

INTERNATIONAL COMMITTEE OF THE RED CROSS

**Conference of Government Experts on the
Reaffirmation and Development
of International Humanitarian Law
Applicable in Armed Conflicts**

SECOND SESSION

3 May - 3 June 1972

**REPORT
ON THE WORK OF THE CONFERENCE**

**Volume II
(Annexes)**



GENEVA
July 1972

**Colonel Howard S. Levie
Collection**



**The Judge Advocate General's
Legal Center and School
United States Army
Charlottesville, Virginia**

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NOTICE

The present volume contains the various written proposals submitted by the experts in each Commission and during plenary sessions. They are reproduced in numerical order. When they were accompanied by a commentary, the ICRC has given it only when it was indispensable for clarifying the proposal; in certain cases, it has been given in shortened form. Minor modifications have been made in the wording of a few proposals, for the purpose of uniform presentation.

**DRAFT INSTRUMENTS SUBMITTED BY THE ICRC
TO THE SECOND SESSION OF THE CONFERENCE
OF GOVERNMENT EXPERTS**

I

Draft additional Protocol to the four Geneva Conventions of August 12, 1949

The High Contracting Parties,

Recalling that the recourse to force is prohibited in international relations,

Deploing that despite this prohibition and notwithstanding all endeavours to proscribe armed conflicts they continue to occur and to cause a great deal of suffering which must be alleviated,

Noting that humanitarian rules retain all their validity despite the infringements which they suffered and believing that the observance of these rules in their entirety by all the Parties to the conflict will improve the likelihood of finding peaceful solutions,

Reaffirming the conventional and customary rules whereby the Parties to the conflict must make a distinction between protected persons and objects, on the one hand, and military objectives, on the other,

Emphasizing that the methods and measures which are today available to the armed forces do not always allow such a distinction to be made,

Believing, consequently, that it is essential to reaffirm and develop the rules ensuring the protection of the victims of armed conflicts and enshrining the principles of humanity and to supplement those measures intended to reinforce their implementation;

Have agreed on the following:

PART I

General provision

Article 1

Scope of the present Protocol

1. The present Protocol elaborates and supplements the provisions of the four Geneva Conventions of August 12, 1949, for the Protection of Victims of War.

2. It is applicable in the situations provided for in Article 2, common to these Conventions.

Article 2

Terminology

For the purposes of the present Protocol:

- (a) "the Conventions" means the four Geneva Conventions of August 12, 1949, for the Protection of Victims of War;
- (b) "First Convention", "Second Convention", "Third Convention", "Fourth Convention" mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and

Shipwrecked Members of Armed Forces at Sea, of August 12, 1949; the Geneva Convention relative to the Treatment of Prisoners of War, of August 12, 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 12, 1949;

- (c) "substitute" means an organization replacing a Protecting Power under the Conventions.

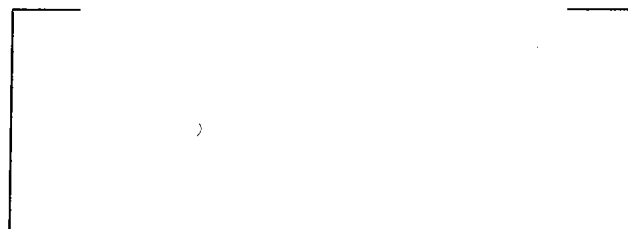
Article 3

Legal status of the Parties

The application of the Conventions and of the present Protocol, as well as the conclusion of the annexed model agreements or of special agreements, has no effect on the legal status of the Parties to the conflict and, in particular, involves no recognition of the adverse Party as a State.

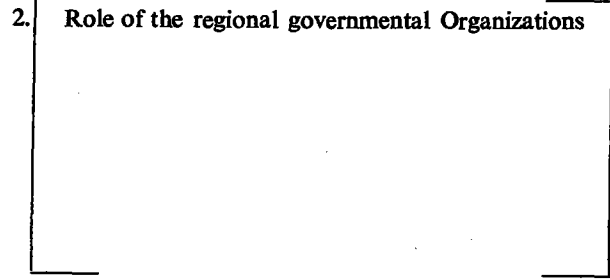
Article 4

Provisional application



Article 5

Beginning and end of application



Article 6

Appointment of Protecting Powers and of their substitute

1. For the sole purposes of applying the Conventions and the present Protocol, each of the Parties to the conflict has the obligation to appoint a Protecting Power from the beginning of the hostilities, and must accept the activities on its territory of a Protecting Power appointed by the adverse Party. If, despite the foregoing, the appointment of a Protecting Power is not made, the Parties to the conflict shall accept, as substitute, the International Committee of the Red Cross or any other impartial humanitarian organization.

2. The appointment and the acceptance of a Protecting Power, or of its substitute, for the sole purposes of applying the Conventions and the present Protocol, have no effect on the reciprocal legal status of the Parties to the conflict and, in particular, do not involve recognition of the adverse Party as a State.

3. The maintenance of diplomatic relations between the belligerent States does not constitute an obstacle to the appointment of Protecting Powers or of their substitute.

Article 7

Qualified persons

With a view to facilitating application of the provisions of the Conventions and of the present Protocol relative to the Protecting Powers and to their substitute, the High Contracting Parties shall endeavour to train a qualified personnel on a national basis. For this purpose, they shall establish lists of persons whose names will be transmitted to the Parties concerned by the International Committee of the Red Cross.

Article 8

Co-operation of the High Contracting Parties

1. The High Contracting Parties being bound, by the terms of Article 1, common to the Conventions, to respect and to ensure respect for these Conventions in all circumstances, are invited to co-operate in the application of these Conventions and of the present Protocol, in particular by making an approach of a humanitarian nature to the Parties to the conflict and by relief actions. Such an approach shall not be deemed to be interference in the conflict.

Article 9

Meetings

1. The Depositary State of the Conventions and of the present Protocol shall, whenever it deems this expedient, convene a meeting of representatives of the High Contracting Parties. The purpose of the meeting will be to study problems concerning the application of the Conventions and of the present Protocol. The meeting may likewise examine any amendment to these instruments proposed by a High Contracting Party, and in this respect shall decide as to the measures to be taken.

2. Moreover, a meeting shall be convened by the Depositary State at the request of at least one-fifth of the High Contracting Parties or of the International Committee of the Red Cross.

Article 10

Permanent body



PART II

Wounded, sick and shipwrecked persons

SECTION I

General provisions

Article 11

Definitions

For the purposes of the present Part:

- (a) the term "medical establishments and units" means hospitals and other fixed medical establishments, medical and pharmaceutical stores of such

establishments, mobile medical units, blood transfusion centres and other installations designed for medical purposes;

- (b) the term "medical transports" means the transport of wounded, sick, shipwrecked and infirm persons, expectant mothers and maternity cases, medical personnel, medical equipment and supplies, by ambulance or by any other means of transport, excluding transport by air;
- (c) the term "medical personnel" means personnel regularly and exclusively engaged in the operation or administration of medical establishments and units, including personnel assigned to the search for, removal, transport and treatment of wounded, sick, shipwrecked and infirm persons, expectant mothers and maternity cases;
- (d) the term "distinctive emblem" means the distinctive emblem of the red cross (red crescent, red lion and sun) on a white background.

Article 12

Protection and care

1. All wounded, sick and shipwrecked persons, as well as infirm persons, expectant mothers and maternity cases, shall be the object of special protection and respect.
2. Such persons shall, in all circumstances, be treated humanely and shall receive, with the least possible delay, the medical care that their condition requires, without any discrimination.

Article 13

Protection of persons

1. All unjustified acts, whether of commission or omission, that endanger the health or the physical or mental well-being of a protected person within the meaning of the Conventions and the present Protocol are prohibited.
2. Accordingly, it is prohibited to subject protected persons to any experiment or treatment, including the removal or transplant of organs, not warranted on remedial grounds. The prohibition applies even in cases where the protected person gives his assent.

Article 14

Civilian medical establishments and units

1. Civilian medical establishments and units shall in no circumstance be attacked. They shall at all times be respected and protected by the Parties to a conflict.
2. Parties to a conflict shall provide such medical establishments and units with a certificate identifying them for the purposes of the present Protocol.
3. With the authorization of the State, medical establishments and units shall be marked with the distinctive emblem.
4. To obviate the possibility of any hostile action, the Parties to a conflict shall take the necessary steps, in so far as military considerations permit, to make known the location of medical establishments and units and to mark them with the above-mentioned distinctive emblem, in

such a way as to make them clearly visible to the opposing forces.

5. The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

Article 15

Discontinuance of protection of civilian medical establishments and units

1. The protection to which civilian medical establishments and units are entitled shall not cease unless they are used to commit outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, setting, wherever appropriate, a reasonable time limit and after such warning has remained unheeded.
2. The fact that wounded, sick and shipwrecked members of the armed forces are treated in such medical establishments and units shall not be deemed to be an act harmful to the enemy; nor shall the presence of small arms and ammunition taken from such members of the armed forces and not yet handed over to the competent service.

Article 16

Civilian medical transports

1. Ambulances and other vehicles used as medical transport by civilian medical establishments and units shall be respected and protected at all times. They shall be furnished with a certificate issued by a competent authority and attesting to their medical nature.
2. Other means of transport, whether used in isolation or in convoy, on land or on waterways, assigned temporarily to medical transport shall be respected and protected while being used for such purpose.
3. With the assent of the competent authority, all the foregoing means of transport shall be marked with the distinctive emblem. Those covered by paragraph 2 above may display the distinctive emblem only while they are carrying out their humanitarian mission.
4. The provisions of Article 15 of the present Protocol shall likewise be applicable to medical transports.

Article 17

Requisition

1. The right of an Occupying Power to requisition medical establishments and units and their movable and immovable assets, as well as the services of their medical personnel, shall be exercised only temporarily and in case of urgent necessity, and subject to the further conditions that suitable arrangements are made for the treatment of protected persons within the meaning of the Conventions and of the present Protocol, and that the necessary steps are taken in advance for tending the wounded, the sick and the shipwrecked, and for providing suitable hospital accommodation for the civilian population.

2. The equipment, material and stores of medical establishments and units shall not be requisitioned so long as they are needed for the civilian population.

Article 18

Civilian medical personnel

1. Civilian medical personnel duly recognized or authorized by the State, as well as the medical personnel of National Red Cross (Red Crescent and Red Lion and Sun) Societies assigned to the medical treatment of protected persons, shall be respected and protected.

2. The aforesaid medical personnel shall be identified by means of an identity card bearing a photograph of the holder and embossed with the stamp of the responsible authority; while on duty, the medical personnel shall wear on the left arm a stamped armband bearing the distinctive emblem. The armband shall be issued by the State to which the personnel belong.

3. In so far as possible, every assistance shall be given to civilian medical personnel to enable them to carry out their humanitarian mission to the best of their ability. In particular, they shall have access to any place where their services are required, subject to such measures of supervision and security as the Parties to the conflict may judge necessary.

4. In the event that the above-mentioned personnel fall into the hands of the adverse Party, they shall be granted all facilities necessary for the performance of their duties. In no circumstance shall they be required or compelled to carry out tasks unrelated to their mission.

5. The persons in charge of each medical establishment and unit shall at any time make available to the competent national or occupying authorities an up-to-date list of its personnel.

Article 19

Protection of medical duties

1. In no circumstance shall the exercise of medical activities compatible with professional rules be deemed an offence, regardless of the person benefiting therefrom.

2. In no circumstance shall medical personnel be compelled by any authority to violate any provision of the Conventions or of the present Protocol.

3. Medical personnel shall not be compelled to perform acts or carry out work contrary to professional rules.

4. Medical personnel shall not be compelled to inform an occupying authority of the wounded, sick and shipwrecked under their care. An exception shall be made in the case of compulsory medical regulations for the notification of communicable diseases.

Article 20

Role of the population

1. The competent civilian and military authorities shall permit inhabitants and relief societies, even in invaded or occupied areas, spontaneously to give shelter to and tend the wounded, sick and shipwrecked of whatever nationality.

2. The civilian population shall respect these wounded, sick and shipwrecked persons and shall refrain from committing acts of violence against them.

3. No one shall be molested or convicted for having tended wounded, sick and shipwrecked persons.

Article 21

Use of the distinctive emblem

From the outbreak of hostilities the High Contracting Parties shall adopt special measures for supervising the use of the distinctive emblem and for the prevention and repression of any misuse of the emblem.

Article 22

Neutral States

Neutral States shall apply, by analogy, the provisions of the present Protocol to wounded, sick and shipwrecked persons and to medical personnel of the Parties to the conflict received or interned in their territory.

SECTION II

Medical air transport

Article 23

Medical aircraft

1. In the present Protocol the term "medical aircraft" refers to aircraft used by the military and civilian medical services of the Parties to the conflict, permanently or temporarily but exclusively for medical duties, namely for the evacuation and transport of military or civilian wounded, sick, shipwrecked and infirm persons, expectant mothers and maternity cases, as well as for the transport of medical personnel, equipment and material.

2. All medical aircraft shall carry a certificate issued by the responsible authority and attesting to the medical nature of their functions.

Article 24

Protection

1. Permanent medical aircraft shall be respected and protected at all times.

2. Temporary medical aircraft shall be respected and protected throughout their mission.

Article 25

Removal of the wounded

1. In areas of military operations the Parties to the conflict shall, save in cases of imperative military necessity, permit the removal and evacuation of wounded, sick and shipwrecked persons by medical aircraft and particularly helicopters.

2. The removal and evacuation shall be carried out with the utmost possible speed.

Article 26

Flight over the territories of the Parties to the conflict

Subject to the provisions of Article 25 of the present Protocol, medical aircraft shall not fly over enemy or enemy-occupied territory save by prior agreement between the relevant Parties to the conflict. The agreement shall cover in particular the routes, times and heights of flights as well as the means of identification of medical aircraft.

Article 27

Identification

1. With the agreement of the responsible authority, medical aircraft may be marked with the distinctive emblem (red cross, red crescent, red lion and sun). When flights are undertaken under an agreement such as is provided for in Article 26 of the present Protocol, the aircraft shall always bear the distinctive emblem.

2. Apart from the distinctive emblem, medical aircraft may be fitted with a system of signals and identification, in accordance with the Rules attached as an annex to the present Protocol.

Article 28

Landing

1. Medical aircraft flying over enemy or enemy-occupied territory shall obey any order to land or alight on water.

2. In the event of a landing, on land or on water, whether forced or in compliance with a summons, on enemy or enemy-occupied territory, by a medical aircraft covered by an agreement concluded under Article 26 of the present Protocol or carrying out a mission under Article 25, the aircraft with its occupants may resume its flight after examination, if any.

3. In the event of a landing, on land or on water, whether forced or in compliance with a summons, on enemy or enemy-occupied territory by any other medical aircraft, the aircraft may be made subject to the law of armed conflicts, on condition that the captor assumes responsibility for caring for the wounded, sick and shipwrecked persons on board. In the latter case the treatment of the medical personnel and the members of the crew shall be consistent with the Conventions. The medical equipment and material shall remain available for the treatment of the wounded, sick and shipwrecked persons.

Article 29

Neutral States

1. Except by prior agreement, medical aircraft shall not, subject to the provisions of paragraph 3 below, fly over or land on the territory of a neutral State. They shall be respected throughout their flights and also for the duration of any calls in the territory. Nevertheless they shall obey any summons to land or to alight on water.

2. The agreement shall cover in particular the routes, times and heights of flights, as well as the means of identification of the aircraft.

3. In the absence of an agreement and in the event of urgent necessity, medical aircraft may, at their own risk, fly over, and land on, the territory of neutral States. They shall make every effort to give notice of the flight and to

identify themselves. The neutral State concerned shall, to the extent possible, respect such aircraft.

4. In the event of a landing, on land or on water, in the territory of a neutral State, whether forced or in compliance with a summons, the aircraft, with its occupants, may resume its flight after examination, if any.

5. Any wounded, sick or shipwrecked persons disembarked from a medical aircraft with the consent of the local authorities on the territory of a neutral State shall, unless agreed otherwise between the neutral State and the Parties to the conflict, be detained by the neutral State where so required by international law, in such a manner that they cannot again take part in the hostilities. The cost of hospital treatment and internment shall be borne by the Power to which the wounded, sick and shipwrecked persons belong.

PART III

Combatants

Article 30

Means of combat

1. Combatants' choice of means of combat is not unlimited.

2. It is forbidden to use weapons, projectiles or substances calculated to cause unnecessary suffering, or particularly cruel methods and means.

3. In cases for which no provision is made in the present Protocol, the principle of humanity and the dictates of the public conscience shall continue to safeguard populations and combatants pending the adoption of fuller regulations.

Article 31

Prohibition of perfidy

1. It is forbidden to kill or injure by resort to perfidy. Unlawful acts betraying an enemy's confidence, such as the abuse of an international convention, truce or humanitarian negotiation, the misuse of internationally recognized protective signs, the feigning of surrender, the use in combat of the enemy's distinctive emblems, are deemed to constitute perfidy.

2. Ruses of war are not considered as perfidy. Ruses of war are those acts, such as camouflage, traps, mock operations, and misinformation, which, whilst infringing no recognized rule, are intended to mislead the enemy or to induce him to act recklessly.

Article 32

Recognized signs

It is forbidden to make improper use of the flag of truce, the protective sign of the red cross (red crescent, red lion and sun), the protective sign cultural property and other protective signs specified in international conventions.

Article 33

Emblems of nationality

It is forbidden to make improper use of enemy or neutral flags, military insignia and uniforms. In combat their use is forbidden at all times.

Article 34

Safeguard of an enemy hors de combat

1. It is forbidden to kill or wound an enemy who, having laid down his arms, or no longer having any means of defence, has surrendered at discretion.
2. It is forbidden to decide to leave no survivors and take no prisoners, to so threaten an enemy and to conduct the fight in accordance with such a decision.
3. A captor shall provide for persons falling into his power even if he decides to release them.
4. Nevertheless, sentences may subsequently be passed for infringements of the law of armed conflict, consistent with the procedure recognized in international law.

Article 35

Conditions of capture and surrender

1. A combatant is captured when he falls into the power of an enemy.
2. The following *inter alia* shall be considered to have fallen into the power of an enemy:
 - (a) any disarmed combatant unable to defend himself or express himself in territory taken, even temporarily, by an enemy;
 - (b) any combatant expressing by the usual means or by his attitude his intention to surrender, and abstaining from any violence.

Article 36

Aircraft occupants

The occupants of aircraft in distress who parachute to save their lives, or who are compelled to make a forced landing, shall not be attacked during their descent or landing unless their attitude is hostile.

Article 37

Independent missions

1. Members of armed forces and other combatants complying with the conditions laid down in Article 4 of the Third Convention who enter territory controlled by an enemy in order to gather and transmit information of a military order shall not be considered as spies. Similarly, military and non-military personnel openly carrying out their mission of liaison or communication between units of their own armed forces or with the enemy armed forces shall not be considered as spies.

2. Members of armed forces and other combatants fulfilling the conditions of Article 4 of the Third Convention and who enter areas or territories controlled by an enemy with the intent of carrying out destruction shall not be considered as saboteurs within the meaning of Article 5 of the Fourth Convention.

3. In the event of their capture, persons referred to in the two preceding paragraphs shall be prisoners of war.

Article 38

Guerrilla fighters

1. In the event of their capture, members of militias or volunteer corps, including those of organized resistance or independence movements not belonging to the regular armed forces but belonging to a Party to the conflict, even in the case of a government or of an authority not recognized by the Detaining Power, shall be treated as prisoners of war within the meaning of the Third Convention, provided that such militias, volunteer corps or organized resistance or independence movements fulfil the following conditions:

- (a) that in their operations they comply with the requirements of the principles of the law of armed conflicts and of the rules laid down in the present Protocol;
- (b) that in their operations they show their combatant status by openly displaying their weapons or that they distinguish themselves from the civilian population either by wearing a distinctive sign or by any other means;
- (c) that they are organized and under the orders of a commander responsible for his subordinates.

2. Individual infringements of the foregoing conditions shall not entail forfeiture of prisoner-of-war treatment for the other members of the organization who have observed those conditions.

3. Combatants not fulfilling the foregoing conditions shall, in the event of their capture, be afforded guarantees not less favourable than those laid down in Article 3 common to the Conventions.

Article 39

Organization and discipline

Armed forces shall be organized and subject to an appropriate internal disciplinary system. Such disciplinary system shall enforce respect of the present rules and of the other rules applicable in armed conflicts.

PART IV

Civilian population

SECTION I

General provisions

Article 40

General protection of the civilian population

The civilian population and objects of a civilian character shall be protected against dangers resulting from hostilities.

Article 41

Definition of the civilian population

1. Any person who is not a member of the armed forces and who, moreover, does not take a direct part in hostilities is considered to be a civilian.

2. The civilian population comprises all civilian fulfilling the conditions stipulated in the foregoing paragraph.

3. Proposal I: The presence, within the civilian population, of individuals who do not conform to the definition given in paragraph 1, does not prevent the civilian population from being considered as such, reservation being made for Articles 45 paragraph 5, 49, 50 and 51 of the present Protocol.

Proposal II: The presence, within the civilian population, of individual combatants, does not prevent the civilian population from being considered as such, reservation being made for Articles 45 paragraph 5, 49, 50 and 51 of the present Protocol.

4. In case of doubt as to their civilian character, the persons mentioned in paragraph 1 shall be presumed as belonging to the civilian population.

Article 42

Definition of objects of a civilian character

1. Objects which, by their nature or use, answer the needs of the civilian population, are considered as objects of a civilian character.

2. Objects of a civilian character comprise, in particular, objects which are indispensable to the survival of the civilian population, as well as those serving mainly pacific of helpful purposes.

3. In case of doubt as to the nature and destination of objects mentioned in paragraph 1, crops, provisions and other foodstuffs, drinking water reserve supplies and dwellings and buildings designed for the shelter of the civilian population, or which the latter habitually uses, shall be presumed to be objects of a civilian character.

Article 43

Definition of military objectives

Only those objectives which, by their nature or use, contribute effectively and directly to the military effort of the adversary, or which are of a generally recognized military interest, are considered as military objectives.

Article 44

Definition of attacks

Acts of violence, whether offensive or defensive, committed against the adversary by means of weapons, in the course of hostilities, are considered attacks.

SECTION II

Protection of the civilian population against dangers resulting from hostilities

CHAPTER I

Civilians

Article 45

Respect for the civilian population

1. The civilian population as such, as well as individual civilians, shall never be made the object of attack.

2. In particular, terrorization attacks shall be prohibited.

3. Attacks which, by their nature, are launched against civilians and military objectives indiscriminately, shall be prohibited.

4. Attacks directed against the civilian population or individual civilians by way of reprisals shall be prohibited.

5. Nevertheless, civilians who are withing a military objective run the risks consequent upon any attack launched against this objective.

Article 46

Safeguarding of the civilian population

The civilian population or individual civilians shall never be used in an attempt to shield, by their presence, military objectives from attack.

CHAPTER II

Objects of a civilian character

Article 47

Respect for objects of a civilian character

Objects of a civilian character shall never be attacked, provided they are not used either directly or mainly for a military purpose.

Article 48

Respect for and safeguarding of objects indispensable to the survival of the civilian population

1. Attacks launched against objects indispensable to the survival of the civilian population by way of reprisals are prohibited.

2. The Parties to the conflict under whose control objects indispensable to the survival of the civilian population are placed, shall refrain from:

(a) using them in an attempt to shield military objectives from attack;

(b) destroying them, except in cases of unavoidable military necessity and only for such time as that necessity remains.

Precautionary measures**Article 49***Precautions when attacking*

So that the civilian population, as well as objects of a civilian character, who might be in proximity to a military objective be spared, those who order or launch an attack shall, when planning and carrying out the attack, take the following precautions:

- (a) they shall ensure that the objectives to be attacked are not civilians, nor objects of a civilian character, but are identified as military objectives; if this precaution cannot be taken, they shall refrain from launching the attack;
- (b) they shall warn, whenever circumstances permit, and sufficiently in advance, the civilians threatened, so that the latter may take shelter.

Article 50*Principle of proportionality*

1. Those who order or launch an attack, shall refrain from doing so when the probable losses and destruction are disproportionate to the concrete military advantage sought by them.

2. In application of this principle, the Parties to the conflict shall refrain from attacking as one sole objective, by means of bombardments or any other methods, an area comprising several military objectives which are some distance from each other and situated in populated regions.

3. When there is a choice among several objectives for obtaining the same military advantage, those who order or launch an attack shall choose the objective which presents the least danger to the civilian population and objects of a civilian character.

Article 51*Precautions against the effects of attacks*

1. The Parties to the conflict under whose control the civilian population and objects of a civilian character are placed, shall take the necessary precautions against dangers resulting from attacks.

2. They shall endeavour, either to remove them from the vicinity of the threatened military objectives, subject to the provisions of Article 49 of the Fourth Convention, or to avoid that these military objectives are permanently situated within densely populated regions.

Article 52*Relationship of this Chapter to the other provisions of the present Protocol*

The precautionary measures described above do not dispense the Parties to the conflict in any way from observing, in all circumstances, the other provisions of the present Protocol.

Localities and objects under special protection**Article 53***Non-defended localities ("open cities")*

1. It is prohibited to attack, by any means whatsoever, populated sites upon which the Parties to the conflict have conferred, by agreement, the status of non-defended localities and which, consequently, no longer constitute an obstacle to the advance of the enemy.

2. This agreement may be either express or tacit, or may consist of reciprocal and concordant declarations. It may be concluded either directly, or through the medium of a Protecting Power, its substitute, or a neutral and impartial intermediary. The Parties may to this end, and in the absence of a special agreement, implement the provisions of the Model Agreement annexed to the present Protocol.

3. The subject of such an agreement may be any locality situated in a zone of military operations from which armed forces and all other combatants, as well as mobile weapons and mobile military equipment, have been evacuated and in which no use will be made of fixed military installations.

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

5. The Parties to the conflict may mark these localities. In this case, they shall use the distinctive emblem described in the Model Agreement mentioned above.

6. If the enemy should occupy them, it may, in taking the precautions mentioned in Articles 49 to 51 of the present Protocol, render useless or destroy the military objectives which these localities may contain.

7. A non-defended locality will lose its status when it no longer fulfils the conditions stipulated in paragraph 3 of the present Article, or when one or other of the Parties to the conflict has denounced the above-mentioned agreement.

8. The provisions of the present Article do not affect, in any way whatsoever, the obligations resulting from Article 25 of the Regulations respecting the Laws and Customs of War on Land, annexed to the Fourth Hague Convention of October 18, 1907.

Article 54*Neutralized localities*

1. It is prohibited for the Parties to the conflict to extend their military operations to populated sites on which they have conferred by agreement the status of neutralized localities and which, consequently, are no longer of military interest to the Parties to the conflict.

2. This agreement may be either express or tacit, or may consist of reciprocal and concordant declarations. It may be concluded either directly, or through the medium of a Protecting Power, its substitute, or a neutral and impartial intermediary. It shall fix the methods of supervision. The Parties may to this end, and in the absence of a special agreement, implement the provisions of the Model Agreement annexed to the present Protocol.

3. The subject of such an agreement may be any locality situated outside a zone of military operations from which armed forces and all other combatants, as well as mobile weapons and mobile military equipment, have been evacuated, in which no use will be made of fixed military installations and where any activity linked to the military effort has ceased.

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

5. The Parties to the conflict may mark these localities. In this case, they shall use the distinctive emblem described in the Model Agreement mentioned above.

6. When a neutralized locality becomes included in an area of military operations, it shall retain its status. A neutralized locality shall lose its status if it does not fulfil the conditions stipulated in paragraph 3 of this Article or if one or the other of the Parties to the conflict has denounced the above-mentioned agreement; nevertheless, instead of denouncing the agreement, the Parties to the conflict shall endeavour to confer upon the locality in question the status of a non-defended locality.

Article 55

Works and installations containing dangerous forces

1. Without prejudice to other provisions of the present Protocol and so as to spare the civilian population and objects of a civilian character from dangers which may result from the destruction of, or damage to, works and installations—such as dykes, hydroelectric dams and sources of power—through the release of natural or artificial forces, the High Contracting Parties concerned are invited:

- (a) to agree, in peace time, on a procedure which would allow, in all circumstances, special protection to be given to those works which are designed for essentially peaceful purposes;
- (b) to agree, in time of armed conflicts, to special protection being given to certain works or installations, provided they are not directly or mainly used for a military purpose. To this end, they may implement the provisions of the Model Agreement annexed to the present Protocol.

2. When these works or installations are used directly or mainly for a military purpose and their destruction or damage would entail the annihilation of the civilian population, the Parties to the conflict shall take, exercising particular care, the precautionary measures required by Articles 49 to 51 of the present Protocol.

Article 56

Relationship of this Chapter to the other provisions of the present Protocol

The agreements conferring special protection on localities or objects do not dispense the Parties to the conflict, in any way, from observing the other provisions of the present Protocol.

SECTION III

Assistance to the civilian population

CHAPTER I

Measures in favour of children

Article 57

Protection of children

Children shall be the object of special protection. The Parties to the conflict shall provide them with the care and aid which their age and situation require.

Article 58

Safeguarding of children

Proposal I: The Parties to the conflict shall take care that children aged under fifteen years shall not take a direct part in hostilities.

Proposal II: The Parties to the conflict shall not recruit children of under fifteen years for service in their armed forces, nor accept their voluntary enrolment.

Proposal III: The Parties to the conflict shall not recruit children of under fifteen years for service in their armed forces, nor accept their voluntary enrolment. Children of under fifteen years shall not be used as auxiliaries of armed forces, in particular for transporting or camouflaging weapons or military equipment or for laying mines.

Article 59

Mothers of infants

The death penalty shall not be pronounced on mothers of infants or on women responsible for their care.

Article 60

Death penalty

In no case shall the death penalty be pronounced on civilians who are under eighteen years at the time of the offence. Pregnant women shall not be executed.

Article 61

Repatriation

1. So as to permit and facilitate the return, to their families and country, of children cared for or received abroad, the authorities of the receiving country shall establish for each child a card, with photographs, which they shall communicate to the Central Tracing Agency.

2. In so far as it is possible each card will contain the following minimum information:

- (a) surname of the child;
- (b) the child's first name;
- (c) the place and date of birth (failing this, the approximate age);

- (d) the father's first name;
- (e) the mother's first name and her maiden name;
- (f) the child's nationality;
- (g) the address of the child's family;
- (h) the date at which and the place where the child was found;
- (i) the date at which and the place from where the child left his country;
- (j) the child's blood group;
- (k) any distinguishing features;
- (l) the child's present address.

Article 62

Relationship of this Chapter to the Fourth Convention

The preceding measures do not dispense the Parties to the conflict, in any way whatsoever, from observing, in all circumstances, the provisions of Articles 14, 24, 38 (5), 50, 68 paragraph 4 and 140 of the Fourth Convention.

CHAPTER II

Relief

Article 63

Supplies

The Parties to the conflict shall ensure, to the fullest extent of their capacity and without making any distinction of an unfavourable character, the supply of goods indispensable to the civilian population placed under their control, in law or in fact. If domestic resources are inadequate, they shall endeavour to import the necessary goods.

Article 64

Humanitarian assistance

1. To the fullest extent possible, the Parties to the conflict shall accept and facilitate relief actions destined exclusively to the civilian population placed under their control, in law or in fact.
2. The offer of relief, whether emanating from a State, a National Red Cross Society, or any other recognized relief society, or from the International Committee of the Red Cross, or from any other impartial humanitarian body, in favour of the inadequately supplied civilian population, should not be regarded as an unfriendly act.
3. Nevertheless, the Parties to the conflict shall have the right to prescribe the technical arrangements for the conveyance of relief. They may not, in any way whatsoever, divert relief consignments from their proper destination nor delay their conveyance. They have the right to be reasonably satisfied through the Protecting Power, its substitute or an impartial humanitarian organization, that these consignments are exclusively used for the relief of the needy civilian population.

Article 65

Transit

1. The High Contracting Parties shall grant free passage to relief consignments destined exclusively to the civilian population of another, even if it should be an enemy, Contracting Party.
2. These Parties shall have the right to prescribe the technical arrangements for the conveyance of relief. They may not, in any way whatsoever, divert relief consignments from their proper destination, nor delay their conveyance. They have the right to be reasonably satisfied, through the Protecting Power, its substitute, or an impartial humanitarian organization, that these consignments are exclusively used for the relief of the needy civilian population.

Article 66

Relationship of this Chapter to the Fourth Convention

1. The preceding measures do not dispense, in any way whatsoever, the Parties to the conflict from observing, in all circumstances, the provisions of Articles 55, 59, 60, 61, 62, 63, 108, 109, 110 and 111 of the Fourth Convention.
2. Article 10 of the Fourth Convention is reserved.

SECTION IV

Civil defence organizations

Article 67

Definition

1. Those organizations, which are set up or recognized by their Government and whose exclusive function, in time of armed conflict, is to ensure the survival and living conditions of the civilian population exposed to dangers resulting from hostilities or natural disasters, shall be considered to be civil defence organizations within the meaning of the present Protocol. Their tasks, which they fulfil without exercising any discrimination, are mainly the following:

- (a) the tracing of, and the giving of first aid and medical care to victims;
- (b) the safeguarding, particularly by fire-fighting, of persons, either civilians or military personnel *hors de combat*;
- (c) the protection of objects indispensable to the survival of the civilian population;
- (d) the provision of material and social assistance to the civilian population;
- (e) the administration of essential public utility services, indispensable to the civilian population;
- (f) the maintenance of order in disaster areas;
- (g) preventive measures (warning, evacuation, etc.);
- (h) the construction and administration of shelters.

2. These organizations have no military character whatsoever and do not carry out any combat missions. They may, however, be organized on a military pattern and be attached to military authorities. Their personnel

may, in the discharge of their tasks, co-operate with military personnel.

3. In order to ensure the maintenance of order in disaster areas, or for the purpose of legitimate self-defence linked to their tasks, personnel of civil defence organizations are authorized to carry light weapons.

Article 68

General protection

1. Civil defence organizations shall be protected. They shall at all times be authorized to accomplish their tasks; when they accomplish them in combat zones, their activity shall not be hindered, except in the case of imperative military necessity.

2. The personnel of civil defence organizations shall never be attacked.

3. Buildings, equipment and means of transport belonging to civil defence organizations shall never be attacked or destroyed. The same shall apply to those assigned temporarily to them for any emergency relief action, for such time as this temporary use endures.

Article 69

Protection in occupied territories

1. In occupied territories, civil defence organizations shall receive every facility from the responsible authorities for accomplishing their tasks, subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power. The latter shall not be permitted to introduce in the management or personnel of these organizations any changes which could jeopardize the efficacious discharge of their tasks; it shall not be also permitted to demand that these organizations should discharge their tasks by giving priority to victims belonging to the said Power.

2. If they should fall into the power of the enemy, the personnel of civil defence organizations shall not be made prisoners of war, but shall enjoy, at least, the guarantees granted by the Fourth Convention. The Occupying Power may not compel permanent personnel to undertake activities other than those stipulated in Article 67 of the present Protocol, nor oblige them to serve outside occupied territories; on the other hand, it may employ temporary personnel on work mentioned in Article 51 of the Fourth Convention.

3. Buildings, equipment and means of transport belonging to civil defence organizations shall remain for the use of the civilian population. They may only be requisitioned temporarily, in cases of urgent necessity, and provided the requisition does not seriously jeopardize the protection of the civilian population.

Article 70

Organizations of neutral States

1. The protection conferred by the present Protocol shall also be granted to personnel and equipment belonging to those civil defence organizations of neutral States which, with the approval of their own governments and after having notified the opposing Party accordingly, were to offer their assistance to the civil defence

organizations of a Party to the conflict, with the latter's agreement and under its authority.

2. In no circumstances shall this assistance be considered as interference in the conflict.

Article 71

Markings

1. The distinctive emblem of civil defence organizations consists in.... The personnel of civil defence organizations shall be recognizable by an identity card attesting to the capacity of the holder, bearing his photograph, and embossed with the stamp of the responsible authority; while on duty, they shall wear on the left arm a stamped armband bearing the distinctive emblem, issued by the State to which they belong.

2. The identification of personnel and the marking of buildings, equipment and medical transports of civil defence organizations are governed by Articles 14, 16 and 18 of the present Protocol.

3. Temporary personnel, medical and non-medical, as well as buildings, equipment and means of transport used temporarily for any emergency relief action, may bear the distinctive emblem only when actually discharging their tasks.

4. From the outbreak of hostilities, the High Contracting Parties shall adopt special measures for supervising the use of the distinctive emblem and for the prevention and repression of any misuse of the emblem.

Article 72

Notification

Each of the High Contracting Parties shall notify the International Committee of the Red Cross [the Depositary State] which of its civil defence organizations may enjoy the protection under the present Section.

PART V

Execution of the Conventions and of the present Protocol

SECTION I

General provisions

Article 73

Detailed execution and unforeseen cases

The High Contracting Parties, acting through their civilian and military authorities, shall ensure the detailed execution of the Articles of the Conventions and of the present Protocol and provide for unforeseen cases, in conformity with the general principles of the Conventions and of the present Protocol.

Article 74

Prohibition of reprisals and exceptional cases

1. Measures of reprisal against persons and property protected by the Conventions and by the present Protocol are prohibited.

2. In cases where reprisals are not yet prohibited by the law in force, if a belligerent considers that it must resort thereto, it shall observe the following minimal conditions:

- (a) the resort to reprisals must be officially announced as such;
- (b) only the qualified authority can decide on resort to reprisals;
- (c) the reprisals must respond to an imperative necessity;
- (d) the nature and scope of the reprisals shall never exceed the measure of the infraction which they seek to bring to an end;
- (e) the belligerent resorting to reprisals must, in all cases, respect the laws of humanity and the dictates of the public conscience;
- (f) reprisals shall be interrupted as soon as the infraction which gave rise to them has come to an end.

Article 75

Orders and instructions

1. The civilian and military authorities of the High Contracting Parties shall, through the official channels, issue to their subordinates orders and instructions intended to ensure respect for the provisions of the Conventions and of the present Protocol, and shall supervise the execution thereof.

2. The High Contracting Parties shall determine the procedure to be followed for the application of the principle under which a subordinate is exempted from any duty to obey an order which would lead him to commit a grave breach of the provisions of the Conventions and of the present Protocol.

Article 76

Dissemination

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

2. The military and civilian authorities who, in time of armed conflict, assume responsibilities in respect of protected persons and property, must be fully acquainted with the provisions of the present Protocol.

Article 77

Rules of application

The High Contracting Parties shall communicate to one another, through the Depositary State, the laws and regulations which they adopt to ensure the application of the present Protocol.

SECTION II

INTERGOVERNMENTAL ORGANIZATIONS

Article 78

Accession



PART VI

Final provisions

Article 79

Signature

The present Protocol shall be open until ... 197... at ..., for signature by the Parties to the Conventions.

Article 80

Ratification

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Depositary State.

Article 81

Accession

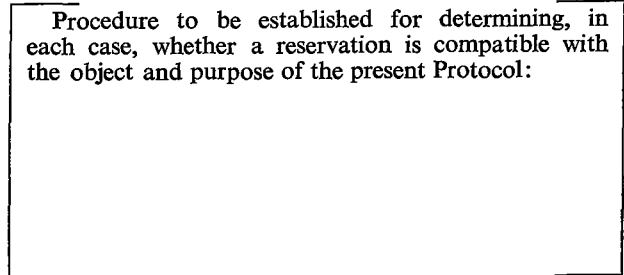
- 1. The present Protocol shall remain open for accession by any Party to the Conventions which has not signed it.
- 2. The instruments of accession shall be deposited with the Depositary State.

Article 82

Reservations

- 1. The High Contracting Parties, when signing, ratifying the present Protocol or acceding thereto, shall not formulate any reservation to Articles...
- 2. Further to the prohibition stipulated in the preceding paragraph, a reservation incompatible with the object and purpose of the present Protocol shall not be permitted.

Procedure to be established for determining, in each case, whether a reservation is compatible with the object and purpose of the present Protocol:



3. A reservation may be withdrawn at any time by notification to this effect addressed to the Depositary State.

Article 83

Entry into force

1. The present Protocol shall enter into force when ... instruments of ratification or accession have been deposited.

2. Thereafter, it shall enter into force, for each High Contracting Party, as soon as its instrument of ratification or of accession has been deposited.

Article 84

Treaty relations upon entry into force of the present Protocol

1. When the Parties to the Conventions are also Parties to the present Protocol, the Conventions apply as elaborated and supplemented by the present Protocol.

2. As between a Party to the Conventions and to the present Protocol, and a Party solely to the Conventions, only the latter apply.

Article 85

Denunciation

1. In case a High Contracting Party should denounce the present Protocol, the denunciation shall only take effect one year after the receipt of the instrument of denunciation. However, if on the expiry of that year, the denouncing Party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities and, in any case, until the operations of release and repatriation of the persons protected by the present Protocol are completed.

2. The denunciation shall be notified in writing to the Depositary State, which shall transmit it to all the High Contracting Parties.

3. The denunciation shall have effect only in respect of the denouncing Party. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of general international law.

Article 86

Notifications

The Depositary State shall inform all the Parties to the present Protocol of the following particulars:

- (a) signatures affixed to the present Protocol, ratifications and accessions under Articles 80 and 81 of the present Protocol;
- (b) the date of entry into force of the present Protocol under its Article 83;
- (c) communications and declarations received under Articles 72, 77 and 82 of the present Protocol;
- (d) denunciations under Article 85 of the present Protocol.

Article 87

Registration and publication

After its entry into force, the present Protocol shall be transmitted by the Depositary State to the Secretariat of the United Nations Organization for registration and publication, in accordance with Article 102 of the United Nations Charter.

Article 88

Authentic texts and official translations

1. The original of the present Protocol, of which the French and English texts are equally authentic, shall be deposited with the Depositary State.

2. The Depositary State shall arrange for official translations of the present Protocol to be made into Arabic, Chinese, Russian and Spanish.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the present Protocol.
DONE AT ..., this ... day of ..., 197

ANNEX I

Regulations on the marking and identification of medical aircraft

The matter will be studied partly on the basis of the documentation that the ICRC presented to the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which met in Geneva from 24 May to 12 June 1971 * , and partly on the basis of a special technical note drawn up by the ICRC

ANNEX II

DRAFT MODEL AGREEMENTS

1. Draft Model Agreement creating non defended localities

Article 1

Creation and delimitation

1 Under the present Agreement, the Contracting Parties confer, in accordance with Article 53 of the Additional Protocol to the four Geneva Conventions of August 12, 1949 (hereinafter called the Protocol), the status of non-defended locality [on the town of...] [on the village of...].

2. The delimitation of this locality shall be as follows: [here follow the geographic co-ordinates of the locality and/or indications fixing its boundaries, by means of natural features or artificial landmarks, such as rivers, lakes, hills, dams, roads, etc. A map may be attached.]

* See ICRC, *Protection of the Wounded and Sick*, 1971 (ICRC, Conf. Govt. Experts, Geneva 1971, Doc. CE/7B).

Article 2

Markings

*First possibility*¹: This locality shall be recognized by oblique red bands on a white ground placed on its boundaries, especially on highways, and in places where they are clearly visible. Should the locality be occupied by one of the Parties, the latter shall remove all markings.

*Second possibility*¹: This locality shall not be marked in any way.

Article 3

*Supervision*²

A Commission composed of ... shall supervise whether the locality of ... fulfils the conditions laid down in paragraph 3 of Article 53 of the Protocol. To that end, the members of the Commission shall have free access, at all times, to the locality of... Every facility, particularly that of communication shall be granted to them, in order that they may discharge their mission of supervision.

Article 4

Violation of the Agreement

*First possibility*³: If the supervisory Commission observes any facts contrary to the provisions of Article 53 of the Protocol, it shall immediately advise the Power or authorities in whose territory the locality is situated. In serious cases, the Commission shall inform the Power which has recognized the status of the locality. This Power may then either address a warning to the opposing Party, or denounce the present Agreement.

*Second possibility*⁴: The Party in possession of convincing evidence of the violation of the present Agreement shall address to the other a warning giving a reasonable period of notice. If this warning is ignored, the Party may denounce the present Agreement.

Article 5

Coming into force

The present Agreement shall come into force on ... [here follow date and time].

Article 6

Duration

1. Unless the present Agreement is denounced by one or the other of the Parties, it shall remain in force up to the moment when the locality is occupied by one or the other of the Parties.

2. In the event of denunciation, the latter shall come into effect ... hours following notification to the opposing Party.

¹ The signatories of the present Agreement have the choice of one or the other of these two possibilities.

² This article is optional.

³ If there is supervision.

⁴ If there is no supervision.

2. Draft Model Agreement creating neutralized localities

Article 1

Creation and delimitation

1. Under the present Agreement, the Contracting Parties confer, in accordance with Article 54 of the Additional Protocol to the four Geneva Conventions of August 12, 1949 (hereinafter called the Protocol), the status of neutralized locality [on the town of ...] [on the village of ...].

2. The delimitation of this locality shall be as follows: [here follow the geographic co-ordinates of the locality and/or indications fixing its boundaries, by means of natural features or artificial landmarks, such as rivers, lakes, hills, dams, roads, etc. A map may be attached.]

Article 2

Markings

*First possibility*⁵: This locality shall be recognized by oblique red bands on a white ground placed on its boundaries, especially on highways, and in places where they are clearly visible. Should the locality be occupied by one of the Parties, the latter shall remove all markings.

*Second possibility*⁵: This locality shall not be marked in any way.

