



**OFFICIAL RECORDS**

OF THE

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

GENEVA (1974 -1977)

VOLUME VIII

## INTRODUCTORY NOTE

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

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

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\*Document circulated in French only.

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**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 VIII

CONTENTS

SUMMARY RECORDS OF COMMITTEE I

	<u>Page</u>
I. First session (CDDH/I/SR.1-16) .....	1
II. Second session (CDDH/I/SR.17-41) .....	131

FIRST SESSION

(Geneva, 20 February - 29 March 1974)

COMMITTEE I

SUMMARY RECORDS OF THE FIRST TO SIXTEENTH MEETINGS  
held at the International Conference Centre, Geneva,  
from 7 to 26 March 1974

Chairman: Mr. E. HAMBRO (Norway)

Rapporteur: Mr. M. MARIN-BOSCH (Mexico)



CONTENTS

	<u>Page</u>
<u>First meeting</u> .....	5
Organization of work	
<u>Second meeting</u> .....	7
Consideration of draft Protocol I	
Article 1 - Scope of the present Protocol	
<u>Third meeting</u> .....	17
Consideration of draft Protocol I ( <u>continued</u> )	
Article 1 - Scope of the present Protocol ( <u>continued</u> )	
<u>Fourth meeting</u> .....	25
Consideration of draft Protocol I ( <u>continued</u> )	
Article 1 - Scope of the present Protocol ( <u>continued</u> )	
<u>Fifth meeting</u> .....	33
Tribute to the memory of Mrs. Pierre Graber	
Consideration of draft Protocol I ( <u>continued</u> )	
article 1 - Scope of the present Protocol ( <u>continued</u> )	
<u>Sixth meeting</u> .....	43
Consideration of draft Protocol I ( <u>continued</u> )	
Article 1 - Scope of the present Protocol ( <u>continued</u> )	
<u>Seventh meeting</u> .....	51
Organization of work	
Consideration of draft Protocol I ( <u>continued</u> )	
Article 2 - Definitions	
Sub-paragraphs (a) and (b)	
Sub-paragraph (c)	
Sub-paragraphs (d) and (e)	
Proposed new sub-paragraphs (f) and (g)	
Proposed new article 2 <u>bis</u>	
<u>Eighth meeting</u> .....	59
Consideration of draft Protocol I ( <u>continued</u> )	
Proposed new article 2 <u>bis</u>	
Article 2 - Definitions ( <u>continued</u> )	
Article 3 - Beginning and end of application	
Article 4 - Legal status of the parties to the conflict	
Proposed new article 4 <u>bis</u>	

CONTENTS (continued)

	<u>Page</u>
<u>Ninth meeting</u> .....	67
Consideration of draft Protocol I ( <u>continued</u> )	
Article 3 - Beginning and end of application ( <u>continued</u> )	
Protection of journalists engaged in dangerous missions in areas of armed conflict	
Proposed new article 4 <u>bis</u> ( <u>continued</u> )	
Article 4 - Legal status of the parties to the conflict ( <u>continued</u> )	
<u>Tenth meeting</u> .....	71
Consideration of draft Protocol I ( <u>continued</u> )	
Article 3 - Beginning and end of application ( <u>continued</u> )	
<u>Eleventh meeting</u> .....	77
Consideration of draft Protocol I ( <u>continued</u> )	
Article 2 - Definitions ( <u>resumed from the eighth meeting</u> )	
Sub-paragraphs (d) and (e) ( <u>resumed from the seventh meeting</u> )	
Article 5 - Appointment of Protecting Powers and of their substitute	
<u>Twelfth meeting</u> .....	87
Consideration of draft Protocol I ( <u>continued</u> )	
Article 1 - Scope of the present Protocol ( <u>resumed from the             sixth meeting</u> )	
Article 5 - appointment of Protecting Powers and of their substitute ( <u>concluded</u> )	
Commemoration of the Sharpeville affair	
<u>Thirteenth meeting</u> .....	97
Consideration of draft Protocol I ( <u>continued</u> )	
Article 1 - Scope of the present Protocol ( <u>continued</u> )	
<u>Fourteenth meeting</u> .....	105
Consideration of draft Protocol I ( <u>concluded</u> )	
Article 1 - Scope of the present Protocol ( <u>concluded</u> )	
<u>Fifteenth meeting</u> .....	115
Adoption of the report of the Committee	
<u>Sixteenth (closing) meeting</u> .....	123
Adoption of the report of the Committee ( <u>concluded</u> )	
Closure of the session	

SUMMARY RECORD OF THE FIRST MEETING

held on Thursday, 7 March 1974, at 3.15 p.m.

Chairman: Mr. HAMBERG (Norway)

ORGANIZATION OF WORK

1. The CHAIRMAN emphasized that the task entrusted to the Committee was a technical one, and should not give rise to statements of general policy. Delegations had had ample time to make such statements at plenary meetings.
2. It would be seen from document CDDH/4 that the Committee was called upon to study various articles of draft Additional Protocols I and II to the Geneva Conventions of August 12, 1949 (CDDH/1). He proposed that the corresponding sections of the two drafts should be considered simultaneously.
3. In pursuance of rule 33 of the provisional rules of procedure (CDDH/2), the Committee might ask the experts of the International Committee of the Red Cross (ICRC) briefly to introduce the articles of the Protocols. Once adopted, the rules of procedure would apply to the Committee mutatis mutandis.
4. If the debate tended to become unduly prolonged, the Committee might envisage setting a time-limit for statements, and might restrict the number of times any delegation could speak on a given article. Representatives could, of course, exercise the right of reply, preferably at the end of the meetings.
5. Finally, he had noticed that very often delegations requested not to be first on the list of speakers: in the interests of efficiency, such requests would not be granted.
6. Mr. CUTTS (Australia) said he agreed with the Chairman's proposal to study the two draft Protocols simultaneously, but thought that a given section of draft Protocol I should be studied first, and then the corresponding section of draft Protocol II.
7. The CHAIRMAN said that that was exactly what he had in mind. If that procedure were adopted, the Committee could follow the order suggested on page 5 of document CDDH/4.
8. Mr. KNITTEL (Austria), Mr. PICTET (Switzerland), Mr. KATOLECKI (Poland), Mr. BALKEN (Federal Republic of Germany), Mr. CLARK (Nigeria), Mr. MILLER (Canada), Mr. SULTAN (Arab Republic of Egypt) and Mr. GRIGOROV (Union of Soviet Socialist Republics), said that they were in favour of the procedure proposed by the Chairman, especially since many of the provisions were common to the two draft Protocols.
9. Mr. MAHASSEN (Saudi Arabia) proposed that the two draft Protocols should be studied separately, since they dealt with entirely different areas.
10. Mr. RAHMANI (Algeria) and Mr. HAKSAR (India) agreed with the Saudi Arabian representative. If his proposal were adopted, the Committee would certainly be able at least to complete consideration of draft Protocol I.

11. Mr. LIN Chia-sen (China) also agreed with the solution proposed by the Saudi Arabian representative. The head of the Chinese delegation had in any case explained his country's attitude towards draft Protocol II at the twelfth plenary meeting (see CDDH/SR.12).

12. Mr. de la PRADELLE (Monaco) said that he would welcome the ICRC experts' views on the question.

13. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the procedure set out in document CDDH/4 and suggested by the President was consistent with the wishes of the ICRC, which hoped that draft Protocol II would not be set aside by the Conference.

14. Mrs. EUJARD (International Committee of the Red Cross) pointed out that consideration of draft Protocol II by Committees II and III depended to a large extent on the wording of article 1 of that Protocol concerning the field of application. If Committee I were to defer consideration of that article, the work of the other two Committees would be correspondingly delayed.

15. The CHAIRMAN reminded the Committee that it had before it two proposals, one of them - his own - that the draft Protocols should be considered simultaneously and the other, by Saudi Arabia, that the two drafts should be considered one after the other. He put the first proposal to the vote.

The Chairman's proposal was adopted by 46 votes to 9, with 8 abstentions.

The meeting rose at 3.45 p.m.

SUMMARY RECORD OF THE SECOND MEETING  
held on Monday, 11 March 1974, at 10.15 a.m.

Chairman: Mr. HAMERO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1)

Article 1 - Scope of the present Protocol (CDDH/1, CDDH/I/5 and Add.1, CDDH/I/11 and Add.1, CDDH/I/12 and Add.1, CDDH/I/13)

1. The CHAIRMAN invited the representative of the ICRC to introduce article 1.
2. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the Commentaries (CDDH/3) to the draft Protocol were in a way a statement of reasons and that they contained references to earlier preparatory work.
3. Article 1 of draft Protocol I defined the scope of the provisions of the draft Protocol as a whole, which was intended not to revise but to supplement the Geneva Conventions of 1949. Hence any provisions of those Conventions that were not so supplemented would continue to apply as they stood and the application of the draft Additional Protocol would be governed by the general principles of the Conventions.
4. Article 1 came within the general provisions relating on the one hand to the application of the Protocol, and, on the other, to the strengthened application of the Geneva Conventions of 1949. It had rightly been pointed out that, side by side with the development of the Geneva Conventions, the task of finding the most effective ways and means of ensuring their application was of paramount importance.
5. Draft Protocol I would apply in the situations covered by article 2 common to the Geneva Conventions of 1949, namely in the case of a declared war or "any other armed conflict that might arise between two or more Contracting Parties, even where the state of war was not recognized by one of them, and in the case of occupation of all or part of the territory of a Contracting Party, even where such occupation encountered no military resistance. Such situations came within the category of "international armed conflicts", as opposed to the situations covered by article 3, common to the four Conventions of 1949, and by draft Protocol II, i.e. "non-international armed conflicts".
6. Several Government experts had wished to introduce a second paragraph or a supplementary article stipulating that armed struggles waged by peoples for the exercise of their right to self-determination were international armed conflicts within the meaning of the 1949 Conventions and of the draft Protocol. A number of representatives had also raised that point in the general debate at the present Conference.
7. Article 1 should be read in conjunction with article 84, which concerned the new treaty situation that would arise on the entry into force of the Protocol and which incorporated the principles laid down in paragraph 3 of article 2 common to the four Conventions. Certain Government experts had wished those provisions to be incorporated in article 1.

8. Mr. ABI-SAAD (Arab Republic of Egypt), introducing amendment CDDH/I/11 and Add.1 of which he was a co-sponsor, said that wars of national liberation had formed a very important category of armed struggle in the post-1945 period and a number of them were still continuing. Contemporary international law recognized such wars as international armed conflicts. United Nations General Assembly resolution 3103 (XVIII) was the latest in a stream of resolutions of important international bodies proclaiming that principle. The General Assembly had, indeed, gone further by recommending sanctions against colonial, alien and racist régimes and the provision of assistance to specific liberation movements, and the Security Council in one case had ordered mandatory sanctions. It would be difficult to explain all such international action if wars of liberation were to be considered merely as armed conflicts of a non-international character. Existing practice provided abundant proof of the international nature of such conflicts.

9. Recent experience had shown the importance of reducing the scope for future controversy over interpretation as much as possible. The task of the Conference was to bring the Geneva Conventions up to date and make them better adapted to present and future situations. While it was hoped that wisdom would prevail and that circumstances giving rise to wars of liberation would cease to arise, plans unfortunately had to be made on the assumption that they would continue to exist for some time.

10. The terms "wars of liberation" and "liberation movements" were objected to in some quarters: the question was one not of semantics, however, but of a social phenomenon affecting millions of human beings - the primordial factor in humanitarian law. The term "wars of liberation" had been avoided in amendment CDDH/I/11 and Add.1, which referred instead to armed struggles waged by peoples in the exercise of their right of self-determination. An effort had been made to use generally-accepted legal concepts as a frame of reference, self-determination being one of the basic principles of contemporary international law recognized in the Charter of the United Nations and in the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States (General Assembly resolution 2625 (XXV)), which had been adopted without a dissenting vote. Participants were thus not being asked to accept anything new; it was merely proposed that they should affirm explicitly in the field of humanitarian law what they had already accepted as binding law within the United Nations and within general international law.

11. The question before the Conference was not whether it could do away with wars of national liberation by ignoring them or denying them the benefit of humanitarian law but rather how relevant and legal instrument on international humanitarian law which purported to regulate international armed conflicts in the last quarter of the twentieth century would be if it chose to ignore wars of national liberation.

12. Mr. CRISTESCU (Romania), introducing his delegation's amendment (CDDH/I/13), said that some of the reasons for its submission had already been explained by the Egyptian representative in introducing his own group's amendment (CDDH/I/11 and Add.1).

13. Among the international instruments which justified such a provision were Article 1 of the Charter of the United Nations, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.

14. The Universal Declaration of Human Rights gave the peoples of a colony or non-autonomous territory which had not yet achieved its independence a legal status independent of the metropolitan Power and thus testified to the international nature of conflicts arising in such cases.

15. International law considered aggression as an international crime. Humanitarian law came within the general framework of international law and should conform to its principles, whence the reference in the amendment to the right of the peoples in question to defend themselves against aggression.

16. Mr. CERADOVIC (Yugoslavia) said that his delegation attached particular importance to the wording of article 1, which determined the scope of the entire Protocol. The article should be drafted clearly so as to avoid any possible misinterpretation and to ensure that it conformed to contemporary international law. It was with that in mind that his delegation had co-sponsored the amendment introduced by the Egyptian representative (CDDH/I/11 and Add.1).

17. The amendment contained nothing new: all it did was to make explicit a rule which had developed gradually over the past quarter of a century, and had now been generally accepted. The right of peoples to self-determination had been recognised by the Charter of the United Nations and formulated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. In accordance with substantive international law, any armed struggle carried on to achieve that right was an international armed conflict within the meaning of article 2 common to the Geneva Conventions of 1949. That principle had been affirmed in numerous United Nations General Assembly resolutions of which the most recent was resolution 3103 (XXVIII).

18. Article 42 of draft Protocol I recognized that principle, but the draft Protocol as a whole failed to take it sufficiently into account: article 1 should stipulate clearly that the Protocol applied to peoples fighting for their right to self-determination. That would meet the wishes of the vast majority of members of the international community.

19. In sponsoring the amendment, his delegation had taken three factors into consideration: first, the rules of substantive international law as they affected the problem; secondly, the needs of the international community, which required a clear statement that armed struggle carried out by peoples in affirmation of their right to self-determination came under the heading of international conflicts, and thirdly, the humanitarian factor with which the Conference was particularly concerned, and which called for every effort to protect all victims of armed conflict. The victims of anti-colonial wars and wars against foreign domination, which were a feature of the time, should be duly protected.

20. His delegation had also been influenced by a practical consideration: by adopting amendment CDDH/I/11 and Add.1 the Committee would be making the scope of the Protocol clear from the outset, thus avoiding misunderstanding and lengthy discussion at a later stage.

21. Mr. LONGVA (Norway) said that his delegation had sponsored the amendment introduced by the Egyptian representative (CDDH/I/11 and Add.1) because it felt strongly that all victims of war must be protected, regardless of the political or legal classification of the conflict. That aim could only be achieved if the question of the applicability of international humanitarian law was dissociated from controversial political and legal concepts. The distinction between international and non-international conflicts was not, in his delegation's view, an appropriate criterion for the applicability of rules of international humanitarian law, and it reserved its right to propose at a later stage that the two Protocols be amalgamated. It was therefore unable to consider the adoption of article 1 of either draft Protocol as final at the present stage.

22. His delegation realized that a single Protocol might have to include certain chapters applicable only in international conflicts and that the concept of international conflict would therefore continue to be of paramount importance to the applicability of international humanitarian law. The purpose of the amendment was to restate the scope of the concept of international conflict as concisely as possible.

23. In the general discussion some representatives had submitted that the Geneva Conventions of 1949 did not cover wars of national liberation which should, therefore, be considered as armed conflicts not of an international character. His delegation did not share that view.

24. The concepts upon which the applicability of the four Geneva Conventions were based were evolutionary. Developments since 1949 had to be taken into consideration in interpreting article 2 defining the field of application of the Conventions. The principles of interpretation of international legal instruments upheld by the International Court of Justice in its Advisory Opinion entitled "The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)"<sup>1/</sup> was relevant in that respect.

25. In interpreting article 2, common to the 1949 Conventions, one could not neglect the subsequent development of international law with respect to non-self-governing territories, the most important phases of which were the adoption by the General Assembly of the Declaration on the Granting of Independence to Colonial Countries and Peoples and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Special attention should be paid to the stipulation in the second of those declarations concerning the separate and distinct status of the territory of a colony or other non-self-governing territory.

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<sup>1/</sup> See I.C.J. Reports 1971, page 16.



26. In interpreting the four Geneva Conventions, it was important not to neglect the developments to which he had referred or the many United Nations resolutions reaffirming that wars of national liberation in southern Africa and Guinea-Bissau were to be considered as international conflicts within the meaning of those Conventions. Nor could the political history of decolonization in general over the past two decades be left out of account. The process of decolonization was relevant to the interpretation of many present-day international instruments.
27. In the light of all those factors, wars of national liberation such as those being waged in southern Africa or Guinea-Bissau clearly constituted international conflicts within the meaning of article 2 common to the four Geneva Conventions.
28. Recourse to armed struggle by peoples under colonial or racist domination, which had been one of the most important developments in international society over the past two decades, had resulted in untold human suffering. One of the most tragic facts of contemporary international society was the continuance of colonial and racist oppression, in the light of which wars of national liberation might be expected to continue to play an important role in international relations. The Conference had a humanitarian duty to ensure that the Geneva Conventions and the Additional Protocols applied in full to such conflicts.
29. His delegation hoped that the amendment would be adopted in the same humanitarian spirit in which it was submitted.
30. Mr. CAMEJO-ARGUDIN (Cuba) said that his delegation had intended to submit an amendment of its own. The points it had wished to raise were, however, covered by the amendment introduced by the Egyptian delegate (CDDH/I/11 and Add.1), which it would like to co-sponsor.
31. Mr. de BREUCKER (Belgium) said that the sponsors of the amendment were seeking to assimilate armed conflict for the purpose of self-determination to international armed conflict, in order to increase the protection accorded to combatants. That meant that the four Conventions and Protocol I would have to apply to such struggles.
32. However, as many delegations had pointed out, Protocol II already created heavy obligations. Application of the four Conventions and Protocol I would represent an even heavier burden. The requirements of those Conventions could in fact be fulfilled only by States. The four Conventions and Protocol I could not apply to entities which were not States.
33. Some speakers had mentioned certain United Nations resolutions designed to impose on both sides in a conflict specific provisions wider than those which might apply within the framework of Protocol II. It was, however, for the conscience of nations to say whether a given conflict should involve a wider application of humanitarian law.
34. Wars of liberation were anachronisms which would soon be ended, and ought not to be covered by Protocol I. It would be imprudent to create a precedent by changing the categories of international law because of the motivation behind a given type of conflict.

35. The amendment in document CDDH/I/11 and Add.1 spoke of "peoples" but what were "peoples" in international law? It would be impossible to speak of an internal armed conflict every time an ethnic community wished to sever itself from a State. Even if that amendment were adopted, it was far from certain that the parties involved would be able to implement the provisions of the four Geneva Conventions and Protocol I.

36. Mr. GRAEFFRATH (German Democratic Republic), introducing the amendment in document CDDH/I/5, said it was increasingly recognized that forcible maintenance of a colonial régime was an international crime, equivalent to permanent aggression. In international practice, a people under colonial oppression had the same right to self-defence as a State under armed attack. The socialist countries had defended that idea for many years, and it had found expression in the Final Act of the Conference of Heads of State or Government of Non-Aligned Countries, held in Cairo in 1964, and in the Political Declaration, adopted by the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers in 1973.

37. Despite numerous appeals by the United Nations, the provisions of international humanitarian law were not yet being applied to peoples fighting for their liberation. That was why the General Assembly, in operative paragraph 3 of resolution 3103 (XXVIII), had declared that "armed conflicts involving the struggle of peoples against colonial and alien domination and racist régimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions". That resolution was extremely important because it confirmed that the colonial Power had no rights of sovereignty over colonial territories and peoples, that assistance by foreign States to the liberation struggle of colonial peoples did not constitute interference in the domestic affairs of the colonial Power; and that article 2, not article 3 of the Geneva Conventions, was applicable to armed conflicts of that kind.

38. The new paragraph which the sponsors of amendment CDDH/I/5 and Add.1 were proposing to add to article 1 of draft Protocol I embodied the principles of resolution 3103 (XXVIII) and was designed to codify international law already in force.

39. Mr. KHATTABI (Morocco) said that national liberation movements had a legal status in public international law because their right to self-determination was recognized in the Charter of the United Nations and other instruments. Liberation movements were in fact taking part in the Diplomatic Conference and were recognized individually by certain States and collectively by the United Nations. Protocol I should take into account the struggle against colonial and alien military occupation. His delegation supported amendment CDDH/I/11 and Add.1 and the views expressed by the representatives of Egypt and Yugoslavia, and wished its name to be added to the list of sponsors.

40. Mr. KNITTEL (Austria) said that he would introduce amendment CDDH/I/12 and Add.1 once it had been distributed.

41. Mr. CLARK (Nigeria) said he could assure the Belgian representative that some of the points he had made had not entered the sponsors' minds at all when they were drafting their amendment (CDDH/I/11 and Add.1). While the smaller

countries of Africa might not approve of all the ways of the United Nations, there was as yet no viable alternative open to them. His delegation had therefore sponsored amendment CDDH/I/11 and Add.1 in the belief that it was based on generally-accepted principles of international law and on United Nations resolutions, in particular resolution 2621 (EAV) and the Declaration on Principles of International Law concerning Friendly Relations and co-operation among States in accordance with the Charter of the United Nations. He understood the right to self-determination not as encouraging secessionist and divisive subversion in multi-ethnic nations, but as applying to a struggle against colonial and alien domination, foreign occupation and racist régimes.

42. Mr. KABUAYE (United Republic of Tanzania) said he supported amendment CDDH/I/11 and Add.1 and the statements by the representatives of Egypt and Nigeria. Wars of national liberation were a phenomenon that had arisen since 1949, of which no account had been taken in the 1949 Geneva Conventions. Since the aim of the Conference was to reaffirm and develop international humanitarian law, it was essential to take account of developments since 1949 and to adopt the proposed amendment.

43. Mr. IJAS (Indonesia) said that his delegation had no objection to amendment CDDH/I/11 and Add.1 and could support it if the words "against colonialism, foreign occupation and alien domination" were inserted after the word "self-determination".

44. Mr. DRAPER (United Kingdom) said that he had been somewhat surprised at the very wide-ranging text of amendment CDDH/I/11 and Add.1. The 1949 Geneva Conventions had been carefully drafted on the basis of a distinction between international and non-international armed conflicts. If the systems of those Conventions were to be disrupted, all the Conventions would have to be revised. Protocols I and II assumed a clear distinction between the two classes of armed conflict, and struggles for national liberation fell within the ambit of Protocol II.

45. The various arguments had presented no convincing case for considering an internal struggle as an international one. Moreover, it was a basic principle of the Geneva Conventions, The Hague Regulations<sup>2/</sup> and other instruments that legal and humanitarian protection should never vary according to the motives of those engaged in a particular armed struggle. Deviation from that principle would mean damaging the structure of The Hague and Geneva Conventions and would involve the need to reconstruct the whole of humanitarian law. Moreover, to discriminate between the motives of those engaged in the struggle, would violate essential principles of human rights.

46. It was true that self-determination was mentioned in the Charter of the United Nations, but as a principle, not as a right. Nowhere in the Charter did the right to engage in armed struggle appear. No resolution of the United Nations could amend the Charter, which would remain inviolate until amended in

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<sup>2/</sup> See The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, to which The Hague Regulations are annexed.

the proper manner. Terms like "struggle for the self-determination of peoples" were all too vague. What was a "people"? Such terms were elastic, as Biafra and Bangladesh had shown. They could not be used as a basis for law-making.

47. It would not advance the cause of international humanitarian law to insert the proposed amendments in Protocol I, for endless political debate would ensue.

48. His delegation suggested some strengthening of article 1, and was associated with amendment CDDH/I/12 and Add.1, mentioned by the Austrian representative.

49. Mr. GIRARD (France) said that two completely different concepts were emerging from the discussion. The first was the concept upon which the Egyptian representative had based his statement and the second was the concept to which his Government subscribed, namely, that the United Nations and the ICRC pursued their activities on entirely different levels. The United Nations was the political body whose role was to find political solutions to specific problems of the moment, whereas humanitarian law must provide protection for all war victims at all times and must not be subordinated to subjective considerations of any sort. Consideration of elements such as motivation, justice and legitimacy, which it was quite normal to discuss in the United Nations, would be fatal in an assembly held under the auspices of the ICRC. Humanitarian law must remain free of any notion of political motivation or subjective judgment, and his Government was not prepared, under any circumstances, to sacrifice that basic principle.

50. Mr. PRUGH (United States of America) said it was important to restore faith in the Geneva Conventions, which had not always been implemented as effectively as would have been desirable. His delegation fully endorsed the views expressed by the Belgian and United Kingdom representatives, and associated itself with amendment CDDH/I/12 and Add.1. It also agreed with the French delegation that political concepts should not be allowed to obscure the goal of the Conference, which was to promote better implementation of the existing body of law and progressively to improve humanitarian protection for people involved in war.

51. The responsibility for the application of humanitarian law must of necessity be vested in a State or other equally responsible body. Who was to decide whether a struggle in which people were involved against their own Government was an international struggle? Humanitarian law and its attendant responsibilities could not be based on vague concepts which introduced the concept of rightness or wrongness of a conflict, and thus jeopardized the granting of an equal degree of protection to all concerned.

52. The fact that law was not static did not imply licence to destroy or intrude upon relationships between a State and its own citizens. Internal terrorism could not be made legitimate merely by calling it an international conflict. Concepts such as "alien domination" and "racist régime" had yet to be defined. Political consideration should be banished from the discussion, and the Committee should confine itself to ensuring better protection for all war victims through the development of humanitarian law.

53. Mr. CRISTESCU (Romania) said that there could be no question of introducing political concepts into humanitarian law. The question was that of the relationship between humanitarian law and general international law, since the former could not be conceived in isolation from the latter. In trying to develop and adapt humanitarian law to the requirements of general international law, account must be taken of positive international law as embodied in the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI)), and the Vienna Convention on the Law of Treaties.<sup>3/</sup> The allegation that the concept of a "people" was vague was ill-founded, since it was defined, among other instruments, in the Charter of the United Nations and the international Covenants on human rights.

54. The words "foreign occupation" in the amendment submitted by his delegation (CDDH/I/13) meant military occupation. A general reference to the right to self-determination would not be appropriate in the context of article 1 since existing United Nations jurisprudence in that field covered only one aspect of the right of peoples to self-determination.

55. Mr. SHAH (Pakistan) said that his delegation had sponsored the amendments contained in documents CDDH/I/11 and Add.1 and CDDH/I/12 and Add.1 because it supported the principles embodied in both amendments. However, it considered that the former amendment should not be taken up until the Committee came to discuss draft Protocol II.

56. Mr. ZAFERA (Madagascar) said that his delegation wished to join as a sponsor of the amendment contained in document CDDH/I/11 and Add.1, since it considered that the field of application of article 1 of draft Protocol I should be extended to cover the just struggles being waged by national liberation movements.

57. Mr. MBAYA (United Republic of Cameroon) said that he would be prepared to follow the advice of some delegations that juridical and political questions should not be confused provided a satisfactory reply was given to two questions. First, according to the theory put forward by the Belgian representative and supported by other representatives, the repressive operations carried out in Mozambique by the Portuguese Government would qualify as police operations which were essentially within the domestic jurisdiction of Portugal; was that purely a question of law or a question of politics? Secondly, was it the Conference's intention to draw up an abstract body of law with no roots in reality? Indeed, was it possible to ignore all realities of a political nature?

58. Mr. GLORIA (Philippines) said he supported the principles embodied in the amendments contained in documents CDDH/I/11 and Add.1 and CDDH/I/13, since they were consonant with article 1 of draft Protocol II. However, language of a political nature requiring definition was used in those amendments. Since his delegation considered that article 1 of draft Protocol I should be amended without substantially changing its basic meaning, it was inclined to support amendment CDDH/I/12 and Add.1.

The meeting rose at 12.25 p.m.



SUMMARY RECORD OF THE THIRD MEETING

held on Monday, 11 March 1974, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 1 - Scope of the present Protocol (CDDH/1, CDDH/5 and Add.1, CDDH/I/11 and Add.1, CDDH/I/12 and Add.1, CDDH/I/13) (continued)

1. Mr. BOULAFENKOV (Union of Soviet Socialist Republics) reminded those present that his delegation was one of the co-sponsors of proposed amendment CDDH/I/5 and Add.1, which would add to article 1 of draft Protocol I a new paragraph mentioning peoples fighting against colonial and alien domination and against racist régimes. The right of peoples to govern themselves was recognized in international law, and their struggles to that end were international armed conflicts covered by the Geneva Conventions and other agreements in the field of humanitarian law. Consequently, the sole object of the proposal was to embody in humanitarian law a rule which was already in existence and which took into account the realities of the times.
2. The three proposed amendments before the Committee were not contradictory, and though his delegation favoured the text of which it was a co-sponsor (CDDH/I/5 and Add.1), as being more precise and more in conformity with United Nations General Assembly resolution 3103 (LXVIII), his delegation would consider the possibility of merging that text with the two others (CDDH/I/11 and Add.1 and CDDH/I/13).
3. Mr. VILELA (Uruguay) said that the rules of humanitarian law should apply to all victims of armed conflicts, whoever they might be, and that subjective elements for the purpose of distinguishing between the various forms of armed conflict must be avoided.
4. Mr. BANYEZAKO (Burundi) said that his delegation associated itself with the co-sponsors of amendment CDDH/I/11 and Add.1. It believed that wars of national liberation should be regarded as international armed conflicts, and that a special paragraph should be devoted to them, separate from article 1 of Protocol I. The right to self-determination had already been laid down in several international instruments and in General Assembly resolutions, notably 3103 (LXVIII) of 12 December 1973.
5. Mr. EL MISBAH EL SADIQ (Sudan) said that his delegation was one of the co-sponsors of amendment CDDH/I/11 and Add.1. The principles of humanitarian law should be reaffirmed and developed in the light of contemporary events, such as national liberation struggles.

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\* Incorporating CDDH/I/SR.3/Corr.1

6. Mr. CUTTS (Australia) pointed out that the delegations which had submitted amendment CDDH/I/11 and Add.1 or had been its co-sponsors belonged to different regional groups. Consistent with its position in plenary, his delegation associated itself with the co-sponsors of that proposal, in the belief that the realities of the contemporary world had to be taken into account.

7. At the second meeting, certain delegations had opposed amendment CDDH/I/11 and Add.1 but the differences of opinion which arose seemed to bear less on the idea underlying that proposal, namely, ensuring the widest possible protection to all victims of armed conflicts, than on the means of attaining that end. Moreover, the various proposals before the Committee were not irreconcilable and could in certain cases be merged. While amendment CDDH/I/11 and Add.1 was based on the concept of self-determination, which had already been broadly defined, amendments CDDH/I/5 and Add.1 and CDDH/I/13 introduced concepts which were much less precise, such as racist régimes and aggression.

8. His delegation was one of the co-sponsors of amendment CDDH/I/11 and Add.1 for it felt that armed struggles of national liberation were better mentioned in Protocol I than in Protocol II. It believed that that proposal could well be merged with document CDDH/I/12 and Add.1.

9. Mr. de BREUCKER (Belgium), in reply to a question asked by the representative of the United Republic of Cameroon at the second meeting, said that one must not be trammelled by particular cases when reaffirming and developing humanitarian law. His delegation, in its study of the draft Protocols, had tried not to let itself be influenced by the memory of the two occupations it had undergone. There must not be a special humanitarian law for one region, but a general law based on the distinction between international and non-international armed conflicts. The Geneva Conventions of 1949 had been designed to cover international armed conflicts and it would not be right to apply them to non-international ones. It was always possible, in particular cases of non-international conflicts, to apply to them the standards elaborated for international armed conflicts, but a new classification of armed conflicts, which might prove imprecise in the future, had to be avoided.

10. Amendment CDDH/I/12 and Add.1 was not a riposte to amendment CDDH/I/11 and Add.1. At most, paragraph 3 of amendment CDDH/I/12 and Add.1 might help to elucidate ambiguous cases arising in the application of humanitarian law.

11. Paragraph 1 of amendment CDDH/I/12 and Add.1 had been taken from the Geneva Conventions. Paragraph 2 was based on draft article 1 elaborated by the ICRC. Paragraph 3 was a restatement of the Martens clause, which was to be found in the Preamble to The Hague Conventions of 1899 and 1907. The object of that paragraph was both to make it clear that written humanitarian law could only develop gradually and to show that there was a common law rule which must be respected. The Martens clause was also one of interpretation; it ruled out an a contrario interpretation since, where there was no formal obligation, there was always a duty stemming from international law. It was essential to rehabilitate that clause, which States had flouted during hostilities. For that reason, his delegation favoured the introduction of that clause in positive law.



12. Mr. PICTET (Switzerland) said that he supported amendment CDDH/I/12 and Add.1 which had the merit of developing the somewhat bare text proposed by the ICRC for article 1. If the Martens clause were better sited in article 1(3) rather than in the Preamble, it would perhaps be logical to reverse the order of the first two paragraphs. Moreover, it was to be noted that the title of article 1 in amendment CDDH/I/12 and Add.1 was the same as that of part I of draft Protocol I.

13. The other proposed amendments tended to establish a particular category of conflicts on the basis of subjective criteria stemming from the causes of those conflicts and the aims of the parties. That entailed a move from the field of ius in bello to a zone which held dangers for the Conference, namely, ius ad bellum. His delegation believed that it would be very dangerous, and against the spirit of humanitarian law, to classify armed conflicts on the basis of non-objective and non-legal criteria. In adopting that position, his delegation was not expressing an opinion on the legitimacy of national liberation struggles with which many people in Switzerland felt in sympathy. That question lay within the province of other forums; the task of the Conference was to provide the greatest possible protection for the victims of those conflicts.

14. Mr. KHATTABI (Morocco) said that armed occupation was covered by article 2 common to the four Geneva Conventions of 1949. In that connexion, a distinction should be drawn between "occupation" and "alien domination" resulting from a colonial régime. His delegation would not object if the sponsors of amendment CDDH/I/11 and Add.1 wished to make specific mention of the armed struggle of peoples under colonial and alien domination and racial régimes.

15. He was ready to accept amendment CDDH/I/12 and Add.1, provided amendment CDDH/I/11 and Add.1 was adopted. Paragraph 3 of amendment CDDH/I/12 and Add.1 merely confirmed a principle already set forth in instruments established prior to the 1949 Conventions, which left intact the problem of including struggles for national liberation in the category of international armed conflicts.

16. Mr. CARON (Canada) said that he would view with anxiety the inclusion of provisions which would make the protection of the victims of armed conflicts dependent upon the motivations of such conflicts. The need to apply the Protocol to a given situation should rather be the subject of a resolution.

17. Mr. PARTSCH (Federal Republic of Germany) said that it would be useful to hear the views of the representatives of the national liberation movements on the proposed amendments. The purpose of amendment CDDH/I/12 and Add.1 was to restrict the contents of article 1 to permanent, rather than transitory, situations.

18. Amendment CDDH/I/12 and Add.1 would imply that any party to non-international conflicts - which were the subject of draft Protocol II - should likewise respect and benefit by the provisions of draft Protocol I. Therefore amendment CDDH/I/12 and Add.1 in fact opened up wider possibilities than did the other proposed amendments. For instance, amendment CDDH/I/11 and Add.1 was incomplete, for it referred only to "situations" and not to the opposing parties; it would be applicable only to an absolutely clear situation. According to amendment CDDH/I/12 and Add.1, on the other hand, all the parties which had respected the Conventions and the Protocols would benefit by those instruments.

19. Mr. RODRIGUEZ ROMAN (Spain) said that humanitarian law should aim at the protection of all mankind without distinction, and that Protocol I should apply to all armed conflicts whatever their motivation and should include no subjective criterion. His delegation was therefore against amendments CDDH/I/11 and Add.1, CDDH/I/13 and, above all, CDDH/I/5 and Add.1. It was in favour of amendment CDDH/I/12 and Add.1, which referred only to humanitarian criteria.

20. Mrs. HELLER (Mexico) said that one way for the Conference to reach the objectives it had set itself would be to define as international conflicts the anti-colonialist struggles being waged by the national liberation movements. Her delegation was consequently in favour of amendment CDDH/I/11 and Add.1, with which amendments CDDH/I/5 and Add.1 and CDDH/I/13 had certain points in common, and she agreed with the representative of the Soviet Union that the sponsors of those proposals should try to produce a joint text.

21. Her delegation also shared the view of the Belgian representative, who apparently regarded the national liberation struggles as transitory phenomena; it must, however, be recognized that questions of decolonization and apartheid had constantly preoccupied the United Nations since its inception. Protocol I should therefore be extended to take account of that situation, which was unfortunately an enduring one.

22. Mr. KAEUAI (United Republic of Tanzania) said he was astonished that Switzerland was not in favour of defining various categories of conflict, since the ICRC itself had already drawn a distinction between international conflicts and internal conflicts.

23. Struggles for national liberation were undeniably international conflicts, and his delegation was not prepared to accept a humanitarian law drawn up solely in the interest of the imperialist Powers.

24. Mr. HAKSAR (India) said that, according to some delegations, to include struggles for national liberation under the heading of international conflicts would give rise to confusion or even discrimination likely to hinder the development of the law. Those delegations would therefore like such struggles to come under Protocol I. That was not a very logical attitude, since the lack of clarity of which they complained in the concept of national liberation struggles would not be remedied merely because such struggles were covered by Protocol II. Moreover, his delegation saw no lack of clarity: the struggles had an undeniable international aspect, and had been recognized by the United Nations as legitimate. All the same, it would perhaps be necessary to seek a more precise definition which would rule out any ambiguity. In that connexion, the amendment proposed orally to document CDDH/I/11 and Add.1 by the representative of Indonesia at the second meeting, together with the other proposed amendments, deserved the Committee's undivided attention.

25. Mr. MBAYA (United Republic of Cameroon) said that he was not sure that the Belgian representative's answer to his question at the second meeting had been to the point.

26. Mr. KAKOLECKI (Poland) said that he was in favour of the amendments proposing to include struggles for national liberation under article 1 of Protocol I. He also agreed that the sponsors might produce a joint draft. The amendments were

consistent with international law, and the notions they invoked were not at all subjective. It was not difficult to determine what actual situation fell within the category of national liberation struggles.

27. It had been said, very wrongly, that national liberation movements would not be in a position to fulfil the legal obligations arising from the Conventions and the Protocol. The representatives of those movements could provide invaluable information on that subject.

28. He agreed that the Belgian representative had not given a satisfactory answer to the question put to him by the delegation of the United Republic of Cameroon.

29. Mr. ALVAREZ-PIFANO (Venezuela) said that he, too, was in favour of amendment CDDH/I/11 and Add.1. Struggles against colonialism were undoubtedly international conflicts and should come under Protocol I. The League of Nations itself had recognized that colonial situations were international situations, a ruling which had been reaffirmed in the United Nations Charter and in various resolutions. In international law, moreover, colonial territories had their own legal status, distinct from that of the metropolitan country: any armed conflict arising in such territories was therefore international. Lastly, resolution 3103 (XXVIII), adopted by the General Assembly of the United Nations, expressly recognized that the struggles of peoples against colonialism were international armed conflicts in the sense of the Geneva Conventions.

30. Mr. CRISTESCU (Romania) stressed that the conflicts referred to in proposed amendments CDDH/I/5 and Add.1, CDDH/I/11 and Add.1 and CDDH/I/13 were a reality: those who wished them to be included in the category of internal conflicts were motivated by political considerations. International humanitarian law could not be an isolated branch of the law, and must be in conformity with general international law -- with jus cogens.

31. He considered that paragraph 1 of proposed amendment CDDH/I/12 and Add.1 was acceptable, but it was still necessary to find a proper place for it in the Protocol. He could not agree with paragraph 2. Paragraph 3 embodied a very important idea, to which the Romanian Delegation subscribed. That idea should even find expression in the preamble, with a special title which might be: "Reaffirmation of humanitarian law".

32. The CHAIRMAN announced that the Secretary-General of the Conference had received a letter from the Secretary-General of the United Nations transmitting to the Conference General Assembly resolution 3058 (XXVIII) on the protection of journalists engaged in dangerous missions in areas of armed conflict. In that resolution, the General Assembly requested the Secretary-General of the United Nations to transmit to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts the draft articles and amendments annexed to his note of 9 July 1973, together with the observations and suggestions made during the twenty-eighth session of the General Assembly, and to invite the Diplomatic Conference to submit its comments and advice on the above-mentioned text.

33. Committee I would perhaps wish to decide, after an interval for thought, on the follow-up action to be taken on the communication from the United Nations Secretary-General.

34. Mr. LONGVA (Norway) said he considered that the sponsors of proposed amendment CDDH/I/11 and Add.1 were simply asking for the Geneva Conventions to be interpreted within the framework of the existing international legal system. That was the only framework which to some extent could claim to be objective.

35. The sponsors of the proposal had been reproached with placing undue emphasis on special situations. Nevertheless, a number of important principles in international humanitarian law had originated in such situations: thus the second paragraph of article 2 of the Geneva Conventions had been adopted because of what happened in Denmark during the Second World War; paragraph 3 of article 4 of the Third Geneva Convention had its origin in General de Gaulle's French Liberation Movement and in Italian resistance to the fascist authorities. In the view of his Government the latter of those two provisions clearly supported the proposition that liberation struggles such as those taking place in southern Africa, and in Guinea-Bissau had to be considered as international conflicts in the sense of the Geneva Conventions of 1949.

36. Mr. CASSESE (Italy) said that his delegation was unable to support proposed amendment CDDH/I/11 and Add.1.

37. The Italian delegation had always strongly supported the right to self-determination in accordance with the United Nations Charter, but did not believe that struggles to exercise that right constituted international conflicts. Such struggles came within the purview of Protocol II, since they were, if viewed objectively, internal conflicts. Furthermore, to include them in Protocol I would disrupt the whole system of the Geneva Conventions, which were based on the fundamental distinction between internal and international armed conflicts.

38. His delegation could not share the view that wars of national liberation were already covered by article 2 of the 1949 Geneva Conventions in that those movements were "Powers" under the third paragraph of that article and as such entitled to accept and apply the Geneva Conventions. In his delegation's opinion, the word "Powers" used in the third paragraph of article 2 of the Geneva Conventions could only mean States and not authorities other than States. That fact was borne out not only by the letter and spirit of the Conventions, but also by the circumstance that application of many provisions of the Geneva Conventions called for complicated machinery which was, generally speaking, available only to States.

39. The Italian delegation warmly supported proposed amendment CDDH/I/12 and Add.1 with which it was associated as a co-sponsor.

40. Nevertheless, paragraph 2 of the proposed amendment provided that Protocol I should "apply in the situations referred to in article 2 common to the Geneva Conventions of 12 August 1949 for the protection of war victims". However, the first paragraph of article 2 common to the four Geneva Conventions was somewhat ambiguous: it stated, in fact, that "... the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them". In the opinion of the Italian delegation, such a provision must not be interpreted literally, with the result that the Geneva Conventions and, in consequence, draft Protocol I would not apply if the state of war had not been recognized by all Parties to the conflict. The aforementioned provision must

instead be construed liberally, in the sense that the Geneva Conventions and, in consequence, the Protocol applied in the case of any armed conflict which might arise between two or more of the High Contracting Parties, whether or not the state of war were recognized by one, several or all the Parties.

41. Mr. ABADA (Algeria) thought that the three proposed amendments - CDDH/I/5 and Add.1, CDDH/I/11 and Add.1 and CDDH/I/13 - aimed to achieve the same purpose and should be recast in a single proposal for the sake of clarity and efficiency.

42. It was the task of the Conference to ensure the progress of international humanitarian law by endeavouring to embrace the new realities rather than by defending uncompromising stands at all costs.

43. Admittedly, the "Martens clause" had its place in the preamble, but it was necessary to go further and to set forth in the operative part of the Protocol the legal principles stemming from that clause.

44. For all those reasons, the Algerian delegation could not support amendment CDDH/I/12 and Add.1.

45. Baron van BOETZELAER van ASPEREN (Netherlands) shared the views expressed by the representative of Switzerland.

The meeting rose at 5.30 p.m.



SUMMARY RECORD OF THE FOURTH MEETING

held on Tuesday, 12 March 1974, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 1 - Scope of the present Protocol (CDDH/1; CDDH/I/5 and Add.1, CDDH/I/11 and Add.1, CDDH/I/12 and Add.1, CDDH/I/13) (continued)

1. Mr. PRUGH (United States of America), replying to questions posed by the Cameroon representative at the second meeting, said that his delegation understood the desires of peoples to exercise their right of self-determination without outside interference.
2. His delegation's reservation about amendments CDDH/I/11 and Add.1 and CDDH/I/13 were not based on any desire to banish political reality or on narrow legal considerations, but on the fact that those proposals presented a danger to humanitarian law applicable in armed conflicts, for the Geneva Conventions of 1949 were still too thin a shield as they stood.
3. The best way to enhance that protection was to apply article 3 of the Geneva Conventions when the struggle was internal and article 2 when it became international. To be sure, there could be an intermediate stage, as a party to the conflict acquired stature, control over land and population, and other attributes of independence and sovereignty. The question of police repression came under article 3 of the Geneva Conventions.
4. The adoption of amendments CDDH/I/11 and Add.1 and CDDH/I/13 would raise serious problems in the application, for instance, of article 23 of the Third Geneva Convention and of article 4 of the Fourth, to movements fighting for self-determination. Liberation movements could not fulfil all their obligations under the Conventions and would thus be branded as being in violation of those Conventions. The only benefit which those movements would receive from labeling their struggle as international would be enhanced political status, but nothing on the humanitarian plane. Protocol II was the instrument best suited to afford those movements the degree of humanitarian protection required, without imposing on them obligations which they could not accept.
5. Mr. QUENTIN-BAXTER (New Zealand) stated that neither of the two solutions proposed was entirely satisfactory, for both were based on the distinction between international and non-international conflicts, the very criterion which had made the application of the Geneva Conventions of 1949 difficult during the previous 25 years, since numerous conflicts had not tallied with the classical definition of the term "international".
6. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (General Assembly resolution 2625 (XXV)), mentioned in amendment CDDH/I/11 and Add.1, followed the classical doctrine, save that it recognized that colonial territories had an existence distinct

from that of the countries administering them, and that relations between the administering countries and the colonial territories did not have a purely internal character.

7. Humanitarian law was designed to protect victims of war, whether the conflict was technically "international" or not. Moreover, it seemed rather out of place in article 1 of Protocol I to incorporate by reference an instrument which was neither a Conference document nor a treaty instrument. In any case, the Declaration pertained to peacetime law and to the rules which would make it possible to avoid recourse to war, while the Conference was concerned with the law of war.

8. At the present stage, the best solution would be to stipulate that the Geneva Conventions applied in full to any conflict, international or otherwise, which by its scope or its gravity attained the proportions of a war.

9. Mr. LYSAGHT (Ireland) said that his delegation fully understood the motives of the sponsors of CDDH/I/11 and Add.1, as Ireland had itself been the victim of colonial and quasi-colonial domination for over seven hundred years. He could not, moreover, accept the argument advanced by opponents of the proposal, that the Geneva Conventions could not be applied to non-international armed conflicts.

10. Yet, at the current stage, his delegation was not able to lend its support to the amendment in CDDH/I/11 and Add.1. The expression "armed struggles waged by peoples in the exercise of their right of self-determination" was too vague to be useful in a legal instrument. Any separatist movement, any band of armed criminals in a colonial territory might claim to be engaged in an armed struggle in furtherance of their people's right to self-determination.. The amendment was objectionable in that it would apply where a people were content to seek independence by constitutional, non-violent, means and where a minority, with no popular mandate, resorted to violence in the same cause.

11. The amendment might ultimately injure the interests of those it sought to protect, including those fighting in national liberation movements. Its imprecision would allow Governments to deny that a conflict came within the terms of the Protocol. Its acceptance might result in failure to adopt draft Protocol II, which would be regrettable.

12. For those reasons, his delegation wished to reserve its position on amendment CDDH/I/11 and Add.1 and requested that no final decision on it be taken in the Committee until a more precise formulation was considered. The same reservations applied to the amendments in documents CDDH/I/5 and Add.1 and CDDH/I/13.

13. Miss BOA (Ivory Coast) stressed that humanitarian law, to be universal, should not only reflect the views of some fifty countries which had signed the 1949 Geneva Conventions; it should take account of the subsequent evolution of the situation, both as regards the former colonial powers and the colonized countries. That was why her country, which had joined in sponsoring the amendment in CDDH/I/11 and Add.1, requested that the struggles waged by the national liberation movements be included under the provisions of draft Protocol I.



14. Her delegation was not opposed to the idea of combining the amendments proposed in documents CDDH/I/11 and Add.1 and CDDH/I/12 and Add.1, which were not mutually exclusive, but complementary.

15. Referring to the contention that the adoption of amendment CDDH/I/11 and Add.1 might undermine the Geneva Conventions, she pointed out that the colonialists had never respected article 3 common to the four Geneva Conventions, and that the United Nations General Assembly had affirmed in operative paragraph 3 of resolution 3103 (XXVIII) that "... the struggle of peoples against colonial and alien domination and racist régimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions".

16. Mr. PI Chi-lung (China) said that his delegation fully supported the views of the third-world countries concerning the status to be granted to wars of national liberation. The heroic struggle of peoples against the colonial system - itself a by-product of colonialism - had not been foreseen in the 1949 Geneva Conventions. At the time, that was already a grave oversight, and to refuse to remedy it would run counter to the aims of the Conference.

17. The wars of national liberation were just wars waged against imperialist and colonialist domination. The United Nations General Assembly at its twenty-eighth session had proclaimed that the struggles of peoples against colonial and alien domination and racist régimes were to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions (resolution 3103 (XXVIII)).

18. His delegation's view was that a war of national liberation should be regarded as an armed international conflict in the sense of article 2 common to the four Geneva Conventions, and that it should be clearly stipulated in draft Protocol I that the four Geneva Conventions applied unreservedly to the armed struggles of peoples against colonialism, alien domination and racist régimes.

19. Mr. de la PRADELLE (Monaco) said that the amendments proposed seemed unlikely to advance the discussion. Very similar amendments had been proposed at the 1949 Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War with a view to covering civil, colonial and religious wars. Such cases had, moreover, been taken into consideration in 1947 by the Conference of Government Experts for the Study of Conventions for the Protection of War Victims, and in 1948 in preparation for the XVIIth International Conference of the Red Cross. A compromise solution had eventually been adopted in 1949 and was reflected in articles 2 and 3 common to the four Geneva Conventions; those articles were inseparable.

20. It was doubtful whether the present Conference could find another solution capable of reconciling the divergent points of view of delegations. The one adopted in 1949 implied that the general principles of humanitarian law were applicable in civil, colonial and religious wars. Moreover, parties to conflicts had been invited to conclude special agreements to ensure the complete or partial application of other provisions of the Geneva Conventions. It was not for the Conference to alter current international law as set out in the Geneva Conventions.

21. It was doubtful whether the effect of the United Nations General Assembly resolutions had been to transform that positive law. He in no way regarded those resolutions as having the force of law. When the United Nations was set up by the United Nations Conference on International Organization, held at San Francisco in 1946, the Philippines delegation had suggested that the General Assembly should be given legislative powers but its suggestion had been rejected. It was impossible, too, that such powers could have come into being since then. At most, the General Assembly had been recognized as being competent to prepare legislation and invite States to work out treaties. But United Nations resolutions, even when adopted unanimously, were not a component of positive international law. Some points of international law should on no account be called into question: for instance, the distinction between articles 2 and 3 of the Geneva Conventions, which was recognized by General Assembly resolution 3102 (XXVIII) on respect for human rights in armed conflicts. If, as the proposed amendments advocated, the Conference were to review that distinction - which was the basis of both draft Protocols - it would be exceeding its terms of reference.

22. Mr. ABDINE (Syrian Arab Republic), referring to a remark by the United States representative, said that it should be possible to blunt the political edge of the discussion concerning article 1 and to reconcile both the contending standpoints, the first of which was based on nineteenth-century practice and refused to recognize present-day realities; it was founded on natural law and invoked the Martens clause. The second took account of world developments and went further than the first in that its aim was to extend the application of the Geneva Conventions and the Protocols to liberation movements; in that respect it raised the question of the distinction between international and non-international armed conflicts.

23. International law admitted of several criteria for qualifying an armed conflict as international: first, the fact that two subjects of international law were engaged in the armed conflict. National liberation movements were subjects of international law, as was clearly shown by certain United Nations General Assembly resolutions, the fact that they had been invited to participate in the present Conference and by article 42 of draft Protocol I. At the time of the Algerian war, the conflict arising out of the French interception of vessels on the high seas had been regarded as an international one. It had also been contended that an armed conflict became an international one once a State came to the aid of a national liberation movement.

24. The Second World War had shown that no State was safe from foreign occupation which could give birth to liberation movements, so it was important that the present discussion should not centre around the existing national liberation movements alone.

25. Mr. DRAPER (United Kingdom) said that amendments CDDH/I/5 and Add.1, CDDH/I/11 and Add.1 and CDDH/I/13 were dividing the Conference into two camps. He was doubtful about the first and the last of those proposals, especially as regards the medieval concept of just warfare. The text proposed in document CDDH/I/11 and Add.1 seemed safer, though it was open

to criticism from a purely legal standpoint; the subject seemed to be the principle of self-determination rather than law. The Geneva Conventions and the draft Protocols had been devised for entities capable of applying them: in other words, States. Obviously, the application of many of the provisions of the Geneva Conventions could not be extended to national liberation movements as envisaged in the text of document CDDH/I/11 and Add.1 which, if adopted, would necessitate major changes in established humanitarian law; it would be a pity if essentially political considerations led the Conference to tamper with that law.

26. With regard to amendment CDDH/I/12 and Add.1, which his delegation had co-sponsored, he drew attention to the words "undertake to respect and to ensure respect for" and "in all circumstances", which, in view of their importance, had been taken bodily from article 1 common to all four Geneva Conventions. Paragraph 2 of the proposed text was modelled on article 1 of Protocol I as submitted by the ICRC, although it did not specify that Protocol I supplemented the Geneva Conventions because the question was a controversial one. Paragraph 3 embodied the Martens clause, which belonged in article 1 rather than in the preamble.

27. His delegation hoped that the positions adopted in the various amendments could be reconciled thanks to the spirit of co-operation of all delegations. In any event, care should be taken not to put article 1 of draft Protocol I prematurely to the vote.

28. Mr. JOHNSON (Togo) emphasized that the national liberation movements had become a reality which increasingly compelled recognition. For that reason, his delegation viewed with understanding all the proposed amendments designed to establish in draft Protocol I the international character of armed conflicts in which national liberation movements were pitted against colonial and racist régimes.

29. Mr. BEN ACHOUR (Tunisia) said that it was necessary to broaden the scope of Protocol I. He endorsed the statement made at the second meeting by the representative of the Arab Republic of Egypt when introducing amendment CDDH/I/11 and Add.1, and requested to be included among the sponsors of that proposal.

30. Mr. RICARDES (Argentine) said that he considered that amendments CDDH/I/11 and Add.1 and CDDH/I/12 and Add.1 were not incompatible, and should be combined in a single text, as much for legal as for practical reasons.

31. In support of amendment CDDH/I/11 and Add.1, it should, in particular be remembered that the United Nations, in General Assembly resolution 3103 (XXVIII), had declared that national liberation struggles were international conflicts: they should, accordingly, be governed by Protocol I. The word "peoples", as used in that amendment, was entirely appropriate: it was used at the beginning of the preamble to the Charter of the United Nations.

32. Moreover, paragraph 3 of amendment CDDH/I/12 and Add.1 deserved to be adopted and to become a legal rule.

33. Mr. CLARK (Nigeria) said that if the place to be accorded the national liberation movements had given rise to controversy, all doubt in that connexion had been dispelled when the Conference had adopted draft resolution CDDH/I/22 and Corr.1 at the seventh plenary meeting.

34. It was generally conceded that the 1949 Conventions had become insufficient. It was, therefore, necessary to examine the proposed amendments in the light of the new material they contained. In particular, if the Conference did not agree that the national liberation struggles were governed by draft Protocol I, his delegation's fears would be confirmed: the problems would be dealt with solely from the point of view of the western Powers, in defiance of the principles of international law which recognized the lawfulness and international nature of national liberation struggles.

35. Paragraph 1 of amendment CDDH/I/12 and Add.1 followed article 1, common to the Geneva Conventions, almost word for word. That article broke new ground in 1949 by introducing the idea of unilateral obligation not subject to reciprocity: from that point of view, paragraph 1, which reaffirmed already recognized principles, was acceptable, while paragraph 3 of the same proposal, reproduced the Martens clause which proclaimed the existence of a "natural law" which was sacred and universal. That, it had to be admitted, was not an easy concept to verify. However, that clause figured already in the third paragraph of the preamble to draft Protocol I, which was the best place for it in view of its vagueness.

36. Paragraph 2 of the same amendment was designed to replace proposal CDDH/I/11 and Add.1, but it was imprecise and its scope was too limited. Quoting article 53 of the Vienna Convention of 1969 on the Law of Treaties<sup>1/</sup>, he emphasized that that paragraph did not appear to be compatible with present standards of international law, and was not acceptable since it might prove to be contrary to jus cogens.

37. Mr. ECONOMIDES (Greece) said that the proposed amendments CDDH/I/5 and Add.1 and CDDH/I/13 were very limited in scope, since they referred only to struggles against colonialism and racialism; proposed amendment CDDH/I/11 and Add.1 seemed to go further as it dealt in more general terms with the right of peoples to self-determination. Nevertheless, that right, which had never been legally framed, could not, in his delegation's opinion, be usefully and effectively grafted onto humanitarian law, an essentially juridical body of law with strict and detailed rules. He did not, therefore, support proposed amendments CDDH/I/5 and Add.1, CDDH/I/11 and Add.1 and CDDH/I/13.

38. Proposed amendment CDDH/I/12 and Add.1, although limited in scope, seemed to him acceptable; in particular, the inclusion of the Martens clause appeared extremely judicious.

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<sup>1/</sup> See United Nations publication, Sales No: E.70.V.5, page 296.

39. Mr. KALSHOVEN (Netherlands), referring to the argument advanced by the representative of Australia at the third meeting in favour of amendment CDDH/I/11 and Add.1 - namely that it was wiser to include national liberation struggles in draft Protocol I, because it was not certain that draft Protocol II would see the light of day - said that it was doubtful whether the proposed amendment would really solve the problem. Indeed, to say that those struggles were of an international character implied that all the parties should apply the Geneva Conventions and draft Protocol I. That appeared to be difficult in cases where, for example, hostilities only took the form of infiltration; draft Protocol II had been prepared specifically for that type of situation and cases in which it was impossible to apply draft Protocol I.

40. It had been argued in reply that, in cases of that kind, the oppressor alone would be bound to respect the Geneva Conventions and the draft Protocol. The sponsors of amendment CDDH/I/11 and Add.1 were therefore introducing the idea that a distinction must be drawn between the parties according to the legitimacy or illegitimacy of their cause. Although it was true that humanitarian law was not immutably fixed, certain basic values must be respected, including the idea of equality as between the parties. He wondered whether the supporters of amendment CDDH/I/11 and Add.1 really contemplated introducing such a dangerous form of discrimination

41. Mr. MAROTTA RANGEL (Brazil) said that the first problem to be solved was that of the internal or international character of struggles for self-determination. Such struggles might be deemed to be internal when the Government in power controlled the entire territory and assumed full responsibility for its international relations. On the other hand, as soon as the national liberation movement exercised effective control over part of the territory and was recognized by members of the international community, the conflict was international.

42. The United Nations had decided in favour of recognizing the international character of struggles carried on by the national liberation movements, but it was certain that those movements were not always in a position to discharge the obligations stemming from the Conventions and draft Protocol I. The Brazilian delegation could agree to the inclusion within the purview of Protocol I only of struggles to achieve self-determination carried on by territories in the strict sense meant by Chapter XI of the Charter of the United Nations - in other words, territories that did not belong to the State controlling them. Proposed amendment CDDH/I/11 and Add.1, was unsatisfactory in that respect, since it referred to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), a declaration which was altogether too vague and abstract.

43. The reservations felt by the Brazilian delegation with regard to amendment CDDH/I/11 and Add.1 were a fortiori applicable to amendments CDDH/I/5 and Add.1 and CDDH/I/13.

44. He expressed some objections of a technical nature with regard to amendment CDDH/I/12 and Add.1: first of all, article 1 of draft Protocol I should deal not with general principles, but with the scope of the Protocol. The omission of a specific indication that the Protocol supplemented the Geneva Conventions was to be regretted. He considered that the Preamble was the best place for the Martens clause.

45. Mr. LONGVA (Norway), replying to the representative of the Netherlands, said that the sponsors of amendment CDDH/I/11 and Add.1 did not contemplate introducing any form of discrimination between the parties. It should be noted in that respect that the national liberation movements were already applying the Conventions to a large extent. The problem involved might be compared with that of upholding the equality between the occupiers and the occupied, a problem which had never prevented military occupation from being regarded as international conflicts in the sense of the Geneva Conventions.

46. Mr. MONTEIRO (Mozambique Liberation Front - FRELIMO) said that a national liberation struggle could not be dissociated from certain principles of humanity. At its second congress held in June 1963, FRELIMO had reaffirmed the justice of a policy of clemency towards captured enemies. It had been shown in practice that, despite disparities in the resources of the parties involved, nothing prevented the national liberation movements from respecting the principles of humanitarian law.

The meeting rose at 6 p.m.

SUMMARY RECORD OF THE FIFTH MEETING

held on Thursday, 14 March 1974, at 3,35 p.m.

Chairman: Mr. HAMBRO (Norway)

TRIBUTE TO THE MEMORY OF MRS. PIERRE GRABER

1. The CHAIRMAN proposed that the Committee should send a telegram of condolence to Mr. Pierre Graber, President of the Conference, whose wife had died suddenly.

It was so agreed.

On the proposal of the Chairman, the members of the Committee observed one minute's silence in tribute to the memory of Mrs. Pierre Graber.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 1 - Scope of the present Protocol (CDDH/1, CDDH/I/5 and Add.1 and 2, CDDH/I/11 and Add.1 to 3, CDDH/I/12 and Add.1 and Corr.1, CDDH/I/13, CDDH/I/41 and Add.1, CDDH/I/42 (continued)

2. Mr. ABI-SAAB (Arab Republic of Egypt) said that he wished to revert to certain criticisms which had been directed at amendment CDDH/I/11 and Add.1 to 3. First, it had been said that the Conference was not necessarily obliged to take into account the political decisions adopted by the United Nations. That was an indefensible position, because international law constituted an indissoluble body of complementary rules. The United Nations had been seeking to develop humanitarian law since 1963, and it had referred to the Geneva Conventions of 1949, in a large number of resolutions, which had been adopted - often by a large majority - by the very delegations which were attending the Diplomatic Conference, for the specific purpose of pointing out the direction of their development. No separation could therefore be made between the decisions of the United Nations and the work of the Conference.

3. Secondly, it had been said that the proposal in document CDDH/I/11 and Add.1 to 3 envisaged only particular cases; but that was true of international law as a whole, and the Geneva Conventions in particular, which had gradually been built up on the basis of specific situations revealed in international practice.

4. Other critics had said that the proposal referred only to vague concepts which it would be difficult to translate into legal criteria; they had particularly criticized the terms "peoples" and "right of self-determination". It was true that the concept of "peoples" still had to be more precisely defined in legal terms; although that task was difficult, it was not impossible, and should not be used to disguise the essential

point, that of finding a legal solution of a very real problem which was causing great suffering. Moreover, amendment CDDH/I/11 and Add.1 to 3 referred to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), which provided an adequate basis for determining, in a given situation, whether the right of peoples to self-determination was applicable. It did not matter whether the "right of peoples to self-determination" was called a "right" or a "principle"; what counted was that it was part of contemporary international law.

5. The Declaration in question already provided valuable guidance concerning the sphere of application of the right or principle, even though there was still room for improvement. Delegations which were afraid that the principle would apply to all States where there was a variety of races, languages or religions need not be alarmed: according to the Declaration, it applied only in cases where such grounds were used as a basis for systematic discrimination.

6. Amendment CDDH/I/11 and Add.1 to 3 doubtless still contained some imprecisions, but no more than other texts of the same nature: unfortunately, international law always allowed for a wide margin of interpretation, which could always be abused in cases of bad faith. That was an unavoidable deficiency which must be mitigated, as far as possible, by satisfactory guarantees of implementation and by reducing the margin of divergent interpretations as far as possible. That was exactly the purpose of the proposed amendment, since the majority of States considered that the armed conflicts in question were of an international nature, while a minority rejected that view.

7. Some delegations had said that the national liberation movements would be unable to apply the provisions of the Conventions and the draft Protocol because the conditions of their struggle were different in practice from those of international conflicts. That was a false distinction: the material conditions of national liberation struggles were similar to those of resistance movements against foreign occupation, which were specifically mentioned in the Conventions and were classified as international conflicts; it had not been considered that the special conditions of the struggles of such movements would prevent them from applying the Conventions.

8. Other delegations had criticized the proposal on the ground that it confused the jus ad bellum with the jus in bello. That would be true if it sought to give preferential treatment to one of the parties to a conflict. Yet it was the existing system that gave preferential treatment to one of the parties, by refusing protection to the national liberation movements; on the contrary, according to amendment CDDH/I/11 and Add.1 to 3, humane treatment should be afforded equally to both parties.

9. The sponsors of the proposal had also been accused of trying to introduce national liberation struggles into Protocol I with a view to "burying" Protocol II. Nothing of the kind: the victims of the situations referred to in Protocol II must unquestionably be protected on the same basis as others. On the contrary, those who opposed the amendment opposed also



Protocol II. Similarly, the sponsors of amendment CDDH/I/11 and Add.1 to 3 were not opposed to the adoption of amendment CDDH/I/12 and Add.1 and Corr.1, but the latter in no way solved the problem they had wished to tackle in their own proposal.

10. Although the criticisms levelled at amendment CDDH/I/11 and Add.1 to 3 were unfounded, its sponsors were not opposed to any suggestions which would improve the existing text.

11. Mr. ANGONI (Albania) said that the national liberation struggles waged by oppressed peoples were legitimate and represented the only certain road towards freedom and independence. That should be expressly stated in Protocol I because freedom fighters, who were subjected to savage repression by the imperialist Powers, had the right to effective protection. Those who waged an unjust war against those combatants should bear the responsibility for their crimes; as the representatives of the Democratic Republic of Viet-Nam and the Provisional Revolutionary Government of the Republic of South Viet-Nam, the terrorist methods used by the imperialists, colonialists and racists against the civil populations must be condemned.

12. The Albanian Government and people supported struggles for national liberation and social progress and condemned the crimes of the imperialist Powers and the new Soviet imperialists who advocated "peaceful co-existence" between the oppressed and the oppressors.

13. Mr. REÇBERNJAJ (Ukrainian Soviet Socialist Republic) said that he was in favour of any proposal which tended to widen the scope of article 2 common to the four Geneva Conventions. It was perfectly clear that conflicts involving a colonial or racist Power on the one side and a people fighting for its independence on the other were international conflicts. The Charter of the United Nations and many of its resolutions recognized the legality of wars of liberation. The struggling peoples were subjects of international public law, whether or not they had been recognized. A provision making national liberation struggles subject to Protocol I would be entirely in accordance with modern international law, particularly since they had been the most common form of conflict in recent times. In those conditions, it was impossible seriously to assert that the adoption of such an amendment would destroy the legal basis of the Conventions.

14. Moreover, how could it be said that the Conventions and Protocols entailed obligations which were too onerous for the national liberation movements, when the latter themselves declared that they were ready to assume those obligations? All those arguments carried very little weight and were based on outmoded ideas. The Ukrainian delegation would be in favour of merging amendments CDDH/I/5 and Add.1 and 2 and CDDH/I/11 and Add.1 to 3.

15. Mr. MONTEIRO (Mozambique Liberation Front - FRELIMO) said that the central question of the debate was whether the national liberation movements should be covered by Protocol I (International conflicts) or by Protocol II (non-international conflicts). It should be borne in mind

that from the legal point of view those struggles had already been classified as international in other bodies and, quite recently, by the General Assembly of the United Nations in resolution 3103 (XXVIII); moreover, the national liberation movements had a clearly-defined status vis-à-vis a number of international and intergovernmental organizations and collaborated with them. The question was therefore one of harmonizing humanitarian law with the international law of which it formed a part.

16. That interpretation was, indeed, a matter of simple logic: unless it was claimed that the members of FRELIMO were Portuguese, it had to be recognized that the struggle they were waging was international.

17. What would be the practical consequences of the application of draft Protocol I? An examination of the 1949 Conventions showed that some of their provisions had never been observed because they were incomplete or imprecise. It was therefore essential to determine clearly the nature of wars of liberation. Attempts had been made in the past to get round the law by describing such confrontations as "operations for the maintenance of order" and so forth. At the present time, Portugal was trying to "africanize" the war - as the Viet-Nam war had been "vietnamized" - in order to create the illusion of an internal struggle between two factions.

18. It had been said that only States were capable of applying the Conventions: at earlier meetings, he had already given specific examples of the application of the Conventions by the national liberation movements. The essential requirement, indeed, was not the technical apparatus or the material means, but the will to apply the principles of humanitarian law and the political outlook of the parties. Cases were known where States had departed from the established rules far more grossly than the liberation movements. If the rules had to be adapted, that might be due to the special conditions of guerrilla warfare and not to the fact that the parties were or were not States.

19. Some States had taken the view that the scale of the hostilities did not justify the struggles in question being covered by Protocol I. Portugal had always tried to minimize the scale of the war, but recent events had revealed its true extent to the world. It was not merely a matter of minor skirmishes, but also of large-scale operations. In that connexion, he suggested that information meetings might be organized between the two sessions of the Conference, to enable delegations to appreciate the extent of the hostilities. But the fact had to be faced that the end of wars of liberation was unfortunately still a long way off and that those wars were bound to spread still further.

20. Mr. LERMANN (Denmark) said it was necessary, for legal and practical reasons, to maintain the distinction between international and non-international armed conflicts that was made in the Geneva Conventions.

21. The humanitarian rules applicable in conflicts within a country's borders should be laid down in a separate Protocol, as had been done in draft Protocol II, and protection in such cases should be limited to the humanitarian principles embodied in the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, and in other international humanitarian instruments which could in practice be applied by both parties to the conflict.

22. Any attempt to replace the objective criteria of the ICRC draft for defining international armed conflicts by such subjective criteria as the cause of the conflict or the mediaeval concept of just and unjust wars would give rise to insurmountable problems as to which cause or movement was eligible for international status.

23. His delegation preferred the original text of article 1 of draft Protocol I, as drafted on the basis of opinion prevailing among the Government Experts who had met in 1971 and 1972.

24. In view of the importance of article 1, the text finally adopted should receive general support; a more thorough study was therefore needed to try to reconcile opposing points of view.

25. When United Nations General Assembly resolution 3103 (XXVIII) had been adopted, it had been generally recognized by its sponsors - and stated in the last preambular paragraph - that the basic principles proclaimed in the resolution should be without prejudice to their elaboration in future within the framework of the development of international law applying to the protection of human rights in armed conflicts.

26. The Conference would certainly not be abiding by resolution 3103 (XXVIII) if it voted on article 1 before knowing the outcome of work on the most important articles of the two Protocols.

27. For instance, the insertion in Protocol II of a provision prohibiting the imposition of the death penalty on captured combatants solely on account of their participation in hostilities, might have a considerable impact on the wording of article 1 of both Protocols. It would meet the humanitarian concern of liberation movements fighting for self-determination, because it would ensure for them the essential protection accorded to prisoners of war.

28. In the view of his delegation, the Conference should not decide on the scope of draft Protocol I before knowing what the substance of both Protocols was to be; accordingly, the Committee should take no premature decision on article 1.

29. Mr. OGOLA (Uganda) said that colonialism was invasion par excellence: the colonial armies came from Europe - they were not local forces. The struggle waged by colonized peoples against the invaders therefore could not be included among the situations envisaged in draft Protocol II.

30. Moreover, the international community, expressing itself through the United Nations, had recognized that colonized peoples had identities of their own, different from that of the metropolitan power which had colonized them, and that it was for the liberation movements of their own region, not for the colonizing Power concerned, to express the aspirations of such peoples. Those principles were reflected in United Nations General Assembly resolution 1514 (XV), which embodied the Declaration on the Granting of Independence to Colonial Countries and Peoples, and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, in accordance with the Charter of the United Nations.

31. Mr. ARMALY (Palestine Liberation Organization - PLO) pointed out that it had been the struggles of the peoples represented by liberation movements which had brought to light the inadequacies of the 1949 Geneva Conventions and the urgent need for adopting additional provisions to reaffirm and develop humanitarian law.

32. The right of peoples to self-determination was now accepted, although people were being denied the means of exercising it. Out of sheer desperation, the national liberation movements had taken to armed struggle as the only means to open to them. If there were any peaceful means of securing the rights of oppressed peoples, the liberation movements would not fail to use them.

33. With regard to amendment CDDH/I/12 and Add.1 and Corr.1, the so-called Martens clause might be useful in conflicts of an indeterminate nature, but could not be applied to wars of national liberation, which were specifically international in character.

34. The argument that national liberation movements would be incapable of carrying out certain humanitarian obligations was not borne out by the facts. For instance, in the struggle that the Palestinian people was waging against Israel, such international bodies as the ICRC, Amnesty International and even the Israel League for Civil and Human Rights, had testified that Israel had committed many violations of humanitarian law, whereas the Palestinian resistance had always collaborated with the ICRC, in accordance with the Geneva Conventions, and inter alia, had returned Israeli prisoners of war through the ICRC.

35. The Palestine Liberation Organization unreservedly supported amendments CDDH/I/5 and Add.1 and 2 and CDDH/I/11 and Add.1 to 3 and hoped that they would be combined in a single text.

36. Mr. TURPIN (Guinea-Bissau) asked the Chairman to express the gratitude of the people of his country to the Norwegian Government and to the other Nordic countries.

37. Those who argued that politics should not be injected into the debates should bear in mind that law was of necessity influenced by politics and that the debates themselves had clearly shown how concepts of international humanitarian law differed according to the economic and social systems prevailing in various countries.

38. The legitimate and organized struggle of peoples who wished to regain their national independence could not be regarded as an internal conflict, since the adversaries were different peoples of different races from different geographical backgrounds.

39. If one day the people of Guinea-Bissau reached the stage where they could extend the struggle to Portugal itself, would that conflict be considered as an internal conflict by those who currently regarded national liberation struggles as international conflicts?

40. The fear that uprisings might be recognized as international conflicts was unfounded, since there was a considerable difference between a struggle for liberation from colonial and racist domination and insurrections in States which enjoyed territorial integrity and had a central government bearing responsibility for the country's common destiny.

41. It has been alleged that the liberation movements were incapable of assuming the obligations arising from the Geneva Conventions. Yet Portugal, which was deemed capable of assuming such obligations, was daily violating those Conventions by using arms that caused unnecessary suffering to the civilian population, such as napalm, fragmentation bombs and defoliants, whereas the liberation movements had returned Portuguese prisoners and had always treated them well, as the ICRC could testify.

42. His delegation therefore unreservedly supported amendment CDDH/I/11 and Add.1 to 3 and wished to become a sponsor of that proposal.

43. Mr. KIRÇA (Turkey), introducing his delegation's amendment (CDDH/I/42), said that Turkey could not fully subscribe to the other amendments submitted, although it was not in principle opposed to extending the rules of international humanitarian law to national liberation struggles. It considered that an international treaty should not contain references to texts which did not have status either of a convention or of a codification of generally accepted customary rules. That was the case of resolutions of the United Nations General Assembly and of such texts as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations: reference to those texts in Protocol I might give rise to erroneous interpretations of their nature. On the other hand, his delegation could accept a reference to the principle of self-determination as it was set forth in the United Nations Charter. The wording of the article must not be open to divergent interpretations of the definition of the armed conflicts to which it would apply. That was why his delegation had proposed the objective criterion of recognition of the national liberation movements by the regional inter-governmental organizations concerned. There was no other way of avoiding wrong interpretations of an untoward nature which would constitute interference in the internal affairs of States.

44. Mr. CLARK (Nigeria), introducing amendment CDDH/I/41 and Add.1 on behalf of its sponsors, pointed out that it was the result of negotiations between the delegations which had submitted amendments CDDH/I/5 and Add.1 and 2, CDDH/I/11 and Add.1 to 3 and CDDH/I/13. Bangladesh, Bulgaria, Indonesia, Mongolia, Romania and Sri Lanka should be added to the list of countries sponsoring the new amendment.

45. The arguments on which that amendment was based were those that had been invoked with regard to the earlier amendments. In that connexion, operative paragraphs 3 and 4 of resolution 3103 (XXVIII), adopted by the General Assembly on the report of the Sixth Committee, were of outstanding importance. Moreover, the new amendment reiterated some of the actual terms used by the jurists of the Sixth Committee, such as "peoples", "colonial and alien domination" and "racist régimes". Self-determination was one of the basic principles of the United Nations Charter, and its

interpretation could not lead to any confusion. All such terms had now been incorporated in international legal terminology. The position of peoples engaged in liberation struggles was similar to that of people living in occupied territory, which was referred to in article 2 common to the four Geneva Conventions. What was needed now was to cover a situation that had not been foreseen by the authors of the 1949 Conventions.

46. Mr. JOHNSON (Togo) suggested that the words "incarné dans" be replaced by the words "consacré dans" in the French text of document CDDH/I/41.

47. Mr. GRAEFRATH (German Democratic Republic), speaking on behalf of the sponsors of amendment CDDH/I/5 and Add.1 and 2, said that the delegations in question were withdrawing their proposal since they were all now sponsors of amendment CDDH/I/41 and Add.1, which fully reflected the ideas embodied in the earlier text.

48. Mr. NAMON (Ghana) observed that all the delegations that had submitted amendments were seeking to extend the scope of the Protocol so as to cover national liberation struggles which did not fall within the purview of the 1949 Conventions. In order to reconcile different opinions, it was important to supplement article 1 of Protocol I with provisions which would be simple and easy to interpret. Those requirements would be met by amendment CDDH/I/41 and Add.1, of which his delegation was a sponsor. The article under consideration was very important, since the future application of the two Protocols depended upon it.

49. Mr. NODA (Japan) pointed out that under the system established in 1949, the Geneva Conventions applied to situations defined in article 2 common to those instruments, namely to all armed conflicts which might arise between the High Contracting Parties as well as to cases of partial or total occupation of the territory of a High Contracting Party. On the other hand, only article 3 applied to armed conflicts arising on the territory of one of the High Contracting Parties. The Conference was seeking to develop humanitarian law by means of a first Protocol designed to cover international conflicts and of a second concerned with non-international conflicts. Any attempt to apply the 1949 Conventions as a whole to armed conflicts in which entities other than States were participating would tend to destroy the established system and would lead to practical difficulties. Moreover, there could be no question of allowing entities other than States to apply only certain provisions, since the articles were all closely linked: for instance, the provisions relating to the periods of application of the Conventions and to the functions of a Protecting Power and its substitute; and if article 4 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, was to be cited as an extreme case, the Convention as a whole could not be implemented should that single article not be applied. His delegation therefore considered that the question of non-international armed conflicts should be dealt with in Protocol II and could support none of the proposals except amendment CDDH/I/12 and Add.1 and Corr.1.

50. Mr. GLORIA (Philippines) emphasized the need to develop international humanitarian law, taking into account the changes that had occurred in the political structure of societies. The system established under the Geneva Conventions was indeed out of date and could not be applied to local conflicts, which had assumed very wide dimensions in modern times. Wars of liberation could certainly no longer be ignored by law. Under article 41 of draft Protocol I, the armed forces of resistance movements were included in the concept of armed forces, and article 42 defined a new category of prisoners of war, namely the members of organized resistance movements who had fallen into the hands of the enemy, and the ICRC had suggested that a third paragraph should be added to the article. Several amendments had been submitted to article 1 and delegations should be given time to study them carefully before taking a decision on that provision. Moreover, the amendments had to be read together with the preamble to Protocol I, which was the last item on the Committee's agenda. It would therefore be better for the Committee to concentrate on the articles which seemed least controversial.

The meeting rose at 6 p.m.





SUMMARY RECORD OF THE SIXTH MEETING

held on Friday, 15 March 1974, at 10.40 a.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/I) (continued)

Article 1 - Scope of the present Protocol (CDDH/I, CDDH/I/11 and Add.1 to 3, CDDH/I/12 and Add.1 and Corr.1, CDDH/I/13, CDDH/I/41 and Add.1 to 7, CDDH/I/42) (continued)

1. The CHAIRMAN invited the Committee to continue the discussion of the proposal to add a second paragraph to article 1 of draft Protocol I (CDDH/I/41 and Add.1 to 7).

2. Mr. RATTANSEY (United Republic of Tanzania) said that he had noted with interest that certain delegations considered that the provisions of draft Protocol I could not be applied to national liberation movements, on the grounds that the Geneva Conventions of 1949 could be applied only to international armed conflicts and that such a state of war could exist only between States. They also claimed that those movements, being merely organizations and not States, could not be parties to Protocol I, and should be covered by the special provisions on non-international armed conflicts in draft Protocol II. That difference of view was fundamental and was based on a totally different interpretation of customary international law. Such law was based on the pronouncements of universally accepted bodies established by the international community. Since the Second World War international law had been created by events such as the endorsement by the United Nations of the Nürnberg principles (General Assembly resolution 95 (I)) and the acceptance of the Charter of the United Nations, which had formed a new body of international law on the question of colonial, racist and alien domination culminating in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)). It was surely impossible to say that the decisions taken at Nürnberg were political and that the trials had had no basis in public international law. Similarly, public international decisions on the wars of liberation were not political decisions but formed part of international law, and the liberation movements had been given a status akin to sovereignty. His delegation fully supported amendment CDDH/I/41 and Add.1 to 7 because wars of liberation were in a special category from the point of view of international law and should rightfully be covered by draft Protocol I. The technicalities so ably recited by the United Kingdom representative at the fourth meeting could not prevent the forward march of substantive international law. In modern times there could be no international conflicts without the intervention of the United Nations and international public opinion. Portuguese colonialism and racism and the racist régimes in southern Africa must cease, and peoples who were not fettered by selfish economic interests must establish legal precedents in order to ensure world peace.

3. Mr. MTAMBANENGWE (Zimbabwe African National Union - ZANU), supporting amendment CDDH/I/41 and Add.1 to 7 to article 1 of draft Protocol I, said that he could not agree if introduced it would violate the spirit of the Geneva Conventions of 1949 and open the way to a revision of those Conventions.

4. As stated by the ICRC in the commentary on article 1 of draft Protocol I (CDDH/3), the Protocol sought to supplement the Geneva Conventions of 1949 where the lessons drawn from contemporary armed conflicts showed that the Conventions had proved to be inadequate before the requirements of humanity. Paragraphs (2) and (6) of article 4A of the third Geneva Convention of 1949, relative to the Treatment of Prisoners of War, contained special provisions covering members of militias, volunteer corps and organized resistance movements, and consequently such bodies were already a feature of contemporary armed conflicts. Had the Geneva Conventions been adopted at an earlier period such special provisions would perhaps not have been included. The arguments to the effect that the introduction of the amendment to article 1 would violate the Conventions did not stand up to close examination; their purpose was merely to prevent the Conference from adopting the necessary supplementary provisions to meet the requirements of humanity based on lessons drawn from contemporary armed conflicts, such as those in Viet-Nam, Guinea-Bissau, Angola, Mozambique, southern Africa and Zimbabwe.

5. The leader of the minority régime in Rhodesia, Mr. Ian Smith, had stated on 5 March 1974 that the prospect of a conventional war situation in southern Africa was unlikely but that it would be stupid to rule it out for all time. Mr. Smith had added that if that situation developed, it could not be left simply to southern Africa alone because it would amount to a confrontation between the communists on the one side and the free world on the other.

6. Certain representatives had hinted that if the Protocols contained special provisions on armed conflicts in colonial countries, under which colonial and racist régimes would be required to behave humanely towards those who were fighting those régimes, the Protocols would not meet with universal acceptance. It was obvious that in the absence of legally enforceable provisions in the Conventions that would ensure that they were respected in all circumstances, the only thing that would make parties to a conflict respect the Conventions would be the knowledge that whatever acts were committed by one party could be committed by the other. The liberation movements could take prisoners, they could attack enemy civilians, they could take hostages and they could threaten to give no quarter.

7. What those who opposed amendment CDDH/I/41 and Add.1 to 7 were trying to do was to give preferential treatment to the colonialist, racist and imperialist régimes. As the representative of Uganda had stated at an earlier meeting, those régimes could not claim members of the liberation movements as their subjects merely because they had occupied their countries for so long. The fact that such régimes had found their harsh laws incapable of subduing the indigenous inhabitants of the countries they

occupied revealed the true state of affairs. The truth was that the United Kingdom, the United States of America and others did not wish to offend South Africa, Portugal and Israel, who were their agents in the perpetual exploitation of colonial peoples.

3. Mr. BARRO (Senegal) said that it was necessary to reflect on the consequences of adopting solutions that merely ratified a state of affairs which had lasted too long and would soon disappear, namely colonial and racial domination and exploitation, which was the cause of the dramatic events which daily shocked the conscience of mankind.

9. The protection of civilians from the horrors of war was not simply a matter of humanitarianism; it was a matter of justice. Article 2 of the Charter of the United Nations ruled out the use of force as a means of settling international disputes; that was a contractual obligation for all the signatories of the Charter and it was, indeed, also binding on non-Member States, taking precedence over all obligations under other international agreements. That the term "international disputes" in Article 2 of the Charter referred not merely to disputes between Member States was, moreover, clear from Article 33, paragraph 1 of which referred not to "States" or "Members", but to the "parties" to disputes.

10. The simple fact that the United Nations had adopted resolution 1514 (XV) containing the Declaration on the Granting of Independence to Colonial Countries and Peoples and had set up a Special Committee to supervise its implementation, was sufficient to establish the international character of the fighting which resulted from the refusal of the colonial Powers to implement that Declaration and from their resort to force in response to the will of the people to regain their sovereignty. To deny the international character of armed conflicts was to trample on the most sacred rights of the peoples who were fighting.

11. It was the feeling of injustice so engendered which was mainly responsible for what was described as "international terrorism". When thousands of innocent people were daily being slaughtered in many parts of the world, it was difficult for people to be shocked at the few dozen innocent victims of the hijacking or sabotage of airliners. Without justice, humanitarian law was merely an empty word.

12. International law must evolve and take account of new realities. The national liberation movements constituted a new category of subjects of international law; they had proved their capacity to assume obligations and responsibilities and they could claim rights as representatives of their peoples. Armed factions within States might also, of course, claim rights; but had such rights been defined? Would they be recognized? And could such factions assume responsibilities and obligations? In any event, sufficient proof had not been given to justify their inclusion as a new category of subjects of international law. Thus, any provisions of treaties which referred to them could only be invoked in respect of States; which meant that States confronted by such situations would be answerable before the other Contracting Parties for any cruelties committed against their nationals. Any other course would be tantamount to internationalizing the conflict, thus automatically bringing the insurgents within the system of the Geneva Conventions.

13. The Senegalese delegation reaffirmed its support for amendment CDDH/I/41 and Add.1 to 7. It would also be glad if the scope of draft Protocol II, on the protection of victims of non-international conflicts, could be explained.

14. Mr. BIDI (Pan-Africanist Congress - PAC) said that by far the most important issue in relation to article 1 was that of national liberation wars. In that connexion a number of very pertinent questions had been asked; for example, who was to define such concepts as "peoples", "national liberation wars", "national liberation movements" or the "right to self-determination"? The answer was that they would be defined in the same way as definitions had been arrived at in the case of the 1949 Geneva Conventions and the earlier Conventions. In other words, the work would be done by legal experts and diplomatists. When they had done so, national liberation wars would have been definitively identified as international conflicts. For that was what they certainly were, regardless of their degree of intensity. The Africans of Mozambique, Angola and Guinea-Bissau were nations, and totally different nations from the Portuguese nation, not "parts" of it. The same applied to the inhabitants of all the islands which surrounded the African continent and were under foreign domination, to the African inhabitants of South Africa, Rhodesia and Namibia and to the Palestinians. The separate and independent national existence of the peoples subject to foreign domination was recognized by the entire international community, except of course by the alien groups which exercised authority over them.

15. It had been suggested that the problem of national liberation wars was merely a temporary one. That might be true if it referred to the struggles actually taking place, for the peoples would certainly win their battles and attain statehood. But no one could assert that there would be no more such wars in the future. Peoples which had not yet begun their struggle for liberation and independence would certainly decide to do so during the coming century. Their struggles would equally be of an international nature and those engaged in them would benefit from the decisions to be adopted by the present Conference. Thus, the fear that the relevant laws would shortly have to be redrafted was quite unjustified and could only be a pretext for delaying the Conference's intention of providing the maximum protection for human lives in times of violence.

16. For the first time in history, representatives of the whole third world were attending a diplomatic conference on international humanitarian law. Nobody could seriously imagine that those representatives had come to Geneva with the sole intention of destroying the fabric and foundations of that law, from which they stood to gain more than anyone. None of the arguments against amendment CDDH/I/41 and Add.1 to 7 had done anything to show the necessity of continuing to exclude wars of independence from the category of international conflicts.

17. With regard to amendment CDDH/I/12 and Add.1 and Corr.1, the recent massacre at Wiriyamu in Mozambique and other atrocities committed by the Portuguese in Angola and Guinea-Bissau or by the Pretoria régime in Namibia and elsewhere, as also the whole history of the wars in South-East Asia, indicated that the provisions of article 3, common to the four

Geneva Conventions of 1949 or of draft Protocol II were quite inadequate to meet the situation. Something much more than pious exhortations was required if international humanitarian law was to be genuinely reaffirmed and developed.

18. Mrs. HELLER (Mexico) welcomed amendment CDDH/I/41 and Add.1 to 7, for her delegation had been among the first to suggest that the common elements in documents CDDH/I/5 and Add.1 and 2, CDDH/I/11 and Add.1 to 3 and CDDH/I/13 should be presented in a single consolidated text. From the positive efforts which had been made to arrive at an acceptable formula consonant with the aims of the Conference, there had emerged new or complementary elements which ought to be taken into account in the preparation of a final document.

19. Mr. NOKWE (African National Congress - ANC), supporting the amendment proposed to article 1 (CDDH/I/41 and Add.1 to 7), said that since 1946, when the issue of racism had first been raised in the United Nations in connexion with people of Indian origin in South Africa, certain countries had always argued that racial discrimination was a domestic problem. In 1952, however, when the item entitled "Question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa" had been discussed in the United Nations General Assembly and resolution 616 (VII) had been adopted, it had been recognized that apartheid policies were a threat to international peace and a violation of fundamental human rights.

20. Describing the injustices of the policies of expansionist and colonialist régimes in southern Africa, he stressed that it was no longer possible to regard the struggle of national liberation movements as an internal affair of certain States and urged most strongly that such conflicts should be recognized as international in character.

21. Mr. HAKSAR (India) said that many delegations, including his own, were agreed on the principle that the struggle of national liberation movements should clearly come within the framework of international armed conflicts and consequently within the scope of draft Protocol I. He considered that the formulation set forth in document CDDH/I/41 and Add.1 to 7 could appropriately be incorporated in article 1 of draft Protocol I.

22. It seemed to him that the reservations expressed by some delegations regarding the principle underlying the amendment and its possible consequences did not amount to objections to the principle but rather reflected concern about the consequent changes that it would involve for the draft Protocol. As several amendments had been submitted, he suggested that the Committee might move on to article 2, allowing time for informal consultations on article 1.

23. Mr. OBRADOVIC (Yugoslavia) welcomed the amendment submitted in document CDDH/I/41 and Add.1 to 7, which combined the amendments in documents CDDH/I/5 and Add.1 and 2, CDDH/I/11 and Add.1 to 3 and CDDH/I/13 and drew attention to the most typical cases of armed conflicts in the struggle of peoples for self-determination, which his Government held to be international conflicts. He did not agree that the insertion of a text of that

kind in Protocol I would lead to the introduction of a concept of discrimination between the parties engaged in such conflicts and he fully supported the views expressed at the fourth meeting by the Norwegian representative on the subject. He agreed with the Algerian representative (third meeting) that the Committee should make further efforts to find a solution acceptable to all.

24. While he appreciated the value of paragraphs 1 and 3 of amendment CDDH/I/12 and Add.1 and Corr.1, he felt that paragraph 2 was incomplete and therefore unsatisfactory. He stressed that, whatever the exact wording, the basic idea underlying the Committee's amendments must be incorporated in article 1.

25. Mr. KNITEL (Austria) said that, although the struggle of peoples for self-determination did not come within the existing field of application of the four Geneva Conventions of 1949 as defined in article 2, the function of the present Conference was not only to reaffirm but also to develop the existing law. It had been almost unanimously requested in the United Nations that peoples fighting for self-determination should be given protection similar to that provided for in the four Geneva Conventions. To find a solution to the problem was not easy, since two different concepts had appeared in the discussions. In the general interests of alleviating human suffering, however, such divisions should be avoided and a compromise solution found.

26. In his view, there was no basic contradiction between the proposals in documents CDDH/I/11 and Add.1 to 3 and CDDH/I/12 and Add.1 and Corr.1 and he did not agree that paragraph 2 of the latter failed to bring out fully the supplementary character of the two draft Protocols. His delegation intended to submit a formal proposal for the inclusion of a general provision under part VI of Protocol I concerning the relationship between that Protocol and previous existing humanitarian law.

27. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the general provisions of draft Protocol I, which had been drawn up by the ICRC with the active assistance of a large number of experts, must be analysed in the context of the four 1949 Geneva Conventions which that Protocol was meant to supplement - and of all the substantive provisions of the Protocol.

28. In accordance with the wish expressed by the vast majority of the Government Experts consulted, the ICRC had prepared the draft Protocol as an additional instrument to the 1949 Conventions. The existing text of article 1 stipulated that the Protocol "supplemented" those Conventions; some experts would have preferred to say that it "reaffirmed and supplemented" them, in order to make it clear that no revision was envisaged. The whole structure of the Protocol had been built up by the ICRC on the basis of that supplementary character: if it was abandoned, the structure of that instrument would have to be completely revised and even the title would have to be amended. In view of the "additional" nature of the Protocol, the majority of the participants at the Conference of Government Experts had not thought it necessary to reaffirm some of the general principles common to the Conventions, and in particular their common article 1.

29. Since the 1949 Conventions did not include a real preamble, the clause known as the "Martens clause" which appeared in the preamble to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, had been introduced into the article on denunciation common to the four Geneva Conventions. But the Preamble, as the Commentary to the draft Protocols (CDDH/3, page 109) had indicated, was where that provision "would have been the most appropriately placed." Some recent treaties such as the 1961 Vienna Convention on Diplomatic Relations<sup>1/</sup> and the 1969 Vienna Convention on the Law of Treaties<sup>2/</sup> had introduced such a clause into their Preambles. That was why the ICRC, pursuant to the opinion of some experts, had placed that clause in the Preamble to the draft Protocol.

30. The discussion revealed the fundamental importance of the question of armed struggles for self-determination. The ICRC welcomed the large numbers of participants in the Conference and the fact that some of those concerned who had not taken part in earlier proceedings would be able to make their voices heard. The study of such a fundamental point, which had merely been touched upon at the Conference of Government Experts, must not be rushed: there would be sufficient time to study it thoroughly and systematically before the second session. The problem was certainly complex from the standpoint of the legal subtleties involved, and many questions seemed to require further study, but it would surely be possible to find a solution to all the difficulties. Such a study was all the more essential in view of the need to preserve the universality of the Geneva Conventions and to adopt provisions that would be accepted by the greatest possible number of parties. If a working group were to be set up to consider the problem, the ICRC would be happy to place its expertise at the disposal of that group.

31. The CHAIRMAN said that there were four amendments to article 1 of draft Protocol I still before the Committee - those in documents CDDH/I/11 and Add.1 to 3, CDDH/I/12 and Add.1 and Corr.1, CDDH/I/41 and Add.1 to 7, and CDDH/I/42. He proposed that an appropriate number of the sponsors of those amendments should consult unofficially with a view to producing, if possible, a single agreed text.

32. Mr. CLARK (Nigeria) and Mr. SHAH (Pakistan) said that they wished to be regarded as sponsors of amendment CDDH/I/41 and Add.1 to 7 and not of that in document CDDH/I/11 and Add.1 to 3.

33. Mr. LYSAGHT (Ireland) said that some representatives who were not sponsors of any of the draft amendments might, precisely for that reason, have a useful contribution to make in working out a compromise text.

34. The CHAIRMAN suggested that the sponsors themselves should decide who was to compose the Working Group in question. The representative of Ireland and others in a similar position would doubtless be welcomed.

It was so decided.

The meeting rose at 12.25 p.m.

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<sup>1/</sup> United Nations publication, Sales No.: 62.X.1.

<sup>2/</sup> United Nations publication, Sales No.: E.70.V.5.





SUMMARY RECORD OF THE SEVENTH MEETING

held on Friday, 15 March 1974, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

ORGANIZATION OF WORK

1. The CHAIRMAN suggested that the Committee should consider article 1 of draft Protocol II: Several delegations had already said that they favoured that method of working, but the delegation of India had expressed a contrary opinion at an earlier meeting.
2. Mrs. BUJARD (International Committee of the Red Cross), supporting the Chairman's suggestion, said that Committee III had already examined articles 43 and 44 of Protocol I and article 24 of Protocol II, and was considering articles 45 and 46 of Protocol I and articles 25 and 26 of Protocol II. Committee III favoured the simultaneous consideration of the two Protocols, and a large number of amendments both to Protocol I and to Protocol II had been submitted. Besides, discussions in Committee III had shown that it was urgent to determine the field of application of Protocol II as defined in its article 1.
3. Mr. PARTSCH (Federal Republic of Germany) and Mr. MILLER (Canada) supported the Chairman's suggestion. Determination of the field of application of Protocol II was important to enable the Conference, and especially Committee III, to progress in its work.
4. Mr. KAKOLECKI (Poland) said that it would be better to begin consideration of article 2 of Protocol I.
5. Mr. LONGVA (Norway) requested the closure of the list of speakers, of whom there were eight.
6. Mr. MISHRA (India) pointed out that the discussion did not relate to a procedural question and that all representatives who wished to speak should be permitted to do so.
7. Mr. CLARK (Nigeria), Mr. ZAFERA (Madagascar), Mr. OGOLA (Uganda), Mr. ABDINE (Syrian Arab Republic), Mr. RATTANSEY (United Republic of Tanzania), Mr. BARRÓ (Senegal), Mr. CALERO-RODRIGUES (Brazil) and Mr. SHAH (Pakistan) considered that the Committee should consider article 2 of Protocol I. The Committee had rightfully decided to study the Protocols simultaneously, but by groups of articles. If that decision were not upheld a new one, adopted by a two-thirds majority in accordance with rule 32 of the rules of procedure, would be necessary.
8. On the other hand, the Committee should not begin the study of Protocol II until the question of the scope of Protocol I had been settled. After the study of that question by the Working Group, and if it were decided that wars of national liberation came within the field of

application of Protocol I, the scope and the very existence of Protocol II would be challenged by a certain number of delegations. It might therefore be a waste of time to begin discussion of Protocol II.

