1977)

CDDH/I/26

Pakistan

11 March 1974

Original: English

Redraft Article 1 to read:

"1. The present Protocol which elaborates and supplements Article 3 common to the four Geneva Conventions of August 12, 1949, shall apply to all cases of armed conflict referred to in Article 3 occurring in the territory of a High Contracting Party and in which:

(a) Organized armed forces engage in hostile acts against the authorities in power and the authorities in power employ their own armed forces in response.

(b) The hostilities are of some intensity and continue for a reasonable period of time.

(c) The armed forces opposing the authorities in power occupy a part of the territory of the High Contracting Party.

(d) The armed forces opposing the authorities in power are represented by a responsible authority and declare their intention of observing the humanitarian rules laid down in Article 3, common to the Geneva Conventions, and in the present Protocol.

2. A High Contracting Party may recognize the existence of a conflict not of an international character in its territory before the conditions set out in paragraph 1 are satisfied. In such an event it shall apply rules laid down in Article 3, common to the Geneva Conventions, and in the present Protocol.

3. The present Protocol shall not apply to situations of internal disturbances and tensions, inter alia riots, isolated and sporadic acts of violence and other acts of a similar nature."

Draft Protocol II, Article 1 (continued)

CDDH/I/30
12 March 1974
Original: French

Romania

1. Add the following clause at the end of paragraph 1:

"in cases where the State, on whose territory the events are taking place, recognizes the existence of the conflict, its character and its constituent elements."

2. Delete paragraph 3.

CDDH/I/32
12 March 1974
Original: English

Indonesia

Amend paragraph 1 to read:

"1. The present Protocol shall apply to all armed conflicts not covered by Article 2 common to the Geneva Conventions of August 12, 1949, in which organized forces under responsible command in the territory of a High Contracting Party take up arms over a prolonged period against the legitimate government and occupy a substantial part of the territory of the High Contracting Party."

CDDH/I/33
12 March 1974
Original: Spanish

Spain

Add the following words at the end of paragraph 1, after the words "responsible command".

"effectively exercised in such a way as to guarantee its readiness and ability to observe and enforce observance of the rules of humanitarian law in force."

Draft Protocol II, Article 1 (continued)

CDDH/I/79
21 March 1974
Original: French

Brazil

Redraft Article 1 as follows:

"Article 1, Scope of the present Protocol

1. The present Protocol shall apply to armed conflicts not covered by Article 2 common to the Geneva Conventions of August 12, 1949, relating to the protection of victims of international armed conflicts, in which, on the territory of a High Contracting Party:

(a) Organized armed forces or other organized armed groups under a responsible and identifiable authority, and clearly distinguished from the civilian population, perform acts hostile to the established authorities to which the latter respond by using their armed forces; and

(b) Forces hostile to the Government exert continuous and effective control over a non-negligible part of the territory.

2. The foregoing provisions do not modify the conditions governing the application of Article 3 common to the Geneva Conventions of 12 August 1949."

CDDH/I/88
11 September 1974
Original: English

German Democratic Republic

Redraft paragraph 1 as follows:

"1. The present Protocol which specifies and supplements Article 3 common to the four Geneva Conventions of August 12, 1949, shall apply to all armed conflicts which in conformity with common Article 3 have not an international character and take place between armed forces or organized armed groups under responsible command."

ARTICLE 2 - PERSONAL FIELD OF APPLICATION
(adopted by Committee I at the second session
and by the Conference
at the fiftieth plenary meeting, on 3 June 1977)

CDDH/I/21
11 March 1974
Original: French

Romania

1. In paragraph 1 after the words "The present Protocol shall apply, without", insert the words "infringing the rules of military discipline and without ...".
2. Delete paragraph 2.

CDDH/I/37
14 March 1974
Original: English

Canada

Delete the whole Article and substitute the following:

- "1. The present Protocol shall apply, without any adverse distinction founded on race, colour, caste, nationality, religion or faith, political opinion, sex, social status or any other similar criteria, to all persons, whether military or civilian, combatant or non-combatant, affected by an armed conflict within the meaning of Article 1.
2. Every person whose liberty has been restricted for reasons relating to the armed conflict, shall be treated in accordance with the provisions of Articles 8 and 10 until released, or until convicted and all rights of appeal are exhausted."

(This amendment was replaced by document CDDH/I/220 below.)

Draft Protocol II, Article 2 (continued)

CDDH/I/79

Brazil

21 March 1974

Original: French

Redraft Article 2 as follows:

"Article 2 - Beginning and end of application

1. Without prejudice to the provisions of Article 6 of the present Protocol, which shall apply at all times, this Protocol shall apply from the beginning of any armed conflict within the terms of Article 1, and recognized as such both by the High Contracting Party on whose territory the armed conflict is considered to exist and by the authority to which the armed forces or groups opposed to the Government are subject.

2. A High Contracting Party may announce its intention of applying the present Protocol, even if all the conditions set forth in paragraph 1 of the present Article are not fulfilled.

3. The present Protocol shall cease to apply upon the general cessation of military operations, subject to the provisions of Article 3, paragraph 2 of this Protocol."

(This amendment was withdrawn at the twenty-ninth meeting of Committee I, on 17 March 1975.)

CDDH/I/216

Philippines

17 February 1975

Original: English

Amend the title to read:

"Article 2 - Field of application as to persons"

Draft Protocol II, Article 2 (concluded)

CDDH/I/220

Canada

18 February 1975

Original: English

Delete the whole Article and substitute the following:

"1. The present Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, any other similar criteria (hereinafter referred to as 'adverse distinction'), to all persons, whether military or non-military, combatant or non-combatant, affected by an armed conflict within the meaning of Article 1.

2. On conclusion of the conflict, every person whose liberty has been restricted for reasons relating to the conflict, as for example for having participated therein, shall be treated in accordance with the provisions of Articles 8 and 10 until released, or until convicted and all rights of appeal are exhausted."

CDDH/427

Pakistan

31 May 1977

Original: English

Substitute "5 and 6" for "8 and 10" in paragraph 2.

ARTICLE 3 - LEGAL STATUS OF THE PARTIES TO THE CONFLICT
(adopted by Committee I at the second session
and rejected by the Conference
at the fiftieth plenary meeting, on 3 June 1977)

CDDH/I/79
21 March 1974
Original: French

Brazil

Redraft Article 3 as follows:

" Article 3 - Personal field of application

1. The present Protocol shall apply to all persons, whether military or civilian, combatant or non-combatant, affected by an armed conflict within the meaning of Article 1, without any adverse distinction based on race, colour, religion or creed, sex, birth or fortune, or any similar criterion.

2. Even after the end of the armed conflict, all persons whose liberty has been restricted for reasons related to the armed conflict and who may not have been released, and persons arrested for the same reasons, shall continue to benefit from the provisions of Articles 8 and 10 until released."

(Renumber Article 3 of the ICRC draft and subsequent Articles of draft Protocol II).

CDDH/I/223
20 February 1975
Original: English

Philippines

Amend Article 3 to read:

"The application of the provisions of the present Protocol shall not affect the legal status of the Parties to the conflict and their respective territories. Neither shall such legal status be affected by any of the provisions of the Geneva Conventions of August 12, 1949, and of the Additional Protocol relating to the protection of victims of international conflicts enforceable under special agreements or by any agreements provided for in the Geneva Conventions and their Additional Protocols."

Draft Protocol II, Article 3 (concluded)

CDDH/I/232

27 February 1975

Original: Spanish

Argentina

Delete the phrase: "or that of the territories on which they exercise authority".

CDDH/427

31 May 1977

Original: English

Pakistan

Delete this Article.

ARTICLE 4 - NON-INTERVENTION *
(adopted by Committee I at the second session
and by the Conference
at the fiftieth plenary meeting, on 3 June 1977)

CDDH/I/23 Romania
11 March 1974
Original: French

Redraft Article 4 as follows:

"Nothing in the present Protocol shall be interpreted in a manner to affect the sovereignty of States, or to authorize third States to intervene in the armed conflict."

CDDH/I/239 Iraq, Nigeria, Venezuela
18 March 1975
Original: English

In paragraph 2 of Article 4, delete the words "by other States".

CDDH/I/240 India
18 March 1975
Original: English

Add a new paragraph 3:

"3. Despite the foregoing, any external interference in a non-international armed conflict as defined in Article 1 of the present Protocol, shall be considered a violation of the present Protocol, which will cease to apply till such time as external interference is removed."

CDDH/427 Pakistan
31 May 1977
Original: English

Renumber as Article 3.

* Article 3 of the Final Act.

ARTICLE 5 - RIGHTS AND DUTIES OF THE PARTIES TO THE CONFLICT
(adopted by Committee I at the second session
and rejected by the Conference
at the fiftieth plenary meeting, on 3 June 1977)

CDDH/I/35
12 March 1974
Original: English

Australia

Delete the existing text of Article 5 and substitute
the following:

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

CDDH/427
31 May 1977
Original: English

Pakistan

Delete the Article.

PART II - HUMANE TREATMENT OF PERSONS IN
THE POWER OF THE PARTIES TO THE CONFLICT *

ARTICLE 6 - FUNDAMENTAL GUARANTEES **
(adopted by Committee I at the second and fourth sessions
and by the Conference
at the fiftieth plenary meeting, on 3 June 1977)

CDDH/I/37 Canada
14 March 1974
Original: English

1. At the end of paragraph 1, add the following phrase:
"founded on race, colour, caste, nationality, religion or
faith, political opinion, sex, social status or any other
similar criteria".
2. Make paragraph 3 a separate article entitled
"Protection of women".

CDDH/I/92 Poland
1 October 1974
Original: French

1. Replace sub-paragraph 2(a) by sub-paragraph 2(a) of
Article 65 of draft Protocol I.
2. Add to paragraph 2 the provisions contained in sub-
paragraphs 2(b) and (c) of Article 65 of draft Protocol I.

CDDH/I/93 Finland
4 October 1974
Original: English

1. In paragraph 2 insert the following as sub-
paragraph (g):
"(g) measures of reprisal;".
2. Sub-paragraph 2(g) will then become sub-paragraph 2(h).

* Title in Final Act: PART II - HUMANE TREATMENT.

** Article 4 of the Final Act.

Draft Protocol II, Article 6 (continued)

CDDH/I/244
20 March 1975
Original: French

Belgium

Replace paragraph 3 by the following:

"Women and children shall moreover be the object of special respect and shall be protected, in particular against any form of indecent assault."

CDDH/I/302
23 April 1976
Original: French

International Committee of the Red Cross
(suggested amendment)

Proposal I

"Article 6 - Fundamental guarantees

1. (No change).
2. (No change).
3. Measures comparable with reprisals and violating the provisions of this Protocol against the persons referred to in paragraph 1 are prohibited."

Proposal II

"Article 6 - Fundamental guarantees

1. (No change).
2. (No change).
3. Countermeasures violating the provisions of this Protocol and taken against the persons referred to in paragraph 1, even when intended to make the adverse Party respect his own obligations, are prohibited."

Draft Protocol II, Article 6 (concluded)

CDDH/427

Pakistan

31 May 1977

Original: English

1. Renumber as Article 4.
2. Add a new paragraph 3 to read:

"3. Children shall be provided with the care and aid they require, and in particular:

 - (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
 - (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
 - (c) children below the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;
 - (d) the special protection provided by this Article to children below fifteen years of age shall remain applicable to them if they take a direct part in hostilities despite the provisions of paragraph (c), and are captured."
3. Delete paragraph 2(b) and renumber accordingly.

CDDH/430

Pakistan

2 June 1977

Original: English

Amend Article 4 (CDDH/427) as follows:

1. At the end of paragraph 1, after the full stop, add:

"It shall not be ordered that there shall be no survivors."
2. Add the following as paragraph (e):

"Measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well being."

ARTICLE 6 bis - PROTECTION OF WOMEN
(adopted by Committee I at the second session
and rejected by the Conference
at the fiftieth plenary meeting, on 3 June 1977)

See amendment CDDH/I/37 to Article 6.

ARTICLE 7 - SAFEGUARD OF AN ENEMY HORS DE COMBAT

NOTE. At the first session, it was proposed that Article 22 should become paragraph 1 of Article 7 (CDDH/I/37). Later Committee I decided that paragraph 1 of Article 7 should be re-drafted as new Article 22 bis (see page 69 below), and that paragraph 2 of Article 7 should be included in Article 8 as paragraph 5 (CDDH/219/Rev.1, para. 158).

CDDH/I/257

United States of America

24 March 1975

Original: English

1. Revise paragraph 1 as follows:

"It is forbidden to make an adversary hors de combat the object of attack. An adversary hors de combat is one who no longer has any means of defence or has surrendered. These conditions are considered to have been fulfilled, in particular, in the case of an adversary who abstains from any hostile acts and is not attempting to escape and who

(a) is unable to express himself, or

(b) clearly expresses an intention to surrender."

2. Move paragraph 2 to Article 8, amended as follows:

"Any Party to the conflict is free not to detain combatants of the adversary whom it does not wish to hold, after ensuring to the maximum extent of available means that they are in a fit state to return to the adverse Party without danger to their safety."

3. Add the following new paragraph (which would replace Article 22):

"It is forbidden to order any action in violation of paragraph 1 of this Article, to threaten an adversary therewith, or to conduct hostilities on such a basis."

See also amendment CDDH/I/37 to Article 22.

ARTICLE 8 - PERSONS WHOSE LIBERTY HAS BEEN RESTRICTED *
(adopted by Committee I at the second session
and by the Conference
at the fiftieth plenary meeting, on 3 June 1977)

CDDH/I/37
14 March 1974
Original: English

Canada

Delete the whole article and substitute the following:

"1. Persons whose liberty has been restricted by capture or otherwise for reasons relative to the armed conflict, shall, whether they are interned or detained, be treated humanely, in accordance with Article 6.

2. In addition, the Parties to the conflict shall respect at least the following provisions:

(a) The wounded and sick shall be treated in accordance with Article 12;

(b) If a Party to the conflict decides to send back to the adverse Party those combatants it has captured, it must ensure that they are able to make the journey safely.

3. The Parties to the conflict shall also respect the following provisions within the limits of their capabilities:

(a) The persons referred to in paragraph 1 shall be accommodated in a manner affording reasonable safeguards as regards health and hygiene and providing effective protection against the rigours of the climate and the dangers of the armed conflict;

(b) They shall be provided with drinking water and food sufficient to maintain their good health, and shall be provided with, or permitted to obtain, adequate clothing;

(c) If female, they shall be accommodated separately and shall be under the immediate supervision of women. This does not apply to situations in which members of the same family are in the same place of restriction;

(d) They shall be allowed to receive individual or collective relief;

* Article 5 of the Final Act.

Draft Protocol II, Article 8 (continued)

CDDH/I/37 (concluded)

(e) They shall be allowed to practise their religion and to receive spiritual assistance from ministers of their faith;

(f) They shall be allowed to send and receive letters and cards. The Parties to the conflict may limit the number of letters and cards, if considered necessary;

(g) They shall be removed if the area of their restriction becomes exposed to dangers arising from the armed conflict, provided this can be accomplished in conditions of adequate safety.

4. Measures of reprisals against the persons referred to in paragraph 1 are prohibited.

5. Subject to temporary and exceptional measures imposed by military necessity, the Parties to the conflict shall facilitate visits to persons referred to in paragraph 1 by an impartial humanitarian body such as the International Committee of the Red Cross."

CDDH/I/94

Finland

4 October 1974

Original: English

1. In sub-paragraph 2(b) replace the word "reasonable" by the word "adequate".

2. Insert the following as sub-paragraphs (d) and (e):

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

(e) they shall, if subjected to work, have the benefit of adequate working conditions and safeguards in particular as regards hours of labour and safety measures; they shall not be employed on work of an unhealthy, dangerous or humiliating nature;"

Sub-paragraph (d) will then become sub-paragraph (f).

3. Delete paragraph 4; paragraph 5 will then become paragraph 4.

Draft Protocol II, Article 8 (continued)

CDDH/I/236

13 March 1975

Original: French

Germany, Federal Republic of

Amend Article 8 to read:

"1. All persons whose liberty has been restricted by capture or arrest for reasons in relation to the armed conflict shall, whether they are interned or detained, be treated humanely in all circumstances, in accordance with Article 6.

2. In addition, the Parties to the conflict shall respect at least the following provisions:

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

(b) measures of reprisals against the persons referred to in paragraph 1 are prohibited;

(c) the persons referred to in paragraph 1 shall be allowed to receive individual or collective relief;

(d) they shall be allowed to practise their religion;

(e) women shall be held in quarters separated from men's quarters; they shall be under the immediate supervision of women. This does not apply to those cases where members of the same family are in the same place of internment.

3. Subject to temporary and exceptional measures, the Parties to the conflict

(a) shall allow the persons referred to in paragraph 1 to send and receive letters and cards. The Parties to the conflict may limit the number of such letters if they deem in necessary;

(b) shall facilitate visits to the persons referred to in paragraph 1 by an impartial humanitarian body such as the International Committee of the Red Cross.

4. Within the limits of their capabilities, the Parties to the conflict shall also respect the following provisions:

Draft Protocol II, Article 8 (continued)

CDDH/I/236 (concluded)

(a) the persons referred to in paragraph 1 shall be accommodated in buildings or quarters which afford reasonable safeguards as regards hygiene and health, and provide efficient protection against the rigours of the climate and the dangers of the armed conflict;

(b) they shall be provided with adequate supplies of drinking water and with food rations sufficient to keep them in good health; they shall be permitted to secure or to be provided with adequate clothing;

(c) they shall be allowed to receive spiritual assistance from chaplains and other persons performing similar functions;

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

CDDH/I/245
20 March 1975
Original: Russian

Byelorussian Soviet Socialist Republic
Ukrainian Soviet Socialist Republic
Union of Soviet Socialist Republics

In paragraph 5, after "International Committee of the Red Cross", add the words "or the national Red Cross society".

CDDH/I/247
21 March 1975
Original: French

Holy See

Replace the text of sub-paragraph 3(b) by the following:

"(b) they shall be allowed to practise their religion and receive spiritual assistance from persons, such as chaplains, performing religious functions."

Draft Protocol II, Article 8 (continued)

CDDH/I/264
25 March 1975
Original: French

Belgium

To paragraph 4 of the amendment submitted by the Federal Republic of Germany (CDDH/I/236), add a new sub-paragraph (e) reading:

"(e) the Parties to the conflict shall establish and communicate lists of persons whose liberty has been restricted, in conformity with the provisions of Article 34 of the present Protocol."

CDDH/427
31 May 1977
Original: English

Pakistan

1. Renumber as Article 5.
2. Replace the introductory part of paragraph 1 by the following:

"1. In addition to the provisions of Article 4, the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:"

3. Replace sub-paragraph 1(a) by the following:

"(a) the wounded and the sick shall be respected, protected and treated humanely and shall receive with the least possible delay the medical care and attention required by their condition;"

4. Replace the introductory part of paragraph 2 by the following:

"2. Those who are responsible for the internment of the liberty of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to them:"

Draft Protocol II, Article 8 (concluded)

CDDH/427 (concluded)

5. Replace sub-paragraph 2(b) by the following:

"(b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;"

6. Add sub-paragraph (e) to paragraph 2 as follows:

"(e) they shall not be subjected to any medical procedure which is not indicated by the state of health of the persons concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances."

7. In paragraph 3 substitute "4" for "6" appearing after "Article" and substitute "4" for "5".

8. Delete paragraph 4.

9. Renumber paragraph 5 as 4 and redraft as follows:

"4. In case it is decided to release persons deprived of their liberty necessary measures to ensure their safety shall be taken by those so deciding."

CDDH/432
2 June 1977

Pakistan

Original: English

Amend Article 5 (CDDH/427) as follows:

1. Reword sub-paragraph (a) as follows:

"The wounded and the sick shall be treated in accordance with Article 8."

2. Delete sub-paragraph 2(e) and renumber the following sub-paragraph accordingly.

For draft amendment CDDH/I/6 submitted by the Republic of Viet-Nam, see Annex II to the Table of Amendments,

ARTICLE 8 bis - INTERNED FAMILIES
(withdrawn)

CDDH/I/250
21 March 1975
Original: English

Canada

Add a new Article 8 bis:

"Article 8 bis - Interned families

Regardless of the provisions of Article 8, wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees. Internees may request that their children who are left at liberty without parental care shall be interned with them and, except where compliance would be contrary to the interests of the children concerned, it shall be so granted."

(This amendment was withdrawn by its sponsor. See document CDDH/405/Rev.1, paragraph 123.)

ARTICLE 9 - PRINCIPLES OF PENAL LAW
(incorporated in Article 10 by Committee I
at the third session)

CDDH/I/37 Canada
14 March 1974
Original: English

Delete paragraphs 2, 3, 4 and 5.

(This amendment was withdrawn at the thirty-third meeting of
Committee I, on 20 March 1975.)

CDDH/I/89 German Democratic Republic
11 September 1974
Original: English

Amend paragraph 2 to read:

"2. No one may be punished on account of any act or
omission contrary to a duty to act which was not an offence
under national or international law at the time when it was
committed."

CDDH/I/95 Poland
1 October 1974
Original: French

1. In paragraph 2 insert the words "prosecuted or" after
the words "No one may be".
2. Add the following words at the end of paragraph 4:
"subject to subsequent and more favourable provisions".

Draft Protocol II, Article 9 (concluded)

CDDH/I/248
21 March 1975
Original: French

Brazil

1. Amend the first paragraph of Article 9 to read:

"1. No one may be punished for an offence for which he or she is not personally responsible; collective penalties are prohibited."

2. Reword paragraph 4 of Article 9 on the lines of paragraph 3(d) of Article 65 in Protocol I.

CDDH/I/258
24 March 1975
Original: English

United States of America

1. Begin the Article with introductory language applicable to all its paragraphs, as follows: "With respect to offences related to the conflict:".
2. Delete paragraph 3.

CDDH/I/262
24 March 1975
Original: English/
French

Belgium, Netherlands, New Zealand

Since this proposal (see amendment CDDH/I/262, page below) to Article 10 takes up the contents of Article 9 of the International Committee of the Red Cross draft, Article 9 should as a consequence be deleted.

For amendments CDDH/I/4 and CDDH/I/58 submitted by the Philippines, see Annex I to the Table of Amendments.

Draft Protocol II, Article 10 (continued)

CDDH/I/252

Nigeria

21 March 1975

Original: English

1. Replace paragraph 1 by the following:

"1. No sentence shall be passed or penalty inflicted upon a person found guilty of an offence in relation to the armed conflict without previous judgement by a court whose jurisdiction is based on a recognizable body of laws and which offers the guarantees of independence and impartiality which are generally recognized as essential, in accordance with a procedure affording the accused the necessary rights and means of defence."

2. Delete paragraph 6.

CDDH/I/259

Canada

24 March 1975

Original: English

Replace Article 10 by the following:

"Article 10 - Penal provisions

1. No one shall be sentenced or punished for an offence in relation to the conflict without previous judgement pronounced by a court or a properly constituted tribunal affording all the usual guarantees required by the Rule of Law, which are generally recognized as essential, including a procedure affording the accused the right to defend himself or to be represented by counsel.

2. Representatives of the national Red Cross (Red Crescent or Red Lion and Sun) Society, or branches thereof, or body fulfilling the functions of such a Society and the identification of which has been notified to and agreed by the other party, shall have the right to attend the trial of any accused person, unless the hearing is, as an exceptional measure, to be held in camera.

3. A convicted person shall be advised of his rights of appeal and petition, and of any time limits. In no case shall he be denied any of the rights under the law normally applicable.

Draft Protocol II, Article 10 (continued)

CDDH/I/259 (concluded)

4. The death penalty pronounced on any person found guilty of an offence in relation to the armed conflict shall not be carried out until the conflict has concluded.

5. The death penalty shall not be pronounced for an offence in relation to the armed conflict committed by persons below / eighteen / / fifteen / years of age.

6. The death penalty shall not be carried out on pregnant women or mothers of infants.

7. At the conclusion of the conflict, the authorities in power shall endeavour to grant amnesty to as many as possible of those who have participated in the armed conflict or whose liberty has been restricted for reasons related to the armed conflict."

CDDH/I/260
24 March 1975
Original: English

Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Democratic Republic of Viet-Nam, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics

Add a new paragraph 7:

"7. Nothing in the present Protocol shall be invoked to prevent the prosecution and punishment of persons charged with crimes against humanity or who participate in the conflict as foreign mercenaries."

CDDH/I/261
24 March 1975
Original: English

Sweden

1. Delete paragraphs 3 and 4 and insert as one paragraph:

"In no case of offences related to the armed conflict shall the death penalty be imposed."

Draft Protocol II, Article 10 (continued)

CDDH/I/261 (concluded)

2. Delete paragraph 5 and insert as a new paragraph:

"No prosecution shall be carried out and no sentence shall be passed only by reason of a person's taking part in hostilities covered by the present Protocol, except where the participation involved violations of the present Protocol."

CDDH/I/262

24 March 1975

Original: English/
French

Belgium, Netherlands, New Zealand

Amend Article 10 to read:

"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 afford the accused before and during his trial the necessary rights and means of defence;

(b) no one may be punished for an offence he or she has not personally committed; collective penalties are prohibited;

(c) no one may be prosecuted or punished for an offence in respect of which a final judgement, acquitting or convicting that person, has already been given;

(d) no one may be prosecuted for an act or omission which was not an offence under national or international law at the time when it was committed, nor shall a heavier penalty be imposed than the one applicable at that time, subject to later more favourable provisions;

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

Draft Protocol II, Article 10 (concluded)

CDDH/I/262 (concluded)

3. Paragraph 2 of the ICRC draft.
4. 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.
5. Paragraph 4 of the ICRC draft.
6. Paragraph 5 of the ICRC draft.
7. Paragraph 6 of the ICRC draft."

CDDH/427
31 May 1977
Original: English

Pakistan

Renumber as Article 6.

For amendments CDDH/I/4 and CDDH/I/58 submitted by the Philippines, see Annex I to the Table of Amendments.

ARTICLE 10 bis - PROHIBITION OF REPRISALS *
(adopted by Committee I at the fourth session
and rejected by the Conference
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/I/302
23 April 1976
Original: French

International Committee of the Red Cross
(Suggested amendment)

"Article 10 bis

Failure by a Party to the conflict to observe the provisions of this Protocol shall not entitle the adverse Party to take countermeasures infringing the provisions of this Protocol against persons who do not take a direct part or who have ceased to take a part in hostilities, whether or not their liberty has been restricted, and against medical units and transports, even if the aim of such countermeasures is to make the adverse Party respect his own obligations."

CDDH/427
31 May 1977
Original: English

Pakistan

Delete this article.

* Provisional title suggested by the Secretariat.

PART III - WOUNDED, SICK AND SHIPWRECKED PERSONS *

CDDH/II/231
17 February 1975
Original: English

Australia

Amend the heading of Part III to read: "THE WOUNDED
AND SICK AND THE SHIPWRECKED".

* Title in Final Act: PART III - WOUNDED, SICK AND SHIPWRECKED.

ARTICLE 11 - DEFINITIONS
(adopted by Committee II at the third and fourth sessions
and rejected by the Conference
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/II/18
11 March 1974
Original: French

Holy See

In sub-paragraph (f) ii, add the words: "and the
voluntary relief organizations".

CDDH/II/58
12 March 1974
Original: French

Holy See

Add the following definition:

"'chaplains and other persons performing similar
functions' means:

- i. army chaplains of whatever religious denomination;
- ii. ministers of religion serving the people;
- iii. chaplains engaged in civil defence as defined in
Article 54 and ministers of religion of the
national Red Cross (Red Crescent, Red Lion and
Sun) Societies and voluntary relief agencies."

CDDH/II/218
13 February 1975
Original: English

Canada

Delete this Article.

Draft Protocol II, Article 11 (continued)

CDDH/II/219
13 February 1975
Original: English

United States of America

Amend the Article to read:

"The terms defined in Articles 11 and 21 of the Protocol Additional to the Geneva Conventions of August 12, 1949 and relating to the Protection of Victims of International Armed Conflict, shall, as far as applicable, have the same meaning when used in the present Protocol."

CDDH/II/224
17 February 1975
Original: English

Australia

Replace the existing Article by the following:

"For the purposes of this Part:

(a) 'the wounded and sick' means persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. The term shall also be construed to cover other persons in need of medical assistance and care who refrain from any act of hostility, including the infirm, pregnant women and maternity cases, as well as new-born babies;

(b) 'the shipwrecked' means persons, whether military or civilian, who are in peril at sea or on other waters as a result of the destruction, loss or disablement of the vessel or aircraft in which they were and who refrain from any act of hostility;

(c) 'medical unit' means establishments and units, whether military or civilian, organized for medical purposes, such as the search for, removal, transportation, diagnosis or treatment of the wounded and sick as well as the prevention of disease. The term includes, for example, hospitals, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such medical units. Medical units may be fixed or mobile;

Draft Protocol II, Article 11 (continued)

CDDH/II/224 (concluded)

(d) 'medical transport' is any means of transport assigned for the transportation by land, sea or air of the wounded and sick and the shipwrecked, medical personnel, equipment and supplies;

(e) 'medical personnel' means

- i. the personnel of the Parties to the conflict, whether military or civilian who are assigned to the search for, removal, treatment or transportation of the wounded and sick and the shipwrecked; it includes medical transport crews and personnel as well as personnel engaged in the operation and administration of medical units and medical transports;
- ii. the civil defence personnel performing the tasks referred to in paragraph (a) of Article 31 and the medical and medico-social personnel of Red Cross (Red Crescent, Red Lion and Sun) organizations referred to in Article 35;

(f) 'distinctive emblem' means the distinctive emblem of the red cross (red crescent, red lion and sun) and a white ground."

CDDH/II/270
18 March 1975
Original: French

Austria, France, Holy See, Nigeria

1. Replace sub-paragraph (g) by the following:

"'Religious personnel' means persons such as chaplains exclusively engaged in the work of their ministry and attached:

- (a) either to military or civilian medical units;
- (b) or to organized armed groups within the meaning of Article 1 of the present Protocol;
- (c) or to organized civil defence groups."

2. Renumber the present sub-paragraph (g) ('distinctive emblem') as sub-paragraph (h).

Draft Protocol II, Article 11 (continued)

CDDH/II/315
11 April 1975
Original: English

Netherlands, United Kingdom of Great
Britain and Northern Ireland, United
States of America

1. Amend sub-paragraph (f) as follows:

"(f) 'medical personnel' means those persons exclusively assigned to the search for, the collection, transportation or treatment of the wounded and sick, or the shipwrecked, or to the prevention of disease; and also persons exclusively assigned to the administration of medical units, or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term shall include:

- i. the medical personnel of Parties to the conflict whether military or civilian, including those assigned to medical tasks of civil defence.
- ii. medical personnel of Red Cross (Red Crescent, Red Lion and Sun) organizations and of other voluntary aid / societies / / organizations / located within the territory of the High Contracting Party / referred to in Article 1 of the present Protocol /, recognized and authorized by a Party to the conflict."

2. Add a new sub-paragraph (g):

"(g) 'Religious personnel' means persons such as chaplains, whether military or civilian, exclusively engaged in the work of their ministry and attached either to:

- i. armed forces or other armed groups of the Parties to the conflict, or to,
- ii. medical units of the Parties to the conflict."

3. Renumber the present sub-paragraph (g) as sub-paragraph (h).

Draft Protocol II, Article 11 (concluded)

CDDH/427

Pakistan

31 May 1977

Original: English

Delete the Article.

For amendment CDDH/II/91 submitted by the Republic of Viet-Nam, see Annex II to the Table of Amendments.

ARTICLE 12 - PROTECTION AND CARE *
(adopted by Committee II at the second session
and by the Conference
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/44 Romania
13 March 1974
Original: French

Add a new paragraph 5 as follows:

"5. The protection and care provided for in the present Part shall be given for humanitarian purposes only and may never serve as a pretext for violation of the law."

CDDH/II/218 Canada
13 February 1975
Original: English

Amend paragraph 1 to read:

"1. The wounded, sick and the shipwrecked shall be respected and protected."

(This amendment was withdrawn at the twenty-fifth meeting of Committee II, on 26 February 1975.)

CDDH/II/225 Australia
17 February 1975
Original: English

Delete the existing Article and insert:

"1. The wounded and sick and the shipwrecked shall be respected and protected.

2. In all circumstances the wounded and sick shall be treated humanely and shall receive, with the least possible delay and without any discrimination the medical care necessitated by their condition.

* Article 7 of the Final Act.

Draft Protocol II, Article 12 (continued)

CDDH/II/225 (concluded)

3. The physical or mental integrity of the wounded and sick, the shipwrecked and persons whose liberty has been restricted by capture or arrest for reasons in relation to the armed conflict shall not be endangered by any unjustified act or omission. Accordingly it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and is not consistent with accepted medical standards which would be applied to nationals of the Party under similar circumstances. In particular it is prohibited to carry out on such persons, even with their consent:

- (a) physical mutilation;
- (b) medical or scientific experiments;
- (c) the removal of tissue or organs for transplantation.

4. Exceptions to the provisions of paragraph 3 may be made only in the case of donations of blood or of skin for grafts provided that they are given voluntarily and without any coercion or inducement and then only under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient."

CDDH/II/238
19 February 1975
Original: English

Byelorussian Soviet Socialist Republic,
Ukrainian Soviet Socialist Republic,
Union of Soviet Socialist Republics

Replace paragraph 2 of Article 12 of the ICRC draft and that of amendment CDDH/II/225 by the following:

"2. The wounded and the sick belonging to any Party to the conflict or to the neutral part of the population shall, under all circumstances, be treated humanely and offered necessary medical care on equal footing. The only criterion in determining the priority and scope in rendering medical assistance shall be the state of health."

Draft Protocol II, Article 12 (concluded)

CDDH/427

Pakistan

31 May 1977

Original: English

Renumber as Article 8 and redraft as follows:

"Article 8 - Protection and care

1. All the wounded, sick and shipwrecked, and whether or not they have taken part in the armed conflict, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones."

ARTICLE 12 bis - PROTECTION OF PERSONS
(adopted by Committee II at the second session
and rejected by the Conference
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/II/GT/24

3 March 1975

Original: English

Proposal made by the Working Group

"Article 12 bis - Protection of persons

1. The physical or mental health and integrity of persons who have fallen into the hands of the adverse Party, or who are interned, detained or deprived of liberty, as a result of hostilities, shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with accepted medical standards which would normally be applied within the State.

2. In particular it is prohibited to carry out on such persons, even with their consent:

- (a) physical mutilations;
- (b) medical or scientific experiments;
- (c) removal of tissue or organs for transplantation.

3. Exceptions to the prohibition contained in paragraph 2(c) of this Article may be made only in the case of donations of blood or of skin for grafts provided that they are given voluntarily and without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient."

Draft Protocol II, Article 12 bis (concluded)

CDDH/427

Pakistan

31 May 1977

Original: English

1. Renumber paragraph 1 as Article 5(f) and redraft as follows:

"(f) Their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances."

2. Delete paragraph 2.

ARTICLE 13 - SEARCH AND EVACUATION *
(adopted by Committee II at the second and fourth sessions
and by the Conference as Article 8 bis
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/II/226
17 February 1975
Original: English

Australia

Amend the Article to read:

"Article 13 - Search and evacuation

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

2. Whenever circumstances permit, local arrangements shall be concluded by the Parties to the conflict for the removal of the wounded and sick and the shipwrecked from the combat zone or from a besieged or encircled area."

CDDH/427
31 May 1977
Original: English

Pakistan

Delete Article 13.

CDDH/431
2 June 1977
Original: English

Pakistan

In the simplified draft of Protocol II (CDDH/427),
add a new Article 8 bis - Search.

"Whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, to search for the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them."