Article 3

Supervision

A Commission composed of ... shall supervise whether the locality of ... fulfils the conditions laid down in paragraph 3 of Article 54 of the Protocol. To that end, the members of the Commission shall have free access, at all times, to the locality of Every facility, particularly that of communication, shall be granted to them, in order that they may discharge their mission of supervision.

Article 4

Violation of the Agreement

If the supervisory Commission observes any facts contrary to the provisions of Article 54 of the Protocol, it shall immediately advise the Power or authorities in whose territory the locality is situated. In serious cases, the Commission shall inform the Power which has recognized the status of the locality. This Power may then either address a warning to the opposing Party, or denounce the present Agreement.

Article 5

Coming into force

The present Agreement shall come into force on ... [here follow date and time].

⁵ The signatories of the present Agreement have the choice of one or the other of these two possibilities.

Article 6

Duration

1. Unless the present Agreement is denounced by one or the other of the Parties, it shall remain in force up to the end of hostilities.

2. In the event of denunciation, the latter shall come into effect ... hours following notification to the opposing Party.

3. *Draft Model Agreement granting special protection to works containing dangerous forces*

Article 1

Creation and delimitation

1. Under the present Agreement, the Contracting Parties confer, in accordance with Article 55 of the Additional Protocol to the four Geneva Conventions of August 12, 1949 (hereinafter called the Protocol), special protection [on the dam of ...] [on the dyke of ...].

2. The delimitation of this work shall be as follows: [here follow the geographic co-ordinates of the work, and/or indications fixing its boundaries, by means of natural features or artificial landmarks, such as rivers, lakes, hills, roads, etc. A map may be attached.]

Article 2

Markings

*First possibility*⁶: This work shall be recognized by oblique red bands on a white ground placed on its boundaries, especially on highways, in places where they are clearly visible. Should the work be occupied by one of the Parties, the latter shall remove all markings.

*Second possibility*⁶: This work shall not be marked in any way.

Article 3

*Supervision*⁷

A Commission composed of ... shall supervise whether

the work of ... fulfils the conditions laid down in paragraph 1 (b) of Article 55 of the Protocol. To that end, the members of the Commission shall have free access, at all times, to the ... Every facility, particularly that of communication, shall be granted to them, in order that they may discharge their mission of supervision.

Article 4

Violation of the Agreement

*First possibility*⁸: If the supervisory Commission observes any facts contrary to the provisions of Article 55 of the Protocol, it shall immediately advise the Power or authorities in whose territory the work is situated. In serious cases, the Commission shall inform the Power which has recognized the status of the work. This Power may then either address a warning to the opposing Party, or denounce the present Agreement.

*Second possibility*⁹: The Party in possession of convincing evidence of the violation of the present Agreement shall address to the other a warning giving a reasonable period of notice. If this warning is ignored, the Party may denounce the present Agreement.

Article 5

Coming into force

The present Agreement shall come into force on ... [here follow date and time].

Article 6

Duration

1. Unless the present Agreement is denounced by one or the other of the Parties, it shall remain in force up to the moment when the work is occupied.

2. In the event of denunciation, the latter shall come into effect ... hours following notification to the opposing Party.

⁶ The signatories of the present Agreement have the choice of one or the other of these two possibilities.

⁷ This article is optional.

⁸ If there supervision.

⁹ If there is no supervision.

II

Draft additional Protocol to Article 3 common to the four Geneva Conventions of August 12, 1949

The High Contracting Parties,

Recalling that the human person remains at all times under the protection of the principles of humanity and the dictates of the public conscience,

Emphasizing that the humanitarian principles enshrined in Article 3 common to the four Geneva Conventions of August 12, 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,

Conscious of the need to develop the rules implicit in Article 3 common to the four Geneva Conventions of August 12, 1949, and applicable in armed conflicts not of an international character with a view to ensuring the basic humanitarian protection of all persons, whether combatants or non-combatants,

Agree on the following:

CHAPTER I

Scope of the Protocol

Article 1

Material field of application

The present Protocol, which elaborates and supplements Article 3 common to the four Geneva Conventions of August 12, 1949 (hereinafter referred to as common Article 3), shall apply to all conflicts not of an international character referred to in common Article 3 and, in particular, in all situations where, in the territory of one of the High Contracting Parties, hostilities of a collective nature are in action between organized armed forces under the command of a responsible authority.

Article 2

Personal field of application

The present Protocol shall apply to all persons, whether military or civilian, combatant or non-combatant, who are in the territory of one of the High Contracting Parties where an armed conflict within the meaning of Article 1 of the present Protocol is occurring.

Article 3

Beginning and end of application

The present Protocol shall apply from the time when the armed conflict begins until the end of hostilities. However, after the end of hostilities, persons who are interned or detained after sentence has been passed in respect of an act committed in relation to the armed conflict, and who have not been released, as well as persons arrested on charges relating to the armed conflict, shall enjoy the protection of Article 26 of the present Protocol for as long as their liberty shall be restricted.

CHAPTER II

General Protection of the Population

Article 4

Torture and ill-treatment

In order that the prohibition stipulated in common Article 3 (1) (a) should obtain its fullest effect, the Parties to the conflict shall take all necessary measures to ensure that their military or civilian agents should not commit, nor issue orders to commit, nor condone acts of torture or brutality.

Article 5

Terrorism, reprisals, pillage

1. Acts of terrorism, as well as reprisals against persons and objects indispensable to their survival, are prohibited.
2. Pillage is prohibited.
3. Women and children shall be protected, in particular against rape and any form of indecent assault.

Article 6

Measures in favour of children

1. Children shall be the object of special protection. The Parties to the conflict shall provide them with the care and aid which their age and situation require.
2. To this end, the Parties to the conflict undertake, at least:
 - (a) to ensure the identification of children, particularly by making them wear identity discs;
 - (b) to take care that children who are orphaned or separated from their families as a result of armed conflict are not left abandoned;

(c) to endeavour to conclude local agreements for the removal of children from combat zones; such children shall be accompanied by persons responsible for ensuring their safety; all necessary steps shall be taken to permit the reunion of members of families temporarily separated;

(d) to take care that children under fifteen years of age do not take any direct part in hostilities.

3. The death penalty shall not be pronounced on civilians below eighteen years of age at the time when the offence was committed, nor on mothers of infants or on women responsible for their care. Pregnant women shall not be executed.

CHAPTER III

Protection of the wounded, sick and shipwrecked

Article 7

Protection and care

1. All wounded, sick and shipwrecked persons, military and civilian, as well as infirm persons, expectant mothers and maternity cases, shall be the object of special protection and respect.

2. Such persons shall, in all circumstances, be treated humanely and shall receive, with the least possible delay, the medical care that their condition requires, without any discrimination.

3. All unjustified acts, whether of commission or omission, that endanger their person or their physical and mental health are prohibited.

Article 8

Search

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

Article 9

Role of the population

1. The civilian population shall respect the wounded, sick and shipwrecked and refrain from committing acts of violence against them.

2. No one shall be molested or convicted for having tended the wounded, sick and shipwrecked.

Article 10

Medical and religious personnel

Military and civilian medical personnel as well as chaplains and other persons carrying out similar functions shall, in all circumstances, be respected and protected throughout their mission. Should they fall into the hands of the adverse Party, they shall be likewise respected and

protected; they shall be granted all facilities necessary for the discharge of their functions and shall not be compelled to carry out tasks unrelated to their mission.

Article 11

Medical establishments and transports

1. Fixed establishments and mobile medical units, both military and civilian, which are solely intended for the care of the wounded, sick and shipwrecked, shall in no circumstances be attacked, but shall, together with their equipment, at all times be respected and protected by the Parties to the conflict.

2. Transports of wounded, sick and shipwrecked persons, or of medical personnel or equipment, shall be respected and protected in the same way as mobile medical units.

Article 12

Evacuation

The Parties to the conflict shall endeavour to conclude local agreements for the removal from areas where hostilities occur of the wounded, sick and shipwrecked, the infirm, expectant mothers and maternity cases.

Article 13

The distinctive emblem

1. The emblem of the red cross (red crescent, red lion and sun) on a white background is the distinctive emblem of the medical services of the Parties to the conflict and of Red Cross organizations. It shall not be used for any other purpose and shall be respected in all circumstances.

2. From the outbreak of hostilities the Parties to the conflict shall adopt special measures for supervising the use of the distinctive emblem and for the prevention and repression of any misuse of the emblem.

CHAPTER IV

Civilian population

Article 14

Definition of the civilian population

1. Any person who is not a member of the armed forces and who, moreover, does not take a direct part in hostilities is considered to be a civilian.

2. The civilian population is composed of all civilians fulfilling the conditions in paragraph 1.

3. Proposal I: The presence, within the civilian population, of individuals who do not conform to the definition given in paragraph 1, does not prevent the civilian population from being considered as such.

Proposal II: The presence, within the civilian population, of individual combatants, does not prevent the civilian population from being considered as such.

Article 15

Respect for and safeguarding of the civilian population

1. The civilian population as such, as well as individual civilians, shall never be made the object of attack.
2. In particular, terrorization attacks shall be prohibited.
3. Attacks which, by their nature, are launched against civilians and military objectives indiscriminately, shall be prohibited. Nevertheless, civilians who are within a military objective run the risks consequent upon any attack launched against this objective.
4. The civilian population or individual civilians shall never be used in an attempt to shield, by their presence, military objectives from attack.

Article 16

Respect for and safeguarding of objects indispensable to the survival of the civilian population.

Proposal I: 1. Objects indispensable to the survival of the civilian population shall not be the object of attack.

2. The Parties to the conflict under whose control objects indispensable to the survival of the civilian population are placed, shall refrain from:

- (a) using them in an attempt to shield military objectives from attack;
- (b) destroying them, except in cases of unavoidable military necessity and only for such time as that necessity remains.

Proposal II: 1. Objects indispensable to the survival of the civilian population shall not be the object of attack.

2. The Parties to the conflict under whose control objects indispensable to the survival of the civilian population are placed shall refrain from destroying them or using them in an attempt to shield military objectives from attack.

Article 17

Precautions when attacking

So that the civilian population, as well as objects indispensable to its survival, who might be in proximity to a military objective be spared, those who order or launch an attack shall, when planning and carrying out the attack, take the following precautions:

- (a) they shall ensure that the objectives to be attacked are not civilians, nor objects of a civilian character, but are identified as military objectives; if this precaution cannot be taken, they shall refrain from launching the attack;
- (b) they shall warn, whenever circumstances permit, and sufficiently in advance, the civilians threatened, so that the latter may take shelter.

CHAPTER V

Combatants

Article 18

Means of combat

1. Combatants' choice of means of combat is not unlimited.
2. It is forbidden to use weapons, projectiles or substances calculated to cause unnecessary suffering, or particularly cruel methods and means.
3. In cases for which no provision is made in the present Protocol, the principle of humanity and the dictates of the public conscience shall continue to safeguard populations and combatants pending the adoption of fuller regulations.

Article 19

Prohibition of perfidy

1. It is forbidden to kill or injure by resort to perfidy. Unlawful acts betraying an enemy's confidence are deemed to constitute perfidy.
2. Ruses of war are not considered as perfidy.

Article 20

Recognized signs

It is forbidden to make improper use of the flag of truce, the protective sign of the red cross (red crescent, red lion and sun), the protective sign for cultural property and other protective signs specified in international conventions.

Article 21

Emblems of nationality

It is forbidden to make improper use of enemy insignia and uniforms. In combat their use is forbidden at all times.

Article 22

Safeguard of an enemy hors de combat

1. It is forbidden to kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion.
2. It is forbidden to decide to leave no survivors and take no prisoners, to so threaten an enemy and to conduct the fight in accordance with such a decision.
3. A captor shall provide for persons falling in his power even if he decides to release them.

Article 23

Conditions of capture and surrender

1. A combatant is captured when he falls into the power of an enemy.

2. The following *inter alia* shall be considered to have fallen into the power of an enemy:

- (a) any disarmed combatant unable to defend himself or express himself in territory taken, even temporarily, by an enemy;
- (b) any combatant expressing by the usual means or by his attitude his intention to surrender, and abstaining from any violence.

Article 24

Aircraft occupants

The occupants of aircraft in distress who parachute to save their lives, or who are compelled to make a forced landing, shall not be attacked during their descent or landing unless their attitude is hostile.

CHAPTER VI

Persons whose liberty has been restricted

Article 25

Treatment of combatants who have fallen into the power of the adversary

Members of regular armed forces and members of those armed forces which have fulfilled the conditions stipulated in Article 4 A (2) of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall receive, after having fallen into the power of the adversary, a treatment similar to that provided for prisoners of war in the said Convention.

Article 26

Treatment of persons whose liberty has been restricted

1. Subject to Article 25 of the present Protocol, all other persons whose liberty has been restricted, whether interned or detained after sentence has been passed, in respect of an act committed in relation to the armed conflict, shall in all circumstances be respected and treated humanely, without any adverse distinction.

2. All unjustified acts, whether of commission or omission, that endanger their person or their physical and mental health are prohibited.

3. The Parties to the conflict shall respect, as a minimum, the following provisions:

- (a) they shall provide for the maintenance of the persons referred to in paragraph 1 above and for the medical attention which their state of health requires;
- (b) places of internment and detention shall not be set up in areas close to combat zones. The persons referred to in paragraph 1 above shall be evacuated when the places where they are interned or detained become particularly exposed to dangers arising out of the conflict, if their evacuation can be carried out in adequate conditions of safety;

(c) the persons referred to in paragraph 1 above shall be allowed to practise their religion and receive spiritual assistance from chaplains and other persons performing similar functions;

(d) the persons referred to in paragraph 1 above shall be allowed to send and receive letters and cards. The Parties to the conflict may limit the number of letters and cards sent by each person if they deem it necessary;

(e) the persons referred to in paragraph 1 above shall be allowed to receive individual or collective relief.

4. Subject to temporary and exceptional measures, the Parties to the conflict shall agree to and facilitate visits to the persons referred to in paragraph 1 above, carried out by an impartial humanitarian body such as the International Committee of the Red Cross.

CHAPTER VII

Penal prosecutions

Article 27

Individual responsibility

No person may be punished for an offence he or she has not personally committed. Collective penalties are prohibited.

Article 28

Penal prosecutions against combatants

After having fallen into the power of the adversary, combatants who will have fulfilled the conditions stipulated in Article 25 of the present Protocol, as well as those combatants who, without having fulfilled the conditions stipulated in Article 4 A (2) of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, will have at least, in the course of their operations, distinguished themselves from the civilian population by some distinctive sign or by any other means and who had complied with the provisions of the present Protocol, shall not be punishable by death if they become the object of penal prosecutions only by reason of having taken part in hostilities or having been members of armed forces.

CHAPTER VIII

Relief

Article 29

Relief for the population

The Parties to the conflict shall ensure, to the fullest extent of the means available to them and without any adverse distinction, the provision of foodstuffs, clothing, medical and hospital stores and shelter facilities necessary for the population in the territory under their control.

Article 30

Humanitarian assistance

1. If the population is inadequately supplied in foodstuffs, clothing, medical and hospital stores and shelter facilities, or if the wounded, sick and shipwrecked, military and civilian, need medical assistance, the Parties to the conflict shall, to the fullest possible extent, agree to and facilitate impartial relief activities undertaken by humanitarian bodies, such as the International Committee of the Red Cross and National Red Cross Societies.

2. The Parties to the conflict shall have the right to prescribe the technical arrangements under which the passage of relief supplies shall be allowed. They shall in no way whatsoever divert relief consignments from the purpose for which they are intended or delay the forwarding of such consignments.

3. In no circumstances shall this assistance be considered as interference in the conflict.

Article 31

Consignment of essential supplies for the civilian population

1. In cases of blockade or siege, the Parties to the conflict or any High Contracting Party concerned shall allow the free passage of all consignments of essential foodstuffs, clothing, medical and hospital stores and shelter facilities, intended only for civilians.

2. The Parties to the conflict or any High Contracting Party concerned shall have the right to prescribe the technical arrangements under which the passage of relief supplies shall be allowed. They shall in no way whatsoever divert relief consignments from the purpose for which they are intended or delay the forwarding of such consignments.

3. The Parties to the conflict or any High Contracting Party concerned may make such permission conditional on the distribution only to the persons benefited thereby being made under the supervision of an impartial humanitarian body.

Article 32

Recording and information

1. The International Committee of the Red Cross shall, if it deems necessary, propose to the Parties to the conflict the organization of information bureaux to which they shall communicate all relevant information on victims of the events who may be in their power. The dead shall also be recorded.

2. Each information bureau shall transmit to the other bureaux, if necessary through the Central Tracing Agency, the information thus obtained and shall transmit them to the next of kin concerned; the information bureaux shall also be responsible for replying to all enquiries concerning victims of the events and shall take the necessary steps to search for them; this is subject to reservations concerning cases where the transmission of information or the search might be detrimental to the victims of the events or to their relatives.

Article 33

National Red Cross and other relief societies

1. Subject to temporary and exceptional measures taken by the Parties to the conflict to guarantee their security, the National Red Cross (Red Crescent, Red Lion and Sun) Society and its branches shall be able to pursue their activities in accordance with the rules of the Red Cross as stated by International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions.

2. Other humanitarian relief organizations created during the hostilities shall be permitted to carry out their activities in accordance with the principles of humanity, impartiality and neutrality.

3. In no circumstances shall the fact of having taken part in the humanitarian activities of the organizations referred to in paragraphs 1 and 2 above be considered to be punishable.

Article 34

Civil Defence Organizations

1. Subject to temporary and exceptional measures taken by the Parties to the conflict to guarantee their security, civil defence organizations shall be allowed to carry out their humanitarian tasks; they shall at all times be protected.

2. In no circumstances shall the fact of having taken part in the humanitarian activities of such organizations be considered to be punishable.

CHAPTER IX

Executory provisions

Article 35

Regulations

The Regulations concerning special cases of armed conflicts not of an international character (hereinafter called the Regulations) shall constitute an integral part of the present Protocol; the procedure by which the present Protocol is to be applied is also valid for the Regulations.

Article 36

Special agreements

The Parties to the conflict shall endeavour to bring into force, either by means of special agreements, or by declarations addressed to the International Committee of the Red Cross, all or part of the other provisions of the four Geneva Conventions of August 12, 1949, and of the Additional Protocol to the said Conventions.

Article 37

Co-operation in the observance of the present Protocol

Each Party to the conflict, to the fullest possible extent, shall call upon a body which offers all guarantees of impartiality and efficacy to co-operate in the observance of the provisions of the present Protocol and its Regulations and of the other provisions of the four Geneva Conventions of August 12, 1949, and of the Additional Protocol to the said Conventions brought into force in accordance with Article 36 of the present Protocol.

Article 38

Legal status of the Parties to the conflict

The legal status of the Parties to the conflict shall not be affected by the application of the provisions of the present Protocol and its Regulations and of all or part of the other provisions of the four Geneva Conventions of August 12, 1949, and the Additional Protocol to the said Conventions brought into force in accordance with Article 36 of the present Protocol, and by the conclusion of any other agreement.

Article 39

Dissemination of the present Protocol

1. The High Contracting Parties undertake, in time of peace, to disseminate the text of the present Protocol as widely as possible to the whole population; they shall include the study thereof in their programmes of military and civil instruction.

2. In time of armed conflict, the responsible authorities of the Parties to the conflict shall take appropriate measures to bring the provisions of the present Protocol and its Regulations to the knowledge of all, combatants and non-combatants alike.

Article 40

Rules of application

The High Contracting Parties shall communicate to one another, through the Depository State, the laws and regulations which they adopt to ensure the application of the present Protocol and its Regulations.

CHAPTER X

Final provisions

Article 41

Signature

The present Protocol shall be open until ... 197... at ..., for signature by the Parties to the four Geneva Conventions of August 12, 1949.

Article 42

Ratification

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Depository State.

Article 43

Accession

1. The present Protocol shall remain open for accession by any Party to the four Geneva Conventions of August 12, 1949, which has not signed the present Protocol.

2. The instruments of accession shall be deposited with the Depository State.

Article 44

Entry into force

1. The present Protocol shall enter into force when ... instruments of ratification or accession have been deposited.

2. Thereafter, it shall enter into force, for each High Contracting Party, as soon as its instrument of ratification or of accession has been deposited.

Article 45

Treaty relations upon entry into force of the present Protocol

When the Parties to the four Geneva Conventions of August 12, 1949, are also Parties to the present Protocol, common Article 3 shall apply as elaborated and supplemented by the present Protocol.

Article 46

Notifications

The Depository State shall inform all the Parties to the present Protocol of the following particulars:

(a) signatures affixed to the present Protocol, ratifications and accessions under Articles 43 and 44 of the present Protocol;

(b) the date of entry into force of the present Protocol under its Article 45.

Article 47

Registration and publication

After its entry into force, the present Protocol shall be transmitted by the Depository State to the Secretariat of the United Nations Organization for registration and publication, in accordance with Article 102 of the United Nations Charter.

Article 48

Authentic texts and official translations

1. The original of the present Protocol, of which the French and English texts are equally authentic, shall be deposited with the Depository State.

2. The Depository State shall arrange for official translations of the present Protocol to be made into Arabic, Chinese, Russian and Spanish.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the present Protocol.

DONE AT ..., this ... day of ..., 197....

ANNEX

Regulations concerning special cases of armed conflicts not of an international character

Article 1

Effective organization of the Party opposing the authorities in power

When, in case of armed conflict not of an international character in the territory of one of the High Contracting Parties, the Party opposing the authorities in power has a government which exercises effective power, by means of its administration and adequately organized armed forces, over a part of the territory, the Parties to the conflict shall apply all the provisions of the four Geneva Conventions of August 12, 1949, and the Additional Protocol to the said Conventions.

Article 2

Outside aid in armed conflict not of an international character

When, in case of armed conflicts not of an international character in the territory of one of the High Contracting Parties, the armed forces of other States take a direct part in the hostilities, the relations between the Parties to the conflict shall be governed as follows :

- (a) the relations as between the authorities in power and the States that aid the Party opposing the authorities in power shall be governed by the four Geneva Conventions of August 12, 1949, and the Additional Protocol to the said Conventions; the same shall apply to the relations between States aiding the authorities in power and States aiding the Party opposing the authorities in power;
- (b) the relations between the authorities in power and the Party opposing those authorities shall be governed by at least the provisions in common Article 3 and in the present Protocol. Moreover, the Parties to the conflict shall grant to all captured combatants prisoner-of-war treatment as laid down in the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, and shall apply to civilians the provisions of Part IV relative to the civilian population of the Additional Protocol to the Geneva Conventions:
 - (1) when only the authorities in power benefit from other States' assistance;
 - (2) when both authorities in power and the Party opposing them benefit from other States' assistance;
- (c) all the relations between the Parties to the conflict shall be governed by the four Geneva Conventions of August 12, 1949, and the Additional Protocol to the said Conventions, when the Party opposing the authorities in power fulfils the conditions stipulated in Article 1 of these Regulations, whether or not it is aided by other States.

III

Draft Resolution concerning Disarmament and Peace to be annexed to the Final Act of the Diplomatic Conference

The Conference,

Noting that the Geneva Conventions and their Additional Protocols do not contain any express provision concerning weapons of mass destruction, blind, poisonous and particularly cruel weapons, and weapons with indiscriminate effects.

Believing nevertheless that these weapons are contrary to the dictates of humanity and that, in armed conflicts, the members of the international community must absolutely renounce their use,

Expresses the hope that the prohibition of the production, stockpiling and use of such weapons will be confirmed or proclaimed and that these measures will lead to general and complete disarmament,

Urges, moreover, the Parties to the Conventions to spare no effort for the preservation of peace.

IV

Preliminary Draft Declaration on the Application of International Humanitarian Law in armed Struggles for Self-Determination

The undersigned plenipotentiaries, in the name of their respective governments:

Considering that the principle of the right of peoples to self-determination is given official sanction in, inter alia, the Charter of the United Nations, the International Covenants on Human Rights, and resolutions of the United Nations General Assembly,

Considering that the implementation of this principle still encounters difficulties and sometimes entails armed struggles which cause great suffering and a large number of victims,

Considering that it is incumbent upon the international community to endeavour to mitigate that suffering,

1. *Declare* that the Geneva Conventions of 12 August 1949, the Additional Protocol to the said Conventions, and other humanitarian rules of international law limiting the use of weapons and means of injuring the enemy should be applied in armed struggles waged by peoples for their right to self-determination within the meaning of the definition of that right in Article 1 common to the International Covenants on Human Rights, adopted by the United Nations General Assembly on 16 December 1966;

Proposal I:

2. *Declare* that, failing full application of those provisions, the Parties to such struggles shall in all circumstances observe, by analogy, at least the rules in Article 3 common to the four Geneva Conventions of 12 August 1949, as well as those of the Additional Protocol to that article.

Proposal II:

2. *Declare* that, failing full application of those provisions, the Parties to the struggles shall in all circumstances observe at least the rules appended to this Declaration.

WRITTEN PROPOSALS SUBMITTED BY THE EXPERTS TO COMMISSION I
(Wounded, Sick and Shipwrecked Persons)

Original: English

CE/COM I/1

**Proposal submitted by the experts
of the United States of America**

Draft Article 23

Medical Aircraft: Definitions

As used in this Section:

1. A "medical aircraft" is an aircraft of any description, including fixed wing or rotary wing, belonging to or under the control of the Military Services of a Party to the conflict, whenever used solely in the performance of a medical mission. Medical aircraft include both permanent and temporary medical aircraft.

2. A "permanent medical aircraft" is an aircraft assigned exclusively to use as a medical aircraft without provision for the termination of that assignment.

3. A "temporary medical aircraft" is an aircraft, other than a permanent medical aircraft, when actually employed as a medical aircraft.

4. A "medical mission" is the evacuation or transport of wounded, sick, and at sea, the shipwrecked, or medical personnel or medical equipment protected by the Conventions or any protocol thereto, for the purpose of securing the medical treatment of the wounded and sick, or any other activity exclusively ancillary to such evacuation or transport. At sea, a medical mission shall include the search for and rescue of the shipwrecked, wounded and sick.

5. A "distinctive signal" is any one or more of the light or instantaneous electrical or radio identification signals designated for the exclusive use of medical aircraft in the Annex to this Protocol, as amended from time to time pursuant to the procedures prescribed in that Annex.

Draft Article 23 a

Medical Aircraft: Certification

All medical aircraft shall carry a certificate issued by the responsible military authority and attesting to the medical nature of their functions.

Draft Article 24

Protection

1. Permanent medical aircraft shall not be the object of attack and shall be respected and protected. While in the performance of medical missions, temporary medical aircraft similarly shall not be the object of attack and shall be respected and protected.

2. The Parties to the conflict are prohibited from using the protection extended to medical aircraft, including, in particular, that specified in this article and Articles 25, 26, and 29, in order to acquire any military advantage over any other Party to the conflict. The presence of medical aircraft may not be used to render military objectives immune from military operations.

3. Medical aircraft shall be neither armed nor reconnaissance configured and shall contain no armament other than small arms and ammunition belonging to the wounded and sick and not yet handed over to the proper authorities and such small arms as may be necessary to permit the medical personnel and crew members to defend themselves and the wounded and sick.

4. As far as is practicable under the circumstances, the medical mission shall be performed in such places and in such a manner as to minimize the risk that the conduct of hostilities by combatants may imperil the safety of medical aircraft.

Draft Article 24 a

Flight Crews

1. Members of the flight crew of permanent medical aircraft shall be considered to be medical personnel exclusively engaged in the transport of the wounded or sick within the meaning of Article 24 of the First Convention and Article 36 of the Second Convention, and shall benefit from the safeguards accorded to such persons under the terms of the First Convention.

2. Members of the flight crew of temporary medical aircraft shall be considered to fall within the scope of Article 25 of the First Convention and Article 37 of the Second Convention and shall benefit from the safeguards accorded to such persons under the terms of the Conventions.

3. Members of the flight crew of permanent medical aircraft shall wear the distinctive emblem and shall carry the identity card prescribed by the Conventions. Members of the flight crew of temporary medical aircraft shall wear the distinctive emblem and carry military identity documents under the conditions specified in the Conventions.

Draft Article 25

Removal of Wounded, Sick and Shipwrecked from Battle Areas

1. Aircraft operating in areas in which opposing ground combat forces are in hostile contact with each other shall benefit from the respect and protection extended to

medical aircraft only if they serve as such both in approaching and departing from such areas and during their stay in such areas.

2. At sea, and especially in areas in which opposing naval forces are in hostile contact with each other, the Parties to the conflict shall not, save in cases of imperative military necessity, interfere with the search for, or removal and evacuation of, the wounded, sick and shipwrecked by medical aircraft.

3. At the discretion of the appropriate commander, the Party employing medical aircraft may give an adverse Party notification of the fact that medical aircraft will operate in the combat zone and may provide such information as will aid an adverse Party in the identification of such aircraft.

Draft Article 26

Overflight of Territories Controlled by the Enemy

1. Medical aircraft shall continue to enjoy the respect and protection provided under Article 24 of this Protocol while they are flying over territory physically under the control of an adverse Party. The Party employing the medical aircraft shall ensure that they comply with the requirements laid down in paragraphs 2 through 4 of this article and Article 27 of this Protocol while flying over such territory.

2. The Party employing medical aircraft shall provide to the Party physically in control of the territory over which medical aircraft will fly, timely notification, including the following particulars:

- (a) The aircraft involved are medical aircraft;
- (b) The description and number of aircraft involved;
- (c) The time, altitude, and route of travel of the aircraft; and
- (d) Any other information which will aid in the identification of the aircraft.

The Party physically in control of the territory over which medical aircraft will fly will acknowledge receipt of the information in paragraph 2 of this article and may require reasonable alternative altitudes and routes of travel, and the Party employing medical aircraft shall comply with such requirements.

3. Medical aircraft shall not carry cameras or other intelligence-gathering equipment or intelligence personnel, other than those who are wounded or sick. Personnel aboard such aircraft shall not be required to disclose any strategic or tactical information or any other information not necessary to the treatment of the wounded and sick, acquired during the course of their medical mission.

4. Medical aircraft may fly over territory controlled by an adverse Party only to the extent that such overflight is essential to the accomplishment of the medical mission.

Draft Article 27

Identification

1. If the Party employing them desires to provide medical aircraft with means designed to assure effective recognition and protection, it shall cause such medical aircraft to display conspicuously the distinctive emblem. If feasible, such aircraft should also transmit one or more distinctive signals.

2. Each Party to a conflict shall adopt and implement reasonable methods and procedures designed to provide for the identification and protection of medical aircraft which are transmitting the distinctive signal and displaying the distinctive emblem.

3. It is strictly prohibited to display the distinctive emblem or to transmit the distinctive signal except in conformity with the terms of the Conventions and this Protocol.

Draft Article 28

Landing in Territories Controlled by the Enemy or at Sea

1. Medical aircraft flying over territory physically under the control of an adverse Party as specified in Article 26 of this Protocol or at sea may be ordered to land or, as appropriate, alight on water in order to permit inspection and verification of the character of the aircraft. Medical aircraft shall obey every such order.

2. In the event of a landing, whether ordered, forced, or the result of fortuitous circumstances, an aircraft is subject to inspection to determine whether it is a medical aircraft within the meaning of Article 23 of this Protocol. If inspection discloses that it is not a medical aircraft within the meaning of that article, it may be seized and the crew and passengers shall be treated in accordance with the applicable provisions of the Conventions and of this Protocol. Such seized aircraft as are designed to serve as permanent medical aircraft may be used only as medical aircraft thereafter.

3. If inspection discloses that the aircraft is a medical aircraft within the meaning of Article 23 of this Protocol, the aircraft, its crew, its medical personnel, and its passengers shall not be subject to capture, detention, or internment but shall be permitted to continue their mission.

4. Inspection shall be conducted expeditiously in order not to delay any longer than is necessary the medical treatment of the wounded and sick.

Draft Article 29

Neutral States

1. Medical aircraft of Parties to the conflict may fly over the territory of neutral powers, land on it in case of necessity, or use it as a port of call, without the necessity of antecedent agreement. Neutral powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. If such possible conditions or restrictions are imposed, they shall apply equally and without discrimination to all Parties to the conflict. Medical aircraft shall continue to enjoy the respect and protection guaranteed by Article 24 of this Protocol while in the exercise of this right. The Party employing the medical aircraft shall ensure that they comply with the requirements laid down in paragraphs 2 and 3 of this article while flying over neutral territory.

2. A Party employing medical aircraft shall be under the same obligations toward a neutral power as toward an adverse Party under paragraphs 2, 3, and 4 of Article 26 of this Protocol. A neutral power shall enjoy the same rights under paragraphs 2, 3 and 4 of Article 26 as an adverse Party with respect to a Party employing medical aircraft.

3. Medical aircraft may be ordered to land or, as appropriate, alight on water in order to permit inspection and verification of the character of the aircraft. Medical aircraft shall obey every such order. In the event of a landing, whether ordered, forced, or the result of the fortuitous circumstances, an aircraft is subject to inspection to determine whether it is a medical aircraft within the meaning of Article 23 of this Protocol. If inspection discloses that it is not a medical aircraft within the meaning of that article, it will be detained, and its crew, its medical personnel, and its passengers shall be treated in accordance with the applicable provisions of the Conventions, of this Protocol, and of international law. If inspection discloses that the aircraft is a medical aircraft within the meaning of Article 23 of this Protocol, the aircraft, its crew, its medical personnel, and its passengers shall be permitted to continue their mission. Any wounded or sick who are disembarked with the consent of the local authorities shall be treated in conformity with Article 37 of the First Convention or Article 40 of the Second Convention.

Draft Article 29 a

Aircraft of Societies of Neutral Countries

The provisions of Article 27 of the First Convention shall apply to medical aircraft furnished to a Party to the conflict by a recognized society of a neutral country.

Draft Article 29 b

Application of Articles 23 to 29 b relating to Medical Transport

Section II of Part II of this Protocol (Articles 23 to 29 b) relating to Medical Transport shall apply only with respect to relations between and among those powers which are Parties to the First or Second Convention and to this Protocol. In such relations, it shall be supplementary to Chapter VI of the First Convention and Chapter V of the Second Convention.

Original: English

CE/COM I/2

Proposal submitted by the experts of the United Kingdom

Draft Article 11

Definitions

(It will be necessary either to add to Article 11 or to propose a new article indicating the scope of this part of the Protocol. A new article is suggested, in the following terms: "The provisions of this part of the Protocol cover the whole of the population of the countries in conflict, including those in occupied territories. Nothing in this section shall impose any obligation upon a Party to the

conflict in relation either to persons referred to in Article 12 or to medical personnel who form part of its own population.")

Draft Article 12

Protection and care

1. (After the word "sick", add the words "whether non-combatants or combatants rendered *hors de combat*". After the word "persons", add the words "at sea".)
2. (no change)

Draft Article 13

Protection of persons

1. All unjustified acts or wilful omissions that endanger ...
2. (no change)

Draft Article 14

Civilian medical establishments and units

1. Subject to the provisions of Article 15(1), civilian medical establishments and units shall in no circumstances be the object of attack. (See Article 45.) They shall at all times ...
2. (no change)
3. After the outbreak of hostilities, medical establishments and units shall, with the authorization of the State, be marked as far as possible with the distinctive emblem.
4. (no change)
5. The responsible authorities shall endeavour to ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives are not likely to imperil their safety.

Draft Article 16

Civilian medical transports

1. Subject to the provisions of paragraph 4, ambulances and other vehicles ...
2. (no change)
3. (no change)
4. (no change)

Draft Article 18

Civilian medical personnel

1. (no change)
2. ... on the left arm a stamped water-resistant armlet ...
- 3, 4. (It is unreasonable to expect Parties to the conflict to give assistance and grant all facilities necessary to doctors and other medical personnel. These two paragraphs should be rephrased so as merely to bind the Parties not to prevent medical personnel from performing their duties.)
5. (no change)

Draft Article 19

Protection of medical duties

1. In no circumstances shall the exercise of medical activities compatible with professional rules in force in the area of these activities be deemed an offence against municipal or occupational or penal law, regardless of the person benefiting therefrom.

2. (no change)

3. (Amend text to correspond to amended paragraph 1 above.)

4. (It will have to be made clear what sort of information the medical personnel shall not be compelled to give. The paragraph is imprecise at present.)

Draft Article 20

Role of the population

1. (Omit the words "even in invaded or occupied areas", since in practice these are the only areas where the rule may be effective.)

2. (no change)

3. (no change)

Draft Article 21

Use of the distinctive emblem

(Words to the effect that Article 75 (1) and Article 77 should apply to such measures should be added at the end of the Article.)

Original: English

CE/COM I/3

**Proposal submitted by the experts
of the United States of America**

Draft Article 11

Definitions

For the purposes of the present Part:

(a) (no change)

(b) (no change)

(c) (no change)

(d) (no change)

(e) the term "protected persons" as used in Part II of this Protocol means persons defined as protected persons in Article 4 of the Fourth Convention, and those defined as entitled to protection under Articles 12, 13 and 28 of the First Convention; Articles 12, 13 and 37 of the Second Convention; Articles 12 and 18 of this Protocol; and Prisoners of War as defined in the Fourth Convention and in this Protocol;

(f) the term "shipwrecked person" as used in this Protocol means any person who:

(1) is in peril at sea as a result of the destruction, loss, or disablement of the vessel or aircraft in which he was travelling, and

(2) who is in need of humanitarian assistance and care, and

(3) who refrains from any hostile act.

Draft Article 12

Protection and care

1. The wounded and sick, whether non-combatants or combatants rendered *hors de combat*, as well as the shipwrecked at sea, infirm persons, expectant mothers and maternity cases, shall be the object of special protection and respect.

2. (no change)

Draft Article 13

Protection of persons

1. Any unjustified act or omission which seriously endangers the life or health of any protected person is prohibited.

2. Accordingly, it is prohibited to subject protected persons to any experiment or treatment, including the removal or transplant of organs, not warranted on therapeutic or prophylactic grounds. This prohibition applies even if the protected person gives his assent.

Draft Article 17

Requisition

1. The occupying Power may requisition civilian medical establishments and units, their movable and immovable assets, and the services of their medical personnel only temporarily and only in case of urgent necessity for the care of military wounded and sick, and then on condition that suitable arrangements are made in due time for the care and treatment of the patients, and for the needs of the civilian population for medical treatment.

2. (no change)

Original: English

CE/COM I/4

**Proposal submitted by the experts
of the Federal Republic of Germany**

Draft Article 11

Definitions

Draft Article 18

Civilian medical personnel

(The definition of the term "medical personnel" as set forth in Article 11 (c) in connection with Article 18, para 1, of the present version applies only to personnel "regularly and exclusively" engaged in the operation or administration of medical establishments and units. This definition should be revised in such a manner as to ensure that the protection accorded to medical personnel is ex-

tended also to persons employed for specific missions or tasks in the operation or administration of medical units and establishments.

The following amendments are therefore suggested:

in Article 11 (c), delete the words “regularly and exclusively”;

in Article 18,

1. Civilian medical personnel duly recognized and authorized by the State *and either permanently or temporarily engaged in the operation or administration of medical establishments and units* as well as medical personnel of National Red Cross (Red Crescent and Red Lion and Sun) Societies assigned to the medical treatment of protected persons, shall be respected and protected.)

Draft Article 19

Protection of medical duties

(It is suggested that a provision be included in Article 19, para 3, to the effect that medical personnel shall not be compelled to abstain from acts demanded by professional rules, as follows:

“Medical personnel shall not be compelled to perform acts or carry out work contrary to professional rules *or to abstain from acts demanded by professional rules*”.)

Original: English

CE/COM I/5

Proposal submitted by the experts of the German Democratic Republic

Draft Article 14

Civilian medical establishments and units

(Delete in paragraph 4 the phrase: “...in so far as military considerations permit, ...”)

Draft Article 19

Protection of medical duties

(Replace paragraph 4 by the following: “Medical personnel shall not be compelled to inform an occupying authority *about diseases* of the wounded, sick and shipwrecked under their care. An exception shall be made in the case of compulsory medical regulations for the notification of communicable diseases”.)

Draft Article 25

Removal of the wounded

(Replace Article 25 by the following: “The removal and evacuation of wounded, sick and shipwrecked persons by medical aircraft and particularly helicopters in areas of military operations is permitted only by agreement between the local military authorities of the Parties. The agreement may be concluded in every possible way and shall cover in particular the routes, times, heights of

flights, number of aircraft as well as the means of identification”.)

Draft Article 26

Flight over the territories of the Parties to the conflict

(Delete first line of this Article: “Subject to the provisions of Article 25 of the present Protocol”.)

Draft Article 27

Identification

(1. Modify the first sentence as follows: “With the agreement of the responsible authority, medical aircraft must be marked ...”. Delete the second sentence of this paragraph.

2. No change.)

Original: French

CE/COM I/6

Proposal submitted by the experts of Monaco

Draft Section V (new) of Part IV

Medical air transport

Draft Article ...

Civilian transport aircraft belonging to the Parties to the conflict, or those which are placed at their disposal, which will be used temporarily and exclusively for the evacuation of wounded, sick, shipwrecked and infirm persons, expectant mothers and maternity cases, as well as for the transport of medical personnel, equipment and supplies, shall not be the object of attacks, but shall be respected and protected throughout the whole period of their mission.

Draft Article ...

Aircraft assigned exclusively, in time of peace or during armed conflicts, to civilian medical and hospital services, shall be respected and protected at all times. This respect and protection shall be extended to land areas and infrastructural equipment which may be reserved for their use.

Draft Article ...

Civilian aircraft of all categories may be transformed, at the beginning of or at any time during an international armed conflict, into medical aircraft, provided that they are not used for any other purpose during the entire period of the armed conflict.

Draft Article ...

Neutral States, National Red Cross (Red Crescent, Red Lion and Sun) Societies and officially recognized relief societies may place medical aircraft at the disposal of one or more of the Parties to the conflict for the purpose of strengthening civilian medical services in their territories.

Draft Article . . .

Aircraft of international governmental and non-governmental organizations, aircraft belonging to the United Nations and its specialized agencies, to the Sovereign Military Order of Malta, to the International Committee of the Red Cross and the League of Red Cross Societies engaged in the transfer of, assistance to and relief of, the civilian population pursuant to Articles . . . of the present Protocol, shall also be respected and protected in all circumstances.

Draft Article . . .

Flight of civilian medical aircraft over the territory, whether land or sea, of one of the Parties to the conflict or over any occupied territory or any area of the high seas in which military operations may take place, shall be made the subject of a special agreement between the Parties concerned, namely, the Parties to the conflict, neutral States and international organizations. The agreement shall define the nature of the humanitarian mission, give details of the flight plan (heights, times and routes agreed on) and the identification signals to be used. Such flights shall be exempt from all air control charges.

Draft Article . . .

In the absence of any such agreement, any aircraft flying over the territory of a Party to the conflict, over occupied territory, or over areas where the armed forces of the belligerents are in contact, shall not be attacked. They are, however, required to obey any summons to land or to alight on water. They shall be authorized to continue their humanitarian mission after their identity has been checked and the medical nature of their mission established. If this control reveals that they are engaged in activities which are incompatible with the humanitarian nature of their mission, the aircraft may be detained and its occupants shall be liable to the penalties provided in the laws of war.

Draft Article . . .

Civilian medical aircraft of the Parties to a conflict may fly over or make stops on the territory of neutral States, provided that they give notice of their intention to do so.

Original: English

CE/COM I/7

**Proposal submitted by the experts of
the German Democratic Republic**

Draft Article 28

Landing

1. (no change)
2. In the event of a landing, on land or on water, whether forced or in compliance with a summons, on enemy or enemy-occupied territory, by a medical aircraft covered by an agreement concluded under Article 26 of the present Protocol or carrying out a mission under Article 25, the aircraft with its occupants may resume its

flight after examination, if any, unless the mission of the medical aircraft was violated.

3. (no change)

Original: English

CE/COM I/8

**Proposal submitted by the experts
of the United Kingdom**

It is suggested that the ICRC draft Articles 23 to 29 are not examined but that instead we consider the proposals submitted by the experts of the United States of America (CE/COM I/1). On this basis, the following amendments are suggested:

Draft Article 24

Protection

1. Medical aircraft on the ground shall not be the object of attack. This prohibition extends to medical aircraft in the air only if the prior agreement of the adversary has been obtained to the medical mission.
2. (no change)
3. (Revise opening phrase to read: "Medical aircraft shall contain no armaments, . . .")
4. (no change)

Draft Article 24a

Flight crews

1. (no change)
2. (no change)
3. (Omit the last sentence.)

Draft Article 25

Removal of wounded, sick and shipwrecked from battle areas

1. In order to increase the occasions when medical aircraft are protected under Article 36 of the First Convention, Article 39 of the Second Convention and Article 22 of the Fourth Convention, Parties to the conflict shall endeavour to conclude agreements incorporating the provisions of Articles . . . of this Protocol.
2. (no change)
3. (no change)

Draft Article 26

Overflight of territories controlled by the enemy

1. (Delete)
2. (Add, in the last sentence, after the word "travel", the words "and other conditions".)
3. (After the word "disclose", add "to the enemy".)
4. Medical aircraft will be protected when flying over territory controlled by an adverse Party only to the extent that such overflight is essential to the accomplishment of the medical mission and after prior clearance has been given. (This paragraph might suitably replace paragraph 1.)

