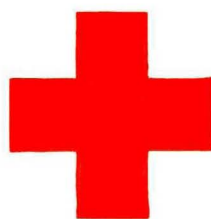


INTERNATIONAL COMMITTEE OF THE RED CROSS

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

(Geneva, 24 May - 12 June 1971)

REPORT ON THE WORK OF THE CONFERENCE



GENEVA
August 1971

**Colonel Howard S. Levie
Collection**



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

INTERNATIONAL COMMITTEE OF THE RED CROSS

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

(Geneva, 24 May - 12 June 1971)

REPORT ON THE WORK OF THE CONFERENCE

**GENEVA
August 1971**

CONTENTS

	Page	Paragraphs
INTRODUCTION	1	
OFFICIAL OPENING SESSION	3	
LIST OF PARTICIPANTS	7	
CONFERENCE AND COMMISSION OFFICIALS	13	
RULES OF PROCEDURE OF THE CONFERENCE	15	
LIST OF DOCUMENTS SUBMITTED BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS	16	
 REPORT ON THE FIRST PLENARY SESSIONS OF THE CONFERENCE	 17	 1-32
I. Procedure	17	1-10
II. General Discussion	18	11-20
III. Specific Problems discussed in the General Debate	20	21-31
IV. Methods for Drafting New Rules	22	32
 REPORT OF COMMISSION I	 23	 33-92
INTRODUCTION	23	33-42
CHAPTER I - Protocol I Protection of Wounded and Sick in International Armed Conflicts	24	43-70
CHAPTER II - Protocol II Protection of Wounded and Sick in Non-International Armed Conflicts	27	71-88
CHAPTER III Safety of Medical Transports	28	89-92
ANNEXES to the Report of Commission I	29	
 REPORT OF COMMISSION II	 33	 93-404
INTRODUCTION	33	93-97
PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS	34	98-356
CHAPTER I General Discussion	34	98-128
CHAPTER II Definition of Non-International Armed Conflicts	36	129-191
CHAPTER III Objective Finding of the Existence of Armed Conflicts	41	192-218
CHAPTER IV The Content of a Possible Protocol	43	219-281
CHAPTER V Non-International Armed Conflicts in which the Party Opposing the Authorities in Power has an Organization Displaying many of the Constituent Features of a State	48	282-289
CHAPTER VI Foreign State Aid in Non-International Armed Conflict	50	290-311
CHAPTER VII Wars of Liberation	52	312-356

	Page	Paragraphs
ANNEXES to the Report of Commission II concerning the Protection of Victims of Non-International Armed Conflicts	57	
RULES APPLICABLE IN GUERRILLA WARFARE	66	357-404
INTRODUCTION	66	357-360
CHAPTER I		
General Comments	66	361-371
CHAPTER II		
Prisoner-of-War Status for Guerrilleros	68	372-385
CHAPTER III		
Protection of Civilian Populations	69	386-392
CHAPTER IV		
Methods of Warfare	70	393-395
CHAPTER V		
Conclusions and Proposals	70	396-404
REPORT OF COMMISSION III	72	405-522
INTRODUCTION	72	405-408
PART ONE PROTECTION OF CIVILIAN POPULATION AGAINST DANGERS OF HOSTILITIES	73	409-486
CHAPTER I		
General Discussion	73	409-423
CHAPTER II		
The Distinction between the Civilian Population and Military Objectives; Definition of Civilian Population	75	424-439
CHAPTER III		
Protection of Civilian Population	77	440-453
CHAPTER IV		
Distinction between Non-Military Objects and Military Objectives; Definition of Non-Military Objects; Protection of Non-Military Objects	80	454-459
CHAPTER V		
Precautions to spare the Civilian Population and Non-Military Objects	81	460-467
CHAPTER VI		
Zones under Particular Protection	82	468-471
CHAPTER VII		
Protection of the Civilian Population against Certain Bombardments and Weapons	83	472-477
CHAPTER VIII		
Protection of the Civilian Population against Certain Effects of Economic Warfare; International Relief Action for Civilian Population; Other Problems	84	478-486
PART TWO STRENGTHENING OF THE GUARANTEES AFFORDED BY INTERNATIONAL HUMANITARIAN LAW FOR NON-MILITARY CIVIL DEFENCE ORGANIZATIONS	87	487-506
CHAPTER I		
General Discussion	87	487-492
CHAPTER II		
Definition	88	493-495
CHAPTER III		
Civil Defence Duties	88	496-501
CHAPTER IV		
Protection and Markings	89	502-506
ANNEXES to Parts One and Two of the Report of Commission III	90	
PART THREE PROTECTION OF JOURNALISTS ON DANGEROUS MISSIONS	100	507-515
ANNEX to Part Three of the Report of Commission III	102	

	Page	Paragraphs
PART FOUR RULES RELATIVE TO BEHAVIOUR OF COMBATANTS	103	516-522
ANNEXES to Part Four of the Report of Commission III	105	
REPORT OF COMMISSION IV	107	523-580
INTRODUCTION	107	523-526
CHAPTER I		
Remarks on the Reinforcement of the Rules relative to the Supervision of the Regular Observance of the Law in Force	107	527-555
CHAPTER II		
Remarks and Suggestions on the Reinforcement of the Rules relative to Penal Sanctions for Violations of the Law in Force	110	556-572
CHAPTER III		
Observations concerning the Problem of Reprisals	111	573-577
CHAPTER IV		
Remarks and Suggestions on the Dissemination of Humanitarian Principles and Rules, National Legislation for their Application, and Instructions to be given to the Armed Forces	111	578-580
ANNEXES to the Report of Commission IV	113	
REPORT ON THE FINAL THREE PLENARY SESSIONS OF THE CONFERENCE	117	581-620
I. Introduction	117	581-584
II. Progress	118	585-589
III. Prospects	118	590-620
ANNEX to the Report on the Final Three Plenary Sessions of the Conference	121	

INTRODUCTION

In September 1969, at Istanbul, the XXIst International Conference of the Red Cross unanimously adopted Resolution No. XIII entitled "Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts". In that resolution, the Conference requested the International Committee of the Red Cross (ICRC) to pursue actively its efforts with a view to proposing, as soon as possible, concrete rules which would supplement humanitarian law in force. It also urged the ICRC to invite government experts to meet for consultation with the ICRC on those proposals.

On the basis of that resolution and in order to be able subsequently to put forward proposals to all governments, the ICRC decided to convene the "Conference of Government Experts on the Reaffirmation and Development of Humanitarian Law Applicable in Armed Conflicts", which was held from 24 May to 11 June 1971 in Geneva.

Consistent with the same resolution, which advocated the meeting of government experts who were representative of the main legal and social systems in the world, and bearing in mind the active interest displayed by many governments for Red Cross efforts in that field, the ICRC invited some forty governments to delegate experts to the Conference. A few of them having decided not to participate, the invitation was extended to several other governments which had shown special interest in the meeting. Finally, almost 200 experts from 41 States were gathered in Geneva. The list of participants is attached hereto.