9. Mr. de BREUCKER (Belgium) and Mr. KNITEL (Austria) supported the Chairman's suggestion.

10. Mr. HAKSAR (India) stated that his delegation had expressed reservations when the Committee had decided to study the two Protocols concurrently, chapter by chapter. It was all the more difficult for him to agree that the Committee should consider Protocol II as the question of the scope of Protocol I was still undecided. Although Committee III had adopted a different method of working, it had not done so without some strong reservations.

11. Mr. MBAYA (United Republic of Cameroon) expressed support for the views of those who favoured consideration of article 2 of Protocol I, and the hope that the Chairman would withdraw his suggestion.

12. Mr. YOKO (Zaire) reiterated the warnings he had uttered in the general debate against any attempt to turn aside discussions on essential questions. The purpose of the Conference was not solely the reaffirmation of international humanitarian law, as the conservative elements of the Conference desired, but also its development. To broach an article of Protocol II would only cause delay. It was regrettable that certain delegations attached an exaggerated importance to the Protocols. They were merely working documents, were not binding and had been drafted from a point of view which he deplored.

13. The CHAIRMAN said that he was ready to withdraw his suggestion if the remaining speakers on the list waived their right to speak.

14. Mr. MILLER (Canada) said that most delegations seemed to wish to continue the attempt to reach agreement on the question of which Protocol should cover wars of liberation. Many wished the provisions of Protocol I to be applicable to that category of armed conflict. The Canadian delegation was convinced of the need to develop international humanitarian law by devoting a separate instrument - Protocol II - to non-international armed conflicts.

15. The CHAIRMAN said that if there were no objections, he would consider that the Committee wished to begin consideration of article 2 of draft Protocol I.

It was so agreed.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/I) (continued)

Article 2 - Definitions (CDDH/1, CDDH/I/20, CDDH/I/36 and Corr.1, CDDH/I/33, CDDH/I/62)

Sub-paragraphs (a) and (b)

16. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing article 2 of draft Protocol I, said that that provision required more detailed study. The ICRC had never considered the draft

Protocols as final. The United Nations General Assembly recognized, however, in resolution 3102 (XXVIII), that they provided an excellent basis for discussion at the Diplomatic Conference.

17. The terms defined in article 2 were general terms, to be found in various parts of the Protocol. Other less general definitions were given at the beginning of certain parts while yet others were given in the comments on some articles.

18. Sub-paragraph (a) defined the term "Conventions", which meant the four Geneva Conventions of August 12, 1949, relating to the Protection of War Victims. That was in fact the title under which they had been published in the United Nations Treaty Series and by which they were designated by the depositary. Sub-paragraph (b) merely listed the title of each Convention.

19. The CHAIRMAN invited delegations which had proposed amendments to sub-paragraphs (a) and (b) of article 2 to introduce them.

20. Mr. CUTTS (Australia), co-sponsor of the amendments in document CDDH/I/36 and Corr.1, said that the first amendment proposed reversing and combining sub-paragraphs (a) and (b); that amendment was no longer applicable in view of the explanations given by the representative of the ICRC, and his delegation was willing to withdraw it.

21. Mr. MBAYA (United Republic of Cameroon) said that it was preferable to keep the text as it stood, for the sake of logic.

22. Mr. de BREUCHER (Belgium), Mr. PRUGH (United States of America) and Mr. DRAPER (United Kingdom) were in favour of withdrawing the amendment.

23. The CHAIRMAN said that the Rapporteur would record the debate in his report and that the Drafting Committee would amend sub-paragraphs (a) and (b) if it deemed it necessary.

#### Sub-paragraph (c)

24. The CHAIRMAN invited the representative of the ICRC to introduce sub-paragraph (c) of article 2.

25. Mr. Antoine MARTIN (International Committee of the Red Cross) said that to his knowledge sub-paragraph (c) had been the subject of only one amendment (CDDH/I/36 and Corr.1), which proposed its deletion.

26. He acknowledged that that sub-paragraph was incomplete, in that it ought to have specified the nationality of those persons and objects entitled to protection, as had been mentioned at the XXIIInd International Conference of the Red Cross (paragraph 12 of CDDH/6 - report on the draft Additional Protocols to the Geneva Conventions of August, 12, 1949). However, in view of the difficulty of establishing a full list of the categories of persons and objects protected by the four Geneva Conventions and by the Protocol, the ICRC had preferred to give a very general, though

admittedly incomplete, definition, so as to show clearly that it was aware of the problem; it being understood that the Conference would undertake to make more specific provisions.

27. Replying to a question by the representative of the Soviet Union concerning the scope of sub-paragraph (c), he explained that, as was indicated in the comment on article 2 (CDDH/3, page 7), the draft Protocol in no way changed the provisions of the Conventions themselves, but merely supplemented them. Consequently, the protection provided by the Protocol applied to persons and objects covered by the Conventions, but was extended to new categories of persons and objects.

28. The CHAIRMAN invited the sponsors of paragraph 2 of document CDDH/I/36, proposing the deletion of article 2 (c), to introduce their amendment.

29. Mr. DRAPER (United Kingdom) said that he acknowledged the difficulty of the task assigned to the ICRC, which had had to prepare in a relatively short time a text including highly complex elements, and that he appreciated the effort which had been made to work out definitions. However, in view of the importance of the subsequent provisions of the Protocol which referred to "protected persons" and "protected objects", in particular articles 11 and 74, it would be better to delete the over-succinct definition given in article 2, and to define those two concepts in the appropriate articles of substance.

30. Mr. de BREUCKER (Belgium) and Mr. PRUGH (United States of America), as co-sponsors of the amendment, supported the statement by the representative of the United Kingdom.

31. Mr. MBAYA (United Republic of Cameroon) said that there was no need to prolong the discussion on which article would contain a definition of protected persons and objects, which in his view was a minor point. The essential point was the principle of protection. In the interests of efficiency, he therefore approved the deletion of sub-paragraph (c) and proposed that the Committee proceed with the discussion on article 2.

32. Mr. BIGAY (France) supported that proposal.

33. Mr. HAKSAR (India) said that as there was no ideal and complete definition, he preferred sub-paragraph (c) to be retained but amended to mention only the Protocol and Conventions, without referring to any specific part, section or article.

34. Mr. ULLRICH (Democratic Republic of Germany) pointed out an apparent difference in the Protocol between individual protection of persons (article 74), and collective protection of civilian populations referred to in part IV. Article 74 only provided for repression of grave breaches committed against protected persons, which might imply that any breach committed against a population as a whole, for example a large-scale bombardment, would not be considered as a grave breach. As that was a delicate problem, it would be advisable, in order to avoid ambiguity and to work out a comprehensive definition, to postpone any decision on that definition until article 74, which was of prime importance, had been approved.

35. Mr. GLORIA (Philippines) said that he considered sub-paragraph (c) superfluous as "protected persons" and "protected objects" were defined in several articles either explicitly or by means of examples. He therefore favoured the deletion of that sub-paragraph.

36. Mr. BARRC (Senegal) pointed out that, although the expression "protected persons" was used in some articles, it was not mentioned in others, and that if the penalties referred to in article 74 were to be applied in the event of breaches of the Protocol, the criteria governing protection of the various categories of person or object should be clearly specified. Too restrictive a definition should be avoided: it could well become out of date in a few years as a result of changes which might subsequently occur in the dangers arising from the development of weapons and methods of fighting.

37. The CHAIRMAN asked the sponsors of the amendment proposing the deletion of article 2 (c) whether they wished the Committee to decide the question immediately, or whether they would agree to defer a decision until the substance of the relevant articles had been considered.

38. Mr. DRAPER (United Kingdom), Mr. PRUGH (United States of America) and Mr. de BREUCKER (Belgium) agreed to the deferment of the decision.

39. The CHAIRMAN asked whether it was the general opinion of the Committee that article 2 (c) should be considered concomitantly with the relevant operative articles.

It was so agreed.

#### Sub-paragraphs (d) and (e)

40. Mr. Antoine MARTIN (International Committee of the Red Cross) stated that sub-paragraphs (d) and (e) were closely linked with article 5 of draft Protocol I. At the XXIInd International Conference of the Red Cross, the opinion had been voiced that the expression "is prepared to carry out the functions", in sub-paragraph (d), was too subjective and that the wording "has given its agreement to carry out", or "has agreed to carry out" was preferable.

41. Mr. de BREUCKER (Belgium) said that the object of proposed amendment CDDH/I/36 and Corr.1, so far as sub-paragraph (d) was concerned, was merely the substitution of "has agreed" for "is prepared", which was considered too familiar, and, in the French version, of the words "aux termes des Conventions et du présent Protocole" for "par les Conventions et par le présent Protocole".

42. Mr. KUSSBACH (Austria) informed the meeting that Austria, Finland, Sweden, Switzerland and the United Kingdom had submitted an amendment<sup>1/</sup> for an editorial change to article 2 (d).

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<sup>1/</sup> The proposed amendment was later circulated as document CDDH/45.

43. Mr. SHAH (Pakistan) suggested that consideration of article 2 (d) be deferred until the Committee had dealt with article 5.

44. Mr. ABDINE (Syrian Arab Republic) stated that his delegation had submitted an amendment to article 2 (d) (CDDH/I/62), proposing to replace the word "State" by "a person or an entity", for a regional organization, for example, should be able to act as a Protecting Power.

45. Mr. MILLER (Canada) said that a definition was hardly the proper place to specify that the State called upon to act as a Protecting Power should be ready to carry out those functions: that idea would be better placed in article 5.

46. Mr. Antoine MARTIN (International Committee of the Red Cross), referring to the remark by the representative of the Syrian Arab Republic, stated that Protecting Powers were a long-standing institution in international customary law relating to States: regional organizations were covered by the word "substitute" in article 2 (e).

47. Mr. KUSSBACH (Austria), Mr. KAKOLECKI (Poland) and Mr. MURILLO RUBIERA (Spain) suggested that consideration of sub-paragraphs (d) and (e) of article 2 be postponed until the Committee came to discuss article 5.

It was so agreed.

Proposed new sub-paragraphs (f) and (g) (CDDH/I/33)

48. Mr. CALERO-RODRIGUES (Brazil) asked the Committee not to consider his country's proposed amendment (document CDDH/I/33) to add sub-paragraphs (f) and (g) to article 2, until it had decided on the terms of article 1 of draft Protocol I.

It was so agreed.

Proposed new article 2 bis (CDDH/I/20)

49. Mr. SHAH (Pakistan) said that his delegation had introduced a proposed amendment (document CDDH/I/20) for the insertion of a new article 2 bis in draft Protocol I. The first paragraph of the new article repeated article 1 common to the four Geneva Conventions of 1949. Experience had shown that the obligation for the Parties to respect and to ensure respect for the Conventions was by no means always complied with: the draft Protocol should therefore reaffirm that obligation. Paragraph 2 of the new article specified the means of ensuring that the obligation would be fulfilled.

50. Mr. KAKOLECKI (Poland) said that the amendment submitted by Pakistan should be more precise, particularly with regard to the methods and procedures of ensuring respect for the Conventions in all circumstances.

51. Mr. de la PRADELLE (Monaco) said that he supported the amendment proposed by Pakistan.

52. Mr. Antoine MARTIN (International Committee of the Red Cross) said that proposals similar to those contained in the amendment submitted by Pakistan had been made at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in connexion with the interpretation of article 1 common to the Geneva Conventions. Some of the experts had considered that article 1 could be interpreted as laying upon the High Contracting Parties as a whole the collective responsibility for respecting and ensuring respect for the Conventions, while others inclined towards a more restrictive interpretation, according to which the obligation devolved upon each individual High Contracting Party, without any possibility for them as a body to ensure respect for the Conventions. The Red Cross advocated the wider interpretation (collective responsibility of the High Contracting Parties as a whole). Article 7 of the draft Protocol was the result of lengthy debate on the question.

The meeting rose at 5.50 p.m.





SUMMARY RECORD OF THE EIGHTH MEETING

held on Monday, 18 March 1974, at 10.15 a.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Proposed new article 2 bis (CDDH/1/20) (continued)

1. Mr. SHAH (Pakistan) said he wished to make a few more comments on his delegation's amendment (CDDH/I/20).
2. The usefulness of that proposal could not be denied: if a Power failed to carry out its obligations, there should be provisions whereby it could be made aware of its misdeeds and required to remedy them. For example, if a Power failed to observe the provisions of articles 113 and 132 of the Third Geneva Convention of 1949, there was as yet no way of inducing it to conform.
3. Furthermore, the new article 2 bis proposed by his delegation was in conformity with the spirit of the Conventions, since it restated article 1 common to the four Conventions, and reflected the purpose of article 70 of draft Protocol I. Moreover, it would strengthen article 7 of that Protocol: indeed, his delegation would like the meetings referred to in article 7 to consider not only the application of Protocol I but also that of the Conventions and perhaps even to deal with individual cases. Pakistan therefore believed that certain problems could be dealt with collectively at such meetings rather than on a bilateral basis, and to that end it had submitted an amendment to article 7 (CDDH/I/23) and had proposed a new article 7 bis (CDDH/I/27) and a new article 7 ter.
4. One delegation seemed to fear that the Pakistan amendment (CDDH/I/20) might introduce the concept of reprisals, but that was not the case: there was absolutely no question of taking measures against any party whatsoever.
5. Since the purpose of document CDDH/I/20 was to strengthen article 7, he suggested that its consideration should be deferred until it could be examined together with the proposals concerning that article (CDDH/I/23), article 7 bis (CDDH/I/27) and proposed new article 7 ter (CDDH/I/25).
6. The CHAIRMAN said that, in the circumstances, the Committee might proceed to consider article 3.
7. Mr. LIN Chia-sen (China) said that it would be useful to have a recapitulation of the decisions taken with regard to article 2.

Article 2 - Definitions (CDDH/1; CDDH/I/36 and Corr.1, CDDH/I/33, CDDH/I/62) (continued)

8. Mr. Antoine-MARTIN (International Committee of the Red Cross) reminded the Committee that there were no substantive objections to sub-paragraphs (a) and (b) of article 2, which had been referred to

the Drafting Committee for final recording. It had been decided to resume examination of sub-paragraph (c) when article 74 was considered. Sub-paragraphs (d) and (e) would be considered together with article 5.

Article 3 - Beginning and end of application (CDDH/1; CDDH/I/14)

9. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the article related only to the application of Protocol I and was not meant to supplement the provisions of the 1949 Geneva Conventions regarding the beginning and the end of their application (article 5 of the First and Third Conventions, and article 6 of the Fourth Convention). At the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held in 1972, the ICRC had questioned the need for a special provision on the subject in view of the supplementary nature of the draft Protocols. The experts had decided that a clause was required. While some of them considered that a simple reference to the relevant provisions of the Conventions would suffice, the majority had been in favour of entirely new rules, on the basis of which the ICRC had prepared its draft of article 3.

10. With regard to paragraphs 1, 2 and 3, he referred the Committee to the Commentary to the draft Protocol (CDDH/3) and pointed out that Committee III was currently engaged in slightly amending the definition of "military operations" which appeared in the commentary to article 3, paragraph 2.

11. It was stated in the Commentary that some experts had been in favour of adding a paragraph 4, but that the proposed paragraph had not been included in article 3 because its subject matter was already covered by article 65, paragraph 5.

12. Mr. VIEYTE (Uruguay) said that his delegation had already explained the reasons for its amendment (CDDH/I/14) in the general debate. The ICRC text of article 3 did not take realities sufficiently into account. Experience had shown that the protection of victims should be extended far beyond the cessation of military hostilities. The amendment should therefore be supported by all delegations.

13. Mr. MISHRA (India) said that his delegation had submitted two amendments to article 3, which had not yet been circulated.

14. The CHAIRMAN suggested that consideration of article 3 be deferred until all the amendments to it were available to the Committee.

It was so decided.

Article 4 - Legal status of the parties to the conflict (CDDH/I; CDDH/I/34, CDDH/I/43)

15. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing article 4, said that its object was to ensure better the fulfilment of the humanitarian aims of the Conventions and of Protocol I.

As in the case of the other articles, the ratio legis of article 4 was given in the Commentary, which also indicated the agreements expressly provided for in draft Protocol I.

16. The report on the study by the XXIInd International Conference of the Red Cross of the draft Additional Protocols (CDDH/6) stated on page 7 that it had been proposed to delete the words "or that of the territories over which they exercise authority"

17. The general rule in article 4 was reaffirmed in article 5, paragraph 4 of which related to the effects of designation and acceptance of Protecting Powers and of their substitute. The majority of the experts consulted were in favour of that reaffirmation, but others considered it to be superfluous.

18. Mr. CUFFS (Australia), introducing his delegation's amendment (CDDH/I/34) proposing the addition of the words "and territories" to the title of article 4, said that it was only a drafting change. Article 4 was related both to the parties to the conflict and to the territories over which they exercised authority, whereas the title mentioned only the parties to the conflict. The question could be referred to the Drafting Committee.

19. Mr. Antoine MARTIN (International Committee of the Red Cross), replying to a question by Mr. ABI-SAAB (Arab Republic of Egypt), said that the expression "or that of the territories over which they exercise authority" did not appear in the draft of article 4 prepared by the Conference of Government Experts at its second session. Bearing in mind recent events, the ICRC had considered it desirable to add those words in order to remove all doubts concerning the humanitarian objectives of the Conventions and of the Protocol under consideration.

20. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that an amendment to delete the expression in question was being prepared. In order to expedite the debate, it might be considered as an oral proposal.

21. Mr. LONGVA (Norway), introducing his delegation's amendment (CDDH/I/42) proposing the addition of two new paragraphs to article 4 said that the text should be considered in the light of amendment CDDH/I/11 and Add.1 to 3. There was no question of taking up a position on the legitimacy of armed struggles: the purpose of the proposal was simply to ensure the application of humanitarian law to all armed conflicts. No subjective criteria concerning the motives of armed conflicts should be introduced, but guarantees should be provided that the victims of armed conflicts, irrespective of the camp to which they belonged, should enjoy equal protection. Such humanitarian protection should not, however, encourage any action which would dismember sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples.

22. The Norwegian proposal had been submitted because the proposed amendments to article 1 had been referred to the Working Group to which that text could also be referred.

23. Mr. CUTTS (Australia) pointed out that certain parts of the Norwegian proposal were taken from a recent Advisory Opinion of the International Court of Justice. That proposal might well prove extremely useful in the Working Party's discussions of article 1. In particular, the first phrase of the proposed new paragraph 3 might facilitate agreement on article 1. The Norwegian amendment should therefore be referred to the Working Party.

24. With regard to the Soviet oral proposal, the Committee could consider it at the current meeting, but it would be desirable for the Soviet delegation to explain the reasons why it had been submitted.

25. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that the concluding phrase of the ICRC text of article 4 would have the effect of legalizing colonial possessions. Since that question was controversial and since it would be futile to open a long discussion on it, the best course would be to delete the phrase in question.

26. In his opinion the addition to the title of article 4 in the proposed Australian amendment raised a question of substance and could not simply be referred to the Drafting Committee.

27. Mr. KNITEL (Austria) said he thought that the Australian amendment could be referred to the Drafting Committee. With regard to the Soviet proposal, he was not sure that the principle laid down in article 4 applied only to the territories that the Soviet delegation had in mind. It did not seem advisable to refer the Norwegian amendment to the Working Group, which had already been given the heavy task of examining article 1. It would be better for the Committee to consider the Norwegian proposal when it received the Working Group's report.

28. Mr. KHATTABI (Morocco) said that the last phrase of article 4 could lead to confusion and could weaken article 2, paragraph 2, common to the four Geneva Conventions, which referred to cases of partial or total occupation of the territory of a High Contracting Party, as well as article 3, paragraph 3, of Protocol I, which related to the end of application of that Protocol in occupied territory. If an occupying Power saw fit to modify the legal status of all or part of the occupied territory, it could try to avoid applying the Conventions or Protocol I on the grounds that it was dealing with national territory. The last phrase of article 4 also appeared in article 3 of Protocol II, but in that context it applied to the parties to the conflict and not to the Contracting Parties. He therefore supported the Soviet proposal.

29. Mr. KAKOLECKI (Poland) said that the Australian amendment affected the substance of article 4, since it prejudged the wording of that provision. It would be irrelevant if the Soviet proposal was accepted. That proposal was judicious, since the status of the territories in question could not be settled by the Protocol. The Norwegian amendment, on the other hand, should be referred to the Working Group.

30. Mr. de la PRADELLE (Monaco) said there was no need to postpone the consideration of article 4, since that provision raised a question of principle on which the Committee could take a decision in principle without

prejudice to the substance. The rule set out in article 4 already appeared in paragraph 3 of article 3 common to the four Geneva Conventions. It embodied the principle of the separation of humanitarian from political considerations; the protection of victims of armed conflicts should be ensured regardless of any political consideration. The fact that that rule was to be examined in connexion with Protocol II should not prevent the Committee from adopting a position of principle forthwith.

31. Mr. MURILLO RUBIERA (Spain) said that, although the addition of the last phrase of article 4 was the result of praiseworthy effort, it raised difficulties which made it hard to accept the provision. With regard to the Soviet proposal, the last phrase of article 4 referred not only to colonial or neo-colonial situations, but also to situations that were perfectly in keeping with the principles of the Charter of the United Nations and of general international law. On the other hand, one purpose of the Norwegian amendment was to add to article 4 a seemingly unnecessary paragraph 2 which, besides being very long, was drafted in a form hardly suitable for an international instrument. Its second purpose was to add a third paragraph relating to territorial integrity and political unity, although that provision was necessary, it should not depend on respect for the equal rights of peoples and their right to self-determination. In view of the importance of that paragraph 3, it should be examined by the Committee, not referred to the Working Party.

32. Mr. LONGVA (Norway) said that, in proposing that his amendment should be forwarded to the Working Group, he had intended not to add to the task of that body, but, on the contrary, to facilitate it. The two proposed paragraphs were based on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)) and it was important that they should be referred to the Working Group.

33. Mr. BARRO (Senegal) expressed concern about the turn of the discussion. Was it wise to pursue work on the substance before knowing the outcome of the Working Group's deliberations on article 1? Other questions were about to be referred to that Group and the Committee was making little headway. It would have to reconsider the articles under discussion when it received the Working Group's conclusions.

34. Mr. ABI-SAAB (Arab Republic of Egypt) said that, of all the interpretations that could be placed upon article 4 of draft Protocol I, the only acceptable one was that which conformed to general international law; in other words, article 4 should reaffirm the principle laid down in The Hague regulations annexed to The Hague Convention No. IV of 1907. The article should therefore be worded in the same terms as those regulations. His delegation would submit an amendment to that effect.

35. Mr. CRISTESCU (Romania) said that article 4 should either contain the words "or that of the territories occupied by them", or else restate the terms of The Hague Convention. He therefore supported the amendment to that effect which was, moreover, in conformity with article 3, paragraph 3, of the draft Protocol, and also with article 2, paragraph 2, of the four Geneva Conventions.

36. On the whole, he approved of the ideas in the Norwegian amendment (CDDH/I/43). In the French version of paragraph 2, it would be better to use the United Nations Charter expression "le droit des peuples à disposer d'eux-mêmes" rather than "le droit à l'autodétermination".

37. Lastly, paragraph 3 of the amendment should refer to the whole of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.

38. Mr. QUENTIN-BAXTER (New Zealand) said that the Norwegian amendment to article 4 (CDDH/I/43) deserved careful consideration and should certainly be taken into account by the Working Party set up to consider article 1. Nevertheless, it should be borne in mind that the essential aim of article 4 was to lay down the fundamental principle that the application of the Conventions and of the Protocol would not affect the legal status of the parties to the conflict. It was therefore inappropriate for that article to include statements of legal doctrine of the kind contained in paragraph 3 of the Norwegian amendment. Moreover, it was not for a conference meeting outside the United Nations framework either to explain or to summarize United Nations instruments.

39. Mr. MBAYA (United Republic of Cameroon) said that paragraph 3 of the Norwegian amendment to article 4 (CDDH/I/43) did not appear to relate directly to the legal status of the parties to the conflict.

40. Mr. de BREUCKER (Belgium) stressed the importance of the principle set forth in article 4 of the draft Protocol. It might be advisable either to use the words "territories subjected to enemy occupation", or else to include a reference to article 42 of The Hague Regulations, annexed to The Hague Convention No. IV of 1907.

41. Mr. LONGVA (Norway) explained that the chief aim of the Norwegian amendment (CDDH/I/43) was to help to reach a compromise on article 1. It was not a final text, but one intended to facilitate the work of the Committee and of the Working Group.

42. Mr. RATTANSEY (United Republic of Tanzania) agreed that the Norwegian amendment should be referred to the Working Group because the fate of articles 3 and 4 was closely linked with the decision to be taken on article 1.

43. The CHAIRMAN suggested that the Norwegian amendment should be submitted to the Working Group in connexion with article 1. The Committee could vote on the Australian and Soviet amendments, and on the Egyptian amendment as soon as it was available.

44. Mr. MISRA (India) said that the Committee should not set aside the Norwegian amendment (CDDH/I/43) while discussing article 4, even if the amendment were referred to the Working Group in connexion with article 1.

45. Mr. DRAPER (United Kingdom) said that he shared the New Zealand representative's views and had no objection to the Norwegian amendment being used as a basis for discussing article 1 in the Working Group.

46. In reply to a question by Mr. REIMANN (Switzerland), the CHAIRMAN explained that the Committee would vote on the Australian (CDDH/I/34), Egyptian and Soviet amendments while the Working Group was still studying the Norwegian amendment. When that Group had finished its discussion of article 1 and if the Norwegian amendment was maintained, the Committee could put it to the vote or re-open the whole question.

Proposed new article 4 (bis) (CDDH/I/15)

47. Mr. CRISTESCU (Romania) drew the Committee's attention to his delegation's proposal (CDDH/I/15) for the insertion of a new article 4 bis, concerning the interpretation and application of the Protocol in accordance with the principles governing international treaties, as set forth inter alia in the 1969 Vienna Convention on the Law of Treaties.

The meeting rose at 12.25 p.m.





SUMMARY RECORD OF THE NINTH MEETING

held on Monday, 18 March 1974, at 3.20 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 3 - Beginning and end of application (CDDH/1; CDDH/I/14, CDDH/I/45, CDDH/I/46, CDDH/I/47, CDDH/I/48 and Add.1 and Corr.1 and Add.1/Corr.1, and CDDH/I/49) (continued)

1. Mr. SABEL (Israel), introducing amendment CDDH/I/45, said that all the provisions in article 3 concerning the beginning and end of the application of the Protocol should be examined carefully. One obvious lacuna was in the protection accorded to persons hors de combat, who might in certain cases require protection even after the "general close of military operations". The time restriction included in article 3, paragraph 2 of the ICRC text was not to be found either in The Hague Convention of 1907 concerning the Laws and Customs of War on Land or in the 1949 Geneva Conventions, which stipulated that protection should be accorded to persons hors de combat in all circumstances, at any time and in any place. The ICRC text would accordingly represent a retrograde step. Article 65, paragraph 5, which was limited in scope, in no way covered the cases referred to in the Israeli amendment.
2. Mr. DIXIT (India), introducing amendment CDDH/I/46, said that the first part of the amendment was designed to clarify the text and to bring it into line with the 1949 Conventions; the second part was intended to cover a case which was omitted from the ICRC draft of article 3.
3. Mr. ABDINE (Syrian Arab Republic), introducing amendment CDDH/I/47, said that the general close of military operations did not necessarily mean the end of an armed conflict.
4. Mr. KHAIRAT (Arab Republic of Egypt), introducing the amendment in document CDDH/I/48 and Add.1 and Corr.1 and Add.1/Corr.1. said that the first part of the amendment was intended to ensure that the provisions concerning the beginning and end of the application of the two Protocols and of the four Conventions should coincide, for otherwise discrepancies might arise. The second part of the amendment was designed to ensure that no sudden worsening of the treatment accorded to protected persons should occur after the close of military operations or the termination of occupation and that they should continue to enjoy all their rights and privileges. A proposal along the lines suggested had received a majority of votes during the Conference of Government Experts. In its Commentary (CDDH/3), the ICRC had expressed no objection to the addition of such a paragraph, but had considered that the case was already covered by article 65, paragraph 5 of draft Protocol I. That article, however, only referred to the nationals of States not bound by the Convention

and to the parties' own nationals, whereas the paragraph proposed in document CDDH/I/48 covered all protected persons. Moreover, it was not yet known what shape article 65 would assume after it had been considered by the Diplomatic Conference.

5. Mr. PRUGH (United States of America), introducing amendment CDDH/I/49, said that the purpose of the amendment was to consolidate the provisions concerning the beginning and end of the protection accorded by the Protocol to prisoners of war in a single paragraph 2 which, if adopted, would obviate the need for the existing paragraph 3. A further provision should, however, be added to cover the case of persons hors de combat, as suggested by Israel.

6. Mr. CUTTS (Australia) said that all the proposals designed to cover gaps in the existing ICRC text seemed constructive and, to some extent, to overlap; the various sponsors might confer together with a view to producing a single consolidated text. As the United States draft was the most comprehensive, it might serve as the main basis of an effort to combine the different proposals.

7. The CHAIRMAN proposed that the sponsors of amendments CDDH/I/45 to CDDH/I/49 should meet informally with the representative of the ICRC with a view to producing a revised version of article 3 for consideration at the Committee's next meeting.

It was so decided.

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

8. Mr. KHATTABI (Morocco) said that, in view of the state of progress of the work and the importance of the question under consideration, his delegation, together with other sponsors of United Nations General Assembly resolution 3053 (XXVIII), felt that the question dealt with in that resolution would be considered in more appropriate conditions at the second session of the Conference. To that end, his delegation and others had submitted a draft resolution that afternoon<sup>1/</sup>; once it had been circulated the draft resolution could be considered at a plenary meeting of the present session. He hoped that the draft resolution would be adopted by consensus.

9. The CHAIRMAN proposed that the procedure suggested by the representative of Morocco should be followed.

It was so decided.

Proposed new article 4 bis (continued)

10. Mr. CALERO-RODRIGUES (Brazil), referring to the new article 4 bis proposed by the Romanian delegation in document CDDH/I/15, doubted whether it should be included in draft Protocol I, since paragraph 2 of the new article enunciated principles which already appeared in the Charter of the United Nations.

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<sup>1/</sup> Later circulated as document CDDH/I/60.

11. Mr. SHAH (Pakistan) agreed with the representative of Brazil. The proposed article embodied provisions which might contradict some of the provisions of other articles of draft Protocol I. For instance, States which ratified the Protocol would be in duty bound under the provisions of article 33 to intervene in an armed conflict in order to prevent any violation of the provisions of that article. He therefore thought that the Romanian proposal needed further study and suggested that the Committee might consider it again after certain other provisions had been discussed and finally approved.

12. Mr. ABDINE (Syrian Arab Republic) said that, since the provisions suggested in the proposed new article were implicit in all international agreements, it seemed inadvisable to make such specific provisions in draft Protocol I. He therefore appealed to the representative of Romania to withdraw his proposal.

13. Mr. CRISTESCU (Romania) said that, although he was not convinced that there would be no advantage in having the text he had proposed included in draft Protocol I, he would withdraw it. He pointed out, however, that paragraph 1 of the proposal was an attempt to prevent the possibility of the extension of an armed conflict. Paragraph 2 was designed to include in the Protocol principles of international law that were the basis of the interpretation of international treaties. Such principles had not so far been incorporated in draft Protocol I and did not appear in the Geneva Conventions of 1949, in General Assembly resolution 2625 (XXV) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", or in the 1969 Vienna Convention on the Law of Treaties. His delegation therefore reserved the right to revert to the matter later, since it considered that there was an urgent need for the provisions suggested to be included in draft Protocol I.

Article 4 - Legal status of the parties to the conflict (CDDH/I/43)  
(continued)

14. Mr. LIN Chia-gen (China) asked whether the amendment submitted by Norway to article 4 (CDDH/I/43) was to be discussed in connexion with article 4 or, as had been suggested that morning, submitted to the Working Group on article 1. It seemed to him contradictory that the same proposal should be submitted under two different articles. He also asked for enlightenment on the terms of reference of that Working Group, since he had understood that the Group would deal only with amendments already submitted to the Committee.

15. Mr. MISHRA (India) said that he had understood that the Norwegian amendment was not being referred formally to the Working Group, but that it could be borne in mind both by the Working Group on article 1 and by the Committee in its discussions on article 4.

16. The CHAIRMAN confirmed that the amendment had been submitted as a basis for both discussions and that the terms of reference of the Working Group were to discuss all the proposed amendments to article 1 and prepare a consolidated text. All delegations were free to make proposals which could facilitate the work of that Group.

17. Mr. LONGVA (Norway) explained that the amendment was merely a working instrument and would in any case be discussed by the Committee after the Working Group had submitted its report.

18. Mr. LIN Chia-sen (China) expressed reservations on the question.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE TENTH MEETING

held on Tuesday, 19 March 1974, at 10.20 a.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 3 - Beginning and end of application (CDDH/1; CDDH/I/14, CDDH/I/45, CDDH/I/47, CDDH/I/48 and Add.1 and Corr.1 and Add.1/Corr.1, CDDH/I/49, CDDH/I/63 and Corr.1) (continued)

1. Mr. HAKSAR (India), speaking on behalf of the Working Group, said that it had drawn up a new version of paragraph 1 of article 3, taking into account the proposed amendments. The new version bore the symbol CDDH/I/63 and Corr.1. The Working Group had likewise studied paragraphs 2 and 3 of article 3, together with the proposed new paragraph 4, but had not arrived at any conclusion concerning them.
2. Mr. CUTTS (Australia) said that he had hoped for more complete results from the Working Group. The Committee could postpone its consideration of article 3 in order to give the Working Group time to continue its work on that article.
3. Mr. HAKSAR (India) said that he would prefer the article to be considered immediately, since all the delegations which had submitted amendments were present. Moreover, the points of view did not appear to be very divergent.
4. Mr. CUTTS (Australia) said that the amendments to paragraph 1 were not incompatible; they could be approved en bloc.
5. The CHAIRMAN announced that another amendment (CDDH/I/43 and Add.1 and Corr.1 and Add.1/Corr.1) had been received in connexion with paragraph 1. He asked whether its sponsors were willing to accept the version given in document CDDH/I/63 and Corr.1.
6. Mr. EL GHONEMY (Arab Republic of Egypt) reserved the right to revert to the question, since the field of application of the new amendment largely depended on the definitive version of article 1. Apart from that, his delegation had no objection to the solution proposed in document CDDH/I/63 and Corr.1.
7. Mr. MBAYA (United Republic of Cameroon), supported by Mr. BIGAY (France) wondered why the word "situation" had been replaced by the word "case" in the English version of document CDDH/I/63 and Corr.1 which was the only text at present before the Committee. In French the turn of phrase would be rather inelegant.
8. Mr. MURILLO RUBIERA (Spain) said that the same difficulty would arise in the case of the Spanish version.

9. Mr. DIXIT (India) pointed out that the proposal submitted by his delegation in document CDDH/I/46 already suggested replacing the word "situation" by the word "case". The word "situation" lacked precision and clarity, and might give rise to difficulties. It had seemed more judicious to use the word "case", as in article 2 common to the Geneva Conventions of 1949.
10. Mr. DRAPER (United Kingdom) said that he was not convinced that it would be a happy solution to replace the word "situation" by the word "case". Admittedly it was used in article 2 common to the Geneva Conventions, but the ICRC itself had thought it better to use the word "situation", which had a wider meaning. In English, too, the phrase "from the outset of any case" was not very elegant. He would like to know how the Indian representative proposed to bring the new version of paragraph 1 into line with the other two paragraphs of article 3.
11. Mr. PARTSCH (Federal Republic of Germany) wondered whether the reference to the Conventions in the new version of paragraph 1 would not give rise to difficulties.
12. Mr. KNITEL (Austria) shared the doubts of the previous speaker. The word "situations" was used in article 141 of the Third Geneva Convention and was therefore in keeping with the terminology of the Conventions.
13. Mr. DIXIT (India), reverting to what had been said by the United Kingdom representative, pointed out that the words "from the outset" - which, moreover, were not used in amendment CDDH/I/46 - were used in article 6 of the Fourth Convention. The terminology of the Conventions should be followed as far as possible. His delegation would nevertheless have no objection to replacing the word "outset" by the word "beginning".
14. The meaning of the word "case" was sufficiently broad, since it covered all the situations referred to in the Conventions.
15. Mr. PRUGH (United States of America) fully endorsed the view of the Indian representative.
16. Mr. CLARK (Nigeria) said that he, too, entertained some doubts with respect to the terminology used in amendment CDDH/I/63 and Corr.1
17. Baron van BOETZELAER van ASPEREN (Netherlands) said that the new amendment gave rise to language difficulties. That being so, the Indian and United States representatives might perhaps agree to revert to the word "situation".
18. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that the reference to the Conventions was a question of substance which the Committee should consider in plenary session. The Conventions included provisions concerning the beginning and end of application, and the amendment under discussion would amount to an amendment of those provisions.
19. Mr. CALERO-RODRIGUES (Brazil) said that the word "situation" seemed preferable to "case". In any event, the wording of articles 1 and 3 should be uniform. The Committee might keep both words for the time being, pending a decision concerning article 1.

20. Mr. ECONOMIDES (Greece) said that his delegation had no objection to the drafting amendments that had been proposed, although it preferred the word "situation" to "case". On the other hand, it considered the reference to the Conventions to be an amendment of substance.
21. Mr. Antoine MARTIN (International Committee of the Red Cross) explained that the draft prepared by the ICRC made no mention of the Conventions because there were already provisions in the latter concerning the beginning and end of their application (article 5 of the First and Third Conventions; article 6 of the Fourth Convention). A reference to the Conventions in article 3 would have meant that a revision of some kind had been made to the relevant provisions of the Conventions.
22. Mr. FRUCHTERMAN (United States of America) said that the Working Group had replaced the words "in peacetime" by "at all times", since it was sometimes difficult to establish exactly what was peacetime.
23. With regard to the words "beginning" and "outset", the Committee could decide to place those words between square brackets, leaving it to the Drafting Committee to decide which of the words was the more appropriate. The Working Group had retained the word "outset" in order to keep to the wording of article 6 of the Fourth Convention.
24. His delegation preferred the word "case" to "situation", but would accept the latter if the Drafting Committee decided to retain it.
25. Mr. KHAIRAT (Arab Republic of Egypt), referring to the report of the 1972 Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, pointed out that most of the experts had agreed to the Conventions being mentioned. Furthermore, the ICRC itself referred to the Conventions in the articles of part I of the draft Protocol, with the exception of article 3.
26. The CHAIRMAN suggested that the Committee should take a decision on the text adopted by the Working Group, in the following form:
- "In addition to the provisions applicable at all times, the Conventions and the present Protocol shall apply from the outset  from the beginning/ of any case  situation/ mentioned in article 2 common to the Conventions."
27. Mr. CLARK (Nigeria) said that the word "applicable" should also be included in square brackets in the English version.
28. Mr. PICNET (Switzerland), Mr. PARTSCH (Federal Republic of Germany), Mr. LYSAGHT (Ireland) and Mr. MURILLO RUBIERA (Spain) said that they were in favour of the original ICRC text of article 3.
29. Mr. de BREUCKER (Belgium) said that his delegation, too, preferred the original text of article 3, except that the words "at all times" were perhaps clearer.
30. Mr. KAPOLECKI (Poland), Mr. BARRC (Senegal) and Mr. LIN Chia-gen (China) said that they were unable to take a position on article 3 until a decision had been taken on article 1.

31. Mr. CLARK (Nigeria) and Mr. DIXIT (India) suggested that the text of the Working Group should be referred to the Drafting Committee, with the various alternatives shown within square brackets.
32. Mr. QUENTIN-BAXTER (New Zealand) and Mr. MURILLO RUBIERA (Spain) pointed out that the alternatives affected not merely the wording of the article but also its substance. It was not for the Drafting Committee to touch upon substance.
33. Mr. ECONOMIDES (Greece) said that, in view of the explanation given by the ICRC expert, his delegation reserved its position with regard to the mention of the Conventions.
34. Mr. de GERLICZY-BURIAN (Liechtenstein) said that he would prefer the ICRC text to be retained in its present form, since the attempts made to improve on it raised numerous difficulties. It might perhaps be preferable to replace "in peacetime" by "at all times", although such an amendment would not change the text much.
35. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that his delegation had no objection to the inclusion of a reference to the Conventions.
36. Mr. QUENTIN-BAXTER (New Zealand) said that if it was certain that the final provisions, particularly articles 30 and 31, would not be redrafted, no question of substance would arise.
37. Mr. KAKOLECKI (Poland) felt that it would be desirable to place the reference to the Conventions in square brackets, since the decision on that point depended on the field of application of draft Protocol I.
38. Mr. LEGNANI (Uruguay) said that the paragraph under consideration would be clearer and more precise if the words "at all times" were accepted. It should furthermore be specified which provisions were applicable at all times.
39. Mr. LYSAGHT (Ireland) pointed out that, if article 1 extended the field of application of draft Protocol I, it would be essential to amend the ICRC text of paragraph 1 of article 3 accordingly.
40. Mr. MBAYA (United Republic of Cameroon) asked whether it could happen that provisions applicable in peacetime were not applicable in times of conflict.
41. Mr. Antoine MARTIN (International Committee of the Red Cross) said that in using the expression "in peacetime" the ICRC had based itself on the terminology of the Geneva Conventions. Some articles of those Conventions were in fact applicable in peacetime, namely, most of the final provisions and a number of other provisions such as the article on the dissemination of the Conventions. Provisions applicable in peacetime were obviously applicable also in times of armed conflict.



42. Mr. de la PRADELLE (Monaco) pointed out that articles 10 and 23 of the First Convention were examples of provisions applicable both in peacetime and in times of armed conflict.

43. After a procedural debate, the CHAIRMAN put to the vote the question whether to postpone the vote on the choice of the text which would serve as a basis for discussion when the Committee came to consider article 3, bearing in mind the report of the Working Group on article 1. The texts in question were that proposed by the ICRC and that drawn up by the Working Group.

The Committee decided by 55 votes to 11 to postpone the vote on the choice between the two basic texts proposed for paragraph 1 of article 3.

The meeting rose at 12.20 p.m.



SUMMARY RECORD OF THE ELEVENTH MEETING

held on Wednesday, 20 March 1974, at 10.15 a.m.

Chairman: Mr. HAMERO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/I) (continued)

Article 2 - Definitions (CDDH/I, CDDH/45; CDDH/I/29, CDDH/I/36 and Corr.1, CDDH/I/44 and Corr.1, CDDH/I/62) (continued)\*

Sub-paragraphs (d) and (e) (continued)\*\*

Article 5 - Appointment of Protecting Powers and of their substitute (CDDH/I; CDDH/I/9, CDDH/I/13, CDDH/I/24, CDDH/I/31, CDDH/I/50, CDDH/I/51, CDDH/I/52, CDDH/I/54, CDDH/I/61, CDDH/I/62, CDDH/I/64)

1. The CHAIRMAN said that since the discussion at the tenth meeting had shown that some delegations were not in a position to comment on articles 3 and 4 until the field of application of the Protocol had been definitively established in article 1, he would invite members of the Committee to consider article 5 of draft Protocol I. He recalled that at an earlier meeting the Committee had decided to consider article 5 in conjunction with article 2 (d) and (e), which gave definitions of the terms 'Protecting Power' and 'substitute'.
2. Miss PERRET (Secretary of the Committee) said that the following amendments had been submitted to article 5: documents CDDH/I/9, CDDH/I/13, CDDH/I/24, CDDH/I/31, CDDH/I/50, CDDH/I/51, CDDH/I/52, CDDH/I/54, CDDH/I/61, CDDH/I/62, and CDDH/I/64. Amendments to article 2 (d) and (e) were to be found in documents CDDH/I/29, CDDH/I/36, CDDH/I/44, CDDH/I/62 and CDDH/45.
3. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing article 5, said that the article related to the question of the machinery for the application of the 1949 Geneva Conventions. At the early plenary meetings of the Conference, several delegations had drawn attention to the need to strengthen that machinery. The application of the Geneva Conventions depended partly on the Parties to those Conventions. In particular it was for each party to the conflict to decide individually how the Conventions were to be applied. However, the application and supervision of the 1949 Conventions were not left entirely to the unilateral appreciation of the Parties to the Conventions. The Conventions contained provisions for specific institutions known as Protecting Powers to facilitate and guarantee the impartial supervision of their application. The system of self-scrutiny was therefore supplemented by the institution of a third independent scrutiny, as laid down in article 2 common to the Conventions (article 9 of the Fourth Convention). The term 'Protecting Power' was defined in article 2 (d)

\* Resumed from the eighth meeting.

\*\* Resumed from the seventh meeting.

of draft Protocol I. The commentary on that sub-paragraph described the functions to be undertaken by the Protecting Powers for the purposes of the Conventions and of draft Protocol I.

4. For various reasons, which the ICRC had outlined in its preliminary documentation, the application machinery established in 1949 had not worked satisfactorily. The ICRC had therefore sent to all the States Parties to the Conventions a questionnaire concerning measures intended to reinforce the implementation of these Conventions. The Conference of Government Experts had given the problem detailed study and general agreement had been reached on some points. The experts, like the Governments which had replied to the questionnaire, had been in favour of retaining and reinforcing the system of Protecting Powers. The General Assembly of the United Nations had expressed the same view in a number of resolutions. The experts had considered it advisable to reaffirm the obligation incumbent on each Party to the conflict to designate a Protecting Power at the beginning of any situation referred to in article 2 common to the Conventions. On the other hand, the experts had considered that there should be no obligation to accept the Protecting Power thus designated, since neither the designation nor the acceptance of a Protecting Power could be settled by an automatic procedure regardless of the consent of the Parties to the conflict. Lastly, the great majority of the experts, like the Governments which had replied to the questionnaire, had considered that the procedure whereby the ICRC would be appointed as substitute for a Protecting Power should be strengthened and simplified.

5. Various amendments to article 5 had been submitted at the XXIInd International Conference of the Red Cross, as was mentioned in paragraphs 14 to 19 of the report of that Conference (CDDH/6). One proposal, in particular was that paragraph 3 of article 5 should be replaced by another providing, in the event of failure to appoint a Protecting Power, for the activities of a humanitarian organization such as the ICRC to be appointed by one party to the conflict and recognized by the other or, alternatively, appointed by the United Nations or by a Conference of High Contracting Parties.

6. Finally, it was pointed out that paragraphs 24 to 31 of the Memorandum submitted by non-governmental organizations to the present Conference dealt with the implementation of humanitarian conventions.

7. Following a short procedural discussion in which Mr. SHAM (Pakistan), Mr. CRISTESCU (Romania), Mr. de BREUCKER (Belgium) and Mr. DRAPER (United Kingdom) took part, the CHAIRMAN invited the sponsors of the amendments to article 2 (d) and (e) to introduce those amendments. It would be advisable for the Committee subsequently to consider article 5 paragraph by paragraph and for the sponsors of amendments to those paragraphs to introduce them as the Committee took up each paragraph.

8. Mr. de BREUCKER (Belgium), introducing the amendments to article 2 (d) and (e) (CDDH/I/36 and Corr.1), on behalf of the sponsors, said that the Geneva Conventions provided no definition of the term "Protecting Power", which had its origin in customary law. According to the definition provided by the ICRC in article 2 (d), the State designated as Protecting Power

should be "willing" to carry out the functions assigned to a Protecting Power under the Conventions and Protocol I. The word "willing" was not a suitable legal term and might be replaced by "has agreed" or "is prepared to", words implying not only consent but readiness to carry out the functions in question.

9. Article 2 (e) gave a definition of the term "substitute", already in use in the system introduced in 1949. According to the ICRC definition, that term meant an "organization" which would act in place of the Protecting Power for the discharge of all or part of its functions. The sponsors of the amendment in document CDDH/I/36 and Corr.1 considered it preferable to replace the word "organization" by "impartial humanitarian organization". Indeed, according to article 5 of draft Protocol I, the Protecting Power was to ensure the application of the Conventions and the Protocols. It was therefore necessary that the substitute should be both humanitarian and impartial in the opinion of both Parties to the conflict. That wording might lead to the designation of all kinds of organizations such as the ICRC, the Office of the United Nations High Commissioner for Refugees, certain United Nations bodies or one or another non-governmental organization.

10. Mr. ABDINE (Syrian Arab Republic), introducing his delegation's amendments to article 2 (d) and (e) (CDDH/I/52), pointed out that in the meaning of article 2 (d) the term "Protecting Power" applied solely to a State. In view of the difficulties which had arisen in implementing the system of Protecting Powers, it might perhaps be advisable to allow the parties to a conflict the freedom to choose from among other entities, as was the case when they resorted to arbitration. The Syrian proposal was that the parties concerned should be free to choose a person or an entity as a "Protecting Entity". Since it was the consent of the parties to the conflict which mattered, there could be no reason to limit the choice to States not engaged in the conflict.

11. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing article 5, paragraph 1, of draft Protocol I, pointed out that that provision reaffirmed the obligation incumbent on every party to the conflict, by virtue of the Conventions, to designate a Protecting Power within the meaning of article 2 (d) of draft Protocol I.

12. If diplomatic relations were broken off between the parties to the conflict, then the mandate of Protecting Power under the Conventions and the Protocol was automatically by law vested in the third State, acceptable to the receiving State, which might already have been entrusted by the sending State - in accordance with customary international law or with article 45 of the 1961 Vienna Convention on Diplomatic Relations<sup>1/</sup> - with the protection of its interests and those of its nationals and which had been accepted by the receiving State. A party to the conflict wishing to entrust to different third States the "Vienna mandate" and the "Geneva mandate" should therefore make known expressly and immediately its position. That provision had been introduced in the light of recent experience. By a large majority, the experts consulted had considered that the designation and acceptance of a Protecting Power required agreement between the two parties to the conflict and the third State designated.

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<sup>1/</sup> United Nations publication, Sales No.: 62.X.1.

13. The Conference of Government Experts had had before it a number of proposals containing fixed time-limits for the designation of a Protecting Power and for the acceptance of such designation. In conformity with the wishes of the majority of the experts, the ICRC had decided on flexible indications, such as "from the beginning of any conflict" or "without delay". A precise time-limit, however, was proposed in article 5, paragraph 2.

14. Mr. KUSSBACH (Austria) introduced, on behalf of the sponsors, the amendments in document CDDH/45, which aimed at harmonizing the terminology of draft Protocol I, taking into account the terminology employed in the Conventions and the opinions expressed by the Government experts. One of those amendments referred to article 2 (d) of draft Protocol I. He emphasized that that amendment in no way affected the substance of article 2.

15. Mr. CRISTESCU (Romania) introduced the amendments to article 5 contained in document CDDH/I/13, which were designed to retain and strengthen the role of Protecting Powers. That important question had been the subject of considerable controversy at the 1949 Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, and the pertinent provisions of the Conventions had been accepted with reservations by some delegations. It was important to avoid coming up against the same difficulties as had been encountered in 1949. It had to be acknowledged that subsequently the system of Protecting Powers had not worked well during international conflicts, particularly those involving small countries. The financial and economic implications of the system, particularly for developing countries, must not be overlooked. Moreover, the desire to ensure respect for the sovereignty of States explained the reservations that had been made against the Protecting Powers system. The object of the amendments in document CDDH/I/13 was to eliminate all automatic procedures in the functioning of the system, since its automatic character might be contrary to the wishes of States. To sum up, the amendments were designed to base the system on the agreement and good will of States. The advantage of the proposed paragraph 2 was that it enabled the United Nations to take the initiative, if necessary, in designating a Protecting Power.

16. In conclusion, he said that his delegation accepted the proposal in document CDDH/45 concerning article 2.

17. Mr. SHAH (Pakistan) pointed out that the amendments proposed by his delegation to article 5 (CDDH/I/24) included two new paragraphs (paragraphs 1 and 2) which were designed to strengthen the role of the Protecting Powers and to empower them to ensure the application of the Conventions and the Protocol. Paragraphs 3 and 4 of the amendments were almost identical with the paragraphs in draft Protocol I, save for the fact that under the amendment the parties would be obliged to justify their refusal to accept the designation of a Protecting Power. One delegation had suggested that the adjective "neutral" in paragraph 4 of the amendments should be replaced by "impartial"; the Pakistan delegation had no objection to that. As far as paragraph 3 of article 5 was concerned, he preferred proposal II (CDDH/1, page 4).

18. Mr. ABDINE (Syrian Arab Republic) said that in the amendments submitted by his delegation to article 5 (CDDH/I/62) the word "Power" had been replaced by the word "Entity" in order to bring the wording into line with that of the amendment to article 2 in the same document.
19. Part of a sentence in paragraph 1 of article 5 of the draft Protocol had been deleted because it implied too great a degree of automatic procedure.
20. In paragraph 2, the word "unjustified" had been deleted, since it could lend itself to various interpretations. Paragraph 3 provided for cases in which it had not been possible to designate a Protecting Entity. In such a situation, Syria would advocate a certain degree of automatic procedure in designating the Entity; that paragraph would also have the advantage of creating a mechanism to which recourse could be had in certain difficult cases in which the ICRC might have to intervene.
21. Mr. de BREUCKER (Belgium) pointed out that paragraph 2 of the amendments to article 5 in document CDDH/I/13 duplicated paragraph 3 of article 5 of the draft Protocol.
22. With respect to the Pakistani amendment (CDDH/I/24), he questioned the advisability of the last phrase in paragraph 2, which left it to the Protecting Power to draw the attention of the international community to continuing violations; that was too wide a mandate, more particularly when the Protecting Power was designated by a single Party; and it would entail such heavy responsibilities that very few States would accept them.
23. The Syrian amendment (CDDH/I/62) came near to the views of the Belgian delegation, but the use of the word "Entity" seemed superfluous, since the notion of a substitute already appeared in the Conventions.
24. Paragraph 1 of article 5 of the draft Protocol was acceptable, but it could be shortened, particularly as several delegations would like the phrase "which has not already entrusted ... of its nationals ..." to be deleted. His delegation had no objection to its deletion.
25. Belgium intended to submit an amendment to define the functions of the Protecting Power strictly, precisely and realistically.
26. Mr. IJAS (Indonesia) said that the smooth working of the system of Protecting Powers could not be ensured if a degree of automatic procedure was introduced into its application; the agreement of the parties to the conflict appeared to be indispensable. Proposal 1 for article 5, paragraph 2 appeared to meet that condition, but if one of the parties to the conflict refused to accept the proposed substitute, the United Nations could designate an international body with the agreement of the parties. He would therefore suggest that, if the Romanian delegation had no objection, article 5, paragraph 3 of the draft Protocol could be replaced by the proposed paragraph 2 of the amendments in document CDDH/I/13, with the word "humanitarian" replaced by the word "international".

27. Mr. CHOWDHURY (Bangladesh) drew attention to his delegation's amendment to article 5, paragraph 3 (CDDH/I/61), which would allow the ICRC to assume the functions of a substitute independently of the agreement of the parties to the conflict. Such an amendment would avoid a great many difficulties if a party refused to agree on the role of the ICRC.

28. Mr. WHANG (Republic of Korea) said that his delegation found article 5 of draft Protocol I acceptable in general. Experience had shown that the application of the existing rules concerning the supervisory mechanisms was not entirely satisfactory. For that reason, the United Nations General Assembly at its twenty-sixth session (resolution 2352 (XXVI)) and at its twenty-seventh session (resolution 3032 (XXVII)) had invited the ICRC to devote special attention to the need to ensure better application of existing rules relating to armed conflicts, including the need for strengthening the system of Protecting Powers; the Government Experts, too, had stressed that need.

29. His delegation supported paragraphs 1 and 2 of article 5 of the draft Protocol and found them completely realistic. With respect to paragraph 3, it took the view that the appointment of a substitute should be automatic and should not depend on the consent of the Parties. Alternative proposal II therefore seemed the most suitable, but he would suggest that the words "without delay" should be inserted between "shall" and "accept".

30. Mr. KAKOLECKI (Poland) drew the Committee's attention to his delegation's amendment (CDDH/I/29) with respect to the definition of the term "substitute". The definition it proposed placed the emphasis on the guarantee of impartiality and efficacy on the part of the organization acting in place of a Protecting Power and stressed the fact that the task of acting as substitute should be entrusted to it by the Parties involved in the conflict, for the substitute could not discharge its functions impartially and effectively without the agreement of the Parties to the conflict. In that respect, the aim of the Syrian amendment was similar to that of his delegation.

31. His delegation, too, thought that the words "or unjustified delay" in paragraph 2 of article 5 should be deleted, as also the phrase "which had not already entrusted the protection of its interests and those of its nationals to a third State" in paragraph 1 of the same article.

32. Mrs. HELLER (Mexico) said that her delegation favoured proposal I of the ICRC text of paragraph 3 of article 5. Mexico would be ready to accept as a substitute any international institution or body proposed or accepted by the parties to the conflict, such as, for instance, the United Nations. The amendment to article 5 proposed by Romania (CDDH/I/13) was the one her delegation considered most suitable. Nevertheless, it would be well to specify that the United Nations itself could act as substitute: the end of paragraph 2 of the Romanian proposal might therefore be amended to read: "... or, where appropriate, the United Nations or a body designated and recognized by that Organization...".



33. Lastly, her delegation supported the Indonesian amendment to replace the words "a humanitarian body" by the words "an international body".

34. Mr. PICTET (Switzerland) said that his delegation favoured the ICRC text of article 5. It supported, in particular, the provision in paragraph 1 whereby the Protecting Power designated in peacetime would be fully entitled to exercise its mandate from the outbreak of hostilities, in the absence of any specific statement to the contrary by the accrediting State. That was a logical assumption, since the co-existence of two different Protecting Powers would give rise to difficulties. Switzerland was also in favour of the procedure of exchanging lists, as set forth in paragraph 2 of article 5. As far as paragraph 3 was concerned, it preferred proposal II. His delegation could accept any amendment which would further strengthen the provisions of the 1949 Conventions in a realistic way and would respect the unity of concept and of terminology of those Conventions.

35. Mr. QUACH TONG DUC (Republic of Viet-Nam), referring to his delegation's amendment (CDDH/I/9), said that it was necessary to provide a remedy for situations arising from the lack of a Protecting Power when the parties to a conflict could not agree: that was why his delegation preferred proposal II for article 5, paragraph 3, (CDDH/1, page 4).

36. Baron van BOETZELAER van ASPEREN (Netherlands) said he found the text of article 5 as drafted by ICRC perfectly acceptable.

37. From the outbreak of an international armed conflict, each party to the conflict had a dual obligation: namely, to appoint a Protecting Power and to accept one. Both parties should try to reach agreement, and that implied the obligation of the party accepting the Protecting Power to give that Power full facilities for the exercise of its functions. That aspect could perhaps be made more explicit.

38. With regard to paragraph 2 of article 5, the expression "In the event of disagreement or unjustified delay" might call into question the propriety of the ICRC's offer of its good offices. It might be better if the ICRC were given the right to offer its good offices from the beginning of a situation in which the Geneva Conventions were applicable; in other words, from the moment the parties to the conflict were required to negotiate. In that way the ICRC would be an acceptable intermediary in a situation where negotiation was likely to prove difficult; thus the procedure for appointing a Protecting Power would be accelerated. Moreover, by taking part in the negotiations, ICRC would be in a position to determine, with reasonable objectivity, the time at which agreement between the parties would no longer be possible. The parties to the negotiations could also decide to ask ICRC immediately to serve as a substitute pending the outcome of the negotiations.

39. His delegation would therefore support any amendment to paragraph 2 of article 5 which specified that, from the beginning of a situation as referred to in article 2 common to the four Conventions, the ICRC could use its good offices and mediate between the Parties to the conflict with a view to the designation of a Protecting Power.

40. So far as paragraph 3 of article 5 was concerned, his delegation preferred proposal II, although the text made no provision for cases in which the Protecting Power itself might subsequently become involved in the conflict or be no longer able to exercise its functions effectively. In such cases it would be better if the Parties to the conflict were obliged to accept the ICRC offer to assume the task of substitute for the Protecting Power until such time as another Protecting Power or substitute had been appointed and accepted or until the Protecting Power was once more in a position to exercise its functions effectively, without prejudice, of course, to article 10 of the First, Second and Third Geneva Conventions and article 11 of the Fourth.

41. Unlike other international organizations, the ICRC could play a unique part, one in which it could not be replaced by any other organization. If necessary, it could call on the assistance of other substitutes, provided that the parties to the conflict were in agreement on that point. It was therefore possible - and at times desirable - that several substitutes would be operating at one and the same time. His delegation shared the views of the Austrian delegation on that point.

42. Mr. RECHETNJAK (Ukrainian Soviet Socialist Republic) said that his delegation was not in favour of the automatic nature of the designation, and especially the acceptance, of the Protecting Powers.

43. With regard to paragraph 1, article 5 of the draft Protocol, his delegation did not agree with the views expressed by the representative of the ICRC and thought that the "Vienna mandate" and the "Geneva mandate" were quite different. It therefore proposed the deletion, in paragraph 1, of the passage "which has not already entrusted the protection of its interests and those of its nationals to a third State".

44. With regard to the Pakistani amendment (CDDH/I/24), his delegation shared the concern of the Belgian delegation. Paragraph 2 of that amendment stated that the Protecting Power might undertake "any intervention": that ran counter to the basic principles of international law which forbade the use or the threat of force. Paragraph 1 laid down that the Conventions and the Protocol were to be applied "under the scrutiny" of the Protecting Powers; such scrutiny was not part of the functions of a Protecting Power. Finally, paragraph 4 implied that acceptance of the Protecting Power was automatic; a Protecting Power appointed by a party to the conflict could not exercise its functions effectively if it did not enjoy the full confidence of the other Party.

45. Mrs. CHEVALLIER (Holy See) said that her delegation shared the views of the Belgian representative, to the effect that the concept of a substitute should be amplified within the framework of article 2 (e) of the draft Protocol.

46. It would also like to see paragraph 3 of article 6 of the draft Protocol amplified and provision made for the possibility of designating an organization to collaborate with, or assist, the substitute. The task of such a collaborating or assistant organization would be to help the substitute in its mission, to co-operate with it and, if necessary, to replace it in one or more of its functions.

47. It went without saying that the organization collaborating with, or assisting, the substitute must meet all the conditions required for such a function, notably, the possession of adequate machinery and experience.

48. In addition to the organizations mentioned as examples by the Belgian representative, there was the Sovereign Order of Malta, whose humanitarian tradition went back several centuries; moreover, it was a subject of international law and was recognized by more than 40 Governments.

49. Mr. ABU-GOURA (Jordan), introducing amendment CDDH/I/44 and Corr.1 to article 2, said that the text of article 2 (e) of the draft Protocol did not in any way improve upon that of article 10 of the first three Geneva Conventions or that of article 11 of the Fourth Convention; it seemed to him that it would be preferable for all the High Contracting Parties, especially those under occupation, that the substitute should be defined as an organization exercising, with all guarantees of impartiality and effectiveness, the functions of the Protecting Power.

50. Mr. MAROTTA RANGEL (Brazil) said that his delegation was prepared to accept, in principle, both the ICRC text of article 5 and the amendments proposed for its improvement. In paragraph 3, proposals I and II were not mutually exclusive and might, with a few changes, be merged, as was suggested by his delegation in document CDDH/I/54. The two present alternatives had one defect: no provision was made for cases in which the ICRC was unwilling or unable to assume the functions of a substitute. His delegation's amendment would remove that defect by laying down that the ICRC might either nominate an international body capable of assuming, with the agreement of the parties, the functions of a substitute, or, after consulting the parties, assume such functions itself.

The meeting rose at 12.30 p.m.



SUMMARY RECORD OF THE TWELFTH MEETING

held on Thursday, 21 March 1974, at 3.20 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 1 - Scope of the present Protocol (CDDH/1; CDDH/I/41, CDDH/I/71)  
(resumed from the sixth meeting)

1. The CHAIRMAN asked the Chairman of the Working Group on article 1 to report progress.
2. Mr. MARIN-BOSCH (Mexico), Rapporteur, Chairman of the Working Group on article 1, said that although the Group had met twice to explore the possibilities of drafting a single text of article 1, it had been unable to reach the necessary compromise.
3. Mr. MISHRA (India) and Mr. CLARK (Nigeria), supported by Mr. ABDINE (Syrian Arab Republic), suggested that since consultations between the sponsors of documents CDDH/I/41 and CDDH/I/71 were still in progress, a decision on article 1 should be postponed until the next meeting, when a text would be available.

It was so agreed.

4. Mr. MILLER (Canada) said that his delegation and that of New Zealand would be submitting a procedural draft resolution on the Committee's discussion of article 1. The matter had already been discussed in the Working Group.
5. The CHAIRMAN suggested that the Committee should accept no more documents for consideration at its next meeting, but should confine itself to discussing amendments.
6. Mr. PRUGE (United States of America), supported by Mr. de ALCAMBAR PEREIRA (Portugal), said that it would be unwise at that stage to preclude the possibility of discussing further proposals.
7. Mr. GLORIA (Philippines) said he could support the Canadian proposal, since its effect would be to defer discussion of article 1, which needed further study.
3. The CHAIRMAN suggested that the Committee should discuss the Canadian proposal at its next meeting.

It was so agreed.

Article 5 - Appointment of Protecting Powers and of their substitute  
(CDDH/I/13, CDDH/I/24, CDDH/I/50, CDDH/I/62, CDDH/I/67 and Add.1,  
CDDH/I/68, CDDH/I/70, CDDH/I/75, CDDH/I/77) (concluded)

9. The CHAIRMAN invited the Committee to consider article 5 and the amendments thereto paragraph by paragraph.

Paragraph 1

10. Mr. ANGONI (Albania) said that one of the shortcomings of the 1949 Geneva Conventions was that they failed to provide a satisfactory procedure for the appointment of Protecting Powers and their substitutes. The Albanian Government had entered specific reservations on the question to all four Conventions, because the relevant provisions opened the door to violations of State sovereignty and took no account of the distinction between just and unjust wars, which should be the principal criterion in the development of international humanitarian law. Moreover, in view of the nefarious activities of the imperialist and colonialist States, especially the two super Powers, article 5 should be so worded as to take into account respect for sovereignty and non-interference in the internal affairs of sovereign countries and peoples, which were two fundamental principles of international law. In addition, the necessary corrections should be made in the corresponding articles of the four Geneva Conventions.

11. The Protecting Powers must be appointed with the consent of the two conflicting parties, and the Protecting Powers and their substitutes must never take advantage of their position to intervene in the internal affairs of the countries where they were required to act. Article 5 must be drafted as clearly and unequivocally as possible, to prevent the imperialist and colonial Powers from using it as a pretext for intervening in the internal affairs of others.

12. Mr. OBRADOVIC (Yugoslavia) said that his delegation considered the ICRC draft of article 5 to be satisfactory, though capable of improvement and preferred the variant of paragraph 3 in proposal I (CDDH/I, page 4) because that text expressed better the principle of consent by the parties to the conflict. Proposal II needed further analysis.

13. The many amendments submitted should be carefully considered and compared, and the Committee should try to find time to deal with at least some of them. In any case, the ICRC text did not require a great deal of amendment.

14. Mr. HAKSAR (India) said that his delegation's amendments (CDDH/I/53) related to article 5, paragraphs 1, 2 and 5 and that the amendments to paragraphs 1 and 5 were related. They had been submitted because the ICRC draft of article 5 seemed by implication to make it mandatory that the Protecting Power appointed under article 45 of the 1961 Vienna Convention on Diplomatic Relations should automatically act as Protecting Power under the Protocol. Such an implication was undesirable for several reasons. The function and responsibilities of the Protecting Power under the Vienna Convention and under draft Additional Protocol I were not the

same, and a State appointed as a Protecting Power under the Vienna Convention might not be willing to act as such under the Additional Protocol; in some cases the Parties might wish to entrust the different functions envisaged under the Vienna Convention and under the draft Additional Protocol to different States; and even the maintenance of diplomatic relations between parties to a conflict was no obstacle to the appointment of a Protecting Power for the purpose of applying the 1949 Conventions and the Additional Protocols.

15. His delegation had therefore proposed the deletion of the words "which has not already entrusted the protection of its interests and those of its nationals to a third State" from article 5, paragraph 1 and the insertion of the words "or the entrusting of the protection of a Party's interests and those of its nationals to a third State" after "between the parties to the conflict" in paragraph 5.

16. Mr. de BREUCKER (Belgium), introducing the amendment submitted by his delegation, the Netherlands and the United Kingdom (CDDH/I/67 and Add.1), said that it was designed to make the ICRC text more specific by deleting the words "... which has not already entrusted the protection of its interests and those of its nationals to a third State" from paragraph 1. Although the sponsors had no objection to those words, they had thought it best to delete them because of certain objections that had been raised in the Committee.

17. In addition, the sponsors proposed that the words "for the sole purpose of applying the Conventions" should be replaced by the words "to carry out the functions assigned to it under the Conventions and the present Protocol", which were more precise.

18. Mr. BOULANENKOV (Union of Soviet Socialist Republics), introducing the amendment to article 5, paragraph 1 in document CDDH/I/70, said that the system of scrutiny in the Geneva Conventions of 1949 should be maintained and strengthened. That system, based on respect for the sovereign rights of the parties to a conflict, had sometimes not been implemented and had indeed been violated, not because it was defective or because the provisions of the Geneva Conventions were legally unsound, but because of a lack of good faith on the part of certain States.

19. It would be seen from the amendment that the sponsors were prepared to accept certain new ideas which appeared in the ICRC draft and those of the amendments submitted by other delegations which strengthened the principles laid down in the Geneva Conventions.

20. The underlying principle of the amendment was that the essential duty of Protecting Powers under the Conventions was to safeguard the interests of parties to the conflict: even though a Protecting Power might act in respect of individual persons, from the legal point of view it safeguarded the interests of a party to the conflict as vested in the rights of its nationals.

21. His delegation could not accept the ICRC thesis that the parties to a conflict had a collective responsibility; it recognized only the responsibility of the Protecting Power with respect to the State that had designated it. That ruled out any possibility of automatic designation or automatic acceptance of Protecting Powers. Since the Protecting Power was responsible for safeguarding the interests of a party to the conflict, only that party could designate a certain State as its Protecting Power; and since the Protecting Power acted within a State, only that State could accept or reject a State as the Protecting Power of its adversary.

22. The ICRC text of article 5, paragraph 1, provided an express obligation for States to appoint a Protecting Power by introducing the word "shall" in the third line - a step forward compared with the Geneva Conventions, which contained no specific provision for the procedure of designating Protecting Powers. His delegation had no objection to making that obligation explicit. On the other hand, it had proposed the deletion of the words "which has not already entrusted the protection of its interests and those of its nationals to a third State" which appeared in the ICRC text, since their effect would be to make designation automatic.

23. The sponsors had no strong feelings about their proposal to insert the word "undue" before "delay" in the third line and had proposed the deletion of the last four words of the ICRC draft - "and accepted as such" - because they might lead to misinterpretation.

24. Mr. MBAYA (United Republic of Cameroon) said that the ICRC text of paragraph 1 was acceptable to his delegation.

25. Mr. BOUBEN (Byelorussian Soviet Socialist Republic) said that his delegation, like the delegation of the USSR, attached great importance to the system of the Protecting Power and its substitute. As was stated in the ICRC's Commentary on article 5, there was full agreement in favour of keeping, and at the same time improving that system.

26. With that statement in mind, his delegation had co-sponsored the amendments proposed to that key article in document CDDH/I/70, which were designed to improve and clarify the system of the Protecting Power and its substitute.

27. Paragraph 1 of article 5 as proposed by the ICRC contained a reference to article 2 common to the four Geneva Conventions. Since there was an almost unanimous desire on the part of delegations that article 1 of draft Protocol I should be amended, and a number of proposals to that effect had been submitted, including the amendment to article 1 sponsored by more than forty Powers in document CDDH/I/41 and Add.1 to 7, of which his delegation was a sponsor, it would seem logical to refer in paragraph 1 of article 5 to article 1 of draft Protocol I, and not to article 2 common to the four Geneva Conventions.

28. At the eleventh meeting many delegations had advanced arguments in favour of the deletion of the words "which has not already entrusted the protection of its interests and those of its nationals to a third State,"



in paragraph 1 of article 5. Moreover, those words had been omitted in the amendments to article 5 submitted by the delegations of the Syrian Arab Republic (CDDH/I/62), Pakistan (CDDH/I/24), Romania (CDDH/I/13) and thirteen delegations (CDDH/I/75). His delegation fully supported that deletion.

29. In accordance with the Chairman's ruling that article 5 would be discussed paragraph by paragraph, he would confine his remarks to paragraph 1, but he reserved his delegation's right to comment on the other paragraphs of article 5 as they came up for discussion.

30. Mr. DRAPER (United Kingdom) said that the Netherlands delegation had become a sponsor of the amendment submitted by his own and the Belgian delegations (CDDH/I/67 and Add.1), the main purpose of which was to strengthen the idea of obligation expressed in paragraph 1 of the ICRC text and to ensure that there was a single, clear-cut system for designating Protecting Powers that could be applied from the very outset of the conflict.

31. Mr. FISCHER-REICHENBACH (Sovereign Order of Malta), speaking at the invitation of the Chairman, said that the Order was prepared to assume the function of substitute for the Protecting Power where possible and would be glad to collaborate with the ICRC in appropriate circumstances.

32. The Order had for centuries acted as an instrument of public international law, with functional sovereignty which fitted it for supra-national activity; it was based on the same principles of independence, neutrality and equal treatment of the needy as the ICRC; it had embassies in forty States in Europe, Latin America, Africa, the Middle East and Asia and had medical personnel and establishments at its disposal in some seventy countries.

33. Mr. HUGLER (German Democratic Republic) said that it was essential to devise a practical system acceptable to all States. His delegation supported the Indian amendment to paragraph 1 (CDDH/I/68), preferred proposal I of the ICRC draft of paragraph 3, and agreed with the amendment to the definition of "substitute" in article 2 (e) proposed by Poland (CDDH/I/29).

34. The general control functions which the Pakistani amendment (CDDH/I/24) would confer upon the Protecting Powers were, in the view of his delegation, too far-reaching; those functions should be limited to controlling the implementation of the provisions of the Geneva Conventions and the draft Protocols. There should be no interference with the sovereign rights of the parties to the conflict.

35. The provisions would have little practical value unless a time-limit was set for the appointment of Protecting Powers. His delegation was aware of the difficulties likely to be encountered in that connexion, and would therefore give careful consideration to the possibility of enabling the ICRC to offer its good offices with a view to the designation of Protecting Powers acceptable to both parties to the conflict.

36. Mr. ARIM (Turkey) said that the ICRC text of paragraph 1 was acceptable to his delegation, as was the Belgian, Netherlands and United Kingdom amendment (CDDH/I/67 and Add.1) which did not differ greatly from the former text. His delegation was not yet in a position to comment on the other amendments to paragraph 1.

37. Mr. LYSAGHT (Ireland) said that any proposal that increased the likelihood of the appointment of Protecting Powers with power to implement the Conventions would be welcomed by his delegation, which considered that the parties to a conflict had a reciprocal moral obligation to consider in good faith the adversary's proposal for a Protecting Power. It was also necessary to provide for the appointment of a substitute, subject to the agreement of the parties to the conflict.

38. His delegation preferred the ICRC text to the amendment in document CDDH/I/67 and Add.1, which seemed to deprive the Protecting Power of any general function of ensuring implementation of the Protocol.

39. Mr. MURILLO RUBIERA (Spain) said that his delegation's amendment to paragraph 1 (CDDH/I/77) stressed the legal and moral obligation of each party to the conflict to appoint a Protecting Power at the beginning of the conflict and to accept on its territory the activities of the adversary's Protecting Power. It should be made quite explicit in paragraph 1 that States were in duty bound to respect certain international rules, irrespective of their reasons for entering a conflict. The idea of appointing Protecting Powers was a substantial improvement on that of making diplomatic arrangements to protect interests.

40. Although the ICRC's functions were mainly administrative, it would be in a position to help the parties to the conflict to fulfil their obligations, and a provision to that effect should be included in paragraph 1. The Italian amendment to paragraph 3 (CDDH/I/50) was based on the same idea.

41. Mr. NODA (Japan) said that his delegation could agree in principle with the ICRC draft of paragraph 1, but considered that the phrase "which has not already entrusted the protection of its interests and those of its nationals to a third State" should be deleted and therefore supported the proposals to that effect in documents CDDH/I/13, CDDH/I/62, CDDH/I/67 and Add.1 and CDDH/I/70. Furthermore, it held the view that each party to the conflict should be under an obligation to accept a Protecting Power and therefore supported the Belgian, Netherlands and United Kingdom amendment (CDDH/I/67 and Add.1).

42. Mr. KAKOLECKI (Poland) said that to enable the Protecting Powers to play an effective and impartial role, it would be necessary to obtain the agreement of the three parties concerned, namely, the designating Party, the adverse Party and the Protecting Power designated. He therefore fully supported the amendment in document CDDH/I/70.

Paragraph 2

43. Mr. Antoine MARTIN (International Committee of the Red Cross) said that many government experts had suggested that the problems encountered in the designation and acceptance of Protecting Powers might be solved by the establishment of specified time-limits. In that connexion, he drew attention to paragraphs 4.75 and 4.80 on pages 181 and 182 of the report on the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and to the replies of Governments to question 3 of the ICRC questionnaire concerning measures intended to reinforce the implementation of the Geneva Conventions of 1949. Proposals for entrusting the ICRC with the administration of the designation and acceptance procedures and with the necessary notifications had been supported by the majority of experts. The ICRC would be prepared to assume that task in accordance with paragraph 2.

44. Replying to a question raised by the Netherlands representative at the eleventh meeting, he said that the ICRC would be the body responsible for deciding whether there was disagreement or unjustified delay in the designation or acceptance of the Protecting Power, after taking all aspects of the situation and the opinion of the interested parties into account.

45. Mr. de BREUCKER (Belgium), introducing the amendment to article 5, paragraph 2 in document CDDH/I/67 and Add.1, said that its purpose was basically the same as that of the ICRC text, which it was merely intended to strengthen. The sponsors took special exception to the use of the term "unjustified delay" in the ICRC text. Moreover, his delegation would like the words "shall have the right to exercise" in the amendment to be replaced by the words "shall exercise".

46. The Conference might wish to consider inserting an additional provision to enable the ICRC to exercise its good offices in a situation where a Protecting Power was unable to be present.

47. Mr. ABDINE (Syrian Arab Republic), introducing his delegation's amendment to paragraph 2 (CDDH/I/68), said that it was proposed to delete the words "unjustified delay" because they were likely to give rise to useless discussion and to encourage the very delay they were intended to prevent.

48. Mr. BOUBEN (Byelorussian Soviet Socialist Republic) said that his delegation supported the proposal to delete the words "unjustified delay".

49. A number of delegations had expressed the view that the wording of the draft Additional Protocols should be kept as close as possible to that of the Geneva Conventions of 1949. That was the purpose of the amendment to paragraph 2 in document CDDH/I/70; a similar provision was to be found in article 2, paragraph 5, of draft Protocol II and in the amendment to article 5, paragraph 3, of draft Protocol I in document CDDH/I/75.

50. Since the feasibility of communicating the proposed list of States to the ICRC within ten days was doubtful, the time-limit had been left open in the amendment. In conclusion, the idea of three-sided agreement to the designation of the Protecting Power should be retained.

51. Mr. MBAYA (United Republic of Cameroon) said that his delegation shared the view that the words "unjustified delay" should be deleted. It agreed with the amendment in document CDDH/I/67 and Add.1, with two reservations: first, the expression "from the outbreak of a situation" was somewhat vague; secondly, his delegation was in favour of the appointment of a Protecting Power by three-sided agreement, as provided for in the ICRC text, and considered that the three parties should be given adequate time to reach agreement.

52. Mr. MURILLO RUBIERA (Spain), introducing his delegation's amendment to paragraph 2 (CDDH/I/77), said that it was based on the ICRC text and on views expressed at the Conference of Government Experts. The term "unjustified delay" had been omitted because it lent itself to different interpretations. The time-limit, which had been left open, should be short, in view of the nature of modern conflict.

53. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that his delegation would be submitting a drafting correction<sup>1/</sup> to the amendment in document CDDH/I/70.

54. The activities of any humanitarian organization that might act as an intermediary would be of an extraordinary nature and it was therefore inappropriate to lay down an obligatory provision in the paragraph. That was why the sponsors of the amendment had used the words "subject to the consent of the parties to the conflict".

55. Mr. DRAPER (United Kingdom), replying to the representative of the United Republic of Cameroon, said that the meaning of the phrase "from the outbreak of a situation" should be reasonably clear to the parties concerned. The ICRC would begin its mediation procedure immediately a conflict for which there was no Protecting Power had begun.

56. His delegation could accept the Belgian suggestion to replace the words "shall have the right to exercise" in the Belgian, Netherlands and United Kingdom amendment (CDDH/I/67 and Add.1) by the words "shall exercise".

57. Mr. REIMANN (Switzerland) said he thought that amendment CDDH/I/67 and Add.1, as altered by the sponsors, was an improvement on the ICRC text.

### Paragraph 3

58. Mr. CASSESE (Italy), introducing his delegation's amendment (CDDH/I/50), said it was designed to enable the ICRC to intervene as soon as possible after the outbreak of hostilities and to avoid the delay that the complex

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<sup>1/</sup> Later circulated as document CDDH/I/70/Corr.1.

machinery envisaged in the ICRC text would cause. There was no intention of imposing any duty on the ICRC: under the Italian amendment, that body might offer to act as a substitute, but would decide for itself whether or not it should assume such functions.

59. The ICRC provided in its draft that it could offer its services only as a measure of last resort, whereas the amendment would authorize it to do so from the outset of the conflict. Moreover, the opening words of the amendment made it clear that such action would not relieve the parties to the conflict of their obligations under paragraphs 1 and 2.

60. His delegation had submitted its amendment to paragraph 3 rather than to paragraph 1 in order that the primary duty of the parties to a conflict to appoint a Protecting Power should be emphasized at the beginning of the article: an offer by the ICRC to act as a substitute was only a possibility and should therefore take second place.

#### COMMEMORATION OF THE SHARPEVILLE AFFAIR

61. Mr. CLARK (Nigeria), recalling the fact that the United Nations General Assembly in resolution 2142 (XXI) had proclaimed 21 March as "International Day for the Elimination of Racial Discrimination", read a solemn declaration to commemorate the Sharpeville affair, and Mr. TASWELL (South Africa) exercised his right of reply.

62. Mr. BELCUSOV (Ukrainian Soviet Socialist Republic) said that his delegation, together with the delegations of the Union of Soviet Socialist Republics and the Byelorussian Soviet Socialist Republic, wished to be associated with the Nigerian statement.

The meeting rose at 6 p.m.



SUMMARY RECORD OF THE THIRTEENTH MEETING

held on Friday, 22 March 1974, at 10.15 a.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 1 - Scope of the present Protocol (CDDH/1; CDDH/I/12 and Add.1 and Corr.1, CDDH/I/41 and Add.1 to 7, CDDH/I/42, CDDH/I/71, CDDH/I/78)  
(continued)

1. Mr. MILLER (Canada), introducing draft resolution CDDH/I/78, said that, in the course of the Conference, the question of the exercise of the right of self-determination of peoples had assumed considerable importance in relation to the two draft Protocols and, indirectly, the four Geneva Conventions of 1949. The discussion had been very constructive and had produced some most detailed and interesting proposals; all those proposals had emphasized the need to apply the régime of the Geneva Conventions, as supplemented by the Protocols, to armed conflicts which involved the exercise of the right of self-determination within the meaning of the Charter of the United Nations.
2. Unfortunately, the discussion of that question had not begun as soon as would have been desirable in view of its importance, with the result that at a time when the Committee's work should be coming to an end, there were still uncertainties as to the precise wording to be given to that principle in the Protocols; and as to the repercussions that it might have on the Protocols as a whole and indirectly on the Geneva Conventions. It was absolutely essential that more time should be available for a thorough examination of that important question. The Canadian and New Zealand delegations were therefore proposing that a working group be set up to study the problem in depth before the Diplomatic Conference resumed in 1975.
3. In so doing they were not seeking in any way to prejudge, hamper or impede the decisions that the Committee might perhaps wish to take on the various proposals concerning the formulation of the right of self-determination, in article 1 of draft Protocol I. In submitting draft resolution CDDH/I/78, the Canadian and New Zealand delegations were merely suggesting a method of work which might, perhaps, make it possible to reach a more widely acceptable formulation of the principle in question and to facilitate the work of the Conference in 1975. The draft resolution could be referred to the Conference in plenary session.
4. In the French version of operative paragraph 1, the comma after the word "humanitaire" should be deleted.

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\* Incorporating document CDDH/I/SR.13/Corr.1.

5. As regards the task to be carried out by the intersessional working group, the sponsors of draft resolution CDDH/I/78 had restricted themselves to mentioning the problem of the right of peoples to self-determination, because in the course of the work of the Conference that problem had assumed far greater importance than any other, but they would have no objection if other delegations wished to propose additional tasks.

6. Mr. GIRARD (France) said that differences of opinion on the problem of the right of peoples to self-determination were concerned much less with the objectives than with the means to achieve them.

7. That important problem, which went beyond the initial frame of reference of the Conference, called for very thorough consideration. For that reason, the French delegation would not be able to support the amendments to article 1 in documents CDDH/I/11 and Add.1 to 3, CDDH/I/41 and Add.1 to 7 and CDDH/I/71 or other proposals to the same effect, because they did not seem appropriate, at the present stage of the Conference's work. His delegation agreed with those of Canada and New Zealand that the dialogue that had been begun should be pursued.

8. Mr. QUENTIN-BAXTER (New Zealand) said that the reason why his delegation was reluctant to accept the amendments concerning the problem of the exercise of the right to self-determination was not because it dissociated itself from the position taken up by the international community, in particular by the United Nations, but because the Conference on the development of humanitarian law did not seem the appropriate tribunal to deal with such a matter. The Conference's role was not to condemn tyrants but to bring them to respect the rules of humanitarian law so that the victims of the conflicts in question should be spared unnecessary suffering.

9. It was therefore proper that the problem as a whole should be given closer consideration with a view to defining the elements needed to complete the Geneva Conventions in line with the impartial tradition of the Red Cross, and to extending their application to the type of conflicts that broke out at the present time.

10. After a short procedural debate in which Mr. MILLER (Canada) and Mr. MISHRA (India) took part, the Chairman said that document CDDH/I/78 contained an entirely new proposal, which went beyond the scope of article 1. In accordance with the rules of procedure, the Committee should consider the amendments to article 1 instead of continuing to discuss the draft resolution which could be considered either by the Conference in plenary session or by the Committee itself at its next meeting.

It was so agreed.

11. After a further procedural discussion in which Mr. TARCICI (Yemen), Mr. CLARK (Nigeria) and Mr. DRAPER (United Kingdom) took part, the CHAIRMAN proposed, at the suggestion of Mr. MISHRA (India), that the



meeting be suspended so that unofficial discussions might take place with a view to reconciling the amendments to article 1 in documents CDDH/I/41 and Add.1 to 7 and CDDH/I/71, and avoiding a debate on them before they were put to the vote.

It was so agreed.

The meeting was suspended at 11.5 a.m. and resumed at 11.30 a.m.

12. Mr. PRUGH (United States of America) requested that a discussion be held on the draft resolution submitted by the Canadian delegation (CDDH/I/73).

13. Mr. MILLER (Canada) said that, during the suspension, several delegations had suggested drafting changes to the draft resolution sponsored by his delegation and that of New Zealand, and that it would be desirable that those suggestions should be submitted to the Committee. It would, however, be preferable not to start a detailed discussion of the draft resolution as long as the fate of article 1 had not been settled.

14. Mr. GARCÉS (Colombia) said he agreed with the United States representative. Delegations, particularly those from distant countries, needed time to reflect and to consult their Governments.

15. The CHAIRMAN, referring to the decision taken before the suspension of the meeting, said that, if there were no objection, he would take it that the Committee was ready to consider the amendments to article 1.

It was so agreed.

16. Mr. LISTRE (Argentina), speaking on behalf of the sponsors of the amendment to article 1 (CDDH/I/71), said that it represented a compromise between amendments CDDH/I/12 and Add.1 and Corr.1 and CDDH/I/41 and Add.1 to 7. In the Working Group, the Argentine delegation had stated that it wished to limit itself to a modification of amendment CDDH/I/41 and Add.1 to 7, namely, to replace the words "colonial and alien domination" by "colonial domination and alien occupation". Subsequently, at the request of the sponsors of amendment CDDH/I/41 and Add.1 to 7, the compromise formula "colonial and alien occupation" had been used.

17. Amendment CDDH/I/71 should obtain the support of the majority of the sponsors of amendment CDDH/I/41 and Add.1 to 7. Moreover, it was not incompatible with amendment CDDH/I/12 and Add.1 and Corr.1 from which it had taken the so-called "Martens clause". The ICRC text was used in paragraph 1.

18. Mr. MISHRA (India), speaking on behalf of the sponsors of amendment CDDH/I/41 and Add.1 to 7, said that they considered amendment CDDH/I/71 acceptable on condition that the words "colonial and alien occupation" in paragraph 2 were replaced by "colonial domination and alien occupation".

19. Mr. ABDINE (Syrian Arab Republic), speaking on behalf of the Arab group, said that the group would prefer amendment CDDH/I/47 and Add.1 to 7, but, in a spirit of conciliation and to enable the Committee to extricate itself from the deadlock, it was ready to support amendment CDDH/I/71, which reconciled the different points of view. In paragraph 2 of the French version, however, the word "populations" should be replaced by the word "peuples", and the expression "de leur droit à l'auto-détermination" by "du droit des peuples à disposer d'eux-mêmes", so that the text would be in conformity with the terminology of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)).

20. Mrs. HELLER (Mexico), speaking on behalf of the sponsors of amendment CDDH/I/71, said that they accepted the Indian amendment which corresponded to the wording originally proposed by the sponsors. The changes proposed by the Syrian representative were also acceptable.

21. Mr. ABADA (Algeria) said he supported the Syrian proposal. His delegation was one of the sponsors of amendment CDDH/I/41 and Add.1 to 7 and it accepted proposal CDDH/I/71 in a spirit of compromise.

22. The Algerian delegation was ready, in the period between the two sessions of the Conference, to consider the repercussions of the decision to be taken by the Committee on article 1.

23. Mr. HESS (Israel) said he would like to make a brief statement concerning article 1 of the ICRC text of draft Protocol I. That article corresponded to paragraph 1 of document CDDH/I/71. In his delegation's opinion, the expression "the Geneva Conventions" was purely descriptive. The 1949 Diplomatic Conference had drawn up four distinct and separate Conventions, each dealing with a separate subject and having its own framework and final clauses.

24. Although the common objective of the four 1949 Geneva Conventions was to protect the victims of war, each of them had its own validity and applicability and constituted a distinct legal instrument.

25. His delegation wished to reiterate its understanding that the work of the Conference in no way affected the separate and distinct legal validity of each of the Conventions.

26. Mr. de BREUCKEN (Belgium) said that amendment CDDH/I/71 was merely a combination of amendments CDDH/I/12 and Add.1 and Corr.1 and CDDH/I/41 and Add.1 to 7. The sponsors of amendment CDDH/I/12 and Add.1 and Corr.1 did not in any way envisage the situation described in documents CDDH/I/11 and Add.1 to 3 and CDDH/I/41 and Add.1 to 7; all that they had done had been to lay down the obligation to respect and to ensure respect for the Protocol, to define its scope, and to restate the applicability of the so-called Martens clause in certain situations. Paragraph 2 of amendment CDDH/I/71 contained a provision which was wholly alien to the spirit of amendment CDDH/I/12 and Add.1 and Corr.1 and it was in no sense a compromise.

27. Mr. ALDRICH (United States of America) said that he, too, was of the opinion that amendment CDDH/I/71 did not represent a true compromise on the substantive questions dividing the Committee.

28. Mr. CRISTESCU (Romania) said that he whole-heartedly supported amendment CDDH/I/71 and the Indian amendments.

29. Mr. BLIX (Sweden) said that the Conference must arrive at a version of article 1 which would be acceptable to all the groups of countries, otherwise the usefulness of the Protocol would be greatly impaired. Since none of the amendments submitted so far had met with general approval, his delegation would abstain on each of them. It was unfortunate that the discussion could not have been prolonged and that acceptable alternative solutions had not been found. Since so little progress had been made in the discussions, he would have preferred the Committee not to proceed to a vote.

30. Mr. EL GHONEMY (Arab Republic of Egypt), supported by Mr. CLARE (Nigeria) and Miss BOA (Ivory Coast), moved the closure of the debate on amendment CDDH/I/71.

31. Mr. DRAPER (United Kingdom) and Mr. GLORIA (Philippines) said they were opposed to the closure of the debate; amendment CDDH/I/71 had been submitted only recently and had not yet been properly discussed.

32. The CHAIRMAN put the Egyptian motion to the vote.

The motion for the closure of the debate was adopted by 64 votes to 27, with 4 abstentions.

33. Mr. ENICEL (Austria), speaking on a point of order, recalled that several amendments had been submitted to article 1 and that, in conformity with rule 41 of the rules of procedure, those proposals should be put to the vote in the order in which they had been submitted. Since amendment CDDH/I/12 and Add.1 and Corr.1 had been submitted before amendment CDDH/I/71, it should be put to the vote first. The Austrian delegation would, however, agree to the vote being taken first on amendment CDDH/I/71, provided that each of its paragraphs was voted upon separately.

34. The CHAIRMAN said that, in conformity with rule 40 of the rules of procedure, the Committee should vote first on the amendment furthest removed in substance from the original proposal, namely amendment CDDH/I/71.

35. Mr. ALDRICH (United States of America) said that in his opinion amendment CDDH/I/41 and Add.1 to 7 was furthest removed from the original proposal.

36. Mr. MISHRA (India) requested, on behalf of the sponsors of amendment CDDH/I/41 and Add.1 to 7 that priority should be given to amendment CDDH/I/71.

37. Mr. ALDRICH (United States of America) opposed that request.

38. The CHAIRMAN put the Indian request to the vote.

The Committee decided, by 67 votes to 14, with 14 abstentions, to give priority to amendment CDDH/I/71.

39. The CHAIRMAN recalled that Austria had asked that each paragraph of amendment CDDH/I/71 should be put to the vote separately.

40. Mr. EL GHONEMY (Arab Republic of Egypt) opposed the Austrian request.

The Committee rejected the Austrian request by 56 votes to 21, with 6 abstentions.

41. Mr. MARIN-BOSCH (Mexico), Rapporteur, read out amendment CDDH/I/71, as amended orally during the suspension of the meeting.

42. Mr. MISERA (India) suggested that the word "against" should be inserted in paragraph 2 of the English text, as amended orally, between the words "alien occupation, and" and "racist régimes".

At the request of the representative of Nigeria, a vote was taken by roll-call on amendment CDDH/I/71. India, having been drawn by lot by the Chairman, was called upon to vote first.

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

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

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

The amendment to article 1 (CDDH/I/71), as amended orally, was adopted by 70 votes to 21, with 13 abstentions.

43. The CHAIRMAN pointed out that by the adoption of that amendment all the other amendments submitted to article 1 of draft Protocol I had been excluded.

44. Mr. CUTTS (Australia), explaining his vote, said that his delegation was in favour of the application of draft Protocol I to those struggling for self-determination; it could not, however, agree to certain terms in amendment CDDH/I/71 which introduced the concept of just or unjust war; it was for that reason that it had abstained. He regretted, moreover, that the Committee had not taken a separate vote on each paragraph, for he would have been able to support some of them unreservedly. He also deplored the fact that the discussion had been closed prematurely.

45. Mr. SAARIO (Finland), speaking in explanation of his vote, said that what was most important was to reach a solution that was acceptable to all. The object of the Conference was not to draw up a juridical definition of struggles for national liberation, but to find a means of extending protection to all victims of conflicts, whatever those conflicts might be. In supporting amendment CDDH/I/71, his delegation had therefore voted in favour of the underlying principle rather than the form in which it had been submitted. His delegation did not consider that the Committee had given enough attention to draft resolution CDDH/I/78.

46. Mr. de GERLICZY-BURIAN (Liechtenstein), explaining his vote, said that his delegation's position was based on juridical considerations.

The meeting rose at 1 p.m.



SUMMARY RECORD OF THE FOURTEENTH MEETING

held on Monday, 25 March 1974, at 10.15 a.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (concluded)

Article 1 - Scope of the present Protocol (CDDH/1; CDDH/I/71, CDDH/I/78)  
(concluded)

1. Mr. de BREUCKER (Belgium) said that his delegation had maintained on several occasions, both before and during the Conference, that the struggle of peoples against colonialist and racist régimes deserved understanding and sympathy and that adequate protection should be given to combatants engaged in such conflicts. It had participated in the Working Group's discussions to seek a solution to the problem of covering such conflicts in an appropriate text and had therefore welcomed the draft resolution submitted by Canada and New Zealand (CDDH/I/73).
2. He considered that the vote on amendment CDDH/I/71, submitted by Argentina, Honduras, Mexico, Panama and Peru had been premature, since further discussion might have led to a more precise text guaranteeing adequate protection for war victims. That amendment had discriminatory and subjective features which were out of place in the Geneva Conventions. He hoped that, despite the result of the vote, texts would be drawn up at the second session which would give effective protection to the victims of all forms of armed conflict in accordance with universally accepted standards and could be adopted by consensus.
3. His delegation considered that the Committee should examine the Canadian and New Zealand draft resolution (CDDH/I/73), take note of amendment CDDH/I/71 and reaffirm the need to maintain the universality of humanitarian law.
4. Mr. CAMEJO-ARGUDIN (Cuba) said that the amendment in document CDDH/I/71 had not been supported by all Latin-American countries because they were reluctant to vote against the United States Government. His delegation had voted in favour of the proposed amendment, on the understanding that the text was interpreted as referring not only to the national liberation movements present at the Conference and those recognized by the Organization of African Unity and the League of Arab States, but also others such as the Puerto Rico liberation group.
5. Mr. HESS (Israel), explaining his delegation's negative vote on the amendment in document CDDH/I/71, said that his delegation's statements in plenary had indicated why, in its view, a clear distinction existed and

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\* Incorporating document CDDH/I/SR.14/Corr.1

must be maintained between international and non-international conflicts, and why subjective distinctions based on the motives or the cause of one or other party completely disregarded the fundamental principles of international humanitarian law. He supported, and would have voted in favour of paragraphs 1, 3 and 4 of that document, had that been possible.