* Title in Final Act: Article 8 - Search.

ARTICLE 14 - ROLE OF THE CIVILIAN POPULATION
(adopted by Committee II at the second and third sessions
and rejected by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/II/227

Australia

17 February 1975

Original: English

Redraft Article 14 as follows:

"Article 14 - Role of the civilian population

1. The civilian population shall respect the wounded and sick and the shipwrecked, even if they belong to the adverse Party, and shall refrain from committing any acts of violence against them.

2. Relief societies, such as Red Cross (Red Crescent, Red Lion and Sun) organizations and the civilian population shall be permitted to offer medical assistance or care to the wounded and sick and the shipwrecked, either spontaneously or at the request of the Parties to the conflict.

3. No one shall be harmed, prosecuted or convicted for having given medical assistance or care to the wounded and sick and the shipwrecked, even if they belong to the adverse Party.

4. Parties to the conflict may appeal to the charity of commanders of civilian ships and crafts, vehicles and aircraft to take aboard and care for the wounded and sick and the shipwrecked, and to collect the dead. Ships, craft, vehicles and aircraft responding to such appeals and those spontaneously giving shelter to such casualties shall be granted special protection and facilities for the discharge of their mission of assistance."

Draft Protocol II, Article 14 (concluded)

CDDH/427

Pakistan

31 May 1977

Original: English

Renumber as Article 15 and redraft as follows:

"The civilian population and relief societies located in the territory of the High Contracting Party, such as Red Cross, Red Crescent, Red Lion and Sun organizations may offer their services for performance of their traditional functions in relation to the victims of the armed conflict."

For amendment CDDH/II/7 submitted by the Republic of Viet-Nam, see Annex II to the Table of Amendments.

ARTICLE 15 - MEDICAL AND RELIGIOUS PERSONNEL *
(adopted by Committee II at the second and third sessions
and by the Conference
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/II/218 Canada
13 February 1975
Original: English

Delete Article 15.

(This amendment was replaced by document CDDH/II/241 below.)

CDDH/II/228 Australia
17 February 1975
Original: English

Amend Article 15 as follows:

"Medical personnel and chaplains and other persons performing similar functions whether military or civilian, shall, in all circumstances, be respected and protected. They shall be granted every assistance possible for the discharge of their functions and shall not be compelled to carry out tasks unrelated to their mission."

(This amendment was replaced by document CDDH/II/243 below.)

CDDH/II/233 and Austria, Belgium, France, Holy See,
Add.1 Nigeria, Switzerland
18 February 1975
Original: French

Amend Article 15 as follows:

"Medical personnel and religious personnel (such as chaplains), whether military or civilian, ministering to the wounded, the sick and the shipwrecked shall, in all circumstances, be respected and protected.

They shall be granted all the aid necessary for the discharge of their functions and shall not be compelled to carry out tasks unrelated to their mission."

(In document CDDH/II/233/Add.1, the Holy See was added as co-sponsor.)

(This amendment was replaced by document CDDH/II/243.)

* Title in Final Act: Article 9 - Protection of medical and religious personnel.

Draft Protocol II, Article 15 (continued)

CDDH/II/241
21 February 1975
Original: English

Canada

Amend Article 15 to read:

"All medical personnel, chaplains and other persons performing similar functions, as well as civilians who care for the wounded and sick and the shipwrecked, shall be respected and protected at all times. They shall not be harmed, convicted or punished for having offered to provide or for having provided care to the wounded and sick and the shipwrecked, or otherwise attended to their needs."

(The first sentence of this amendment was withdrawn at the twenty-seventh meeting of Committee II, on 28 February, 1975, in favour of the first sentence of amendment CDDH/II/243.)

CDDH/II/243
26 February 1975
Original: French

Australia, Austria, Belgium, France,
Holy See, Nigeria, Switzerland

Redraft Article 15 to read:

"Medical personnel and religious personnel - such as chaplains, whether military or civilian, ministering to the wounded, the sick and the shipwrecked, shall in all circumstances be respected and protected.

They shall be granted all the aid necessary for the discharge of their functions and shall not be compelled to carry out tasks unrelated to their mission."

This text is based directly on Article 15 of Protocol I, which the Committee has just adopted.

CDDH/II/388
3 June 1976
Original: English

Canada, United Kingdom of Great Britain
and Northern Ireland, United States of
America

Amend the last sentence of paragraph 1 of Article 15 to read: "They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission."

Draft Protocol II, Article 15 (concluded)

CDDH/427

Pakistan

31 May 1977

Original: English

Renumber as Article 9 and redraft paragraph 2 as follows:

"2. In performance of their duties and except on medical grounds, medical personnel should not be required to give priority to any person."

ARTICLE 16 - GENERAL PROTECTION OF MEDICAL DUTIES *
(adopted by Committee II at the second session
and by the Conference
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/II/1 Belgium
27 February 1974
Original: French

Add the following to paragraph 2:

"In particular, such persons shall not be compelled to administer to prisoners treatment calculated to induce them to behave in any given fashion in relation to the armed conflict."

CDDH/43 Romania
13 March 1974
Original: French

1. In paragraph 1 add the following sentence: "Mandatory health regulations concerning the notification of communicable diseases shall be observed."

2. Delete paragraph 3.

CDDH/II/218 Canada
13 February 1975
Original: English

Delete Article 16.

(This amendment was withdrawn as regards the deletion of paragraphs 1 and 2 at the twenty-eighth meeting of Committee II, on 3 March 1975.)

CDDH/II/222 United States of America
13 February 1975
Original: English

Delete Article 16.

(This amendment was withdrawn as regards the deletion of paragraphs 1 and 2 at the twenty-eighth meeting of Committee II, on 3 March 1975.)

* Article 10 of the Final Act.

Draft Protocol II, Article 16 (concluded)

CDDH/II/229
17 February 1975
Original: English

Australia

Delete the existing Article and insert the following:

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

2. Persons engaged in medical activities shall neither be compelled to perform acts or carry out work contrary to, nor to refrain from acts required by:

(a) medical ethics or rules designed for the benefit of the wounded and sick; or

(b) the present Protocol.

3. No person engaged in medical activities may be compelled to give to any authority adverse to that person information concerning the sick and wounded under his care or who have been under his care, if that information is likely, in his judgement, to prove harmful to the persons concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected."

CDDH/427
31 May 1977
Original: English

Pakistan

Renumber as Article 10.

ARTICLE 17 - MEDICAL UNITS AND TRANSPORTS *
(adopted by Committee II at the second session
and by the Conference
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/II/218
13 February 1975
Original: English

Canada

1. Amend Article 17 to read:

"Medical personnel, chaplains and other persons performing similar functions, medical units and medical transports, whether military or civilian, shall be respected and protected at all times."

2. Change title to read: "Medical personnel, units and transport".

(This amendment was withdrawn at the twenty-eighth meeting of Committee II, on 3 March 1975.)

CDDH/II/235
18 February 1975
Original: English

United States of America

Redraft as follows:

1. Medical units and transports shall be respected and protected at all times and shall not be the object of attack.

2. The protection to which medical units are entitled shall not cease unless they are used to commit, outside their humanitarian function acts harmful to the adverse Party. Protection may, however, cease only after warning has been given setting, whenever appropriate, a reasonable time limit, and after such warning has remained unheeded.

3. The following shall not be considered harmful acts:

- (a) the fact that the personnel of a medical unit or medical transport are armed for their own defence or that of the wounded and sick in their care;

* Title in Final Act: Article 11 - Protection of medical units and transports.

Draft Protocol II, Article 17 (concluded)

CDDH/II/235 (concluded)

(b) the presence in medical units or medical transport of small arms and ammunition taken from the wounded and sick and not yet handed over to the proper service;

(c) the fact that medical units are guarded by armed sentries or escorts for keeping order."

CDDH/427

31 May 1977

Original: English

Pakistan

Renumber as Article 11 and delete paragraph 3.

ARTICLE 18 - THE DISTINCTIVE EMBLEM *
(adopted by Committee II at the second session
and by the Conference
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/427
31 May 1977
Original: English

Pakistan

1. Renumber as Article 12.
2. Redraft paragraph 1 as follows:

"Under the direction of the competent authority concerned, the distinctive emblem shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances."

3. Delete paragraphs 2 and 3.

CDDH/429
2 June 1977
Original: English

Pakistan

At the end of the Article add the words "and not be used improperly".

* Article 12 of the Final Act.

ARTICLES 19 bis, 19 ter, 19 quater

NOTE. See amendment CDDH/II/92 submitted by the Republic of Viet-Nam (Annex II to the Table of Amendments).

ARTICLE 19 quinquies - FOREIGN STATES
(withdrawn)

CDDH/II/248

Norway

3 March 1975

Original: English

Insert the following:

"Article 19 quinquies - Foreign States

In the event of an armed conflict as defined in Article 1 of this Protocol foreign States shall, to the extent that they are applicable, comply with the provisions of this Protocol (Part) in respect of (such persons protected by it) (the wounded, the sick and the shipwrecked) who may be received or interned within their territory and to any dead of the Parties to that conflict whom they may find."

(This amendment was withdrawn at the thirty-fourth meeting of Committee II, on 11 March 1975.)

PART IV - METHODS AND MEANS OF COMBAT

ARTICLE 20 - PROHIBITION OF UNNECESSARY INJURY
(adopted by Committee III at the third session
and rejected by the Conference
at the fifty-first plenary meeting, on 3 June 1977)

CDDH/III/87

German Democratic Republic

11 September 1974

Original: English

Replace Article 20 by the following:

"Article 20 - Means and methods of combat

1. The choice of means and methods of combat by the Parties to the conflict and by the combatants is not unlimited.
2. It is forbidden to use means and methods which cause unnecessary suffering or other particularly cruel means and methods.
3. It is forbidden to use means and methods which affect military objectives and protected persons or civilian objects indiscriminately.
4. It is forbidden to use means and methods which destroy natural human environmental conditions.
5. In cases for which no provision is made in the present Protocol, the principle of humanity, the rules and principles of international law and the dictates of the public conscience shall continue to safeguard populations and combatants pending the adoption of fuller regulations."

Draft Protocol II, Article 20 (concluded)

CDDH/III/104

Finland

4 October 1974

Original: English

Replace the present title and text by the following:

"Article 20 - Basic rule

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

2. It is forbidden to employ weapons, projectiles, substances, or other methods and means which cause unnecessary suffering or superfluous injury."

CDDH/III/215

Brazil

19 February 1975

Original: English

In paragraph 1, after the words "armed forces", insert the words "... or organized armed groups ...".

CDDH/427

Pakistan

31 May 1977

Original: English

Delete this Article.

ARTICLE 20 bis - PROTECTION OF CULTURAL OBJECTS

AND OF PLACES OF WORSHIP*

(adopted by Committee III at the third and fourth sessions
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/III/GT/95

25 May 1976

Original: French

Afghanistan, Egypt, Ghana, Greece,
Holy See, Italy, Iran, Japan, Jordan,
Spain, Yugoslavia

Add a new Article 20 bis reading as follows:

"It is forbidden to commit any acts of hostility
against historic monuments and places of worship which
constitute the national heritage of a country, and to use
them in support of the military effort."

CDDH/427

31 May 1977

Original: English

Pakistan

Delete this Article.

CDDH/436

3 June 1977

Original: French

Austria, Cyprus, Greece, Holy See, Italy,
Kuwait, Saudi Arabia

1. Amend the title to read: "Article 20 bis - Protection
of cultural objects and of places of worship"**
2. Delete the words: "Without prejudice to the provisions
of the Hague Convention on the Protection of Cultural
Property in the Event of Armed Conflict of 14 May 1954".
3. Insert after the words: "historic monuments or works
of art" the words "or places of worship which constitute
the cultural and spiritual heritage of peoples".

* Article 16 of the Final Act.

** At the fifty-ninth meeting, on 10 May 1977, Committee III had
adopted a draft of this article with the title "Protection of
cultural objects" (see CDDH/407/Rev.1, Annex).

Draft Protocol II, Article 20 bis (concluded)

CDDH/436/Rev.1 and
Corr.1
6 June 1977
Original: French

Austria, Cyprus, Greece, Holy See, Italy,
Kuwait, Saudi Arabia

1. The title of the Article should read as follows:
"Protection of cultural objects and of places of worship".
2. Delete the words: "Without prejudice to the provisions of the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954".
3. Insert after the words: "historic monuments or works of art" the words "or places of worship which constitute the cultural and spiritual heritage of peoples".

(In document CDDH/436/Rev.1/Corr.1, Australia was replaced by Austria as co-sponsor.)

ARTICLE 21 - PROHIBITION OF PERFIDY
(adopted by Committee III at the fourth session
and rejected by the Conference
at the fifty-second plenary meeting, on 6 June 1977)

CDDH/III/105
1 October 1974
Original: French

Poland

Replace the present text of the second and third sentences of paragraph 1 by the following: "Acts inviting the confidence of the adversary with intent to betray that confidence and to cause him to take action in the false belief that he is legally bound to do so, are deemed to constitute perfidy. Such acts include the following:".

CDDH/III/221
24 February 1975
Original: English

Canada

Delete this Article.

CDDH/427
31 May 1977
Original: English

Pakistan

Delete this Article.

ARTICLE 22 - QUARTER
(adopted by Committee III at the third session
and rejected by the Conference
at the fifty-second plenary meeting, on 6 June 1977)

CDDH/I/37
14 March 1977
Original: English

Canada

Transfer Article 22 to Article 7 to become paragraph 1 of that Article. The existing paragraph 1 of Article 7 will then become paragraph 2 of the new Article 7. Thus:

"Article 7 - Quarter and safeguard of an enemy hors de combat

1. It is forbidden to order that there shall be no survivors, to threaten an adversary therewith and to conduct hostilities on such basis.

2. In accordance with Article 6, it is forbidden to kill, injure, ill-treat or torture an adversary hors de combat. An adversary hors de combat is one who, having laid down his arms, no longer has any means of defence or has surrendered. These conditions are considered to have been fulfilled, in particular in the case of an adversary who:

(a) is unable to express himself, or

(b) has surrendered or has clearly expressed an intention to surrender

(c) and abstains from any hostile act and does not attempt to escape."

CDDH/III/221
24 February 1975
Original: English

Canada

Delete this Article.

CDDH/427
31 May 1977
Original: English

Pakistan

Delete this Article.

ARTICLE 22 bis - SAFEGUARD OF AN ENEMY HORS DE COMBAT
(adopted by Committee III at the third session
and rejected by the Conference
at the fifty-second plenary meeting, on 6 June 1977)*

CDDH/III/350
2 June 1976
Original: English

Proposal by the Working Group

"Article 22 bis

1. A person who is recognized or should, under the circumstances, be recognized to be, hors de combat shall not be made the object of attack.

2. A person is hors de combat if:

(a) he is in the power of an adverse party; or

(b) he clearly expresses an intention to surrender;
or

(c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and he is therefore incapable of defending himself;

and in any case, provided that he abstains from any hostile act and does not attempt to escape."

CDDH/427
31 May 1977
Original: English

Pakistan

Delete this Article.

* See also Article 7.

ARTICLE 23 - RECOGNIZED SIGNS
(adopted by Committee III at the third session
and rejected by the Conference
at the fifty-second plenary meeting, on 6 June 1977)

CDDH/III/75 Venezuela
21 March 1974
Original: Spanish

Add a paragraph 3 reading as follows:

"3. It is forbidden to make use of the emblem and distinctive sign of the United Nations except as authorized by that Organization."

CDDH/III/216 Brazil
19 February 1975
Original: English

Replace paragraph 1 by the following:

"1. It is forbidden to make improper use of the protective sign of the red cross (red crescent, red lion and sun) and of other protective signs or emblems provided for in the Conventions, in the Additional Protocols to the Conventions, and in other similar international acts."

CDDH/III/221 Canada
24 February 1975
Original: English

Delete this Article.

CDDH/427 Pakistan
31 May 1977
Original: English

Delete this Article.

PART V - CIVILIAN POPULATION *

CHAPTER I - GENERAL PROTECTION AGAINST EFFECTS OF HOSTILITIES

ARTICLE 24 - BASIC RULES

(approved ad referendum by Committee III
at the first session and adopted at the second session.
Rejected by the Conference
at the fifty-second plenary meeting, on 6 June 1977)

CDDH/III/12
12 March 1974
Original: French

Romania

Redraft paragraph 1 to read:

"1. In order to ensure respect for the civil population and for civilian objects the Parties to the conflict shall confine their military operations to the weakening of the military resources of the adversary and shall at all times make a clear distinction between the civil population and civilian objects on the one hand and combatants and military objectives on the other."

CDDH/III/15
12 March 1974
Original: French

Czechoslovakia, German Democratic
Republic, Poland

Replace paragraph 1 by the following:

"1. In order to ensure respect for the civilian population and for civilian objects, the Parties to the conflict shall make a distinction between the civilian population and combatants, and between civilian objects and military objectives. The civilian population and civilian objects shall be protected against the dangers of hostilities."

* PART IV of the Final Act.

Draft Protocol II, Article 24 (concluded)

CDDH/III/23

13 March 1974

Original: English

United States of America

1. In paragraph 1, delete the words "shall confine their operations to the destruction or weakening of the military resources of the adversary and".

2. In paragraph 2, delete the words "when conducting military operations" and the second sentence.

CDDH/III/106

4 October 1974

Original: English

Finland

Delete paragraph 2.

CDDH/427

31 May 1977

Original: English

Pakistan

Delete this Article.

ARTICLE 25 - DEFINITION

(approved ad referendum by Committee III
at the first session and adopted at the second session.

Rejected by the Conference
at the fifty-second plenary meeting, on 6 June 1977)

CDDH/III/12
12 March 1974
Original: French

Romania

After the words "armed forces" insert the following:
"or of organized armed groups under a responsible command".

CDDH/III/13 and
Add.1
12 March 1974
Original: French

Finland, Sweden

In paragraph 2, replace the full-stop by a comma and
add the words "whether regarded individually, in groups or
as a whole."

(In document CDDH/III/13/Add.1, Sweden was added as co-sponsor.)

CDDH/III/31
14 March 1974
Original: English

Brazil

Replace paragraph 1 by the following:

"1. For the purposes of the present Protocol, any
person who is not a member of the armed forces or of
organized armed groups is considered to be a civilian."

CDDH/III/33
15 March 1974
Original: English

Arab Republic of Egypt

Add a new paragraph drafted as follows:

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

Draft Protocol II, Article 25 (concluded)

CDDH/III/34

Australia

15 March 1974

Original: English

Delete the existing text and substitute the following:

"Article 25 - Definition of the civilian population

1. The civilian population comprises all civilians. Persons who do not form part of the armed forces, or of organizations attached to them and who do not participate directly in operations of a military character, are civilians.

2. The presence, within the civilian population, of individuals who are not civilians does not affect the protection to be afforded to the civilian population.

3. In cases where doubt arises as to whether a person is a civilian, he shall be presumed to be a civilian until his status is otherwise established."

CDDH/III/36

Canada

15 March 1974

Original: English

In paragraph 1, change "of armed forces" to read "of armed forces or of organized armed groups."

CDDH/427

Pakistan

31 May 1977

Original: English

Delete this Article.

For amendment CDDH/III/2 submitted by the Republic of Viet-Nam, see Annex II to the Table of Amendments.

ARTICLE 26 - PROTECTION OF THE CIVILIAN POPULATION *
(adopted by Committee III at the second and fourth sessions
and by the Conference
at the fifty-second plenary meeting, on 6 June 1977)

CDDH/III/12
12 March 1974
Original: French

Romania

Redraft Article 26 to read:

"1. The civil population shall at all times enjoy general and effective protection against dangers resulting from military operations.

2. Never and in no circumstances shall the civil population in general or individual civilians in particular who do not take a direct and immediate part in hostilities, be made the object of attack in any form.

3. It is forbidden to employ means of combat or methods which strike or affect the civil population and combatants or civilian objects and military objectives indiscriminately, and to attack without distinction, as a single objective, by bombardment or any other method, a zone containing several military objectives situated in populated areas and at some distance from each other.

4. Reprisals against the civil population or civilians and methods designed to spread terror among the civilian population are prohibited."

5. (Unchanged).

(This amendment was replaced by document CDDH/III/327.)

CDDH/III/28
14 March 1974
Original: English

Ghana

In paragraph 3(b) after the words "incidental losses",
insert the words "or cause hardship".

(This amendment was replaced by document CDDH/III/324.)

* Article 13 of the Final Act.

Draft Protocol II, Article 26 (continued)

CDDH/III/36
15 March 1974
Original: English

Canada

1. Delete paragraph 1, second sentence.
2. Delete paragraph 2 and replace by:

"Civilians shall enjoy the protection afforded by this Chapter except when they commit hostile acts or take a direct part in military operations".

3. Delete paragraphs 3 and 5.

CDDH/III/42
18 March 1974
Original: English

Australia

1. Delete paragraph 2.
2. Replace paragraph 3 by the following:

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

(a) to attack without distinction, as one single objective, by bombardment or any other method, a zone containing several military objectives, which are situated in populated areas and are at such a distance from each other that they could reasonably be attacked individually;

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

3. Delete paragraph 4.

Draft Protocol II, Article 26 (continued)

CDDH/III/45

18 March 1974

Original: English

Sweden

Reword paragraph 3(b) as follows to form a new para-
graph 4, and renumber the subsequent paragraphs accordingly:

"4. It is forbidden to launch attacks even upon a military objective, when such attacks may be expected to entail losses among the civilian population or cause the destruction of civilian objects beyond the immediate vicinity of the military objective or, to cause such losses or such destruction within the immediate vicinity of the military objective, to an extent disproportionate to the direct and substantial military advantage anticipated."

CDDH/III/48

18 March 1974

Original: English

Algeria, Arab Republic of Egypt, Democratic
Yemen, Iraq, Kuwait, Libyan Arab Republic,
Morocco, Sudan, Syrian Arab Republic,
United Arab Emirates

1. In paragraph 1, replace the words "intended to" by the word "that".
2. In paragraph 3(b), substitute the word "or" for the word "and".
3. Put a full-stop after the word "objects", and delete the rest of the paragraph.
4. Add a new paragraph as follows:

"The following acts against the civilian population or individual civilians are particularly prohibited in all circumstances:

(a) individual or mass forcible transfers, deportations or expulsions outside their own territory;

(b) torture, collective punishments, arbitrary administrative detention, family splitting, corporal punishment or any similar act of physical or mental brutality;

(c) destruction of houses, shops or buildings, pillage, arbitrary expropriation or any act directed against civilian persons or civilian objects."

Draft Protocol II, Article 26 (continued)

CDDH/III/48/Rev.1 and Add.1 and 2
18 March 1974
Original: English

Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Kuwait, Libyan Arab Republic, Mali, Mauritania, Morocco, Sudan, Syrian Arab Republic, United Arab Emirates

1. In paragraph 1, delete the words "intended to" in the second line, and replace them by the word "that".
2. In paragraph 3(b) substitute the word "or" for the word "and" in the second line.
3. In paragraph 3(b), put a full stop after the word "objects" and delete the rest of the paragraph.
4. Add a new paragraph 5:

"5. The following acts against the civilian population or individual civilians are particularly prohibited in all circumstances:

(a) individual or mass forcible transfers, deportations or expulsions outside their own territory;

(b) torture, collective punishments, arbitrary administrative detention, family splitting, corporal punishment or any similar act of physical or mental brutality;

(c) destruction of houses, shops or buildings, pillage, arbitrary expropriation or any act directed against civilian persons or civilian objects."

(In documents CDDH/III/48/Rev.1/Add.1 and Add.2, Mali and Mauritania were added as co-sponsors.)

CDDH/III/51
18 March 1974
Original: English

Philippines

1. Redraft paragraph 1 to read:

"It is prohibited to attack, or commit acts capable of spreading terror amongst the civilian population and individual civilians."

Draft Protocol II, Article 26 (continued)

CDDH/III/51 (concluded)

2. Redraft paragraph 2 to read:

"Civilians shall enjoy the protection afforded by this Article except when they take a direct part in hostilities."

3. In sub-paragraph 3(b), delete the phrase "to an extent disproportionate to the direct and substantial military advantage anticipated."

4. Paragraph 4 (Unchanged).

5. Paragraph 5 (Unchanged).

CDDH/III/68
19 March 1974
Original: English

Brazil

Replace paragraph 2 by the following:

"2. Civilians shall enjoy the protection afforded by this Article provided that they do not lose their status by taking part in the hostilities."

CDDH/III/88
11 September 1974
Original: English

German Democratic Republic

Delete the second sentence of paragraph 1.

CDDH/III/89
11 September 1974
Original: English

German Democratic Republic

Replace paragraph 3(b) by:

"(b) to launch attacks which because of their character affect the cleanness and balance of the natural environment,"

Draft Protocol II, Article 26 (continued)

CDDH/III/90

German Democratic Republic

11 September 1974

Original: English

Redraft paragraph 4 as follows:

"4. Attacks against the civilian population as such or against civilian objects by way of reprisals or terror attacks are prohibited."

CDDH/III/324

Ghana

30 April 1976

Original: English

In sub-paragraph (b) of paragraph 3, after the words "incidental losses", insert the words "or cause hardship".

CDDH/III/327

Romania

30 April 1976

Original: French

Redraft Article 26 to read:

"1. The civil population shall at all times enjoy general and effective protection against dangers resulting from military operations.

2. Never and in no circumstances shall the civil population in general or individual civilians in particular who do not take a direct and immediate part in hostilities, be made the object of attack in any form.

3. It is forbidden to employ means of combat or methods which strike or affect the civil population and combatants or civilian objects and military objectives indiscriminately, and to attack without distinction, as a single objective, by bombardment or any other method, a zone containing several military objectives situated in populated areas and at some distance from each other.

4. Reprisals against the civil population or civilians and methods designed to spread terror among the civilian population are prohibited."

5. (Unchanged).

Draft Protocol II, Article 26 (concluded)

CDDH/427

Pakistan

31 May 1977

Original: English

1. Renumber this article as Article 7.
2. Delete paragraphs 3 and 5.

CDDH/433

Pakistan

2 June 1977

Original: English

In Article 7, paragraph 3, of the simplified draft of Protocol II (CDDH/427) replace the word "Chapter" by the word "Article".

ARTICLE 26 bis - GENERAL PROTECTION OF CIVILIAN OBJECTS
(adopted by Committee III at the second and fourth sessions
and rejected by the Conference
at the fifty-second plenary meeting, on 6 June 1977)

CDDH/III/13 and Finland, Sweden
Add.1
12 March 1974
Original: French

Add a new Article as follows:

"New Article 26 bis - General protection of civilian
objects

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

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

(In document CDDH/III/13/Add.1, Sweden was added as co-sponsor.)

CDDH/III/52 Sweden
18 March 1974
Original: English

Add the following paragraph to the new Article 26 bis:

"3. In case of doubt as to whether an object is civilian, it shall be presumed to be so."

CDDH/III/62 Arab Republic of Egypt, Iraq, Syrian Arab
Republic
19 March 1974
Original: English

Insert a new Article 26 bis reproducing the text of Article 47 of Protocol I.

Draft Protocol II, Article 26 bis (concluded)

CDDH/III/62/Rev.1

and Add.1

19 March 1974

Original: English

Arab Republic of Egypt, Iraq, Mali,
Syrian Arab Republic

A new Article 26 bis concerning general protection of civilian objects reading as Article 47 of the Protocol I will eventually be added.

(In document CDDH/III/62/Rev.1/Add.1, Mali was added as co-sponsor.)

CDDH/427

31 May 1977

Original: English

Pakistan

Delete this Article.

ARTICLE 27 - PROTECTION OF OBJECTS INDISPENSABLE
TO THE SURVIVAL OF THE CIVILIAN POPULATION *
(adopted by Committee III at the third session
and by the Conference
at the fifty-second plenary meeting, on 6 June 1977)

CDDH/III/12
12 March 1974
Original: French

Romania

Redraft Article 27 to read as follows:

"1. Civilian objects shall enjoy general and effective protection against the ravages of war; they shall not be the object of reprisals or attacks and shall not be damaged or destroyed, provided they are not used directly or immediately for the conduct of military operations.

2. General and effective protection shall be enjoyed by objects indispensable to the survival of the civil population, such as foodstuffs and food producing areas, crops, livestock, drinking water supplies, irrigation works, objects of national economic value, objects intended for the civil population, such as houses, dwellings, installations or means of transport, and all objects which are not military objectives, except where such objects intended for the civil population are mainly used as military objectives. Any action directed against such objects, whether to starve out civilians, or force them to move away or for any other reason, is prohibited."

(This amendment was replaced by document CDDH/III/327 below.)

CDDH/III/13 and
Add.1
12 March 1974
Original: French

Finland, Sweden

1. Delete the comma after the word "namely" and replace that word by the words "such as".

2. At the end of the Article, add the following sentence:
"These objects shall not be the subject of reprisals."

(In document CDDH/III/13/Add.1, Sweden was added as co-sponsor.)

* Article 14 of the Final Act.

Draft Protocol II, Article 27 (continued)

CDDH/III/62/Rev.1 and Arab Republic of Egypt, Iraq, Mali,
Rev.1/Add.1 Syrian Arab Republic
19 March 1974
Original: English

The amendments proposed to Article 48 of draft Protocol I will eventually apply to Article 27 of draft Protocol II, the following words being added to Article 27: "These objects shall not be made the object of reprisals."

(In document CDDH/III/62/Rev.1/Add.1, Mali was added as co-sponsor.)

CDDH/III/324 Ghana
30 April 1976
Original: English

After the words "irrigation works", insert the words "or the means of communication, such as arterial roads essential to the supply of such indispensable objects".

CDDH/III/327 Romania
30 April 1976
Original: French

Redraft Article 27 to read:

"1. Civilian objects shall enjoy general and effective protection against the ravages of war; they shall not be the object of reprisals or attacks and shall not be damaged or destroyed, provided they are not used directly or immediately for the conduct of military operations.

2. General and effective protection shall be enjoyed by objects indispensable to the survival of the civil population, such as foodstuffs and food producing areas, crops, livestock, drinking water supplies, irrigation works, objects of national economic value, objects intended for the civil population, such as houses, dwellings, installations or means of transport, and all objects which are not military objectives, except where such objects intended for the civil population are mainly used as military objectives. Any action directed against such objects, whether to starve out civilians, or force them to move away or for any other reason, is prohibited."

Draft Protocol II, Article 27 (concluded)

CDDH/427

Pakistan

31 May 1977

Original: English

Delete this Article.

Draft Protocol II, Article 28 (continued)

CDDH/III/37
15 March 1974
Original: French

Finland

Add to paragraph 1 the sentence "These objects shall not be made the target of reprisals".

CDDH/III/46
19 March 1974
Original: English

Australia

Delete existing Article and insert:

"Article 28 - Avoidance of unnecessary damage

1. Parties to the conflict shall endeavour to avoid attacks on or the destruction of works or installations containing potentially dangerous or destructive forces, such as dams, dykes and nuclear generating stations, particularly when damage to them or their destruction would cause grave losses among the civilian population.

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

CDDH/III/62
19 March 1974
Original: English

Arab Republic of Egypt, Iraq, Syrian
Arab Republic

Amend Article 28 to bring it into line with the final text of Article 49 of Protocol I.

Draft Protocol II, Article 28 (concluded)

CDDH/III/62/Rev.1 and Arab Republic of Egypt, Iraq, Jordan, Mali,
Corr.I and Syrian Arab Republic
Rev.1/Add.1
26 March 1974
Original: English

Article 28 will be amended at the proper time to read
as Article 49 of draft Protocol I.

(In document CDDH/III/62/Rev.1/Corr.1 the words "Article 29" were
amended to read "Article 49".)

(In document CDDH/III/62/Rev.1/Add.1, Mali was added as co-sponsor.)

(At the twentieth meeting of Committee III, on 14 February 1975,
Jordan joined as co-sponsor.)

CDDH/III/327 Romania
30 April 1976
Original: French

1. Redraft paragraph 1 to read:

"1. Works or installations containing dangerous
forces, such as dams, dykes, electric or nuclear power
stations shall at all times be protected. It is forbidden
to perpetrate any attacks, destruction, damage, reprisals
or any other harm in respect of these objects."

2. Add the following sentence at the end of paragraph 2:
"Military guard over these objects shall not serve as a
pretext for contravening the protection clauses in para-
graph 1."

CDDH/427 Pakistan
31 May 1977
Original: English

1. Renumber this Article as Article 13.
2. Delete paragraphs 2, 3 and 4.

ARTICLE 28 bis - PROTECTION OF THE NATURAL ENVIRONMENT

(adopted by Committee III at the second session
and then included by the Drafting Committee
in Article 20, as paragraph 3)

CDDH/III/55
19 March 1974
Original: English

Australia

Insert a new provision as follows:

"Article 28 bis - Protection of the natural environment

It is forbidden to despoil the natural environment as a
technique of warfare."

CDDH/427
31 May 1977
Original: English

Pakistan

Delete this Article.

See also CDDH/III/107 under Article 28 ter.

ARTICLE 28 ter - PRECAUTIONS IN ATTACK
(rejected by Committee III at the second session)

CDDH/III/107

Finland

4 October 1974

Original: English

Add a new Article as follows:

"Article 28 bis - Precautions in attack"

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

(a) Proposal I

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

Proposal II

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

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

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

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

Draft Protocol II, Article 28 ter (concluded)

CDDH/III/107 (concluded)

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

(At the twenty-second meeting, on 18 February 1975, the sponsor stated that the new Article 28 bis proposed by him in document CDDH/III/107 should be renumbered Article 28 ter (CDDH/III/SR.22).)

ARTICLE 29 - PROHIBITION OF FORCED MOVEMENT OF CIVILIANS *
(adopted by Committee III at the second and fourth sessions
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/III/12
12 March 1974
Original: French

Romania

Redraft paragraph 2 to read:

"2. Any deportation of the civilian population, individually or in groups, and any transfer of civilian objects or installations across the frontiers of the country of origin are strictly prohibited."

(This amendment was replaced by document CDDH/III/327.)

CDDH/III/40
15 March 1974
Original: English

Zimbabwe African People's Union (ZAPU)

1. Insert the following as paragraph 2:

"2. Whether or not civilians are displaced, they shall not be subject to forced or compulsory labour."

2. Paragraph 2 will then become paragraph 3.

CDDH/III/220
21 February 1975
Original: English

Canada

Delete Article 29.

* Article 17 of the Final Act.

Draft Protocol II, Article 29 (concluded)

CDDH/III/327

Romania

30 April 1976

Original: French

Redraft paragraph 2 to read:

"2. Any deportation of the civilian population, individually or in groups, and any transfer of civilian objects or installations across the frontiers of the country of origin are strictly prohibited."

CDDH/427

Pakistan

31 May 1977

Original: English

1. Renumber as Article 14.
2. Delete "a Party to the conflict" whenever it appears.
3. In paragraph 2, add a full stop after "conflict" and delete the rest of the sentence.

CHAPTER II - CIVIL DEFENCE

ARTICLE 30 - RESPECT AND PROTECTION
(adopted by Committee II at the fourth session
and rejected by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/II/368
11 May 1976
Original: English

Denmark

1. The Article should be renumbered "Article 31".
2. Add a new second sentence to paragraph 1: "It shall not be the object of attack."
3. Add a new paragraph 3:

"3. Buildings, or part of buildings, material, vehicles and water craft used exclusively for civil defence purposes shall not, except in the case of imperative military necessity, be the object of attack or destruction."

(This amendment was withdrawn at the eighty-ninth meeting of Committee II, on 6 May 1977.)

CDDH/II/415
18 April 1977
Original: English

Indonesia

Delete Article 30.

CDDH/II/421
18 April 1977
Original: English

Canada, France, United Kingdom of Great
Britain and Northern Ireland

Delete this Article.