Identification

1. (Amend to read on the lines of ICRC draft Article 27.)
2. (Amend to read on the lines of ICRC draft Article 27.)
3. (no change)

Draft Article 28

Landing in territories controlled by the enemy or at sea

1. (Amend the last sentence to read: "Medical aircraft failing to obey any such order shall thereby lose the protection afforded to them under this Protocol.")
2. (no change)
3. (Add, after the word "Protocol", the words "and has complied with Articles 24 (3) and 26 (3) of this Protocol".)
4. (no change)

Draft Article 29a

Aircraft of societies of neutral countries

(This should refer to air crew as well as aircraft.)

Original: English

CE/COM I/9

**Proposal submitted by the experts
of the Federal Republic of Germany,
Jordan, Norway, Poland, Switzerland
and Yugoslavia**

Draft Article ... (new)

Protection of National Red Cross (Red Crescent, Red Lion and Sun) Societies

1. The Parties to the conflict shall give to the National Red Cross (Red Crescent, Red Lion and Sun) Societies and to International Red Cross bodies all facilities, assistance and protection necessary for the performance of their humanitarian activities to be carried out in accordance with the Red Cross Principles as defined by International Red Cross Conferences.

2. These activities, in favour of wounded, sick and shipwrecked persons, prisoners of war, internees, refugees, children, the aged, the handicapped and other victims of conflict, consist, *inter alia*, in the training of medical and social welfare establishments and units, blood transfusion services, social welfare work, rescue services, collection, transportation and distribution of relief supplies, tracing services and the reuniting of families.

3. Victims of conflicts may apply to the National Society of the territory in which they live (alternative: concerned) for assistance. National Societies shall be empowered to give this assistance in the most appropriate fashion.

(See report of the Conference of Red Cross Experts, Vienna 1972, page 29, and Annex I - O4, page 62.)

**Proposal submitted by the experts
of Belgium**

Draft Article 23

Medical aircraft

The possibility of using on a medical mission aircraft which were sent out for other purposes during the "outward" journey, should be worded more explicitly.

These aircraft, clearly, should be protected only during the medical part of their mission.

It is also obvious that these aircraft may be assigned to a medical mission only from the rear of the combat zone, that is, outside those areas where enemy land forces are fighting each other.

Depending on the texts to be adopted as a basis for discussion of this article, the Belgian delegation will introduce an oral amendment, so that this eventuality may be provided for.

Draft Article 25

Removal of the wounded

(In order to add weight to the idea that it is not obligatory to have prior agreement, add after the phrase "shall, save in the case of imperative military necessity", the words "and without, necessarily, the conclusion of a prior agreement".)

Draft Article 26

Flight over the territories of the Parties to the conflict

1. (ICRC text)

2. When the circumstances of the conflict make it very difficult, if not impossible, to conclude a prior agreement, it is highly desirable that aircraft on an exclusively medical mission, which have been duly identified as such, should exceptionally benefit from the respect and protection granted by Article 35 of the First Convention, subject to the application, by the adverse Party, of the right conferred upon it by paragraph 1 of Article 28 of this Protocol.

Original: English

CE/COM I/11

**Proposal submitted by the experts
of Egypt**

Draft Article 25

Removal of the wounded

1. In areas of military operations each Party to the conflict shall do its utmost, if circumstances allow, to proceed to the removal and evacuation of wounded, sick and shipwrecked persons in areas under its control by medical aircraft and particularly helicopters.

2. (No change)

**Proposal submitted by the experts of
Belgium, France, Netherlands, Sweden, Switzerland,
United Kingdom, United States of America
and U.S.S.R.**

Draft Article 18

Civilian medical personnel

1. (no change)
2. (no change)
3. During occupation every assistance shall be given by the adverse Party to civilian medical personnel to enable them to carry out their humanitarian mission to the best of their ability. During invasion all assistance that is possible shall be given by the adverse forces to civilian medical personnel. In both cases, they shall have access to any place where their services are required, subject to such measures of supervision and security as the Parties to the conflict may judge necessary, and in no circumstance shall they be required or compelled to carry out tasks unrelated to their mission.
4. (Paragraph 5 of ICRC text)
5. (Deleted)

Original: French

CE/COM I/13

Proposal submitted by the experts of Romania

Draft Article 14

Civilian medical establishments and units

(Delete from paragraph 4 the words "in so far as military considerations permit" and from paragraph 5 the words "as far as possible".)

Draft Article 17

Requisition

1. Requisitioning by the Occupying Power is prohibited in all situations and all circumstances. Any person infringing this rule shall be considered guilty of an offence
2. (Deleted)

Draft Article 18

Civilian medical personnel

(Delete from paragraph 3 the words "In so far as possible".)

Draft Article 19

Protection of medical duties

(The Romanian experts consider that the "professional rules" referred to in the first paragraph should be related to an international standard.)

Role of the population

1. The Party to the armed conflict controlling all or part of the territory it has invaded shall allow the inhabitants and relief societies spontaneously to give shelter to and tend the wounded, sick and shipwrecked of whatever nationality.
2. (no change)
3. (no change)

Draft Article 22

Neutral States

(Replace the words "by analogy" by "in a corresponding manner".)

Original: English

CE/COM I/14

**Proposal submitted by the experts
Australia, Sweden, the United States of America
and the U.S.S.R.**

Draft Article 19

Protection of medical duties

1. (no change)
2. (no change)
3. (no change)
4. Persons engaged in medical activities shall not be compelled to inform the adverse Party of the patients under their care unless failure to do so would be contrary to existing laws concerning the notification of communicable diseases.

Original: French

CE/COM I/15

**Proposal submitted by the experts
of Poland**

Draft Article 11

Definitions

- (a) The term "medical establishment and units" means hospitals and other fixed and temporarily improvised medical establishments, medical and pharmaceutical stores of such establishments, mobile medical units, blood transfusion centres and other installations designed for medical use;
- (b) (no change)
- (c) the term "medical personnel" means personnel regularly and temporarily engaged in the operation or administration of medical establishments or units, including personnel assigned to the search for, removal, transport or treatment and care of wounded, sick, shipwrecked or infirm persons, expectant mothers and maternity cases, and new-born babies;
- (d) (no change)

Draft Article 13

Protection of persons

1. All acts, whether of commission or omission, that wilfully endanger the health or the physical or mental well-being of a protected person are prohibited.
2. (no change)

Draft Article 18

Civilian medical personnel

1. Civilian medical personnel, permanent or temporary, including the personnel of civil defence organizations, as well as the medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies, duly recognized

and authorized by the competent authority, shall be respected and protected.

2. The aforesaid medical personnel shall be identified by means of an identity card bearing a photograph of the holder and embossed with the stamp of the responsible authority; while on duty, the medical personnel shall wear on the left arm a stamped armlet bearing the distinctive emblem. The armlet should be issued by the State to which the personnel belong. The identity card should conform to the model attached to this Protocol, should bear the distinctive emblem of the red cross (red crescent, red lion and sun) and should state in the languages in international use that the holder of such a card is protected under the Geneva Conventions of 1949 and the additional Protocols thereto.

3. (no change)
4. (no change)
5. (no change)

WRITTEN PROPOSALS
SUBMITTED BY THE EXPERTS TO COMMISSION II
(Armed Conflicts of a Non-International Character)

Original: English

CE/COM II/1

**Proposal submitted by the experts
of the United States**

Draft Article 1

Material field of application

1. The present Protocol, which elaborates and supplements the four Geneva Conventions of August 12, 1949, and in particular Article 3 common to the four Conventions, shall apply to all armed conflicts occurring in the territory of a High Contracting Party to which Article 2 common to the four Geneva Conventions of August 12, 1949 is not applicable. For purposes of this Article the term "armed conflicts" shall include all situations in which hostilities take place between organized armed forces, each of which is under a responsible command.

2. The present Protocol has no application to isolated incidents or to situations of internal disturbances or tensions.

3. The operation of the present Protocol is without prejudice to the application of common Article 3 of the four Geneva Conventions by the High Contracting Parties to those Conventions.

4. The application of this Protocol shall not affect the legal status of the Parties to an armed conflict. In particular, such application by any Party to an armed conflict shall not be taken to imply the recognition, legitimacy, or international standing of that or any other Party to the armed conflict.

Add a new article in chapter I before the present draft Article 1:

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

2. Each Party to an armed conflict to which this Protocol applies is responsible for ensuring compliance with this Protocol by members of its armed forces and other persons in its service or subject to its control.

Original: French

CE/COM II/2

**Proposal submitted by the experts
of Austria**

Draft Article 1

Material field of application

1. The present Protocol, which reaffirms, elaborates and supplements Article 3 common to the four Geneva

Conventions of August 12, 1949 (hereinafter referred to as common Article 3) shall apply to all armed conflicts not of an international character referred to in common Article 3.

2. It shall apply in particular in all situations where, in the territory of one of the High Contracting Parties, hostilities of a collective nature are occurring between organized armed forces under the command of a responsible authority.

3. The provisions of the present Protocol constitute no obstacle to any humanitarian activities undertaken by the International Committee of the Red Cross or any other impartial humanitarian body with the agreement of the Parties concerned, in the case of armed conflicts not of an international character and in particular also in the case of internal disturbances and tensions.

Original: French

CE/COM II/3

Proposal submitted by the experts of France

Draft Article 1

Material field of application

The present Protocol shall apply to all cases of armed conflict not of an international character, of evident intensity, occurring on the territory of one of the High Contracting Parties over a prolonged period, in which organized armed forces engage in hostile acts against the authorities in power and the authorities in power use against such persons their own armed forces.

The present Protocol shall not apply to riots, banditry, isolated acts of terrorism, crimes, offences against penal law or other acts of a similar nature.

Original: French

CE/COM II/4

**Proposal submitted by the experts
of Romania**

Draft Article 1

Material field of application

The present Protocol, which elaborates and supplements Article 3 common to the four Geneva Conventions of August 12, 1949 (hereinafter referred to as common Article 3), shall apply to all the armed conflicts not of an international character referred to in common Article 3, where the State in whose territory the events are occurring recognizes the existence of armed internal conflict, its character and its constituent elements.

**Proposal submitted by the experts
of Canada**

Draft Article 1

Material field of application

The present Protocol, which elaborates and supplements Article 3 common to the four Geneva Conventions of August 12, 1949 (hereinafter referred to as common Article 3), shall apply whenever hostilities exist between organized armed forces under the command of a responsible authority and when Article 2 common to the four Geneva Conventions of 1949 is not applicable.

Proposal submitted by the experts of Indonesia

Draft Article 1

Scope of the present Protocol

The present Protocol, which elaborates and supplements Article 3 common to the four Geneva Conventions of August 12, 1949 (hereinafter referred to as common Article 3), shall apply to armed conflicts not of an international character in the sense of Article 2 of the present Protocol.

Draft Article 2

Terminology/Definition

1. For the purposes of the present Protocol, "armed conflicts not of an international character" means situations where, in the territory of one of the High Contracting Parties, armed conflicts are occurring between the armed forces of the legitimate Government of the High Contracting Party and organized forces under the command of a responsible authority, occupying a part of the territory of the High Contracting Party, whilst the said armed conflict has had a certain duration.

2. External aid given to the Parties to the conflict or the presence of foreign elements within the armed forces of the Parties to the conflict does not change the character of the conflict as conflict not of an international character.

Proposal submitted by the experts of Egypt

Draft Article 1

Material field of application

Add the following as paragraph two:

2. Notwithstanding the provisions of the previous paragraph, the Regulations concerning special cases of armed conflict not of an international character, hereto

annexed, shall apply to armed conflicts which arise from the struggle of peoples under alien domination for liberation and self-determination.

**Proposal submitted by the experts
of Austria**

Replace draft Article 4, draft Article 5, paragraph 3, and draft Article 6, paragraph 2 (d), of the draft Additional Protocol to common Article 3 by the following texts:

Draft Article 4

Torture and ill-treatment

The Parties to the conflict shall take all necessary measures to ensure that their military or civilian agents shall not commit, nor issue orders to commit, nor condone acts of torture or brutality, such as violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.

Draft Article 5

Terrorism, reprisals, pillage

3. At all times and in all places and without any adverse distinction, women and children shall be protected, in particular against rape and any form of indecent assault.

Draft Article 6

Measures in favour of children

2. (d) to refrain from recruiting and from accepting the voluntary enrolment of children under fifteen years of age, and to take steps to ensure that they do not take any direct part in hostilities.

**Proposal submitted by the experts
of Switzerland**

Draft Article 6

Measures in favour of children

Paragraph 2 (d): Replace the opening words "to take care" by the words "to take the measures necessary to ensure..."

Paragraph 3: The death penalty, for offences committed in connection with the hostilities, shall not be pronounced on persons below eighteen years of age at the time when the offence was committed, or on mothers of infants, on women responsible for the care of infants or on pregnant women.

Proposal submitted by the experts of Switzerland

Draft Article 9

Role of the population

Paragraph 1: The Parties to the conflict may call upon the civilian population to collect and tend the wounded, sick and shipwrecked; the civilian population shall likewise be permitted to collect and tend spontaneously the wounded, sick and shipwrecked.

Paragraph 2: (insert former paragraph 1)

Paragraph 3: former paragraph 2, with the addition of the following words: . . ., nor shall anyone be compelled to reveal the identity or location of such persons.

Proposal submitted by the experts of Switzerland

Draft Article 15

*Respect for and safeguarding of the civilian population**Paragraph 2*

It is worth considering whether paragraph 2 does not in fact weaken the general principle laid down in paragraph 1. Moreover, terrorism is already prohibited by Article 5 (1).

Paragraph 2 of Article 15 should therefore be deleted.

Proposal submitted by the experts of Switzerland

Draft Article 30

Humanitarian assistance

In paragraph 1, the reservation, "to the fullest possible extent", should be deleted.

Draft Article 32

Recording and information

1. The Parties to the conflict shall accept the organization by the International Committee of the Red Cross, if it deems necessary, of information bureaux...

Draft Article 34

Civil Defence Organizations

The reservation at the beginning of paragraph 1 should be deleted:

Civil defence organizations shall be allowed to carry out their humanitarian tasks;...

Proposal submitted by the experts of the Philippines

(*General Statement.*—With common Article 3 of the Geneva Conventions of 1949 as the source of legal authority and basic guide in the drafting of this Protocol, we must contend with two factors, i.e. the introduction of Humanitarian International Law into the sphere of domestic or internal affairs of the state, on the one hand, and state sovereignty as translated and reflected in domestic law, on the other hand.

International Humanitarian Law requires a minimum of humane treatment to victims of armed conflicts not of an international character as outlined in the said common Article 3 but nowhere in such law may it be gleaned that POW treatment or status may be afforded such victims.

International Humanitarian Law is likewise to be considered as suppletory to domestic law; and, that in the event of conflict, the law of the forum shall prevail.)

Draft Preamble

The High Contracting Parties,

Recalling that principles of humanity demand the humane treatment and protection of the human person at all times,

Emphasizing that the humanitarian principles enshrined in Article 3 common to the four Geneva Conventions of August 12, 1949 constitute the safeguards for ensuring the basic humanitarian protection of all persons, combatants or non-combatants, in cases of armed conflict not of an international character,

Conscious of the need to reaffirm and develop the rules applicable in armed conflicts not of an international character as derived from the mentioned common Article 3,

Agree on the following:

Draft Article 1

Scope of the present Protocol

This Protocol applies

- a. in all armed conflicts not of an international character in the territory of any of the High Contracting Parties;
- b. to all persons, military or civilian, combatants or non-combatants, in the territory where the armed conflict occurs;
- c. for the duration of the armed conflict.

Proposal submitted by the experts of the United Kingdom

Draft Article 1

Material field of application

The present Protocol, which is complementary to

Article 3 common to the four Geneva Conventions of 1949 (hereinafter referred to as common Article 3), shall apply to all armed conflicts not of an international character referred to in common Article 3 and in which the Parties to the conflict have the material means of observing and ensuring the observance of the obligations of common Article 3 and of this Protocol.

Original: English

CE/COM II/15

**Proposal submitted by the experts
of the United States**

Draft Article 4

General protection

Non-combatants and combatants rendered *hors de combat* are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of murder, mutilation, cruel treatment, and torture, against threats thereof, and against insults and public curiosity.

Draft Article 5

Hostages, terrorism, reprisals, pillage, rape

1. The taking of hostages is prohibited.
2. Acts of terrorism are prohibited.
3. Reprisals against non-combatants and combatants rendered *hors de combat* are prohibited.
4. Pillage is prohibited.
5. Women and children shall be protected, in particular against rape and any form of indecent assault.

Original: Spanish

CE/COM II/16

**Proposal submitted by the experts
of Argentina**

Draft Article 1

Material field of application

1. The present Protocol shall apply to armed conflicts not of an international character referred to in Article 3 common to the four Geneva Conventions of August 12, 1949, this being understood to mean to situations involving hostilities, on the territory of a High Contracting Party, between organized armed forces which are under the command of a responsible authority and are identifiable by an immediately recognizable emblem.
2. The application of the present Protocol shall require that, in all cases, the State on whose territory the armed clashes occur, recognizes that such clashes constitute an internal conflict with the characteristics described in paragraph 1 of this article.

Original: English

CE/COM II/17

**Proposal submitted by the experts
of Egypt and Norway**

Draft Article 1

Material field of application

1. The present Protocol, which lays down minimum standards applicable in all armed conflicts, shall apply to all conflicts referred to in Articles 2 and 3 common to the four Geneva Conventions of August 12, 1949, for the Protection of Victims of War.
2. The rules laid down in ... apply only in the situations provided for in Article 2 common to these Conventions.

Original: Spanish

CE/COM II/18

Proposal submitted by the experts of Spain

Draft Article 1

Material field of application

1. The present Protocol which reaffirms, elaborates and supplements Article 3 common to the four Geneva Conventions of August 12, 1949 (hereinafter called common Article 3) shall apply to all armed conflicts not international in character and especially to those situations in which organized armed forces, under the command of a responsible body with effective authority ensuring its desire and ability to ensure observance of the rules of Humanitarian Law in force, are brought into conflict by collective hostilities on the territory of a High Contracting Party.
2. The application of the present Protocol shall not affect the international legal status of the opposing Parties at the moment when the conflict commences.

Original: French

CE/COM II/19

Proposal submitted by the experts of Belgium

Draft Article 1

Material field of application

- Replace "...all conflicts not of an international character referred to in common Article 3 and, in particular, in all situations where ..."
- by either
- "... all conflicts not of an international character, in particular those creating a situation where ..."
- or
- "... all conflicts not of an international character and which create a situation where ..."

Draft Article 3A

Any humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The application of this provision of the present Protocol shall have no effect on the legal status of the Parties to the conflict.

Draft Preamble

Additional paragraphs:

The High Contracting Parties,

Recalling that...

Emphasizing that ...

Conscious of ...

Recalling that Article 3 common to the four Geneva Conventions of August 12, 1949 (hereinafter called common Article 3) is couched as follows:

(quote Article 3)

Recalling further that Article 4 A (2) of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, (to which article the present Protocol specifically refers) is couched as follows:

(quote Article 4 A (2))

Agree on the following:

Original: French

CE/COM II/20

Proposal submitted by the experts of Romania

Draft Article 3

Beginning and end of application

The present Protocol shall apply from the beginning of the armed conflict not of an international character, as defined in Article 1, until the end of hostilities or until such time that the conflict ceases to possess those characteristics referred to in Article 1. However, after the end ... (as originally proposed by the ICRC).

Original: French

CE/COM II/21

Proposal submitted by the experts of Romania

Draft Article 4

Torture and ill-treatment

Add at the end of the text:

... or any other acts which, under the law of the State on whose territory the armed conflict is occurring, constitute offences against the person.

Draft Article 5

Terrorism, reprisals, pillage

Add a new paragraph, as paragraph 2, reading as follows: 2. All other offences against the person are prohibited.

Re-number the present paragraphs 2 and 3 as paragraphs 3 and 4.

Original: English

CE/COM II/22

Proposal submitted by the experts of Egypt

Draft Article 5

Terrorism, reprisals, pillage

1. Acts of terrorism, as well as reprisals against persons and objects necessary to their survival, are prohibited.

Original: English

CE/COM II/23

Proposal submitted by the experts of the German Democratic Republic

Draft Article 25

Treatment of combatants who have fallen into the power of the adversary.

Members of regular armed forces and members of those armed forces which have fulfilled the conditions stipulated in Article 4 A(2) of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, or, at least, the conditions stipulated in Article 38, paragraph 1, Protocol I, shall receive, after having fallen into the power of the adversary, prisoner-of-war treatment as provided for in the Convention.

Original: English

CE/COM II/24

Proposal submitted by the experts of the German Democratic Republic

Draft Article 28

Penal prosecutions against combatants

After having fallen into the power of the adversary, combatants who will have fulfilled the conditions stipulated in Article 25 of the present Protocol, as well as those combatants who, without having fulfilled the conditions stipulated in Article 25 of the present Protocol, will have at least, in the course ...

Original: English

CE/COM II/25

Proposal submitted by the experts of the Netherlands

Draft Article 25

Treatment of members of armed forces who have fallen into the power of the adversary

Members of armed forces, whether regular or irregular, taking part in the armed conflict, who have fallen into the

power of the adversary, shall receive a treatment similar to that provided for prisoners of war in the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, provided that such armed forces fulfil the following conditions:

- (a) that of conducting their operations in accordance with the principles of the law of armed conflicts and the rules laid down in the present Protocol;
- (b) that of distinguishing themselves in their operations from the civilian population, whether by carrying arms openly, by wearing a distinctive sign, or by any other means;
- (c) that of being organized and commanded by a person responsible for his subordinates.

Original: English

CE/COM II/26

**Proposals submitted by the experts
of the United States**

Draft Article 6

Measures in favour of children

Paragraph 1 — The Parties to the conflict shall provide children with special protection, in particular with the care and aid which their age and situation require.

Paragraph 2(d) — delete “any direct”.

Paragraph 3 — The death penalty shall not be pronounced on persons who are under fifteen years of age at the time of the offence. The death penalty shall not be carried out on pregnant women or on mothers of infants.

Original: English

CE/COM II/27

**Proposal submitted by the experts of the
German Democratic Republic**

Draft Article 7

Protection and care

Add a new paragraph 4 with the text of draft Article 13, paragraph 2, draft Protocol I.

Original: English

CE/COM II/28

**Proposal submitted by the experts of the
German Democratic Republic**

Draft Article 21

Emblems of nationality

Delete the last sentence.

Draft Article 24

Aircraft occupants

The occupants of aircraft in distress who parachute to save their lives shall not be attacked during their descent or landing unless their attitude is hostile.

Original: English

CE/COM II/29

**Proposals submitted by the experts
of the United States**

Draft Article 26

Treatment of persons whose liberty has been restricted

Delete in paragraph 1, “without any adverse distinction”.

Amend sub-paragraph 3(a) to read as follows:

(a) they shall provide for the medical attention which the state of health of the persons referred to in paragraph one above requires;

Add the following to the list of rights:

The persons referred to in paragraph 1 above shall be accommodated in buildings or quarters which afford reasonable safeguards as regards hygiene and health and provide efficient protection against the rigours of the climate and the effects of the conflict. The persons referred to in paragraph 1 shall be provided with adequate supplies of water and with food rations sufficient to keep them in a good state of health. They shall be permitted to secure adequate clothing or be provided with such clothing.

Original: English

CE/COM II/30

Proposal submitted by the experts of Sweden

Draft Article 5

Terrorism, reprisals, pillage

Paragraph 3 of draft Article 5 should constitute a separate new article:

Women shall be especially protected, in particular against rape and any form of indecent assault.

Original: French

CE/COM II/31

Proposal submitted by the experts of Switzerland

Draft Article 27

Individual responsibility

No person may be punished for an offence that he or she has not ordered to be committed or has not personally committed. Collective penalties are prohibited.

Original: English

CE/COM II/32

**Proposal submitted by the experts
of the German Democratic Republic**

Draft Article 15

Respect for and safeguarding of the civilian population

Delete the last sentence of paragraph 3.

Draft Article 16

Respect for and safeguarding of objects indispensable to the survival of the civilian population

Proposal I, paragraph 2 (b):

Write only: "destroying them" and delete the rest.

Original: French

CE/COM II/33

Proposal submitted by the experts of Kuwait

Draft Article 16

Respect for and safeguarding of objects indispensable to the survival of the civilian population

Paragraph 2 of Proposal I should be amended to read as follows:

The Parties to the conflict under whose control objects indispensable to the survival of the civilian population are placed, shall refrain from:

- (a) using them in an attempt to shield military objectives from attack;
- (b) destroying them, except where unavoidable military necessity requires them to be made unusable, and provided that this continues only for such time as that necessity remains.

(The experts of Kuwait would nevertheless prefer Proposal II to be taken as the basis of discussion.)

Original: French

CE/COM II/34

Proposal submitted by the experts of Kuwait

Draft Article 24

Aircraft occupants

The last part of draft Article 24 should be drafted as follows:

... unless they act in such a way as to denote hostility, or try to avoid capture.

Original: French

CE/COM II/35

Proposal submitted by the experts of Romania

Draft Article 25

Treatment of combatants who have fallen into the power of the adversary

1. Delete the following from the wording of draft Article 25:

... "and members of those armed forces which have fulfilled the conditions stipulated in Article 4 A(2) of the Geneva Convention relative to the Treatment of Prisoners

of War of August 12, 1949", and "in the said Convention".

2. Add the following to the end of draft Article 25:

Persons who take part in an armed conflict not of an international character within the meaning of Article 1 of the present Protocol, and who have taken up arms against the regular armed forces of the authorities in power, shall, under all circumstances, be respected and treated humanely in accordance with the law.

Draft Article 26

Treatment of persons whose liberty has been restricted

1. Add the following to the end of paragraph 1:
... in accordance with the law.
2. Delete paragraph 4.

Original: English

CE/COM II/36

Proposal submitted by the experts of Sweden

Article 25

Treatment of members of armed forces who have fallen into the power of the adversary

Members of regular armed forces and combatants who have fulfilled the conditions stipulated either in Article 4A (2) of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, or in Article 38 of the Additional Protocol to the Four Geneva Conventions of August 12, 1949, shall receive, after having fallen into the power of the adversary, a treatment similar to that provided for prisoners of war in the said Prisoners of War Convention.

Original: English

CE/COM II/37

Proposal submitted by the experts of Denmark and the United Kingdom

Draft Article 25

Treatment of combatants who have fallen into the hands of the adversary

Delete draft Articles 25 and 28 and replace both by the following single article:

1. Members of the armed forces participating in the armed conflict including those defined in Article 38 of the Protocol additional to the four Geneva Conventions of 1949 who fall into the hands of the adversary Party shall be treated in accordance with the principles laid down in Article 26 of the present Protocol.

2. In the event of members of such armed forces becoming the object of penal proceedings solely on account of their participation in such conflict, or membership of such armed forces, the death penalty shall not be imposed.

3. Persons who participate in the conflict but who do not fall within paragraph 1 of this article shall be treated as required in common Article 3.

Treatment of persons whose liberty has been restricted

Delete paragraph 1 and replace by the following:

1. Persons whose liberty has been restricted in respect of an act committed in relation to the armed conflict, whether interned or detained in accordance with municipal law, shall in all circumstances be respected and treated humanely.

Delete from paragraph 2 the words "All unjustified acts, whether of commission or omission" and replace them by "All unjustified acts or wilful omissions. . ."

Original: English

CE/COM II/38

Proposal submitted by the experts of Canada

Draft Article 25

Treatment of combatants who have fallen into the power of the adversary

Delete draft Article 25.

Draft Article 26

Treatment of persons whose liberty has been restricted

1. All persons who fall into the hands of an adversary or who are interned or detained or whose liberty has in any way been restricted for any reason related to the hostilities shall in all circumstances be respected and treated humanely without any adverse distinction.

Original: English

CE/COM II/39

Proposal submitted by the experts of Egypt

Draft Article 28

Penal prosecutions against combatants

1. After having fallen into the power of the adversary, combatants who will have fulfilled the conditions stipulated in Article 25 of the present Protocol, as well as those combatants who, without having fulfilled the conditions stipulated in Article 25 of the present Protocol, will have at least distinguished themselves from the civilian population by some distinctive sign or by any other means and who have complied with the provisions of the present Protocol, shall not be punishable solely for having taken part in hostilities or having been members of armed forces.

2. No one shall incur death penalty solely for having taken part in hostilities or having been a member of armed forces, unless imperative security requirements make this necessary.

Proposal submitted by the experts of Pakistan

Title of Protocol

Amend the title of the Additional Protocol as proposed by the ICRC to read as follows:

"The Geneva Convention for ensuring basic humanitarian protection to all persons affected by armed conflicts not of an international character"

This instrument might then be referred to as the "Fifth Convention".

Original: French

CE/COM II/41

Proposal submitted by the experts of France

Draft Article 6

Measures in favour of children

Amend the first sentence of paragraph 1 to read as follows: children shall be afforded privileged treatment.

Replace sub-paragraph 2 (d) by the following : not to recruit into their armed forces children under fifteen years of age nor accept their voluntary enrolment.

Original: French

CE/COM II/42

Proposal submitted by the experts of France

Draft Article 9

Role of the population

Delete paragraph 1 and insert the following between the second and third paragraphs of the draft Preamble:

Firmly undertaking to ensure that the civilian population respects the wounded, sick and shipwrecked and refrains from committing acts of violence against them.

Original: French

CE/COM II/43

Proposal submitted by the experts of France

Draft Article 14

Definition of the civilian population

Delete draft Article 14.

Draft Article 15

Respect for and safeguarding of the civilian population

1. Add at the end of the sentence "by the two Parties to the conflict."

2. Replace "terrorization attacks" by the phrase "attacks for the sole purpose of causing terror . . ."

Draft Article 17

Precautions when attacking

1. Those who order or launch an attack shall ensure that the objectives are identified as military objectives.
2. Whenever circumstances permit, they shall warn the civilian population in the vicinity of a military objective, so that the population may take shelter.

Original: French

CE/COM II/44

Proposal submitted by the experts of Romania

Draft Article 14

Definition of the civilian population

Draft paragraph 3 in accordance with " Proposal I ".

Draft Article 16

Respect for and safeguarding of the civilian population

Draft Article 16 in accordance with " Proposal II ".

Original: French

CE/COM II/45

Proposal submitted by the experts of Romania

Draft Article 28

Penal prosecutions against combatants

Delete draft Article 28 on penal prosecutions against combatants.

Original: French

CE/COM II/46

Proposal submitted by the experts of Romania

Draft Article 29

Relief for the population

Add the following sentence to Article 29 :

The State on whose territory the conflict is taking place has the right to assist the population in the zone occupied by the adverse Party, which must allow this assistance to be given.

Draft Article 30

Humanitarian assistance

Delete paragraph 3.

Draft Article 32

Recording and information

Add, after paragraph 1, the following :

The decisions concerning any such proposal and concerning the discontinuance of the functioning of these

bureaux shall be taken by the State on whose territory the conflict is taking place.

Original: French

CE/COM II/47

Proposal submitted by the experts of Romania

Draft Article 39

Dissemination of the present Protocol

and

Draft Article 40

Rules of application

Delete draft Articles 39 and 40.

(The ideas contained in Articles 39 and 40 could be introduced in the preamble to draft Protocol II.)

Original: English

CE/COM II/48

Proposal submitted by the experts of Pakistan

Draft Article 27

Individual responsibility

No person may be punished for an offence he or she has not personally committed and for which he or she cannot be regarded as personally liable. Collective penalties are prohibited.

Original: English

CE/COM II/49

Proposal submitted by the experts of the United States

Draft Article 28

Penal prosecutions against combatants

1. No sentence shall be passed or execution carried out against a person who has committed an offence related to the conflict without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are generally recognized as indispensable by the principal legal systems of the world.

2. A person convicted of such an offence shall be entitled, in accordance with the laws in force, to avail himself of the right of appeal or petition from any sentence pronounced upon him. He shall be fully informed of his right of appeal or petition.

3. A death sentence imposed on any person whose guilt arises only by reason of his having participated as a combatant in the hostilities shall not be carried out until the hostilities have ceased.

4. At the conclusion of the hostilities, the Parties to the conflict should endeavour to grant amnesty to as many as possible of those who have participated in the conflict or have been convicted of offences or deprived of liberty in connection with the conflict.

Proposal submitted by the experts of Canada

Draft Article 27

Individual responsibility

No person may be punished for an offence he or she has not personally committed or for an act or omission which was not an offence at the time it was committed. Collective penalties are prohibited.

Proposal submitted by the experts of the United States

Draft Article 29

Relief for the population

Move this draft Article to Chapter IV on the Civilian Population as it does not relate to relief in the strict sense.

Amend "the population" to read "civilians who take no active part in the hostilities".

Draft Article 30

Humanitarian assistance

Combine with draft Article 31.

Draft Article 31

Relief supplies and activities

1. The Parties to the conflict or any other High Contracting Party concerned shall allow the free passage of all consignments of essential foodstuffs, clothing, medical and hospital stores and shelter facilities, intended only for those taking no active part in the hostilities.

2. The Parties to the conflict and any High Contracting Party concerned may make the passage of consignments conditional on the distribution to the persons to be benefited thereby being made under the supervision of an organ or agency of the United Nations, a regional international organization, or a humanitarian organization, such as the International Committee of the Red Cross.

3. The provision of relief supplies, as defined in paragraph 1, or the undertaking of relief activities, including the supervision of the distribution of relief supplies, shall under no circumstances be regarded as interference in the conflict.

Draft Article 33

National Red Cross and other relief societies

In paragraph 1 insert "provided that they act" between "activities" and "in accordance with".

Civil Defence Organizations

In paragraph 1 delete "they shall at all times be protected" and change "organizations" to "personnel".

In paragraph 2 change "the humanitarian activities of such organizations" to read "humanitarian civil defence activities".

Proposal submitted by the experts of the United Kingdom

Draft Article 27

Individual responsibility

1. No person shall be punished for an offence for which he or she has not personally been found guilty by a regularly constituted Court affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

2. Penal provisions shall not be retroactive.

3. Collective penalties and measures against persons and objects protected by this Protocol are prohibited.

Proposal submitted by the experts of Yugoslavia

Draft Article 27

Individual responsibility

Add after the first sentence:

The fact that a person in charge does not prevent the execution of an order which he or she knows carries an offence shall entail the personal responsibility of that person.

Proposal submitted by the experts of Norway

Draft Article 28

Penal prosecutions against combatants.

After having fallen into the power of the adversary, combatants shall not be punishable by death if they become the object of penal prosecutions only by reason of having taken part in hostilities or having been members of the armed forces.

Original: English

CE/COM II/55

**Proposals submitted by the experts
of the Philippines**

Draft Article 25

*Treatment of combatants who have fallen into the power of
the adversary*

Combatants who have fallen into the power of the adversary shall receive a treatment consistent with the requirements of common Article 3 of the Geneva Conventions of August 12, 1949.

Original: English

CE/COM II/56

**Proposal submitted by the experts
of the Philippines**

Draft Article 27

Individual responsibility

Collective penalties are prohibited. No person may be punished for an offence he or she has not personally committed except in those cases provided for by municipal law such as those laws punishing conspirators and principals whose co-operation was indispensable for committing the offence, and the like.

Original: English

CE/COM II/57

**Proposals submitted by the experts
of the United Kingdom**

Draft Article 29

Relief for the population

Delete draft Article 29, because the obligations imposed on the Parties to the conflict are too wide-ranging.

Draft Article 30

Humanitarian assistance

Draft Article 31

Consignment of essential supplies for the civilian population

Combine the texts of the two draft articles to read as follows:

1. If, in the opinion of the International Committee of the Red Cross, the civilian population is, having regard to their normal standard of living, inadequately supplied, the Parties to the conflict shall, to the fullest possible extent, agree to and facilitate impartial relief activities, including the provision of foodstuffs, clothing, medical and hospital stores and housing facilities, undertaken by the International Committee of the Red Cross, the League of Red Cross Societies or National Red Cross (Red Crescent, Red Lion and Sun) Organizations, for the civilian

population as such or for the wounded, sick and shipwrecked, both military and civilian.

2. The Parties to the conflict shall have the right to prescribe the technical arrangements under which the passage of relief supplies shall be allowed. They shall in no way divert relief consignments from the purpose for which they are intended or delay the forwarding of such consignments.

3. The Parties to the conflict or any High Contracting Party concerned may make the provision of relief supplies conditional on their distribution to the persons specified in paragraph 1 under the supervision of an impartial humanitarian body.

4. In no circumstances shall the provision of relief assistance be considered as interference in the conflict.

Draft Article 33

National Red Cross and other relief societies

Paragraph 1:

Insert the words "acting if necessary independently" after the words "and its branches".

Insert the words "for the benefit of the whole civilian population" after the word "activities".

Delete the final sentence of paragraph 1 and the whole of paragraph 2.

Original: English

CE/COM II/58

**Proposal submitted by the experts
of Canada, Norway and Sweden**

Draft Article 31

Consignment of essential supplies for the civilian population.

Delete the word "civilian" in the title.

Paragraph 1: Delete the words: "intended only for civilians".

Paragraph 3: Delete the words: "only to the persons benefited thereby".

Original: English

CE/COM II/59

Proposal submitted by the experts of Indonesia

Draft Article 35

Regulations

Delete Article 35, including the Annex to draft Protocol II.

Draft Article 37

Co-operation in the observance of the present Protocol

Add between the words "extent" and "shall" in the first line the words "and with the agreement of the legitimate government".

Draft Article 38

Legal status of the Parties to the conflict.

The legal status of the Parties to the conflict shall not be affected by the application of the provisions of the present Protocol.

Original: English

CE/COM II/60

Proposal submitted by the experts of Denmark

Draft Article 37

Co-operation in the observance of the present Protocol

Each Party to the conflict shall accept any offer of the International Committee of the Red Cross to carry out its humanitarian functions, unless, or until, the Parties have provided other means for the effective performance of such activities.

Original: French

CE/COM II/61

Proposal submitted by the experts of Italy

New Article 36 (a)

Insert a new Article 36 (a) between draft Articles 36 and 37:

The International Committee of the Red Cross may determine the existence of a conflict which is not of an international character within the meaning of Article 1 of the present Protocol, by issuing an opinion that will not have any obligatory import.

Draft Article 37

Co-operation in the observance of the present Protocol

1st line, delete "to the fullest possible extent";

2nd line, after "guarantees of impartiality and efficacy" insert "such as the International Committee of the Red Cross".

Add a second paragraph to Article 37, worded as follows:

In the case where, after a reasonable period of time, the Parties to the conflict have not called upon any such body referred to in the preceding paragraph, the International Committee of the Red Cross may carry out the tasks of such a body.

(Commentary:

Draft Article 36 (a)

The general nature of the definition of armed conflicts not of an international character makes it necessary to envisage the possibility of an impartial moral authority to confirm the existence of objective elements which, in a specific case, would lead to a non-international conflict. The possibility of the ICRC expressing an opinion on this subject might constitute an obstacle to States

arbitrarily denying the existence of a conflict of this kind on their territory, with the intention of avoiding the obligations resulting from the Second Protocol. However, because of the essentially moral nature of the authority of the ICRC, it is desirable to establish clearly that an opinion on the existence of a conflict, within the meaning of Article 1 of Protocol II, would have no obligatory import.

Draft Article 37, first paragraph

The amendments proposed are intended to make clear that the Parties are under the obligation to appeal to an impartial body; their discretionary powers, therefore, are limited to the choice of one or other of the appropriate bodies.

Draft Article 37, second paragraph

The proposal is intended to reinforce the system of guarantee established in the first paragraph, by stipulating explicitly that if the Parties do not make the choice in the first paragraph within a reasonable time, the ICRC shall be fully entitled to perform the humanitarian duties in question.)

Original: French

CE/COM II/62

Proposal submitted by the experts of Austria and Switzerland

Draft Article 37

Co-operation in the observance of the present Protocol

1. The present Protocol and its Regulations, as well as the other provisions of the four Geneva Conventions of August 12, 1949, and of the Additional Protocol to the said Conventions brought into force in accordance with Article 36 of the present Protocol shall be applied with the co-operation and under the scrutiny of a body, such as the International Committee of the Red Cross, offering all guarantees of impartiality and efficacy.

2. Parties to a non-international armed conflict shall appoint as quickly as possible such a body, the competence of which shall extend throughout the territory of the High Contracting Party where the conflict is occurring.

3. Until such a body has been appointed, in accordance with paragraph 2, the Parties to the conflict shall accept the International Committee of the Red Cross as the body provided for under paragraph 1.

Original: English

CE/COM II/63

Proposal submitted by the experts of the United States of America

Draft Article 18

Means of combat

1. The right of the Parties to the conflict to adopt means of injuring the enemy is not unlimited.

2. It is forbidden to use weapons, projectiles, substances, or methods calculated to cause unnecessary suffering.

Delete draft Article 18 (3) and insert the following as a separate article:

In cases not included in the present Protocol or other applicable conventions, civilians and combatants remain under the protection and the rule of the principles of international law, as they result from the principles of humanity and the dictates of the public conscience.

Draft Article 19

Prohibition of perfidy

1. It is forbidden to kill or injure by resort to perfidy. Acts designed to mislead the adversary into the belief that protection under international law will be granted constitute perfidy. Such acts, *inter alia*, include the following examples when carried out with the intention of committing or resuming hostilities:

- (a) the feigning of a situation of distress, notably through the misuse of internationally recognized protection signs;
- (b) the feigning of cease-fire, of a humanitarian negotiation, or of surrender;
- (c) the disguising of combatants as civilians.

2. Ruses of war are not considered as perfidy. Ruses of war are those acts such as camouflage, traps, mock operations, and misinformation, which, whilst infringing no recognized rule, are intended to mislead the enemy or to induce him to act recklessly.

Draft Article 20

Recognized signs

It is forbidden to make improper use of the flag of truce or of the protective sign of the red cross (red crescent, red lion and sun).

Draft Article 21

Adversary emblems

It is forbidden to make use of an adversary's flags, distinctive emblems, military insignia or uniforms with the intention of directly facilitating acts of combat.

Draft Article 22

Safeguard of an enemy hors de combat and

Draft Article 23

Conditions of capture and surrender

Replace draft Articles 22 and 23 with the following single article:

1. It is forbidden to kill or to wound an adversary who is unconscious or who, having laid down his arms or no longer having means of defence,

(a) has surrendered or has clearly expressed an intention to surrender and to abstain from any hostile act, and

(b) is not attempting to escape.

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

Draft Article 24

Aircraft occupants

The occupants of aircraft in distress who parachute to save their lives or who are compelled to make a forced landing shall not be attacked during their descent or landing, unless their attitude is hostile. They shall, if they have landed in an area controlled by the adversary and are not in a hostile attitude, be afforded a reasonable opportunity to surrender.

Original: English

CE/COM II/64

Proposal submitted by the experts of Canada

Draft Article 10

Medical and religious personnel

Number the present paragraph as 1. and add the following:

2. Medical personnel may be authorized by a Party to the conflict to wear the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white background.

3. A person authorized under paragraph 2 shall wear the emblem on the armband affixed to the left arm and shall carry an appropriate identity card indicating in what capacity he is entitled to wear the emblem.

Draft Article 11

Medical establishments and transports

In paragraph 1, insert "including blood transfusion centres", after the word "establishments" in the first line.

Add paragraph 3:

3. With authorization from a Party to the conflict, fixed and mobile medical establishments and units may be marked with the Red Cross (Red Crescent, Red Lion and Sun).

Draft Article 12

Evacuation

Add at the end of the article "and children under fifteen".

Original: English

CE/COM II/65

Proposal submitted by the experts of Canada

Draft Article 14

Definition of civilian population

Replace the present draft Article 14 by the following:

Definition of civilian

Any person who is not a member of military forces engaged in the hostilities is a civilian.

Replace the title, paragraph 1 and paragraph 4 of the present draft Article 15 by the following:

Draft Article 15

Respect for and safeguarding of civilians

1. Civilians shall not be made the object of attack. However, a civilian who takes part in the hostilities loses his right of immunity from attack.

4. Civilians shall never be used in an attempt to shield, by their presence, military objects from attack.

Original: English

CE/COM II/66

Proposal submitted by the experts of Canada

Draft Article 36

Special agreements

Insert "appropriate" before "provisions" in the fourth line.

Draft Article 38

Legal status of the Parties to the conflict

Add to the last line:

"envisaged in or by the said Conventions and Protocols".

Original: English

CE/COM II/67

Proposals submitted by the experts of the United Kingdom

Draft Article 36

Special Agreements

Add the words "not already made applicable" at the end of the draft article.

Draft Article 37

Co-operation in the observance of the present Protocol

Each Party to the conflict shall to the fullest possible extent call upon the International Committee of the Red Cross to supervise the implementation and observance of the present Protocol, the relevant provisions of the Geneva Conventions of 1949 and the Additional Protocol thereto made applicable by this Protocol.

Draft Article 38

Legal status of the Parties to the conflict

Insert the words "international and internal" before the words "legal status" in line 1.

Draft Article 39

Dissemination of the present Protocol

3. The High Contracting Parties shall report to the Depositary Power and to the International Committee of the Red Cross on the measures which they have taken to implement this article one year after the deposit of the instrument of ratification of the present Protocol and thereafter at intervals to be agreed with the Depositary Power and the International Committee of the Red Cross.

Original: English

CE/COM II/68

Proposals submitted by the experts of the United Kingdom

Draft Article 2

Personal field of application

1. The benefits and obligations of the present Protocol shall apply, without any adverse distinction, to all persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause, who are in the territory of a High Contracting Party where an armed conflict within the meaning of Article 1 of the present Protocol is occurring.