6. Mr. LYSAGHE (Ireland) said that his delegation had not opposed the amendment in document CDDH/I/71 because his Government was sympathetic to the aspirations of national liberation movements and to their claim to the protection of international humanitarian law. He was, however, disappointed that the sponsors had not produced a more objective definition of the circumstances in which the Protocol was to be applied to wars of self-determination, and he appealed for a modification of the amendment in accordance with the reservations which he had expressed. He hoped that the matter would not be pressed to a vote in plenary at the current session.

7. Mr. BALDWIN (Federal Republic of Germany) said that the character of wars of national liberation was often a controversial political issue; they should not automatically be labelled as international conflicts, as described in article 2 common to the four Geneva Conventions of 1949. His delegation had opposed amendment CDDH/I/71 because it did not differentiate between the international or non-international character of wars of liberation. Nevertheless, he did support the maximum extension of the Geneva Conventions to all victims of wars of liberation, as international humanitarian law should be universal.

8. He considered that the definition of self-determination applicable to areas of fighting "against colonial domination and alien occupation and racist régimes", given in paragraph 2 of the amendment, was too limited: that principle should apply to all parts of the world.

9. Mr. OFSTAD (Norway) said that his delegation's vote in favour of the amendment was the expression of its desire to give the Geneva Conventions the widest possible application. All war victims must be protected, regardless of the political and legal classification of the conflict, and that was only possible if the applicability of international humanitarian law was severed from all controversial political and legal concepts. The distinction between international and non-international conflicts was not a convenient criterion for the application of international humanitarian law. As many victims as possible must be given maximum protection under the Geneva Conventions and the proposed Additional Protocols.

10. Although supporting that principle, his delegation did, however, have strong reservations against some of the wording of document CDDH/I/71, and regarded the phrase "against colonial domination and alien occupation and racist régimes" as superfluous. It would have preferred the wording of document CDDH/I/11 and Add.1 to 3.

11. Adoption of the amendment in document CDDH/I/71 did not amount to acceptance of the so-called "just war" concept. It was intended to ensure equal protection of all victims on both sides in wars of national liberation.



12. Lastly, he wished to recall that his delegation had reserved its right to propose at a later stage of the Conference that the two draft Protocols be amalgamated into one single Protocol applicable in all armed conflicts. Consequently, he did not consider any adoption of article 1 as final at the present stage of the Conference.

13. Baron van BCETZELAER van ASPEREN (Netherlands) said he hoped that decisions would thereafter be taken by consensus, which was essential in dealing with matters of substance. His delegation would continue its efforts to find a universally acceptable solution to the problem of defining wars of self-determination. His delegation had voted against amendment CDDH/I/71, as it supported the ICRC's view that humanitarian principles must be applied in all circumstances.

14. Mr. PICTET (Switzerland) said he regretted that the amendment in document CDDH/I/71 had been put to the vote, since key provisions should be adopted by consensus, even at the expense of long and arduous search. All possibilities of reaching a generally acceptable text had not been completely explored.

15. His delegation's vote concerned the wording of paragraph 2: it did not refer to the struggle against colonial domination, alien occupation or racist régimes. His delegation had doubts concerning the opportuneness of introducing concepts of a political nature into matters of humanitarian law. The Geneva Conventions had always been above all considerations of that type in order the better to protect the victims of all conflicts whatever their origin. He hoped that the question would be studied more deeply.

16. Mr. LEHMANN (Denmark) said that his delegation had voted against the proposed amendment because it introduced subjective and political criteria into a legal text whose purpose was humanitarian. The Conference should work for the adoption of humanitarian rules governing the largest possible number of victims of all armed conflicts, whatever their nature. Such protection could only be based on objective, non-political criteria. Considering the importance of the issue, his delegation would have preferred that no vote had been taken. It fully supported the draft resolution in document CDDH/I/72 which it hoped would lead to a consensus.

17. Mr. FLAKA (Albania) said his delegation had voted in favour of amendment CDDH/I/71, in accordance with its Government's principle of support for oppressed peoples fighting against colonialist and racist régimes. The fact that wars of liberation were recognized by the Conference represented a victory for peace-loving countries. The provisions in paragraph 2 should be reflected in the draft Protocols, although he would have preferred a more clear-cut wording. He also had some reservations about the wording of paragraph 3.

18. Mr. DAYAL (India) said that the introduction into the discussion before and after the vote of the idea of just and unjust wars, and consequently that of discrimination, had only confused the issue. The question before the Committee had simply been to decide whether a specific

type of conflict which was a major phenomenon of the time should be recognized as an international conflict. Different interpretations of the implications of that decision could only create difficulties in the work of the Conference.

19. Mrs. QUINTERO (Colombia) said she wished to reaffirm her country's unwavering attachment to the principle of the free self-determination of peoples, as enshrined in the United Nations Charter. Her delegation had abstained from the vote on amendment CDDH/I/71, however, for reasons of a juridical nature, since it was not satisfied with the way in which the concept of liberation struggles was linked to Protocol I. None the less, in view of the importance of the issue, her delegation had been in favour of continuing the discussion in the hope of reaching a compromise solution, since it feared that adoption of the amendment might have immediate political rather than legal effects, thus jeopardizing the principle of universality on which the application of humanitarian law should be based.

20. Mr. SPERDUTI (Italy) said that his delegation felt that although, in certain cases, the struggles of national liberation movements resulted in international conflicts, that type of conflict had special characteristics and was not an Inter-State conflict for the regulation of which international humanitarian law had been developed. Special international rules applicable to national liberation wars should be worked out, which would be acceptable to both parties engaged in that type of conflict. His delegation had voted against the amendment because it considered that the text would prejudice the further examination of a whole category of problems, including prisoner-of-war status and the protection of the civilian population.

21. He supported draft resolution CDDH/I/73, because an intersessional working group could establish the conditions under which the Geneva Conventions and the draft Additional Protocols could be applicable to struggles for self-determination.

22. Mgr. LUONI (Holy See) said that his delegation had kept silent during the discussion which had preceded the vote on amendment CDDH/I/71, but would not conceal its anxiety as to what the consequences of that vote might be for the future of the Conference. Other international organizations were responsible for taking decisions of a fundamentally political nature and for the Conference to take such decisions could only increase the existing confusion concerning the competence of the different organizations. The vote had split the Conference into two groups. The value of any rules that might be adopted would be diminished if there were a certain number of States which thought it against their interests to apply them, as had been the case in the past, when a number of countries had refused to accept a draft proposed by the ICRC. In the case of rules of international humanitarian law, it was desirable to seek a consensus. What was absolutely essential was to leave the door open for further dialogue; his delegation hoped it would not be a dialogue of the deaf.

23. Mr. NCDA (Japan) said that his delegation had opposed amendment CDDH/I/71 because it implied a radical modification of the basic principles and the whole structure of the Geneva Conventions and the draft Protocols,

even the titles of which would have to be changed. He hoped to hear the observations of the ICRC representative on the amendment and suggested that the ICRC should provide the Conference with a set of new draft Protocols as a basis for discussion at the second session of the Conference. The Japanese delegation felt that the convening of an intersessional working group as proposed by Canada and New Zealand might be helpful.

24. Mr. ECONOMIDES (Greece) said that, to be effective, international humanitarian law must be universal. The absence of a compromise solution might have serious consequences. The United Nations or some other international organization might be made responsible for deciding in the light of objective criteria - such as the duration, intensity or scope of a conflict - whether it was to be considered as having an international character. His delegation regretted that the Canadian and New Zealand draft resolution (CDDH/I/78) had not been discussed before the vote was taken on the amendment.

25. Mr. VIEYTE (Uruguay) said that his delegation had voted against the amendment, first because it did not consider that the conflicts in question were of an international character, secondly because the text might open the door to any seditious movements which disturbed the internal life of States, and thirdly because authentic humanitarian law ought to protect all victims of war, without considering what particular war it was or for what motives it was waged.

26. Mr. PRUGH (United States of America) said that the vote of the United States delegation had been intended to ensure the widest possible humanitarian law protection for the victims of war on the basis of universality and regardless of the cause for which they were fighting. The scope of the Conventions and of Protocol I must be clarified so that they applied to any armed conflict which attained a certain level of intensity. The text of amendment CDDH/I/71 might fail to cover certain armed conflicts which were of greater intensity and involved a greater need for protection than those covered by it. He would like to believe those delegations which had assured the Committee that the amendment did not raise the issue of "just" or "unjust" wars, but his interpretation of the language of the amendment was just the opposite. Possibly there was some failure of communication; if that was so, everything should be done to clear it up.

27. Consensus was important in international law and particularly in the case of the issues under discussion; it was regrettable that certain proposals which might have led to a consensus had not been discussed. Efforts should continue to seek a solution on which it would be possible for most delegations to agree.

28. Mr. MBAYA (United Republic of Cameroon) said that under cover of an explanation of vote many speakers had merely repeated what they had said in the general debate. One had described national liberation movements as "collections of individuals in rebellion against their Government". That description might, for example, apply to a group of Portuguese in rebellion against the Portuguese Government, but could not possibly apply to movements of Africans seeking liberation from foreign domination. No speaker had replied to, or even mentioned, the point made at an earlier

meeting by the representative of the Syrian Arab Republic that international humanitarian law already took cognizance of subjects of international law other than States. Some speakers seemed to wish to invent a third, intermediate, category of wars which were both international and non-international. It would be difficult to admit such a "mixed" category, but in any case it could not affect the fact that wars of national liberation were international.

29. He appreciated the suggestion of the representative of Norway that there should be a single legal instrument applicable to all armed conflicts irrespective of whether they were internal or international since, in either case, the suffering victims were equally deserving of the protection of humanitarian law. But the tendency of the Conference seemed to be to maintain the distinction: Protocol II provided less protection than Protocol I. Since national liberation wars had to be included in one category or the other, the question was which degree of protection should be afforded to the victims of those wars? National liberation wars were not civil wars; the inhabitants of southern Africa were not Portuguese. It was clear, therefore, that the victims of those wars must receive the protection of draft Protocol I. What was particularly disquieting was that it was precisely those Powers which possessed overwhelming military force which now appeared to be unwilling to apply the Conventions if the amendment supported by the majority was incorporated in them.

30. Mr. El Mehdi ELY (Mauritania) said that he fully supported the statement by the representative of the United Republic of Cameroon.

31. Mr. CLARK (Nigeria) said that the task of the Conference was to develop laws which would be acceptable to humanity. The amendment, which had had the support of 70 countries, did not speak of "just" or "unjust" wars, but of wars of national liberation, which was a perfectly objective concept. Mr. Kissinger had recently said that a new world order was evolving; he appealed to the representatives of the minority to accept that fact and to abandon their outworn prejudices. They should not attempt to poison the atmosphere by pretending that, because of their power or geographical position, they were better entitled than the majority to speak in the name of the international community.

32. Mr. YOKO (Zaire) said that all delegations had had the opportunity to express their views on article 1 during the general debate and during the discussions in the Committee and the Working Group. An attempt had been made to reach a consensus, but it had become clear that that was impossible. After a very long discussion, the Committee had decided to apply its rules of procedure and proceed to a vote, which had given a majority of well over two-thirds. Certain members of the minority, who had been opposed to the principle of the amendment and not merely to its wording, were now trying to pretend that the question had not been maturely discussed. The Committee had accepted the principle that a two-thirds majority represented a practical consensus. Some delegations now seemed to be seeking to go back on that principle: they spoke of acceptance by "most of the delegations", or even of unanimity. The implication appeared to be that anything agreed upon by two or three Western countries

was universal but that the delegations of the majority did not represent sovereign States at all. He appealed to the representatives of the minority, in a spirit of compromise and true democracy, to accept the decision of the overwhelming majority and not to try to reopen the discussion. The delegations which had voted for amendment CDDH/I/71 had done so because it represented a necessary development of international humanitarian law.

33. Mr. LEE (Republic of Korea) said that his delegation supported national liberation movements, but had not voted for the amendment because it would be difficult to distinguish between real national liberation movements and other political movements. He regretted that a decision had been taken by vote instead of by consensus.

34. Mr. MARTIN HERRERO (Spain) said that his delegation had urged that draft resolution CDDH/I/73, submitted by Canada and New Zealand, should be discussed before a vote was taken on amendment CDDH/I/71. His delegation could accept the four operative paragraphs of the Canadian proposal, but not the preamble, which seemed to be in contradiction with operative paragraph 3.

35. Mr. QUENTIN-BAXTER (New Zealand) said that the joint resolution submitted by Canada and New Zealand (CDDH/I/73) was not backed by any bloc nor were its contents a threat to any minority. It was merely a proposal that an intersessional Working Group should be set up to consider as its primary task the problem of the right of peoples to self-determination in relation both to Protocol I and Protocol II, beginning with the relevant proposals advanced during the current session of the Conference and to submit to the resumed session a report containing agreed texts and, if necessary, such alternative formulations as were considered necessary.

36. The delegations of Canada and New Zealand had not attempted to obtain priority for the consideration of their proposal when the amendment to article 1 of draft Protocol I (CDDH/I/71) was being considered. They had not thought it right to compete with a strong majority movement, the reasons for which they understood even if they did not share the views expressed in support of the amendment. They considered that the problem mentioned in operative paragraph 3 of their proposal needed to be examined more thoroughly and not within the context of any article which had been adopted.

37. The delegations of Canada and New Zealand were interested in knowing how the wording of their proposal could be improved in order to achieve its aim. The main requirements which they wished to meet were, first, the extension of the Geneva Conventions of 1949 to cover the present situation; secondly, the avoidance of subjective criteria, since neither the ICRC nor any protecting agencies could be asked to make decisions of a political nature and, thirdly, the avoidance of any result which might act as a lever to disruption within national societies. The New Zealand delegation thought it was possible by skilled and patient work to produce a text which met those three criteria and would also satisfy the Conference.

38. Mr. BARRO (Senegal) said that the sponsors of draft resolution CDDH/I/78 had no doubt been inspired with a desire to reach a consensus in Committee I on article 1, but later developments in the Committee had shown that the majority of representatives had decided otherwise. The scope of article 1 had been decided by a vote on amendment CDDH/I/71 and therefore the joint Canadian and New Zealand draft resolution had no raison d'être.

39. Mr. YOKO (Zaire) said that the ideas expressed in draft resolution CDDH/I/78 were out-of-date, as the Committee had adopted the amendment to article 1. It would be a waste of time to examine the proposal.

40. Mr. MILLER (Canada) said that draft resolution CDDH/I/78 was not particularly a Canadian or a New Zealand one; it was an attempt to advance an idea of the way in which advantage could be taken of the period between the two sessions of the Conference to work towards a more universally accepted way of dealing with the very real and complicated issue of the right to self-determination in a manner which would do credit to the fundamental principles of humanitarian law. He was glad to note from the discussion at the present meeting that there appeared to be considerable support for an intersessional working group. Many speakers had pointed out that the decision taken at the Committee's thirteenth meeting had raised a new set of practical problems: first, that there were substantive consequences which flowed from that decision; secondly, that there was a need to reflect carefully and to continue the dialogue on the issue and, thirdly, that there was some advantage in having an intersessional machinery in which that could be accomplished.

41. He agreed that draft resolution CDDH/I/78 as it stood was out-of-date, but some interesting suggestions had been made by certain representatives as to how the wording could be improved. He was aware that within the Committee several representatives were actively considering how the text could take fully into account the decision that had been adopted at the thirteenth meeting on the amendment to article 1 (CDDH/I/71). It would therefore seem that, unless there was some objection to the idea of an intersessional working group per se, it might be worth while if efforts were made to organize an informal meeting at which those who supported the idea of having such a group could suggest how its terms of reference and functions might be described in a better way than in draft resolution CDDH/I/78. He therefore suggested that such an informal group might meet within the next day or two under the chairmanship of the Rapporteur of Committee I in order to make the proposal a Conference document and prepare the ground work for its acceptance in plenary later.

42. The CHAIRMAN suggested that those members who wished to participate in the informal meeting proposed by the Canadian representative should get in touch with the Secretary of the Committee.

43. Baron van BOETZELAER van ASPEREN (Netherlands) said that draft resolution CDDH/I/78, containing the suggestion that an intersessional working group should be set up, should be brought up to date on the lines suggested by the Belgian representative; the Netherlands delegation would be glad to co-operate in finding a solution to the problem mentioned in the proposal.

44. Mr. CRISTESCU (Romania) said that he understood the wish of the Canadian and New Zealand delegations who were anxious that continuing efforts should be made to find a solution to the situations referred to in article 1 of draft Protocol I. He thought that all delegations should participate in finding such a solution and not just a small intersessional group.

45. The CHAIRMAN, replying to questions by Mr. MISHRA (India) and Mr. BOULANENKOV (Union of Soviet Socialist Republics), said that any text agreed upon by the informal meeting on draft resolution CDDH/I/73 need not be referred to Committee I but could be submitted direct to a plenary meeting of the Conference. No rule of procedure forbade such action.

46. Mr. de BREUCKER (Belgium) said that victims of armed conflict must be given the widest possible protection, there must be no discrimination in granting such protection and the universality of humanitarian law must be maintained. Although certain delegations considered that the Canadian/New Zealand draft resolution was of no importance now that the amendment to article 1 had been adopted, its philosophy was still valid and the vote taken at the Committee's thirteenth meeting did not bind that body's future work. The joint draft resolution was an appeal for further studies to be made during the period between sessions of the Conference, which he thought would be useful.

47. Mr. MULLER (Finland) said that, although he could not fully approve the suggestion by the Chairman that any text agreed upon by the proposed informal meeting should go straight to the plenary meeting of the Conference, he would not object to such a procedure.

48. Mr. RATTANSEY (United Republic of Tanzania), supported by Mr. YOKO (Zaire), said that it would be contrary to procedure for joint draft resolution CDDH/I/73 to be submitted direct to the plenary; it should first be discussed by Committee I.

49. Mr. ABADA (Algeria) said that the joint draft resolution no longer existed. Delegations might meet in order to discuss whether a new proposal should be drafted.

The meeting rose at 12.35 p.m.





SUMMARY RECORD OF THE FIFTEENTH MEETING

held on Tuesday, 26 March 1974, at 10.25 a.m.

Chairman: Mr. HAMBRO (Norway)

ADOPTION OF THE REPORT OF THE COMMITTEE (CDDH/I/31 and Add.1) (CDDH/I/32)

1. Mr. MARIN-BOSCH (Mexico), Rapporteur, submitted the draft report (CDDH/I/31), which was a brief summary of the work of the Committee and was designed to facilitate the work of the second session, the report of which would be far more comprehensive and cover all the work.
2. He then submitted the addendum (CDDH/I/31/Add.1) to the draft report and drew attention to some other additions to be made to the draft report: in paragraph 3, the figure 16 should be inserted before the word "meetings" and after "SR.1 to", and the figure 26 before the word "March"; in paragraph 7, the word "fourteenth" should be inserted before the word "meeting"; and in paragraph 33, the words "and Corr.1" should be inserted at the end of sub-paragraph (n). In paragraph 3 (a), Algeria should be deleted from the list of sponsors. Paragraph 34 should be redrafted to read:

"The Committee initiated its consideration of article 5, which it had decided to study together with sub-paragraphs (d) and (e) of article 2, which provide definitions of the terms 'Protecting Power' and 'substitute'. In the initial debate, which covered only paragraphs 1 and 2 of the ICRC text, many delegations were in favour of strengthening the system of 'Protecting Powers'."
3. In paragraph 28 of the Spanish text, the following should be added after the word "revisada" - "del artículo 3. En la 10ª sesión de la Comisión, las delegaciones que habían participado en esas consultas oficiosas presentaron una versión revisada".
4. In paragraph 4 of the French text, the first eight words should be replaced by the following: "La Commission a été assistée par", and the present paragraph 12 should be replaced by the following: "12. Au sujet des travaux de la Commission sur le projet d'article premier, le document suivant a été présenté : Canada et Nouvelle-Zélande, CDDH/I/79."
5. Paragraph 6 of the English version should begin as follows:

"3. With regard to the ICRC text, the ..."; in the same paragraph, the word "by" at the beginning of each of sub-paragraphs (a) to (g) should be deleted; in paragraph 2 of the amendment appearing in paragraph 15, the words "colonial and alien occupation and against racist régimes" should be replaced by the words "colonial domination and alien occupation and against racist régimes"; in paragraph 12, the word "very" should be inserted after the words "after a". Finally, paragraph 26

should be replaced by the following: "26. At the Committee's eighth meeting, the sponsor of the amendment suggested that its consideration be deferred and that it be studied together with the amendments in documents CDDH/I/27, CDDH/I/22 and CDDH/I/25 concerning articles 7, 7 bis and 7 ter, respectively."

6. Mr. SHAH (Pakistan) said that the draft report did not sufficiently reflect the decisions taken by the Committee. While it was true that the examination of article 1 only had been concluded, decisions had nevertheless been taken with regard to the methods of examining the other articles at the second session, and those decisions should appear clearly in the report.

7. The CHAIRMAN suggested that the Committee should consider the draft report paragraph by paragraph.

It was so agreed.

Paragraphs 1 to 3

Paragraphs 1 to 3 were approved.

Paragraph 9

8. Mr. CLARK (Nigeria) said that it should be indicated in paragraph 9 that several sponsors of amendment CDDH/I/11 and Add.1 to 3 had decided to withdraw their sponsorship.

9. Mr. LONGVA (Norway) said that he seemed to recollect that only Nigeria had announced during the debate that it wished to withdraw its sponsorship.

10. Mr. CLARK (Nigeria) pointed out that Pakistan had made a similar announcement during the meeting.

11. Mr. CUTTS (Australia) said that, so far as he knew, Nigeria and Pakistan were the only countries which had expressly withdrawn their sponsorship.

12. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that it should be stated in paragraph 9 that, in sponsoring CDDH/I/41 and Add.1 to 7, the sponsors of CDDH/I/11 and Add.1 to 3 had automatically withdrawn their support for the earlier proposal. The proposals in CDDH/I/11 and Add.1 to 3 and CDDH/I/13 should be cited together.

13. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that, unlike the representative of the Soviet Union, he thought that the proposal in document CDDH/I/11 and Add.1 to 3 had not been withdrawn. To reconcile the various views, however, the following sentence could be added at the end of paragraph 9: "Some sponsors of amendment CDDH/I/11 and Add.1 to 3 subsequently withdrew their sponsorship and joined the sponsors of amendment CDDH/I/43 and Add.1 to 7".

14. Mr. MISHRA (India) suggested that the beginning of the sentence proposed by the Rapporteur should read: "Most sponsors of amendment CDDH/I/11 and Add.1 to 3...".

15. Mr. BOULANENKOV (Union of Soviet Socialist Republics) proposed the following text: "The sponsors of amendments CDDH/I/5 and Add.1 and 2 and CDDH/I/11 and Add.1 to 3, with the exception of Norway and Australia, subsequently withdrew their sponsorship and jointly sponsored CDDH/I/41 and Add.1 to 7.

16. Mr. ABI-SAAB (Arab Republic of Egypt) pointed out that his delegation had never withdrawn its sponsorship of CDDH/I/11 and Add.1 to 3.

17. Mr. MARIN-BOSCH (Mexico), Rapporteur, proposed to add the following sentence to the end of paragraph 9: "Most sponsors of CDDH/I/11 and Add.1 to 3 subsequently withdrew their sponsorship and, together with other delegations, presented amendment CDDH/I/41 and Add.1 to 7."

Paragraph 9, as amended, was adopted.

#### Paragraph 10

18. Baron van BOETZELAER van ASPEREN (Netherlands) drew attention to the amendment to paragraph 10 proposed in document CDDH/I/32.

19. Mr. OGOLA (Uganda) considered the amendment, especially the last sentence, to be completely inappropriate. The Committee had not sought to determine whether article 2 would be applicable only to States, but had tried to determine whether wars of national liberation were international conflicts. That was the problem which should be reflected in paragraph 10. His delegation was therefore against the amendment in its existing form, particularly as the terms used therein were unacceptable.

20. Mr. CUTTS (Australia) suggested the addition of the following sentence at the end of paragraph 10: "Yet other delegations, while accepting the principle that Protocol I should apply to armed conflicts of self-determination, considered that this should be expressed without qualification."

21. Mr. LONGVA (Norway) said that his delegation could accept paragraph 10 in its existing form, but had no objection either to the amendment in document CDDH/I/22 or to the Australian amendment. If the latter were adopted, a sentence should be added to the end of paragraph 10, to read: "It was emphasized that this would merely be a restatement of positive international law, and that it would not involve any subjective element or political motivation as criteria for the application of international humanitarian law."

22. Mr. MISHRA (India) suggested that paragraph 10 should be worded as follows: "The great majority of delegations were in favour ... against colonial domination and alien occupation and against racist régimes. That fact was reflected in the vote on document CDDH/I/71 as amended orally.

Most delegations expressed views on the amendments under reference. These views are summarized in the summary records of the second to fourteenth meetings of the Committee."

23. Following an exchange of views in which Mr. KAKOLECKI (Poland), Mr. BARRO (Senegal), Mr. KHATTAEI (Morocco), Mr. MBAYA (United Republic of Cameroon), Mr. GLORIA (Philippines), Mr. OULD SIDI HAIBA (Mauritania) and Mr. GIRARD (France) took part, the CHAIRMAN suggested that delegations submitting amendments to paragraph 10 should consult one another with a view to presenting a joint text.

It was so agreed.

24. Baron van BOETZELAER van ASPEREN (Netherlands) announced that, following their consultations, the delegations presenting amendments to paragraph 10 had agreed on the following: "The majority of delegations were in favour ... against colonial domination and alien occupation and against racist régimes. Other delegations did not share this view. The various opinions expressed on the subject appear in the summary records of the second to the fourteenth meetings of the Committee." If that wording were adopted, the sponsors of the amendment in CDDH/I/82 would be prepared to withdraw it.

25. Mr. OGOLA (Uganda) asked that the words "the majority" should be replaced by "the great majority".

26. The CHAIRMAN said that, in the absence of any objection, he would take it that paragraph 10 as read out by the Netherlands representative and amended by the Ugandan representative was adopted.

It was so agreed.

Paragraph 10, as amended, was adopted.

#### Paragraph 11

27. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that the differences mentioned in the last sentence of the paragraph were undeniably a matter of substance.

28. The CHAIRMAN suggested that the last sentence of the paragraph, from the word "nor" onwards, should be deleted.

It was so decided.

Paragraph 11, as amended, was adopted.

#### Paragraph 12

29. Mr. CLARK (Nigeria), Mr. BOULANENKOV (Union of Soviet Socialist Republics) and Mr. PATHMARAJAH (Sri Lanka) said that they saw no need for paragraph 12.

Paragraph 16

30. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that paragraph 16 of the draft report should be worded as follows: "In connexion with the proposal contained in CDDH/I/73, the Committee decided at its fourteenth meeting to make no comment."

31. Mr. ABDINE (Syrian Arab Republic) pointed out that, in accordance with rule 40 of the rules of procedure, draft resolution CDDH/I/73 had been rejected by the Committee in view of the adoption of amendment CDDH/I/71.

32. Mr. QUENTIN-BAXTER (New Zealand) pointed out that draft resolution CDDH/I/73 had been submitted by its sponsors, not as an amendment to article 1 of the draft Protocol, but as a document designed to facilitate the work of the Committee and of the Conference.

33. Mr. ABDINE (Syrian Arab Republic) said that draft resolution CDDH/I/73 had been presented concurrently with other proposals and it had been decided to give priority to the examination of one of the other proposals - that appearing in document CDDH/I/71. In accordance with the rules of procedure, the adoption of the latter proposal had resulted in the elimination of draft resolution CDDH/I/73.

34. The CHAIRMAN pointed out that no decision had been taken, pursuant to rule 40 of the rules of procedure, on the priority to be given to the examination of draft resolution CDDH/I/73. The matter had been left in abeyance.

35. Mr. MISHRA (India) said that draft resolution CDDH/I/73 did not relate specifically to Protocol I. It might be better to speak of it, not in reference to article 1 of Protocol I, but rather to all the work of the Committee. He therefore suggested that the following paragraph should be added at the end of the Committee's report: "In connexion with the work of the Committee, the delegations of Canada and New Zealand submitted document CDDH/I/73. However, this document was not pressed to a vote by the sponsors."

36. Mr. ECONOMIDES (Greece), referring to the statement by the Syrian representative, stressed that the Chairman had not regarded draft resolution CDDH/I/73 as coming within the scope of rule 40 of the rules of procedure but as a new proposal which could be examined in plenary.

37. Mr. GIRARD (France) said that he did not think that paragraph 16 accurately reflected what had happened in the Committee. Some delegations seemed to wish to give the impression that the majority opinion had been uncontested.

Mr. Obradović (Yugoslavia), Vice-Chairman, took the Chair.

38. Mr. CLARK (Nigeria) suggested that the words "following the vote on CDDH/I/71" should be added at the end of the paragraph proposed by the Indian delegation.

39. Mr. MISHRA (India) supported that suggestion.

40. Mr. QUENTIN-BAXTER (New Zealand) welcomed the wording proposed by the representative of India. The sole concern of the sponsors of draft resolution CDDH/I/73 was to reflect the facts accurately. On the other hand, the addition proposed by the representative of Nigeria was not acceptable. The fact that the sponsors had not pressed for their proposal to be put to the vote was not because of the adoption of amendment CDDH/I/71, but because their proposal did not conflict in any way with the amendments proposed to article 1. Amendment CDDH/I/71 and draft resolution CDDH/I/73 could not be mutually exclusive. The text proposed by the Indian delegation would therefore afford complete satisfaction if that point was made clear in it.

41. Mr. MILLER (Canada) shared the opinion of the representative of New Zealand. The Indian proposal would avoid the Committee having to make it clear that there had been no request for amendment CDDH/I/71 to be considered as a matter of priority.

42. Mr. CLARK (Nigeria) recalled that the representative of India had agreed to the addition of the words "following the vote on CDDH/I/71" to his proposal.

43. Mr. MISHRA (India) pointed out that the representative of New Zealand was asserting that draft resolution CDDH/I/73 had not been nullified by the fact that amendment CDDH/I/71 had been adopted. It was accepted that draft resolution CDDH/I/73 had been dropped, it was perhaps not necessary to add the words proposed by the representative of Nigeria.

44. Mr. BOULANENKOV (Union of Soviet Socialist Republics) supported the addition proposed by the representative of Nigeria. At the fourteenth meeting, the representative of Canada had recognized that draft resolution CDDH/I/73, as it stood, had been ruled out by the adoption of amendment CDDH/I/71. He had not pressed for it to be put to the vote, but had suggested that an informal group should meet in order to draw up a document for submission to the Conference. A suggestion of that kind amounted to a withdrawal.

45. Mr. MARTIN HERRERO (Spain) thought that paragraph 12 of the report did not give an adequate picture of what had occurred in the Committee.

46. Mr. BARRO (Senegal) expressed the view that the Committee should consider that draft resolution CDDH/I/72 had never been submitted to it, since the situation which it was designed to cover had not arisen. The sponsors of the draft resolution had had in mind circumstances in which the Committee might not succeed in reaching agreement on article 1.

47. Mr. MILLER (Canada) suggested that the following words should be added at the end of the text proposed by the Indian delegation: "Since the text of the proposal became out of date after the Committee's decision on CDDH/I/71".

43. Mr. YOKO (Zaire) said that he associated himself with the remarks made by the representative of Senegal. The sponsors of draft resolution CDDH/I/73 recognized themselves that its contents had been overtaken by events. The majority of the Committee seemed to take the view that that proposal, like other proposals which had become out of date, need not be mentioned. In consequence, he proposed that any mention of draft resolution CDDH/I/73 should be deleted.

Mr. Hambro (Norway) resumed the Chair.

49. Mr. SPERDUTI (Italy) said that it was not possible to declare that draft resolution CDDH/I/73 was out of date. Perhaps its wording was out of date following the adoption of amendment CDDH/I/71, but it could still be defended by its sponsors if it were suitably modified.

50. Mr. MBAYA (United Republic of Cameroon) said that he did not think that an accurate presentation of the facts would harm anyone. Two delegations had submitted a draft resolution, which had been the subject of considerable discussion, and then, following the adoption of amendment CDDH/I/71, the draft resolution had become out of date, as had been confirmed by one of its sponsors. Consequently, he was not in favour of paragraph 12 being deleted.

51. Mr. YOKO (Zaire) said that his delegation, in agreement with the delegation of Senegal, was withdrawing its proposal for the deletion of the passage in the report relating to draft resolution CDDH/I/73, both delegations accepted the Indian proposal, as amended by the Canadian delegation.

52. The CHAIRMAN said that, if there were no objections, he would consider that the Committee accepted the new paragraph proposed by the Indian delegation, as amended by the Canadian delegation.

It was so decided.

The meeting rose at 12.30 p.m.





SUMMARY RECORD OF THE SIXTEENTH (CLOSING) MEETING

held on Tuesday, 26 March 1974, at 4.20 p.m.

Chairman: Mr. HAMBRO (Norway)

ADOPTION OF THE REPORT OF THE COMMITTEE (CDDH/I/81 and Add.1) (concluded)

1. The CHAIRMAN invited the Committee to continue the examination of its report (CDDH/I/31 and Add.1).

Paragraphs 13 and 14

Paragraphs 13 and 14 were approved.

Paragraph 15

2. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that the word "domination" should be inserted after the word "colonial" in paragraph 2 of the English version of article 1 (CDDH/I/31, paragraph 15).

It was so agreed.

Paragraph 15, as amended, was approved.

Paragraph 16

3. The CHAIRMAN said that paragraph 16 should be deleted in view of the decision taken at the fifteenth meeting.

Paragraph 16 was deleted.

Paragraph 17

Paragraph 17 was approved.

Paragraph 18

4. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that the first line of the English version should be amended to read: "18. After a very short debate ...". In all three language versions, the reference should be to the "legal expert of the ICRC" and not to the "ICRC representative".

5. Mr. PRUGH (United States of America), referring to the first sentence of paragraph 18, said that the amendment in document CDDH/I/36 and Corr.1 to article 2 (a) and (b) had not been withdrawn by its sponsors: they had merely indicated that they had no objection to its being referred to the Drafting Committee. He therefore suggested that the second part of the first sentence be amended to read: "... the sponsors of the above amendment, which they described as being of a methodological nature, agreed to its being referred to the Drafting Committee."

Paragraph 18, as amended, was approved.

Paragraphs 19 to 25

Paragraphs 19 to 25 were approved.

Paragraph 26

6. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that the English version of paragraph 26 should be amended along the following lines:

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

7. The addendum to the draft report (CDDH/81/Add.1) suggested that the following sentence be added at the end of paragraph 26: "The Committee decided to adopt that procedure."

It was so agreed.

Paragraph 26, as amended, was approved.

Paragraph 27

Paragraph 27 was approved.

Paragraph 28

8. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that the Spanish version should be aligned with the English text. In all three working languages reference should be made to the "legal expert of the ICRC" and not to "the ICRC representative".

Paragraph 28, as amended, was approved.

Paragraphs 29 to 32

Paragraphs 29 to 32 were approved.

Paragraph 33

9. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that the name "Byelorussian Soviet Socialist Republic" should be included in the French version of paragraph 33 (n) and that "Brazil and the Philippines" should be mentioned as co-sponsors in paragraph 33 (r).

10. Mr. ABADA (Algeria) said that the name "Algeria" should be substituted for the name "Argentina" in the French version of paragraph 33 (o).

11. Mr. FRUCHTERMAN (United States of America) said that the symbol of the document mentioned in paragraph 33 (o) should read "CDDH/I/75", not "CDDH/I/76".

Paragraph 33, as amended, was approved.

Paragraph 34

12. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that paragraph 34 as revised should read as follows:

"34. The Committee initiated its consideration of article 5 which it had decided to study together with sub-paragraphs (d) and (e) of article 2, which provided definitions of the terms 'Protecting Power' and 'substitute'.

In the initial debate, which covered only paragraphs 1 and 2 of article 5 of the ICRC draft, many delegations spoke in favour of strengthening the system of Protecting Powers."

13. Mr. KAKOLECKI (Poland) suggested that paragraph 34 include a reference to the fact that some delegations considered that the system of Protecting Powers should be based on an agreement between the parties to a conflict, concerning not only the designation of a Protecting Power but also the acceptance by the parties of the Protecting Power.

14. Mr. SHAH (Pakistan) said that the Committee's report was incomplete. Paragraph 34 referred to the "initial" debate, which might suggest that there had not been any further debate on the question. He therefore suggested that a sentence drafted along the following lines be added at the end of the paragraph: "Owing to lack of time, consideration of these articles could not be completed and they were therefore referred to the next session."

15. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that the revised text of article 34 which he has read out reflected the fact that the Committee had not concluded the debate on articles 2 and 5.

16. Mr. CLARK (Nigeria) suggested that in the revised text the word "initial" be replaced by the word "ensuing".

17. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said he supported the Polish representative's suggestion. The report should reflect what had been said in the Committee, namely, that the system of Protecting Powers should be strengthened. He therefore suggested that the words "on the basis of the principle of consent by the parties to the conflict with respect both to designation and the acceptance of the Protecting Power", be inserted in the second paragraph of the revised text, after the words "Protecting Powers".

18. Mr. DRAPER (United Kingdom) said that he preferred the text read out by the Rapporteur.

19. Baron van BOETZELAER van ASPEREN (Netherlands), supporting the Rapporteur's text, said that a useful precedent had been set by the Committee when dealing with paragraph 10, in connexion with which it had been decided that reference should be made to the summary records for the opinions expressed by delegations.

20. Mr. KNITEL (Austria) suggested that a phrase drafted along the following lines be included in article 34: "The majority of representatives were in favour of strengthening the system of Protecting Powers."

21. Mr. MURILLO RUBIERA (Spain) said he agreed with the views expressed by the Polish and USSR representatives, but thought that the formula suggested by the Rapporteur should be approved.

22. Mr. CUTTS (Australia) said that the majority of representatives had been in favour of having an automatic arrangement for the appointment of Protecting Powers.

23. Mr. MISHRA (India), supported by Mr. KAKOLECKI (Poland), said that his delegation also considered that attention should be drawn to the summary records of the Committee's meetings in order to bring out clearly the views of particular delegations. He therefore suggested that the second paragraph of the revised text be redrafted along the following lines:

"In the ensuing debate, which covered only paragraphs 1 and 2 of the text of article 5 proposed by the ICRC, many delegations expressed their views on the appointment of Protecting Powers and their substitutes and these views may be found in the summary records of the relevant meetings."

24. Mr. BOULANENKOV (Union of Soviet Socialist Republics), Mr. RECHETNJAK (Ukrainian Soviet Socialist Republic), Mr. DRAPER (United Kingdom) and Mr. de BREUCKER (Belgium), supported the amendment proposed by the representative of India.

The amendment proposed by the representative of India was adopted by consensus.

Paragraph 34, as amended, was approved.

Paragraphs 35 and 36 (CDDH/I/31/Add.1)

25. Mr. HUGLER (German Democratic Republic) said that if he remembered rightly the proposal by Australia, Lebanon and Morocco (CDDH/I/60) had never been submitted to the Committee. He therefore proposed a new wording for paragraph 35 along the following lines:

"In connexion with the question of the protection of journalists engaged in dangerous missions in areas of armed conflict, which the Secretariat of the Conference had referred to Committee I, the Committee decided to refer it back to the plenary meeting of the Conference."

26. Mr. CUTTS (Australia) said that the proposal had been circulated in document CDDH/I/60 and he would be glad if that fact could be recorded in the report.

27. Mr. HUGLER (German Democratic Republic) withdrew his amendment.

23. Mr. MISHRA (India) suggested that the heading to paragraphs 35 and 36 might read "Other matters" rather than "Other decisions".

It was so agreed.

Paragraphs 35 and 36, as amended, were approved.

New paragraph 37

29. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that a Canadian proposal for an additional paragraph 37 had been submitted that morning, to read as follows:

"In connexion with the work of the Committee, the delegations of Canada and New Zealand submitted document CDDH/I/70. However, that document was not pressed to a vote by the co-sponsors since the text of the proposal became out of date after the Committee's decision on document CDDH/I/71."

Paragraph 37 was approved.

Annex (CDDH/I/31)

30. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that under article 70, Poland should be added to the list of co-sponsors of amendment CDDH/I/39 which had two addenda (CDDH/I/39 and Add.1 and 2).

The annex to document CDDH/I/31, as amended, was approved.

New paragraph 30

31. Mr. MISHRA (India) said that the normal procedure was that a main Committee, when submitting its report to the plenary, should mention any important recommendations it had adopted. He accordingly proposed the insertion, before the annex, of a new paragraph 30 with the heading "Recommendation to the Plenary" and reading: "30. The Committee recommends the text of article 1 of draft Protocol I as contained in paragraph 15 of this report for adoption by the Conference".

32. Mr. GLORIA (Philippines) said that the new paragraph was superfluous because it was already clear from the report that the Committee had adopted the text set forth in paragraph 15.

33. Baron van BOETZELAER van ASPEREN (Netherlands) said that he agreed with the Philippines representative. The proposed new paragraph went outside the Committee's function, which was to approve the report.

34. Mr. KARCIECKI (Poland) said that the proposed new paragraph would be useful in that it underlined the special importance attached by the Committee to its decision on article 1.

35. Mr. CLARK (Nigeria) said that the new paragraph was necessary to enable the plenary to see at a glance what the recommendation of the Committee was.

36. Mr. DRAPER (United Kingdom), supported by Mr. PRUGH (United States of America) and Mr. MURILLO RUBIERA (Spain), said that the proposed new paragraph would alter the nature of the report. It would make it very hard for those delegations which had difficulty in accepting the new text of article 1 to accept the report as a whole.

37. Mr. MBAYA (United Republic of Cameroon), supported by Mr. de BREUCKER (Belgium), said that the Committee seemed to be splitting hairs. It was difficult to see the value of the proposed new paragraph.

38. The CHAIRMAN said that adoption of the report would not imply any change of attitude on the part of delegations towards the substantive issues referred to. It merely meant agreeing that the report was a faithful reflection of what the Committee had done.

39. Mr. CUTTS (Australia) said that he was opposed to the suggested addition because it seemed an unusual procedure to make such an insertion in a text produced by the Rapporteur which, in section III, already gave extensive coverage to the point in question.

40. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that there was nothing unusual in a committee's including a recommendation in its report to the plenary. The purpose of the addition was to recommend to the plenary that it deal with the matter during the present session of the Conference and not postpone it to a later session.

41. Mr. RATTANSEY (United Republic of Tanzania) said that it was quite normal at international conferences for a main committee to incorporate the gist of its work in a recommendation to the plenary. The plenary could, of course, reject the recommendation, but the recommendation served to ensure that the point was taken up and not held over.

42. Mr. BARRO (Senegal) said that if the Committee failed to include such a recommendation in its report, it would have failed in its mission as a main committee, which was precisely to make recommendations on matters it considered important. If there was no recommendation, the document submitted to the plenary would not be a report but a mere summary of the summary records.

43. Mr. YOKO (Zaire) said he appealed to members of the Committee to show the same spirit of compromise and moderation as had been shown by those members who had agreed to support the Canadian proposal for an intersessional working group despite their initial reservations.

44. The CHAIRMAN said that, whether the Indian proposal was adopted or not, the plenary would retain its full freedom of action.

45. Mr. PICTET (Switzerland) said that the Indian proposal involved a new decision on the part of the Committee and should be treated accordingly.

46. Mr. GLORIA (Philippines) asked whether delegations really believed that failure to include the proposed new paragraph would mean that the plenary would take no action on the text adopted for article 1.

47. Mr. MISHRA (India) said that the discussion had confirmed him in his view that the proposed new paragraph was by no means superfluous; there seemed to be a number of delegations which felt that the plenary should not take any action on the text adopted for article 1. His proposal was merely procedural and involved no new decision of substance. The plenary would, of course, have complete freedom to deal with the recommendation as it saw fit.

48. Mr. KNITTEL (Austria) said that, so far as he knew, none of the other Committees had included recommendations in their reports.

49. Mr. CLARK (Nigeria) said that the Committee was not obliged to follow the same procedure as the other Committees.

50. Mr. AEDINE (Syrian Arab Republic) said that there was no rule against committees making recommendations. It was not a decision of substance; in adopting the Committee's report containing the recommendation, the plenary would merely be noting that that was what the Committee had decided.

51. Mr. IHATTABI (Morocco), supported by Mr. YOKO (Zaire) and Mr. EL GHONEMY (Arab Republic of Egypt), asked that the Indian proposal for a new paragraph 30 should be put to the vote.

52. Mr. PRUGH (United States of America) proposed that the word "adoption" in the last line of the text proposed by India be replaced by the word "consideration".

53. The CHAIRMAN invited the Committee to vote on the United States amendment.

The United States amendment was rejected by 40 votes to 26, with 10 abstentions.

54. The CHAIRMAN invited the Committee to vote on the text proposed by India for a new paragraph 30.

The text of a new paragraph 30, proposed by the Indian delegation, was adopted by 51 votes to 23, with 9 abstentions.

55. The CHAIRMAN invited the Committee to adopt the draft report (CDDH/I/31 and Add.1), as a whole, as amended.

The draft report (CDDH/I/31 and Add.1), as a whole, as amended, was adopted by 59 votes to none with 22 abstentions.

#### CLOSURE OF THE SESSION

56. The CHAIRMAN declared the first session of the Committee closed.

The meeting rose at 6.10 p.m.





SECOND SESSION

(Geneva, 3 February - 18 April 1975)

COMMITTEE I

SUMMARY RECORDS OF THE SEVENTEENTH TO FORTY-FIRST MEETINGS

held at the International Conference Centre, Geneva,  
from 7 February to 15 April 1976

Chairman: Mr. E. HAMBRO (Norway)

Rapporteur: Mr. A. E. de ICAZA (Mexico)



CONTENTS

	<u>Page</u>
<u>Seventeenth (opening) meeting</u> . . . . .	141
Introduction by the Chairman	
Election of Rapporteur	
Consideration of draft Protocol I	
Article 5 - Appointment of Protecting Powers and of their substitute	
Paragraph 3	
<u>Eighteenth meeting</u> . . . . .	155
Consideration of draft Protocol I ( <u>continued</u> )	
Article 5 - Appointment of Protecting Powers and of their substitute ( <u>continued</u> ):	
Paragraph 3 ( <u>continued</u> )	
Paragraph 4	
Paragraphs 5 and 6	
<u>Nineteenth meeting</u> . . . . .	171
Consideration of draft Protocol I ( <u>continued</u> ):	
Article 5 - Appointment of Protecting Powers and of their substitute ( <u>continued</u> )	
Paragraphs 3, 4, 5 and 6 ( <u>continued</u> )	
Article 6 - Qualified persons	
Article 7 - Meetings	
<u>Twentieth meeting</u> . . . . .	185
Consideration of draft Protocol I ( <u>continued</u> ):	
Article 7 - Meetings ( <u>continued</u> )	
Article 7 <u>bis</u> - Inquiry procedure concerning alleged violation of the Conventions	
Article 7 <u>ter</u> - Settlement of disagreements	

Twenty-first meeting . . . . . 191

Consideration of draft Protocol I (continued):

Article 2 - Definitions

Sub-paragraphs (a) and (b)

Sub-paragraph (c)

Sub-paragraphs (d) and (e)

Proposed new sub-paragraphs (f) and (g)

Article 3 - Beginning and end of application

Article 4 - Legal status of the Parties to the conflict

Twenty-second meeting . . . . . 201

Consideration of draft Protocol II:

Article 1 - Material field of application

Article 2 - Personal field of application

Twenty-third meeting . . . . . 215

Consideration of draft Protocol II (continued):

Article 1 - Material field of application  
(continued)

Article 2 - Personal field of application  
(continued)

Article 3 - Legal status of the Parties to  
the conflict

Twenty-fourth meeting . . . . . 229

Consideration of draft Protocol II (continued):

Article 1 - Material field of application  
(continued)

Article 2 - Personal field of application  
(continued)

Article 3 - Legal status of the Parties to  
the conflict (continued)

Article 4 - Non-intervention

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

	<u>Page</u>
<u>Twenty-fifth meeting</u> . . . . .	241
Organization of work	
Setting up of a working group on the question of the protection of journalists engaged in dangerous missions in areas of armed conflict	
<u>Twenty-sixth meeting</u> . . . . .	247
Consideration of draft Protocol I ( <u>resumed from         the twenty-first meeting</u> )	
Report of Working Group A on articles 2 to 7	
Article 2 - Definitions ( <u>concluded</u> )	
Sub-paragraphs ( <u>d</u> ) and ( <u>e</u> )	
Article 3 - Beginning and end of application ( <u>concluded</u> )	
Article 4 - Legal status of the Parties to the conflict ( <u>concluded</u> )	
Article 5 - Appointment of Protecting Powers and of their substitute ( <u>resumed             from the nineteenth meeting</u> )	
Paragraph 4 <u>bis</u>	
Article 6 - Qualified persons ( <u>concluded</u> )	
Paragraph 1	
Paragraph 2	
Paragraph 3	
Paragraph 4	
<u>Twenty-seventh meeting</u> . . . . .	253
Consideration of draft Protocol I ( <u>continued</u> )	
Report of Working Group A on articles 2 to 7 ( <u>continued</u> )	
Article 5 - Appointment of Protecting Powers and their substitute ( <u>continued</u> )	
Paragraph 4 <u>bis</u>	
Paragraph 1	
Paragraph 2	
Paragraph 3	
Paragraph 4	
Paragraph 5	
Paragraph 6	
Paragraph 7	
Statement by the representative of the Sovereign Order of Malta	

	<u>Page</u>
<u>Twenty-eighth meeting</u> . . . . .	271
Consideration of draft Protocol I ( <u>continued</u> ):	
Report of Working Group A on articles 2 to 7 ( <u>concluded</u> )	
Article 5 - Appointment of Protecting Powers and of their substitute ( <u>concluded</u> )	
Article 7 - Meetings ( <u>concluded</u> )	
Other business	
<u>Twenty-ninth meeting</u> . . . . .	285
Consideration of draft Protocol II ( <u>resumed from     the twenty-fourth meeting</u> )	
Report of Working Group B on articles 1 to 5	
Article 1 - Material field of application ( <u>concluded</u> )	
Article 2 - Personal field of application ( <u>concluded</u> )	
Article 3 - Legal status of the Parties to the conflict ( <u>concluded</u> )	
Article 4 - Non-intervention	
<u>Thirtieth meeting</u> . . . . .	299
Consideration of draft Protocol II ( <u>continued</u> )	
Report of Working Group B on articles 1 to 5 ( <u>concluded</u> )	
Article 4 - Non-intervention ( <u>concluded</u> )	
Article 5 - Rights and duties of the Parties to the conflict ( <u>concluded</u> )	
<u>Thirty-first meeting</u> . . . . .	311
Consideration of draft Protocol I ( <u>resumed from     the twenty-eighth meeting</u> )	
Report of the Ad Hoc Working Group on the Protection of Journalists engaged in Dangerous Missions	
Organization of work	

	<u>Page</u>
<u>Thirty-second meeting</u> . . . . .	323
Consideration of draft Protocol II ( <u>resumed from the thirtieth meeting</u> )	
Article 6 - Fundamental guarantees	
Article 7 - Safeguard of an enemy <u>hors de combat</u>	
Article 8 - Persons whose liberty has been restricted	
<u>Thirty-third meeting</u> . . . . .	343
Consideration of draft Protocol II ( <u>continued</u> )	
Joint Working Group to consider the question of reprisals	
Article 8 - Persons whose liberty has been restricted ( <u>continued</u> )	
Article 9 - Principles of penal law	
Article 10 - Penal prosecutions	
<u>Thirty-fourth meeting</u> . . . . .	357
Consideration of draft Protocol II ( <u>continued</u> )	
Article 10 - Penal prosecutions ( <u>concluded</u> )	
<u>Thirty-fifth meeting</u> . . . . .	367
Consideration of draft Protocol I ( <u>resumed from the thirty-first meeting</u> )	
Report of the <u>Ad Hoc Working Group on the Protection of Journalists engaged in Dangerous Missions (resumed from the thirty-first meeting and concluded)</u>	
Organization of work	
<u>Thirty-sixth meeting</u> . . . . .	377
Organization of work	

	<u>Page</u>
<u>Thirty-seventh meeting</u> . . . . .	383
Consideration of draft Protocol I ( <u>resumed from the thirty-fifth meeting</u> )	
Article 70 - Measures for execution	
Proposed new article 70 <u>bis</u> - Activities of the Red Cross and other humanitarian organizations	
Article 71 - Legal advisers in armed forces	
Article 72 - Dissemination	
Article 73 - Rules of application	
Article 74 - Repression of breaches of the present Protocol	
Article 75 - Perfidious use of the protective signs	
Article 76 - Failure to act	
Article 77 - Superior orders	
Article 78 - Extradition	
Article 79 - Mutual assistance in criminal matters	
Organization of work	
Statement by the observer for Amnesty International	
<u>Thirty-eighth meeting</u> . . . . .	403
Consideration of draft Protocol I ( <u>continued</u> )	
Report of Working Group A on articles 70, 70 <u>bis</u> , 71, 72 and 73	
Article 70 - Measures for execution ( <u>concluded</u> )	
Proposed new article 70 <u>bis</u> - Activities of the Red Cross and other humanitarian organizations ( <u>concluded</u> )	
Article 71 - Legal advisers in armed forces ( <u>concluded</u> )	
Article 72 - Dissemination ( <u>concluded</u> )	
Paragraph 1	
Paragraph 2	
Paragraph 3	
Article 73 - Rules of application ( <u>concluded</u> )	



	<u>Page</u>
<u>Thirty-ninth meeting</u> . . . . .	411
Consideration of draft Protocol II ( <u>resumed from the thirty-fourth meeting</u> )	
Report of Working Group B on articles 6, 6 <u>bis</u> and 8	
Article 6 - Fundamental guarantees ( <u>concluded</u> )	
Paragraph 1	
Paragraph 2 (a)	
Paragraph 2 (b)	
Paragraph 2 (c)	
Paragraphs 2 (d), (e) and (f)	
Paragraph 2 (g)	
Paragraph 3	
Article 6 <u>bis</u> ( <u>concluded</u> )	
Article 8 - Persons whose liberty has been restricted ( <u>concluded</u> )	
Paragraphs 1 (a) and (b)	
Paragraph 1 (c)	
Paragraph 1 (d)	
Paragraphs 1 (e) and 2 (a), (b) and (c)	
Paragraph 2 (d)	
Paragraph 3	
Paragraph 4	
Paragraph 5	
<u>Fortieth meeting</u> . . . . .	421
Consideration of draft Protocol II ( <u>continued</u> )	
Report of Working Group B on articles 6, 6 <u>bis</u> and 8 ( <u>concluded</u> )	
Explanations of vote	
Report of Committee I	
<u>Forty-first (closing) meeting</u> . . . . .	431
Adoption of the report of Committee I	
Closure of the session	



SUMMARY RECORD OF THE SEVENTEENTH (OPENING) MEETING

held on Friday, 7 February 1975, at 10.10 a.m.

Chairman: Mr. HAMBRO (Norway)

INTRODUCTION BY THE CHAIRMAN

1. The CHAIRMAN reminded Committee I of its decision at the first session of the Conference that in 1975 it would resume its work exactly at the point at which it had left off at the end of the first session and that, as in 1974, the two draft Protocols would be considered simultaneously, Part by Part. He pointed out that, so far, Committee I had only considered the first five articles of draft Protocol I and a number of amendments submitted to them. He mentioned the decisions taken on each of the five articles.
2. Referring to the future organization of work, he suggested that the Committee should continue with and conclude consideration of Part I of draft Protocol I, beginning with article 5, paragraph 3, and that it should then turn to Part I of draft Protocol II. Articles 6 to 10 of draft Protocol II would be examined immediately after the provisions on application, not after the final provisions.
3. He suggested also that the Committee should meet only once a day, in the afternoon, to enable the working groups and sub-committees it would set up to consider the articles after their discussion at the plenary meetings.
4. Each article could be considered under the procedure adopted the previous year, namely: enumeration by one of the legal secretaries of the amendments submitted, then comments on the texts before the Committee by the expert of the International Committee of the Red Cross (ICRC), and, finally, introduction of the various proposals by one of the sponsors.
5. As the Committee wished to perform its work as effectively as possible, there should be no political discussion and it should not be necessary to limit the number of speakers or the length of speeches.
6. The Committee should set up a Drafting Committee as soon as possible. He suggested that that Committee should comprise only two, instead of three, representatives from each regional group, besides the representatives of delegations that had submitted proposals.

7. A draft time-table had been circulated, but Committee III had not yet finally referred articles 63 to 65 and 67 to 69 of draft Protocol I and article 32 of draft Protocol II to Committee I; and it had not yet been decided whether United Nations General Assembly resolutions 3058 (XXVIII) and 3285 (XXIX) on the protection of journalists engaged in dangerous missions in areas of armed conflict fell within the competence of Committee I or of Committee III.

8. If there were no objections, he would consider that his suggestions had been adopted.

It was so agreed.

9. Replying to questions by Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic), the CHAIRMAN announced that a document showing the progress of work would be circulated, that the Committee's decision to meet in the afternoons would be applicable throughout the entire session and that the list of members of the Committee would be brought up to date and circulated by the Secretariat.

10. In reply to a question by Mr. ABI-SAAB (Arab Republic of Egypt), the CHAIRMAN said that, after concluding the examination of draft Protocol I, article 5, which had been broken off at the end of the first session, the Committee would consider articles 2, 3 and 4 of that Protocol.

#### ELECTION OF RAPPORTEUR

Mr. Antonio de Icaza (Mexico) was elected Rapporteur by acclamation, in succession to Mr. Miguel Marin-Bosch (Mexico), who was not participating in the proceedings of the second session.

#### CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1)

Article 5 - Appointment of Protecting Powers and of their substitute (CDDH/1, CDDH/56; CDDH/I/9, CDDH/I/50, CDDH/I/54, CDDH/I/64, CDDH/I/67 and Add.1, CDDH/I/70, CDDH/I/75, CDDH/I/77, CDDH/I/83)

#### Paragraph 3

11. Mr. PRUGH (United States of America), referring to an address delivered by Mr. Baxter (United States of America) in December 1974, said that, despite all efforts to build up a system of humanitarian law applicable in cases of armed conflict, the progress achieved had been poor. He had noted one principle necessary in building up that law: the principle of openness and accountability, as exemplified in the obligation for belligerents to respond to requests for a Protecting Power or substitute, and the obligation

to give account of the situation of detained civilians or prisoners-of-war. It was highly desirable to use that principle of openness and accountability as a basis for the discussions of article 5 which, of all the articles before the Conference, was the one with the most direct humanitarian function.

12. Introducing the United States amendment (CDDH/I/64) to article 5, paragraph 3, he noted that in recent armed conflicts the machinery of humanitarian protection by the Protecting Power or its substitute had not operated satisfactorily, with the result that the effectiveness of the 1949 Geneva Conventions in providing protection for war victims had been seriously weakened. It might be concluded that, because of political pressures which deterred States from complying with their obligations, it was often difficult to obtain the agreement of the Parties to the conflict on the selection of Protecting Powers or their substitute. Consequently, the United States delegation proposed the following procedure: if a Protecting Power had not been appointed within 60 days of the time when one Party had first proposed such an appointment, the Parties to the conflict would automatically accept an offer made by the ICRC, where it deemed that necessary, to act as a substitute for the Protecting Power to the extent compatible with its own activities. Thus, in giving their agreement, the Parties would be free from political pressures, and States would be protected from any real or imagined harm which might come of their acceptance.

13. He believed that his Government's proposal would go far to correct the deficiencies that had been observed for some years in the protection of war victims and hoped that delegations would give it careful attention.

14. Mr. SURBECK (Legal Secretary) enumerated the amendments which had been submitted to article 5, paragraph 3.

15. Mr. AGOES (Indonesia) asked whether it would be possible to submit further amendments.

16. The CHAIRMAN said that no decision had yet been taken on that question.

17. Mr. MILLER (Canada) proposed that a time-limit should be set for the submission of amendments.

It was so agreed.

18. Mr. Antoine MARTIN (International Committee of the Red Cross), before introducing article 5, paragraph 3, reminded the Committee of certain important points affecting the article as a whole.

19. At the first session of the Conference, Committee I had decided to consider article 5, entitled "Appointment of Protecting Powers and of their substitute", paragraph by paragraph, (CDDH/I/SR.12, para.9), because of the wide scope of the article and the specific purpose of each of its provisions. As the Committee had decided, consideration of the article was bound up with consideration of article 2, sub-paragraphs (d) and (e), which contained draft definitions of the terms "Protecting Power" and "substitute of a Protecting Power". A number of amendments had been submitted, and the debates on the article appeared in the summary records of the eleventh and twelfth meetings of Committee I (CDDH/I/SR.11 and SR.12).

20. During the preparatory work, a majority of the experts consulted, as well as a majority of the Governments which had answered an ICRC questionnaire on measures designed to reinforce the application of the four Geneva Conventions of 1949, had declared themselves in favour of maintaining and strengthening the system of Protecting Powers, and the United Nations General Assembly had expressed similar views in various resolutions on the subject. In the general opinion of the experts consulted and the Governments which had replied to the ICRC questionnaire, the appointment and acceptance of Protecting Powers could not be settled by an automatic process independent of the agreement of the Parties to the conflict.

21. Article 5, paragraph 3, dealt with the role which the ICRC would, as a last resort, be prepared to assume as the substitute for a Protecting Power within the meaning of article 2, sub-paragraph (e). It was important to bear in mind the provisions of the Geneva Conventions of 1949 concerning the question of substitute of Protecting Powers. Under the first paragraph of article 10 common to the first three Conventions of 1949 (article 11, paragraph 1 of the fourth Convention), the Parties to the Conventions were entitled to appoint an organization as the substitute for the Protecting Powers. The organization in question would have to offer all guarantees of impartiality and efficacy; the Parties to the Conventions might appoint the substitute at any time, before or during hostilities; and they would entrust to it the duties incumbent on the Protecting Powers by virtue of the Conventions. That right had so far never been exercised.

22. The second paragraph of Article 10 common to the first three Conventions of 1949 (Article 11 of the fourth Convention) provided that if the persons protected did not benefit or ceased to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization appointed in accordance with the first paragraph, the Detaining Power should request a neutral State, or such an organization to undertake the functions incumbent on the Protecting Powers by virtue of the Conventions.

23. Lastly, the third paragraph of Article 10 common to the Conventions (Article 11 of the fourth Convention) stipulated that, as a last resort and in the event of failure of the aforesaid system, the Detaining Power should request an organization such as the International Committee of the Red Cross, to assume the humanitarian functions performed by the Protecting Powers, or should accept the offer of the services of such an organization.

24. He had thought it necessary to mention the substitute system provided for in the four Geneva Conventions of 1949 because, since draft Protocol I was an additional instrument designed to supplement those Conventions, the machinery of Protecting Powers or their substitute set out in those instruments would remain fully in force and the High Contracting Parties would retain the option of establishing an organization to replace the Protecting Power, as envisaged in the first paragraph of Article 10 of the Conventions. At the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, the ICRC had, moreover, raised the question of establishing a standing supervisory body, even though most of the experts and also Governments replying to the ICRC questionnaire were against introducing an article on the establishment of such a body; some of them, of course, would have welcomed the establishment of an automatic back-up institution or a standing body established or designated for that purpose by the United Nations. In that connexion, reference should also be made to certain proposals made at the XXIIInd International Conference of the Red Cross, held at Teheran in 1973, and to some of the amendments submitted at the first session of the Diplomatic Conference.

25. So far as the ICRC was concerned, it should be remembered that a general provision in the 1949 Conventions, Article 9 common to three of the Conventions (Article 10 of the fourth Convention) entitled "Activities of the International Committee of the Red Cross", recognized the activities of the ICRC and its traditional right to take the initiative. Under Article 9, no provision of the Conventions constituted an obstacle to the humanitarian activities of the ICRC or any other impartial organization. Besides, certain provisions of the 1949 Conventions described the humanitarian activities of the ICRC: most of those activities were distinct from, although in certain cases related to those which the ICRC would be called upon to assume as a substitute for a Protecting Power. Article 9 would thus retain its full validity - a fact that should be emphasized.

26. With regard to the part to be played by the ICRC as a substitute in the true meaning of the term, it should be remembered that shortly after the 1949 Conventions were concluded the ICRC had decided, and had made known its decision, that it was prepared in principle to act as a substitute for a Protecting Power in default of the latter, either acting normally as a "last resort" under the

third paragraph of Article 10 common to three of the Conventions (Article 11 of the fourth Convention) or in cases where States agreed to describe it as an "international organization which offers all guarantees of impartiality and efficacy", in accordance with the first paragraph of Article 10. However, since the ICRC had made certain reservations of detail concerning the scope of its role, the false impression had been created in certain quarters that the ICRC had refused to act as substitute for a Protecting Power. Those reservations of detail mainly related to the ICRC's stipulation that, in becoming a substitute, it would retain its essential character - that of an institution with its own principles. If its activities were to become more "protective" than in the past, it would not thereby become a "Power", or a State with the pertinent diplomatic characteristics. The ICRC substitute would not act as the representative of one State to another, but would represent the whole community of States Parties to the 1949 Geneva Conventions. All misunderstandings in that connexion must be dispelled and the statement made by the President of the ICRC to the second session of the Conference of Government Experts, held in 1972, should be reaffirmed. That statement read as follows:

"... the ICRC proposes to make use of the power conferred on it to assume the role of substitute for the Protecting Power whenever it considers it necessary and possible to do so. This role should not, however, be automatically imposed on the ICRC. Only when all other possibilities were exhausted would the ICRC offer its services. Any such offer would then require the agreement of the Parties concerned. To fulfil those functions the ICRC will obviously need to be supplied with adequate funds and staff. Finally, the ICRC would like to make it clear that, should it agree to act as substitute, it does not intend in any way to weaken the system of Protecting Powers provided for in the Conventions."<sup>1/</sup>

27. The two proposals in article 5, paragraph 3, which were in conformity with the statement of the President of the ICRC, clearly showed that the ICRC was prepared to assume the functions of substitute for Protecting Powers.

28. He reiterated that the ICRC was not afraid to play such a part, since it had already carried out many of the functions of substitute for Protecting Powers as part of its traditional activities. Through its delegations on the spot, it was fortunate enough to be informed in advance, and very precisely informed, concerning all the problems of applying the Geneva Conventions in any given conflict.

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<sup>1/</sup> See ICRC: Report on the Work of the Conference (of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts), volume I, p.208.



29. Mr. BOBYLEV (Union of Soviet Socialist Republics) asked whether the ICRC intended to oppose the automatic system and, if so, whether it was in favour of proposal I in article 5, paragraph 3, and against proposal II.

30. Mr. Antoine MARTIN (International Committee of the Red Cross) said that under proposal II the Red Cross would accept the offer made to it if it saw fit to do so. As the President of the ICRC had emphasized at the Conference of Government Experts, the ICRC would see fit to do so only if it obtained the agreement of the interested parties.

31. Mr. ROSENNE (Israel) asked whether the text of the ICRC representative's statement could be distributed, so that it could be studied before the discussion of article 5, paragraph 3.

32. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the Secretariat would make the text available to representatives as soon as possible.

33. Mr. MILLER (Canada) said that his country's delegation to the Sixth (Legal) Committee at the twenty-ninth session of the United Nations General Assembly in 1974 had stressed the importance it attached to any proposals designed to facilitate the implementation of the 1949 Geneva Conventions.

34. His delegation had not sponsored any of the amendments submitted, but hoped that the Committee would adopt a clear, precise text, stipulating that the Parties to a conflict could accept a substitute for a Protecting Power only if there was no agreement on the Power proposed.

35. He was in favour of proposal II concerning paragraph 3 which, in his view, was better worded than proposal I and provided that once the ICRC had offered to act as a substitute, the Parties to the conflict would be obliged to accept that offer.

36. Short of providing for the establishment of an ad hoc committee before the start of a conflict, proposal II would meet the concern of those who advocated a stronger, semi-automatic system for replacing the Protecting Power.

37. Several amendments mentioned a time limit; he would like that limit to be clearly stated, in order to avoid any delay in the acceptance of the offer. Various comments on the matter had already been made at the current meeting.

38. Mr. CALERO-RODRIGUES (Brazil) said that, in order to ensure a certain degree of automatism without making that an absolute rule, the system adopted should offer several variants with regard to the choice of Protecting Power or its substitute. Yet the proposed texts referred to one possibility only, that of recourse to the ICRC, whereas some other international or regional body might be more acceptable to the Parties to the conflict. The Brazilian amendment (CDDH/I/54) provided for several solutions. The role of the ICRC would then be to see to it that the Parties to the conflict accepted the proposed body; alternatively, it would accept that responsibility itself. Objections by the Parties to the conflict to the ICRC as a possible substitute could be avoided by unofficial consultations.

39. It would be necessary to study in greater detail the other proposals submitted, particularly the question of time-limits. It should be possible to formulate a general text on the basis of those amendments since none of the delegations appeared to oppose strengthening the role of the Protecting Power.

40. Mr. ABI-SAAB (Arab Republic of Egypt) said that the amendment submitted by his country and twelve others (CDDH/I/75) had much in common with many of the proposals advanced up to that point; they all aimed at perfecting the system of scrutiny of implementation provided in the Geneva Conventions of 1949.

41. The institution of Protecting Powers had in practice been followed before having been codified in the successive Geneva Conventions. It aimed at ensuring proper implementation and preventing violations during armed conflicts instead of resorting to sanctions after the harm had been done. The 1949 Conventions considered that institution an essential and obligatory component of the system provided in those Conventions, and in order to ensure the existence of a mechanism of surveillance in all circumstances, they provided for a whole range of substitutes for Protecting Powers in order to meet all the contingencies of the absence of such a Power.

42. Paradoxically, however, since 1949 the system of Protecting Powers and their substitutes had all but ceased to function. That might have been caused by the extension of the role of Protecting Powers under the Geneva Conventions of 1949 or by the nature of contemporary armed conflicts, but it was more immediately the result of the consensual character of the procedure of the appointment of Protecting Powers and, to a lesser degree, of their substitutes.

43. Article 5 of draft Protocol I tried to remedy that situation in three different ways: first, paragraphs 4 and 5 provided assurances or clarifications designed to remove some of the presumed causes of the reluctance of States Parties to a conflict to appoint Protecting Powers; second, paragraph 2 aimed at facilitating the procedure of appointing such Powers by authorizing the ICRC to act as an intermediary between the Parties to the conflict in that respect; third, but the most important, came paragraph 3 with its two alternative versions, providing for the possibility for the ICRC to assume the functions of a substitute in case no Protecting Power was appointed.

44. However, neither of the alternative versions of paragraph 3 went far enough: the first contributed little that was new since it explicitly required the consent of both Parties to the conflict; the second version went further since it imposed an obligation on the Parties to accept the ICRC's offer. But the ICRC was under no obligation to make such an offer in all cases. Moreover, the representatives of the ICRC had made it abundantly clear at the 1972 Conference of Government Experts and later on that the ICRC would make such an offer only if certain conditions obtained, the first being the consent of the Parties to the conflict.

45. Thus, both alternatives remained resolutely consensual and did not go much further than what was possible at present. Indeed, the ICRC had already tried to fill the gap as far as it could and considered fit, basing itself on its autonomous functions under the Conventions and on its right of initiative according to Article 9 common to three of the 1949 Conventions (Article 10 of the fourth Convention) which safeguarded its right to undertake tasks and activities other than those specifically attributed to it in the Conventions, subject to the consent of the Parties to the conflict.

46. What was now needed was a provision which would leave no loophole and which would provide a safety net to be applied, as a last resort, in all cases of absence of a consensual designation of a Protecting Power or a substitute.

47. The Parties to the conflict must be placed under the obligation of accepting a substitute such as the ICRC or, as the Brazilian representative had suggested (CDDH/I/54), a regional body; and a procedure must be provided for the appointment of that substitute, by assigning that task in the final instance to the United Nations for example, as proposed by the Norwegian amendment (CDDH/I/83), or to the Conference of the High Contracting Parties as proposed by the Arab Republic of Egypt and co-sponsors in amendment CDDH/I/75.

48. It was true that there was no way physically to compel a reluctant party to co-operate with a substitute it had not accepted or to allow it to function in territories under its control. But at least, if the above approach were followed, such a negative attitude would constitute a characterized violation of a clear and specific obligation; and that in itself would be an important source of moral and political pressure towards compliance.

49. Such a solution would not undermine the essential role of the ICRC. On the contrary, it would enhance and supplement it, by covering those cases in which the ICRC could not or would not offer to act as a substitute.

50. The CHAIRMAN suggested that an informal meeting of the sponsors of the amendments to article 5, paragraph 3, should be held on Monday morning, 10 February, and should be attended by representatives of the ICRC.

It was so agreed.

51. Mr. GIRARD (France) said that, although he understood the desire of some delegations to make the procedure regarding the substitute an automatic one, he considered that the Committee's main concern should be directed towards adopting a more efficient system than the one so far applied. The French delegation was in favour of proposal I, in spite of the fact that it did not represent much change. It was not entirely opposed to proposal II, although the text did place a fairly heavy responsibility on the ICRC. Furthermore, the words "if it deems it necessary" were very vague and the idea of necessity could be interpreted in various ways.

52. He had followed with interest the statements in support of strengthening the moral obligation of the Parties to the conflict. However, the proposal suggesting the appointment of a Conference of the High Contracting Parties as the final authority was hardly compatible with the desirability of very short time-limits. He approved of the suggested informal meeting of the sponsors of the amendments to article 5, paragraph 3.

53. Mr. de BREUCKER (Belgium) said he did not consider the text of proposal I very satisfactory, since it required the agreement of two Contracting Parties. It would be preferable forthwith to reserve for the ICRC the power to act as a substitute if the Parties to the conflict tried to evade or back out of their obligations. The words "in so far as those functions are compatible with its own activities" should be deleted, since they constituted a retrogression from Article 9 common to three of the 1949 Conventions. In any event, it would be advisable to protect the ICRC's right to exercise initiative.

54. On the other hand, proposal II seemed to be entirely satisfactory. Paragraph 3 of amendment CDDH/I/67 and Add.1, submitted by Belgium, the Netherlands and the United Kingdom, endeavoured to establish, on the basis of the third paragraph of Article 10 of the first Geneva Convention of 1949, the obligation of the Party to the conflict holding prisoners of war or occupying enemy territory to apply to the ICRC: "... shall ... request or accept the offer of the services of the International Committee of the Red Cross to assume the functions of a Protecting Power under the present Protocol".

55. His delegation wished to participate in the informal meeting of the sponsors of amendments.

56. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam), having stressed the importance of the system of the Protecting Power for the effective application of the Geneva Conventions, referred to the origin of the deadlock in which the Committee found itself over article 5: indeed, the impartiality of the Protecting Power was being called in question.

57. His country's experience had shown that public opinion constituted the very source of humanitarian law. That opinion, which was represented by non-governmental organizations, must therefore be taken into account. Consequently, the participation of the States and of the non-governmental organizations of the two parties was indispensable if the impartiality of the Protecting Power was to be guaranteed.

58. His delegation, while appreciating the work of the ICRC, considered that that body did not always provide the guarantees of impartiality which were required of a substitute for the Protecting Power. It opposed amendment CDDH/I/9, submitted by the Republic of Viet-Nam, from that point of view and recommended the adoption of amendment CDDH/I/70, submitted by the Byelorussian SSR, the Ukrainian SSR and the Union of Soviet Socialist Republics. It was prepared to consider other amendments along the same lines.

59. Mr. Bohyung LEE (Republic of Korea) said that he recommended the adoption of proposal II and suggested that the words "without delay" be inserted before the words "the offer made by the International Committee ...", with a view to protecting the interests of the parties and of their nationals.

60. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that his country's delegation based itself on the provisions of the 1949 Geneva Conventions, taking into account the reservations made when those instruments had been drawn up. It could not accept the idea of a Protecting Power being imposed without the consent of the

parties concerned and did not think that there could be any question of automatically granting an international organization the right to assume the role of Protecting Power. Proposal I was largely consonant with the amendment submitted by the Byelorussian SSR, the Ukrainian SSR and the Union of Soviet Socialist Republics (CDDH/I/70). The Soviet delegation was prepared to take part in the informal discussions between the sponsors of amendments to article 5, paragraph 3.

61. Mr. FERRARI-BRAVO (Italy), introducing his delegation's amendment (CDDH/I/50), said that, although experience might have shown that the system of a Protecting Power required improvement, the intervention of an impartial body to ensure the application of humanitarian law was in the interests of the entire international community. Admittedly, that system was in principle based on acceptance by the parties, but in view of the ultimate aim, attention must be paid forthwith to situations where it might prove impossible to reach agreement on the designation of a Protecting Power or a substitute. As to the proposal to convene a conference of Parties to the Geneva Conventions of 1949, such a procedure would involve delays incompatible with the urgency of action required by modern warfare. The intervention of an organization offering every guarantee of impartiality must be provided for in the Protocols. The question was not one of imposing an obligation on the ICRC, but rather one of avoiding its being handicapped in advance by having to seek the agreement of the Parties to the conflict at the diplomatic level.

62. The Italian amendment was reasonably close to proposal II put forward by the ICRC for article 5, paragraph 3, and the Italian delegation was prepared to consider any proposal that would lead to a consensus of opinion. In that spirit, it supported the Chairman's suggestion for a meeting of the sponsors of amendments.

63. The establishment of a time-limit for the intervention of the ICRC, suggested by several delegations, seemed to be dangerous in view of the nature of modern warfare, which called for rapid action. It would be better to leave it to the ICRC to select the time it considered most favourable for intervention. The main consideration was that States should be obliged to accept its intervention.

64. Mr. MURILLO RUBIERA (Spain) said that delegations attached the greatest importance to machinery for action by the Protecting Power. It was essential to improve that machinery, in order to ensure better application of humanitarian principles. He would limit his remarks to article 5, paragraph 3, of draft Protocol I and to paragraphs 3 and 4 of the amendment submitted by his Government (CDDH/I/77), but that did not mean that he underestimated the value of the proposals put forward by other delegations. With regard to the two alternatives proposed by the ICRC for article 5,

paragraph 3, he thought the difficulty lay in the need for efficient machinery, on the one hand, and for respect for the wishes of the Parties to the conflict, on the other. Delegations thus tended to favour a flexible automatic system to prevent action from being blocked by the opposition of one of the parties. A certain degree of automatic procedure could nevertheless be introduced, in view of the adoption at the first session of the Diplomatic Conference of an amendment to article 1 of draft Protocol I, whereby the parties undertook to respect and to ensure respect for the Protocol in all circumstances. The first alternative proposed by the ICRC for article 5, paragraph 3, had the weakness of delaying intervention, which could prove dangerous. It would be better to adopt the second alternative, which should nevertheless be improved, since it did not set any time-limit. The Spanish delegation therefore suggested introducing the words "immediately" and "without delay" into the text. In view of the heavy responsibility imposed on the ICRC by paragraph 3 of the Spanish amendment, it should be provided that the substitute could be replaced by another Power or another organization, and that was the purpose of paragraph 4 of the amendment. The Spanish delegation would willingly participate in the meeting of sponsors of amendments suggested by the Chairman.

65. Mr. PICTET (Switzerland) said that, as he had already stated at the first session of the Conference, his delegation preferred proposal II, (see CDDH/I/SR.11, para.34), which seemed to it to be a satisfactory compromise between the various proposals. Indeed, his delegation would favour, if that were possible, the greater strengthening of the institution of Protecting Power and its substitute. It would be advisable to provide in paragraph 3 for a time-limit which should be short. That would enable the ICRC to seek, under the best possible conditions, the agreement between the Parties to the conflict which it considered necessary before offering itself as substitute.

66. Mr. KARASSIMEONOV (Bulgaria) said he agreed with the speakers who thought it indispensable to draw up a text acceptable to all members of the Committee. As had been suggested, a small working group should be entrusted with the study of all the amendments submitted; it could include the sponsors of the various amendments and any representatives who had suggestions to make.

67. The Bulgarian delegation preferred proposal I since the selected text must be flexible, must not lay down an automatic system, must safeguard the sovereign independence of the States and must provide for the possibility of agreement between the Parties to the conflict. That text might be supplemented by certain amendments.

68. He supported the amendments submitted by the Byelorussian SSR, the Ukrainian SSR and the Union of Socialist Soviet Republics (CDDH/I/70), and by Brazil (CDDH/I/54), which made it possible to call upon a humanitarian organization other than the ICRC. The representative of the Democratic Republic of Viet-Nam, while recognising the vital role which the ICRC had played and would continue to play, had emphasized the importance of that possibility.

69. When drawing up the final text, consideration must be given to the statement of the President of the ICRC at the second session of the Conference of Government Experts, held in 1972, to the effect that the ICRC would accept the duties of substitute for a Protecting Power only with the agreement of the Parties to the conflict.

The meeting rose at 12.45 p.m.



SUMMARY RECORD OF THE EIGHTEENTH MEETING

held on Monday, 10 February 1975, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 5 - Appointment of Protecting Powers and of their substitute  
(CDDH/1, CDDH/56; CDDH/I/31, CDDH/I/50, CDDH/I/59, CDDH/I/61,  
CDDH/I/67 and Add.1, CDDH/I/70, CDDH/I/75) (continued)

Paragraph 3 (continued)

1. The CHAIRMAN invited the Committee to continue the consideration of article 5, paragraph 3.
2. Mr. LEHMANN (Denmark) reminded the Committee that his delegation had already stated at the first session of the Diplomatic Conference and at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts that it attached the greatest importance to the question of control. Clearly, effective protection of human rights in time of peace as well as during armed conflicts called for some kind of international control - specifically, protection of the individual against arbitrary interference from his own national authorities. To be effective, control must be carried out by an independent and impartial body. Otherwise, all efforts to reform the rules of international law relating to armed conflicts would be thwarted.
3. The question, therefore, was what would be the most realistic way of modifying and strengthening the system of designating the Protecting Power, as laid down in the Geneva Conventions of 1949.
4. His delegation believed that the International Committee of the Red Cross (ICRC) by offering to act as a substitute for the Protecting Power, had made a break-through in the search for a strengthening of the system of control provided for in the 1949 Geneva Conventions. That offer deserved all possible support: acceptance of article 5, paragraph 3, was therefore of crucial importance.
5. He fully endorsed the views expressed by the representatives of Pakistan, Switzerland and the Netherlands (CDDH/I/SR.11, paras.17, 34 and 40) who had supported proposal II concerning paragraph 3, which represented an advance so far as concerned the procedure for designating the Protecting Power. But the proposal could be improved. It in no way violated the principle of the sovereignty

of States. Under international customary law, States were under no obligation to accept any kind of international control; on the other hand, there was nothing in such law which prevented them from concluding treaties by which they subjected themselves to a certain degree of international control.

6. To improve proposal II, recourse could be had to the Italian delegation's suggestion in amendment CDDH/I/50 that "... until such time as the Protecting Powers begin to exercise their functions, each of the Parties to the conflict shall accept the offer made by the ICRC ... to act as a substitute ...".

7. The Canadian delegation had also proposed the fixing of a time-limit in respect of the ICRC offer and acceptance by the Parties to the conflict.

8. In conclusion, he pointed out that, at the present stage, the problem was to improve the control system envisaged for an armed conflict; article 5 would appear to be the central provision. One should not lose sight, however, of the more traditional system of control, under which procedures were established for settling disputes, and which was, in a sense, of a preventive character. The draft Protocols contained no such rules.

9. Mr. ROSENNE (Israel) said that, as his delegation had already pointed out at the first session, neither the institution of Protecting Power as envisaged in the 1949 Geneva Conventions nor the concept of substitute Protecting Power had been resorted to in the Middle East conflict.

10. Despite the intricacies of the general political problems in that area and the complications which might have arisen from a formal designation of the ICRC as a substitute Protecting Power, the ICRC had been operating on a de facto basis with the agreement of the Parties to the conflict.

11. Israel had no direct experience of the system of designating a Protecting Power, and he would therefore limit himself to one observation only.

12. His delegation shared the view expressed at the first session that it would be preferable not to overload article 5 with reference to another type of Protecting Power altogether - as partly codified in Article 45 of the 1961 Vienna Convention on Diplomatic Relations.<sup>1/</sup> There was a difference between representation of national interests in the case of a temporary rupture of diplomatic relations and the element of "scrutiny" inherent in the "Geneva mandate". The Drafting Committee should make a careful study of that question.

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<sup>1/</sup> United Nations publication, Sales No: 62.X.1.

13. Paragraph 3 envisaged two entirely different hypotheses. One was where no Protecting Power was appointed between two States which had broken off diplomatic relations; the other was where there had never been any Protecting Power - whether under the Vienna or Geneva mandate, or any other basis of customary international law - for the basic reason that there had never been any normal diplomatic relations between the two States in conflict. Israel was a case in point.
14. He then indicated some factors which influenced Israel's position. The control body must be effective and impartial. Its effectiveness did not depend solely on its means and staff; the real consent of the Parties to the conflict was also essential. His delegation therefore favoured proposal II.
15. Some of the amendments before the Committee envisaged appeals to the United Nations or to an ad hoc conference of the High Contracting Parties to designate a Protecting Power or a substitute. That approach would not meet the basic requirements of effectiveness and impartiality. Other amendments raised the question of fixed time-limits for the appointment of a Protecting Power or substitute. Some of the periods suggested seemed rather long, but as against that, the introduction of a fixed time might enhance the effectiveness of the provisions currently being drafted.
16. Despite their large number, the amendments did not raise great questions of principle; there seemed to be a consensus in favour of an approach which was not based on any automatism in the designation of the Protecting Power or its substitute. The Drafting Committee or the Working Group should consider paragraph 3 in the light of the discussions which had just taken place.
17. Mr. LE MINH CHUC (Republic of Viet-Nam) said he believed that the agreement of the Parties which was required for assumption by the substitute of the functions of a Protecting Power was a normal concession to the sovereignty of States, in the hope that the Parties would accept the offer made by the substitute, since they saw that to be in their joint interest. But that hope could be vain if one of the Parties washed its hands of the fate of any of its nationals captured by the enemy while reserving the right to deal with members of the adverse Party detained by it in the most inhumane manner.
18. An automatic system for designation of the substitute appeared to be acceptable. His delegation supported proposal II.

19. Regarding the designation of the substitute, some delegations had expressed the view that the choice should not be limited to the ICRC alone, but should embrace a complex of suitable international humanitarian organizations. Other delegations had proposed an extension of the choice to bodies of a political, regional or international character. A political body would present the same difficulties which had arisen in regard to designation of the Protecting Power. One delegation had even provided a definition of the criterion of impartiality required in a substitute and had said: "Unjust equality is inequality, unjust impartiality is partiality". An international humanitarian body such as the ICRC, with its strong moral authority, its resources and its experience, could take on the role of substitute.

20. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) observed that the fact that there were two alternatives for article 5, paragraph 3, bore witness to the presence of difficulties. The statement by the ICRC representative had clearly shown that his organization had some conception of the problem and that it preferred proposal I.

21. The many amendments submitted revealed a wide range of diverse and contradictory opinions. His delegation recognized that the good offices of the organization acting as a substitute for the Protecting Power could be of value; he therefore accepted the idea of such substitution where designation of a Protecting Power met with difficulties. But it should be remembered that the humanitarian organization acting as a substitute should function impartially and effectively. It was thus absolutely essential that both Parties to the conflict should be convinced of its impartiality. The word "effectiveness" implied that the organization must not merely be willing, but also able, to play that role. Consequently, the pool of substitutes should include other organizations than the ICRC and comprehensive information should be provided as to possible candidates.

22. His delegation could not accept an automatic system for designation of the Protecting Power, and would draw attention to the reservations expressed by his delegation and by those of the Byelorussian SSR and the Soviet Union concerning Article 10 common to the first three Geneva Conventions of 1949 (Article 11 of the fourth Convention).

23. He did not believe that a problem of that type could be solved by laying down strict rules. Only the agreement of the two Parties could enable the Protecting Party to act effectively.

24. Mr. AGOES (Indonesia) said that he considered article 5 to be a key provision and that a satisfactory solution should therefore be sought which would be acceptable to all.

25. His Government was of the firm belief that the designation and acceptance of the Protecting Power should not be based on an automatic process but on the consent of the two Parties to the conflict, in line with the principle of the sovereignty of States. Failing agreement on the appointment of the Protecting Power, his Government would strongly favour giving the ICRC priority to assume the functions of substitute.

26. He was in favour of proposal II, but would like it to be expressed in stronger terms, so that the ICRC could immediately function as a substitute when the system of appointment of the Protecting Power mentioned in article 5, paragraphs 1 and 2 proved inapplicable. He suggested that the words "shall accept the offer made by" should be replaced by the words "shall permit".

27. In order to provide for cases where the ICRC could not assume the functions of a substitute, he proposed as a reserve solution that reference should be made to "an international organization designated by the Secretary-General of the United Nations", which could offer all guarantees of impartiality and efficacy.

28. Mrs. DARIIMAA (Mongolia) said that, while she recognised the importance of the part played by the ICRC, she considered that to name only that organization as a substitute would be to close the door on other international organizations which were equally able to contribute to the development of international humanitarian law. Such organizations already existed and new ones might be set up. Draft Protocol I should therefore be worded in terms that allowed forthwith for the creation of such organizations. Her delegation suggested that the words "the International Committee of the Red Cross" should be replaced by the words "an international humanitarian organization". If, however, other delegations insisted that the ICRC be named and given priority, her delegation would agree, as a compromise, to such a wording as: "the ICRC or other international humanitarian organizations".

29. In addition, her delegation was opposed to the fixing of a time limit, as proposed by several delegations; such a measure could lead to misinterpretation of draft Protocol I and to practical difficulties should no substitute be appointed by the end of the time limit.

30. With regard to amendment CDDH/I/75, which provided, as a last resort, for recourse to the conference of the High Contracting Parties pursuant to article 7 of draft Protocol I, she was of the view that it would be difficult for that conference to meet in time of conflict because of the inevitable political tensions, and that one of the Parties might use such a meeting to delay application of the Protocol.

31. Mr. Tchoung Kouk DJIN (Democratic People's Republic of Korea) said he thought that if the aims of international humanitarian law were to be achieved and present-day realities taken into account the designation of the Protecting Power and its substitute must be based on the assurance that the interests of war victims would be scrupulously protected. The victims' sufferings were caused by the imperialist aggressors, and it was to the inhuman crimes committed by those aggressors that the Protecting Power or its substitute must put an end. Sovereignty and the right to self-determination must also be respected, and the Protecting Power must therefore be appointed on the initiative of the Parties to the conflict and with their consent. The same should apply to the designation of a substitute, which should be an international organization offering all guarantees of impartiality and efficacy. Throughout the world United States imperialists were infringing international law by interfering in the internal affairs of States and bringing misfortune to the peoples concerned. They had been occupying South Korea, for example, for the last thirty years. It was natural that progressive men and women should condemn such practices. In view of the experience of its own country, his delegation reaffirmed that the designation of the Protecting Power or its substitute must offer all the necessary safeguards against the United States aggressors.

32. The CHAIRMAN reminded the meeting of the aims of the Conference and asked delegations to refrain, in their interventions, from making attacks on other countries and using language which implied that some victims were more entitled to protection than others. Moreover, any delegation which considered that its country was being criticized could ask to exercise its right of reply, and that might needlessly delay the Committee's work.

33. Mr. ZAFERA (Madagascar) said he considered article 5 to be one of the key provisions of the Geneva Conventions of 1949.

34. Like others, his delegation was opposed to automatic designation. The sovereignty of the Parties to a conflict must be safeguarded, and their consent to the appointment of the Protecting Power was essential if the Conventions were to be correctly applied.

35. His delegation also thought that no specific time limit should be set for the designation of the Protecting Power or for the acceptance or rejection of that designation.

36. As to the ICRC, the responsibility it was prepared to assume in the last resort should not be imposed on it automatically, whatever function it might undertake. The greatest latitude must therefore be given to the Parties, whose authorization was just as vital for the designation of the substitute as for that of the Protecting Power.

37. He therefore supported the first variant proposed by the ICRC for paragraph 3.

38. Mr. GRAEFRATH (German Democratic Republic) said he also considered article 5 to be a key article. No Protecting Power or substitute could work effectively if its designation had not been approved by the Parties to the conflict and if it did not have their confidence.

39. As most of the speakers had pointed out, the Protecting Power system provided for in the Geneva Conventions of 1949 had not worked, and it was therefore unrealistic to imagine that States would be able to agree on that point in advance, as the proposal II suggested by the ICRC for paragraph 3 and certain amendments envisaged.

40. The only possible solution was that contained in ICRC proposal I and the amendments submitted to the same effect, for example amendment CDDH/I/70. The representative of the Democratic People's Republic of Korea had therefore been right in pointing out that the designation of the Protecting Power or its substitute should be subject to the authorization of the Parties.

41. If the number of bodies authorized to provide protection were increased, that could provoke competition between Protecting Powers or substitutes, and political bodies would then experience greater difficulties in performing their humanitarian function.

42. His delegation was in favour of the designation of a humanitarian organization with the consent of the Parties to the conflict.

43. Mgr. LUONI (Holy See)\* drew attention to certain points that were common to all the preceding statements, namely, that a substitute for the Protecting Power must be designated; that the substitute must be accepted by all Parties to the conflict; and that in the interests of the civilian populations to be protected the substitute must be able to fulfil its mission as soon as possible. The third point necessarily implied satisfaction of the second.

44. Several representatives had very aptly described the tragic consequences which would result if there were no Protecting Power. Attention had also been very rightly drawn to the difficulties and delays inherent in the diplomatic procedure currently applied in times of conflict to reach a solution acceptable to all the Parties.

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\* The statement was read out by Mrs. Rouillet (Holy See).

45. As delegations were generally agreed that substitutes other than the ICRC could usefully replace Protecting Powers, his delegation wished to suggest that other international humanitarian organizations, duly approved by the Conference, be mentioned in draft Protocol I alongside the ICRC. Such organizations could either work with the ICRC or replace it, so that the Parties to a conflict would have a choice of several possibilities.

46. His proposal was designed solely to avoid, as far as possible, the dangerous drawbacks presented by the lack of a substitute for the Protecting Power, and it in no way diminished the esteem in which his delegation held the ICRC, which, in its view, was still the organization most fitted to assume the functions of substitute for the Protecting Power.

47. Mr. MURILLO RUBIERA (Spain) said that the meeting of the Working Group on amendments to article 5, paragraph 3, had shown that delegations must answer three basic questions: which body was competent to act as a substitute, whether designation should be automatic, and whether a time limit should be set for designation.

48. Although he had already made known his delegation's views and did not wish to speak on the substance of the matter for the time being, he considered that some of the observations made in the course of the debate warranted further attention. He referred in particular to the observations made by the Belgian and the United Kingdom representatives regarding the influence which the wording adopted for article 5, paragraph 3, of draft Protocol I might have on the legal system provided for in Article 10 of the Conventions.

49. Mr. CHOWDHURY (Bangladesh) pointed out that the provisions of article 5 were intended to relieve the sufferings of the civilian population of Parties to the conflict and to afford it all the necessary protection, whatever the nature of its government. In the circumstances, any reference to imperialism or colonialism was out of place, since it was only a matter of applying legal principles.

50. With regard to the question of a substitute when no Protecting Power had been appointed, some representatives had stated that nothing should infringe the sovereignty of States, but in his view an acceptable Protecting Power must first be found. The ICRC should propose five names from which the Parties to the conflict could choose. What was essential was that if a substitute proved necessary, the ICRC should be able to ensure the protection of human life and the property of the civilian population, and to act in the capacity of substitute.



51. Careful study of the amendments submitted showed that the aim of all delegations was to ensure that there was a substitute in order to reduce the sufferings of the civilian population. It was important to adhere as closely as possible to the text drafted by the ICRC, which took into account the structure of the two Protocols. His delegation had submitted an amendment (CDDH/I/61) relating to proposal I, the purpose of which was to enable the ICRC to strengthen its position to the utmost. Cases had already occurred when Red Cross representatives found themselves in difficult situations. Their activities must not be dependent on the whims of the Parties to the conflict.

52. His delegation preferred the text of proposal I. Proposal II could, however, be improved by deleting the words "if it deems it necessary".

53. Mr. Bohyung LEE (Republic of Korea), exercising his right of reply, said that it was most regrettable that the delegation of the Democratic People's Republic of Korea had revived a controversy on political questions outside the scope of the Conference. His delegation denied the allegations of the North Korean delegation.

54. Mr. DRAPER (United Kingdom) pointed out that the effective functioning of a Protecting Power, or its substitute, from the outset of any armed conflict until its conclusion, was essential if the rules of the Protocol were to have any meaning. It was particularly vital that the Protecting Power should monitor those rules from the outset of the conflict. It was at that stage that the worst atrocities occurred, particularly in relation to prisoners of war.

55. Article 10 common to the 1949 Geneva Conventions (Article 11 of the fourth Convention) provided an effective mechanism in the case of default of a Protecting Power. Unfortunately, certain States had been unable to accept that provision. In paragraphs 1 and 2 of article 5, the monitoring mechanism for the application of the Protocol was defective because it was based upon agreement of the Parties. Only in proposal II relating to paragraph 3 had any attempt been made to bring draft Protocol I into line with the provisions of the Conventions he had mentioned. In his delegation's view, the possibility of war victims receiving the benefit of the humanitarian protection afforded by Protocol I, should not be dependent on the hazards of an agreement made in the course of armed conflict nor could that protection be sacrificed to the claims of national sovereignty of the Parties to the conflict. His delegation therefore supported the adoption of proposal II, which might be improved by a reasonable time provision, as suggested by other delegations.

56. Moreover, proposal II only provided for the case of no Protecting Power being appointed, whereas Articles 10 and 11 of the Geneva Conventions and amendment CDDH/I/67 provided also for the contingency of a Protecting Power being appointed and ceasing to act during the conflict. That was a matter of great importance, particularly for prisoners of war. Proposal II had the further merit that it would enable the substitute to discharge "all or part of the functions" of a Protecting Power (article 2, subparagraph (e)). It was not an automatic system but a safe one, offering guarantees of security in case of disagreement.

57. His delegation did not believe that regional bodies or some new institution to be created within the United Nations family could effectively assume the function of substitute. Such bodies lacked skill and expertise; moreover, it would be difficult for them to exclude political considerations entirely, as the ICRC had managed to do for a century.

58. His delegation was willing to participate in all meetings of the sponsors of amendments relating to article 5, paragraph 3, in order to ensure effective implementation of the Protocol.