(This amendment was withdrawn at the ninety-eighth meeting of Committee II, on 13 May 1977.)

Draft Protocol II, Article 30 (concluded)

CDDH/427

Pakistan

31 May 1977

Original: English

Delete Article 30.

Draft Protocol II, Article 31 (concluded)

CDDH/II/420

18 April 1977

Original: English

Canada, France, United Kingdom of Great
Britain and Northern Ireland, United
States of America

Delete this Article.

(The United States of America joined as co-sponsor at the eighty-ninth meeting of Committee II, on 6 May 1977.)

CDDH/II/422

18 April 1977

Original: French

Romania

1. Amend sub-paragraph (a) of the ICRC draft as follows:

"(a) rescue, first aid, conveyance of wounded;"

2. After sub-paragraph (a), insert a sub-paragraph (b) worded as follows:

"(b) fire-fighting, flooding and other disasters; participation in actions to prevent their effects;"

3. The present sub-paragraph (b) becomes sub-paragraph (c), etc.

(This amendment was withdrawn at the ninetieth meeting of Committee II, on 6 May 1977.)

ARTICLE 31 bis - IDENTIFICATION
(withdrawn)

CDDH/II/370
11 May 1976
Original: English

Denmark

Add a new Article 31 bis:

"Article 31 bis - Identification

1. The international distinctive sign of civil defence, marking the personnel, buildings, material, vehicles and water craft engaged in civil defence tasks, is an equilateral triangle on an orange background.
2. The distinctive sign shall be respected in all circumstances.
3. It may not be used to protect other persons or objects. The Parties to the conflict shall adopt special measures for supervising its use and for preventing and repressing any misuse of it."

(This amendment was withdrawn at the eighty-ninth meeting of Committee II, on 6 May 1977.)

CHAPTER III - MEASURES IN FAVOUR OF CHILDREN

ARTICLE 32 - PRIVILEGED TREATMENT *
(adopted by Committee III at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/III/12
12 March 1974
Original: French

Romania

1. Redraft paragraph 1 to read:

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

2. Redraft paragraph 2 to read:

"2. To this end, the Parties to the conflict, shall, inter alia:

(a) protect children against any form of indecent assault;".

3. The present sub-paragraph (a) will become sub-paragraph (b), and so forth.

(This amendment was replaced by document CDDH/III/327.)

CDDH/III/28
14 March 1974
Original: English

Ghana

In paragraph 1, for the words "their age and situation require", substitute the words "which they need".

(This amendment was replaced by document CDDH/III/324.)

* At the fifty-third plenary meeting, the Conference adopted the Article and decided to include it in Article 4 as paragraph 3, as suggested in amendment CDDH/427 below.

Draft Protocol II, Article 32 (continued)

CDDH/I/244
20 March 1975
Original: French

Belgium

In paragraph 1, delete the words "... they shall be especially protected against any form of indecent assault."

CDDH/III/309 and
Add.1 and 2
28 April 1976
Original: French

Austria, Belgium, Egypt, Greece, Holy See,
Nicaragua, Saudi Arabia, Uruguay

1. In draft Protocol II, Article 32, paragraph 2, insert a new sub-paragraph (d) between existing sub-paragraphs (c) and (d), to read:

"(d) take care that children who are orphaned or separated from their families as a result of armed conflict receive an education, including religious or moral education, in keeping with the wishes of their parents, or, in the absence of parents, of those responsible for their care."

2. Existing sub-paragraphs (d) and (e) of the ICRC text would become (e) and (f) in this new version.

(In documents CDDH/III/309/Add.1 and 2, Greece and Uruguay were added as co-sponsors.)

CDDH/III/324
30 April 1976
Original: English

Ghana

In paragraph 1, for the words "their age and situation require", substitute the words "which they need".

Draft Protocol II, Article 32 (continued)

CDDH/III/327
30 April 1976
Original: French

Romania

1. Redraft paragraph 1 to read:

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

2. Redraft paragraph 2 to read:

"2. To this end, the Parties to the conflict shall, inter alia:

(a) protect children against any form of indecent assault;"

3. The present sub-paragraph (a) will become sub-paragraph (b), and so forth.

CDDH/III/328
30 April 1976
Former symbol:
CDDH/I/299
2 June 1975
Original: French

Brazil

In paragraph 2(e), replace the words "children under fifteen years of age" by "persons under eighteen years of age".

CDDH/427
31 May 1977
Original: English

Pakistan

1. Renumber as Article 4, paragraph 3.

2. Redraft as follows:

"3. Children shall be provided with the care and aid they require, and in particular:

(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

Draft Protocol II, Article 32 (concluded)

CDDH/427 (concluded)

(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) children below the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) the special protection provided by this Article to children below fifteen years of age shall remain applicable to them if they take a direct part in hostilities despite the provisions of paragraph (c), and are captured."

PART VI - RELIEF

ARTICLE 33 - RELIEF ACTIONS *
(adopted by Committee II at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/II/77
19 March 1974
Original: English

Norway

1. In paragraph 3, delete the full stop and add "supplies and personnel".
2. In paragraph 4, add the words "supplies and personnel" after the word "relief".
3. Add a new paragraph 6 reading as follows:

"6. The Parties to the conflict and any High Contracting Party should accept as International Relief Co-ordinator the United Nations Disaster Relief Co-ordinator (UNDRO) and the International Red Cross in co-operation with other impartial international relief organizations."

(This amendment was withdrawn at the ninety-fifth meeting of Committee II, on 12 May 1977.)

CDDH/427
31 May 1977
Original: English

Pakistan

Delete Article 33.

CDDH/435
3 June 1977
Original: English

Finland

Delete paragraphs 3, 4 and 5 of Article 33.

* Title in Final Act: Article 18 - Relief societies and relief actions.

Draft Protocol II, Article 33 (concluded)

CDDH/440

Finland

6 June 1977

Original: English

Delete in paragraph 2 of Article 33 the words "in any territory under the control of a Party to the conflict" and replace the words "the Party or Parties concerned" by "the High Contracting Party concerned".

For amendment CDDH/II/5 submitted by the Republic of Viet-Nam, see Annex II to the Table of Amendments.

ARTICLE 34 - RECORDING AND INFORMATION
(adopted by Committee II at the fourth session
and rejected by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/II/428
19 April 1977

Original: English

Canada, Ireland, United Kingdom of Great
Britain and Northern Ireland

Amend paragraph 1 to read:

"1. Each Party to the conflict shall without delay organize, if necessary with the co-operation of the International Committee of the Red Cross information bureaux to which they shall communicate all information necessary for the identification of persons deprived of their liberty, wounded or killed for reasons related to the armed conflict, together with particulars of their state of health or cause of death."

There would be a few consequential amendments to the second paragraph.

CDDH/427
31 May 1977

Original: English

Pakistan

Delete Article 34.

ARTICLE 35 - NATIONAL RED CROSS AND OTHER RELIEF SOCIETIES
(deleted by Committee II as the substance of this Article
became paragraph 1 of Article 33)

CDDH/427

Pakistan

31 May 1977

Original: English

Renumber as Article 15, and redraft as follows:

"The civilian population and relief societies located in the territory of the High Contracting Party, such as Red Cross, Red Crescent, Red Lion and Sun organizations may offer their services for performance of their traditional functions in relation to the victims of the armed conflict."

PART VII - EXECUTION OF THE PRESENT PROTOCOL

ARTICLE 36 - MEASURES FOR EXECUTION
(adopted by Committee I at the third session
and rejected by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427

Pakistan

31 May 1977

Original: English

Delete Article 36.

ARTICLE 37 - DISSEMINATION *
(adopted by Committee I at the third session;
replaced by the Conference by a simplified text (CDDH/434)
at the fifty-third plenary meeting, on 6 June 1977

CDDH/I/319
17 May 1976
Original: French

Brazil

Replace the ICRC text by the following:

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

CDDH/427
31 May 1977
Original: English

Pakistan

Delete Article 37.

CDDH/434
2 June 1977
Original: English

Pakistan

Add new Article 1 bis:

"This Protocol shall be disseminated as widely as possible."

ARTICLE 38 - SPECIAL AGREEMENTS
(adopted by Committee I at the third session
and rejected by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/I/318
17 May 1976

Original: English

United Kingdom of Great Britain and
Northern Ireland

Insert "where they consider it appropriate" after
"shall".

CDDH/427
31 May 1977

Original: English

Pakistan

Delete Article 38.

ARTICLE 39 - CO-OPERATION IN THE OBSERVANCE OF
THE PRESENT PROTOCOL
(adopted by Committee I at the third session
and rejected by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427
31 May 1977

Pakistan

Original: English

Delete Article 39.

PART VIII - FINAL PROVISIONS *

ARTICLE 40 - SIGNATURE **
(adopted by Committee I at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427

Pakistan

31 May 1977

Original: English

Renumber as Article 16.

* PART V of the Final Act.

** Article 20 of the Final Act.

ARTICLE 41 - RATIFICATION *
(adopted by Committee I at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427
31 May 1977
Original: English

Pakistan

Renumber as Article 17.

* Article 21 of the Final Act.

ARTICLE 42 - ACCESSION *
(adopted by Committee I at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427

Pakistan

31 May 1977

Original: English

Renumber as Article 18.

* Article 22 of the Final Act.

ARTICLE 43 - ENTRY INTO FORCE *
(adopted by Committee I at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427
31 May 1977
Original: English

Pakistan

Renumber as Article 19.

* Article 23 of the Final Act.

ARTICLE 44 - AMENDMENT *
(adopted by Committee I at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427

Pakistan

31 May 1977

Original: English

Renumber as Article 20.

* Article 24 of the Final Act.

ARTICLE 44 bis - DENUNCIATION *
(adopted by Committee I at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/I/350/Rev.1
13 May 1977
Original: English

Proposal by the Working Group

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."

CDDH/427
31 May 1977
Original: English

Pakistan

Renumber as Article 21.

* Article 25 of the Final Act.

ARTICLE 45 - NOTIFICATIONS *
(adopted by Committee I at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427

Pakistan

31 May 1977

Original: English

Renumber as Article 22.

* Article 26 of the Final Act.

ARTICLE 46 - REGISTRATION *
(adopted by Committee I at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427

Pakistan

31 May 1977

Original: English

Renumber as Article 23.

* Article 27 of the Final Act.

ARTICLE 47 - AUTHENTIC TEXTS AND OFFICIAL TRANSLATIONS *
(adopted by Committee I at the fourth session
and by the Conference
at the fifty-third plenary meeting, on 6 June 1977)

CDDH/427
31 May 1977

Pakistan

Original: English

Renumber as Article 24.

* Title in Final Act: Article 28 - Authentic texts.

III. ANNEXES TO THE TABLE OF AMENDMENTS

Annex I	NEW SECTION III - Amendments to the Draft Code of International Crimes and Procedure in Violation of the Conventions and the present Protocols, submitted by the delegation of the Philippines.....	125-162
Annex II	Amendments to draft Additional Protocols I and II submitted by the Republic of Viet-Nam at the first and second sessions of the Conference..	165-173
Annex III	Draft amendments to draft Additional Protocol I submitted by the Democratic Republic of Viet-Nam.....	177-188
Annex IV	Draft amendments concerning Protocol II as a whole submitted by the Canadian Delegation.....	191-203

ANNEX I TO THE TABLE OF AMENDMENTS

NEW SECTION III

(This Section is annexed to the Table of Amendments as requested by the Philippines delegation (see CDDH/I/346 below)

CDDH/I/3
5 March 1974
Original: English

Philippines

Add a new section to Part V to be known as Section III, and incorporate the Draft Code of International Crimes and Procedure in Violation of the Conventions and the present Protocol (Report on the study by the XXIIInd International Conference of the Red Cross of the draft Additional Protocols to the Geneva Conventions of August 12, 1949 (Geneva, ICRC, January, 1974) (CDDH/6), pages 52 - 68).

(This amendment was withdrawn by document CDDH/I/10.)

CDDH/I/4
5 March 1974
Original: English

Philippines

1. Incorporate Article 9 (Principles of penal law) with the Draft Code of International Crimes and Procedure in Violation of the Conventions and the present Protocols (ICRC report, (CDDH/6), pages 52 - 68).

2. Incorporate Article 10 (Penal prosecutions) with the same Draft Code.

(This amendment was withdrawn by document CDDH/I/10.)

CDDH/I/57
18 March 1974
Original: English

Philippines

1. Add a new section to Part V to be known as Section III.

2. Incorporate the Draft Code of International Crimes and Procedure in Violation of the Conventions and the present Protocols (ICRC report, (CDDH/6), pages 52 - 68).

3. Translate the Draft Code into the official languages of the Conference.

(This amendment was replaced by document CDDH/I/333 below.)

Draft Protocol I, New Section III (continued)

CDDH/I/58

Philippines

18 March 1974

Original: English

1. Incorporate Article 9 (Principles of penal law) with the Draft Code of International Crimes and Procedure in Violation of the Conventions and the present Protocols (ICRC report, (CDDH/6), pages 52 - 68).
2. Incorporate Article 10 (Penal prosecutions) with the same Draft Code.

CDDH/56/Add.1 and
Corr.1

Philippines

16 December 1974

Original: English

Add a new section to Part V:

"NEW SECTION III - DRAFT CODE OF INTERNATIONAL CRIMES
IN VIOLATION OF THE GENEVA CONVENTIONS OF 1949 AND THE
ADDITIONAL PROTOCOLS"

PART I - CRIMES UNDER INTERNATIONAL HUMANITARIAN LAW

Article 1 - Crimes against humanity

Crimes against humanity, as defined in this Code, are grave breaches of international law, for which the offenders shall suffer death, imprisonment for life, or any other penalty that an international court or tribunal may impose.

Article 2 - Classification of crimes against humanity

The following acts are crimes against humanity, among others:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture which shall include among others:

* In substantial compliance with the Draft Code adopted by the International Law Commission (27 July 1951) (see Official Records of the General Assembly, Sixth Session, Supplement No.9 (A/1858), pp. 10-14).

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

- (i) starvation resulting in death.
- (ii) beating resulting in death.
- (iii) freezing resulting in death.
- (iv) mass extermination resulting in death.
- (v) ruthless killing of prisoners of war by:
 - a. shooting.
 - b. decapitation.
 - c. drowning.
 - d. forced march without food or water.
 - e. marchers dropping out being shot or bayoneted.
- (vi) killing without trial recaptured prisoners after escape or for attempt to escape.
- (vii) killing without trial captured members of the enemy armed forces.

(b) Attempt upon the lives of the wounded or sick, or shipwrecked members of the armed forces, or violence to their persons.

(c) Torture or inhuman treatment of wilfully causing great suffering or serious injury to body or health which shall include, among others:

- (i) Forcing an individual against his will to undergo any kind of biological experiment.
- (ii) maltreatment administered for the purpose of obtaining a confession or information.
- (iii) torture administered out of sheer sadism.
- (iv) torture administered to 'convert' an individual to the Occupying Power's political ideology.
- (v) measures cutting off prisoners of war or detainees completely from the outside world and in particular from their families.
- (vi) mental anguish created by the Detaining Power (e.g. telling the prisoner of war that he will be executed the following day).
- (vii) any form of measures causing injury to the human dignity.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

- (d) Any deliberate omission of action ordinarily taken to preserve human life.
- (e) Unlawful deportation or transfer of a protected person.
- (f) Unlawful confinement of a protected person.
- (g) Compelling a protected person to serve in the armed forces of a hostile Power.
- (h) Taking of hostages.
- (i) Attack on or destruction of medical ships or aircraft, either civilian or military, which are equipped solely with a view to assisting the wounded, sick and shipwrecked, and to treating or transporting them.
- (j) Attack on or bombardment of hospital zones.
- (k) Reprisals against the wounded and sick members of the armed forces, civilian personnel and buildings or equipment protected by the Convention.
- (l) Enslavement.
- (m) Persecution on political, racial, religious or cultural grounds, when such acts are committed in execution of or in connexion with other offences defined in this Code.
- (n) Plunder of populations in occupied countries by the Occupying Power.
- (o) Any form of aircraft hijacking, bomb threat or bomb explosion caused to aircraft in time of peace.

Article 3 - Violation of the laws and customs of war

Any authority or individual of a State who commits any act in violation of the laws and customs of war or any provision of a treaty or convention related thereto, shall suffer death, imprisonment for life, or any other penalty as an international court or tribunal may impose.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

Article 4 - Classification of crimes against the laws and customs of war

The following acts are grave breaches, among others, punishable under the preceding Article.

(a) Any act perpetrated against, and causing bodily harm to, women, children, the sick, and the aged.

(b) Any act of omission for the protection of diplomatic representatives and staff of neutral Powers in belligerent territory.

(c) The use of incendiary weapons.

(d) The use of asphyxiating gases.

(e) The use of projectiles.

(f) The use of blast and fragmentation weapons.

(g) The use of expanding bullets.

(h) The use of perfidious weapons.

(i) The discharge of projectiles from balloons.

(j) The use of the hydrogen bomb.

(k) The use of the napalm bomb.

(l) The destruction or seizure of the enemy's property, unless its destruction or seizure be imperatively demanded by the necessities of war.

(m) The destruction of edifices devoted to religion, art, science, and charity, historical monuments, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

(n) Pillage of any town or place.

(o) Confiscation of private property.

(p) Forcible requisitions in kind or services from localities or inhabitants except for the needs of the army of occupation.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

(q) Any violation of the rules of usufruct by the Occupying State on the use of public buildings, immovable property, forests and agricultural undertakings belonging to the Occupied State.

(r) Killing or wounding treacherously individuals of the enemy nation or armed forces.

(s) Wounding or killing an enemy who, having laid down his arms, or having no longer means of defence, has surrendered voluntarily.

(t) Declaring that no quarter will be given.

(u) Any criminal or inhuman act perpetrated against the prisoners of war not otherwise mentioned in any of the preceding Articles of this Code.

Article 5 - Conspiracy

Any authority or individual of a State who conspires with another or others to commit any of the offences defined in this Code shall suffer death, life imprisonment, or any other penalty that an international court or tribunal may impose, taking into account the gravity of the offence.

Article 6 - Inciting to commit war crimes

Any authority or individual of a State who directly incites another or others to commit any of the offences defined in this Code shall suffer death, life imprisonment or any other penalty that an international court or tribunal may impose, taking into account the gravity of the offence.

Article 7 - Accomplice

Any authority or individual of a State who is an accomplice in the commission of any of the offences defined in this Code shall suffer life imprisonment or any lesser penalty that an international court or tribunal may impose.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

Article 8 - Attempt to commit war crimes

Any authority or individual of a State who attempts to commit any of the crimes defined in this Code shall suffer imprisonment or any lesser penalty that an international court or tribunal may impose.

Article 9 - All other violations not mentioned in this Code

Although not mentioned in this Code, all other violations of the laws of war and international humanitarian law, and omissions amounting to criminal acts, shall be taken cognizance of by an international court according to the nature and degree of the violation or omission, and punished at the discretion of such court.

Article 10 - Command responsibility

The fact that an individual acted as Head of State or as responsible government official, or superior officer of the armed forces, does not relieve him from command responsibility for committing any of the offences defined in this Code.

Article 11 - Responsibility of subordinate

The fact that an individual charged with an offence defined in this Code acted pursuant to a superior's order and that he had no alternative but to comply, does not relieve him from responsibility; however, such act with which he is charged may be considered in mitigation of the sentence.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

PART II - INTERNATIONAL CRIMINAL COURT OR TRIBUNAL *

Article 12 - Purpose of the Court

There is established an International Criminal Court or Tribunal to try persons accused of grave breaches of or crimes under international law, or the law of war, as may be provided in conventions or special agreements among States Parties to the present Convention.

Article 13 - Law to be applied by the Court

The Court shall apply international law, covering the various crimes defined in Part I of this Code and the various existing treaties, conventions, and assurances on the law of war.

Article 14 - Permanent nature of the Court

The Court shall be a permanent body. Sessions shall be called only when matters before it require consideration, and shall be held in any territory taking into consideration all conveniences and practicalities.

Article 15 - Qualifications of Judges

The Court shall be composed of a body of independent judges, either civilian or military in the active or inactive status, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, and are of recognized competence in international law, especially in international criminal law.

Article 16 - Number of Judges

The Court shall consist of nine Judges.

* In substantial compliance with the draft approved by the United Nations Committee on International Criminal Jurisdiction, August 31, 1951. (See Official Records of the General Assembly, Seventh Session, Supplement No.11 (A/2136), pp. 21-25).

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

Article 17 - Nomination of candidates

1. Judges shall be elected from a list of candidates nominated by the States Parties to the Geneva Conventions of 1949 and the additional Protocols.

2. Each State may submit the names of not more than four candidates.

Article 18 - Election of Judges

1. Judges shall be elected at meetings of representatives of the States Parties to the Conventions by an absolute majority of those present and voting. A Secretary-General shall be appointed by the Parties to the Conventions who, after due notice to each of such States, shall convene these meetings. He shall hold office at any place as decided by the Parties.

2. In the event of more than one national of the same State obtaining a sufficient number of votes for election, the one who obtains the greatest number of votes shall be considered as elected and if the votes are equally divided the elder or eldest candidate shall be considered as elected.

Article 19 - Terms of office

1. Judges shall be elected for nine years only with no reelection. They shall hold office or hear cases at such place as they see fit.

2. In case of vacancy during the nine-year term due to resignation, death, or any incapacity, the nominee or nominees obtaining the next highest votes at the first election shall take over depending upon the number of existing vacancies, subject to the provision of Article 18 (2) of this Code.

Draft Protocol II, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

Article 20 - Rules of Court

1. The Court shall adopt rules for carrying out its functions. In particular, it shall prescribe rules of procedure and such general principles governing the admission of evidence as the Court may deem necessary.

2. These rules and any amendments thereto shall be published without delay and shall not be altered so as to affect pending proceedings.

Article 21 - Jurisdiction as to persons

The Court shall be competent to try natural persons only of Parties to the conflict, including persons who have acted as Head of State or agent of government.

Article 22 - Jurisdiction as to offences

1. The Court shall take cognizance only of grave breaches of or crimes under international law.

2. Grave breaches are those involving any of the following acts, if committed against persons or property protected by the Conventions: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly which crimes are sufficiently enumerated in Articles 4 and 7 of this Code.

Article 23 - Crimes less grave in nature

Each High Contracting Party shall refer for trial by its own national court any case or cases endorsed to it by the Investigating Panel created within the framework of the International Criminal Court or Tribunal pursuant to Article 30 of this Code. Such case or cases shall be endorsed to the High Contracting Party concerned only, if in the findings of the Investigating Panel, the offences involved are less grave in nature.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

Article 24 - Cognizance of jurisdiction

Jurisdiction over any of the offences or crimes as defined in Part I of this Code shall be taken cognizance of by the Court where the Parties to the conflict are signatories to the Geneva Conventions of 1949 and the Additional Protocols provided that any State or States not Parties to the Conventions may confer upon the Court by special agreement or by unilateral declaration jurisdiction to try cases in violation of any provision of Part I of this Code; provided, however, that where the Parties to the conflict are not signatories to the foregoing Conventions and the Additional Protocols but members of the United Nations, they may avail themselves of the power of the Court to try their respective cases if they confer jurisdiction upon the Court with the approval of the General Assembly of the United Nations.

Article 25 - Access to the Court

Proceedings before the Court may be instituted only by:

(a) The Parties to the conflict which are signatories to the Geneva Conventions and the Additional Protocols or by the General Assembly of the United Nations, as the case may be, pursuant to the proviso to Article 24 of this Code.

(b) Any organization of States so authorized by the General Assembly of the United Nations, as the case may be, pursuant to the proviso to Article 24 of this Code.

Article 26 - Challenge

1. The jurisdiction of the Court may be challenged only by the Parties to any proceeding.

2. The grounds for challenge shall be as specified by the Court. Such challenge shall be made prior to the arraignment.

3. Challenge, however, may be made at any stage of the trial and shall be considered by the Court at such time as the Court thinks fit but not after the closing arguments of counsel are made.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

Article 27 - Assistance of States

1. The Court may request national authorities concerned to assist it in the performance of its duties.
2. A State shall be obliged to render such assistance only in conformity with any convention or other instrument in which the State has accepted such obligation.

Article 28 - Penalties

The Court shall impose upon an accused, upon conviction, such penalty as the Court may determine, subject to the limitations prescribed in Part I of this Code.

Article 29 - Principles of international humanitarian law *

1. No one may be punished for an offence which he or she has not personally committed.
2. Collective penalties are prohibited.
3. No one may be punished for any act or omission contrary to a duty to act which was not an offence at the time it was committed.
4. No one shall be liable to be prosecuted or punished for an offence for which he has already been finally acquitted or convicted.
5. No one shall be held guilty of an offence except under those provisions of law which were in force at the time when the offence was committed.
6. Everyone charged with an offence is presumed innocent until proved guilty according to law.
7. The death penalty pronounced on any person found guilty of an offence in relation to the armed conflict shall not be carried out until the hostilities have ceased.

* In substantial compliance with Articles 9 and 10 of draft Additional Protocol II.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

8. The death penalty shall not be pronounced for an offence in relation to the armed conflict committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Article 30 - Investigation Panel or Committing Authority

1. There shall be established within the framework of the International Criminal Court or Tribunal a fact-finding body which shall be called Investigation Panel or Committing Authority composed of as many persons as may be needed, elected in the same manner at the same time, on the same terms, and possessing similar qualifications as the judges.

2. The function of the Panel shall be to examine the evidence offered by the complainant to support the complaint.

3. The complainant shall designate an agent or agents who shall present the evidence before the Panel.

4. If the Panel is satisfied that the evidence is sufficient to support the complaint, it shall so certify to the Court and the complainant if the offence or offences are grave; otherwise, if the Panel finds that the offence or offences are less grave in nature, it shall endorse the case or charges to the Contracting Party having jurisdiction over the person of the accused, for trial by its own national court.

5. Before issuing any such certificate, the Panel shall give the accused reasonable opportunity to be heard and to adduce such evidence as he may desire.

6. The Panel shall adopt its own rules of procedure.

Article 31 - Prosecuting Attorney or Trial Counsel

1. The States Parties to the Conventions, at the meetings and in the manner provided for in Article 18, shall elect a panel of as many persons as may be needed whose duty it shall be, whenever a certificate for trial is issued by the Investigation Panel, to elect forthwith a Prosecuting Attorney herein referred to also as Trial Counsel who shall possess the same or similar qualifications as a member of the Court.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

2. The Prosecuting Attorney or Trial Counsel shall file with the Court an indictment of the accused based on the findings certified by the Committing Authority and shall be responsible for conducting the prosecution before the Court.

PART III - PROCEDURE *

Article 32 - Indictment or charge

1. The indictment or charge shall contain a concise statement of the facts which constitute each alleged offence and a specific reference to the law and Article of this Code under which the accused is charged.

2. The Court may authorize amendment of the indictment or charge.

Article 33 - Notice of the indictment or charge

1. The Court shall notify the State of which the accused is alleged to be a national, of the indictment or charge, and the State in which the crime is alleged to have been committed.

2. The Court shall not proceed with the trial unless satisfied that the accused has had the indictment or any amendment thereof, as the case may be, served upon him and has sufficient time to prepare his defence.

* In substantial compliance with the report of the United Nations Committee on International Criminal Jurisdiction (see Official Records of the General Assembly, Seventh Session, Supplement No.11 (A/2136), pp. 24 and 25.)

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

Article 34 - Rights of the accused

1. The accused shall be presumed innocent until proved guilty.

2. The accused shall have a fair trial and, in particular:

(a) The right to be present at all stages of the proceedings;

(b) The right to conduct his own defence or to be defended by counsel of his own choice, and to have his counsel present at all stages of the proceedings;

(c) The right to have the proceedings of the Court, including documentary evidence, translated into his own language;

(d) The right to interrogate, in person or by his counsel, any witness and to inspect any document or other evidence introduced during the trial;

(e) The right to adduce oral and other evidence in his defence; and

(f) The right to the assistance of the Court in obtaining access to material which the Court believes to be relevant to the issues before the Court.

3. The accused shall have the right to be heard by the Court but shall not be compelled to speak. His refusal to speak shall not be relevant to the determination of his guilt. Should he elect to speak, he shall be liable to questioning by the Court and by counsel.

Article 35 - Publicity of hearings

1. The Court shall be open to the public unless there are exceptional circumstances in which the Court finds that the presence of the public might prejudice the interests of justice.

2. The deliberations of the Court shall take place in private and shall not be disclosed.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

Article 36 - Warrants of arrest

The Court shall have power to issue warrants of arrest related to crimes over which the Court has jurisdiction.

Article 37 - Provisional liberty of accused

The Court shall decide whether the accused shall remain in custody during the trial or be provisionally set at liberty, and the conditions under which such provisional liberty shall be granted.

Article 38 - Powers of the court

The Court shall have the powers necessary to the proper conduct of the trial, including the power to require the attendance of witnesses, require production of documents and other evidentiary material, rule out irrelevant issues, evidence and statements, and maintain order at the trial.

Article 39 - Dismissal of case

The Court may dismiss at any stage of the proceedings any case in which the Court is satisfied that no fair trial can then be had. In the event of such dismissal, the Court shall discharge the accused and may also acquit him.

Article 40 - Withdrawal of prosecution

A prosecution may be withdrawn only with the approval of the Court. In the event of such approval, the Court shall discharge the accused and may also acquit him.

Article 41 - Quorum

The participation of seven judges shall suffice to constitute the Court.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

Article 42 - Required votes

1. The death penalty shall require a unanimous vote of the judges participating in the trial, otherwise life imprisonment shall be imposed.
2. All other final judgements and sentences of the Court shall require a majority vote of the judges participating in the trial.
3. The same requirement shall apply to other decisions of the Court, provided that, in the event of an equality of votes, the vote of the presiding judge shall be decisive.

Article 43 - Contents and signature of judgement

1. The judgement shall state, in relation to each accused, the reasons upon which it is based.
2. The judgement shall contain the names of the judges who have taken part in the decision. It shall be signed by the President and the Registrar of the Court.

Article 44 - Separate opinions

If the judgement of the Court does not represent the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 45 - Announcement of sentence

The sentence shall be read in open Court.

Article 46 - Revision of judgement

1. An accused who has been found guilty may apply to the Court for revision of judgement.
2. An application for revision shall not be entertained unless the Court is satisfied:

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (continued)

(a) That a fact was discovered of such a nature as to be a decisive factor; and

(b) That that fact was, when the judgement was given, unknown to the Court and the accused.

3. Revision proceedings shall be opened by a judgement of the Court expressly recording the existence of the new fact and recognizing that it has such a character as to lay the case open to revision.

Article 47 - Subsequent trial

No person who has been tried and acquitted or convicted before the Court shall be subsequently tried for the same offence in any court within the jurisdiction of any State which has conferred jurisdiction upon the Court with respect to such offence.

Article 48 - Execution of sentence

Sentences shall be executed in accordance with conventions relating to the matter. In the absence of such conventions, arrangements for the execution may be made with the State concerned upon motion of the Court, by the Secretary-General, pursuant to the proviso to Article 24 of this Code.

Article 49 - Board of Clemency

1. A Board of Clemency consisting of five members shall be established by the States Parties to the present Convention.

2. The Board shall have the powers of pardon and parole and of suspension, reduction and other alteration of a sentence of the Court.

3. The Board shall adopt its own rules of procedure.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1 and Corr.1 (concluded)

Article 50 - Special tribunals

Nothing in the present Convention shall be taken to prejudice the right of two or more States Parties thereto jointly to set up special tribunals to try the perpetrators of crimes over which each of such States has jurisdiction according to the general rules of international law.

Article 51 - Extradition

1. The States Parties to the Conventions shall pledge themselves to grant extradition in respect of any violation of the Code, particularly of the offences or crimes as defined in Part I.

2. Nothing can prejudice, however, the right of any State not a Party to the Conventions to avail itself of the jurisdiction of the Court and to grant extradition in respect of the trial of its own nationals outside its own territory."

(In document CDDH/56/Add.1/Corr.1, the Title of Part I was changed to read "Crimes under International Humanitarian Law"; Articles 1, 2 and 5 were deleted and the remaining Articles were renumbered accordingly.)

CDDH/I/333

Philippines

14 September 1976

Original: English

Add a new section to draft Protocol I, Part V, to be known as Section III and incorporate the Draft Code of International Crimes in Violation of the Geneva Conventions of 1949 and the draft Additional Protocols (see document CDDH/56/Add.1/Rev.1).

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 Philippines
14 September 1976
Original: English

Amendments to the Draft Code of International Crimes in Violation of the Geneva Conventions of 1949 and the draft additional Protocols (CDDH/56/Add.1):

"PART I

CRIMES UNDER INTERNATIONAL LAW

Article 1

Crimes against international humanitarian law

Acts described in this Code as breaches in violation of the Geneva Conventions and the present Protocols are crimes against international humanitarian law for which the offenders shall suffer death, imprisonment for life, or any other penalty that an international Court or Tribunal may impose, depending upon the gravity of the offence or offences committed.

Article 2

Classification of crimes against
international humanitarian law

The following grave breaches are crimes against international humanitarian law, among others:

- (a) Grave breaches as defined or mentioned in the Geneva Conventions of 1949;
- (b) Grave breaches as defined or mentioned in Article 74 of Protocol I which supplements the Geneva Conventions of 1949;
- (c) Any form of unlawful seizure of aircraft such as hijacking, and any form of criminal interference with civil aviation such as unlawful attacks against aircraft in time of peace; and
- (d) Any form of terrorist activities causing violence to person and destruction to property committed in time of peace.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 3

Violation of the laws and customs of war

Any authority or individual of a State who commits any act in violation of the laws and customs of war or any provision of a treaty or convention related thereto shall suffer death, imprisonment for life, or any other penalty that an international court or tribunal may impose.

Article 4

Classification of crimes against the laws and customs of war

1. The following acts are grave breaches, among others, punishable under the preceding article:

(a) Any act perpetrated against, and causing bodily harm to women, children, the sick and the aged.

(b) The use of bullets inflicting wounds of useless cruelty, such as explosive bullets, and in general all kinds of bullets which exceed the limit necessary for placing a man hors de combat.

(c) The use of asphyxiating, poisonous or other gases and analogous liquids, materials or devices, and those weapons that violate the traditional principles of international law and humanitarian rules such as biological weapons, blast and fragmentation weapons.

Article 5

Conspiracy

1. Any authority or individual of a State who conspires with another or others to commit any of the offences defined in this Code shall suffer death, life imprisonment, or any other penalty that an international court or tribunal may impose, taking into account the gravity of the offence.

2. A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 6

Inciting to commit war crimes

1. Any authority or individual of a State who directly incites another or others to commit any of the offences defined in this Code shall suffer death, life imprisonment or any other penalty that an international court or tribunal may impose, taking into account the gravity of the offence.

2. There is incitement when the person who has decided to commit a crime proposes its execution to some other person or persons.

Article 7

Accomplices

1. Any authority or individual of a State who is an accomplice in the commission of any of the offences defined in this Code shall suffer life imprisonment or any lesser penalty that an international Court or Tribunal may impose.

2. An accomplice is any person who, although he does not take a direct part in the execution of any offence defined herein, does not directly force or induce others to commit it, or does not co-operate in the commission of the offence by another act without which it would not have been accomplished, co-operates, however, in the execution of the offence by previous or simultaneous acts.

Article 8

Attempt to commit war crimes

1. Any authority or individual of a State who attempts to commit any of the crimes defined in this Code shall suffer imprisonment or any lesser penalty that an international Court or Tribunal may impose.

2. There is an attempt when the offender commences the commission of a crime directly by overt acts, and does not perform all the acts of execution which produce the crime by reason of some cause or accident other than his own spontaneous desistance.