2. Members of the armed forces of another State who are in the territory of the High Contracting Party referred to in paragraph 1 of this article, as well as members of militias or volunteer corps forming part of such armed forces, shall never be the subject of attack provided they do not take part in the conflict.

3. These provisions shall also apply to persons who accompany these armed forces without actually being members thereof as defined in Article 4 A(4) of the Third Geneva Convention, provided that they are not nationals of the High Contracting Party referred to in paragraph 1 of this Article.

Draft Article 3

Beginning and end of application

Delete the words "Beginning and" in the title and the words "The present Protocol shall apply from the time when the armed conflict begins until the end of hostilities. However . . ."

Original: French

CE/COM II/69

Proposal submitted by the experts of Romania

Draft Preamble

Amend the third paragraph of the Preamble to read as follows:

Conscious of the need to ensure the basic humanitarian protection of all persons, whether combatants or non-combatants, and to develop, to that end, the rules implicit in Article 3 common to the four Geneva Conventions of

August 12, 1949, and applicable in armed conflicts not of an international character, the existence, the nature, and the constituent elements of which are recognized by the States on whose territory these conflicts occur,

Original: English

CE/COM II/70

Proposal submitted by the experts of Egypt

Delete draft Article 35 and the Regulations concerning special cases of armed conflicts not of an international character.

Add a new chapter entitled "Special Cases" and include the following articles:

1. The Parties to the conflict shall, in special cases when hostilities have reached a level as to make it necessary, grant the combatants having fallen into the power of the adversary a treatment similar to that provided for prisoners of war in the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. They shall also apply to the civilian population the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

2. Liberation and self-determination movements, as well as internal conflicts which, in the view of the United Nations, threaten international peace and security shall always be considered special cases within the meaning of Article ... of the present Protocol.

3. The application of Articles ... and ... of the present Protocol does not dispense the Parties to the conflict from recognizing the application of all the Geneva Conventions of August 12, 1949, to such conflicts when circumstances warrant it.

Original: English

CE/COM II/71

Proposal submitted by the experts of Egypt

Draft Article 24

Aircraft occupants

The occupants of aircraft in distress who parachute in the territory of the adversary to save their lives shall not be attacked during their descent provided that it is evident that they are *hors de combat*.

(N.B. This proposal is the second option. It would be preferable for the whole draft article to be deleted.)

Original: English

CE/COM II/72

Proposal submitted by the experts of Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary and Poland

Draft Article 18

Means and methods of combat

1. The choice of means and methods of combat by the

Parties to the conflict and by the combatants is not unlimited.

2. It is forbidden to use means and methods which cause unnecessary suffering or other particularly cruel means and methods.

3. It is forbidden to use means and methods which have an effect on military objectives and protected persons or civilian objects indiscriminately.

4. It is forbidden to use means and methods which destroy the natural human environmental conditions.

5. In cases for which no provision is made in the present Protocol, the principle of humanity, the relevant rules and principles of international law and the dictates of the public conscience shall continue to safeguard populations and combatants pending the adoption of fuller regulations.

Original: French

CE/COM II/73

Proposal submitted by the experts of Switzerland

Draft Article 24

Aircraft occupants

Add a new paragraph 2:

The unfair use of signals and messages of distress by aircraft occupants is forbidden.

Original: French

CE/COM II/74

Proposal submitted by the experts of Switzerland

Draft Article 18

Means of combat

Paragraph 3 of this article should become Article 1, and the wording of the Martens clause, as it appears in the Hague Convention No. IV of 1907 (penultimate paragraph of the Preamble) should remain unchanged.

Original: English

CE/COM II/75

Proposal submitted by the experts of Sweden

Chapter III should have the following contents:

Draft Article 7

Protection and care

Redraft this article so as to include the full text of Articles 12 and 13 of Protocol I.

Draft Article 8

Search

This article remains unchanged.

Draft Article 9

Role of the population

1. The civilian population shall respect the persons listed in Article 7, paragraph 1, of the present Protocol, even if they belong to the adverse Party, and shall refrain from committing acts of violence against them.
2. No one shall be molested or convicted for having sheltered or tended wounded, sick and shipwrecked persons, even if they belong to the adverse Party.

Draft Article 10

Medical and religious personnel

This article remains unchanged.

Draft Article 10 A

Protection of medical duties in general

This new article should be identical with the text of Article 19, paragraphs 1 to 4 of Protocol I, with the following two modifications:

Paragraph 2. It should refer to "any provision of Article 3 common to the four Conventions or of the present Protocol".

Paragraph 3. It should refer to "persons described in Article 7 of the present Protocol".

Draft Article 11

Medical establishments and transports

1. Hospitals and other fixed medical establishments, medical and pharmaceutical stores of such establishments, mobile medical units, blood transfusion centres and other installations used for medical purposes, whether permanent or temporary, shall in no circumstance be attacked. They shall at all times be respected and protected by the Parties to the conflict.

2. Transports of persons listed in Article 7, paragraph 1, or of medical personnel or equipment, shall be respected and protected in the same way as mobile medical units.

Draft Article 12

Evacuation

This article remains unchanged.

Draft Article 13

The distinctive emblem

This article remains unchanged.

Original: French

CE/COM II/76

Proposal submitted by the experts of France

Draft Article 14

Definition of the civilian population

Delete this draft article.

Draft Article 15

Respect for and safeguarding of the civilian population

1. Military actions shall be carried out with a constant concern to spare the civilian population to the utmost extent bearing in mind the nature and the power of the weapons used.
2. In particular, attacks whose sole object is to spread terror shall be prohibited.

Draft Article 17

Precautions when attacking

1. Those who order or carry out an attack shall ensure that the objectives to be attacked are in fact military objectives, namely, objectives the total or partial destruction or the seizure or neutralization of which would confer a definite military advantage.
2. When circumstances permit, they shall warn the civilian population in the vicinity of a military objective, in order that they may take shelter.

Original: French

CE/COM II/77

Proposal submitted by the experts of France

Draft Article 18

Means of combat

1. The right of the Parties to the conflict in the choice of means of injuring the enemy is not unlimited.
2. It is forbidden to use weapons, projectiles, substances or methods calculated to cause unnecessary suffering.

Draft Article 22

Conditions to qualify as hors de combat

The following shall be considered to be *hors de combat*:

- (a) a wounded enemy who ceases to fight,
- (b) an enemy captured by force or by surprise during the fighting,
- (c) an enemy who has surrendered.

Draft Article 23

Safeguard of an enemy hors de combat

1. Even before the enemy has become *hors de combat* it is forbidden to declare that enemy survivors will be killed or that no prisoners will be taken, to so threaten the enemy and to conduct the fight accordingly.
2. It is forbidden in all cases to kill, wound or ill-treat an enemy who is *hors de combat*.
3. An enemy who is *hors de combat* shall be treated humanely; as far as possible care shall be provided for those in need of it.
4. The authorities of the Party into whose hands enemy combatants who are *hors de combat* have fallen shall provide for them even if they wished to release them.

Proposal submitted by the experts of France

Draft Article 28

Penal prosecutions against combatants

Delete this draft article.

Proposal submitted by the experts of France

Draft Article 35

Regulations

Delete this draft article.

Proposal submitted by the experts of the United States

Draft Article 9

Role of the population

3. Unless arrangements are made pursuant to Article 32 of this Protocol, the Parties to the conflict shall communicate to each other or, when this is not possible, shall publish all details of sick and shipwrecked and dead of the adverse Party in their hands.

(Reason: Although Article 32 provides for the establishment of information bureaux connected with the Central Tracing Agency, there may be situations when this procedure cannot be effected.)

Draft Article 11

Medical establishments and transports

3. The protection to which medical establishments, units and transport are entitled shall not cease unless they are used to commit, outside their humanitarian mission, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, setting, wherever appropriate, a reasonable time limit and after such warning has remained unheeded.

4. The fact that combatants are in such medical establishments and units for medical treatment shall not be deemed to be an act harmful to the enemy; nor shall the presence of small arms and ammunition taken from such combatants and not yet handed over to the proper service.

(Reason: To conform to Article 15, and Article 16, paragraph 4, of Draft Protocol I.)

Proposal submitted by the experts of the United States

Draft Article 14

Definition of the civilian population

In paragraph 1 modify "does not take a direct part in hostilities" to read "takes no active part in the hostilities".

Retain paragraph 2 and Proposal I of paragraph 3 of Article 14. Delete Proposal II of paragraph 3 of Article 14.

Draft Article 15

Respect for and safeguarding of the civilian population

1. The civilian population as such, as well as individual civilians, shall never be made the object of attack. In particular, attacks intended to terrorize the civilian population shall be prohibited.

2. Attacks which are launched indiscriminately against civilians and military objectives shall be prohibited.

3. Civilians who are within or near military objectives run the risks resulting from any attack launched against those objectives.

4. Civilians shall never be used in an attempt, by their presence, to shield military objectives from attack.

Draft Article 16

Respect for property

Property shall not be destroyed, except in cases of unavoidable military necessity.

Draft Article 17

Precautions when attacking

When ordering or carrying out an attack the Parties to the conflict and those who plan or order military operations shall take all reasonable steps so to confine the attack that it does not extend to the civilian population and civilian objects in the vicinity of the military objective. For that purpose advance warning shall be given whenever possible.

Proposal submitted by the experts of the United Kingdom

A. General

The word "shipwrecked" should be defined as follows: The term "shipwrecked persons" means any person who is in peril at sea as a result of the destruction, loss, or disablement of the vessel or aircraft in which he was travelling, and who is in need of humanitarian assistance and care, and who refrains from any hostile act.

Medical and religious personnel

Delete the words "granted all facilities" and substitute "accorded every assistance".

Original: English

CE/COM II/83

Proposal submitted by the experts of Denmark

Draft Preamble

After the second paragraph of the Preamble, insert the following provision:

Recalling furthermore the derogations provisions contained in the International Covenant on Civil and Political Rights and other international Human Right instruments, according to which the fundamental Human Rights such as the Right to Life, Right to Human Treatment, Freedom from Slavery, Freedom of Thought, Conscience and Religion, Freedom from Ex Post Facto Criminal Legislation, can never be derogated from even in time of a public emergency which threatens the life of the nation,

Original: French

CE/COM II/84

Proposal submitted by the experts of Italy

Draft Article 15

Respect for and safeguarding of the civilian population

Replace the second sentence of paragraph 3 of this article by the following sentence:

In the event of attacks which, while directed against military objectives, are of such character as to cause harm to the civilian population, the Party which launches the attack shall take all precautions necessary to spare the civilian population as much as possible.

Original: English

CE/COM II/85

Proposal submitted by the experts of the United States*General protection of the population*

Add the following new article.

Draft Article ...

Forced movements of civilians

1. The displacement of civilians shall not be ordered or compelled except in cases where the safety of the civilians involved or imperative military reasons so demand.

2. Civilians, other than aliens subject to deportation, shall not under any circumstances be ordered or compelled to leave the territory of the State within which the armed conflict is taking place.

Proposal submitted by the experts of the German Democratic Republic

Draft Article 17

Precautions when attacking

Redraft sub-paragraph (b) to read as follows:

(b) they shall do all in their power to warn civilians threatened by the attack.

Original: English

CE/COM II/87

Proposal submitted by the experts of Indonesia and Pakistan

Draft Preamble

1. Insert, between the second and the third paragraphs, the following paragraph:

Being aware however of the need for respecting the sovereignty of the High Contracting Parties.

2. Add to the last paragraph after the word "non-combatants" the following words: "within the limits of the principle of non-interference".

Original: English

CE/COM II/88

Proposal submitted by the experts of Indonesia

Draft Article 3

Beginning and end of application

Delete the second sentence of this draft article.

Original: English

CE/COM II/89

Proposal submitted by the experts of Indonesia

Draft Article 34

Civil Defence Organizations

Delete the first paragraph of this draft article, the latter to read as follows:

In no circumstances shall the fact of having taken part in the humanitarian activities of Civil Defence Organizations be considered to be punishable.

* *

Note.

Proposals CE/Com III/C 33, PC 78, PC 81, PC 82 and CE/Com IV/24 were also submitted to the experts of Commission II.

**WRITTEN PROPOSALS
SUBMITTED BY THE EXPERTS TO COMMISSION III**

(Combatants; Journalists; Civilian Population)

Original: English

CE/COM III/C1

(c) methods and means which destroy natural human environment.

**Proposals submitted by the experts
of Australia, Canada, Federal Republic of Germany,
and the United States of America**

Original: English

CE/COM III/C 3

Draft Article 31

Prohibition of perfidy

1. It is forbidden to kill or injure by resort to perfidy. Acts designed to mislead the adversary into the belief that protection under international law will be granted constitute perfidy. Such acts include

- (a) the feigning of a situation of distress, notably through the misuse of internationally recognized protection signs,
- (b) the feigning of cease-fire, of a humanitarian negotiation or of surrender both with the intention of resuming hostilities.

2. Ruses of war are not considered as perfidy. Ruses of war are those acts such as camouflage, traps, mock operations, and misinformation, which, whilst infringing no recognized rule, are intended to mislead the enemy or to induce him to act recklessly.

Draft Article 33

Emblems of nationality

It is forbidden to make use of enemy or neutral flags, military insignia and uniforms with the intention of directly facilitating acts of combat.

Original: English

CE/COM III/C 2

Proposal submitted by the experts of Poland

Draft Article 30

Means of combat

2. It is forbidden to use the following methods and means:

- (a) methods and means which allow no distinction between military objectives on one hand and the civilian population and civilian objects on the other hand;
- (b) methods and means which cause unnecessary suffering or are particularly cruel;

**Proposal submitted by the experts
of the Federal Republic of Germany**

Draft Article 30

Means and methods of combat

1. The right of the Parties to the conflict to adopt means of injuring the enemy is not unlimited.

2. It is forbidden to use any means of combat against civilian targets. Furthermore, it is forbidden to use any means of combat against other targets if the military advantage pursued is out of proportion to the suffering caused among the civilian population. Those who use or give orders for the use of means of combat are bound to weigh the military advantage offered by the destruction of a military target against the suffering caused thereby to the civilian population.

3. It is forbidden to use means of combat in a way calculated to cause unnecessary suffering. This prohibition covers the use of means of combat which offer no greater military advantage than other available means of combat, while causing substantially greater suffering. Those who use or give orders for the use of means of combat are bound to weigh the concrete military advantages pursued against the suffering caused thereby to the adversary.

4. It is forbidden to use means of combat in a perfidious way.

(Identical title and wording for Article 18 of Draft Protocol II).

Original: English

CE/COM III/C 4

Proposal submitted by the experts of Finland

Draft Article 31

Prohibition of perfidy

It is forbidden to kill or injure by resort to perfidy. Acts betraying an enemy's confidence, such as the misuse of internationally recognized protective signs, the feigning of surrender, the use in combat of the enemy's distinctive emblems, are deemed to constitute perfidy.

**Proposal submitted by the experts
of the Federal Republic of Germany**

Draft Article 30

Means of combat

General rule

Pending the acceptance of more complete rules, the High Contracting Parties reaffirm that in cases not covered by humanitarian conventions the civilian population and the combatants shall continue to be safeguarded by the principles of the laws of nations as they result from the usages established from the laws of humanity and the dictates of the public conscience.

The purpose of this proposal, which applies also to Article 18 in Draft Protocol II, is to reaffirm the Martens clause. In Draft Protocol I, it could be placed either in Part I or in Part V, and, Draft Protocol II, either in Chapter I or in Chapter IX.

**Proposal submitted by the experts
of Czechoslovakia, the German Democratic Republic
and Hungary**

Draft Article 30

Means of combat

1. The choice of means of combat by the Parties to the conflict and by the combatants is not unlimited.

2. It is forbidden to use weapons, projectiles or substances calculated to cause unnecessary suffering or other particularly cruel methods and means.

3. It is forbidden to use weapons, projectiles or other means and methods which because of their uncontrollable effects in terms of time and space affect military objectives and protected persons or other protected objects indiscriminately.

4. It is forbidden to use weapons, projectiles or other means and methods which upset the balance of the natural living and environmental conditions.

5. In cases for which no provision is made in the present Protocol, the principle of humanity, the rules and principles of international law and the dictates of the public conscience shall continue to safeguard populations and combatants pending the adoption of fuller regulations.

(Paragraph 5 may also be part of the Preamble or figure as a separate article.)

**Proposal submitted by the experts
of the United Kingdom**

Draft Article 32

Recognized signs

It is forbidden to make use of the flag of truce, the

protective sign of the red cross (red crescent, red lion and sun), the protective sign for cultural property and other protective signs specified in applicable international conventions and in Articles . . . of the present Protocol for purposes other than those specified in those conventions and the present Protocol.

**Proposal submitted by the experts
of the Netherlands**

Draft Article 36

Aircraft occupants

1. The occupants of aircraft who parachute with orange-coloured parachutes therewith show their will to surrender and shall not be attacked.

2. The occupants of aircraft in distress who are compelled to make a forced landing shall not be attacked during their descent or landing unless their attitude is hostile, or the landing is performed on or in the neighbourhood of a military object.

Proposal submitted by the experts of Israel

Draft Article 31

Prohibition of perfidy

1. I feel that the first sentence of the paragraph is too narrow in its scope. It seems that not only to kill or injure by perfidy should be forbidden, but also any other perfidious act. Therefore I would suggest that the first sentence in the paragraph should read as follows:

“ Any act of perfidy towards the enemy is forbidden ”.

2. The word “ Unlawful ” in the beginning of the second sentence of the paragraph seems to be superfluous. Acts of perfidy are unlawful by themselves and it is needless to add to them the adjective “ unlawful ”.

3. In order to avoid a contention that the examples of acts of perfidy mentioned in the second sentence of the paragraph are exhaustive, I would suggest to add to the beginning of the second sentence of the paragraph, before the words “ acts betraying ”, the following words:

“ Without affecting the general principle ”.

**Proposal submitted by the experts
of the United States of America**

Draft Article 36

Aircraft occupants

The occupants of aircraft in distress who parachute to save their lives or who are compelled to make a forced

landing shall not be attacked during their descent or landing, unless their attitude is hostile. They shall, if they have landed in territory controlled by their enemy, and are not in a hostile attitude, be afforded a reasonable opportunity to surrender.

Original: English

CE/COM III/C 11

**Proposal submitted by the experts
of the United States of America**

Draft Article 34

Safeguard of an enemy hors de combat

1. It is forbidden deliberately to kill or to wound an enemy combatant who is unconscious or who, having laid down his arms or no longer having means of defence,

(a) has surrendered unconditionally or has clearly expressed an intention to surrender and to abstain from any hostile act, and,

(b) is not attempting to escape.

2. It is forbidden to announce or to threaten, expressly or by implication, that enemy survivors will be killed and that persons seeking to surrender unconditionally will nevertheless be attacked.

Draft Article 35

Conditions of capture and surrender

Delete.

Original: English

CE/COM III/C 12

**Proposal submitted by the experts
of the United States of America**

Draft Article 38

Guerrilla fighters

If captured, the following shall be treated as prisoners of war under the Third Convention:

Members of militias or volunteer corps including those of organized resistance movements who do not belong to the regular forces but who belong to a Party to the conflict provided they fulfil the following conditions:

(a) they are organized and under the orders of a commander who is responsible to a Party to the conflict for the conduct of his subordinates, and show in their military activities their combatant character by

(b) distinguishing themselves from civilians, either by carrying arms openly, by wearing a distinctive sign recognizable at a distance, or by any other equally effective means, and

(c) they conduct their operations in accordance with the laws and customs of war.

Draft Article . . .

Any person not entitled to more favoured treatment under the Conventions and this Protocol shall, in the event of his capture, internment, or detention in relation to the armed conflict, be afforded guarantees and treatment not less favorable than those laid down in Article 3 common to the Conventions.

(Cf. Article 38, para. 2 of Draft Protocol I)

Original: English

CE/COM III/C 13

**Proposal submitted by the experts
of the United States of America**

Draft Article 30

Means of combat

1. The right of combatants to adopt means of injuring the enemy is not unlimited.

2. It is forbidden to use weapons, projectiles, substances, methods and means calculated to cause unnecessary suffering.

3. In cases for which no provision is made in the present Protocol, civilians and combatants remain under the protection and the rule of customary international law and the principle of humanity.

Original: English

CE/COM III/C 14

**Proposal submitted by the experts
of Brazil**

Draft Article 30

Means of combat

1. (no change)

2. Delete the adverb "particularly"

3. Delete the phrase "and the dictates of the public conscience", and insert this paragraph as paragraph 3 of Article 1 of the Protocol.

Draft Article 1

Scope of the present Protocol

1. (no change)

2. (no change)

3. Pending the adoption of fuller regulations, the principles of humanity shall continue to safeguard populations and combatants in cases for which no provision is made in the present Protocol.

Draft Article 31

Prohibition of perfidy

1. In the second sentence, delete "unlawful".

Draft Article 34

Safeguard of an enemy hors de combat

1. (no change)
2. It is forbidden to take or kill hostages (or "the taking and execution of hostages...")
3. (Present paragraph 2: It is forbidden to decide to leave no survivors, etc.)

Draft Article 35

Conditions of capture and surrender

1. (no change)
2. (no change)
3. A captor shall provide for persons falling into his power even if he decides to release them. (Article 34, paragraph 3)
4. Nevertheless, sentences may subsequently be passed for infringements of the law of armed conflict, consistent with the procedure recognized in international law. (Article 34, paragraph 4)

Original: English

CE/COM III/C 15

Proposal submitted by the experts of Norway

Draft Article 38

Guerrilla fighters

1. In the event of their capture, members of militias or volunteer corps, including those of organized resistance or independence movements not belonging to the regular armed forces but belonging to a Party to the conflict, even in the case of a Government or authority not recognized by the Detaining Power, shall be treated as prisoners of war within the meaning of the Third Convention, provided that the following conditions are fulfilled:

- (a) that hostilities have reached such a level as to make application of the Protocol a humanitarian necessity,
- (b) that the Government or authority in question have declared their willingness to apply the Conventions and the present Protocol in the conflict,
- (c) that the members of such militias, volunteer corps or organized resistance or independence movements are under the orders of a commander responsible for the conduct of his subordinates.

2. Combatants who are not covered by the foregoing provisions shall, in the event of their capture, be afforded guarantees not less favourable than those laid down in Article 3 common to the Conventions.

Original: French

CE/COM III/C 16

Proposal submitted by the experts of Egypt, Saudi Arabia and the Sudan

Draft Article 31

Prohibition of perfidy

From the second sentence of paragraph 1, delete the following words:

"... the use in combat of the enemy's distinctive emblems ..."

Original: French

CE/COM III/C 17

Proposal submitted by the experts of Romania

Draft Article 30

Means of combat

2. Add the following sentence: "It is forbidden to employ weapons of mass destruction, in particular nuclear and thermo-nuclear arms, and any other weapon whereof the nature is such that its destructive effects are not limited to the annihilation of combatants and military objectives but also endanger the civilian population, non-military objects and the environment".

3. Insert, after the words "public conscience" in paragraph 3, the phrase "and the principles stated in United Nations General Assembly resolution 1653 (XVI) entitled Declaration concerning the prohibition of the use of nuclear and thermo-nuclear weapons."

Draft Article 38

Guerrilla fighters

1. Delete sub-paragraphs (b) and (c).

Draft Article 39

Organization and discipline

Replace the second sentence by: The High Contracting Parties undertake to enforce, by their internal disciplinary systems, respect of the present rules and of the other rules applicable in armed conflicts.

Original: English

CE/COM III/C 18

Proposal submitted by the experts of Canada

Draft Article 30

Means of combat

1. Delete "combatants" and substitute therefor "the belligerents".

Original: French

CE/COM III/C 19

Proposal submitted by the experts of Hungary

Draft Article 39

Organization and discipline

Add the words "of international law" after the words "and of the other rules". The second phrase of the article would then be worded as follows:

Such disciplinary system shall enforce respect of the present rules and of the other rules of international law applicable in armed conflicts.

Original: English

CE/COM III/C 20

**Proposal submitted by the experts
of the United Kingdom**

Draft Article 37

Independent missions

1. Delete the first two lines and substitute "Members of armed forces and other combatants complying with the conditions laid down in Article 4 A (2) of the Third Convention as supplemented by the present Protocol who . . ."
2. Delete as far as "enter" in line 2 and substitute the same words as suggested in (a) above.
3. Delete.

Original: English

CE/COM III/C 21

**Proposal submitted by the experts
of the United Kingdom**

Draft Article 39

Organization and discipline

After "armed forces" insert "including militia and volunteer corps covered by Article 38 of the present Protocol".

Original: English

CE/COM III/C 22

**Proposal submitted by the experts
of the United Kingdom**

Draft Article 30

Means of combat

1. Combatants' choice of means of combat is not unlimited.
2. It is forbidden to use weapons, projectiles or substances calculated to cause unnecessary suffering.
3. Delete.

New Paragraph in the Preamble to Protocol I

incorporating the Martens clause in an updated form, as follows:

Reaffirming that, until a more complete code of the laws of war has been issued, in cases not included in the present Protocol, civilians and combatants remain under the protection and the rule of the principles of customary international law as they result from established international usages, the principles of humanity and the dictates of the public conscience.

Original: English

CE/COM III/C 23

**Proposal submitted by the experts
of Egypt, Libya, Saudi Arabia and the Sudan**

Draft Article 33

Emblems of nationality

It is forbidden to make use of enemy or neutral flags, military insignia and uniforms.

Original: English

CE/COM III/C 24

Proposal submitted by the experts of Indonesia

Draft Article 36

Aircraft occupants

1. One could say that the occupants of aircraft in distress are parachuting to save their lives, but in the second line of Article 36 starting with "or who are compelled to make a forced landing" one must say "or the aircraft which is to make a forced landing".
2. The second line says "shall not be attacked during their descent or landing unless their attitude is hostile".

When we speak of the aircraft in distress or the aircraft which is compelled to make a forced landing, and which regards its occupants, we are all aware of its fate.

We cannot judge immediately their behaviour, and it takes some time to be aware of their attitude or to know about their hostile attitude.

This article gives the chances for an immediate attack while not knowing the exact attitude.

So I would like to add the words "without previous sufficient warning" before the word attacked.

This previous sufficient warning is very important as regards the fate of occupants who are at the very first moment of parachuting, or of the aircraft which is compelled to make a forced landing, in order to know their real behaviour.

In this case a sufficient warning should be given before coming to the decision to attack.

Original: English

CE/COM III/C 25

**Proposal submitted by the experts
of the German Democratic Republic**

Draft Article 36

Aircraft occupants

1. The occupants of aircraft in distress who parachute to save their lives shall not be attacked during their descent unless their attitude is hostile.

Draft Article 33

Emblems of nationality

2. Delete the last sentence.

**Proposal submitted by the experts
of the Netherlands**

Part III A (new)

Draft Article 39 b:

Without prejudice to the generality of the provisions of Articles 30, 40 and 45, the following weapons shall be prohibited for use in circumstances where they may affect the civilian population:

1. ... [delayed action weapons, the dangerous and perfidious effect of which are likely to be indiscriminate and to cause suffering to the civilian population];*
2. ... [napalm bombs and other incendiary weapons];*
- 3 ... [bombs which for their effect depend upon fragmentation into great numbers of small calibre pieces or the release of great numbers of small calibre pellets].*

* The words between the square brackets are meant to convey a *general* description of the weapons involved. The *precise* description of those weapons should be undertaken by experts in this field.

Original: French

CE/COM III/C 27

Proposal submitted by the experts of France

Draft Article 30

Means of combat

1. The choice of means of combat by parties to an armed conflict is not unlimited.

Original: English

CE/COM III/C 28

Proposal submitted by the experts of Israel

Draft Article 35

Conditions of capture and surrender

It seems that the proposed Article 35 paragraph 2 (a) may establish an unjustified discrimination between combatants fulfilling the conditions laid down in the paragraph and captured in a territory taken by an enemy, and those combatants, also fulfilling the conditions of the paragraph, but captured in the enemy's own territory, which was not taken by him.

There appears to be no solid ground to distinguish between the two categories of combatants which are virtually *hors de combat*. It is suggested that the words "in territory taken, even temporarily, by an enemy", in the second line of paragraph 2 (a), would be replaced by the following words: "in territory under the control of the enemy".

The term "under the control of the enemy" seems to include a territory *taken* by the enemy and the enemy's *own* territory.

Proposal submitted by the experts of Canada

Draft Article 35

Conditions of capture and surrender

1. Delete "combatant" and substitute therefor "person".

Original: French

CE/COM III/C 30

Proposal submitted by the experts of Belgium

Draft Article 36

Aircraft occupants

The occupants of an aircraft in distress shall never be attacked when they are obviously *hors de combat*.

(The experts of Egypt, Iraq, Kuwait, Lebanon, Libya and Saudi Arabia also endorsed this proposal.)

Original: English

CE/COM III/C 31

**Proposals submitted by the experts
of the Philippines**

Draft Article 33

Emblems of nationality

The use of enemy or neutral flags, military insignia and uniforms is forbidden.

Rationale: Article 33, as presently worded, would admit of a *proper* use of enemy or neutral flags, etc., in situations other than combat. It is believed that the prohibition should be total; it is quite inconceivable that there could be proper use of these emblems. And if there be such use, it is suggested that the same be enumerated in the article.

Draft Article 34

Safeguard of an enemy hors de combat

4. Delete.

Rationale: As presently worded, the cited paragraph 4 of Article 34 is quite equivocal; it may lead one to question present practice relative to the trial of prisoners of war, as it seems, indirectly at least, to recognize or sanction such already established judicial procedure.

Draft Article 36

Aircraft occupants

It is proposed that this Article be reworded to clearly define the following terms/concepts:

- (a) in distress;
- (b) parachute; and
- (c) hostile attitude.

Rationale: "Distress" may involve varying degrees. To "parachute" may not be the only means of saving life in the situation contemplated. "Hostile attitude" is too vague and general.

Original: French

CE/COM III/C 32

Proposal submitted by the experts of Hungary

Draft Article 37

Independent missions

2. After "with the intent of carrying out destruction", insert "of military targets."

Original: English

CE/COM III/C 33

Proposal submitted by the experts of Egypt, Finland, Mexico, Norway, Sweden, Switzerland and Yugoslavia

Draft Article 30

Means and methods of combat

3. It is forbidden to use weapons and methods of warfare which are likely to affect combatants and civilians indiscriminately.

4. Delayed-action weapons, the dangerous and perfidious effects of which are likely to be indiscriminate and to cause suffering to the civilian population, are prohibited.

5. Incendiary weapons, containing napalm or phosphorous, shall be prohibited.

6. Bombs which for their effect depend upon fragmentation into great numbers of small calibre pieces or the release of great numbers of small calibre pellets shall be prohibited.

7. The constant development of new weapons and methods of warfare places an obligation upon States to determine individually—wherever they do not attain international agreements—whether the use of particular new weapons or methods of warfare is compatible with the principles contained in this article.

8. The prohibitions contained in this article are without prejudice to any prohibitions of weapons and methods of warfare which are found in other articles of the present Protocol or in other instruments.

(For the title of Part III, replace the word "Combatants" by the words "Means and methods of combat"; the present text, containing the Martens clause, is placed elsewhere in Draft Protocol I)

(This proposal was also endorsed by the experts of Algeria, Austria, Kuwait, Libya, Mali, Saudi Arabia and Syria)

Original: French

CE/COM III/C 34

Proposal submitted by the experts of Brazil

Draft Article 37

Independent missions

Spies shall not be condemned without previous trial.

Original: French

CE/COM III/C 35

Proposal submitted by the experts of Switzerland

Draft Article 36

Aircraft occupants

Add the following as the second paragraph:

"The use of misleading signals and messages of distress by aircraft occupants is forbidden."

Original: English

CE/COM III/C 36

Proposal submitted by the experts of Egypt

Draft Article 37

Independent missions

1. Add the words: "wearing their uniform" to paragraphs 1 and 2 of Art. 37 after the words: "Members of armed forces".

2. The words: "fulfilling the conditions of Article 4 of the Third Convention" in paragraphs 1 and 2 to be replaced by the following: "fulfilling the conditions laid down in Article 38 of the present Protocol."

Original: French

CE/COM III/C 37

Proposal submitted by the experts of France

Draft Article 37

Independent missions

1. Insert in line 3 between "enter" and "territory", the words "or remain on".

2. Insert in line 4 between "destruction" and "shall", the words "of a military nature".

Original: English

CE/COM III/C 38

Proposal submitted by the experts of Norway, Romania and the Sudan

Draft Article 32

Recognized signs

Add at the end (after conventions) the words "and

other international instruments, in particular that of the United Nations ”.

Draft Article 33

Emblems of nationality

Change the heading to read “Emblems of nationality and of international forces ”.

Maintain the body of the text as presented by the ICRC.

Original: English

CE/COM III/C 39

**Proposal submitted by the experts
of the Netherlands**

Draft Article 38

Guerrilla fighters

1. Sub-paragraphs (a), (b) and (c) to read as follows:

- (a) that of conducting their operations in accordance with the principles of the law of armed conflicts and of the rules laid down in the present Protocol;
- (b) that of distinguishing themselves in their operations from the civilian population, either by carrying arms openly, or by wearing a distinctive sign, or by any other means;
- (c) that of being organized and commanded by a person responsible for his subordinates.

Original: English

CE/COM III/C 40

Proposal submitted by the experts of Sweden

Draft Article 38

Guerrilla fighters

2. Individual infringements of the foregoing conditions shall not entail forfeiture of the right to prisoner-of-war treatment for the perpetrator or other members of the organization. The perpetrator may, however, be prosecuted for any war crime which he himself may have committed.

Original: English

CE/COM III/C 41

Proposal submitted by the experts of Indonesia

Comment on Draft Article 38

Guerrilla fighters

This method of warfare adopted by many countries will be applied for many years to come. It is necessarily a logical consequence of the expansion of the techniques of war. In many advanced countries, the stress is mostly on the sophistication of weapons and techniques, but in many young countries the emphasis of their defence

capability is on a combination of manpower, geographical considerations and nationalism. Indeed in many young countries guerrilla warfare has become part and parcel of the national doctrine of defence. Needless to say, the guerrilla warfare we have in mind is guerrilla warfare in the context of international armed conflict.

In my delegation's view, the provisions mentioned in Article 38 are taken from the articles of the Hague Rules (Convention IV), especially Article 1. If we consider further the spirit of Article 2 of the Hague Rules, there is no place for guerrilla warfare. It would, of course, place guerrilla warfare in an almost impossible situation if we have to apply fully the provisions mentioned in the Rules.

Taking the “distinctive sign”, it may be said that this has become less and less significant in modern warfare, in many cases even only ornamental. In an automated battle field, there is not much left of the “distinctive sign”.

More important is this problem of “distinctive sign recognizable from a distance” in guerrilla warfare. The mere element of surprise makes this provision untenable. Taking camouflage as a ruse, as an acceptable means of conduct of war, this provision is not relevant for guerrilla warfare.

The provision of carrying arms openly, too, is difficult to associate with the conduct of guerrilla warfare. Furthermore, we should not have the notion of guerrilla warfare as being only the conduct of hostilities with weapons. It could be much more, covering a broad area of subjects or targets that may be of use to the enemy.

Experience has proved that guerrilla warfare could be successful only if it receives full assistance from the population. It is in the interest of the guerrilla fighters themselves not to cause unnecessary casualties among the population.

Original: English

CE/COM III/C 42

**Proposal submitted by the experts
of the United Kingdom**

Draft Article 38

Guerrilla fighters

1. In the event of their capture, members of militias or volunteer corps, including those of organised resistance movements not belonging (“appartenant”) to the regular armed forces but operating in association with a Party to the conflict, shall be treated as prisoners of war within the meaning of the Third Convention, provided that such militias, volunteer corps or organised resistance movements fulfil the following conditions:

- (a) that they conduct their operations in accordance with the laws and customs of war;
- (b) that they show in their operations their combatant character by either carrying arms openly or distinguishing themselves from the civil population by a fixed distinctive sign recognisable at a distance; and
- (c) that they are organised and under the orders of a commander responsible for his subordinates' conduct either to a Party to the conflict or to an effective authority having the characteristics of a Government.

2. Infringements of conditions (a) and (b) of paragraph 1 by individual members of the militia, volunteer corps or resistance group shall not deprive such individuals of their prisoner-of-war status provided that the majority of its members have complied with those conditions and that the group has met the remaining conditions on all occasions.

3. Combatants infringing the foregoing conditions shall, in the event of their capture, be afforded treatment not less favourable than that laid down in Article 3 common to the Conventions.

Original: English

CE/COM III/C 43

Proposal submitted by the experts of Canada

Draft Article 38

Guerrilla fighters

Delete present heading and substitute therefor: "Members of militias or volunteer corps, including those of organized resistance or independence movements not belonging to the regular armed forces of a Party".

3. Persons not fulfilling the foregoing conditions shall, in the event of their capture, be afforded guarantees not less favourable than those laid down in Article 3 common to the Conventions.

Original: English

CE/COM III/C 44

Proposal submitted by the experts of Jordan

Draft Article 30

Means of combat

1. (no change)

2. In particular it is forbidden to use

(a) weapons and means of warfare which endanger the civil population and are indiscriminate in their effects on combatants and civilian alike,

(b) weapons and means of warfare which are calculated to cause unnecessary suffering.

3. Without prejudice to the generality and comprehensiveness of the above two principles, the following weapons or means of destruction of human beings should never be used:

nuclear, biological, bacteriological, and chemical weapons.

4. Steps should be taken to outlaw the above-mentioned weapons and means of warfare and embody same in international treaties.

Original: French

CE/COM III/C 45

**Proposal submitted by the experts
of the Republic of Vietnam**

Draft Article 31

Prohibition of perfidy

1. It is forbidden to kill or injure by resort to perfidy.

Acts betraying an enemy's confidence, such as the abuse of an international convention, truce or humanitarian negotiation, the misuse of internationally recognized protective signs, the feigning of surrender, the use in combat of the enemy's distinctive emblems, the resort to disguise as civilians, are deemed to constitute perfidy.

2. (no change.)

Original: English

CE/COM III/C 46

Proposal submitted by the experts of Australia

Draft Article 34

Safeguard of an enemy hors de combat

2. It is forbidden to order that there shall be no survivors or that no prisoners shall be taken, or to threaten an adversary therewith and to conduct the struggle on such basis.

Original: English

CE/COM III/C 47

Proposal submitted by the experts of Canada

Draft Article 37

Independent missions

1 and 2. Insert the word "Uniformed" at the beginning of the first sentence in each paragraph.

In the first sentence of each paragraph, delete the word "combatants" and substitute therefor the word "persons."

Original: French

CE/COM III/C 48

Proposal submitted by the experts of Italy

Draft Article 38

Guerrilla fighters

1. Delete the words "... even in the case of a government or of an authority not recognized by the Detaining Power...".

Original: English

CE/COM III/C 49

Proposal submitted by the experts of Syria

Draft Article 36

Aircraft occupants

Delete the whole article.

Independent missions

In paragraphs 1 and 2, after the sentence "Members of armed forces and other combatants", insert the following: "wearing uniforms or distinctive signs".

Draft Article 38

Guerrilla fighters

1. In the event of their capture, members of militias or volunteer corps, including those of organized resistance or liberation movements not belonging to the regular armed forces but belonging to a Party to the conflict or who are themselves a Party to the conflict, even in the case of a government or of an authority or a movement not recognized by the Detaining Power, shall be treated as prisoners of war within the meaning of the Third Convention, provided that such militias, volunteer corps or organized resistance or liberation movements fulfil the following conditions:

- (a) that in their operations they comply, within their possibilities, with the requirements of the principles of the law of armed conflicts and of the rules laid down in the present Protocol;

Draft Article ...

In any case not covered by the preceding articles, persons participating in resistance movements and freedom-fighters in territories under colonial and alien domination and foreign occupation who are struggling for their liberation and self-determination should, in case of arrest, be treated as prisoners of war in accordance with the principles of the Hague Convention of 1907, the Geneva Conventions of 1949 and the present Protocol.

Original: French

CE/COM III/C 50

**Proposal submitted by the experts
of the Republic of Vietnam**

Draft Article 38

Guerrilla fighters

1. In the event of their capture, members of militias or volunteer corps, including those of organized resistance movements not belonging to the regular armed forces but belonging to a Party to the conflict, shall be treated as prisoners of war within the meaning of the Third Convention, provided that they fulfil the following conditions:

- (a) that in their operations they comply with the laws and customs of war;
- (b) that in their operations they show their combatant status by openly carrying their arms and that they distinguish themselves from the civilian population by a fixed distinctive sign recognizable from a distance;
- (c) that they be organized and under the orders of a person responsible for his subordinates.

Original: French

CE/COM III/C 51-52

Proposal submitted by the experts of France

Draft Article 38

Guerrilla fighters

4. Members of regular armed forces who engage in guerrilla operations, yet comply with the conditions of the regulations in force, shall, in the event of their capture, be afforded the status of prisoners of war.

Original: French

CE/COM III/C 53

Proposal submitted by the experts of Brazil

Draft Article 38

Guerrilla fighters

Replace the present title by:
"Combatants not belonging to the regular armed forces".

Original: English

CE/COM III/C 54

**Proposal submitted by the experts
of the Philippines**

Draft Article 38

Guerrilla fighters

1. In the event of their capture, members of organized resistance or independence movements not belonging to the regular armed forces but belonging to a Party to the conflict, even in the case of a government or of an authority not recognized by the Detaining Power, shall be treated as prisoners of war within the meaning of the Third Convention, provided that such organized resistance or independence movements fulfil the following conditions:

- (a) that in their operations they comply with the requirements of the principles of the law of armed conflicts and of the rules laid down in the present Protocol; and
- (b) that they are under a commander responsible for his subordinates.

2. Combatants not fulfilling the foregoing conditions shall, in the event of their capture, be likewise afforded guarantees as laid down in Article 3 common to the Conventions.

Original: English

CE/COM III/C 55

Proposal submitted by the experts of Norway

Draft Article 31

Prohibition of perfidy

1. It is forbidden to kill or injure by resort to perfidy.

Acts betraying an enemy's confidence, such as the abuse of an international convention, truce or humanitarian negotiation, the misuse of internationally recognized protective signs, the feigning of surrender, the use in combat of the enemy's distinctive emblems, the creation, prior to attack, of an impression with the enemy of being a non-combatant, are deemed to constitute perfidy.

2. (no change)
3. Attacks from ambush, even if carried out in civilian clothing, are not prohibited.

Original: English

CE/COM III/C 56

Proposal submitted by the experts of Australia, Belgium, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America

Draft Article 30

Means of combat

1. The right of the Parties to the conflict to adopt means of injuring the enemy is not unlimited.
2. It is forbidden to use weapons, projectiles, substances, or methods calculated to cause unnecessary suffering.
3. In the development of new weapons or methods of warfare States have an obligation to determine whether the use of a particular new weapon or method of warfare will be compatible with the principle that methods and means of armed conflict shall not be employed in a manner calculated to cause unnecessary suffering.

(This proposal replaces the amendments contained in documents CE/COM III/C 3, C 13, C 18, C 22 and C 27. The co-sponsors will propose a separate article embodying existing Article 30 (3) of the ICRC draft.)

Original: Spanish

CE/COM III/C 57

Proposal submitted by the experts of Spain

Draft Article 30

Means and methods of combat

1. The choice of means and methods of combat by the Parties to the conflict is not unlimited.
2. Means and methods of combat which are prohibited are those which:
 - (a) have uncontrollable effects, or harm without distinction combatants and the civilian population, or military objectives and non-military objects; or
 - (b) cause unnecessary suffering.
3. It is prohibited to use delayed-action weapons, incendiary weapons containing napalm or phosphorus, fragmentation bombs and other weapons, projectiles or substances that have the effects or cause the suffering referred to in the preceding paragraph;

4. Weapons of mass destruction, blind, poisonous or cruel weapons, and weapons with indiscriminate effects are contrary to the dictates of humanity. Members of the international community must renounce such weapons absolutely.

5. The prohibitions provided for in this article shall not affect any other prohibitions on methods and means of combat laid down by international treaty or customary law.

(The experts of Spain consider that the clause known as the "Martens clause" should not be included in this article, but, given its general scope, should be included in the Preamble or in Part I (General Provisions) of the Draft Protocol.)

Original: English

CE/COM III/C 58

Proposal submitted by the experts of Australia, Belgium, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America

Draft Article 30

Means of Combat

Delete Article 30 (3) and insert the following as a separate article:

In cases not included in the present Protocol or other applicable conventions, civilians and combatants remain under the protection and the rule of the principles of international law, as they result from the principles of humanity and the dictates of the public conscience.

Original: English

CE/COM III/C 59

Proposal submitted by the experts of Australia, Belgium, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America

Draft Article 30

Means of combat

1. The right of the Parties to the conflict to adopt means of injuring the enemy is not unlimited.
2. It is forbidden to use weapons, projectiles, substances, or methods calculated to cause unnecessary suffering.
3. In the development of new weapons or methods of warfare States have an obligation to determine whether the use of a particular new weapon or method of warfare will be compatible with the principle that methods and means of armed conflict shall not be employed in a manner calculated to cause unnecessary suffering.

(This proposal replaces the amendments contained in documents CE/COM III/C 3, C 13, C 18, and C 22. The co-sponsors will propose a separate article embodying existing Article 30 (3) of the ICRC draft.)

Proposal submitted by the experts of Australia, Belgium, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America

Draft Article 32

Recognized signs

It is forbidden to make use of the flag of truce, the protective sign of the red cross (red crescent, red lion and sun), the protective sign for cultural property and other protective signs specified in widely recognized international conventions and in Articles ... of the present Protocol for purposes other than those specified in those conventions and the present Protocol.