In its invitation of 22 October 1970, the ICRC gave a provisional list of matters to be submitted to the Conference.

In the course of the first few months of 1971, the ICRC sent the governments invited the documentary material it had drawn up on the basis, in particular, of the opinions gathered during private consultations with some fifty experts throughout the world. Consisting of the eight *Documents* listed later on in this report and which covered more than 800 pages in each of the Conference's three working languages (French, English and Spanish), that material contained *inter alia* draft rules in various stages of development and accompanied by extensive comments on the problems to be dealt with and on the opinions of persons consulted. The ICRC added other documents, particularly the report on the work of the Conference of Red Cross Experts which met in The Hague from 1 to 6 March 1971, with the active assistance of the Netherlands Red Cross, to give

National Red Cross Societies the opportunity to make known their views on the main problems submitted to the government experts.

The ICRC also sent the governments invited two reports by the U.N. Secretary-General on Respect for Human Rights in Time of Armed Conflicts, and the records of relevant proceedings of the U.N. General Assembly which, in its resolution 2677 (XXV), asked the Secretary-General to transmit those documents to the ICRC for submission to the Conference of Government Experts.

When it sent the documentary material to the governments invited, on 19 March 1971, the ICRC proposed that the Conference set up three commissions to meet simultaneously. It also proposed a provisional agenda sharing the matters for discussion among the commissions.

At the beginning of its work, the Conference adopted the rules of procedure proposed by the ICRC, the text of which is given later in this paper. Those rules specified, *inter alia*, that experts would express personal opinions not binding on the governments which had appointed them, and that the Conference would reach no decisions and pass no resolutions. In accordance with the same rules, the Conference elected its own and each commission's officers as shown later on in this report.

After two days of general discussion, the Conference split into four commissions—a fourth having been considered necessary—three of which met simultaneously to consider the subjects which had been assigned to them. The last two days were devoted to the adoption of commission reports and to a general discussion in the course of which the Conference considered, among other things, the action to be taken to follow up its work.

Apart from the documents already mentioned, this report consists in the main of those drawn up by the four commissions as amended by the Conference. The ICRC has added an analysis of its own of the plenary sessions with which the Conference began and ended.

* * *

The International Committee of the Red Cross is gratified that governments replied so favourably to its appeal by delegating numerous and highly qualified experts to Geneva. It wishes to convey to them here its profound gratitude.

After three weeks of discussions, conducted in the best team spirit and without a single note of discord, experts were almost unanimous in desiring a second

Conference with a broader attendance in the near future. Indeed, although in general the results were important, the work was far from uniformly advanced in every field. Some fully worked out draft treaty provisions were produced, but some subjects were not even broached.

The International Committee of the Red Cross was therefore requested to draw up new drafts, as complete and concrete as possible. It intends to do so with a view to submitting them to governments in good time for the second Conference which it is already preparing to organize.

OFFICIAL OPENING SESSION

On 24 May 1971, in the meeting room of the Hôtel Intercontinental, Geneva, the opening session of the Conference of Government Experts took place.

Under the chairmanship of Mr. M. A. NAVILLE, President of the International Committee of the Red Cross, the ceremony was attended by some 200 government experts and by representatives of the United Nations, the International Committee of the Red Cross, the Swiss Government, and the Republic and Canton of Geneva, as well as by many members of the diplomatic corps and of governmental and non-governmental international organizations.

After opening the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Mr. Naville stated, in relation to the work to be undertaken by the Conference:

This Conference is a landmark in the ICRC's work for the benefit of the victims of war in all its forms. It is almost superfluous to say that since the end of the Second World War there have been many armed conflicts. It is true that the four 1949 Geneva Conventions, revised or entirely new, have introduced appreciable modifications in the way in which belligerents treat persons falling into their power. Nevertheless, on numerous occasions, the relentless nature of certain conflicts, particularly cruel methods of war, the suffering and hardship inflicted on innocent people and even on whole populations, have aroused world opinion to demand that certain evil practices be no longer tolerated. It is in that context, and based on the daily experience of its delegates in the field, that the ICRC has worked unceasingly for the stricter application of existing rules and for their reinforcement by a set of new rules.

The work carried out in 1956 and 1957 led to the submission to the XIXth International Conference of the Red Cross of Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War. The draft met with a cool reception from governments.

However, since that time world opinion and governments' attitudes have undergone a certain change which encouraged the ICRC to announce to States in 1968 that it was working on new drafts for the reaffirmation and development of all humanitarian law applicable in armed conflicts.

Its efforts, incidentally, were not carried out in isolation, since almost simultaneously, in an important resolution, the International Conference on Human

Rights at Tehran in 1968 displayed its concern for the protection of human rights in armed conflict.

The XXIst International Conference of the Red Cross, at Istanbul in 1969, to which the ICRC had submitted important documentary material, recognized the absolute necessity for this work. It therefore asked the ICRC to press on resolutely and to draw up, with the assistance of experts from the Red Cross, governments and other circles, concrete proposals for submission to governments. As you are aware, the ICRC has conducted a series of individual consultations. It also convened at The Hague, at the beginning of March this year, a conference of Red Cross experts, and today we are about to begin the consultation of experts from a number of governments.

Along similar lines, the United Nations adopted a resolution in 1968 requesting the Secretary-General to study various aspects of the application of Human Rights in armed conflicts. The Secretary-General submitted an important report in 1969 and was urged to continue his work. A second report was submitted to the twentyfifth session of the United Nations General Assembly in the autumn of 1970 and in a resolution with which you are acquainted, the General Assembly exhorted the ICRC and the Secretary-General to continue their studies. In the same resolution, the Assembly expressed its satisfaction at the convening of the present conference of experts and its hope that the conference would go thoroughly into the question of how existing humanitarian rules should be developed and would put forward concrete recommendations. Finally, the same resolution directed that the Secretary-General's two reports, government observations, records of discussions and the relevant resolutions of the General Assembly, the Economic and Social Council, and the Commission for Human Rights, be submitted to the Conference of Government Experts for examination.

As you can see, fruitful co-operation and confidence has grown between the United Nations and the ICRC. It is in a similar spirit that I have the pleasure of welcoming among us today the Secretary-General's representative, Mr. Marc Schreiber, and his assistants who will take part in our work.

I would also express my gratitude to the States which have responded to the ICRC's appeal by delegating to this conference experts whose advice, coming from people so competent, will be essential for our progress on the course we have set. The ICRC looks upon their attendance as a proof of their interest and confidence, of which it is most appreciative. Indeed,

without the active support of governments, the mission it has undertaken could not be brought to a successful conclusion. By delegating experts to this conference, your governments discounted all political or diplomatic considerations and, to avoid placing the success of the meeting in jeopardy, they have abstained from raising any question of the relationships among themselves. We thank them warmly. I would also like to avail myself of this opportunity to confirm that the ICRC's invitation to governments whose experts are present here does not in any way imply a standpoint or opinion on any government's past or present attitude concerning humanitarian law and the implementation of the Geneva Conventions in particular cases.