Draft Protocol I, New Section III (continued)

CDDF/56/Add.1/Rev.1 (continued)

Article 9

All other violations not mentioned in this Code

Though not mentioned in this Code, all other violations of the laws of war and of international humanitarian law, and omissions amounting to criminal acts, shall be taken cognizance of by an international court according to the nature and degree of the violation or omission, and punished at the discretion of such Court.

Article 10

Command responsibility

The fact that an individual acted as Head of State or as responsible Government official, or superior officer of the armed forces, does not relieve him from command responsibility for any of the offences committed by any one under him, as defined in this Code.

Article 11

Responsibility of subordinates

The fact that an individual charged with an offence defined in this Code acted pursuant to a superior's order and that he had no alternative but to comply, does not relieve him from responsibility; however, such act with which he is charged may be considered in mitigation of the sentence.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

PART II

INTERNATIONAL CRIMINAL COURT OR TRIBUNAL

Article 12

Purpose of the Court

There are established as many International Criminal Courts or Tribunals as are necessary to try persons accused of grave breaches or crimes under international law, or the law of war, as may be provided in conventions or special agreements among States Parties to the present Convention.

Article 13

Appointing Authority

1. There shall be established a body within the framework of the Contracting Parties which shall be known as the Appointing Authority. This body shall be composed of seven duly credited representatives, each from the following:

- (a) Western Group
- (b) Eastern Group
- (c) Arab Group
- (d) Asian Group
- (e) Latin-American Group
- (f) African Group
- (g) Swiss Confederation

2. The powers of the Appointing Authority, among others, are as follows:

- (a) The power to appoint any Court or Tribunal which shall try cases assigned to it.
- (b) The power to approve the sentence of the Court or Tribunal which shall include the power to approve or disapprove a finding and to approve only so much of a finding of guilty of a particular offence as involves a finding of guilty of a lesser included offence when, in the opinion of the Appointing Authority, the evidence of record requires a finding of only the lesser degree of guilt.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 13 (continued)

(c) The power to approve or disapprove the whole or any part of the sentence.

(d) The power to remand a case for rehearing.

Article 14

Law to be applied by the Court

Each Court created or established shall apply international law, covering the various crimes defined in Part I of this Code and the various existing treaties, conventions, and assurances of the law of war.

Article 15

Nature of the Court

Each Court created or established shall be a temporary body. Sessions shall be called only when matters before it require consideration, and shall be held in any territory taking into consideration all conveniences and practicalities.

Article 16

Qualification of Judges

Each Court established shall be composed of a body of independent Judges, either civilian or military in the active or inactive status, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, and of recognized competence in international law, especially in international criminal law.

Article 17

Number of Judges

Each Court established shall consist of seven Judges, one of whom will be the presiding Judge to be selected in accordance with Article 19, paragraph 2.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 18

Nomination of candidates

1. Judges shall be elected from a list of candidates nominated by the States Parties to the Geneva Conventions of 1949 and the additional Protocols.
2. Each State may submit the names of its candidates.

Article 19

Election of Judges

1. The judges shall be elected at meetings of representatives of the States Parties to the Conventions by an absolute majority of those present and voting. A Secretary-General shall be appointed by the parties to the Conventions who, after due notice to each of such States, shall convene these meetings. He shall hold office at any place as decided by the Parties.
2. In the event of more than one national of the same State obtaining a sufficient number of votes for election, the one who obtains the greatest number of votes shall be considered as elected and if the votes are equally divided the elder or eldest candidate shall be considered as elected.

Article 20

Term of office

1. The Judges shall serve as long as there are cases assigned to their respective Courts for trial. They shall hold office or hear cases at such place as they see fit.
2. In case of vacancy during their tenure of office due to resignation, death, or any incapacity, the nominee or nominees obtaining the next highest votes at the first election shall take over depending upon the number of existing vacancies, subject to the provision of paragraph 2, Article 19, of this Code.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 21

Rules of Court

1. The Appointing Authority shall adopt rules for carrying out the functions of the Courts. In particular, it shall prescribe rules of procedure and such general principles governing the admission of evidence as the Courts may deem necessary.

2. These rules and any amendments thereto shall be published without delay and shall not be altered so as to affect pending proceedings.

Article 22

Jurisdiction as to persons

Each Court shall be competent to try natural persons only of parties to the conflict, including persons who have acted as Head of State or agent of Government.

Article 23

Jurisdiction as to offences

1. Each Court shall take cognizance only of grave breaches or crimes under international law.

2. Grave breaches are those involving any of the acts mentioned in Articles 2 and 4 of this Code.

Article 24

Crimes less grave in nature

Each High Contracting Party shall refer for trial by its own national Court any case or cases endorsed to it by the Investigating Panel created by the Appointing Authority within the framework of the International Criminal Courts or Tribunals. Such case or cases shall be endorsed to the High Contracting Party concerned only, if in the findings of the Investigating Panel, the offences involved are less grave in nature.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 25

Cognizance of jurisdiction

Jurisdiction over any of the offences or crimes as defined in Part I of this Code shall be taken cognizance of by each Court where the parties to the conflict are signatories to the Geneva Conventions of 1949 and the Additional Protocols provided that any State or States not parties to the Convention, may confer upon the Court by special agreement or by unilateral declaration jurisdiction to try cases in violation of any provision of Part I of this Code; provided, however, that where the parties to the conflict are not signatories to the foregoing Conventions and the additional Protocols but members of the United Nations, they may avail themselves of the power of the Court to try their respective cases if they confer jurisdiction upon the Court with the approval of the General Assembly of the United Nations.

Article 26

Access to the Court

Proceedings before the Court may be instituted only by:

(a) The parties to the conflict which are signatories to the Geneva Conventions and the Additional Protocols or by the General Assembly of the United Nations, as the case may be, pursuant to the proviso to Article 25 of this Code.

(b) Any organization of States so authorized by the General Assembly of the United Nations, as the case may be, pursuant to the proviso to Article 25 of this Code.

Article 27

Challenge

1. The jurisdiction of the Court may be challenged only by the parties to any proceeding.

2. The grounds for challenge shall be as specified by the adopted rules of procedure. Such challenge shall be made prior to the arraignment.

3. Any ground for challenge, however, may be made at any stage of the trial and shall be considered by the Court at such time as the Court thinks fit but not after the closing arguments of counsel are made.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 28

Assistance of States

1. The Court may request the national authorities concerned to assist it in the performance of its duties.

2. A State shall be obliged to render such assistance only in conformity with any convention or other instrument in which the State has accepted such obligation.

Article 29

Penalties

The Court shall impose upon an accused, upon conviction, such penalty as the Court may determine, subject to the limitations prescribed in Part I of this Code.

Article 30

Investigation Panel or Committing Authority

1. The Appointing Authority shall establish within the framework of the International Criminal Courts or Tribunals a fact-finding body which shall be called Investigation Panel or Committing Authority composed of as many persons as may be needed, elected in the same manner at the same time, on the same terms, and possessing similar qualifications as the Judges.

2. The function of the Panel shall be to examine the evidence offered by the complainant to support the complaint.

3. The complainant shall designate an agent or agents who shall present the evidence before the Panel.

4. If the Panel is satisfied that the evidence is sufficient to support the complaint, it shall so certify to the Court and the complainant if the offence or offences are grave; otherwise, if the Panel finds that the offence or offences are less grave in nature, it shall endorse the case or charges to the High Contracting Party having jurisdiction over the person of the accused, for trial by its own national Court.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 30 (continued)

5. Before issuing any such certificate, the Panel shall give the accused reasonable opportunity to be heard and to adduce such evidence as he may desire.

6. The Panel shall adopt its own rules of procedure.

Article 31

Prosecuting Attorney or Trial Counsel

1. The States Parties to the Conventions, at the meetings and in the manner provided for in Article 19, shall elect a panel of as many persons as may be needed whose duty it shall be, whenever a certificate for trial is issued by the Investigation Panel, to elect forthwith a Prosecuting Attorney herein referred to also as Trial Counsel who shall possess the same or similar qualifications as a member of the Court.

2. The Prosecuting Attorney or Trial Counsel shall file with the Court an indictment of the accused based on the findings certified by the Committing Authority and shall be responsible for conducting the prosecution before the Court.

Draft Protocol I, New Section III (continued)

CDDH/56/Add,1/Rev.1 (continued)

PART III

PROCEDURE

Article 32

Indictment or charge

1. The indictment or charge shall contain a concise statement of the facts which constitute each alleged offence and a specific reference to the law and Article of this Code under which the accused is charged.
2. The Court may authorize amendment to the indictment or charge.

Article 33

Notice of the indictment or charge

1. The Court shall notify the State of which the accused is alleged to be a national, of the indictment or charge, and the State in which the crime is alleged to have been committed.
2. The Court shall not proceed with the trial unless satisfied that the accused has had the indictment or any amendment thereof, as the case may be, served upon him and has sufficient time to prepare his defence.

Article 34

Rights of the accused

1. The accused shall be presumed innocent until proved guilty.
2. The accused shall have a fair trial and, in particular:
 - (a) The right to be present at all stages of the proceedings;
 - (b) The right to conduct his own defence or to be defended by counsel of his own choice, and to have his counsel present at all stages of the proceedings;

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 34 (continued)

(c) The right to have the proceedings of the Court, including documentary evidence, translated into his own language;

(d) The right to interrogate, in person or by his counsel, any witness and to inspect any document or other evidence introduced during the trial;

(e) The right to adduce oral and other evidence in his defence; and

(f) The right to the assistance of the Court in obtaining access to material which the Court believes to be relevant to the issues before the Court.

3. The accused shall have the right to be heard by the Court but shall not be compelled to speak. His refusal to speak shall not be relevant to the determination of his guilt. Should he elect to speak, he shall be liable to questioning by the Court and by counsel.

Article 35

Publicity of hearings

1. The Court shall be open to the public unless there are exceptional circumstances in which the Court finds that the presence of the public might prejudice the interest of justice.

2. The deliberations of the Court shall take place in private and shall not be disclosed.

Article 36

Warrants of arrest

The Court shall have power to issue warrants of arrest related to crimes over which the Court has jurisdiction.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 37

Provisional liberty of accused

The Court shall decide whether the accused shall remain in custody during the trial or be provisionally set at liberty, and the conditions under which such provisional liberty shall be granted.

Article 38

Powers of the Court

The Court shall have the powers necessary to the proper conduct of the trial, including the power to require the attendance of witnesses, require production of documents and other evidentiary material, rule out irrelevant issues, evidence and statements, and maintain order at the trial.

Article 39

Dismissal of case

The Court may dismiss at any stage of the proceedings any case in which the Court is satisfied that no fair trial can then be had. In the event of such dismissal, the Court shall discharge the accused and may also acquit him.

Article 40

Withdrawal of prosecution

A prosecution may be withdrawn only with the approval of the Court. In the event of such approval, the Court shall discharge the accused and may also acquit him.

Article 41

Quorum

The participation of five Judges shall suffice to constitute the Court.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 42

Required votes

1. The death penalty shall require a unanimous vote of the Judges participating in the trial otherwise life imprisonment shall be imposed.
2. All other final judgements and sentences of the Court shall require a majority vote of the Judges participating in the trial.
3. The same requirement shall apply to other decisions of the Court, provided that, in the event of an equality of votes, the vote of the presiding Judge shall be decisive.

Article 43

Contents and signature of judgement

1. The judgement shall state, in relation to each accused, the reasons upon which it is based.
2. The judgement shall contain the names of the Judges who have taken part in the decision. It shall be signed by the presiding Judge and the Registrar of the Court.

Article 44

Separate opinions

If the judgement of the Court does not represent the unanimous opinion of the Judges, any Judge shall be entitled to deliver a separate opinion.

Article 45

Announcement of sentence

The sentence shall be read in open Court.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 46

Revision of judgement

1. An accused who has been found guilty may apply to the Court for revision of judgement.

2. An application for revision shall not be entertained unless the Court is satisfied:

(a) That a fact was discovered of such a nature as to be a decisive factor; and

(b) That that fact was, when the judgement was given, unknown to the Court and the accused.

3. Revision proceedings shall be opened by a judgement of the Court expressly recording the existence of the new fact and recognizing that it has such a character as to lay the case open to revision.

Article 47

Subsequent trial

No person who has been tried and acquitted or convicted before the Court shall be subsequently tried for the same offence in any Court within the jurisdiction of any State which has conferred jurisdiction upon the Court with respect to such offence.

Article 48

Execution of sentence

No sentence shall be executed unless approved or confirmed by the Appointing Authority.

Article 49

Board of Clemency

1. A Board of Clemency consisting of five members shall be established by the States Parties to the present Convention.

2. The Board shall have the powers of pardon and parole.

3. The Board shall adopt its own rules of procedure.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (continued)

Article 50

Special Tribunals

Nothing in the present Convention shall be taken to prejudice the right of two or more States Parties thereto jointly to set up special tribunals to try the perpetrators of crimes over which each of such States has jurisdiction according to the general rules of international law.

Article 51

Extradition

1. The States Parties to the Conventions shall pledge themselves to grant extradition in respect to any violation of the Code, particularly of the offences or crimes as defined in Part I.

2. Nothing can prejudice, however, the right of any State not a party to the Conventions to avail itself of the jurisdiction of the Court created under this Code, and to grant extradition in respect to the trial of its own nationals outside its own territory.

Draft Protocol I, New Section III (continued)

CDDH/56/Add.1/Rev.1 (concluded)

PART IV

ADMINISTRATIVE MATTERS

Article 52

Records of trials

Each Court shall keep a separate record of its proceedings in the trial of each case brought before it. Such record shall be authenticated by the signature of the presiding Judge and the Trial Counsel. However, if the record cannot be authenticated by the presiding Judge and the Trial Counsel, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member in lieu of the presiding Judge and by an assistant Trial Counsel, if there be one, in lieu of the Trial Counsel; otherwise by another member of the Court.

Article 53

Depository of records

The records of trials of all cases brought before each Court established pursuant to this Code shall be deposited with the Swiss Confederation, depository of the Conventions and the Additional Protocols.

Article 54

Financial Considerations

1. Salaries, allowances and other expenses related to the functions of the Appointing Authority, Judges, Investigating Panel, Trial Counsel and Assistant Trial Counsel shall be borne by their respective governments.

2. No salaries, allowances, or other expenses shall accrue to the benefit of the persons mentioned in the preceding paragraph in the event that there are no cases assigned to each Court for trial.

Draft Protocol I, New Section III (concluded)

CDDH/I/333

Philippines

14 September 1976

Original: English

Add a new section to draft Protocol I, Part V, to be known as Section III and incorporate the Draft Code of International Crimes in Violation of the Geneva Conventions of 1949 and the draft Additional Protocols (see document CDDH/56/Add.1/Rev.1).

CDDH/I/346

Philippines

2 May 1977

Original: English.

1. In view of the lack of time; this Diplomatic Conference being directed to finish its work at this session, and in a true spirit of co-operation, the Philippines delegation is willing not to proceed further with the deliberation of its proposal in CDDH/56/Add.1/Rev.1 for the creation of a code of international crimes in violation of the Geneva Conventions of 1949 and the Additional Protocols.

2. It is, however, the wish of the Philippines delegation to have CDDH/56/Add.1/Rev.1 incorporated into the instruments of the Conference as an Annex.

3. The Philippines delegation hereby proposes, therefore, that CDDH/56/Add.1/Rev.1 be no longer discussed; however, it is further proposed that it be incorporated as an Annex to the instruments of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict for future reference and consideration.

ANNEX II TO THE TABLE OF AMENDMENTS

ANNEX II TO THE TABLE OF AMENDMENTS
(Amendments to draft Additional Protocols I and II
submitted by the Republic of Viet Nam at the first
and second sessions of the Conference)

PROTOCOL I

CDDH/I/9
11 March 1974
Original: French

Article 5

Amend paragraph 3 to read:

"If, despite the foregoing, no Protecting Power is appointed, the Parties to the conflict shall accept the offer made by the International Committee of the Red Cross, if it deems it necessary, to act as a substitute within the meaning of Article 2(e)."

CDDH/II/87
21 September 1974
Original: French

Article 8

1. Complete the title of draft Protocol I, Part II, as follows: "WOUNDED, SICK, SHIPWRECKED AND MISSING PERSONS".
2. Add a sub-paragraph (b) (bis) drafted as follows:

"(b) bis 'missing' means military personnel who have failed to rejoin their units after a military operation and civilians who have failed to return to their domicile owing to circumstances connected with hostilities."

CDDH/II/88
21 September 1974
Original: French

Article 16

Amend paragraph 3 to read:

"3. No person engaged in the medical activities mentioned in paragraph 1 above, may be compelled ...".

Draft Protocol I (continued)

CDDH/II/89
21 September 1974
Original: French

Article 17

Amend paragraph 3 to read:

"3. No one shall be molested, prosecuted or convicted for having given shelter, care or assistance to sick or wounded persons even if they belong to the adverse Party, on the sole condition that the fact is reported to the local authorities."

CDDH/II/257 *
10 March 1975
Original: French

New Section I bis

Add a supplementary article as follows to the new section proposed in document CDDH/II/244:

"The Parties to the conflict shall agree to set up committees to arrange for the repatriation of persons reported missing who have been found and to whom the provisions of the Conventions cannot be applied."

CDDH/II/90
21 September 1974
Original: French

Articles 32 bis, ter, quater

Add a new Section III to draft Protocol I, Part II reading as follows:

"SECTION III - THE MISSING AND DEAD

Article 32 bis

The Parties to the conflict shall endeavour to assist one another in collecting information concerning military personnel and civilians belonging to each Party who are reported missing. They shall set up and keep files on such persons for this purpose."

* This document was circulated on 28 February 1975 under symbol CDDH/II/244/Add.1.

Draft Protocol I (continued)

CDDH/II/90 (concluded)

"Article 32 ter"

Each Party to the conflict shall, as far as possible, mark the site and maintain the graves of the dead of the other Party who are buried within the territory it controls. Each Party shall set up and keep files for the identification of these graves.

To the same end, burial shall be carried out individually and the dead interred in individual graves."

"Article 32 quater"

At the close of hostilities, the Parties to the conflict shall agree to set up commissions for the purpose of seeking the missing and finding the graves of the dead.

They shall facilitate the repatriation of the missing who have been found; mortal remains; and personal effects of a sentimental value.

They shall also facilitate visits to graves by the families of the dead, social organizations and representatives of the Party concerned."

CDDH/III/6
11 March 1974
Original: French

Article 35

In paragraph 2, delete the words "are lawful" and substitute the words "are not considered as acts of perfidy".

CDDH/III/5
11 March 1974
Original: French

Article 42

In paragraph 1, fifth line, after the words "and provided that", delete the words "such movements fulfil the following conditions" and substitute the following "such 'government' or authority is fighting on behalf of a people against a foreign occupying force, the conditions of Article 4 of the Third Convention being applicable in their entirety."

Draft Protocol I (continued)

CDDH/III/5/Rev.1
10 February 1975
Original: French

Article 42

Amend the Article to read:

"1. In addition to the persons mentioned in Article 4 of the Third Convention, members of organized resistance movements who have fallen into the hands of the enemy are prisoners of war provided such movements belong to a Party to the conflict, even if that Party is represented by a government or an authority not recognized by the Detaining Power and provided that such movements are engaged in the situations referred to in Article 1, paragraph 2, and fulfil the following conditions:

(a) that they are under a command responsible to a Party to the conflict for its subordinates;

(b) that they distinguish themselves from the civilian population in military operations by openly carrying weapons and by wearing a fixed distinctive emblem recognizable at a distance;

(c) that they conduct their military operations in accordance with the Conventions and the present Protocol."

CDDH/III/4
11 March 1974
Original: French

Article 49

In paragraph 2, first line, replace the words "The Parties to the conflict shall endeavour to avoid locating" by the words "It is forbidden to locate".

Draft Protocol I (continued)

CDDH/III/3

Article 50

11 March 1974

Original: French

1. Amend paragraph 1(a) to read:

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

2. In paragraph 1(b), first line, replace the words "cancel or suspend" by the words "endeavour to avoid".

CDDH/II/9

Article 59

11 March 1974

Original: French

- Amend paragraph 4 to read:

"4. The international distinctive sign of civil defence is an equilateral light blue triangle on a light orange background."

CDDH/II/8

Article 62

11 March 1974

Original: French

- In paragraph 2, second line, replace the word "when" by the words "after having verified that those".

Draft Protocol I (concluded)

CDDH/I/8

11 March 1974

Original: French

Article 77

1. Change the title to read "Orders and instructions".
2. In paragraph 1, delete the existing text and substitute the following:

"The civilian and military authorities of the High Contracting Parties shall issue to their subordinates, through official channels, orders and instructions to ensure observance of the provisions of the Conventions and the present Protocol and shall supervise their execution."

3. In paragraph 2, last line, replace the words "refusing to obey" by the words "not carrying out".

PROTOCOL II

CDDH/I/7
11 March 1974
Original: French

Article 1

In paragraph 1, last line, delete the words "or other organized armed groups".

CDDH/I/6
8 March 1974
Original: French

Article 8

In paragraph 5, second line, after the word "endeavour", insert the words "in accordance with Article 5 of the present Protocol, to furnish a list of the places of detention and".

CDDH/II/91
21 September 1974
Original: French

PART III, Article 11

PART III

Complete the title of draft Protocol II, Part III, as follows: "WOUNDED, SICK, SHIPWRECKED AND MISSING PERSONS".

Article 11

Add a sub-paragraph (b) bis drafted as follows:

"(b) bis 'missing' means military personnel who have failed to rejoin their units after a military operation and civilians who have failed to return to their domicile owing to circumstances connected with hostilities."

CDDH/II/7
8 March 1974
Original: French

Article 14

At the end of paragraph 3, replace the full stop by a comma and add the following clause: "provided they so inform the authorities in power".

Draft Protocol II (continued)

CDDH/II/6
8 March 1974
Original: French

Article 16

In paragraph 3, first line, replace the words "medical activities" by the words "medical activities as referred to in paragraph 1 above".

CDDH/II/92
21 September 1974
Original: French

Articles 19 bis, ter, quater

Add the following new articles:

"Article 19 bis

The Parties to the conflict shall endeavour to assist one another in collecting information concerning military personnel and civilians belonging to each Party who are reported missing. They shall set up and keep files on such persons for this purpose."

"Article 19 ter

Each Party to the conflict shall, as far as possible, mark the site of and maintain the graves of the dead of the other Party who are buried within the territory it controls. Each Party shall set up and keep files for the identification of these graves.

To the same end, burial shall be carried out individually and the dead interred in individual graves."

"Article 19 quater

At the close of hostilities the Parties to the conflict shall agree to set up commissions for the purpose of seeking the missing and finding the graves of the dead.

They shall facilitate the repatriation of the missing who have been found; mortal remains; and personal effects of a sentimental value.

They shall also facilitate visits to graves by the families of the dead, social organizations and representatives of the Party concerned."

Draft Protocol II (concluded)

CDDH/III/2

8 March 1974

Original: French

Article 25

1. Change the title to read: "Definition of the civilian population and civilian objects".
2. In paragraph 1, after the words "armed forces" insert the words "and who does not directly or indirectly participate in hostilities".
3. Add a new paragraph 4 to read:

"4. Objects which, by their character or use, are intended for the civilian population are considered to be civilian objects, except when they are occupied by armed forces or used for the purpose of hostilities."

CDDH/II/5

8 March 1974

Original: French

Article 33

1. In paragraph 1, third line, delete the words "to the fullest possible extent".
2. In paragraph 2, second line, delete the word "when" and substitute the words: "after having verified that such".
3. In paragraph 4, second line, after the word "supervision", insert the words "of a protecting Power or".



ANNEX III TO THE TABLE OF AMENDMENTS

A N N E X III

(Draft amendments to draft Additional Protocol I
submitted by the Democratic Republic of Viet-Nam)

CDDH/41
12 March 1974
Original: French

Democratic Republic of Viet-Nam

Part One

BASIC CONSIDERATIONS

- Humanity and equality based on justice.
- The effective protection of unarmed or insufficiently armed persons in the context of new conditions of warfare.

I. The concept of humanity as set out in the Geneva Conventions consists merely in binding up war wounds without condemning war crimes and has proved to be inadequate. This watertight separation between jus ad bellum and jus in bello was possible within the framework of the law of The Hague of 1899 and 1907, under which war was regarded as admissible in international relations, but it has become a flagrant anomaly now that the war of aggression is deemed to be "the ultimate international crime", since under modern international law the only permissible wars are those of legitimate self-defence as established by the United Nations Charter.

In view of contemporary realities, the absence of any reference to international legislation on war crimes and other international crimes related to armed conflicts in the four Geneva Conventions is out of keeping with the true spirit of humanity, which must be based on justice. Justice demands that a clear distinction be made between what is humane and what is inhumane, it requires us to oppose inhumane acts and support the humane.

In order to satisfy the requirements of man's conscience, the new humanitarian law has to contribute to the fullest extent possible - that is, by strict moral condemnation of all international crimes related to armed conflicts - to the prevention of new war crimes, such as those perpetrated in Viet-Nam by American imperialism and in Guinea-Bissau, southern Africa, Mozambique, Angola, and elsewhere by the original colonialists, the neo-colonialists and racist regimes.

Where humanitarian treatment is concerned the spirit of the Geneva Conventions is essentially based on the outdated concept of the equal rights of the parties to a conflict. In modern terms, this is the concept of the impartiality of humanitarianism in times of war.

CDDH/41 (continued)

Here again, the absence of a concept of justice at the root of this concept of equality or impartiality has led the Geneva Conventions into gross injustices, from which the peoples fighting against imperialist aggression had occasion to suffer.

The humanitarian provisions of the four Conventions put war criminals and their victims on an equal footing. Moreover, in certain cases they afford the guilty more privileged treatment than their victims.

It is right that there should be equality of humanitarian treatment between war criminals of the opposing parties, between war victims and between combatants of the opposing parties. But justice requires that there should be no possibility of equal treatment for war criminals and for their victims. This is a question of ordinary human common sense.

If this were not so, the result would be to encourage war criminals - an unexpected effect which the Geneva law certainly did not knowingly anticipate. Yet the realities of our times place a heavy responsibility towards mankind on the Geneva law.

As a consequence of the absence of justice at the root of the concept of equality, the four Conventions, when they do establish distinctions, as, for example, between victims Parties and non-Parties to the Conventions (article 2, common to the four instruments), create the unfair situation in which Parties to the Conventions which violate those instruments are protected while those who, although not Parties to the Conventions have not committed any acts contrary to their provisions are thwarted. This incongruity has been prejudicial to the strict application of the Conventions, which are fairly widely regarded as having been concluded only to be violated.

If the concept of the equality or impartiality of the humanitarian spirit of the four Conventions is viewed in the context of the realities of our times, the following conclusion is inescapable, unjust equality is inequality and unjust impartiality is partiality, and that to the advantage of war criminals, not of their victims.

Equality or impartiality must be based on justice if it is to serve as the criterion for humanitarian treatment.

II. The essence and purpose of humanitarian law is to protect the overall physical and moral well-being of human beings and to create all the legal conditions necessary to enable them fully to develop their personality, even under the difficult conditions of war, when weapons are being used to destroy them.

CDDH/41 (continued)

It is precisely because the four Geneva Conventions have basically attained this end that they have their place in history. But wartime conditions evolve over the centuries. Where human protection is concerned, the four Conventions were to a large extent applicable to the wars between industrial countries waged during the period between the two World Wars. This implied a certain balance from the outset; each side possessed a deterrent force, that is to say, the power to apply the law of retaliation. As a result, a certain respect for the laws and customs of war was preserved, even in the heat of the battle.

Since the signature of the four Geneva Conventions of 1949, the structure of colonial and neo-colonial wars of aggression has been transformed, culminating in the Viet-Nam war.

American imperialism and other imperialist countries under its sway seek out their prey on its own ground, in the under-developed countries, and profit by their absolute superiority in weapons to break down the patriotism of civilian population by terror, by constant massacres which represent total genocide.

In the face of the increasingly fervent national and democratic awakening of weak and dependent peoples, in the face of the solidarity of whole peoples which keep the conventional machinery of war at bay, the only strategy open to imperialist aggression, as in Viet-Nam, is total war waged to the bitter end by one side, the side of the aggressor, an over-industrialized country equipped with the most modern and terrible military methods, and free from any fear of being punished on its own soil through "retaliation" by the adversary, an under-developed and inadequately armed small people.

It is more than probable that in the coming decades it will be wars of this kind that will break out, more than any others. Although all mankind is constantly struggling to prevent such wars, they continue to represent a grave threat to mankind.

Owing to the scientific and technical advances in warfare made by American imperialism and a small group of imperialist countries under its sway, almost half the human race, under-developed and insufficiently armed, is exposed to their colossal war machine which is ready to mount an operation of total genocide, that is, the destruction of those peoples - civilians, women and children - who refuse to give in.

CDDH/41 (continued)

What should be the position of humanitarian law in face of these new war conditions which set unarmed or inadequately armed men and under-developed and ill-equipped peoples against imperialism's modern war machine? In our opinion, humanitarian law should:

First, effectively protect human beings against the war machine of aggression; promote and develop their capacity to use all their courage and intelligence to defend themselves against the weapons used by the imperialist aggressor;

Secondly, take all possible measures to prevent the use of the war machine of aggression by morally condemning it as a war crime. It should be pointed out here that moral condemnation is the sole deterrent of an instigator of war who does not fear retaliation on his own soil.

The effective and vigorous protection of mankind against the war machine therefore calls for the exclusion of any rules which require guerrilla fighters to wear distinctive emblems, since these would only serve to make them the target of the imperialist aggressor's fire, or which restrict the ruses of war - the courage and intelligence of the inadequately armed man - and represent them as acts of perfidy.

In severely condemning the war machine of aggression as criminal, the rules prohibiting means and methods of criminal combat should be as complete and detailed as possible. Similarly, the inadequate and dangerous concepts of "unnecessary injury", "unnecessary suffering", "due proportion" and "military necessity" should be excluded.

CDDH/41 (continued)

Part Two

DRAFT AMENDMENTS TO THE
ICRC DRAFT ADDITIONAL PROTOCOLS

On the basis of these fundamental considerations, we are submitting the following:

- (1) An amendment to the preamble to draft Protocol I of the ICRC.
- (2) A number of proposals for new articles designed either to replace certain articles of draft Protocol I of the ICRC or to supplement that draft.

I. Our amendment to the preamble reflects the above fundamental considerations, which should serve both as a basis for the drafting of specific provisions of the Protocol and as a guide for the future application of the final Protocol.

Amendment to the preamble to draft Protocol I of the ICRC

"The High Contracting Parties,

Considering that international humanitarian law should contribute to the maintenance and strengthening of international peace, and the development of friendly relations among nations based on respect for the principle of equal rights and self-determination and for fundamental human rights:

Considering that modern international law has condemned wars of aggression as the ultimate international crime, and has stigmatized crimes against peace, crimes against humanity, particularly the continued existence of colonial regimes, the practice of apartheid and all forms of racial discrimination, the crime of genocide and war crimes stricto sensu (i.e., serious violations of the laws or customs of war)

Considering that the struggle of peoples subjected to colonial and foreign domination and to racist regimes for their right to self-determination and independence is lawful and entirely in conformity with the principles of international law and that the armed conflicts in which peoples fight against colonial and foreign domination and racist regimes should be regarded as international armed conflicts in the meaning of the Geneva Conventions of 12 August 1949:

Deeming it essential to reaffirm and strengthen humanitarian principles based on justice in order to encourage efforts to ensure the scrupulous application of the provisions of humanitarian

CDDH/41 (continued)

law, the prevention and punishment of international crimes related to armed conflicts and the effective protection of the civilian population and of combatants in the new conditions of warfare;

Have agreed on the following:"

II. Drafts of new articles proposed as additions to draft Protocol I of the ICRC

(1) With a view to encouraging efforts to ensure the scrupulous application of the provisions of humanitarian law, the prevention and punishment of international crimes related to armed conflicts and the effective protection of the civilian population and of combatants in the new conditions of warfare:

(a) We propose that the following new article covering international crimes related to armed conflicts be inserted immediately after Article 1 of draft Protocol I:

Article : "The High Contracting Parties recognize the following international crimes related to armed conflicts, defined in modern international law since the Judgement of the Nuremburg International Military Tribunal:

- (1) Wars of aggression, which constitute the ultimate international crime;
- (2) Crimes against peace;
- (3) The continued existence of colonial régimes, the practice of apartheid and all forms of racial discrimination;
- (4) War crimes stricto sensu, i.e., serious violations of the laws and customs of war;
- (5) The crime of genocide;
- (6) Crimes against humanity."

The High Contracting Parties would thus go no further than to recognize international crimes related to armed conflicts as defined in such texts of international law as: the Judgement of Nuremburg of 1 October 1946 and United Nations General Assembly resolution 95(I) of 11 December 1946 on wars of aggression; the Statute of the International Military Tribunal of 8 August 1945 on the crime against peace and the crimes against humanity; General Assembly resolutions 1514(XV) of 14 December 1960, 2103(XX) of 20 December 1965 and 3103(XXVIII) of 12 December 1973, on the condemnation of colonialism in all its forms and manifestations, on the practice of apartheid, and all forms of racial discrimination; the Statute of the International Military Tribunal of 8 August 1945,

CDDH/41 (continued)

the Judgment of Nuremberg of 1 October 1946, article 50 of the First Convention, article 51 of the Second Convention, article 130 of the Third Convention and article 147 of the Fourth Convention of 1949, as well as article 23 of The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1945, on war crimes stricto sensu, and the Convention of 9 December 1948 on the crime of genocide.

Humanitarian law does not pass legal sentence or lead to judicial sentence. However, drawing on the new ethical concepts of humanity, it has the competence to pronounce moral condemnation, by stating that under the rules of international law in force, a given act constitutes an international crime related to armed conflicts and is condemned by the conscience of mankind, which unerringly evaluates such acts.

It is on this essential basis of justice, which draws distinctions between persons subject to humanitarian law, that this law will establish rules on protection and treatment.

(b) We propose that the following new article on "Methods and means of combat and prohibited methods of warfare" replace articles 33 and 34 of section I, part III of draft Protocol I:

Article : The following shall be considered to be war crimes stricto sensu and crimes against humanity:

- (a) The use in strategic or tactical operations of all means and methods of combat causing mass extermination or destruction of entire regions, whether inhabited or not, or engendering extremely serious mutilation or particularly agonizing and long-lasting suffering both physical and moral.
- (b) The use of means or methods of combat, such as spraying of poisonous chemical products, area bombardments, intensive shelling, indiscriminate shooting and the razing of large areas, the immediate and long-term effects of which are genocide, biocide, destruction or the disruption of natural conditions in the human environment.
- (c) Resort to so-called "strategic" attacks against the economic and military potential of a people whose degree of economic and military development is clearly disproportionate to that of the attacking country.
- (d) The use of any method of war designed to subjugate an entire people which is fighting against colonial or foreign domination or against a racist regime, particularly the combination of means and methods of combat with

CDDH/41 (continued)

methods of war designed to terrorize the civilian population with a view to forcing it into a mass migration or herding it into camouflaged concentration camps.

- (e) Resort to attacks motivated by so-called "military necessity" or other similar concepts, for the purpose of justifying violations of the mandatory provisions of international humanitarian law.
- (f) Resort to reprisals against persons or objects protected by the Conventions as supplemented by the present Protocol."

In our opinion, the rule governing the use of means and methods of combat in the new humanitarian law should exclude the idea of "unnecessary injury" and "avoidable suffering", which appears a contrario to permit "necessary injury" and "unavoidable suffering", probably in accordance with the permissibility of war prevailing in international relations at the time of the law of The Hague. At the present time, our humanitarian feelings are revolted by the mere mention of such ideas. Indeed, technical advances in certain imperialist countries enabled them to justify their barbarous crimes in the Viet-Nam war by using arms which were said to "cause less unnecessary suffering by killing more quickly"!