59. Mr. PRUGH (United States of America) said that it would be well to ascertain in advance what international humanitarian organizations existed, how they were organized, whether they were impartial or had the apparent ability to perform at least the essential humanitarian functions of a Protecting Power. In article 6 of draft Protocol I the High Contracting Parties were requested to recruit and train personnel, to establish lists of persons so trained and to define the conditions governing their employment; perhaps the same request should be addressed to international humanitarian organizations. Such organizations might be asked in a separate paragraph to identify themselves to a central agency, such as the depositary State or the ICRC. A number of impartial humanitarian bodies existed, no doubt, but his delegation believed that States would wish to consider in peace time, when they were free from the immediate pressures applied in conflicts, what organizations might consent to act, as a last resort, in the capacity of a substitute.

60. Mrs. MANTZOULINOS (Greece) said that the 1949 Geneva Conventions and the draft Protocols were due to the initiative of the ICRC. She saw no point in looking for some other body, alien to the "Law of Geneva". For the designation of the substitute an automatic mechanism should be adopted which in her delegation's view would in no way prejudice the sovereignty of the Parties. Her delegation had submitted an amendment to that effect (CDDH/I/31).

61. Mr. Antoine MARTIN (International Committee of the Red Cross), said that, after hearing all the statements concerning article 5, paragraph 3, he wished to express thanks on behalf of the ICRC for the confidence shown in that organization.

62. Although it was true that the substitute system had so far never been used, it would be wrong to say that the system of Protecting Powers had not been used: it had served in three cases.

63. He endorsed the statements he had made in introducing article 5, paragraph 3 at the seventeenth meeting (CDDH/I/SR.17). The ICRC was quite willing to assume the role of substitute, but only when all other possibilities, namely the machinery of Protecting Powers followed by that of substitutes as provided for in the first and second paragraphs of Article 10 common to the 1949 Geneva Conventions (first and second paragraphs of Article 11 of the fourth Convention) had been exhausted.

64. The words "or substitute within the meaning of the first and second paragraphs of Article 10 of the Conventions (Article 11 of the fourth Convention)" might be inserted after the words "Protecting Power" in paragraph 3.

65. In view of the supplementary nature of the Protocol, it had not been thought necessary expressly to reaffirm all the articles relating to the monitoring and application system set out in the 1949 Conventions. In pursuance of Article 10 common to those Conventions (Article 11 of the fourth Convention), an organization which offered all guarantees of impartiality and efficacy, as well as any humanitarian organization, might be entrusted with the tasks incumbent on the Protecting Power by virtue of the Conventions. That provision common to the Conventions would retain its validity.

66. Other impartial humanitarian organizations had not been expressly designated because several experts had said during the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, that it would be difficult to mention such bodies in general terms and that it would be necessary to indicate which were envisaged, but there had been disagreement on that point. The ICRC had never considered that it had a monopoly in that regard and it would only assume the role of substitute if all other possibilities had been exhausted.

#### Paragraph 4

67. The CHAIRMAN suggested that the Committee should examine article 5, paragraph 4.

68. Mr. de SALIS (Legal Secretary) read out the list of amendments relating to paragraph 4.

69. Mr. Antoine MARTIN (International Committee of the Red Cross) said that, within the particular context of the system of Protecting Powers, the provision constituted a reaffirmation of the general principle laid down in article 4 of draft Protocol I, entitled "Legal status of the Parties to the conflict" and already considered at the first session of the Conference. A large majority of the experts consulted considered that a reaffirmation of that kind was necessary under the terms of the article relating to international machinery for supervising the application of humanitarian law. In the case of Governments, nearly all of those which had replied to the ICRC's questionnaire concerning measures intended to reinforce the implementation of the Geneva Conventions strongly favoured the inclusion of such a provision.

70. The previous year, when introducing at the eighth meeting (CDDH/I/SR.8) draft article 4, the ICRC had made it clear that its purpose was to ensure a more thorough implementation of the humanitarian purposes of the Geneva Conventions of 1949 and draft Protocol I, since the Parties to the conflict might be afraid, though unjustifiably, that the application of those instruments might have political or legal consequences affecting their reciprocal status, and it was desirable to dispel all doubts in that connexion. Paragraph 4 which was now being introduced was based on the same ratio legis. At the first session of the Conference, during the discussion of article 4 - with regard to which many delegations had not been prepared to express an opinion until the scope of draft Protocol I had been established in article 1 - some representatives had criticized the words "or that of the territories over which they exercise authority" and, on being requested to clarify that point, the representative of the ICRC had replied that, in fact, those words had not been included in the draft submitted to the Conference of Government Experts, but that the ICRC had considered the addition of those words to be desirable in the light of recent events (CDDH/I/SR.8, para.19). As in the case of article 4, amendments had been submitted at the Conference, proposing the deletion of the phrase or improvements of its wording.

71. The ICRC naturally attached great importance to the inclusion of a provision of that kind in the article relating to the machinery for supervising application.

72. Mr. ABI-SAAB (Arab Republic of Egypt) said that his delegation, together with those of twelve other countries, had submitted an amendment to article 4 (CDDH/I/59) which also applied to article 5, paragraph 4 and was intended to clarify the last part of the phrase "... or that of the territories over which they exercise authority".

The text submitted by the ICRC was open to different interpretations; and the purpose of the aforementioned amendment was to eliminate any ambiguity as to the compatibility of the provision with the fundamental rule of general international law underlying The Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, and the fourth Geneva Convention of 1949, to the effect that occupation did not affect title to territory. He reserved the right to develop the argument further in the context of article 4.

Paragraphs 5 and 6

73. The CHAIRMAN asked the representative of the ICRC to introduce article 5, paragraphs 5 and 6 so that paragraphs 4, 5 and 6 could be discussed simultaneously.

74. Mr. de SALIS (Legal Secretary) read out a list of the amendments relating to paragraphs 5 and 6.

75. Mr. Antoine MARTIN (International Committee of the Red Cross), referring to paragraph 5, said that a very large majority of the experts consulted and of Governments in their replies to question 5 of the ICRC questionnaire concerning the measures intended to reinforce the implementation of the four Geneva Conventions of 1949, had expressed the hope that such a provision would be incorporated. Some of them had even expressed the wish that in such cases the appointment of Protecting Powers should be made obligatory.

76. It had become apparent that the implementation of machinery for supervising the application of the Geneva Conventions of 1949 was distinct from the question of the maintenance or breaking-off of diplomatic relations between the Parties to the conflict. Some experts had drawn attention to the fact that the diplomatic mission of a Party to the conflict which remained on the spot would probably have great difficulty in carrying out all the duties assigned to it by the Conventions and by draft Protocol I to the Protecting Powers. It should be pointed out that a minority of experts had expressed their fears that the simultaneous presence of diplomatic representatives of the Parties to the conflict and of the Protecting Powers might cause disputes as to competence between the two authorities concerned, which would only be of disservice to the cause itself.

77. In its Commentary on draft Protocol I (CDDH/3), the ICRC did not refer to paragraph 6 because that provision was self-explanatory. However, some experts had expressed the view that to make the provision perfectly clear it would be better to say "whenever hereafter in the present Protocol mention is made of the Protecting Power".

78. It should be pointed out that the Committee had decided to examine the definition of the word "substitute" in article 2, subparagraph (e) together with article 5 now under discussion.

79. With regard to that definition the ICRC concurred with the views of those who had expressed the hope that the organization replacing the Protecting Power could, if necessary, be called upon to exercise only a part of the latter's functions: that might be the case where, in accordance with the wishes of the designated Protecting Power and with the approval of the Parties to the conflict, the said Power and the substitute shared the tasks in question; that would also be the case if the substitute, with the consent of the Parties to the conflict, agreed to undertake only a part of those activities.

80. At a meeting of the Committee's Working Group on article 5, paragraph 3, a representative had asked whether the ICRC should be regarded as a substitute on the same footing and in the same capacity as the other substitutes that might be envisaged under the terms of the Geneva Conventions.

81. Although empowered to exercise its humanitarian initiative in favour of victims of conflicts in accordance with Article 9 common to the 1949 Conventions (Article 10 of the fourth Convention), and to perform the humanitarian tasks incumbent upon it under the Conventions and the principles of the Red Cross, the ICRC would be a substitute in the same capacity as any other substitute assigned to carry out the functions of Protecting Powers as defined by the Geneva Conventions.

82. The CHAIRMAN declared open the debate on article 5, paragraphs 4, 5 and 6.

83. Mr. DRAPER (United Kingdom) said that his delegation was in favour of the ICRC text but together with Belgium and the Netherlands had submitted an amendment (CDDH/I/67 and Add.1). Since article 5, paragraph 1, already contained the binding obligation to designate a Protecting Power, that binding character should be restated in paragraph 5, in order to strengthen the ICRC text.

84. Mr. PICTET (Switzerland) referring to paragraph 5, said that, at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Switzerland had been among the minority which considered the inclusion of that paragraph in draft Protocol I unnecessary. He drew attention to the view already expressed that there could not be a Protecting Power while diplomatic relations were maintained. Besides, some experts feared that the simultaneous presence of

diplomatic representatives and representatives of the Protecting Power might cause confusion or disputes as to competence. However, the Swiss delegation would not oppose the adoption of paragraph 5 if that was the wish of the majority.

85. Mr. CHOWDHURY (Bangladesh) observed that the United Kingdom delegation shared the opinion of Bangladesh that the ICRC should be under an obligation to intervene. Amendment CDDH/I/67 and Add.1 was perfectly straightforward and should be adopted. Since countries might become belligerents without breaking off diplomatic relations, it was desirable to provide for such a contingency.

86. Replying to Mrs. DARIIMAA (Mongolia), who considered that the ICRC should not be obliged to intervene automatically as a substitute, Mr. CHOWDHURY (Bangladesh) specified that the obligation he had referred to concerned the preceding paragraph of article 5 and that in any case action by the ICRC was subject to the consent of States.

The meeting rose at 5.50 p.m.





SUMMARY RECORD OF THE NINETEENTH MEETING

held on Tuesday, 11 February 1975, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 5 - Appointment of Protecting Powers and of their substitute  
(CDDH/1, CDDH/56; CDDH/I/51, CDDH/I/52, CDDH/I/67 and Add.1,  
CDDH/I/68, CDDH/I/75, CDDH/I/77, CDDH/I/80 and Add.1) (continued)

Paragraphs 3, 4, 5 and 6 (continued)

1. The CHAIRMAN said that a Working Group had been set up to deal with the two alternative proposals, I and II, which had been submitted for article 5, paragraph 3 (CDDH/1). If delegations had other amendments to submit to that paragraph, they could be included as part of the Working Group's report.
2. He invited delegations to resume their discussion of article 5.
3. Mr. OBRADOVIĆ (Yugoslavia) said that, in general, the text of article 5 was acceptable to his delegation. While it preferred proposal I for paragraph 3, it was prepared to be adaptable and hoped that the Working Group would be able to find a wording acceptable to all.
4. With regard to paragraphs 4 and 5, his Government did not consider them indispensable, since under prevailing international law, the maintenance of diplomatic relations during armed conflicts would not exempt the Parties to the conflict from having recourse to the Protecting Power under the Geneva Conventions of 1949. With all due respect for the views expressed by the representative of Switzerland at the eighteenth meeting (CDDH/I/SR.18) it seemed to him that, as far as the application of the provisions of the Geneva Conventions was concerned, there was an obligation for the Parties to armed conflicts to designate a Protecting Power even if diplomatic relations between them had not been broken off. It was obvious that the appointment of a Protecting Power had no effect on the juridical status of the Parties in question or on that of the territories in which they exercised their authority.
5. His delegation was aware of the argument which had been advanced at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts that, precisely because of some uncertainty about the interpretation of the act of designating a Protecting Power, as far as the status of the Parties and the territory was concerned, States would in actual cases refrain from designating a Protecting Power.

In the same way, the fact that diplomatic relations had not been broken off had in some cases served as an excuse for not having recourse to the Protecting Power.

6. In view of those unfavourable factors, which in practice were inevitable, his delegation was not opposed to the inclusion of those paragraphs in article 5, but it thought that some amendments might be made to the present text of paragraphs 4 and 5. As far as paragraph 4 was concerned, his delegation favoured the amendment submitted by the Arab countries (CDDH/I/75), since it made the provision much more clear. The text of paragraph 5 in amendment CDDH/I/67 and Add.1 would also be entirely acceptable to his delegation, since it made the ICRC text of paragraph 5 clearer.

7. Mr. CUTTS (Australia) said that it was generally agreed that the system of Protecting Powers and substitutes was of the utmost importance for the operation of international humanitarian law in armed conflicts. It was also generally agreed that it was particularly important to set up effective machinery in draft Protocol I now under consideration because that devised in 1949 had proved ineffective. For one reason or another, States which had been engaged in armed conflict since that time had not chosen to appoint Protecting Powers.

8. For that reason, many delegations had urged that the appointment of a Protecting Power or a substitute should be automatic or compulsory in all cases of armed conflict, while others had urged that nothing should be done which might infringe the sovereignty of the States concerned and that a Protecting Power or substitute should be appointed only with the agreement of such States.

9. In his opinion, that apparent conflict seemed slightly unreal. It was true that the final sanction in the matter would be the sovereignty of the States concerned, which could not be forced to appoint a Protecting Power. On the other hand, international public opinion would not welcome a document which left to the belligerent parties the choice whether or not to invoke machinery to alleviate the sufferings of the victims of war. What was needed, therefore, was a text which would place the maximum pressure upon belligerent States to accept a machinery of Protecting Powers which would not in any way infringe their national sovereignty. That, he thought, was precisely what the ICRC had had in mind when it had devised its original draft of article 5, which had clearly been designed to provide the maximum range of alternative methods of bringing the Protecting Power apparatus into operation and to bring maximum pressure to bear on the States concerned to make use of that machinery.

10. From that point of view, article 5, paragraph 1 provided for the Parties to a conflict to act of their own volition in appointing Protecting Powers. If they failed to do so, the ICRC was empowered, under paragraph 2, to take steps to persuade the Parties to take such action. If that procedure still failed to produce results, paragraph 3 provided that the ICRC itself was empowered to act as a substitute or at least to offer to do so.

11. The two alternative texts provided by the ICRC for paragraph 3 were not far apart, since neither was intended to provide for the automatic or compulsory appointment of the ICRC as a substitute for a Protecting Power. His delegation preferred proposal II, not because it made it more obligatory for the party concerned to accept the offer of the ICRC but because it appeared to do so. For those seeking the automatic application of the "substitute" provisions, which had been described as "automaticity", the ICRC text was really the best which could be hoped for, although some devices for tightening up the procedure had been proposed in some amendments. In answer to those who wished to emphasize the principle of State sovereignty, he said that world public opinion would not thank the Conference if it failed to make an effort to take the application of international humanitarian law a step further than it now stood.

12. Among the devices which had been suggested to strengthen the ICRC text, he agreed with the statement of the representative of Mongolia at the eighteenth meeting (CDDH/I/SR.18) that a rule calling for the expiry of a deadline might appear to weaken its application. Further consideration should also be given to the proposal made by the representative of Canada at the seventeenth meeting (CDDH/I/SR.17).

13. With regard to paragraph 4, his delegation could accept the ICRC formulation but would give careful consideration to the amendments which had been proposed to it.

14. Concerning paragraph 5, he was inclined to agree with the Swiss representative's statement at the eighteenth meeting (CDDH/I/18) that such a provision was hardly necessary. In his view, the Protecting Power machinery was an alternative which would come into effect when diplomatic relations were broken off. It was difficult for him to envisage a situation in which the maintenance of diplomatic relations could constitute an obstacle to the appointment of a Protecting Power in a situation which called for such an appointment. Like the Swiss delegation, however, his delegation would not object to that formulation if it was desired by the majority of the Conference.

15. Lastly, with regard to paragraph 6, his delegation had proposed an amendment (CDDH/I/51). Although that amendment was not of such a nature as to involve the sovereignty of States, he hoped that it would receive the consideration of the Drafting Committee. The use of the term "implies", at least in the English text, did not seem appropriate. In his opinion, it would be more direct and more accurate to say that mention of a Protecting Power included the substitute.

16. Mr. SOOD (India) said that his delegation had proposed the insertion of the words "or the entrusting of the protection of the party's interests and those of its nationals to a third State" in paragraph 5 (CDDH/I/68) because it felt that, once the conflict had started, the presence or absence of diplomatic relations should not prejudice the appointment of a "substitute" under article 2, sub-paragraph (e). His delegation considered that the duties of a Protecting Power or substitute under articles 5 and 2, sub-paragraph (e), were different in nature and scope from those of a third party entrusted with the protection of the interests of Parties to the conflict.

17. Miss GUEVARA ACHAVAL (Argentina) said that her delegation found it difficult to accept the present wording of article 5, paragraph 4, because of its colonialist implications. It should be borne in mind that at the present time situations existed in occupied territories which were forever being called in question by third States, and that the approval of paragraph 4 might be interpreted as the acceptance of such illegal occupation.

18. Her delegation would therefore support amendments CDDH/I/52 and CDDH/I/77, which were designed to overcome that difficulty by deleting the phrase "or that of the territories over which they exercise authority".

19. Mr. KNITEL (Austria), introducing the amendment submitted by his delegation and others (CDDH/I/80 and Add.1), explained that the amendment, which was designed to harmonise the new law as embodied in the draft Protocols and the existing law as embodied in the four Geneva Conventions of 1949, was influenced by the last paragraph of article 10 common to the first three Conventions (Article 11 of the fourth Convention) which spoke of substitute organizations - in the plural - and not of one single organization.

20. In addition, his delegation would be able to support paragraph 5 as proposed in amendment CDDH/I/67 and Add.1 if the words "and under the Conventions" were added at the end of that paragraph - his delegation would submit an amendment to that effect.

21. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that his delegation had been glad to co-sponsor amendment CDDH/I/52, since in the year 1975 most colonialist régimes had already collapsed and progress was being made towards the elimination of those which remained.

22. Mr. KARASSIMEONOV (Bulgaria) said that his delegation could not accept the words "the territories over which they exercise authority" in paragraph 4, since that phrase was obviously contrary to the spirit of the times, to current international law and to all the decisions taken by the United Nations. His delegation therefore fully supported amendment CDDH/I/52, and also amendment CDDH/I/75.

Article 6 - Qualified persons (CDDH/1, CDDH/56; CDDH/I/40, CDDH/I/55, CDDH/I/76, CDDH/I/76, CDDH/I/84)

23. The CHAIRMAN asked the representative of the International Committee of the Red Cross (ICRC) to introduce article 6.

24. Mr. Antoine MARTIN (International Committee of the Red Cross) said that for a long time past various circles - in particular medical - had hoped that groups would be set up consisting of qualified persons capable of carrying out the functions entrusted by the Geneva Conventions to the personnel of Protecting Powers or their substitutes and that they would be trained.

25. In 1965, the XXth International Conference of the Red Cross had adopted resolution XXII entitled "Personnel for the Control of the Application of the Geneva Conventions" which had considered it necessary in case of armed conflict to supply Protecting Powers or their substitutes with a sufficient number of persons capable of carrying out such control impartially, and which invited States Parties to the Conventions to envisage setting up groups of competent persons capable of carrying out those functions. The ICRC had stated that it was ready to help train such persons but, so far, as he had had the occasion to point out several times, no one had come forward and no group had been formed.

26. In 1971, the first session of the Conference of Government Experts, to which that question had been submitted, had noted it with interest and had expressed the hope that the ICRC would include it in a questionnaire concerning measures for strengthening the implementation of the Geneva Conventions, to be sent to all Parties to those Conventions. The majority of Governments had replied in favour and, while many of them had considered ways and means of making such personnel available to the Protecting Powers, some had also considered the role which might be assigned to such personnel at the national level in peacetime.

27. In 1972, at the second session of the Conference of Government Experts, there had been a marked tendency to envisage such personnel as playing a part also in peacetime, especially as regards dissemination and instruction, as well as in times of armed conflict, in particular with a view to facilitating the work of the Protecting Powers. The commission entrusted to study that question had made a proposal on which the ICRC had largely based article 6 at present under consideration. The ICRC had certainly been the first to recognize that it was not clear why that provision which followed the article relating to the Protecting Power system, regarded merely as incidental the role which such qualified personnel could play within the framework of such a system. It was obvious that the functions which that personnel could perform in peacetime on the national territory or, should the occasion arise, on that of a third State, had no direct link with the machinery of the Protecting Power system, but were connected with the question of the implementation of the Conventions under Part V of the present draft Protocol - a Part which included article 71 concerning the use of qualified legal advisers in armed forces, and also article 72 which dealt with the dissemination of humanitarian rules.

28. The ICRC nevertheless considered that the two ideas on which article 6 was based should be retained - first, to train qualified personnel which could ensure the better implementation of the Conventions and of Protocol I in national territory and, second, to ensure that that personnel could, should the need arise, be made available to a Protecting Power or to a substitute. The ICRC recognized, however, that article 6 might be made clearer in order to establish its link with the Protecting Power system and that another formula might be considered for paragraph 1. For example, consideration might be given to some such text as the following:

"1. In peacetime the High Contracting Parties shall endeavour to train qualified personnel with a view to ensuring the application of the Conventions and of the present Protocol and to enabling the Protecting Powers or their substitute to carry out the functions incumbent on them under these instruments."

29. With regard to paragraphs 2, 3 and 4 which did not call for any special comment, he would simply refer the Committee to the text of the Commentary to the draft Protocols (CDDH/3, p.15).

30. The ICRC had carefully studied the various amendments proposed and was prepared to answer any questions concerning them.

31. Mr. KNITEL (Austria) said that he would be glad to know between whom the special agreements referred to in paragraph 4 would be concluded.

32. Mr. Antoine MARTIN (International Committee of the Red Cross) said that it was intended that the special agreements referred to in article 6, paragraph 4 would be concluded between the party supplying the qualified personnel and the party receiving them. Amendments had been submitted by Brazil (CDDH/I/55) and the German Democratic Republic (CDDH/I/84) with a view to making the text clearer on that point.

33. Mr. PRUGH (United States of America) said that he would be glad to hear the ICRC representative's comments on the advisability of inserting a reference in paragraph 1 to the part that might be played by national Red Cross societies.

34. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the ICRC, in close collaboration with representatives of the League of Red Cross Societies and of national Red Cross Societies (Red Crescent, Red Lion and Sun) was drafting a general provision for strengthening the Red Cross Societies' role in humanitarian law. Any amendments submitted on the subject would be dealt with under that general provision and not under separate articles. It would therefore be advisable for the Committee to await submission of the text in question before considering such amendments.

35. Mr. MILLER (Canada) said that he would be glad to see the English version of the ICRC proposal for paragraph 1 in writing.

36. Mr. Antoine MARTIN (International Committee of the Red Cross) explained that the ICRC was not empowered to make formal amendments to its own draft articles. He had merely made a tentative suggestion on the lines of which delegations might submit an amendment if they so wished.

37. Mr. MILLER (Canada) said he would be satisfied to see the English version in the summary record provided it had received the prior approval of the ICRC representative.

38. Mr. ZAFERA (Madagascar) said that his delegation, which supported the basic ideas in article 6, endorsed the ICRC representative's suggestion for paragraph 1. A reference might be made in paragraph 2 to the part the ICRC might play in training qualified personnel.

39. Mr. CHOWDHURY (Bangladesh) said that his delegation, too, supported the basic ideas in article 6. Its amendment to paragraph 1 (CDDH/I/66) entailed the replacement of the words "shall endeavour to train" by the words "shall impart training" and placed emphasis on the number and capability of persons to be trained. His delegation's amendments to the other paragraphs, which were of a drafting nature, would be considered by the Drafting Committee.

40. Mr. GLORIA (Philippines) said that his delegation, which fully supported the provisions of article 6, would like to see the addition of a new paragraph 5, as proposed in its amendment (CDDH/I/40). As parts of a great humanitarian organization, the Red Cross societies, with whose work he had long been familiar, should be given an important part to play under article 6. The Philippines Red Cross Society had offered its assistance to the Advocate-General of the Armed Forces of the Philippines when he had published a manual simplifying the provisions of the four Geneva Conventions of 1949. The societies, which had always been to the fore in implementing the Conventions, carried out their humanitarian work not only in armed conflicts but in other times of calamity. They were in the best technical position to apply most of the provisions of the Conventions and Protocols, and particularly those of article 6. While each Contracting Party was required to play its part, better results would be obtained if the national Red Cross, Red Crescent or Red Lion and Sun societies could offer their services to the authorities responsible for recruiting and training the qualified personnel. There should be effective co-ordination between the Government and the national Red Cross Society in all aspects of training and recruitment.

41. Mr. Bohyung LEE (Republic of Korea) said that his delegation found draft article 6, the terms of which were no doubt intended to supplement the provisions of article 5, generally acceptable. The possible need of developing countries for the assistance of an international organ such as the ICRC should, however, be taken into consideration in paragraph 2. That was the purpose of his delegations's amendment (CDDH/I/76).

42. Mrs DARIIMAA (Mongolia) said that her delegation failed to understand the purpose of the list referred to in paragraph 3. If the ICRC was expected to accept the list without question there would be no point in submitting it; if, on the other hand, the ICRC rejected any of the persons listed, it would be acting as a supra-national authority, which it could not be. It was the sovereign right of States to determine the competence or otherwise of their own nationals.

43. She agreed with the proposal of the German Democratic Republic (CDDH/I/84) for the addition of the words "between the Parties concerned" at the end of paragraph 4. Without that addition the agreement of one of the Parties might be overlooked. The Brazilian amendment (CDDH/I/55) was too restrictive.

44. Mr. SATO (Japan) said that the basic concepts of article 6 were acceptable to his delegation, although some of the proposed amendments might be useful. The maintenance of a body of qualified persons would be an important element in an over-all system to



facilitate the dissemination of information and to ensure the full implementation of the Conventions and Protocols. Article 6 should therefore be read in conjunction with articles 71 and 72.

45. Article 6, paragraph 2 left the recruitment and training of qualified personnel to the discretion of the Contracting Parties. Their decision on the number and level of training of qualified persons to be recruited would be influenced primarily by the availability of human and financial resources and by other internal circumstances. It might therefore be appropriate to leave paragraph 2 as it stood. His delegation would, however, like to have an indication of the number of personnel and level of training envisaged, so that the Contracting Parties could take that into account in applying the provisions of the article.

46. The concept of qualified persons would be particularly useful in cases in which a Contracting Party was required to act as a Protecting Power. His delegation therefore could not agree to the deletion from paragraph 1 of the reference to the activities of the Protecting Powers; nor could it support the deletion of paragraph 3, since a list of qualified persons would be essential to facilitate the use of their services.

47. Mr. ROSENNE (Israel) said that his delegation had no difficulty about article 6 as submitted by the ICRC. Although it could accept in principle the idea that the national societies might offer their services, it regretted that it was unable in present circumstances to support the Philippine amendment (CDDH/I/40). The comments he was about to make would also relate to any general proposal that might be put forward in respect of the national societies.

48. His delegation had drawn attention on various occasions to its position concerning the use in Israel's armed forces of the Red Shield of David as the distinctive emblem of the medical services, while respecting the inviolability of other emblems. At the twelfth (closing) meeting of Committee II (CDDH/II/12, para.41) at the first session of the Conference, his delegation had indicated that Israel's national society was the Red Shield of David Society. One of the incongruous results of the non-recognition of its distinctive emblem was that the Society remained excluded from the International Red Cross, despite the fact that it possessed all the necessary qualifications and stood in high repute for its spontaneous response to calls for aid to victims of distress and disaster, regardless of race, creed or nationality. Such exclusion was compatible neither with the aims of universality and non-discrimination, which were the hallmarks of the International Red Cross, nor with the Conference's objective of strengthening the role of the national societies - an unattainable aim so long as unjustified restrictions continued to be placed on the acceptance of qualified national societies within the framework of the International Red Cross.

49. His delegation's inability to vote in favour of the provision in question indicated its dissatisfaction with the existing state of affairs.

50. Mr. CALERO-RODRIGUES (Brazil), referring to the Mongolian representative's comments, said that he did not consider his delegation's amendment (CDDH/I/55) to be more restrictive than that of the German Democratic Republic (CDDH/I/84). The fact that two Contracting Parties had been specified did not mean that others would be precluded from signing agreements. The ICRC representative had drawn attention to the need to clarify paragraph 4 and that was the intention of his delegation's amendment.

51. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that the fundamental task of the personnel in question would be to facilitate the application of the Conventions and of the Protocol. That task would also require the services of the military and civilian medical and judicial authorities.

52. It was unnecessary to refer in particular to the activities of the Protecting Powers or their substitutes, since those activities were covered by the application of the Conventions and of the Protocol. The reference at the end of paragraph 1 could therefore be deleted.

53. He supported the Mongolian representative's comments on the list referred to in paragraph 3. It was not a proper function of the ICRC to examine the qualifications of national personnel; to require a Contracting Party to submit such a list would be an unwarranted interference in its internal affairs. He supported the amendment of the German Democratic Republic to paragraph 4. Its use of the word "parties" made it broader than the Brazilian amendment, which referred only to States.

54. Mr. Antoine MARTIN (International Committee of the Red Cross), replying to questions asked by representatives, noted that the representatives of Mongolia and of the Ukrainian Soviet Socialist Republic had expressed some concern about the wording of article 6, paragraph 3. He emphasized that the ICRC in no circumstances wished to supervise the training of qualified personnel to facilitate the "application of the Conventions and of the present Protocol and in particular the activities of the Protecting Powers". If doubt existed concerning the interpretation of paragraph 3, the wording should be amended.

55. Pointing out that article 6 had been drafted by one of the commissions of the Conference of Government Experts convened by the ICRC, he referred to the commentary on paragraph 3 of the article (see CDDH/3, p. 15), and said that it would be useful for the ICRC, which closely followed the application and the dissemination of the

Geneva Conventions, to have lists of qualified personnel. If, in accordance with article 5, paragraph 2, the ICRC was entrusted with procedure concerning the designation and acceptance of Protecting Powers, it would certainly be useful for it to have the names of persons who could be called upon to play a part within the framework of the international supervisory machinery.

56. Replying to the request by the representative of Japan for an indication of the number of persons who should be trained and the way in which they should be trained in order to ensure the application of article 6, he said that the ICRC had no right whatsoever to interfere in the internal affairs of a State. It would, however, be glad to make suggestions upon request concerning the personnel mentioned in article 6 and would be glad to train such personnel if so requested.

57. Replying to the representative of the Philippines, who had referred to his delegation's amendment (CDDH/I/40) concerning the part to be played by national Red Cross societies, he pointed out that that question would be re-examined when the text relating to the general provision for strengthening the role of those societies was examined. In any case, as it was obvious that national Red Cross Societies could at any time offer their services in order to ensure the better application of the Geneva Conventions, he felt that amendment CDDH/I/40 might be unnecessary.

58. Replying to the representative of the Republic of Korea, he said that the ICRC, while deeply honoured by the proposal in amendment CDDH/I/76, considered that it was rather a declaration of good will than a legal obligation, and that the amendment was not absolutely essential.

59. The CHAIRMAN suggested that article 6 should be referred to the Working Group.

It was so agreed.

Article 7 - Meetings (CDDH/1, CDDH/56, CDDH/I/48 and Add.1 and Corr.1, CDDH/I/65)

60. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing article 7, said that it had given rise to much discussion during the preparation of draft Protocol I.

61. In 1971, at the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, a proposal entitled "Possibility of ensuring the better application of the Geneva Conventions of 1949" had requested the ICRC to prepare a special study on the role to be played by the High Contracting Parties in order to ensure that those Conventions were duly respected.

62. The same year, in a questionnaire on measures to be taken for strengthening the application of the four Geneva Conventions of 1949, the ICRC had asked States Parties to the Geneva Conventions whether they could and should exercise collective control action in pursuance of article 1 common to those Conventions and, if so, what procedure was envisaged in that respect. Some of the replies to the questionnaire had been in the affirmative but many had replied in the negative and others had expressed doubts about the effectiveness of such a proposal.

63. Some of the experts consulted had emphasized the need to develop the article on inquiry procedure common to the Conventions of 1949; some of them had hoped for the establishment of a legal body with the power to inquire into, and report on, any violations of the Conventions, and others had called for the establishment of collective control either within the framework of the United Nations or by a conference of the High Contracting Parties.

64. After a close study of all these proposals, the ICRC had finally decided to limit itself to including in the draft Protocol submitted to the present Conference a provision concerning only the examination by the proposed meetings of the general problems relating to the application of the Protocol. The meetings of the High Contracting Parties would not take decisions concerning the application of the 1949 Geneva Conventions, because the ICRC considered, as did other experts, that the "convention community" of the Parties to the Protocol would be unable to give a decision on problems of the application of the Conventions of 1949 which linked another "convention community".

65. Mr. ABU-GOURA (Jordan), referring to the suggestion in article 7 that "a meeting of the High Contracting Parties shall be convened at the request of two-thirds of them", said that it would be difficult to obtain such a majority. He considered that meetings should be convened at the request of one or more of the High Contracting Parties and "with the approval of a majority of the said parties", as proposed in amendment CDDH/I/48 and Add.1 and Corr.1, of which his delegation was a sponsor.

66. Mr. EL ARAEY (Arab Republic of Egypt), speaking as a sponsor of amendment CDDH/I/48 and Add.1 and Corr.1, said that such an important meeting as that envisaged in article 7 should not be confined to dealing with general problems concerning the application of Protocol I; it should deal also with the application of the 1949 Geneva Conventions. The procedure followed in calling meetings of the High Contracting Parties should be similar to that followed by the United Nations when convening Special and Emergency Special Sessions of the General Assembly.

67. Mr. EL-MISBAH EL SADIG (Sudan) said that the object of amendment CDDH/I/48 and Add.1 and Corr.1 was to simplify the convening of a meeting of the High Contracting Parties and the ICRC's task by proposing that such a meeting could be requested by "one or more of the said Parties". It would be difficult to obtain the two-thirds majority proposed in article 7 of draft Protocol I.

68. Mr. CHOWDHURY (Bangladesh), supporting the basic idea in article 7, pointed out that amendment CDDH/I/65, submitted by his delegation, suggested that a review conference should be convened by the depositary of the 1949 Geneva Conventions either at the request of one-third of the High Contracting Parties or ten years from the date of the coming into force of the Protocol.

69. Mrs. DARIIMAA (Mongolia) asked how article 7 would be put into practice. She considered that the article lacked consistency and pointed out that in international practice meetings such as those proposed in article 7 were convened at the request of the High Contracting Parties only.

70. Mr. de BREUCKER (Belgium) said that he saw no need for such meetings as those proposed in article 7 to be convened by a two-thirds majority in order to consider matters which by the time the meeting was convened might be a thing of the past.

71. He wondered whether the provisions of article 7 and those of article 86 were related.

72. Mr. CUTTS (Australia) said that article 7 made necessary provision for the possibility of reviewing problems which might arise from the application of Protocol I. The question to be decided was how the meetings of the High Contracting Parties should be convened. It was highly desirable that the ICRC, in addition to the High Contracting Parties, should be in a position to request the depositary to convene a meeting of those Parties. However, the two-thirds majority suggested in article 7 might lead to difficulties and his delegation would prefer such meetings to be convened at the request of half the number of the High Contracting Parties.

73. His delegation could support amendment CDDH/I/48 and Add.1 and Corr.1 if the words "one or more of the said Parties" were deleted.

74. Mr. Antoine MARTIN (International Committee of the Red Cross) drew attention to the commentary on article 7 (CDDH/3, p.15) and said that doubts had been expressed by some of the Government experts regarding the proposed two-thirds majority required for calling a meeting of the High Contracting Parties. As stated in the commentary, however, the majority of the experts had pointed out that it was necessary to determine at what moment the figure of

two-thirds would be taken into consideration, and a proposal had been submitted at the 1972 Conference of Government Experts to the effect that no such meetings could be convened until at least one-half of the Parties to the Conventions had become Parties to the Protocol. None of the suggestions put forward in that respect had, however, been approved by a majority of the experts.

75. Replying to the representative of Mongolia, he said that the text of article 7 had been drafted by the ICRC bearing in mind the majority opinion of the Conference of Government Experts. Many experts considered that the ICRC should have the right to make a request to the depositary for the convening of a meeting of the High Contracting Parties because the ICRC had the task, according to the 1949 Geneva Conventions and its own statute, to follow closely questions relating to the application and the implementation of the Geneva Conventions. Furthermore, the ICRC had a continuing link with the depositary. If the last sentence of article 7 proved unacceptable, the ICRC would be the first to agree that it should be deleted.

76. Referring to the statement by the representative of Belgium, he pointed out that the draft prepared for the 1972 Conference of Government Experts provided that the proposed meeting of High Contracting Parties would study problems concerning the application of Protocol I and in addition any amendments to the Geneva Conventions proposed by Parties to that Protocol. A number of experts had then said that the amendment procedure was complex and that it should be introduced in Part VI - Final Provisions. The ICRC had supported that point of view by introducing in Part VI a detailed article on amendment procedure. Several of the amendments submitted to article 7 should therefore be dealt with when the Committee considered article 86 of draft Protocol I.

The meeting rose at 5.55 p.m.

SUMMARY RECORD OF THE TWENTIETH MEETING

held on Wednesday, 12 February 1975, at 3.15 p.m..

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 7 - Meetings (CDDH/1, CDDH/56; CDDH/I/16, CDDH/I/28, CDDH/I/48 and Add.1 and Corr.1, CDDH/I/62, CDDH/I/65) (continued)

1. The CHAIRMAN invited the Committee to continue the consideration of Article 7.

2. Mr. HUSSAIN (Pakistan) said that Article 1 common to the four Geneva Conventions of 1949 stated that the High Contracting Parties undertook to respect and to ensure respect for the Conventions in all circumstances. The experience of contemporary armed conflicts had shown, however, that observance was far from satisfactory. His delegation accordingly welcomed the insertion of article 7 in draft Protocol I, providing for the possibility of convening a meeting to study general problems concerning the application of the Conventions and Protocol. The absence of such a forum had been a serious impediment to the smooth working of the Conventions. In the view of his delegation, however, restriction of such meetings to the study of general problems was unnecessary and was likely to constitute a handicap to the proper implementation of the Protocol, since any problem arising out of a concrete case would seem to be excluded. In his view, the meeting itself should decide what problems it would deal with and its freedom of action should not be unduly circumscribed by the wording of the article. In Pakistan's amendment (CDDH/I/28), the present draft article 7 became paragraph 1, while paragraphs 2 and 3 referred to problems concerning the use of weapons causing unnecessary suffering and indiscriminate weapons and to problems arising out of serious and continuing breaches of the Protocols.

3. There was nothing essentially new in such provisions: Article 1 common to the four Geneva Conventions of 1949 and article 70 of draft Protocol I implied that, if a Party failed to carry out its obligations, the other Contracting Parties were bound to endeavour to bring it back to an attitude of respect for its engagements.

4. His delegation regarded article 7 as one of the most crucial articles in draft Protocol I, since it was just as important to ensure implementation of what had already been settled in the Conventions as to embark on fresh law-making.

5. Mr. BLOEMBERGEN (Netherlands) said that his delegation was not convinced that article 7 was the best way of dealing with the problems to which it referred. As other speakers had pointed out, the question of possible amendments to the Protocol was already dealt with in article 36. The suggestion that a meeting for the consideration of amendments might develop into a kind of review conference was a very interesting idea; his Government would always be happy to participate in any conference designed to improve humanitarian law.
6. Article 7, however, referred to general problems concerning the application of the Protocol. The utility of a meeting of the High Contracting Parties seemed doubtful because, with the existing tight conference schedule, it seemed likely that the problems to be dealt with would have been by-passed by events before the meeting could be convened. In any case, questions of the application and interpretation of the Protocol could always be put before the International Court of Justice at The Hague, which was at all times available to settle legal disputes or give an Advisory Opinion. Any provision on that point, however, should be included in the final provisions and not at the beginning of the Protocol.
7. Mr. CRISTESCU (Romania) said he must apologize for not having been able to introduce at an earlier meeting his delegation's amendment to article 6 (CDDH/I/17), which was designed to ensure that the personnel covered by that article remained under the jurisdiction of their State of origin.
8. His delegation's amendment to article 7 (CDDH/I/16), was designed to fill a gap in the Conventions, which contained no provision for their possible amendment or revision. The Romanian amendment provided that the depositary of the Conventions, at the request of two-thirds of the Parties thereto, would convene a diplomatic conference with a view to amending or revising the Protocol.
9. The CHAIRMAN pointed out that article 6 had been passed to the Working Group, of which the Rapporteur was Chairman.
10. Mr. EL ARABY (Arab Republic of Egypt) said that he would reply to comments made at the previous meeting (CDDH/I/SR.19) on amendment CDDH/I/43 and Add.1 and Corr.1.
11. The first comment had related to the words "one or more of the said Parties". The intention of the sponsors was to provide machinery for convening a meeting of the High Contracting Parties at the request of any party. The meaning would remain unchanged if the expression "any party" were used, as some representatives had suggested. Such a meeting would, of course, not take place unless a majority accepted it.



12. The second comment had been on the type of problem to be dealt with by such a meeting. The sponsors wished it to be possible for the meeting to discuss more than merely general matters, but again they realized that a majority would be required to take a decision on the matter.

13. The last observation had been on whether the problems to be discussed should include the Conventions of 1949 as well as the draft Protocols. The sponsors had no intention of asking for a revision of the Conventions at such meetings, but, under Article 1 of the four Conventions, the High Contracting Parties were collectively responsible for ensuring respect for the Conventions, while article 1 of the Protocol made it clear that the Protocol was supplementary to the Conventions. For those reasons the sponsors of the amendment (CDDH/I/48 and Add.1 and Corr.1) wished to maintain their text, which he hoped would be acceptable to the majority.

14. Mrs. DARIIMAA (Mongolia) said that she had searched in vain in the Statutes of the International Committee of the Red Cross for a provision that the High Contracting Parties could present instruments approving its Statutes, as was provided in the rules of other international organizations. The Swiss Government was not a depositary of the Statutes of the ICRC. An interesting and unusual legal problem arose in that article 7 provided that the depositary of the Conventions "may convene such a meeting at the request, also, of the International Committee of the Red Cross". Since the first sentence of article 7 provided that the depositary could convene a meeting at the request of two-thirds of the High Contracting Parties, a situation could arise in which two-thirds of the Parties to the Geneva Conventions were put on an equal footing with the ICRC. Since the Statutes had not been approved by Governments, she thought that a careful examination of the provision was needed.

15. Mr. PARTSCH (Federal Republic of Germany) said that, in principle, his delegation was in favour of article 7.

16. Several representatives had referred to the United Nations method of convening conferences; but the United Nations was a permanent body with a fixed budget, whereas article 7 referred to ad hoc conferences within a quite different framework. In general, his delegation thought that the United Nations General Assembly could not be taken as a model in the present context.

17. His delegation was in favour of enabling a meeting of the High Contracting Parties to study also the application of the Conventions. But it was important that the study should be confined to general problems; specific cases should not be discussed.

18. With regard to the bodies that would be able to request the convening of such a meeting, he pointed out that there was no obligation on the part of the depositary to convene a meeting at the request of the ICRC: it was merely authorized to do so. There was thus no question of placing two-thirds of the High Contracting Parties on the same footing as the ICRC.

19. Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic) said that the number of amendments submitted to article 7 showed the interest it had aroused. Its original wording seemed rather complicated, however, and he thought that the point raised by the Mongolian representative might be covered by the deletion of the last sentence, which would be in line with other amendments submitted.

20. Mr. PICTET (Switzerland) said that, since Switzerland was the depositary of the Conventions, its interest in article 7 was obvious.

21. The Swiss delegation was opposed to any attempt to widen the scope of the meetings referred to in article 7. The question of amendments to Protocol I was dealt with in article 86. The meetings provided for in article 7 would not be an appropriate place for the negotiation and adoption of amendments which should be the task of diplomatic conferences preceded, where necessary, by the work of experts and by the usual consultations. The idea of having an assembly of Contracting Parties that would become a kind of collective control body seemed neither feasible nor desirable. The difficulty of organizing such meetings would be great, and there was a danger of their being unable to act in time. Such an arrangement would also give to any State the possibility of intervening in an international conflict which might produce reactions among the parties to it that would make effective control difficult. If a control organ was to be set up, it should be a permanent body, not an occasional one. It would be preferable for the meetings to confine themselves to general problems, as the existing text of article 7 provided; such meetings could be useful, as an exhaustive discussion of general problems might eventually lead to the introduction of the amendment procedure provided for in article 86. His delegation feared, however, that it might prove impossible to avoid the discussion of concrete situations, with all the resultant drawbacks.

22. As the depositary State, Switzerland was ready to assume the duties that would be entrusted to it if article 7 was adopted. His delegation nevertheless thought that, precisely because they were important, such meetings should not be frequent and should be convened only if a large number of High Contracting Parties so desired. It would be unwise to fix the figure at less than the two-thirds mentioned in article 7.

23. Mr. FREELAND (United Kingdom) suggested that amendment CDDH/I/48 and Add.1 and Corr.1 might form the basis of a compromise, if everything after the words "upon the approval" were deleted and replaced by the words "of two-thirds of the said Parties, to consider general problems concerning the application of the present Protocol".

24. Mr. GIRARD (France) said that conventions of such a kind should be as permanent as possible. He agreed with the representative of Switzerland that amendments to the Conventions should be dealt with under the final clauses. His delegation would have been prepared to support the original text, but it could also accept the wording of amendment CDDH/I/48 and Add.1 and Corr.1 if it were modified on the lines suggested by the United Kingdom representative.

25. Mr. GRAEFRATH (German Democratic Republic) supported the United Kingdom proposal, which could provide a good starting point for the discussion in the Working Group.

26. Mr. Antoine MARTIN (International Committee of the Red Cross), replying to the Mongolian representative, said that the proposal in the last phrase of the original text had been supported at the meetings of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, since they knew that the International Committee of the Red Cross closely followed the implementation of the Geneva Conventions. Since, however, the proposal had aroused some objection, the ICRC would have no objection to it being withdrawn.

27. He firmly maintained the point of view he had expressed at the nineteenth meeting (CDDH/I/SR.19) during his introductory statement on the draft article, namely, that the meetings should examine only general problems relating to the application of the Protocol. The study of such questions might result in a desire to amend the Protocol, in accordance with the provisions of article 86.

28. The term "High Contracting Party" applied to Parties to the Protocol, not to the Parties to the Conventions. The moment at which the figure of two-thirds would be taken into consideration should be discussed in the Working Group or some similar body, which could also study the other matters left open in the original text.

The Committee decided to refer article 7 and the amendments to it to the Working Group.

Article 7 bis - Inquiry procedure concerning alleged violation of the Conventions (CDDH/56; CDDH/I/27)

Article 7 ter - Settlement of disagreements (CDDH/56; CDDH/I/25)

29. Mr. HUSSAIN (Pakistan) said that his delegation had proposed the addition of two new articles (7 bis and 7 ter) dealing respectively with the inquiry procedure for examining alleged violations of the Conventions and with the settlement of disputes (CDDH/I/27 and CDDH/I/25). He understood, however, that similar proposals were to be submitted by the Scandinavian delegations in the form of an amendment to article 73 of draft Protocol I. He accordingly suggested that, to avoid duplication, discussion of his own delegation's proposals should be postponed until article 73 came to be considered.

It was so agreed.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE TWENTY-FIRST MEETING

held on Thursday, 13 February 1975, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

In the absence of the Chairman, Mr. K. Obradović (Yugoslavia), Vice-Chairman, took the Chair.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 2 - Definitions (CDDH/1, CDDH/56; CDDH/I/38)

1. Mr. ROSENNE (Israel) said that, when preparing a legal text, it was the usual practice to bring all the definitions together in a single "Definitions" article which was discussed at the end, when it had become clear which terms needed to be defined. He suggested that the same procedure should be followed in the case of the draft Protocols instead of having a number of "Definitions" articles in different parts of the text.

2. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the definitions in article 2 were general definitions which held good for the whole of draft Protocol I. The articles entitled "Definitions" at the beginning of a Part, Section or Chapter indicated the meaning to be given to the terms defined in the particular Part, Section or Chapter in question. Committee II was considering the definition of "area of military operations" and had suggested that a Joint Working Group of Committees I and II should be set up to consider whether or not a definition of that expression should be included in article 2. Other questions of a similar nature might arise in Committee III, and be referred to Committee I.

3. Mr. ROSENNE (Israel) said that the present arrangement might render Protocol I unduly complicated. He hoped that an attempt would be made to consolidate all the necessary definitions in a single "Definitions" section.

Sub-paragraphs (a) and (b)

4. The CHAIRMAN, replying to a question from Mr. FERRARI-BRAVO (Italy), pointed out that the Committee had already decided to refer sub-paragraphs (a) and (b) to the Drafting Committee (see CDDH/I/SR.7).

Sub-paragraph (c)

5. Mr. Antoine MARTIN (International Committee of the Red Cross) said that, at the seventh meeting of the first session of the Conference (CDDH/I/SR.7), it had been decided to defer consideration of article 2, sub-paragraph (c), containing the definition of "protected persons and protected objects", until the articles containing those expressions, namely, articles 11 and 74 of draft Protocol I, had been examined.

Sub-paragraphs (d) and (e)

6. Mr. Antoine MARTIN (International Committee of the Red Cross) said that a Working Group was at present considering article 5, paragraph 3; it would therefore be advisable to wait for the results of its work before taking a decision on the definitions of "Protecting Power" and "substitute", given in sub-paragraphs (d) and (e) respectively.

7. Mr. KNITEL (Austria) said that it would be unnecessary for the Committee to discuss sub-paragraphs (d) and (e) in plenary. He proposed that they should be referred to the Working Group.

It was so agreed.

Proposed new sub-paragraphs (f) and (g) (CDDH/I/38)

8. Mr. CALERO-RODRIGUES (Brazil), introducing the Brazilian amendment (CDDH/I/38), said that it was a purely technical one designed to clarify the terms "Party to the Conventions" and "Party to the conflict".

9. Mrs. DARIIMAA (Mongolia) said that she could not understand why, if it was a purely technical amendment, those terms had been selected for definition. If representatives were going to clarify every obvious term, draft Protocol I would not be complete unless every important term it contained was clarified. Clarifying every word would result in overloading the Protocol, which appeared undesirable. She therefore opposed the Brazilian amendment.

10. Mr. LONGVA (Norway) said that his delegation intended to submit further amendments to article 2 and he understood that other delegations might do the same. He therefore proposed that the discussion of the article should be deferred and that, for the present, it should not be sent to the Working Group.

11. Mr. GRAEFERATH (German Democratic Republic) said that, by defining the expressions "Party to the Conventions" and "Party to the conflict" in terms of States, the Brazilian amendment excluded peoples fighting for their independence which had not yet established a State.

12. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam) said that he agreed with the Norwegian representative's proposal and with the views expressed by the representative of the German Democratic Republic. The issue was that of the scope of application of the 1949 Geneva Conventions; the Brazilian definitions were incompatible with the desire that those Conventions should apply universally to all armed conflicts. It was far too important a matter to be decided until the effect of the new text adopted for article 1 on the whole of the rest of draft Protocol I had been studied.

13. Mr. ABADA (Algeria) agreed that the question was not yet ripe for solution. He accordingly supported the Norwegian proposal.

14. Mr. FREELAND (United Kingdom) also supported the Norwegian proposal. The brief discussion so far had been very useful, but it would be prudent to adjourn it and resume the debate at a later meeting.

15. Mr. CALERO-RODRIGUES (Brazil) said that he had no objection to the postponement of the discussion of his amendment.

16. Mr. GLORIA (Philippines) said there was no need to defer the discussion. The definitions were unnecessary and the amendment could simply be rejected.

17. The CHAIRMAN said that the majority of representatives appeared to support the Norwegian proposal. He therefore suggested the adjournment of the discussion of article 2 until later.

It was so agreed.

Article 3 - Beginning and end of application (CDDH/1, CDDH/56; CDDH/I/45, CDDH/I/46, CDDH/I/43 and Add.1 and Corr.1, CDDH/I/49, CDDH/I/63 and Corr.1, CDDH/I/213, CDDH/I/215)

18. Mr. KNITEL (Austria) said that there appeared to be a mistake in the wording of the amendment proposed by the Working Group of Committee I (CDDH/I/63 and Corr.1) as reproduced on page 16 of document CDDH/56: the word "case" should be replaced by the word "situation".

19. Mr. PRUGH (United States of America) said that one delegation had insisted very strongly on the inclusion of the word "case" instead of the word "situation" and after a lengthy discussion that solution had been adopted.

20. He had introduced the United States amendments (CDDH/I/49) at the first session of the Conference (CDDH/I/SR.9, para.5) and did not wish to repeat what he had then said.

21. Mr. CUTTS (Australia), introducing the Australian amendment (CDDH/I/213), said that in his delegation's view, the ICRC draft of article 3 was generally satisfactory, but one or two improvements could be made. His delegation proposed that the words "In addition to" at the beginning of the article, should be replaced by the words "Except for", because the former expression seemed to imply that the majority of the provisions of the Protocol were applicable in peacetime, which was not the case. Secondly, the exception in question applied to all three paragraphs of the article and not merely to paragraph 1; in the Australian amendment the words were accordingly taken out of paragraph 1 and made it into a kind of preamble. The third amendment, which was one of substance, was the addition of the second sentence to paragraph 2. Although, in general, the application of Protocol I should cease on the general close of military operations, there would still be a considerable number of persons in need of the protection of the Protocol after that time. The new sentence took account of those persons.

22. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that Article 2 common to the Geneva Conventions of 1949, referred to in the ICRC draft and in the Australian amendment (CDDH/I/213), did not cover all the situations that might arise. By adopting the new text of article 1 of draft Protocol I at the first session (CDDH/I/SR.13), the Conference had broadened the scope of the situations referred to in Article 2 common to the four Geneva Conventions of 1949 to include cases in which one of the Parties to the conflict was a national liberation movement. He therefore proposed that, whichever text was adopted, the words "Article 2 common to the Conventions" should be replaced by "article 1 of the present Protocol". Such an amendment would be in line with the decisions already taken by the Conference.

23. The CHAIRMAN invited the Ukrainian representative to submit his amendment in writing.

24. Mr. ROSENNE (Israel), recalling his delegation's statement at the Committee's ninth meeting (CDDH/I/SR.9, para.1) during the first session of the Diplomatic Conference, said that all the provisions concerning the application ratione temporis of the provisions of draft Protocol I should be aligned on the corresponding provisions of the Conventions. A complete examination of the temporal aspect could only be completed satisfactorily when all the substantive provisions of draft Protocol I had been drawn up, the matters dealt with in article 3 really concerning the "final clause" of the Protocol. The whole question should be referred back to the Working Group.

25. His delegation could accept the text proposed by the Working Group (CDDH/I/63 and Corr.1), the wording of which, and in particular the expression "at all times", seemed preferable to that



used in the Australian amendment (CDDH/I/213). On the other hand, favourable consideration should be given to the structural change proposed in that amendment.

26. Article 1 dealt only with the beginning of applicability of the provisions of the Protocol. With regard to the cessation of applicability, the Israel amendment (CDDH/I/45) drew attention to the fact that persons hors de combat might continue to require protection after the general close of military operations. The proposed Australian addition to paragraph 2 was in line with that suggestion, but it did not go far enough; it was not only prisoners of war who needed continued protection - wounded persons on the battlefield also needed it. The question of persons hors de combat had been considered in Committee II, which had taken the view that the substantive issue did not fall within that Committee's competence but in that of Committee III. In his view, the Working Group might usefully deal with that question in its temporal aspects.

27. Despite the rather technical appearance of article 3, it had implications of considerable practical importance.

28. Mr. SOOD (India) said that, in document CDDH/I/46, his delegation had submitted an amendment to paragraph 1 of article 3, and had also proposed a new paragraph 4.

29. The words "beginning of any situation" in article 3, paragraph 1 were very vague and it was therefore desirable to redraft that paragraph on the lines of Article 2 common to the four Geneva Conventions of 1949.

30. Article 3, paragraph 2 stated that "the application of the present Protocol shall cease on the general close of military operations". Article 11<sup>o</sup> of the third Geneva Convention referred to "the cessation of active hostilities". Article 65, paragraph 5 of draft Protocol I used the term "general cessation of hostilities". His delegation thought it preferable to use the wording of the Conventions, otherwise difficulties of interpretation would arise.

31. Lastly, article 3 gave no date after which the Protocol would continue to apply to protected persons within the meaning of article 2, sub-paragraph (c), and his delegation was therefore proposing to add a new paragraph 4 to cover such cases.

32. Mr. PICTET (Switzerland) said that, in French at least, the Australian amendment was mainly a matter of drafting, with a single point of substance. He thought that drafting changes should be avoided as far as possible.

33. Mr. ABI-SAAB (Arab Republic of Egypt) said that amendment CDDH/I/48 and Add.1 and Corr.1, submitted by his delegation and several others, was in two parts. The first part proposed the inclusion in the three paragraphs of article 3 of the words "the Conventions and" before the words "the present Protocol". There could be no discrepancy between the Conventions and the Protocol as to their scope of application in time. The Protocol was not an independent instrument capable of independent application, but was supplementary to the Conventions and could only be applied in conjunction with them. The possible argument that the Conventions should not be mentioned in order to avoid giving the impression of revising them was untenable. Technically, revision included additions to, deletions from or changes in the substance of a legal instrument. A "supplementary" Protocol constituted legally, by its very essence, an instrument of revision, whether it was so called or not; and there was no legal difference between adding to the substantive protection provided by the Conventions and extending their application in time.

34. The second part of the amendment proposed to add a paragraph 4 to the article in order to extend the application of the Conventions and the Protocol to protected persons remaining in the hands of the enemy until their release, repatriation or reestablishment. It corresponded to paragraph 2 (c) of the United States amendment (CDDH/I/49), the Indian amendment (CDDH/I/46) and the Australian amendment (CDDH/I/213). The sponsors of amendment CDDH/I/48 and Add.1 and Corr.1 hoped that a small working group would be able to arrive at a consolidated text.

35. Mr. TORRES AVALOS (Argentina) thought it would be wiser to deal with article 3 paragraph by paragraph.

36. The CHAIRMAN said that the prevailing confusion was due to the lapse of time between the first and second sessions of the Conference. Normally, the Rapporteur of the Working Group would have made a report which the Committee would have discussed; but, in view of the confusion, he (the Chairman) felt that it would be better to discuss the whole article. The Israel representative had now suggested that, after the discussion on article 3, that article should be referred to a working group. But, obviously, what had already been sent to the Working Group could not be referred back to it again.

37. Mr. ROSENNE (Israel), said that, speaking from memory, he was under the impression that when the text of article 3, submitted by the Working Group of Committee I (CDDH/I/63 and Corr.1), had been discussed at the Committee's tenth meeting (CDDH/I/SR.10), the text had met with some difficulty and that a new text had been drafted which contained words and phrases in square brackets. Was the Committee going to start from there?

38. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the Working Group on article 3 had made only one proposal on paragraph 1, which was contained in document CDDH/I/63 and Corr.1, in which there were no square brackets. He then quoted paragraph 13 of summary record CDDH/I/SR.10. The Committee had decided to postpone the vote on the choice between the two basic texts proposed for article 3, paragraph 1.

39. The CHAIRMAN asked the Committee whether it wished to vote first on the ICRC text.

40. Mr. PRUGH (United States of America) said that the confusion had arisen because at the end of the Committee's tenth meeting, when the Committee had had the two proposals before it, the suggestion of using a bracketed form had been made but the matter had not been pursued. Many representatives had pointed out that everything would depend on the report from the Working Group which was considering article 1. That report had never been dealt with in connexion with article 3 because its presentation had been the concluding action of the Committee. Nothing further had been done to consider the impact of what had been done with article 1. More discussion was therefore needed. The Egyptian representative's suggestion might reconcile the various points of view. The Working Group's text (CDDH/I/63 and Corr.1) clearly did not take into account the situation with respect to the amendment to article 1, which must now be considered.

41. It would therefore be appropriate for a group to try to reconcile the differences, and the Committee should also have a serious discussion.

42. Mr. RYCHETNIAK (Ukrainian Soviet Socialist Republic) thought that the Committee could not yet vote on paragraph 1, for several proposals had been made and in fact his delegation had just submitted an amendment to the end of the paragraph. It would therefore be better to set up a Working Group.

43. The CHAIRMAN pointed out that he was not insisting on a vote, but it would be inappropriate to send a matter already dealt with by one Working Group to another. He was, however, inclined to agree with the Israel representative and set up a Working Group.

44. Miss BOA (Ivory Coast) asked whether paragraph 1 should not be discussed and then sent to the Drafting Committee as usual instead of setting up a Working Group. What countries would be represented on that Group?

45. The CHAIRMAN replied that since there were other proposals, including that of the Ukrainian delegation, the officers of Committee I thought it best to ask a Working Group to deal with the matter instead of the Drafting Committee. That would in no way constitute a precedent. The Group would be open to any delegations interested.

46. Mr. de ICAZA (Mexico), Rapporteur, said that amendment CDDH/I/48 and Add.1 and Corr.1 seemed to be the same as amendment CDDH/I/63 and Corr.1 and might therefore be set aside, thus leaving two texts only - amendment CDDH/I/63 and Corr.1 and the ICRC text. He asked for guidance from the ICRC expert.

47. Mr. Antoine MARTIN (International Committee of the Red Cross) said that in fact amendment CDDH/I/43 and Add.1 and Corr.1 differed from amendment CDDH/I/63 and Corr.1 because it inserted "the Conventions" before "the present Protocol". In introducing article 1 of draft Protocol I at the first session (CDDH/I/SR.2), the ICRC had indicated why it had not included "the Conventions" in that article: first, because the Conventions already provided for the beginning and end of their application, in Article 5 of the first, Article 5 of the third and Article 6 of the fourth Geneva Conventions; and, second, and more important, the present article 3 of draft Protocol I had been drafted in accordance with the wishes of a majority of Government experts, who had agreed that draft Protocol I did not revise but only supplemented the Geneva Conventions. The ICRC had therefore thought it best not to mention the Conventions in article 3.

48. Mr. KNITTEL (Austria) endorsed the proposal that the text should be referred to a Working Group.

49. Mr. TOPRES AVALOS (Argentina) asked whether the Working Group would deal with the whole of article 3 or just with paragraph 1.

50. Mr. PICTET (Switzerland) approved the suggestion to set up a Working Group but thought that it should not constitute a precedent and that it would be better to add no further amendments.

51. The CHAIRMAN said that only paragraph 1 would be referred to the Working Group. Paragraphs 2 and 3 would be discussed by the full Committee. However, the Ukrainian amendment (CDDH/I/215) had already been submitted.

52. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) maintained his amendment.

53. Mr. KNITTEL (Austria) then proposed that the whole of article 3 should be referred to the Working Group.

It was so agreed.

Article 4 - Legal status of the Parties to the conflict (CDDH/1, CDDH/56; CDDH/I/34, CDDH/I/52, CDDH/I/59 and Add.1 and 2, CDDH/I/73, CDDH/I/214)

54. Mr. Antoine MARTIN (International Committee of the Red Cross) said that, at the first session of the Diplomatic Conference, it had become evident that many delegations were not prepared to discuss article 4 until the field of application of draft Protocol I had been definitely established in article 1 (see CDDH/48/Rev.1, para.28). Since the field of application had now been established, he thought that the Committee could proceed to discussion of article 4.

55. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that amendment CDDH/I/52 was of particular importance and was supported by amendment CDDH/I/59 and Add.1 and 2. If interpreted in a broad sense, the provisions of the original text of article 4 could be extended to colonial and dependent territories and might be taken to mean that the status of those territories was permanent.

56. Mr. ROWE (Australia) said that, on reflection, his delegation had decided to withdraw its amendment (CDDH/I/34), but it hoped that the Working Group would endeavour to ensure that the titles of articles reflected their substance.

57. In the amendment just submitted by his delegation (CDDH/I/214), the references to "Conventions" and "agreements" had been omitted because his delegation considered it inappropriate for the Protocol to contain provisions concerning the legal effects of the application of the Conventions or those of any agreements which might be reached in the future. The legal effects of the latter should be provided for in the agreements themselves. His delegation had no serious objection to the original text and had merely submitted its amendment to ensure that the point raised would be considered by the Working Group.

58. Mr. EL ARABY (Arab Republic of Egypt) said that the sponsors of amendment CDDH/I/59 and Add.1 and 2 were grateful to the sponsors of amendment CDDH/I/52 for their support. The purpose of the sponsors was to make the original wording of article 4 clearer in order that there might be no controversy over future interpretations. It was in conformity with the United Nations Charter, The Hague Regulations<sup>1/</sup> and the provisions of international law.

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<sup>1/</sup> Annexed to The Hague Convention No.IV of 1907 concerning the Laws and Customs of War on Land.

59. Mrs. DARIIMAA (Mongolia) said that the deletion of the word "Conventions" from the original text as suggested in the Australian amendment (CDDH/I/214) might lead to difficulties in a conflict between Parties to the Geneva Conventions and Parties to the Protocol only, for example national liberation movements. A situation wherein a party could occupy a territory by force and establish jurisdiction over it must at all costs be avoided. The original wording appeared to be more in accordance with humanitarian developments in the rules of international law.

60. Mr. ABDUL-MALIK (Nigeria) said that his delegation supported amendments CDDH/I/52, CDDH/I/58 and Add.1 and 2 and CDDH/I/73 because it considered the last phrase of the original text to be the expression of an outdated colonial mentality which was not in line with the present situation, in which the main remaining colonial Power was progressively granting independence to its territories. His delegation had at first thought that the phrase should merely be deleted but on reflection it realized the need to take into consideration certain situations such as the occupation of a territory, as was done in amendment CDDH/I/59 and Add.1 and 2, for instance. The exact wording could be agreed upon by the Working Group.

61. Mr. BARRO (Senegal) said that his delegation had submitted its amendment (CDDH/I/73) because it feared that the expression used in the original text might become a pretext to give legality to the occupation of a territory during a conflict. With that amendment, the text would conform to the rules and principles of international law set forth in the United Nations Charter and would in no way legitimize a conflict started by a colonial Power in order to maintain domination over a territory in contravention of its people's right to self-determination.

62. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the reference to the Conventions in the original text of article 4 had been included because the majority of the experts consulted had considered it necessary, since the Geneva Conventions of 1949 contained no provision to that effect, except in common Article 3 concerning non-international armed conflicts. As draft Protocol I aimed at supplementing the Conventions, the experts had thought it essential to introduce such a clause in respect of provisions relating to international armed conflicts also.

63. It should be noted that article 4 was reaffirmed in article 5, paragraph 4, the wording of which should therefore conform as closely as possible to that used in article 4.

The Committee decided to refer the study of article 4 and the amendments to it to the Working Group.

The meeting rose at 5.30 p.m.

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

held on Friday, 14 February 1975, at 3.15 p.m.

Chairman: Mr. HAMBERO (Norway)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1)

Article 1 - Material field of application (CDDH/1, CDDH/56;  
CDDH/I/88)

1. Mrs. BUJARD (International Committee of the Red Cross) said that the majority of armed conflicts which had taken place since the end of the Second World War had been of a non-international character, and they had caused tremendous suffering and claimed a large number of victims. It was true that since 1949 non-international armed conflicts had no longer been completely ignored in the law of armed conflicts; Article 3 common to the four Geneva Conventions of 1949 laid down essential humanitarian rules guaranteeing fundamental humane treatment to victims of all non-international armed conflicts and established a legal base for offers of services that might be made to the Parties to the conflict by an impartial humanitarian body. When put to the test of non-international armed conflicts, however, the rules of protection in Article 3 common to the four Geneva Conventions of 1949 had been shown to require elaboration and completion. Government and Red Cross experts consulted by the ICRC since 1971 had confirmed the urgent need to strengthen the protection of victims of non-international armed conflicts by developing international humanitarian law applicable in such situations. That urgent need had been emphasized by a number of delegations during the general debate at the first session of the Conference - the need to strengthen protection of victims, to prevent an increase in violence, and to prevent the opposing forces taking action that would render national reconciliation difficult.
2. The object of draft Protocol II was to protect all persons on the territory of a State in which a non-international armed conflict was taking place against the arbitrary authority of the Parties to the conflict when constitutional guarantees had been generally suspended or which no longer applied effectively in the troubled times through which that State was passing. By setting certain standards to be observed by the Parties to the conflict in their behaviour towards the armed forces of the adversary and towards the civilian population, it also sought to limit the intensity of hostilities and to restrict suffering.
3. The entire Protocol was centred on the protection of the human being. In order to arrive at an instrument such as draft Protocol II boldness was necessary for there were humanitarian considerations

that were more important than anything else. But realism was also required to make the Protocol applicable and to ensure its application.

4. In order to take into account the fundamentally different political aspects which existed between international and non-international armed conflicts, the ICRC had respected the distinction, well established in public international law, between those armed conflicts, in conformity with the wish expressed by the vast majority of experts consulted.

5. To take into account the particular material conditions in which hostilities took place because of the inequality of the opposing parties, the ICRC had endeavoured to draw up simple rules which all the Parties to a conflict should apply to the entire population affected by it, thus avoiding the establishment of special categories of protected persons.

6. With a view to achieving a delicate balance between the needs of humanity and the security requirements of the State intending to take the requisite steps to maintain or re-establish order on its territory, draft Protocol II left intact the right of the constituted authorities to prosecute and sentence persons guilty of offences committed in connexion with the armed conflict.

7. To safeguard the principle of the sovereignty of States and of non-interference in their internal affairs, draft Protocol II contained a safeguard clause stating that nothing in the instrument should be interpreted as authorizing third States to intervene in the armed conflict.

8. Lastly, draft Protocol II reaffirmed the principle that the legal status of the Parties to the conflict would not be affected by the application of its provisions.

9. Referring to the structure of draft Protocol II, she said that emphasis had been placed, after the general provisions contained in Part I, on the protection of the population against the arbitrary authority of the Parties to the conflict in whose power the population might be (Part II) and on the protection of wounded, sick and shipwrecked persons (Part III) following the order adopted in Article 3 common to the four Geneva Conventions of 1949. Parts IV and V dealt with certain rules to be observed in the conduct of hostilities by the Parties to the conflict in their behaviour towards the combatants and the civilian population. Part VI was devoted to provisions on relief and humanitarian assistance, Part VII to provisions for execution and Part VIII to the final provisions.



10. Draft Protocol II took over from the Geneva Conventions and from draft Protocol I the basic provisions which seemed indispensable for ensuring the protection of the victims of non-international armed conflicts.

11. Article 1 - Material field of application - which defined the circumstances in which the provisions of Protocol II would apply, was the cornerstone of the Protocol, for on its scope the whole contents of the instrument would depend. The Conference of Government Experts on the Reaffirmation and Development of Humanitarian Law applicable in Armed Conflicts had drawn up six alternative texts: the first was based on the idea that a single Protocol should apply without distinction to all armed conflicts; the other five alternative texts, applicable only to non-international armed conflicts, ranged from the broadest possible definition, covering all non-international armed conflicts, including those which were limited, to the narrowest definition, covering only non-international armed conflicts with all the characteristics of a war. The Government Experts had concluded that a choice would have to be made between a Protocol with a narrow field of application and broad rules and one with a broad field of application and only a few basic humanitarian rules. Those views had also been expressed by a number of delegations at the first session of the Conference.

12. The ICRC had had the difficult task of determining the field of application of draft Protocol II; it had chosen a broad field to cover all non-international armed conflicts and for that purpose had endeavoured to specify the characteristics of a non-international armed conflict by means of objective criteria so that the Protocol could be applied when those criteria were met and not be made subject to other considerations.

13. The characteristics of a non-international armed conflict were described in article 1, paragraphs 1 and 2. Paragraph 1 was intended, first, to distinguish non-international armed conflicts from international armed conflicts. It made the distinction by a negative reference to Article 2 common to the four Geneva Conventions of 1949, reaffirming thereby that a non-international armed conflict differed from an international armed conflict because of the legal status of the subjects of law involved: in non-international armed conflicts the legal status of the parties was fundamentally unequal, since part of the population would be fighting against the Government in power, acting in the exercise of its original public authority. The negative reference to Article 2 common to the four Geneva Conventions of 1949 should be supplemented by a reference to article 1 of draft Protocol I so as to exclude from the scope of draft Protocol II the situations referred to in article 1.

14. Article 1, paragraph 2 of draft Protocol II distinguished between non-international armed conflicts and situations of internal disturbance and tension, which were excluded from the field of application of Protocol II.

15. The upper and lower limits of non-international armed conflict being thus established, the conflict itself was defined in the second part of paragraph 1 as the opposition of armed forces capable of concerted military action under responsible command. In response to a request by certain experts, a distinction had been made between the expression "armed forces", which applied to the armed forces of the established Government, and the expression "organized armed groups under responsible command", which applied to armed forces organized by insurgents for the purpose of the struggle. That distinction implied no difference in degree of organization: insurgent armed forces had to have an organic structure, in other words, they must be endowed with a system of competence and responsibility and subjected to a system of internal discipline as implied by article 36 - measures for execution - which stipulated that each Party to the conflict should take measures to ensure observance of the Protocol by its military and civilian agents and persons subject to its authority.

16. It should be borne in mind that unlike article 1 of draft Protocol II, Article 3 common to the four Geneva Conventions of 1949 contained no precise material criteria for defining its field of application. Some experts had drawn the attention of the ICRC to the fact that very small non-international armed conflicts might be covered by Article 3 common to the Geneva Conventions of 1949 without falling within the scope of article 1 of Protocol II, and had added that bearing that fact in mind the linking of Protocol II with Article 3 common to those Conventions might have the effect of restricting the latter's field of application, and that, consequently, it was desirable that common Article 3 and Protocol II should co-exist autonomously in order that the conditions of application of common Article 3 might remain unchanged. In view of the uncertainty as to the field of application of draft Protocol II, on which the Conference might reach agreement, the ICRC had supported that standpoint. Draft Protocol II was thus conceived as an instrument additional to the four Geneva Conventions of 1949, the conditions of application of Article 3 common to them remaining unchanged, as stated in article 1, paragraph 3, of draft Protocol II. The great advantage of the system was that it left intact the guarantee in Article 3 common to the Conventions of basic humane treatment to victims in all cases of non-international armed conflict. Its disadvantage was that it created a somewhat complicated conventional situation by establishing two instruments applicable to non-international armed conflicts. However, in most cases Article 3 common to the Geneva Conventions of 1949 and Protocol II could be applied simultaneously.

17. Mr. TORRES AVALOS (Argentina) said that his delegation appreciated that draft Protocol II had been based on the idea of the protection of humanity. It was, however, unrealistic in some respects. Certain articles, and particularly article 1, to some extent infringed the jurisdiction and sovereignty of States. His delegation would like to see a realistic and effective instrument which could be accepted by sovereign States.

18. Mr. CLORIA (Philippines) said he would be interested to know how the ICRC had selected the headings of article 1 (Material field of application) and article 2 (Personal field of application). He had noted that they had not been mentioned in any of the amendments which had been submitted.

19. Mr. MILLER (Canada) said that the comments of the ICRC representative had shown the purpose of draft Protocol II in its essence. In its concern for an advance in humanitarian law applicable to all armed conflicts, Canada had submitted a draft Protocol at the first session of the Conference of Government Experts in 1971, starting with a basic and fundamental approach. It had been aware of the difficulties which the authors of the four Geneva Conventions had faced in 1949 when they had inserted common Article 3. That had then represented a significant advance, but the time had now come to expand and improve on what had been done. The purpose of draft Protocol II was to add significantly and in a practical manner to the fundamental humanitarian provisions of the article.

20. That should be done, first, by defining non-international armed conflicts, second, by covering all instances involving the use of armed forces and, third, by establishing new, simple, clear and basic provisions that every responsible Government would wish to apply in the full exercise of State sovereignty. Protocol II should therefore be one intended largely for application within a single State and designed to persuade Governments and insurgents alike of the humanitarian benefits of acting with reasonable restraint in their treatment of civilians and captured combatants. What Canada was seeking was a realistic, victim-oriented protocol well within the capacity of the adversaries in an internal conflict to apply and considered by both sides to a dispute to be mutually advantageous.

21. The ICRC had no doubt had a difficult task in balancing all the various factors with a bearing on the scope and content of draft Protocol II. His Government, which had given all the assistance it could, welcomed the way in which article 1 was formulated. It had originally wished Protocol II to apply to all cases of armed conflict involving governmental military forces on the one side and military forces whether regular or irregular on the other, and had emphasized that it should apply to all persons

whether military or civilian, combatant or non-combatant. It was satisfied with article 1, however, because, although paragraph 2 excluded situations of internal disturbance and tension, it had achieved a balance between the low threshold originally advocated by his Government and the higher one advocated by others. His delegation had taken careful note of the ICRC representative's comments on the need to insert a reference to article 1 of draft Protocol I, and would be prepared to put the idea forward in a working group.

22. Mrs. BUJARD (International Committee of the Red Cross), replying to the question raised by the Philippine representative, said that the ICRC had considered it necessary to devote two different articles to the field of application of Protocol II: the first concerned the material elements constituting armed conflict, namely, the confrontation of armed forces or organized armed groups under responsible command; the second indicated the persons to whom the Protocol applied.

23. Mr. GRAEFRATH (German Democratic Republic) said that the comments of the ICRC representative on the relationship between draft Protocol II and Article 3 common to the four Geneva Conventions of 1949 would form a useful subject for discussion.

24. The purpose of his delegation's proposal (CDDH/I/88) was to re-establish and secure identity of field of application as between Article 3 common to the four Geneva Conventions and draft Protocol II. Up to the time of the second Conference of Government Experts, the field of application of draft Protocol II had been identified in all texts with the field of application of Article 3, and that identity had been expressed in the title of draft Protocol II, in conformity with which the field of application had been determined in article 1, notwithstanding a divergence of views on individual criteria.

25. The starting point had now been substantially changed, however: draft Protocol II no longer supplemented Article 3 common to the Geneva Conventions of 1949 but had been made additional to the Conventions without modifying the conditions governing the application of that article. If that meant that draft Protocol II supplemented Article 3 and related to all cases of non-international armed conflict covered by it, the idea had been expressed more precisely and unambiguously in the earlier proposal, upon which his delegation's amendment was based. Draft Protocol II was obviously meant, however, to cover only a particular category of non-international armed conflicts, a certain group being selected from those covered by the broad scope of Article 3. That meant a complete change from the system of the four Geneva Conventions, in which the distinction was made between international and non-international armed conflicts. It was a very important distinction, based on respect for State sovereignty and territorial integrity.

26. The effort was now being made to distinguish between three categories of armed conflict - first, international armed conflict covered by draft Protocol I; second, non-international armed conflict covered by draft Protocol II; and, third, non-international armed conflict covered by Article 3 common to the four Geneva Conventions of 1949.

27. His delegation considered that the introduction of new categories and difficult distinctions was not calculated to strengthen the development of international humanitarian law. Instead, it might encourage interference in the internal affairs of States.

28. The title of draft Protocol II gave the impression that the Protocol related to all non-international armed conflicts, but that was not the case, as could be seen from article 1, paragraph 3. Furthermore, article 1, paragraph 2 of draft Protocol II might give the equally mistaken impression that Article 3 common to the four Geneva Conventions of 1949 related to internal disturbances, as distinct from the kind of conflicts to which draft Protocol II related. Such an interpretation would be contradictory to the clear texts of the four Geneva Conventions of 1949 which referred to non-international conflicts and not to internal disturbances.

29. Protocol II as at present worded was dangerous, for it was aimed at the internationalization of internal conflicts, and would thus encourage interference in the domestic affairs of States. The aim of draft Protocol II was no doubt to ensure the greater protection of victims of non-international armed conflicts, but whether or not the Protocol was applied would depend on the authorities of the State on whose territory the armed conflict occurred.

30. The amendment submitted by his delegation to article 1, paragraph 1, of draft Protocol II (CDDH/I/88) was based on the draft approved at the second Conference of Government Experts. It was designed to re-establish the identity of the field of application of draft Protocol II and Article 3 common to the four Geneva Conventions of 1949.

31. Mr. SOOD (India) said that various types of armed conflict had been mentioned in article 1 of draft Protocol I, adopted by Committee I at the first session of the Diplomatic Conference. He thought that the term "non-international armed conflicts" used in the commentary to draft Protocol II, article 1, should be defined. Article 3, common to the four Geneva Conventions of 1949, was vague and did not define the term "armed conflict not of an international character".

32. Under article 1, paragraph 2 of draft Protocol II the Protocol as at present drafted did not apply to "internal disturbances and tensions, inter alia riots, isolated and sporadic acts of violence and other acts of a similar nature". Would rebellion or large-scale lawlessness be covered by the provisions of draft Protocol II rather than by the laws of the State concerned?

33. Mr. de BREUCKER (Belgium) pointed out that humanitarian law arose from an increasing awareness of the demands of humanity and from the stirrings of the public conscience. The purpose of the early rules on the subject - those of 1899<sup>1/</sup> and 1907<sup>2/</sup> - was to govern conflicts between States. In 1949, for the first time and to an extremely modest degree, certain rules were worked out for the benefit of victims of non-international armed conflicts. Those were the rules that now had to be amplified and developed, despite the existence of two poles of dialectical tension: State sovereignty on the one hand, and the increased requirements of protection, seen from the standpoint of implementing human rights, on the other. In his view, draft Protocol II stated the problem admirably. Article 1 of that draft Protocol covered the field of application of that instrument adequately. The words used to describe non-international armed conflicts of the usual kind could not be made subject to additional conditions relating to the duration or intensity of the conflict, or to still other conditions, whose only effect would be to suspend or qualify the application of the Protocol.

34. Although he endorsed the principle in article 1, paragraph 2, he thought that its wording might be made more restrictive as a result of changes to be discussed within the Working Group.

35. With regard to article 1, paragraph 3, which stated that the provisions of the Protocol to be drawn up would not modify the conditions governing the application of Article 3 common to the four Conventions of 1949, he considered that the ICRC had adopted a very sensible approach, since, in fact, Article 3 did not define non-international armed conflicts. However admirable the ICRC approach, a more precise definition of the applicability of the rules governing that type of conflict must leave open the field of application left undefined in Article 3 common to the Conventions, particularly if article 1 were to be amended by raising the

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<sup>1/</sup> See the Regulations respecting the Laws and Customs of War on Land annexed to The Hague Convention of 1899.

<sup>2/</sup> See the Regulations respecting the Laws and Customs of War on Land annexed to The Hague Convention No. IV of 1907.

threshold of application of the Protocol. Any other course of action might be a retrograde step by contrast with the very broad field of application of Article 3, despite the preparation of a Protocol applicable to the type of conflict to which that Article referred and such a retrograde step would prove prejudicial to the very guarantees of humanitarian law which the Conference was endeavouring to promote.

36. Mr. MARTIN HERRERO (Spain) said that ever since the first Conference of Government Experts his country had taken a special interest in the wording of draft Protocol II and, in particular, article 1 of that document concerning the material field of application of the Protocol. His delegation had submitted an amendment to article 1 at the Conference of Government Experts which, however, had not been adopted.

37. The Spanish delegation was not completely satisfied with the present wording of article 1 which it found rather confused, and would therefore submit an amendment in the Working Group. The terms "responsible command" and "armed forces" should be defined. His delegation understood the latter term to mean the regular armed forces of a State.

38. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) drew attention to the statement he had made in connexion with article 3 of draft Protocol I at the twenty-first meeting and the amendment (CDDH/I/215) he had submitted to that article.

39. His delegation considered that the wording of article 1, paragraph 1 of draft Protocol II should also be amended, by replacing the phrase "by Article 2 common to the Geneva Conventions of August 12, 1949", by the words "by article 1 of Additional Protocol I to the Geneva Conventions of August 12, 1949."

40. Mr. GIRARD (France) said that his delegation welcomed the initiative taken by the ICRC in proposing a protocol applicable to all armed conflicts not covered by Article 2 common to the four Geneva Conventions, that was to say, applicable to conflicts in which one of the belligerents was not a State. The economy of the ICRC drafts had, however, been considerably changed. An effort should be made, however, to define the term "non-international armed conflicts".

41. The representative of the German Democratic Republic had expressed the opinion that the Committee was considering three different categories of armed conflict. In his (Mr. Girard's) view, there were four, namely, ordinary conflicts between States, which were covered by draft Protocol I; non-inter-State conflicts which were covered, or which it was thought should be covered, by draft Protocol I; non-inter-State conflicts which were at present

covered by draft Protocol II and which, unlike the first two, were considered not to be of an international nature; and, lastly, non-inter-State conflicts which, it had been suggested, might not be covered by draft Protocol II, but rather by a protocol III.

42. It was difficult for his delegation to take a position on article 1 before knowing the content of the Protocols. He thought, however, that instead of four categories of armed conflict it might be better to have two - one clearly covered by draft Protocol I and the other clearly covered by draft Protocol II.

Article 2 - Personal field of application (CDDH/1, CDDH/56; CDDH/I/37, CDDH/I/79)

43. Mrs. BUJARD (International Committee of the Red Cross), introducing article 2 of draft Protocol II, said that paragraph 1 enunciated the principle that draft Protocol II applied to all affected in one way or another by hostilities, namely that not being combatants they should benefit from the protection afforded by the Protocol against the dangers of armed conflict, or if taking part in hostilities they should conform to certain rules of behaviour as regards the armed forces of the adverse Party and the civilian population.

44. That meant that the provisions of the Protocol applied to everyone, without distinction, affected by armed conflict - whatever their nationality - including refugees and Stateless persons: humane treatment should be the same for all.

45. Naturally that provision did not affect the right of the authorities to take special security measures in the case of persons of foreign nationality. It might also happen that certain offences would be considered as more or less serious depending on whether they had been committed by nationals or by foreigners. That was an administrative or legal measure which might have nationality as a criterion but which had no effect as regards the treatment of individuals.

46. The purpose of article 2, paragraph 2, was to guarantee humane treatment to persons whose liberty had been restricted and who were not set free at the end of the armed conflict and also to persons who might be arrested by the victorious party at the end of the conflict. The ICRC considered that such persons should at least remain covered by articles 3 and 10 at all times and without a time limit, until they were released - even if that occurred twenty years after the end of the armed conflict. That provision did not in fact impose on the victorious party an excessive obligation especially when security and order had been re-established. Articles 3 and 10 enumerated only those guarantees provided in national legislation for all common law offenders.



47. Mr. PRUGE (United States of America), referring to article 2, paragraph 1, asked whether the application had any geographical limitation, as, for example, to the territory of the party where the conflict occurred. None was expressly stated.

48. Mrs. BUJARD (International Committee of the Red Cross) said there had been a long discussion of that point at the Conference of Government Experts, but the experts had pointed out that in a large, federal State, for example, it might be better that the Protocol should apply to the persons affected by an armed conflict rather than to the territory where the armed conflict took place. To meet that wish, the ICRC had not included in its draft an article concerning the territorial scope of the Protocol.

49. Mr. MILLER (Canada) drew attention to the amendment (CDDH/I/37) which his delegation had proposed to article 2 at the first session. It had considered it useful to state more specifically in paragraph 1 what was meant by the phrase "without any adverse distinction". It also intended to incorporate that amendment in a proposal for a definition, which it would submit later.

50. The words "On the conclusion of the conflict" had been omitted in error at the beginning of paragraph 2 of his delegation's amendment.

51. Mr. CALERO-RODRIGUES (Brazil) said that his delegation had submitted its amendments to articles 1, 2 and 3 (CDDH/I/79) because, after a careful study of the amendments submitted by other delegations, it had concluded that it was necessary to choose between the idea of the field of material application, which was admittedly a vast one, and the idea of a more limited form of protection than that envisaged. In drafting its amendment to article 1, the Brazilian delegation had adopted the second alternative, which was close to the ICRC draft and continued to stress the application of Article 3 common to the Geneva Conventions of 12 August 1949.

52. Mr. AGOLS (Indonesia) said he wished first to refer to his delegation's views on draft Protocol II as a whole. It was intended to provide rules concerning the application of humanitarian principles in armed conflicts of an internal or domestic nature. His delegation was in full agreement that humanitarian principles should govern the treatment of human persons in any armed conflict and that the victims of such conflicts should be given maximum protection.

53. Nevertheless, in their continuous efforts to improve and develop the application of those humanitarian principles, States should not be too idealistic; a realistic approach was also necessary. Draft Protocol II dealt with matters coming within the domain of the domestic affairs of a sovereign State, and the

Committee should therefore take a cautious and practical view and give due consideration to the principle of the integrity and sovereignty of States. He hoped that no decisions would be taken on the provisions of draft Protocol II which might be interpreted as interference in the internal affairs of States.

54. Despite the provisions of draft Protocol II, article 3, his delegation deemed it necessary to say that the effect of applying Protocol II, if such a Protocol was really needed, should not in any way be interpreted as a direct or indirect recognition of the forces hostile to the lawful government.

55. In his delegation's view, article 1, paragraph 1, in particular, should be made subject to the following conditions. First, it should apply to regular armed forces under responsible command which took up arms against the legitimate government, or to armed conflicts taking place between regular armed forces and organized armed groups. Secondly, the armed forces or organized armed groups hostile to the legitimate government must exercise continuous and effective control over a substantial or non-negligible part of the territory of the High Contracting Party. Thirdly, the armed conflict must reach a certain degree of intensity and continue for a prolonged period.

56. Mr. QUACH TONG DUC (Republic of Viet-Nam) said his delegation welcomed the ideas on which draft Protocol II was based and fully associated itself with the desire of the international community to promote respect for human dignity and the human person in armed conflicts which were not of an international character.

57. In order to ensure that there was no reluctance in applying draft Protocol II, his delegation thought that the concept of "non-international armed conflicts" should be defined as precisely as possible. There was a wide variety of such conflicts, ranging from internal tensions to civil war, and, in fact, the 1971 Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts had expressed the view that some definition based on objective criteria should be sought.

58. In order to justify the application of humanitarian law and to reconcile it with the principle of non-intervention in the internal affairs of States, his delegation considered that the scope of Protocol II should be limited to situations of armed conflict of a particularly serious nature. For the purposes of a definition, the Drafting Committee of Commission II of the 1971 Conference of Government Experts had proposed the adoption of the criteria of

duration and organization.<sup>3/</sup> Others had also been proposed, such as the occupation of territory or the degree of intensity of the conflict. In its own draft, the ICRC had adopted the requirement that the armed groups should be organized and had excluded internal disturbances and tensions from the application of the Protocol.

59. His delegation proposed that, in addition to organization, two other criteria should be adopted: the occupation of territory, and the support of the population. The Party in conflict with the lawful Government should at least be fighting for a just cause in order to have that popular support, which was not a purely subjective factor but could be easily evaluated on the basis of actual demonstrations.

60. The occupation of a considerable part of the national territory implied control of that portion of territory by the responsible command and was proof of the seriousness and high degree of intensity of the hostilities between the government of a State, on the one hand, and one or more factions on the other.

61. Those criteria were the reason for his delegation's new amendment (CDDH/I/91) which replaced its original proposal (CDDH/I/7).

62. Mr. MILLER (Canada), introducing his delegation's proposed new article (CDDH/I/37), said that paragraph (a) repeated Article 1 common to the Geneva Conventions, which he considered it important to stress, while paragraph (b) related to the Parties to an armed conflict. The word "Party" in paragraph (b) should be corrected to read "party" in order to make it clear that a corresponding duty devolved on Parties to a conflict which were not High Contracting Parties.

63. Mrs. DARIIMAA (Mongolia) said that she did not quite understand the text of paragraph (a) of the new article proposed by Canada (CDDH/I/37). She mentioned the case of two parties composed of citizens of the same State who were engaged in hostilities in the same territory and within the frontiers of the same sovereign State, and said that if the expression "High Contracting Parties" was adopted, the insurgent party, in order to become a "High Contracting Party" would have to submit instruments of ratification to the

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<sup>3/</sup> See Conference of Governments Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (Geneva 24 May - 12 June 1971) Report on the Work of the Conference, p.63.

depository of the Protocol. In order to agree to observe the provisions of the Protocol would the insurgent party have to ratify that document? The substitution of the words "the Parties to the conflict" by the words "High Contracting Parties" would lead to the text being interpreted and understood in that way and would make its meaning obscure.

64. Mr. de BREUCKER (Belgium) said he wondered whether the new article suggested by the Canadian delegation was not already covered by article 5 of draft Protocol II concerning the rights and duties of the Parties to the conflict. In particular, paragraph (a) of the Canadian draft, which referred to the "High Contracting Parties", might give rise to difficulties which it might be better not to raise.

65. Moreover, he did not see how paragraph (b) added anything to article 36 of draft Protocol II concerning measures for execution, which stated: "Each party to the conflict shall take measures to ensure observance of this Protocol by its military and civilian agents and persons subject to its authority".

66. Mr. MILLER (Canada), replying to the representative of Mongolia, said that the Conference was, of course, drafting a Protocol to which States, but not insurgent groups, would become Parties. It was necessary, therefore, to state early in the Protocol that States which were Parties to it would undertake to respect and to ensure respect for it in all circumstances.

67. In reply to the representative of Belgium, he said he was not sure that article 5 of draft Protocol II covered the same ground as his own proposal, and he would prefer to wait for an explanation of that article when it was introduced by the ICRC. With reference to paragraph (b) of his amendment, he agreed there was a somewhat similar provision in article 36, but he considered it important to state the principle at the beginning of the Protocol as a balancing factor.

68. The CHAIRMAN suggested that a Working Group should be set up to deal with draft Protocol II under the chairmanship of the Committee's Vice-Chairman, Mr. Obradović (Yugoslavia).

It was so agreed.

The meeting rose at 5.25 p.m.

SUMMARY RECORD OF THE TWENTY-THIRD MEETING

held on Monday, 17 February 1975, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 1 - Material field of application (CDDH/1, CDDH/56; CDDH/I/26, CDDH/I/30, CDDH/I/32, CDDH/I/37, CDDH/I/79, CDDH/I/88, CDDH/I/218, CDDH/I/219) (continued)

Article 2 - Personal field of application (CDDH/1, CDDH/56; CDDH/I/21, CDDH/I/37, CDDH/I/79, CDDH/I/216) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of draft Protocol II, articles 1 and 2.

2. Mr. KNITTEL (Austria) said that Austria would always endeavour to obtain maximum protection for all victims of all types of armed conflict. That was why it was in principle in favour of draft Protocol II.

3. In 1946, at its XVIIth International Conference, the ICRC had submitted a draft providing that in all non-international armed conflicts, especially civil wars, colonial conflicts and wars of religion, the Parties to the conflict should apply the provisions of the four Geneva Conventions of 1949. The draft had been finally adopted subject to the deletion of the non-exhaustive list of non-international armed conflicts. But the reason for that deletion was not to narrow the scope of the provision, but on the contrary to avoid the risk of the Conventions not being applied because the notion of non-international armed conflict had been too restrictively defined.

4. At the first session of the Conference, Committee I had decided to bring wars of liberation within the ambit of draft Protocol I so that all the provisions of the Geneva Conventions of 1949 as well as Protocol I itself should apply thenceforth to that category of non-inter-State armed conflicts, as had been provided by the ICRC in its 1946 draft.

5. Now, in 1975, the Committee was being asked to find a set of humanitarian international rules governing all types of that category of non-international armed conflict because, as had been pointed out by the Head of the USSR delegation in 1949, the sufferings of the victims of non-international armed conflicts were certainly as keen as those which had led Henry Dunant to propose a set of humanitarian international rules for international conflicts.

In 1912, on the other hand, the representative of the Imperial Russian Government had refused even to discuss the ICRC report on the role of the Red Cross in civil wars on the grounds that, under Russian law, insurgents or revolutionaries could only be considered as criminals. Further, by a curious twist of history, the representative of a delegation which in 1949 had requested the deletion of Article 3 common to the four Conventions, was now one of the most ardent advocates of draft Protocol II.

6. That showed how the passage of time could bring about a more enlightened attitude to humanitarian problems. It was to be hoped that those who in 1949 were not in favour of Article 3 common to the Geneva Conventions would now support draft Protocol II, and that those who had supported that Article would now press for the maximum extension of humanitarian protection to that category of victims of non-inter-State armed conflicts.

7. At the first session of the Conference, a large majority of representatives had wished to have such protection extended to one of the two categories of non-inter-State armed conflicts, by broadening the field of application of Protocol I. Why should the same extension of humanitarian protection now be refused to the victims of the other category of non-inter-State conflicts which had to be regulated by Protocol II? Public opinion would be astonished at such discrimination. It might begin to suspect that the protection given to the first category under Protocol I had been accorded not just for humanitarian reasons, but for other reasons as well.

8. He had listened with interest to the explanation by the ICRC representative of the relationship between the system of Article 3 common to the four Conventions and that of draft Protocol II. Although he had some doubts as to whether the creation of so many categories of armed conflict might not lead to difficulties of application, he now felt that the ICRC formula perhaps best reflected the common aim, the desire to prevent Article 3 common to the four Conventions from being interpreted differently in the future from how it was now.

9. The wording of draft Protocol II, article 1, paragraph 1 should take into account the decisions reached at the first session of the Conference. With regard to the reference to "other organized armed groups" in paragraph 1 of article 1, it was hard to see how Protocol II could be applied without Government forces being involved.

10. He was opposed to amendments to paragraph 1 which sought to introduce additional criteria for the definition of a non-inter-national armed conflict. It was a mistake to try to carry definitions too far.

11. The Canadian proposal (CDDH/I/37) for a new article at the beginning of draft Protocol II was an extension of an idea which had already been taken up in draft Protocol I and which the Austrian delegation supported.

12. Mr. LONGVA (Norway) said his Government's view was that the protection of victims of armed conflicts should be the same regardless of their legal or political classification. The Conference should establish identical legislation for all victims of all armed conflicts. The distinction drawn between international and non-international conflicts, and the elaboration of two different Protocols with different levels of protection for victims only led to discrimination or what had been called "selective humanitarianism". There should be one single protocol covering all victims of armed conflicts. However, in a spirit of realism, the Norwegian delegation would participate in the Conference for the time being on the assumption that there would be two separate protocols, but it reserved the right to propose at a later stage that they should be amalgamated into one single instrument.

13. With regard to draft Protocol II, article 1, he was concerned, as were other representatives, that it might increase the categories of armed conflicts from two to three. His delegation had therefore submitted an amendment (CDDH/I/218) designed to harmonize the wording of article 1 with the text of Article 3 common to the four Geneva Conventions; it did not affect the substance of article 1. In his view, there could not be an armed conflict in the sense of Article 3 common to the four Conventions except in cases where hostilities broke out between armed forces or other organized groups under responsible command.

14. Some speakers were of the opinion that there might be a contradiction between draft Protocol II and the principle of State sovereignty. That was not the case, as had been made clear in the judgment of the Permanent Court of International Justice in the S.S. "Wimbledon" case which stated:

"The Court declines to see in the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right to enter into international engagements is an attribute of State sovereignty."1/

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1/ See Publications of the Permanent Court of International Justice, Series A. No. 1, August 17th 1923. Collection of Judgments - The S.S. "WIMBLEDON".