(This proposal replaces the amendments contained in CE/COM III/C 7.)

Proposal submitted by the experts of Australia, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America

Draft Article 34

Safeguard of an enemy hors de combat

Draft Article 35

Conditions of capture and surrender

Replace Articles 34 and 35 with the following:

1. It is forbidden to kill or to wound an adversary who is unconscious or who, having laid down his arms or no longer having means of defence,

(a) has surrendered, or has clearly expressed an intention to surrender and to abstain from any hostile act, and

(b) is not attempting to escape.

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

This proposal replaces the amendments contained in documents CE/COM III/C 11, C 29, and C 46. The co-sponsors intend to propose a provision embodying the principle contained in Article 34 (3) of the ICRC draft.)

Proposal submitted by the experts of Australia, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America

Draft Article 37

Independent missions

1. Members of armed forces in uniform and others

complying with the conditions laid down in Article 38 of the present Protocol who are on territory controlled by an enemy in order to gather or transmit information of a military nature shall not be considered as spies.

2. Members of armed forces in uniform and others complying with the conditions laid down in Article 38 of the present Protocol who are on territory controlled by an enemy in order to carry out destruction shall not be considered as saboteurs.

3. In the event of their capture, persons referred to in the two preceding paragraphs shall be prisoners of war.

(This proposal replaces the amendments contained in documents CE/COM III/C 20 and C 47.)

Proposal submitted by the experts of Australia, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America

Draft Article 38

Guerrilla fighters

Replace the present title by "Irregular forces".

1. In the event of their capture, members of militias or volunteer corps, including those of organized resistance movements not belonging to the regular armed forces but belonging to a Party to the conflict, shall be prisoners of war within the meaning of the Third Convention, provided that such militias, volunteer corps or organized resistance movements fulfil the following conditions:

(a) that they conduct their operations in accordance with the laws and customs of war;

(b) that they show in their operations their combatant character by either carrying arms openly or distinguishing themselves from the civil population by a fixed distinctive sign recognizable at a distance; and

(c) that they are organized and under the orders of a commander responsible for his subordinates' conduct to a Party to the conflict.

2. Infringements of conditions (a) or (b), or both, of paragraph 1 by individual members of the militia, volunteer corps or resistance group shall not deprive the other members of the group of prisoner-of-war status provided that the group as a whole has complied with condition (c) of paragraph 1 on all occasions.

Draft Article . . .

Any person not entitled to more favourable treatment under the Conventions and the present Protocol shall, in the event of his capture, internment, or detention in relation to the armed conflict, be afforded treatment not less favourable than that laid down in Article 3 common to the Conventions.

(Cf. Article 38, para. 3 of Draft Protocol I. This proposal replaces the amendments contained in documents CE/COM III/C 12, C 42, and C 43.)

Original: English

CE/COM III/C 64

Proposal submitted by the experts of Australia, Belgium, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America

Draft Article 39

Organization and Discipline

1 After "Armed forces" insert "including irregular forces covered by Article 38 of the present Protocol".

2 After "and of the other rules" insert "of international law".

(This amendment replaces the amendments contained in document CE/COM III/C 21.)

Original: French

CE/COM III/C 65

Proposal submitted by the experts of France

Draft Article 34

Enemy to be considered hors de combat

The following shall be considered as *hors de combat*:

- (a) a wounded enemy who has ceased to fight;
- (b) an enemy captured by force or by surprise during the fighting;
- (c) an enemy who has made an act of surrender.

Draft Article 35

Safeguard of an enemy hors de combat

- (a) Even before the enemy is *hors de combat*, it is forbidden to declare that enemy survivors will be killed, or that no prisoners will be taken, to so threaten an enemy and to conduct the fight accordingly.
- (b) It is in all circumstances forbidden to kill, wound or maltreat an enemy who is *hors de combat*.
- (c) The enemy who is *hors de combat* must be treated humanely; the procedure laid down in the Third Convention for the treatment of prisoners of war should be applied as soon as possible; medical care should be given, to the greatest extent possible, to those who need it.
- (d) The authorities of the Party into whose power the enemy who are *hors de combat* have fallen must provide for the latter, even should those authorities decide to release them.

Original: French

CE/COM III/C 66

Proposal submitted by the experts of Brazil

Draft Article 38

Guerrilla fighters

1. Sub-paragraphs (a) and (b) to read as follows:

- (a) that in their operations they comply with the rules

of the law of armed conflicts and the rules laid down in the present Protocol;

- (b) that in their operations they show their combatant status by carrying arms openly and that they distinguish themselves from the civilian population by wearing a fixed distinctive sign recognizable at distance.

Original: English

CE/COM III/C 67

Proposal submitted by the experts of Sweden

Draft Article 34

Safeguard of an enemy hors de combat

Add, as sub-paragraph 2A, of Article 34 the following provision (from Article 4 of Protocol II):

It is forbidden, in particular, to use torture; Parties to a conflict shall take all necessary measures to ensure that no persons under their command use torture, or issue orders for the use of torture or condone acts of torture.

Original: English

CE/COM III/C 68-69

Proposal submitted by the experts of Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary and Poland

Draft Article 30

Means and methods of combat

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

(Paragraph 5 should be a separate article. This proposal replaces documents CE/COM/C 2 and 6.)

Original: English

CE/COM III/C 70

Proposal submitted by the experts of Australia, Belgium, Brazil, Canada, the Federal Republic of Germany, Israel, the Philippines, the United States of America and the Republic of Vietnam

Draft Article 31

Prohibition of perfidy

1. It is forbidden to kill or injure by resort to perfidy.

Acts designed to mislead the adversary into the belief that protection under international law will be granted constitute perfidy. Such acts include, *inter alia*, the following examples when carried out with the intention of committing or resuming hostilities:

- (a) the feigning of a situation of distress, notably through the misuse of internationally recognized protection signs,
- (b) the feigning of cease-fire, of a humanitarian negotiation or of surrender,
- (c) the disguising of combatants as civilians.

2. Ruses of war are not considered as perfidy. Ruses of war are those acts such as camouflage, traps, mock operations and misinformation, which, whilst infringing no recognized rule, are intended to mislead the enemy or to induce him to act recklessly.

(This proposal replaces those contained in documents CE/COM III/C 1, 9, 14 and 45.)

Original: English

CE/COM III/C 71

**Proposal submitted by the experts of
Australia, Belgium, Canada,
the Federal Republic of Germany,
Israel, the Philippines, the United States
of America and the Republic of Vietnam**

Draft Article 33

Enemy and neutral emblems

It is forbidden to make use of enemy or neutral flags, distinctive emblems, military insignia and uniforms in such a way that it facilitates acts of combat.

(This proposal replaces those contained in documents CE/COM III/C 1, Corr. 1 and CE/COM III/C 31.)

Original: English

CE/COM III/C 72

**Proposal submitted by the experts
of Byelorussia, Poland and the U.S.S.R.**

Draft Article 38

Irregular forces

1. In the event of their capture, members of militias or volunteer corps, including those of resistance movements or national liberation movements against colonial domination, not belonging to the regular armed forces but belonging to a Party to the conflict, even in the case of a government or of an authority not recognised by the Detaining Power, and operating in or outside their own territory, even if this territory is occupied, shall be prisoners of war within the meaning of the Third Convention, provided that such militias or volunteer corps, including resistance movements or national liberation movements against colonial domination, fulfil the following conditions:

- (a) that they conduct their operations in accordance with the laws and customs of war;
- (b) that in their operations they distinguish themselves from the civilian population;

(c) that they are organized and commanded by a person responsible for his subordinates.

2. Individual infringements of the foregoing conditions shall not entail forfeiture of prisoner-of-war status for the other members of the organization who have observed those conditions.

Original: English

CE/COM III/C 73

**Proposal submitted by the experts
of Australia, Belgium, Canada,
the Federal Republic of Germany,
Norway, Romania, the Sudan, the United Kingdom
and the United States of America**

Draft Article 32

Recognized signs

1. It is forbidden to make use of the flag of truce, the protective sign of the red cross (red crescent, red lion and sun), the protective sign for cultural property and the protective signs specified in Articles . . . of the present Protocol for purposes other than those specified in the conventions establishing those signs and in the present Protocol.

2. It is forbidden to make use of the sign of the United Nations except to the extent authorized by the Secretary-General.

(This proposal replaces the amendments contained in CE/COM III/C 38 and C 60.)

Original: French

CE/COM III/C 74

**Explanatory statement submitted by the
experts of France**

Article 37

Independent missions

Article 38

Guerrilla fighters

The struggle on the territory controlled by the enemy against the latter may be:

1. Carried out using various special methods of action such as:

- the collecting and transmission of military information,
- the destruction of military targets,
- guerrilla warfare, as a method of attack used by the weaker party against the stronger, taking advantage of occasional favourable conditions;

2. carried out by different types of persons:

- members of the armed forces having entered, or having been left on enemy-occupied territory,
- combatants as defined in Article 38 of the Protocol,
- persons other than those defined above;

3. carried out for a variety of reasons, which became apparent to the Commission in the course of its discussions, and which come down to a desire to free the home country from a foreign invader.

N.B. This differentiation might help in drafting Part III ("Combatants") and especially Articles 37 and 38.

Original: English

CE/COM III/PC 1

**Proposal submitted by the experts
of the Federal Republic of Germany**

Draft Article 53

Non-defended localities ("open cities")

In order to facilitate the negotiation and implementation of agreements for the protection of non-defended localities ("open cities"), it is suggested that Article 53, paragraph 2, be re-worded to read as follows:

2. This agreement may be either express or tacit, or may consist of reciprocal and concordant declarations. The Parties may, in the absence of a special agreement, implement the provisions of a Model Agreement annexed to the present Protocol (Annex II). With a view to facilitating the negotiation of an agreement for the protection of undefended localities on its territory or to secure its existence, each Party to the conflict may avail itself of the services of a Protecting Power, its substitute, or any other neutral and impartial intermediary. The adverse Party is bound to respond to the proposals made by such intermediaries.

Original: English

CE/COM III/PC 2

**Proposal submitted by the experts
of the United States of America**

Draft Article 40

General protection of the civilian population

The Parties to a conflict shall, to the maximum extent feasible, endeavour to protect civilians and non-military objects against the dangers resulting from hostilities.

Original: English

CE/COM III/PC 3

**Proposal submitted by the experts
of the United States of America**

Draft Article 41

Definition of the civilian population

Any person who is not a member of the armed forces and does not take an active part in hostilities is considered to be a civilian.

(Cf. CE/COM III/PC 78.)

Original: English

CE/COM III/PC 4

**Proposal submitted by the experts
of the United States of America**

Draft Article 42

Definition of objects of a civilian character

Objects reputed to be non-military are those necessarily or essentially designed for and used predominately for civilians. Once they are occupied by military personnel or used for military purposes, they then become military objects.

Draft Article 43

Definition of military objectives

Delete.

(Cf. CE/COM III/PC 115.)

Original: English

CE/COM III/PC 5

**Proposal submitted by the experts
of the United States of America**

Draft Article 44

Definition of attacks

Acts of violence, whether offensive or defensive, committed against the adversary by means of weapons in the course of hostilities, are considered as attacks for the purposes of this Protocol.

(Cf. CE/COM III/PC 105.)

Original: English

CE/COM III/PC 6

**Proposal submitted by the experts
of the United States of America**

Draft Article 45

Respect for the civilian population

1. Civilians shall not be made the object of attack.
2. Nevertheless, civilians who are in the vicinity of military objectives run the risks resulting from any attack launched against those objectives.

(Cf. CE/COM III/PC 106.)

Original: English

CE/COM III/PC 7

**Proposal submitted by the experts
of the United States of America**

Draft Article 46

Safeguarding of the civilian population

Civilians shall never be used in an attempt, by their presence, to shield military objectives from attack.

(Insert the amended article as a new paragraph in Article 45.)

(Cf. CE/COM III/PC 79.)

Original: English

CE/COM III/PC 8

**Proposal submitted by the experts
of the United States of America**

Draft Article 47

Respect for objects of a civilian character

Non-military objects which are necessarily or essentially designed for the use of civilians enjoy a general protection against the dangers arising from military operations. They should not, in particular, be made the object of attacks directly launched against them, unless they are used mainly in support of the military effort.

Original: English

CE/COM III/PC 9

**Proposal submitted by the experts
of the United States of America**

Draft Article 49

Precautions when attacking

The Parties to the conflict shall take all reasonable precautions to ensure that attacks against military objectives do not unnecessarily endanger civilians. Except when urgent military necessities prevent, attacks upon a military objective in an area populated by civilians shall be preceded by a warning adequate to permit them to remove themselves to a safe place.

(Cf. CE/COM III/PC 107.)

Original: English

CE/COM III/PC 10

**Proposal submitted by the experts
of the United States of America**

Draft Article 51

Precautions against the effect of attacks

Parties to the conflict shall, to the maximum extent feasible, take necessary precautions to protect civilians under their control against the dangers resulting from attack.

(Cf. CE/COM III/PC 109.)

Original: English

CE/COM III/PC 11

**Proposal submitted by the experts
of the United States of America**

Draft Article 50

Principle of proportionality

1. Amend this paragraph to read as follows:
Those who plan military operations shall take into

consideration the extent of destruction and probable casualties which will result and to the extent consistent with the necessities of the military situation seek to avoid such casualties or destruction.

2. Delete.

3. Insert after the word "shall" the following words: "to the extent consistent with the necessities of the military situation".

Original: English

CE/COM III/PC 12

**Proposal submitted by the experts
of the United States of America**

Draft Article 57

Protection of children

The Parties to the conflict shall provide children with special protection, in particular with the care and aid which their age and situation require.

Original: English

CE/COM III/PC 13

**Proposal submitted by the experts
of the United States of America**

Draft Article 58

Safeguarding of children

Accept Proposal I and reject Proposals II and III, but delete the words "a direct" from Proposal I.

Original: English

CE/COM III/PC 14

**Proposa. submitted by the experts
of the United States of America**

Draft Article 59

Mothers of infants

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

Draft Article 60

Death penalty

In no case shall the death penalty be pronounced on persons who are under fifteen years at the time of the offence.

Original: English

CE/COM III/PC 15

**Proposal submitted by the experts
of the United States of America**

Draft Article 62

Relationship of this Chapter to the Fourth Convention

1. Delete the words "in all circumstances".
2. Replace the words "dispense" by the word "relieve".

Original: English

CE/COM III/PC 16

**Proposal submitted by the experts
of the United States of America**

Draft Article 64

Humanitarian assistance

1. Delete the word "possible" and substitute "compatible with military requirements".

2. Insert after the words "a National Red Cross Society", the words "any organ or agency of the United Nations or specialized agency of the United Nations".

3. Delete "the needy civilian population" and substitute "civilians in need".

(Cf. CE/COM III/PC 81).

Original: English

CE/COM III/PC 17

**Proposal submitted by the experts
of the United States of America**

Draft Article 65

Transit

1. Insert after the words "its substitute", the words "any organ or agency of the United Nations or specialized agency of the United Nations".

2. Delete "the needy civilian population" and substitute "civilians in need".

Original: English

CE/COM III/PC 18

**Proposal submitted by the experts
of the United States of America**

Draft Article 66

Relationship of this Chapter to the Fourth Convention

1. Delete the words "in all circumstances".

2. The provisions of this Chapter are without prejudice to the rights of the International Committee of the Red Cross or any other impartial humanitarian organization under Article 10 of the Fourth Convention.

Original: French

CE/COM III/PC 19

**Proposal submitted by the experts
of Switzerland**

*Declaration applying to Police Officers
the Geneva Convention of August 12, 1949 concerning the
Protection of Civilians in Wartime*

(Draft)

Point 1

In pursuance of Article 70, paragraph 1, of the above-mentioned Convention, police officers shall not incur any

administrative or judicial penalties at the instance of the Occupying Power by reason of the execution, prior to the occupation or during a temporary interruption thereof, of orders issued by any of the sovereign authorities of the land, whether legislative, administrative or judicial, and in so far as their acts have not been contrary to Human Rights as defined by the Universal Declaration of Human Rights.

Point 2

In pursuance of Article 27 of the above-mentioned Convention, police officers shall not be required by the Occupying Power to carry out any orders contrary to their constant duty to respect Human Rights as defined in the Universal Declaration of 10 December 1948. They may not be required to search for or question, arrest, hold in custody or transport, any persons subjected to these measures on the grounds of race, religion, or political convictions unless the said persons express their beliefs by acts of violence not permitted under the laws of war.

Point 3

In pursuance of Article 51 of the above-mentioned Convention, the police may not be required to assist in the execution of orders designed to employ the population for military purposes, or for the promotion of military operations. The police may only be required to maintain law and order, while protecting the rights of the civilian population as defined by the laws and customs of war.

Point 4

In pursuance of Articles 54, 65 and 67 of the above-mentioned Convention, police officers discharged from their duties by the Occupying Power shall not be liable to any compulsory service and shall enjoy the benefits and security bestowed upon them by regulations applicable to them. These regulations may not be altered by the Occupying Power.

During or after the occupation, police officers may in no case be subjected to penalties, sanctions or coercive measures by reason of the execution by them of orders issued by authorities who could in good faith be regarded as competent, especially if the execution of these orders was a normal part of their duty.

Original: French

CE/COM III/PC 20

Proposals submitted by the experts of Finland

Draft Article 45

Respect for the civilian population

5. Nevertheless, civilians who are within or in the proximity of a military objective run the risks consequent upon any attack launched against this objective.

Draft Article 57

Protection of children

Children of under fifteen years of age shall be the object of special protection. The Parties to the conflict shall provide them with the care and aid which their age and situation require.

Draft Article 62

Relationship of this Chapter to the Fourth Convention

The preceding measures do not dispense the Parties to the conflict, in any way whatsoever, from observing, in all circumstances, the provisions of Articles 14, 23, 24, 38(5), 50, 68 paragraph 4 and 140 of the Fourth Convention.

Original: English

CE/COM III/PC 21

**Proposal submitted by the experts
of the Philippines**

Draft article 40

General protection of the civilian populations

Delete the word "resulting".

Draft Article 41

Definition of civilian

Any person shall be considered a civilian under any of the following circumstances:

- (a) he is not an active member of the armed forces;
- (b) he does not take a direct part in the hostilities;
- (c) when by reason of his occupation or physical location, he is not so assimilated to combatants as to lose his civilian characteristics; or
- (d) he is neither a government official nor an employee forming part of the Ministry of War or Department of Defence comprising the Departments of the Army, Navy, or Air Force.

Original: English

CE/COM III/PC 22

Proposal submitted by the experts of Canada

Draft Article 40

General protection of the civilian population

Delete.

Draft Article 41

Definition of civilians

1. Delete the words "and who, moreover, do not take part in hostilities".

(Cf. CE/COM III/PC 78.)

Draft Article 42

Definition of objects of a civilian character

Delete.

(Cf. CE/COM III/PC 115.)

Draft Article 44

Definition of attacks

Delete the words "means of weapons" and substitute "any means".

(Cf. CE/COM III/PC 105.)

Draft Article 45

Respect for the civilian population

1. Delete the words "the civilian population as such, as well as individual civilians", and substitute therefor the word "civilians".

4. Delete the words "the civilian population or individual civilians" and substitute therefor the word "civilians". (Cf. CE/COM III/PC 106.)

Draft Article 46

Safeguarding of the civilian population

Delete "the civilian population or individual civilians" and substitute therefor the word "civilians".

Original: French

CE/COM III/PC 23

Proposal submitted by the experts of Brazil

Draft Article 42

*Definition of objects of a civilian
character*

1. Objects which, by their nature or use, answer the needs exclusively of the civilian population, are considered as objects of a civilian character.

Original: French

CE/COM III/PC 24

Proposal submitted by the experts of Bsazil

Draft Article 40

Definition of the civilian population

(Cf. Article 41 of Draft Protocol I.)

1. (no change)
2. (no change)
3. Proposal I
4. (no change)

Draft Article 41

*General protection of the civilian
population*

(Cf. Article 40 of Draft Protocol I.)

Original: French CE/COM III/PC 25

Proposal submitted by the experts of Brazil

Draft Article 45

Respect for the civilian population

5. Nevertheless, civilians who are within or in the proximity of a military objective run the risks consequent upon any attack launched against this objective.

Original: French CE/COM III/PC 26

Proposal submitted by the experts of Brazil

Draft Article 57

Protection of children

Children should be the object of special protection. The Parties to the conflict shall, as far as possible, provide them with the care and aid which their age and situation require.

Original: French CE/COM III/PC 27

Proposal submitted by the experts of Brazil

Draft Article 58

Safeguard of children

Proposed amendment: Proposal III.

Original: French CE/COM III/PC 28

Proposal submitted by the experts of Brazil

It is suggested that Articles 59 and 60 should be merged into one article, to read as follows:

Draft Article 59

Death penalty

1. The death penalty shall not be pronounced:
 - (a) on civilians who are under eighteen years at the time of the offence;
 - (b) on mothers of infants or on women responsible for their care at the time of the offence.
2. Pregnant women shall not be executed.

Original: English CE/COM III/PC 29

Proposal submitted by the experts of the United Kingdom

Draft Article 40

General protection of the civilian population

Add after the word "hostilities" the words "as

provided in Section II of this Part of the present Protocol".

Draft Article 41

Definition of the civilian population

Civilians covered by Article 4 of the Third Convention or by Article 38 of the present Protocol.

(Cf. CE/COM III/PC 78.)

Draft Article 42

Definition of objects of a civilian character

Delete.

(Cf. CE/COM III/PC 115.)

Draft Article 43

Definition of military objectives

An objective is to be considered as a military objective only if its complete or partial destruction, capture or neutralisation would, in the opinion of the operational commander in the light of the information available to him at the time, confer a distinct military advantage.

(Cf. CE/COM III/PC 115.)

Draft Article 44

Definition of attacks

Attacks are acts of violence, whether offensive or defensive, committed against the adversary by means of weapons in the course of hostilities.

(Cf. CE/COM III/PC 105.)

Draft Article 45

Respect for the civilian population

3. Attacks not directed against military objectives are prohibited.

(Cf. CE/COM III/PC 106.)

4. Attacks directed against the civilian population or individual civilians as such are prohibited unless made as reprisal attacks in response to deliberate attacks on the civilian population or individual civilians by the adversary.

5. Civilians who are within or near a military objective are not entitled to the protection conferred by this article.

Draft Article 47

Respect for objects of a civilian character

Delete (see comments on Article 45(3) above).

Draft Article 48

Respect for and safeguarding of objects indispensable to the survival of the civilian population.

1. Delete the words "by way of reprisals".

2. The Parties to the conflict under whose control objects indispensable to the survival of the civilian population are placed shall refrain from:

- (a) destroying such objects;
- (b) using such objects in an attempt to shield military objectives from attack.

Draft Article 49

Precautions when attacking

When ordering or carrying out an attack the Parties to the conflict shall take all reasonable steps so to confine that attack that it does not extend to the civilian population and civilian objects in the vicinity of the military objective. For that purpose advance warning shall be given whenever possible.

(Cf. CE/COM III/PC 107.)

Draft Article 50

Principle of proportionality

1.2. Delete both paragraphs. (These are covered by the above proposals for Article 43 and Article 45 (3) and (5)).

3. When there is a choice among several objectives for obtaining the same military advantage, those who order or launch an attack should choose the objective which presents the least danger to the civilian population and civilian objects.

Draft Article 51

Precautions against the effect of attacks

1. The Parties to the conflict shall take all practicable precautions to protect civilians and civilian objects against dangers resulting from attacks.

2. Delete.

(Cf. CE/COM III/PC 109.)

Draft Article 52

Relationship of this Chapter to the other provisions of the present Protocol

Delete.

Original: English

CE/COM III/PC 30

Proposal submitted by the experts of the German Democratic Republic

Draft Article 49

Precautions

- b) they shall do everything in their power to warn the civilians threatened by the attack.

Original: English

CE/COM III/PC 31

Proposal submitted by the experts of the German Democratic Republic

Draft Article 48

Respect for and safeguarding of objects indispensable to the survival of the civilian population

1. Attacks launched against objects of a civilian character and against military objectives indiscriminately are prohibited.

2. The Parties to the conflict under whose control objects indispensable to the survival of the civilian population are placed, must not:

- (a) use these objects with the intention to shield military objectives from attacks;
- (b) destroy these objects.

Original: English

CE/COM III/PC 32

Proposal submitted by the experts of the German Democratic Republic

Draft Article 47

Respect for objects of a civilian character

1. Objects of a civilian character shall never be attacked, also not by way of reprisals.

2. This prohibition also refers to works and installations containing dangerous forces — such as dykes, hydroelectric dams and sources of power.

Draft Article 55

Works and installations containing dangerous forces

Delete.

Original: English

CE/COM III/PC 33

Proposal submitted by the experts of Czechoslovakia, the German Democratic Republic and Hungary

Draft Article 45

Respect for the civilian population

1 The civilian population as such, as well as individual civilians, shall never be made the object of attack.

2. Attacks by way of reprisals as well as terrorization attacks directed against the civilian population as such and individual civilians are prohibited.

3. Attacks which, by their nature, are launched against civilians and military objectives indiscriminately, are prohibited. It is prohibited therefore to attack, by bombardment or by any other means, a zone comprising

several military objectives at a distance from one another and situated in inhabited areas.

4. Attacks which, by their nature, are liable to disturb the cleanliness and balance of the natural environment are prohibited.

5. The compulsory evacuation of the civilian population from occupied territories is prohibited.

Draft Article 50

Principle of proportionality

Delete.

Original: English

CE/COM III/PC 34

**Proposal submitted by the experts
of Czechoslovakia, the German
Democratic Republic and Hungary**

Draft Article 42.

*Definition of objects of a civilian
character*

2. Objects which by their nature and use are indispensable for the survival of the civilian population comprise for example crops, provisions, foodstuffs as well as facilities and installations for their production and storage, drinking water reserve supplies, dwellings, buildings and objects intended for the shelter of the civilian population, for cultural purposes, for education or social and health services.

3. Objects the civilian character of which as defined in the foregoing paragraphs is doubtful are presumed to be civilian objects as long as such doubt subsists.

Draft Article 43

Definition of military objectives

Delete.

Original: English

CE/COM III/PC 35

**Proposal submitted by the experts
of the German Democratic Republic**

Draft Article 41

Definition of the civilian population

3. The presence within the civilian population of individuals who do not conform to the definition given in paragraph 1 does not prevent the civilian population from being considered as such.

Original: French

CE/COM III/PC 36

**Proposal submitted by the experts
of Switzerland**

Draft Article 41

Definition of the civilian population

1. Any person who does not fall within one of the categories enumerated in Article 4A, sub-paragraphs (1) to (6), of the Third Convention or in Article 38 of the present Protocol is considered to be a civilian.

Original: English

CE/COM III/PC 37

Proposal submitted by the experts of Norway

Draft Article 40

*Basic principles and rules for the
protection of civilian populations*

The following basic principles and rules for the protection of civilian populations shall apply in all armed conflicts:

- (a) fundamental human rights continue to apply in all situations of armed conflicts;
- (b) in the conduct of military operations, every effort shall be made to spare civilian populations from the ravages of war and all necessary precautions shall be taken to avoid injury, loss or damage to the civilian population;
- (c) civilian populations shall not be the object of military operations, neither shall they be used as a shield for military operations;
- (d) civilian populations, or individual members thereof, shall not be the object of reprisals, forcible transfers or other assaults on their integrity;
- (e) dwellings and other installations that are used only by civilian populations shall not be the object of military operations;
- (f) all Parties to an armed conflict shall facilitate the provision of international humanitarian relief to civilian populations.

Original: English

CE/COM III/PC 38

Proposal submitted by the experts of Denmark

Draft Article 47

Respect for civilian objects

Civilian objects shall never be directly attacked.

Original: English

CE/COM III/PC 39

Proposal submitted by the experts of Denmark

Draft Article 45

Respect for the civilian population

3. Attacks which are launched intentionally against civilians and non-civilian objects indiscriminately shall be prohibited.

Original: English

CE/COM III/PC 40

Proposal submitted by the experts of Denmark

Draft Article 42

Definition of civilian objects

1. Objects which are intended for and are used predominantly for civilians are considered as civilian objects.

2. Civilian objects comprise, in particular, objects which are indispensable to the survival of the civilian population.

3. Once they are occupied by military personnel or used predominantly for military purposes, they shall be considered as non-civilian objects.

4. In case of doubt as to their civilian character the objects mentioned in paragraph 1 shall be presumed as being civilian objects.

Draft Article 43

Definition of military objectives

Delete.

(In the following articles the expression "military objectives" should be replaced by the words "non-civilian objects".)

Original: French

CE/COM III/PC 41

Proposal submitted by the experts of Switzerland

Draft Article 47

Respect for objects of a civilian character

Replace the words "for a military purpose", at the end of the sentence, by the words "in the fighting".

Original: French

CE/COM III/PC 42

Proposal submitted by the experts of Romania

Draft Article 40

General protection of the civilian population

The civilian population shall always be afforded effective and complete protection against the dangers

resulting from military operations and must never be the object of such operations.

Persons who are members of the civilian population, their dwellings and property, and all non-military installations shall never in any circumstance be the object of military operations, and shall be spared the ravages of war.

Original: French

CE/COM III/PC 43

Proposal submitted by the experts of Romania

Draft Article 41

Definition of the civilian population

1. The civilian population comprises persons who are not members of the armed forces or who do not take part directly and immediately in military operations. Persons whose activities could contribute directly to the military effort do not thereby lose their status as civilians.

2. (Cf. Proposal II of paragraph 3 of Draft Protocol I.)

Original: French

CE/COM III/PC 44

Proposal submitted by the experts of Romania

Draft Article 42

Definition of objects of a civilian character

All objects which do not directly produce weapons, military equipment or means of combat, or are not directly and immediately employed by the armed forces are considered to be non-military objects, even if, at a later date, as a result of a change in their utilization, they might subsequently assume a predominantly military character. In the conduct of military operations, a clear distinction must be made at all times between military objectives and non-military objects, so that the latter be spared the devastation of war. Consequently, military operations must in all circumstances be restricted to military objectives only.

Original: French

CE/COM III/PC 45

Proposal submitted by the experts of Romania

Draft Article 43

Definition of military objectives

Any objective directly and immediately producing weapons, military equipment and combat material, or directly and immediately used by the armed forces is considered as a military objective.

Proposal submitted by the experts of Romania

Draft Article 45

Respect for the civilian population

1. The civilian population, and individual civilians, shall never, in any circumstances, be made the object of military operations, attacks, acts of terrorism, acts which are likely to harm civilians and military objectives indiscriminately or reprisals, and shall be spared the dangers resulting from military operations.

2. Before attacking a military objective, the attacking party shall give adequate warning by appropriate but sure means, of its intention, so that the civilian population may withdraw from the objective. Persons ignoring this warning and remaining within the military objective will risk the dangers resulting from the attack on the objective.

Original: French

CE/COM III/PC 47

Proposal submitted by the experts of Romania

Draft Article 47

Respect for objects of a civilian character

Non-military objects shall enjoy general protection against the devastation of war; they must not be made the object of attack, nor be destroyed or damaged or made the object of reprisals, provided that they are not used directly and immediately in the conduct of military operations.

Original: French

CE/COM III/PC 48

Proposal submitted by the experts of Switzerland

Draft Article 43

Definition of military objectives

Add a second paragraph reading as follows:

Such objectives are detailed in an annex to the present Protocol.

(The annex would contain the list printed on pages 72-73 of the 1956 Draft Rules submitted by the ICRC, with some possible changes that the experts of Switzerland might put forward later.)

Comment: This amendment will involve inserting an article in Section II, Chapter III:

The military objectives defined in Article 43 may not be attacked if their total or partial destruction, in a given situation, does not further in any way the military operations.)

Proposal submitted by the experts of Uruguay

Draft Article 41

Notion of civilian population

1. Civilian population shall be understood to mean all those persons who are not members of the armed forces and who do not take a direct part in hostilities.

2. The occasional presence of persons who do not meet the above conditions shall not prevent the population from being considered civilian.

3. In case of doubt concerning the character of the population, it shall be presumed to be civilian.

Original: French

CE/COM III/PC 50

Proposal submitted by the experts of Italy

Draft Article 45

Respect for the civilian population

(1) Delete paragraphs 3 and 5.

(2) Add as the last paragraph:

When attacks, launched against military objectives, are of such a nature that they might harm the civilian population, the Party launching the attack shall take all necessary precautions to spare, as far as possible, the civilian population.

Original: French

CE/COM III/PC 51

Proposal submitted by the experts of France

Draft Article 41

Definition of the civilian population

Delete.

Draft Article 42

Definition of objects of a civilian character

1. All objects which are not military objectives according to Article 43 shall be considered to be of a civilian character.

2. In case of doubt, food resources, drinking water reservoirs and dwellings and buildings normally used by civilians shall be considered objects of a civilian character.

Draft Article 43

Definition of military objectives

Any objective, the total or partial destruction, capture or neutralization of which would offer a definite military advantage, shall be considered a military objective.

Draft Article 44

Definition of attacks

Any acts of violence committed against the adversary in the course of hostilities shall be considered attacks.

Draft Article 45

Respect for the civilian population

1. Constant care shall be taken, when conducting military operations, to spare civilians to the greatest extent possible commensurate with the character and power of the weapons used.

2. Attacks, the sole purpose of which is to spread terror, shall be in particular prohibited.

Draft Article 46

Safeguarding of the civilian population

(Add to this article, after the first sentence, paragraph 5 of Article 45 which will thereby become paragraph 2 of Article 46.)

1. (no change).

2. Nevertheless, civilians who are within a military objective run the risks consequent upon any attack launched against this objective.

Original: French

CE/COM III/PC 52

Proposal submitted by the experts of Egypt

The texts of the articles in this Part IV should be regrouped as follows:

1. Section I. *General provisions* remains unchanged.

2. The texts of Section II: *Protection of the civilian population against dangers resulting from hostilities* and, Section III: *Assistance to the civilian population*, to be regrouped as follows:

(a) Articles 45 and 46 (Civilians, Section I, Chapter I),

(b) Articles 57 to 62 (Measures in favour of children, Section III, Chapter I),

(c) Articles 63 to 66 (Relief, Section III, Chapter II)

(d) Objects of a civilian character, Articles 47 and 48, (Section II, Chapter II)

(e) Articles 49 to 52 (Precautionary measures, Section II, Chapter III)

(f) Articles 53 to 56 (Localities and objects under special protection, Section II, Chapter IV)

3. Section IV: *Civil defence organizations* remains unchanged.

Original: French

CE/COM III/PC 53

Proposal submitted by the experts of Romania

Draft Article 48

Respect for and safeguarding of objects indispensable to the survival of the civilian population

1. Objects indispensable to the survival of the civilian

population, dams, dykes, sources of power, economic objectives of national interest designed for peaceful purposes, and works and installations shall be protected and spared and particular care shall be taken by the combatants in order that the civilian population may be safeguarded against the dangers consequent on the destruction of, and damage caused to these non-military objects.

2. The Parties to the conflict who are in control of these objects shall refrain from using them in order to shield military objectives from attack or destruction.

3. It is prohibited to attack these objects, in any circumstances, unless they are used directly and immediately for military purposes.

Original: French

CE/COM III/PC 54

Proposal submitted by the experts of Romania

Draft Article 49

Precautions when attacking

(b) Delete the expression: "whenever circumstances permit"

Original: French

CE/COM III/PC 55

Proposal submitted by the experts of Romania

Draft Article 51

Precautions against the effects of attacks

Delete paragraph 2.

Original: French

CE/COM III/PC 56

Proposal submitted by the experts of Romania

Draft Article 55

Works and installations containing dangerous forces

Delete.

Original: French

CE/COM III/PC 57

Proposal submitted by the experts of Romania

Draft Article 57

Protection of children

Those members of the civilian population, such as women, children, the aged, wounded, sick and infirm who are entitled to general protection, shall receive from the belligerents the necessary assistance and care.

Proposal submitted by the experts of Romania

Draft Article 63

Supplies

Amend the last sentence to read as follows:

If domestic resources are inadequate, they shall be required to import the necessary goods.

Proposal submitted by the experts of Egypt, Mexico, Netherlands, Sweden, Switzerland

Draft Article 49

Precautions when attacking

Insert in Chapter III of Section II the following two articles:

Draft Article 49 bis

If the Parties to a conflict make use of mines, they are bound, without prejudice to the stipulations of the VIIIth Hague Convention of 1907, to chart minefields. The charts shall be handed over, at the close of active hostilities, to the adverse party, and also to all other authorities responsible for the safety of the population.

Draft Article 49 ter

Weapons capable of causing serious damage to the civilian population shall as far as possible be equipped with a safety device which renders them harmless when they escape from the control of those who employ them.

Proposal submitted by the experts of Egypt, Mexico, Netherlands, Sweden, Switzerland

Draft Article 49

Precautions when attacking

1. In the first sentence, delete the expression "who might be in proximity to a military objective"
2. At the end of sub-paragraph (b) add:

Such warnings must never, however, discharge the persons responsible for the attack from the duty of observing the preceding provisions of this article.

Proposal submitted by the experts of Egypt, Mexico, Netherlands, Sweden, Switzerland

Draft Article 45

Respect for the civilian population

Delete sub-paragraph 5.

Proposal submitted by the experts of Brazil and Spain

Section I of Part IV should be entitled "Definitions".

Draft Article 40

General protection of the civilian population

The text of this article should be transferred to form the first part of Article 45.

Draft Article 41

Definition of the civilian population

3. Proposal I should be adopted rather than Proposal II, because the latter implies that the fact that one person or a few persons, while not being combatants, take a direct part in the hostilities, could deprive the rest of the civilian population of its status as such. The reference to Articles 45, 49, 50 and 51 should be deleted.

4. In case of doubt as to their civilian character, persons shall be presumed to be civilians.

The justification for this is that there can be no doubt with respect to the persons mentioned in paragraph 1 of this article, and the text proposed is therefore illogical.

Draft Article 42

Definition of objects of a civilian character

2. Objects of a civilian character comprise, in particular, objects which are indispensable to the survival of the civilian population, as well as those serving mainly pacific or helpful purposes, such as crops, provisions and other foodstuffs, drinking water reserve supplies and dwellings and buildings designed for the shelter of the civilian population or which the latter habitually uses.

3. In case of doubt as to the nature and destination of objects, it shall be presumed that they are of a civilian character.

Draft Article 43

Definition of military objectives

It is proposed that the words "or which are of a generally recognized military interest" should be deleted.

Proposal submitted by the experts of Yugoslavia

Draft Article 41

Definition of the civilian population

After paragraph 3 insert a new paragraph 4 worded as follows:

4. The fact that civilians have taken part temporarily in the hostilities does not deprive them of their civilian status when *hors de combat*.

The present paragraph 4 then becomes paragraph 5.

**Proposal submitted by the experts
of Egypt, Mexico, Netherlands, Sweden, Switzerland**

Delete Articles 42, 43, 47 and 48 (1).

Insert, in the place of those texts, the following:

Draft Article 42

Definition of military objectives

1. Objectives which are, in view of their essential characteristics, generally recognized to be of military importance and whose total or partial destruction, in the circumstances ruling at the time, offers a military advantage, constitute military objectives.

2. Objects not falling within this category are non-military and may not be the subject of direct attack.

Draft Article 43

Definition of objects of a civilian character

Houses, dwellings, installations or means of transport which are used by the civilian population must not be the object of attacks directly launched against them, unless they are used mainly in support of the military effort.

Draft Article 43 A

Objects which are indispensable to the survival of the civilian population, such as foodstuffs and food-producing areas, crops, cattle, water resources and constructions intended for the regulation of such resources must never be subjected to attacks directly launched against them, nor be attacked by way of reprisals.

Draft Article 43 B

Objects which, by their nature or use, serve primarily humanitarian or peaceful purposes, such as medical, religious, educational or cultural institutions, enjoy the protection expressly accorded to them under applicable rules of international law. They must not be made the object of reprisals.

**Proposal submitted by the experts
of Egypt, Mexico, Netherlands, Sweden, Switzerland**

Draft Article 46 bis

Women must be protected in particular against rape and any form of indecent assault.

**Proposal submitted by the experts
of Iraq, Jordan, Kuwait, Libya and Saudi Arabia**

Draft Article 42

Definition of objects of a civilian character

3. Delete the words: "drinking water reserve supplies"

of paragraph 3 in Article 42 and substitute: "Water resources and constructions and other works designed to regulate and develop such resources."

Draft Article 43

Definition of military objectives

Delete.

Draft Article 55

Works and installations containing dangerous forces

Delete.

Proposal submitted by the experts of Uruguay

Draft Article 45

Definition of the civilian population

A civilian is any person not protected by the Geneva Conventions of August 12, 1949, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; and relative to the Treatment of Prisoners of War.

Draft Article 46 (present Article 45)

Respect for the civilian population

3. Attacks which, by their nature, affect civilians and military objectives indiscriminately shall be prohibited; nevertheless, civilians who are within a military objective run the risks involved in the event of any attack launched against such objective.

5. Delete.

**Proposal submitted by the experts
of the Republic of Vietnam**

Draft Article 41

Definition of the civilian population

1. Any person not covered by Article 4 of the Third Convention and who, moreover, is not participating in the war effort of one of the Parties to the conflict, is considered to be a civilian.

2. The civilian population comprises all persons fulfilling the conditions stipulated in the foregoing paragraph.

**Proposal submitted by the experts
of the Republic of Vietnam**

Draft Article 42

Definition of objects of a civilian character

1. Objects which are intended essentially and primarily for the civilian population are considered as objects of a civilian character.
2. Such objects lose their civilian character if they are used to support the war effort, or if they are occupied by one of the Parties to the conflict.

**Proposal submitted by the experts
of the Republic of Vietnam**

Draft Article 45

Respect for the civilian population

5. Nevertheless, civilians who are within or in the vicinity of a military objective run the risks consequent upon any attack launched against this objective.

**Proposal submitted by the experts
of the Republic of Vietnam**

Draft Article 46

Safeguarding of the civilian population

The Parties to the conflict shall refrain from forcibly employing the population on work of a military nature and from shielding, through that population's presence, military objectives from attack.

**Proposal submitted by the experts
of the Republic of Vietnam**

Draft Article 47

Respect for objects of a civilian character

Objects of a civilian character shall never be attacked, provided they are not used to support the war effort of a Party to the conflict.

Proposal submitted by the experts of France

Draft Article 49

Precautions when attacking

Those who order or carry out an attack shall ensure that the objectives to be attacked are in fact military objectives as defined in Article 43 above. Whenever circumstances permit, they shall warn the civilian population in the vicinity of a military objective so that they may take shelter.

Proposal submitted by the experts of France

Draft Article 50

Principle of proportionality

1. Those who order or launch an attack shall ensure that the probable losses and destruction are not disproportionate to the military advantage sought by them.
2. When there is a choice among several objectives for obtaining the same military advantage, those who order or launch an attack shall choose the objective which presents the least danger to the civilian population and objects of a civilian character.

Proposal submitted by the experts of Spain

Draft Article 45

Respect for the civilian population

3. Attacks which by their nature affect military objects, the civilian population and civilian objects indiscriminately shall be prohibited.
5. Delete.

Proposal submitted by the experts of Spain

Draft Article 47

Respect for objects of a civilian character

Objects of a civilian character shall not be attacked.

Original: Spanish

CE/COM III/PC 77

Proposal submitted by the experts of Spain

Draft Article 48

Respect for and safeguarding of objects indispensable to the survival of the civilian population

2. The opposing Parties to the conflict who are in control of objects essential for the survival of the civilian population shall refrain from destroying them or using them in an attempt to shield military objectives from attack.

Original: English

CE/COM III/PC 78

Proposal submitted by the experts of Australia, Belgium, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America

Draft Article 41

Definition of the civilian population

1. Civilians are all persons who do not fall within one of the categories enumerated in Article 4A, sub-paragraphs (1), (2), (3) and (6) of the Third Convention or in Article 38 of the present Protocol.

2. Civilians as defined in paragraph 1 shall enjoy the protections set out in Part IV of the present Protocol unless and for such time they take a direct and immediate part in hostilities.

3. The civilian population comprises all civilians fulfilling the conditions stipulated in paragraph 1.

4. The presence, within the civilian population, of individuals who do not conform to the definition given in paragraph 1, does not prevent the civilian population from being considered as such.

5. In case of doubt as to their civilian character, the persons mentioned in paragraph 1 shall be presumed as belonging to the civilian population.

(This proposal replaces that contained in document CE/COM III/PC 3 and also the amendments to Article 41 appearing in documents CE/COM III/PC 22 and CE/COM III/PC 29.)

Original: English

CE/COM III/PC 79

Proposal submitted by the experts of Australia, Belgium, Canada, the Federal Republic of Germany, Spain, the United Kingdom, the United States of America Uruguay and the Republic of Vietnam

Draft Article 46

Safeguarding of the civilian population

The physical presence or physical movements of the civilian population shall never be used for tactical or

strategic purposes. In particular, the civilian population or individual civilians shall never be used in an attempt to shield, by their presence, military objectives from attack, nor to shield, protect, or impede military operations.

(This proposal cancels the amendment proposed in CE/COM III/PC 7.)

Original: French

CE/COM III/PC 80

Proposal submitted by the experts of Egypt, Finland, Sweden and Switzerland

Draft Article 50

Principle of proportionality

1. Those who order or launch an attack shall refrain from doing so when the probable losses and destruction suffered by the civilian population and objects of a civilian character would be disproportionate to the concrete military advantage sought by them.