(c) We propose that a new article be added after Article 79 of Section II, Part V, of draft Protocol I, reading as follows:

Article : "The punishment of persons guilty of international crimes related to armed conflicts shall not be subject to the statute of limitations."

The principle that war crimes are not subject to the statute of limitations has been universally recognized in rules of international law since 1969.

(2) With regard to the necessity of ensuring effective protection for the civilian population as a whole in the new conditions of warfare, we propose that the following article be added before Article 43, at the beginning of Chapter I of Section I, Part IV of draft Protocol I:

Article : "It is strictly forbidden to cause loss of human life and material damage to the civilian population, as well as destruction of the environment,

In particular, it is strictly forbidden to resort to economic blockade, the destruction of stores, foodstuffs, crops, livestock, drinking water supplies, dykes, dams, hydraulic works, and schools and cultural objects."

CDDH/41 (continued)

Similarly, we propose that the following article replace article 50 of chapter IV, section I, part IV of the ICRC draft Protocol I:

Article : "In order to ensure maximum respect and protection for the civilian population, it is strictly forbidden to base attacks on the principle of "due proportion" according to which attack is permitted when losses in civilian lives, and damage to civilian objects and to the environment, are not disproportionate to the direct and substantial military advantage anticipated."

(3) With regard to the civilian population in occupied areas, total genocide designed to exterminate and subjugate an entire people, carried out by the imperialist aggressor against a nation which has been fighting for self-determination for several decades, requires a more detailed rule of humanitarian law.

Moreover, international law has condemned war of aggression as the ultimate international crime and has sanctioned the right of peoples to wage a war of self-defence. It has now become an active and vital principle of law that, in wars of national liberation and in patriotic wars against imperialist aggression, the victims of aggression have to wage a people's war.

For this reason, we propose that the following article be added at the beginning of chapter I, section III, part IV of the ICRC draft Protocol I:

Article : "In occupied areas"

- (1) the whole population is entitled to love its country and the right to freedom. Life, health, physical and mental integrity, human dignity, honour, religious beliefs and practices, man's other democratic freedoms, and the population's property must be respected in all circumstances.
- (2) It is strictly forbidden to place civilians under any form of arrest for refusing to submit, for their political resistance or for their patriotism.
- (3) If a civilian is arrested during military operations, he must be set free as soon as possible. During the period of detention, the arrested person has the right to treatment at least equal to that afforded prisoners of war under the terms of the Third Convention.
- (4) It is strictly forbidden to resort to torture, corporal punishment or physical or moral pressure in order to oblige married couples to divorce or to force civilians to abjure their political convictions."

CDDH/41 (continued)

(4) (a) With regard to protection for combatants in the new conditions of warfare, the humanitarian law which supplements the 1949 Geneva Conventions must, as mentioned above, take into account that this protection for the combatant on the side of the inadequately armed and unorganized victim of aggression who is called upon to muster all his courage and intelligence to compensate for his lack of arms in order at least to avoid danger, or to defend himself or, better still, to halt the military might of the enemy equipped with the most modern and terrible means of combat.

Article 13, para. 6, of the First Convention, as well as the corresponding articles in the Second and Third Geneva Conventions, extends the principle of protection to the "inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units." This provision appeals to the finest of man's sentiments - love of country and heroism. But what must be stressed here is that the Conventions have thereby already taken into account the real and unorganized condition of insufficiently armed people who are obliged to resist aggression. In view of this fact, should humanity require an inadequately armed man to be in uniform, wear a distinctive emblem, and be organized in order to be accorded protection?

Furthermore, everyone knows that, in guerilla warfare; the combatants have to take advantage of the cover of night in order to avoid becoming the target of the enemy's modern weapons. In such conditions, does humanity really require them to wear emblems or uniforms so that "they distinguish themselves from the civilian population in military operations", as laid down in Article 42 of the ICRC draft Protocol I? Such a requirement would expose combatants to the lethal fire of the imperialists, who have the monopoly of modern arms techniques. It would sacrifice man to the machine of war. It would be contrary to the spirit of humanity. In practical terms, it would amount to supporting the counter-guerilla tactics of the imperialist aggressors.

For this reason, we propose that Article 42 of the ICRC draft Protocol I be replaced by a provision reading:

Article : "All combatants in the armed struggles of peoples against colonial and foreign domination and against racist régimes, whether they belong to an organization or not, are, once captured and detained during a period of hostility, prisoners of war."

It must be pointed out that United Nations General Assembly resolution 3103(XXVIII) of 12 December 1973 on the basic principles relating to the legal status of combatants struggling against colonial and foreign domination and against racist régimes was of the same tenor.

CDDH/41 (continued)

We also propose that all the provisions of the ICRC draft Protocol I relating to the questions of distinctive emblems, uniforms, and the organization of peoples struggling against colonial and foreign domination and against aggression, be amended in line with this new conception.

(b) For the purpose of achieving better protection for prisoners of war in the new conditions of warfare, we propose that a new article - Article 42 (a) - be added immediately after the above new article, article 42:

Article 42 (a): "In addition to the provisions of the Third Convention which prohibit all inhumane treatment of prisoners of war, it is strictly forbidden to take against them such acts of reprisal as: suppression by force of arms, detention in penitentiary establishments (gaols, penitentiaries, penal settlements, etc.), the falsification of records in order to transform prisoners of war into penal law prisoners, etc.

It is strictly forbidden to resort to physical or moral coercion to oblige prisoners of war to abjure their political convictions."

(c) Furthermore, in accordance with the spirit of humanity based on justice, we propose that the following article be added as Article 42 (b) immediately after the above new article, article 42 (a):

Article 42 (b):

"(1) All those who commit international crimes related to armed conflicts and who are caught in the act shall not be entitled to prisoner-of-war status.

(2) However, the persons referred to in paragraph (1) shall be treated humanely during their detention, shall not be put to death or subject to torture of any kind, shall be fed and housed in the conditions normal to a citizen of the Detaining Power, and shall be cared for in the event of sickness or injury. If they are found guilty of grave infringements of the law during their detention, they shall have the right to present their defence and they shall be entitled to a fair and proper trial."

Throughout the recent war in Viet-Nam, the Government of the Democratic Republic of Viet-Nam acted at all times in this way and received the approval of all progressive sections of humanity. When acceding to the four Geneva Conventions, many countries expressed similar reservations. We believe that the proposed provision could be incorporated into the new humanitarian law.

CDDH/41 (concluded)

The time has now come to establish clearly to which side the international community's humanitarian assistance will be given - to the combatant who respects humanitarian law, or to the combatant who violates humanitarian law. He who violates humanitarian law does not have the right to be well-treated under that law.

(d) We propose that a new article - Article 42 (c) - be added immediately after the above new Article 42 (b):

Article 42 (c): "Those members of the armed forces of the Parties to a conflict who have not carried out their superior officers' orders to commit international crimes related to armed conflict, or who had not perpetrated them at the time they were captured, shall have the benefit of prisoner-of-war status."

(5) In order to enable the Conventions to be applied to the specific conditions of armed struggle against foreign and colonial domination and against racist régimes, we propose that the following article be inserted in Section I, Part V, of ICRC draft Protocol I, before Article 70:

Article : "Peoples who are struggling against colonial and foreign domination and against racist régimes shall, in so far as their economic and social condition permit, endeavour to apply the provisions of the Conventions relating to the transmission of information concerning the geographic location of prisoner of war camps, the issuing of identity cards to military personnel, the financial resources of prisoners of war, information bureaux, etc."

(6) With regard to the scope and application of the four Conventions and of the final Additional Protocol, we propose that the following two articles be added to Part VI of ICRC draft Protocol I:

Article : "Since the provisions of the Conventions which are supplemented by the present Protocol do no more than recognize the highest rules of humanity in existence and acknowledged by all sovereign States and nations and by the conscience of mankind, the Conventions supplemented by the present Protocol shall be applicable to all Parties engaged in armed conflict, whether or not they have acceded to the Conventions alone or to the Conventions supplemented by the present Protocol."

Article : "Those cases not provided for in the Conventions and the present Protocol shall, consistent with justice, be governed in accordance with the principles of humanity, the rules and principles of international law, and the dictates of the public conscience."

ANNEX IV TO THE TABLE OF AMENDMENTS

A N N E X IV

(Draft amendment concerning Protocol II as a whole
submitted by the Canadian Delegation)

CDDH/212

Canada

4 April 1975

Original: French

EXPLANATORY COMMENTS

It should be noted that articles 2 to 6 inclusive of this draft and article 20 are as adopted in Commissions I and III respectively. The language of the other articles is based mainly on the ICRC text, with such changes as are considered desirable to obtain greater simplicity and clarity.

Canada believed originally, in 1971, and is still firmly of the opinion, that Protocol II should in fact be drafted as a supplement to article 3 common to the Geneva Conventions and should contain such provisions of Humanitarian Law as can command the widest application to internal conflicts and as are both practicable and attractive. In this regard it would be useful to keep the following four points in mind:

- (1) The provisions of Protocol II must, individually and overall, be agreeable to all parties to the conflict, whether governmental or non-governmental. There should therefore be an obvious, practical benefit to be derived by each party in the observance of these provisions.
- (2) These provisions must be well within the perceived capacity of each party to apply them. They should, therefore, be kept as precise and simple as possible so as to be readily understood and honoured by even a relatively rudimentary organized armed group under responsible command, etc.
- (3) The Protocol should not be invoked as affecting the sovereignty of any State Party or the responsibility of its government to maintain law or order and to defend national unity and territorial integrity by legitimate means; nor should it be invoked to justify any outside intervention.
- (4) Nothing in the Protocol should suggest that dissidents must be treated legally other than as rebels. To move in the direction of recognizing the military activities of the rebels as having some degree of legitimacy, is to invite the expectation or even demand for Prisoner-of-War status on capture.

CDDH/212 (continued)

Finally, it is necessary to warn against any automatic repetition in Protocol II of the more comprehensive provisions, such as those on civil defence, found in Protocol I and applicable in that Protocol to international conflicts. To do so, would risk altering the 'Material Field of Application' of Protocol II to such an extent that states, with a view to the internal application of the Protocol, would either fail to ratify it or tend to argue for its non-application in situations objectively falling within the scope of the Protocol, thereby leaving, in fact, the victims of these contemporary conflicts without adequate protection.

CDDH/212 (continued)

DRAFT PROTOCOL II

The High Contracting Parties

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

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 the law of nations as derived from the principles of humanity and the dictates of the public conscience,

Have agreed on the following:

PART I

General Provisions

Article 1 - Respect for the protocol

1. The High Contracting Parties undertake to respect and to ensure respect for the present Protocol in all circumstances.
2. Each party to an armed conflict to which this Protocol applies is responsible for ensuring compliance with the Protocol by all persons under its control.

Article 2 - Material field of application

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.

CDDH/212 (continued)

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 3 - Personal field of application

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 4 - Legal status of the parties to the conflict

The application of the provisions of the present Protocol, or of 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 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 5 - Non-intervention

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.

Article 6 - Rights and duties of the Parties to the conflict

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

CDDH/212 (continued)

PART II

Humane Treatment of persons in the power of the Parties
to the conflict

Article 7 - Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take a 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 any adverse distinction.

2. The following acts against the persons referred to in paragraph 1 are and shall remain prohibited at all times and in all circumstances:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (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;
- (e) slavery and the slave-trade in all their forms, including forced labour;
- (f) pillage;
- (g) threats to commit any of the foregoing acts.

Article 8 - Women

Women shall be the object of special respect and shall be protected in particular against rape, enforced prostitution and any form of indecent assault.

Article 9 - Persons whose liberty has been restricted

1. Persons whose liberty has been restricted by capture or otherwise for reasons relating to the armed conflict, shall, whether they are interned or detained, be treated humanely, in accordance with article 7.

2. In addition, the wounded, sick and the shipwrecked shall be treated in accordance with article 12.

CDDH/212 (continued)

3. With respect to the persons referred to in paragraph 1, the parties to the conflict shall, within the limits of their capabilities, respect the following provisions;

(a) They shall be accommodated in a manner affording reasonable safeguards as regards health and hygiene and providing effective protection against the rigours of climate and the dangers of the armed conflict.

(b) They shall be provided with both drinking water and food sufficient to maintain their good health and shall be provided with, or permitted to obtain, adequate clothing.

(c) They shall be accommodated separately with their own sex and shall be under the immediate supervision of members of that sex. This does not apply to situations in which members of the same family are in the same place of restriction.

(d) They shall be allowed to receive individual or collective relief.

(e) They shall be allowed to practice their religion and to receive spiritual assistance from chaplains and other persons performing similar functions.

(f) They shall be allowed to send and receive letters and cards. The parties to the conflict may limit the number of these, if considered necessary.

(g) They shall be removed from the area of their restriction if it becomes exposed to dangers arising from the armed conflict, provided this can be accomplished in conditions of relative safety.

4. Acts of retaliation comparable to reprisals against the persons referred to in paragraph 1 are prohibited.

5. Subject to temporary and exceptional measures, the parties to the conflict shall facilitate visits to persons referred to in paragraph 1 by an impartial humanitarian body such as the International Committee of the Red Cross and National Red Cross (Red Crescent or Red Lion and Sun) Societies or branches thereof.

Article 10 - Interned families

Regardless of the provisions of article 9, wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees. Internees may request that their children who are left at liberty without parental care shall be interned with them and, except where compliance would be contrary to the interests of the children concerned, it shall be so granted.

CDDH/212 (continued)

Article 11 - Penal provisions

1. No one may be punished for an offence which he or she has not personally committed; collective punishments are prohibited.
2. No one shall be sentenced or punished for an offence in relation to the conflict without previous judgement pronounced by a court or by a properly constituted tribunal affording all the usual guarantees required by the Rule of Law, which are generally recognized as essential, including a procedure affording the accused the right to defend himself or to be represented by counsel.
3. Representatives of the National Red Cross (Red Crescent or Red Lion and Sun) Society, or branches thereof, or of a body fulfilling the functions of such a Society and the identification of which has been notified to and agreed to by the other party shall have the right to attend the trial of any accused person, unless the hearing is, as an exceptional measure, to be held in camera.
4. A convicted person shall be advised of his rights of appeal and petition, and of any time limits applicable thereto. In no case shall he be denied any such rights provided for by law.
5. The death penalty pronounced on any person found guilty of an offence which was based solely on his having taken part in the armed conflict shall not be carried out until the conflict has concluded.
6. The death penalty shall not be pronounced for an offence in relation to the armed conflict committed by persons below fifteen years of age.
7. The death penalty shall not be carried out on pregnant women.
8. At the conclusion of the conflict, the authorities in power shall endeavour to grant amnesty to as many as possible of those who have participated in the armed conflict or whose liberty has been restricted for reasons related to the armed conflict.

CDDH/212 (continued)

PART III

Wounded and Sick and Shipwrecked Persons

Article 12 - Protection and care

1. The wounded and sick and the shipwrecked shall be respected and protected.
2. In all circumstances, they shall be treated humanely and shall receive with the least possible delay and without any adverse distinction the medical care necessitated by their condition.
3. All unjustified acts or omissions harmful to the health or to the physical or mental well-being of the persons referred to in paragraph 1 are prohibited. This prohibition applies even if those persons give their consent.
4. It is accordingly prohibited to carry out on the persons referred to in paragraph 1 physical mutilations or medical or scientific experiments, including grafts and organ transplants, which are not justified by their medical treatment and are not in their interest.

Article 13 - Search and evacuation

1. At all times, and particularly after an engagement, the parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick and the shipwrecked and ensure their adequate care.
2. Whenever circumstances permit, local arrangements shall be concluded by the parties to the conflict for the removal of the wounded and the sick from the combat zone or from a besieged or encircled area.
3. The dead shall be collected and arrangements made for their decent disposal.

Article 14 - Role of the civilian population

1. The civilian population shall respect the wounded and sick and the shipwrecked, even if they belong to the adverse party, and shall refrain from committing acts of violence against them.
2. Relief societies and the civilian population shall be permitted to offer shelter, care and assistance to such wounded and sick persons, either spontaneously or at the request of the parties to the conflict.

CDDH/212 (continued)

3. No one, including medical personnel and chaplains and persons performing similar functions, shall be molested or convicted for having offered or given shelter, care or assistance to the wounded and sick and the shipwrecked even if they belong to the adverse party.

Article 15 - Medical personnel, units and transports

Medical personnel, chaplains and other persons performing similar functions, medical facilities and medical transports, whether military or civilian, shall in all circumstances be respected and protected.

Article 16 - The distinctive emblem

1. The emblem of the red cross (red crescent, red lion and sun) on a white background, which is the distinctive emblem of the medical personnel, medical units and medical transports of the parties to the armed conflict and of Red Cross (Red Crescent, Red Lion and Sun) organizations, shall be respected in all circumstances.

2. It may not be used to protect other persons or objects; the parties to the conflict shall adopt special measures for supervising its use and for preventing and repressing any misuse of it.

Article 17 - Prohibition of reprisals

Acts of retaliation comparable to reprisals against the wounded and sick and the shipwrecked as well as against medical personnel, medical units and means of medical transports are prohibited.

PART IV

Methods and Means of Combat

Article 18 - Prohibition of unnecessary injury

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

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

Article 19 - Safeguard of persons hors de combat

1. It is forbidden to kill or injure a combatant who is hors de combat. For the purposes of this paragraph a combatant is hors de combat if he is not yet in the power of the adversary party but is unconscious or

CDDH/212 (continued)

- (a) is wounded or sick; or
 - (b) has surrendered or has clearly expressed an intention to surrender;
- and, if, in either case, he abstains from any hostile act and does not attempt to escape.

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

Article 20 - Civilian Population

1. A civilian is anyone who is not a member of the armed forces or of an organized armed group.
2. The civilian population comprises all persons who are civilians.
3. The presence within the civilian population of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.
4. In case of doubt as to whether a person is a civilian, such persons shall be considered to be a civilian.

Article 21 - Basic rules

1. In order to ensure respect for the civilian population the parties to the conflict shall confine their operations to the destruction or weakening of the military resources of the adversary and shall make a distinction between the civilian population and combatants, and between civilian objects and military objectives.
2. Constant care shall be taken, when conducting military operations, to spare the civilian population, civilians and civilian objects. This rule shall, in particular, apply to the planning, deciding upon or launching of an attack.

Article 22 - Protection of the civilian population

1. The civilian population as such, as well as individual civilians, shall not be made the object of attack. In particular, methods intended to spread terror among the civilian population are prohibited.
2. Civilians shall enjoy the protection afforded by this article unless and for such time as they take a direct part in hostilities.

CDDH/212 (continued)

3. Attacks against the civilian population or civilians by way of acts of retaliation comparable to reprisals are prohibited.

Article 23 - Measures in favour of children

1. Children shall be the object of privileged treatment; they shall be especially protected against any form of assault. The parties to the conflict shall provide them with the care and aid their age and situation require.

2. To this end, within the levels of their capability, the parties to the conflict shall, inter alia,

(a) endeavour to furnish means for the identification of children in the area of armed conflict;

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

(c) take measures, if necessary, and with the consent of their parents or persons responsible for their care, to remove children from the area of combat and ensure that they are accompanied by persons entrusted with their safety;

(d) take all necessary steps to facilitate the reuniting of families temporarily separated;

(e) take the necessary measures to ensure that children under fifteen years of age shall not take any part in hostilities and, in particular, they shall refrain from recruiting them into armed forces or from accepting their voluntary enrolment.

PART VI

Relief and Related Activities

Article 24 - Relief actions

1. If the civilian population is inadequately supplied, in particular with means of shelter, foodstuffs, clothing and medical and hospital stores, the parties to the conflict shall agree to and to the fullest possible extent facilitate relief actions by non-parties to the conflict which are exclusively humanitarian and impartial in character and which are conducted without any adverse distinctions. Relief actions fulfilling the above conditions shall not be regarded as interference in the armed conflict.

2. The parties to the conflict and any High Contracting Party through whose territory supplies must pass shall grant free passage when relief actions are carried out in accordance with the conditions stated in paragraph 1.

CDDH/212 (continued)

3. When prescribing the technical methods relating to assistance or transit, the parties to the conflict and any High Contracting Party shall endeavour to facilitate and accelerate the entry, transport, passage and distribution of relief.

4. The parties to the conflict and any High Contracting Party may set as a condition that the entry, transport, passage or distribution of relief be executed under the supervision of an impartial humanitarian body.

5. The parties to the conflict and any High Contracting Party shall in no way whatsoever divert relief consignments from the purpose for which they are intended or delay the forwarding of such consignments.

Article 25 - National Red Cross and other relief societies

1. The National Red Cross (Red Crescent and Red Lion and Sun) Society and its branches, acting if necessary independently, shall be permitted to pursue their humanitarian activities in accordance with the principles of the Red Cross as stated by the International Conferences of the Red Cross. Other relief societies shall be permitted to carry out their humanitarian activities in accordance with similar conditions.

2. In no circumstances shall the fact of having taken part in these activities be punishable.

Article 26 - Recording and information

1. If necessary, the parties to the conflict shall, to the extent possible, organize, with the co-operation of the International Committee of the Red Cross, information bureaux to which they shall communicate all relevant information on the victims of the conflict who may be in their power. The dead shall also be recorded.

2. Each information bureau shall transmit to the other bureaux, if necessary through the Central Information Agency provided for in the Geneva Conventions of August 12, 1949, the information thus obtained, and shall transmit it to the next of kin concerned; the information bureaux shall also be responsible for replying to all enquiries concerning the victims of the conflict, and shall take the necessary steps to search for them. The transmission of information or the search for the victims shall not be undertaken if they are liable to be prejudicial to the interests of the victims or of their relatives.

CDDH/212 (concluded)

PART VII

Execution of the Present Protocol

Article 27 - Dissemination

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 and civil instruction.

2. In the 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 authorities and all persons subject to their control.

Article 28 - Special agreements

The parties to the conflict shall endeavour to bring into force, either by means of special agreements or by declarations addressed to the depositary of the Geneva Conventions of August 12, 1949, or to the International Committee of the Red Cross, all or part of the provisions of those Conventions and of the Additional Protocol relating to the protection of Victims of International Armed Conflicts.

Article 29 - Co-operation in the observance of the present Protocol

The parties to the conflict may call upon a body offering all guarantees of impartiality and efficacy, such as the International Committee of the Red Cross, to co-operate in securing the observance of the provisions of the present Protocol. Such a body may also offer its services to the parties to the conflict.

IV. INFORMATION DOCUMENTS
circulated during the third and fourth sessions
of the Conference

CONTENTS

	<u>Page</u>
1. Memorandum by non-Governmental Organizations on the two draft Protocols to the Geneva Conventions, 1949 - Supplementary to the Memorandum of 31 December 1973 (CDDH/INF.224, 27 April 1976)	207-218
2. Memorandum by non-Governmental Organizations on the two draft Protocols to the Geneva Conventions, 1949 - Supplementary to the Memorandum of 31 December 1973 (CDDH/INF.224/Add.1, 27 April 1976)	219
3. Memorandum by the World Veterans' Federation and the International Federation of Resistance Fighters concerning Articles 41 and 42 of draft Protocol I to the Geneva Conventions of 1949 (CDDH/III/INF.213, 27 April 1976)	221-225
4. Memorandum concerning draft Additional Protocol I to the Geneva Conventions of 1949, prepared by the International Confederation of Former Prisoners of War (CDDH/INF.226, 3 May 1976)	227-230
5. Incendiary weapons, document from the Swedish delegation concerning the work of the Conference (CDDH/IV/INF.220, 11 May 1976)	231-233
6. Study of the problem of the material remnants of wars, particularly mines, and their effect on the environment, communicated by the United Nations Environment Programme (CDDH/IV/INF.222, 17 May 1976)	235-238

CONTENTS (concluded)

	<u>Page</u>
INFORMATION DOCUMENTS (<u>concluded</u>)	
7. Memorandum concerning Articles 45, 52, 53, 55 and 56 of draft Additional Protocol I to the Geneva Conventions of 1949, submitted by the International Union of Police Trade Unions (CDDH/II/INF. 262, CDDH/III/INF. 218, 20 May 1976)	239-242
8. Second International Symposium on Wound Ballistics, Gothenburg, 23-28 August 1976 (document received from the Swedish delegation) (CDDH/IV/INF. 230, 26 May 1976)	243-250
9. Letter addressed to Mr. P. Graber, President of the Conference, by Mr. J. Pictet, Vice-Chairman of ICRC and Mr. H. Haug, President of the League of Red Cross Societies, concerning Articles 9 and 23 of Protocol I (CDDH/II/INF.266, 27 May 1976)	251-252
10. Memorandum concerning Articles 54, 56, 57 and 59 of draft Additional Protocol I to the Geneva Conventions of 1949, submitted by the International Civil Defence Organization (CDDH/II/INF.275, 15 April 1977)	253-259
11. Terminal ballistics and wounding effects of small calibre projectiles, document received from the Austrian, Swedish and Swiss delegations (CDDH/IV/INF.237, 15 April 1977)	261-280
12. Implementation of General Assembly Resolution 3435 (XXX): Study of the problem of the material remnants of wars, particularly mines, and their effect on the environment, document communicated by the United Nations Environment Programme (CDDH/IV/INF.241, 2 May 1977)	281-289
13. Statement by UNESCO at the fourth session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (CDDH/INF.242, 17 May 1977)	291-293

CDDH/INF.224
27 April 1976
Original: French

Memorandum by non-Governmental Organizations on the
two draft Protocols to the Geneva Conventions, 1949
- Supplementary to the Memorandum of 31 December 1973

The attention of delegates participating in the Conference is drawn to the text, attached hereto, of a memorandum on the two draft Additional Protocols to the Geneva Conventions of 1949, prepared by a group of non-governmental organizations participating in the Conference as observers. The organizations are listed in an annex to the memorandum.

This document is being distributed in accordance with rule 61 of the rules of procedure and by agreement with the chairmen of the committees concerned.

CDDH/INF.224 (continued)

1. The undersigned non-governmental organisations welcome the significant accomplishments of the 1st and 2nd sessions of the Diplomatic Conference to Re-Affirm and Develop International Humanitarian Law Applicable to Armed Conflicts and look forward to the successful conclusion of the work of the Conference at the Third Session beginning on 21 April 1976.

2. On behalf of our organisations we take this opportunity to put forward our views on some of the issues that will come before the third session of the Conference.

DRAFT PROTOCOL I

Part II 3. We welcome the provisions of Part II concerning the protection of wounded, sick and shipwrecked persons and the extension of such protection to the civilian population in dangerous or occupied areas. We especially welcome the
Art. 11 principles laid down in Article 11 prohibiting the subjection of persons in the power of the enemy to pseudo-medical acts not warranted by their state of health.

4. Some of our organisations have been and are involved in bringing medical relief and spiritual care in case of international and non-international conflicts and therefore we
Art. 15, welcome the provisions related to the protection of medical
16 & 17 and religious personnel giving assistance in combat zones as well as in occupied territories.

Art. 16 5. We also support the provisions prohibiting punishment of those who give medical treatment compatible with professional ethics, and protecting them from having to disclose information likely to be harmful to the patients or their families.

Art. 33, 6. We note that the text of Articles 33, 34 and 46 of the
34 Draft Protocol I, as adopted at the second session of the Conference, incorporates many of the points made in our original memorandum concerning the need to limit the sufferings of the victims of war and to prevent indiscriminate attacks on the civilian population. We also note, however, that in their present form Articles 33 and 34 are expressed in very general terms, leaving them open to differing interpretations. We would like to submit for consideration the following points:

CDDH/INF.224 (continued)

- (1) The concept of "unnecessary suffering" or "superfluous injury", though hallowed by long usage, is not easily understood by the public. We note that the United Nations General Assembly, in Resolutions 3464 (XXX) and 3500 (XXX), refers to the prohibition of weapons which are deemed to be "excessively injurious". These Resolutions of the General Assembly, in our opinion, conform to the present-day requirement of world public opinion that weapons that cause unconscionable suffering be outlawed or restricted - whether or not there may be a military justification for their use - as demonstrated in the efforts to restrict or eliminate the use of nuclear or incendiary weapons. We believe that the Conference should pronounce itself against weapons which cause unconscionable suffering in addition to those which cause "unnecessary suffering" or "superfluous injury" (from the point of view of the military object). We consider that, by bearing in mind the concept of weapons which cause unacceptable suffering and shock the conscience of mankind, it will be easier to arrive at a precise definition of the weapons forbidden or restricted in their use under Article 33, para. 2.
- (2) We believe that experience has already shown that the following categories of weapons or military practices fall within the principle of Article 33 and should be expressly forbidden or specifically restricted in their use:
 - (a) incendiary weapons, notably napalm;
 - (b) splinter bombs, including fléchettes;
 - (c) the laying of unmarked minefields and the scattering of mines from the air;
 - (d) delayed-action weapons and booby traps, which are not only treacherous but are also liable to be indiscriminate in their effects.

Provisions for their prohibition or restriction could either be included in this Protocol or be the subject of a separate instrument.

- (3) Further consideration must be given to other conventional weapons whose effects appear to contravene the humanitarian principles of the Hague Conventions of 1899 and 1907, notably the new generation of rifles.

CDDH/INF.224 (continued)

7. The text of Article 34, as adopted, obliges a High Contracting Party to determine whether the employment of a new weapon "would, under some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party". We welcome the imposition of this obligation upon governments, but regret that the article leaves the determination of the legitimacy of a weapon to the party which proposes to use it.

8. We submit that the experience of recent years, including the work of the Diplomatic Conference and of the Conference of Government Experts, has demonstrated the need for a machinery to keep up-to-date the list of prohibited weapons. The extreme rapidity of technological development today, which led the Conference of Government Experts at Lucerne to consider possible future weapon developments, demonstrates the need for such a body. We therefore propose that the Diplomatic Conference should establish in the Protocol or in a separate instrument a procedure for convening Conferences of Government Experts at regular intervals to review the list of prohibited weapons and practices in the light of new developments.

Art. 46, 9. We welcome the advances which have been made in extending
47, 47 the prohibition of reprisals already existing in the Geneva
bis, 48, Conventions to the civilian population and civilian objects.
48 bis,
49

10. We note that there are proposals which would derogate from these prohibitions. We strongly oppose such proposals, in particular for the following reasons:

- (1) they would leave the determination whether an original violation of the humanitarian law has occurred to the sole discretion of one of the belligerents;
- (2) they would open up to reprisals all persons and objects at present protected, including even prisoners of war and the wounded and the sick;
- (3) experience shows that the application of reprisals leads to an escalation of reprisals and counter-reprisals;
- (4) past conflicts have amply demonstrated that reprisals are without effect and even counter-productive;
- (5) in any event, reprisals are inhuman and unjust since their effect invariably strikes innocent persons unrelated to the alleged original violation.

CDDH/INF.224 (continued)

11. In addition we would like to make the following comments on these articles:

- Art. 46, 47 and 50 - we welcome the prohibition of acts which have the primary object of spreading terror among the civilian population;
- we consider that the rules laid down in these articles clearly exclude the use of nuclear arms, other weapons of mass destruction and the method of area bombing;
- Art. 48 - we welcome the formulation of rules for the protection of objects indispensable to the survival of the civilian population, although we regret that some exceptions weaken this article;
- we express our satisfaction about the introduction of the prohibition of starvation as a method of warfare;
- Art. 46 bis- and 48 bis - we welcome new articles (1) on the protection of cultural objects and places of worship, and (2) on the protection of the natural environment against long-term damage.
- Art. 49 12. Although this article sets forth rules for the protection of works and installations containing dangerous forces, we would express our concern about the exception whereby the special protection of nuclear electric generating stations is to cease if they provide significant support to military power. The element of human judgment in the appreciation of the criteria laid down for such eventuality and in the proportionality of the damage may be very fragile. We consider that the interests of the civilian population should be upheld against those of the armed forces.

Further, we strongly support the idea that agreements should be made between parties for additional protection of objects containing dangerous forces, including in peace time.

Precautionary Measures. Precautions in Attacks and the Effects of Attacks

- Art. 50 13. We welcome the provisions of these articles, hoping that the general rule laid down in Art. 50, para. 1 - to spare the civilian population, civilians and civilian objects - would be made an imperative duty to the armed forces.

CDDH/INF.224 (continued)

Non-Defended Localities and Neutralized Localities

Art. 52, 14. The establishment of neutralized localities and security
53 towns is important and the provision for agreements concerning
such localities and zones, to be concluded even in peace time
and to be respected at all times, is to be welcomed.

Civil Defence

Art. 54 15. We consider important the proposed rules for the
and ff. protection of humanitarian tasks intended to safeguard the
civilian population against the effects of hostilities or
disasters and to ensure the conditions necessary to its survival
and existence. We welcome the rules related to the protection
of civilian bodies assigned to discharge these tasks, as well
as the protection of buildings, material and means of trans-
port belonging to the civil defence.

Art. 57 16. We also would like to underline the importance of applying
these rules of protection to the personnel, material, and
means of transport of international civil defence bodies or of
civil defence bodies of States not parties to a conflict,
which are engaged in civil defence activities on the territory
of a party to a conflict.

17. We support the recommendation of the experts consulted by
the ICRC: "Personnel of military units assigned exclusively to
civil defence tasks shall not be intentionally attacked pro-
vided they display the international distinctive sign of civil
defence specified in Art. 59 below, and bear only small arms.
If they fall into the power of the enemy they shall be
considered to be prisoners of war". (Document D 395b. p. 38
Note).

Art. 61 18. It is felt that the words "adverse distinction" may lead
to difficulties and we recommend the use of the wording of
Art. 3 common to the Geneva Conventions, namely "without any
adverse distinction founded on race, colour, religion or faith,
sex, birth or wealth or any other similar criteria".

Art. 62 19. We welcome Article 62, but wish to suggest two additions:
(1) At the end of paragraph 3 add "and to ensure the protection
of relief supplies and personnel".

CDDH/INF.224 (continued)

- (2) Add a new paragraph "6. The parties to the conflict and all High Contracting Parties shall take all possible steps to ensure the effective coordination on the national and international plane of the relief actions envisaged in paragraph 1."

Treatment of Persons in the Power of a Party to the Conflict

- Art. 64, 20. We have noted with satisfaction the inclusion in Art. 64
65 and 65 of clauses relating to the protection of refugees and stateless persons, as well as of nationals of the parties to the conflict, as was suggested by certain organisations during the preliminary discussions. The adoption of these provisions and in particular the fundamental guarantees contained in Art. 65 is plainly in accord with the provisions of the International Covenant on Civil and Political Rights, especially Art.4 of that Covenant. This unification of the concept of fundamental human rights constitutes an important step forward in international legislation.
21. While we welcome the fundamental guarantees contained in Art. 65, we suggest that under para. (b) coercion by threat of action against relatives, friends or associates should be mentioned among the specifically prohibited acts. We also wish to voice the grave concern felt by non-governmental organizations with regard to a problem which in our view is not fully met by these fundamental guarantees. We refer to the mass detention of civilian prisoners and internees in the course of armed conflicts, often continuing for long periods after the cessation of hostilities. We consider it important that provisions be made for procedures aimed at the expeditious release of such prisoners after the cessation of hostilities. Provision should also be made for according facilities for visiting places of internment to an international body such as the International Committee of the Red Cross. These facilities exist for protected persons under the Fourth Geneva Convention, but similar provisions are required for the persons who would be entitled to the protection of the proposed Art. 65. Provision should be made for this protection to continue even after the cessation of hostilities under the detained persons have been released.