15. Ratification of the ICRC draft Protocol II by a State would, therefore, in no way imply an abandonment of sovereignty but rather the exercise of it.

16. Mr. KEITH (New Zealand) said that there were four main factors to take into account: the protection of individual human beings in armed conflicts; the general law relating to the protection of human rights and fundamental freedoms; sovereignty; and realism.

17. With regard to the first, so far as the individual was concerned, whether he was wounded, injured, having his house bombed or being tried for alleged war crimes, he needed the same protection, no matter how the lawyers or politicians defined the conflict or whether it came under Protocol I, Protocol II, Article 3 common to the four Conventions, or Protocol one and a half as the French representative had perhaps suggested. There must be equal rights and equal protection for all.

18. The developing law on the protection of human rights and fundamental freedoms argued in the same direction. States were being asked to accept and acknowledge obligations of an international character to provide and recognize such protection and were doing so.

19. Sovereignty was not a monolithic principle standing in the way of law but something much more flexible developing from the collective will of mankind. Examples of the changing pattern of views on sovereignty were the laws relating to genocide and racial discrimination. How it developed entered into the realm of politics and what States were willing to acknowledge in drafting and ratifying international instruments.

20. Realism demanded certain steps by States involved in the law-making process. One essential was the protection of the individual, a matter of paramount importance. Further, it was important that rules of restraint should be observed by both sides to an armed conflict.

21. But some delegations evidently thought there was a legal and political difference between the situations covered in draft Protocol I and those covered in draft Protocol II. There was obviously a need to reach a compromise on the scope and content of the proposed draft. He supported a broad formulation of article 1 and did not agree with those who wished to narrow its area of applicability. And, if possible, the number of categories of non-international armed conflicts should be reduced, as had been proposed by the Norwegian delegation; too many could confuse the issue.



22. Mr. CUTTS (Australia) said that draft Protocol II would be an important international instrument for the development of humanitarian law and the protection of victims in non-international armed conflicts. The Protocol should apply to all armed conflicts of that nature but not to conflicts covered by Article 2 common to the Geneva Conventions of 1949 or those specified in draft Protocol I, article 1. The type of conflict to be covered by draft Protocol II would be major civil war conflict and armed conflict which amounted to insurgency rather than belligerency but which was still well above the level of internal disturbances such as riots which were rightly excluded from draft Protocol II, article 1, paragraph 2.

23. In order to indicate more clearly the conflicts covered by draft Protocol II, there should be a reference to the exclusion of wars of self-determination as envisaged in article 1 of draft Protocol I. The Australian delegation had therefore submitted an amendment (CDDH/I/219) for insertion in draft Protocol II, article 1, paragraph 1, after the reference to Article 2 common to the Geneva Conventions, of the words "as supplemented by article 1 of the Additional Protocol relating to the protection of victims of international armed conflicts".

24. With regard to article 1, paragraph 3, the chief source of legal obligations in relation to non-international armed conflicts was Article 3 common to the four Geneva Conventions; draft Protocol II would enhance the protection provided by that article. His delegation therefore thought it important that draft Protocol II, article 1, paragraph 3 should be retained, since it indicated the relationship between the Protocol and Article 3 common to the four Geneva Conventions.

25. Mr. PICTET (Switzerland) expressed the hope that there would be early agreement on the broad lines of draft Protocol II, article 1, for once the field of application of the Protocol had been defined, the other Committees, particularly Committee III, would be able to consider the articles allocated to them on a more solid basis.

26. Definitions were always difficult and could even be dangerous. The negotiators of the 1949 Geneva Conventions had deliberately refrained from defining the non-international armed conflicts which were the subject of Article 3 common to those Conventions. Since, however, the majority of the experts had thought that there should be a definition in draft Protocol II, the Swiss delegation accepted the principle of a definition and found the definition proposed by the ICRC satisfactory. The combination of negative and positive criteria in that definition made it both flexible and precise.

27. Draft Protocol II was of particular importance as a supplement to the Geneva Conventions. Once it was decided to define the non-international armed conflict to which Protocol II applied, it was essential to stipulate that Article 3 common to the Geneva

Conventions remained valid. It should remain in force in all circumstances, even if it caused legal complications in cases where the conditions for the application of Protocol II, as defined in article 1, were not fulfilled. Such legal inconveniences were negligible compared with the suffering of victims of non-international armed conflicts if they were deprived of the protection afforded by article 3 of the four Geneva Conventions.

28. His delegation was highly in favour of greater protection for the victims of non-international armed conflicts and would support any proposals made in that connexion.

29. Mr. PARTSCH (Federal Republic of Germany) said that the importance of draft Protocol II should not be underestimated. According to the ICRC, 80 per cent of the victims of armed force in the last thirty years had been victims of non-international armed conflicts. It had been suggested that such conflicts should be treated as purely internal affairs according to the United Nations Charter. Great care should, of course, be exercised in such matters, but there had been considerable developments in international law since the drafting of the Charter and the legal position of the individual had also changed. The Universal Declaration of Human Rights had been adopted by the General Assembly of the United Nations on 10 December 1948, but it was only now becoming clear that the individual had a part to play as a subject of the new legal order.

30. One result of that development had been a change in the definition of State sovereignty in international relations. One of the most important limitations on State sovereignty was respect for human rights. Although the two Covenants on Human Rights - the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966 - had not yet received the necessary thirty-five ratifications, they had been accepted by the vast majority of Member States. Draft Protocol II was a new effort to make those limitations on State sovereignty compulsory.

31. The ICRC text endeavoured to define the types of conflict to be covered by draft Protocol II. Article 1, paragraph 2 excluded certain acts of violence, although it went beyond Article 3 common to the Geneva Conventions of 1949, which avoided definitions. He doubted whether it was wise to stipulate conditions, such as the duration of a conflict or the occupation of State territory, as was proposed in some amendments. Had a Government the right to take action which infringed minimum human rights just because a rebellion was of a recent nature, or because no part of its territory had been occupied?

32. The question whether draft Protocol II should be more closely connected with Article 3 common to the Geneva Conventions was more a technical than a political question. If draft Protocol II was to be regarded as independent of the protection given by Article 3 common to the Conventions, there might be a field of application that it did not cover. The idea behind the concept of draft Protocol II was to broaden protection and not to limit it by new definitions of non-international armed conflicts. As long as there was no difference between a non-international armed conflict according to Article 3 common to the Geneva Conventions and the new definition in draft Protocol II, article 1, paragraph 1, both concepts could be merged.

33. Mr. CRISTESCU (Romania) said that his delegation attached considerable importance to the field of application of draft Protocol II, since the sovereignty of States was involved. There was a fundamental difference between international and non-international armed conflicts, and it would be a mistake automatically to transpose the provisions of draft Protocol I to draft Protocol II. In a spirit of co-operation, his delegation was prepared to consider the establishment of rules for non-international armed conflicts, provided that every care was taken to ensure respect for the principles of national sovereignty and non-intervention in a State's internal affairs. He agreed with the statements made at an earlier meeting by the representatives of India and Indonesia that the type of armed conflict in question was not easy to define. He also shared the view expressed by the Australian representative that additional criteria to those proposed in the ICRC text should be considered, such as, for example, the duration and proportions of the armed conflict.

34. Nevertheless, the ICRC text provided a useful basis for discussion. With regard to draft Protocol II, article 1, he drew attention to his delegation's amendments to paragraphs 1 and 3 (CDDH/I/30). The purpose of the first amendment was to ensure respect for the territorial sovereignty of States. The second sought to delete paragraph 3, which his delegation considered unnecessary.

35. His delegation had also proposed two amendments to draft Protocol II, article 2 (CDDH/I/21). The first, which concerned paragraph 1, sought to ensure respect for the sovereignty of the State and for the latter's authority over its armed forces, while the second sought to delete paragraph 2, since it dealt with situations that were the concern of national penal law.

36. Mr. FACK (Netherlands) said that he would enlarge on the general view expressed by his delegation at the first session of the Conference, namely, that the world was badly in need of a generally acceptable set of rules concerning essential humanitarian protection in non-international conflicts.

37. Over the past decade, there had been many conflicts that would have been covered by Protocol II had it been in force. Human suffering in such situations had been extremely severe and in almost every case humanitarian rescue operations had had to be launched by the international community. In that connexion he paid a warm tribute to the ICRC for its unceasing efforts to render assistance to needy victims wherever and whenever possible in such situations.

38. It was hardly surprising, therefore, that draft Protocol II was presented as an essential part of the ICRC draft. It was indeed indispensable; its significance as a modern instrument for humanitarian protection could hardly be overestimated.

39. Article 1 was the heart of draft Protocol II and the text proposed by the ICRC was to be commended. It was true that the wording of paragraph 2 might be subject to various interpretations, but that could not be avoided in a world where there was often a clash between matters of international concern and matters essentially within the domestic jurisdiction of States. It was therefore inevitable that the State concerned would exercise its own judgment with regard to applicability. His delegation's interpretation of article 1 was that draft Protocol II would not be applicable in situations of conflict that were being dealt with by police forces using normal police methods and equipment, but that it would become applicable as soon as the authorities were forced to seek substantial assistance from military units or to hand full responsibility for dealing with the conflict over to the armed forces. His delegation did not consider that it would be applicable in cases of incidental terrorist activities, but thought that it would apply in cases of armed action and activity that obviously involved more than incidental occurrences.

40. With regard to the concept of sovereignty, he pointed out that the power of Governments to deal with internal armed conflicts in order to restore law and order was limited by various principles and provisions embodied in international law. Although some of the international instruments concerned had been designed primarily for peacetime situations, they embodied several fundamental rights to be safeguarded also in times of armed conflict or public emergency. Nevertheless, there remained an undefined area concerning rights, powers and obligations in non-international armed conflicts and it was in that context that draft Protocol II was needed.

41. The character of draft Protocol II was twofold: it sought to safeguard certain fundamental rights of individuals and it laid down - particularly in articles 20, 24 and 26 - some fundamental points of law of armed conflict. His delegation welcomed the fact

that it did not provide for any implementation machinery. It would indeed be inappropriate to include in draft Protocol II complicated norms of the sort that had rightly been embodied in draft Protocol I.

42. His delegation attached particular importance to the obligations which draft Protocol II imposed on both human beings and States. It accordingly subscribed to the tenor of sub-paragraph (a) of the new article which the Canadian delegation had proposed for insertion at the beginning of draft Protocol II (CDDH/I/37).

43. It would be clear from his remarks that the Netherlands delegation did not consider draft Protocol II to be utopian. The ICRC, which operated tirelessly in the midst of deprivation, bloodshed, misery and starvation, was certainly better aware of the grim realities of the modern world than any other international organization and the world owed it a debt of gratitude for its constructive and patient efforts to develop and improve the protection of victims of non-international armed conflicts.

44. Mr. FERRARI-BRAVO (Italy) said that it was difficult to express an opinion on the general scope of a text without having precise knowledge of the contents. Consequently, his delegation's attitude would largely depend on the outcome of the Conference's discussions concerning other provisions. Great care would be needed in drafting the provisions of draft Protocol II, which was narrower in both scope and applicability than draft Protocol I.

45. The ICRC text of draft Protocol II, article 1 was entirely acceptable to his delegation. Paragraphs 1 and 2 were complementary and established a good balance between humanitarian demands and the need to ensure non-interference in the action of the public authorities. In particular, his delegation had no objection to the phrase "armed forces or other organized armed groups". To amend the text of paragraph 1 would be to destroy the scope of the Protocol; and his delegation was therefore unable to support any of the amendments that had been proposed to that paragraph. It also considered that paragraph 3 should be retained.

46. Draft Protocol II was closely linked to all the international rules relating to human rights and could contribute to the application of certain ideas which had received increasing support since the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights on December 10, 1948. It might usefully be simplified even further to bring it more closely into line with the general system for the protection of human rights.

47. He supported the new article proposed by the Canadian delegation for insertion at the beginning of draft Protocol II (CDDH/I/37).

48. Mr. SOOD (India) said that his delegation had expressed its doubts concerning draft Protocol II at an earlier meeting of the Committee. If national liberation movements were included under article 1, the application of draft Protocol II to internal disturbances and other such situations would be tantamount to interference with the sovereign rights and duties of States. The definition of non-international armed conflicts was still vague and no convincing arguments had been put forward to justify the need for draft Protocol II, the provisions of which would not be acceptable to his delegation.

49. Mrs. DARIIMAA (Mongolia) said that she had difficulty in understanding the purpose and meaning of some of the amendments proposed to articles 1 and 2. For example, the Pakistan and Brazilian amendments to article 1 (CDDH/I/26 and CDDH/I/79) sought to define non-international armed conflicts. She doubted whether it would serve any purpose to lay down a clear-cut definition. Only when the Protocol had entered into application would it be possible to judge whether or not the definition was good. In such cases, jurists usually tried to find a flexible formula which would serve to cover a wide range of future situations.

50. According to paragraph 2 of the Pakistan amendment (CDDH/I/26), the Protocol would only be applicable once the High Contracting Party in question had recognized the existence of a non-international conflict in its territory. Whether or not such recognition took place, however, human beings and their individual fate would be involved. From the standpoint of human rights, what would be the position of the wounded and sick and of prisoners of war before the State in question had recognized the existence of a conflict?

51. The meaning of paragraph 1 (b) of the Brazilian amendment (CDDH/I/79) was quite clear, but was not clear who would decide whether or not the forces hostile to the Government exerted continuous and effective control over a non-negligible part of the territory. A similar difficulty arose from the Indonesian amendment to paragraph 1 (CDDH/I/32), which spoke of "a prolonged period" but neither defined such a period nor indicated which of the Parties to the conflict would decide what was meant. Again, in the Spanish amendment to paragraph 1 (CDDH/I/33), there was no mention of who would judge whether or not the guarantee in question was present. The German Democratic Republic's amendment to paragraph 1 (CDDH/I/88) was more acceptable, since it was based on Article 3 common to the four Geneva Conventions and did not introduce the idea of personal or individual assessments.

52. Turning to article 2, she said that she did not understand the meaning of the Philippine proposal to change the title (CDDH/I/216). It was not clear whether that proposal sought to extend or to limit

the field of application of the Protocol to individuals. If it was mainly a question of language, the wording should be improved; if not, some explanation was required.

53. Paragraph 1 of the Canadian proposal concerning article 2 (CDDH/I/37) contained a definition which might be important for a federal or multinational State but which had comparatively little significance for a small State. In paragraph 2 of that amendment the phrase "and who might not have been released, as well as persons arrested for these same reasons" appearing in the ICRC text had been omitted. She wondered what would be the position of persons in those categories if the Canadian amendment was adopted.

54. Referring to paragraph 3 of the Brazilian amendment to article 2 (CDDH/I/79), she observed that the problems of the wounded and of prisoners of war did not cease to exist upon cessation of military operations. Yet they were not mentioned in either that paragraph or in the new article 3 proposed by the Brazilian delegation.

55. The shorter the Protocol, the clearer it would be. The final text should be comprehensible to every soldier and peasant. When it considered draft Protocol II, the Working Group should take into account the general questions involved and should produce rules that were acceptable to all and did not represent the views of only a few delegations.

56. The CHAIRMAN announced that there would be a meeting of the Working Group on 19 February at which delegations could discuss points of detail. Statements at the present meeting should be of a general character.

57. Mr. HUSSAIN (Pakistan) said that it had been the consistent position of his Government to recognize the imperative necessity to elaborate and extend the application of humanitarian law to armed conflicts of a non-international character. It favoured the extension of rules applicable to international conflicts to cover all armed conflicts. His delegation had therefore submitted amendment CDDH/I/26 to draft Protocol II, article 1.

58. His delegation considered that precision should not be sacrificed to brevity and that the provisions should be easily understandable and sufficiently detailed to enumerate a number of conceivable situations. His delegation's amendment attempted to give a clearer and more positive wording to the article. Paragraph 1 stressed the fact that Protocol II supplemented Article 3 common to the Geneva Conventions. Reference to conflict "occurring in the territory of one of the High Contracting Parties", which was clearly made in Article 3 common to the Geneva Conventions and was missing from draft Protocol II, had been duly incorporated in the reformulation. Sub-paragraphs (a), (b), (c) and (d) explained the

scope of the Protocol, including a condition that insurgents must declare their intention of observing the humanitarian rules laid down in Article 3 thus avoiding unilateral application of the Protocol. It was essential that both Parties to the conflict should be bound to apply the provisions.

59. He would answer the points raised by the representative of Mongolia at an appropriate moment in the Working Group.

60. Mr. FREELAND (United Kingdom), speaking on a point of order, said that points of detail such as those raised by the representative of Mongolia would be better dealt with in the Working Group. He requested that, as the provisions under discussion were key provisions and as the Working Group would not meet to examine articles 1 and 2 until 19 February, those articles should remain on the agenda of the Committee meeting of the following day. The statements made had been the result of careful consideration and his own delegation and perhaps others would be glad to have time for reflection and possibly make further general statements on those articles.

61. The CHAIRMAN said that articles 1 and 2 would remain on the agenda for the following day if the Committee so desired.

62. Mr. OBRADOVIĆ (Yugoslavia) supported the proposal of the United Kingdom representative.

63. Mr. MILLER (Canada) supported the remarks made by the United Kingdom representative.

64. In reply to the representative of Mongolia, he said that he had already pointed out the error in paragraph 2 of his delegation's amendment to draft Protocol II, article 2 and a new proposal would be submitted.

65. The CHAIRMAN suggested that, if there were no objections, the discussion on articles 1 and 2 might be adjourned and the Committee might pass on to article 3.

It was so agreed.

#### Article 3 - Legal status of the Parties to the conflict (CDDH/1)

66. Mrs. BUJARD (International Committee of the Red Cross), introducing article 3, said that some delegations had expressed concern that draft Protocol II might weaken the well-established principles of international law concerning sovereignty of States and non-interference in internal affairs. Governmental experts consulted in 1971 and 1972 had expressed similar concern. For that reason, draft Protocol II, which was purely humanitarian in purpose and which did not limit a State's right to take all



necessary steps to maintain or restore order within its own territory, and did not open the door to any possible intervention by another State, included two safeguarding clauses: article 3 relating to the legal status of the Parties to the conflict, and article 4 which reaffirmed the principle of sovereignty of States and of non-intervention.

67. Article 3 was based on the principle set forth in paragraph 4 of Article 3 common to the four Geneva Conventions of 1949.

68. Under draft Protocol II, whose sole purpose was to assure fundamental guarantees to the human person, Parties to the conflict must ensure that in the case of a human being affected by an armed conflict there must be respect for humanitarian rules. But the fact of applying Protocol II would not in itself constitute, on the part of the established Government, recognition of any power whatsoever of any insurgent party and no recognition even implicit, of belligerency. Also the fact that the insurgent party applied that Protocol would not confer on it any wider authority or power, or any immunity. As had already been said, draft Protocol II did not in any way affect the right of the established Government to repress insurrection, to prosecute, to judge or to condemn its adversaries.

69. The present provision therefore specified that the legal status of the Parties to the conflict "shall not be affected by the application of the provisions of the present Protocol". Further, that principle was not only valid for Protocol II itself, but also for the other provisions of the Geneva Conventions of 1949 and of draft Protocol I which the Parties to the conflict might decide to bring into force in accordance with article 38 of draft Protocol II entitled "Special agreements".

70. The purpose of article 3 was thus to establish clearly that the application of international humanitarian law in case of non-international armed conflict would have no effect on the legal status of relations existing between Parties to the conflict.

71. Mr. MILLER (Canada), referring to the doubts expressed by the representative of India about draft Protocol II and its possible effect on the rights of a State to act within its own territory, stated that his delegation considered that article 3 included sufficient safeguards to dispel any concern that Protocol II might be used as a vehicle for obtaining political recognition. It should be possible to draft Protocol II in such a way as to be beneficial both to the Government and to the insurgents. The fundamental humanitarian objective of draft Protocol II, and indeed of the Conference itself, should not be frustrated by expressions of concern that the provisions might be used to enhance the political status of a Party to the conflict.

72. Mrs. DARIIMAA (Mongolia) said that she did not understand the phrase "or that of the territories on which they exercise authority" in draft Protocol II, article 3. She would like the representative of the ICRC to explain its origin.

73. Mrs. BUJARD (International Committee of the Red Cross) said that the formula appeared also in draft Protocol I and was not new. In non-international armed conflict it took on a different meaning and concerned only the territory of the State in which such an armed conflict was taking place. In principle, the established Government exercised control over the whole territory, but in situations of armed conflict the insurgent party might exercise de facto control over part of the territory. In such a situation the legal status of the State was unaffected even if the insurgent party applied the provisions of Protocol II to the part of the territory it controlled.

74. Mr. BETTAUER (United States of America) suggested that if the phrase "or that of the territories on which they exercise authority" was amended to read "or that of any territory" the question of defining who was exercising authority would be avoided.

The meeting rose at 5.30 p.m.

SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

held on Tuesday, 18 February 1975, at 3.10 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 1 - Material field of application (CDDH/1, CDDH/56; CDDH/I/217, CDDH/I/219) (continued)

Article 2 - Personal field of application (CDDH/1, CDDH/56; CDDH/I/37) (continued)

Article 3 - Legal status of the Parties to the conflict (CDDH/1, CDDH/56) (continued)

1. The CHAIRMAN invited the Committee to resume its consideration of articles 1 to 3.

2. Mr. PRUGH (United States of America) said that his delegation generally approved of the basic concept of draft Protocol II as an instrument for promoting an advance in humanitarian law and equally, humanitarian protection for victims in non-international conflicts occurring within the territory of a High Contracting Party. It wished to endorse the limitations and provisions which were consistent with that concept and which did not encourage the spread of further suffering caused by an internal armed conflict and terrorism.

3. It agreed with and supported the text concerning the field of application and considered that draft Protocol II should be congruent in that respect with draft Protocol I, so that there was no gap as regards the application.

4. Concerning the issue raised in draft Protocol II, article 3, his delegation understood and supported the view expressed in the text that the application of humanitarian law in any type of armed conflict, and pertinently for Protocol II, in non-international armed conflict, in no way signified approval or complete recognition of the opposing groups or movements or in any way affected the legal status of any party or territory.

5. Mr. OBRADOVIĆ (Yugoslavia) said that he wished to begin by outlining his Government's views on draft Protocol II. The main purpose of the draft Protocol was to reduce atrocities committed in internal conflicts, it was based on Article 3 common to the four Geneva Conventions of 1949. The task in hand was to ensure

that the provisions of draft Protocol II fully covered non-international conflicts and were drafted so as to be acceptable to all States. A balance was necessary between humanitarian requirements and the rights of States, including sovereignty, non-interference in internal matters and non-intervention.

6. While, in general, draft Protocol II as worded conformed with his Government's views, there were some provisions which he would like to see worded somewhat differently, since in their present form they could be used as a pretext for foreign interference in an internal conflict. His delegation also had certain objections, mainly of form rather than substance. The draft articles were, however, an excellent basis for the Committee's work.

7. With regard to article 1, he preferred the original texts of paragraphs 1 and 2, which provided a reasonable definition of non-international armed conflict. Although they were not perfect, he felt that the Committee would only complicate its task if it tried to find a better definition. He would, however, support the Ukrainian amendment to paragraph 1 (CDDH/I/217) which took account of the substantial changes that had occurred in the definition of international conflicts since the first session of the Conference. In the case of paragraph 2 particularly, which covered the important problem of determining precisely at what point internal tensions or disturbances became a conflict within the terms of draft Protocol II, it would be impossible to produce a text which covered all the numerous individual situations. Whatever wording was adopted, there would inevitably be problems in practice in deciding at what point a situation had developed into an armed conflict within the terms of draft Protocol II. It would be best to leave it to the parties concerned. Paragraph 3 was acceptable.

8. Regarding article 2, the drafting could be improved, but that was a matter for Working Group B. Article 3 was rather too complicated: he hoped that it could be simplified. Since articles 4 and 5 were simple and, he hoped, generally acceptable, he suggested that the Committee approve them without referring them to Working Group B.

9. Mr. TORRES AVALOS (Argentina) said that he had already indicated his general criticisms of the ICRC draft, though he recognized the valuable work the latter had done.

10. He agreed with the general approach that there was one limitation on the sovereignty of the modern State and that concerned the application of humanitarian law and the protection of the human being. A parochial approach to sovereignty was out of date. The act of signing a treaty was an act of sovereignty but it did not imply any recognition of sovereignty. Although in accordance with international jurisprudence the signing of a treaty was an act of

sovereignty, the subject under discussion was different. What was required was an international instrument that would be of real service in the protection of the human being and that would therefore be effectively applied.

11. To turn specifically to draft Protocol II, articles 1 to 3, the first part of article 1 contained a number of imprecisions which should be removed, because the work that was being done was not just of short-term importance but important for the future as well. In paragraph 1 the expression "armed forces or other organized armed groups under responsible command" was too vague. There should be no possibility of confusing the situation described there with the situation described in paragraph 2 since otherwise it would not be clear when the Protocol should be applied. It would be helpful to introduce a limit as a means of distinguishing between the situations described in the two paragraphs.

12. Instead of the words "Article 2 common to the Geneva Conventions of August 12, 1949" in article 1, paragraph 1, he would prefer to start with a more positive formulation, making it clear that the purpose of the Protocol was to develop Article 3 common to the Geneva Conventions of 1949. It appeared from some interpretations that the development of Article 3 could make it applicable to conflicts between two parts of the armed forces in the State of a High Contracting Party, but he thought it would be extremely difficult to get agreement with that view.

13. He was concerned about the present drafting of article 3 and suggested that, in the interests of clarity, the phrase "or that of the territories on which they exercise authority" should be deleted.

14. Mr. de ICAZA (Mexico) said that his delegation attached the greatest importance to the scope and field of application of the draft Protocol concerned with the victims of internal armed conflicts. It considered it essential that the Protocol should safeguard the sovereign rights of States. In the past, and even very recently, the protection of actual or possible victims of an internal conflict had been made the pretext for external armed intervention. Hence he had approached the consideration of draft Protocol II with a great deal of mistrust. He was opposed to the proposal for the insertion of a new article at the beginning stating the obligation of the Contracting Parties to ensure respect for the Protocol, for there was only a remote possibility of the Protocol being used in bad faith. He did not like the idea of the list of exceptions, which would be reached by compromise and was bound to be incomplete: he would prefer the more positive formulation of cases which would be governed by the provisions of the Protocol, where it was applicable.

15. In his view, article 2, paragraph 2 concerned a field coming within the competence of the penal legislation of States, since it would enter into force at the end of a conflict. It extended the application of the Protocol in time.

16. His delegation's attitude to the Protocol as a whole would depend on the extent to which articles 3 and 4 precluded the possibility of external intervention in the domestic affairs of States on any grounds whatsoever.

17. Mr. ABDUL-MALIK (Nigeria) said that he would urge the delegations which did not see the value of draft Protocol II to look at it as an integral whole and not at specific articles. He was sure that they would then overcome their objections to what was a carefully-thought-out legal edifice. His own delegation had wondered whether, in view of the changes brought about by the adoption of article 1 of draft Protocol I, there should not be a merger between the two Protocols, as the representative of Norway had suggested at an earlier meeting. There was merit in that suggestion, but it was far ahead of its time and realism dictated otherwise. Humanitarian principles were indivisible, but different rules had to be made for different situations.

18. His delegation had also wondered whether draft Protocol II was necessary, since draft Protocol I, article 1 covered the three possible situations, namely those in which peoples were fighting against colonial domination, alien domination, or racist regimes. There might, however, be other situations, since the three situations mentioned were, by definition, international armed conflicts under Article 2 common to the Geneva Conventions of 1949.

19. Draft Protocol II was concerned with non-international armed conflicts, which made it a unique document in the field of human rights, since the Universal Declaration of Human Rights and similar international declarations dealt mainly with peacetime situations. All political systems and their associated legal systems, of course, professed to look after the individual in such a way as to make such documents unnecessary, but in the last analysis what mattered to the individual was his life, health and physical well-being. Those basic necessities were covered only by draft Protocol II and could be guaranteed only by its adoption. That did not mean that the Nigerian delegation agreed with every article, provision or sentence of draft Protocol II, but it supported the Protocol in principle.

20. The ICRC draft of article 1 represented the views of his delegation to a large extent. He agreed, however, with the Australian suggestion (CDDH/I/219) for the addition of certain words to paragraph 1. What his delegation had in mind was the expression "as modified by article 1 of the draft Protocol additional to the Geneva Conventions of August 12, 1949, and

relating to the protection of victims of international armed conflicts". With regard to article 1, paragraph 3, he could not see that Article 3 common to the Geneva Conventions was not modified by the provisions of draft Protocol II, article 1; those provisions supplemented Article 3 although they did not derogate from it. His delegation would be happy if a formula could be found to reflect that point.

21. His delegation agreed with the principles embodied in draft Protocol II, article 2, but thought that the formulation could be improved. The Canadian proposal (CDDH/I/37) was interesting, but as it was apparently to be modified his delegation would reserve judgment until it had seen the revised text.

22. He hoped that he had been able to dispel the fears of some delegations about the encroachment on State sovereignty that draft Protocol II seemed to represent. State sovereignty was not and could never be an impregnable fortress: slight inroads into it were often necessary to enable mankind to live in a better world. The present was a good occasion to make sacrifices in the interests of humanity and the development of international humanitarian law. Nevertheless, his delegation had serious misgivings about the danger of the derogations from State sovereignty that Protocol II might bring about, but it was confident that a solution would be arrived at that could be adopted by consensus.

23. Mr. ABADA (Algeria) thought that draft Protocol II met the need to guarantee certain fundamental human rights to all those engaged in armed conflicts, of whatever kind. He reaffirmed the willingness of his delegation to participate in the joint task of preparing texts that would be acceptable to all.

24. The humanitarian intentions of draft Protocol II could not be denied, but in the interests of realism, it was necessary to define its precise scope so that it would at all times be in conformity with the requirements of national sovereignty and the principle of non-interference in the internal affairs of States. Humanitarian law and national sovereignty should not be considered irreconcilable and he hoped that a suitable balance between them could be reached.

25. With regard to draft Protocol II, article 1, his delegation supported the proposals designed to bring it into line with Article 3 common to the Geneva Conventions of 1949. It would be preferable for the new provisions to be based on what had been accepted in 1949, which could be developed and improved. His delegation thought that some of the amendments proposed were of too explicit a nature and that attempts to define difficult concepts might only lead to complications.

26. Mr. ABI-SAAB (Arab Republic of Egypt) said that there could be no such thing as "selective humanitarianism", which was a contradiction in terms. The drive and motivation which prompted the effort to develop the law and extend protection applied equally to the victims of international and of non-international armed conflicts.

27. Draft Protocol II was no more than an interpretation and an elaboration of Article 3 common to the 1949 Conventions. That Article was called "a convention in miniature"; it laid down general principles only. Any Government in a situation covered by that Article which agreed to apply it in good faith would observe in practice most of the standards of behaviour prescribed, in greater detail, by draft Protocol II. He wished to emphasize that essential identity between common Article 3 and draft Protocol II.

28. Several delegations from the third world had expressed legitimate anxiety, however, about the possibility of Protocol II being used as a justification for intervention. In a world in which threats as well as acts of intervention, military or otherwise, were common, it was important that those misgivings be taken into consideration. Draft Protocol II did endeavour to meet them in general in articles 3 and 4, and more specifically in some of its subsequent more detailed articles. Thus, the mechanism of scrutiny of implementation (significantly described in article 39 as "co-operation in the observance of the ... Protocol") was voluntary, and the Protocol did not provide for a prisoner-of-war status. Nevertheless, the Conference should try to meet that anxiety to a greater extent and should keep it in mind in drafting each of the articles of Protocol II.

29. In that respect, it might be advisable to follow a human rights approach rather than one of the law of war. The first was generally accepted by States, but the second might arouse resistance as implying the projection into the internal sphere of the legal regulations developed for international armed conflicts; to some, that would amount, despite formal general denegations, to an internationalization of internal conflicts.

30. Turning to article 1 of draft Protocol II, he considered it satisfactory in general; but it should be brought into line with article 1 of draft Protocol I as amended and adopted at the first session of the Conference. Article 1 of draft Protocol II had chosen a different and higher threshold of application than that of Article 3 common to the Conventions of 1949. That might create practical complications, as it would be necessary to distinguish three types of situations respectively calling for the application of article 3 common to draft Protocols I and II. But it was a step in the right direction of gearing the scope of protection to



the level of intensity of the conflict rather than to abstract legal categories such as internal and international armed conflicts. Such an approach by stages was more in conformity with the spirit and purpose of humanitarian law and with the multiple forms of contemporary armed conflicts, especially guerrilla warfare and low-intensity conflicts. For the same reason, it was essential to safeguard the independent scope of application of Article 3 common to the Conventions of 1949 - as did paragraph 3 of article 1 - in situations not covered by Protocol II.

31. He considered, however, that for Protocol II to be of real use, article 1 should not adopt excessively restrictive criteria or establish too high a threshold for its application. Amendments to article 1 requiring the recognition by the established Government of the existence of a situation of an internal armed conflict, introduced a purely subjective and voluntary criterion; they revived the old-fashioned doctrine of recognition of belligerency. But, if there were a recognition of belligerency, there would be no need for a Protocol II, because, according to general international law, the whole body of the law of war would then apply, including the four Geneva Conventions of 1949 and their Additional Protocol I.

32. Other amendments purported to introduce the requirement of territorial control by the rebels. But that was too restrictive in view of the nature of modern, and particularly guerrilla, warfare. In armed conflict situations characterized by high mobility, territorial control continuously changed hands, sometimes alternating between day and night, to the point of becoming meaningless. Other forms of intense armed conflict, such as urban guerrilla armed conflict would not fulfil the requirement of territorial control. Such a requirement would then exclude from the ambit of Protocol II many, if not most, of the contemporary types of internal armed conflict and would confine it to the relatively rare cases of characterized civil war; it would thus severely limit its real significance and usefulness.

33. With regard to article 3 of draft Protocol II, his delegation considered submitting an amendment to it parallel to the amendment made to the corresponding article 4 of draft Protocol I, in order to eliminate the possibility of misunderstanding and misinterpretation to which the present language of the two draft articles might lend itself.

34. Mr. FREELAND (United Kingdom) stressed the value of a discussion of the broad issues covered in draft Protocol II, article 1 before the detailed discussion of subsequent articles started. A review of recent armed conflicts would show that many or most of them had been internal conflicts, to which no recognized body of humanitarian rules applied. A large number of the victims

of modern warfare had therefore been left without the protection of any formal agreement. Article 3 common to the Geneva Conventions of 1949 represented only a tentative first step in the direction of giving formal expression to the rules of common humanity in relation to internal conflicts. There was evidence to support the belief that the time had come to reconsider that area of the law on armed conflicts.

35. At the first session of the Conference the extension of the Geneva Conventions of 1949 to conflicts covered by Article 3 common to those Conventions, but not of an international character, had been discussed. The results constituted a new departure, but their implications for the development of humanitarian law had yet to be gauged. Discussion of draft Protocol II provided the essential balance to the work on draft Protocol I. To consider the extension of formal protection to one set of conflicts formerly covered only by Article 3 common to the Conventions of 1949 and to ignore all others covered by that article would indeed be the "selective humanitarianism" mentioned by the representative of the Arab Republic of Egypt.

36. It was only realistic to recognize that the work on draft Protocol II would be difficult. The underlying difficulty was that States were wary of accepting restrictions of their freedom of action in their own territory, and, on the other hand, the right of other States and the international community in general to concern themselves with what was done in that territory. While that was true of conventions on human rights designed for application in peacetime, it was even more so in the case of a new legal instrument designed for application at a time of national crisis and tension when the rule of law itself was likely to be under severe attack. The United Kingdom Government shared that concern, but would do its utmost to arrive at a Protocol that would be generally acceptable as providing standards of humanitarian treatment that could be applied by all States in an internal armed conflict. It was not enough for States to invoke sovereign and vital interests. As the representative of Nigeria had said, sovereignty was not and never could be an impregnable fortress. States would have to agree to accept restrictions if international law was to progress.

37. The underlying difficulty was that of striking the right balance between scope and content. If the level of application was set so high that only the "classical" civil war was covered, Protocol II would be useless; if it was set so low that it covered police action against sporadic criminal or terrorist acts, it was unlikely to be accepted by States. The obligations imposed on States and dissidents should not be so vague as to be nugatory, or so high as to set an impossible standard. In his delegation's view, the ICRC had struck about the right balance in its text.

38. His delegation reserved its position pending further discussion of the meaning of article 1, but that article seemed to require a level of intensity of the conflict and of organization of the non-State party to the conflict that was satisfactory. Police-type activities were effectively excluded. It was right to divorce article 1 from Article 3 common to the Geneva Conventions of 1949. That article should continue to stand on its own for those unable to accept Protocol II, but the vagueness of its scope, and its non-application in the past, made a new start essential.

39. It would be premature to go into detail on matters of substance, but he feared that in some cases, notably in Parts IV and V of the Protocol, the content was too heavy for the scope as defined in article 1, it would presuppose a conflict of very high level. His delegation might therefore suggest certain amendments or deletions at a later stage.

40. The CHAIRMAN said that, as no further delegations wished to speak on articles 1, 2 or 3, the Committee could proceed to consider article 4.

Article 4 - Non-intervention (CDDH/1, CDDH/56; CDDH/I/23)

41. Mrs. BUJARD (International Committee of the Red Cross) said that article 4 reaffirmed the principle of State sovereignty and of non-intervention.

42. The first part of the article, reading as follows: "Nothing in the present Protocol shall be interpreted as affecting the sovereignty of States ...", recalled that the right to conclude an international agreement was an attribute of State sovereignty and that in concluding a treaty a State did not sacrifice its sovereignty but exercised it. Once a treaty was ratified it became an integral part of national legislation and could not consequently affect the sovereignty of a State. But that provision also signified that the Parties to the conflict must not take advantage of the fear of an attack on State sovereignty or of a possible foreign intervention because of the Protocol in order not to apply the provisions of the Protocol.

43. Referring to the second phrase of article 4: "or as authorizing third States to intervene in an armed conflict", she said that a drafting error should be corrected, the use of the words "third States" was in fact incorrect in the context of a non-international armed conflict in which two States were not opposed but the Government in power and a part of the population of the State. The words "third States" should be replaced by a more appropriate expression such as "other States" or "foreign States".

44. The second part of article 4 reaffirmed the principle of State sovereignty and non-interference in the internal affairs of a State by providing that no provision of the Protocol could serve as a pretext for intervention by other States in an armed conflict which took place on the territory of a Contracting Party.

45. The Parties to the conflict alone must apply the rules of the Protocol. It was true that in certain circumstances the Parties to the conflict might need the assistance of third parties in order to fulfil the obligations laid down in the Protocol. Draft Protocol II foresaw three situations in which such assistance might prove especially necessary - assistance to persons deprived of their freedom (article 8, para.5); relief action concerning the civilian population (article 33) and the recording and transmission of information on the victims of armed conflict (article 34). Further, article 39 reaffirmed the right of a body offering all guarantees of impartiality and efficacy to take humanitarian action.

46. But, in connexion with each of those provisions safeguard clauses had been introduced in order to prevent any action exceeding that of assistance. Such clauses would, in the last resort, leave the Parties to the conflict free to accept or decline offers of humanitarian assistance.

47. The CHAIRMAN said that the only amendment proposed, namely, that of Romania (CDDH/I/23), seemed to be one of drafting rather than of substance. He asked whether it was agreed that it should be sent to the Drafting Committee.

48. Mr. CRISTESCU (Romania), introducing amendment CDDH/I/23, said that it had been prepared following the discussions at the two sessions of the Conference of Government Experts on the Reaffirmation and Development of Humanitarian Law applicable in Armed Conflicts and as a compromise in order to accept the definition of non-international armed conflict in article 1. A definition of internal armed conflict was obviously needed primarily for other Powers and for international organizations, but not for the State on whose territory such a conflict took place. His delegation's amendment also recognized the territorial State as an element in the definition of non-international armed conflict.

49. In connexion with the statement by the representative of the Arab Republic of Egypt, he considered that acceptance of the provisions by a territorial State did not imply recognition of belligerent status for the other party, but recognition that the territorial State, by virtue of its sovereignty, could allow foreign humanitarian activities to be carried out in its territory in an armed conflict.

50. Article 4 was intended as a safeguard to protect the State of whose territory an internal conflict arose, but in its present form it would in fact permit intervention in the internal affairs of such a State. His amendment was designed to make that safeguard effective and to bring the text of the article into line with its title.

51. Mr. GLORIA (Philippines) said that he preferred the original text to the Romanian amendment.

52. Mr. ROSENNE (Israel) said that the English text of the amendment was not co-ordinated with the original French text.

53. Mr. de ICAZA (Mexico) said that he would support the Romanian amendment subject to the deletion of the reference to "third States", since that could only cause confusion. It would be more appropriate to refer to "any other State". The matter should be considered by the Drafting Committee.

54. Mr. GIRARD (France) said that he would have no objection to the amendment if it meant that no provision of Protocol II could be invoked to undermine the sovereignty of States.

The Committee agreed to refer the Romanian amendment to article 4 (CDDH/I/23) to the Drafting Committee.

Article 5 - Rights and duties of the Parties to the conflict (CDDH/1, CDDH/56; CDDH/I/35)

55. Mrs. BUJARD (International Committee of the Red Cross) said that the purpose of article 5 was to make it clear that draft Protocol II should be applied by all the Parties to a conflict, whether established Governments or rebels. The rights and duties laid down in it were valid for all. The article was based on the same principle as Article 3 common to the Geneva Conventions of 1949, namely that an engagement entered into by the State was not only binding upon the established Government but also upon the constituent authorities and all private individuals on the territory of the High Contracting Party concerned. That meant that the engagement entered into by the State was binding on an insurgent party. Neither the way in which the insurgent party was constituted nor the fact that it momentarily escaped control by the established Government were of a nature to weaken or even to put an end to the engagement by the State - the insurgent party would continue to be bound by that engagement. As regards the last point, it was not, in the opinion of the ICRC, a legal impossibility.

56. Mr. CUTTS (Australia) introduced amendment CDDH/I/35, which was a drafting matter and did not affect the French text.

57. The CHAIRMAN said that the Committee had completed its general debate on Part I of draft Protocol II. He suggested that further discussion should be deferred until reports had been received from the two Working Groups.

It was so agreed.

58. Mr. BOBYLEV (Union of Soviet Socialist Republics) suggested that Working Groups A and B should not meet simultaneously, in order to enable more delegations to participate.

It was so agreed.

The meeting rose at 4.45 p.m.

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

held on Friday, 28 February 1975, at 5.5 p.m.

Chairman: Mr. HAMBRO (Norway)

ORGANIZATION OF WORK

1. The CHAIRMAN said that he was disturbed at the lack of progress made by Committee I in dealing with the articles assigned to it: not a single paragraph of an article had been approved during the week which had just elapsed.
2. He realized that the Committee was faced with a difficult task but no headway had been made during the thirteen working days reserved for consideration of articles 2 to 7 of draft Protocol I and articles 1 to 5 of draft Protocol II. The Committee had only twenty-six working days in which to complete its work.
3. It might perhaps be useful if the Committee's Working Groups were to break up into smaller groups. He hoped that the Groups that were studying article 1 of draft Protocols I and II would complete their work by the following week.
4. Mr. MILLER (Canada) said that the Working Groups had worked very hard during the Chairman's absence and had formed smaller groups in order to complete their work.
5. He considered that the difficulties encountered by the Working Groups should be borne in mind and that they should not be criticized.
6. The CHAIRMAN said that it had been far from his intention to voice any criticism of the diligence and competence of the Committee's subsidiary bodies and their members.

SETTING UP OF A WORKING GROUP ON THE QUESTION OF THE PROTECTION OF JOURNALISTS ENGAGED IN DANGEROUS MISSIONS IN AREAS OF ARMED CONFLICT

7. The CHAIRMAN said that operative paragraph 2 of Conference resolution 4 (I), adopted on 28 March 1974, stated that the Conference "Decides to include the examination of this question as a matter of priority in the agenda for its next session." (CDDH/55, p.6).

8. He pointed out that no decision had ever been taken on how the question of the protection of journalists engaged in dangerous missions in areas of armed conflict should be dealt with by the Conference. The matter had not been referred by the General Committee or by the Plenary to Committee I or to Committee III, and he considered that in view of the tasks facing it, Committee I itself should not deal with the matter.

9. He therefore suggested that an informal Working Group should be set up to make recommendations to the President or to the Secretary-General of the Conference on how the question should be treated. He thought that the States which had co-sponsored United Nations General Assembly resolutions 3058 (XXVIII) and 3245 (XXIX) might be asked to designate members to participate in the proposed Working Group and that each regional group should be asked to designate two members.

10. Mr. BETTAUER (United States of America) said that if those suggestions met with general approval, his delegation would have no objection. Nevertheless, he had some doubts about the proposed procedure.

11. His delegation had no objection to the question of the protection of journalists engaged in dangerous missions in areas of armed conflict being considered at the appropriate time, but it felt that it would be a diversion of effort for the Committee to consider that item at present.

12. It was not clear which Committee should deal with the item. It might be useful, therefore, if the Chairmen of Committees I and III conferred about the matter. If, however, Committee I decided to establish a Working Group, he did not think that the Group should make an informal recommendation to the United Nations Secretary-General, and he could not agree that the sponsors of the two General Assembly resolutions should form the nucleus of the proposed working group.

13. Mr. FREELAND (United Kingdom) said that, though his delegation had no strong objection to the procedure suggested by the Chairman, it felt there was force in the United States representative's argument.

14. The idea of setting up an informal Working Group from among the members of Committee I might prejudice the question of where the matter of the protection of journalists engaged in dangerous missions in areas of armed conflict should be studied. Accordingly, he suggested that a small group should be selected by the President from among the various bodies of the Conference to make a recommendation to him which could in turn be communicated to the Conference as a whole.



15. Mr. AL-FALLOUJI (Iraq) said that members of Committee I could not be blamed for the delay which had occurred in dealing with the items assigned to it. The complex subjects before Committee I were fraught with difficulties and could not be dealt with quickly. The real task of the Committee was to find the best method of reaffirming and developing international humanitarian law.

16. He agreed with the Chairman that a Working Group should be set up to deal with the procedural question of where the item concerning the protection of journalists engaged in dangerous missions in areas of armed conflict should be studied, but he considered that the Group should receive clear directives, and asked who would give them.

17. If the proposed Group was set up by the Conference it should report to that body; if the Group was set up by Committee I it should report to that Committee. He was in favour of the Group being set up by the Conference and receiving instructions from that body.

18. His delegation supported the freedom of the Press and wished to ensure that journalists engaged in dangerous missions were given effective protection.

19. Mr. KUSSBACH (Austria) said that his delegation considered that Committee I had enough work to do and that a solution to the problem of the protection of journalists should be found which would not overburden the Committee.

20. He supported the suggestion made by the United Kingdom representative, but pointed out that, at a meeting of the General Committee, it had been suggested that a Working Group should be set up to consider the question of the protection of journalists, and that members of the group should not belong to any one Committee. After a few meetings such a group would submit a report to the plenary Conference which after adoption could be transmitted to the United Nations Secretary-General. Certain members of the General Committee, however, had expressed concern at that procedure, since there was no rule of procedure which empowered the President or the Secretary-General of the Conference to set up the proposed Working Group. They had decided, therefore, that the Working Group should be set up by Committee I and had requested the Secretary-General to send a letter to the Chairman of Committee I to that effect.

21. Mr. DIXIT (India) said that the Committee must face realities. Members of Committee I had worked very hard and within a short space of time fewer members would be able to attend the Conference. He suggested, therefore, that the item concerning the protection of journalists should be referred back to the General Committee.

22. Mr. GIRARD (France) agreed that the work of Committee I had reached a critical phase. In its two resolutions on the question of the protection of journalists, the United Nations General Assembly had expressed the wish that the Conference should submit its observations and suggestions on the question of the protection of journalists engaged in dangerous missions in areas of armed conflict.

23. In operative paragraph 1 of its resolution 4 (I) the Conference had asked the Secretary-General of the Conference to transmit to the Secretary-General of the United Nations its request that additional time be allowed for the submission of its comments and advice on the draft articles on the protection of journalists engaged in dangerous missions in areas of armed conflict. In operative paragraph 2 of the same resolution the Conference had decided to include the examination of the question as a matter of priority in the agenda for its next session. He thought, therefore, that it would be rather difficult again to ask the United Nations Secretary-General if the matter could be delayed for another year.

24. He supported the suggestion that the General Committee should be asked to deal with the problem and could not agree that the matter should be referred back to the President of the Conference since he had already studied it. The proposed Working Group should submit a report to whatever body the General Committee suggested.

25. The French delegation would be glad to be a member of the proposed Working Group.

26. Mr. FREELAND (United Kingdom) said that his delegation had been unaware of what had taken place in the General Committee concerning the question. He understood that the proposed Working Group would be composed of members of Committee I and that it would make a recommendation to the President or to the Secretary-General of the Conference on how the question should be dealt with procedurally. The only difference between that proposal and his own was that he had suggested that it might be better for members of the proposed Group to be selected from other bodies in addition to Committee I.

27. When the advice of the Working Group was received, a recommendation could be made by the President to the plenary Conference on how the problem should be handled.

28. Mr. CUTTS (Australia) agreed that it would be impossible for the Conference to decline a second time to respond to the request made to it by the General Assembly.

29. As the representative of a country which had been one of the sponsors of the General Assembly resolutions in question, he considered that the Chairman had suggested the best way of dealing with the problem and said that his delegation would be glad to take part in the Working Group.

30. The CHAIRMAN referred to a letter he had received from the Secretary-General of the Conference dated 25 February 1975, drawing attention to the General Assembly's express request that the Conference should deal with the question of the protection of journalists engaged on dangerous missions in areas of armed conflict. In his letter the Secretary-General of the Conference had stated that it was essential to deal with the question and that the Conference could not return the same dilatory answer as it had given in 1974.

31. The item concerning the protection of journalists had been considered by the General Committee and by the President and the Secretary-General of the Conference. He would suggest that the proposed Working Group should be composed of representatives of States who had taken part in the discussions in the United Nations General Assembly on the question of the protection of journalists and of two members of each regional group.

32. Mr. MILLER (Canada) suggested that it would be better to place emphasis on the representation of regional groups and of any States interested.

33. The CHAIRMAN agreed with that suggestion. It would be for the Working Group to decide whether a recommendation should be made to the plenary Conference or to the General Committee on the problem of the protection of journalists engaged in dangerous missions in areas of armed conflict.

The Chairman's suggestion was adopted by consensus.

34. The CHAIRMAN said that he would convene the Working Group on Wednesday, 5 March.

The meeting rose at 5.55 p.m.



SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

held on Thursday, 13 March 1975, at 3.10 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)\*

Report of Working Group A on articles 2 to 7 (CDDH/I/235 and Corr.1)

1. The CHAIRMAN said that since there were a number of mistakes in the report of Working Group A (CDDH/I/235 and Corr.1), the Rapporteur had declined to accept responsibility for the document in its present form. He suggested that the Committee adjourn for a short time to enable Working Group A to reconsider its report, after which the Chairman of that Group would submit it to the Committee.

2. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic), supported by Mr. BOBYLEV (Union of Soviet Socialist Republics) and Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic), said that the Russian version of the document had not yet been circulated.

The meeting was suspended at 3.25 p.m. and resumed at 5.25 p.m.

3. The CHAIRMAN announced that Working Group A had adopted its report on the first part of draft Protocol I (CDDH/I/235 and Corr.1), which was now before the Committee. Since the Working Group had consisted of a large part of the Committee itself, it would probably not be necessary to repeat all the arguments already put forward in the Group. He therefore suggested that, instead of reopening the discussion on all the proposals, delegations should have an opportunity of expressing their views when explaining their vote. All views would be recorded in the summary records.

It was so agreed.

Article 2 - Definitions (concluded)

Sub-paragraphs (d) and (e)

Article 3 - Beginning and end of application (concluded)

4. The CHAIRMAN suggested that, since article 2, sub-paragraphs (d) and (e), and article 3 had already been agreed by consensus in the Working Group, no formal vote was needed on those articles.

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\* Resumed from the twenty-first meeting.

Article 2, sub-paragraphs (d) and (e)<sup>1/</sup> and article 3<sup>2/</sup> were adopted by consensus.

Article 4 - Legal status of the Parties to the conflict (concluded)

5. The CHAIRMAN invited the Committee to vote on article 4.
6. Mr. OBRADOVIĆ (Yugoslavia) said that his delegation had become a co-sponsor of the joint amendment in document CDDH/I/59 and Add.1 and 2.
7. Mr. CRISTESCU (Romania) said that his delegation too was now a co-sponsor of the joint amendment and wished its name to be included in the first paragraph on page 3 of the Working Group's report (CDDH/I/235 and Corr.1).
8. Mr. de ICAZA (Mexico), Chairman of Working Group A, said that two alternative texts for article 4 were included in square brackets in the Working Group's report. A corrected version of the first of those was given in document CDDH/I/235/Corr.1.
9. The CHAIRMAN said that the Committee would vote first on the text furthest removed from the original, namely, the second text; if that were adopted there would no longer be any need to vote on the first; if it were rejected the Committee could then vote on the first version.

The second text in square brackets in article 4 was adopted by 46 votes to 11, with 14 abstentions.

Article 4 as a whole was adopted by consensus.<sup>3/</sup>

10. Mr. GIRARD (France) said that he had voted against the second alternative version, not because he had any objection to the substance, but because he considered that that proposal concerned a provision of international law which had no place in article 4 of Protocol I.

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<sup>1/</sup> For the text of article 2, sub-paragraphs (d) and (e) as adopted see report of Committee I (CDDH/219/Rev.1, paras. 23 and 27).

<sup>2/</sup> For the text of article 3 as adopted, see report of Committee I (CDDH/219/Rev.1, para. 31).

<sup>3/</sup> For the text of article 4 as adopted, see report of Committee I (CDDH/219/Rev.1, para. 36).

11. Mr. CUTTS (Australia) said that he had voted against the second alternative version because, although he recognized that the occupation of a territory did not change its legal status, that was a statement of principles of international law which was irrelevant to the text under discussion.
12. Mr. FREELAND (United Kingdom) said that his delegation had also voted against that version not because it was opposed to the principle involved but because it considered it out of place in article 4. He would have preferred the first alternative, which exactly reflected the agreed wording of article 5, paragraph 5.
13. Mr. PICTET (Switzerland) said that his delegation did not dispute the correctness, in substance, of the text which had just been adopted. The only reason why it had voted against it was that it considered it to be a reaffirmation of a general principle of international law which, in that form, was in its opinion unnecessary in the Protocol. It therefore preferred the other alternative.
14. Mr. CARON (Canada), Mr. PARTSCH (Federal Republic of Germany), Mr. PACK (Netherlands) and Mr. de CERLICZY-BURIAN (Liechtenstein) said that they had voted against the second alternative for the same reasons as the preceding speakers.
15. Mr. SAARIO (Finland) and Mr. MURILLO RUBIERA (Spain) said that they had abstained because, although it was an established rule of international law that occupation did not affect the legal status of a territory, their delegations did not consider it necessary to include a specific provision on that point in the Protocol.
16. Mr. de BREUCKER (Belgium) said that he had voted against article 4 as drafted because it contained two statements of principle which were quite unconnected: one quite rightly referred to the application of the Conventions and draft Protocol I; the other repeated the rule of international law that occupation did not change the title to a territory. Those two concepts should not be lumped together in the same article. Belgium attached importance to the rule that occupation could not change the legal status of a territory. The fourth Geneva Convention of 1949 was based in part on that essential rule. If, during the consideration of other articles of the Protocol it appeared desirable to restate that principle in order to draw useful conclusions from it in the field of humanitarian law, then his delegation would certainly study the position with the closest interest.
17. Mr. BONDIOLI-OSIO (Italy) said that, although there was no difference of meaning between the two versions of article 4, he preferred the former because it was simpler and better expressed the intention of the article.

18. Mr. WIELINGER (Austria) said that his delegation had voted against article 4 only because, in its opinion, the wording of the article had no place in a document like Protocol I with regard to occupied territories; he agreed with the view of the delegation of Finland that it was a rule of international law that the occupation of a territory in no way affected the legal status of the territory in question.

19. Mr. AL-FALLOUJI (Iraq) said that his delegation had voted in favour of the second alternative because the purpose of the Conference was to reaffirm as well as to develop international humanitarian law applicable in armed conflicts. It was therefore necessary categorically to reaffirm that fundamental principle at the appropriate moment. The first alternative seemed to him too vague.

20. Mr. ABI-SAAB (Arab Republic of Egypt) said that he associated himself with what the Iraqi representative had said. He wished to remind those speakers who had said that the principle reaffirmed in the amendment just adopted had no place in Protocol I that not only The Hague Regulations<sup>4/</sup> but large parts of the fourth Geneva Convention of 1949 were based on the principle in question. He failed to see how it could be out of place to mention one of the basic assumptions underlying the Conventions in a Protocol designed to supplement those Conventions.

21. Mr. EL-MISBAH EL SADIG (Sudan) said that he agreed with the Iraqi and Egyptian representatives.

Article 5 - Appointment of Protecting Powers and of their substitute (continued)\*

Paragraph 4 bis

22. Mr. HERNANDEZ (Uruguay) said that the four Geneva Conventions of 1949 and Protocol I would have to be applied by all those who might be involved in armed conflicts. He accordingly thought it advisable that a few words should be inserted in paragraph 4 bis to make it clear that the "investigation and reporting of violations" referred specifically to the Conventions and the Protocols.

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<sup>4/</sup> Annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land.

\* Resumed from the nineteenth meeting.



23. Mr. ABI-SAAB (Arab Republic of Egypt), supported by Mr. EL-MISBAH EL SADIG (Sudan), requested that consideration of article 5, paragraph 4 bis be postponed till the next meeting of the Committee.

It was so agreed.

Article 6 - Qualified persons (concluded)

24. The CHAIRMAN proposed that the Committee adopt article 6 by consensus.

25. Mr. GLORIA (Philippines) said that his delegation had no objection to the rest of the article, but it had proposed that paragraph 3 be amended because it was not in consonance with the draft of the International Committee of the Red Cross (ICRC). In the new version given in document CDDH/I/235, it appeared that the whole intention of the ICRC had been reversed.

26. The CHAIRMAN invited the Committee to consider article 6 paragraph by paragraph.

Paragraph 1

Paragraph 1, was adopted by consensus.

Paragraph 2

27. Mr. CRISTESCU (Romania) said that his delegation understood that it was not only the recruitment and training of qualified personnel to facilitate the application of the Geneva Conventions of 1949 and of the two Protocols and, in particular, the activities of the Protecting Powers which lay within the national competence, but also the composition of such personnel.

It was so agreed.

Paragraph 2 was adopted by consensus.

Paragraph 3

28. Mr. CRISTESCU (Romania) said that, since paragraph 3 had been discussed at length in the Working Group and certain reservations had been expressed, he proposed that a vote be taken.

29. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic), supported by Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic), said that it had been agreed in the Working Group that the Russian version of paragraph 3 should correspond with the English, French and Spanish versions except that three words - "esli sochtut nuzhny" ("if they deem it necessary") - would be added at the end.

On that understanding, the Russian-speaking delegations would not oppose a vote on the version of paragraph 3 given in document CDDH/I/235.

30. The CHAIRMAN invited the Committee to vote on article 6, paragraph 3 in the English, French and Spanish versions of document CDDH/I/235, it being understood that the Russian version would be as read out by the Ukrainian representative.

Paragraph 3, was adopted by 67 votes to one, with 4 abstentions.

31. Mr. CRISTESCU (Romania) said that he had abstained from voting because his delegation considered that the paragraph imposed excessive obligations on the Contracting Parties.

#### Paragraph 4

Paragraph 4, was adopted by consensus.

Article 6 as a whole was adopted by consensus.<sup>5/</sup>

The meeting rose at 6.20 p.m.

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<sup>5/</sup> For the text of article 6 as adopted, see report of Committee I (CDDH/219/Rev.1, para.78).

SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

held on Friday, 14 March 1975, at 3.30 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of Working Group A on articles 2 to 7 (CDDH/I/235/Rev.1)  
(continued)

Article 5 - Appointment of Protecting Powers and of their substitute  
(text referred back to the Committee by Working Group A)

1. The CHAIRMAN suggested that, in accordance with the wishes of Working Group A (CDDH/I/235/Rev.1), the text proposed for a paragraph 4 bis of article 5 should be discussed and that the normal procedure should be followed for the other paragraphs.

It was so agreed.

2. Mr. de ICAZA (Mexico), Chairman of Working Group A, replying to a question by Mr. GRAEFRATH (German Democratic Republic), said that when paragraph 4 bis had been discussed in the Working Group, a number of questions had been left in abeyance and the representatives of the United Nations Secretary-General and the ICRC had not yet replied to those questions.

3. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, said that he thought that, like Working Group A, Working Group B should hold a last meeting before the plenary meeting of the Conference at which the Committee was to report on the results of its work.

It was so agreed.

Paragraph 4 bis

4. Mr. OFSTAD (Norway) said that his delegation supported the paragraph 4 bis proposed in the report of Working Group A (CDDH/I/235/Rev.1). That paragraph was necessary in order to ensure that the victims of conflicts would have the assistance of a Protecting Power in as many situations as possible.

5. The main purpose of the text was to give the United Nations a locus standi in the designation of Protecting Powers. It did not create any new rights or obligations for the United Nations and thus did not in any way run counter to the provisions of the Charter. It left the United Nations free to act or not to act. Moreover, even if that text was not adopted, the United Nations could still offer to act as a Protecting Power under article 5, paragraph 4, proposed by the Working Group. Furthermore, the United Nations

Security Council could appoint Protecting Powers in cases affecting international peace and security. In such cases, its decision would be binding in accordance with Article 25 of the United Nations Charter.

6. The functions assigned to the United Nations under paragraph 4 bis were limited to the designation of a body to act as a Protecting Power. The United Nations could obviously choose a United Nations body which offered all guarantees of impartiality and effectiveness, such as the Office of the United Nations High Commissioner for Refugees, but it could also designate an outside body such as the ICRC or the World Council of Churches.

7. Although the Committee was not competent to discuss the creation of special United Nations bodies responsible for the implementation of the Geneva Conventions of 1949, the position taken by the United Nations Secretary-General on that matter, as recorded in his report entitled "Respect for Human Rights in Armed Conflicts" (United Nations document A/8052, paras.246 and 249) should be borne in mind.

8. His delegation was prepared to accept the following amendments to the proposed text, provided that they were generally acceptable: first, the text might become article 5 bis instead of a paragraph of article 5; second, the words "including the investigation and reporting of violations" might be deleted; third, the word "assumed" might be replaced by the word "arranged", in order to avoid what some participants had called a subjective element. Lastly, the words "which offers all guarantees of impartiality and efficacy" might be inserted after the word "body".

9. Mr. CACERES (Mexico) said that his delegation would like to associate itself with the sponsors of the text proposed for paragraph 4 bis.

10. Mr. BETTAUER (United States of America) said that his delegation understood the motives which had inspired the authors of paragraph 4 bis. No country was more concerned than his own to improve the Protecting Powers system. His delegation was, however, compelled to oppose paragraph 4 bis.

11. The text proposed by Working Group A for article 5 was the result of a difficult compromise which was not fully satisfactory to anyone, but which was none the less a positive step. His delegation was ready to defend it and to oppose any amendment which would have the effect of destroying that compromise and preventing draft Protocol I from achieving the widest possible adherence without reservations.

12. Moreover, as far as the substance of the text was concerned, the functions of a Protecting Power or substitute must be impartial in every aspect; to involve the United Nations in the process would be to introduce many political factors in the appointment of the substitute and in its performance of its functions.

13. The United Nations certainly had an important role to play in the promotion of human rights, but history had shown that that role was heavily political. In Working Group A, the representative of the United Nations Secretary-General had expressed doubts about the legal capacity of the United Nations, under the Charter, to carry out the role that would be assigned to it under paragraph 4 bis.

14. Mr. EL-FATTAL (Syrian Arab Republic) said that draft paragraph 4 bis reflected a strong trend of opinion which had first become apparent at the Diplomatic Conference of 1949. In its Resolution 2, that Conference had recommended that "... consideration be given as soon as possible to the advisability of setting up an international body, the functions of which shall be, in the absence of a Protecting Power, to fulfil the duties performed by the Protecting Powers".<sup>1/</sup> The United Nations Secretary-General had reflected that trend in paragraph 246 of his report (A/8052). It was not therefore true to say that paragraph 4 bis ran counter to the United Nations Charter or that it introduced an innovation. It was in perfect harmony with the Purposes and Principles of the United Nations Charter, from both the humanitarian and the security point of view. It was designed solely to establish an organic link between the Geneva Conventions of 1949 and the two draft Protocols, on the one hand, and the Articles of the Charter relating to the protection of human rights, on the other. To oppose it was to show a lack of confidence in the United Nations.

15. In conclusion, he pointed out that very few developing countries were represented in Working Group A.

16. Mr. CRISTESCU (Romania) said that the United Nations had always attached particular importance to the development of humanitarian law applicable in armed conflicts, as could be seen from the various resolutions adopted by the General Assembly since the International Conference on Human Rights held at Teheran in 1968.

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<sup>1/</sup> Final Record of the Diplomatic Conference of Geneva of 1949,  
Vol. I, p.361.

17. His delegation thought that the United Nations could play a part in the designation of Protecting Powers, with the consent of the Party concerned, and that was why it had submitted its amendment (CDDH/I/18) to article 5. It therefore endorsed the motives which had prompted the proposal in paragraph 4 bis, as also the comments of the Norwegian representative, but it stressed that the powers of the United Nations could not extend beyond those expressly assigned to it in the paragraph under consideration.

18. Mr. PICTET (Switzerland) said that his delegation appreciated the intentions of the authors of paragraph 4 bis, the more so since, like them, it thought that the Parties to a conflict should not be able to oppose the appointment of Protecting Powers or a substitute indefinitely. The lengthy discussions in the Working Group had, however, confirmed the fact that most delegations were still opposed to a more coercive system.

19. Furthermore, his delegation did not think that paragraph 4 bis in its present form would really strengthen the machinery provided for in article 5. On the contrary, the adoption of that paragraph might upset the balance of article 5; that article was the outcome of difficult negotiations and his delegation, for its part, wholeheartedly endorsed it. His delegation was therefore unable to support paragraph 4 bis.

20. Mr. de BREUCKER (Belgium) paid a tribute to the authors of paragraph 4 bis, which bore witness to their anxiety to ensure a strict control, which the Parties would be unable to avoid, of the application of the Conventions. The absence of a Protecting Power or a substitute in a large number of conflicts had undoubtedly prompted the proposed text.

21. Paragraph 4 bis simply gave the United Nations the right to designate a body to undertake the functions of Protecting Power, without specifying what authority that body would exercise with respect to the Parties to the conflict.

22. If it was to be a body acting as a substitute, designated and accepted by the Parties to the conflict, it must be acknowledged that the designation of such a humanitarian and impartial body belonging to the United Nations family was already possible under the existing law (first paragraph of Article 10 of the first and second Geneva Conventions of 1949).

23. If it was to be a body which the United Nations was empowered to impose on the Parties - and that was the course advocated by the Norwegian delegation - the proposal could not be envisaged in the framework of the system which the Conference was developing. The system of Protecting Powers was based on a tripartite agreement:

consent of the candidate Power, designation by one Party to the conflict, and acceptance by the other. According to paragraph 4 bis, the substitute would be imposed on the requesting Power in the same way as on the adverse Party and the constraint on both Parties would be established on behalf of an unspecified body which the Protocol would give the United Nations the right to designate. That would be sufficient to upset the balance of article 5.

24. According to the views expressed by the observer for the United Nations in Working Group A, it was the duty of States to respect the Conventions above all and to set up control machinery in conformity with them. If the United Nations was to consider setting up a body superimposed on States in order to apply humanitarian law in a spirit of complete neutrality and impartiality, or if it considered itself able to entrust that task to an external body - as had indeed been suggested - it would have to be considered whether such a decision was in conformity with the Purposes and Principles of the United Nations Charter, and the Conference would not be competent to do so.

25. Moreover, the division of competence between the body designated by the United Nations and the Protecting Power, supposing that all or part of the functions of the Protecting Power had not been discharged, would raise extremely complex problems because of the parallel actions of one body that had been accepted and one that had been imposed. Such problems would be so complex that States might perhaps be discouraged from assuming the duties of Protecting Power.

26. His delegation was therefore unable to support article 5, paragraph 4 bis within the Conference. Its attitude did not reflect in any way on the merit, which his country recognized, of the action of the United Nations in the matter of human rights, which was reflected in the establishment of appropriate instruments of great value ever since the adoption of the Universal Declaration of Human Rights. The United Nations was also active in the many bodies connected with it whose task it was to develop and to encourage respect for human rights and fundamental freedoms. The United Nations could and should continue its action in the field of human rights, since conflicts still broke out in the world, and, through the appropriate channels, it should call upon the Parties to such conflicts to respect the Geneva Conventions of 1949 and, when it was a case of applying article 3 common to those Conventions, to extend the unduly narrow field of application of that article by making a wide use of the other provisions adopted in 1949.

27. Mr. EL ARABY (Arab Republic of Egypt) thanked the Mexican delegation for joining the authors of paragraph 4 bis.

28. He wholeheartedly endorsed the remarks of the representatives of Norway and of the Syrian Arab Republic. Referring to the statement made by the representative of the United Nations Secretary-General in Working Group A, he pointed out that the General Assembly had frequently advocated an improvement of the system of Protecting Powers; that was the reason for the proposal in paragraph 4 bis. He pointed out to the delegations which found it difficult to support that paragraph as it stood that the authors had asked in vain for proposals for its amendment. The Arab Republic of Egypt, as a sovereign State, was aware of the importance of the principle of consent but considered that it should be abandoned in the case dealt with in paragraph 4 bis.

29. Mr. BONDIOLI-OSIO (Italy) said that, in the opinion of his delegation, paragraph 4 bis should be considered in the light of the efforts already made to reach agreement on the text of article 5.

30. Paragraph 4 bis introduced an additional constraint on the Parties to the conflict. Through the United Nations, a sort of court of appeal would be set up to supervise the way in which the Protecting Power performed its functions, and that might discourage the Government designated as Protecting Power from accepting that responsibility. Moreover, the fact that the competent authority, whether the United Nations General Assembly, Security Council or Secretary-General, was not specified could lead to difficulties of interpretation, as had been pointed out by the representative of the Secretary-General himself.

31. The Italian delegation realized, of course, that the authors of paragraph 4 bis had wished to ensure that the Protecting Power would be able, at all times, to discharge its functions to the fullest extent, in itself a most desirable thing; nevertheless, it was sometimes better to leave well alone, and his delegation was afraid that the adoption of draft paragraph 4 bis might upset the balance of article 5, which provided for effective supervisory machinery while respecting the principle of the consent of the Parties to the conflict.

32. Mr. MURILLO RUBIERA (Spain) said that his country had always given the most careful attention to the possibility of improving the Protecting Power system having regard both to the gaps in Article 10 of the Geneva Conventions of 1949 and to those cases where there was no Protecting Power or substitute. His delegation therefore fully understood the intentions of the authors of paragraph 4 bis and their desire to rectify an omission.



33. The text provided, however, for intervention by the United Nations for the purpose of designating a body to undertake the functions of a Protecting Power. Bearing in mind the competence of the United Nations in the sphere of human rights, the Spanish delegation wished to make cert. in comments on that point. First, the United Nations could always be asked to designate a body under the provisions of the first paragraph of Article 10 of the Conventions, while respecting the three-sided agreement upon which it was intended that the system of the Protecting Power should be based, secondly, it should not be forgotten that, by providing that the United Nations should fill any gap that might occur, it was being proposed that the objective should be attained outside the framework of the Geneva Conventions and of the Protecting Power system; lastly, the United Nations, owing to its essentially political character, would introduce a disturbing element into the delicate machinery which Working Group A had endeavoured to set up in article 5.

34. For those reasons, his delegation was not prepared to support paragraph 4 bis.

35. Mrs. CHEVALLIER (Holy See) said she agreed with those representatives who had expressed doubts as to the precise scope of paragraph 4 bis.

36. In principle, her delegation was prepared to consider favourably any proposal that would ensure that a Protecting Power or substitute was appointed as quickly as possible and that it would be able to carry out its functions normally in the event of a conflict. But she was concerned about the precise implications of the texts drafted by Working Group A, and she therefore wished to put two questions to the authors of paragraph 4 bis.

37. The first was, what would be the status, and more particularly the legal status, of the body to be designated by the United Nations under paragraph 4 bis? Reference had been made in a previous statement to the guarantees which such a body should offer, and she wished to know on what basis those guarantees would be assessed.

38. Secondly, over and above all the difficulties of a technical nature already referred to, would the designation by the United Nations of the body in question carry with it any coercive element?

39. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said he understood the objectives of the authors of paragraph 4 bis, the effect of which was to strengthen the machinery for appointing Protecting Powers and their substitutes. However, the paragraph also dealt with a special situation, namely one in which all or part of the functions of the Protecting Power, including the investigation and reporting of violations, might not have been

carried out. But it was not possible to use a special situation as a basis for rules of humanitarian law that would constitute a principle governing the designation of the Protecting Power. Moreover, he had already emphasized that it was indispensable that the agreement of the Parties should be obtained in designating a body responsible for discharging the functions of the Protecting Power.

40. From the practical point of view, if the Protecting Powers or their substitute were designated without the agreement of the Parties, they would be unable to discharge their functions effectively.

41. From the legal point of view, it was surely inconceivable that the United Nations should be asked to designate a body to undertake the functions of the Protecting Power, when there was no mention of such a possibility in the 1949 Geneva Conventions. When one took into consideration the rather negative opinion expressed in Working Group A by the representative of the United Nations Secretary-General, paragraph 4 bis left a feeling of uncertainty and its adoption would lead to serious difficulties.

42. It would also be necessary to know which organ of the United Nations would designate the Protecting Power. Article 5 drafted by Working Group A provided for a tripartite arrangement for designating Protecting Powers and their substitute.

43. His delegation would vote against paragraph 4 bis.

44. Mr. FACK (Netherlands) said he felt bound to state that his delegation had doubts about paragraph 4 bis.

45. His country had always observed the provisions of the United Nations Charter, but it had to be remembered that the United Nations was concerned with the maintenance of world peace and security and that its aims were primarily political. The ICRC, on the other hand, was essentially an apolitical and humanitarian body.

46. The United Nations comprised four political organs, one legal organ and one administrative organ. He wondered which would be the body to be designated under paragraph 4 bis: the text and the commentaries were not very clear.

47. If it was a political organ, humanitarian protection would be subject to political judgment, and that was contrary to the aims of humanitarian law. In that connexion, the Committee should bear in mind the doubts expressed by the representative of the United Nations Secretary-General. There were of course certain bodies such as the Office of the United Nations High Commissioner for Refugees whose activities were of a humanitarian nature, but were nevertheless very limited in scope.

48. It was not certain whether the victims of armed conflicts would derive any benefit if the paragraph were adopted. In his view, the article 5 drafted by Working Group A represented a balanced compromise which the Committee ought to adopt as it stood. Consequently, he would vote against paragraph 4 bis.

49. Mr. CUTTS (Australia) said that his delegation could not accept paragraph 4 bis. At the end it was stated that "the United Nations may designate a body to undertake these functions", but no reference was made to the consent of the Parties. The Parties to the conflict were thus under constraint where the designation of the Protecting Power was concerned.

50. There had been some differences of opinion in the Working Group over the designation and acceptance of the Protecting Power; then, after lengthy negotiations, the Group had reached a compromise on the machinery for the designation of a Protecting Power and the acceptance of the good offices of the ICRC with a view to the designation of a Protecting Power and, failing that, assumption of the functions of a substitute.

51. If paragraph 4 bis were adopted, the basic compromise would be jeopardized, for the paragraph stressed the element of constraint whereas article 5 was concerned rather with the maintenance of State sovereignty.

52. If paragraph 4 bis were adopted, his delegation would have to reconsider its position with regard to article 5 as a whole. The new provision contributed nothing to humanitarian law, and created a dangerous precedent. His views in that respect were the same as those of the Netherlands representative.

53. Mr. GRAEFRATH (German Democratic Republic) said he had already had occasion to explain his delegation's position in Working Group A. He appreciated the ideas of the authors of paragraph 4 bis and shared their desire to ensure implementation of the Conventions and draft Protocol I with a view to protecting the victims of armed conflicts, which still took place despite the general prohibition of the use of force against the territorial integrity or political independence of a State.

54. His delegation fully understood why certain States had insisted that violations of the Conventions and draft Protocol I should be the subject of investigations and reports, as laid down in paragraph 4 bis. The United Nations or some of its specialized agencies had, in certain well-known cases, investigated and reported on violations of human rights, the Geneva Conventions and especially of the fourth Geneva Convention of 1949. But, although he approved of the activities undertaken by those bodies, he did not feel that

the United Nations or its specialized agencies should assume the functions of a Protecting Power or a substitute. A Protecting Power or a substitute could only exercise its functions with the consent of the Parties, as provided by the Geneva Conventions of 1949, and as the Committee had clearly reaffirmed when it unanimously adopted the definition given in article 2, subparagraph (d) of draft Protocol I. The Committee had no power to alter that fundamental rule of the Conventions.

55. It would be dangerous to compel the Protecting Power or the substitute to assume the functions of an authority called on to make investigations, or to link the humanitarian functions of the said Power to political issues in such a way that States would probably permit the body before which political and legal accusations of violations of the Protocol and Conventions were brought to determine whom a State must accept as Protecting Power or substitute.

56. He did not agree that the United Nations should be called upon to designate a body to undertake the functions of Protecting Power, without the consent of the Parties. He would therefore vote against paragraph 4 bis.

57. He expressed the hope that the authors of the paragraph would withdraw their proposal, for Working Group A had reached a carefully studied compromise on article 5. Paragraph 4 bis - especially if corresponding reservations were not permitted - would not only make it impossible for certain delegations to adopt article 5, but would challenge the acceptability of draft Protocol I as a whole. He still hoped that a vote on the paragraph could be avoided.

58. Mr. FREELAND (United Kingdom) said that, very reluctantly, he had come to the conclusion that his delegation must oppose the adoption of paragraph 4 bis. The object of article 5 was to enhance the effectiveness in practice of the system for securing the operation of Protecting Powers. His delegation strongly supported that aim and would indeed have liked the compromise text to go further in the direction of ensuring that there were Protecting Powers or bodies to perform the function of Protecting Powers, in all situations of armed conflict to which Protocol I would apply. It seemed clear, however, that the proposal by Norway and certain Arab countries went too far, having regard to present international attitudes, for it introduced an element of constraint which other delegations found unacceptable. In Working Group A some delegations had taken as their point of departure a position of principle that the consent of the Parties was necessary in each case as a pre-condition for the functioning of Protecting Powers. From what they had said, there seemed a strong likelihood that, if paragraph 4 bis were to be adopted, that would call in question the participation of those delegations in the Protocol. That result would not enhance the effectiveness of the system.

59. The Norwegian representative had indicated that paragraph 4 bis could become an article 5 bis and therefore be accepted with reservations. But that outcome also would not enhance the effectiveness of the system.

60. The United Kingdom delegation would therefore vote against paragraph 4 bis, even if amended in accordance with the Norwegian proposal.

61. Mr. PARTSCH (Federal Republic of Germany) said that his delegation would have preferred proposal II for article 5, paragraph 3 of draft Protocol I. It had several objections to make regarding the automatic operation of paragraph 4 bis. As had been stated by the representative of the United Nations Secretary-General, that organization had special responsibilities in the field of peace and security. His delegation doubted whether those responsibilities were fully compatible with the functions envisaged in paragraph 4 bis. Under no circumstances should the United Nations system be mixed up with the existing machinery for safeguarding humanitarian law.

62. Miss MANEVA (Bulgaria) subscribed to the reservations formulated by the previous speakers. The text of paragraph 4 bis was imprecise and would give rise to difficulties. It ran counter to the principle of securing the consent of the Parties to the conflict for designation and acceptance of the Protecting Power.

63. She joined the representative of the German Democratic Republic in hoping that a vote on paragraph 4 bis could be avoided. If it could not, she would vote against the paragraph.

64. Mr. ABDUL-MALIK (Nigeria) said he considered that the six paragraphs of article 5 proposed by the United States delegation and approved by Working Group A were an improvement on the ICRC text. They were also a compromise, but there were still some gaps. Paragraph 4 bis sought to fill those gaps. On numerous occasions, from Resolution 2 of the 1949 Diplomatic Conference to the latest statement by the representative of the United Nations Secretary-General, appeals had been made for the creation of standing machinery for the designation of Protecting Powers, but nothing concrete had been done; for that reason, the initiative of Norway and certain Arab countries was a happy one. It had his full support. Nevertheless, certain editorial changes should be made to the text to make it more consonant with the law of the United Nations and the Geneva régime.

65. The time had come to create a body of last resort; since paragraph 4 bis was a step in that direction, his delegation could, under the exceptional circumstances, accept its automatic operation, which would, however, be unacceptable in another context. All things considered, and despite its misgivings about other aspects of the text, his delegation could accept paragraph 4 bis.

66. Mr. TORRES AVALOS (Argentina) said that his delegation had studied paragraph 4 bis with interest. It had listened carefully to the statement made by the representative of the United Nations Secretary-General in Working Group A. It still had doubts, however, about the legal aspects.

67. He wondered whether the text of paragraph 4 bis was in conformity with the provisions of the United Nations Charter, and whether it could really be adopted. For that reason, although rather attracted by the underlying philosophy of the draft, his delegation would abstain in the vote.

68. The CHAIRMAN said he understood the Norwegian representative wished paragraph 4 bis (CDDH/I/235/Rev.1) to be put to the vote. In view, however, of the appeal by two delegations, he asked the Norwegian representative whether he maintained his proposal.

69. Mr. LONGVA (Norway) said he did not withdraw the proposal.

70. The CHAIRMAN put paragraph 4 bis to the vote.

Paragraph 4 bis was rejected by 32 votes to 27, with 16 abstentions.

71. Mr. PICTET (International Committee of the Red Cross) said that while the ICRC was pleased to place the technical skill of its experts at the Diplomatic Conference's disposal, it did not consider that it should take a stand on provisions which mainly concerned Governments. It was for them alone to decide on the commitments they wished to undertake. That was the reason for the ICRC's frequent reticence during the Conference. In article 5, at present under discussion, however, special functions of great importance were envisaged for the ICRC, and it would therefore be useful for delegations to know its views on the subject.

72. The ICRC had taken note of the article 5 submitted to the Committee, and it welcomed the fact that the delegations participating in the discussions of Working Group A had attached prime importance to the strengthening of the Protecting Power system and had considered article 5 to be a key provision.

73. No one, he thought, would be surprised or upset if he said that the ICRC had not found a perfect wording. It would perhaps still be possible to make certain adjustments of form at a later stage. In article 5, paragraph 3, for instance, the ICRC was placed on a footing of competition with other bodies, not specified, and that might lead to practical difficulties. Without asking for a monopoly, which it had never contemplated, the ICRC would have liked a more definite priority to be established in its favour.

74. In paragraph 4, the wording was also unsatisfactory; there were repetitions and vague terms.

75. Everyone realized, of course, that the texts in question were the outcome of patient work and a real effort to achieve conciliation within Working Group A. The ICRC had therefore asked him, as its Vice-President, to inform the Committee that it was able, on the whole, to undertake the tasks assigned to it even if complex conditions were attached to them. He would like, however, in connexion with that agreement in principle, to make two comments on paragraph 4 for inclusion in the summary record.

76. The ICRC had been gratified by the confidence that had once again been placed in it. As it had often had occasion to say, it had never dreamt of acting as substitute for the Protecting Powers without the consent of the Parties to the conflict.

77. Paragraph 4 was concerned only with the role of substitute which the ICRC might be called upon to play. That role was therefore quite distinct from, and could in no way affect, the ICRC's main role under the Geneva Conventions. The Conventions expressly assigned many tasks to the ICRC, and they recognized, in Article 9 common to the Geneva Conventions of 1949 (Article 10 of the fourth Convention) that the ICRC had a general right of initiative in respect of the activities it might have to undertake on behalf of the victims of armed conflicts, with the agreement of the Parties concerned. The new provision could in no way restrict, therefore, the ICRC's traditional role.

78. The ICRC would like a similar provision to Article 9 to be included in the Protocols, in a place to be decided upon, not necessarily in article 5.

79. His second comment concerned the procedure provided for in paragraph 4 for a possible offer by the ICRC, after undertaking consultations, to assume the task of substitute for the Protecting Powers. If, however, there had to be such consultations, without publicity of course, the ICRC could obviously not keep the result secret. It would have to say in the end whether its collaboration was accepted or not.

80. He hoped that the discussions would give rise to conclusions so that the control system, based mainly on the Protecting Powers, could function harmoniously without its even being necessary to resort to a substitute.

81. He thanked the representatives of Governments for the trust they continued to place in the ICRC, for without that trust the ICRC could not successfully discharge the functions of which it would, he believed, prove worthy.

82. The CHAIRMAN suggested that a vote should be taken on paragraphs 1 to 7 of draft Protocol I, article 5.

83. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) pointed out that the present wording of article 5, paragraphs 1 to 7, was the result of long and strenuous efforts and he urged delegations to accept the text as submitted.

84. The CHAIRMAN asked that members of the Committee should confine themselves to explanations of votes.

85. Mr. de ICAZA (Mexico), Rapporteur, who had acted as Chairman of Working Group A, said that the Drafting Committee must decide whether the word "parties" should be written with a capital or a small letter.

86. Mr. CRISTESCU (Romania) asked that a separate vote should be taken on paragraph 1.

It was so agreed.

87. Mr. CRISTESCU (Romania) said that Romania should be added to the delegations which had expressed reservations on paragraph 1.<sup>2/</sup>

#### Paragraph 1

Paragraph 1 was adopted by 72 votes to one, with 2 abstentions.

#### Paragraph 2

Paragraph 2 was adopted by consensus.

#### Paragraph 3

88. The CHAIRMAN observed that two delegations, those of Switzerland and Spain, had submitted amendment proposals.<sup>3/</sup>

89. Mr. PICTET (Switzerland) said that the purpose of his delegation's amendment was to stress the priority that should be given to the ICRC in the matter of good offices. He would not press for a vote to be taken on the proposal but would leave it to the Drafting Committee to find a solution.

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<sup>2/</sup> See foot-note \* in the report of Working Group A (CDDH/I/235/Rev.1).

<sup>3/</sup> See foot-note \*\* in the report of Working Group A.



90. Mr. MURILLO RUBIERA (Spain) said that his delegation maintained its amendment proposing priority for the ICRC. He suggested, moreover, that a separate vote should be taken on the last sentence of paragraph 3, beginning with the words, "For that purpose it may ...".

91. The CHAIRMAN suggested that a vote should first be taken on the Spanish amendment, then on the last sentence of paragraph 3 and finally on the paragraph as a whole.

It was so agreed.

The Spanish amendment was rejected by 13 votes to 20, with 37 abstentions.

The last sentence of paragraph 3 was adopted by 61 votes to none, with 4 abstentions.

Paragraph 3, as a whole, was adopted by 65 votes to none, with 3 abstentions.

#### Paragraph 4

92. Mr. EL ARABY (Arab Republic of Egypt) recalled that his delegation had pointed out to Working Group A the discrepancy between the text of paragraph 4 and that of paragraph 3 of Article 10 common to the 1949 Conventions. In fact, the latter had rightly been interpreted as containing a compulsory element. On behalf of the co-sponsors of amendment CDDH/I/75, he wished to submit an amendment to article 5, paragraph 4.

93. Mr. GRAEFRATH (German Democratic Republic), speaking on a point of order, pointed out that under rule 38 of the rules of procedure, amendments to texts being voted upon could not be submitted orally after the vote had begun.

94. Mr. EL ARABY (Arab Republic of Egypt), supported by Mr. EL-FATTAL (Syrian Arab Republic) and Mr. EL-MISBAH EL SADIG (Sudan), proposed that voting be postponed on paragraph 4, for unless the new amendment to article 5, paragraph 4, proposed by the co-sponsors of paragraph 4 bis was considered, they would have no alternative but to ask for a vote on amendment CDDH/I/75.

95. The CHAIRMAN, supported by Mr. BETTAUER (United States of America), Mr. CUTTS (Australia), Mr. BOYLEV (Union of Soviet Socialist Republics) and Mr. FACK (Netherlands) requested that the voting should continue.

96. Mr. FACK (Netherlands) said that a proposal which could not be considered by the Committee could be submitted to a plenary meeting of the Conference.

97. Mr. TARCICI (Yemen) proposed that the meeting be suspended.

98. The CHAIRMAN put to the vote the proposal to suspend the meeting.

That proposal was rejected by 32 votes to 21, with 4 abstentions.

Paragraph 4 was adopted by 53 votes to 10, with 8 abstentions.

#### Paragraph 5

99. The CHAIRMAN put to the vote the deletion of the words in square brackets - "In accordance with article 4" - in the text of that paragraph.

100. In support of the submission of Mr. EL ARABY (Arab Republic of Egypt) that the vote should be on the deletion of the brackets in question, Mr. ABI-SAAB (Arab Republic of Egypt) pointed out that at the time of the adoption of that paragraph in the Working Group, two versions of article 4 had been referred to the Committee from which to choose; one of those would have rendered superfluous the reference in article 5, paragraph 4 to article 4, hence the brackets. But, as that version had not been adopted by the Committee, the reference was logically valid and the vote should be on the deletion of the brackets and not on the reference within them.

101. The CHAIRMAN asked representatives if they accepted paragraph 5 in that form.

Paragraph 5 was adopted by consensus.

#### Paragraph 6

102. Mr. FREELAND (United Kingdom) said that, although he considered the scope of the words "according to the Vienna Convention on Diplomatic Relations" too restrictive, his delegation would vote for paragraph 6 on the understanding that the Drafting Committee would be in a position to consider the replacement of those words, for purposes of clarification, by a phrase such as "in accordance with conventional or customary rules of international law relating to diplomatic relations".

103. The CHAIRMAN, replying to Mr. EL-FATTAL (Syrian Arab Republic) and Mr. SOOD (India), said that a question of drafting was involved.

Paragraph 6 was adopted by consensus.

Paragraph 7

Paragraph 7 was adopted by consensus.

Article 5 as a whole was adopted by consensus.<sup>4/</sup>

STATEMENT BY THE REPRESENTATIVE OF THE SOVEREIGN ORDER OF MALTA

104. Mr. DECAZES (Sovereign Order of Malta) said that during the Committee's deliberations that day, reference had been made to bodies which could, if necessary, act as substitute for the Protecting Power. In that connexion, he thought it would be a good moment to explain to delegations the very special and unique international status of the Sovereign Order of Malta and its activities.

105. The Sovereign Order of Malta was a subject of international public law with operational sovereignty, the right to appoint and receive envoys and the right to conclude treaties. It was one of the most long-standing subjects of international public law.

106. It had in fact enjoyed that status without interruption for centuries, and at the present time was diplomatically recognized by about forty Powers bound together by common humanitarian interests. Those countries were all represented at the present meeting, and he welcomed the occasion to thank them for the interest and support they constantly demonstrated.

107. The Order's traditional task was to assist the wounded victims of armed conflicts. It also provided aid to the victims of natural catastrophes. At the international level, it undertook, or participated in, organized works for refugees, emigrants, exiles, and the sick in general, particularly lepers and abandoned children.

108. In the exercise of its secular and humanitarian mission, the Order was inspired by the principles of total impartiality and neutrality. It offered assistance to all those who had need of it, without distinction of nationality, race, creed, status or location. It complied with the conventions in force in the context of international humanitarian law, including the Geneva Conventions.

109. For that purpose, it had forty ambassadors in Africa, Latin America, Asia, Europe and the Middle East, well equipped groups in many of the countries of those continents, and personalities who were members of the Order and qualified in the diplomatic, military, medical, legal and humanitarian fields.

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<sup>4/</sup> For the text of article 5 as adopted see the report of Committee I (CDDH/219/Rev.1, paras. 42, 45, 52, 56, 64, 68 and 71)

110. Thus, as in the past, the Order had been able to intervene, rapidly and effectively, on the occasion of recent conflicts and natural catastrophes. It had, for example, been able to carry out the functions of substitute for the Protecting Power at the time of the Suez conflict of 1956.

The meeting rose at 5.55 p.m.

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

held on Monday, 17 March 1975, at 10.20 a.m.

Chairman: Mr. HAMBERO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of Working Group A on articles 2 to 7 (CDDH/I/235/Rev.1)  
(concluded)

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

1. Mr. CRISTESCU (Romania) said that his delegation had voted against paragraph 1 of article 5 of Protocol I, the provisions of which seemed to him to be an extension rather than a revision of Articles 8 and 9 of the Geneva Conventions of 1949. Article 5, paragraph 4 showed clearly that the procedure for the designation and the functioning of the substitute for the Protecting Powers was subject to the consent of the Parties to the conflict.
2. Mr. CARON (Canada) said that his delegation was convinced that article 5, as adopted, strengthened the Protecting Power system, for it was clear, practical and progressive. In addition, it offered the advantage of having been adopted by consensus.
3. His delegation did not subscribe to the reservations expressed by some delegations with regard to the words "without prejudice to the right of any other impartial humanitarian organization to do likewise" since that expression merely stated a fact and in no way altered the obligation laid down in paragraph 3 or the priority given to the ICRC; moreover, the ICRC was the only body on which that paragraph imposed an obligation. As the Swiss representative had pointed out at the twenty-seventh (CDDH/I/SR.27) meeting of the Committee, Articles 9 and 10 common to the first three Conventions (Articles 10 and 11 of the fourth) remained fully valid.
4. Mr. ABI-SAAB (Arab Republic of Egypt) said that his delegation had accepted article 5, but had voted against its paragraph 4 since it considered that paragraph imperfect and dangerous. It was imperfect because it fell short of achieving the desired humanitarian objectives. Its basic defence was that it achieved consensus on a controversial issue which was subject to reservations in the Geneva Conventions of 1949. But that consensus was between East and West and did not rally the third world countries which had been very poorly represented in the discussions and, as shown by the vote on paragraph 4 bis, were dissatisfied with paragraph 4 which they considered insufficient to achieve the humanitarian purposes of the Conference. That was particularly unfortunate

since it was in the third world that armed conflicts were taking place at present and were more probable in the future. The East and West were legislating on a subject in which third world countries were the most directly interested parties, without taking their views sufficiently into consideration.

5. Paragraph 4 was also dangerous. Indeed, article 5, as adopted, dealt with two different aspects: first, the procedure of appointing the Protecting Powers; and in this respect its contribution (paragraph 3) was positive, though modest; and second, the substantive obligation for the Parties to accept a substitute and in that respect the present text was dangerous because being retrogressive in relation to the third paragraph of Article 10 common to the first three Geneva Conventions of 1949 (Article 11 of the fourth Convention), which imposed a much stronger obligation on the Parties than did article 5, paragraph 4 the latter provision could be used retroactively to interpret the former in a restrictive manner, bringing it down to its own level.

6. It would therefore be a serious mistake to adopt that provision in plenary without specifying that it related exclusively to paragraph 1 of common Article 10, and that it had no incidence on paragraph 3 of that Article.

7. He welcomed the statement by the ICRC representative at the twenty-seventh meeting (CDDH/I/SR.27) since it indicated a willingness on the part of the ICRC to play a more active role in the future than in the past. He also welcomed the declaration that the ICRC did not seek a monopoly in the humanitarian field, and expressed the hope that that organization would, in deed as well as in word, endeavour to join with other organs interested in the humanitarian field, in order to increase the possibilities open to the Parties to the conflict of finding an acceptable substitute. Such an attitude was particularly important now that paragraph 4, by specifically mentioning the ICRC, attributed to it a priority in negotiating with the Parties the possibilities of an acceptable offer from a suitable substitute.

8. Mr. AL-FALLOUJI (Iraq) said that his delegation had been surprised to hear some speakers refer to the United Nations as a political or basically political organization, while acknowledging the importance of its activities in connexion with human rights, and maintain that the United Nations had no competence in humanitarian matters. Such an attitude disregarded the spirit prevailing in the United Nations, and overlooked the fact that Article 1, paragraph 3 of its Charter stressed the need to solve problems of a humanitarian character. Moreover, the responsibility of the United Nations for the maintenance of peace was inseparable from the efforts made by the international community to alleviate the

suffering caused by war. The United Nations itself had requested the Conference to consider the question of the protection of journalists engaged on dangerous missions in time of armed conflict, not because it judged itself unable to do so but because co-operation on that matter was essential.

9. His delegation thought that the texts of the draft Protocols should be adopted by consensus as far as possible, because in humanitarian law any article weakened by a vote was already doomed to ineffectiveness. Article 5, paragraph 4 had been rejected by a small majority with a large number of abstentions and with many representatives absent. That result did not absolve the Conference from its responsibility vis-a-vis the still unsettled problem of the defects in the Protecting Power system. It must be acknowledged, too, that the proposed text did not dispel the misgivings voiced about recourse to compulsory machinery. A consensus could and should still be sought and his delegation would do everything it could to co-operate with the other delegations to that end.

10. His delegation's vote should be interpreted as a mark of confidence in the mission and work of the United Nations, of the ICRC, and of every other international organization concerned with international humanitarian law. Yet his delegation thought it inconceivable that an attempt should be made to reaffirm and develop international humanitarian law without at the same time ensuring that the bodies responsible for applying it co-operated with each other and co-ordinated their activities.

11. Mr. LONGVA (Norway) said that if a formal vote had been taken on article 5 his delegation would have abstained, since that article did not seem to provide an adequate solution to the vital problem of implementing the Geneva Conventions of 1949 and Protocol I. The new article 5 should in no way be interpreted as limiting the applicability of Article 10 of the first three Geneva Conventions of 1949 (Article 11 of the fourth Convention), since it merely developed the first paragraph of that Article. If no Protecting Power were designated under those two provisions, the Parties to the conflict would have to assume their obligations under the subsequent paragraphs of Article 10 of the Geneva Conventions.

12. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam) said that although his delegation had accepted article 5 as a whole, it had abstained in the vote on paragraph 1, since the words "duty" and "from the beginning of that conflict" in the first sentence seemed to indicate that the principle of ensuring respect for the Conventions by applying the Protecting Power system could take priority over the fundamental principle laid down in Article 1 common to the 1949 Geneva Conventions, which made it binding on the Parties "to respect and to ensure respect" for the Conventions "in all circumstances". Under Articles 8 and 9 common to the Geneva Conventions the Protecting Power had a purely supporting function in the application of the Conventions.