Original: English

CE/COM III/PC 81

Proposal submitted by the experts of Jordan, Norway, the United States of America and Yugoslavia

Draft Article 64

Humanitarian assistance

1. The Parties to the conflict shall accept and facilitate relief actions destined exclusively to the civilian population placed under control, in law or in fact.

2. Relief for the benefit of civilian population is to be provided without discrimination. The offer of such relief by a State, by an impartial international humanitarian body such as the Red Cross, or by any organ or agency of the United Nations or specialized agency of the United Nations, shall not be regarded as an unfriendly act.

3. The Parties to the conflict shall exercise their right to prescribe technical arrangements so as to facilitate the conveyance and distribution of relief. They may not, in any way whatsoever, divert relief consignments from their proper destination nor delay their conveyance. They have the right to be reasonably satisfied through the Protecting Power, its substitute or an impartial humanitarian organization, that these consignments are exclusively used for the relief of the needy civilian population.

(The experts of Sweden sponsor paragraph 2 of the above draft article.)

(The sponsor of document CE/COM III/PC 16 withdraws the proposal contained therein.)

Proposal submitted by the experts of Sweden

Draft Article 64

Humanitarian assistance

1. To the fullest extent possible, the Parties to the conflict shall accept and facilitate relief actions to the population placed under their control, in law or in fact.

2. Relief for the benefit of the civilian population is to be provided without discrimination. The offer of such relief by a State, by an impartial humanitarian body, such as the Red Cross, or by any organ or agency of the United Nations or specialized agency of the United Nations should not be regarded as an unfriendly act.

3. Delete "Nevertheless". Delete the last sentence, beginning "They have the right . . .".

Original: English

CE/COM III/PC 83

Proposal submitted by the experts of Sweden

Draft Article 65

Transit

Amend as follows:

- (1) Delete the words "exclusively" and "civilian".
- (2) Delete the last sentence beginning "They have the right . . .".

Original: English

CE/COM III/PC 84

Proposal submitted by the experts of the Philippines

Draft Article 58

Safeguarding of children

Add the following paragraphs:

2. From the outbreak of hostilities the High Contracting Parties shall adopt special measures for the use of a suitable emblem by schools and school vehicles.

3. Schools and vehicles used exclusively for the school children shall be respected and protected at all times.

Original: French

CE/COM III/PC 85

Proposal submitted by the experts of Senegal

Draft Article 64

Humanitarian assistance

2. After the words "The offer of relief, whether emanating from a State," insert the phrase, "the United Nations Organization or any other body in the United Nations system."

Proposal submitted by the experts of Switzerland

Draft Article 55

Works and installations containing dangerous forces

In paragraph 1, sub-paragraph (b) and in paragraph 2, replace the words "used for a military purpose" by "used for military operations".

(At the same time, the Swiss experts support the proposals put forward for increasing the protection given to the type of works and installations dealt with in Article 55.)

Original: Spanish

CE/COM III/PC 87

Proposal submitted by the experts of Uruguay

Draft Article 53

Non-defended localities ("open cities")

1. It is prohibited to attack, by any means whatsoever, populated sites, within an area of military operations, upon which the Parties to the conflict . . .

2. This may be an express agreement or it may consist of reciprocal and concordant declarations . . .

3. Such an agreement shall consist essentially in a commitment:

(a) to refrain from attacking the site or from attempting to instigate any form whatever of armed resistance within such an area;

(b) not to station within the area any armed forces or other combatants;

(c) not to keep within the area any mobile weapons or military equipment;

(d) to destroy any fixed military installations within the area or to refrain from using them. Such obligations shall apply equally to all Parties accepting the agreement which shall remain in force until the termination of hostilities.

6. If one of the Parties to the agreement should occupy the fixed military installations within the area, it may destroy them provided that it takes the precautions mentioned in Articles 49 to 51 of the present Protocol.

7. Delete.

8. Delete.

Original: English

CE/COM III/PC 88

Proposal submitted by the experts of the Philippines

Draft Article 64

Humanitarian assistance

2. The offer of relief, whether emanating from a State, a National Red Cross Society, or any other recognized relief society, or from the International Committee of the

Red Cross, or from any other impartial humanitarian body, in favour of the inadequately supplied civilian population, shall be regarded as a humanitarian act for which it shall be entitled to priority attention and execution.

3. Although the Parties to the conflict shall have the right to prescribe the technical arrangements for the conveyance of relief, they may not, in any way whatsoever, divert relief consignments from their proper destination nor delay their conveyance.

4. The Protecting Power or its substitute as the case may be shall notify the Parties to the conflict that the relief consignments shall be exclusively for the use of the needy civilian population.

Original: Spanish

CE/COM III/PC 89

Proposal submitted by the experts of Spain

Draft Article 49

Precautions when attacking

In order to safeguard the civilian population, as well as objects of a civilian character, who might be in the vicinity of a military objective, those who order or launch an attack shall give due warning to civilians threatened, so that the latter may take shelter, unless such warning is likely to involve greater risk for these persons.

(Sub-paragraph (a) of Article 49 of Draft Protocol I has not been included in this article because its provisions are already covered by the prohibition contained in draft Article 47.)

Original: Spanish

CE/COM III/PC 90

Proposal submitted by the experts of Spain

Draft Article 50

Principle of proportionality

Delete paragraph 2, given the prohibition in Article 45(3), and word paragraph 1 as follows:

1. Those who order or launch an attack shall refrain from doing so when the risks involved for the civilian population and objects of a civilian character are disproportionate to the military advantage sought.

Original: French

CE/COM III/PC 91

Proposal submitted by the experts of Yugoslavia

Draft Article 60 A

Conditions for the evacuation of children

1. When carrying out the removal or the evacuation of children in order to protect them from danger, the Parties to the conflict must, to the fullest extent possible, see that the protected locality is not too distant from the child's original locality and that young children remain with their

mothers. Removal to a foreign country should remain an exceptional measure and should only be effected where the special care or treatment which his condition may require is not available within the national territory. Such removal, if deemed necessary, should take place solely with the consent of the parents or guardians, or of the persons who are actually looking after the child.

2. In the case of evacuation to a foreign country, the Party to the conflict carrying out the evacuation and the authorities of the country to which the children are evacuated shall take all necessary measures to ensure that these children are educated in the language and culture of the country of which they are nationals.

(This amendment has been inspired by the proposal of the International Union for Child Welfare; see ICRC document No. RO 403 b of 3 May 1972, pages 14 to 17.)

Original: French

CE/COM III/PC 92

Proposal submitted by the experts of Bulgaria

Draft Article 58

Safeguarding of children

Add the following to the proposals of the International Committee of the Red Cross:

Proposal IV: Where the territory of one of the Parties to the conflict is occupied by the other Party, the occupying Party shall refrain from applying coercive measures upon children of under fifteen years of age, subjecting them to torture, sending them to prisoner-of-war camps, concentration camps or prisons, inflicting the death penalty upon them or employing them for activities which are liable to be in the service of the armed forces.

Proposal V: Where all the territory of one of the Parties to the conflict is occupied by the other Party and where the occupied Party continues to resist, the occupying Party shall refrain from applying the coercive measures mentioned in Proposal IV with regard to children of under fifteen years of age.

Original: English

CE/COM III/PC 93

Proposals submitted by the experts of Australia

Draft Article 40

General protection of the civilian population

The civilian population and non-military objects shall be protected against dangers resulting from hostilities.

Draft Article 42

Definition of non-military objects

Those objects whose destruction would give neither long-term nor short-term military advantage are non-military objects and should never be attacked.

Draft Article 43

Definition of military objectives

Delete.

Draft Article 44

Definition of attacks

Delete.

Draft Article 45

Respect for the civilian population

2. In particular, attacks solely to terrorise the civilian population shall be prohibited.

4. Retaliatory attacks directed against the civilian population shall be prohibited.

(Cf. CE/COM III/PC 106.)

Draft Article 47

Respect for non-military objects

1. Non-military objects shall not be attacked.

2. Non-military objects which are accorded protection shall not be used by their presence to shield military objectives from attack.

Draft Article 48

Respect for and safeguarding of objects indispensable to the survival of the civilian population

Delete.

Draft Article 49

Precautions in attack

In launching an attack a Party shall:

(a) use every endeavour to avoid harm to the civilian population and non-military objects; and

(b) warn, whenever circumstances permit, civilians who may be threatened to enable them to shelter.

Draft Article 50

Principle of proportionality

1. Those who order or launch an attack or order its continuation should take into consideration the losses or damage which the attack, even if carried out with all precautions, may inflict upon the civilian population and non-military objects.

2. Delete the word "shall" and substitute therefor the word "should".

3. Delete the word "shall" and substitute therefor the word "should" and delete the words "objects of a civilian character" and substitute therefor the words "non-military objects".

Original: English

CE/COM III/PC 94

**Proposal submitted by the experts
of the German Democratic Republic**

Draft Article 59

Mothers of infants

The death penalty shall not be pronounced on mothers

of infants and on women or old persons responsible for their care. It shall not be pronounced and carried out on pregnant women.

Draft Article 60

Death penalty

Delete the last sentence.

Original: Spanish

CE/COM III/PC 95

Proposal submitted by the experts of Uruguay

Draft Article 59

Mothers of infants

The death penalty shall not be pronounced on pregnant women, or on women responsible for the care of one or more children under ... years of age, even though the children may not be their own, if the offence or severity of the sentence are related to the armed conflict.

Draft Article 60

Death penalty

Delete the last sentence.

Original: English

CE/COM III/PC 96

**Proposal submitted by the experts
of Australia and Canada**

Draft Article 51

Precautions against the effects of attacks

Notwithstanding that the rights conferred upon the population in the event of transfer or evacuation under Article 49 of the Fourth Convention are expressly preserved, the Parties to the conflict shall, so far as possible, take all reasonable steps to protect the civilian population and non-military objects subject to their authority from the dangers to which they would be exposed in an attack — in particular by removing them from the vicinity of military objectives and from threatened areas.

(Cf. CE/COM III/PC 109).

Original: English

CE/COM III/PC 97

Proposal submitted by the experts of Canada

Draft Article 64

Humanitarian assistance

Paragraph 1, delete "destined exclusively to" and substitute "undertaken for the benefit of the civilian population".

Proposal submitted by the experts of Canada

Draft Article 65

Transit

1. Delete "destined exclusively to" and substitute by "intended for".

Proposal submitted by the experts of Egypt and Lebanon

Draft Article 57

Protection of children

First sentence:

Children under fifteen years shall be the object of special protection.

Draft Article 58

Safeguarding of children

Add a new paragraph, as follows:

2. Children under fifteen years who take part in hostilities and are captured may not be considered responsible. They shall not be sentenced to any penalty. They shall be the object of protective measures (placed in a retraining or rehabilitation institute). In all cases, they must be treated humanely.

Proposal submitted by the experts of the Republic of Vietnam

Draft Article 58

Safeguarding of children

1. The Parties to the conflict shall not recruit children of under fifteen years for service in their regular or other armed forces, nor accept their voluntary enrolment.
2. Children of under fifteen years shall not be authorized to take any part whatsoever in hostilities.

Proposal submitted by the experts of Byelorussia and the U.S.S.R.

Draft Article 58

Safeguarding of children

Maintain Proposal I and accordingly delete Proposals II and III.

Proposal submitted by the experts of Byelorussia and the U.S.S.R.

Draft Article 61

Repatriation

1. Delete the words "permit and".

Proposal submitted by the experts of Denmark, Finland, Ireland, the Netherlands, Norway, Sweden and Switzerland

Draft Article 41 A

Relationship of Article 41 to the Fourth Convention

The definition of Civilian Population given in Article 41 supplements that given in Article 4 of the Fourth Convention.

In particular, refugees and stateless persons within the meaning of international instruments defining their status as such shall enjoy the full protection accorded to protected persons by the Fourth Convention.

Proposal submitted by the experts of Egypt, Iraq, Kuwait, Lebanon, Libya, Saudi Arabia, the Sudan and Syria

- 1) Delete Article 55 of Draft Protocol I.
- 2) Add a Draft Article 48 A

Works and installations containing dangerous forces

1. In order to spare the civilian population and objects of a civilian character from dangers which may result from the destruction of, or damage to, works and installations — such as hydro-electric dams, dykes and sources of power — through the release of natural or artificial forces, the Parties to the conflict shall refrain, in all circumstances, from launching attacks against these works and installations.

2. Furthermore, the Parties to the conflict shall not locate military objectives in the immediate vicinity of works and installations containing dangerous forces.

3. In order to facilitate their identification, the Parties to the conflict may mark works and installations containing dangerous forces with the special sign consisting of oblique red bands on a white ground. The fact of not marking these works and installations in no way dispenses the Parties to the conflict from their obligation to respect in their entirety the provisions of the first two paragraphs.

**Proposal submitted by the experts
of Canada, the Federal Republic of Germany,
the United Kingdom and the United States of America**

Draft Article 44

Definition of attacks

Acts of violence, whether offensive or defensive, committed against the adversary, in the course of hostilities, are considered as attacks for the purposes of this Protocol.

(This proposal replaces that contained in document CE/COM III/PC 5 and in the relevant sections of documents CE/COM III/PC 22 and 29.)

**Proposal submitted by the experts of Australia,
Belgium, Canada, the Federal Republic of Germany,
the United Kingdom and the United States of America**

Draft Article 45

Respect for the civilian population

1. The civilian population as such, as well as individual civilians, shall never be made the object of attack. In particular, attacks intended to terrorize the civilian population shall be prohibited.

2. Attacks which are intentionally launched indiscriminately against civilians and military objectives shall be prohibited.

3. Civilians who are within or near military objectives run the risks resulting from any attack launched against those objectives.

(The co-sponsors have not at the present time agreed on a proposal on the prohibition of reprisals against civilians.)

(This proposal replaces the amendments to this article contained in documents CE/COM III/PC 6, 22, 29 and 93.)

**Proposal submitted by the experts
of Australia, Canada,
the Federal Republic of Germany,
the United Kingdom and the United States of America**

Draft Article 49

Precautions when attacking

When ordering or carrying out an attack the Parties to the conflict and those who plan or order military operations shall take all reasonable steps so to confine that attack that it does not extend to the civilian population and civilian objects in the vicinity of the military objective. For that purpose, advance warning shall be given whenever possible.

(This proposal replaces the amendments to this article contained in documents CE/COM III/PC 9, 29 and 93.)

**Proposal submitted by the experts of Canada,
the Federal Republic of Germany,
the United Kingdom and the United States of America**

Draft Article 51

Precautions against the effects of attacks

The Parties to the conflict shall, to the maximum extent feasible, take the necessary precautions to protect civilians under their control against the dangers resulting from attack.

(This proposal replaces the amendments to this article contained in documents CE/COM III/PC 10 and 29. The Canadian, but not the Australian, delegation withdraws its proposal contained in document CE/COM III/PC 96.)

**Proposal submitted by the experts
of the United States of America**

Indiscriminate attacks

It is requested that the following understanding of the experts from the United States of America be included in the Report of Commission III with respect to the term "indiscriminate attacks" as that term is used by the ICRC in the draft Additional Protocol to the four Geneva Conventions of August 12, 1949:

Indiscriminate attacks are those attacks which have no specific military objective.

**Proposal submitted by the experts
of Byelbrussia, Czechoslovakia and the U.S.S.R.**

Draft Article 60

Death penalty

The death penalty shall not be pronounced on civilians who are under eighteen years by the time of the commission of offence, and on women who are pregnant at the time of the commission of the offence or at the time of the pronouncement of the penalty. The death penalty shall not be carried out on a woman who is pregnant at the time of execution of the penalty.

**Proposal submitted by
the experts of Norway**

International relief in armed conflicts

1. It is suggested that the International Committee of the Red Cross, the League of Red Cross Societies and

Secretary-General of the United Nations should jointly convene a Relief Conference — to be held before the Diplomatic Conference.

2. The purpose of the Relief Conference should be to draw up basic principles and methods of relief action, and to develop institutions and processes for co-ordination in this field.

3. More precisely, it is suggested that the Relief Conference should discuss *inter alia*:

— The aims and methods of relief actions.

— Advance preparation to meet disaster situations, including those following from armed conflicts, by international humanitarian organizations, UN agencies, States and national voluntary organizations.

— The co-ordination of such advanced preparation on the national and international level to keep up-to-date records on resources available for use in disasters; to collect data which may facilitate the prediction of the nature of needs likely to arise in particular areas as consequences of armed conflicts and other disasters; to train personnel for administration and field action in relief operations; to prepare for the best possible utilization of local food resources in time of disaster; to prepare for the maximum use of local personnel; and the establishment of permanent co-ordination agencies for these purposes.

4. It is suggested that, among the experts to be invited to the conference, there should be nutritionists, public health experts, agriculturists, economists, experts in transport and distribution, as well as legal experts. Care should be taken to secure the attendance of persons who have been responsible for relief actions on behalf of international or national humanitarian organizations or UN agencies.

5. It is further suggested that the conclusions of the Conference of Experts should be made available to the Diplomatic Conference as background documentation. The conclusions should also be made available to all organizations and agencies to serve as guidelines for their relief actions.

(The Norwegian experts believe that the work of such a conference could help, not only to improve the performance of relief actions, but also to allay the apprehensions of governments and other authorities who might be under the obligation to accept relief for the civilian population under their control.)

Original: English

CE/COM III/PC 113

**Proposal submitted by the experts
of Bulgaria, Czechoslovakia,
the German Democratic Republic
Hungary and Poland**

Draft Article 53

Non-defended localities

Delete "open cities" in the title of this article:

1. An attack, by any means whatsoever, on a non-defended locality is prohibited according to international law.

2. To ensure the observance of this prohibition, a Party to the conflict may declare as a non-defended locality any

site in or outside a zone of military operations from which armed forces and all other combatants, as well as mobile weapons and mobile military equipment, have been evacuated and in which no use, other than for peaceful purposes, will be made of fixed military installations or establishments.

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

4. The Party which has declared a locality a non-defended locality shall mark these localities if possible by two oblique red bands on a white ground placed on their boundaries, especially on highways, and in places where they are clearly visible.

5. A non-defended locality will lose its status if it no longer fulfils the conditions stipulated in paragraph 2 of the present article.

6. If the adverse Party should occupy the non-defended locality, in no circumstances has it the right to repeal the status of the locality.

Original: English

CE/COM III/PC 114

**Proposal submitted by the experts
of Bulgaria, Czechoslovakia,
the German Democratic Republic and Hungary**

Draft Article 54

Neutralized areas

1. It is prohibited for the Parties to the conflict to extend their military operations or attacks, by any means whatsoever, to an area on which they have conferred by agreement the status of neutralized areas.

2. This agreement may be either express or tacit, or may consist of reciprocal and concordant declarations. It may be concluded orally or in writing either directly or through the medium of a Protecting Power or its substitute. It shall fix the methods of supervision and the purpose of neutralization.

3. The subject of such an agreement may be any area situated in or outside a zone of military operations from which armed forces and all other combatants, as well as mobile weapons and mobile military equipment, have been evacuated and in which no hostile use will be made of fixed military installations or establishments and where any activity linked to military effort has ceased.

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

5. The Party on whose territory the areas are located shall mark these areas by two oblique red bands on a white ground placed on their boundaries, especially on highways, and in places where they are clearly visible.

6. A neutralized area shall lose its status if it no longer fulfils the conditions stipulated in paragraph 3 of the present article.

7. If the adverse Party should occupy the territory in which the neutralized area is situated, in no circumstances has it the right to repeal the status of the area.

Original: English

CE/COM III/PC 115

**Proposal submitted by the experts
of Australia, Belgium, Canada,
the Republic of Korea, the Philippines,
the United Kingdom and the United States
of America**

Draft Article 42

Definition of military objectives

Military objectives are those which by their nature or use contribute effectively and directly to the military effort of the adversary, or the complete or partial destruction, capture or neutralization of which, in the circumstances ruling at the time, offer a distinct military advantage.

Draft Article 43

Definition of civilian objects

Objects which are not military objectives as defined in Article 42 are civilian objects.

(This proposal replaces the amendments to Articles 42 and 43 contained in documents CE/COM III/PC 4, 22, 29 and 93.)

Original: English

CE/COM III/PC 116

**Proposal submitted by the experts
of Australia, Belgium, Canada,
the Republic of Korea, the Philippines,
the United Kingdom and the United States
of America**

Draft Article 47

Respect for civilian objects

Civilian objects shall never be the object of attack.

Original: English

CE/COM III/PC 117

Commentary of the IUCW on Articles 57 to 62 of Draft Protocol I and Article 6 Draft Protocol II.

The protection of children in time of armed conflict has taken on a new urgency. Recent armed conflicts have resulted in an increasing proportion of casualties among civilians, including children. Death, disease, malnutrition, separation from their families, refugee camps and interruption of their education have affected thousands of children during recent armed conflict. The effort to reaffirm and develop international humanitarian law applicable in time of armed conflict should therefore

measures for the protection of children. As the U.N. Declaration of the Rights of the Child states, "The child include particular attention directed to more effective shall in all circumstances be among the first to receive protection and relief" ¹.

The International Committee of the Red Cross has recognized the importance of such protection by asking various non-governmental organizations concerned with the welfare of children to reply to a questionnaire concerning the provisions of the Fourth Geneva Convention relating to the protection of children. The ICRC circulated the questionnaire in order to be able to communicate the opinions of such organizations to the second session of the Conference of Government Experts convened by the ICRC in May, 1972.

The International Union for Child Welfare is one of the non-governmental organizations which the ICRC asked to reply to the questionnaire. The IUCW has long been concerned with the protection of children in time of armed conflict. As early as 1932 it presented a report on the effects of war on children and youth to the Disarmament Conference of that year ². Prior to World War II the IUCW prepared a draft convention on the protection of children in time of war ³ and later collaborated with the ICRC in preparing suggestions which were eventually incorporated in the Geneva Conventions of 1949. It was one of the original promoters of the Declaration of Geneva on the Rights of the Child, a fore-runner of the U.N. Declaration of the Rights of the Child. It is therefore particularly interested in collaborating with the current efforts of the ICRC and the government experts to reaffirm and develop the international humanitarian law of armed conflicts, as such law relates to children. The ICRC has prepared two draft protocols to the Geneva Conventions, as well as commentaries on these protocols, to be used as a basis for discussion at the second session of the Conference of Government Experts. These draft protocols, one relating to international and the other to non-international armed conflict, contain a number of specific provisions on the protection of children. The IUCW has decided to submit herewith its opinion and that of its member organizations on the protection of children in time of armed conflict to the second session of government experts in the form of a Commentary on the two draft protocols prepared by the ICRC. The opinions of the IUCW result from the replies to the ICRC questionnaire which it circulated among a geographically representative group of its member national organizations as well as its own recent experience of problems of children in time of armed conflict. However, the Commentary will also be based on other sources, both private and inter-governmental. References will be given to all such information used in the Commentary.

The increasing concern of the international community for the protection of children in time of armed conflict, in particular as reflected in declarations and resolutions of various U.N. organs, has been referred to in the documentation provided by the ICRC. However, reference should also be made here to the more recent evidence of this concern which has appeared since the publication of

¹ Principle 8, U.N. Declaration on the Rights of the Child. A/Res. 1386 (XIV), 1959.

² Les effets de la guerre sur l'enfance et la jeunesse, Rapport préparé par l'Union Internationale de Secours aux Enfants, Genève, 1932.

³ Projet de convention pour la protection des enfants en cas de conflit armé. 1939, ronéogr., 5 p. UIPE (IUCW).

the ICRC's draft protocols and commentary. Government experts interested in further information on this topic, particularly in specific examples of ill-treatment of women and children in recent armed conflicts, will find it in the Report of the Secretary-General of the UN on Protection of Women and Children in Emergency or War-Time, Fighting for Peace, Self-Determination, National Liberation and Independence, 21 January 1972⁴. The Secretary-General's report and the general subject of the protection of women and children in armed conflicts was debated at the February-March 1972 meeting of the U.N. Commission on the Status of Women⁵, and resulted in the adoption of a resolution on the subject⁶.

The following IUCW Commentary; which has been based on replies of IUCW member organizations to the ICRC questionnaire and on the private and inter-governmental sources referred to, has been divided into two parts: Part A is a commentary on each article of the Draft Additional Protocols prepared by the ICRC which relate to the protection of children. An effort has been made to avoid remarks made by the ICRC in its own Commentary on these articles. Part B includes some suggestions for additional articles in any protocol to the Geneva Conventions. The Conclusion refers to the problem of the general protection of civilians, particularly in aerial bombardments, and the implementation of the Geneva Conventions. The relevance of these two aspects of international humanitarian law to the subject under consideration is evident, since, if civilians cannot be protected in modern methods of warfare and the Geneva Conventions are not implemented, special measures of protection for children are largely illusory.

PART A. COMMENTS ON THE ICRC PROPOSALS RELATING TO CHILDREN

INTERNATIONAL CONFLICTS

ICRC Draft Additional Protocol to the Four Geneva Conventions of Aug. 12, 1949

(a) General Remarks

The International Union for Child Welfare strongly approves of the inclusion of articles providing for special protection for children in any additional protocol to the Geneva Conventions. The precedent was already set in the Fourth Geneva Convention of 1949 which contained a number of articles relating to special protection for children. Preliminary remarks of some experts at the first session of the Conference of Government Experts in 1971 suggested that "the civilian population as a whole, should be protected, without special rules and discrimination in favour of women and children which would complicate regulations in which simplicity was of the essence"⁷.

⁴ E/CN.6/561, Add. 1 and 2.

⁵ E/CN.6/SR.594, 595, 596, 597.

⁶ Res. XII, E/CN.6/L.614/Add. 9. The attention of the government experts is called to paragraph three of the operative portion of that resolution which welcomes the fact that the Conference Experts convened by the Red Cross will consider special measures of protection for women and children and "expresses the wish that among government experts who will participate in that Conference, Member States will appoint women who are making a fundamental contribution to the establishment of humanitarian law for the protection of women and children".

⁷ ICRC, Report, Conf. Govt. Experts, Geneva 1971. Para 25.

However, the Report of the discussion in the Commission on the protection of civilian population at the same Conference stated that "It was not contested by government experts that children should enjoy special protection"⁸.

The Fourth Geneva Convention includes articles on special measures of protection for children during international armed conflict. However, it contains no *general norm* providing for special protection for children. Article 16 provides that the "wounded and sick, as well as the infirm and expectant mothers, shall be the object of special protection and respect." Children were not included in this general article. The ICRC proposes to remedy this lacuna by proposed Art. 57 of the Draft Additional Protocol referred to in more detail below.

Other provisions of Part II of the Fourth Geneva Convention (which covers the protection of the entire population of the countries in conflict and not only the restricted category of protected persons defined in Article 4) provide for the possibility of safety zones to protect, among others, "children under fifteen" and "mothers of children under seven" (Art. 14); the removal from besieged or encircled areas of "children" (Art. 17); the free passage of consignments of foodstuff for "children under fifteen" (Art. 23). Article 24 relates directly to child welfare and provides in general for the education of "children under fifteen" who are orphans or separated from their families, for the reception of such children in neutral countries for the duration of the conflict, and for an effort to arrange for all "children under twelve" to be identified by the wearing of identity discs. Articles 38, 50 and 68 provide for special measures of protection for children who are non-nationals in the hands of a party to the conflict. In particular, special provisions are made for the protection of children in Occupied Territories.

The following articles on children included in the ICRC Draft Additional Protocol to the Four Geneva Conventions of August 12, 1949 would remedy some of the shortcomings of the Fourth Geneva Convention.

(b) ICRC Article 57 — Protection of Children

"Children shall be the object of special protection. The parties to the conflict shall provide them with the care and aid which their age and situation require."

As mentioned above, this Article attempts to remedy the lacuna of the Fourth Geneva Convention which contains no general norm relating to the protection of children. No age limit is mentioned in this proposed ICRC article. Nevertheless, the ICRC mentions an age limit in the following proposed Article 58: "The parties to the conflict shall take care that children *under fifteen* shall not take a direct part in the hostilities. The IUCW suggest that the same age limit should be included in Article 57 as in Article 58 so that the first sentence of Article 57 would read: "Children *under fifteen* shall be the object of special protection."

As the ICRC pointed out in the documentation presented to the first session of the government experts a minority of experts consulted prior thereto considered that no additional special measures for the protection of children were necessary "having regard to the fact that children are taking part in military operations to an ever greater extent"⁹. The ICRC has attempted to meet this objection

⁸ *Ibid.*, Para. 450.

⁹ ICRC, Doc. CE/3, Geneva, Jan. 1971, p. 47.

children under fifteen in hostilities. Logically then, special by an article prohibiting the direct participation of protection should be extended to children up to the age of fifteen. If no such age limitation were included it might be felt that the general norm provided for special protection up to a later age.

The age of fifteen as a criterion was already used in various articles of the Fourth Geneva Convention. The ICRC Commentary on the Fourth Geneva Convention states that "An age limit of fifteen was chosen because from that age onwards a child's faculties have generally reached a stage of development at which there is no longer the same necessity for special measures"¹⁰.

Affiliated national organizations of the IUCW suggested varying proposals regarding the age limit for the protection of children. One affiliated national organization stated:

"in a number of developing countries, especially in Africa, children of 14 are already adults and, if boys, are generally self-supporting. If girls, at the age of 14 they are probably married. In these countries also, it is thought that boys of 14 would automatically be combatant in time of war. It is therefore suggested that consideration should be given to reducing the age of this group to "under fourteen" rather than "under fifteen".

Two other affiliated organizations suggested the age limit of "under 18" both for special measures of protection up to that age and for forbidding the recruitment of children below 18 for military operations. They cited in support of this age limit the laws of their own country which provided for military service only after 18 years of age and the special provisions requiring permission for marriage under this age. Only one affiliated organization stated that there should be no compulsory recruitment under 21 years of age.

The IUCW believe, in conclusion, that the age of "under fifteen" is the most satisfactory one to use in the provisions for the protection of children. Although in some countries "under 18" or "under 21" may seem more in accordance with their traditions, in other countries, youth are integrated into the adult population at a younger age. The age of fifteen also appears to be a reasonable criterion in view of its prior use in the Fourth Geneva Convention; it also appears to be a realistic age limit as regards direct participation in hostilities. At any event, it would seem important to include the same age criterion in Article 57 as in Article 58.

(c) ICRC Article 58 — Safeguarding of Children

"Proposal I: The Parties to the conflict shall take care that children under fifteen years shall not take a direct part in hostilities.

Proposal II: The Parties to the conflict shall not recruit children under fifteen years for service in their armed forces, nor accept their voluntary enrolment.

Proposal III: The Parties to the conflict shall not recruit children of under fifteen years for service in their armed forces nor accept their voluntary enrolment. Children under fifteen years shall not be used as auxiliaries of armed forces, in particular for transporting or camouflaging weapons or military equipment or for laying mines".

It is the overwhelming opinion of the organizations concerned with the protection of children that an article of this type should be included in any development of the international humanitarian law of armed conflict. The increasing use of children in armed hostilities and the consequent tendency to deny protection to them as a result is extremely unfortunate. The use of children in armed conflict is not an entirely new phenomenon. Children often played a part in resistance activities in Europe during World War II. Today, they tend to be participants in armed conflicts where one of the parties is in a situation of military inferiority, particularly in what are considered by the parties to be wars of liberation or self-defense where guerrilla type fighting is prevalent. In view of what might unfortunately be considered the military necessity of using children in such types of conflicts it is important not to put the age limit on their use at an unreasonably high level lest we invite wholesale disregard for the provision.

The IUCW prefers Proposal No 1 among the three proposals of the ICRC. It seems preferable to prohibit children taking any direct part in hostilities rather than prohibiting their enlistment in armed forces (Proposal II and III) since they might take direct part in hostilities without being members of the armed forces. Proposal III attempts to limit the activities of children more broadly by specifying that they may not be used as "auxiliaries of armed forces". The term does not appear to have a precise meaning and the listing of certain types of prohibited activities but not others may create the impression that similar but not specified activities are permitted.

Several national affiliated organizations of the IUCW proposed that children who take a direct part in hostilities and are captured should not be held accountable for such activity because of their youth and hence not subject to punishment. If measures are taken to see that they are prevented from further direct participation in hostilities (by placing them in educational or corrective institutions) they should at all times be humanely treated and continue to be entitled to the special protection due to their age and immaturity. The ICRC proposals contain nothing on this subject although the questionnaire which they circulated to the non-governmental organizations raised the question of what to do with such captured children. The government experts or the ICRC may wish to propose an addition to Article 58 concerning this aspect of the problem.

(d) ICRC Article 59 — Mothers of infants.

"The death penalty shall not be pronounced on mothers of infants or on women responsible for their care."

Article 60 — Death penalty.

"In no case shall the death penalty be pronounced on civilians who are under the age of eighteen years at the time of the offence. Pregnant women shall not be executed."

The IUCW is obviously in favor of these provisions which incorporate the most elementary humanitarian considerations. Some of the national affiliated organizations of the IUCW have pointed out that in their view the death penalty is not justified in any case of civil or military crimes. Several of the organizations also favored not imposing the death penalty on anyone under eighteen years,

¹⁰ Commentary on Art. 24 of the Fourth Geneva Convention, ed. Jean S. Pictet, Geneva, ICRC, 1958, p. 186.

without making a distinction whether the person was a civilian or not. They would therefore prefer a provision reading: "In no case shall the death sentence be pronounced on anyone under eighteen. . ."

(e) ICRC Article 61 — Repatriation.

Due to the length of this article proposed by the ICRC it is not reproduced here. The text may be found in I Basic Texts, documentary material submitted by the ICRC to the Conference of Government Experts, second session, p. 21. Its provisions relate to facilitating the return to their families of children cared for or received abroad. It provides for detailed information concerning each child to be communicated to the Central Tracing Agency. As pointed out in the ICRC Commentary on this Article it is meant to complete Article 26 of the Fourth Convention which provides that "Each party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. . ."

The IUCW finds this Article satisfactory and feels that it should be included in any draft protocol. However, as the Commentary provided by the ICRC points out, this Article should not be interpreted as condoning the evacuation of children to foreign territory except under special circumstances. The important question of the evacuation of children, in particular outside of their national territory, is discussed in Part B, IV a) below.

(f) ICRC Article 62 — Relationship of this chapter to the Fourth Convention.

This article simply states that the preceding articles do not dispense the Parties to the conflict from observing specified provisions of the Fourth Convention. In listing the articles of the Fourth Convention concerned with children, Article 23 was not mentioned. It should be included in the list.

NON-INTERNATIONAL ARMED CONFLICTS

ICRC Additional Protocol to Article 3 Common to the Four Geneva Conventions of August 12, 1949.

(a) General Remarks

Article 3 common to the Four Geneva Conventions relating to "armed conflict not of an international character" contains only certain general norms for the protection of civilians and no special measures of protection for children. The ICRC has proposed a draft additional protocol to complete Article 3 and has included in it specific measures of protection for children (Article 6). Some of these provisions are already contained in the Fourth Geneva Convention as it pertains to international conflicts and some are contained in the new Draft Additional Protocol proposed by the ICRC to the four Geneva Conventions relating to international conflicts.

It is extremely important that these new articles proposed by the ICRC for non-international conflicts be retained in any protocol which is additional to common Article 3. Recent armed conflicts of an internal character have resulted in great suffering to large numbers of children and, as a number of the national member organizations of the IUCW have pointed out, it is essential that legal protection be extended to these victims of non-international armed conflict.

The IUCW has a number of comments on the ICRC proposals on children in non-international conflicts and suggests the following article in place of the proposed Article 6 of the ICRC. The main reasons for the changes proposed by the IUCW in the ICRC text is to bring the protection of children in non-international conflicts into conformity with the provisions for their protection in international conflicts. The IUCW does not feel there are adequate reasons to distinguish between the protection accorded children in the two different types of conflicts. The portion of the IUCW draft which differs from the ICRC draft is underlined.

b) IUCW proposed Article 6 — Measures in Favour of Children

1. Children *under fifteen* shall be the object of special protection. The parties to the conflict shall provide them with the care and aid which their age and situation require.

2. To this end, the Parties to the conflict undertake, at least :

(a) to ensure the identification of children, particularly by making them wear identification discs, *or by some other means.*

(b) to take care that children who are orphans or separated from their families are not left abandoned.

(c) To endeavour to conclude local agreements for the removal of children from combat zones; such children shall be accompanied *if possible by their mothers or other family members or by persons responsible for ensuring their safety; such removal should normally not be outside the national territory of the child; in exceptional cases where the care of the child requires removal outside the country, the consent of the parents or guardian of the child should normally be obtained;* necessary all necessary steps shall be taken to permit the reunion of members of families temporarily separated. *So as to permit and facilitate the return to their families and countries of children cared for or received abroad, the authorities of the receiving country shall establish for each child a card, with photographs, which they shall communicate to the Central Tracing Agency. The card shall contain the main information relating to the identity of the child.*

(d) to take care that children under fifteen years of age do not take any part in hostilities.

3. The death penalty shall not be pronounced on *anyone* below eighteen years of age at the time when the offence was committed nor on mothers of infants or on women responsible for their care. Pregnant women shall not be executed.

In Article 6 (1) the IUCW has proposed the addition of "under fifteen" — a proposal which they also made in the provisions relating to international conflicts.

The ICRC draft of article 6 (2) (a) provides that the Parties shall "ensure the identification of children, particularly by making them wear identity discs". This proposition differs somewhat from the comparable article of the Fourth Geneva Convention (Article 24) relating to international conflicts which provides: "They (the parties to the conflict) shall, furthermore endeavour to arrange for all children under twelve to be identified by the

wearing of identity discs, or by some other means." As the ICRC Commentary points out, in some cases children over twelve, such as mentally handicapped children or deaf mutes, may need such measures of identification, hence the provision "under twelve" was not included. However, the phrase "or by some other means" should perhaps be added to the end of the sentence to emphasize the freedom of the parties to choose the system of identification which they prefer.

Article 6 (2) (b) applies to non-international conflict the type of protection provided for children in international conflicts by Article 24 and Article 50 of the Fourth Geneva Convention. Although these provisions are considerably more detailed than the current draft of the ICRC, the latter has the merit of being concise and probably contains the essential elements of the two articles of the Fourth Geneva Convention. Hence no changes are suggested in it.

Article 6 (2) (c) proposed by the ICRC relates to the evacuation of children from combat zones. The IUCW believes that the exceptional and temporary nature of such removal should be stressed and especially the importance of avoiding the transfer of children abroad by including a provision so stating in the text of the article itself. This question is referred to below in more detail (See Part B, IV (a)).

It also, therefore, seems important to include in this same sub-section a provision on Repatriation similar to Article 61 proposed by the ICRC in the Draft Additional Protocol relating to international conflicts. There have been a number of transfers of children abroad in recent non-international conflicts. The IUCW has therefore included in their proposed Article 6 a condensed statement on Repatriation.

As suggested in the case of international conflicts, Article 6 (2) (d) could perhaps be completed by a provision emphasizing that should children be captured who have participated directly in armed conflict they should not be held personally responsible for such activity and hence not be subject to punishment. They should at all times be treated humanely and should continue to receive the special protection due to their age and immaturity. The IUCW suggests the possibility of such an addition but has not suggested a particular formulation of it.

Article 6 (3) substitutes "anyone" for "civilians" for the reasons mentioned above concerning proposed ICRC Article 60 relative to international conflicts.

PART B.

SOME ADDITIONAL CONSIDERATIONS RELATING TO THE PROTECTION OF CHILDREN

(a) Evacuation of children

Article 14 of the Fourth Geneva Convention envisages the possibility of the establishment of safety zones where children, among others, could be congregated to protect them from the effects of war. Article 6 (2) (c) of the ICRC Draft Additional Protocol to Article 3 common to the Four Geneva Conventions of Aug. 12, 1949 provides that "The Parties to the conflict undertake . . . (c) to endeavour to conclude local agreements for the removal of children from combat zones." The 1970 Secretary-General's Report

on Respect for Human Rights in Armed Conflicts¹¹ discusses at some length the possibility of the establishment of refuges or sanctuaries which would provide special protection and immunity from attack for the civilian population.

All of these measures, it would seem, would require the removal or evacuation of the civilian population, including children, to some extent. The ICRC proposed Articles 53 and 54 (concerning non-defended localities and neutralized zones) of the *Draft Additional Protocol to the Four Geneva Conventions of Aug. 12, 1949* apparently do not envisage measures requiring the evacuation or removal of civilians, however.

Whatever may be the practicality or impracticality of the establishment of zones where civilians would be protected from attack, the IUCW wishes to draw the attention of the Conference of Government Experts to a particular problem which exists in any removal or evacuation of children. That problem is the prejudicial effect, psychologically and physically, which removal or evacuation of children frequently has on them, especially, if they are also separated from their families, and particularly from their mothers if they are young children. Therefore, when persons concerned with the protection of children contemplate the removal or evacuation of children in order to protect them from danger, they should also take into account the possible negative effects of such removal.

Following World War II, the detrimental effects of such evacuation and separation from their families was pointed out in a UNESCO study :

"When we study the nature of the psychological suffering of the child who is a victim of the war, we discover that it is not the facts of war itself—such as bombings, military operations—which have affected him emotionally; his sense of adventure, his interest for destruction and movement can accommodate itself to the worst dangers, and he is not conscious of his peril if he keeps near him his protector who, in his child's heart, incarnates security, and if, at the same time, he can clasp in his arms some familiar object.

It is the repercussion of events on the family affective ties and the separation with his customary framework of life which affect the child, and more than anything the abrupt separation from his mother"¹².

This opinion appears to be held by the majority of organizations for the welfare of children who have had experience with children removed from their countries or immediate localities in wartime. Some affiliated national organizations of the IUCW have emphasized that if such removal is necessary to avoid immediate danger to a child as it sometimes certainly is, an effort should be made to see that the period of removal is as short as possible, that families are not separated, if possible, and that young children remain with their mothers¹³. Removal to a *foreign* territory should be considered justifiable only in exceptional circumstances and under certain conditions.

¹¹ A/8052, 18 Sept. 1970, Para. 45-87.

¹² IUCW translation. *L'Enfance, Victime de la Guerre*, une étude de la situation européenne, par le Docteur Thérèse Brosse, UNESCO 1949, Paris, pp. 11-12.

¹³ Article 14 of the Fourth Geneva Convention provides that safety zones may be established to protect from the effects of war, among others, "children under fifteen" and "mothers of children under seven . . ." One affiliated organization of IUCW suggested that this age limit should be raised to "under nine" since, in its opinion, even in extended family in wartime, children up to nine would need to remain with their mothers in order to survive.

The ICRC in its Commentary on proposed Article 61 of the Draft Additional Protocol to the Four Geneva Conventions has discussed this problem. However, in view of its importance, the IUCW would like to see reference to it in the *text* of any provision additional to the Four Geneva Conventions rather than simply in the Commentary. It proposes the following or a similar text for inclusion in an additional Protocol on international conflicts.

IUCW Proposed Article — Evacuation of Children

When considering the removal or evacuation of children in order to protect them from danger, the Parties to the conflict, should endeavour to balance the advantages of such removal with the detrimental psychological effects it may have on children. If removal or evacuation is deemed necessary an effort should be made, wherever possible, to see that the protected locality is not too distant from the child's immediate locality, and that young children (or "children under nine") remain with their mothers. Removal to a *foreign* country should remain exceptional and be effected normally only where special care or treatment is unavailable within the national territory. Such removal, if deemed necessary, should take place with the consent of the parents or guardians — wherever possible — and an endeavour should be made to ensure adequate identification of the child.

In the case of non-international conflicts the IUCW has already expressed similar ideas in its proposed Article 6 above to replace the ICRC proposal of Article 6 in the Draft Additional Protocol to Article 3 Common to the Four Geneva Conventions of August 12, 1949 (See III (b) above).

Hopefully, such provisions may help to avoid the tragic situations of family separation and psychological disturbance which evacuation of children has frequently created even in the recent past. At the same time, the possibility of such removal or evacuation in cases where the protection of the child demands it should remain open.

(b) Cultural Rights of Children

The IUCW wishes to call the attention of the Conference of Government Experts to a particular problem which has not been specifically mentioned in the ICRC suggested texts, nor in their Commentary on these texts. This problem may be characterized as the protection of the cultural rights of children, i.e., the protection of their identity as a member of a particular cultural group. It is true that this problem does not concern children only. Nevertheless, because of their immaturity and the necessity for continued education any failure to protect this right, and specifically any direct effort to change their cultural identity, may affect children in a more serious manner than adults.

This problem is treated incidentally in Articles 24 and 50 of the Fourth Geneva Convention which provide that the education of orphans and children separated from their families should, if possible, be entrusted to "persons of similar cultural tradition" (Article 24), and to "persons of their own nationality, language, and religion." (Article 50).

The Commentary on Article 24 of the Fourth Geneva Convention states,

"That provision is most important. It is intended to exclude any religious or political propaganda designed to wean children from their natural milieu for that would cause additional suffering to human beings already grievously stricken by the loss of parents" ¹⁴.

Article 24, however, applies only to children who are orphans or separated from their families and Article 50 only applies in occupied territories and neither specifically prohibit propaganda efforts to change the cultural identity of children.

The Second World War already illustrated the dangers to which children are exposed in this regard,

"The social cyclone of the Second World War not only destroyed homes, it also tore millions of children from their educational milieu which dispersed instruction, while at the same time a systematic plan of cultural destruction was put into effect by an enemy which forbade courses, changed programmes, occupied classrooms, pillaged libraries" ¹⁵.