CDDH/INF.224 (continued)

- Art. 66 22. We attach great importance to this Article and hope that its content will not be diluted. We agree with the rewording of the text as proposed by Finland in CDDH/III/101 which reads: "It is forbidden to destroy, render useless or remove objects indispensable to the survival of the civilian population, such as foodstuffs and food-producing areas, crops, livestock, drinking water supplies and irrigation works, whether it is to starve out civilians, to cause them to move away or for any other reason. These objects shall not be made the object of reprisals".
- Art. 67 to 69 23. We have noted the provisions contained in Article 67 to 69, designed to ensure special protection for women and children. We support the proposals contained in these Articles. We suggest, however, that the concept which underlies these provisions should be extended. There are other categories of people who need special protection. We think specifically of the aged who need help or care and other persons who are physically or mentally handicapped. It seems to us that an additional paragraph should take account of the needs of these categories. Such a paragraph could be worded in the following manner: "The parties to the conflict should provide other categories of civilians in need of special care and protection, such as the aged in need of help and the physically and mentally handicapped, with the care and aid their age and situation require".
24. We respectfully suggest that a more appropriate title for Chapter II of Part III of Draft Protocol I would be:
"MEASURES IN FAVOUR OF PERSONS REQUIRING SPECIAL PROTECTION".
25. We suggest that Article 59 of the draft protocol submitted by the ICRC to the second session of the Conference of Governmental Experts should be included in Draft Protocol I. This Article provided that the death penalty should not be pronounced on mothers of infants or on women responsible for their care. We ask that this provision should be inserted in Article 67.
- Art. 68 26. We suggest that in Article 68, a new paragraph 3 be added as follows: "3. Children under 15 who are captured after having taken part in hostilities should at all times be treated humanely and receive the special protection due to their age and immaturity. They should not be held criminally responsible for acts committed by them during hostilities". The present paragraph 3 would become 4.
- Art. 69 27. We believe that evacuation of children to a foreign country should only be contemplated as a last resort. We also call attention to the harmful consequences of separating children from

CDDH/INF.224 (continued)

their parents even when the children remain within the country. We suggest that para. 1 of Article 69 should provide that: "Children may not be evacuated to a foreign country or otherwise separated from their parents except when it is essential for their health or survival".

Art. 69 28. We suggest two amendments to Article 69:
(2)

(1) In paragraph 2 for "language and culture of the country to which they belong" read "their own language, culture and religion".

(2) In paragraph 3 after sub-paragraph (f) add "(g) the child's religion" and re-letter the subsequent sub-paragraphs.

Art. 70 29. We suggest that the English wording of clause 4 should
(4) be re-written to conform to the French text in the following words: "The High Contracting Parties and the Parties to the conflict shall in every way possible make similar facilities available to 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".

30. We wish to reiterate the importance which NGOs attach as already stated in our previous Memorandum - to the adoption of rules to ensure the effective application of the Geneva Conventions and the Additional Protocols. We would like to insist again in this respect on the desirability of establishing a permanent, independent, impartial body, acceptable to the entire international community, which could be entrusted with the investigation of alleged serious violations of international humanitarian law. We are glad to note that proposals have been made to this effect.

Reservations

Art. 85 31. We suggest that Article 85 providing for admissible reservations to Draft Protocol I should be amended so as to exclude reservations to Arts. 40, 42, 48, 48bis, 49, 65, 66, 67 and 68 in addition to those already mentioned in the text. These provisions are of such importance that no derogation to them should be permitted.

CDDH/INF.224 (continued)

DRAFT PROTOCOL II

32. The second half of the 20th century has witnessed a decrease in the number of classical, purely inter-state conflicts. On the other hand, we have seen a dramatic increase of wars of national liberation (now, it would seem, accepted as international conflicts) and non-international conflicts.

33. This latter type of conflict causes ever greater damage in human terms and has justifiably had international attention focussed upon it, as witnessed by the proposals for a second protocol.

34. We recognize that this is an area which is "sensitive" in terms of state sovereignty. Nevertheless we believe that the exercise of humanitarian restraint by belligerents in such non-international conflicts is not a surrender of sovereignty but its most judicious exercise, as it leaves open the possibility of national reconciliation. The alternative is an escalation of violence and horrors which mark for long periods the country concerned and all sectors of its population.

35. The extent to which these conflicts have grown, sometimes as surrogates for international conflicts, the extent of the forces involved and the damage caused, cannot leave the international community indifferent. A humanitarian standard in such conflicts is becoming ever more urgent.

36. With respect to the proposals before the Conference on the Draft Protocol II, we would make a few comments.

Art. 6, 8 37. We welcome the fundamental guarantees for the humane treatment of persons in the power of the Parties to the conflict, as well as the binding rules contained in Article 8 to the benefit of persons interned or detained for reasons related to the armed conflict, as minimum standards which the Parties to a conflict are required to respect.

38. We would insist on the importance of paragraph 4 which encourages the Parties to facilitate visits to protected persons by representatives of an impartial humanitarian organisation.

39. We repeat our comments in paragraph 10 above upon the subject of reprisals. In our view the same principles should apply to non-international conflicts and, indeed, there may even be greater reason for excluding reprisals in such conflicts in order to avoid a degradation which would make national reconciliation and reconstruction impossible.

CDDH/INF.224 (continued)

- Art. 12, 40. We consider all these provisions important, especially
12 bis those related to protection against physical mutilations,
13 & 14 medical experiments and transplantation of organs.
- Art. 14, 41. We also welcome the inclusion in Draft Protocol II of
15, 16 the rules laid down in Draft Protocol I concerning the role of
& 17 the civilian population and of relief societies in providing
medical assistance, the protection of medical and religious
personnel, and the general protection of medical duties and
medical units and transport.

Civilian Population

- Art. 24, 42. We support the provisions concerning the general protection
25 & 26 of the civilian population in non-international armed conflicts
as an important step forward in the codification of international
humanitarian law. We especially welcome the outlawing of
indiscriminate attacks against the civilian population, the
introduction of an article on the protection of civilian objects,
Art.26bis 28 the prohibition of attacks against works and installations
28 bis containing dangerous forces, as well as the provisions for the
protection of the natural environment.

43. We urge the adoption of Article 27 as drafted by the
ICRC, making it illegal to attack, destroy or render useless
objects indispensable to the survival of the civilian
population.

- Art. 29 44. In order to reduce the suffering and hardship endured
by the civilian population, we support the prohibition of
forced displacement of civilians and the provision that,
if they are displaced, measures of safety and adequate living
conditions be provided.

45. However, we would urge that there should be a provision
for the prompt return of the displaced population at the end
of the conflict and the restoration of their land and other
property.

* *
* *

List of signatories attached

CDDH/INF.224 (concluded)

Amnesty International
Arab Lawyers Union
Christian Peace Conference
Commission of the Churches on International Affairs
Confédération Internationale des Anciens Prisonniers de Guerre
Consultative Council of Jewish Organizations
Friends World Committee for Consultation
International Alliance of Women
International Association of Democratic Lawyers
International Catholic Child Bureau
International Commission of Jurists
International Confederation for Disarmament and Peace
International Confederation of Catholic Charities
(Caritas Internationalis)
International Confederation of Free Trade Unions
International Council of Jewish Women
International Council of Social Democratic Women
International Council of Women
International Federation for Human Rights
International Federation of Business and Professional Women
International Federation of Free Journalists
International Federation of Resistance Movements
International Federation of University Women
International Federation of Women Lawyers
International Movement for Fraternal Union Among Races and Peoples
International Peace Bureau
International Social Service
International Union for Child Welfare
International Union of Police Trade Unions
International Union of Socialist Youth
International University Exchange Fund
International Youth and Student Movement for the United Nations
(ISMUN)
Muslim World League
Pax Romana IMCS-ICMICA - International Movement of Catholic
Students
International Catholic Movement for
Intellectual and Cultural Affairs
St. Joan's International Alliance
Women's International League for Peace and Freedom
World Alliance of Young Men's Christian Associations
World Assembly of Youth (WAY)
World Association of World Federalists
World Confederation of Labour
World Conference on Religion and Peace
World Jewish Congress
World Muslim Congress
World Student Christian Federation
World Veterans Federation
World Young Women's Christian Association

CDDH/INF.224/Add.1
12 May 1976
Original: French

- 219 -

Memorandum by non-Governmental Organizations on the
two draft Protocols to the Geneva Conventions, 1949
- Supplementary to the Memorandum of 31 December 1973

Addendum

Add the following four organizations to the list of signatories:

Soroptimist International Association

World Peace Council

World Federation of United Nations Associations

Movement against Racism, Anti-Semitism, and for Peace
(M.R.A.P.)

CDDH/III/INF.213
27 April 1976
Original: French

Memorandum by the World Veterans' Federation and
the International Federation of Resistance Fighters
concerning Articles 41 and 42 of Draft Protocol I
to the Geneva Conventions of 1949

The attention of representatives participating in the work of Committee III is drawn to the text, attached hereto, of a memorandum concerning articles 41 and 42 of draft Additional Protocol I to the Geneva Conventions of 1949, prepared by two non-governmental organizations attending the Conference as observers. They are the World Veterans' Federation and the International Federation of Resistance Fighters.

This document is distributed under rule 61 of the rules of procedure and by agreement with the Chairman of Committee III.

CDDH/III/INF.213 (continued)

1. The World Veterans' Federation and the International Federation of Resistance Fighters, each of which is composed of veterans of conventional wars and wars of resistance and national liberation, and of deportees, prisoners of war and war victims, are directly concerned with the protection of combatants in international humanitarian law and have constantly endeavoured to secure an improvement in the status of combatants and the adaptation of that law to new situations.

2. Both Federations welcome the steps taken in that direction and the results already achieved, and have noted the broad discussion that has taken place and the numerous draft amendments relating to articles 41 and 42 of draft Additional Protocol I.

3. Anxious to make a useful contribution to the discussions of the third session, bearing in mind the experience of their members and basing themselves on, inter alia, the amendments proposed by the Government of Norway, WVF and FIR have the honour to submit the following suggested texts relating to articles 41 and 42 of draft Additional Protocol I, together with a statement of reasons.

CDDH/III/INF.213 (continued)

SUGGESTED TEXTS RELATING TO ARTICLES 41 AND 42
OF DRAFT ADDITIONAL PROTOCOL I

Statement of reasons

1. The provisions of articles 41 and 42 must, it would seem, be such as to:

- help to discourage aggression;
- permit the full deployment of defence forces in their struggle for national independence and the protection of liberty;
- ensure fully the protection of the civilian population without weakening defence capability in the event of aggression;
- reaffirm the inalienability of the rights of prisoners of war, since the guarantees conveyed by those rights are not negotiable;
- be concordant with the other provisions of Protocol I.

2. The following points should be stressed in this respect:

- 2.1 The experience of the past years proves that the use of methods of war contrary to human dignity and the humanitarian requirements of international law strengthens the determination of the populations and combatants who are the victims of them, and in the long run rebounds against those who use such methods.
- 2.2 In view of the diversity of the material means open to the Parties to the conflict and the complexity of the Geneva Conventions and their additional Protocols, the essential requirement is the will of the Parties to apply the provisions adopted. It is not therefore just a question of formulation: every effort must be made to ensure that the actual notion of international humanitarian law is instilled in international and national consciousness.

CDDH/III/INF.213 (continued)

2.3 Moreover, suitable arrangements for applying the provisions must be defined and instituted.

3. It is in the spirit of the foregoing observations, and in full awareness of the non-exhaustive nature of the proposed wordings, that the following suggested texts, based on the amendments submitted by the Government of Norway, have been drafted.

Suggested texts relating to articles 41 and 42

Article 41 - Organization of defence

Respect for international Conventions

1. The defence forces of a Party to the conflict may consist of regular armed forces (on the active or reserve lists), territorial defence units and militias and volunteer corps, and of members of resistance or liberation movements, organized or being organized.
2. Such defence forces shall be subject to appropriate disciplinary instructions and shall be placed under a command responsible to a Party to the conflict. They shall observe the rules of international law applicable in armed conflicts, including the present Protocol.

Article 42 - Status and protection of combatants

1. The members of the armed and defence forces defined in article 41 of this Protocol are considered to be combatants within the meaning of article 1 of the Hague Regulations of 1907, even if the Party to which they belong is represented by a de facto Government or authority not recognized by the adversary.

CDDH/III/INF.213 (concluded)

2. The persons defined in the foregoing paragraph shall in all circumstances be protected by the international law applicable in armed conflicts, including the present Protocol. No prohibited methods or means may be used against them during hostilities, and, if wounded, they shall be entitled to the care provided for by international conventions and usage. Should they fall into the hands of the enemy, they shall be entitled to prisoner-of-war status within the meaning of the Third Convention, notwithstanding the earlier contradictory provisions of its article 4.

CDDH/INF.226

3 May 1976

Original: French

Memorandum concerning draft Additional Protocol I
to the Geneva Conventions of 1949,
prepared by the International Confederation of
Former Prisoners of War

The attention of representatives to the Conference is drawn to the text, attached hereto, of a Memorandum concerning draft Additional Protocol I to the Geneva Conventions of 1949, prepared by the International Confederation of Former Prisoners of War, a non-governmental organization attending the Conference as an observer.

This document is distributed under rule 61 of the rules of procedure and by agreement with the chairmen of the committees concerned.

CDDH/INF.226 (continued)

M E M O R A N D U M

I

Art.46,
para.4 The provisions of Art. 46, para. 4, do not represent progress towards making the international humanitarian law applicable in armed conflicts more humane, since they merely confirm the prohibition already in force with regard to persons protected by the Fourth Convention.

Former prisoners of war cannot but regret the fact that:

1. The prohibitions of reprisals that exist under article 13 of the Third Convention with regard to prisoners of war have not all been confirmed;
2. The prohibitions in force under international law have not been fundamentally expanded and improved;
3. The results of the conferences of government experts held in 1971 and 1972 have not been taken into account at all.

At the first Conference of Experts held in Geneva from 24 May to 12 June 1971, reprisals were denounced as the most barbarous measure in the waging of conventional warfare, and the opinion emerged that reprisals should be regarded as abolished or closely limited by extremely strict conditions (Report on the Work of the Conference (Geneva, 24 May - 12 June 1971), para. 575). At the second Conference of Experts in 1972, the majority of experts considered that reprisals were already prohibited in all cases on the basis of international customary law. The absolute prohibition of reprisals was based on the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (Report of Committee IV, paras. 4106-4108).

II

The International Confederation of Former Prisoners of War (ICFPW) also wishes to draw the attention of the Diplomatic Conference to the other proposals contained in the Memorandum of 20 March 1974, as follows:

CDDH/INF.226 (continued)

1. Internment camps for prisoners of war should benefit from special protection; they should in future, as far as possible, be established in extraterritorial zones and should be administered - including their medical services - by neutral staff.
2. In order to supervise observance of the provisions already in force under the Geneva Conventions of 12 August 1949, an Ad Hoc International Control Commission should be set up, whose members should include representatives of ICFPW.
3. For penal proceedings with regard to grave breaches of the laws of war, an international tribunal should be established.
4. The existing law of war should be brought together in special legislation; the corresponding national laws should be published systematically.
5. The problem of responsibility for the execution of an order given by a superior which the person executing it was obliged to obey should be regulated by international law.
6. An international convention should be drawn up to regulate the law governing reprisals.
7. Steps should be taken to ensure that States having entered reservations to article 85 of the Third Geneva Convention (maintenance of prisoner-of-war status even after conviction) should now withdraw them.
8. The prohibition already in existence under general international law with regard to the use of the following weapons should be reaffirmed:
 - (a) thermonuclear, nuclear, bacteriological and chemical weapons;
 - (b) all weapons the effects of which cannot be controlled or which are likely to destroy the environment as well as the objective itself;
 - (c) traditional weapons likely to cause unnecessary suffering.

CDDH/INF.226 (concluded)

9. Steps should be taken to regulate the whole conduct of guerrilla operations, again as a supplement to the Hague Convention concerning War on Land of 1907 and to ensure that members of regular armed forces captured by guerrilla forces are treated in accordance with the provisions of the Convention relative to Prisoners of War. Since guerrilla forces do not normally have a territory of their own, the application of ICFPW recommendation No. 1 (internment camps in extraterritorial zones) is an essential precondition for the inclusion of guerrilla forces in the protection provided by the Geneva Conventions.

Geneva, 21 April 1976

CDDH/IV/INF.220
11 May 1976
Original: English

Incendiary weapons, document from the Swedish delegation
concerning the work of the Conference

AD HOC COMMITTEE ON COVENTIONAL WEAPONS

The Secretary-General presents his compliments to
representatives and draws their attention to a document, attached
hereto, from the Swedish delegation concerning the work of the
Conference.

CDDH/IV/INF.220 (continued)

INCENDIARY WEAPONS

To the International Committee of the Red Cross

The delegations of Algeria, Austria, Egypt, Iran, Ivory Coast, Lebanon, Lesotho, Mali, Mauritania, Mexico, New Zealand, Norway, Romania, Sudan, Sweden, Switzerland, Tunisia, United Republic of Tanzania, Venezuela, Yugoslavia and Zaire, attending the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, would like to inform you that, after further examination of the proposal relating to incendiary weapons included in the working paper contained in document CDDH/IV/201 of 7 February 1975, they have agreed upon a modified text, which they are ready to advance for inclusion in an international instrument relating to the prohibition or restriction in the use of certain conventional weapons.

It is assumed that the preamble of an international instrument relating to the prohibition or restriction in the use of certain conventional weapons might contain references to the Charter of the United Nations and other relevant instruments, notably to the duty of States, in accordance with Article 2(4) of the United Nations Charter, to refrain in their international relations from the threat or use of force, and to the inherent right of individual or collective self-defence in accordance with Article 51 of the Charter.

The text of the modified proposal reads as follows:

Article ... Incendiary weapons

1. Incendiary weapons shall be prohibited for use.
2. This prohibition shall apply to:

the use of any munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame and/or heat produced by a chemical reaction of a substance delivered on the target. Such munitions include flame-throwers, incendiary shells, rockets, grenades, mines and bombs.

CDDH/IV/INF.220 (concluded)

3. This prohibition shall not apply to:
- (a) munitions which may have secondary or incidental incendiary effects, such as illuminants, tracers, smoke, or signalling systems;
 - (b) munitions which combine incendiary effects with penetration or fragmentation effects and which are specifically designed for use against aircraft, armoured vehicles and similar targets.

The Government of Mexico continues to be in favour of eliminating the exception contained in sub-paragraph 3(b) in order that the prohibition of incendiary munition be total.

The International Committee of the Red Cross is kindly requested at its early convenience to acquaint all those invited to the forthcoming second session of the Conference of Government Experts on the Use of Certain Conventional Weapons of the above by circulating copies of this letter to them and to ensure that it be included in the documentation submitted to the Conference.

I have been authorized by the delegations enumerated at the outset to communicate this letter to you on their behalf.

Stockholm, 15 May 1975

Hans Blix
Head of the Swedish Delegation

CDDH/IV/INF.222
17 May 1976
Original: English

Study of the problem of the material remnants of wars,
particularly mines, and their effect on the environment,
communicated by the United Nations Environment Programme

The Secretary General has the honour to bring to the
attention of the participants in the Conference the attached
document which the United Nations Environment Programme has
communicated to the Conference for distribution.

CDDH/IV/INF.222 (continued)



UNITED NATIONS ENVIRONMENT PROGRAMME
PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT



Cable Address: UNITERRA, Nairobi
Telex No. 22068
Telephone: 33930

P. O. Box 30552,
Nairobi.

Ref. No.

4 May 1976

Dear Sir,

At its fourth session held in Nairobi from 30 March to 14 April 1976, the Governing Council of the United Nations Environment Programme, decided to initiate a study of the problem of the material remnants of wars particularly mines.

In its final decision on this question the Governing Council referred to the current efforts of the Conference on Humanitarian Law and urged that the discussions now going on in Geneva should aim at ensuring maximum possible protection to the environment against damages caused by war.

.....
The full text of the Governing Council's decision is enclosed herewith, and I should be grateful if you would bring its contents to the attention of the delegates at the Conference.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. B. Stedman'.

R. B. Stedman
Acting Deputy Executive Director

The President
Conference on Humanitarian Law
Federal Political Department
Geneva
Switzerland

CDDH/IV/INF.222 (continued)

Decision by the Governing Council of the United Nations
Environment Programme

80 (IV). Study of the problem of the material remnants of wars, particularly mines, and their effect on the environment

The Governing Council,

Having considered the note by the Executive Director on the study of the problem of the material remnants of wars, particularly mines, and their effect on the environment,

Recalling paragraph 5 of General Assembly resolution 3435 (XXX) of 9 December 1975,

Realizing that the Governing Council has the responsibility to deal with the problem of the effect of mines on the human environment,

1. Takes note of the views regarding the scope of the study required by the above resolution, as set out by the Executive Director in his note;
2. Welcomes the efforts currently being undertaken in the context of the Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and the Conference of the Committee on Disarmament, and urges that the discussions now taking place in the various relevant forums should aim at ensuring the maximum possible protection of the environment against damage caused by war;
3. Authorizes the Executive Director to proceed with the appropriate study, to commence by seeking information from Governments, taking into account the statistics prepared by Governments concerning the losses caused by mines, and to give due and careful consideration to such statistics in recommending the formulation of any guidelines;

CDDH/IV/INF.222 (concluded)

4. Requests the Executive Director to consult with Governments regarding the feasibility and desirability of convening an intergovernmental meeting to deal with the environmental problems of the material remnants of wars;

5. Further requests the Executive Director to render assistance in the field of environmental protection to States, upon request, in preparing their own programmes for the elimination of mines in their territories;

6. Authorizes the Executive Director, on its behalf, to submit an interim report on the study to the General Assembly at its thirty-first session;

7. Agrees to consider the matter further at its fifth session, with a view to submitting the study to the General Assembly at its thirty-second session.

54th meeting
9 April 1976

CDDH/II/INF.262
CDDH/III/INF.218
20 May 1976
Original: French

Memorandum concerning Articles 45, 52, 53, 55 and 56 of draft Additional Protocol I to the Geneva Conventions of 1949, submitted by the International Union of Police Trade Unions

The attention of representatives in Committee II and Committee III is drawn to the attached text of a memorandum concerning Articles 45, 52, 53, 55 and 56 of draft Additional Protocol I to the Geneva Conventions of 1949, which has been submitted by a non-governmental organization participating in the Conference as an observer. The organization in question is the International Union of Police Trade Unions (UISP).

This document is circulated in accordance with rule 61 of the rules of procedure and by agreement with the Chairman of Committee II.

CDDH/II/INF.262

CDDH/III/INF.218 (continued)

Already before the Diplomatic Conference took place the Police federations of Europe united in the UISP had pleaded several times for documenting worldwide by a convention the civil status of the police. The citizens of all countries of the world should be sure that under all circumstances the police will do its service by strictly considering Human Rights in maintaining law and order.

As regards the work of the Diplomatic Conference we notice a certain progress in this respect on the basis of the records of the second session. The UISP has noticed with appreciation that article 52, paragraph 3 of the draft concerning non-defended localities shall say:

"The presence, in this locality, of specially protected persons under this Protocol and the Conventions and the presence of police forces retained for the sole purpose of maintaining law and order is not contrary to the conditions in this article,"

thus ensuring for this domain that police forces are to be considered as being civilian persons.

Similarly we appreciate that in article 53, paragraph 4 of the draft dealing with demilitarized zones, it is provided:

"The presence, in this zone, of specially protected persons under this Protocol and the Conventions and the presence of police forces retained for the sole purpose of maintaining law and order is not contrary to the conditions prescribed in this article."

We think that from this definition it can be concluded, too, that for this domain the civilian status of the police is demonstrated.

The European Police federations united in the UISP would be glad if also in other articles of the Conventions to be prepared the civilian status of the police could be specified:

Article 45, paragraph 1 of the draft should be supplemented - analogous to articles 52 and 53 - by a half-sentence: "this also applies to the police forces retained for the sole purpose of maintaining law and order." We think it imperatively necessary to confirm this fact in the article which defines the civilians and the civilian population.

Article 55 of the draft should be supplemented in the same way, the more as there already exists a proposition of Denmark, Federal Republic of Germany, Uganda, United Kingdom of Great Britain and

CDDH/II/INF.262

CDDH/III/INF.218 (continued)

Northern Ireland, that shall ensure by an amendment in article 55 of the draft that the prohibition to carry arms or munition does not apply to police officers in uniform.

The UISP recommends the following amendments to articles 55 and 56:

Article 55 - Zones of military operations

Paragraph 1, stating:

"In zones of military operations, the civilian bodies which are established or recognized by their governments and are assigned to the discharge of the tasks mentioned in Article 54 shall be respected and protected. Their personnel shall not be intentionally attacked. Except in case of imperative military necessity, Parties to a conflict shall permit them to discharge their tasks,"

should be amended by a final clause: "The same applies to police forces retained for the sole purpose of maintaining law and order."

Article 56 - Occupied territories

Paragraph 1 is stating:

"In occupied territories, the civilian bodies assigned to the discharge of the tasks mentioned in Article 54 shall receive every facility from the authorities for the discharge thereof. In no circumstance shall their personnel be compelled to perform activities unconnected with their functions. The Occupying Power shall not change the structure or personnel of such bodies in any way which might jeopardize the efficient discharge of their mission. It shall not demand that the civil defence bodies give the nationals of the Occupying Power priority."

This paragraph should be amended by the following final clause: "The bodies of the civil defence do also comprise police forces retained for the sole purpose of maintaining law and order."

By a consequent application of the Conventions expected to be adopted it should be enjoined to police forces retained for the sole purpose of maintaining law and order that they should wear, for their own protection and in the interest of a general identification, the protective emblem provided for the civil defence bodies.

CDDH/II/INF.262

CDDH/III/INF.218 (concluded)

Knowing about the difficulties accompanying the deliberations of the Diplomatic Conference, we count on the sense of responsibility of the representatives of all attending countries and ask for a proper consideration of the foregoing recommendations.

Because of the difficulties in interpreting all records established up to now and on the other hand the necessity to come to an agreement with all organizations affiliated to the UISP, we have only today been able to submit this proposition.

We would be very obliged to you, dear Sir, if you could make it possible to have discussed our recommendations within the scope of the coming deliberations.

Sincerely yours,

The President

The Secretary

(Kuhlmann)

(Gniesmer)

CDDH/IV/INF.230
26 May 1976
Original: English

Second International Symposium on Wound Ballistics,
Gothenburg, 23-28 August 1976
(document received from the Swedish delegation)

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

The Secretary-General, with the agreement of the Chairman of the Ad Hoc Committee, wishes to draw the attention of delegates to the document attached, received from the Swedish delegation, concerning the Second International Symposium on Wound Ballistics -- Gothenburg, August 23-28, 1976.

CDDH/IV/INF.230 (continued)

SECOND INTERNATIONAL SYMPOSIUM ON WOUND BALLISTICS
GOTHENBURG, 23-28 AUGUST 1976

July 21-30, 1975, an International Symposium on Wound Ballistics took place in Gothenburg, Sweden, at the invitation of the Surgeon General of the Swedish Armed Forces. The purpose of the symposium was to try to establish criteria for the characterization and evaluation of gunshot wounds. Medical and ballistic experts of 17 nations attended the symposium. In addition some manufacturers of small calibre weapons were represented.

A report from the symposium, containing all data emerging from the experiments, was sent to all participants. In addition, the results of the symposium, further supplemented by additional tests, were evaluated and embodied in a report, published in Acta Chirurgica Scandinavica, Supplementum 459, 1976.

In response to suggestions by several experts attending the "Conference of Government Experts on weapons that may cause unnecessary suffering or have indiscriminate effects" in Lugano, 1976, a Second Symposium on Wound Ballistics is now planned to take place in Gothenburg, August 23-28, 1976.

Like last year the Surgeon General of the Swedish Armed Forces will organize the symposium, in co-operation with the University of Gothenburg and the National Defence Research Institute. Invitations will be extended to experts from countries whose delegations at the Geneva Conference on Humanitarian Law indicate an interest in receiving such invitations. In addition, the WHO, the ICRC and some major manufacturers of small calibre weapons will be invited.

The purpose of the second symposium will be:

To demonstrate and evaluate various testing methods for measuring the wounding effect of small calibre projectiles, especially to compare tests against live tissue with tests against non-biological materials.

During the symposium, a small number of experiments will be carried out. These will be preceded by similar experiments, performed in some states before the symposium and the results of all these experiments will serve as basis for the discussion. As the purpose is thus not to compare the effects of various weapons, a very limited choice of weapon-ammunition combinations will be used, and all tests will be performed at a range of 100m. The selection of weapons will be made to cover, as far as possible, representative mechanisms of wound production.

CDDH/IV/INF.230 (continued)

If time permits, a discussion on multiple injuries as a separate item is suggested.

Two days of the symposium will be devoted to experiments, which will take place near a field hospital outside Gothenburg. Three days will be used for scientific discussions at the Sahlgrenska Hospital, University of Gothenburg. In addition, an excursion for the participants will be arranged.

A detailed programme and description of the arrangements for the experiments are attached.

Advance bookings have been made at the Hotel Europa, Gothenburg and reservations can be made through the Secretary-General of the symposium. The special room rate, including breakfast, will amount to Skr. 110:00/day.

It is expected that, as a rule, delegations will not comprise more than four members. The programme is designed primarily for medical, ballistics and military experts. However, lawyers and diplomats who are engaged in these questions and who may find it interesting to attend are welcome. In addition to the scientific discussions in the programme other informal discussions can be arranged during the evenings of August 26 and 27, if this is found desirable.

The working language of the symposium will be English.

Participants who wish to present papers during the symposium are kindly requested to give notice to the Secretary-General, if possible before August 1. The notice should include an estimate of the time required for presentation and a summary.

The address of the Secretary-General is:

Dr. Bo Rybeck
Ast/Trång
S-100 45 STOCKHOLM 90
Sweden

During the Diplomatic Conference on Humanitarian Law, inquiries may be directed to the Swedish delegation. Requests for invitations should also be directed to the Swedish delegation as soon as possible.

CDDH/IV/INF.230 (continued)

PRELIMINARY PROGRAMME

Symposium Wound Ballistics

Gothenburg 23-28 August 1976

<u>Sunday 22</u>	Arrival in Gothenburg
<u>Monday 23</u>	<u>Place:</u> Lecture hall, Sahlgrenska Hospital
09.00	Bus from the hotel
09.30-09.45	Opening of the symposium. Major-General S. Åke Lindgren, Surgeon General of the Swedish Armed Forces
09.45-10.00	Brief survey of the activities during the symposium Ass. Prof. Bo Rybeck
10.00-12.00	Introductory statements by the participants Chairman: Major-General S. Åke Lindgren
12.00-14.00	Luncheon
14.00-15.15	Detailed description of experiments planned for the symposium Mr. Bo Janzon, Ass. Prof. Bo Rybeck
15.15-15.30	Coffee break
15.30-17.00	Discussion concerning planned experiments Chairman: Ass. Prof. T. Seeman
17.00-17.30	Bus from the Sahlgrenska Hospital to the hotel
19.00-21.00	Reception
<u>Tuesday 24</u>	<u>Place:</u> Torslanda 10 km outside Gothenburg
08.00	Bus from the hotel
08.30-12.30	Tests with various weapons against live and simulant targets. Surgical operations at field hospitals
12.30-13.30	Luncheon at field hospital
13.30-17.30	Continued tests
17.30	Bus from Torslanda to the hotel (For attending military surgeons and others interested a visit to a 400 bed field hospital will be arranged. Party leaving Torslanda at 13.00 and returning to Gothenburg at 20.00)

CDDH/IV/INF.230 (continued)

<u>Wednesday 25</u>	<u>Place:</u> Torslanda
08.00	Bus from the hotel
08.30-12.30	Continued tests with various weapons
12.30-13.30	Luncheon at field hospital
13.30-17.30	Continued tests
17.30	Bus from Torslanda to the hotel
19.00	Dinner at the Älvsborg Fortress
<u>Thursday 26</u>	<u>Place:</u> Lecture hall Sahlgrenska Hospital
08.00	Bus from the hotel
08.30-12.30	Discussion concerning the various tests, their reliability and their validity concerning biological effects of missile wounds. The feasibility of determining energy transfer from the bullet in the non-biological tissues should be discussed. Chairman: Professor L.E. Gelin
12.30-14.00	Luncheon
14.00-17.00	Continued discussions
17.00	Bus from Sahlgrenska Hospital to the hotel
<u>Friday 27</u>	<u>Place:</u> Lecture hall Sahlgrenska Hospital
08.00	Bus from the hotel
08.30-12.30	Possibly discussion concerning multiple wounds. Mortality requirement of treatment and disability. Chairman: Ass. Prof. T. Seeman
12.30-14.00	Luncheon
14.00-16.00	Concluding statements and discussion about future symposia Chairman: Professor L.E. Gelin
16.00-17.00	Closure of the symposium Professor L.E. Gelin Major-General S. Åke Lindgren
<u>Saturday 28</u>	Excursion in the archipelago of Gothenburg
<u>Sunday 29</u>	Departure for delegates

CDDH/IV/INF.230 (continued)

SYMPOSIUM ON WOUND BALLISTICS, GOTHENBURG, SWEDEN,
AUGUST 1976

Technical arrangements (Preliminary plan)

Weapons and ammunition

Table 1 Weapons

Weapons *)	Calibre mm	Country of manufacture
G 3	7,62	FRG
AKM	7,62	USSR
M 16	5,56	USA

*) All weapons shall be fitted with telescopic sights

Table 2 Ammunition

Ammunition	Country of manufacture
7,62 mm x 51 NATO	Belgium
7,62 mm x 39	USSR
5,56 mm x 45 SS 92	Belgium

Tests

The following kinds of tests will be carried out before and during the symposium. The aim will be to prepare a sufficient number of each of the experiments to assure acceptable statistical significance of the results. All experiments against live animals will be carried out in muscle tissue (hind legs).

CDDH/IV/INF.230 (continued)

Target	Thickness of target (mm)	Range (m)	Measurements ^{1/}
pig	100-200 (as near 140 as possible)	100	Blood flow in the injured region by radioactive isotope marked microspheres injected into the arterial blood stream, to yield a three-dimensional picture of the extent of the wound. Total energy transfer, bullet yaw on exit. Histological examination of injured muscle.
pig	100-200 (as near 140 as possible)	100	Surgical debridement weighing of the debrided tissue. Total energy transfer, bullet yaw on exit. Histological examination.
soft soap	140	100	Shape and size of cavity, total energy transfer, bullet yaw on exit
soft soap	100-300	100	- " -
gelatine	140	100	Total energy transfer, bullet yaw on exit
gelatine	100-300	100	- " - + slicing of the block at right angles, measurement of permanent cavity and total length of cracks at right angles to trajectory

^{1/} The motion of the projectile inside the target may be recorded by a number of x-ray flashes.

Shooting

A qualified marksman will be supplied by the Swedish Navy. A shooting rig will, in addition, be available.

CDDH/IV/INF.230 (concluded)

Experimental set-up and measurements

The target will be located in a shaded area. Close to the target is a target board for adjustment of the aiming point. There is also a location where simulant targets may be put up and shot upon. Locations to shoot from will be arranged at a distance of 100 meters from the target. Measuring equipment will be situated in the proximity of the target. Permanent roped-off areas where spectators may observe the actual firings will be arranged.

Immediately preceding impact, the velocity of the projectile will be measured by photocells. On exit, the velocity will be measured by thin laminate gauges and/or by photographic methods, and the projectile will be collected in soft wall-board. The projectiles will be recovered from this at suitable intervals.

Following a firing into a biologied target the animal will be brought to an operating room, where surgical evaluation of the wounds will be performed. The operations will be recorded in colour on video-tape and on colour photographs. X-rays in two planes will be taken of the injured leg prior to operation.