13. Mr. BLOEMBERGEN (Netherlands) said that, in Working Group A, his delegation had been ready to support any proposal which strengthened the Protecting Power system as defined in the 1949 Geneva Conventions. The attitude of his delegation was based on certain considerations. The first was that it would not be satisfied with a mere reaffirmation of the provisions of Articles 8, 9 and 10 of the Conventions but that it should rather strive to create further commitments for the Parties to the conflict, wherever circumstances permitted. The second consideration was that the designation and acceptance of Protecting Powers was a matter of extreme urgency. The victims of armed conflicts should benefit from the protection afforded by the Geneva Conventions and the Protocols as soon as possible after the outbreak of the conflict. His delegation therefore had expressed reservations concerning any elements in the procedure for designating the Protecting Power that would imply an avoidable loss of time. In his delegation's view, it was advisable, for the benefit of the victims, to fall back on the ICRC as a substitute after a relatively short time. That did not mean that the Parties to the conflict should not continue their efforts to reach agreement on the designation of a Protecting Power, in conformity with the provisions of article 5, paragraphs 2 and 3.

14. His delegation felt reasonably satisfied with the first four paragraphs of article 5 which imposed on the Parties to a conflict the duty to ensure the implementation of the Conventions and of Protocol I through the application of a system requiring them to designate and to accept a Protecting Power. A careful balance had thus been struck between the requirements of humanitarian law and respect for national sovereignty.

15. Mr. WIELINGER (Austria) said that his delegation had voted for article 5 of draft Protocol I because of its great interest in any measure that might help to improve the condition of all victims of armed conflicts and also because it regarded the provisions on Protecting Powers as key elements in that Protocol. It welcomed the fact that the provisions of article 2, sub-paragraphs (d) and (e), and of article 5 in no way derogated from the provisions of the Geneva Conventions of 1949 but rather expanded the form of words used in them, which was perhaps too succinct, while retaining the terminology they employed to define the Protecting Power.

16. His delegation had also noted with satisfaction that the article allowed another State or a substitute to share a part of the functions of the Protecting Power that a State acting in that capacity might be unable to perform. Article 5 in no way ruled out the possibility that the functions of a Protecting Power might be divided among several substitutes.



17. Mr. ABADA (Algeria) said that Algeria, a young State, attached primary importance to the notion of sovereignty, from which respect for the fundamental principle of the consent of the Parties logically derived. It was precisely because that principle was respected throughout article 5 of draft Protocol I that his delegation had voted in favour of each of its paragraphs.

18. His delegation had welcomed the clarifications given by the representative of the ICRC concerning the third paragraph of Article 10 of the 1949 Conventions; those explanations had greatly facilitated the preparation of an acceptable text. His delegation would have been unable to accept any interpretation of that paragraph which could have implied any threats. The acceptance of draft Protocol I, article 5 by consensus represented real progress in terms of practical achievement.

19. Mr. PICTET (Switzerland) said that one of the main objectives of the Conference was to strengthen the provisions relating to the application of the Conventions, and especially to the Protecting Powers system described in the first paragraph of both Articles 8 and 10 of the Geneva Conventions. The text of article 5 which had just been adopted represented appreciable progress, but his delegation would have preferred the article to include an element of constraint. The progress achieved consisted, in the first place, of the statement in paragraph 1 that it was the duty of the Parties to a conflict to apply, from the beginning of that conflict, the Protecting Powers system, thus making possible an effective implementation of the Conventions and Protocol I in favour of the victims. Secondly, article 5 instituted well-ordered machinery which would enable the system to function without delay, and which laid down a definite procedure, particularly in paragraph 3, to facilitate the designation and the acceptance of Protecting Powers. Lastly, article 5, paragraphs 3 and 4 referred specifically to the ICRC, which was now called upon to play a leading part in putting the whole system into effect.

20. The fact that other impartial humanitarian organizations were mentioned as well as the ICRC could not be taken to mean that any rivalry could arise, to the detriment of the efficiency of the agreed machinery. Paragraphs 3 and 4 could therefore be interpreted as conferring on the ICRC some measure of priority both with regard to the offer of its good offices with a view to the designation of Protecting Powers and with regard to the offer to act as a substitute. He hoped that, in accordance with his previous request, the Drafting Committee would word the French text of paragraph 3 in such a way as to give greater emphasis to that priority.

21. Though it accepted article 5, the Swiss delegation wished to state forcefully that that provision in no way affected the second to sixth paragraphs of Article 10 common to three of the 1949 Geneva Conventions (Article 11 of the fourth Convention); nor could it alter in any way the right conferred on the ICRC by Article 9 common to the Conventions to undertake, subject to the consent of the Parties, its traditional humanitarian activities for the protection of the victims of conflicts. He would like to see that point of view reflected in the Committee's report.

22. Mr. AGOES (Indonesia) said that his delegation had abstained in the vote on article 5, paragraph 3 because it considered that the ICRC was the most suitable and the most efficacious organization to carry out the duties described in that paragraph, and that there was no need to grant the same right to other humanitarian organizations which offered all guarantees of impartiality.

23. Mr. MURILLO RUBIERA (Spain) said that his delegation had abstained in the vote on draft Protocol I, article 5, paragraph 3, thus expressing its disapproval of a rule which it considered illogical, defective and incomplete.

24. It was illogical because the procedure laid down in connexion with the offer of good offices did not give the ICRC the priority to which it was entitled in view of the obligation implied by the words "shall offer". In his delegation's opinion, the recognized right of other impartial humanitarian organizations to act thus should remain distinct from the obligation which that paragraph placed on the ICRC and the fulfilment of which could be accompanied by numerous other offers, since those organizations could do "likewise", in the same way as the institution which had not only the right but also the obligation to act whenever Protecting Powers had not been designated or accepted.

25. A multiplicity of offers would not make it any more likely that the Parties to a conflict would respect the obligation which, under article 5, paragraph 2, they should discharge spontaneously from the very beginning of the conflict. What would ensure that the Parties to a conflict would feel bound to concern themselves with the designation and acceptance of Protecting Powers would be their knowledge that, if they did not do so of their own accord, a specific body would at once offer its good offices.

26. Moreover, paragraph 3 was defective because the machinery for communication of the lists which the ICRC might request in order to remedy the situation was described in confused and equivocal terms. It was impossible to speak of asking "the other Party" when, a few lines above, the provision was to "ask each Party". It was also the two Parties which should provide another list of five States which they would be willing to accept in their territory as Protecting Power of the adverse Party.

27. It could not be argued that it was a matter of drafting, for it was a requirement of the internal logic of the rule.

28. The drafting of a legal provision could always be improved but the obscurity of ideas reflected in a confused text could not be accepted by a legislator.

29. There was certainly obscurity in the term "other Party", without any reference in the text to a previously mentioned Party.

30. Confusion was compounded by the allusion, at the end of the text, to two lists on both of which the same State should be named. What were those lists? The text mentioned three specifically, whereas it was common knowledge that the machinery called for four - two for each Party. It was also well known that the same State proposed should appear on two lists from each Party to the conflict, one for designation and the other for acceptance. But the text must specify that clearly, without any need for explanation; the text did not do so and thus was certainly obscure.

31. Finally, paragraph 3 was incomplete because it should in any event envisage the likelihood that no State would appear on both lists.

32. By their very nature, procedural provisions - as in the present case - should specify the various phases of the process laid down. Even if they were over-detailed, they would at least have the advantage of achieving what they sought to achieve.

33. For those reasons, his delegation could not support paragraph 3.

34. Moreover, his delegation would have liked the efforts to ensure the availability of a Protecting Power to have been such as to make it possible to attain the essential objective: to ensure that, for whatever reasons, victims of conflicts were not deprived of the protection afforded by efficient application of the Conventions. Such was not the case, since there had been no real progress from the 1949 position. When all was said and done, paragraph 3 did not guarantee the availability of a Protecting Power.

35. Mr. CONDORELLI (Italy) said that his delegation had voted in favour of article 5 because it had felt that the text, although certainly not the best, was simply the least bad that could be envisaged in the present circumstances.

36. Throughout the work that had preceded the Conference and even since the Conference had opened, his delegation had submitted proposals for the establishment of machinery for humanitarian protection that would be as automatic as possible, in order to ensure in all cases the availability of an impartial organization,

as could be seen from the Italian amendment to paragraph 3 (CDDH/I/50). It was a pity that that point of view had not prevailed, for whenever the Parties to a conflict refused their consent, humanitarian needs would remain unsatisfied.

37. Nevertheless, the compromise version approved by the Committee was acceptable in so far as, under article 5, paragraph 1, the system of Protecting Powers was mandatory, although subject to procedures requiring the consent of the Parties at all stages. In other words, a Party which, at any stage, refused to collaborate in the application of the system or hindered its operation would be committing an international crime.

38. Consequently, and in view of the procedure laid down in paragraph 3, the procedure prescribed in paragraph 4 for finding a substitute clearly presupposed that at least one of the Parties to the conflict had not fulfilled the obligations laid down in the preceding paragraphs.

39. Moreover, paragraph 4 empowered the ICRC to offer its services as a substitute, after due consultations with the Parties, but without the consent of the latter being necessary. It was only the exercise of the functions of substitute that was subject to acceptance by the Parties. Since, however, the latter were required to make every effort to facilitate the operation of a substitute, that provision was clearly breached if a Party to the conflict, having been obliged to accept the offer of the ICRC, did not allow the latter to carry out its functions. All that was admittedly theoretical for the ICRC had repeatedly stated that it had no intention whatsoever of intervening without the consent of the Parties concerned. Perhaps, however, it would one day deem it advisable to exercise that function in view of the particular nature of a conflict or the conduct of the Parties.

40. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that, in common with others, his delegation considered the provisions of article 5 to be of fundamental importance. The text prepared by Working Group A and approved by the Committee was the result of painstaking efforts.

41. His country's position was clear: the activities of the Protecting Power designated by one of the Parties to the conflict must be subject to the consent of the other Party. The same held good in regard to the substitute. In the absence of a Protecting Power, the ICRC or other organizations which offered all guarantees of impartiality and efficacy would not automatically intervene. They should not be empowered to exercise the functions of Protecting Power except with the consent of the interested Parties.

42. His delegation had therefore voted in favour of article 5 and thought that any attempt to amend the text would have untoward consequences. The fact that the Committee had approved it unanimously was encouraging and gave grounds for hope that, in the same spirit of collaboration, solutions would be found to the problems presented by the other articles.

43. Mr. de BRUCKER (Belgium) pointed out that, from the beginning of the work undertaken by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, his country had shown the keenest interest in everything pertaining to the supervision of the application of the four Geneva Conventions of 1949. During the present session of the Conference, it had joined in the efforts made to reaffirm the need for such supervision and to facilitate the implementation of the provisions to that end included in the Conventions, as was shown by amendment CDDH/I/67 and Add.1, which it had submitted jointly with the United Kingdom and Netherlands delegations. Article 5 - the result of painstaking efforts by Working Group A - which had been approved by the Committee, supplemented the too brief terms of Article 8 of the first three Conventions and Article 9 of the fourth Convention, and similarly reaffirmed and supplemented the terms of the first paragraph of Article 10 of the first three Conventions and the first paragraph of Article 11 of the fourth Convention. With respect to the Conventions, nothing concerning the other obligations incumbent on the Detaining Power or the duties incumbent on the Protecting Power, its means of supervision and the field of application of such supervision, was weakened or called in question in the present article 5 of draft Protocol I.

44. The sole purpose of article 5 was to work out a designation procedure and, in the event of a breakdown of the machinery, a procedure for good offices, and then for substitution. The opening sentence of paragraph 1 rightly reminded the Parties that it was their duty to have recourse to the system. The second sentence confirmed, perhaps a little too discreetly, the highly important nature of the duties assumed by the Protecting Power.

45. Paragraph 2 described the procedure whereby a Protecting Power was entrusted with its powers.

46. In cases where, despite the obligation provided for in paragraph 2, designation or acceptance was lacking from the outset, a good-offices procedure was provided in paragraph 3. The finality of that procedure was the same as that of the preceding paragraph; furthermore, a specifically designated administrator, namely, the ICRC, was provided for its implementation. That explicit reference to the ICRC gave that organization priority with respect to other bodies which, according to the text, also had the right, if necessary, to offer their good offices. The drafting of that part of a sentence relating to the possible intervention of such bodies could be improved.

47. Paragraph 4, which was based on the regrettable supposition of there not being a Protecting Power - which should, in future, occur only in exceptional circumstances - again brought the ICRC to the fore, in the capacity of a substitute, but allowing any other impartial and effective organization the right to intervene. The Belgian delegation understood that paragraph to mean, firstly, that reliance had to be placed on the wisdom of the ICRC in its consultations with the Parties regarding the offer it might make and, secondly, that the Parties were under an obligation to do their utmost to facilitate the task of the substitute.

48. Article 5 approved by the Committee should enable the 1949 Geneva Conventions to be promptly and satisfactorily implemented. The words "from the beginning ...", appearing in the first three paragraphs, and "without delay" appearing in paragraphs 2, 3 and 4, took on a special meaning in that respect.

49. The few rules thus adopted should help to strengthen the supervision of the observance of human rights during armed conflicts.

50. Mr. FREELAND (United Kingdom) said that it would be clear from his delegation's explanation of its vote on paragraph 4 bis that the United Kingdom would have liked article 5 to go further in the direction of ensuring that the functions of Protecting Powers would be exercised in all cases of armed conflict to which Protocol I would apply. His delegation recognized, however, that the text drafted by Working Group A - which was the result of a difficult compromise - went as far as it could in that direction in existing circumstances if the Protocol was to command that degree of adherence by the international community which should be the aim of all. It had therefore voted in favour of article 5, all the more readily in view of the inclusion in the text of certain elements to which it attached importance. Examples were the mandatory terms of the first sentence of paragraph 4 and the clear statement in paragraph 1 of the duty of the Parties to the conflict to make the system of Protecting Powers work. As the Belgian representative had pointed out in connexion with the second sentence of paragraph 1, **the reference** to the duty of the Protecting Powers to safeguard the interests of the Parties to the conflict should be understood as meaning not that Protecting Powers were to serve the narrow national interests of the Parties. It should be read as applying to the interests of the Parties in a wider humanitarian sense, that was to say as meaning primarily their interests in relation to the well-being of their nationals who were victims of the conflict in question. That had been the meaning which, in his delegation's view, attached to the same expression in Article 8 of the first three Geneva Conventions of 1949 and Article 9 of the fourth Convention.

51. Mr. LOPUSZANSKI (Poland) said that his delegation attached great importance to the operation of the system of designation and acceptance of Protecting Powers, which was one of the key provisions of humanitarian law.

52. His delegation had voted in favour of article 5 as drawn up by Working Group A. Although that article was not entirely to its satisfaction, it represented a genuine compromise between the principle of the protection of victims and that of the sovereignty of States, which gave grounds for hoping that the system of Protecting Powers would function satisfactorily on behalf of the victims of armed conflicts.

53. Mr. GIRARD (France) said that his country had been satisfied with the 1949 provisions and did not really see in what way they could be improved upon. His delegation's position on article 5 was based, firstly, on the principle of the universality and objectivity of international law - and in that respect the ICRC seemed to the French authorities to offer all the necessary guarantees of impartiality and efficacy, and further, on purely practical considerations, namely, that the fact that it had not been possible to apply the 1949 Conventions in certain cases was attributable to particular problems which could not be solved by provisions of conventions. Nevertheless, his delegation had made a point of participating in the preparation of the compromise which a number of delegations had thought necessary. During the debate in Working Group A, it had upheld the principle which it regarded as essential, namely, the consent of the Parties. If a Protecting Power or its substitute was imposed on a country, no positive results could be obtained and tension would inevitably be created between the country concerned - and its allies - and the substitute imposed on it.

54. Miss FAROUK (Tunisia) said that, while her delegation understood the concern of the delegations which would have welcomed more binding provisions and closer co-ordination between the United Nations and the Conference in order to ensure a more reliable system of protection, it had voted in favour of each of the paragraphs of article 5. It thought that the provisions of that article maintained a suitable balance between respect for the sovereignty of States and improvement of the machinery of humanitarian law. Moreover, international law was a form of law which was in process of being developed, and what might appear to represent considerable progress but was at present thought by some to be premature might be achieved in the not too distant future.

55. At all events, the aim of the Conference was to be effective and it was important that the text of draft Protocol I should be adopted by consensus.

56. In conclusion, she thanked the ICRC for its interpretation of paragraph 3 of Article 10 of the Conventions.

57. Mr. REFFTAUER (United States of America) said that his delegation had associated itself with the consensus on article 5, whose adoption by Committee I marked a significant step forward.

58. As he had pointed out at the time of the vote on paragraph 4 bis, at the twenty-seventh meeting (CDDH/I/SR.27), the United States delegation had always stressed the need for improving the system of designation and acceptance of the Protecting Power, in order to ensure that the law would be implemented.

59. The ideas in paragraphs 2, 3 and 4 of article 5, which had just been approved, concerning the designation of Protecting Powers had already been put forward in a preliminary form by the United States delegation at the first session of the Conference of Government Experts, held in June 1971 (document CE/COM.IV/2). At the second session, in 1972, the United States delegation had submitted a formal amendment refining the ideas that had been put forward in 1971 (document CE/COM.IV/5). Those efforts had culminated in the adoption of article 5, which set forth clearly the duty of Parties to secure the supervision and implementation of the Geneva Conventions of 1949 and Protocol I. A procedure was laid down by which the ICRC could offer its good offices to aid in the designation of Protecting Powers.

60. In addition, paragraph 4 of the article provided that Parties would accept an offer made by the ICRC or other organizations which offered all guarantees of impartiality and efficacy to act as a substitute for a Protecting Power. That was a new and crucial obligation, one that provided a final fallback to ensure that the system would work. His delegation did not see the need to include the second sentence of that paragraph but saw no great harm in its inclusion.

61. Finally, his delegation supported the statement of the representative of the ICRC that the specification of responsibilities in article 5 in no way interfered with the ICRC's right of initiative or undercut any of its rights and responsibilities, whether derived from the Geneva Conventions or elsewhere. He considered that so clear that it would not be necessary to insert a new article to that effect.

62. Mr. ABDUL-MALIK (Nigeria) said that his delegation had voted in favour of article 5 as a whole, but had abstained in the vote on paragraph 4. As it had stated in connexion with paragraph 4 bis, it considered that paragraph 4 did not go far enough, although it included a number of interesting points. It had been pointed out in Working Group A that the ICRC should be accorded priority in the



matter of humanitarian protection. His delegation considered, however, on the basis of the experience acquired in Africa by the Organisation of African Unity, that other organizations offering all guarantees of impartiality and efficacy should be authorized to carry out the role of Protecting Power.

63. His delegation was glad to note that in the text approved by the Committee certain terms with a colonialist connotation which had appeared in the original draft of the article had been deleted.

#### Article 7 - Meetings

64. The CHAIRMAN recalled that it had been decided that the Committee would proceed to vote on article 7 without opening a new discussion. Working Group A, having failed to reach agreement, had submitted a text to the Committee (CDDH/I/235/Rev.1). The Committee had to decide, first whether to retain the words "two thirds" or "a majority", then whether to retain the word "general" and, finally, whether to retain the words "of the Conventions and".

65. Mr. TORRES AVALOS (Argentine) said that, as was stated in the report of Working Group A, some delegations had urged the inclusion in the report of a statement to the effect that article 7 should be considered in relation to article 86 of draft Protocol I, in view of the close link between the two articles. There could indeed be some confusion between the idea of "general problems" and that of amendment, which was the subject of article 86, and it could lead to complications and misinterpretation. He suggested, therefore, that the vote on article 7 should be postponed.

66. The CHAIRMAN invited the Committee to vote on that proposal.

The Argentine proposal was rejected by 43 votes to 7, with 17 abstentions.

67. The CHAIRMAN invited the Committee to vote on article 7.

68. Mr. CONDORELLI (Italy) said that it would be preferable to vote first on the retention of the word "general", then on the question of the majority, and finally on retention of the words "of the Conventions and".

It was so agreed.

69. Mr. HUSSAIN (Pakistan) said that he would like his amendments (Article 7 bis - CDDH/I/27, and article 7 ter - CDDH/I/25) to be considered at the same time as amendments to article 79 bis (CDDH/I/241 and CDDH/I/267).

It was so agreed.

70. The CHAIRMAN invited the Committee to vote on the retention of the word "general".

The Committee decided, by 42 votes to 24, with 6 abstentions, to retain the word "general".

71. The CHAIRMAN invited the Committee to vote on the retention of the words "a majority".

The Committee decided, by 35 votes to 29, with 8 abstentions, to retain the words "a majority".

72. The CHAIRMAN invited the Committee to vote on the retention of the words "of the Conventions and".

The Committee decided, by 62 votes to none, with 10 abstentions, to retain the words "of the Conventions and".

73. The CHAIRMAN read out the following final text for article 7, it being understood that the amendments submitted by the Pakistan delegation would be considered later.

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

Article 7, as amended, was adopted by consensus<sup>1/</sup>

#### OTHER BUSINESS

74. The CHAIRMAN drew the Committee's attention to the note by the Secretary-General concerning the summary records of the Conference which appeared in one of the Conference Journals dated 17 March 1975 (CDDH/JC/216).

75. He suggested that, pending agreement with the Chairman of Committee III on articles 63 to 65 and 67 to 69 of draft Protocol I and on article 32 of draft Protocol II, consideration of articles 6 to 10 of draft Protocol II and 70 to 79 of draft Protocol I should be placed on the agenda of a forthcoming meeting of Committee I.

It was so agreed.

The meeting rose at 12.5 p.m.

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<sup>1/</sup> For the text of article 7 as adopted, see the report of Committee I (CDDH/219/Rev.1, para.86).

## SUMMARY RECORD OF THE TWENTY-NINTH MEETING

held on Monday, 17 March 1975, at 4.35 p.m.

Chairman: Mr. HAMBRØ (Norway)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)\*Report of Working Group B on articles 1 to 5 (CDDH/I/238)

1. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, said that the report (CDDH/I/238) had been adopted by consensus.

2. There were two points he wished to make with regard to the report. The first was that the square brackets in article 1, paragraph 1 should be removed, since it had now been agreed that the expression "armed forces" should be used in preference to either of the two other expressions considered originally; the last paragraph on page 2 of the report should therefore be deleted. In draft Protocol II, in so far as the armed forces of a High Contracting Party were concerned, the expression "armed forces" meant all the armed forces, including those that, under some national systems, might not be considered regular forces constituted in accordance with the national law. Under some national systems, according to the views expressed by a number of delegations, the expression "armed forces" would not include other governmental agencies the members of which might be armed. Examples of such agencies were the police, Customs and other similar bodies.

3. The second point related to article 4, the text of which had so far been adopted only in the English version. The French, Russian and Spanish versions would be available later.

Article 1 - Material field of application (CDDH/1, CDDH/56; CDDH/I/30) (concluded)

4. The CHAIRMAN said representatives would appreciate that all questions relating to articles 1, 2, 3, 4 and 5 of draft Protocol II had been fully considered in Working Group B. For that reason, he was not inviting discussion, but would be taking a vote on each article, if representatives so desired. Explanations of vote could, of course, be made for the summary record. He asked whether, in the light of the explanations given by the Chairman of Working Group B, article 1 could be adopted by consensus.

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\* Resumed from the twenty-fourth meeting.

5. Mr. PARTSCH (Federal Republic of Germany) said that in Working Group B his delegation had proposed an amendment to article 1 to add at the end of the article the words "within the meaning of paragraph 1". The purpose of that amendment was to ensure that article 1, paragraph 2 could not be interpreted as not being in conformity with paragraph 1. Since so many of the delegations that had participated in the drafting of article 1 did not share the concern of the delegation of the Federal Republic of Germany, he would not press for the inclusion of the words in question. Both paragraphs, read in context, must accordingly be interpreted as not conflicting either with each other or with the universal character of the Geneva Conventions of 1949. His delegation would not therefore stand in the way of a consensus.

6. Mr. CALERO-RODRIGUES (Brazil) said that the report of Working Group B mentioned the position adopted by the Brazilian delegation. His delegation had submitted a draft for a new article 2 entitled "Beginning and end of application" (CDDH/I/79) which was designed to make clear when the Protocol came into force. In the view of his delegation, it was important that that should be stated in order to avoid any confusion. That new article 2 had been withdrawn, but the amendment to paragraph 1 of article 1 submitted by the Brazilian delegation in Working Group B (see CDDH/I/238) would achieve the same purpose by making it clear that the Protocol was applicable only when the necessary conditions had been satisfied.

7. For the Brazilian delegation, the position was clear: draft Protocol II could not be applicable unless its applicability was recognized both by the High Contracting Party in whose territory the armed conflict was considered to exist, and by the adverse Party. It seemed reasonable to his delegation that that should be clearly stated in draft Protocol II, but as a compromise had already been reached with difficulty, they would not press their amendment to a vote. They wished it to be recorded in the summary record, however, that the Brazilian delegation considered that Protocol II could not be applicable unless the High Contracting Party was satisfied that the conditions mentioned in that Protocol had been met.

8. The CHAIRMAN said he wished to thank the Brazilian delegation for their constructive attitude.

9. Mr. CRISTESCU (Romania) said that the Romanian delegation had submitted an amendment (CDDH/I/30) to add to the end of paragraph 1 the words "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". A compromise had been reached, however, and he would not therefore press for a vote on the amendment. He supported the amendment to article 1 proposed by Brazil and asked that that be noted in the report of Working Group B.

10. Mr. OBRADOVIC (Yugoslavia), Chairman of Working Group B, said that the report merely stated that some delegations supported the Brazilian proposal. He took it that Romania did not wish to be mentioned explicitly.

11. The CHAIRMAN asked whether article 1, as drafted by Working Group B, could be adopted by consensus.

It was so agreed.<sup>1/</sup>

12. Mr. MILLER (Canada) said that, in his view, article 1 constituted a significant advance in humanitarian law: it added to the threshold already provided for in Article 3 common to the Conventions of 1949 in a practical manner.

13. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that the Soviet delegation had always supported draft Protocol II, and had actively promoted the adoption of article 1. According to the provisional summary record of the twenty-third meeting of the Committee (CDDH/I/23), held on 17 February 1975, the Austrian representative had remarked that "In 1912 the representative of the Imperial Russian Government had refused even to discuss the ICRC report on the role of the Red Cross in civil wars on the grounds that under Russian law, insurgents or revolutionaries could only be considered as criminals. Now, by a curious twist of history, the USSR representative was one of the most ardent advocates of draft Protocol II. That showed how the passage of time could bring about a more enlightened attitude to humanitarian problems". The representative of Austria would be aware that, in October 1917, the great socialist revolution had taken place, and that the Russian working class, under the leadership of the Communist Party and together with the peasants, had put an end to exploitation and had established a new social system; that event had determined the further development of the history of mankind. The Soviet Government, from its earliest beginnings, had adopted the principle of peace as the basis of its foreign policy. That was the most humane of all principles, and embodied a concern for man and the protection of his rights and interests; it also called for efforts to preserve humanity from the all-devouring flames of war. That explained the position of the Soviet delegation with regard to draft Protocol II, a position that was based on a policy of peace. His delegation wished to go on record as supporting draft Protocol II and the applicability of article 1 to civil war.

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<sup>1/</sup> For the text of article 1 as adopted, see the report of Committee I, (CDDH/219/Rev.1, para. 92).

14. Mr. BLOEMBERGEN (Netherlands) said that his delegation was prepared to accept the version of article 1 contained in the report of Working Group B, but in a mood of resignation rather than a spirit of compromise. Like many other delegations, the Netherlands delegation had hoped that a version of draft Protocol II could be worked out that would apply in the broadest possible way to non-international armed conflicts so as to protect the largest possible number of victims of such conflicts. His delegation had expected that, while containing only a minimum number of basic humanitarian requirements and at the same time safeguarding the sovereign interests of the High Contracting Parties, the narrow scope of application of the draft article presented by Working Group B could be avoided; that expectation had proved to be unfounded. A number of new criteria had been added to those in the ICRC draft (CDDH/1), and those new criteria offered every opportunity for subjective interpretation. His delegation could only hope that the High Contracting Parties would not interpret those criteria too narrowly.

15. Mr. SOOD (India) said that the Committee would be aware that the Indian delegation had initially stated that the ICRC draft of Protocol II was not acceptable to them. Since article 1 had been adopted by consensus, his delegation had not insisted on a vote, but had reserved the right to return to article 1 in plenary session. His delegation fully associated itself with the view of the delegations of Brazil and Romania that explicit recognition of the existence of an armed conflict was a prerequisite for the application of Protocol II to a conflict occurring on the territory of a High Contracting Party.

16. Mr. CRISTESCU (Romania) said that his delegation accepted the compromise that had been reached on article 1; he believed that the definition of a non-international armed conflict contained in that article implicitly recognized the need for the recognition of the armed conflict as such by the High Contracting Party on whose territory that conflict was considered to be occurring. That interpretation had been confirmed by practical experience, which had shown that only when such recognition had taken place could the effective application of humanitarian law be ensured. In the view of his delegation, by accepting the text of article 1 the Committee had adopted that interpretation.

17. Mr. AL-FALLOUJI (Iraq) said that the fact that his delegation had not wished to force a vote on article 1 did not mean that they were in agreement with it. The principles underlying that article, like those of draft Protocol II as a whole, were the subject of certain reservations on the part of the delegation of Iraq. In his view, both article 1 and the Protocol could cut both ways.

Subversive wars predominated at the present time, and intervention was not always obvious; subversion caused by foreigners through the intermediary of their pawns within the country was unfortunately the most frequent occurrence. The new nations were right to be concerned at attempts to conceal that type of aggression or interference with the sovereignty of States. Article 3 common to the Geneva Conventions of 1949 was not yet generally accepted or applied, so that it would have been realistic at least to take the necessary measures to ensure that it was made more effective. Although that Article had not been accepted by the majority of countries, they were now engaged in drafting some 40 additional articles. He could not regard that as development of humanitarian law; it was rather a complication. After the work that had been done from 1971 onwards, what was needed was a complete re-assessment to see what States were prepared to accept in 1975. They should not be in too great a hurry, however, otherwise there was a risk of a relapse in humanitarian law.

18. Unfortunately, draft Protocol II affected all the provisions of draft Protocol I. The international community was ready to accept a great deal in draft Protocol I, but its readiness to do so ran the risk of being paralysed by draft Protocol II. The Committee should not take premature decisions merely because it was tired. He was in favour of the idea, to which many delegations were sympathetic, that a complete reassessment of draft Protocol II should be undertaken, together with a reassessment of the appropriateness of continuing the debate in the name of international humanitarian law. He supported the Brazilian amendment to article 1 submitted to the Working Group.

19. The CHAIRMAN said that he assumed that the remarks of the representative of Iraq were to be taken as a statement and not as a proposal.

20. Mr. SUDIRDJO (Indonesia) said that his delegation in a spirit of conciliation and in the light of the remarks of the representatives of Brazil and Romania, had no objection to the adoption of article 1 of Protocol II by consensus. If the proposals of those delegations had been put to the vote, however, the Indonesian delegation would have voted for them. The standpoint of his delegation had already been made clear at an earlier plenary meeting of the Committee and in Working Group B and its sub-group.

21. Mr. PICTET (Switzerland) said that, in adopting article 1 by consensus, the Committee had laid the foundations for draft Protocol II as a whole. In his delegation's opinion, article 1 as now drafted fully satisfied its purpose: the definition of conflict respected fully the sovereignty of future Contracting Parties, and the conditions laid down for application of the draft Protocol would not raise the threshold of application to a prohibitive level. His delegation would not have been against even less

restrictive conditions, but in the light of the views expressed by the majority of delegations, it was prepared to support the conditions as drafted. It hoped, however, that the degree of protection afforded to victims would be in keeping with the agreed threshold of application. The conditions laid down in the article were also based on objective criteria, which would ensure that application of the Protocol in a given situation could not be delayed by problems of interpretation of the provisions of article 1.

22. He noted with satisfaction that the humanitarian standards already applicable to non-international armed conflicts would remain fully in force. Article 3 common to the Geneva Conventions of 1949 would apply to conflicts not covered by article 1. Paragraph 1 of that article stated that the existing conditions of application of common Article 3 would not be modified and paragraph 2 set forth only the situations in which the Protocol would not be applicable, since no other international instrument was mentioned.

23. As it stood, article 1 of draft Protocol II conformed with his delegation's views on the relations that should exist between the Geneva Conventions of 1949 and that Protocol.

24. Mr. CONDORELLI (Italy) said that, although his delegation had not wished to prevent article 1 being adopted by consensus, it was not really satisfied with the wording. It would have preferred a much broader definition covering more types of conflict, since humanitarian needs were the same in every kind of conflict. His delegation had, however, accepted the article in a spirit of conciliation and recognized that it had certain merits.

25. The first was, in short, the satisfactory way in which it settled the problem of the relationship between article 1 of draft Protocol II and Article 3 common to the Geneva Conventions of 1949. Paragraph 1 made it clear that the latter would not be modified by the draft Protocol and paragraph 2 confirmed his view that common Article 3 remained with its own field of application and was not affected by article 1 as a whole. The situations provided for in paragraph 2 did not fall within the scope of application of draft Protocol II since that Protocol did not regard them as armed conflicts, though that would clearly not exclude the possibility that some of them might come within the field of application of common Article 3.

26. Secondly, the conditions of application of draft Protocol II were established objectively: there was no room for any subjective assessment of the existence of an armed conflict within the meaning of the present article. The applicability of the Protocol would therefore in no way depend on recognition of the existence of the conflict by anyone: it would depend solely on the presence of the objective conditions required.



27. Mr. de BREUCKER (Belgium) said that Working Group B and the Committee had opted for a slightly broader field of application for draft Protocol II than that defined in the draft submitted by the ICRC, which faithfully covered every type of non international armed conflict. His delegation accepted the choice that had been made and believed that it paved the way for the inclusion in the draft Protocol of certain detailed provisions which some might otherwise have hesitated to accept.

28. Although the field of application of draft Protocol II went very little beyond that of Article 3 common to the Geneva Conventions of 1949 no provision introduced in the present text of article 1 could constitute an arbitrary or subjective prerequisite enabling a High Contracting Party to evade the application of the Protocol. In particular, words such as to enable them to carry out sustained and concerted military operations and to implement the present Protocol in paragraph 1 were objective and descriptive statements which ensured that the application of the present instrument would not be subject to any suspensive or delaying condition at the discretion of a State.

29. Paragraph 3 of the ICRC draft made it clear that the provisions of article 1 in no way modified the field of application of Article 3 common to the Geneva Conventions of 1949 which, being undefined, was very wide. A number of members of Working Group B on article 1 had likewise been anxious to preserve the full field of application of common Article 3. Their concern had resulted in paragraph 1 of article 1, which in effect developed and supplemented common Article 3 without modifying the existing conditions of application of that Article which were broader than the field of application defined by the draft Protocol. In other words, there would be no grounds in the future for claiming that the application of Article 3 was in any way restricted or affected by the material field of Protocol II as set forth in paragraph 1 of article 1 or by any factor concerning its determination.

30. The text accepted by the Committee explicitly avoided the application of draft Protocol II to situations of internal disturbances and tensions and isolated or sporadic acts of violence. Such situations could not be governed by the provisions of draft Protocol II since, in accordance with the provisions of paragraph 2 of article 1, they could not be considered as armed conflicts.

31. Mr. TORRES AVALOS (Argentina) said that, although his delegation would have preferred article 1 to have a more definite and clear field of application it was prepared in a spirit of compromise to accept the text submitted to the Committee for consideration.

32. Mr. BETTAUER (United States of America) said that his delegation strongly supported the ICRC text and would have preferred a lower threshold of application than that in the text adopted. The compromise submitted by Working Group B, however, was fair and reasonable, despite certain problems. The conditions it laid down for application of the draft Protocol to internal conflicts were reasonably objective and could be applied without great difficulty. It was in the interests of all sides in an internal conflict to respect basic humanitarian norms.

33. Mr. CLARK (Nigeria) said that his delegation's difficulties concerning draft Protocol II, as expressed in Working Group B, had not been wholly eliminated and he therefore reserved his position.

34. He wished to stress two points. First, nothing in article 1 or in draft Protocol II should be invoked by any State, organization or religious body as justifying interference in the internal affairs of any State. Secondly, in the hypothetical case of a conflict between armed forces of a High Contracting Party and dissident armed forces of that same Party, article 1 as now accepted by consensus should be interpreted without prejudice to the body of law available for dealing with situations of mutiny.

35. Mrs. CHEVALLIER (Holy See) said she was pleased to note that, despite reservations by some delegations, there was a general concern to ensure that the rules of humanitarian law should be as effective as possible. Her delegation hoped that all possible victims of armed conflict would be covered and that no category would be omitted. The task was to reaffirm and develop humanitarian law to the greatest extent possible. She therefore welcomed the acceptance by consensus of article 1, which established an acceptable basis for draft Protocol II.

36. Mr. AMIR-MOKRI (Iran) said that he had joined in the consensus on article 1 but would have voted in favour of the Brazilian amendment if it had been put to the vote.

37. Mr. KURDI (Saudi Arabia) said that he welcomed the acceptance of article 1, but his Government's position concerning draft Protocol II was governed by two fundamental principles. The first was Islamic law, which provided for full respect and protection for all human beings, regardless of colour or race. Secondly, the draft Protocol should strike a balance between the fullest possible human protection and respect for the sovereignty of States. His delegation hoped that draft Protocol II would reflect those two principles. It therefore refrained from commenting on article 1 and would have abstained in a vote.

38. Mr. PINEDA (Venezuela) said that his delegation would have abstained in a vote on article 1, not because of its substance, but because it was imprecise and lacked clarity. It was a basic article in the global legal philosophy of draft Protocol II and should therefore have been specially precise. Although his delegation had not shared in the consensus, it would accept article 1 as a common effort to reach a compromise. It would submit its views to a plenary meeting of the Conference.

39. Mr. GRAEFRATH (German Democratic Republic) said that his delegation accepted the consensus on article 1, although it would have preferred a much lower threshold. In accordance with its amendment (CDDH/I/88) it would have preferred a much wider field of application for draft Protocol II.

40. His delegation understood article 1 of draft Protocol II as supplementing Article 3 common to the Geneva Conventions of 1949 without modifying the latter's conditions of application. Thus, Article 3 did not apply to internal disturbances such as riots and isolated and sporadic acts of violence which were not armed conflicts as outlined in paragraph 2 of article 1 of draft Protocol II in full accordance with Article 3 common to the Geneva Conventions.

41. Mr. BANYIYEZAKO (Burundi) said that his delegation endorsed the statements of the representatives of Brazil, Romania, India, Iraq and Nigeria. His delegation feared that draft Protocol II might be used to interfere in the internal affairs of States, particularly the developing States. At the present stage he wished to reserve his delegation's position on the field of application of draft Protocol II. He would have abstained in a vote on article 1. Draft Protocol II should not contain any provision that might encourage and support rebellion against established authority. No Government should be required to recognize a rebel movement as a High Contracting Party or to treat rebels as prisoners of war but Governments could be required to treat rebels humanely. He was opposed to any implication that draft Protocol II contained detailed provisions for the protection of such rebel movements.

42. Mr. LONGVA (Norway) said that his delegation would have abstained in a vote on article 1 mainly for the reasons given by the Netherlands representative. In particular, his delegation objected to the assumption in article 1 that armed forces needed to exercise control of territory in order to be able to implement the provisions of draft Protocol II. That assumption had been rejected by Committee I at the first session of the Conference in respect of the national liberation movements and he could see no objective element which would make the application of draft Protocol II more difficult in such circumstances for dissident forces than the application of the whole of the 1949 Geneva Conventions and draft Protocol I by national liberation movements. He was forced to the

conclusion that the problem was not lack of material possibilities concerning the dissident armed forces concerned, but lack of political readiness on the part of certain delegations. In the light of the excellent statement by the USSR representative, he could only conclude that those delegations were over fifty years too late in relation to history.

43. Mr. JERBI (Libyan Arab Republic) and Mr. ZAFERA (Madagascar) said that they would have abstained in a vote on article 1.

Article 2 - Personal field of application (CDDH/1, CDDH/56)  
(concluded)

Article 2 was adopted by consensus.<sup>2/</sup>

44. Mrs. CHEVALLIER (Holy See) said that she was glad that article 2 of draft Protocol II had been adopted by consensus, but had doubts as to the progress which the text adopted in Working Group B constituted in relation to the ICRC text. She did not like the idea of distinguishing between various categories of victims of armed conflicts and regretted that the words "all persons, whether military or civilian, combatant or non-combatant" had been dropped, since in her view they made the scope of paragraph 1 wider than did the text adopted by Working Group B.

45. Mr. KURDI (Saudi Arabia) said that the statement which he had made in connexion with article 1 applied equally to articles 2, 3, 4 and 5.

46. The CHAIRMAN said that the Saudi Arabian representative's statement would be noted.

Article 3 - Legal status of the Parties to the conflict (CDDH/1, CDDH/56) (concluded)

Article 3 was adopted by consensus.<sup>3/</sup>

Article 4 - Non-intervention (CDDH/1, CDDH/56 CDDH/I/240)

47. Mr. CLARK (Nigeria) said that, if it was not too late, he would like to submit an amendment to article 4, paragraph 2.

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<sup>2/</sup> For the text of article 2 as adopted, see the report of Committee I (CDDH/219/Rev.1, para. 98).

<sup>3/</sup> For the text of article 3 as adopted, see the report of Committee I (CDDH/219/Rev.1, para. 103).

48. Mr. OBRADOVIC (Yugoslavia), Chairman of Working Group B, said that, in order to avoid delay in the adoption of article 4, it would be better if the Nigerian representative would submit his amendment to the Drafting Committee.

49. Mr. CLARK (Nigeria) said that his amendment was not likely to cause any difficulties. As paragraph 2 now stood, he did not think it could be interpreted as including religious bodies; yet, in the past, religious bodies had been guilty of intervention in the internal affairs of States, using the pretext that they were engaged in humanitarian activities. To cover such contingencies, he would like the words "or any other organization" to be inserted after the word "States" in paragraph 2.

50. Mr. OBRADOVIC (Yugoslavia), Chairman of Working Group B, drew attention to the fact that, despite Article 2, paragraph 7 of the Charter of the United Nations, the United Nations Security Council was empowered to take appropriate action in a situation which came within the domestic jurisdiction of the State, and that was the case of non-international conflicts when the Security Council considered that it endangered international peace and security. It therefore seemed to him that, in the Nigerian proposal relating to the prohibition of intervention by international organizations in an internal armed conflict, insufficient account was taken of that fact and that consequently the proposed wording should be made more precise.

51. The CHAIRMAN said that, although he was loth to accept an amendment at the present juncture, if he heard no objection, he was prepared to put the Nigerian amendment to the vote.

52. Mr. AL-FALLOUJI (Iraq) said that he had a great deal of sympathy for the Nigerian proposal, which he supported. The principle of sovereignty had to be respected, irrespective of whether the intervention in the affairs of a State was by States or organizations.

53. The CHAIRMAN suggested that the simplest solution might be to delete the words "by other States".

54. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that the Nigerian amendment could be interpreted as meaning not simply an organization but an organization of States. It could accordingly relate to interference by an organization like the United Nations, or by regional organizations which for military reasons might wish to interfere.

55. The CHAIRMAN said that he wished to avoid at all costs a situation in which an amendment was submitted at the present late stage and then sub-amendments were submitted to it. If that sort of thing happened, Committee I would never complete its work.

56. Mr. FREELAND (United Kingdom) said that it was his understanding that the Committee, when considering the reports of its Working Groups, would merely vote on the texts if necessary and otherwise confine itself to explanations of vote. It would consider only amendments appearing in those reports, any further amendments being a matter for a later stage. He therefore urged that the Committee should not consider any amendments submitted for the first time at the present meeting but leave them to be taken up later.

57. The CHAIRMAN asked the Nigerian representative if he would be satisfied if his views were reflected in the summary record or whether he still wished a vote to be taken on his proposed amendment.

58. Mr. CLARK (Nigeria) said that he was prepared to accept the Chairman's suggestion, although it did not fully satisfy him.

59. Mr. CARIAS (Honduras) said that his delegation was well aware of the delicate balance which existed between the wording adopted in the various articles and the relationship linking all of them. It would therefore find it difficult to take a position on the Nigerian proposal and the Chairman's suggestion that the words "by other States" might be deleted. While he understood the Nigerian representative's concern, he regretted that the question had been raised so late. It might be advisable to allow delegations time to consider how and where the Nigerian proposal could best be reflected. It appeared to refer both to organizations of States and to other organizations and he did not see how the deletion of the words "of other States" would meet the difficulty.

60. Mr. OBRADOVIĆ (Yugoslavia) Chairman of Working Group B, said that, while the text of article 4 in document CDDH/I/238 had been agreed by consensus in the Working Group, it had also been agreed that any delegation which might have new proposals to make could do so in the Committee on that understanding. The Nigerian representative was within his rights to do so. He believed that the representative of India also wished to submit a new proposal. Both could be submitted in writing, discussed and voted on at the next meeting.

61. Mrs. DARIIMAA (Mongolia) said that the concept of the Nigerian proposal was not clear; it could relate to international organizations like the United Nations and the specialized agencies, which could engage in humanitarian activities to assist the wounded and the sick. It could equally be interpreted as referring to groups of States such as the Organization of African Unity, or again to international organizations of a humanitarian character like the ICRC, which gave assistance to the victims of armed conflicts. There were yet other organizations whose members came from a single State, which could be used by that State to provide aid to the victims of armed conflicts.

62. She would like to hear more of the Nigerian representative's reasons for presenting the amendment and precisely what it was intended to cover.

63. Mr. SOOD (India) said that he had introduced a new amendment in Working Group B that afternoon. The amendment (CDDH/I/240) called for the insertion of a new paragraph 3 in article 4, reading:

"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."

64. The CHAIRMAN asked the Nigerian representative to submit his amendment in writing if he could not accept the Chairman's suggestion. The Committee could vote on the various amendments at the next meeting, and then consider the report by the Ad Hoc Working Group on the protection of journalists on dangerous missions (CDDH/I/237). He would also like delegations to consider what they wished to do after that. He suggested that it might be well to leave the discussion of the articles which Committee III had asked Committee I to consider until the end of the session and to consider next articles 6 - 10 of draft Protocol II and articles 70 - 79 of draft Protocol I. As they were not as difficult as the articles with which the Committee was now dealing, they might be referred directly to the drafting groups.

65. Mr. FREELAND (United Kingdom) said that he was not opposed to beginning the discussion of the report on the protection of journalists on dangerous missions the following day, but would not like a decision to be taken on it then. The subject had been considered in the United Nations over a long period and he would want to have the views of his Government on the report before adopting a position.

66. The CHAIRMAN said that note had been taken of that request.

67. Mr. MILLER (Canada) said that he considered it would be only fair to allow a short time for discussion of the new proposals before a vote was taken on them.

68. Mr. PINEDA (Venezuela) said that his delegation would make a formal proposal that the words "by other States" in article 4, paragraph 2 be deleted, as the Chairman had suggested.

69. Mr. AL-FALLOUJI (Iraq) said that he was concerned about the procedure which the Committee was proposing to adopt. His delegation, and he was sure that other small delegations were in the same position, had been unable to take part in the work of Working Group B. It had understood that it would be able to exercise its rights in the Committee, and that included the right to a full discussion of all the proposals. He accordingly hoped that the usual procedure would be followed in the Committee; everything should not be deferred for consideration in plenary.

70. The CHAIRMAN said that Working Group B had never met simultaneously with Committee I and that if delegations insisted on a full debate in Committee, then it was pointless to have a working group.

The meeting rose at 6.15 p.m.



SUMMARY RECORD OF THE THIRTIETH MEETING

held on Tuesday, 18 March 1975, at 10.20 a.m.

Chairman: Mr. HAMBERG (Norway)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Report of Working Group B on articles 1 to 5 (CDDH/I/238/Rev.1)  
(concluded)

Article 4 - Non-intervention (CDDH/1, CDDH/56; CDDH/I/239,  
CDDH/I/240) (concluded)

1. The CHAIRMAN invited the Committee to pursue its consideration of draft Protocol II, article 4, on which a consensus had been reached within Working Group B (CDDH/I/238/Rev.1). The text had been the subject of two amendments (CDDH/I/239 and CDDH/I/240).
2. Mr. CLARK (Nigeria) explained that the delegations of Iraq and Venezuela had joined his own delegation in sponsoring amendment CDDH/I/239, the purpose of which was to delete the words "by other States" from article 4, paragraph 2. After the Committee's discussion at the twenty-ninth meeting (CDDH/I/SR.29), there seemed to be no need to set out the grounds on which the three delegations had submitted that amendment.
3. Mr. SOOD (India) introduced the amendment submitted by his delegation (CDDH/I/240) and reminded the Committee that under the terms of article 4, paragraphs 1 and 2, no State had the right to intervene in an armed conflict taking place on the territory of a Contracting Party. It might none the less be wondered what would happen if, after an armed conflict had broken out within a State, external interference occurred in the form not of direct intervention, but of subversive activity conducted from outside. That was no hypothetical case but a situation which had already arisen and might arise again. In a non-international armed conflict subversive activities might be financed, backed with equipment or even directed from abroad. It therefore seemed essential to specify that if at any time external interference occurred in a non-international armed conflict, Protocol II would cease to apply. His delegation further took the view that in such an event Protocol I would not be applicable. Steps would have to be taken to put a stop to such external interference by appealing to the parties involved or by exerting an international means of pressure. He could not agree with those delegations which considered that there would be a vacuum if Protocol II ceased to apply. Protocol II should contain a mechanism for halting external interference, and it was in that spirit that his delegation had submitted its amendment.

4. Mr. MILLER (Canada) observed that his delegation had been opposed to the Nigerian delegation's suggestion to add the words "or any other organization" after "by other States". That suggestion had been unacceptable to the States Members of the United Nations, which were bound to do nothing which might affect their obligations under the terms of the Charter. The Nigerian delegation had then made another proposal which, although it left the text rather ambiguous, was none the less acceptable to his own delegation.

5. On the other hand his delegation could not accept the Indian amendment (CDDH/I/240). It understood the Indian delegation's concern, but considered that the terms used and the intention expressed might give rise to many problems. In its present form, the amendment suggested that the first two paragraphs were not being respected and served no purpose. The impact of those two paragraphs would be greatly weakened by the suggested words "Despite the foregoing". It should also be remembered that both in the United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (see United Nations General Assembly resolution 2625 (XXV)) and in the course of the Conference on Security and Co-operation in Europe, a distinction had been drawn between intervention and interference. The word "intervention" applied to subversive activities or the sending of mercenaries, whereas the word "interference" might mean demarches, or even simple protests. The latter term was therefore inappropriate to the case in hand. Nor was the term "as defined in article 1" appropriate, since that article contained no definition of a non-international armed conflict. Then again, the meaning of the word "violation" was also unclear, since there was no way of knowing whether it referred to a violation of the whole or a part of the Protocol.

6. The last part of the sentence, reading "which will cease to apply till such time as external interference is removed", could have serious consequences. A Contracting Party could claim that the adversary was receiving assistance from outside, and that Party would then be justified in saying that it would cease for its part to apply Protocol II. Did that mean that the adversary would likewise cease to apply the Protocol? If so, the victims of the conflict would find themselves without protection. It would, moreover, be difficult to determine at what moments interference began and ended, and at what point protection should again be afforded. Adoption of the Indian amendment would reduce the effect of paragraphs 1 and 2 of article 4 and weaken the application of Protocol II, since everything would depend, in the final analysis, on the subjective assessment of one of the Parties to the conflict. It was to be hoped that the Indian representative would not press for the adoption of his amendment.

7. Mr. CONDORELLI (Italy) said that he would raise no objections to amendment CDDH/I/239, with the proviso, however, that it could not be interpreted as preventing the United Nations and its specialized agencies, or, for that matter, any other organizations dedicated to the protection of human rights, from taking steps in defence of human rights, since that was one of their basic tasks.

8. With regard to the Indian amendment (CDDH/I/240), it was the Italian delegation's understanding that the delegation of India had wished to strengthen article 4 by providing for a kind of penalty in cases where the rule of non-interference in non-international armed conflicts was violated. It was necessary, however, to consider carefully the consequences that the adoption of such an amendment would entail: any direct or indirect intervention, no matter how slight, by a third State would thus bring about the suspension of the application of Protocol II. That would happen in every case, whether the foreign intervention was on the side of the government forces or on the side of the rebel forces. The results would be the same in all cases: there would meanwhile be no protection for humanitarian requirements. Prisoners could be tortured, the wounded and the sick could be left untended, women and children could be deprived of protection, and so forth. The consequences could be really dangerous and it was for that reason that his delegation would vote against the adoption of the Indian amendment.

9. Mr. WIELINGER (Austria) said that he could accept amendment CDDH/I/239, subject to the reservation which had just been expressed by the Italian representative.

10. He was opposed to the Indian amendment (CDDH/I/240) because in all the conflicts that had occurred over the last two centuries, Governments had always stated that there was outside interference. The new paragraph 3 proposed by India might serve as a pretext for failure to apply Protocol II, since it was difficult to establish whether or not there had been outside interference.

11. Mr. de BREUCKER (Belgium) said that his delegation had immediately realized, when considering draft Protocol II, that there was a risk of that instrument undermining the sovereignty of States. For that reason the Belgian delegation, while advocating the adoption of humanitarian standards designed to alleviate suffering as far as possible, had thought it essential to embody provisions which would protect the fundamental right of a State to defend its own sovereignty, both within and without, in the Protocol. It was, indeed, that preoccupation which explained the care which had been taken in framing paragraphs 1 and 2 of article 4.

12. The Nigerian delegation had at first proposed that mention should be made of "any other organization" in paragraph 2. It was not really clear whether the reference was to the United Nations, to non-governmental organizations or to those providing relief. The Belgian delegation would have been unable to accept that proposal. The new Nigerian amendment made the text more obscure, but the Belgian delegation would none the less be able to accept it.

13. The Indian delegation was also concerned with protecting the sovereignty of a State falling victim to a non-international armed conflict, and had for that reason submitted the amendment contained in document CDDH/I/240. The circumstances, however, that even very small-scale interference would be deemed to constitute a violation of Protocol II, and would enable one of the Parties to cease to apply the Protocol, presented serious dangers. What would then become of the wounded, the sick, the women and the children? In those circumstances, the victims of interference would be the very persons it was intended to protect. It would be difficult for a Conference whose purpose it was to protect the victims of a conflict to accept that idea. It was unthinkable that humanitarian principles might be put in question as a result of alleged or genuine interference in an armed conflict. It was the Conference's responsibility, when adopting a provision, to ensure that it did not tend to undermine the sovereignty of States; but the protection of victims remained the principal issue.

14. Mrs. DARIIMAA (Mongolia) said that, in her view, the amendment suggested by the Nigerian delegation at the twenty-ninth meeting was lacking in clarity and might give rise to unfortunate interpretations. The amendment, as newly drafted (CDDH/I/239) did not have the same shortcomings, and her delegation would support it.

15. Mr. HERNANDEZ (Uruguay) said he considered it essential that the two Protocols which the Conference was in process of drafting should be clear and precise, so that they could give rise to no mistaken interpretations. Deletion of the words "by other States" in article 4, paragraph 2 was not enough to resolve the problem that had arisen. It would be preferable to complete the existing text by embodying words which would help to make its meaning precise.

16. Mr. MURILLO RUBIERA (Spain) said that draft Protocol II was an instrument of international scope which, by taking internal conflicts into consideration, lent added strength to the Geneva Conventions of 1949. Having listened to the reasons given for the proposed change by the sponsors of amendment CDDH/I/239, he had been inclined to support that amendment, but on reflection he thought that deletion of the words "by other States" would detract from the precision of the original text, which in his view should therefore be retained.

17. With regard to the Indian amendment (CDDH/I/240), he could well understand that the text drafted by Working Group B (CDDH/I/238/Rev.1) might cause some concern to the delegation of India. But while the aim of the Indian amendment was to safeguard the independence of States in non-international conflicts, which he himself approved, it envisaged a break in the application of Protocol II which would leave victims of such conflicts without protection; and that he could not accept. His delegation therefore could not approve the amendment.

18. Mr. AMIR-MOKRI (Iran) said he had at first been inclined to support the oral amendment made at the twenty-ninth meeting by the delegation of Nigeria, but had observed that its formulation might lead to confusion. The comments of the representative of the Ukrainian Soviet Socialist Republic in fact showed that the latter's interpretation of the amendment did not correspond with the meaning given it by the delegation of Iran. On the other hand the amendment submitted by the delegations of Iraq, Nigeria and Venezuela (CDDH/I/239), which reverted to a suggestion made at the twenty-ninth meeting by the Chairman, eliminated any possibility of ambiguity and had the additional merit of shortening the text of article 4, paragraph 2. The delegation of Iran therefore supported that amendment.

19. Mr. GIRARD (France) said that he could well understand the concern caused to certain delegations by article 4 of draft Protocol II, which dealt with the possibilities of external interference or intervention, for his own country had during the course of its history been the victim of some of the situations described. His delegation would not oppose amendment CDDH/I/239. He did not clearly understand its purpose, but felt that the proposed deletion would have the advantage of aligning the text of paragraph 2 with that of paragraph 1.

20. As to the amendment of India (CDDH/I/240), the delegation of France also understood the concern which gave rise to it, namely the desire to prevent external interference in the affairs of a country and any violation of Protocol II. He believed that violations of an international instrument could only be committed by the parties to that instrument. He was not sure that an action by an entity which was not a party to the instrument could be considered as a violation of the Protocol or as an act of external interference. The Indian amendment raised a question of principle which it was difficult to ignore. Furthermore, the precise content of Protocol II was not yet known. In any case it was his belief that, even if an act of interference or of intervention occurred, the armed forces of the countries concerned would act in a manner compatible with the provisions of the Geneva Conventions of 1949.

National laws undoubtedly did not fall short of the minimum rules set by those Conventions. Since the two paragraphs of article 4 were very explicit, the delegation of India might perhaps find it advisable not to take a definite decision concerning its amendment until it had measured precisely the impact of the contents of Protocol II, and accordingly not to push for an adoption of its amendment before being fully aware of the final provisions of Protocol II. It might then find that the amendment served no purpose. Indeed, a pause for reflection might be useful to all the participants.

21. Mr. LOPUSZANSKI (Poland) supported amendment CDDH/I/239. Regarding the amendment of India (CDDH/I/240), he could understand the wish to prohibit external interference with greater severity. But the amendment was so drafted as to weaken the provisions of article 4 concerning the protection of victims of non-international conflicts. He could therefore not approve the Indian amendment.

22. Mr. de ICAZA (Mexico) said that his delegation strongly supported any provisions aimed at safeguarding the sovereignty of States. At the same time the deletion of the words "by other States", proposed in amendment CDDH/I/239 did not appear to him to reinforce the text of article 4, paragraph 2 in that respect. He even felt that it would be preferable to add a sentence to develop the idea which it was sought to express. As to the amendment of India, he considered that the idea which had inspired it was excellent; he, too, considered that any external interference in non-international armed conflict must be considered as a violation of Protocol II. Nevertheless, he felt it was impossible to envisage a break in the application of that Protocol. The text deserved to be more carefully studied. He therefore proposed that article 4 and the proposed amendments to it should be returned to the Working Group for further consideration.

23. The CHAIRMAN put the proposal of the representative of Mexico to the vote.

The proposal was rejected by 23 votes to 9, with 31 abstentions.

24. Mr. AGOES (Indonesia) said that he understood the spirit in which the delegation of India had presented its amendment, designed to add a new paragraph 3; but the text seemed to him incomplete in that it failed to indicate what would happen between the time when an act of external interference occurred and the time when it ceased. It might perhaps be opportune to insert a sentence saying that national legislation would be applied.

25. Mr. DIXIT (India) supported amendment CDDH/I/239, which had the merit of making the text of article 4, paragraph 2, clearer.

26. He had listened with interest to the comments made on amendment CDDH/I/240 submitted by his delegation. It was certainly heartening to see that, after the Second World War, the industrialized nations, in order to spare their peoples great sufferings, had determined never again to let war rage on their territory. Unfortunately, the situation was not the same for the developing countries, whether in Asia, Africa or Latin America; they had been the scene of international, national, and internal conflicts causing much bloodshed and for which their Governments were in no way responsible. Looking at the situation objectively, it had to be admitted that legal texts and the relevant Conventions were applied or were not applied. Excellent, extremely well-drafted legal texts existed, designed for the most worthy purposes, but their interpretation could vary according to subjective or objective criteria, those appearing objective to some being subjective to others. It was essential to be realistic. His delegation had participated actively in the work on draft Protocols I and II. It had been in favour of some provisions, and expressed doubts regarding others. It had welcomed the text prepared by Working Group B (CDDH/I/238/Rev.1), with certain reservations, and had accordingly, in submitting its amendment, endeavoured to improve on that text so that India might become a Party to Protocol II. The claim that his delegation's amendment would result in Governments being unable to ensure the protection of their nationals was based on false premises. All countries had laws and constitutions protecting the fundamental rights of man. The Indian Government, more than any other, was able to ensure the well-being and protection of its nationals in all respects. If a world government existed, there would perhaps be no reason to fear violations of national sovereignty; but things being what they were, developing countries were bent on protecting their sovereignty, and had set their hearts on working for their own development without external interference, in order to attain a situation similar to that which the European countries had achieved, not without effort and internal struggles. In answer to those delegations that asked what would happen during the period in which Protocol II ceased to be applied, he would say that the national law would of course prevail. Alluding to the various types of conflict which could occur, he referred to subversive acts directed from abroad, to conflicts in which financial aid, the supply of weapons, the foreign training of combatants, and even mercenaries came from abroad. It would be difficult to pretend that such action did not constitute interference in the internal affairs of a country. His delegation's amendment was designed solely to avoid interference of that kind and of any other kind. It could even have gone further by providing penal sanctions for all violations of Protocol II. The fears that such a provision might arouse would be groundless, since there would be no sanction unless there had been violation.

27. He then turned to the various observations which had been made on the legal aspects of the question.

28. Some representatives had drawn a distinction between "intervention" and "interference". His delegation was indeed speaking of interference. It was, however, prepared to accept amendments of form, provided they were desirable, or, if necessary, the return of the text to the Working Group.

29. It had also been said that article 1 did not contain a definition of a non-international conflict. He pointed out, first of all, that a definition could be affirmative or negative, and that article 1 did in fact state that Protocol II applied to a non-international conflict.

30. One delegation had asked what was to be understood by "violation". Clearly, if a law that was intended to be respected had not been adhered to, it had been violated.

31. Others had said that it was difficult to decide at what points interference began and terminated. That was also true in the context of paragraph 2. The facts themselves determined the existence or otherwise of a violation.

32. Again, others had spoken of the humanitarian aspect of the question. In Working Group B, he had proposed in that connexion, the insertion of the words "on condition that national law be applied", but that proposal had not been accepted. Yet that text was applicable to situations not covered by draft Protocol I, and there were situations in which Protocol I itself would not be applicable. Protocol II would then apply. In other situations the law of the land would continue to apply.

33. He repeated that his amendment would indirectly prove a deterrent, by discouraging external interference.

34. His delegation had preferred not to speak of a "suspension of the Protocol", but rather to use the words "cease to apply". It hoped that its amendment would thereby be conducive to an increasingly broad recognition and application of Protocol II.

35. The representative of France had suggested that the Indian delegation should not insist on amendment CDDH/I/240 being put to the vote for the moment, but should wait until draft Protocol II as a whole had been finalized. His delegation would be prepared to accept that suggestion on condition that the text of its amendment were placed between square brackets for subsequent consideration.

36. The CHAIRMAN put the proposed amendment to draft Protocol II, article 4, paragraph 2, as submitted by Iraq, Nigeria and Venezuela (CDDH/I/239), to the vote.

The amendment was adopted by 50 votes to none, with 16 abstentions.



37. The CHAIRMAN indicated that the Committee should proceed to a vote on the Indian amendment.

38. Mr. AL-FALLOUJI (Iraq), speaking on a point of order, pointed out that the French delegation had suggested that any decision on the Indian amendment should be temporarily postponed. That suggestion had been accepted by the Indian delegation and was now supported by Iraq. The normal procedure would be for the Committee first to take a decision on that suggestion.

39. The CHAIRMAN asked the Indian delegation if it wished to withdraw its amendment on the understanding that it would submit it again later.

40. Mr. DIXIT (India) said he did not wish to withdraw his amendment; but in view of the suggestion made by the French delegation that his proposal should be considered later, when all the provisions of Protocol II had been adopted, he wished again to propose that, at the present stage, the text should be placed between square brackets, which would indicate that no decision had been taken on it.

41. Mr. de ICAZA (Mexico) said that he, too, supported the suggestion of the French delegation to postpone consideration of and voting on the Indian amendment (CDDH/I/240). He thought that the text could provisionally be placed in square brackets.

42. The CHAIRMAN said he regretted that, according to the rules of procedure, he could not accede to the request of the representative of India, who, however, was entitled as a matter of course to withdraw his amendment and to submit it again later.

43. Mr. BETTAUER (United States of America) said that he agreed with the Chairman on the point of procedure. Either the Indian proposal could be voted upon immediately or, in view of the suggestion made by the French delegation, the Indian delegation might be asked to withdraw it for the time being in order to submit it again later. His delegation was unable to agree that the text should provisionally be placed between square brackets.

44. The CHAIRMAN explained to the representative of India that if the amendment was voted upon immediately and rejected, the Indian delegation would have to obtain a two-thirds majority in order to be able to submit it again; whereas if it withdrew its proposal forthwith it would be free to submit it again later. Moreover, the report could state that the Indian delegation had no intention of abandoning its text and had withdrawn it only on the understanding that it could submit it again later.

45. Mr. MILLER (Canada) pointed out that, prior to the debate on procedure, the Chairman had already suggested that the Indian amendment should be put to the vote.

46. Mr. DIXIT (India) said that he was sorry to contradict the representative of Canada on that point, but that he had asked for the floor even before the Chairman had finished speaking.

47. The CHAIRMAN assured the representatives of Canada and of India that their remarks would be included in the summary record of the meeting.

48. Mr. AL-FALLOUJI (Iraq) said that he wished to express his opposition concerning the way in which the vote had been requested, and to support the position of India on the matter.

49. The CHAIRMAN, in order to close the debate on procedure, asked the representative of India if he would accept the method he had outlined, namely to postpone the decision concerning the Indian amendment and to mention in the report of Committee I the condition attached to its provisional withdrawal.

50. Mr. DIXIT (India) agreed to the procedure suggested by the Chairman.

That procedure was adopted.

51. Mr. de ICAZA (Mexico), speaking on a point of order, requested that the explanation which he had given at the beginning of the meeting, when he had asked that article 4 should be referred back to the Working Group, should appear in the summary record.

52. In explanation of his vote he said that, in the opinion of his delegation, the greatest possible number of guarantees should be included in draft Protocol II in order to avoid all interference in the affairs of States. His delegation did not think, however, that the text of article 4, paragraph 2 would be strengthened by the deletion of the words "by other States", and that was why he had abstained from voting on amendment CDDH/I/239.

53. With regard to the Indian amendment (CDDH/I/240), his delegation, while supporting the idea that any interference should be considered a violation of the Protocol, did not think it feasible to envisage the possibility that the Protocol would cease to apply.

Article 4, as amended, was adopted by consensus<sup>1/</sup>

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<sup>1/</sup> For the text of article 4, as adopted, see the report of Committee I (CDDH/219/Rev.1, para. 111).

Article 5 - Rights and duties of the Parties to the conflict  
(CDDH/I, CDDH/56; CDDH/I/35, CDDH/I/216) (concluded)

54. The CHAIRMAN asked the Committee whether the text of article 5 submitted by Working Group B (CDDH/I/238/Rev.1) could be adopted by consensus.

It was so agreed.<sup>2/</sup>

55. Mr. SOOD (India) pointed out that if the passage reading "the rights and duties which derive from the present Protocol apply equally to all the Parties to the conflict" (CDDH/I/35) was insisted upon, great caution should be exercised in determining who were the Parties to the conflict, since, if certain specific duties were incumbent on those Parties, it might happen that the Party to the conflict which was opposed to a Government did not have the material or financial means, or the technical infrastructure, necessary for the application of Protocol II.

56. Mr. de ICAZA (Mexico) said that a capital letter had wrongly been used in the expression "Parties to the conflict" in the text of article 5. He hoped that the Drafting Committee would take care to correct mistakes of that kind.

57. Mr. OBRADOVIĆ, Chairman of Working Group B, said that that was a mere typographical error.

58. With regard to the question of titles mentioned in document CDDH/I/216 by the Philippine delegation, he added that in the Working Group it had been decided that the matter would be submitted to the Committee.

59. The CHAIRMAN suggested that the question of titles - which was of interest to all the Committees - should be referred to the Drafting Committee.

60. Mr. GLORIA (Philippines) supported the Chairman's suggestion.

61. Mr. BALKEN (Federal Republic of Germany) proposed that the Committee should ask the Drafting Committee to take responsibility for the arrangement of the different articles also.

62. Mr. KURDI (Saudi Arabia) recalled the statement he had made at the twenty-ninth meeting (CDDH/I/SR.29) concerning article 1 of draft Protocol II, and expressed the hope that that statement would be taken into account in connexion with that article which had been adopted by consensus.

The meeting rose at 12.35 p.m.

<sup>2/</sup> For the text of article 5, as adopted, see the report of Committee I, (CDDH/219/Rev.1, para. 116).



## SUMMARY RECORD OF THE THIRTY FIRST MEETING

held on Tuesday, 18 March 1975, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)\*Report of the Ad hoc Working Group on the Protection of Journalists Engaged in Dangerous Missions (CDDH/I/237 and Corr.1, CDDH/I/242)

1. The CHAIRMAN announced that Mr. Sperduti (Italy), Chairman of the Ad Hoc Working Group, had been detained in Italy by his professional duties and invited the representative of France to introduce the report of the Working Group (CDDH/I/237 and Corr.1).
2. Mr. GIRARD (France), introducing the report of the Ad Hoc Working Group on the Protection of Journalists Engaged in Dangerous Missions (CDDH/I/237 and Corr.1), said that the Group had drafted a new article (ibid., annex I) to be inserted after article 69 of draft Protocol I. The new article conferred on journalists engaged in dangerous professional missions the protection provided for civilians by draft Protocol I, article 45, paragraph 1 and provided that such journalists could obtain an identity card on the lines of the model annexed to the report (ibid., annex III). With regard to the information to be included in that card, some delegations had raised objections of principle to a reference to the bearer's religion, whereas others had attached great importance to such a reference. Each Government should be free to take whatever decision it thought fit on that point and the Group had therefore agreed that the mention of the bearer's religion should be optional.
3. The Group had drawn up a draft resolution for submission to the plenary, by the terms of which the Conference would adopt the new article on the protection of journalists engaged in dangerous professional missions in areas of armed conflict and request the Secretary-General of the Conference to transmit the text of the resolution to the Secretary-General of the United Nations.
4. The three documents drafted by the Working Group, namely the draft of the new article, the draft resolution and the model identity card for journalists engaged in dangerous professional missions, had been adopted unanimously.

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\*/ Resumed from the twenty-eighth meeting.

5. Mr. BETTAUER (United States of America) said he fully supported the proposed article and the model identity card drawn up by the Working Group. Those documents represented a compromise solution which should meet with general approval.

6. With regard to the draft resolution in annex II on the adoption of the new article on the protection of journalists engaged in dangerous professional missions, to be submitted to the plenary Conference, there had been an exchange of views in the Working Group and the general opinion had been that if, towards the end of the session, it became apparent that the Conference would not be able to adopt other articles of the two draft Protocols, then that draft resolution should not be submitted to the plenary. In that case, another draft resolution would be submitted to the plenary, in which the Diplomatic Conference would take note of the work accomplished by Committee I and request the Secretary-General of the Conference to report on that work to the United Nations Secretary-General and to transmit to him the full report of the Ad Hoc Working Group, including the original draft resolution appearing in annex II, which the Conference would in that case adopt at its third session.

7. Mr. HERNANDEZ (Uruguay) suggested that, in the journalists' own interests, the inclusion of fingerprints on the model identity card for journalists engaged in dangerous missions should be compulsory rather than optional. Among other things, that would enable journalists whose identity card had been lost or stolen to prove that their card did in fact belong to them.

8. Miss EMARA (Arab Republic of Egypt) and Mr. AMIR-MOKRI (Iran) said they supported the documents drafted by the Ad Hoc Working Group.

9. Mr. MILLER (Canada) pointed out that his delegation's name had been omitted from the third paragraph on the first page of the report of the Ad Hoc Working Group. The first sentence of that paragraph should read: "... prepared by the delegations of France, Canada and the United States of America, respectively".

10. He welcomed the fact that the Working Group had succeeded in drawing up a satisfactory draft article on the protection of journalists engaged in dangerous professional missions in areas of armed conflict. For the first time, journalists who undertook dangerous missions of that kind would be able to do so in the knowledge that their status was expressly recognized and that they would be treated as civilians even when captured.

11. The inclusion of the new article in draft Protocol I would be a quicker and more effective means of ensuring the necessary protection for journalists engaged in dangerous professional missions than the drafting of a separate convention. Moreover, it would have the practical advantage of making the journalists in question more familiar with the Geneva Conventions and the Protocols.

12. Mr. ABDUL-MALIK (Nigeria) proposed that the words "if possible" should be omitted from the first paragraph of the "remarks" on the draft model identity card (CDDH/I/237/Corr.1). Journalists could be more certain of protection if the card had to be in the language of the area in which the armed conflict was taking place.

13. Mr. BLOEMBERGEN (Netherlands) said he wondered whether the use of the words "Journalists ... shall be considered as civilians (CDDH/I/237, annex I), would not give the impression that they were not in fact civilians. It might be better to reword the draft article so that it read: Journalists who are engaged in dangerous professional missions in areas of armed conflict shall, as civilians within the meaning of paragraph 1 of article 45, be protected under the Conventions ... .

14. Mrs. DARIIMAA (Mongolia) said she fully supported the report of the Ad Hoc Working Group (CDDH/I/237 and Corr.1).

15. Referring to the Uruguayan representative's proposal that the inclusion of fingerprints in the identity card for journalists engaged in dangerous professional missions should be made compulsory, she pointed out that it was generally criminals who had their fingerprints taken. She was therefore against the proposal.

16. Mr. AL-FALLOUJI (Iraq) congratulated the Ad Hoc Working Group on its excellent work.

17. He thought that the Netherlands representative's proposal should be considered and that the Nigerian representative's proposal was very sound.

18. Mr. BALKEN (Federal Republic of Germany) said he hoped that the Committee would refrain from taking a final decision immediately on the Ad Hoc Working Group's report, which delegations had received only the previous evening. There had not been time for instructions to be received from Governments. The question was an important one and called for further reflection.

19. Mr. de BREUCKER (Belgium) said he was glad that the Ad Hoc Working Group had reached unanimous agreement on a satisfactory system for the protection of journalists engaged in dangerous professional missions. With regard to the wording of the new draft article, he too thought that the expression "... shall be considered as civilians" should be amended, for the existing text gave the impression that journalists had not been regarded as civilians in the past.

20. In the second sentence of the draft article, the inclusion of the words "without prejudice to the right of war correspondents accredited to the armed forces to the status provided under Article 4.A (4) of the Third Convention" was well advised, for the question had not been settled satisfactorily in the draft convention submitted to the United Nations General Assembly (see United Nations document A/9643, annex I).

21. He agreed that the Secretary-General of the Conference should submit a report on the progress made on the subject to the Secretary-General of the United Nations, pending the adoption of the new draft article by the plenary at an appropriate moment.

22. Mr. REIMANN (Switzerland) said he fully supported the United States representative's proposal with regard to the course to be adopted in the future. He, too, considered that the Committee should not recommend the adoption by the Conference of the new article on journalists engaged in dangerous professional missions, if the Conference was not in a position to adopt the other articles of the two Protocols; in that case, Committee I should recommend that the plenary adopt a draft resolution on the lines indicated by the United States representative, rather than the draft resolution in annex II of the Ad Hoc Working Group's report.

23. Mr. PINEDA (Venezuela) said that the Ad Hoc Working Group had produced an important document, which had his delegation's approval. The purpose was to protect and safeguard the rights of journalists in particular situations in the course of dangerous professional missions. Like the Uruguayan representative, he considered that fingerprints were the best system of identification, and fingerprinting could not be regarded as being in any way derogatory to journalists. If it would give rise to fewer difficulties, it might even be desirable to establish a world centre for recording the fingerprints of all journalists sent on dangerous missions.

24. The better to ensure the safety and protection, at a distance, of journalists engaged in dangerous professional missions, it could be arranged that they should wear special armbands of the kind used by the Red Cross and by medical personnel. Draft Protocol I would thereby be improved, since the journalists in question would enjoy fuller protection, being visible from a distance.



25. Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic) said that the text had been discussed at length in the Ad Hoc Working Group. He therefore proposed that it be sent to the Drafting Committee, which would improve the drafting and ensure the concordance of the different language versions.

26. Although certain points had arisen during the discussions, such as compulsory fingerprinting and the mention of religion, the members of the Ad Hoc Working Group had unanimously accepted the compromise text in CDDH/I/237 and Corr.1. Consequently, there was no need to take up the suggestions made in the Committee by various speakers, since the accepted text took account of differences of legislation and of opinion.

27. The Nigerian representative's suggestion that the words "if possible" in annex III (CDDH/I/237/Corr.1), should be deleted was also unacceptable, because the Working Group had considered it highly unlikely that a country would be able to issue cards in all the languages of the world. For that reason, the Working Group had preferred the present wording "... if possible, in the language of the region in which the armed conflict is taking place".

28. He could see no point in the Netherlands representative's suggestion, which merely made the sentence more complicated, without altering the substance.

29. Mr. GIRARD (France) said that it was quite true that the words "if possible" had been maintained for practical reasons. Nevertheless, it was to the journalist's own interests that use could be made of his document, as certain representatives had pointed out.

30. The use in the proposed new article of the word "civilians" meant that journalists engaged in dangerous professional missions would enjoy protection "within the meaning of paragraph 1 of article 45". If the Committee found another form of words, he would agree to amend the proposed text, provided that the new wording took into account the discussions in the Ad Hoc Working Group.

31. Several representatives had expressed doubts about the value of the identity card. In that connexion, reference should be made to the Geneva Conventions of 1949, since that was the solution chosen for war correspondents and it was also the one applicable in the present case. The armlet suggestion was interesting, but there was no provision to that effect in Article 4.A (4) of the third Geneva Convention of 1949. It would therefore be difficult, if not impossible, to afford journalists engaged in dangerous professional missions a wider degree of protection than that which war correspondents already enjoyed.

32. He did not think that any useful purpose would be served by entering into details of procedure, but he firmly hoped that the plenary would be in a position to adopt many articles at the end of the present session.

33. Mr. SOOD (India) said he shared the concern of the representative of Nigeria. It was in the interest both of Governments and of journalists that the latter should carry a document which would be intelligible in the area where the armed conflict was taking place.

34. With regard to religion, he considered that protection should be given to both the physical and the psychical well-being of journalists. For religious reasons, certain countries had dietary habits which should be respected without causing unnecessary trouble. He would accordingly recommend that religion should be mentioned on journalists' identity cards.

35. Identity cards should enable the authorities to give as much protection as possible to journalists on dangerous professional missions. For that reason the words "and to enable them to grant him the requisite protection" should be added after the words "to assist in his identification" at the end of the "Notice" in the model identity card.

36. Mr. HERNANDEZ (Uruguay) said that his proposal was not intended to be pessimistic; on the contrary, its purpose was to provide a greater degree of protection to journalists on dangerous professional missions.

37. Mr. MURILLO RUBIERA (Spain) said that he opposed neither the text nor the draft resolution proposed by the Ad Hoc Working Group, which his delegation approved in substance. But he would not be able to take part in the vote until he had received instructions from his Government about the conditions for the identification of journalists. All Governments should be required to accept arrangements for identification on a basis of equality and reciprocity.

38. He supported those representatives who considered that fingerprinting was the most effective method of identification; if the object of an identity card was to provide a journalist with maximum protection, it should bear his fingerprints. Moreover, identity cards should be translated into the language of the country where a journalist was carrying out his dangerous mission. It would be preferable, however, to standardize identity cards so that the authorities and the military of every country would be able to recognize it and ensure the safety of its holder.

39. After so many years of effort it was important to achieve tangible results in the matter of journalists on dangerous professional missions.

40. Mr. BETTAUER (United States of America) said he agreed with the substance of the comments made by the representatives of the Byelorussian Soviet Socialist Republic and of France. He wished to provide some additional explanations on the points which were causing most difficulty to Governments.

41. The Ad Hoc Working Group had drawn up a compromise text which represented a carefully negotiated balance that took account of the various opinions expressed. The United Nations had not arrived at a text acceptable to his delegation after five years of discussion in that forum. In his delegation's view, the text submitted by the United Nations Secretary-General in document A/9643 entitled "Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict" raised several difficulties. Although the Ad Hoc Working Group had diverged greatly from the previous draft it had submitted a text (CDDH/I/237 and Corr. 1) which retained the main element of an identity card and was an acceptable compromise.

42. He agreed with the French representative that the reference to article 45, paragraph 1, after the words "shall be considered" in the proposed new article in draft Protocol I was quite clear: it emphasized that journalists on a dangerous professional mission should be treated as civilians.

43. As to the question whether Governments were entitled to issue identity cards, he pointed out that the draft which had been before the United Nations for five years contained an article 6 which provided for issuance of identity cards by Governments. Surely, if Governments could issue passports, they could also issue identity cards.

44. Referring to the question of how the military would be able to recognize and respect such an identity card if it was issued by another Government or Party to the conflict, he said that if the card formed part of an annex to draft Protocol I it would be widely circulated among the Parties concerned, in accordance with the provisions of the Protocol. Moreover, the identity card in the Working Group's draft was based on the model appearing in annex IV to the third Geneva Convention of 1949; so far as the number of languages was concerned, it was based on other identity cards issued to war correspondents. Certain changes had been made to clarify the treatment of journalists in case of capture, as, for instance, by including the sentence reading "The holder is entitled to be treated as a civilian under the Geneva Conventions of 12 August 1949, and their additional Protocol I."

45. The United States delegation did not favour the adoption of an armlet, because that question had caused difficulties when a draft Convention was submitted to the General Assembly. It was necessary to distinguish between civilian population and combatants and not to make civilians the object of attack. Those principles had been discussed and adopted in Committee III of the Diplomatic Conference and the rules adopted by that Committee had been inspired by the United Nations. Providing a distinction by an arm band to be worn by different persons protected as civilians could only result in a weakening of the protection.

46. Mr. GREEN (Canada) said that the text submitted by the Ad Hoc Working Group was acceptable. In his view, the format of the identity card should be small, so that it would fit into a shirt pocket. It would therefore be unrealistic to decide that the card would be translated into many languages.

47. With regard to the Indian representative's proposal that the words "to enable them to grant him the necessary protection" should be added at the end of the "Notice", he pointed out that the idea was already to be found in the second sentence of the proposed new article of draft Protocol I (CDDH/I/237, annex I).

48. Since a journalist on a dangerous professional mission was a civilian, he thought that the words "shall be considered as" should be replaced by the word "are" in the proposed new article. As to fingerprints, it seemed rather unlikely that soldiers in the front line would be able to "read" them. If they were made compulsory, arrangements would have to be made for an imprint of the whole hand to appear in the identity card. The regulations already existing in every country for the issue of visas should also be applied in connexion with the issue of identity cards to journalists.

49. Mr. PINEDA (Venezuela) drew attention to United Nations General Assembly, resolution 3245 (XXIX) requesting that measures should be taken to ensure the protection of journalists. Since the purpose of the present Conference was to codify and develop humanitarian law, the text proposed in document CDDH/I/237 and Corr.1 should be revised and supplemented. While his delegation understood the spirit in which the Ad Hoc Working Group had reached a compromise, it felt bound to stress the need to seek a procedure whereby journalists engaged in dangerous professional missions could be better identified at a distance. It accordingly asked that the Committee should not take an immediate decision on the text of the Working Group's report (CDDH/I/237 and Corr.1). As in the case of medical and religious personnel, journalists ought to be distinguished by some outward sign, which would make it impossible for it to be claimed, after the event, that there was nothing to indicate

that those concerned were professional journalists. Furthermore, he supported the proposal of the representative of India that the religion of the holder of an identity card should be indicated on the card, since religion constituted both a material and a moral source which could reinforce the desired protection.

50. Turning to the Spanish text of the proposed new article (CDDH/I/237 and Corr.1, annex I) he asked that the words "o en que" in the penultimate line should be replaced by "o donde".

51. Mr. CARNAUBA (Brazil) associated his delegation with the congratulations addressed to the Ad Hoc Working Group on the preparation of its report (CDDH/I/237 and Corr.1). He pointed out, however, that, while his delegation did not wish in any way to criticize the results of that work, it would have liked the report to provide some explanation of the principles by which the Working Group had been guided in carrying out its task. That omission could no doubt be easily rectified and it seemed that the Committee would be able to reply to the request made by the United Nations General Assembly in resolution 3245 (XXIX).

52. He shared the concern expressed by the representatives of the Federal Republic of Germany and Switzerland regarding the way in which the Committee should conduct its discussion and report on the results to the United Nations Secretary-General. He did not think it was necessary for a resolution to be adopted in plenary meeting; it would be sufficient to draw up a text for transmission to the United Nations.

53. The CHAIRMAN said that the discussion on the present item was now closed and the decision would be deferred until the end of the week. He asked the members of the Committee not to forget that the proposals made in document CDDH/I/237 and Corr.1 represented a balanced compromise and that it would be dangerous to make any important changes. He proposed that the time limit fixed for the submission of amendments to that text should be 12 noon on Thursday, 20 March.

It was so agreed.

#### ORGANIZATION OF WORK

54. The CHAIRMAN said that the next item on the agenda was the consideration of Part II, articles 6 to 10 of draft Protocol II. The Committee might first hold a general discussion and then refer that part to Working Group B, resuming its consideration later in the light of the work of the Working Group. In his opinion, that would entail loss of time and two other possibilities might be considered: either to hold the discussion in the Committee and then

instruct Working Group B to draw up the definitive text, or to refer the question forthwith to Working Group B, in which all members of the Committee could participate, and then take a final decision in plenary meeting. He himself favoured the latter course.

55. Mr. BETTAUER (United States of America) said that he found the Chairman's proposal acceptable. If it was adopted, the Committee would not hold its meetings at the same time as the Working Group. Moreover, it would be advisable to fix a time limit for the submission of amendments, which would be considered by the Working Group, so that no new amendments could be submitted at the Committee's plenary meeting when the vote was taken. That would not mean that some amendments, after being considered in Working Group B, could not be voted on also at the plenary meeting of the Committee if they had not been accepted in the Working Group's text.

56. The CHAIRMAN suggested that 12 noon on Friday, 21 March, should be the time-limit for the submission of amendments with regard to articles 6 to 10 of draft Protocol II. Working Group B could begin to study them on the two preceding days. At its plenary meeting on Friday, 21 March, the Committee would take decisions on the question of the protection of journalists engaged in dangerous professional missions, and, if it had time and if Working Group B had completed its work, it could begin consideration of articles 6 to 10 of draft Protocol II.

57. Mrs. DARIIMAA (Mongolia) said that she thought that the items on which no agreement was reached in Working Group B should be placed in brackets in the report.

58. The delegations of some of the Asian and African countries were not in a position to participate in the discussions in Working Group B and were only able to attend the Committee's plenary meetings; perhaps the members of such delegations could be allowed to submit amendments in plenary meeting.

59. The CHAIRMAN pointed out that the meetings of Working Group B would be open to all members of the Committee and would thus be on a par with the plenary meetings, which would not be held at the same time.

60. Mr. de ICAZA (Mexico), Rapporteur, said that the task before Working Group B was to reach a compromise between different points of view.

61. Its work might be rendered useless if it was possible for new amendments to be submitted at plenary meetings; moreover, delegations needed time to study the various points of view. As the plenary meetings were not to take place at the same time as the

meetings of Working Group B, all delegations should be able to be represented at those meetings; if they were not, it could only be concluded that the particular question under consideration did not interest them.

62. Mr. BOBYLEV (Union of Soviet Socialist Republics) pointed out that, under article 29 of the rules of procedure of the Conference, no proposal could be discussed or put to the vote at any meeting unless copies of it had been circulated to all delegations not later than the day preceding the meeting. He did not therefore think that the Committee could embark on its consideration of articles 6 to 10 of draft Protocol II on 21 March.

63. Mr. CARNAUBA (Brazil) agreed. He thought, moreover, that the plenary Committee could not, on one and the same day, hold a general discussion on the report of Working Group B and take a vote on that report.

64. The CHAIRMAN said that the fact that a time-limit was set for the submission of amendments did not mean that such texts could not be submitted earlier. Moreover, the general discussion took place in the Working Group and must not be resumed at the plenary meeting.

65. Mrs. DARIIMAA (Mongolia) pointed out that delegations from Asian and African countries, which had very few members and sometimes found it difficult to be represented in working groups, should be able to express their views at plenary meetings.

66. Mr. de ICAZA (Mexico), Rapporteur, said that the situation of delegations from the third world countries which were not adequately represented would be taken into account, and the organizers of the Conference would do everything possible to enable them to take a greater part in the discussions of the Working Groups and to be kept informed of all decisions reached by those Groups.

67. Mr. GLORIA (Philippines) said that he doubted whether his delegation would be able to observe the time-limit fixed for submitting amendments to articles 6 to 10 of draft Protocol II.

68. Mr. de ICAZA (Mexico), Rapporteur, explained that the time-limit only concerned official draft amendments to existing texts. Changes could always be suggested during the discussions in the Working Groups.

69. The CHAIRMAN asked the Committee if it accepted the time-limits proposed, namely, 12 noon on Thursday, 20 March, for amendments relating to the protection of journalists engaged in dangerous missions, and 12 noon on Friday, 21 March, for amendments relating to articles 6 to 10 of draft Protocol II. He also suggested 5 p.m. on Monday, 24 March, as a time-limit for amendments to articles 70 to 79 of draft Protocol I, which would be discussed next.

It was so agreed.

The meeting rose at 5.20 p.m.



SUMMARY RECORD OF THE THIRTY-SECOND MEETING

held on Wednesday, 19 March 1975, at 3.20 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)\*

Article 6 - Fundamental guarantees (CDDH/1, CDDH/56; CDDH/I/37, CDDH/I/92, CDDH/I/93)

1. The CHAIRMAN invited the representative of the International Committee of the Red Cross to introduce article 6 of draft Protocol II.
2. Mrs. BUJARD (International Committee of the Red Cross) said that in any non-international armed conflict, the civilian population was always in a particularly dangerous situation. Caught between the Parties to the conflict, it was subject to pressures and restraints by the two parties alternately which more often than not demanded its active co-operation in their operations and their assistance in the form of information, material aid and even financial support. Members of armed forces taking part in hostilities might find themselves, because of the hatred between the Parties, exposed to the most inhumane treatment if they fell into the hands of the adversary after becoming hors de combat.
3. Draft Protocol II, Part II was therefore designed to protect all persons who took no direct part or who had ceased to take a part in hostilities against abuse of power and inhuman and cruel treatment by the military or civilian authorities of the Party to the conflict in whose power they might be.
4. The basic features of Part II were, first, that although it laid down rules regarding humane treatment of protected persons, it in no way shielded from the application of national law any person who might have violated that law in connexion with the armed conflict.
5. Secondly, it set out to protect all persons affected by the armed conflict without creating special categories of protected persons enjoying special status or treatment. That meant that, contrary to its earlier proposals and in accordance with the recommendations of the experts it had consulted, the ICRC had given up the idea of assimilating combatants who were hors de combat and had fallen into the hands of the adverse Party, to prisoners of war.

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\* Resumed from the thirtieth meeting.

A captured combatant would only enjoy the protection provided in articles 8, 9 and 10 and if he had committed an offence in connexion with the armed conflict, might be prosecuted, tried and sentenced in accordance with national law.

6. Paragraph 1 of Article 6, Fundamental guarantees, laid down the general principle of the humane treatment of persons. To that general principle were added, in paragraphs 2 and 3, lists of prohibited acts. Those provisions were taken from Article 3 or other provisions of the Geneva Conventions of 1949, or from the International Covenant on Civil and Political Rights (see United Nations General Assembly resolution 2200 (XXI) of 16 December 1966). Since each of those instruments defined its own field of application which was not that of draft Protocol II, the most important of those provisions should be taken up for the purpose of that Protocol. In paragraph 1, the words "whether or not their liberty has been restricted" should be reconsidered in the light of the wording adopted for article 2, paragraph 2. Paragraph 3 might form a separate article.

7. Mr. CASTREN (Finland) said that a reference to measures of reprisals should be included in article 6, paragraph 2, so that civilian populations would have at least minimum guarantees against inhumane treatment by the parties to non-international conflicts. Paragraph 4 in the ICRC draft of article 6 prohibited reprisals, but it was too limited in scope. The amendment by the Finnish delegation (CDDH/I/93) was aimed at adding a new sub-paragraph (g) in article 6 in order to place a general prohibition on reprisals, as had been done in Article 33 of the fourth Geneva Convention of 1949. If the Finnish amendment was accepted, article 8, paragraph 4 could be deleted, and a further amendment need not be submitted by his delegation.

8. Contrary to what was often stated, reprisals were not limited to times of war or other types of armed conflict, but were also exercised in times of peace. Reprisals should never in any circumstances be used against civilian populations. They could possibly be employed between States or Parties to a conflict. For example, they could be regarded as legitimate in the event of destruction of public property or a violation of international law by one or other Party to a conflict. But there was universal agreement that reprisals of an inhumane nature were inadmissible. That was why innocent civilians should be protected against such acts in times both of war and peace.

9. Mr. MILLER (Canada) said that the Canadian delegation's amendment (CDDH/I/37) called essentially for two things. The first was a clarification of the meaning of the term "adverse distinction" in the last sentence of article 6, paragraph 1 of the ICRC text. His delegation had defined the term as it appeared in article 2, paragraph 1 of draft Protocol II and believed that the same definition

should apply throughout the draft Protocol. Consequently, the Canadian amendment on that point was no longer necessary. The second aim of amendment CDDH/I/37 was to propose that article 6, paragraph 3 in the ICRC draft, relating to the protection of women, should become a separate item in draft Protocol II; but the text of that paragraph as drafted by the ICRC was fully acceptable.

10. Mr. PARTSCH (Federal Republic of Germany) endorsed the ICRC text of draft Protocol II, article 6, but questioned whether its moral and practical intent was expressed explicitly enough. An amendment by the Polish delegation, not yet submitted, would render his own delegation's amendment unnecessary.

11. The amendment introduced by the Finnish delegation (CDDH/I/93) raised certain problems, however. Was it advisable to use the word "reprisal" in draft Protocol II? Perhaps it would be possible to find another term where non-international armed conflicts were concerned. There were no objections from the legal point of view to the use of the word "reprisal", but from the political point of view it could be inferred that its use gave the Parties to a conflict a status under international law which they had no right to claim. He suggested that another formulation, for example "measures of retaliation comparable to reprisals", might not meet with the same objections.

12. The Canadian delegation's amendment relating to the protection of women (CDDH/I/37) also gave rise to some doubts. It was clear that the adoption at a meeting of the Ad Hoc Working Group of Committee I, of an identity card for journalists without distinction of sex (see CDDH/I/237, annex III), meant that equal respect should be given to women. But to make a special paragraph on the subject of the protection of women, as had been done in article 6, paragraph 3 of the ICRC draft, would imply that the provisions set out in the other paragraphs of article 6 were intended for men only.

13. Mr. AL-FALLOUJI (Iraq) said that although his delegation was continuing to participate in the discussions on articles 6 to 10 of draft Protocol II, that did not mean that it had withdrawn its reservations on the Protocol as a whole. It was to be hoped that the discussions would come closer to international realities, that they would avoid extremes, and that a formulation would be found to reconcile the many divergent views of the delegations.

14. He still had reservations about article 6, in particular the reference to "persons who do not take a direct part ... in hostilities", in paragraph 1 of that article. What about persons who played an indirect role but a dangerous one?

15. With regard to article 6, paragraph 2, it was to be assumed that the prohibitions listed were addressed to and applicable by both Parties to the conflict. But to draft an article on the prohibition of terrorism, slavery or hostages in the context of internal conflicts was to imply that such things were tolerated elsewhere and at other times. Surely the object was to prohibit such acts everywhere and at all times.

16. Reprisals were prohibited in article 19, paragraph 2 of draft Protocol II, which had led to considerable problems during discussions in Committee II. That was why the decision had been taken in Committee II to set up a Joint Working Group to study and settle the question of reprisals once and for all. In the view of his delegation, it was premature to deal with that question in Committee I, since further discussion would pre-empt the work of the Joint Working Group. In any case, the question of reprisals had no place in Protocol II, for the Conference was not entitled to legislate for the treatment of citizens of sovereign States - a course which might lead it into conflict with national legislations.

17. Mr. LOPUSZANSKI (Poland) expressed satisfaction with the ICRC draft of article 6. The Polish amendment (CDDH/I/92) was of a textual nature and could be examined by the Drafting Committee. He considered that the Finnish delegation's amendment (CDDH/I/93) was also a matter essentially for the Drafting Committee. He thanked the representative of the Federal Republic of Germany for supporting his delegation's amendment and shared the view of the representative of Iraq that discussion on the question of reprisals should be deferred until such time as the results of the Joint Working Group's work were known.

18. Mr. de ICAZA (Mexico) considered that articles 6 to 10 of draft Protocol II came closer to the subject of humanitarian rights than to that of humanitarian law. He expressed satisfaction that paragraph 2 of the ICRC draft of article 6 used the words "at any time and in any place" with reference to internal armed conflicts. The prohibitions set out in article 6 were minimum fundamental human rights.

19. In sharing the concern of the representative of Iraq with regard to sub-paragraph (c) regarding acts of terrorism, he maintained that such acts should be categorically prohibited and not merely confined to the persons referred to in article 6, paragraph 1.

20. He also shared the view of the representative of the Federal Republic of Germany, that paragraph 3 of article 6 was already covered in paragraph 2, sub-paragraph (d) which referred to outrages on personal dignity. He proposed that paragraph 3 should simply state that women should be the subject of special respect.

21. Mr. ABDUL-MALIK (Nigeria) endorsed the views of the representative of Iraq with regard to article 6. Draft Protocol II was originally conceived to cover non-international situations, and there seemed to be no reason why article 6 should seek to lay down laws that were already covered in most domestic legal systems. The article would appear to be an attempt to destroy the careful balance between international and domestic jurisdiction. He could not understand the Finnish amendment on reprisals (CDDH/I/93), and he agreed with the views of the representative of the Federal Republic of Germany on the question. He was unhappy about the use of the word "reprisals", but might possibly endorse the Finnish amendment if another term were found, as for example "retaliation" or "vengeance".