This seems the proper place to restate that this conference is first and foremost an opportunity to consult specialists and to exchange views in order the better to highlight questions, suggest answers, and find methods of practical application. Only the appointed experts, and the representatives of the United Nations Secretary-General and of the ICRC will therefore attend the meetings.

In view of the nature of the consultation, there could be no question of inviting all governments to send experts; that would have made discussion almost impossible. It was for that reason that the ICRC, in accordance with the directives of the XXIst International Conference of the Red Cross, drew up a list of governments representative of the main legal and social systems throughout the world, bearing in mind at the same time the active interest which several governments had displayed in the undertaking. Nevertheless, the opinions of governments which have not sent experts, will, of course, be welcomed with interest and gratitude by the ICRC.

As I stressed at the beginning of The Hague Conference last March, "opinions expressed will be binding only on those who express them - what is said will be noted but will not be the subject of a vote or a decision. It is hoped that the subjects for discussion will be broached from a general point of view and that specific examples will be referred to only for the purpose of drawing from them conclusions acceptable to all. It is hoped that everyone will bear in mind that the common concern which brings us here is essentially humanitarian".

As was stated in our circular of 19 March, we suggest that the work begin with a general discussion which might take up two or three meetings. The proceedings will then continue in three commissions meeting simultaneously. The first commission will deal with the question of the protection of the wounded, the sick, and the medical personnel. The second will consider the problem of victims of non-international armed conflicts, and rules applicable in guerrilla warfare. The third commission will be concerned with the protection of civilian population in time of war and with the rules relative to the behaviour of combatants. Other matters will be examined in the last week of the conference in plenary meetings. It will be for the ICRC to determine how suggestions put forward should be followed up.

On behalf of the authorities of the Republic and Canton of Geneva, Mr. Willy Donzé, President of the State Council, cordially welcomed the government experts to Geneva. He then evoked the history of the founding of the International Committee of the Red Cross:

It was early in September 1863, in Geneva, that the ICRC, which was then known as the "Comité international de secours aux militaires blessés", sent out invitations to a conference from which, in the words of its president, "he expected great results for relieving the lamentable conditions of the wounded". The members of the Committee were very uncertain as to who would take part in the conference. But they were overjoyed to learn that 31 experts from 16 States had answered the appeal.

The Conference was a sequel to the War of Italy and to the enterprise of Henry Dunant, a citizen of Geneva, who had been deeply moved by the horror of the Battle of Solferino. Henry Dunant was an unusual man, with multiple and sometimes contradictory facets to his personality. In him co-existed the philanthropist and saint, the missionary and prophet and the slightly disturbing businessman. He himself liked to style himself a cosmopolitan. He was joined by Gustave Moynier, Guillaume-Henri Dufour, Louis Appia and Théodore Maunoir. Gustave Moynier, a level-headed serious-minded man, an eminent jurist with a flair for organization, was the very antithesis of Dunant. He believed that it was not for the Red Cross to remain as an association only doing humanitarian work, but that it should become an enterprise conscious of its aims, firmly organized, with both feet solidly on the ground. Guillaume-Henri Dufour was a gifted officer who had saved our country, rapidly bringing to a close a distressing civil war, without leaving, and therein lay his exceptional merit, any trace of bitterness or of hatred with the vanquished. Louis Appia was a doctor, a technician, a man of action, marching straight along. His neutral and impartial intervention in Geneva, seeking only to alleviate suffering, proved to be very often of great utility. Finally, Théodore Maunoir, a doctor, too, was a judicious counsellor, always ready to point out where obstacles lay and how to get round them, and to apply, where and when needed, a drop of oil to the bearings.

The movement was launched. It led, on the one hand, to the creation of the International Red Cross and, on the other, in 1864, through the convening of a Diplomatic Conference, also at Geneva, to the First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field.

After underlining the international role of Geneva, which had been a city of refuge since the 16th century, Mr. Donzé went on to say that:

After the First World War, Geneva was chosen as the headquarters of the future League of Nations. This institution played a considerable role in the field of public international law.

After the Second World War, the United Nations came into existence, and its European Office was set up at Geneva. This led to the establishment in our city of four of its specialized agencies, besides numerous non-governmental organizations. They are: the International Labour Organisation, the World Health Organization, the International Telecommunications Union and the World Meteorological Organization.

In 1949, the Diplomatic Conference convened for that purpose drafted the four Geneva Conventions at present in force throughout the world.

A realistic view of the problems before it has led the international community to carry on its search for peace simultaneously on two planes: to prevent armed conflicts, by seeking a solution to the profound causes of war and by employing the channels of diplomacy and arbitration; but also, in the presence of such conflicts, to improve the protection of victims, by fighting for the elimination of needless suffering. Seen in this light, the meeting of the Commission on Peaceful Relations between States held last year in Geneva and this present conference are not inconsistent in any respect, both having the protection of the human person as their main centre of interest.

Professor W. Riphagen, legal adviser to the Netherlands Ministry of Foreign Affairs, after pointing out that "the most important international law development in the 19th and 20th centuries had been the universal recognition and protection of the human being", continued:

It has often been pointed out that the work of developing and of giving added precision to rules of jus in bello indicates an attitude of resignation regarding the use of armed force as a political expedient. In 1949, in discussing its programme of work and the possible place of the codification of the law of war in

this programme, the United Nations Commission on International Law made the observation that—and I quote—"It was considered that if the Commission, at the very beginning of its work, were to undertake this study, public opinion might interpret its action as showing lack of confidence in the efficiency of the means at the disposal of the United Nations for maintaining peace".

While understanding this hesitation from a policy standpoint to outlaw the use of force in international relations, it should nevertheless be pointed out that there is by no means any contradiction between such action and that to be carried out within the framework of humanitarian law.

It is also true that the hope of ensuring that the requirements of humanity shall prevail in armed conflict constantly comes up against necessities which arise from the very fact that the aim of hostilities is to put an end to those hostilities.

Consequently the work of developing humanitarian law demands as much patience and modesty as perseverance and boldness.

To conclude, Professor Riphagen stated:

Starting with the alleviation of the plight of individuals caught up in conflict between Powers, humanitarian law was extended to include rules for the conduct of hostilities and also to place certain categories of persons legally "hors combat" as it were.

It seems inevitable that that extension should reach the more general questions of Powers and relationships between Powers, and problems arising from the trend for individuals to be drawn into collective efforts.

Armed conflicts are increasingly varied in form and affect ever greater numbers of people. In other words, the task which the Red Cross has set itself has become both more urgent and more difficult.