Experimental animals

About 15 pigs, weighing each at least 70 kg, will be available. The animals will be cared for by special personnel supplied by the Swedish Navy. All animals will be anaesthetized before the firing, and will remain under anaesthesia until the operations have been performed. The animals will then be killed while still under anaesthesia.

CDDH/II/INF.266
27 May 1976
Original: French

Letter addressed to Mr. P. Graber, President of the Conference,
by Mr. J. Pictet, Vice-Chairman of ICRC and
Mr. H. Haug, President of the League of Red Cross Societies,
concerning Articles 9 and 23 of Protocol I

The attention of representatives in Committee II is drawn to the attached text of a letter addressed to Mr. P. Graber, President of the Conference, by Mr. J. Pictet, Vice-Chairman of ICRC and Mr. H. Haug, President of the League of Red Cross Societies, concerning Articles 9 and 23 of Protocol I already adopted by the Committee.

This document is being circulated at the request of Committee II.

CDDH/II/INF.266 (concluded)

Geneva, 30 April 1976

Mr. President,

In the course of its discussions Committee II has adopted articles 9 and 23 concerning the provision of medical units and hospital ships to the Parties to a conflict. Under these articles, medical units and hospital ships may be provided by neutral or non-belligerent States or by an impartial international humanitarian organization. The Conference has also adopted an amendment submitted by various delegations providing for the addition of the words "such as the International Committee of the Red Cross or the League of Red Cross Societies" after the words "by an impartial international humanitarian organization".

Our two institutions have accepted the amendments that refer to them, while noting that they would probably become superfluous if agreement could be reached on a satisfactory article concerning the role that the various Red Cross organizations could play in applying the Protocol.

Since then Committee I has adopted article 70 bis unanimously, which is satisfactory for our two institutions. Since that article covers the humanitarian activities of the various Red Cross organizations, the reference to the ICRC and the League in articles 9 and 23 is no longer necessary.

We should be grateful if you would transmit the foregoing information to the Drafting Committee, so that it can be taken into account when that Committee considers the text of those articles.

Thanking you in advance for your attention to this communication, we ask you to accept, Sir, the assurance of our highest consideration.

(Signed:) H. HAUG

President of the League of
Red Cross Societies
Head of the Delegation of the
League to the Diplomatic
Conference on Humanitarian Law

(Signed:) J. PICTET

Vice-Chairman of the ICRC
Head of the Delegation of the
ICRC to the Diplomatic
Conference on Humanitarian Law

Mr. Pierre Graber,
President of the Diplomatic
Conference on Humanitarian Law,
Geneva.

CDDH/II/INF.275
15 April 1977
Original: French

Memorandum concerning Articles 54, 56, 57 and 59 of
draft Additional Protocol I to the Geneva Conventions of 1949,
submitted by the International Civil Defence Organization

1. The attention of representatives in Committee II is drawn to the attached text of a memorandum concerning Articles 54, 56, 57 and 59 of draft Additional Protocol I to the Geneva Conventions of 1949, which has been submitted by an inter-governmental organization participating in the Conference as an observer. The organization in question is the International Civil Defence Organization (I.C.D.O.).

2. This document is circulated in accordance with rule 61 of the rules of procedure and by agreement with the Chairman of Committee II.

CDDH/II/INF.275 (continued)

SESSION OF THE TECHNICAL COMMISSION
"JURIDICAL AFFAIRS"
Geneva, 14-16 March 1977

RESOLUTION ADOPTED BY THE COMMISSION

regarding the additional Protocols to
the Geneva Conventions of 1949

THE "JURIDICAL AFFAIRS" TECHNICAL COMMISSION

INVITES

the Secretary General to distribute as widely as possible, accompanied by an explanatory memorandum, the texts as established by the Commission in its recommendation CT.AJ.3/R.1 and accepted by the Executive Council in its resolution CE.6/R.1 regarding the amendments to Articles 54, 56, 57 and 59 of the Draft Protocol I to the Geneva Conventions of 1949, which are to be submitted to the 4th session of the Diplomatic Conference on Humanitarian Law

REQUESTS

the Secretary General to contact the members of the Conference (governments and humanitarian organizations) in order to assess the chances of acceptance of the documents established by the I.C.D.O., and to explain them with a view to obtaining the support of non I.C.D.O. member countries

APPEALS

to all I.C.D.O. Member States to defend these texts.

CDDH/II/INF.275 (continued)

Subject : Protocol I
Chapter VI - Civil Defence

The Secretary General of the International Civil Defence Organization presents his compliments to the Delegates of the States and Organizations represented at the 4th session of the Diplomatic Conference on Humanitarian Law and has the honour of transmitting herewith Resolution CE.6/R.1 of the Executive Council concerning the amendments to Articles 54, 56, 57 and 59 of the Additional Protocol to the Geneva Conventions of 1949, relating to Civil Defence.

The amendments, as presented in the document CT.AJ.4/R.1, which is attached to the above-mentioned resolution, have been studied and adopted by the National Civil Defence Authorities of I.C.D.O. Member States, their concern being to reduce the differences of opinion which arose during the last session of Committee II and to prepare a text that is acceptable to all and takes into account the requirements of Civil Defence.

With reference to the Interim Report of the Drafting Committee (CDDH/II/384/Rev.1), and in accordance with the decision of the governing bodies of his Organization, the Secretary General communicates to all the delegations the amendments proposed to the articles of Protocol I relating to Civil Defence and requests them to give these amendments their kind support.

The Secretary General of the I.C.D.O. avails himself of this opportunity to renew to the Delegates of the States and Organizations the assurances of his highest consideration.

CDDH/II/INF.275 (continued)

EXECUTIVE COUNCIL
Geneva, 21-23 October 1976

RESOLUTION ADOPTED BY THE EXECUTIVE COUNCIL

regarding the additional Protocols to
the Geneva Conventions of 1949

THE EXECUTIVE COUNCIL

HAVING TAKEN NOTE

of the report of the 3rd Session of the Technical Commission "Juridical Affairs", held on 18 and 19 October 1976, as well as of the recommendations contained in document CT.AJ.3/R.1 with the purpose of establishing a firm platform of requirements confirmed by the directors of National Civil Defence Authorities.

ADOPTS

the amendments to Articles 54, 56, 57 and 59 of additional Protocol I to the Geneva Conventions of 1949

TRANSMITS

the said recommendations to the Member States for their consideration and possible comments, inviting them to present them in the form of amendments to Commission II of the Diplomatic Conference on Humanitarian Law in the spring of 1977.

CDDH/II/INF.275 (continued)

RECOMMENDATIONS OF THE COMMISSION

concerning articles 54, 56, 57 and 59
of the additional Protocol I to the
Geneva Conventions of 1949

Article 54 - Definition

For the purposes of this Protocol, civil defence is the performance of some or all of the following humanitarian tasks intended to protect and help the civilian population to avoid the dangers and recover from the effects of hostilities or disasters and to provide the conditions necessary for its survival.

- (a) warning;
- (b) evacuation;
- (c) management of shelters;
- (d) blackout;
- (e) rescue and fire fighting;
- (f) first aid and medical services;
- (g) detection and marking of danger areas;
- (h) provision of emergency accommodation and supplies;
- (i) co-ordination of restoration and maintenance of order in distressed areas;
- (j) emergency measures for the repair of recognized indispensable public utilities such as gas, water, power stations;
- (k) emergency disposal of the dead;
- (l) conservation of objects indispensable for survival;
- (m) complementary or incidental activities necessary to carry out the aforementioned tasks.

Medical services and assistance including first aid rendered by civil defence bodies and personnel are covered by Part II of this Protocol.

CDDH/II/INF.275 (continued)

Article 56 - Occupied territories

1. In occupied territories, the civil defence bodies and units shall receive from the authorities the facilities necessary for the discharge of their tasks. In no circumstances shall their personnel be compelled to perform activities which will make it difficult for them to perform their civil defence tasks. The Occupying Power shall not change the structure or personnel of such bodies and units in any way which might jeopardize the efficient discharge of their mission. Civil defence bodies and units, which also remain governed by article 63 of the Fourth Convention, shall not be required to give priority to the nationals or interests of that power.

2. The Occupying Power shall not divert from their assignment nor requisition buildings, equipment, supplies and transports belonging to, or in use by civil defence bodies and units. It shall not divert neither requisition shelters.

Article 57 - Civil defence bodies and units of neutral or other States not Parties to the conflict and international bodies

1. Articles 55^{*}, 56, 58 and 59 of this Protocol also apply to the personnel, equipment, supplies and transports of established or recognized civilian bodies and units of neutral or other States not Parties to the conflict and of international civilian bodies which carry out Civil Defence activities as defined in Article 54 of this Protocol, on the territory of a Party to the conflict and under its control with the consent of any adverse Party concerned. In this case, notification shall be given to any adverse Party concerned. In no circumstances shall such activity be deemed to be interference in the conflict.

* 2. In occupied territories, the Occupying Power may exclude or restrict the activities of civilian bodies and units of neutral or other States not Parties to the conflict and of international civilian bodies only if it can assure the adequate performance of civil defence tasks from its own resources or those of the occupied territory.

*As consideration of Article 55 was postponed, this figure is in brackets, as is paragraph 2 of Article 57, since the Drafting Committee/Working Group was unable to conclude its deliberations on this item (CDDH/II/384/Rev.1).

CDDH/II/INF.275 (concluded)

Article 59 - Identification

4. The international distinctive sign of civil defence is:
- two oblique red bands on a yellow background (model enclosed).

* * *

Comments

It should be pointed out here that the yellow background proposed by I.C.D.O. for the flag, armllets and tabards, as well as emblems and designs to be applied on equipment, means of transportation, and walls and roofs of buildings utilized by Civil Defence, has already been adopted by many national Civil Defence Authorities, which use it for helmets and overalls of the personnel or as a background for identification and signalling inscriptions.

With regard to this, the technical Sub-Committee on Signs and Signals took note at its meeting in March 1974 of reservations expressed by specialized agencies concerning the proposed light blue colour and suggestions as to suitable colours for use in a signalling system, these being: yellow, white, red, green and blue. It was further shown that red, blue and green turn to black or lose their colour value in different kinds of lighting.

Thus, yellow stands out amongst all the colours of the spectrum as being the most practical, as it loses little of its value in different kinds of lighting, in particular in artificial lighting. Moreover, coming near the green part of the spectrum, this yellow is also preferable from the psychological point of view since it is an unpleasant shade, hence more easily noticed.

As to the oblique red bands proposed in the I.C.D.O. amendment, they already appear in Annex I of the IVth Geneva Convention, Article 6, to designate the hospital and safety zones provided for in Article 14. The subsequent creation of a new distinctive sign composed of blue and orange for Civil Defence Authorities' personnel and equipment could lead to confusion. Indeed, according to the definition proposed in Article 54 of Protocol I, it is these Authorities who will be called upon to protect and help the civilian population to avoid dangers, recover from the effects of hostilities and provide the conditions necessary for its survival. However, the management of hospital and safety zones protected by the oblique red bands is the responsibility of National Civil Defence Authorities.

It should also be noted that a certain number of National Civil Defence Authorities (Mali, Pakistan and Saudi Arabia) have already introduced, and others are considering introducing, the oblique bands in the emblem for their protection and safety organizations and units.

CDDH/IV/INF.237
15 April 1977
Original: English

Terminal ballistics and wounding effects
of small calibre projectiles,
document received from the Austrian, Swedish and
Swiss delegations

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

The Secretary-General wishes to draw the attention of delegates to the document attached, received from the Austrian, Swedish and Swiss delegations, concerning Terminal Ballistics and Wounding Effects of Small Calibre Projectiles.

CDDH/IV/INF.237 (continued)

TERMINAL BALLISTICS AND WOUNDING EFFECTS
OF SMALL CALIBRE PROJECTILES

JOINT PAPER BY EXPERTS OF
AUSTRIA, SWEDEN AND SWITZERLAND

MARCH 1977

CDDH/IV/INF.237 (continued)

INTRODUCTION

This paper describing the present knowledge of the terminal ballistics of small calibre projectiles and their subsequent wounding effects in live tissue is based on studies of the literature and on experiments performed both in Austria, Switzerland and Sweden. The Austrian experiments were carried out at the Technical Department of the Austrian Army and the Swiss experiments were performed at the Armament and Procurement Group. The Swedish experiments were carried out at the Departments of Surgery I and II, University of Göteborg and at the National Defense Research Institute during the years 1973 to 1976.

The Austrian expert group was headed by lieutenant-colonel, Dr. W. Pexa, the Swedish expert group was headed by commodore T. Wulff and the Swiss expert group by professor F. Aebi.

1. The wounding effect of a small calibre projectile in biological tissue is dependent on the transfer of the projectile's kinetic energy and its absorption in the tissue.

When a fast projectile penetrates a dense medium a cavity of a considerably larger size than the projectile will develop behind it (Woodruff 1898, Wilson 1921, Callender & French 1935, De Muth 1966, Thoresby 1966, May 1975). The pressure waves arising as a result of this process will be transmitted to the medium and may cause damage at rather great distances from the path of the projectile.

2. The kinetic energy (E) of a projectile is determined by its mass (m) and velocity (v), according to the equation

$$E = \frac{m v^2}{2}$$

3. When a projectile penetrates an infinite, soft, dense target it will expend all its kinetic energy and eventually stop within the target.

The maximum volume of the cavity formed behind a projectile will then be directly proportional to the kinetic energy at impact.

(Callender & French 1935, Harvey et al 1962, Janzon 1975, Pfaehler 1977)

The form of the maximum cavity is dependent upon the shape and the stability of the penetrating projectile. Several factors influence the stability of a shaped projectile in a dense medium.

CDDH/IV/INF.237 (continued)

The twist of the barrel rifling that gives the bullet its stabilizing spin is important. By increasing the twist the projectile rotates quicker and will generally become more stable.

The relation between the rotational speed of the bullet and its velocity at the moment of impact will play an important role in the behaviour of the bullet in the target. A low rotational speed combined with a high velocity will usually result in a bullet which is highly unstable in the target. The contrary extreme relation will give the same result.

At very close range, the bullet is greatly affected by various forces from the muzzle. If it enters a target at that range, the bullet will behave as if it was very unstable. Along the air trajectory (different ranges), the bullet will have a varying stability, specific for each type of bullet and weapon.

Figure 1 illustrates schematically the shape of the maximum cavity formed behind projectiles with the same kinetic energy at impact but with varying stability or form. (A) depicts the cavity of a quite stable slender projectile while (B) is the result of a less stable one. The cavity in (C) arises after a very unstable bullet. If an elongated bullet deforms on impact, like the mushrooming of a dum-dum bullet the resulting cavity will be as shown in (D). Due to its form, a sphere is completely stable and creates, because of its larger presented area, a cavity such as is shown in (E). For an elongated bullet it is possible to use the first part (neck) of its track in a dense fully plastic medium as an indication of the bullet's stability in the target. The longer the neck the more stable is the projectile.

If the target is short enough to allow the projectile to pass through without consuming all its kinetic energy the resulting cavity will vary greatly depending upon the bullet's form and stability. The dotted line illustrates a short target. The forms of the cavities are obviously extremely different for the various types of projectiles, although they all have the same impact kinetic energy. The residual kinetic energy the bullets carry after traversing the target of course varies accordingly.

4. The proportion of the kinetic energy of a projectile transferred to the tissues during the penetration is dependent on the shape at any instant, the momentarily displayed cross-section area, the velocity of the projectile and on the properties of the penetrated tissues, above all their density.

The retardant force acting on the projectile, which determines the energy transfer to the tissues, follows the laws of aerodynamic or hydrodynamic drag (Callender & French 1935, Krauss 1957, Hoerner 1965). There is a difference in the drag coefficient (proportionality constant) in dense fluid-like media, as compared to air, due to the occurrence of cavitation phenomena (May 1975).

CDDH/IV/INF.237 (continued)

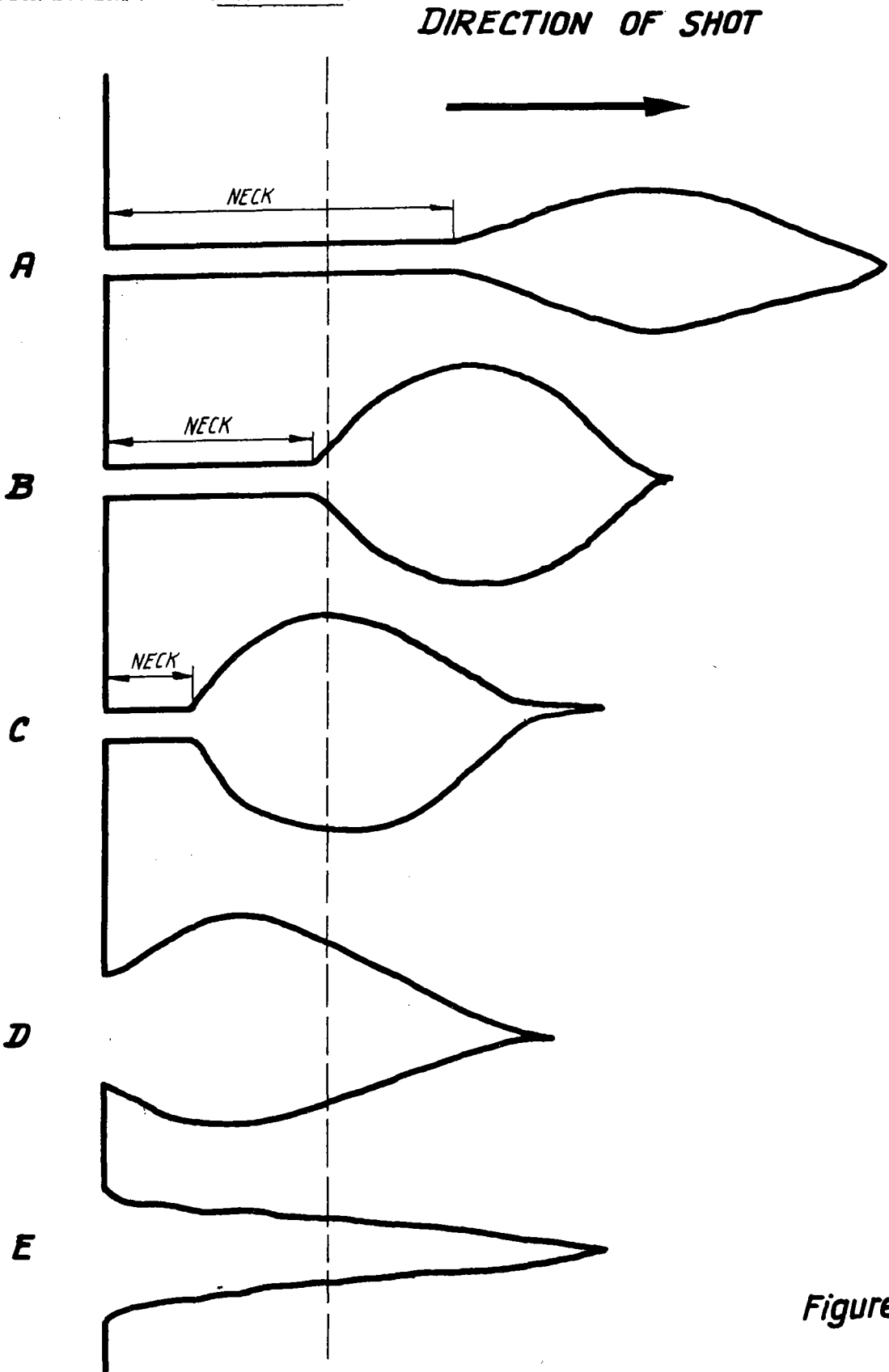


Figure 1

CDDH/IV/INF.237 (continued)

4.1 The velocity of the projectile enters the time rate of transfer of energy to the tissues in at least its third potency. The retardant force on the projectile is proportional to the square of its velocity. When the velocity exceeds certain limits this rate increases even more (Callender & French 1935, Harvey et al 1962, Hoerner 1965). The velocity of a projectile thus has a double role in the wounding process, because the drag coefficient also increases with velocity at velocities just below and slightly exceeding that of sound (Hoerner 1965).

4.2 The projected transverse area of a projectile during its passage through a dense medium is dependent upon its form, stability and mechanical strength.

A completely round sphere always presents the same area towards the medium it passes, provided it keeps its form. A shaped projectile presents a varying area towards the tissue depending upon its attitude during passage. Thus a projectile that enters a dense medium head-on will be less retarded than if it comes in obliquely. All spin-stabilized, shaped projectiles are more or less unstable during passage through a medium denser than air. Since the retardation and thus the wounding effect is to a large extent dependent upon the presented area of the projectile, which in turn is heavily increased by tumbling, it is of great importance how soon a projectile will tumble during its passage through human tissue.

When a shaped projectile tumbles in human tissue the forces acting upon it are 10-20 times greater than in a head-on position. Rifle bullets are usually constructed with an outer lining (jacket) of some stronger metal. The jacket contains a core of a metal with high density, usually lead (fig.2).

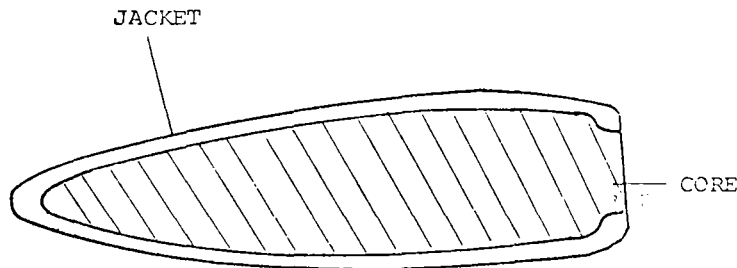


Figure 2

The construction sometimes breaks up particularly when the projectile tumbles quickly and at high impact speed. Smaller calibre offers greater chances of weak construction and in some series a very high percentage of particular projectile types have been shown to break when penetrating even soft tissue.

CDDH/IV/INF.237 (continued)

In a Swiss series at a range of 30 m against a soap target (dimensions 200 x 200 x 140 mm; bullet track 140 mm) all projectiles of 10 shots with one type of 5.56 mm calibre bullet broke during penetration. Against the same type of target and at the same range none of 20 shots with two types of 7.62 mm calibre bullets were damaged.

A Swedish series of shots against the same type of soap target, but at a range of 100 m, showed similar results. Of nine fired 5.56 mm calibre bullets all broke. All the nine projectiles of the 7.62 mm calibre passed through the target undamaged.

When the soap target was substituted with gelatine of the same dimensions, shots fired at the same range revealed that of the 5.56 mm calibre bullets 11 of 12 projectiles broke. 19 shots with 7.62 mm calibre projectiles were fired. Only one broke when penetrating the target. Altogether 74 shots were fired against the soft tissues of the hind leg of pigs at a range of 100 m. The thickness of the legs hit varied between 36 and 160 mm. Half of the shots (37) were fired with 5.56 mm calibre bullets of two types. Seven of those projectiles broke. The rest (37) of the shots consisting of 7.62 mm calibre bullets of two types revealed that none broke during passage through the soft tissues of the hind legs. Table 1 lists the results of the above-mentioned series.

Table 1

Number of bullets broken in various targets

Range and target	5.56 mm calibre			7.62 mm calibre		
	1)	2)	3)	1)	2)	3)
<u>Range 30 m</u>						
Soap	10 / 10 (100)			0 / 20 (0)		
<u>Range 100 m</u>						
Soap	9 / 9 (100)			0 / 9 (0)		
Gelatine	11 / 12 (92)			1 / 19 (5)		
Pig	7 / 37 (19)			0 / 37 (0)		

1) Number of broken bullets

2) Total number of shots

3) Percentage

CDDH/IV/INF.237 (continued)

Figure 3 shows x-ray pictures taken of a 5.56 mm calibre bullet at two different times during its passage through a soap block used in the Swiss series. The first picture (A) shows the beginning of the deformation of the bullet. At this point the bullet has just started to tumble. The second picture (B) shows the same bullet when leaving the target; it has disintegrated completely. The black line across both pictures represents the rear side of the soap block. The rapidly expanding cavity behind the bullet is clearly seen on both pictures as a lighter area within the block.

When a projectile hits hard tissues, such as bone, deformation or break up is likely, although at the present stage of knowledge, not statistically proven (Callender & French 1935).

Break up of a bullet results in an expenditure of most of its kinetic energy within the target. In addition, fragments of the bullet may be deposited in the tissues. The detailed effects of the break up upon the wounding process are not fully known. However, break up or deformation in most cases increases the transverse area of the missile presented (Berlin et al 1976).

The particular wounding effects resulting from projectile break up per se have not as yet been defined. The overall factor determining the character and extent of the resulting wound is the transfer of energy from the projectile at each instance along the track.

5. The energy is released mainly in the form of pressure waves, sometimes preceded by strong shock waves. Exactly how the kinetic energy is transformed within the tissues is not yet known.

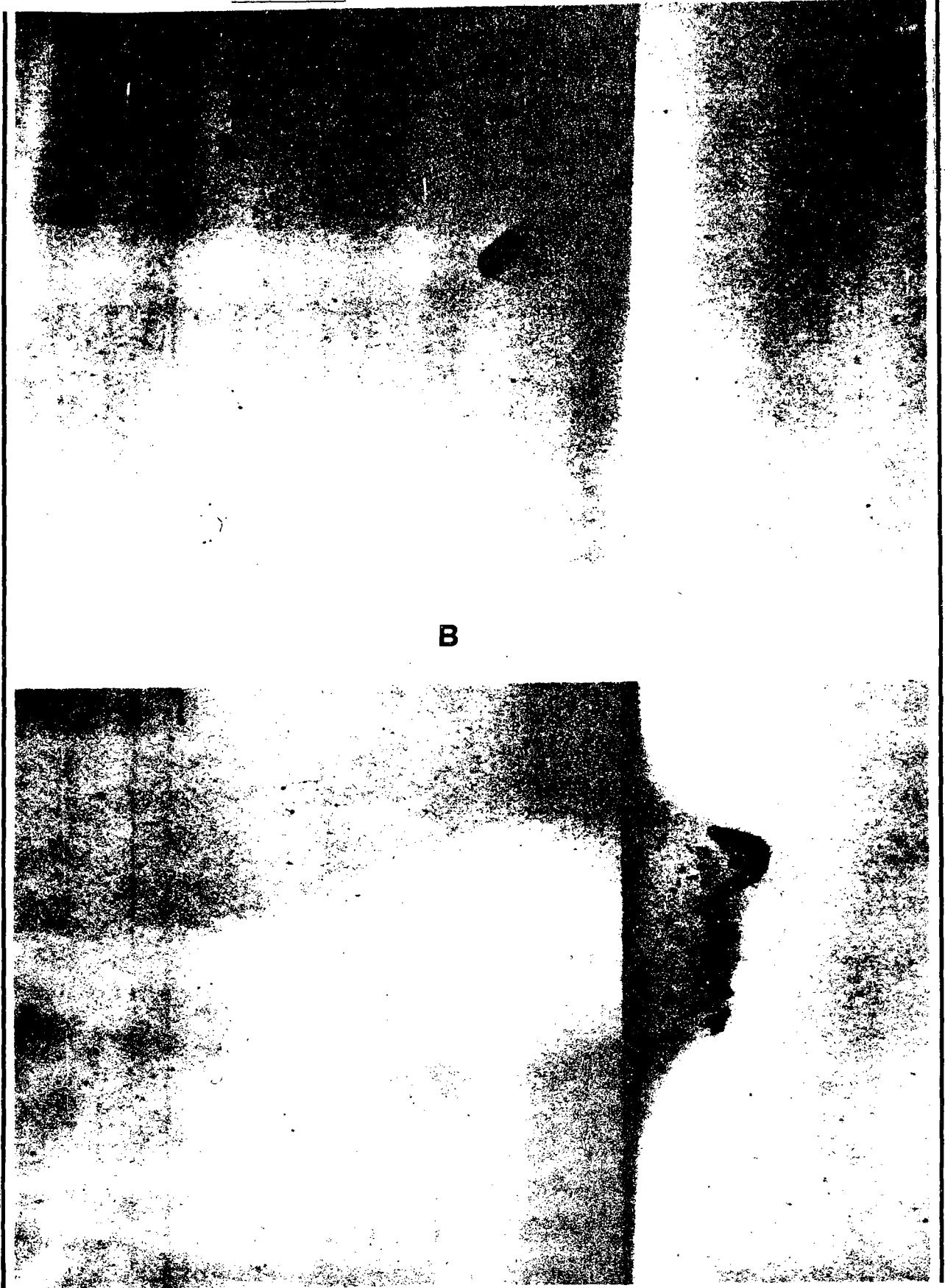
The pressure waves cause mechanical dislocation, derangement and heating in the target medium. The pressure will pulsate with successive expansions of the temporary cavity. Provided that the projectile has sufficient velocity, strong shock waves occur. They do not cause any appreciable displacement of the tissue particles and are usually considered to have only a minor part in the wound formation, but might damage the structure of living cells. They can, however, be registered at very long distances from the wound. The heating of the target medium is probably of very little importance in the wound formation. Local, violent heating caused by shock wave fronts, may, however, injure individual cells.

Any pressure wave hitting an obstacle of high density, such as bone, will be reflected and the maximum pressures may be considerably increased due to superposition of the incoming and reflected waves.

CDDH/IV/INF.237 (continued)

A

Figure 3



CDDH/IV/INF.237 (continued)

6. The biological results of the effects of missiles are:

local tissue death,
regional and local circulatory and metabolic changes
and release of active substances,
cell injury far away from the wound track caused by
pressure waves and strong shock waves. These injuries
may result in general effects, depending on their
localization in the body,
the central nervous system and the centres regulating
circulation and/or respiration, may be affected and
thus give general effects.

6.1 The extent of the immediate local tissue death is related to the amount of kinetic energy transferred to the tissues per unit length of the wound channel (Berlin et al 1976, 1977). The expansion of the temporary cavity will cause crush and tear damages to the tissues surrounding it (Krauss 1957, Amato et al 1970, 1971).

As the cavity formed will collapse and expand again several times, positive and negative pressures arise within the wound, thereby sucking in dirt and infectious agents.

The final extent of the tissue death is dependent on the reaction of the entire body and, in addition, on the medical care instituted (Mendelson & Glover 1967).

The two decisive major factors causing subsequent cell death are spreading of the initial infection and impairment of the cell oxygenation. A primarily injured cell may recover fully if it has a normal oxygen supply and is protected from invasion of infectious agents. Thus the local and regional circulatory and metabolic changes may have a decisive influence on the extent of the ultimate tissue death (Rybeck et al 1975).

A momentary, great energy transfer, as when a shaped projectile tumbles or when a broadfaced projectile (sphere or mushroomed bullet) penetrates with a very high velocity, often causes fractures of bone outside the bullet track (Emergency War Surgery /NATO Handbook/ 1958, Berlin et al 1976).

6.2 The regional circulatory changes have been shown to be well related to the amount of transferred energy. There is an increase in the regional blood flow including a part of the capillary bed. However, the distribution of the capillary blood flow is not yet known in detail (Rybeck 1974, Berlin et al 1977).

CDDH/IV/INF.237 (continued)

6.3 Pressure waves absorbed in surrounding tissues of the same density may not, when fading out at long distances from the bullet track, cause any appreciable damage. However, if they encounter air-filled cavities, explosive-like phenomena may occur. In such cases parts of the bowel, for example, may rupture and subsequently result in life-threatening conditions such as generalized peritonitis (Berlin et al 1969).

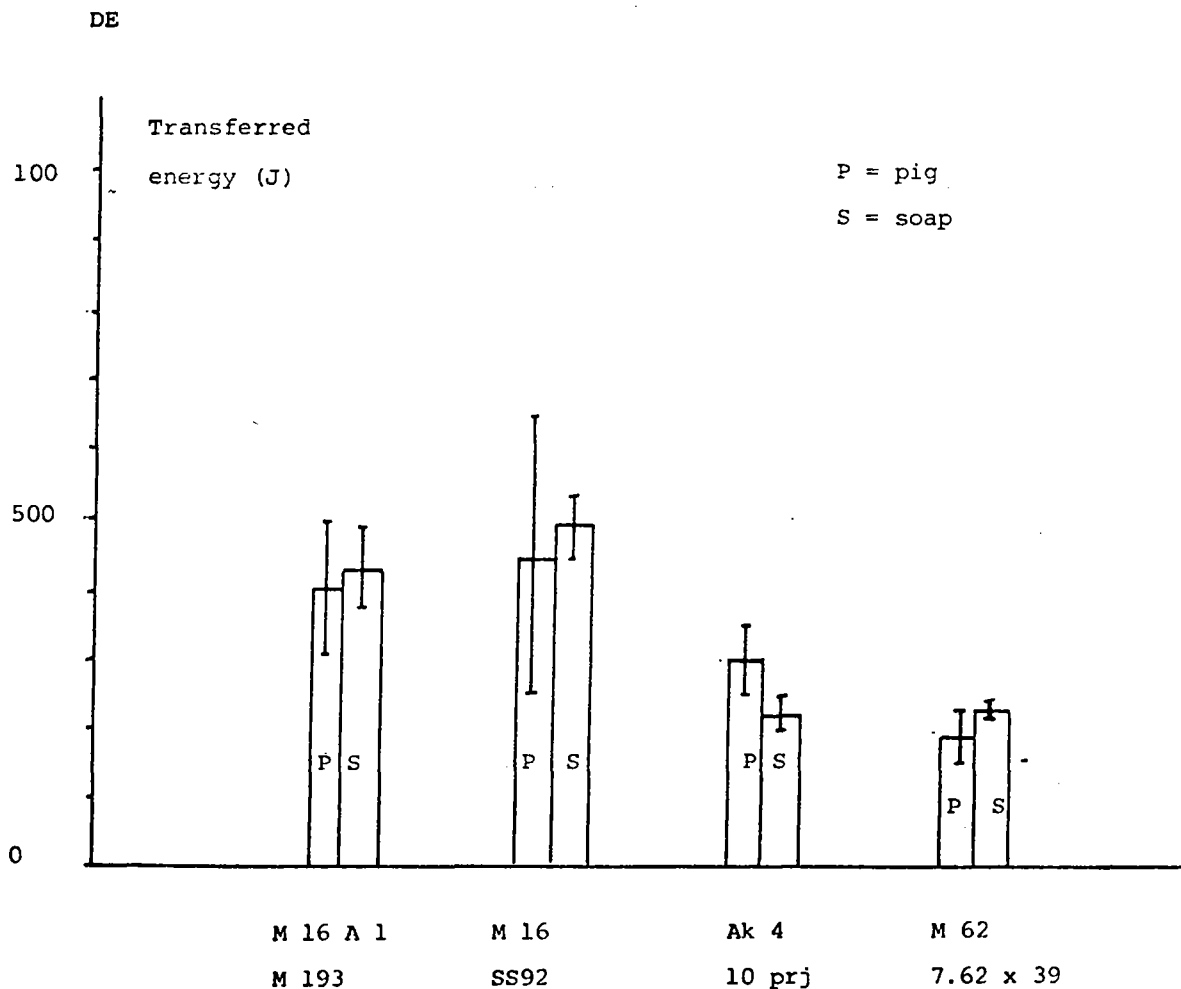
6.4 The influence on the function of the central nervous system, the heart and other organs caused by strong shock waves and by the local release of metabolic substances is not known in detail. (Clemenson 1953, Johnston 1972, Berlin et al 1977).

7. The study of the terminal ballistic properties of projectiles would be facilitated using a suitable, non-biological material to simulate live tissues. The results should then be related to the live tissue of interest. That means that the material chosen should have the same density and cause a similar behaviour of penetrating missiles as does the live tissue in question (Berlin et al 1977).

Experiments have shown that a particular soap is suitable to simulate muscle tissue. The density of the soap is the same and, when penetrating the medium, projectiles seem to tumble, deform, break and transfer energy in much the same way as they do in live muscle tissue. Figure 4 shows the energy transfer (DE) for different weapons/ammunitions in live muscle tissue of pigs (P) and in soap (S), 140 mm thick (Berlin et al 1977).