22. Mr. DIXIT (India) said he had tried in vain to understand the scope of application of article 6. He shared the views of the Iraqi delegation and considered that some of the points under discussion would be better dealt with in Working Group B or by the Secretariat. The gist of the discussions in Committee I turned on internal armed conflicts, and the scope of national law had therefore to be taken seriously into account. Talk about reprisals was consequently out of context, as were such matters as acts of terrorism. It was essential to discuss practical issues, and if that were done the Indian delegation would give its full co-operation to make draft Protocol II more realistic. With regard to the protection of women, the Indian Government had granted women full equality. If it was desired to mention the subject of special measures for the protection of women in article 6, then those measures should be set out in specific terms.

23. Mr. FREELAND (United Kingdom) said that the work of Committee I would be facilitated if representatives could have information on what had transpired in other Committees with regard to the question of reprisals. It would seem that Committees II and III had debated the question and reached some conclusions, and it would help representatives if they could have some information about those conclusions.

24. Much to his surprise, he had heard the Iraqi representative say that there had been a decision to set up a Joint Working Group to look into the question of reprisals. He would welcome information on the composition of that body, since it seemed clear that all the Committees should be represented on it in a manner agreeable to them.

25. The CHAIRMAN, replying to the United Kingdom representative said that he was not fully informed on the Joint Working Group but would seek details before the next meeting.

26. Mr. CUTTS (Australia) said that articles 6 to 10 constituted an important section of draft Protocol II in relation to humane treatment and the protection of civilian populations in the course of internal armed conflicts. The ICRC draft, and the amendments to it, had been well compiled and were acceptable to the Australian delegation, with minor textual improvements. He was pleased that the problem of reprisals was to be examined separately in an effort to find a single solution acceptable to all the Committees.

27. Mr. de SCHUTTER (Belgium) found the ICRC text totally acceptable. To lay stress on the protection of special categories of persons, as had been done in article 6, paragraph 3 in relation to women, was a timely act. He agreed with the views of the delegation of the Federal Republic of Germany and suggested that there should be some parallelism between article 6, paragraph 3 and article 32, paragraph 1 of draft Protocol II. Article 6, paragraph 3 should accordingly read "Women and children shall be the object of privileged treatment; they shall be especially protected against any form of indecent assault."

28. Referring to the Polish amendment to article 6 (CDDH/I/92), he said that he would also welcome it if the text of paragraph 2 of that article could be made identical with that of article 65, paragraph 2, of draft Protocol I. He would reserve comment on the question of reprisals, pending the results of the work of the Joint Working Group on the subject.

29. Mr. PICTET (Switzerland) said he fully endorsed articles 6 to 10 which were in no way superfluous in draft Protocol II, inasmuch as it stressed the fundamental rules applied in international law. He also supported the various amendments that had been introduced, in particular that of the Polish delegation (CDDH/I/92), which simply needed slight textual change. The question of reprisals deserved fuller study.

30. Mr. TORRES AVALOS (Argentina) said that, although he considered that the general concept of the ICRC text of article 6 was good, and although many of the provisions in it were already embodied in Argentine domestic legislation, he shared the concern expressed by other representatives with regard to that article and considered that it should be studied by a Working Group. Some representatives considered that article 6 entailed too much interference in national sovereignty. For the reasons he had given, his country had no objection to the concepts of the article, but it was not a matter of analysing one or two or more national legislations: what was important was to draw up an effective instrument for the positive development of international humanitarian law.

31. Mr. RECHETNIAK (Ukranian Soviet Socialist Republic) said that the whole of Part II of draft Protocol II dealt with the very essence of the Protocol, since it concerned the degree of protection that could be provided for persons who fell into the hands of a Party to the conflict. The amount of protection that could be given was determined by the nature of internal armed conflicts and was obviously different from the corresponding provisions of Protocol I, which was concerned with international armed conflicts. His delegation believed that despite that, the universally guaranteed and recognized rights and freedoms of the individual should be the same in all types of armed conflict. Among the instruments of international law which dealt with protection were the 1949 Geneva Conventions, the International Covenant on Civil and Political Rights and other international undertakings.

32. The United Nations General Assembly's resolution 2675 (XXV), "Basic principles for the protection of civilian populations in armed conflicts", should also not be forgotten. It stated that the fundamental human rights, as accepted in international law and laid down in international instruments, continued to apply fully in situations of armed conflict.

33. His delegation found the ICRC text of article 6 acceptable. It corresponded to the legislation of his own country; but his delegation was opposed to the Canadian amendment (CDDH/I/37), which proposed that paragraph 3 should be removed from article 6 and made a separate article. That would only weaken the protection of women. It was also inopportune and premature to incorporate the Finnish amendment on reprisals (CDDH/I/93), since that matter was under discussion with reference to both Protocols by the Joint Working Group of Committees II and III. Committee I should take part in those discussions. Attention should also be given to the ICRC approach to reprisals outlined in the ICRC commentary to article 8, paragraph 4 of draft Protocol II (CDDH/3, p. 139).

34. Mrs. DARIIMAA (Mongolia) said that article 6 of draft Protocol II laid down fundamental guarantees for the humane treatment of persons falling into the hands of a Party to an armed conflict. A non-international armed conflict took place within the territory of one sovereign State and affected those who were citizens of that State; it could, in fact, be assimilated to a civil war and it involved rebels who opposed the Government and might reject national legislation. A situation might arise in the territory of a High Contracting Party in which the rebels might declare that the legislation of that Party had no legal force in the territory under their de facto control. In such a situation, article 6 would have great significance, since it was concerned with the basic guarantees for the humane treatment of persons in the hands of Parties to the conflict. The article was therefore acceptable to her delegation.

35. She supported in principle the ICRC draft of article 6 and also the Polish amendment (CDDH/I/92), which sought to strengthen and further develop the principles of international humanitarian law. With regard to the Canadian amendment concerning paragraph 3 of article 6 (CDDH/I/37), she supported the views expressed by the Ukrainian representative.

36. The views of the representative of Iraq concerning the Finnish amendment (CDDH/I/93) deserved the Committee's attention. It might, however, be better to await the outcome of the discussions to be held on the subject of reprisals by the Joint Working Group set up by Committees II and III.

37. Mr. AMIR-MOKRI (Iran) said that his delegation could, in principle, support the ICRC draft of article 6. On the other hand, it had reservations concerning the addition of the word "reprisals", which was not appropriate in a protocol concerning non-international armed conflicts. His delegation had already stated its position on that question, and its views were reflected in the relevant summary records of Committee II.

38. Mr. PARTSCH (Federal Republic of Germany) drew attention to the ICRC Commentary (CDDH/3, p. 137), which indicated the origin of the various provisions contained in article 6, paragraph 2. The prohibitions laid down in sub-paragraphs (a), (b) and (d) were taken from Article 3 common to the Geneva Conventions of 1949, whereas those laid down in sub-paragraphs (c), (e) and (f) were taken from the fourth Geneva Convention and from the International Covenant on Civil and Political Rights. Consequently, the question whether the provisions of paragraph 2 had their place in a protocol concerning non-international armed conflicts could only arise in connexion with sub-paragraphs (c), (e) and (f).

39. Mr. DRAPER (United Kingdom) said that, in general, his delegation supported the principles laid down in article 6. He was puzzled, however, by the somewhat awkward relationship between the heading of Part II and the phrase: "All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted ..." in the first sentence of article 6, paragraph 1. He asked why that particular phrase had been chosen to describe persons in the power of Parties to the conflict. He assumed that the phrase "without any adverse distinction" in the same paragraph would have the benefit of the definition which had been worked out and included in article 2 of draft Protocol II.

40. With regard to paragraph 2, he said that the phrase "at any time and in any place whatsoever" was so comprehensive that it would probably not leave room for the operation of reprisals in any form.



41. Turning to paragraph 3, he said that his delegation did not subscribe to the view that because women were given special mention there, they might be considered as excluded from the benefit of the provisions of paragraph 2. All the prohibitions in paragraph 3, which were based on the second paragraph of Article 27 of the fourth Geneva Convention of 1949, had their place in draft Protocol II, Part II, and it would be a great loss if they were to be deleted.

42. Mr. KEITH (New Zealand) said that his delegation generally supported the provisions of article 6 and of the other articles of Part II. It had been argued that reprisals were already prohibited under existing law - namely, common Article 3 - and if article 6 were to be taken as permitting acts of reprisal the Conference would be taking a step backwards. But throughout the Geneva Conventions great importance was attached to the granting of protection against reprisals.

43. For example, Article 33 of the fourth Convention prohibited reprisals against all protected persons whether or not their liberty had been restricted. It had been suggested that the word "reprisals" might be replaced by another term for the purposes of draft Protocol II, and it had been said that the inclusion of a provision concerning reprisals might give rise to problems of status. In the view of his delegation, the broad wording adopted for article 3 of draft Protocol II provided a satisfactory solution to the problem of status.

44. His delegation was not convinced that it would be possible to provide an across-the-board answer to the reprisals question merely by setting up an inter-Committee working group. The concept of reprisals should be considered in particular contexts, as was being done in Committees II and III. There was no reason why Committee I should not adopt the same approach, consider the question in relation to Part II of draft Protocol II, and accept the Finnish amendment (CDDH/I/93).

Mr. K. Obradović (Yugoslavia), Vice-Chairman, took the Chair.

45. Mrs. HJERTONSSON (Sweden) said that her delegation supported the principle of the Finnish amendment (CDDH/I/93). The United Kingdom representative had expressed the view that the phrase "at any time and in any place whatsoever" excluded the possibility of reprisals against the categories of persons in question. If that was so, she could see no reason why that should not be stated explicitly.

46. Mrs. BUJARD (International Committee of the Red Cross), replying to the question put by the United Kingdom representative, said that the expression "persons in the power of the Parties to the conflict" in the heading of Part II was perhaps not entirely satisfactory, since it might imply that the articles related only to persons who had been deprived of their liberty and to combatants who were in the hands of the adversary. The term "persons under the de facto control of the Parties to the conflict" should perhaps have been used, in order to make it quite clear that the articles related to all persons under the de facto control of the parties, whether their liberty was restricted or not, and whether they were peaceful civilians or persons no longer participating in the conflict.

Article 7 - Safeguard of an enemy hors de combat (CDDH/1, CDDH/56; CDDH/I/37)

47. Mrs. BUJARD (International Committee of the Red Cross) said that article 7, paragraph 1, was based on Article 23 (c) of The Hague Regulations of 1907, <sup>1/</sup> which forbade the killing or wounding of an enemy who, having laid down his arms, or having no longer any means of defence, had surrendered at discretion. Article 7 had a corresponding article in draft Protocol I, namely article 38 which appeared in Part III, Section I headed "Methods and means of combat". It should be noted that draft Protocol II contained no provisions granting any status or special treatment to a combatant hors de combat who had fallen into the hands of the adverse Party. The only protection from which such persons would benefit, from the time they became hors de combat was that provided for in Part II. The ICRC had placed article 7 in Part II rather than in Part IV - "Methods and Means of Combat" - of draft Protocol II because it had appeared logical to recall clearly the moment starting from which the combatant who had ceased to take part in hostilities was entitled to benefit from the protection of Part II of draft Protocol II.

48. Article 7, paragraph 2 took on particular importance in the context of a non-international armed conflict. It was based not only on a provision of the Geneva Convention of 1906 for the Amelioration of the Condition of Wounded and Sick in Armies in the Field, but also - and above all - on practical experience. In many recent non-international armed conflicts, the rebel party, being unable to intern captured adversaries, had decided to release them after disarming them. Such action, which enabled summary executions to be avoided, was truly humanitarian only if such release did not place those released in a situation of distress and if they were enabled to return to the territory under the control of their party without any danger to their safety.

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<sup>1/</sup> Regulations respecting the Laws and Customs of War on Land annexed to The Hague Convention No. IV of 1907.

49. Two improvements might be made in the text of paragraph 2. First, the provision should be extended to cover all persons deprived of their freedom including civilians who might have been detained for some given reason. Secondly, it might be desirable to replace the words "send back to the adverse Party" by the word "release".

50. Committee I might find it difficult to take a decision on article 7 before Committee III had completed its work on article 38 of draft Protocol I. Even if Committee I deferred its decision, however, it might wish to express its views on the underlying principles of the article.

51. Mr. MILLER (Canada), introducing the Canadian amendment (CDDH/I/37) to article 7, said that the proposal, submitted at the first session of the Conference, had been prompted by his delegation's uncertainty whether the contents of article 7 should be included in Part II or in Part IV of draft Protocol II. His delegation now considered that paragraph 1 of the amendment should be included in Part IV rather than in Part II. Paragraph 2 of the amendment was identical with paragraph 1 of the ICRC text. Paragraph 2 of the ICRC text, which did not appear in the amendment, concerned combatants whose liberty had been restricted and listed the conditions under which they were to be sent back to the adverse party. Its proper place was therefore in article 8; his delegation would comment on it when that article was taken up.

52. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that, in general, the text of article 7 was acceptable to his delegation. Nevertheless, he wished to comment on some points which concerned both drafting and substance. In paragraph 1 (a) and (c) should be read together, as should (b) and (c), but that was not very clear from the text. The sub-paragraphs should be redrafted in order to define more clearly the conditions considered to have been fulfilled. In paragraph 2, it was not clear what steps the Parties to the conflict were required to take in order to ensure the safe journey of released prisoners back to their own party. He hoped that Working Group B would study those points, which he thought should also be considered by the Drafting Committee.

53. Mr. SCHUTTE (Netherlands) said that at the present stage his delegation did not wish to express a definite view on the place of article 7 in draft Protocol II. When Committee III had considered draft Protocol I, article 38, there had been a great deal of discussion on the words "ill-treat or torture", which some representatives considered inappropriate because, as soon as a combatant fell into the hands of the adversary, he was covered by the corresponding articles of the third Geneva Convention of 1949. His delegation, however, considered that those words served a purpose in draft Protocol II, article 7 since the words "capture or

arrest" used in article 8 might be interpreted as meaning that not all persons participating in the hostilities were authorized to make captures or arrests.

54. Turning to paragraph 2, he said that there had been considerable support in Committee III for the idea that the corresponding sentence in draft Protocol I, article 38 should be reworded to make it clear that a party which was not in a position to hold its prisoners was under the obligation to release them. A similar provision might usefully be included in article 7.

55. Mr. DRAPER (United Kingdom) said he considered that article 7, paragraph 1 should be transferred from draft Protocol II, Part II to Part IV, where it should be placed adjacent to article 22. With regard to the Netherlands representative's comments, he thought that paragraph 2 should be considered with due regard to Committee III's reformulation of draft Protocol I, article 38 and should then be placed in article 8.

56. Mr. BETTAUER (United States of America) said he had some doubt whether the words "ill-treat or torture" in the first sentence of paragraph 1 were entirely appropriate. The purpose of draft Protocol II, article 7, like that of draft Protocol I, article 38, was to state that an adversary hors de combat should not be subjected to a certain treatment before he was detained; once he was detained, the fundamental guarantees laid down in article 6 would come into operation. In his view, it would be preferable to state that it was forbidden to make an adversary hors de combat the object of an attack.

57. His delegation also had some difficulty over the way in which the conditions were listed in sub-paragraphs (a), (b) and (c) of article 7, paragraph 1. The words "or" and "and" occurred so frequently that it would be difficult to determine exactly whether or not a person hors de combat actually fulfilled the conditions. His delegation would take up that question in the Working Group.

58. Although it had no strong views on what would be the most appropriate place in draft Protocol II for paragraph 1, his delegation had welcomed the Canadian delegation's proposal to move the substance of article 22 into article 7, and it regretted that the Canadian delegation no longer seemed to be pressing that proposal. It would be desirable to include the substance of article 22 and paragraph 1 of article 7 in a single article and it could be left to the Drafting Committee to determine the most appropriate place for that article - whether Part II or Part IV of draft Protocol II.

59. His delegation's initial reaction to the provisions of paragraph 2 had been that they might not be appropriate in the case of a non-international armed conflict, because it was rather difficult to conceive of one party, for example a Government, being under the obligation to send back to the adverse Party people whom it considered to be rebels, and to provide for their safe transit. But his delegation would be glad to hear further argument on the subject.

60. Mr. SOOD (India) said that his delegation wished to propose some minor drafting amendments to the ICRC text of article 7. In sub-paragraph (b), the word "an" should be replaced by the word "his". He agreed with the Ukrainian representative that the text of paragraph 2 should be more specific. The words "health and" should be inserted before the word "safety" at the end of that paragraph.

61. He appreciated the intention of the Canadian amendment (CDDH/I/37), but he could not understand the purpose of removing article 22 from its present place and inserting it in article 7, since article 22 had a wider application than article 7, which referred only to a particular category of persons.

62. Mr. de SCHUTTER (Belgium) said that without prejudice to future discussions on the exact wording of article 7, to be decided in the light of Committee III's discussion on draft Protocol I, article 38, his delegation fully supported the Canadian proposal to combine articles 22 and 7. It also supported the suggestion by the ICRC representative to replace the words "send back to the adverse Party" in paragraph 2 by a term expressing the notion of "release".

63. Mr. AL-FALLOUJI (Iraq) said that article 7 was an example of the policy of making draft Protocol II a copy of draft Protocol I, a policy which was the source of all the difficulties that were being encountered and which his delegation opposed.

64. Article 6 referred to persons "who do not take a direct part or who have ceased to take part in hostilities". An adversary hors de combat would be covered by those words, and article 7 was therefore superfluous. His delegation was prepared to discuss draft Protocol II from the purely humanitarian standpoint, but it was not prepared to agree to the inclusion of any provision that would give a rebel party the position of an entity recognized under international law.

Article 8 - Persons whose liberty has been restricted (CDDH/1, CDDH/56; CDDH/I/37, CDDH/I/94, CDDH/I/236)

65. Mrs. BUJARD (International Committee of the Red Cross) said that draft Protocol II did not establish any particular category of protected persons; consequently, the purpose of article 8 was to cover all persons without distinction, both civilian and military, whose liberty had been restricted for reasons in relation to the armed conflict. Thus, to the guarantees provided in article 6 which covered all persons in the power of one of the Parties to the conflict should be added - for persons deprived of their freedom - the guarantees of article 8.

66. In order to bring the wording of article 8 into line with that of article 2, paragraph 2, already adopted, the words "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 ..." should perhaps be replaced by some such words as "All persons who have lost their freedom or whose liberty has been restricted for reasons relating to the armed conflict ...", followed by "shall in all circumstances be treated humanely, as provided in article 6".

67. Article 8, paragraphs 2 and 3 contained a number of rules intended to guarantee that persons whose liberty had been restricted were given decent conditions of arrest or detention. The provisions in paragraph 2 were considered to be minimum requirements and were mandatory. They concerned the health and safety of protected persons who must be interned or detained in places where they would be sheltered from the rigours of the climate. Paragraph 2 also concerned health and the provision of food and clothing. Paragraph 3 required the Parties to the conflict to respect, within the limits of their capabilities, certain provisions which would alleviate the conditions of detention or internment. Some might think the provisions of paragraphs 2 and 3 excessive, while others might think that they did not go far enough. In any case, their purpose was to ensure that whatever the living conditions prevailing in the territory in which the armed conflict was taking place, prisoners should not be treated less well than those who detained them.

68. Paragraph 4 corresponded to the provisions of the third and fourth Geneva Conventions of 1949 which dealt with the prohibition of reprisals against persons protected by those Conventions. That question had been discussed in Committee II, in connexion with article 19, and it had been decided to set up a Joint Working Group to discuss the problem of reprisals.

69. In paragraph 5 the Parties to the conflict were requested to facilitate visits by an impartial humanitarian body, such as the International Committee of the Red Cross, to persons whose liberty had been restricted: the ICRC was mentioned in that paragraph only as an example of what was to be understood by an "impartial humanitarian body." The experts had considered that it was impossible to make such a provision mandatory in Protocol II.

70. Mr. MILLER (Canada), introducing his delegation's amendment to article 8 (CDDH/I/37), said that the simplification suggested by the ICRC representative went some way towards covering paragraph 1 of his delegation's amendment. That paragraph established as a fundamental principle the humane treatment of persons who had been interned or detained, and it contained a reference to article 6.

71. There was no difficulty over paragraph 2 (a), which referred to the wounded and the sick, but paragraphs 2 (b) and (c) presented problems. It must be remembered that the provisions referred to internal armed conflict, in which one of the parties would not be a government and would therefore have only rudimentary facilities at its disposal. He considered that paragraphs 2 (b), (c) and (d) could be transferred to paragraph 3, thus making the obligation less mandatory and placing it within the capabilities of both parties. It would be difficult, for example, for an armed group to achieve the standards of hygiene, health, and so forth, described in paragraph 2 (c). The most that could be expected was that prisoners should be given the same treatment as those detaining them.

72. Mr. PARTSCH (Federal Republic of Germany), introducing his delegation's amendment to article 8 (CDDH/I/236), said that the amendment made less radical changes than the Canadian proposal. The main difference between his delegation's amendment and that of the Canadian delegation and the ICRC text was that his amendment attempted to place all the examples in three categories. The first covered the minimum provisions to be complied with; the second dealt with temporary and exceptional measures; the third contained provisions to be respected within the limits of the capabilities of the Parties to the conflict. Paragraphs 2 (a), (b) and (e) were identical with the ICRC text, but measures of reprisals did not form the subject of a separate paragraph. The word "reprisals" should be put in square brackets until the results of the Joint Working Group were known. Paragraphs 2 (c) and (d) dealt with relief and religion. It should be noted that the right to practise religion was separate from the question of whether chaplains were available. Housing and food had not been included in the first category because the possibilities available to the parties were limited; he agreed with the representative of Canada that it was only possible to insist upon conditions for prisoners which were not less favourable than they were for the combatants. The provisions

concerning letters and visits from humanitarian bodies had seemed necessary because in some cases the place of detention might not have been disclosed. In the third category, the provision of accommodation, drinking water and food had been transferred from absolute protection to limited protection; the subject-matter of paragraph 4 (c) and 4 (d), on the other hand, were already in the limited protection category in the ICRC text.

73. Mr. HOBYLEV (Union of Soviet Socialist Republics) said that articles 6 to 8 were of great importance for the victims of internal armed conflicts. It was indispensable to ensure maximum protection for those victims, and it seemed to him that, in that respect, article 8 of the ICRC text did not fully reflect his delegation's wishes. Objection could of course be raised on the ground of the means available to the Parties to the conflict, but the problem was to ensure the protection of victims of non-international armed conflict, taking account of real possibilities and facts, so that the articles could be observed by all Parties to the conflict.

74. He had the impression that, in paragraph 4, two concepts were being confused; one was the question of harsh measures by the other Party to the conflict, and the other related to repressive measures against persons subjected to temporary detention. The latter were not reprisals pure and simple, and he suggested that the question should be discussed by Working Group B.

75. With reference to paragraph 5, he felt that, in view of the characteristics of internal armed conflict, maximum protection for victims could be ensured by the national Red Cross Societies. He therefore proposed the addition of the words "or the national Red Cross Society" after the words "the International Committee of the Red Cross" in paragraph 5.

76. Mr. de ICAZA (Mexico) said that, in general, his delegation supported the ICRC text of article 8, but it had some reservations. It considered paragraph 2, especially its sub-paragraphs (b) and (c), to be unrealistic. Most non-international armed conflicts occurred in developing countries in which living conditions were poor. The conditions described in paragraph 2 would be regarded as almost ideal in such countries. He therefore fully supported the Canadian amendment (CDDH/I/37) which introduced the notion that Parties to the conflict should respect those provisions within the limits of their capabilities.

77. He considered that the reference to humanitarian bodies in paragraph 5 should be deleted. In internal armed conflicts there was a proliferation of humanitarian bodies, some of which were of doubtful impartiality. If all such bodies were covered by paragraph 5, the provision would be impossible to apply. Again, national Red Cross societies might have difficulty in acting in civil war conditions. He accordingly thought that the reference should be solely to the International Committee of the Red Cross.



78. Mr. CASTREN (Finland), introducing his delegation's amendment to article 8 (CDDH/I/94), said that in the interests of precision his delegation wished to replace the word "reasonable" in paragraph 2 (b) by the word "adequate". It also wished to introduce two new sub-paragraphs 2 (d) and 2 (e), providing additional safeguards for health conditions and working conditions. The existing sub-paragraph (d) would then become sub-paragraph (f). If the situation of persons whose liberty had been restricted was compared with that of persons interned in occupied territory, who were covered by the fairly satisfactory provisions of the fourth Geneva Convention, it had to be admitted that the protection proposed in the ICRC text was extremely modest.

79. His delegation's last amendment proposed the deletion of article 8, paragraph 4; it was linked with its proposed new sub-paragraph (g) in article 6, which he had already introduced. If the latter was not accepted, paragraph 4 would of course be maintained. With regard to the word "reprisals", he still considered that there was no reason why it should not be used also in connexion with non-international armed conflicts; but his delegation would be willing to accept another word, provided that the content was not changed.

80. Mr. TORRES AVALOS (Argentina) said he had some doubts about article 8, paragraph 1. His delegation considered that there was a strong similarity between the principle in that paragraph and the principle in article 6, paragraph 1. He had noted the ICRC representative's comments in that connexion, but he felt that article 8, paragraph 1 was a repetition of the fundamental guarantee referred to in article 6. In his view, that paragraph could be deleted; he would submit a suggestion to that effect to Working Group B.

81. With regard to the question of reprisals, in paragraph 4, his delegation had understood the representative of the Union of Soviet Socialist Republics to mean that "reprisals" in that paragraph might not have the same significance as in international law. He suggested that the Committee should wait for the views of the Joint Working Group.

82. Mr. AMIR-MOKRI (Iran) said that paragraph 2 (b) referred to the accommodation of persons whose liberty had been restricted in buildings or quarters which afforded reasonable safeguards as regards hygiene and health. In its Commentary (CDDH/3, p.139), the ICRC had mentioned that some experts had expressed the fear that the requirements laid down in paragraphs 2 and 3, might be considered excessive in many countries where part of the population, even in peacetime, might not enjoy the material conditions of existence stated in those two paragraphs. There was some substance

in those fears; it would surely be unrealistic to suppose that such conditions could be complied with in poor countries. It would be better to insert some such phrase as "within the limits of their capabilities", which already appeared in paragraph 3.

83. His delegation had already expressed its views on reprisals, which were equally applicable to article 8, paragraph 4.

84. Mr. ABDUL-MALIK (Nigeria) said that article 8 recalled the provisions on international situations appearing in draft Protocol I. It must not be forgotten that draft Protocol II was designed to cover only internal situations. Each country had its own prison laws and regulations to deal with citizens arrested for taking part in a rebellion. The minimum standards laid down under the mandatory provisions of paragraph 2 appeared to his delegation to be incongruous in such an instrument; they might even be higher than those obtaining for law-abiding citizens. The Canadian proposal was more realistic. He proposed that all the sub-paragraphs should be made optional, in other words that the provisions in paragraph 2 should be transferred to paragraph 3.

85. His delegation reserved its position with regard to paragraph 4, on reprisals, until the conclusions of the Joint Working Group were known.

86. His delegation had originally wished to propose the deletion of paragraph 5, but in view of the proposal of the representative of the Union of Soviet Socialist Republics it would keep an open mind.

87. Mr. SOOD (India) said that when the Committee had adopted article 5 at the thirtieth meeting, his delegation had expressed its disagreement. Similarly, it considered that, though article 8 was excellent from a humanitarian point of view, its provisions could not be implemented by all the forces concerned. In particular, paragraphs 2 (b) and (c) and paragraph 3 (c) and (d) could not easily be implemented and therefore seemed unrealistic. Any obligation to respect the provisions implied supervision, but it was not clear who would be responsible for supervision. As his delegation had already stated, Protocol II should not become an instrument for interference in the internal affairs of States. The ICRC text and the amendments submitted by Canada (CDDH/I/37) and the Federal Republic of Germany (CDDH/I/236) contained a reference to the facilitation of visits by impartial humanitarian bodies, in particular the International Committee of the Red Cross. But it must be borne in mind that the provisions dealt with internal armed conflicts and, as the USSR representative had pointed out, the national Red Cross Societies were in a much better position to carry out supervision. His delegation therefore considered that the reference to visits by impartial humanitarian bodies should be deleted. The nationals of a country must be free to decide how to implement article 8 without external interference.

88. Mr. AL-FALLOUJI (Iraq) said that article 8 presented considerable difficulties. Whereas in article 6, paragraph 1, the reference was to persons who did not take a direct part or who had ceased to take a part in hostilities, whether or not their liberty had been restricted, article 8, paragraph 1 was concerned with persons "whose liberty had been restricted". That seemed to him to be contradictory.

89. Under paragraph 2, States were required to provide conditions which they would be unable to provide even in normal circumstances. In some developing countries which suffered from famine and drought it would be miraculous to find such conditions. The United Nations had already defined minimum treatment for prisoners, yet the ICRC was asking for much more. The inclusion of such provisions would only lead to errors and difficulties.

90. Referring to paragraph 5, he expressed surprise that the International Committee of the Red Cross should play such a role in internal affairs, whereas there was no mention of national humanitarian societies such as the national Red Cross or Red Crescent Societies and others.

The meeting rose at 6.5 p.m.



SUMMARY RECORD OF THE THIRTY-THIRD MEETING

held on Thursday, 20 March 1975, at 10.20 a.m.

Chairman: Mr. HAMBRO (Norway)

In the absence of the Chairman, Mr. K. Obradović (Yugoslavia) Vice-Chairman, took the Chair.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Joint Working Group to consider the question of reprisals

1. The CHAIRMAN informed the meeting that Committees I and II had not yet appointed representatives to the Joint Working Group to consider the question of "reprisals". He requested the members of the Committee to consult among themselves before that afternoon on the designation of two representatives.

2. Mr. GRAEFRATH (German Democratic Republic) asked for fuller details regarding the Joint Working Group's terms of reference. Was it intended merely to find another term for the word "reprisals", or would consideration of the question of reprisals as a whole be involved?

3. The CHAIRMAN thought that it would be advisable first to appoint the two representatives. When that had been settled, a decision could be taken regarding the Working Group's terms of reference. He called on the Committee to resume consideration of article 8.

Article 8 . Persons whose liberty has been restricted (CDDH/1, CDDH/56; CDDH/I/37, CDDH/I/236)

4. Mrs. CHEVALLIER (Holy See) said that she wished to point out, as she had already done in Committee II, that it was necessary, in article 8, paragraph 3 (b) to avoid any ambiguity regarding the notion of religious personnel. She considered it advisable to follow the wording used by Committee II for draft Protocol I, article 15 namely, "persons, such as chaplains, performing religious functions".

5. The ambiguity in the words "and other persons performing similar functions" would thus be avoided.

6. She would ask to speak again on the subject of the right that should be accorded to all to practise their religion and to receive spiritual assistance.

7. Mr. de SCHUTTER (Belgium) considered that article 8 contained a provision essential to the whole structure of Part II, even if it did result in apparent repetition: for, after article 6, which dealt with obligations to abstain (that was, with "prohibitions"), article 8 dealt with obligations to take action.

8. The Canadian amendment (CDDH/I/37), in his opinion, gave too much importance to the means at the disposal of the Parties to the conflict. On the other hand, the amendment submitted by the Federal Republic of Germany (CDDH/I/236) had struck his delegation by virtue of its pragmatism and of the clarity with which it had sub-divided obligations into three categories: legal, suspensive and conditional. At the thirty-second meeting (CDDH/I/SR.32), the representatives of Iran and of India had already stressed the fact that difficulties would arise if the guarantees governing shelter, hygiene and drinking water were retained in the first category of obligations. In the proposed amendment of the Federal Republic of Germany, those guarantees were included among the conditional obligations in the third category, which seemed to him more appropriate.

9. His delegation would add to that third category - the conditional obligations - a last guarantee with the following wording: "The Parties to the conflict shall, in accordance with the provisions of article 34 of Protocol II, draw up and transmit lists of persons who have been deprived of their freedom". Article 34 dealt with recording and information. His delegation considered it essential to give a human being, through a certain degree of publicity, some guarantee, if only of simple survival. It accordingly submitted the text he had just quoted as a proposed amendment.

10. Mr. DRAPER (United Kingdom) asked the ICRC representative to explain the exact scope of article 8. He wondered whether the text of paragraph 1 of that article could be held to cover three cases: first, persons whose liberty had been restricted through capture or arrest, and not in connexion with judicial proceedings; secondly, persons deprived of their liberty through capture or arrest and awaiting trial and, thirdly, persons deprived of their liberty through capture or arrest and who were serving custodial sentences after judicial proceedings.

11. The point had not been made clear in the Canadian amendment (CDDH/I/37), or in the amendment submitted by the German Democratic Republic (CDDH/I/236).

12. Yet it was an important point, since in article 2, paragraph 2 of draft Protocol II, as approved by Committee I at the twenty-ninth meeting (CDDH/I/SR.29), on the subject of persons subjected to certain restrictions "after the conflict", the words "the protection of articles 8 and 10" had been left in square brackets. The time had come to define clearly the scope of that provision.

13. Moreover, recalling the anxieties expressed on the subject of paragraph 5 of article 8 regarding visits by humanitarian organizations, his view was that such doubts were partially allayed, since the point was dealt with in paragraph 1 of article 35.

14. His delegation would support article 8 as a whole, but hoped for some clarifications on the part of the ICRC.

15. Mrs. BUJARD (International Committee of the Red Cross) thanked the United Kingdom representative for having raised the point, which was indeed pertinent, especially since article 2 of draft Protocol II had been approved.

16. The ICRC draft was in truth somewhat lacking in clarity.

17. The formula retained had been intended to cover all persons whose liberty had been restricted: persons interned without judicial proceedings and persons awaiting trial during the whole period of their detention from the time of their arrest until their release. That was why she had suggested that the Working Group should consider paragraph 1 of article 8 in the light of article 2 adopted by the Committee.

18. Mr. CONDORELLI (Italy) said that the ICRC draft provided a very good working basis. He had heard all kinds of objections in connexion with article 8 and other rules under the same heading which he regarded as fundamental and which, to his way of thinking, constituted the very core of Protocol II. It had been pointed out that it might not always be possible to observe the rules laid down in paragraph 2 of article 8, and there was an apparent tendency to tone down the imperative obligation contained in that paragraph by using such phrases as "within the limits of their capabilities". He did not think such expressions were necessary or contributed anything by way of clarity. If one merely wished to emphasize that in certain hypotheses it would be impossible to carry out some of the obligations laid down in paragraph 2, it would not be necessary in that case to add anything since it was a recognized general principle that no one was compelled to do the impossible. Furthermore, it was to be feared that the use of such expressions might weaken the provisions to which the Italian delegation attached great importance since they offered the minimal and irrevocable protection of purely humanitarian requirements.

Some representatives had spoken of the excessively far-reaching obligations in paragraphs 2 (b), (c) and (d). The scope of those provisions, however, should be considered in the individual context of the country and people concerned, and the obligation was not the same for all and in all situations.

19. Turning to the objections of substance raised in connexion with article 8, he pointed out that it had been said that it would be dangerous to over-emphasize the parallelism between the rules of Protocols I and II. Any automatic parallelism between the two Protocols was without doubt undesirable; but in so far as Part II was concerned, the plight of persons deprived of their freedom was equally demanding from the humanitarian standpoint. Consequently some parallelism was justified.

20. On the question of "reprisals", if the Joint Working Group which had been mentioned was to consider the question as a whole in Protocols I and II, it would have to be as broadly representative as possible. If it was merely a question of studying the terminology to be used, his delegation would not oppose the establishment of a small working group.

21. The CHAIRMAN said he would ask the Committee's Legal Secretary to contact his counterpart on Committee II to elucidate the terms of reference of the Working Group.

Article 9 - Principles of Penal Law (CDDH/1, CDDH/56 and Add.2; CDDH/I/37, CDDH/I/89, CDDH/I/95)

Article 10 - Penal prosecutions (CDDH/1, CDDH/56 and Add.2; CDDH/I/96)

22. Mrs. BUJARD (International Committee of the Red Cross) pointed out that articles 9 and 10 were closely related and that the general considerations she had to offer applied to both.

23. First, draft Protocol II left intact the right of the constituted authorities to prosecute, try and sentence military and civilian persons guilty of offences related to an armed conflict. Both articles were of special importance because, in the case of a non-international armed conflict, constitutional guarantees were often suspended or could not function normally, and then special laws were enacted and emergency courts instituted. They were also of special importance since under article 5 of draft Protocol II, articles 9 and 10 would both have to be applied by the insurgent party, and it was therefore essential that members of the armed forces fighting for the established Government, as well as members of the civilian population loyal to that Government, should not be summarily executed on higher orders or without trial.



24. Both articles should be considered in the light of article 1, already approved by the Committee, and more particularly of the last sentence of paragraph 1 thereof, which stated that dissident armed forces might "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/I/274). It was therefore no longer hypothetical to admit that the insurgent forces would be in a position to apply articles 9 and 10 if they intended to try those who were in their power. The insurgent party could for that purpose make use of the courts existing within the part of the territory under its control which could set in motion or set up people's courts. The insurgent party must then conform to articles 7 and 10 at least in the administration of justice for every human being had the right, whatever the circumstances, to be tried under acceptable and decent conditions.

25. Article 9 laid down five principles of penal law based either on the Geneva Conventions of 1949 or on the International Covenant on Civil and Political Rights (see United Nations General Assembly resolution 2200 (XXI) of 16 December 1966).

26. According to the penal law experts consulted privately by the ICRC, all five of those principles were already enshrined in all legal systems and their adoption would entail no important changes in the national legislation of the High Contracting Parties. Those experts had also felt that it should be specified that article 9 was applicable in cases of penal prosecutions for offences committed in relation to an armed conflict. One expert had also suggested that the principle of non-retroactivity in paragraph 4 should be supplemented, by qualifying the word "provisions" with the expression "of national and international law", so as to cover crimes against humanity. Perhaps the Working Group would be able to consider both those suggestions.

27. Mr. AMIR-MOKRI (Iran) supported the underlying principle of draft Protocol II, article 9, as worded by the ICRC, since it retained certain provisions of the Geneva Conventions of 1949 and of the International Covenant on Civil and Political Rights, to which his country was a Party. His delegation therefore had no difficulty with those provisions.

28. On the other hand paragraph 2 seemed to duplicate paragraph 4, which already dealt with the principle of non-retroactivity. The Working Group should consider the possibility of deleting paragraph 2.

29. Mr. TORRES AVALOS (Argentina) said he had no objection to the principles set out in article 9, which were in conformity with the principles of constitutional law applied in his own country.

30. He would like the ICRC representative to indicate, however, whether there was any intention to redraft article 9 with a view to bringing it into line with the article 1 of draft Protocol II approved at the twenty-ninth meeting (CDDH/I/SR.29).

31. Mrs. BUJARD (International Committee of the Red Cross) replied that the ICRC had no intention of recasting article 9. It was simply a matter of bearing article 1 in mind when considering articles 9 and 10.

32. Mr. REZEK (Brazil) said that his delegation proposed to submit a number of amendments so as to ensure, for example, that adolescents would not be recruited into armed conflicts and could not therefore subsequently be punished.

33. With regard to article 9, paragraph 1, he would prefer the words "for which he or she is not personally responsible" rather than "which he or she has not personally committed"; such a wording would cover cases of complicity resulting from higher orders.

34. With regard to article 9, paragraph 4 the Brazilian delegation would have preferred to follow the wording used in draft Protocol I, article 65, paragraph 3 (d) which read "no person may be sentenced except in pursuance of those provisions of law which were in force at the time the offence was committed, subject to later more favourable provisions". Everyone was aware that the application of later provisions occurred very frequently in penal law.

35. So far as article 9, paragraph 3 was concerned, it was legitimate to inquire whether the manner in which it was worded might not give rise to a somewhat strange literal interpretation. A person might possibly claim that he should not be punished - or in other words, that he should not go to prison - because he had been sentenced. It was, however, obvious that any such claim would be dismissed as ridiculous.

36. Mr. MILLER (Canada) said that articles 9 and 10 were closely linked and of major importance. In framing the provisions of a humanitarian character applicable to non-international conflicts, the Committee should not lose sight of the fact that those provisions should operate in favour of all the parties, namely of civilians, members of the Government forces and members of the rebel forces. At the first session of the Conference, the Canadian delegation had proposed the deletion of article 9, paragraphs 2, 3, 4 and 5 (CDDH/I/37), because it was afraid that not all national systems of penal law were compatible with those provisions. On reflexion, however, and after consultation with various experts, his delegation

had come to the opinion that there were good reasons for embodying in draft Protocol II concepts that had now been recognized by almost all States. The Canadian delegation wished therefore to withdraw its amendment and supported the text submitted by the ICRC. It considered, however, that paragraphs 2 and 4 covered the same ground, as the representative of Iran had already pointed out.

37. The highly interesting comments of the representative of Brazil deserved to be taken into consideration and should be studied by Working Group B.

38. Mr. GRAEFRATH (German Democratic Republic) observed that the principles set forth in article 9 were recognized in the main systems of penal law. His delegation therefore supported the ICRC draft. In his view, however, the text of paragraph 2 should be improved. It was the aim of amendment CDDH/I/89 to harmonize that text with article 15 of the International Covenant on Civil and Political Rights - a matter of form and not of substance. Indeed, it was well known that after the Second World War the defence of war criminals was largely based on national law and that those criminals rejected any reference to international law. In view of the fact that, in the case of a fascist régime like that of the Third Reich, law and order often assumed a criminal character, it was important to state clearly that no retroactive effect was possible where an act was prohibited by international law, even if it was not prohibited at a given moment by the rules of national law.

39. Mr. LOPUSZANSKI (Poland) congratulated the eminent jurists of the ICRC who had drafted the text of article 9 concerning the principles of penal law. The Polish amendment (CDDH/I/95) was designed first of all to complete paragraph 2 by adding the words "prosecuted or" after the words "No one may be", in order to align it with paragraph 3 (b) of article 65 of draft Protocol I. Thus, immunity would be extended to prosecution, which was the first stage in legal procedure. It was, in addition, the purpose of the same amendment to state in paragraph 4 the principle governing retroactivity, which was widely recognized under most national legislative systems. The addition of the words "subject to subsequent and more favourable provisions" at the end of that paragraph would enable a court to inflict a less harsh sentence in the event that penal legislation had been modified in the meantime on lines that were more favourable to the accused.

40. The Polish delegation supported the German Democratic Republic's amendment (CDDH/I/89), which helped to define the field of application of paragraph 2 in such a way as to exclude war criminals. It had no objections to raise with regard to the Canadian amendment (CDDH/I/37).

41. Mr. de SCHUTTER (Belgium) said that articles 9 and 10 included a series of basic principles such as were to be found not only in the set of customary rules governing any penal action, but also in the third and fourth Geneva Conventions of 1949 and in the International Covenant on Civil and Political Rights. They therefore constituted no new departure; they merely served to clarify the obligations which any responsible organized body should and could respect. Those rules fell in the realm of international law and of human rights; they were of a universal character.

42. Article 9, paragraph 1 reaffirmed the personal nature of penal responsibility. Paragraph 2 proclaimed the principle of legitimacy already to be found in Article 15 of the International Covenant. It must apply to cases of offences against national law and against international law equally. It would be unthinkable that a person could commit an offence against international law with impunity by invoking the provisions of the internal penal law of his country. In that respect amendment CDDH/I/89 of the German Democratic Republic deserved attention.

43. Paragraph 4 enshrined the principle of non-retroactivity, which was widely recognized and could not be ignored. In that connexion, an error, probably a misprint, had crept into notes 9 and 10 at the foot of page 141 of the ICRC Commentary (CDDH/3) which were not correct with regard to paragraph 4. That paragraph should, however, be completed by a provision similar to that put forward in the amendment CDDH/I/95 by the delegation of Poland. That proposal conformed with the current tendency of penal legislation to grant delinquents the benefit of lighter sentences, which could be prescribed after the charges had been drawn up. Those new rules were in fact a concrete expression of the changed attitude of society towards misdeeds once perpetrated.

44. The Belgian delegation entirely approved paragraph 5, which viewed the presumption of innocence as deriving from the realm of human rights.

45. Mr. DRAPER (United Kingdom) emphasized the importance of articles 9 and 10, which were closely connected. The ICRC representative had been right to mention draft Protocol II, article 5 in conjunction with those articles, since the principle that "the rights and duties of the Parties to the conflict under the present Protocol are equally valid for all of them" must clearly be given special consideration when provisions concerning penal law were being drafted.

46. It would be desirable to emphasize that paragraph 1 of article 9 applied to an offence "committed in connexion with the armed conflict", as was made clear in article 10.

47. The principles set out in that article were excellent but ought to be clarified to a certain extent. In particular it should be stated that the article covered all forms of sentences, for a sentence was sometimes imposed through administrative channels instead of by a court. Both the jurisdiction involved and the penal law being applied should be taken into consideration. It would also be useful to state that a person would be presumed innocent until his guilt had been legally established in accordance with the law applied by the competent court. One could, in addition, define the type of offence against national or international law to be taken into consideration.

48. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that in his view the provisions of article 9 faithfully reflected the principles of penal law of the Ukraine and of most other countries, and that the text was therefore acceptable. It would seem preferable to combine paragraphs 2 and 4 into one single paragraph as they dealt with the same subject. The Ukrainian delegation supported the amendment submitted by the German Democratic Republic. There was every reason to be satisfied at the fact that the Canadian delegation had withdrawn its amendment to article 9, for the principles set forth in that article were useful. It was useful to repeat them and to specify that they must be implemented by both Parties to an armed conflict.

49. Article 10 was, in principle, acceptable. It might be questioned, however, whether the suspension of execution of the death penalty in paragraph 3 was, strictly speaking, a humanitarian provision.

50. The Ukrainian delegation supported the Polish amendment to paragraph 4, as the death penalty should not be "pronounced" against pregnant women.

51. Mr. AL-FALLOUJI (Iraq) said that article 9 was of such a general nature that it was out of place in draft Protocol II; no mention was made in it either of armed conflict or of victims. The rules of penal law enunciated therein could be found in the general practice of penal law as well as in certain international conventions relating to human rights, which could be applied to every one and in all circumstances. There had already been previous conferences and there would certainly be future ones dealing with such problems; those conferences might perhaps be considered more competent in that respect than the present Conference.

52. As regards article 9, paragraph 1, it should be stressed that the incriminating act must be an offence in relation to a specific law of some kind. But it had been said that the provisions in question were to be valid for both Parties to the conflict. In that case, which was the law that punished the offence of the rebellious party? Was it the national law? That raised the question of the legality of the rebellion.

53. He was not personally in favour of draft Protocol II, and had already expressed reservations on the subject. He intended to submit a full report on the matter to Working Group B.

54. Miss FAROUK (Tunisia) said that she wished to make a few reservations on the subject of article 9. She agreed with the representative of Iran that paragraphs 2 and 4 duplicated each other. The Brazilian oral amendment to paragraph 1, which consisted of replacing the words "personally committed" by the words "for which he or she is not personally responsible", might raise certain misgivings, for it could well be asked how such a provision was to be applied in practice. If the idea of responsibility were to be retained, she suggested the words: "for which his or her responsibility has not been proved".

55. Mr. BETTAUER (United States of America) said that he shared some of the concern expressed by the representative of Iraq with regard to article 9. That article referred in general to human rights rather than to the protection of individuals participating in an armed conflict. The problem might be solved by the addition of preambular words, as for example: "With regard to offences committed in connexion with the armed conflict".

56. As to paragraph 1, he appreciated the criticisms made by the representative of Brazil and would agree to consider changing that paragraph in an appropriate manner. The proposal of the German Democratic Republic relative to paragraph 2 would be acceptable.

57. He did not think that paragraph 3 could be regarded as a principle of international penal law. In a federal country such as the United States of America, an individual might be judged and acquitted in one State and judged a second time in another State for a series of acts which constituted a crime under the separate laws of each of the two States. Actually, it was to be regretted that the Canadian delegation had withdrawn its proposal for deleting paragraph 3 of article 9. The United States delegation would reconsider its position and might judge it necessary to submit an amendment again urging the deletion of the paragraph in question.

58. Mr. BLOEMBERGEN (Netherlands) said he had no objections to raise, in principle, with regard to the text proposed by the ICRC for article 9. However, since some delegations had pointed out that articles 9 and 10 should be considered as forming a whole, and since the United States representative had brought forward convincing arguments in favour of the insertion of a phrase specifying that it was a question, in article 9, of offences committed in connexion with an armed conflict, he wondered whether the two articles might not be merged in a single text which would include an introduction based upon paragraph 1 of article 10.

59. His delegation likewise accepted the amendment submitted by the German Democratic Republic relative to paragraph 2 (CDDH/I/89), the amendment submitted by Poland (CDDH/I/95), and the suggestions made by the representative of Brazil, which were along the lines of the aforesaid amendment.

60. Mr. SOOD (India) shared the opinion of the representative of Iraq, according to which article 9, as at present worded, had a general application and did not apply specifically to national conflicts. That article enunciated fundamental principles which, in fact, governed penal law in all countries. There was nothing in the text to show that it referred to individuals who had committed an offence in connexion with an armed conflict; all it did was to render draft Protocol II cumbersome, when every effort was being made to make it as specific as possible with a view to its application to non-international armed conflicts.

61. Mr. KEITH (New Zealand) pointed out that article 9 should be read in the light of article 2, paragraph 1, as adopted by the Committee, which helped to define the field of application of article 9. However, taking into consideration the comments made by several delegations that were unlikely to approve article 9 as worded in the ICRC text, he thought, as did the Netherlands representative, that articles 9 and 10 might be merged in one single text based upon draft Protocol I, article 65, paragraph 3 which was, moreover, the original source of draft Protocol II, article 9. His delegation supported the fundamental principles enunciated in article 10 and hoped that it would be possible for Working Group B to hammer out a text which would satisfy all delegations.

62. Mr. PARTSCH (Federal Republic of Germany) said that the insertion at the beginning of article 9 of the words proposed by the United States representative would have the advantage of defining that article's field of application and thus meeting the objections raised by those delegations which considered that owing to its excessively general scope, the article was out of place in draft Protocol II. But he was afraid that by merging articles 9 and 10 - carefully worked out by the ICRC, for which they were both justified - into one single text, they might end by having too lengthy and cumbersome a text.

63. He would like to draw the attention of the representative of the German Democratic Republic to the fact that the text submitted by him in his amendment (CDDH/I/89) did not establish a strict concordance between article 9, paragraph 2 and Article 15, paragraph 1 of the International Covenant on Civil and Political Rights, where it was not a question of an "offence" but of a "misdemeanour". With regard to the principle of non-retrospectivity enunciated in paragraph 4, that was a very intricate point on which he reserved the right to revert in the Working Group B.

64. Mr. GRAEFRATH (German Democratic Republic) said that a mistake had, in fact, crept into the text of amendment CDDH/I/89 in which, instead of the words "... an offence under national or international law ...", the following words, which were the terms used in paragraph 1 of Article 15 of the International Covenant on Civil and Political Rights should be substituted: "a criminal offence, under national or international law".

65. Mr. HUSSAIN (Pakistan) supported the suggestion of the United States representative to insert a sentence at the beginning of article 9 defining the scope of the article. Concerning paragraph 1, he pointed out that two very different ideas were expressed in the same sentence: on the one hand, that no one might be punished for an offence which he or she had not personally committed, and on the other, that collective penalties were prohibited. Those two ideas should not be linked together. In Pakistan, for example, a person who, without having personally committed a punishable offence, but who had taken part in any way in such an offence, could be punished; but the question of collective penalties was dealt with differently.

66. He agreed with the representative of Canada that paragraphs 2 and 4 expressed the same idea and should be combined in a single text.

67. He found paragraph 3 difficult to understand. Was it to be understood that when a rebel had been condemned or acquitted by a rebel court, he could no longer be arrested or punished for a breach of the national laws of the country? In such a case, under pretext of treating rebels humanely, a serious encroachment on national law might occur which would impede its enforcement.

68. Mr. AGOES (Indonesia) shared the opinion of delegations which considered that article 9 had a very general scope and contained provisions already existing in the penal legislation of all countries throughout the world. For that reason he considered it inopportune for the article to appear in Protocol II, which had a well-defined objective.



69. Mr. AL-FALLOUJI (Iraq) wished to ask the ICRC representative a number of questions which he considered essential in order to take a useful part in the discussion on article 9 in Working Group B. In particular, he wished to know under what concepts the terms "offence", "penal law" and "court" should be interpreted when applied to the rebel party? He asked whether, when a condemnation for a presumed offence was made by the rebel party, it was to be understood that the State no longer had the right to hand down a judgement in accordance with its own laws? Concerning the principle of non-retroactivity, he wished to know how, and in what conditions, it could be applied to the rebel party.

70. Mr. ABDUL-MALIK (Nigeria) stated that his remarks related to the withdrawal of the Canadian amendment to article 9 (CDDH/I/37). Even if its principle was acceptable, article 9, in the form proposed by the ICRC, had no place in draft Protocol II unless the United States proposal, which answered the concern of the Nigerian delegation, was accepted. In any case, paragraph 3 raised the same difficulties for Nigeria, which like the United States of America was a federal state, and for the reasons which had been very clearly expressed by the United States representative. He would add to the latter's remarks that the delegation of Nigeria considered that up to a point the rebels had not actually set up courts and did not necessarily follow the laws of governments' Parties to the conflict. The Nigerian delegation therefore considered that paragraph 3 should in any event be deleted.

71. Mr. CONDORELLI (Italy) said that he understood the perplexity of delegations who wondered whether article 9, as proposed by the ICRC, found its right place in draft Protocol II. In his opinion, the article should only be included there to the extent that it was linked with the objectives of that Protocol. He therefore approved the suggestion of the United States representative and thought that paragraph 3 should be based on the principles expressed in draft Protocol I, article 65, paragraph 3 (b). There was no question that article 9, paragraph 3 as proposed by the ICRC, could not be read as signifying that a double judgement might never occur. He suggested that in order to reconcile the different points of view, the words "of the same Party to the conflict", could be added to the end of the paragraph, to indicate that judgement by another State was not excluded.

The meeting rose at 12.30 p.m.



SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

held on Thursday, 20 March 1975, at 3.30 p.m.

Chairman: Mr. HAMBRO (Norway)

In the absence of the Chairman, Mr. K. Obradović (Yugoslavia), Vice-Chairman, took the Chair.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 10 - Penal prosecutions (CDDH/1, CDDH/56; CDDH/I/89, CDDH/I/95, CDDH/I/96) (concluded)

1. The CHAIRMAN said it had been agreed with the Chairman of Committee II that a Joint Working Group should be set up to try to find a suitable wording to cover the meaning of the word "reprisals" in the context of non-international conflicts.
2. He invited the representative of the International Committee of the Red Cross to introduce Protocol II, article 10.
3. Mrs. BUJARD (International Committee of the Red Cross) said that article 10, paragraph 1 which dealt with penal prosecutions, reaffirmed, in the context of draft Protocol II, a legal rule already contained in Article 3 common to the Geneva Conventions of 1949, namely, the rule that no sentence should be passed or penalty inflicted upon a person found guilty of an offence in relation to the armed conflict without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees of independence and impartiality which were generally recognized as essential. Article 10, paragraph 2, concerning the right of appeal, supplemented paragraph 1.
4. The main problem dealt with by article 10 was the infliction of the death penalty on a person found guilty of an offence in relation to the armed conflict. The experts consulted by the ICRC had considered that it was hardly possible to place a general prohibition on the death penalty, if the various penal systems in force were to be taken into account. They had, however, generally agreed that it was possible to prohibit the death penalty being carried out when the offender was under the age of 18 at the time the offence was committed and that the death penalty should not be carried out on pregnant women. With those two exceptions, article 10 left intact the right of the authorities to pronounce the death penalty, in accordance with national law.

5. In paragraph 3, however, the ICRC had proposed an attenuating clause, which stated that the death penalty pronounced on any person found guilty of an offence in relation to the armed conflict should not be carried out until hostilities had ceased. As indicated in the Commentary (CDDH/3, p.142) the Government experts had differed on that point. The experts in penal law who had been consulted since then, however, had supported the proposal, which did not derogate greatly from national laws since the death penalty could be pronounced, execution alone being deferred.

6. Moreover, from experience gained they had recognized that capital punishment applied by one Party to the conflict inevitably led to capital punishment being applied by the other party thus causing an endless escalation of violence.

7. The second problem was that of the prosecution of a captive combatant solely by reason of his having taken part in hostilities, and despite the fact that he had respected the provisions of Protocol II. Since Protocol II did not grant prisoner-of-war status to captured combatants, such prosecution was possible and they could, if the national law so permitted, be sentenced to death. Paragraph 5 contained an appeal for clemency, proposing that the fact that the accused had respected the provisions of Protocol II should be taken into account. The provisions of article 10 had been based on humanitarian considerations and also on the experience of the ICRC of practice during such conflicts.

8. Mr. de ICAZA (Mexico) said that his delegation shared the concern expressed by several delegations, especially by those of Iraq and the United States of America, and felt, in order to avoid moving into the field of human rights, it would be necessary to have an introductory paragraph to both article 9 and article 10, specifying that they contained guarantees regarding penal prosecutions applicable in cases of armed conflict.

9. With regard to article 10, he intended to put a suggestion before the Joint Working Group, since in Mexican penal law, the term "offences" ("infracciones") meant violations of regulations and not violations of laws, where the term "crimes" ("delitos") was used. It was therefore difficult for him to accept the wording of paragraph 3, for instance, which referred to the death penalty pronounced on any person found guilty of an "offence". In Mexico, the death penalty was referred to only in connexion with capital punishment for crimes, so he hoped a different wording might be found which would meet the needs of the national law of States ratifying the Protocol.

10. As basic human rights were liable to be suspended in armed conflict, it was essential that the Protocol should specify a number of minimum guarantees or safeguards which could not be suspended; otherwise it would fall short of other existing international instruments.

11. Mr. REZEK (Brazil) said that his delegation wished to submit an amendment to article 10, paragraph 4. The ICRC text stipulated that the death penalty should not be pronounced on persons under 18 years of age or carried out on pregnant women. His delegation wished to insert the following provision: "No penal proceedings shall be taken and no sentence pronounced against any person under sixteen years of age at the time of the offence." His delegation had originally considered the age of 18 as acceptable, but had decided on 16 years in view of the fact that the rule would have to apply to the greatest number of countries. It was essential that the immunity provided in the article should be very precise.

12. His delegation agreed with the limiting clause in the ICRC text of paragraph 3 which provided that the death penalty should not be carried out until hostilities had ceased. It considered that postponement, contrary to the views of other delegations, might rather be a source of hope for the offender.

13. Mr. SOOD (India) said that the legal systems of individual countries were extremely complex and it was impossible for all of them to be covered by article 10. During the discussions in Working Group B, his delegation had pointed out that article 10 would be in conflict with his country's national law, and that its provisions would constitute interference in the sovereign right of States. His delegation wished therefore to add the following introductory paragraph to article 10: "The application of the present article shall not prejudice the right of a State to apply its national laws."

14. The CHAIRMAN requested that the Indian amendment be submitted in writing.

15. Mrs. HJERTONSSON (Sweden), referring to paragraph 5, said that her delegation considered that a combatant in an internal armed conflict should not be punished simply because he had taken part in hostilities. Captured combatants should be placed on a more equal footing with prisoners of war in international conflicts.

16. Paragraph 3, which stipulated that the death penalty should not be carried out until the hostilities had ceased, was acceptable to her delegation, but paragraph 4 which prohibited the death penalty for persons under 18 and for pregnant women, was unacceptable since it meant that the death penalty could be pronounced on a person immediately after his eighteenth birthday or on a woman as soon as

her baby was born. Her delegation intended to submit an amendment to article 10 proposing total prohibition of the pronouncement or execution of the death penalty in the case of internal armed conflicts.

17. Mr. HUSSAIN (Pakistan) said that each country had its own criminal laws and there was no point in attempting to impose principles which differed from those followed by the national laws of the countries concerned. In his own country, there was one fundamental right, namely, that there should be no discrimination between one citizen and another. If, under the Geneva Conventions of 1949, a citizen who had rebelled against the Government could avoid punishment when his fellow citizen in peacetime would be prosecuted for similar activities, that would be highly discriminatory. In his country insurgents would be executed, and any attempt to impose international legislation such as that contained in article 10 would, in his opinion, constitute interference with the sovereign rights of States.

18. With reference to paragraph 3, in his country there was a provision that no appeal should remain pending for more than three months, since it was considered that to compel a prisoner to wait longer than that for the final judgment amounted to torture. So long as the death penalty was permissible under national law, it would not be possible for his Government to accept the provisions of article 10.

19. With regard to paragraph 4, the stipulation that the death penalty should not be pronounced on persons under eighteen years of age would encourage rebels to force persons under eighteen to take part in armed conflicts. If a person under eighteen could otherwise be sentenced to death under the national law of any country, it would not be possible to make a different provision in the Protocol.

20. Mr. ABDUL - MALIK (Nigeria) said that the objections he had expressed at the thirty-third meeting (CDDH/I/SR.33) to article 9 also applied to article 10. He had serious reservations about paragraph 1. Rebels could certainly set up courts with a genuine legal basis, but to ensure that such a basis was established, he wished to propose the insertion of the words "whose jurisdiction is based on a recognizable body of law" after the word "court" in paragraph 1. It was only logical that if rebels could organize themselves sufficiently to observe the Protocols, and thereby enjoy their protection, they could also organize a recognizable body of law.

21. With regard to the right of appeal mentioned in paragraph 2, the standards laid down were just not workable in most countries. As for paragraph 3, relating to the death penalty and its suspension until the end of hostilities, that was quite impractical. Conflicts could go on for decades. Was it being suggested that the convicted person should wait all that time under sentence of death? The minimum age for the death penalty should be reduced from eighteen to sixteen, otherwise, rebels would be encouraged to recruit young people under eighteen. He approved the provision with regard to the abolition of the death penalty for pregnant women and had no objection to paragraph 5 but he flatly rejected paragraph 6 since the power to grant amnesty was traditionally reserved to heads of State only. The whole paragraph had no place in draft Protocol II and he proposed that it be deleted.

22. Mr. TORRES AVALOS (Argentina) said that notwithstanding his support for general principles he shared the doubts already expressed by some delegations with regard to the courts that would pronounce the sentences and apply the penal procedures in every case that a State considered with difficulty such "courts" as being the decisive organs as regards rebels. The introductory paragraph to article 9 proposed by India and the United States of America should also appear in article 10.

23. Paragraph 3 of article 10 called for criticism because it would morally torture the condemned person concerning what he could expect regarding the execution of the death sentence. The death sentence for political offences had been abolished in Argentina more than 120 years ago and as a sentence no longer appeared in the Argentine Penal Code. The Argentine delegation therefore considered that an exclusively international problem was involved. His criticism was therefore aimed at preserving the national sovereignty of States on the one hand and the person who had been sentenced to the maximum penalty on the other.

24. Mr. DRAPER (United Kingdom) said that paragraph 2 marked a step forward on Article 73 of the fourth Geneva Convention of 1949. It was not clear whether the word "sentence" in the first line meant conviction or not.

25. It would be a valuable provision if it were laid down that a convicted person should be informed of his right of appeal no later than the time when he was sentenced; he therefore formally proposed that a phrase to that effect be included in paragraph 2. The United Kingdom delegation also wished to make a tentative suggestion that where charges carrying the death sentence were concerned and a plea of guilty was entered, such a plea should be rejected and the case should proceed as if a plea of not guilty had been entered.

26. Mr. MURILLO RUBIERA (Spain) said that article 10 was clear proof of the increasing gravity of the problems dealt with in Part II of draft Protocol II. Paragraph 4 was an example of the problems that could arise because of differences in national legislation. The age of majority in almost all countries was eighteen, but it was indispensable to take account both of the domestic situation in each country and the differences in the national laws. Many of the provisions of article 10 were not new to many countries; for example, the right of appeal against sentence, in paragraph 2, was obviously taken from established penal codes.

27. International law was designed to protect individuals and in the case in question to raise the standard of protection provided in common Article 3 of the Geneva Conventions of 1949 concerning internal armed conflicts to the high level of United Nations covenants. There was a risk that article 10 might aggravate an already difficult situation. Many of the problems dealt with in article 10 fell within the province of international law and it was essential to avoid a conflict between international and domestic jurisdiction.

28. Draft Protocol II must be drawn up in realistic fashion, taking careful account of the special nature of non-international armed conflicts. In such conflicts there was often a lack of symmetry between the two parties, with one tending to be considerably stronger than the other. Part II of draft Protocol II gave the impression that it had been written to protect one party, namely, the stronger party, more than the other. Obviously the stronger party would find it easier to comply with international provisions and thereby obtain more protection for its combatants. It was true that draft Protocol II, article 5 set out the rights and obligations of both Parties to the conflict, but equally true that rebels might find it difficult to apply those provisions. Article 10 was evidence that the difficulties in the way of applying them were considerable. For example, how could rebels be expected to set up courts, tribunals, procedures and all the other facilities needed to comply with the provisions of article 10?

29. The wording of paragraph 6 was unsuitable for an international instrument. The granting of amnesties was the prerogative of domestic law and had no place in draft Protocol II. Paragraph 6 should therefore be deleted.

30. The words "to the greatest possible extent" in paragraph 5 should be deleted. It was only natural that, when faced with prosecution, combatants who had complied with the provisions of draft Protocol II should be given the consideration referred to.



31. He hoped his remarks would have illustrated some of the reasons for exercising the utmost care in drafting Protocol II, if it was desired that it should become an effective international instrument.

32. Mr. AMIR-MOKRI (Iran) said that his delegation fully appreciated the humanitarian reasons underlying article 10, but it had some reservations, particularly concerning paragraph 3. For judicious reasons, a number of experts at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflict had opposed the ICRC proposal (see CDDH/3, p.142). Iranian law was very severe in its attitude towards anyone who sought to overthrow the legal Government by force or who advocated such action. While his delegation could accept the rule in paragraph 3 in the case of international armed conflicts, it could not do so in the case of non-international armed conflicts.

33. His delegation approved the provision in paragraph 4 and considered that it should be carried even further as far as pregnant women were concerned. It could be argued that the mental state of the mother could have an effect on the physical and moral health of her unborn baby, and the solution to the problem might consist in prohibiting the pronouncement of the death penalty on pregnant women. That question deserved the Committee's attention.

34. Mrs. DARIIMAA (Mongolia) said that her delegation favoured draft Protocol II on condition that it did not undermine the sovereign rights of States or serve as a pretext for interference in matters within the domestic jurisdiction of States. The objection raised by the representative of Pakistan that the provisions of paragraph 3 of article 10 conflicted with the Constitution of Pakistan were pertinent and must be taken into consideration. Her delegation supported the position adopted by the delegations of Pakistan and Nigeria with regard to paragraph 3, which should be reconsidered by Working Group B with a view to producing an acceptable text that could be ratified by the supreme legislative bodies of the States participating in the Conference.

35. Her delegation could not accept the provision of paragraph 4 concerning pregnant women. In her country, the death penalty was never pronounced against women, whether pregnant or not, irrespective of the nature and gravity of the crime committed. Consequently, the provisions of paragraph 4 concerning pregnant women were retrograde in comparison with Mongolian national penal law. In a spirit of compromise, however, her delegation would not press for reconsideration of that paragraph. Her Government would no doubt formulate a reservation to paragraph 4, since any negative modification of Mongolian national law would be inconceivable.

36. When article 18 bis had been considered in Committee II the Algerian delegation had raised the question of foreign mercenaries. Her delegation considered that draft Protocol II could not be used to prevent criminal proceedings against, and punishment of foreign mercenaries. Experience showed that crimes against humanity were perpetrated during non-international armed conflicts, and article 10 regrettably contained no provisions concerning such crimes. In the view of her delegation, that omission should be made good.

37. She supported the amendments to article 9 submitted by the German Democratic Republic (CDDH/I/89) and Poland (CDDH/I/95). In principle, her delegation would be able to support the oral amendment to article 10 proposed by the Indian delegation. Similarly, the idea behind the oral amendment to article 10 proposed by the Nigerian delegation was fully acceptable to her delegation.

38. Mr. LOPUSZANSKI (Poland) said that his delegation's amendment (CDDH/I/96) sought to extend the provisions of paragraph 4 so that the death penalty could be neither pronounced nor carried out against pregnant women. It would be inhuman to pronounce the death penalty against a pregnant woman and simply leave the authorities free to carry out the penalty once the woman was no longer pregnant. The waiting period involved would be torture for the person concerned. The amendment, which had been prompted by humanitarian dictates, was in line with the Polish Penal Code and was unlikely to conflict with the penal law of other countries.

39. Mr. BONDIOLI-OSIO (Italy) said that at the present stage he would comment only on paragraph 6. The provision it contained was of a general nature and had a humanitarian purpose. However, there might be situations where a State in exercise of its sovereign rights, did not consider that it was in a position to grant amnesty, and the draft Protocol should contain an alternative provision to cover such situations. His delegation therefore proposed that the following sentence be added at the end of the paragraph: "If no amnesty is granted, the authorities in power shall consider, case by case, the possibility of remitting the whole or part of the penalty inflicted during the conflict."

40. Mr. BOBYLEV (Union of Soviet Socialist Republics) said the heading of Part II which had been somewhat overlooked during the discussion of the related articles indicated that the purpose of the latter was to protect the victims of armed conflicts from various types of injustice. Whatever opinion might be held of draft Protocol II, it must be remembered that armed conflicts always produced victims and that those victims required protection from the undesirable repercussions of the conflict. The question was not whether States were rich and well-equipped; it was that of the humane treatment of victims. That was the principle by which the Committee should be guided.

41. The ICRC had made a laudable attempt to lay down provisions in favour of the victims of non-international armed conflicts, who represented some 90 per cent of the victims of all armed conflicts. It should be remembered that on several occasions in the past non-international armed conflicts had developed into international conflicts. His delegation believed in progress and was confident that those countries which were not yet in a position to guarantee the application of the provisions under consideration would be able to do so at some point in the future. However, there was one category of persons who should not receive protection, namely, persons guilty of crimes against humanity and genocide, including foreign mercenaries participating in armed conflicts. Rules should be laid down for their punishment, and his delegation reserved its right to submit amendments on that subject.

42. With regard to article 10, his delegation supported the proposals for the amendment of paragraph 3. As for the possible contradiction between some of the provisions of article 10 and national law, account must also be taken of international law, particularly in connexion with the provisions of articles 6 and 10. It was not correct to say that the provisions of article 10 would be applied only by the representatives of legal Governments, since article 5 stated quite clearly that each Party to the conflict would have equal rights and duties. Refusal by one of the parties to apply the provisions of the Protocol would arouse world public opinion, which would be able to exert pressure on that party. It should also be borne in mind that the civilian victims of a reactionary régime required protection against arbitrary violence, detention and torture.

43. For those reasons, the articles of Part II should be approved and the ICRC text provided a good basis for discussion. His delegation was ready, in a spirit of co-operation and compromise, to contribute actively to the Committee's work with a view to ensuring the adoption of Part II, particularly articles 6 and 10.

44. The CHAIRMAN said that, if he heard no objection, he would take it that no other delegation wished to comment on article 10 or on Part II as a whole.

It was so agreed.

The meeting rose at 4.55 p.m.



SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

held on Friday, 21 March 1975, at 3.20 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)\*

Report of the Ad Hoc Working Group on the Protection of Journalists engaged in Dangerous Missions (CDDH/I/237 and Corr.1 and 2, CDDH/I/242, CDDH/I/246) (concluded)\*

1. The CHAIRMAN announced that the Committee had before it two draft amendments to the report of the Ad Hoc Working Group on the Protection of Journalists Engaged in Dangerous Missions (CDDH/I/237 and Corr. 1 and 2), the first submitted by the Nigerian delegation (CDDH/I/246) and the second by the Venezuelan delegation (CDDH/I/242).

2. Mr. MENA PORTILLO (Venezuela), introducing amendment CDDH/I/242, said that his delegation was anxious to contribute to the observance of humanitarian law in armed conflicts through the fullest possible protection of persons, such as journalists, who undertook dangerous missions. After lengthy reflection as to the best way of ensuring such protection, his delegation had decided to propose that a paragraph be added to annex I to the Ad Hoc Working Group's report.

3. It was a journalist's mission to report events to the world with complete objectivity at any cost - an extremely arduous task performed at the risk of his life. It seemed right that journalists should be provided not only with an identity card but also with a more obvious distinctive sign. The identity card would enable them to open certain doors and, if they were taken prisoner, to demand the treatment to which they were entitled. But in a combat area, in the confusion and unforeseen emergencies of defensive or offensive fighting, no one would ask to see their identity card. Anyone who fully appreciated the journalist's role would agree that he ought to be given a visible means of avoiding mistaken identity. One might also add to the considerations already voiced as to the importance of the journalist's work the fact that he was also an impartial witness who could determine whether the Parties to a conflict were respecting international humanitarian law.

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\* Resumed from the thirty-first meeting.

4. It would perhaps be objected that the proposed amendment was likely to contribute to the proliferation of signs and symbols; but that argument would appear to be of little importance in view of the nature of the journalists' missions and the demands of international humanitarian law.

5. He drew attention to a Note by the United Nations Secretary-General entitled "Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflicts" (A/9643), dated 22 July 1974. Paragraph 6 of that document mentioned that the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts had been unable at its 1974 session to examine the question of the protection of journalists engaged in dangerous missions, and that it had decided to include it, as a matter of priority, in the agenda for its 1975 session. Paragraph 7 of the Note referred to revised draft articles of a draft international convention on the protection of journalists engaged in dangerous missions in areas of armed conflict, submitted at the twenty-seventh session of the General Assembly and amended during the twenty-eighth, which were reproduced in annex I to the document. Annex II contained amendments to those articles.

6. Annex I to document A/9643 contained a draft article 7, submitted by ten countries: Australia, Austria, Denmark, Ecuador, Finland, France, Iran, Lebanon, Morocco and Turkey, which provided for the identification of journalists by means not only of an identity card, but also of a distinguishing emblem. Draft article 9, paragraph 1, proposed that the emblem should consist of the letter P in black on a gold circular background. The emblem would be issued to the journalist at the same time as the identity card, and would be displayed on the upper left arm. Paragraph 2 provided that the journalist should also, as necessary wear the recognized distinguishing emblem in the area of conflict.

7. He had quoted those texts in order to show that the sponsors of the draft articles had also considered that the protection afforded by the identity card alone was insufficient. He added that that very morning, at an informal meeting of delegations of the Latin-American Group, the participants had declared themselves in favour of the amendment proposed by the Venezuelan delegation. The form of that amendment could subsequently be amended provided agreement were reached on the principle.

8. Mr. GREEN (Canada) said that despite his wish to approve any step taken to increase the protection of journalists engaged in dangerous missions, he was strongly opposed to the Venezuelan amendment which, in his opinion, was liable to increase the danger to which those concerned would be exposed. Journalists, as

civilian persons, were protected in all cases. It would be imprudent to provide them with a distinguishing emblem clearly visible from a distance, which could only draw attention to them. Furthermore, a phosphorescent emblem, as proposed in the Venezuelan amendment, would show more clearly the sector in which the journalist was carrying out his mission, and might also increase the danger. He pointed out that other groups of civilian persons wore arm-bands, for all sorts of reasons, and that such a plethora of distinguishing signs was useless and costly. When the question of the Red Cross arm-band had been discussed in Committee II, the developing countries had stressed that their budgets barely allowed for printing identity cards, and would not run to any extra expenditure. The Ad Hoc Working Group had considered the draft Convention drawn up by the United Nations very attentively, and had unanimously concluded that the wearing of distinguishing emblems clearly visible from a distance would have more drawbacks than advantages.

9. Mr. BATAULT (France) said that he shared the opinion of the representative of Canada. The Ad Hoc Working Group, which included countries of all tendencies, had reached its conclusions with full knowledge of the facts and after studying every contingency. Its text, without being perfect, was satisfactory and had met with the approval of a certain number of participants; it was an effort towards conciliation with a view to assuring the protection of journalists engaged in dangerous missions by comparatively simple means. The Committee should therefore continue to extend its confidence to the Ad Hoc Working Group and approve the proposed text.

10. Mr. PINEDA (Venezuela) said that his delegation was somewhat discouraged by the reception accorded to its amendment (CDDH/I/242). Before drafting, he and his colleagues had contacted journalists and professional associations, who had shown keen interest in the project. One journalist in particular, who had carried out a mission in Cyprus during the recent conflict, had pointed out that an identifying emblem visible at a distance would have been of great value to him.

11. The arguments put forward by the representative of Canada certainly deserved consideration. It was correct that a journalist was a civilian, but when engaged in dangerous missions he should be easily identifiable. The United Nations had stressed the need for providing the best possible protection for journalists engaged in dangerous missions. The aim of the amendment of the delegation of Venezuela was to increase that protection by making it possible to identify a journalist at a distance. As to the proliferation of distinctive emblems, that objection was not serious enough to cause the Conference to refuse to extend such additional protection to journalists. In fact the only distinctive emblems in use in armed conflicts were that of the Red Cross and that of the civilian protection service.

12. The representative of France was right to emphasize that the Ad Hoc Working Group had reached general consensus on the text of the report, but that did not mean that any recommendation aimed at perfecting the means of protection should be turned down. The delegation of Venezuela had referred the question to the President of the Association of Professional Journalists at the United Nations, who had likewise thought it necessary to provide journalists with a distinctive emblem, the shape and colour of which mattered little provided it enabled journalists to be identified. The Committee should take the opinion of specialists and professional associations into account.

13. The delegation of Venezuela was very disappointed not to have found more support at a Conference attempting to develop and improve humanitarian law, and to which so important a problem had been referred.

14. Mr. BETTAUER (United States of America) said that his delegation supported the view of the representatives of Canada and France, and opposed the adoption of the amendment submitted by Venezuela. It also felt that to provide journalists engaged in dangerous missions with an emblem distinguishing them from the rest of the civilian population might increase the dangers to which they were exposed. His delegation had had an opportunity of discussing the question with representatives of journalists' associations. They had expressed no desire to wear any such emblem. The United States delegation therefore urged the adoption of the compromise text drafted by the Ad Hoc Working Group.

15. Mr. TORRES AVALOS (Argentina) said that he supported the Venezuelan amendment (CDDH/I/242).

16. If the Committee could not reach agreement on that amendment, it should be attached to the report of the Ad Hoc Working Group and placed in brackets so that the Conference might reach its decision on the subject in plenary.

17. Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic) said that while sympathizing with the Venezuelan delegation's concern for ensuring better protection for journalists professionally engaged on dangerous missions, the important point was to approach the question realistically: journalists themselves were divided on the need for the proposed emblem for identifying them at a distance.

18. He was unable, therefore, to support the Venezuelan amendment, for the reasons already given by the representatives of Canada, the United States of America and France, and also because that amendment would constitute a discriminatory measure against war correspondents accredited to the armed forces.



19. Mr. SIASSI (Iran) said that his delegation was unable to support the amendment submitted by the Venezuelan delegation, because it considered, for the reasons already set out by the representatives of Canada and France, that the proposal did nothing to increase the desired protection of journalists on dangerous missions.

20. Mr. CARNAUBA (Brazil) supported the suggestion made by the Argentine representative.

21. Mr. PINEDA (Venezuela) said that his delegation would not press for its amendment (CDDH/I/242) to be put to the vote in Committee, but that it reserved the right to submit it afresh in plenary meeting.

22. Mr. GBASHAH (Nigeria) said that his delegation also would not press for a vote to be taken in Committee on its amendment (CDDH/I/246).

23. The CHAIRMAN proposed that the Committee follow the same procedure as in the case of the Indian amendment to article 4 of draft Protocol II (see CDDH/I/SR.30) and approve by consensus the recommendations contained in the report of the Ad Hoc Working Group on the question of the protection of journalists on dangerous missions (CDDH/I/237 and Corr.1 and 2), it being understood that it would be for the plenary Conference to decide whether it wished to adopt them in a final manner.

It was so agreed.

24. Mrs. HJERTONSSON (Sweden) said that the Swedish authorities concerned had not yet had time to adopt a position on the recommendations of the Ad Hoc Working Group. Consequently, the Swedish delegation reserved the right to fix its definitive attitude on this subject at a later date.

25. Mr. ARIM (Turkey) explained that Turkey had been a sponsor of the draft resolutions submitted to the United Nations General Assembly on the subject of journalists and that his delegation had taken part in the Ad Hoc Working Group at the present Conference.

26. While he supported the recommendations of the Ad Hoc Working Group, he was still not convinced of the merits of the Venezuelan amendment.

27. Regarding the events in Cyprus to which the Venezuelan representative had referred, he pointed out that if a Turkish journalist had, in fact, been killed, that had been deliberately and not because he had not been identified as such: it was open to question, therefore, whether wearing an armlet would really protect journalists on dangerous missions.

28. Mrs. CHEVALLIER (Holy See) said that during the debate on draft Protocol II, article 1, the agreed definition of humanitarian law had been that it should be the result of a compromise between the recognized sovereign rights of States and the imperative requirements for the protection of victims.

29. The delegation of the Holy See, which fully understood the legitimate concern on the part of States to reserve their national sovereignty, might be satisfied with that definition if there were sufficient proof that in the formulation of humanitarian law, an equal balance was invariably maintained between the interests involved. It seemed to her, however, that she had listened to more interventions reflecting the concern of States to protect their sovereignty than to interventions motivated by a genuine concern for upholding the fundamental rights of civilian victims of armed conflicts, particularly with respect to draft Protocol II. The same was true in the case of journalists on dangerous missions, whose dignity as human beings possessing fundamental rights - and among them the right to religion - did not seem to be adequately safeguarded.

30. The specific mention of journalists on dangerous missions among the categories of individuals needing protection undoubtedly represented an advance as compared with the present state of humanitarian law, but it should nevertheless be observed that, from a certain point of view, there had been a retrogression with respect to Article 4 of the third Geneva Convention of 1949 dealing with war correspondents: the model of the identity card under annex IV to that Convention included the entry "religion", without any restrictive reference.

31. The delegation of the Holy See was aware that according to modern ideas of the State, which was lay by definition, no citizen could be obliged to declare his religion. It was also aware, in view of the different existing national legal systems, of the difficulties connected with the formulation of an international model for an identity card for journalists on dangerous missions. But if it was accepted that the right not to declare one's beliefs was one fully recognized under modern law, and one which had to be respected, it should logically be accepted that the same right should be granted to those who, being believers, wished to declare the fact. It was, moreover, a fundamental right, duly recognized in the Universal Declaration of Human Rights and by practically all modern legal systems. It would therefore seem more normal that the journalist himself should decide whether he wished his religion to be specified in the document handed to him or not. If it was not possible to have that point specified in a document drawn up by Governments, the question of how the journalist wished to make his beliefs known could be clearly expressed and recognized in international documents should at least be studied.

32. The case should be borne in mind, for example, in which a war correspondent, seriously wounded in the course of his professional duties, was no longer capable of expressing his desire to receive the comforts of religion at that crucial moment. There was also for consideration the legitimate desire of the family or spouse of a civilian victim of armed conflict to have the assurance that, in an extreme case, their relative or spouse had received the last comforts in due dignity, in accordance with his desire and convictions.

33. Accordingly, the delegation of the Holy See appealed most emphatically to the Parties acceding to the Conventions and Protocols to study, within the context of their national laws, the most suitable way of enabling journalists clearly to make known their religion, and thus be assured at all times of receiving religious assistance in accordance with their own wishes.

34. Mr. BALKEN (Federal Republic of Germany) said that when he had expressed the hope that the Committee would not take a definitive decision at its thirty-first meeting (CDDH/I/SR.31) on the report of the Ad Hoc Working Group, it was in order that his delegation might consult its Government on that subject, as well as on the procedure to be followed for transmitting an appropriate reply to the Secretary-General of the United Nations. His delegation was eager that everything should be done, both in Committee and in the plenary meeting, in order that the question of the protection of journalists on dangerous missions be studied in detail and in a broad, co-operative spirit. Accordingly, it supported any decision that the Committee might take in that respect, and accepted the solution proposed by the Chairman.

35. Mr. FREELAND (United Kingdom) said that his delegation had also asked earlier for a decision on the question of the protection of journalists on dangerous missions to be postponed, so that he could obtain instructions from his Government on the solution proposed.

36. His delegation was in favour of all reasonable measures which would increase the protection of journalists engaged in dangerous professional missions, without unacceptably increasing the difficulties, already great, involved in the discharge of their functions.

37. Since the document submitted by the Ad Hoc Working Group constituted a compromise, it could not be expected to meet the wishes of all delegations fully. His delegation, although preferring the variation suggested by the representative of the Netherlands for the draft in annex I to the document concerning the civilian status of journalists, was prepared to accept the text in the form presented. That text seemed satisfactory in the light of

the many difficulties and differences of opinion to which the subject had given rise. He understood the concern which had prompted the delegation of Venezuela to present amendment CDDH/I/242. The ensuing discussion had been very useful, but his delegation would not have been able to support the amendment had it been put to the vote.

38. He thanked the delegation of Venezuela for not having insisted that the Committee take a vote.

39. Mr. PINEDA (Venezuela) thanked the United Kingdom representative and all the delegations which had understood the meaning and scope of his country's concern. He regretted that the amendment put forward by his delegation had not been supported by the other delegations, as its sole aim was to extend additional protection to a category of civilians in certain dangerous situations. Venezuela had not experienced war, but was saddened to see that the rights of all human beings, in times of armed conflict, were violated. For that reason the Government of Venezuela, in its devotion to peace, had acted in favour of humanitarian law, particularly in the case of journalists who were forced by the nature of their work to move in areas where their lives were in danger.

40. The delegation of Venezuela was ready to defend its point of view, and reserved the right to do so in plenary session. It hoped that the full Conference would, in all its decisions, find in favour of humanitarian law and extend the widest possible protection to the civilian population and to journalists engaged in dangerous professional missions.

41. The CHAIRMAN requested the representative of France to express his thanks to Mr. Sperduti, Chairman of the Ad Hoc Working Group.

#### ORGANIZATION OF WORK

42. Mr. HUSSAIN (Pakistan) proposed that the time-limit for tabling amendments to articles 6 to 10 of draft Protocol II, and to articles 70 to 79 of draft Protocol I, be prolonged.

43. Mr. BOBYLEV (Union of Soviet Socialist Republics) thought that articles 70 to 79 of draft Protocol I should not be discussed before the Easter recess; he therefore proposed that the Committee confine itself to completing consideration of articles 6 to 10 of draft Protocol II.

44. Mr. ABI-SAAB (Arab Republic of Egypt) suggested postponing the time-limit for tabling amendments to articles 70 to 79 of draft Protocol I, since they were articles requiring careful consideration and much time for reflection, especially articles 74 to 79.

45. The CHAIRMAN warned the Committee that if members decided to alter the time-limits set for tabling amendments, such decisions would have to be adopted by a majority of two-thirds or by consensus.

46. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, said that the Group was in the midst of its discussions on article 6 and paragraph 1 of article 8. It would be difficult to accept new amendments to those two articles.

47. Mr. HUSSAIN (Pakistan) proposed accordingly that the Committee authorize the tabling of new amendments for those articles of the two Protocols which had not yet been discussed.

48. Mr. BETTAUER (United States of America) did not think that the time-limit for articles 6 to 10 of draft Protocol II could be postponed. He saw no objection to additional time being granted for articles 70 to 79 of draft Protocol I, since they had not yet been discussed by the full Committee. If agreement on those lines could be reached, it could be adopted by consensus.

49. The CHAIRMAN announced that the time-limit for tabling amendments to articles 6 to 10 of draft Protocol II had expired. As to articles 70 to 79 of draft Protocol I, the time-limit was postponed.

The meeting rose at 5.45 p.m.



SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

held on Monday, 24 March 1975, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

ORGANIZATION OF WORK

1. The CHAIRMAN recalled the proposal made by the representative of the Union of Soviet Socialist Republics at the thirty-fifth meeting (CDDH/I/SR.35) that discussion on articles 70 to 79 of draft Protocol I should be deferred until after the Easter recess. A decision on that proposal had to be taken before the meeting of the General Committee in an hour's time. He called on the Chairman of Working Group B for a progress report.
2. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, announced that the Group had held a general discussion on article 6 of draft Protocol I and had set up a Sub-Group, which hoped to produce a text by the following morning. The discussion on article 7 had been left in abeyance until the decision of Committee III on questions allied to that article became available. The Group had begun discussing article 8 and hoped to complete it and take up articles 9 and 10 before Easter, or immediately afterwards.
3. The CHAIRMAN suggested that the Committee should vote on the USSR proposal.
4. Mr. AL-FALLOUJI (Iraq), speaking as representative of Iraq and as Chairman of the Asian Group, said that he had consulted several delegations, which considered that there should be no change in the Committee's arrangements. Certain basic principles on which no decision had yet been taken must first be accepted for draft Protocol I and then adapted to draft Protocol II, not the contrary. There must be no imbalance between the two Protocols. His delegation categorically opposed the idea of changing a method of work adopted by the Conference at its first and second sessions merely for the short period before the Easter recess.
5. Mr. de ICAZA (Mexico), Rapporteur, pointed out that there was no question of changing the Committee's working arrangements. The Committee was merely considering a proposal from the USSR delegation that it should not consider the relevant articles of draft Protocol I until it had finished that part of draft Protocol II which was now under consideration.

5. Mr. HUSSAIN (Pakistan) said that he had received instructions from his Government that draft Protocols I and II should be dealt with simultaneously. At the beginning of the Conference, the Committee had started to deal with draft Protocol I, and had then gone on to another chapter of draft Protocol II. His delegation had thought that the Committee would then return to article 17 et seq. of draft Protocol I and then deal with draft Protocol II again. A decision had been taken to refer both Protocols to two Working Groups, but it had in fact been found necessary to discuss them first in plenary Committee. The decision of the Conference had been that the draft Protocols should be discussed simultaneously and he had been instructed to request that that procedure should be followed, since for his Government both Protocols were of equal importance.

7. Mr. SOOD (India) said that his delegation fully supported the points made by the representatives of Iraq and Pakistan. There were important reasons why it could not agree to the USSR proposal. His delegation's understanding was that the Conference had to discuss both draft Protocols simultaneously, in accordance with rule 28 of the rules of procedure of the Conference. More progress, however, had been made on draft Protocol II than on draft Protocol I. His delegation had regretted the decision taken the previous week to refer articles 6 to 10 of draft Protocol II direct to Working Group B, contrary to established procedure. Either the rule adopted by the Conference should be followed or else discussion on draft Protocol II should be suspended and discussion initiated on articles 71 to 73 of draft Protocol I, so that after Easter there could be parallel discussion of both draft Protocols. Moreover, his delegation would like a definite programme of work to be established for each meeting.

8. The CHAIRMAN pointed out that such a course was impossible since delegations resented any time-limit being imposed on speeches.

9. Mr. CUTTS (Australia) supported the USSR proposal, on grounds not of principle but of practical expediency. Working Group B was beginning to make progress in discussing articles 6 to 10 of draft Protocol II and he feared that, if the discussion were suspended at that stage, much would be lost. Working Group B should continue its work on those articles for the next few days. If it was felt that equal weight should be given to draft Protocol I, it should be decided that after Easter the Committee's entire time should be devoted to it.

10. Mr. BETTAUER (United States of America) supported the USSR proposal, which merely followed the order established by the Committee's working group document (CDDH/I/203 and Add.1) and agreed with the reasoning of the Australian representative. His delegation would, however, abide by any decision of the Committee.



11. Mr. AGOES (Indonesia) said that his delegation felt that progress in discussing draft Protocol I had lagged behind that of draft Protocol II and that it would therefore be advisable to drop the discussion of articles 6 to 10 of draft Protocol II, even in Working Group B, and to concentrate on articles 70 to 79 of draft Protocol I.
12. Mr. AMIR-MOKRI (Iran) shared the views expressed by the representatives of Iraq, India and Pakistan. The Soviet Union proposal was quite unacceptable to his delegation.
13. Mr. ABDUL-MALIK (Nigeria) said that, although his delegation agreed with the Soviet proposal from the point of view of expediency, it felt obliged to oppose it because the Committee had already agreed to consider the two draft Protocols simultaneously and to proceed at an equal pace for both. That was why it had established two Working Groups, Group A on draft Protocol I and Group B on draft Protocol II. Any alteration in that decision would have to be adopted by a two-thirds majority, in accordance with rule 32 of the rules of procedure.
14. Mrs. DARIIMAA (Mongolia) suggested that, in order to avoid further discussion, the Committee should establish an exact time schedule to be followed until the end of the Conference.
15. The CHAIRMAN pointed out the difficulty of such a procedure.
16. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that his delegation's proposal had not been intended to discriminate against the discussion of draft Protocol I. His delegation was in fact in favour of both being discussed and decisions taken upon them in parallel if possible. The proposal had been purely practical, because it seemed that the Committee was not likely to come to any decision in the two days before the Easter recess but would only have time to begin the general discussion of the articles. Since most delegations seemed to oppose his proposal, he would withdraw it.
17. Mr. CUTTS (Australia) said that, in that case, his delegation would put forward, as its own, the proposal just withdrawn by the Soviet Union delegation.
18. Mr. GLORIA (Philippines) said that, since the Committee's adoption of draft Protocol I, article 1 at the first session of the Conference, draft Protocol II had become of secondary importance, all the underlying principles of humanitarian law being embodied in draft Protocol I. Draft Protocol II should therefore be set aside until draft Protocol I had been fully discussed. He proposed that a code of international law and procedures should be created in order to deal with violations of the four Geneva Conventions of 1949 and the additional Protocols. Rather than discuss the abstract

principles in draft Protocol II, it would be more practical for the Committee to concentrate on draft Protocol I, Part V - "Execution of the Conventions and of the present Protocol" - which embodied all matters concerning breaches of that Protocol. He therefore endorsed the proposal made by the representatives of Iraq and Pakistan.

19. The CHAIRMAN invited the Committee to vote on the Australian proposal that the Committee should devote the two days before the Easter recess to discussion of articles 6 to 10 of draft Protocol II.

The proposal was adopted by 29 votes to 22, with 12 abstentions.

20. The CHAIRMAN announced that the Committee would start consideration of articles 70 to 79 of draft Protocol I immediately after Easter.

21. Mr. AL-FALLOUJI (Iraq), speaking on a point of order, said that that decision should have been taken by a two-thirds majority.

22. Mr. ABDUL-MALIK (Nigeria), speaking on a point of order, reminded the Committee that he had already pointed out that the decision would have to be adopted by a two-thirds majority, in accordance with rule 32 of the rules of procedure.

23. The CHAIRMAN replied that, in his opinion, the Committee had not adopted any definite method of work. Its decision to consider the two draft Protocols in parallel was a purely practical one. Since the matter had been raised, however, he asked the Committee to vote on whether or not its last decision should stand.

The decision in favour of the Australian proposal was maintained by 36 votes to 22, with 8 abstentions.

24. The CHAIRMAN announced that the Committee would accordingly discuss articles 6 to 10 of draft Protocol II until the Easter recess and after Easter would start to discuss articles 70 to 79 of draft Protocol I and at the same time terminate its work on articles 6 to 10 of draft Protocol II and continue meetings of Working Group B if necessary.

25. Mr. HUSSAIN (Pakistan) expressed his delegation's regret at the decision just adopted.

26. Mr. DIXIT (India) said that his delegation, too, was concerned at the decision and considered that the point should have been clarified earlier, in view of the programme of work already adopted by the Committee. He requested the Chairman to rule whether a two-thirds majority would be needed to overrule its recent decision.

27. The CHAIRMAN said that he was unable to give a ruling on a hypothetical question at the present time and requested delegations which desired to question the ruling to do so at the next meeting.

28. Mr. AL-FALLOUJI (Iraq), speaking on a point of order, pointed out that all the developing countries wished to contest that decision.

29. Mr. de ICAZA (Mexico), Rapporteur, reminded the Committee that, at its thirty-fourth meeting (CDDH/I/SR.34), it had expressed its willingness to allow the officers of the Committee to decide whether or not to adopt the USSR proposal concerning the continuation of its work.

30. Since that proposal had met with some opposition, however, the officers had decided to put it to the vote. The Committee's report on the progress of its work (CDDH/I/201) had scheduled discussion of articles 63 to 65 and 67 to 69 of draft Protocol I and articles 6 to 10 and 32 of draft Protocol II immediately after articles 1 to 7 of draft Protocol I and 1 to 5 of draft Protocol II. Since it was still not certain whether Committee I or III would eventually discuss articles 63 to 65 and 67 to 69 of draft Protocol I, it was logical that the Committee should next discuss articles 6 to 10 of draft Protocol II, immediately followed by articles 70 to 79 of draft Protocol I and 36 to 39 of draft Protocol II. The Australian proposal had not changed but merely confirmed that programme of work and therefore did not require a two-thirds majority.

31. The CHAIRMAN said that the proposal had been merely a practical suggestion and any delegations questioning it should express their opposition at the next meeting.

32. Mr. BALKEN (Federal Republic of Germany) and Mr. HUSSAIN (Pakistan) requested the Chairman to confirm that the Committee would discuss articles 70 to 79 of draft Protocol I immediately after Easter, in order to enable delegations to organize their work.

33. The CHAIRMAN confirmed that he had already said so.

The meeting rose at 4.5 p.m.



SUMMARY RECORD OF THE THIRTY-SEVENTH MEETING

held on Wednesday, 2 April 1975, at 3.15 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)\*

Article 70 - Measures for execution

Proposed article 70 bis - Activities of the Red Cross and other humanitarian organizations (CDDH/I/263 and Add.1)

Article 71 - Legal advisers in armed forces (CDDH/I/265)

Article 72 - Dissemination

Article 73 - Rules of application

Article 74 - Repression of breaches of the present Protocol

Article 75 - Perfidious use of the protective signs

Article 76 - Failure to act

Article 77 - Superior orders

Article 78 - Extradition

Article 79 - Mutual assistance in criminal matters

1. Mr. Antoine MARTIN (International Committee of the Red Cross) introduced draft Protocol I, Part V, Section I, which contained general provisions designed to ensure the proper implementation of the Protocol. Articles 70 to 73 were closely interrelated. The measures for execution in article 70 would be facilitated by the presence of legal advisers in the armed forces, provided for in article 71, by the wide dissemination of humanitarian rules mentioned in article 72, and by the communication of the laws and regulations that the Contracting Parties might adopt to ensure the application of the Protocol in compliance with article 73. The qualified persons provided for in article 6, already adopted by the Committee, would no doubt have a part to play in connexion with the various measures provided for in Part V, Section I.

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\* Resumed from the thirty-fifth meeting.

Article 70 - Measures for execution

2. Mr. Antoine MARTIN (International Committee of the Red Cross) said that article 70 was the result of a number of proposals submitted at the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

3. With regard to paragraph 1, some experts had proposed the insertion in Part V of an article entitled "Implementation of essential provisions", which would guarantee the implementation without delay of Article 118 of the third Geneva Convention of 1949, on the release and repatriation of prisoners of war at the close of hostilities, and of Articles 132 to 134 of the fourth Geneva Convention of 1949, on the release, repatriation and accommodation in neutral countries of civilian internees within the meaning of that Convention. Those experts considered that such a provision would ensure that the application of those Articles of the Conventions would not be postponed in order to extract political or other advantages. Most of the Government experts had shown interest in the idea of such an Article. The ICRC had taken that wish into account, but had considered that it would be better to have a provision concerning the execution without delay of all the obligations incumbent on the High Contracting Parties under the Conventions and Protocol I, since it would have been difficult to make specific mention of only certain Articles of the Conventions.