Article 1 of the Declaration of the Principles of International Cultural Cooperation prepared under the auspices of UNESCO states, "Each culture has a dignity and value which must be respected and preserved". The recent development of international law has been in the direction of a clearer recognition of the right to preserve one's identity as a member of a particular cultural group ¹⁶. Yet, at the same time, such cultural rights appear in jeopardy when so many armed conflicts seem based on opposition between cultural groups. It is therefore particularly important to protect the cultural rights of children. The importance of protecting children from "psychological coercion" and "political brainwashing" was raised by one of the affiliated organizations of the IUCW in response to the ICRC questionnaire ¹⁷.

It is suggested that the ICRC and the Conference of Government Experts may wish to devote some attention to this problem, perhaps by elaboration of an Article prohibiting such activity as well as the deliberate interruption of the education of children belonging to specific cultural groups.

(c) Relief

In recent international and non-international armed conflicts some of the greatest suffering has been occasioned by the impossibility or difficulty of providing adequate nourishment and medical supplies for the civilian population and, in particular, for children.

The IUCW therefore feels that the proposed ICRC articles on relief (Articles 63 to 66 of the Draft Additional Protocol to the Four Geneva Conventions of August 12, 1949 and Articles 29, 30 and 31 of the Draft Additional Protocol to Article 3 Common to the Four Geneva Conventions of August 12 '1949) are of the greatest importance in the protection of children in time of armed conflicts.

¹⁴ Commentary on Fourth Geneva Convention, *op. cit.*, p. 187.

¹⁵ IUCW translation. Brosse, *L'Enfance, Victime de la Guerre*, *op. cit.*, p. 45.

¹⁶ *Cultural Rights as Human Rights*, Studies and Documents on Cultural Policies, UNESCO, Paris 1970.

¹⁷ See also Report by the Secretary-General, Protection of Children in Emergency or War-time, E/CN.6/561, para. 36 and reference thereto in minutes of the Commission on the Status of Women, 1 March 1972, E/Cn.6/SR.595.

In the main, these proposals seem complete. However, the IUCW would like to draw the attention of the ICRC and the Conference of Government Experts to a problem raised by UNICEF regarding its relief activities on behalf of children. This problem was mentioned by UNICEF in a statement incorporated in the Annex to the 1969 Report of the Secretary-General of the UN on the Respect for Human Rights in Armed Conflicts:

“ One formal difficulty for UNICEF in providing relief is a result of the provision in General Assembly resolution 57 (I) which states that “ The Fund shall not engage in activity in any country except in consultation with, and with the consent of, the Government concerned ”. This has been interpreted by UNICEF as requiring a government request for aid. In the year since the adoption of this resolution, the problem of government request has become complicated somewhat in that many of the areas of armed conflicts are within the borders of a single country. In these internal conflicts, therefore, it may mean that a request for assistance would need to come from only one of the parties to the conflict.

The conventions of the Red Cross do not appear to contain effective provisions regarding relief assistance in areas of internal conflict ...

In the case of civil war, there is a tendency on the part of both sides to assume that relief offered by a United Nations agency carries with it an element of political recognition. It would be useful if international action could be taken which would assure some means of access to the dissidents in such conflicts without appearing to give political recognition ”¹⁸.

Without suggesting any specific text for dealing with the problem raised by UNICEF, it appears to the IUCW that Articles 29, 30 and 31 proposed by the ICRC for relief and humanitarian assistance in non-international conflicts do not treat adequately this problem since inter-governmental organizations are not mentioned and there is no statement that relief offered by an inter-governmental organization does not carry any element of political recognition. The ICRC and the Conference of Government Experts may wish therefore to examine this problem more carefully with UNICEF.

FINAL REMARKS

The preceding Commentary has treated in some detail the question of *special measures of protection for children in time of armed conflicts*. It was not the intention of the IUCW to treat herein the problem of the general protection of civilians since that subject was not contained in the questionnaire circulated by the ICRC to non-governmental organizations.

Nevertheless, it is evident that many aspects of modern warfare, if left uncontrolled legally, may make irrelevant any special measures of protection for children. Aerial bombardments and the use of certain modern weapons which cannot be controlled sufficiently to distinguish between combatants and civilians have been the cause of the greatest recent suffering of children in armed conflicts. Therefore, unless effective legal limits are set to aerial bombardments and to the use of certain types of modern weapons any special measures for the protection of children are largely illusory.

The Articles relating to the general protection of civilians which have been proposed by the ICRC in the

two draft additional protocols suggested as a basis for discussion at the second session of the Conference have not been examined in detail by the IUCW. However, the IUCW wishes to emphasize that the fundamental humanitarian consideration of the protection of children should be foremost in any consideration of these Articles.

A further word must also be said on the subject of implementation or control of the provisions of the Geneva Conventions or any additional protocols to them. Again, special legal measures for the protection of children will be unimportant if they are not implemented. The earlier provisions of the Geneva Conventions of 1949, including those relating to children, have not been implemented to date¹⁹. The IUCW wishes to express its strong conviction that better methods of control and implementation must be found in the current effort to reaffirm and develop international humanitarian law. A number of proposals for such improved implementation and control have already been made. We hope that one of these current proposals for stronger implementation of the Geneva Conventions will be adopted.

(Legal opinion prepared by Virginia Leary, Attorney-at-Law at the IUCW.)

Original: English

CE/COM III/OPC 1

Proposal submitted by the experts of the United States of America

Replace Draft Articles 67 — 72 with the following single article:

1. Subject to temporary and exceptional measures taken by the Parties to the conflict to guarantee their security, civil defence personnel shall be allowed to carry out their humanitarian tasks.

2. In no circumstances shall the fact of having taken part in such humanitarian civil defence activities be considered to be punishable.

Original: French

CE/COM III/OPC 2

Proposal submitted by the experts of Brazil

Draft Article 67

Definition

2. Add, after the word “ tasks ”, the expression “ and solely in such cases ”.

Original: English

CE/COM III/OPC 3

Proposal submitted by the experts of Denmark

Draft Article 67

Definition

1. Delete the word “ exclusive ”.

Insert after the first sentence: “ This is valid without

¹⁹ One affiliated member organization of the IUCW replied to the ICRC questionnaire on special measures of protection for children: “ I feel it is unreal to make such conventions as everybody knows bombs are just falling down and children and pregnant women are killed with or without conventions.”

¹⁸ A/7720, 20 November 1969, Annex B, p. 94.

any regard to the structure of those organizations or their name”.

(a) Delete the word “tracing” and substitute “rescuing”.

2. Add after the first sentence: “their recruitment may be made under obligation”.

Draft Article 68

General protection

(1) Insert, after paragraph 1, the following sentence as a new paragraph 2:

2. If they should fall into the power of the enemy, the personnel of civil defence organizations shall not be made prisoners of war, but shall enjoy, at least, the guarantees granted by the Fourth Convention.

(2) The present paragraphs 2 and 3 will consequently be numbered 3 and 4.

Draft Article 69

Protection in occupied territories

(1) Delete, in paragraph 2, the first sentence.

(2) In paragraph 2, second sentence, replace the word “permanent” by the word “the”.

(3) Delete, in paragraph 2, the last sentence.

Draft Article 70

Organizations of neutral States

(1) Delete the words “neutral States” and substitute “foreign nations”.

(2) Change the heading correspondingly.

Draft Article 71

Markings

2. The identification of medical personnel and marking of medical establishments, units and transports, forming part of civil defence organizations are governed by Articles 14, 16 and 18 of the present Protocol.

Original: English

CE/COM III/OPC 4

Proposal submitted by the experts of Hungary

Draft Article 67

Definition

1. Those organizations, which are set up or recognized by their Government and whose exclusive function, in time of armed conflict, is to save human life and to ensure ...

(This amendment has a reference to point (a), which mentions in the first place the medical care to victims.)

Original: English

CE/COM III/OPC 5

Proposal submitted by the experts of Australia and Ireland

Draft Article 67

Definition

In sub-paragraph 1 (a) after “tracing of” insert “rescuing of”.

Original: English

CE/COM III/OPC 6

Proposal submitted by the experts of the United Kingdom

Draft Article 68

General protection

1. The Parties to the conflict shall use their best endeavours to protect personnel discharging the civil defence functions defined in Article 67 and shall, except in the case of imperative military necessity, refrain from hindering them in the accomplishment of their tasks.

2. Personnel discharging civil defence functions shall not be the subject of deliberate attacks.

3. Buildings, equipment and means of transport being used for the purpose of discharging civil defence functions shall not be deliberately attacked or destroyed during such time as they are being used to discharge civil defence functions.

Original: English

CE/COM III/OPC 7

Proposal submitted by the experts of the Netherlands

Draft Article 67

Definition

1. Those organizations which are set up or recognized by their Government and whose main function, in time of armed conflict, is to ensure the survival and living conditions of the civilian population exposed to dangers resulting from hostilities or natural disasters, shall be considered to be civil defence organizations within the meaning of the present Protocol. Their tasks, which they fulfil without exercising any discrimination, are mainly the following:

(a) the tracing of, and the giving of first aid and medical care to victims;

(b) the safeguarding, particularly by fire-fighting, of persons, either civilians or military personnel *hors de combat*;

(c) the protection of objects indispensable to the survival of the civilian population;

(d) the provision of material and social assistance to the civilian population;

- (e) the administration of essential public utility services, indispensable to the civilian population;
- (f) the maintenance of order in disaster areas;
- (g) preventive measures (warning, evacuation, etc.);
- (h) the construction and administration of shelters.

2. These organizations have no military tasks whatsoever. They may, however, include military personnel, be organized on a military pattern and be attached to military authorities. Their personnel may, in the discharge of their tasks, co-operate with military personnel.

3. In order to ensure the maintenance of order in disaster areas, or for the purpose of legitimate self-defence linked to their tasks, personnel of civil defence organizations are authorized to carry light weapons.

Draft Article 68

General protection

1. Civil defence organizations shall be protected. They shall at all times be authorized to accomplish their tasks; their activities, whether inside or outside combat zones, shall not be hindered, nor shall their personnel, buildings, equipment and means of transport be attacked or destroyed, except in the case of imperative military necessity.

2. The same shall apply to those assigned temporarily to them for any emergency relief action, for such time as this temporary use endures.

(The experts of the Netherlands agree with the other articles in Section IV)

Original: English

CE/COM III/OPC 8

Proposal submitted by the experts of Sweden

Draft Article 67

Definition

1.(b) Delete the activity of fire-fighting in this subparagraph and add a new sub-paragraph:

fire-fighting in order to assist in the rescuing of persons, either civilian or military personnel *hors de combat*, and in the avoiding of damage on civilian property.

Original: French

CE/COM III/OPC 9

Proposal submitted by the experts of Belgium

Draft Article 67

Definition

1. Those organizations which are set up or recognized by their Government and whose exclusively humanitarian mission, in time of armed conflict, is to ensure the survival and living conditions of the civilian population exposed to dangers resulting from hostilities or disasters, shall be considered to be civil defence organizations within the meaning of the present Protocol.

2. These organizations have no military character whatsoever nor do they carry out any combat missions. Their tasks, which they fulfil without exercising any discrimination, are mainly the following:

- (a) the tracing of and the giving of first aid and medical care to victims;
- (b) the safeguarding, particularly by fire-fighting, of persons, either civilians or military personnel, *hors de combat*;
- (c) the protection of objects indispensable to the survival of the civilian population;
- (d) the provision of material and social assistance to the civilian population;
- (e) the administration of essential public utility services indispensable to the civilian population;
- (f) the maintenance of order in the disaster areas;
- (g) preventive measures (warning, evacuation, etc.);
- (h) the construction, equipping and administration of shelters for the civilian population.

Original: English

CE/COM III/OPC 10

Proposal submitted by the experts of the Philippines

Draft Article 67

Definition

1. Those organizations which are set up or recognized by their Government, including their personnel, shall be protected when in the performance of humanitarian tasks or functions, mainly the following:

- (a) the tracing of, and the giving of first aid and medical care to victims;
- (b) the safeguarding of persons, either civilians or military personnel *hors de combat*, especially by fire-fighting;
- (c) the protection of objects necessary to the survival of the civilian population;
- (d) the provision of material and social assistance to the civilian population;
- (e) the administration of essential public utility services necessary to the civilian population;
- (f) the maintenance of order in disaster areas;
- (g) the institution of preventive measures (warning, evacuation, etc.);
- (h) the construction and administration of shelters.

Original: English

CE/COM III/OPC 11

Proposal submitted by the experts of Norway

Draft Article 67

Definition

1. Those organizations, which are set up or recognized by their Government and whose exclusive function, in time of armed conflict, is to ensure the survival and living

conditions of the civilian population exposed to dangers resulting from hostilities or natural disasters, shall be considered to be civil defence organizations within the meaning of the present Protocol. The same shall apply to bodies of relief organizations, etc., operating under the co-ordinated leadership of a civil defence organization. Their tasks, which they fulfil without exercising any discrimination, are mainly the following:

- a) preventive measures (warning, evacuation, shelters, information, etc.);
- b) the tracing of, and the giving of medical care to victims either civilians or military personnel *hors de combat*;
- c) the relief work, for instance rescue work, fire-fighting and provision of material and social assistance;
- d) the protection and maintenance of objects indispensable to the civilian population;
- e) the maintenance of order in disaster areas.

Original: English

CE/COM III/OPC 12

Proposal submitted by the experts of Sweden

Draft Article 69

Protection in occupied territories

3 The terms "for the use of the civilian population" and "the protection of the civilian population" should be amended to read:

"for the use of those organizations", and "the efficient discharge of the tasks of the civil defence organizations", respectively.

Original: English

CE/COM III/OPC 13

**Questions submitted by the experts
of the United States of America to the sub-commission
of Commission III**

1 Is a radar site which provides warning against air attacks on cities a civil defence function?

2 Can military personnel in an urban area both fight fires and man anti-aircraft weapons?

3. If civilians receive certain protection and uniformed members of the armed forces receive certain protection, who is omitted?

4. Many reserve military personnel in the United States receive, as their Reserve Organization training assignment, training as staff members of State and local governments for civil defence. In a crisis situation, these reserve military personnel will be called to active duty and assigned to the State or local governments which they have been trained to support. Although they are in active military status, they are subordinate to, and take orders from, civilian State and local officials. Is it equitable to deny these military personnel the proposed protections?

5. The United States, the warning and communications systems of civil defence are operated by military personnel, at the Federal Government level, subject to the

policy and requirements direction of the Director of Civil Defense, a civilian who directs a civilian activity and staff. Is it equitable to deny these military men the proposed special protections when they are engaged in humanitarian activities, merely because they are in uniform?

Original: English

CE/COM III/OPC 14

Proposal submitted by the experts of Australia

Draft Article 70

Organizations of neutral States

2. In no circumstances shall this assistance be considered as an unfriendly act.

Draft Article 71

Markings

1. After "distinctive emblem" in the last line insert "of civil defence organizations".

3. After "distinctive emblem" in the third line insert "of civil defence organizations".

4. After "distinctive emblem" in the third line insert "of civil defence organizations".

Draft Article 72

Notification

Each of the High Contracting Parties shall notify the International Committee of the Red Cross (the Depository State) of its civil defence organizations.

Original: French

CE/COM III/OPC 15

Proposal submitted by the experts of Belgium

Draft Article 67

Definition

(See CE/COM III/OPC 9.)

Draft Article 68

General protection

2. Civilians who, while not belonging to an organization of the kind defined in Article 67, nevertheless perform the civil defence tasks listed in that article, have been instructed in those tasks and have been granted official recognition by means of an identity card provided for that purpose, shall, in the performance of their tasks, benefit from the protection provided for in the present article.

Report by the *ad hoc* group (experts from Denmark, France, Norway and Sweden) on a special emblem for civil defence organizations

General requirements of a universal distinctive emblem for civil defence organizations

General remarks:

1. The emblem must not be mistaken for other international emblems, such as the distinctive emblem of the red cross (red crescent, red lion and sun) or the emblem protecting cultural property.

2. The emblem must be easy to recognize at a distance on the different kinds of uniform which would be worn by members of various civil defence organizations.

3. National civilian emblems or signs are allowed but shall not have any connection with the international civil defence emblem.

4. The emblem shall not be contrary to any religious sentiments whatsoever.

5. The colour and design of the emblem shall be determined according to the abovementioned principles.

Special remarks:

1. The emblem shall not be one which is already used by other organizations, official or private, national or international.

2. The emblem shall be nationally and internationally protected in the same way as the distinctive emblem of the red cross, etc.

(With regard to this protection, it is recommended that the words "From the outbreak of hostilities" in Article 71, paragraph 4 should be deleted.)

Original: French

CE/COM III/OPC 17

Final proposal submitted by the experts of Belgium

Draft Article 67

Definition

(See CE/COM III/OPC 9.)

Draft Article 68

General protection

Add a new paragraph 4, reading as follows:

4. Civilians who, while not belonging to a civil defence organization as defined in Article 67, have received special instruction in civil defence tasks as listed in that article, and for this purpose hold an official identity card, shall enjoy the general protection afforded by this article while discharging such tasks.

Draft Article 69

Protection in occupied territories

Add a new paragraph 4, reading as follows:

4. Civilians referred to in Article 68 (4) shall enjoy the special protection afforded by the present article.

Organizations of neutral States

Replace "neutral States" by "States not involved in the conflict" in the heading and in paragraph 1.

Original: English

CE/COM III/OPC 18

Proposal submitted by the experts of Egypt

Draft Article 69

Protection in occupied territories

2. The words "into the power of the enemy" to be replaced by the following: "under the authority of the Occupying Power".

Original: English

CE/COM III/OPC 19

Proposal submitted by the experts of Denmark

Draft Article 67

Definition and description

1. Civil defence for the purpose of this Protocol covers the humanitarian tasks of saving human lives, relieving human suffering and safeguarding the survival and living conditions of the civilian population exposed to dangers resulting from hostilities or disasters. These tasks, which should be fulfilled without any discrimination whatsoever, are mainly the following:

- (a) rescue, first aid, transport of wounded and fire-fighting;
- (b) the provision of welfare services to the civilian population;
- (c) emergency repair of public utilities indispensable to the civilian population;
- (d) maintenance of public order;
- (e) preventive measures, such as warning the civilian population, evacuation and the provision of shelters.

2. The protection provided in this Section of the Protocol shall apply within areas of military combat as well as within occupied territories.

3. The protection shall apply to all organizations concerned with the tasks mentioned in paragraph 1, provided they are set up or recognized by their Government, as well as to persons who, without belonging to such organizations, perform those tasks under arrangements organized by their Government.

4. The civil defence bodies shall not carry out any combat missions. They may, however, be organized on a military pattern and be attached to military authorities. Their recruitment may be made under obligation.

5. The civil defence bodies may, in the discharge of their tasks, co-operate with military services. They may include military personnel on condition that such personnel only perform humanitarian tasks within the

scope of paragraph 1, and that they do not wear the military uniform of their country.

6. The participation of civil defence bodies in the common defence effort of their country does not affect their status for the purpose of this Section of the Protocol.

7. In order to ensure the maintenance of order in disaster areas, or for the purpose of legitimate self-defence linked to their tasks, personnel of civil defence bodies are authorized to carry light weapons.

Original: French

CE/COM III/OPC 20

Proposal submitted by the experts of Belgium

Draft Article 67

Definition

Remarks:

1. *Definition of civil defence and description of its tasks*

(a) The Belgian experts accept paragraph 1 of proposal CE/COM III/OPC 19 and the amendments which have already been approved.

(b) Regarding fire-fighting, they accept^r the above-mentioned text but would like the sub-commission to consider the possibility of a more explicit rendering on the lines of document CE/COM III/OPC 8.

2. *Civil defence personnel (status)*

They shall include persons working in:

- (a) organized civil defence bodies with civilian status;
- (b) organizations composed of civilians, or persons who have been given back civilian status by means of legal measures taken in peace time.

(See paragraph 3 of proposal CE/COM III/OPC 19.)

3. *Protection*

(a) If civil defence personnel are concerned with specifically humanitarian tasks, they shall enjoy special protection.

(b) If civil defence personnel carry out other tasks, they shall lose this special protection and shall enjoy only the general protection afforded to civilians under the Fourth Geneva Convention.

(c) The Belgian experts agree with paragraph 2 of proposal CE/COM III/OPC 19.

4. *Position of civil defence in relation to a national authority*

Civil defence units may under no circumstances be placed under the control of military authorities in case of armed conflict.

5. *Civil defence co-operation with military units*

(See paragraph 5 of proposal CE/COM III/OPC 19.)

First sentence:

(a) The Belgian experts concur, on condition that co-operation is only exceptionally carried out, and that it is justifiable to the extent that it is strictly indispensable for the protection of the civilian population.

(b) The Belgian experts would like the above-mentioned clarification to be included in the draft Protocol.

Second sentence:

The Belgian experts are absolutely opposed to the suggestion that military units with military status, thus involving combatants, should be an integral part of civil defence. A measure of co-operation is admissible, but integration is inadmissible, for then no special protection could be afforded to civil defence, even if it were stated that the military units involved would perform only humanitarian tasks.

6. Furthermore, the Belgian experts strongly request that paragraphs 6 and 7 in proposal CE/COM III/OPC 19 be deleted.

Original: English

CE/COM III/RDP 1

Proposal submitted by the experts of the United Kingdom

Draft resolution concerning Disarmament and Peace to be annexed to the final Act of the Diplomatic Conference

(a) *Preamble, paragraph 1:*

Insert "particular" before "weapons"; delete everything after "weapons".

(b) *Preamble, paragraph 2:*

Believing nevertheless that weapons of mass destruction are repugnant to the conscience of mankind and that the cause of peace would be served by agreements for the prohibition of the development, production, possession, stockpiling and use of such weapons, with effective international measures for verification and control;

(c) *Operative paragraph 1:*

Urges all Parties to the Geneva Conventions of 1949 to do all in their power to promote the conclusion of such agreements and to ensure their observance.

Original: English

CE/COM III/RDP 2

Proposal submitted by the experts of France

Draft resolution concerning disarmament and peace to be annexed to the Final Act of the Diplomatic Conference

Operative paragraph 3:

Expresses the hope that international agreements will be concluded, aimed at the elimination of these weapons, the prohibition of their manufacture and the destruction of existing stockpiles, and that these agreements will lead to general and complete disarmament under effective international control.

**WRITTEN PROPOSALS
SUBMITTED BY THE EXPERTS TO COMMISSION IV**

(Application of the Law, General and Final Provisions; Preliminary Draft Declaration on the Application of International Humanitarian Law in Armed Struggles for Self-Determination; Draft Resolution concerning Disarmament and Peace)

Original: English

CE/COM IV/1

Original: French

CE/COM IV/2

**Proposal submitted by the experts
of the Federal Republic of Germany**

Proposal submitted by the experts of Belgium

Draft Article 6

Draft Article 6

*Appointment of Protecting Powers and
of their substitute*

*Appointment of Protecting Powers and of their
substitute*

1. For the sole purpose of applying the provisions of international humanitarian law, each of the Parties to the conflict has the obligation to appoint a Protecting Power from the beginning of the hostilities, to accept the appointment of a Protecting Power by the adverse Party and to facilitate the activities on its territory of a Protecting Power appointed by the adverse Party. If, despite the foregoing, the appointment or acceptance of a State as Protecting Power is not made, the Parties to the conflict shall appoint and accept, as substitute, the International Committee of the Red Cross or any other impartial humanitarian organization.

2. Failing the appointment or acceptance of a Protecting Power, or of its substitute, within . . . days from the opening of hostilities, the Parties to the conflict shall accept, as substitute, the International Committee of the Red Cross.

3. The Protecting Powers and their substitutes shall be considered not only as agents or representatives of the Parties to the conflict but also as the agents of the international community which expresses its concern for the respect of international humanitarian law.

4. The appointment and the acceptance of a Protecting Power, or of its substitute, for the sole purpose of applying the provisions of international humanitarian law have no effect on the reciprocal legal status of the Parties to the conflict and, in particular, do not involve recognition of the adverse Party as a State.

5. The maintenance of diplomatic relations between the belligerent States does not constitute an obstacle to the appointment of Protecting Powers or of their substitute.

6. The provisions of the present Protocol constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded, sick, and shipwrecked persons, prisoners of war, civilians, medical persons and chaplains, and for their relief.

1. The Conventions of 12 August 1949 being applied with the co-operation and under the scrutiny of the Protecting Powers, the High Contracting Parties shall call upon such co-operation as soon as an armed conflict breaks out between two or more of them; they shall facilitate the implementation of this co-operation on their territory for the specific purpose of applying the provisions of the said Conventions and in the proper order of the tasks stated therein.

2. The fact that one of the Parties to the conflict is not, for whatever reason, represented by a Protecting Power, shall not absolve the adverse Party from the same obligation incumbent upon it in accordance with the provisions of Article 1, common to the four Conventions.

3. Without prejudice to any communication to this effect made through the usual channels, the appointment of a Protecting Power shall be notified, within ten days following the outbreak of the armed conflict, to the International Committee of the Red Cross, which, in its turn, shall notify forthwith the adverse Party, on the territory of which the appointed Power is called upon to exercise its mission.

Any Party to the conflict receiving such notification through the intermediary of the International Committee of the Red Cross shall immediately acknowledge its receipt that Party must, moreover, send a reply to the International Committee of the Red Cross within a period of . . . days.

4. Where the Party to the conflict, having received such notification, does not allow the appointment to take effect, its reply to the International Committee of the Red Cross shall contain suggestions which will permit the Party having taken the initiative in proposing the appointment to make another choice and notify it through the same channels.

5. If one of the Parties to the conflict has not benefited from the appointment of a Protecting Power within a time limit of thirty days, dating from the first notification, the International Committee of the Red Cross shall be recognized as the substitute for as long as the situations to be

protected under the terms of the four Conventions do not benefit from a Protecting Power or another body providing every guarantee of impartiality and efficacy.

The same conditions shall apply if, within an identical time limit of thirty days, dating from the outbreak of hostilities, none of the Parties to the conflict has appointed a Protecting Power, nor has addressed a notification to the International Committee of the Red Cross to this effect.

6. The representatives or delegates of the Protecting Power shall accomplish their mission, as defined in the provisions of the four Conventions of 12 August 1949, by considering themselves not only as substitutes or representatives of a Party to the conflict, but as persons whose task it is to ensure that the said Conventions are respected, in accordance with the undertaking given for this purpose by the High Contracting Parties, under the terms of Article 1, common to the four Conventions.

7. The appointment and the acceptance of a Protecting Power, for the sole purposes of applying the Conventions and the present Protocol, have no effect on the reciprocal legal status of the Parties to the conflict and, in particular, do not involve recognition of the adverse Party as a State.

8. The maintenance of diplomatic relations between the belligerent States does not constitute an obstacle to the appointment of a Protecting Power.

9. Whenever mention is made, in paragraphs 1 to 8 of the present Article, of the Protecting Power, such mention also applies to substitute organizations in the sense of Article 10, common to the four Conventions. ,

Original: Spanish

CE/COM IV/3

Proposal submitted by the experts of Spain

Draft Article 6

Appointment of Protecting Powers and of their substitute

1. For the sole purposes of applying the Conventions and the present Protocol, each of the Parties to the conflict has the obligation to appoint a Protecting Power from the beginning of the hostilities and must accept the activities on its territory of a Protecting Power appointed by the adverse Party.

2. This obligation shall be met within five days of the outbreak of hostilities, by notification either to the institutions of the International Red Cross or to a neutral High Contracting Party, which shall in turn request a reply from the other Party to the conflict within twenty-four hours of receiving such a request.

3. Notification shall include the proposal of at least four Powers capable of undertaking the mission of Protecting Power. The Party making such a proposal shall be obliged to abide by the choice made, from among the Powers proposed, by the adverse Party, which shall name at least two of the Protecting Powers mentioned.

4. If, for any reason whatsoever, a Party to the conflict does not accept any of the Powers proposed, while giving reasons for its rejection, it shall forthwith accept, as a substitute and for the purpose of application of the Conventions and the additional Protocols thereto, the good offices of the Permanent Supervisory Body the creation of which is envisaged in the said instruments.

5. The institutions of the International Red Cross or the neutral High Contracting Party taking part in the notification procedure for the appointment of the Protecting Power shall request the said Power to declare its acceptance or rejection of such appointment within a period not exceeding three days from receipt of the request. If the Power proposed gives a negative reply, which must be explained, a similar request shall be made to the other Power chosen, within twenty-four hours of receipt of the first Power's refusal. If the reply is again negative, the Permanent Supervisory Body shall become operative immediately.

6. The International Red Cross may be proposed as a substitute, either when the initial notification is made or when the Powers initially proposed have refused the appointment. In any case, the International Committee of the Red Cross may, in all circumstances, fulfil the functions and carry out humanitarian activities in the conditions laid down in Article 9, common to the First, Second and Third Conventions and Article 10 of the Fourth Convention.

Original: English

CE/COM IV/4

**Proposal submitted by the experts
of the German Democratic Republic**

Draft Article 6

*Appointment of Protecting Powers
and of their substitute*

(Replace paragraphs 1 and 2 of the ICRC text by the following):

1. For the sole purposes of applying the Conventions and the present Protocol, each of the Parties to the conflict has the obligation to appoint a Protecting Power within . . . days from the beginning of the hostilities and to communicate the name of this Protecting Power to the adverse Party. If the appointment of a Protecting Power is not made within . . . days, or if the appointed Protecting Power is not accepted by the adverse Party, the International Committee of the Red Cross or any other humanitarian organization shall act as substitute for a Protecting Power, provided that the Parties to the conflict so agree.

2. The appointment and the acceptance of a Protecting Power, or of its substitute, for the sole purposes of applying the Conventions and the present Protocol, have no effect on the reciprocal legal status of the Parties to the conflict.

Original: English

CE/COM IV/5

**Proposal submitted by the experts
of the United States of America**

Draft Article 6

*Appointment of Protecting Powers and of their
substitute*

1. At the outset of any conflict or occupation referred to in Article 2, common to the Conventions, the Parties to

the conflict shall endeavour to agree promptly on a Protecting Power or a substitute organization to safeguard the interests of each Party.

2. The maintenance of diplomatic relations between the belligerent States does not constitute an obstacle to the appointment of Protecting Powers or substitute organizations.

3. If a Protecting Power or a substitute organization has not been appointed within thirty days after either Party first proposed such appointment, the International Committee of the Red Cross shall request the Detaining Power and the adverse Party each to submit a list of at least . . . possible Protecting Powers or substitute organizations acceptable to it. The two Parties shall submit the lists to the International Committee of the Red Cross within ten days. The International Committee of the Red Cross shall compare the lists and seek the agreement of any proposed Protecting Power or substitute organization named on both lists. If for any reason a Protecting Power or substitute organization is not appointed within a further period of twenty days, the International Committee of the Red Cross shall be accepted by the Parties as a substitute for the Protecting Power.

4. The representatives and delegates of Protecting Powers and substitute organizations shall, without delay, be given access to each captured or detained person in accordance with the Conventions.

Original: French

CE/COM IV/6

Proposal submitted by the experts of Austria

Draft Article 1

Scope of the present Protocol

1. The present Protocol which reaffirms, elaborates and supplements the provisions of the four Geneva Conventions of August 12, 1949, for the Protection of Victims of War, is applicable in all the situations provided for in Article 2, common to the Conventions.

2. Although one of the Powers in conflict may not be a party to the present Protocol, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Protocol in relation to the said Power, if the latter accepts and applies the provisions thereof.

Original: English

CE/COM IV/7

**Proposal submitted by the experts
of the Philippines**

Draft Article 1

Scope of the present Protocol

1. The present Protocol elaborates and supplements the provisions of Article 3 of the four Geneva Conventions of August 12, 1949, for the Protection of Victims of War.

2. It is also applicable to the situations provided for in Article 2, common to these Conventions.

Original: French

CE/COM IV/8

Proposal submitted by the experts of Jordan

Draft Article 5

Beginning and end of application

The present Protocol shall apply from the beginning of any conflict or occupation mentioned in Article 2, common to the four Conventions. In the territory of the Parties to the conflict, the application of the present Protocol shall cease at the general close of military operations and upon the final repatriation of protected persons who have fallen into the hands of the adverse Party.

Original: French

CE/COM IV/9

Proposal submitted by the experts of Romania

Draft Article 6

*Appointment of Protecting Powers and of their
substitute.*

1. For the sole purposes of applying the Conventions and the present Protocol, each of the Parties to the conflict shall appoint a Protecting Power from the beginning of the hostilities, and shall accept the activities on its territory of a Protecting Power appointed by the adverse Party and recognized as such by it. If, despite the foregoing, the appointment of a Protecting Power is not made, the Parties to the conflict shall accept on their territories the activities of a humanitarian body such as the International Committee of the Red Cross, appointed by one Party and recognized by the other Party or, if appropriate, appointed by the United Nations Organization and recognized by the Parties.

2. (Delete paragraph 2 of the ICRC text.)

3. (Delete paragraph 3 of the ICRC text.)

Original: English

CE/COM IV/10

Proposal submitted by the experts of Denmark

Draft Part V

Execution of the Conventions and of the present Protocol

Article (i)

*Activity of the International Committee of the Red Cross
prior to agreement on a Protecting Power*

From the outset of any conflict or occupation referred to in Article 2, common to the Conventions, each of the Parties to the conflict shall accept the offer of the International Committee of the Red Cross to perform the activities of a Protecting Power under the Conventions and this Protocol unless, or until, one or more Protecting Powers or substitutes are effectively carrying out such activities.

The appointment of one or more Protecting Powers or substitutes should, however, not prevent the International Committee of the Red Cross from carrying out its traditional humanitarian activities for the benefit of the war victims.

Article (ii)

Appointment of Protecting Powers and substitutes

(See the several proposals already advanced on this subject)

Article (iii)

Qualified persons

(Draft Article 7 of the ICRC text might be supplemented as follows):

The High Contracting Parties are furthermore invited to assign advisers on international humanitarian law to specially designated major military headquarters.

Article (iv)

Co-operation of the High Contracting Parties

(Draft Article 8, paragraph 1, of the ICRC text)

Article (v)

Orders and instructions

(Draft Article 75 of the ICRC text)

Article (vi)

Dissemination

(Draft Article 76 of the ICRC text might be supplemented by a paragraph 3 incorporating the terms of draft Article 77 of the ICRC text.)

Article (vii)

Procedure for enquiry and conciliation

1. At the request of a Party to the conflict an enquiry concerning any alleged violation of the Conventions and the present Protocol shall be instituted, preferably in a manner whereby the Parties to the conflict appoint members of the Permanent Court of Arbitration to examine and identify the alleged violation.

2. The panel instituted under paragraph 1 may also lend its good offices with a view to settling disagreement between the Parties to the conflict as to the application and/or interpretation of the Conventions and the present Protocol.

Article (viii)

Meetings

1. Any High Contracting Party to the present Protocol or the International Committee of the Red Cross may request the Depositary State to convene a meeting of the representatives of the High Contracting Parties to the present Protocol. The Depositary State shall immediately inform the High Contracting Parties of the request and enquire whether they concur in it. If a majority of the

High Contracting Parties concur in the request, the Depositary State shall convene the meeting. The purpose of the meeting will be to study problems concerning the application of the Conventions and of the present Protocol. The meeting may likewise examine any amendment to these instruments proposed by a High Contracting Party, and in this respect shall decide as to the measures to be taken.

2. No meeting shall be convened under this Article until one-half of the High Contracting Parties to the Conventions on the date of the entry into force of the present Protocol have become Parties to the Protocol.

Original: French

CE/COM IV/11

Proposal submitted by the experts of Austria

Draft Article 6

Appointment of Protecting Powers and of their substitute

(Replace paragraph 1 of draft Article 6 of the ICRC text by the four following paragraphs):

1. For the sole purposes of applying the Conventions and the present Protocol, each of the Parties to the conflict has the obligation to seek the co-operation and scrutiny of a Protecting Power and must accept the activities on its territory of a Protecting Power appointed by the adverse Party.

2. The following may act as Protecting Power under the terms of the Conventions and of the present Protocol: either a neutral State, or an organization offering all guarantees of impartiality and efficacy to which the High Contracting Parties have, in accordance with paragraph 1 of Article 10 (Article 11, paragraph 1, of the Fourth Convention), common to the Conventions, entrusted the duties of a Protecting Power, or, again, the International Committee of the Red Cross.

3. In order to guarantee that the Protecting Powers may, upon the outbreak of hostilities, perform the duties incumbent on them by virtue of the Conventions and the present Protocol, each of the High Contracting Parties undertakes to convey to the Depositary State, within a matter for what reason, from the activities of the present Protocol, the name of the Protecting Power which it will call upon if the need arises.

4. If, despite the foregoing, persons protected by the Conventions and the present Protocol do not benefit, upon the outbreak of hostilities, or cease to benefit, no matter for what reason, from the activities of the Protecting Power appointed in conformity with the preceding paragraph, the Parties to the conflict concerned shall be obliged to accept the offer of the International Committee of the Red Cross to undertake the functions incumbent on the Protecting Powers by virtue of the Conventions and the present Protocol.

**Proposal submitted by the experts
of the United States of America**

Draft Article 8

Co-operation of the High Contracting Parties

Whenever there is reason to believe that applicable provisions of this Protocol or of the Conventions are not being implemented properly, each of the High Contracting Parties shall be entitled to make an approach of a humanitarian nature to the Parties to the conflict with a view to inducing proper implementation of this Protocol or of the Conventions. The High Contracting Parties are invited to co-operate in the application of the Conventions and of this Protocol, in particular by making a joint approach of a humanitarian nature to the Parties to the conflict. Such approaches shall not be deemed to be interference in the conflict.

Original: French

CE/COM IV/13

Proposal submitted by the experts of Poland

Draft Article 7

Qualified persons

(Supplementary article or paragraph:)

The personnel of the Protecting Power as well as the qualified persons referred to in Article 7 shall not be subject to the penal jurisdiction of the territory in which they carry out their humanitarian functions.

Original: English

CE/COM IV/14

**Proposal submitted by the experts
of the United States of America**

Draft Article 7

Qualified persons

(The following articles are proposed in place of draft Article 7 of the ICRC text):

Article ...

Domestic use of implementation teams

1. A High Contracting Party shall constitute and train one or more Implementation Teams charged with the function of ensuring the proper dissemination of the Conventions and this Protocol in conformity with Article ...
2. A High Contracting Party may invite the International Committee of the Red Cross to train such teams. The International Committee of the Red Cross may make its performance of this function conditional upon reimbursement of the cost thereof.

Implementation Teams furnished to other Parties

1. A High Contracting Party shall constitute, train, and make available one or more Implementation Teams, including in its discretion Implementation Teams constituted under Article ..., which shall be charged with the function of assisting another High Contracting Party, including a Protecting Power or a substitute therefor, or the International Committee of the Red Cross to discharge its responsibilities under the Hague Convention concerning the Laws and Customs of War on Land of October 18, 1907, the Conventions, and this Protocol. Implementation Teams may be composed of persons highly qualified in military matters, in laws, in medicine, or in relief administration or other humanitarian activity.

2. Implementation Teams shall operate in conformity with agreements to be concluded between the High Contracting Party furnishing the team and the High Contracting Party or the organization to which the Implementation Team is furnished.

3. Implementation Teams shall at all times operate on a basis of strict neutrality. The High Contracting Party furnishing an Implementation Team shall be responsible for the proper performance of its functions.

Article ...

Utilization of Implementation Teams

1. A High Contracting Party, including a Protecting Power, or the International Committee of the Red Cross may invite another High Contracting Party which has constituted and trained one or more Implementation Teams, under Articles ... or ... or otherwise, to have a team or teams to assist it to discharge its responsibilities under the Hague Convention concerning the Laws and Customs of War on Land of October 18, 1907, the Conventions, and this Protocol.

2. Implementation Teams shall operate in conformity with agreements to be concluded between the High Contracting Party furnishing the teams and the other High Contracting Party concerned or the International Committee of the Red Cross.

3. Members of Implementation Teams shall at all times be respected and protected, even if they fall into the hands of the enemy. If they fall into the hands of the enemy, they shall be released at the earliest opportunity to either the High Contracting Party furnishing them, the High Contracting Party utilizing their services, or the International Committee of the Red Cross.

4. With the consent of the Parties to the conflict, members of Implementation Teams which are utilized by the International Committee of the Red Cross may serve as delegates of that Committee.

(It would be appropriate to annex a model agreement for the implementation of this and the preceding Article.)

Original: English

CE/COM IV/15

Proposal submitted by the experts of Pakistan

Draft Article 6

Appointment of Protecting Powers and of their substitute

(Paragraph 1 of the ICRC text to be reworded as follows:)

1. For the sole purpose of applying the Conventions and the present Protocol, each of the Parties to the conflict shall accept the International Committee of the Red Cross as a Protecting Power from the beginning of the hostilities, and must accept its activities on its territory, until a Protecting Power agreeable to the Parties to the conflict is accepted.

Original: French

CE/COM IV/16

Proposal submitted by the experts of Romania

Draft Article 8

Co-operation of the High Contracting Parties

1. The High Contracting Parties being bound, by the terms of Article 1, common to the Conventions, to respect and to ensure respect for these Conventions in all circumstances, are invited, when acting in their capacity as Protecting Powers, to co-operate in the application of these Conventions and of the present Protocol.

In the interpretation and application of the Conventions and the present Protocol, the High Contracting Parties shall be guided by the fundamental principles governing international treaties which postulate strict respect for the independence and national sovereignty of States, equal rights, non-interference in the internal affairs of other States, prohibition of the use of force or of the threat of force, the settlement of international disputes by peaceful means so as to avoid any threat to justice and international peace and security, and the duty of States to fulfil their international obligations in good faith.

Original: English

CE/COM IV/17

**Proposal submitted by the experts
of the German Democratic Republic**

Draft Article 8

Co-operation of the High Contracting Parties

The High Contracting Parties being bound, by the terms of Article 1, common to the Conventions, to respect and to ensure respect for these Conventions in all circumstances, are invited to co-operate in the application of these Conventions and of the present Protocol, in particular by notifying the Parties to the conflict of their position and by supporting relief actions under Article 64 of this Protocol. Such a notification of position or relief action shall not be deemed to be interference in the conflict.

Original: French

CE/COM IV/18

Proposal submitted by the experts of Romania

Draft Article 9

Meetings

1. A meeting of representatives of the High Contracting Parties, for the purpose of studying problems concerning the application of the Conventions and of the present

Protocol or any amendment to these instruments proposed by a High Contracting Party, in order to decide in this respect on the measures to be taken, may be convened at the request of two-thirds of the High Contracting Parties.

2. (Delete paragraph 2 of the ICRC text.)

Original: French

CE/COM IV/19

Proposal submitted by the experts of Romania

Draft Article 74

[Reprisals]

(Replace paragraph 2 of the ICRC text by the following):

2. Deportation of the civilian population, individually or in groups, and the removal of non-military property or installations beyond the national frontiers of their country of origin are strictly prohibited.

Original: French

CE/COM IV/20

Proposal submitted by the experts of Monaco

Draft Article 6

Appointment of Protecting Powers and the humanitarian activities of the International Committee of the Red Cross

1. From the outset of any armed conflict of an international character to which Article 2, common to the four Geneva Conventions, is applicable:

(a) the Parties to the conflict undertake to appoint, and to accept the scrutiny and co-operation of, Protecting Powers for the sole purposes of applying the Conventions and the present Protocol;

(b) if the appointment of the Protecting Powers has not been made within thirty days, or has proved to be inoperative, the Parties to the conflict undertake to appoint an international body or an *ad hoc* body set up by Contracting Parties not involved in the conflict, for the sole purpose of applying the Conventions and the present Protocol, and to accept the scrutiny and co-operation of such a body.

(c) The Parties to the conflict undertake to accept the humanitarian activities of the International Committee of the Red Cross assigned to it under the Conventions and the present Protocol.

2. (Delete paragraph 2 of the ICRC text.)

3. (Delete paragraph 3 of the ICRC text.)

Original: French

CE/COM IV/21

Proposal submitted by the experts of Switzerland

Draft Article 6

Appointment of Protecting Powers and of their substitute

1. The Conventions and the present Protocol shall be applied with the co-operation and under the scrutiny of the Protecting Powers.

2. The High Contracting Parties shall appoint the Protecting Powers as quickly as possible and in good faith so that the latter may undertake their activities immediately after the outbreak of any conflict or occupation referred to in Article 2, common to the Conventions.

3. In the case of disagreement among the Parties on the appointment of a Protecting Power, the International Committee of the Red Cross or the Secretary-General of the United Nations shall lend their good offices for settling the dispute, should one of the Parties so desire.

4. Until the Protecting Power has been appointed, the Parties to the conflict shall accept the International Committee of the Red Cross as the Protecting Power.

5. The appointment and acceptance of a Protecting Power, for the sole purposes of applying international humanitarian law, shall have no effect on the reciprocal legal status of the Parties to the conflict and, in particular, shall not imply recognition of the adverse Party as a State.

6. The maintenance of diplomatic relations between the belligerent States shall not constitute an obstacle to the humanitarian activities of the International Committee of the Red Cross.

Original: French

CE/COM IV/22

Proposal submitted by the experts of Italy

(Additional to the proposal CE/COM IV/5)

Draft Article 6

Appointment of Protecting Powers and of their substitute

1. From the beginning of any conflict or occupation referred to in Article 2, common to the Conventions, and until such time as the Protecting Powers or their substitutes referred to in the subsequent paragraphs of the present article begin to exercise their functions as set out in the said paragraphs, each of the Parties to the conflict or, where appropriate, the occupying Party or Parties and the Party whose territory is occupied shall accept the exercise of the activities of a Protecting Power by the International Committee of the Red Cross.