LIST OF PARTICIPANTS

(according to the French list)

République démocratique allemande

M. Günther ULRICH
Directeur adjoint, Ministère des Affaires étrangères
Lt-Colonel Rolf FELBER
Ministère de la Défense nationale
Colonel Rolf FISCHER
Ministère de l'Intérieur
M. Rolf STALTMEIR
Chef de section, Ministère des Affaires étrangères
Capitaine Lothar TAUBERT
Ministère de l'Intérieur

République fédérale d'Allemagne

M. Joachim HINZ
Conseiller, Ministère de la Défense
M. Volker HAAK
Premier Conseiller de Légation
Ministère des Affaires étrangères
M^{me} Christa SAERBECK
Conseiller, Ministère de la Santé, Jeunesse et Famille
M. Dieter FLECK
Professeur, Ministère de la Défense

Arabie Saoudite

Dr. ABDEL AZIZ MOUDARESS
President of the Saudi Arabian
Red Crescent Committee
Dr. HUSSEIN AL GAZAERI
Membre du Conseil d'administration du Comité du
Croissant rouge de l'Arabie Séoudite
Dr. HASHEM AL DABBAG
Representative of the Ministry of Public Health to the
Saudi Arabian Red Crescent Committee
Mr. FADL OUKASHA FADL

République Arabe Unie

M. le Professeur D^r Hamed SULTAN
Membre de l'Institut d'Egypte, Professeur de droit
international, Faculté de droit, Université du Caire
M. El Sayed Abdel Raouf EL REEDY
Conseiller de la Mission permanente de la République
Arabe Unie à Genève
Colonel Adly EL SHERIF
Officier de Liaison auprès du CICR
Lt-Colonel Mokhtar CHAABAN
Département de Justice militaire

M. le D^r Hussein HASSOUNA
Deuxième Secrétaire
Ministère des Affaires étrangères
M^{lle} Leila EMARA
Attaché, Ministère des Affaires étrangères
M. Yousri RIZK
Premier Secrétaire
Mission permanente de la République Arabe Unie à
Genève

Argentine

D. José I. GARCIA GHIRELLI
Secretario de Embajada
Mission permanente de la République d'Argentine à
Genève
D. Luis Maria LAURELLI
Secretario de Embajada
D.^a Graciela SABA
Secrétaire d'Ambassade

Australie

Mr. Justice J. A. NIMMO
Judge
Commonwealth Industrial Court
Supreme Court of Australian Capital
Supreme Court of Northern Territory
Mr. F. J. MAHONY
Deputy Secretary, Attorney-General's Department
Mr. K. R. DOUGLAS-SCOTT
Minister, Australian Embassy, Paris
Mr. G. P. TEMME
Chief Executive Officer (Legal)
Department of Defence
Lt.-Col. P. J. CAMERON
Assistant Director
Legal Services, Department of the Army

Autriche

M. Eugen F. BURESCH
Ambassadeur
Représentant permanent de l'Autriche à Genève
M^{lle} Helga BIDMON
Secrétaire d'Ambassade
Mission permanente de l'Autriche à Genève
M. Christian ZEILEISSEN
Jurisconsulte adjoint
au Ministère des Affaires étrangères

M. Friedrich GRIESSLER
Directeur adjoint
au Ministère de la Défense nationale
M. Hans WAGNER
Directeur adjoint au Ministère de l'Intérieur
M. Hans G. KNITEL
Jurisconsulte adjoint à la Chancellerie fédérale

Belgique

Baron DE GAIFFIER D'HESTROY
Ambassadeur, Ministère des Affaires étrangères
M. Jean DE BREUCKER
Conseiller, Ministère des Affaires étrangères
M. André ONKELINX
Conseiller
Délégation permanente de la Belgique à Genève
Colonel Jacques BERBEN
Commandant de l'Ecole des Services
de Santé militaires
Major Georges BERY
Ministère de la Défense Nationale
M. Robert PIANET
Conseiller
Directeur de l'Ecole de Protection civile

Brésil

Ambassador Haroldo Teixeira VALLADÃO
Principal Legal Adviser
Ministry of External Relations
Dr. Vicente Marotta RANGEL
Professor of Public International Law
University of S. Paulo Law School
Dr. Geraldo Magella Dantas BARRETO
Legal Adviser
Ministry of Justice
Dr. Carlos Alberto Dunshee DE ABRANCHES
Professor of Public International Law
University of the State of Guanabara
Minister Frederico Carlos CARNAÚBA
Ministry of External Relations
Col. Paulo Emílio Silva GARCIA
Armed Forces General Staff
Mr. Antonio Amaral DE SAMPAIO
1st Secretary of Embassy
Brazilian Permanent Delegation in Geneva

Burundi

M. Cyrille NZOHABONAYO
Directeur de Cabinet à la Justice
M. François BUZYCYA
Directeur général Ministère de la Santé

Canada

Mr. E. G. LEE
Director of the Legal Operations Division
Department of External Affairs
Colonel J. M. SIMPSON
Deputy Judge Advocate General
Office of the Judge Advocate General

Lieutenant-Colonel J. P. WOLFE
Head of the International Section
Office of the Judge Advocate General
M. Robert AUGER
Troisième Secrétaire
Mission permanente du Canada à Genève
Mr. G. W. RIDUL
Court Reporter
Office of the Judge Advocate General

République démocratique du Congo

M. Philémon BOMPESSE
Président de la Croix-Rouge
de la République démocratique du Congo
M. Médard LUAMBA
Directeur de Cabinet
Ministère de la Santé Publique
M. Raphaël KUMBU
Premier Secrétaire
Mission permanente de la République démocratique
du Congo à Genève

Danemark

Mr. Per FERGO
Head of Department
Ministry of Foreign Affairs
Mr. Erik SCHULTZ
Director of Civil Defence
Mr. Isi FOIGHEL
Professor at Law
University of Copenhagen
Mr. Tyge LEHMANN
Ministry of Foreign Affairs
Secretary to the Delegation
Mr. L. M. K. SKERN
Lieutenant-Colonel, Ministry of Defence
Mr. J. P. A. THOMSEN
Lieutenant-Commander, Ministry of Defence
Mr. Finn ERSKOV
Secretary of Embassy
Permanent Mission of Denmark in Geneva

Espagne

Don Ramon Martin HERRERO
Ministro Plenipotenciario
Don Francisco LOUSTAU FERRAN
Alto Estado Mayor
Don José Luis URIARTE ROJO
Ministerio del Ejército
Don Ignacio DÍAZ DE AGUILAR
Ministerio del Ejército
Don Julio SAINZ BRIGERAS
Ministerio de la Gobernación
Don Francisco Javier SÁNCHEZ DEL RIO Y SIERRA
Ministerio del Aire
Don Francisco DE ASIS CONDOMINES
Asesor Jurídico Internacional
Ministerio de Asuntos exteriores
Don Fernando MURILLO
Asesor Técnico Internacional
de la Cruz Roja Española

Etats-Unis

Mr. George H. ALDRICH
Deputy Legal Adviser, Department of State

Mr. Robert J. PRANGER
Deputy Assistant Secretary
for International Security Affairs
Department of Defence

Mr. Harry H. ALMOND, Jr.
Office of the General Counsel
Department of Defence

Mr. Richard R. BAXTER
Professor of Law
Harvard Law School
Harvard University
Cambridge, Massachusetts

Mr. Ronald J. BETTAUER
Office of the Legal Adviser
Department of State

Mr. James L. CARLIN
Counsellor of Mission
United States Mission in Geneva

Mr. Harry J. DALTON
Colonel, United States Air Force
Office of the Assistant Secretary
of Defence for Public Affairs
Department of Defence