4. The provisions of paragraph 2 must be taken as being complementary to Article 1 common to the four Geneva Conventions of 1949 under which the High Contracting Parties undertook to respect and to ensure respect for the Conventions in all circumstances. The Government experts consulted had considered that the Conventions, even when made more specific and supplemented by Protocol I, would continue to be, in the main, a statement of general rules. It was therefore necessary to provide that measures of execution should be taken by the Contracting Parties to cover in detail actual situations arising from the course of events.

5. It followed that the Contracting Parties must undertake that their civilian and military authorities would, to the fullest extent possible, give orders and instructions to ensure the observance of the provisions of the Conventions and of the Protocol.

Proposed article 70 bis - Activities of the Red Cross and other humanitarian organizations (CDDH/I/263 and Add.1)

6. Mr. WARRAS (Finland), introducing amendment CDDH/I/263 and Add.1, of which his country was a sponsor, said that it proposed the addition of an article 70 bis dealing with the special role, in times of armed conflict, of the Red Cross family, consisting of the International Committee of the Red Cross, the national Red Cross Societies, and the federation or League of Red Cross Societies, and with similar activities carried out by other humanitarian organizations. The purpose of the article was to broaden the provisions of the 1949 Geneva Conventions, contained in Articles 26 and 44 of the first Convention, Article 125 of the third Convention and Articles 63 and 142 of the fourth Convention, so as to take account of the experience acquired since 1949. It was a general provision which could be inserted as article 70 bis in draft Protocol I, Part V, Section I, or as article 6 bis in Part I of that Protocol.

7. Such a reaffirmation by the High Contracting Parties of the role of the national Red Cross Societies and of the international Red Cross organizations at times of armed conflict would be in conformity with the provisions governing the application of the Geneva Conventions and of draft Protocol I, and make it possible to cover the main activities of the Red Cross in a few general provisions.

8. The part played by the ICRC was reaffirmed in paragraph 1. It was only natural that the humanitarian activities of the ICRC, recognized in the various provisions of the Geneva Conventions and of draft Protocol I, should be carried out by virtue of the facilities granted by the High Contracting Parties and in accordance with the local conditions obtaining in their respective countries. That provision seemed logical in view of the humanitarian mandate conferred on the ICRC by the Geneva Conventions and by draft Protocol I in conformity, in particular, with Article 9 of the first, second and third Geneva Conventions of 1949 and Article 10 of the fourth.

9. Paragraph 2 dealt with the part played by the national Red Cross Societies of the Parties to the conflict. It was imperative that the High Contracting Parties should also recognize the humanitarian role of the national Red Cross Societies of the Parties to the conflict and grant them every facility required to carry out their task in accordance with the principles of the Red Cross. Since the activities of the national Red Cross Societies were governed by current conditions in the various countries, the nature of the conflict and the needs of its victims, the sponsors considered it better not to give a complete, or even a partial, list of those activities.

10. Paragraph 3 concerned the facilities granted in accordance with Article 27 of the first Geneva Convention of 1949, to the national Red Cross Societies of countries which were not Parties to the conflict and to the League of Red Cross Societies. In pursuance of the Red Cross principle of universality and of the humanitarian tasks resulting therefrom, the federation of all the national Red Cross Societies - in other words, the League - functioned as a permanent liaison organ between the national Red Cross Societies, with particular regard to the organization and operation of their activities, at national and international levels. In that connexion, it should be noted that all the national Red Cross Societies, currently totalling 122, were recognized by their respective Governments - all of the latter being signatories to the Geneva Conventions of 1949 - as auxiliaries to the public authorities, especially within the meaning of Article 26 of the first Geneva Convention of 1949. It was also noteworthy that the federation, or League, functioned as coordinator of the assistance contributed by the national Red Cross Societies.

11. Paragraph 4 referred to the other humanitarian organizations mentioned in Article 26 of the first Geneva Convention of 1949, in Article 125 of the third Geneva Convention, and in draft Protocol I. It provided for the granting of similar facilities to the other humanitarian organizations which were authorized by the respective Governments to carry out humanitarian activities in compliance with the provisions of the Geneva Conventions and of draft Protocol I. The sponsors considered that in order to ensure broader and better assistance to the victims of conflicts, those other humanitarian organizations should, as far as possible, be afforded the facilities necessary for that purpose.

12. He pointed out that the square brackets which appeared five times before and after the words "and the present Protocol" should be deleted once the draft Protocol had been approved and adopted in its entirety by the plenary Conference. In conclusion, he reminded the meeting that the principle of the draft amendment had been accepted at the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, held in Geneva in 1972.<sup>1/</sup>

13. Mr. BEER (League of Red Cross Societies) said that he would like to draw attention to the importance of the proposed addition of article 70 bis.

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<sup>1/</sup> See ICRC: Report on the Work of the Conference, vol.I, para.1.109.



14. When the four Geneva Conventions at present in force had been signed in 1949, there had been 66 national Red Cross, Red Crescent, and Red Lion and Sun Societies. The number of member societies now recognized by the ICRC was 122. In some countries where there was no recognized society the League gave active assistance to groups which were about to become member societies. Thus, the organization was virtually world-wide, with over 200 million members.

15. The national Societies were a source of strength, both for practical work and for informing the public on the significance of the Conventions and Protocols; they were of assistance to the Governments which would like those instruments to be accepted not only in theory but also in practice.

16. Consequently, it was vital that Governments should recognize and facilitate the work of the national Societies, and that articles explicitly recognizing their existence and protecting their activities should be included in the rules of international humanitarian law.

17. He had been interested to see that the text submitted provided for support to the ICRC to enable it to carry out the humanitarian functions assigned to it under the Geneva Conventions. It was good that such support should be provided in one and the same article.

18. The national Societies had a very special part to play, even in conflicts, because of their dual role as independent voluntary organizations anxious to help suffering humanity and as auxiliaries of the public authorities.

19. It was important that the proposed article should cover also the federation of national Societies - the League of Red Cross Societies. Indeed, one of the main tasks of the League was to form national Societies and prepare them to be ready to take action in any situation, including those arising in time of conflict. The African Red Cross Development Symposium which had been held by the League at Montreux in February/March 1975, in conjunction with the African Red Cross Societies, had recognized the need to help the federation to strengthen the member Societies, to increase their efficiency and to co-ordinate their activities.

20. Collaboration between the ICRC and the League was governed by an agreement based on the experience gained during the conflicts of recent years.

21. The desire that increased support for the work of the Red Cross family should be guaranteed in time of conflict was not new. It had already been voiced at international conferences of the League, in the presence and with the support of Government representatives, and at Red Cross meetings of Government experts. The

League therefore welcomed the proposed article, which recognized the combined efforts of the national Societies, of the ICRC and the League.

22. Paragraph 4 provided that similar facilities should be made available to the other organizations performing their humanitarian activities in comparable circumstances. That was evidence of the determination of the Red Cross to strengthen not only its own unity, but that of all mankind.

23. Mr. PILLOUD (International Committee of the Red Cross) confirmed that the ICRC was entirely satisfied with article 70 bis and sincerely hoped that the Conference would adopt it.

24. It was well to stress the unity of the Red Cross movement, and to specify clearly the assistance which each organization, according to its own capacity, might extend to the victims of armed conflicts.

25. With regard to the ICRC itself, the proposed article was a valuable reaffirmation of the Articles common to the four Geneva Conventions of 1949.

26. Mr. CARON (Canada) said that his delegation found article 70 bis highly satisfactory. It would like Canada to be added to the list of sponsors.

27. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam) welcomed the initiative shown by the sponsors of article 70 bis, in view of the increased powers and obligations of the ICRC, the national Societies, the League of Red Cross Societies and the other humanitarian organizations under the new articles before the Committee.

28. He considered the provisions of draft article 70 bis most opportune, for they specified the duties and at the same time drew attention to all the activities of the ICRC, the League of Red Cross Societies, and the national Red Cross Societies, in conformity with their obligations under the Geneva Conventions and draft Protocol I. His delegation had no comment to offer on the substance of article 70 bis. It endorsed the idea as expressed by the representative of Finland, supported by the representatives of the League of Red Cross Societies and the ICRC.

29. In paragraph 1, however, his delegation proposed that the words "shall grant to the International Committee of the Red Cross all possible facilities" should be replaced by the words "shall, as far as possible, grant to the International Committee of the Red Cross facilities". That wording would be more in keeping with realities and, by eliminating the uncompromising nature of the term "all possible facilities", would make it easier to enforce the proposed provisions.

30. The same amendment applied to paragraph 2, but in paragraphs 3 and 4 the wording was in line with his delegation's suggestion.

31. Mr. DRAPER (United Kingdom) said that his delegation supported amendment CDDH/I/263 and Add.1, defining the role of the Red Cross, the national Societies and the other humanitarian organizations. He would like, however, to be given some explanations concerning its content. He asked if the humanitarian mandates assigned to the ICRC (paragraph 1) by the Geneva Conventions of 1949 and the draft Protocol in order to ensure protection and assistance to the victims of conflicts were the same as those assigned to the national Red Cross Societies of the Parties to the conflict enabling them to carry out their humanitarian activities in favour of the victims of the conflict (paragraph 2). He would like to know whether the word "victims" applied to all the victims, regardless of the Party to which they belonged. Indeed, there appeared to be some difference between the provisions of paragraph 1 and those of paragraphs 2 and 3, the mandate of the ICRC apparently being more extensive than that of the national Red Cross Societies of the Parties to the conflict.

32. He would also like to be assured that the fundamental Principles to which draft article 70 bis referred were those listed on pages 380 and 381 of the International Red Cross Handbook (eleventh edition, Geneva, 1971), which were: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality.

33. Mr. de BREUCKER (Belgium) said that his delegation accepted draft article 70 bis, which, in paragraph 1, confirmed the role of the ICRC and, in paragraph 2, recognized the part played by the national Red Cross Societies. His delegation welcomed the explicit mention, in paragraph 3, of the part that the League of Red Cross Societies could play. He fully subscribed to the principle inherent in paragraph 4, which confirmed the provisions of Article 125 of the third Geneva Convention of 1949 and of Article 142 of the fourth. The former stipulated that the Detaining Powers should grant "all necessary facilities" to "the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war". The latter stated that "the representatives of religious organizations, relief societies, or any other organizations assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities ...".

34. Everyone recognized the part played since 1949 both by the ICRC and by the national Red Cross Societies in helping to alleviate the sufferings of the victims of armed conflicts. Since, however, that role was not a Red Cross monopoly, paragraph 4 provided that the High Contracting Parties should facilitate the assistance which

the other humanitarian organizations were able to offer to the victims of armed conflicts. That was not a backward step as compared with the law in force since 1949, but was a reaffirmation and development of that law. It was in that spirit that his delegation wished to join the sponsors of article 70 bis.

35. Mr. WARRAS (Finland) answered the first of the United Kingdom representative's questions in the affirmative. Red Cross principles were based on the strictest impartiality: in other words, on the absence of any discrimination as regards nationality, race, religious belief, social class or political opinion. The aim of the Red Cross was to alleviate suffering and give priority to the most pressing cases of distress.

36. Mr. PILLOUD (International Committee of the Red Cross) said that the fundamental Principles referred to in paragraphs 1, 2 and 3 of proposed article 70 bis had been adopted at Vienna in 1965 by the XXth International Conference of the Red Cross (resolution VIII). Those Principles, which were read out at the beginning of every International Conference of the Red Cross, were termed "fundamental" to distinguish them from other, more specific, principles adopted by other international conferences.

Article 71 - Legal advisers in armed forces (CDDH/1; CDDH/I/265)

37. Mr. SURBECK (Legal Secretary) said that only one amendment to that article had been submitted (CDDH/I/265). It had been proposed by the Brazilian delegation.

38. Mr. Antoine MARTIN (International Committee of the Red Cross) introduced article 71 and said that, on the whole, the Government experts consulted had expressed a strong desire to have such a provision inserted. The role of legal advisers in armed forces had already been referred to not only in connexion with draft article 70, but also during the ICRC representative's presentation of draft article 6 - "Qualified Persons" - which Committee I had adopted.

39. There could be no doubt that many violations of humanitarian law arose from unfamiliarity with the rules involved. Many experts considered that the Geneva Conventions and draft Protocol I would be better applied if the commanders of military units were accompanied by legal advisers whose main task would be to ensure that the armed forces received appropriate instruction, and to answer any questions put to them.

40. Mr. REZEK (Brazil), introducing his delegation's amendment (CDDH/I/265) to article 71, explained its twofold objective. First, it aimed at removing the compulsory nature attaching to the employment of legal advisers in the armed forces of High Contracting

Parties. Admittedly, the armed forces of most countries relied on the assistance of qualified jurists; but it would be difficult, if not impossible, for all countries to comply strictly with the provisions set out in the original text of article 71 and to attach to each military commander a qualified jurist to advise him on the application of the Geneva Conventions and the additional Protocols.

41. Second, whenever such legal advisers could be attached to military commands, it should be clearly stipulated that their task was to assist and not to supervise: ideally, it should be assumed that each High Contracting Party would, in its desire to disseminate and secure respect for the Geneva Conventions and draft Protocol I, take steps to ensure that the officers of its military commands were directly responsible for the execution of the relevant tasks and consequently would need specialist advice only in cases of uncertainty. Any specific or implied attribution of supervisory functions to jurists attached to armed forces would inevitably challenge the hierarchy essential to the proper working of military institutions and raise problems which were better avoided.

42. Mr. DRAPER (United Kingdom) said that his delegation favoured the underlying principle of article 71: it was important that military commanders should be guided in applying the Conventions and the Protocol, and suitable instruction would certainly benefit the armed forces. On the latter point, however, he considered the English text of article 71 to be too imperative and suggested that the word "ensure" should be replaced by a less forceful word, such as "advise".

43. Miss MANOVA (Bulgaria) said that her delegation, too, considered the proposed wording of article 71 to be excessively forceful; it should surely be for the High Contracting Parties to find the best way of ensuring that the Geneva Conventions and Protocol I were respected. The more flexible text proposed by the Brazilian delegation was closer to the position of her own delegation.

44. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said he agreed with the views of the Bulgarian delegation and would support the Brazilian amendment (CDDH/I/265).

45. Mr. ABDUL-MALIK (Nigeria) said that his country would have some difficulty in applying the provisions of article 71. Although Nigeria employed legal advisers in its ministerial departments, it could not second similar experts to armed forces commands.

46. While accepting the underlying principle of article 71, his delegation would like to see the wording amended to read roughly as follows: "The High Contracting Parties shall ensure that in time

of peace, as in time of armed conflict, qualified legal advisers shall be available to render advice to military commanders on the application of the Conventions and the present Protocol and shall ensure that appropriate instruction shall be given to the armed forces."

47. His delegation felt it could accept the proposed Brazilian amendment subject to a few slight drafting modifications.

48. Mr. GLORIA (Philippines) said that his delegation fully supported article 71. His Government was already employing legal advisers in its armed forces and there seemed no reason why article 71 should not be considered by the Conference. For practical reasons, it might be useful to ask all delegations whether their Governments were already applying the system in question.

49. The issue had been raised at the XXth International Conference of the Red Cross at Vienna, where he had taken the opportunity of giving the International Committee of the Red Cross a brochure concerning the functions he personally had carried out during his military service.

50. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam), referring to the statements of the various speakers, wondered whether, if the Committee adopted article 71, all those countries which had taken part in the vote would be required to attach legal advisers to their armed forces commands; some of them had no such personnel.

51. The following wording, he suggested, would respect the spirit of the article without imposing any organizational method: "The High Contracting Parties shall ensure that in time of peace as in time of armed conflict the armed forces shall be given appropriate instruction on the application of the Conventions and the present Protocol". Such a formula would leave the actual arrangements for the application of article 71 to the initiative of the State concerned.

52. Mr. de BREUCKER (Belgium) said that his delegation attached great importance to the provisions set out in article 71, which had to be applied by the military whose purpose it was to win victories. It was a case not of preventing them from doing so, but of guaranteeing the protection envisaged by the Conventions and draft Protocol I. There therefore seemed to be every justification for entrusting that task to legal advisers.

53. Article 71 also provided that in time of peace, appropriate instruction should be given to the armed forces, and his own delegation unreservedly endorsed that proposal; at the XXIInd International Conference of the Red Cross, held at Teheran in 1973 he himself had advocated that such instruction should be given not only to all military personnel but also to diplomatic and ministerial staff who might be called upon to assist in ensuring the application of the Conventions and the Protocol.

Article 72 - Dissemination

54. Mr. SURBECK (Legal Secretary), informed the Committee that no amendment to the article had been submitted.

55. Mr. Antoine MARTIN (International Committee of the Red Cross) said that in the view of the Red Cross, the dissemination of humanitarian rules applicable in time of armed conflict constituted one of the essential measures calculated to strengthen the application of the Geneva Law. The Red Cross had for a long time past made clear the importance it attached to that task; and it was one of the spheres in which the national Red Cross (Red Crescent, Red Lion and Sun) Societies were called upon to play a vital part as auxiliaries to the public services. Furthermore, the United Nations had called upon Member States to intensify their efforts in that field in a number of resolutions.

56. There might be grounds for fearing that the dissemination in peace-time of humanitarian rules applicable in times of armed conflict might induce some parties to persist in considering war as a permissible means of action. The Red Cross was anxious to stress that the Geneva Conventions and the humanitarian rules formed an integral part of the studies designed to preserve world peace.

57. Mr. BETTAUER (United States of America) said that his delegation firmly supported all measures calculated to ensure the widest possible dissemination of the Conventions and the Protocol. He wondered, however, whether the obligation to provide instruction of that kind to the civilian population would not give rise to technical difficulties in federal States where the responsibility for civil education belonged to local authorities. The question of dissemination was dealt with in Article 47 of the first Convention, Article 48 of the second and Article 144 of the fourth. Those articles provided that the High Contracting Parties should include the study of the Convention in their programmes of military and "if possible", civil instruction. He believed it would be advisable to amend paragraph 1 of article 72 by adding the words "if possible" before the words "civil instruction".

58. It would, moreover, perhaps be desirable to add a new paragraph to article 72, providing that the High Contracting Parties would undertake to disseminate to civilian and military personnel in their military forces or under their control the texts of the Conventions and the Protocols. That would provide a further aspect of possible methods of dissemination.

59. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) pointed out that the wording proposed by the ICRC in article 72, paragraph 1, which provided for the widest possible dissemination of the Conventions and the Protocol, might be considered as providing a justification for war and give rise to serious anxieties in countries which had suffered from armed conflicts and which wished to see the strengthening of peace and security in the world. The expression "as widely as possible", even though it was based on humanitarian considerations, disturbed the balance of that paragraph by giving prominence to the possibilities of new wars occurring. Yet it was necessary to strive to prevent wars at all costs and to achieve objective and genuine disarmament.

60. His delegation had no objections to article 72, paragraph 2 but considered it essential that paragraph 3, the purpose of which was not very clear and which might well encourage the production of innumerable reports - which would soon prove useless - should be deleted. Furthermore, the compulsory submission of reports conflicted with the sovereignty of the High Contracting Parties.

61. Mr. ABDUL-MALIK (Nigeria) said that his delegation shared the view of the United States representative that inclusion of the study of the Conventions and Protocols in the programme of civil instruction would present difficulties, and that it should not be made compulsory. He could not accept the existing wording of paragraph 1, and subscribed to the amendment submitted by the United States representative, to insert the words "if possible" before the words "civil instruction".

62. He had no comments to make on paragraph 2, but supported the proposal to delete paragraph 3.

63. Mr. de BREUCKER (Belgium) pointed out that the expression "disseminate ... as widely as possible" already appeared in Article 127 of the third Geneva Convention of 1949. In his view, that wording should not give rise to undue complications. Moreover, he approved in principle the inclusion of the study of the Conventions and Protocol I in programmes of military and civil instruction.



64. He appreciated the point that had been made about the civilian population, which represented a very varied group whereas the armed forces formed a homogeneous group. The term "armed forces" was too exclusive and the term "civilian population" was too general. If Belgium had to assume the role of a Protecting Power, it would ensure that the Ministry of the Interior, which bore special responsibility for civil protection, the Ministry of Public Health, which was the guardian body for the national Red Cross Society and the authority answerable for the sick and the wounded, and possibly other administrative units concerned, were included among the administrative and other entities which should be conversant with the Geneva Conventions and the Protocol. He proposed accordingly that the last part of the sentence in paragraph 1 should be amended to read as follows: "so that those instruments may become known to the armed forces and to all the authorities called upon to be conversant with them, and if possible to the civilian population".

65. He had no comments of major importance to make about paragraph 3, but as it was repeated in a number of Conventions, he felt entitled to wonder whether a provision on those lines served a useful purpose. Had it been repeated at the request of the depositaries of the Convention, or had the ICRC deemed its reiteration necessary? He would welcome some enlightenment on that subject.

66. Mr. REZEK (Brazil) said that his delegation had been impressed by the statement made by the United States representative, since some of the problems referred to by him also arose in his own country. Brazil was able to disseminate the Conventions and Protocols in the military sector, but so far as civil instruction was concerned, besides the obligation to ensure as wide a dissemination as possible - which might be interpreted somewhat flexibly - the inclusion of such studies in programmes of civil instruction would confront the country with real difficulties. To begin with, the universities were autonomous, and that fact prevented the Government from intervening in the establishment of programmes which often reflected the personal ideas of the teacher; and again, teaching in the primary and middle grades fell within the competence of the federated states, so that the problem was many-sided. His delegation had subscribed initially to the amendment proposed by the United States representative, which suggested inserting in paragraph 1 the words "if possible" before the words "civil instruction"; but it had none the less reacted favourably to the statement made by the Belgian representative, who had pointed out that some non-military authorities, which were yet distinct from the civilian population as a whole, would have a special interest in being thoroughly conversant with the texts in question. He would therefore endorse the wording advocated by Belgium, which urged that the armed forces, certain special categories of officials and, as far as possible, the civilian population, be made conversant with the texts.

67. He shared the views of the Belgian delegation on paragraph 3. His delegation would have no rooted objection to the adoption of that paragraph, but it would not protest against its deletion.

68. Mr. SOOD (India) said that his delegation would find it difficult to subscribe to the views expressed by the representatives of Belgium, Brazil, Nigeria, and the United States of America with regard to paragraph 1 of article 72. He did not see how his Government could disseminate instruction of that kind to the entire Indian population. On the other hand, he supported the amendment which the United States representative had submitted verbally, as well as the proposal made by the Belgian representative.

69. So far as paragraph 3 was concerned, he considered that the projected reports were not really necessary and that the paragraph could be purely and simply deleted.

70. Mr. TORRES AVALOS (Argentina) said that, in his delegation's view, dissemination of the Conventions and of the Protocol, together with the obligation to make the armed forces and the civilian population conversant with them, raised problems of a legal character in a country like Argentina which had a federal structure. Furthermore, the universities in such countries drew up their programmes of studies themselves. At first sight, however, it seemed that despite the difficulties the existing text of article 72 was not incompatible with the federal structure of those States, and indeed the part of the sentence reading: "as widely as possible" in paragraph 1, took account of those difficulties. Accordingly, his delegation would be able to accept paragraph 1.

71. He shared the view of the Belgian representative that a more painstaking examination of paragraph 3 was required.

72. Mr. GIRARD (France) said that he had no basic objection to article 72 in its present form. He felt, however, that it might prove advisable to add the words "if possible" to paragraph 1, bearing in mind the difficulties which the provisions of that paragraph could present on the civilian plane for States having a federal structure.

73. Regarding the "competent authorities" - a point raised by the representative of Belgium - he noted that they were explicitly provided for in paragraph 2.

74. He supported the opinion of the representative of Belgium concerning paragraph 3 and shared the view that its present wording called for clarification; furthermore, it might well be desirable to modify the scope of the paragraph and to ease obligations which did not appear to be of incontrovertible use.

75. Mr. GREEN (Canada) said that he had reservations concerning article 72, paragraph 1. Why did paragraph 1 refer to instruction for the military forces when that liability was already included in article 71, which imposed upon the High Contracting Parties the employment of legal advisers for that very purpose?

76. In addition, Canada, a federal State, had difficulties in undertaking any specific obligation with regard to civil instruction, which was a provincial and not a federal responsibility.

77. The question of the level of civil education at which dissemination of the Conventions and Protocol should be undertaken was, in his opinion, a matter that could be left to the judgement of the educational authorities concerned.

78. The Canadian delegation felt that paragraph 1 should read as follows:

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

The Canadian delegation would propose that form of wording in due course in the Working Group.

79. Mr. Antoine MARTIN (International Committee of the Red Cross) noted that paragraph 3 did not appear in the previous draft. When delegations had proposed the addition of a provision of that nature at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, the ICRC had remarked that, in accordance with resolution XXI adopted at the XXth International Conference of the Red Cross, Governments and the national Societies were already bound to report periodically on the steps which they had taken to disseminate the relevant instruments. Despite that fact, the experts had declared themselves in favour of inserting a provision of that nature.

80. In accordance with the above-mentioned resolution XXI, the ICRC had acquainted the XXIst and XXIIInd International Conferences of the Red Cross with the reports, admittedly few in number, which had been received from Governments on the subject. The ICRC would not insist that paragraph 3 be maintained.

81. Regarding civil instruction programmes, it had been the opinion of the Conference of Government Experts that the words "if possible" should be deleted, since it was the function of federal States to arrange for the civil instruction programmes to include the teaching of humanitarian law.

82. Mr. AMIR-MOKRI (Iran) saw no difficulty in accepting article 72, paragraph 1, nor in accepting the proposal of the United States representative regarding the insertion of the words "if possible" in the paragraph.

83. He could also accept paragraph 2, even though it appeared to him difficult to entrust the task of applying the Conventions and the Protocol to persons who might not know their contents.

84. As to paragraph 3, he was entirely of the opinion of the representative of the Ukrainian Soviet Socialist Republic, supported by the representatives of India and Nigeria. In its present form the paragraph lacked clarity: for example, were the four-year intervals intended to start from the ratification or from the signature of the Protocols?

85. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that until the present Protocol was adopted the words "and the present Protocol" should be between brackets in the articles under consideration.

86. Referring to paragraph 1 of article 72, he wished to stress once more that, rather than the dissemination of the Conventions and the Protocol, the fundamental aim should consist in strengthening peace and peaceful co-existence and striving towards disarmament, in order to save future generations from war. As far as his country was concerned, it was dedicating itself actively to that task.

87. He pointed out that the Russian text of article 72 of draft Protocol I differed from that of Article 127 of the third Geneva Convention of 1949.

88. He supported the proposal of the United States representative to reinsert the words "if possible" in paragraph 1.

89. He also considered that paragraph 3, which contributed nothing and suffered from lack of precision, could be deleted.

#### Article 73 - Rules of application

90. Mr. Antoine MARTIN (International Committee of the Red Cross) explained that the sole object of article 73 was to reaffirm, for the purposes of the Protocol, a provision common to the 1949 Geneva Conventions. The words "official translations of the present

Protocol" must be taken as meaning translations drafted by the High Contracting Parties themselves, differing therefore from the official translations drafted by the depositary of the Conventions in accordance with article 90.

91. The words "laws and regulations" must be interpreted in the broadest sense: they embraced all legal acts emanating from executive or legislative authority and having any relevance to the application of the Protocol.

92. The CHAIRMAN proposed that article 73, being of a purely technical nature, should be referred without further delay to the Working Group.

It was so agreed.

93. The CHAIRMAN suggested that 4 April 1975 at noon be set as the time-limit for tabling amendments to articles 70 - 73 of draft Protocol I.

It was so agreed.

#### ORGANIZATION OF WORK

94. The CHAIRMAN drew the attention of members of the Committee to the recommendations of the General Committee regarding the work programme for the period 2 - 18 April 1975 (CDDH/Sec/215). He informed them that he had consulted representatives of delegations and of groups of delegations regarding the continuation of the work of Committee I. Taking those consultations into account, he made the following suggestions: when the Committee had finished consideration of articles 70 to 73 in plenary it would refer them to a Working Group; it was to be hoped that Working Groups A and B would finish consideration of articles 70 to 73 of draft Protocol I and of articles 6 to 10 of draft Protocol II so that the Committee could adopt them all, or nearly all, in the course of the present session. The Committee could then devote the rest of the time at its disposal to a frank and informal exchange of views on articles 74 to 79, which were very complex and controversial; that would enable delegations to convey to their respective Governments the principal currents of opinion with regard to those articles and to proceed with their study at the third session with the support of definitive instructions regarding them.

95. Mr. HUSSAIN (Pakistan) thought it preferable to give the Working Groups all the time they needed to conclude their work in satisfactory conditions, rather than to initiate a debate on articles 74 to 79 which would at present serve no purpose.

96. The CHAIRMAN stressed that his suggestion could obviously only be taken into consideration when the Working Groups had concluded their work and when the articles referred to them had been definitively approved by the Committee.

STATEMENT BY THE OBSERVER FOR AMNESTY INTERNATIONAL

97. Mr. JACOBY (Amnesty International) observed that both during and after the war in the Middle East, which had broken out in October 1973, the Governments of the Syrian Arab Republic and of Israel had made grave accusations and counter-accusations concerning violations of the many provisions of the Geneva Conventions pertaining to the protection of victims of war from torture and inhumane treatment. They had referred in particular to the relevant provisions of the third Geneva Convention entitled "Convention relative to the Treatment of Prisoners of War".

98. As 1973 was the year in which Amnesty International had launched its Campaign for the Abolition of Torture, it was inevitable that many of those accusations were brought directly to its attention. In order to examine the conflicting allegations and denials, Amnesty International, with the permission of the two Governments concerned, had sent a mission of investigation to the area. That mission, composed of a Norwegian lawyer, a Swedish lawyer and a Dutch physician, met with the full co-operation of the respective authorities in its investigations among former prisoners of war. The report of the Commission would be published on 10 April 1975.

99. Perhaps the most important part of the report consisted in five recommendations to the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law applicable in Armed Conflicts. Amnesty International considered that those recommendations should be made available immediately to the Conference, now that it was in the process of considering the problems of monitoring compliance with the Geneva Conventions.

100. The five recommendations could be summarized as follows:

(1) Provision should be made for an automatic system of independent international investigation into allegations of infringements of the Geneva Conventions originating from any quarter;

(2) Where no Protecting Power was appointed or the Detaining Power failed to make the appropriate request regarding the establishment of a mixed medical commission (see Article 112 of the third Geneva Convention of 1949 and Articles 1 and 2 of Annex II thereto), provision should be

made for the appointment of a medical commission composed entirely of members from neutral countries. The functions of such a commission should be the same as outlined in Article 112 aforementioned, namely to examine sick and wounded prisoners of war and to decide on the need for repatriation;

(3) The obligation to keep full documentation about the medical treatment of wounded prisoners of war should be fully observed. Signed medical documents should constitute a dossier for each prisoner of war, available for inspection and carried back when the prisoner was repatriated. The Detaining Power should at all times keep its own duplicates of those documents, which should remain available for inspection;

(4) The obligation to bring a prisoner of war without delay from the place of capture to the hospital or to the camps set up for prisoners of war should be fully observed. Any delay should be explained in a written justification which should be added to the dossier mentioned under (3) and be available for inspection and carried back when the prisoner was repatriated. The Detaining Power should at all times keep its own duplicates of those documents, which should remain available for inspection;

(5) The obligation to detain prisoners of war in special camps should be fully observed. The provisions concerning the organization of such camps should be made more precise. Emphasis should be placed on the need to allow internal autonomy for the prisoners inside the camps, allowing the guards to patrol only the camp as a whole and not to have direct contact with individual prisoners. The system of representation for prisoners of war should be strengthened, and each representative should be given full access to all the prisoners belonging to the group he represented. Regulations should be adopted to the effect that, whenever a prisoner was to be taken out for interrogation or other purposes, notification should be given to the representative in advance and the prisoner in question should be permitted to be accompanied by the representative, since the only permissible questions were those concerning the name, rank and service number of the prisoner.

The meeting rose at 5.35 p.m.





SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

held on Wednesday, 9 April 1975, at 4.5 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of Working Group A on articles 70, 70 bis, 71, 72 and 73 (CDDH/I/285)

1. The CHAIRMAN said that he wished to congratulate Working Group A on its excellent work. He understood that the only part of its report (CDDH/I/285) on which a vote need be taken was the text of article 72, paragraph 3. He invited the Committee to approve the report article by article, making any necessary explanations of vote after the adoption of each article.

Article 70 - Measures for execution (concluded)

2. In reply to a question by Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic), the CHAIRMAN said that the words "and the Parties to the conflict", in paragraph 1, had been placed in square brackets pending a decision on another article.

Subject to that decision, article 70 was adopted by consensus.<sup>1/</sup>

Proposed article 70 bis - Activities of the Red Cross and other humanitarian organizations (concluded)

Article 70 bis was adopted by consensus.<sup>2/</sup>

3. Mr. HESS (Israel), explaining his delegation's position as regards article 70 bis, said that the national relief society in Israel was the Red Shield of David Society, founded in 1930 during the Mandate Administration in Palestine. The Red Shield of David Law, enacted by the Israel Parliament in 1950, had established the Society as the sole national society whose functions included the functions assigned to national societies by the Conventions and the Protocol.

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<sup>1/</sup> For the text of article 70 as adopted, see the report of Committee I (CDDH/219/Rev.1, para.121).

<sup>2/</sup> For the text of article 70 bis as adopted, see the report of Committee I (CDDH/219/Rev.1, para. 125).

4. Mr. EL-FATTAL (Syrian Arab Republic), on a point of order, said that the Committee should not have to listen to a historical account of an unrecognized sign.
5. In reply to a question by the CHAIRMAN, Mr. HESS (Israel) said that he merely wished to explain the reasons for his delegation's participation in the consensus decision on article 70 bis. He had concluded the historical part of his explanation.
6. The CHAIRMAN said he saw no reason to refuse the Israel representative's request for the floor provided he confined his remarks to an explanation of vote, avoiding further historical details that might give rise to discussion.
7. Mr. HESS (Israel) said that the Red Shield of David Society was a non-political, non-profit making benevolent society which offered first aid and relief services to all in Israel as well as emergency disaster aid to Red Cross affiliated societies overseas. It regularly responded to appeals addressed to it by the ICRC and the League of Red Cross Societies. Since for reasons deeply rooted in religious, historical and national feeling, it did not use the red cross symbol or existing alternatives, the Society had not yet been officially recognized by the ICRC or the League of Red Cross Societies. His delegation hoped that situation would be rectified and that the Red Shield of David would be granted equivalent recognition to that accorded to the other symbols. Until that time, the Red Shield of David Society would continue to fulfil the functions and obligations of the equivalent national societies.
8. The CHAIRMAN said that at the present stage of proceedings, the Israel representative's statement should be taken merely as an explanation of vote and not as a proposal of any kind.

Article 71 - Legal advisers in armed forces (concluded)

9. Mr. de ICAZA (Mexico), Chairman of Working Group A, said that the text of article 71 should be as given in document CDDH/I/GT/78, namely:

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

The other language versions should be brought into line with that text.

Article 71 was adopted by consensus.<sup>3/</sup>

10. Mr. GLORIA (Philippines) said that, although his delegation fully supported article 71, he had emphasized in the Working Group the practical importance of having military legal advisers to fulfil the tasks envisaged, which were basically a military function. The legal advisers would be members of the staff of military commanders charged, inter alia, with the enforcement of discipline within a military command. It would be unrealistic for a civilian legal adviser to be asked to carry out the task since no civilian could follow the armed forces wherever they might have to go in times of armed conflict. It would, moreover, be out of place for a civilian to be assigned to the general staff of a military commander. He hoped that serious consideration would be given to his suggestion when the article came into force, even though it did not contain the word "military" before the words "legal advisers".

11. In the interest of the Conference, for which co-operation and mutual understanding were essential, his delegation wished to reiterate its full support for article 71 as drafted.

Article 72 - Dissemination (concluded)

12. The CHAIRMAN said that, since a vote had to be taken on paragraph 3, he would invite the Committee to consider article 72 paragraph by paragraph.

Paragraph 1

13. The CHAIRMAN said that the words "and civil" between the words "military" and "instruction" should be deleted. The Working Group had been in complete agreement on that amendment.

Paragraph 1, as amended, was adopted by consensus.

Paragraph 2

Paragraph 2 was adopted by consensus.

Paragraph 3

14. The CHAIRMAN said that the Indian delegation in the Working Group had proposed that paragraph 3 be deleted. The Norwegian delegation had strongly opposed that proposal. He would put the paragraph to the vote.

Paragraph 3 was adopted by 22 votes to 17, with 19 abstentions.

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<sup>3/</sup> For the text of article 71 as adopted, see the report of Committee I (CDDH/219/Rev.1, para. 130)

15. The CHAIRMAN suggested that article 72 as a whole be adopted by consensus.

16. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that his delegation was opposed to that suggestion in view of the result of the vote on paragraph 3.

17. The CHAIRMAN said that, since there was an objection to his suggestion he would put the article to the vote.

Article 72 as a whole was adopted by 49 votes to none, with 10 abstentions.<sup>4/</sup>

18. Mr. SOOD (India), speaking in explanation of vote, said that, although his delegation had voted in favour of article 72 as a whole, it was unable to support paragraph 3. In particular, the use of the mandatory word "shall" rather than the word "may" was unacceptable to his delegation.

19. Miss MANEVA (Bulgaria), speaking in explanation of vote, said that, in her delegation's view, paragraph 3 placed excessive unilateral obligations on the High Contracting Parties, and the purpose of the reports referred to was unclear. Her delegation had therefore voted against the paragraph.

20. Mr. TORRES AVALOS (Argentina), speaking in explanation of vote, said that his delegation had opposed paragraph 3 because it more or less duplicated the provisions of article 73.

21. Mr. EL-FATTAL (Syrian Arab Republic), speaking in explanation of vote, said that his delegation had voted in favour of article 72 as a whole but had abstained in the vote on paragraph 3 because it considered that, despite its relevance to the implementation of international humanitarian law, the paragraph should have been formulated in non-mandatory terms.

22. Mr. AGOES (Indonesia), speaking in explanation of vote, said that his delegation had voted in favour of article 72 as a whole but had been unable to support paragraph 3 because of the obligation it imposed on the High Contracting Parties.

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<sup>4/</sup> For the text of article 72 as adopted, see the report of Committee I (CDDH/219/Rev.1, para. 135).

23. Mr. de BREUCKER (Belgium), speaking in explanation of vote, said that his delegation would have liked to see a more specific reference in article 72, paragraph 1 to the various authorities, apart from the armed forces, which would be informed of the instruments in question. It had nevertheless supported the consensus on that paragraph and others, but had abstained in the vote on paragraph 3 for the reasons it had given at the Committee's thirty-seventh meeting (CDDH/I/SR.37) and because it seemed inappropriate that reports should be sent both to the ICRC and to the Swiss Confederation as depositary.
24. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam), speaking in explanation of vote, said that his delegation had abstained in the vote on article 72 because it was opposed to paragraph 3, which imposed on the High Contracting Parties an obligation which was unclear, difficult to implement and one-sided in that no corresponding obligation was placed on the depositary of the Conventions or on the ICRC.
25. Mr. AMIR-MOKRI (Iran), speaking in explanation of vote, said that his delegation had voted against paragraph 3 for the reasons given during the Committee's earlier consideration of article 72. In view of its support for paragraphs 1 and 2, however, it had voted in favour of the article as a whole.
26. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that his delegation had abstained in the vote on the article as a whole because of its opposition to paragraph 3, which it considered unnecessary and unclear. The twenty-two delegations which had supported the paragraph represented only a small minority of the Conference. He reserved the right to revert to the matter at the relevant plenary meeting.
27. Mr. EIDE (Norway), speaking in explanation of vote, said that, among the most important conditions for compliance with the Geneva Conventions and Protocols was, first, that the military personnel should be fully acquainted with the limitations demanded by those instruments and, secondly, that the civilian population should be aware of the basic rules applicable in armed conflict. It was important to ensure that the armed forces operated within the confines of international humanitarian law and it was also important for the High Contracting Parties, the international community and the Parties to the conflict to know in advance that there had been effective dissemination in all countries. The provision in paragraph 3, which his delegation strongly supported, imposed only a very modest obligation which would serve a great purpose. Although there was some uncertainty as to the precise nature of the obligation, his delegation felt that the ICRC would probably develop future guidelines which would serve to clarify it.

28. Mr. SAMAD (Afghanistan) said that his delegation had voted in favour of article 72 as a whole but had opposed paragraph 3 because of the obligations it imposed.

29. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that his delegation objected to the order in which the amendments had been put to the vote. The proposal to delete paragraph 3, as the amendment furthest removed from the original proposal, should have been put to the vote first, in accordance with rule 40 of the rules of procedure.

30. The CHAIRMAN said that any delegation opposed to the voting procedure he had proposed should have raised a point of order before the vote was taken. He apologized for any mistake he might have made, but he hoped the USSR representative would agree that his objection should simply appear in the summary record of the meeting.

31. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that he had raised his objection in order to ensure that the same procedure was not followed when the matter came up again in the plenary meeting.

32. His delegation had abstained in the vote on paragraph 72 as a whole, despite its support for paragraphs 1 and 2, because it considered it unnecessary for the High Contracting Parties to submit the reports envisaged in paragraph 3. It should be sufficient for the ICRC to obtain reports through the national Red Cross societies. It was not clear why the reports were required or what was to happen to them after they had been received. Paragraph 3 had been supported only by a minority of delegations participating in the Conference and his delegation was strongly in favour of its deletion.

#### Article 73 - Rules of application

33. The CHAIRMAN said that the words "as quickly as possible" should be replaced by the words "as soon as possible". The amendment had been approved by the Working Group.

Article 73, as amended, was adopted by consensus.<sup>5/</sup>

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<sup>5/</sup> For the text of article 73 as adopted, see the report of Committee I (CDDH/219/Rev.1, para. 140).

34. Mr. EL-FATTAL (Syrian Arab Republic), speaking in explanation of vote, said that, although his delegation supported the article, it did not consider itself bound to make any communication to any party other than the depositary of the Conventions.

35. The CHAIRMAN said that he wished to express the Committee's sincere thanks to the Chairman of Working Group A, who had performed his task with skill, patience and tact.

The report of Working Group A, as a whole, as amended, was adopted by consensus.

The meeting rose at 4.50 p.m.





SUMMARY RECORD OF THE THIRTY-NINTH MEETING

held on Friday, 11 April 1975, at 5.5 p.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)\*

Report of Working Group B on articles 6, 6 bis and 8 (CDDH/I/287)

1. The CHAIRMAN invited members of the Committee to adopt the report of Working Group B (CDDH/I/287) and suggested that they should consider the articles paragraph by paragraph.

It was so agreed.

Article 6 - Fundamental guarantees (CDDH/I/93) (concluded)

Paragraph 1

Paragraph 1 was adopted by consensus.

Paragraph 2 (a)

2. Mr. OBRADOVIC (Yugoslavia), Chairman of Working Group B, said that paragraph 2 (a) had given rise to a discussion within the Working Group, which had reached agreement to use the following term: "or any form of corporal punishment". That part of the sentence was in brackets, and it was for the Committee to decide whether to retain it in the final text.

3. Mr. de SALIS (Legal Secretary) read a proposal submitted orally at the previous meeting of the Working Group, seeking to replace the part of the sentence in brackets by the words "or any other violence to the physical well-being of persons".

Two successive votes were then held, first on retaining the part of the sentence in brackets, then on the proposal submitted orally.

The part of the sentence in brackets was retained by 46 votes to 2, with 11 abstentions.

The proposal submitted orally was rejected by 7 votes to 2, with 42 abstentions.

Paragraph 2 (a), thus amended, was adopted by consensus.

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\* Resumed from the thirty-fourth meeting.

Paragraph 2 (b)

Paragraph 2 (b) was adopted by consensus.

Paragraph 2 (c)

4. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, said that some delegations had been of the opinion that the words "in the form of acts of violence" raised difficulties.

5. Mr. de ICAZA (Mexico) proposed that the words be deleted.

6. Mr. BLOEMBERGEN (Netherlands), supported by Mr. MURILLO RUBIERA (Spain) proposed that, in order to simplify the debate, paragraph 2 (c) should read "acts of terrorism".

7. The CHAIRMAN said that two amendments had been submitted, one to delete the words "in the form of acts of violence" and the other to shorten the wording of paragraph 2 (c) to "acts of terrorism". He would put the second amendment to the vote.

The second amendment was approved by 26 votes to 17, with 19 abstentions.

8. The CHAIRMAN said there was thus no need for a vote on the first amendment.

Paragraph 2 (c), as amended, was adopted.

Paragraphs 2 (d), (e) and (f)

Paragraphs 2 (d), (e) and (f) were adopted by consensus.

Paragraph 2 (g)

9. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, pointed out that the word "threats" should be substituted for the word "threat".

Paragraph 2 (g), thus amended, was adopted by consensus.

Paragraph 3

10. Mr. OBRADOVIC (Yugoslavia), Chairman of Working Group B, explained that as the Working Group had decided to propose to the Committee to refer consideration of the problem to the third session of the Conference, he would not press for a vote on paragraph 3 in the Committee at the current stage of the work.

11. The CHAIRMAN added that the Chairmen of Committees II and III had thought it would be advisable to establish, at the third session of the Conference, a Joint Working Group on Reprisals, consisting of members of the three Committees.

12. Mr. ROSAS (Finland) said that he would agree to that proposal, provided that amendment CDDH/I/93 submitted by his delegation was kept in being and discussed at the Conference's third session.

13. Mr. PICTET (Switzerland) said that since Working Group B had proposed that the Committee take no decision on the matter at the current session, he would prefer the text of paragraph 3 to remain in square brackets until the Conference's third session.

14. Mr. OBRADOVIC (Yugoslavia), Chairman of Working Group B, said that the problem should be dealt with in a wider context. If the members of the Committee were ready to accept the Swiss representative's suggestion, paragraph 3 would remain in square brackets.

It was so agreed.

Article 6, as a whole, as amended, was adopted by consensus.<sup>1/</sup>

Article 6 bis (concluded)

15. Mr. de BREUCKER (Belgium) said he would like the words "women and children" to be substituted for the words "all women and children".

16. Mr. MURILLO RUBIERA (Spain) requested that the corresponding change be made in the Spanish version.

17. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that the English, French, Russian and Spanish versions should be identical. He would accept either formula.

18. The CHAIRMAN suggested referring the article to the Drafting Committee, since the amendment was one of form, and asked the Committee to adopt article 6 bis.

Article 6 bis, as amended, was adopted by consensus.<sup>2/</sup>

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<sup>1/</sup> For the text of article 6 as adopted, see the report of Committee I (CDDH/219/Rev.1, para.151):

<sup>2/</sup> For the text of article 6 bis as adopted, see the report of Committee I (CDDH/219/Rev.1, para. 155).

Article 8 - Persons whose liberty has been restricted (concluded)Paragraphs 1 (a) and (b)

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

Paragraph 1 (c)

19. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, said that in order to satisfy the wishes of some delegations which wished to have the rule incorporated in paragraph 2, the Working Group had decided to place it in square brackets in paragraphs 1 and 2 and to leave it to the Committee to decide where it should be inserted.

20. The CHAIRMAN requested members to indicate by a show of hands whether Paragraph 1 (c) should be retained.

The text of Paragraph 1 (c) contained in square brackets was retained by 28 votes to 23, with 7 abstentions.

Paragraph 1 (d)

21. The CHAIRMAN said that the delegation of the Holy See had submitted a new text which he wished to put to the vote.

22. Mr. FREELAND (United Kingdom) said that he had no objection to that procedure, but that the text could be adopted by consensus.

23. Mr. BOBYLEV (Union of Soviet Socialist Republics) said he would agree to a consensus approach if it offered a compromise solution.

24. Mr. GIRARD (France) said that the French version of the text raised difficulties for his delegation; he therefore proposed the following wording:

"(d) they shall be allowed to practise their religion and receive, at their request, appropriate assistance from persons, such as chaplains, exercising religious functions."

If his text was acceptable to the members of the Committee, he would be prepared to associate his delegation with the consensus.

25. The CHAIRMAN suggested that the amendment was one of pure form, which should be referred to the Drafting Committee.

26. Mr. GIRARD (France) said that the initial text was somewhat ambiguous and that his proposal was intended to remove the ambiguity.

27. Mr. AMIR-MOKRI (Iran) said that his delegation accepted the new wording; it had expressed reservations concerning the original text.

28. Mrs. ROULLET (Holy See) said that if her delegation's proposal was not adopted by consensus, the delegation of the Holy See would call for a vote on the text in document CDDH/I/287 and withdraw its compromise proposal.

29. She had no objection to the French representative's proposal.

30. Mrs. DARIIMAA (Mongolia) said she had no objection to a consensus approach, provided the Russian version of paragraph 1 (d) was based on the English text.

31. The CHAIRMAN asked whether, in view of the statement by the representative of the Holy See, the delegations present were prepared to adopt article 8, paragraph 1 (d) by consensus.

32. Mr. MILLER (Canada) suggested that although the wording of that text ruled out any possible ambiguity, it also ruled out the possibility of reaching a decision by consensus.

33. Mr. CRISTESCU (Romania) considered that the text proposed by the French delegation differed in substance from the English version. His delegation accepted the text submitted in writing by the Holy See, which constituted a genuine compromise.

34. Mr. MURILLO RUBIERA (Spain) said that the Holy See version differed considerably from the first text.

35. Mr. CARNAUBA (Brazil) said that he found the three versions equally satisfactory. Since the main object was to arrive at a consensus, he supported the text which appeared on page 4 of the report of Working Group B (CDDH/I/287), as modified by the delegation of the Holy See.

36. Mr. OBRADOVIC (Yugoslavia), Chairman of Working Group B, listed the proposals formulated during the debate and asked the French representative to state whether he maintained his proposal.

37. Mr. GIRARD (France) said that his delegation in no way pressed for modifications to the texts in the other language versions of the report.

38. Mr. FREELAND (United Kingdom), supported by Mr. HUSSAIN (Pakistan) and Mr. AMIR-MOKRI (Iran), proposed that the original text should be adopted by consensus on the understanding that the wording of the French text would remain in abeyance.

39. The CHAIRMAN suggested that paragraph 1 (d) of article 8 should be adopted by consensus and sent back to the Drafting Committee.

40. Mr. CRISTESCU (Romania) pressed for a decision on the four texts.
41. Mr. de ICAZA (Mexico) considered that the text which had just been proposed by the French representative had a meaning totally different from that of the English text. He would be willing to support one or other of the proposed texts, but could not accept that the versions of one and the same article, drawn up in the various languages of the Conference, should impose different obligations.
42. The CHAIRMAN did not consider that the version proposed by the French delegation was basically different.
43. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) proposed that paragraph 1 (d) of article 8 should be put to the vote.
44. Mrs. ROULLET (Holy See), in reply to the CHAIRMAN, said that her delegation would be prepared to accept a vote on the compromise text.
45. After an exchange of views between the CHAIRMAN and Mr. MILLER (Canada), Mr. GIRARD (France) said that he would support the consensus on condition that the French text was corrected by the Drafting Committee.
46. The CHAIRMAN suggested that the French representative's proposal should be put to the vote.
47. Mr. CRISTESCU (Romania) said that his delegation would be prepared to vote on the existing texts unconditionally.
48. Mr. BALKEN (Federal Republic of Germany), supported by the CHAIRMAN and Mr. KUSSBACH (Austria), pointed out that since the French delegation had withdrawn its amendment there was no necessity for a vote.
49. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that the USSR delegation would have some difficulty in accepting the Russian text in its present form, since it referred to military chaplains, a function which did not exist in the Soviet forces.
50. The CHAIRMAN suggested that the question should be sent back to the Drafting Committee.

Paragraph 1 (d) was adopted by consensus.

Paragraphs 1 (e), 2 (a), (b) and (c) were adopted by consensus.

Paragraph 2 (d)

51. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, said that consensus had been reached in the Working Group in support of the deletion of the word "periodical" before the words "medical examinations".

Paragraph 2 (d), as amended, was adopted by consensus.

Paragraph 3

52. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, read out the new version of paragraph 3 proposed by the Working Group:

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

Paragraph 3, as amended, was adopted by consensus.

Paragraph 4

53. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, read out paragraph 4.

Paragraph 4 was adopted by consensus.

Paragraph 5

54. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B, reminded the Committee that two delegations had taken the view that paragraph 5 should be deleted. In the event of its being retained, two variants were proposed by the Working Group, the first of which could if desired be completed by a clause shown between square brackets. He read out the two variants:

"5. /-A Party to the conflict may not release persons deprived of their liberty in circumstances which would endanger their health or safety /-regarding their return to the adverse Party or their homes\_/\_7\_7"

"5. /-Should a Party to the conflict decide to release persons detained, it must take the necessary measures to ensure their safety.\_7"

55. Mr. CUTTS (Australia), supported by Mr. SOOD (India), proposed that the word "regarding" should be replaced by the word "during" at the beginning of that part of the sentence which it was proposed should be added to the first variant.

56. Mr. BOBYLEV (Union of Soviet Socialist Republics) and Mr. GIRARD (France) proposed that the second variant, which departed further from the original text and was more clearly expressed, should be put to the vote before the first.

57. Mr. GLORIA (Philippines) said that he subscribed to the substance of the United Kingdom representative's proposal (first variant), but that he could not support it for two reasons: first, Working Group B had already decided against the negative form when article 2, paragraphs 2 and 3 were under consideration; and secondly, the introduction of the idea of health was superfluous.

58. Indeed, if a detained individual who had been released in good health were to die of an attack during his return journey, that could not be construed as meaning that the party by whom he had been released had failed to fulfil its obligations with regard to his safety. To the extent that the person detained and then released was physically sound at the moment of his liberation, the Party to the conflict releasing him had no duty beyond that of ensuring that he was in no way molested during the period of his journey.

59. He earnestly requested the Committee to look at the United Kingdom proposal and the Philippine proposal (second variant) with complete objectivity, disregarding the relative importance of the countries sponsoring them.

60. Mr. de ICAZA (Mexico) proposed the addition of the words "for reasons connected with the armed conflict" after the word "detained" in the second variant.

61. Mr. KEITH (New Zealand) proposed that the Committee should align the second variant with paragraph 1, and replace the word "detained" by the words "deprived of their liberty".

62. The CHAIRMAN put to the vote the proposal to delete paragraph 5.

The proposal was rejected by 34 votes to 4, with 21 abstentions.

63. The CHAIRMAN put to the vote the second variant, as amended.

The second variant, as amended, was adopted by 42 votes to 11, with 6 abstentions.



64. The CHAIRMAN put article 8 as a whole, as amended, to the vote.

Article 8 as a whole, as amended, was adopted by consensus.<sup>3/</sup>

The report of Working Group B, as a whole, as amended, was adopted by consensus.

The meeting rose at 6.25 p.m.

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<sup>3/</sup> For the text of article 8 as adopted, see the report of Committee I (CDDH/219, para. 175).



SUMMARY RECORD OF THE FORTIETH MEETING

held on Monday, 14 April 1975, at 10.20 a.m.

Chairman: Mr. HAMBRO (Norway)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Report of Working Group B on articles 6, 6 bis and 8  
(CDDH/I/287/Rev.1) (concluded)

Explanations of vote

1. The CHAIRMAN invited those delegations who so wished to explain their votes on articles 6, 6 bis and 8 of draft Protocol II.
2. Mr. BONDIOLI-OSIO (Italy) said that his delegation had not opposed the consensus on article 8 as a whole, although it had voted against paragraph 5.
3. His delegation considered that Working Group B had not gone into sufficient depth on the Philippine text adopted by the Committee and that, once again, the Committee had not taken sufficient account of the special nature of the conflicts covered by draft Protocol II. In such conflicts the line between the parties was not always clear, territories sometimes changed hands from day to night, and the combatants often consisted of small, highly mobile groups without fixed logistic support, using the ambush method of warfare. A small unit might well capture large numbers of the enemy and yet be unable to detain them; it would be quite impossible for such a unit to take the necessary measures to ensure the security of released persons. The Committee had in fact introduced into the draft Protocol a provision which would be inapplicable in 90 per cent of the combats in question.
4. Mr. EL-FATTAL (Syrian Arab Republic) said that his delegation had supported article 6 because it strongly believed in the need to extend humanitarian protection against certain acts to those not involved in internal armed conflicts. It was, however, not happy with the wording of the article for various reasons. The first was the strict juridical equality bestowed by that article on the two Parties to the conflict. That juridical equality between the Parties themselves and between the Parties and the international contracting country had originally been meant to exist only between national liberation movements and their opponents. That matter had been solved with regard to international conflicts in draft Protocol I. Second, certain prohibitions listed in paragraph 2 were either superfluous or out of context. For instance, paragraph 2 (e) on slavery and the slave trade assumed that Governments

still indulged in slavery. It would have been preferable to substitute the words "forced labour". Third, the prohibitions listed in article 6, paragraph 2, did not include the inhuman practice of destroying the homes, property and means of livelihood of those not engaged in the armed conflict. Such acts might be covered in paragraph 2 (d), under the heading of "outrages upon personal dignity", but it would have been preferable to mention them in an additional sub-paragraph or to add the words "wanton destruction of homes and villages" after "pillage" in paragraph 2 (f).

5. Mr. de ICAZA (Mexico) said that his delegation had joined the consensus on the articles although it would have preferred the words suggested in Working Group B by the Philippine delegation - "any form of bodily harm" - to be substituted for "corporal punishment" in article 6, paragraph 2 (a), since corporal punishment also included imprisonment. His delegation had also voted in favour of the Netherlands amendment submitted in Working Group B to article 6, paragraph 2 (c), because it was similar to its own.

6. Mr. SOOD (India) said his delegation regretted the wording adopted for article 8, paragraph 5. In Working Group B, his delegation had expressed doubt concerning the ability of the Detaining Power to ensure the health and safety of released persons until they returned home. The Working Group had, in fact, reached a consensus on the United Kingdom proposal for that paragraph, which was that given in the first variant in the report (CDDH/I/287/Rev.1, p.5), and his delegation had proposed a small amendment to it. He was therefore surprised that the Committee should have adopted the wording proposed by the Philippine delegation (CDDH/I/287/Rev.1, p.5, second variant) which did not ensure the necessary protection. He was afraid that, once the Protocols had been signed and ratified, their failings would be brought to light.

7. Mr. AGOES (Indonesia) said that his delegation had joined the consensus on draft Protocol II, article 8, because it had no fundamental objection to it. However, it contained too many provisions similar to those which were needed in international armed conflicts but not in internal conflicts since they referred to matters covered by municipal law. Their inclusion in draft Protocol II tended to undermine the authority of the sovereign States concerned.

8. Article 6 of draft Protocol II was a repetition of Article 3 common to all four Geneva Conventions of 1949, and was therefore superfluous. However, in a spirit of co-operation, his delegation had raised no objection when the article had been adopted by consensus.

9. In article 8, many sub-paragraphs of paragraph 1, for example sub-paragraphs (b), (c), (d) and (e), should not be mandatory and could be transferred to paragraph 2 of the same article. In paragraph 4, the reference to paragraph 3 should be deleted. Paragraph 5 was irrelevant and unacceptable to his delegation.

10. Mrs. ROULLET (Holy See) said that her delegation had endeavoured, with other delegations, to find a wording for article 8, paragraph 1 (d), which could be adopted by consensus, as was preferable at a conference on humanitarian law. It would, however, be better not to add the word "appropriate", whose ambiguity was recognized even by its sponsor. The right to receive spiritual assistance from persons performing religious functions was not only a corollary of the right to practise a religion and a fundamental human right, but also a sacred right. Her delegation hoped that the word "appropriate" would never be used by a Detaining Power unjustly to deprive of that right people who had fallen into its hands during an armed conflict.

11. Mr. MILLER (Canada) said that his delegation approved the wording of the draft articles adopted at the thirty-ninth meeting in the light of the basic philosophy of draft Protocol II. In the explanatory comments to document CDDH/212, annex II, his delegation had in fact listed four fundamental points to be kept in mind in connexion with that Protocol.

12. Article 6 was largely a repetition, with slight improvements, of Article 3 common to the four Geneva Conventions of 1949. His delegation opposed the inclusion of the idea of corporal punishment in article 6, paragraph 2 (a), because that was a means of punishment recognized in many national legislations; it would have preferred the wording proposed by the Philippine representative in Working Group B, namely "any form of bodily harm". In article 6, paragraph 2 (c), the wording should have indicated against whom the acts of terrorism had been committed. His delegation welcomed the inclusion of article 6 bis because it had always considered it advisable to include the protection of women and children, whether combatants or non-combatants, in a special article.

13. He agreed that article 8 should be as simple as possible and that it should not include too many obligations for the Detaining Power or too slavishly reproduce the wording of draft Protocol I. His delegation therefore considered that several of the provisions in paragraph 1, especially sub-paragraph (c) should not be mandatory, although it was prepared to support the mandatory requirement that all individuals should be allowed relief. It welcomed the compromise reached on paragraph 1 (d), although it regretted the disagreement on the French text. It fully recognized the ambiguity of the word "appropriate" but felt that that was desirable. The reference in paragraph 2 (d) to medical examinations was inadequate, and the word "examinations" should be replaced by "assistance".

14. With regard to paragraph 5, his delegation had a slight preference for the first variant, without the Indian addition, but had no specific objection to the second, although it was not entirely clear how long the Party to the conflict was required to take measures to ensure the safety of the released persons.

15. In general, however, he considered the compromise which had given rise to the consensus successful, except for article 8, paragraph 5, of which he hoped the Drafting Committee would be able to improve the wording.

16. Mr. de BREUCKER (Belgium) said that his delegation welcomed the adoption of the present versions of articles 6, 6 bis and 8 of draft Protocol II, since they were the essential part of the provisions laid down in that Protocol concerning respect for the human person as such. They were a particularly happy amplification of the rather scanty provisions appearing in Article 3 common to the four Geneva Conventions of 1949.

17. Article 6 contained a list of fundamental guarantees and indicated that persons in the power of the Parties to the conflict should be treated humanely.

18. Article 8, the drafting of which had been unquestionably more difficult than that of article 6, contained a certain number of minimum provisions applicable to persons who had been deprived of their liberty or whose freedom had been restricted.

19. The Belgian delegation had taken part in the drafting of article 8 and was happy to note that, among the provisions adopted, the assistance to be given by persons exercising religious functions to persons deprived of their liberty had been expressly mentioned in that article; material and spiritual assistance had thus been expressed in paragraph 1 of that article as one of the minimum fundamental requirements.

20. Referring to paragraph 2 of the same article, which the Parties to the conflict were also called upon to respect within the limits of their capabilities, the Belgian delegation expressed regret that in connexion with the despatch of letters and cards, the Working Group and afterwards the Committee, had not thought that a suggestion made by the Belgian delegation envisaging the mention of the system of information bureaux provided in article 34 of draft Protocol II should be accepted. His delegation reserved its right to revert to the matter when article 34 was considered. It should be recalled that in non-international armed conflict postal services were often paralysed and that the very useful provision in article 8, paragraph 2 (b) might then become ineffective without a special provision as set out in article 34.

21. Lastly, the Belgian delegation also regretted that articles 6 to 8 did not include a strict prohibition of reprisals. The term was doubtless less important than the deed. Precious time had been spent in searching for a formula to that effect. A Sub-Working Group had drafted a text which, amended on the initiative of many delegations, especially those of Austria, Belgium and Switzerland, had been the centre of debate. The wording appeared in document CDDH/I/287/Rev.1, p.6. Since the remaining differences of opinion had not been smoothed out before the adoption of articles 6 to 8 by the Committee, he would bear the matter in mind.

22. There was no doubt that in the opinion of the Belgian delegation the words "are, and shall remain prohibited at any time and at any place whatsoever" which already appeared in Article 3 common to the four Geneva Conventions of 1949 and which were reiterated in article 6, paragraph 2, adopted by the Committee, should serve as a rule of conduct and an absolute prohibition of recourse to reprisals in the articles of Part II.

23. He hoped that at the third session, in approving a provision concerning the prohibition of recourse to reprisals in articles 6, 8, 9 and 10 of draft Protocol II, the work undertaken by the Committee at the current session would be crowned with success.

24. Mr. MURILLO RUBIERA (Spain) said that his delegation had always realized the difficulties inherent in draft Protocol II, due to the new element it introduced in respect of conflicts governed by an international instrument, namely, the inequality between the Parties to the conflicts, which increased the difficulties of establishing standards for their rights and duties. The apparent slowness of the Committee's work should be considered in the light of its endeavours to establish new principles of international law as a development of conventional international humanitarian law.

25. His delegation had abstained on the Netherlands amendment submitted in Working Group B to article 6, paragraph 2 (c), because, like other Spanish-speaking delegations, it had always maintained the need to avoid specific reference to violence, which was always implicit in acts of terrorism. Although the Netherlands amendment, far from being contradictory to their position, clearly confirmed it, his delegation had abstained because it wished to maintain the wording which it had originally supported. It had not, however, opposed its being put to the vote.

26. His delegation had voted in favour of the second alternative for article 8, paragraph 5 (CDDH/I/287/Rev.1, p.5), because it combined, in clear, concise words, the two elements - decision by the Detaining Power and safety of the persons concerned - which should be included in that paragraph.

27. It was regrettable that it had proved impossible at the current session to agree on a text concerning reprisals. His delegation hoped that, after reflection, it would be possible at the third session to reach agreement on a point of such importance in non-international armed conflicts.

28. Mr. AL-FALLOUJI (Iraq) said that the fact that his delegation had not called for a vote on articles 6, 6 bis and 8 did not mean that it agreed with the principles underlying those articles or the details contained in them; it thought that to take a vote in a Conference on Humanitarian Law was incompatible with the humanitarian spirit, which should be one of unanimity and general goodwill.

29. His delegation's fundamental objection to the articles in question was that they placed the State and a rebel Party on an equal footing. In particular, it could not accept the principle of article 6, paragraph 2, that States and rebel Parties should be forbidden in the same way to indulge in certain activities; but that principle was to be found, not only in article 6, but in many parts of the Protocol. His delegation had grave misgivings about the articles so far adopted by the Committee; but if the Committee had made a bad start, it was never too late to correct it. The interval between the sessions should be used for deep reflection on the principles of draft Protocol II. Another danger was that the excessive complication and accumulation of criteria in some of the articles would mean that a spirit of legalism replaced the spirit of humanitarianism. The most important thing was that the provisions of the Protocol should be such that all States were capable of applying them and wished to apply them.

30. Mr. BETTAUER (United States of America) said that his delegation had voted against the deletion of the words "in the form of acts of violence committed against those persons" in article 6, paragraph 2 (c), because it considered that they constituted a very important clarification of what was meant by "acts of terrorism". "Terrorism" was an excessively vague word of which no satisfactory definition existed. Since the Netherlands delegation in proposing deletion of the language in question had considered that language unnecessary and was not trying to modify the meaning of the sub-paragraph but merely to simplify it, the United States delegation would interpret the sub-paragraph as if those words had not been deleted, i.e. to cover acts of terrorism involving physical violence. He strongly disagreed with the Spanish representative's view that a concept of "psychological terrorism" was relevant in draft Protocol II. He found such a term incomprehensible and did not believe that it had been the intention of the Netherlands delegation to broaden the scope of the paragraph to cover such a concept. Finally, he said that the United States delegation did not interpret paragraph 2 (c) to cover propaganda or the incidental effects of legitimate military operations.



31. Mr. BALKEN (Federal Republic of Germany) said that his delegation had been able to join the consensus on articles 6, 6 bis and 8 despite the fact that, at certain points, it would have preferred a simpler and more precise language. It had voted against the Philippine proposal, submitted at the last minute, on article 8, paragraph 5, because it had preferred the United Kingdom text. The present version insisted that the Detaining Power must ensure the safety of the prisoners it had decided to release, but it left completely vague the point to which that obligation held good. In internal struggles, that was a very difficult matter to decide.

32. Mr. SAMAD (Afghanistan) said that his delegation had joined the consensus on articles 6, 6 bis and 8 because it considered that fundamental guarantees should be given to all those legitimately defending their rights recognized by international conventions. In several parts of the world - for instance in Baluchistan and Pakhtunistan - people were fighting for self-determination against forces which were militarily better equipped.

33. His delegation hoped that, when undertaking its detailed study of the question of reprisals, the ICRC would take account of the various types of rebellion and endeavour to determine the exact meaning of such terms as rebellion, banditry and terrorism.

34. Mr. GIRARD (France) said that the Committee and its various Working Groups had done an enormous amount of work and had adopted a very large number of articles, and the French delegation had done its best to contribute to the finding of solutions which were as clear as possible. Now, however, at the end of the second session, the French delegation had serious misgivings - which had been echoed by a number of other delegations - first, whether many of the rules that had been drafted were not too complicated for the purpose in view; and second, whether a proper balance had been maintained between the Protocols and the Parties involved. The French delegation had always stressed that humanitarian law should aim at complete objectivity and impartiality, so that it could achieve universality. It entirely agreed with the Iraqi representative that it was essential that the rules the Conference was seeking to establish should be accepted unanimously. He was sorry to note that "labels" had been attached to the Protocols implying a preconception of how they should be applied. That approach was fundamentally contrary to the objectivity of humanitarian law, which must be applied systematically.

35. The interval between the sessions would give all delegations the opportunity to reflect. Nobody knew what the future had in store or on which side - State or rebels - he might find himself in a future conflict. Delegations should ask themselves whether the main objective of the Conference was not to establish a number of simple humanitarian rules which would be applicable in all circumstances by everyone; he was not sure, however, whether that solution was the best one. The question appeared to him to merit reflection.

36. Mr. FREELAND (United Kingdom) said that, bearing in mind the intrinsic difficulty of drafting Protocol II, he considered that the Committee had made steady and useful progress and there was no need to depart from the approach adopted so far.

37. His delegation had voted against the Philippine proposal on article 8, paragraph 5, because, like the representatives of Canada, the Federal Republic of Germany and Italy, it found the obligations it imposed excessively open-ended. It was a pity that that proposal had been introduced so late in Working Group B and that there had not been time for further negotiation. The best outcome might be a form of words which combined parts of the Philippine and United Kingdom texts, incorporating also the substance of the Indian amendment. Such a text might read: "Should a Party to the conflict decide to release persons whose liberty is restricted for reasons relating to the armed conflict, it may not do so in circumstances which would endanger their health or safety in returning to the adverse Party or their homes". The United Kingdom delegation hoped that further consultations, on the basis of a text of that kind, might lead to a solution at the third session, with which all could agree.

38. Mr. AMIR-MOKRI (Iran) said that his delegation had taken part in the work of Working Group B and was pleased to note that its views had been so largely taken into account in the final draft of the articles. It had been unable, however, to approve the Working Group's version of article 6, paragraph 2 (c), because it was opposed to all forms of terrorism, whether acts of violence or other. It had sympathized with the proposal submitted in Working Group B by the Argentine and Mexican delegations, but had voted for the Netherlands amendment, which was more concise and fitted better into the article. On article 8, paragraph 5, it had abstained, while preferring the United Kingdom to the Philippine text.

39. Mr. KEITH (New Zealand) said that certain delegations had expressed misgivings about the texts adopted by the Committee; in particular, it had been suggested that they were over-complicated. It should be borne in mind, however, that article 1 stipulated that the Protocol applied only to dissident forces which were able to implement the provisions of the Protocol, that article 4 expressly protected the sovereignty of the High Contracting Parties, and that article 5 laid down that the rights and duties deriving from the Protocol applied equally to all the Parties to the conflict. Article 6 was largely a restatement of existing law: Article 3 common to the four Geneva Conventions of 1949. With regard to article 8, long and careful efforts had been made to draft a balanced text and to qualify the obligations imposed so that they would be appropriate to the situation. The New Zealand delegation agreed that it was desirable to seek unanimity in the drafting of

provisions, but in the majority of cases a consensus had in fact been achieved. All the articles so far had been adopted as a whole by consensus, although on certain details a vote had been taken. He thought that all delegations were fully aware of the need for almost unanimity and hoped that efforts in that direction would continue.

40. Mr. HUSSAIN (Pakistan), exercising his right of reply to the intervention by the representative of Afghanistan, expressed surprise at the mention of illusory and non-existing situations particularly in the context of draft Protocol II.

41. Mr. SAMAD (Afghanistan), exercising his right of reply, said that the reference to Baluchistan and Pakhtunistan had been made in a purely humanitarian, and not in a political, context.

42. Mr. BLOEMBERGEN (Netherlands) said that his delegation had voted against the Philippine proposal for the reasons mentioned by other delegations. It had much preferred the United Kingdom text and was very unhappy about the present wording. It hoped that the text just submitted by the United Kingdom delegation would be included in full in the summary record so that the paragraph could be reconsidered at the third session and a text adopted with which all delegations could agree.

43. Mr. GLORIA (Philippines) said that his delegation's proposal had been adopted by 42 votes to 11 with 6 abstentions. It would strongly object to any attempt to introduce another draft of the paragraph and to its consideration by the Conference.

44. The CHAIRMAN said that the explanations of vote were concluded. He proposed that the adoption of the Committee's draft report (CDDH/I/284) be postponed till the following day to give delegations more time to study the document and to enable a number of errors in the various versions to be corrected. He further proposed, however, to invite the Rapporteur to introduce the draft report, forthwith.

It was so agreed.

#### Report of Committee I (CDDH/I/284)

45. Mr. de ICAZA (Mexico), Rapporteur, said that he was glad to have the opportunity to issue corrections of some of the errors which had found their way into the texts of the Committee's draft report (CDDH/I/284) owing to the very heavy pressure of work on the Secretariat.

46. The draft report had been kept as simple as possible, omitting any attempt to analyse the texts submitted and the ideas they contained, but merely listing the various proposals and giving the texts finally adopted.

47. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that his delegation had found a number of mistakes in the Russian version.

48. The CHAIRMAN invited the USSR delegation, and any other delegation which had noticed mistakes in the texts, to draw the Secretariat's attention to them as early as possible so that corrections could be issued in time for the closing meeting.

The meeting rose at 11.50 a.m.

SUMMARY RECORD OF THE FORTY-FIRST (CLOSING) MEETING

held on Tuesday, 15 April 1975, at 10.20 a.m.

Chairman: Mr. HAMBRO (Norway)

ADOPTION OF THE REPORT OF COMMITTEE I (CDDH/I/284)

1. The CHAIRMAN suggested that the report should be adopted paragraph by paragraph.

It was so agreed.

Paragraphs 1 to 4

2. Mr. REIMANN (Switzerland) suggested that paragraph 4 should mention that article 2, sub-paragraph (c) had not been adopted.

3. Mr. de ICAZA (Mexico), Rapporteur, pointed out that the Committee had not yet adopted article 2, sub-paragraphs (a), (b) and (c).

4. Mr. EITEL (Federal Republic of Germany) suggested that article 69 bis concerning the protection of journalists engaged in dangerous missions in areas of armed conflict should be mentioned in the list given in paragraph 4 of the report.

5. Mr. GIRARD (France) suggested that article 70 bis should also be mentioned.

6. Mr. de ICAZA (Mexico), Rapporteur, agreed with the representative of France. He was not sure whether the article concerning journalists had been given the number "69 bis".

7. Mr. BETTAUER (United States of America) said that it was his recollection that the article on journalists had been given the number "69 bis" in the Ad Hoc Working Group on the Protection of Journalists engaged in Dangerous Missions. He therefore thought that paragraph 4 should refer to that number.

8. Mr. GIRARD (France) agreed with the United States representative.

9. Mr. de ICAZA (Mexico), Rapporteur, said the inclusion of article 69 bis in the list given in paragraph 4 might give rise to some problems. He therefore suggested that a new paragraph might be added to the report.

10. The CHAIRMAN suggested that it should be left to the Rapporteur to find a solution to the problem.

It was so agreed.

Paragraphs 1 to 4 with the relevant amendments were adopted.

## Section II. Continuation of the work of Committee I

### Paragraphs 5 to 14

11. Mr. GIRARD (France) drew attention to two typographical errors in the French text of paragraphs 8 and 14.

12. Mr. REIMANN (Switzerland) said that while it was in order for the name of the Chairman of the Sub-Working Group set up by Working Group A to be mentioned, he noticed that that had not been done in connexion with the Sub-Working Group set up by Working Group B, and pointed out that his delegation might submit a text for a paragraph 11 bis. He also drew attention to the fact that the word "renvoyer" appeared four times in the French text of paragraphs 12 and 13, and that the symbol numbers of the four reports submitted by the Working Groups should be mentioned in paragraphs 12 and 13.

13. Mr. de ICAZA (Mexico), Rapporteur, pointed out that the names of Chairmen of Sub-Working Groups appeared later in the report. However, if members so wished, a paragraph 11 bis could be inserted in the report giving the names of the officers of the various Sub Working Groups.

14. Mr. OBRADOVIC (Yugoslavia) agreed with the representative of Switzerland. He pointed out that the second report of Working Group B (CDDH/238/Rev.1) had been slightly redrafted.

15. The CHAIRMAN suggested that the Rapporteur should be asked to draft the proposed paragraph 11 bis.

It was so agreed.

Paragraphs 5 to 14, with the relevant amendments, were adopted.

## Section III - Proposals

Draft Protocol I, article 2, sub-paragraphs (a) and (b).

### Paragraphs 15 to 17

Paragraphs 15 to 17 were adopted.

Draft Protocol I, article 2, sub-paragraph (c)

Paragraphs 18 and 19

Paragraphs 18 and 19 were adopted.

Draft Protocol I, article 2, sub-paragraph (d)

Paragraphs 20 to 23

16. Mr. SURBECK (Legal Secretary), replying to a question by Mr. AMIR-MOKRI (Iran), pointed out that a revised French version of the report had been issued under the same symbol number (CDDH/I/284).

17. The CHAIRMAN said that the mistakes in the Russian text of the report would be corrected and a corrigendum issued.

Paragraphs 20 to 23 were adopted.

Draft Protocol I, article 2, sub-paragraph (e)

Paragraphs 24 to 27

18. Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic), referring to paragraph 27, said that the word "acting" in article 2, sub-paragraph (e) had been mistranslated in Russian. He hoped that all comments concerning the Russian text would be taken care of by the Drafting Committee.

19. Mr. BOBYLEV (Union of Soviet Socialist Republics) asked the Chairman to ensure that the Russian version of the report was duly corrected.

20. The CHAIRMAN said that every effort would be made by the Secretariat to ensure that the corrections made by members of the Committee were circulated in the four working languages before the adoption of the Committee's report in plenary.

21. At a recent meeting of the General Committee he had suggested that it would be useful if the texts adopted by the Conference were studied and corrected, if necessary, by the various language sections during the interval between the second and third sessions of the Conference.

Paragraphs 24 to 27 were adopted.

Draft Protocol I, article 3Paragraphs 28 to 31

Paragraphs 28 to 31 were adopted.

Draft Protocol I, article 4Paragraphs 32 to 36

22. Mr. de ICAZA (Mexico), Rapporteur, referring to paragraph 31 of the French text, said that the reference to a foot-note 2 in the second line of paragraph 2 of the article as adopted should be deleted.

Paragraphs 32 to 36 were adopted.

Draft Protocol I, article 5Paragraphs 37 to 39

Paragraphs 37 to 39 were adopted.

Draft Protocol I, article 5, paragraph 1Paragraphs 40 to 42

23. Mr. BLOEMBERGEN (Netherlands) noted that the original English version of article 5, paragraph 1, as it appeared in paragraph 42 of the report, used the words "to secure the supervision and implementation of the Conventions ...", whereas the French translation stated "d'assurer le respect et la mise en oeuvre des Conventions ...". He preferred the word "supervision" to "respect" and hoped that the discrepancy would be considered by the Drafting Committee.

24. Mr. GIRARD (France) agreed that the French text should be amended.

25. The CHAIRMAN suggested that the French representative should discuss the matter with the Rapporteur.

Paragraphs 40 to 42 were adopted.

Draft Protocol I, article 5, paragraph 2Paragraphs 43 to 45

Paragraphs 43 to 45 were adopted.



Draft Protocol I, article 5, paragraph 3

Paragraphs 46 to 52

26. Mr. BOBYLEV (Union of Soviet Socialist Republics) pointed out that certain words had been omitted from the Russian version of article 5, paragraph 3 as it appeared in paragraph 52 of the report, and drew attention to the correct version which appeared in document CDDH/I/235/Rev.1.

27. The CHAIRMAN said that the Secretariat would note the corrections made by the USSR representative.

28. Mr. REIMANN (Switzerland), referring to paragraph 50 of the report, said that in the Working Group the Swiss delegation had suggested that the Drafting Committee should be asked to find an appropriate formula for paragraph 3. He asked that paragraph 50 should mention that fact.

29. Mr. de ICAZA (Mexico), Rapporteur, said that he had given instructions that reference should be made in paragraph 50 of the report to the wish expressed by the Swiss delegation, but his instructions had unfortunately been overlooked. The paragraph would be appropriately amended.

Paragraphs 46 to 52, with the relevant amendments, were adopted.

Draft Protocol I, article 5, paragraph 4

Paragraphs 53 to 60

30. Mr. AMIR-MOKRI (Iran) drew attention to the fact that in the French text of the report the words "alinea" and "paragraphe" were both used as a translation of the English word "paragraph".

31. Mr. Antoine MARTIN (International Committee of the Red Cross) said that subject to a decision by the Drafting Committee, the word "alinéa" should be retained as the translation of the English word "paragraph" since, in agreement with the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, that had been the word used in the ICRC Commentary (CDDH/3).

32. Mr. OBRADOVIĆ (Yugoslavia) said that the same question had arisen in Working Group B regarding the use of the word "alinéa" as a translation of the word "paragraph". It had been agreed to ask the Drafting Committee to solve the problem.

33. Mr. GIRARD (France) said that he agreed that in article 2 there were no paragraphs but merely "alinéas". However, in the French version of the Committee's report, the same word should be used everywhere. The word "paragraph" was used in the English text. The word "alinéa" referred to an unnumbered group of lines appearing in a text, whereas paragraphs were numbered.

Paragraphs 53 to 60 were adopted.

Draft Protocol I, article 5, paragraph 5

Paragraphs 61 to 64

Paragraphs 61 to 64 were adopted.

Draft Protocol I, article 5, paragraph 6

Paragraphs 65 to 68

34. Mr. FREELAND (United Kingdom) said that in the English text of paragraph 67 reference was made to an amendment proposed by the United Kingdom delegation. At the twenty-seventh meeting (CDDH/I/SR.27), however, the United Kingdom delegation had made it clear that in its opinion what was suggested was not an amendment but a clarification designed to give fuller effect to the purpose of the Committee in drafting the relevant provision. He therefore suggested that the first sentence of paragraph 67 should be amended to read along the following lines: "The Committee considered the proposed text at its 27th meeting and adopted it by consensus, subject to a clarification proposed by the United Kingdom which was referred to the Drafting Committee ...".

The United Kingdom amendment was adopted.

35. Mr. de BREUCKER (Belgium) pointed out that the foot-note reference in paragraph 68 of the French version should be deleted.

Paragraphs 65 to 68, with the relevant amendments, were adopted.

Draft Protocol I, article 5, paragraph 7

Paragraphs 69 to 73

36. Mr. Antoine MARTIN (International Committee of the Red Cross) asked whether the statement made by Mr. Jean Pictet (International Committee of the Red Cross) at the twenty-seventh meeting (CDDH/I/SR.27) of the Committee concerning article 5, which was of considerable importance to the ICRC, could be mentioned in the report.

37. Mr. de ICAZA (Mexico), Rapporteur, considered that there would be no objection to mentioning the statement made by the ICRC representative in paragraph 73 of the report.

It was so agreed.

Paragraphs 66 to 73, with the relevant amendment, were adopted.

Draft Protocol I, article 6

Paragraphs 74 to 78

38. Mr. GLORIA (Philippines) asked that his delegation's proposal that a new paragraph 5 should be included in article 6 should be reflected in the report.

39. The CHAIRMAN said that if that were done all amendments would have to be included in the report, and suggested that if the Philippine representative made a formal declaration it would appear in the summary record of the meeting.

40. Mr. GLORIA (Philippines) withdrew his request.

Paragraphs 74 to 78 were adopted.

Draft Protocol II, article 1

Paragraphs 87 to 92 of the report

41. Mr. MILLER (Canada) said that he would like some reference to be made in the report to his delegation's proposal (CDDH/I/37) that a new article be inserted before the existing article 1 of draft Protocol II, and to the fact that the proposal had not been discussed in Working Group B.

42. Mr. de ICAZA (Mexico), Rapporteur, suggested that the point might be met by including a reference to document CDDH/I/37 (replaced by CDDH/I/220) in the list in paragraph 87, and by stating in paragraph 90 that the proposal had not been discussed in Working Group B.

43. Mr. MILLER (Canada) said that he could accept that suggestion provided it was made clear that the proposed new article was in no way connected with article 1 of the ICRC text.

44. The CHAIRMAN said that the Rapporteur and the Canadian representative would no doubt be able to find an acceptable formulation.

45. Mr. OBRADOVIC (Yugoslavia) said that a new paragraph 91 bis should be inserted in the report, reproducing the explanation given in the foot-note on page 2 of the report of Working Group B (CDDH/I/238/Rev.1) concerning the use of the term "armed forces".
46. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that the words "and to implement the present Protocol" at the end of the text of paragraph 1 given in paragraph 92 of the report had been omitted from the Russian version.
47. The CHAIRMAN said the omission had been noted and would be rectified.
48. Mr. TORRES-AVALOS (Argentina) said it had been agreed that, in the Spanish text at least, the words "armed forces" should have initial capitals. That decision had not been taken into account in paragraph 92 of the report. He supported the Yugoslav representative's proposal for a new paragraph 91 bis. The word "tal" before the word "control" in the Spanish text of article 1, paragraph 1, given in paragraph 92 of the report, should be replaced by the word "suficiente" and the words "que les permita" should be replaced by the words "para permitirles".
49. The CHAIRMAN said that those corrections had been noted.
50. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that the Drafting Committee should bring the other language versions of the report more closely into line with the French version. That applied in particular to the text of article 1, paragraph 2, given in paragraph 92 of the report.
51. The CHAIRMAN said that the Secretariat had taken careful note of that observation and it was hoped that the Drafting Committee would be able to remedy the situation.
52. Mr. de ICAZA (Mexico), Rapporteur, said that he agreed with the Yugoslav representative that the explanation concerning the use of the term "armed forces" should be reproduced in the report, but it might be preferable to include it in paragraph 91 bis rather than in new paragraph 92 bis. The Drafting Committee would be requested to make the drafting changes to the Spanish text proposed by the Argentine representative.
53. The CHAIRMAN suggested that the Spanish-speaking delegations should agree on a precise text and hand it to the Drafting Committee.

It was so agreed.

Subject to the above comments, paragraphs 87 to 92 were adopted.

Draft Protocol II, article 2

Paragraphs 93 to 98

54. Mr. BLOEMBERGEN (Netherlands), referring to the text of article 2, paragraph 2, given in paragraph 98 of the report, suggested that only the words "and 10" should be in square brackets, in view of the fact that the Committee had now adopted article 8.

55. Mr. BETTAUER (United States of America) said that it might finally be decided to refer to other articles or to Part II of draft Protocol rather than to articles 8 and 10 only. The words "the protection of articles 8 and 10" should therefore remain in square brackets for the time being.

56. Mr. BLOEMBERGEN (Netherlands) said that in view of that explanation, he would withdraw his suggestion.

Paragraphs 93 to 98 were adopted.

Draft Protocol II, article 3

Paragraphs 99 to 103

57. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that there was a discrepancy between the French and English versions of paragraph 103 which should be remedied.

58. The CHAIRMAN said that the Secretariat would be requested to make the necessary correction.

Paragraphs 99 to 103 were adopted on that understanding.

Draft Protocol II, article 4

Paragraphs 104 to 111

59. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that the Russian text of article 4 given in the report differed from the official version provided to the Committee by the Russian-speaking delegations, which should have been taken as the final version.

60. Mr. de ICAZA (Mexico), Rapporteur, said that it would be noted from paragraph 106 that Working Group B had adopted only the English version of article 4 and had left it to the Drafting Committee to prepare the other language versions. The text in paragraph 111 of the report was based on the text given in the revised version of the report of Working Group B (CDDH/I/238/Rev.1). He was not in a position to judge whether the Russian version was in conformity with the other versions.

61. The CHAIRMAN said that it was virtually impossible for exact translations to be provided by the language services in the time available to their staff, who worked very hard under difficult conditions and were themselves aware that the results were not always perfect. He suggested that delegations wishing to make linguistic amendments should hand them to the Secretariat as soon as possible and, if still unsatisfied at the end of the session, should send their proposals for correct texts in their own language to the Drafting Committee before the beginning of the third session.

62. Mr. SOOD (India) said it was wrongly stated in paragraph 109 that India had provisionally withdrawn its amendment but had reserved the right to resubmit it later. It had been agreed that the amendment would be submitted in the Committee's report to the plenary meeting and that the matter would be taken up later. There had been no question of withdrawal. The paragraph should be amended accordingly.

63. The CHAIRMAN said the report might state that the Indian representative had not pressed his amendment to a vote but had reserved the right to bring the matter up later.

64. Mr. SOOD (India) suggested that the passage in question should read: "... whereupon India agreed with the decision of the Chairman to incorporate the Indian amendment in the Committee's report to the plenary of the Conference and the Indian delegation reserved the right to take up the proposed amendment there".

65. Mr. HUSSAIN (Pakistan) suggested that a similar formula to that used in paragraphs 84 bis and 84 ter of the report, in the case of the Pakistan amendments to articles 7, 7 bis and 7 ter, might be adopted in the case of the Indian amendment.

66. Mr. de ICAZA (Mexico), Rapporteur, said that he wished to draw the Indian representative's attention to the provisional summary record of the Committee's thirtieth meeting (CDDH/I/SR.30), in which it was stated:

"The CHAIRMAN in order to close the debate on procedure, asked the representative of India if he would accept the method he had outlined, namely to postpone the decision concerning the Indian amendment and to mention in the report the condition attached to its provisional withdrawal.

Mr. DIXIT (India) agreed to the procedure suggested by the Chairman."

It had not been said that the Indian proposal would appear in the Committee's report. The Mexican delegation had been in considerable sympathy with the Indian amendment and he had been careful to examine the summary record closely.

67. Mr. SOOD (India) said that the reference in the summary record to provisional withdrawal was incorrect and he could not agree to its inclusion in the report.

68. The CHAIRMAN suggested that the following formula should be used:

"... whereupon India did not press its proposal to a vote but reserved entire freedom to take it up on a later occasion."

It was so agreed.

Paragraphs 104 to 111 were adopted, subject to that amendment and any necessary linguistic changes.

Draft Protocol II, article 5

Paragraphs 112 to 116

Paragraphs 112 to 116 were adopted.

Draft Protocol I, article 70

Paragraphs 117 to 125

69. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic), referring to paragraph 125, said that his delegation would submit certain drafting amendments to paragraphs 1 and 4 of article 70. Those amendments applied to the Russian text only.

70. Mr. GRAEFRATH (German Democratic Republic) and Mr. MILLER (Canada), referring to paragraph 117, pointed out that their delegations had also sponsored the proposed new article 70 bis.

71. The CHAIRMAN said that the Secretariat would make the necessary corrections.

Paragraphs 117 to 125 were adopted, subject to the necessary corrections.

Draft Protocol I, article 71

Paragraphs 126 to 130

72. Mr. BETTAUER (United States of America) pointed out that there were certain inconsistencies, particularly with regard to punctuation, between the text of article 71 as given in paragraph 130 and in the Working Group's text of the article adopted by the Committee.

73. The CHAIRMAN said that those inconsistencies, which applied to the English text only, would be corrected by the Secretariat.

Paragraphs 126 to 130 were adopted, subject to those corrections.

Draft Protocol I, article 72

Paragraphs 131 to 135

74. Mr. BOBYLEV (Union of Soviet Socialist Republics), referring to the last sentence in paragraph 134, said that his delegation had not only explained its vote but had reserved the right to revert to the subject of article 72 in plenary.

Paragraphs 131 to 135 were adopted, subject to the necessary correction.

Draft Protocol I, article 73

Paragraphs 136 to 140

Paragraphs 136 to 140 were adopted.

Draft Protocol II, article 6

Paragraphs 141 to 155

75. Mr. BETTAUER (United States of America), referring to paragraph 149, said that the statement about the vote on paragraph 2 (c) was incorrect. The vote mentioned in the paragraph concerned the deletion of certain words from the sub-paragraph and not the adoption of paragraph 2 (c) as a whole.

76. Mr. BLOEMBERGEN (Netherlands), also referring to paragraph 149, said that paragraph 2 (c) had been adopted by 26 votes to 17, and not seven as was incorrectly stated.

Paragraphs 141 to 155 were adopted, subject to those corrections.

Draft Protocol II, article 7

Paragraphs 156 to 158

77. Mr. MILLER (Canada) pointed out that the Canadian proposal referred to in paragraph 156 (CDDH/I/37) had been replaced by document CDDH/I/220, as indicated in paragraph 93. The same correction should be made in paragraph 176.

Paragraphs 156 to 158 were adopted, subject to those corrections.



Draft Protocol II, article 8

Paragraphs 159 to 175

78. Mr. CUTTS (Australia), referring to paragraph 175, pointed out that both paragraphs 2 (c) and 4 of the article adopted contained the words "the persons referred to in the opening paragraph of paragraph 1". However, he recalled that there had been dissatisfaction with that wording and that the Committee had decided to leave it to the Drafting Committee.

79. The CHAIRMAN said the Secretariat had informed him that the Drafting Committee had been notified of that matter.

80. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic), referring to paragraph 166, pointed out that certain words had been omitted in the Russian text of paragraph 1 (d). It was also necessary, in his opinion, to find some more satisfactory Russian equivalents for the English words "internment" and "detention".

81. Mr. MILLER (Canada), also referring to paragraph 166, suggested that the final phrase should be replaced by some such phrase as "... that the French version of the text should be reconsidered by the Drafting Committee with a view to its being replaced by some wording which would more accurately reflect the language in which the paragraph was drafted".

Paragraphs 159 to 175 were adopted, subject to the suggested corrections.

Draft Protocol II, articles 9 and 10

Paragraphs 176 to 178

Paragraphs 176 to 178 were adopted.

Question of prohibiting reprisals

Paragraphs 179 and 180

Paragraphs 179 and 180 were adopted.

Part IV - Other Questions

Protection of journalists

Paragraphs 181 to 190

82. Mr. GIRARD (France), referring to paragraph 183, said that the words "an informal working group" should be replaced by the words "an Ad Hoc Working Group".

83. In the same paragraph, he suggested that the invitation in the last sentence should be broadened to include representatives of regional groups and of any other delegations which might wish to participate in the Working Group's discussions.
84. Lastly, concerning paragraph 187, he questioned the accuracy of the statement in the second sentence.
85. The CHAIRMAN said that the Secretariat would take note of the French representative's observations.
86. Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic) supported the French representative's suggestion that the invitation in the last sentence in paragraph 183 should be broadened. He himself proposed that two representatives of different geographic groups should be invited to participate as members of the Ad Hoc Working Group.
87. He entirely supported what the French representative had said with regard to paragraph 187.
88. Concerning paragraph 189, it should be made clear in the report that the amendment submitted by Nigeria had been withdrawn.
89. Lastly, he hoped that the text of the recommendations concerning journalists would be included in the Committee's report to the plenary.
90. Mr. REIMANN (Switzerland) said his delegation was in complete agreement with the observations made by the French representative.
91. Mr. BALKEN (Federal Republic of Germany) said that there was some confusion in his mind about paragraph 190. Did that paragraph mean that the recommendations of the Ad Hoc Working Group had been adopted by the Committee, or were they still only a proposal of the Ad Hoc Working Group?
92. Mr. de ICAZA (Mexico), Rapporteur, said it was clear in his mind that the Committee had approved the recommendations in question and that they now constituted a resolution of the Committee.
93. Concerning paragraph 189, he was not sure what the Byelorussian representative had meant by saying that the Nigerian delegation had withdrawn its amendment.
94. He assured delegations that the Secretariat would take note of all necessary corrections.
95. Mr. ABDUL MALIK (Nigeria) said that as he recalled, his delegation had withdrawn the amendment referred to by the Byelorussian representative.

96. Mr. BETTAUER (United States of America) said he supported the Byelorussian proposal that the full text of the article adopted by the Committee concerning journalists should be included in the Committee's report.

97. Mr. CARNAUBA (Brazil) said he feared that the words in the second sentence in paragraph 190 " ... inform the United Nations Secretary-General of the progress made on that question at the present session of the Conference" might give the impression that the Committee intended to resume consideration of that question at a later stage. He proposed, therefore, that those words should be replaced by the words " ... inform the United Nations Secretary-General of the results of the work accomplished during the present session of the Conference".

98. Mr. de ICAZA (Mexico), Rapporteur, Mr. GIRARD (France) and Mr. FREELAND (United Kingdom) said that they could support the Brazilian proposal.

99. After the Rapporteur had given certain explanations to the representatives of Switzerland and Austria, the CHAIRMAN suggested that the Rapporteur should be authorized to include the Brazilian amendment in paragraph 190 and to insert the texts of the relevant article and resolution in the report.

It was so agreed.

Paragraphs 181 to 190, as amended, were adopted.

100. Mr. BLOEMBERGEN (Netherlands) proposed that in order to facilitate the future work of the Conference, the complete texts adopted by the Committee should be included in an addendum or annex to its report.

101. The CHAIRMAN assured him that a complete synopsis of those texts would be circulated to all delegations before the third session.

102. Mr. GIRARD (France) pointed out that there was no mention of the French amendment concerning article 74 bis after the reference to article 74 in the annex.

103. The CHAIRMAN suggested that the Committee should adopt its report (CDDH/I/284) as a whole.

The report (CDDH/I/284), as a whole, as amended, was adopted.

104. Mr. EL-FATTAL (Syrian Arab Republic) said that on behalf of all the Arab delegations participating in the Conference, namely, Algeria, Arab Republic of Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Sultanate of Oman, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen, and the Palestine Liberation Organization, he would like to state, in explanation of their approval of the report, that those delegations considered that the annex to document CDDH/I/284 was of a purely descriptive character and not a part of the substantive report before the Committee. The Committee's adoption of the report, therefore, could not be construed as waiving any objections of a procedural or substantive nature which could be invoked in relation to the amendments mentioned therein, and, in particular, to articles or parts of the Protocols which had already been adopted.

#### CLOSURE OF THE SESSION

105. The CHAIRMAN declared the second session of the Committee closed.

The meeting rose at 12.35 p.m.