2. (Renumber paragraphs 1, 2, 3 and 4 of proposal CE/COM IV/5 by changing them to paragraphs 2, 3, 4 and 5 respectively.)

Original: English

CE/COM IV/23

**Proposal submitted by the experts of the
Federal Republic of Germany**

Draft Article 75

Orders and instructions

(Insert the following additional paragraph):

The High Contracting Parties shall employ in their armed forces qualified legal advisers whose task it is to advise responsible military commanders, in time of peace as well as in time of armed conflict, on the application of international humanitarian law and to assist them in supervising instruction in the field of international law.

Annex to proposal CE/COM IV/23 Model for the employment of legal advisers and teachers of law in the armed forces

Within the armed forces, qualified lawyers will be employed as legal advisers in major units and as teachers of law in military schools and academies.

I. Legal Advisers

The legal adviser acts, in time of peace as in time of armed conflict, as the commander's personal adviser in all service matters involving questions of international law. Within this scope, the legal adviser is called upon to participate in the military decision-making process and to support the commander in the execution of his command authority.

1. *Control:* The legal adviser is placed under the direct administrative control of the commander to whom he is attached and to whom he reports directly. Control in legal matters, however, is exercised by the senior legal adviser attached to the major unit's superior headquarters.

2. *Tasks:* The legal adviser shall provide advice to his commander and subordinate echelons of command, supervise legal instruction provided to the forces in the course of exercises and training programmes, and instruct officers in legal matters.

More specifically, his tasks include the rendering of professional advice on envisaged orders involving questions of international law. He is under the obligation to draw attention, unequivocally and on his own initiative, to all breaches of law observed.

II. Teachers of Law

Teachers of law in military schools and academies are charged with the training of students and the advanced training of cadre personnel and faculty staff in all aspects of law, notably international humanitarian law. Teachers of law should have practical experience as legal advisers in a major unit.

1. *Control:* The teacher of law is placed under the administrative control of the commandant of the school or academy to which he is attached. Control in legal matters is, however, exercised by the senior legal adviser to the authority exercising administrative control over the school or academy.

2. *Tasks:* The teacher of law shall, in accordance with the training syllabus, provide instruction in all aspects of law, notably international humanitarian law, co-operate with the other members of the faculty staff in providing instruction covering related subjects, and advise the commandant of the school or academy in all service matters involving legal problems.

Original: English

CE/COM IV/24

**Proposal submitted by the experts
of the Federal Republic of Germany**

Draft Article 76

Dissemination

(Draft Article 39 of Protocol II.-Dissemination of the present Protocol)

(Insert the following additional paragraph):

3. The High Contracting Parties shall, at least once every four years, forward to the International Committee of the Red Cross a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations for the dissemination of the Conventions and of the present Protocol.

Original: English

CE/COM IV/25

Proposal submitted by the experts of Jordan

Draft Article 6

Appointment of Protecting Powers and of their substitute

1. For the sole purposes of applying the Conventions and the present Protocol, each Party may appoint such impartial Protecting Power as it may choose, unless such Protecting Power is openly hostile to the State in whose territory it is designated to function. Such appointment shall not operate as an obstacle to the relief work of the International Committee of the Red Cross, conjointly with, or independently of, the functions of the Protecting Power.

2. (Maintain paragraph 2 of the ICRC text.)

3. (Maintain paragraph 3 of the ICRC text.)

Original: English

CE/COM IV/26

Proposal submitted by the experts of Saudi Arabia

Draft Article 6

Appointment of Protecting Powers and of their substitute

1. For the sole purposes of applying the Conventions and the present Protocol, each of the Parties to the conflict has the obligation to designate a Protecting Power within a reasonable time from the beginning of the hostilities and must accept the activities, on its territory, of a Protecting Power designated by the adverse Party. The International Committee of the Red Cross shall assume temporarily the full responsibility of the Protecting Power from the first day of the outbreak of the hostilities and till the designation of a Protecting Power is made by the Parties to the conflict.

If the Parties to the conflict fail to designate a Protecting Power within a reasonable time, they shall accept, as substitute, the International Committee of the Red Cross, or any other impartial humanitarian organization designated by the International Committee of the Red Cross in agreement with the Parties to the conflict. The designated Protecting Power, or the substitute, will assume the full responsibility assigned for that task, including the duty to report and reveal all hostile acts and violations committed against the Conventions and the present Protocol by any of the Parties to the conflict.

2. (Maintain paragraph 2 of the ICRC text.)

3. (Maintain paragraph 3 of the ICRC text.)

Original: English

CE/COM IV/27

**Proposal submitted by the experts
of the Philippines**

(Noce by the ICRC)

Since this proposal, entitled "Penal sanctions as a means of strengthening international humanitarian law", is neither an amendment to one of the draft articles of the ICRC text nor a draft additional article, it is given in summary form in the *Report on the work of the Conference* (in the report of Commission IV, paragraph 4.119, note 57). The proposal CE/COM IV/43, entitled "Code of criminal offences, punishments thereof, and procedures for trial and execution of sentence" and presented by the same experts—see below—contains a draft additional article based on some of the ideas in proposal CE/COM IV/27).

Original: English

CE/COM IV/28

**Proposal submitted by the experts
of Turkey and Tunisia**

(additional to the proposal CE/COM IV/5)

Draft Article 6

Appointment of Protecting Powers and of their substitute

1. (In the second sentence of paragraph 3 of CE/COM IV/5, replace "within ten days" by "without delay").

2. (In the fourth sentence of paragraph 3 of CE/COM IV/5, replace "a further period of twenty days" by "a reasonable period" and "be accepted by" by "offer its services to".)

Original: English

CE/COM IV/29

**Proposal submitted by the experts
of the Philippines**

Draft Article 8

Co-operation of the High Contracting Parties

Under all circumstances, the High Contracting Parties are bound to respect the Conventions and this Protocol. In the event, however, that applicable provisions of the Conventions and this Protocol are violated, each of the High Contracting Parties has the right to call upon the Parties to the conflict to abide by the proper implementation of the Conventions and this Protocol. In this respect, the High Contracting Parties shall co-operate in the application of the Conventions and this Protocol by making a joint and concerted appeal of a humanitarian nature to the Parties to the conflict. Such appeal shall not be interpreted to be an act of interference in the conflict.

**Proposal submitted by the experts
of the Philippines**

Draft Article 7

Protective Action Teams

1. It is incumbent upon every High Contracting Party to organize and train one or more Protective Action Teams which shall be charged with the duties of carrying out properly the pertinent provisions of the Conventions and this Protocol.

2. Any Protective Action Team organized and trained under this Article shall be charged with the function of assisting another High Contracting Party, including a Protecting Power or a substitute therefor, or the International Committee of the Red Cross, in discharging its responsibilities and obligations under the Laws and Customs of War, the Conventions, and this Protocol.

3. Any Protective Action Team shall discharge its duties only within the bounds of the agreements to be concluded between the High Contracting Party furnishing the Team and the High Contracting Party under which the Team shall serve, or a substitute therefor, or the International Committee of the Red Cross.

4. Members of any Protective Action Team shall be respected and protected at all times. If they fall into the hands of the enemy, they shall be released without delay to either the High Contracting Party furnishing the Team, the High Contracting Party under which they serve, or the International Committee of the Red Cross.

5. Any Protective Action Team duly organized and trained within the purview of this Article shall, at all times, perform its duties with utmost impartiality.

Original: English

CE/COM IV/31

Proposal submitted by the experts of Jordan

Draft Article 7

Qualified persons

1. In order to ensure the proper implementation of the provisions of the Conventions and of the present Protocol, each of the High Contracting Parties undertakes to nominate one or more of its subjects to be trained, at its own expense, by the International Committee of the Red Cross. In the event of armed conflict breaking out between two or more States, the International Committee of the Red Cross shall immediately communicate a list of the names of such trained persons to the Parties involved in the conflict, to enable them to select such persons as will be required for performance of their duties—including dissemination of the provisions of the Conventions—in their respective territories; provided, always, that the selecting State does not choose its own subject or subjects from the list communicated to it by the International Committee of the Red Cross.

2. During the exercise of their functions and so long as they remain in the territory to which they have been assigned, such trained persons shall enjoy diplomatic immunity for the duration of the conflict or until they are withdrawn.

**Proposal submitted by the experts
of Bulgaria, Czechoslovakia, the German Democratic
Republic, Hungary and Poland**

Draft Preamble

The High Contracting Parties,

Recalling that in international relations the recourse to force is prohibited in conformity with the Charter of the United Nations,

Deploing that despite this prohibition armed conflicts continue to occur and to cause untold sorrow to mankind which must be prevented,

Reaffirming that the armed struggles of oppressed nations and peoples in territories under colonial and alien domination for their national liberation and self-determination have an international character, and that the combatants of such movements should enjoy the full protection of international law,

Noting that humanitarian rules retain all their validity despite the infringements which they have suffered, and believing that the observance of these rules in their entirety by all the Parties to the conflict will improve the likelihood of finding peaceful solutions,

Reaffirming the conventional and customary rules whereby the Parties to the conflict must make a distinction between protected persons and objects on the one hand, and military objectives on the other,

Emphasizing that the use of weapons and means of mass destruction is contrary to humanitarian principles and international law,

Believing, consequently, that it is essential to reaffirm and develop the rules ensuring the protection of the victims of armed conflicts and enshrining the principles of humanity and to supplement those measures intended to reinforce their implementation,

Have agreed on the following:

... ,

Original: French

CE/COM IV/33

Proposal submitted by the experts of France

Draft Article 7

Qualified persons

With a view to facilitating scrutiny of the application of the provisions of the Conventions and of the present Protocol, the High Contracting Parties shall endeavour to train qualified personnel on a national basis. The recruitment and training of such personnel shall lie solely within the national competence of the High Contracting Parties. Each High Contracting Party shall establish a list of the persons so trained, and shall transmit it to the International Committee of the Red Cross. The conditions governing the use of the services of these persons shall, in each case, form the subject of agreements between the High Contracting Party of which they are nationals and the International Committee of the Red Cross, on the one hand, and the International Committee of the Red Cross and the Parties to the conflict, on the other hand.

Proposal submitted by the experts of Jordan

Draft Article 8

Co-operation of the High Contracting Parties

1. The High Contracting Parties being bound, by the terms of Article 1, common to the Conventions, to respect and to ensure respect for these Conventions in all circumstances, are invited to co-operate in the application of these Conventions and of the present Protocol, in particular by making an approach of a humanitarian nature to the Parties to the conflict and by relief actions. Such approach shall not be deemed to be interference in the conflict.

2. If, however, reliable reports are received of serious violations being committed by one or more of the Parties to the conflict, five or more of the High Contracting Parties may call for a joint meeting of all High Contracting Parties who, upon being satisfied of the veracity of the reports may, by a simple majority resolution of the States attending, warn the defaulting Party or Parties that if violations continue, joint action will be called for.

3. If, after the lapse of five days, reliable reports are received of continued violations, a meeting of the High Contracting Parties shall be called to consider joint action to be taken in regard to the attitude of the defaulting Party.

Original: French

CE/COM IV/35

Proposal submitted by the experts of Switzerland

Draft Article 7

Qualified persons

In order to make the activities of the Protecting Powers and the application of the Conventions and of the present Protocol more effective, the High Contracting Parties shall train qualified personnel on a national basis. For this purpose, they shall establish lists of persons whose names will be transmitted by the International Committee of the Red Cross to the Protecting Powers concerned.

Original: French

CE/COM IV/36

Proposal submitted by the experts of the Arab Republic of Egypt

Draft Article 8

Co-operation of the High Contracting Parties

1. The High Contracting Parties being bound, by the terms of Article 1, common to the Conventions, to respect and to ensure respect for these Conventions in all circumstances, are invited to co-operate in the application of these Conventions and of the present Protocol, in particular by making individual or collective approaches to the Parties to the conflict. Such approaches shall not be deemed to be interference in the conflict.

2. The regional governmental organizations mentioned in chapter VIII of the United Nations Charter may accede to the Conventions in order to help in developing and strengthening international humanitarian law. Such organizations shall undertake to ensure respect for the Conventions whenever taking coercive measures in accordance with the provisions of the United Nations Charter.

3. At the request of the Parties to an armed conflict, these regional organizations may assume the duties of a Protecting Power.

Original: English

CE/COM IV/37

Proposal submitted by the experts of Iraq

Draft Article 8

Co-operation of the High Contracting Parties

1. The High Contracting Parties being bound, by the terms of Article 1, common to the Conventions, to respect and to ensure respect for these Conventions in all circumstances, are invited to co-operate bilaterally or collectively, without any implication of interference in the conflict, in the application of these Conventions and of the present Protocol, in particular by availing themselves of the ways and means accessible to them under the Charter of the United Nations.

Original: French

CE/COM IV/38

Proposal submitted by the experts of France

Draft Article 8

Co-operation of the High Contracting Parties

The High Contracting Parties being bound, by the terms of Article 1, common to the Conventions, to respect and to ensure respect for these Conventions in all circumstances, are invited to co-operate in the application of the present Protocol.

Original: French

CE/COM IV/39

Proposal submitted by the experts of Poland and the U.S.S.R.

Draft Article 78

Accession

(No article.)

Draft Article 84

Treaty relations upon entry into force of the present Protocol

(Add a new paragraph):

3. Ratification of the present Protocol by a State not party to the Conventions shall be regarded as accession to the Conventions as elaborated and supplemented by the present Protocol.

Original: French

CE/COM IV/40

Proposal submitted by the experts of Brazil

Draft Article 9

Meetings

The Depositary State of the Conventions and of the present Protocol shall convene a meeting of the representatives of the High Contracting Parties at the request of at least one-fifth of the High Contracting Parties or of the International Committee of the Red Cross. The purpose of the meeting will be to study the progressive development of the rules of international humanitarian law.

Original: English

CE/COM IV/41

Proposal submitted by the experts of Norway

Draft Article 75

Orders and instructions

(Replace paragraph 2 of the ICRC text by the following):

2. Acting under the orders of a superior does not free any person from responsibility under international law. No person, therefore, has the duty to obey any order which, if carried out, would constitute a grave breach of the Conventions.

Original: English

CE/COM IV/42

Proposal submitted by the experts of Iraq

Draft Article 9

Meetings

(Replace the second sentence of paragraph 1 of the ICRC text by the following):

The purpose of the meeting will be to study problems concerning the application of the Conventions and of the present Protocol, and to consider measures for their application.

Original: English

CE/COM IV/43

**Proposal submitted by the experts
of the Philippines**

Draft supplementary Article to be included in Part V

*Code of criminal offences, punishments thereof, and
procedures for trial and execution of sentences*

The High Contracting Parties shall, in collaboration with the International Committee of the Red Cross, undertake to:

- (a) collate and consolidate the provisions concerning the criminal offences covered by the Conventions and this Protocol;

- (b) formulate or adopt a code based on the foregoing criminal offences;
- (c) classify the criminal offences according to their nature and gravity;
- (d) prescribe the punishments thereof;
- (e) set the procedures for trial and the execution of sentences.

Original: English

CE/COM IV/44

Proposal submitted by the experts of Norway

Draft Article 74

Prohibition of reprisals and exceptional cases

1. (The prohibition of reprisals contained in paragraph 1 of the ICRC text should be moved to Part I: General Provisions.)
2. (Delete paragraph 2 of the ICRC text).

Original English

CE/COM IV/45

Proposal submitted by the experts of the Netherlands

Draft Article 75

Orders and instructions

(Insert the following text as paragraph 2):

2. They shall be criminally liable for any failure on their part to take all those steps within their power to make an end to breaches of the laws of war which were, or ought to have been, within their knowledge.

Original: French

CE/COM IV/46

Proposal submitted by the experts of Belgium

Draft Article 75

Orders and instructions

(Delete paragraph 2 of the ICRC text).

Draft Article 77

Rules of application

(Replace the ICRC text by the following):

Penal provisions

1. The High Contracting Parties shall, within the framework of their penal legislation, take all necessary measures for the investigation and repression of breaches of this Protocol.
2. Any person who commits, orders or condones an act or omission which constitutes or entails such a breach shall be considered as an offender.

3. Persons accused of breaches of this Protocol shall be brought either before the competent national courts or before an international criminal court which will be competent to make judgements in respect of the High Contracting Parties which will have recognized its jurisdiction.

4. Whenever the better administration of justice so requires, the High Contracting Parties shall, in conformity with their legislation and with the treaties in force, grant extradition and all possible legal assistance for the purpose of the prosecution of the breaches in question.

5. The fact of having acted on the orders of his government or of a superior shall not absolve from responsibility any person who has carried out an order of manifestly illegal character, if he was morally capable of making a choice.

6. The High Contracting Parties shall communicate to one another, through the Depositary State, the laws and regulations which they adopt to ensure the application of the present Article.

Original: French

CE/COM IV/47

**Proposal submitted by the experts
of the Arab Republic of Egypt**

Draft Article 78

Accession

The United Nations Organization, the international specialized agencies and regional intergovernmental organizations may accede to the Conventions and the present Protocol.

Original: English

CE/COM IV/48

**Proposal submitted by the experts
of the Arab Republic of Egypt and Norway**

Draft Article 10

Permanent body

1. In conformity with Article 10, paragraph 1, common to the first three Conventions and Article 11, paragraph 1, of the Fourth Convention, the Parties may appoint any body established or designated by the United Nations for that purpose to assume the duties incumbent on the Protecting Power by virtue of the Conventions and the present Protocol.

2. If no Protecting Power has been appointed within the period of ... days from the beginning of a situation provided for in Article 2, common to the Conventions, and the International Committee of the Red Cross has not assumed all the functions of the Protecting Power under the Conventions and the present Protocol, including the investigation and reporting on violations, the said body will then undertake, by virtue of this Protocol, the functions of the Protecting Power or those of them not carried out by the International Committee of the Red Cross.

3. In cases where both the International Committee of the Red Cross and the said body are assuming the functions of the Protecting Power under the Conventions and the present Protocol, they shall act in concert and co-ordinate their activities.

Original: English

CE/COM IV/49

Proposal submitted by the experts of Turkey

Draft Article 73

Detailed execution and unforeseen cases

(Delete draft Article 73, in view of Article 1, common to the Conventions.)

Original: English

CE/COM IV/50

Proposal submitted by the experts of Turkey

Draft Article 74

Prohibition of reprisals and exceptional cases

(Delete draft Article 74, in view of Articles 45 and 48 of Draft Protocol I.)

Original: English

CE/COM IV/51

Proposal submitted by the experts of Denmark

Draft Preamble

(After the third paragraph of the ICRC text, insert the following provision):

Recalling that the Parties to a conflict always remain bound to fulfil their obligations by virtue of the principles of the law of nations, as they result from the usages established among States, from the laws of humanity and the dictates of the public conscience,

Original: English

CE/COM IV/52

Proposal submitted by the experts of Canada

Draft supplementary Article to be included in Part V

Sanctions

The High Contracting Parties shall take all measures necessary, through legislation and otherwise, to provide adequate sanctions for persons breaching the Conventions or this Protocol.

Proposal submitted by the experts of Yugoslavia

Draft Article 74

Prohibition of reprisals and exceptional cases

1. (Remove this draft Article from Part V.)
2. (Transfer paragraph 1 of this draft Article to Part I, in the form of a separate article.)
3. (Insert in Part III, after Article 30, the idea contained in paragraph 2 of this draft Article, adapted to belligerent reprisals in the conduct of hostilities.)

Original: English

CE/COM IV/54

Proposal submitted by the experts of Canada

Draft Article 75

Orders and instructions

1. The High Contracting Parties shall issue orders and instructions intended to ensure respect for the provisions of the Conventions and of the present Protocol, and shall supervise the execution thereof.
2. The High Contracting Parties shall provide that
 - (a) a grave breach of the Conventions or the Protocol shall not be excused because it was done under a superior order; and
 - (b) no person shall be punished for refusing to obey an order or command which, if carried out, would result in a breach of the provisions of the Conventions or of this Protocol.

Original: English

CE/COM IV/55

Proposal submitted by the experts of Jordan

Draft Article 74

Prohibition of reprisals and exceptional cases

1. Measures of reprisal against persons and property protected by the Conventions and by the present Protocol are absolutely prohibited.
2. (Delete paragraph 2 of the ICRC text.)

Original: English

CE/COM IV/56

Proposal submitted by the experts of Jordan

Draft Article 75

Orders and instructions

- (Replace paragraph 2 of the ICRC text by the following):
2. No subordinate shall be exonerated from liability for contravening the provisions of the Conventions and the present Protocol even though acting under orders of his superior or superiors.

Proposal submitted by the experts of Jordan

Draft Article 76

Dissemination

(Add the following paragraph 3):

3. Each of the High Contracting Parties shall cause, at its own expense, a translation of the Conventions and the present Protocol to be made into the language of its nationals in cases where no such translation exists, and should offer it for sale at low cost in every town and village within its territory. In cases where such a translation exists, the High Contracting Parties should have a relatively large number printed and offered for sale at low cost in every town and village within their respective territories.

Original: French

CE/COM IV/58

Proposal submitted by the experts of Poland

Draft Article 75

Orders and instructions

(Replace paragraph 2 of the ICRC text by the following):

2. The High Contracting Parties shall determine the procedure to be followed for the application of the principle under which a subordinate is exempted from any duty to obey an order which would lead him to commit a crime or an offence.

Original: English

CE/COM IV/59

Proposal submitted by the experts of Indonesia, Iraq, Pakistan, Tanzania, Tunisia and Turkey

Draft Article 75

Orders and instructions

1. The national authorities of the High Contracting Parties shall issue to their subordinates orders and instructions intended to ensure respect for the provisions of the Conventions and of the present Protocol, and shall supervise the execution thereof.
2. (Delete paragraph 2 of the ICRC text.)

Original: English

CE/COM IV/60

Proposal submitted by the experts of the United Kingdom

Draft Article 76

Dissemination

(Add the following paragraph 3):

3. The High Contracting Parties shall report to the Depository State and to the International Committee of the

Red Cross at intervals of three years on the measures they have taken in accordance with their obligations under paragraph 1 of this Article.

Original: English

CE/COM IV/61

**Proposal submitted by the experts
of the United Kingdom**

Draft supplementary Article to be included in Part V

Violations

1. Violations of this Protocol shall be treated as if they were violations of the corresponding provisions of the Conventions and shall be dealt with under the following stipulations of the Conventions:

- (a) Articles 49 to 52 of the First Convention;
- (b) Articles 50 to 53 of the Second Convention;
- (c) Articles 129 to 132 of the Third Convention; or
- (d) Articles 146 to 149 of the Fourth Convention.

2. The death penalty may not be imposed for violation of any article of this Protocol other than Articles ... and then only if

- (a) the sentence of death is permitted under the Conventions and the law of the High Contracting Party trying the individual, and
- (b) a Protecting Power or a substitute therefor has been permitted to discharge its functions under the Conventions.

Original: French

CE/COM IV/62

Proposal submitted by the experts of Romania

Draft Preamble

The High Contracting Parties,

Convinced that peace is the underlying condition for the full observance of human rights and war is their negation,

Recalling that under the terms of the Charter of the United Nations, it is forbidden in international relations to threaten or to use force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Reaffirming solemnly that, in order effectively to guarantee respect for human rights, all States should devote their efforts to averting the unleashing of aggressive wars and armed conflicts that violate the Charter of the United Nations and the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Emphasizing the need to undertake specific and immediate action at an international level to outlaw war and to prohibit the use or the threat of force and the interference in any manner whatsoever in the domestic affairs of other States, as well as to ensure respect for the sovereignty of States and the right of peoples to decide their own fate,

Deploing the armed conflicts which cause immense suffering to humanity,

Stressing vigorously that the basic human rights, as accepted in international law and set forth in the Universal Declaration of Human Rights and in other international instruments of the United Nations, shall remain applicable in full in cases of international armed conflicts, conflicts between States and wars of national liberation waged in defence of the right of peoples to decide their own fate,

Reaffirming solemnly that, by virtue of the rules established by conventions and by customs:

the progress of civilization must not result in an aggravation of the calamities of war;

the only legitimate object of States waging war shall be to weaken the military forces of the enemy, to which end it shall suffice to put as large a number as possible *hors de combat*; such object would be exceeded by the use of arms capable of uselessly aggravating the suffering of persons already *hors de combat* or of making their death inevitable, and the use of such arms, consequently, runs counter to all humanitarian rules;

the right of the Parties to an armed conflict to adopt and use means of injuring the enemy is not unlimited;

the use of weapons of mass destruction, causing incalculable human suffering, is forbidden and contrary to humanitarian laws and the principles of international law;

attacks on the civilian population as such are forbidden;

a distinction must be made, at all times, between the civilian population and protected property, on the one hand, and combatants and military objectives, on the other;

in the conduct of military operations, every effort shall be made to spare the civilian population from the devastation of war, and all necessary precautions shall be taken to avoid inflicting wounds upon the civilian population, or causing them loss or injury;

dwellings and other installations used by the civilian population shall not be made the object of military operations;

the civilian population, or individuals forming part of it, shall not be made the object of reprisals, forcible transfer, or of any other attack on their person;

the civilian population and combatants remain, in cases not covered by conventional law, under the protection of the principles of humanity and the dictates of the public conscience,

Emphasizing that the methods and measures which are today available to the armed forces are of such a nature as to strike indiscriminately and destroy completely the civilian population as well as the immediate environment and, consequently, to violate the above-mentioned principles of humanity applicable in armed conflicts,

Believing, consequently, that it is essential to reaffirm and develop the rules ensuring the protection of the victims of armed conflicts and of the civilian population and enshrining the principles of humanity and to supplement those measures intended to reinforce their implementation,

Have agreed on the following:

...

Proposal submitted by the experts of Jordan

Draft Article 82

Reservations

1. The High Contracting Parties, when signing or ratifying the present Protocol or acceding thereto, shall not formulate any reservations.
2. (Delete paragraph 2 of the ICRC text.)
3. (Delete paragraph 3 of the ICRC text.)

Proposal submitted by the experts of Jordan

Draft Article 79

Signature

The present Protocol shall be open for signature by the Parties to the Conventions until the 31st day of December 1973.

Proposal submitted by the experts of Mexico

Draft Article 86

Notification

(Amend the ICRC text as follows):

The Depositary State shall inform the signatory States and all Parties to the present Protocol of the following particulars:

...
(continue as ICRC text)

Proposal submitted by the experts of Norway

Draft Article 76

Dissemination

(Add the following paragraph 3):

3. The High Contracting Parties undertake, in the training of their military personnel, to allocate to the teaching of international humanitarian law not less than ... hours for soldiers ranking below sergeants, ... hours for non-commissioned officers and ... hours for officers.

Proposal submitted by the experts of Pakistan

Draft supplementary Article to be included in Part V, after draft Article 73.

Implementation of essential provisions

The High Contracting Parties shall not delay the implementation of Article 118 of the Third Convention and Articles 132 and 134 of the Fourth Convention and shall in no event use the question of the release and repatriation of prisoners of war and civilian internees to extract any political or other advantage.

Proposal submitted by the experts of the Philippines

Draft Article 2

Terminology

...

(c) "Protecting Power" means a State which is able and willing to carry out, on behalf of any of the States in conflict, the functions assigned to a Protecting Power under the Conventions and the present Protocol.

...

Proposal submitted by the experts of the Philippines

Draft Article 82

Reservations

1. The High Contracting Parties, when signing or ratifying the present Protocol or acceding thereto, may formulate any reservation to any of the Articles therein, except that a reservation incompatible with its object and purpose shall not be permitted.

2. A reservation may be withdrawn at any time by notification to this effect addressed to the Depositary State.

Proposal submitted by the experts of the Philippines

Draft Article 84

Treaty relations upon entry into force of the present Protocol

1. When the Parties to the Conventions are also parties to the present Protocol, the provisions of the Conventions as amended by the present Protocol shall apply

2. As between a Party both to the Conventions and to the present Protocol and a Party solely to the Conventions, only the provisions of the Conventions shall apply.

Original: French

CE/COM IV/71

Proposal submitted by the experts of Romania

Draft Declaration on Disarmament and Peace to be annexed to the Final Text of the Diplomatic Conference

Having completed its work and deliberations, the Conference

I

Declares that:

1. Humanitarian law and the protection of the person during armed conflict can be effective only in the context of the general protection of all peoples and nations which results from respect for the rules and principles of contemporary international law.

2. At the present stage in the development of general international law, matters concerning the humanitarian law of armed conflicts must be approached from the principle that the use of force and the threat thereof in international relations are forbidden and with the conviction that wars and armed conflicts which seriously endanger the peace of mankind as a whole must be eliminated, that all acts of aggression and interference in the domestic affairs of other States must cease and that the right of peoples to self-determination and to defend themselves against aggression must be fully respected.

3. As wars of aggression are considered as international crimes, humanitarian law is based on the distinction between the aggressor and the victim of aggression and provides protection of the victim in the exercise of the inherent, and consequently sacred, right to self-defence.

4. Humanitarian law and the application thereof should lead to the consolidation of international peace and security by prohibiting arms of mass destruction and by achieving general disarmament, primarily in relation to nuclear weapons.

5. The reaffirmation and development of humanitarian law applicable in armed conflicts may never, under any circumstances whatsoever, be used as a pretext for interpretations favouring or humanising wars of aggression with a view to making them acceptable in international life.

II

Noting that neither the Geneva Conventions of 1949 nor their Additional Protocols contain any specific provisions concerning weapons of mass destruction, blind weapons, poisoned, particularly cruel or indiscriminate weapons;

Recalling that the use of arms of mass destruction, causing pointless human suffering, has already been prohibited and is considered to run counter to the laws of humanity and the principles of international law, by international declarations and compulsory agreements, such as the Declaration of Saint Petersburg of 1868, the Declaration of the Brussels Conference of 1874, the Conventions of the Hague Peace Conferences of 1899 and 1907 and the Geneva Protocol of 1925, to which the majority of countries are party;

Reaffirming the principles embodied in those documents, and particularly that the progress of civilization should result in an attenuation of the calamities of war, that the use of arms which inevitably aggravate the suffering or cause the death of men placed *hors de combat* is and continues to be contrary to the laws of humanity, that even in periods of armed conflict humanitarian principles should prevail, that the right of Parties involved in an armed conflict to adopt means of weakening the enemy is not unlimited, that it is forbidden to attack the civilian population as such, and that a clear distinction should always be made between combatants and civilians;

Stressing, in the light of these principles, the necessity for all weapons of mass destruction, whether nuclear, chemical or bacteriological (biological), to be outlawed and banished from the military arsenals of States;

Recalling that, by the Geneva Protocol of 1925, the States parties thereto have recognized the prohibition of the use in war of bacteriological and chemical weapons and that efforts are currently being made to prohibit the improvement, production and stockpiling of such weapons, and to have them destroyed;

Bearing in mind that nuclear and thermo-nuclear weapons are a great threat to all peoples, and that the use of such means of mass destruction would entail, for humanity and for civilization, enormous loss and suffering which would be incomparably greater than the loss and suffering which would be caused by the weapons already declared — in the above-mentioned international instruments — to be contrary to the laws of humanity and the use of which constitutes a crime in international law;

Recalling that in accordance with UN General Assembly resolution 1633 (XV) entitled "Declaration on the Prohibition of the Use of Nuclear and Thermo-Nuclear Weapons" the use of nuclear and thermo-nuclear weapons is contrary to the rules of international law and the laws of humanity and any State utilizing such weapons shall be considered to have violated the United Nations Charter, to have acted contrary to the laws of humanity and to have committed a crime against humanity and civilization;

1. *Calls on* all States to make sustained efforts to give definite form to this prohibition by rapidly concluding an international agreement with compulsory legal force and universal mission, prohibiting the use of, or the threatened use of, nuclear weapons and providing firm guarantees for the cessation of general respect of such prohibition,

2. *Further calls on* all States to take definite measures to create denuclearized zones with the appropriate safety guarantees for the cessation of production of nuclear weapons and for the reduction and disposal of all stocks of such weapons and of the means for transporting them.

III

Noting that destructive wars and armed conflicts, always preceded by an arms race, have inflicted inestimable human and material losses;

Aware of the threat to mankind of the escalating arms race and of the very large existing stocks of nuclear weapons;

Deeply concerned that, by absorbing immense human and material resources, the arms race is an ever-heavier burden on the peoples of the world;

1. *Stresses* the need to put an end to this race and to make effective progress towards general, and especially nuclear, disarmament;

2. *Reaffirms* the duty of States to continue, in good faith, their negotiations to find effective means of halting the nuclear arms race in the near future, to achieve nuclear disarmament and to attain a general and complete disarmament treaty backed by effective international supervision;

3. *Calls on* all States to make every effort, without delay, to take real and effective measures to slow down and halt the arms race, and to make visible progress towards general disarmament, starting with the prohibition and destruction of nuclear weapons and other means of mass destruction.

IV

Recalling the vital importance, for all peoples, of maintaining and consolidating international peace based on freedom, equality, justice, respect for basic human rights and on the development of friendly relations between States regardless of their political, economic and social systems or of their level of development;

Recalling that, for the maintenance of international peace, it is essential that, in their international relations, States refrain from threatening or using force against the territorial unity or political independence of any other State and from acting in any other way which is incompatible with the aims of the United Nations, and that any such threat or use of force would be a violation of international law and the United Nations Charter, and may never be used as a means of settling international disputes;

Recalling that a war of aggression is a crime against peace, in respect of which there is responsibility in international law, and that this principle underlies the whole system of contemporary international law;

Recalling that the territory of a State may not be subjected to military occupation by force in contradiction to the provisions of the United Nations Charter, that no State may acquire the territory of any other State by the threat or the use of force and that no acquisition of territory by the threat or the use of force may be recognized as being just and that all States are bound to refrain from organizing, instigating, aiding or participating in, acts of civil war or acts of terrorism within another State;

Convinced that universal respect for and the full exercise of human rights and basic liberties, and the elimination of violations of such rights, are important for the consolidation of peace and international security;

Convinced also that, in order to maintain and consolidate international peace and security, it is essential to promote the primacy of law over force in international relations;

Reaffirms solemnly that States must fully respect the sovereignty of other States and the right of peoples to decide for themselves, freely and without foreign intervention, coercion or constraint, particularly where the threat or the open or concealed use of force may be involved, and that they should refrain from any attempt to destroy, partially or totally, the national and territorial unity of a State or country;

Reaffirms solemnly that all States must cease any activity which, by force or any other measure, deprives peoples,

especially those under colonial or any other form of foreign domination, of their inalienable right to decide for themselves or of their right to freedom and independence, that they must furthermore renounce all military and repressive activity aimed at preventing dependent peoples from attaining independence, and that they must assist the United Nations and, in accordance with the Charter thereof, oppressed peoples in their legitimate struggle for a speedy end to colonialism or any other form of foreign supervision;

Convinced that there exists a close link between the consolidation of international security, disarmament and the economic development of peoples, in such a way that any progress towards any one of these aims is a step towards the others;

Reaffirms solemnly that the respect in good faith of the principles of international law relating to friendly relations and co-operation among States and the discharge in good faith of obligations undertaken by States in pursuance of the United Nations Charter are of the utmost importance for the achievement of the other aims of the United Nations;

Calls on the Parties to the Geneva Conventions to do all in their power to guarantee international peace and security by developing among themselves friendly relations and co-operation based, regardless of their political, economic or social systems, on strict respect for the principles of the United Nations Charter and especially the principle of the sovereign equality of States and the principles requiring States, in their international relations, to refrain from resorting to the threat or use of force against the territorial unity or political independence of any other State, to settle their international disputes by peaceful means, to refrain from any interference in the domestic affairs of any other State and to co-operate with other States in accordance with the Charter, in good faith and with respect for obligations undertaken.

Original: English

CE/COM IV/72

**Proposal submitted by the experts
of Indonesia, Ivory Coast, Pakistan, Romania, Saudi
Arabia, Tanzania, Turkey and the Ukrainian
Soviet Socialist Republic**

Draft Article 82

Reservations

(Delete this draft Article.)

Original: English

CE/COM IV/73

**Proposal submitted by the experts
of France, Indonesia, Ivory Coast, Romania, Turkey
and the United States of America**

Draft Article 4

Provisional application

(No Article.)

**Proposal submitted by the experts
of Algeria, Cameroon, the Arab Republic of Egypt,
Ivory Coast, Libya, Nigeria, Norway, Pakistan and
Yugoslavia**

Draft Article 1

Scope of the present Protocol

(Add a new paragraph:)

3. The situations referred to in the preceding paragraph include armed struggles waged by peoples for the exercise of their right of self-determination within the meaning of the definition of that right in Article 1, common to the International Covenants on Human Rights, adopted by the United Nations General Assembly on December 16, 1966.

Original: English

CE/COM IV/75

Proposal submitted by the experts of Italy

*Draft Resolution concerning
Disarmament and Peace to be annexed to the Final Act of
the Diplomatic Conference*

(Replace the third paragraph of the ICRC text by the following):

expresses the hope that the prohibition of the production, stockpiling and use of such weapons will be confirmed and proclaimed by the competent international bodies and that these measures will lead to general and complete disarmament,

Original: English

CE/COM IV/76

**Proposal submitted by the experts
of the Philippines**

*Draft Resolution concerning Disarmament and Peace to be
annexed to the Final Act of the Diplomatic Conference*

The Conference,

noting, that the Geneva Conventions and their additional Protocols do not contain any provision prohibiting the use of specific weapons of mass destruction;

believing that these weapons of mass destruction are repugnant to the affirmation and development of humanitarian law, to the dictates of public conscience, and to the cause of universal peace; and

realizing that prohibition of the use of weapons of mass destruction and the cause of universal peace can be attained by means of agreement among the Contracting Parties,

urges, therefore, the Parties to the Conventions to reach a common agreement leading to general and complete disarmament which will thereby preserve the cause of universal peace.

Original: French

CE/COM IV/77

Proposals submitted by the experts of Monaco

Draft Preamble

(Replace the first paragraph of the ICRC text by the following):

Conscious of the principles of international law incorporated in the United Nations Charter, particularly that of the prohibition of the threat or the use of force in international relations,

(and the third paragraph by):

Noting that the rules contained in the treaties of a humanitarian character and recognized by customary international law retain all their validity despite the infringements which they suffered, and believing that the observance of these rules in their entirety by all the Parties to the conflict will improve the likelihood of finding peaceful solutions,

...

Original: English

CE/COM IV/78

**Proposal submitted by the experts
of the Philippines**

Draft Preamble

1. (Replace the third paragraph of the ICRC text by the following):

Noting that, although the humanitarian rules are generally respected, occasional infringements still arise, and believing that the observance of these rules in their entirety by all the Parties to the conflict will improve the likelihood of finding peaceful solutions,

(and the fourth paragraph by):

Reaffirming the conventional and customary rules whereby the Parties to the conflict are under the obligation to make a distinction between protected persons and objects, on the one hand, and military objectives, on the other,

...

2. (Delete the fifth paragraph of the ICRC text.)

WRITTEN PROPOSALS SUBMITTED BY THE EXPERTS DURING THE FINAL PLENARY SESSIONS OF THE CONFERENCE

Original: French

CE/SPF/1

Proposal submitted by the experts of Iraq concerning the drawing up of a Charter for the better implementation of the rules of International Humanitarian Law

I. Unquestionably, the 1949 Geneva Conventions represent an extremely important advance in the process of building up a body of humanitarian law. Nevertheless, the tragic events and bloodshed which have marked the last twenty years have shown that the weakness lies not in the texts but in their false interpretation and in the absence of the political will which is essential for their implementation.

II. We can, therefore, say that the rules of the Geneva Conventions, far from ensuring the effective protection of victims of war, need protection themselves. While it is true that experience has revealed the shortcomings in the texts at present in force, it is also true that the major problem lies in the need to find ways of ensuring that these texts are respected, rather than in improving them. In other words, we believe that, while efforts must be made to improve the texts, at the same time measures must be taken to ensure that they are respected.

III. But the question arises: how can greater respect for international humanitarian law in general, and the Geneva Conventions in particular, be ensured? In our opinion, stress should be laid on the following considerations:

(a) It is impossible to guarantee that these rules will really be respected unless world opinion can be convinced of their importance. Real protection, if not the only protection, can only come from the peoples themselves. World opinion must therefore be made conscious of the benefits inherent in international humanitarian law and, consequently, be prepared to protect those benefits against any threats.

(b) The first step towards instilling this new, favourable attitude towards the Conventions in the public conscience would be the popularization of the treaty rules. This means that a large-scale campaign is essential for their dissemination in every country. They should be taught in schools and universities, to civilians and to military personnel. Instruction should be adapted to the level of each person and should deal not only with the texts at present in force but with any shortcomings that may exist and the need for further development. In other words, instruction in international humanitarian law must be introduced and developed both on the popular and on the academic levels. All information media must be used to interest the masses. National and international organizations must all contribute in the ways best suited to them.

(c) Since the conditions and circumstances in which men are living are constantly changing, it is essential that the rules of international humanitarian law be adapted to contemporary realities. To ensure that the rules are correctly applied, it is important that they correspond to real conditions. The ICRC, States, national and international organizations must assume the responsibility incumbent on them with regard to the application of the rules, their observance and their development. More than ever before, co-ordination between these different bodies is imperative. In particular, we think that the ICRC, while continuing its traditional activities, must adapt its role to the new situations which arise. Furthermore, it seems to us that the ICRC cannot, alone, assume so vast a task, and that international organizations, such as UNESCO, UNICEF, WHO, must accept their obligations, in wartime as in peacetime, alongside the ICRC. In this same field, there must also be co-ordination between these organizations and the National Red Cross Societies.

In conclusion, we consider that, at a forthcoming Diplomatic Conference, a proposal might be put forward for the establishment of a Charter for the respect of the Geneva Conventions, which would embody the general principles and the essential measures to be advocated in order to create in world public opinion a movement for the protection of the rules of international humanitarian law.

The Conference of Experts might, at its second session, entrust the ICRC with the task of preparing a draft for this Charter, and lay down the guidelines to be followed.

If the draft Charter were accepted by the Diplomatic Conference, it might then be submitted to the General Assembly of the United Nations with a view to its adoption by that body.

Original: English

CE/SPF/2

Proposal submitted by the experts of Argentina, Austria, Brazil, Denmark, Egypt, Finland, the Federal Republic of Germany, Iraq, Kuwait, Lebanon, Lybia, Mexico, the Netherlands, Norway, Spain, Sweden, Switzerland, Syria and Yugoslavia

Many experts have supported proposals for the prohibition or limitation of use of some specific types of conventional weapons, deemed to cause unnecessary suffering or to have indiscriminate effects. Other experts have queried whether the present conference has the competence to discuss this question in an adequate manner.

In view of the great importance of the matter and the desirability of seeking agreement on how it can best be approached, it is suggested that the ICRC should arrange a special meeting to consult with legal, military and medical experts on the question of express prohibitions or limitations of use of such conventional weapons as may cause unnecessary suffering or be indiscriminate in their effect.

Original: English

CE/SPF/3

Proposal submitted by the experts of Algeria, Austria, Ireland, Jordan, Libya, Mali, Nigeria, Norway, the Sudan, Sweden, Switzerland, Tanzania, Yemen (Arab Republic of), Yugoslavia

The experts of Algeria, Austria, Ireland, Jordan, Libya, Mali, Nigeria, Norway, Sudan, Sweden, Switzerland, Tanzania, Yemen (Arab Republic of), and Yugoslavia,

Convinced that the claim of war victims for protection is the same regardless of political or legal classifications of the conflict;

Further convinced that uniform rules for the protection of war victims in all armed conflicts would facilitate the study and instruction of international humanitarian law, and hence the application of those rules in all armed conflicts;

Desirous that to the largest extent possible the same substantive humanitarian rules should apply both in international armed conflicts and in armed conflicts not of an international character;

Urges that a Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts should, to this end, endeavour to elaborate, to the largest extent possible by uniform provisions, new substantive rules for the protection of war victims in international armed conflicts and in armed conflicts not of an international character.

Original: English

CE/SPF/4

Proposal submitted by the experts of Algeria, Jordan, Libya, Mali, Nigeria, Norway, the Sudan, Tanzania, Yemen (Arab Republic of), Yugoslavia

The experts of Algeria, Jordan, Libya, Mali, Nigeria, Norway, Sudan, Tanzania, Yemen (Arab Republic of), and Yugoslavia,

Convinced that the effective implementation and development of international humanitarian law applicable in armed conflicts is an urgent and important task for the international community;

Mindful that the lack of balance between Powers with substantial technological means at their disposal on the one hand, and newly independent States and national liberation movements on the other, has led to an escalation of both guerrilla warfare and its corollaries counter-guerrilla, technological and electronic warfare;

Also mindful of the unprecedented suffering these developments have inflicted upon a vast number of innocent war victims during the last decades;

Further mindful that these conflict situations have eroded reciprocity as a *de facto* element of compliance with international humanitarian law applicable in armed conflicts;

Deeply concerned by the fact that the rules contained in the draft Protocols submitted by the ICRC do not adequately cope with these important problems;

Noting the reticence of some experts to engage in a meaningful discussion of these important problems during the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts;

Urges that the ICRC and the United Nations continue their study of the problems relating to guerrilla, counter-guerrilla, technological and electronic warfare with a view to bringing these methods of warfare under the regulation of the international humanitarian law applicable in armed conflicts.