Mr. Edward G. MISEY
Legal Attaché
United States Mission

Mr. Roger E. SHIELDS
Assistant to the Assistant Secretary
of Defence for International Security Affairs
Department of Defence

Mr. Frank A. SIEVERTS
Special Assistant to the Under Secretary of State
Department of State

Mr. Winfield S. SINGLETARY, Jr.
Lieutenant, United States Army
Medical Service Corps
Department of the Army

Mr. Waldemar A. SOLF
Office of the Judge Advocate General
International Affairs Division
Department of the Army

Colonel Robert W. BAZLEZ
United States Air Force
Office of Joint Chiefs of Staff
Department of Defence

Colonel Charles R. NORRIS
United States Army
Office of Joint Chiefs of Staff
Department of Defence

Captain Nicholas SABALOS
United States Navy
Office of Joint Chiefs of Staff

Ethiopie

Ato Abera JEMBERE
General Secretary of the Council
of Ministers with the Rank
of Vice-Minister

Lij. Hailu DESTA
Assistant Minister of Health
and Education
in the Ministry of National Defence

Dr. Sersou BEKKELE
Deputy Legal Advisor
Ministry of Foreign Affairs

Finlande

M. Voitto SAARIO
Membre de la Cour Suprême

M. Holger ROTKIRCH
Chef de Bureau, Ministère des Affaires étrangères

Lt-Colonel Jouko LINTUNEN

France

M. le Professeur Charles CHAUMONT
Professeur à la Faculté de droit
et des sciences économiques de Nancy
Conseiller juridique au Ministère des
Affaires étrangères

Colonel MORENS
Ministère d'Etat, Chargé de la Défense nationale

Madame D'HAUSSY
Direction des Affaires juridiques
Ministère des Affaires étrangères

M. PERREAU PRADIER
Préfet
Directeur du Service national de la Protection civile

M. Paul RAFFI
Chef de l'inspection générale de la Protection civile

M. COIRIER
Chargé des questions de Défense
et de Protection sanitaire des populations civiles
Ministère de la Santé publique et de la Sécurité sociale

Hongrie

Dr. Istvan KIRALY
Directeur, Ministère de la Justice

Dr. Geza HERCZEGH
Professeur de l'Université de Pécs

Dr. Janos PETRAAN
Deuxième Secrétaire
Ministère des Affaires étrangères

Dr. Ferenc GAJDA
Secrétaire d'ambassade
Mission permanente de la République populaire
hongroise à Genève

Inde

Dr. Nagendra SINGH
Secretary to the President of India

Mr. Gauri SHANKAR
First Secretary
Permanent Mission of India in Geneva

Mr. G. S. BALAKRISHNAN
Attaché, Permanent Mission of India in Geneva

Indonésie

Colonel TRANGGONO
Indonesian Red Cross
Mr. Suhandi IJAS
Indonesian Red Cross

Israël

Mr. Meir SHAMGAR
Attorney General
Mr. Mordecai KIDRON
Ambassador
Permanent Representative
Permanent Mission, Geneva
Dr. Theodor MERON
Legal Adviser
Ministry for Foreign Affairs
Colonel Zvi HADAR
Military Advocate General
Captain Zvi EFRAT
Legal Adviser
Mr. Meir OSSAD
Assistant Legal Adviser
Ministry for Foreign Affairs
Mr. Moshe MELAMED
First Secretary
Permanent Mission, Geneva

Italie

M. Giuseppe SPERDUTI
Professeur de Droit International
Université de Rome
M. Giuseppe BARILE
Professeur de Droit International
Université de Florence
M. Antonio CASSESE
Professeur de Droit International
Université de Pise
M. Eugenio DI MATTEI
Premier Secrétaire
Mission permanente d'Italie à Genève
M. Gaetano SPIRITO
Directeur de section
Direction générale de la Protection civile
Ministère de l'Intérieur

Japon

Professor Masayuki TAKEMOTO
University of Kansai
Mr. Rikio SHIKAMA
Head, Social Affairs Division
United Nations Bureau
Ministry of Foreign Affairs
Mr. Hiroshi HASEGAWA
Official
Social Affairs Division
United Nations Bureau
Ministry of Foreign Affairs

Mr. Osamu WATANABE
Second Secretary
Permanent Delegation of Japan
to the International Organizations in Geneva

Jordanie

Dr. Youssef ZEHNI
Chef des Services dentaires jordaniens

Kenya

Dr. J. M. GEKONYO
Deputy Chief Medical Officer

Liban

Dr. Solaimane EL-ZEIN
Ambassadeur
Chef de la Mission permanente du Liban
à Genève
M^{me} Rubi HOMSY
Premier Secrétaire
Mission permanente du Liban à Genève

Mexique

Señor Licenciado Sergio GONZÁLEZ GÁLVEZ
Ministro Consejero
Subdirector General de Organismos
Internacionales en la Secretaría de Relaciones
Exteriores
Contralmirante C. G. Ignacio SÁENZ GUTIÉRREZ
Agregado Naval en la Embajada de México
en Italia
Señor Miguel MARÍN BOSCH
Secretario del Servicio Exterior Mexicano

Nigeria

Lt-Colonel P. MARTINS
Mr. C. O. HOLLIST
Head of International Division
Mr. W. O. ODUBAYE

Norvège

Mr. E.-F. OFSTAD
Deputy-Director
Ministry of Foreign Affairs
Mr. H. MATHIESEN
Secretary-General
Norwegian Red Cross
Mr. B. EGGE
Lieutenant-Colonel
Mr. Jens B. HEGGEMSNES
First Secretary of Embassy
Permanent Norwegian Delegation in Geneva
Mr. H. B. HJELDE
First Secretary
Ministry of Foreign Affairs
Mr. H. W. LONGVA
Legal Adviser
Permanent Norwegian Delegation in Geneva

Pakistan

Mr. Niaz A. NAIK
Ambassador and Permanent Representative
of Pakistan to the European Office
of the United Nations in Geneva
Mr. Shaharyar M. KHAN
Counsellor
Permanent Mission of Pakistan
Mr. Tariq Osman HYDER
Third Secretary
Permanent Mission of Pakistan

Pays-Bas

Professor W. RIPHAGEN
Legal Adviser
Ministry of Foreign Affairs
Mr. A. BOS
Assistant Legal Adviser
Ministry of Foreign Affairs
Mr. Th. C. VAN BOVEN
Head of Department, Directorate
General International Organizations
Ministry of Foreign Affairs
Rear Admiral E. DEDDES
Physician
Ministry of Defence
Major E. L. GONSALVES
Military Legal Service
Ministry of Defence
Mr. F. KALSHOVEN
Lecturer International Law
University of Leyden
Lt-Colonel W. DE VRIES
Ministry of Defence

Philippines

Mr. Renato URQUIOLA
Career Minister
Philippine Mission in Geneva
Mr. Maxie S. AGUILLON
Third Secretary
Philippine Mission in Geneva