CDDH/IV/INF.237 (continued)

Figure 4

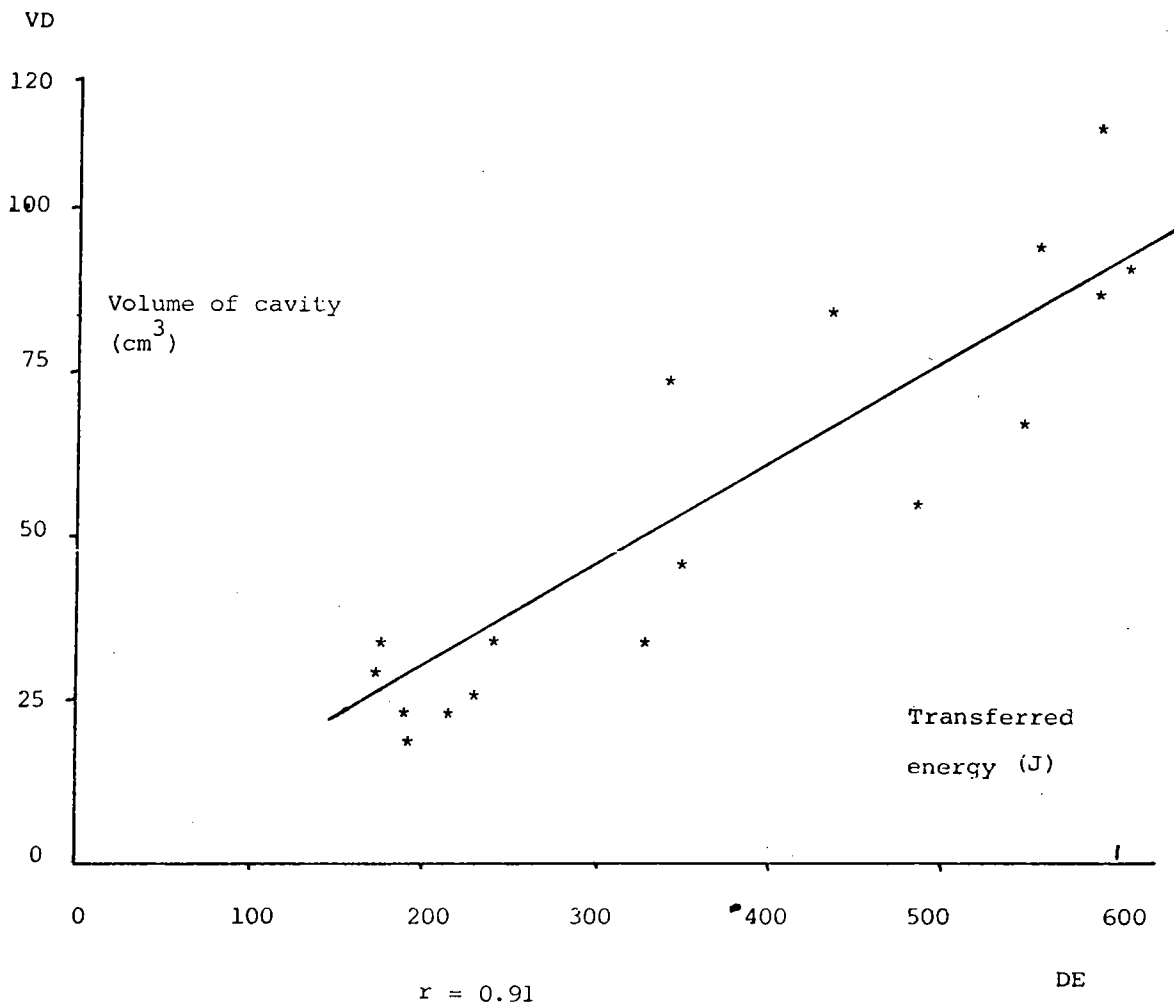


The volume of the cavity in the soap caused by a penetrating projectile appears to be well related to the amount of energy per penetrated unit length. Because of the plastic properties of the soap and its lack of elasticity this cavity reflects the maximum temporary cavity in live muscle tissue.

CDDH/IV/INF.237 (continued)

Figure 5 shows the regression of the cavity volume (VD) in soap blocks versus the amount of transferred energy (DE) from the Swedish series (Berlin et al, 1977).

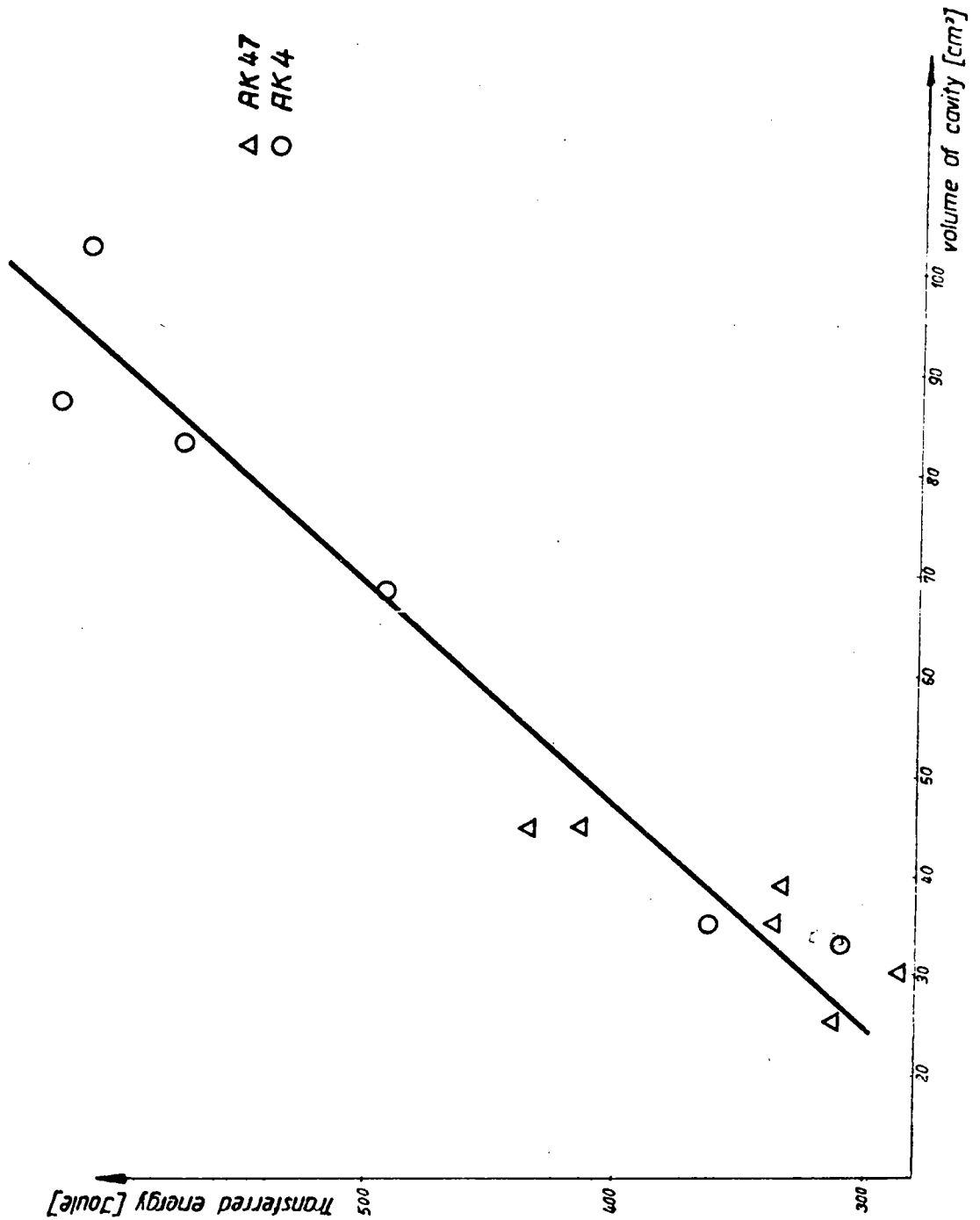
Figure 5



CDDH/IV/INF.237 (continued)

In figure 6 the same correlation is depicted from the Swiss series (Aebi et al 1977).

Figure 6



CDDH/IV/INF.237 (continued)

Based on these findings a non-biological soap target may be best suited for comparison with live tissues. It is suggested that the requirements listed in Table 2 should be fulfilled.

CDDH/IV/INF.237 (continued)

Table 2 Test of terminal ballistics
in non-biological tissue simulant

1.	Target material	Cold-stirred soap based on animal and vegetable fat Fatty acid 50% Water 20 - 22% Density 1060 kg/m ³
2.	Dimensions	200 x 200 x 140 mm Projectile trajectory 140 mm
3.	Range	100 m
4.	Evaluation	Volume of the cavity per unit length and totally Length of the neck Break up or deformation of bullets within the target

CDDH/IV/INF.237 (continued)

Comments on Table 2

- Point 1: The soap material may be used several times provided that the water content is kept constant and the soap has not been contaminated.
- Point 2: 140 mm has been chosen because it represents the 50% probability of encountering human tissue of any shot penetrating a body.
- Point 3: At ranges less than about 50 m the initial instability of any bullet will cause great scatter in the results obtained. Although ranges over 200 m may occur during battle conditions the most common ranges are below 200 m. In addition it is extremely difficult to hit the target exactly at longer distances. 100 m has been chosen because it is a common fighting range and aiming at the exact spot in the target is not too difficult.
- Point 4: The volume represents the total energy transfer in the target.
Volume per unit length gives an estimation of the energy transfer along the track.
The neck of the cavity (fig. 1) is related to the tumbling point of the bullet.

CDDH/IV/INF.237 (continued)

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CDDH/IV/INF.237 (continued)

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CDDH/IV/INF.241

2 May 1977

Original: English

Implementation of General Assembly Resolution 3435 (XXX):
Study of the Problem of the Material Remnants of Wars,
Particularly Mines, and Their Effect on the Environment,
document communicated by the United Nations Environment Programme

The Secretary-General has the honour to bring to the attention of the participants in the Conference the attached document which the United Nations Environment Programme has communicated to the Conference for distribution.



United Nations
Environment
Programme



Distr.
GENERAL

UNEP/GC/103
19 April 1977

Original: ENGLISH

GOVERNING COUNCIL
Fifth session
Nairobi, 9-25 May 1977
Item 14 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 3435 (XXX):
STUDY OF THE PROBLEM OF THE MATERIAL REMNANTS OF WARS,
PARTICULARLY MINES, AND THEIR EFFECT
ON THE ENVIRONMENT

This report is submitted in response to General Assembly resolution 3435 (XXX) and Governing Council decision 80 (IV). It analyses information obtained from Governments and other sources on the effects of remnants of war on the environment. It also outlines action to be taken to clear existing mines, and suggests steps which might be taken to avoid the occurrence of future remnants and their environmental consequences.

Report of the Executive Director

1. INTRODUCTION

1. On 9 December 1975 the General Assembly ^{1/} requested the Governing Council of UNEP "to undertake a study of the problem of the material remnants of war, particularly mines, and their effect to the environment, and to submit a report on the subject to the General Assembly at its thirty-first session".
2. The Executive Director accordingly invited the attention of the Governing Council to this request ^{2/} and convened a meeting of a group of experts to assist him to prepare recommendations on the subject to be submitted to the Governing Council at its fourth session. In those recommendations, the Executive Director defined the scope of a possible study of the subject, how it could be carried out, and the time which would be required. ^{3/}

^{1/} Resolution 3435 (XXX), para. 5.

^{2/} UNEP/GC/84.

^{3/} UNEP/GC/84/Add.1.

CDDH/IV/INF.241 (continued)

UNEP/GC/103

Page 2

3. On 9 April 1976 the Governing Council authorized the Executive Director, inter alia, to proceed with the study requested by the General Assembly, and on its behalf, to submit an interim report on the study to the Assembly at its thirty-first session. The Governing Council also agreed to consider the matter further at its fifth session, with a view to submitting the study to the General Assembly at its thirty-second session. 4/

4. The Executive Director accordingly, on behalf of the Governing Council, submitted an interim report on the study to the General Assembly. 5/ On 16 December 1976, the Assembly adopted a resolution in which it requested the Governing Council to ensure that the study was completed, taking into account the views expressed during the General Assembly discussions. 6/

II. SCOPE OF STUDY

5. Remnants of war may adversely affect the environment in many ways. Mines, for example, may kill or injure human beings, blow up buildings including dwelling houses, and disrupt national development. Mines or other explosives in rivers and the sea constitute a serious danger to fishermen and hamper the full use of these natural resources. In some instances, remnants of war disrupt such activities as mineral exploitation and make many acres of land which are otherwise suitable for agriculture unsafe to farm.

6. The chemical components of some remnants of war may have lasting harmful effects on people, animal population, vegetation, water, land and the ecosystem as a whole. Even when the remnants do not constitute a direct danger to life, they still have harmful environmental effects. For example, bomb craters, barbed wire, wrecked trucks and bunkers, etc. destroy the aesthetic value of the countryside, including beaches, and hamper their use for recreation.

7. However, the mandate restricted the study to "material" remnants of war, "particularly mines", and the responses from Governments gave information mainly on mines. This study is therefore limited to an examination of the effects of the material remnants of war on the populations of the areas affected, the techniques and methods of clearing the remnants, particularly mines, and ways of preventing similar effects in the future through environmental management.

III. PROCEDURE OF STUDY

8. In compliance with paragraph 3 of decision 80 (IV), the Executive Director addressed letters and a questionnaire to all Governments of States Members of the United Nations, requesting statistical and other information related to the remnants of war in their countries. The information sought from Governments was confined to the effects of remnants of war which have occurred through military hostility, other than civil wars, since 1900.

4/ Decision 80 (IV), paras. 3, 6 and 7.

5/ A/31/210.

6/ Resolution 31/111.

CDDH/IV/INF.241 (continued)

9. In addition to the above sources of information, various military archives and libraries were consulted for information on the nature of mines, the effect of each type of mine on the environment, and the best technique of removing or otherwise rendering it harmless.

IV. INFORMATION AND ANALYSIS

A. General

10. The study is based mainly on information and statistics obtained from Governments as at 1 March 1977. By that date, 44 Governments had reacted to the Executive Director's letters and questionnaire. Of the Governments which responded, 13 supplied information indicating the presence of material remnants of war in their country. The information they supplied concerned only remnants of the Second World War and their effect on the environment.

B. Analysis of replies by Governments

11. One Government stated that the Second World War had left behind in its country 84,323,000 pieces of ordnance. Of that quantity, 14,469,600 land mines had been cleared, and clearance of such mines was continuing at the rate of 300,000-400,000 a year. Remnants of war had killed 3,834 civilians, most of them children, and injured 8,384 others, of whom 6,783 were children. For the past five years 30-40 persons had been killed each year and 50-80 had been injured. To date about 461 disposal personnel had been killed and 655 injured.

12. Another Government reported that soon after the Second World War, most of the minefields left behind were cleared, but unexploded bombs and mines still remained. About 50 professionals were engaged daily in clearing those remnants. The number of civilians killed was unknown, and no reliable assessment of victims could be made. The Government supplying this information recommended that States should commit themselves through an international agreement to keep special files on victims of material remnants of war.

13. Another Government stated that of the remnants of war left behind in its territory by the Second World War, 23,000 tons of munitions had been cleared or neutralized by mine clearance squads. That amount included 28,694 shells, 18,224 aerial mines, and 27,722 land mines of various types. Eighteen disposal personnel had been killed during disposal operations, and 44 injured.

14. One other Government stated that the Second World War had left behind 1,700,000 land mines of different types, most of which had been cleared, while the rest were being cleared at an annual cost of US \$50,000 - \$55,000. In addition to the mines, many military fortifications and installations had been left all over the country. The countryside was consequently littered with barbed wire, trenches, bunkers etc., which impeded passage and open-air life, impaired scenic landscapes and constituted a serious danger to humans and animals.

15. Several Governments of maritime States reported that they had been affected by naval mines rather than land mines. One such Government reported that the naval mines and munitions had obstructed fishing operations. Fishing implements were frequently destroyed by wrecks of warplanes and ships, mine anchors, or mustard-gas containers in heavy fishing areas. Sometimes mustard-gas containers were brought to the surface in fishing nets and injured fishermen. Sometimes dangerous ammunition dumped into the sea drifted onto beaches or floated near the coast.

16. One Government reported that the war had left wrecked ships, containing ammunition, in locations proximate to busy ports.

V. DISPOSAL OF EXISTING MATERIAL REMNANTS OF WAR

17. The technical problems of a systematic disposal of the material remnants of war which are a threat to the environment are formidable. The remnants of war are often scattered over wide areas. They are also of different types. Before any remnants can be considered harmless or harmful, they have to be located and investigated, and if harmful to the environment, destroyed or otherwise rendered harmless, by employing various devices.

18. Explosive ordnance disposal operations are carried out through techniques which vary depending mainly on whether the explosive is to be detonated or neutralized, and whether it is a land mine or a naval mine. A brief summary of the techniques employed in mine disposal operations is available.

19. There is evidence to indicate that a reasonable amount of skill and experience is available for tackling the problem of remnants of war through disposal operations. These skills and experience, however, are often confined to developed countries; most developing countries have neither sufficient skills to handle sophisticated mine detectors nor adequate financial resources to deal effectively with the problem. Furthermore, since mines and other explosives were clandestinely laid, unless sophisticated detectors are employed, the nature of the mines and their whereabouts are often known only to those who laid them. Without sophisticated detectors, to locate a mine, determine its nature and remove or neutralize it can be a hazardous, expensive and time-consuming process, and quite often the success of such an operation can be impeded by the nature of the vegetation, the climate, the nature of the soil or the turbulence of the sea in which the mine happens to be laid.

20. Removal of mines and other remnants of war should include abatement of their effects and restoration of the affected environment to its normal state. The latter requires adequate knowledge about the kind of degradation each type of remnant inflicts on a particular area of the environment, and the duration of the ecological effects. Studies are already being carried out in this field ^{7/} by various institutions, both national and private, and it is a necessary preliminary step which must be encouraged for determining the appropriate remedial steps to be taken.

^{7/} See e.g. Studies by the Stockholm International Peace Research Institute - Ecological consequences of the Second Indo-China War (Almqvist and Wiskell International Stockholm, Sweden 1976).

CDDH/IV/INF.241 (continued)

VI. PREVENTION AND AVOIDANCE OF REMNANTS OF WAR
AND THEIR ENVIRONMENTAL HAZARDS IN THE FUTURE

21. The massive manufacture of weapons is heavily dependent on non-renewable natural resources. The processes of manufacturing munitions and testing new weapons produce pollutants which are harmful to man and the environment. The prevention and avoidance of environmental hazards in the future with respect to remnants of war are therefore inextricably bound up with the question of maintenance of peace and the manufacture of weapons.

22. Discussions are now going on about disarmament, particularly as regards those weapons which have highly destructive and lasting effects on the environment. For example, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts proposed at Geneva in 1975 basic rules of warfare prohibiting "methods or means of warfare which are intended or may be expected to cause widespread, long-term, and severe damage to the environment". In the draft protocol (D 1388/1 b*) prepared by the Conference in 1976, apart from making provision for the "protection of objects indispensable to the survival of the civilian population" 8/ and the "protection of works and installations containing dangerous forces" (dams, dykes and nuclear power stations), 9/ special attention was given to the protection of the natural environment. The draft, in this respect, forbids the employment of "methods or means of combat which are intended or may be expected to cause widespread, long-term, and severe damage to the natural environment". 10/

23. Also at Geneva, in 1974, at the Conference of the Committee on Disarmament, it was proposed to prohibit any technique of warfare which would cause a disturbance of the "dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere, and atmosphere ... so as to cause such effects as ... an upset in the ecological balance of a region or changes in weather patterns". The General Assembly requested the Conference to proceed as soon as possible to achieving agreement on the text of a convention on the prohibition of action to influence the environment and climate for military and other purposes incompatible with the maintenance of international security, human well-being and health, and to submit a report on the results achieved for consideration by the Assembly at its thirtieth session. 11/ In 1976 the Conference submitted to the General Assembly a draft convention on the prohibition of military or any other hostile use of environmental modification techniques, which the Assembly referred to all States for their consideration, signature and ratification. 12/

8/ Draft Protocol II art. 27.

9/ Ibid., art. 28.

10/ Ibid., art. 28 bis.

11/ Resolution 3264 (XXIX) of 9 December 1974; see also resolution 3475 (XXX) of 11 December 1975.

12/ Resolution 31/72 of 10 December 1976.

VII. CONCLUSIONS AND RECOMMENDATIONS

24. In view of the limited information received from Governments in response to the Executive Director's letters and questionnaire, no definitive conclusions can be reached on the basis of that information alone. However, augmented by data from other sources, the relatively few responses from Governments may form the basis of some preliminary conclusions and tentative recommendations.

25. The following recommendations are based on the views expressed at the thirty-first session of the General Assembly on the subject of remnants of war, the suggestions of various Governments, the draft convention prepared by the Conference of the Committee on Disarmament, and the terms of the Protocols drafted by the Diplomatic Conference on Humanitarian Law.

A. Removal of existing remnants of war and their effects

26. The following actions are recommended:

(a) Exchange of Information

- (i) All States which have been responsible for the presence of remnants of war on the territory of other States should provide the latter through convenient arrangements - bilateral or multilateral - with all information which could be useful in the rehabilitation of the environment;
- (ii) In the case of land mines and naval mines, this information should at least include the location of mine fields, the layout and number of mines within each field, the technical specification of the mines used, and all necessary information on how to neutralize or destroy them;
- (iii) In the case of air bombs and mines, and in the case of artillery shells, this information should at least include the location of dropping areas, the technical specification and number of pieces for each dropping operation, and all necessary information on how to neutralize or destroy them;
- (iv) The International Referral System (IRS) of UNEP could facilitate access to sources of information on how to deal with environmental problems created by material remnants of war. The effectiveness of such a mechanism would depend on the registration of such sources with IRS;

(b) Technical and financial assistance and advice

- (i) Governments may seek technical assistance through UNEP for the preparation of their programmes for the elimination of mines (see Governing Council decision 80 (IV), paragraph 5);
- (ii) A scheme should be established for giving technical and financial aid to countries, particularly developing countries, for the clearance of remnants of war in their territory;

CDDH/IV/INF.241 (continued)

(c) Joint clearance operations

The successful joint operation for the clearance of the Suez Canal of remnants of war may be adopted as a model for future joint clearance operations;

(d) Studies

Further studies should be carried out on the environmental effects of certain types of weapons. The studies should be co-ordinated in order to avoid duplication; there should also be exchange of information, and the information on the results of the study should be given wide circulation for the benefit of those who require it for the elimination of remnants of war and their environmental effect.

B. Prevention and avoidance of environmental hazards in the future

27. The following actions are recommended:

International conventions and protocols

- (i) Adoption of a global convention which takes into consideration the 1975 proposals of the Diplomatic Conference on Humanitarian Law and the proposals made in the draft convention of the Conference of the Committee on Disarmament;
- (ii) States should be urged to ratify or accede to such a convention, designed to limit the use of weapons which have high and lasting destructive effect on the environment;
- (iii) Through an international convention of a global nature all future land-mines, sea mines, booby traps, grenades and bombs should be fitted with self-destructive or neutralizing mechanisms, which will automatically neutralize them or otherwise make them harmless after a predetermined period. Such a convention may also include a clause to the effect that after cessation of hostilities there should be prompt exchange of registers between the warring groups. The registers should contain maps indicating where mines and other explosives had been laid, their nature, and, if known, their potential effects on the ecology. The exchange of registers would enable the States on whose territories the mines are deposited to carry out promptly on-the-spot checks to ensure that mechanisms for rendering mines safe had functioned. It would also facilitate prompt checks on other possible ill effects on the environment. 13/

13/ Sub-paragraph (iii) is based on a recommendation by one Government.

VIII. SUGGESTED ACTION BY THE GOVERNING COUNCIL

28. The Governing Council may wish to consider a decision along the following lines:

(a) To note the study of the Executive Director on the material remnants of war and their effect on the environment (UNEP/GC/103);

(b) To request the Executive Director, on its behalf, to transmit the study to the General Assembly at its thirty-second session in accordance with the terms of General Assembly resolution 3435 (XXX) and Governing Council decision 80 (IV), paragraph 7;

(c) To recall paragraph 5 of its decision 80 (IV), and to authorize the Executive Director to continue responding to requests for assistance in the elimination of remnants of war.

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CDDH/INF.242

17 May 1977

Original: French

Statement by UNESCO at the fourth session of
the Diplomatic Conference on the Reaffirmation and
Development of International Humanitarian Law
Applicable in Armed Conflicts

1. In accordance with rule 60 of the rules of procedure of the Conference, the representative of UNESCO wishes to inform representatives to the Conference of his organization's views on certain aspects of the Additional Draft Protocols which fall within its competence.
2. UNESCO, whose membership, just like that of this Conference, tends to universality, has always attached great importance to the promotion and safeguarding of the rights to education, science, culture and information of populations afflicted by crises. The victims of armed conflicts, be they wounded, sick, persons deprived of liberty or civilian populations, are always for UNESCO human beings with intellectual and spiritual needs which must be satisfied as far as possible in their particular situation.
3. In any case, UNESCO already occupies a specific place in the application of international humanitarian law, for it is responsible for the implementation of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, together with the Regulations for the Execution of the Convention, both adopted in 1954 under its auspices. This Convention is cited on numerous occasions in the Protocols which the Conference will be adopting. The interest of UNESCO in international humanitarian law, however, goes beyond the Hague Convention of 1954.
4. Since its objective is "to contribute to the maintenance of peace and security through strengthening collaboration between nations through education, science and culture, in order to ensure universal respect for justice, law, the rights of man and the fundamental freedoms ...", UNESCO is available to all its Member States for help in overcoming the difficulties which arise - even in periods of armed conflict - in the fields of education, science, culture and information.

CDDH/INF.242 (continued)

5. It must be emphasized in this connexion that the aspirations of the authors of the Geneva Conventions of 12 August 1949 tally with those of UNESCO, since the texts mention the concept of intellectual assistance. Article 72 of the Third Convention makes some contribution to a definition of intellectual assistance in the following stipulation:

"Prisoners of war shall be allowed to receive ... articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities."

Newspapers, it will be noted, are not included in this list, but international humanitarian law is always the result of a compromise between what States regard as military necessity and what would be desirable for the well-being of the victims of armed conflicts.

6. UNESCO has noted that the Diplomatic Conference has not so far seen fit to reaffirm or develop in Protocol I these provisions concerning intellectual assistance in times of international armed conflict. At all events, UNESCO remains at the disposal of the member States and of humanitarian bodies, particularly the International Committee of the Red Cross, for the purpose of co-operating with them, within the limits of its competence, with a view to affording intellectual assistance whenever such assistance seems necessary.

7. It may be noted that the effort to achieve the reaffirmation and development of the humanitarian law applicable in this area seems to have been directed mainly towards spiritual and medical assistance, and that is perfectly legitimate and understandable. This is particularly true of draft Protocol II, relating to non-international conflicts, under which, for example (Article 8), persons whose liberty has been restricted are to receive medical and religious assistance, whereas intellectual assistance is not expressly mentioned. Sub-paragraph 1(c) of Article 8 does, it is true, speak of their being "allowed to receive individual or collective relief". In the view of UNESCO, it is desirable that this provision should be interpreted broadly, so as to comprise, for example, the kind of relief provided for in Article 72 of the Third Convention, as quoted above. It is probably now too late to amend the text, so as to make it more explicit about intellectual assistance, but UNESCO considers that, failing such an amendment, the best approach would be to construe this and similar provisions as broadly as possible.

CDDH/INF.242 (concluded)

8. Apart from the protection of cultural property and intellectual assistance, UNESCO tries to make its contribution to the dissemination of a knowledge of international humanitarian law. Since 1974, for instance, UNESCO has been collaborating closely with the International Committee of the Red Cross and the Henri Dunant Institute on the preparation of a long-term programme for the institution of specialized instruction in international humanitarian law at the universities of the member States. A textbook on international humanitarian law is thus to be prepared, in collaboration with a team of international specialists, as soon as possible after the end of the Conference. In addition, it is proposed to establish several regional centres for the training of specialists in international humanitarian law in co-operation with the authorities of the countries concerned, and with the delegations of the Red Cross, the national Commissions for UNESCO and institutes of higher education, and in co-operation also, of course, with the International Committee of the Red Cross, whose activities are directed to the same end.

9. Now that the Conference is about to conclude this exercise in bringing international humanitarian law up to date, the Director General of UNESCO, who has been represented at all four sessions of the Conference, wishes to say how impressed he has been by the noteworthy progress made since 1974. He also wishes to assure the States Parties to the Geneva Conventions and those who will accede to the Protocols, and the ICRC, of the wholehearted support of UNESCO, in accordance with the organization's constitutional vocation and with the decisions of its member States. The consequences of armed conflict call for redoubled efforts on the part of the entire international community to safeguard the essentials: first, men's lives and their physical and moral integrity, and then everything which, through education, science, culture and the media of communication, enables the victims of armed conflicts to remain human beings, whose potential for development cannot be forgotten even if it is temporarily impeded.

V. INDEX TO THE TABLE OF AMENDMENTS TO DRAFT
ADDITIONAL PROTOCOL II

I N D E X

	<u>Page</u>
Accession (Article 42)	115
Article 22 of the Final Act	
Amendment (Article 44)	117
Article 24 of the Final Act	
Authentic texts (Article 28)	121
Original title: Authentic texts and official translations (Article 47)	
Authentic texts and official translations (Article 47)	121
Title in Final Act: Authentic texts (Article 28)	
Basic rules (Article 24)	71-72
Rejected in plenary	
Civil defence (Part V, Chapter II)	96-100
Civilian population (Part V)	71-104
Part IV of the Final Act	
Co-operation in the observance of the present Protocol (Article 39)	112
Rejected in plenary	
Definition (Article 25)	73-74
Rejected in plenary	
Definition (Article 31)	98-99
Deleted	
Definitions (Article 11)	39-43
Rejected in plenary	
Denunciation (Article 44 <u>bis</u>)	118
Article 25 of the Final Act	
Dissemination (Article 37)	110
Article 19 of the Final Act	
Entry into force (Article 43)	116
Article 23 of the Final Act	
Execution of the present Protocol (Part VII)	109-112
Final provisions (Part VIII)	113-121
Part V of the Final Act	
Foreign states (Article 19 <u>quinquies</u>)	62
Withdrawn	
Fundamental guarantees (Article 6)	18-20
(Article 4 of the Final Act)	

	<u>Page</u>
General Protection against effects of hostilities (Part V, Chapter I)	71-95
General protection of civilian objects (Article 26 <u>bis</u>) Rejected in plenary	82-83
General protection of medical duties (Article 16) Article 10 of the Final Act	55-56
Humane treatment (Part II) Original title: Humane treatment of persons in the power of the Parties to the conflict (Part II)	18-37
Humane treatment of persons in the power of the Parties to the conflict (Part II) Title in Final Act: Humane treatment (Part II)	18-37
Identification (Article 31 <u>bis</u>) Withdrawn	100
Interned families (Article 8 <u>bis</u>) Withdrawn	29
Legal status of the Parties to the conflict (Article 3) Rejected in plenary	14-15
Material field of application (Article 1)	6-10
Measures for execution (Article 36) Rejected in plenary	109
Measures in favour of children (Part V, Chapter III)	101-104
Medical and religious personnel (Article 15) Title in Final Act: Protection of medical and religious personnel (Article 9)	52-54
Medical units and transports (Article 17) Title in Final Act: Protection of medical units and transports (Article 11)	57-58
Methods and means of combat (Part IV)	63-70
National Red Cross and other relief societies (Article 35) Deleted	108
New Section III - Draft Code of International Crimes in Violation of the Geneva Conventions of 1949 and the Additional Protocols (Annex I to the Table of Amendments)	125-162
Non-intervention (Article 4) Article 3 of the Final Act	16
Notifications (Article 45) Article 26 of the Final Act	119

	<u>Page</u>
Penal prosecutions (Article 10)	32-36
Article 6 of the Final Act	
Personal field of application (Article 2)	11-13
Persons whose liberty has been restricted (Article 8)	23-28
Article 5 of the Final Act	
Preamble	3
Precautions in attack (Article 28 <u>ter</u>)	92-93
Rejected	
Principles of penal law (Article 9)	30-31
Incorporated in Article 10	
Privileged treatment (Article 32)	101-104
Incorporated in Article 4	
Prohibition of forced movement of civilians (Article 29)	94-95
Article 17 of the Final Act	
Prohibition of perfidy (Article 21)	67
Rejected in plenary	
Prohibition of reprisals (Article 10 <u>bis</u>)	37
Rejected in plenary	
Prohibition of reprisals (Article 19)	60
Deleted	
Prohibition of unnecessary injury (Article 20)	63-64
Rejected in plenary	
Protection and care (Article 12)	44-46
Article 7 of the Final Act	
Protection of cultural objects and of places of worship (Article 20 <u>bis</u>)	65-66
Article 16 of the Final Act	
Protection of medical and religious personnel (Article 9)	52-54
Original title: Medical and religious personnel (Article 15)	
Protection of medical units and transports (Article 11)	57-58
Original title: Medical units and transports (Article 17)	
Protection of objects indispensable to the survival of the civilian population (Article 27)	84-87
Article 14 of the Final Act	
Protection of persons (Article 12 <u>bis</u>)	47-48
Rejected in plenary	
Protection of the civilian population (Article 26)	75-81
Article 13 of the Final Act	
Protection of the natural environment (Article 28 <u>bis</u>)	91
Incorporated in Article 20	
Protection of women (Article 6 <u>bis</u>)	21
Rejected in plenary	
Protection of works and installations containing dangerous forces (Article 28)	88-90
Article 15 of the Final Act	

	<u>Page</u>
Quarter (Article 22)	68
Rejected in plenary	
Ratification (Article 41)	114
Article 21 of the Final Act	
Recognized signs (Article 23)	70
Rejected in plenary	
Recording and information (Article 34)	107
Rejected in plenary	
Registration (Article 46)	120
Article 27 of the Final Act	
Relief (Part VI)	105-108
Relief Actions (Article 33)	105-106
Title in Final Act: Relief societies and relief actions (Article 18)	
Relief societies and relief actions (Article 18)	105-106
Original title: Relief actions (Article 33)	
Respect and protection (Article 30)	96-97
Rejected in plenary	
Rights and duties of the Parties to the conflict (Article 5)	17
Rejected in plenary	
Role of the civilian population (Article 14)	50-51
Rejected in plenary	
Safeguard of an enemy <u>hors de combat</u> (Article 7)	22
Safeguard of an enemy <u>hors de combat</u> (Article 22 <u>bis</u>)	69
Rejected in plenary	
Scope of the present Protocol (Part I)	4-17
Title in Final Act: Scope of this Protocol (Part I)	
Scope of this Protocol (Part I)	4-17
Original title: Scope of the present Protocol (Part I)	
Search (Article 8)	49
Original title: Search and evacuation (Article 13)	
Search and evacuation (Article 13)	49
Title in Final Act: Search (Article 8)	
Signature (Article 40)	113
Article 20 of the Final Act	
Special agreements (Article 38)	111
Rejected in plenary	
The distinctive emblem (Article 18)	59
Article 12 of the Final Act	

	<u>Page</u>
Wounded, sick and shipwrecked (Part III)	38-62
Original title: Wounded, sick and shipwrecked persons (Part III)	
Wounded, sick and shipwrecked persons (Part III)	38-62
Title in Final Act: Wounded, sick and shipwrecked (Part III)	