Pologne

Dr. Slawomir DABROWA
Ministère des Affaires étrangères
Colonel Henryk STEPOSZ
Ministère de la Défense
M^{lle} Danuta ZYS
Comité de la Croix-Rouge Polonaise

Roumanie

M. Aurel CRISTESCU
Directeur adjoint
Ministère des Affaires étrangères
M. Gheorghe TINCA
Troisième Secrétaire
Mission permanente de la République
socialiste de Roumanie à Genève

M. Marin PANCEA
Conseiller
Mission permanente de la République
socialiste de Roumanie à Genève

Royaume-Uni

Sir Harold BEELEY, K.C.M.G., C.B.E.
Mr. G. W. JAMIESON
Ministry of Defence
Colonel G. I. A. D. DRAPER, OBE
University of Sussex
Mr. L. J. EVANS
HM Consul-General, Geneva
Mr. M. S. BAKER-BATES
Foreign and Commonwealth Office
Miss A. F. LUSH
Foreign and Commonwealth Office
Mr. J. V. DANCE
Home Office
Mr. A. C. BEER
Ministry of Defence

Suède

Dr. Hans BLIX
Head of Department
Ministry for Foreign Affairs
Mr. Carl-Ivar SKARSTEDT
Head of Legal Department
Ministry for Defence
Mr. Bror KARLSSON
Assistant Judge of Court of Appeal
Attached to the Ministry for Justice
Mr. Bengt ÅKERRÉN
Counsellor of Embassy
Permanent Swedish Delegation in Geneva
Captain Stig STRÖMBÄCK
Royal Swedish Navy
Mr. Esbjörn ROSENBLAD
Head of Section
Ministry for Foreign Affairs
Mr. Kaj FALKMAN
Head of Section
Ministry for Foreign Affairs

Suisse

M. Rudolf BINDSCHIEDLER
Ambassadeur
M. Reinhold KÄSER
Colonel Divisionnaire
Médecin-Chef de l'Armée Suisse
Dr. Karl BRUNNER
Ancien Colonel Divisionnaire
M. Max KELLER
Juriste
M. Joseph MARTIN
Conseiller juridique de l'Office fédéral
de la Protection civile
M. René PASCHE
Collaborateur diplomatique
au Département politique fédéral

M. Herbert VON ARX
Juriste au Département politique fédéral

URSS

M. M. G. GRIBANOV
Ambassadeur Extraordinaire et Plénipotentiaire

Dr. I. P. BLICHTCHENKO
Professeur de Droit international

M. I. I. KRASNOPEEV
Chef du Laboratoire de recherche médicale
de l'Académie de Médecine militaire

M. V. M. BOULANENKOV
Conseiller

Yougoslavie

Dr. Milan SAHOVIC
Head of the Department for International Law
Institute for International Politics and Economy

Dr. Milivoje DESPOT
Colonel
Judge at Supreme Military Court
Dr. Bosko JAKOVLJEVIC
Counsellor of the Federal Council
Yugoslav Red Cross

Organisation des Nations Unies

M. Marc SCHREIBER
Directeur de la Division des Droits de l'Homme
Nations Unies, New York

M. Alexandre BOLINTINEANU
Membre de la Division des Droits de l'Homme
Nations Unies, New York

M. Roy LEE
Membre de la Division des Droits de l'Homme
Nations Unies, New York

Comité international de la Croix-Rouge

M. Marcel NAVILLE
Président
M^{me} D. BINDSCHIEDLER-ROBERT
Professeur à l'Institut universitaire des Hautes Etudes
internationales
M. R. GALLOPIN
Ancien Directeur général du CICR
M. H. HUBER
Juge fédéral
M. D. SCHINDLER
Professeur à l'Université de Zurich
M. F. SIORDET
Membre honoraire

Représentants permanents

M. J. PICTET
Vice-Président
M. C. PILLOUD
Directeur
M. R.-J. WILHELM
Sous-Directeur

Experts juristes

M. A. MARTIN
Assistant du chef de la Division juridique
M^{me} D. BUJARD
Conseiller juriste
M. J. MIRIMANOFF-CHILIKINE
Conseiller juriste
M. J. DE PREUX
Conseiller juriste
M. M. VEUTHEY
Conseiller juriste

Autres experts

M. M. BORSINGER
Délégué général pour l'Europe
Dr. R. MARTI
Médecin-Chef
M. S. NESSI
Délégué général pour l'Amérique latine
M. J. MEURANT
Assistant spécial du Secrétaire général de la Ligue
M. F. DE MULINEN
Chef de la Planification
M. Ph. EBERLIN
Ancien agent convoyeur du CICR

Secrétariat

M. F. GAILLARD
Sous-Directeur
Secrétaire général de la Conférence
M. A. D. MICHELI
Délégué près les Organisations internationales
Secrétaire général adjoint de la Conférence
M. G. REGENASS
Sous-Directeur
Commissaire à la Conférence
M. A. MODOUX
Chef de l'Information
M. G. WINTELER
Juriste
M. G. MALINVERNI
Juriste
M. J. P. HOCHE
Délégué

Conference and Commission Officials

1. Officials of the Conference

Chairman of the Conference

Mr. J. PICTET
Vice-President of the ICRC

Secretary-General

Mr. P. GAILLARD
Assistant Director of the ICRC

Permanent Representative

Mr. C. PILLOUD
Director of the ICRC

Chairman of Commission I

Mr. N. SINGH
Secretary to the President of India
India

Chairman of Commission II

Mr. E. G. LEE
Director of the Legal Operations Division
Department of External Affairs
Canada

Chairman of Commission III

Dr. S. DABROWA
Ministère des Affaires étrangères
Pologne

Chairman of Commission IV

Señor Lic. S. GONZÁLEZ GÁLVEZ
Ministro Consejero
Subdirector General de Organismos Internacionales
en la Secretaría de Relaciones Exteriores
Mexico

2. Officials of Commission I

Chairman

Mr. N. SINGH
Secretary to the President of India
India

Vice-Chairman

Dr. C. A. D. DE ABRANCHES
Professor of Public International Law
University of the State of Guanabara
Brésil

Rapporteur

Dr. B. JAKOVLJEVIC
Counsellor of the Federal Council
Yugoslav Red Cross
Yougoslavie

3. Officials of Commission II

Chairman

Mr. E. G. LEE
Director of the Legal Operations Division
Department of External Affairs
Canada

Vice-Chairman

Colonel TRANGGONO
Indonesian Red Cross
Indonésie

Rapporteur

M. J. DE BREUCKER
Conseiller
Ministère des Affaires étrangères
Belgique

4. Officials of Commission III

Chairman

Dr. S. DABROWA
Ministère des Affaires étrangères
Pologne

Vice-Chairman

Prof. H. SULTAN
Membre de l'Institut d'Egypte
Professeur de Droit International
Faculté de Droit, Université du Caire
République Arabe Unie

Rapporteur

M. C. ZEILEISSEN
Jurisconsulte adjoint au Ministère fédéral
des Affaires étrangères
Autriche

5. Officials of Commission IV

Chairman

Señor Lic. S. GONZÁLEZ GÁLVEZ
Ministro Consejero
Subdirector General de Organismos Internacionales
en la Secretaría de Relaciones Exteriores
Mexico

Vice-Chairman

Mr. C. O. HOLLIST
Head of International Division
Nigeria

Rapporteur

Mr. F. KALSHOVEN
Lecturer International Law
University of Leyden
Pays-Bas

CONFERENCE RULES OF PROCEDURE

Rule 1. — 1. The Conference is convened and organized by the International Committee of the Red Cross (ICRC), which is anxious to obtain expert opinion on the reaffirmation and development of international humanitarian law applicable in armed conflicts.

2. The Conference shall be composed of experts appointed by the governments invited by the ICRC.

Delegates of the United Nations Secretary-General may also take part in the Conference.

Rule 2. — The documentary material of the Conference shall consist principally of:

- a) the Documents I to VIII prepared by the ICRC;
- b) the Report on the Work of the Conference of Red Cross Experts, held at The Hague from 1 to 6 March 1971;
- c) the reports, records and other documents transmitted to the ICRC, in accordance with resolution 2677 (XXV) adopted by the United Nations General Assembly on 9 December 1970;
- d) documents supplied by the United Nations Commission on Human Rights relative to the protection of journalists on dangerous missions.

Rule 3. — All meetings of the Conference shall be held in private, and no observers shall be admitted.

Information on the progress of the Conference shall be given regularly to the press.

Rule 4. — The general secretariat of the Conference, set up by the ICRC, shall provide all the necessary services for the Conference and Commissions.

Rule 5. — The Conference shall elect its Chairman and two Vice-Chairmen, as well as the chairmen and rapporteurs of the three Commissions that will be constituted and among which will be shared the various subjects to be discussed.

The Chairman of the Conference, the Secretary General, a representative of the ICRC and the chairmen of the Commissions shall constitute the Conference Bureau, which shall watch over the proper running of the Conference.

Rule 6. — The experts shall speak in their personal capacity, and their statements shall not bind in any way the government that appointed them.

The Conference shall not reach any decisions, adopt any resolutions or make any recommendations. It shall not take any votes. However, should there be different views on any particular point, it may be put to the vote, purely as an indicative measure.

Rule 7. — Experts may submit observations and proposals in writing.

The secretariat shall endeavour to have these documents translated into the working languages of the Conference and distributed to Conference members.

Rule 8. — French, English and Spanish shall be the working languages of the Conference. The secretariat shall arrange for the simultaneous interpretation of speeches.

Rule 9. — The proceedings of each Commission shall be incorporated in a report that shall be examined by the Conference in plenary session in the course of its final meetings.

Questions examined directly by the Conference in plenary session shall also be incorporated in a report that shall be, if possible, submitted to the Conference before it closes its meetings.

Rule 10. — The ICRC intends to prepare, after the Conference, a full analytical report.

Rule 11. — All cases not covered by the present Rules shall be dealt with on the basis of the Statutes of the International Red Cross and the Rules of Procedure of the International Conference of the Red Cross, and according to generally established parliamentary custom.

**LIST OF DOCUMENTS SUBMITTED
BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS**

Document I:

Introduction. (Document CE/1, Geneva, January 1971, 43 pages)

Document II:

Measures intended to reinforce the implementation of the existing law. (Document CE/2, Geneva, January 1971, 63 pages.)

Document III:

Protection of the civilian population against dangers of hostilities. (Document CE/3, Geneva, January 1971, 161 pages.)

Document IV:

Rules relative to behaviour of combatants. (Document CE/4, Geneva, January 1971, 17 pages.)

Document V:

Protection of victims of non-international armed conflicts. (Document CE/5, Geneva, January 1971, 94 pages.)

Document VI:

Rules applicable in guerrilla warfare. (Document CE/6, Geneva, January 1971, 55 pages.)

Document VII:

Protection of the wounded and sick. (Document CE/7, Geneva, January 1971, 77 pages.)

Document VIII:

Annexes. (Document CE/8, Geneva, January 1971, 118 pages.)

REPORT ON THE FIRST PLENARY SESSIONS OF THE CONFERENCE

I. PROCEDURE

1. The Conference held four initial plenary sessions from 24 to 26 May 1971. After being opened by Mr. Marcel Naville, President of the International Committee of the Red Cross, it elected Mr. Jean Pictet (Vice-President of the ICRC) as its President and Mr. Aurel Cristescu (Rumania), Mr. Sergio González Gálvez (Mexico) and Mr. Willem Riphagen (Netherlands) as Vice-Presidents¹.

2. The President of the Conference announced that the ICRC had envisaged the constitution of three Commissions:

Commission I:

Protection of the wounded and sick (Document VII).

Commission II:

Non-international armed conflicts and guerrilla warfare (Documents V and VI).

Commission III:

Protection of the civilian population (Document III); protection of journalists on dangerous mission; behaviour of combatants (Document IV).

After a brief discussion, the number of Commissions and the subjects to be examined by each of them were approved by the Conference on 26 May 1971, as follows: Commissions I, II and III, as provided for by the ICRC. A further Commission, Commission IV, was formed to examine "Measures intended to reinforce the implementation of the existing law" (Document II). The following were elected Chairmen of the various Commissions:

Commission I:

Mr. N. Singh (India)

Commission II:

Mr. E. G. Lee (Canada)

Commission III:

Mr. S. Dabrowa (Poland)

Commission IV:

Mr. S. González Gálvez (Mexico)².

It was decided that each Commission would appoint its Vice-Chairman and Rapporteur.

3. The President of the Conference, submitting the Rules of Procedure, said that the Conference Bureau would be constituted in accordance with those Rules, and that the ICRC, which was responsible for the Conference Secretariat, had designated Mr. P. Gailard as Secretary General and Mr. A. D. Micheli as Assistant Secretary General. He pointed out that daily summary records would not be made, that information on the progress of the Conference would be regularly issued to the Press and that the ICRC intended, after the Conference was over, to draw up a full analytical report. He stated that the experts of the ICRC would introduce the subjects concerning each of the Commissions and that it would be desirable to reach conclusions on all the points examined. The Secretary General of the Conference declared that tape-recordings would be made of the discussions and that the legal experts of the ICRC would assist the Rapporteurs to prepare the Commission reports.

4. One of the experts observed, in connection with Rule 6, para. 2, of the Rules of Procedure of the Conference, whereby "The Conference shall not take any decisions, adopt any resolutions or make any recommendations" that that provision was contrary to resolution 2677 (XXV), adopted by the United Nations General Assembly at its twenty-fifth session. In that resolution the Assembly had expressed the hope that "the conference of government experts to be convened... by the International Committee of the Red Cross..." would "make specific recommendations in this respect for consideration by Governments".

5. The President of the Conference replied that the purpose of Rule 6 of the Rules of Procedure was merely to indicate that it was not the present Conference's intention to encroach upon or to take the place of a future Diplomatic Conference in any fashion. Though the Conference would not take decisions, adopt resolutions or make recommendations, it was, on the other hand, very desirable that it would come to *conclusions*. That rule, therefore,

¹ Article 5 of the Rules of Procedure had provided for the election of two Vice-Presidents. The Conference adopted a modification of the Rules on this point, without any objection being raised.

² The Conference had originally appointed Mr. K. M'Baye (Senegal), who, however, because of ill health, was unable to attend.

should be interpreted flexibly and not in its strictest sense.

6. Some of the experts expressed the hope that the Conference would reach specific conclusions. One of them expressed the wish that the final proposals made by the Conference should be based on a *consensus*.

7. Some of the experts, noting that the ICRC President, in his inaugural address at the official opening of the Conference, had stressed that, "by delegating experts to this Conference, your governments had discounted all political or diplomatic considerations and, to avoid placing the success of the meeting in jeopardy, they had abstained from raising any question of the relationships among themselves", declared that it was indeed in that spirit that they understood their collaboration. For his part, the President of the Conference stressed the fact that they had come to study the improvements to be brought to the existing law and not to judge the behaviour of States, otherwise there would be the danger of being dragged into a polemical discussion and the work would be jeopardized.

8. The President of the Conference submitted to the delegates the case of the experts from Burundi. Although the Government of Burundi had not been invited to the Conference, it had nominated experts who had come to Geneva. After having remarked that the ICRC had drawn the attention of those experts to the fact that it was upon the Conference to take a decision concerning their participation, the President proposed that they should, exceptionally, be allowed to take part in the Conference. The proposal was adopted.

9. Some experts declared that it was most important that newly independent States should express their views on the development of international humanitarian law applicable in armed conflicts. They considered that the number of African, Latin American and Asian countries who were represented by experts at the Conference was too small. The absence of experts from the People's Republic of China was deplored*. One of the experts said that the new rules to be adopted should represent the joint effort of all States, from East and West, North and South.

10. One of the experts thought that it seemed already inevitable that a second session of the Conference would have to be held, in view of the dimensions of the subjects to be examined. The President replied that he adhered fairly closely to this train of thought, but that a decision on that point should only be taken at the end of the Conference.

* The Government of this State was one of those which the ICRC had invited to delegate experts. Whilst expressing its interest in the work undertaken, it replied that it could not send experts to this meeting.

II. GENERAL DISCUSSION

a) Purpose of the Conference

11. The experts, as a whole, considered that care should be taken not to raise the question of the revision of the Geneva Conventions of 1949, which would be weakened thereby, but rather to reaffirm them, for they still constituted the basis for all future developments. It was therefore necessary to draw up additional texts in those fields where the 1949 Geneva Conventions had proved inadequate before the new requirements of humanity. The representative of the Secretary General of the United Nations recommended that the realities of contemporary armed conflicts, their nature, their methods of combat and the struggle carried on by resistance movements should be more fully taken into account. As to the method to be adopted, he advocated that the text of the Geneva Conventions of 1949 should remain untouched, that additions and clarifications should be provided, and that the imperfections that might be noted in the light of present-day armed conflicts should be remedied.

12. In the opinion of several experts, who pointed out the importance of maintaining and consolidating international peace in conformity with the principles and aims of the United Nations, it was in that perspective that the development and reaffirmation of international humanitarian law in armed conflicts should be imagined. In this connection, emphasis was laid on Article 2 (4) of the United Nations Charter, which prohibits the threat or use of force. One of the experts pointed out that it was paradoxical and saddening to find that, bearing this article of the Charter in mind, it was necessary to deal with the study of the law of armed conflicts; passing in review all the past endeavours made internationally since 1907, he found that the legal instruments devised so far had not eliminated armed conflicts but had only limited their ills. He added that this limitation still held good but that the basic aim was to change world society. Other experts submitted that humanitarian concern should be directed towards the suppression of weapons and the elimination of war. One of the experts, observing that peace was the surest guarantee for the protection of human rights, stressed the necessity for all States to conclude regional or bilateral agreements in this respect.

13. A large number of experts emphasized that the work of the Conference should be carried out with the requisite realistic approach. Attention was drawn to the fact that it would be necessary to prepare texts that could be accepted by governments and that, consequently, the rules to be formulated should be realistic and applicable. One of the experts, stressing that the envisaged development should be reasonably acceptable, considered that the ICRC should study which were the rules that had been best or least respected, and what were the reasons for that.

Emphasis was laid on the indispensable harmonization to be created between "the necessities of war," and "the requirements of humanity", as well as on the necessary balance between idealism and realities.

14. Several experts urged that the rules to be elaborated had to be extremely clear and as simple as possible.

15. Some experts declared that, during the current discussions, the principle of State sovereignty and non-intervention in the domestic affairs of States, in conformity with Art. 2 (7) of the United Nations Charter, should not be lost sight of. It was considered that the conclusions adopted by the Conference should take these principles into account, and that it was in the framework of international law, deriving from the Charter, that the envisaged developments should be imagined. One of the experts remarked that the principle of non-intervention in the domestic affairs of States had just been reaffirmed by the Declaration relative to the principles of international law concerning friendly relations and co-operation among States, adopted by the United Nations General Assembly at its twenty-fifth session.

b) Relations and co-operation between the Secretary-General of the United Nations and the International Committee of the Red Cross

16. Several experts expressed satisfaction with the close and positive collaboration established between the United Nations and the ICRC concerning the different problems currently submitted to the Conference. They hoped that this efficacious co-operation would continue. One of the experts said that these two organizations complemented each other in the work accomplished in this field. Another expert, who held that co-operation between the United Nations and the ICRC was of fundamental importance, considered that certain matters should be settled by the United Nations and other matters outside that organization.

17. Resolution 2677 (XXV) on "Respect for Human Rights in Armed Conflicts", adopted by the United Nations General Assembly at its twenty-fifth session, which emphasized "the importance of continued close collaboration between the United Nations and the International Committee of the Red Cross", was mentioned. It was hoped that positive conclusions reached at the present Conference would be submitted to the General Assembly at its twenty-sixth session.

18. Several experts praised the reports presented by the Secretary-General of the United Nations on "Respect for Human Rights in Armed Conflicts" (A/7720, dated 20 November 1969, and A/8052, dated 18 September 1970) as well as the documentary material presented by the ICRC to the Conference (Documents I to VIII).

19. The representative of the Secretary-General of the United Nations stated that his presence at the Conference was a further sign of the interest shown by the Secretary-General in the work of the ICRC in the field of humanitarian law and of his wish for fruitful collaboration in the attainment of the numerous objectives which the Red Cross had in common with the United Nations. He drew the Conference's attention to resolution 2677 (XXV) adopted in December 1970 by the General Assembly; this resolution requested the Secretary-General to transmit his two reports on respect for human rights in armed conflicts (A/7720 and A/8052) to the ICRC, together with a number of other documents, for consideration by the Conference of government experts, and to report to the General Assembly at its twenty-sixth session on the results of the present Conference. The General Assembly had been informed at its twenty-fifth session of the ICRC's intention to convene a conference of government experts and of its hope that the United Nations, before pursuing its own work in this field, would wait until the results of the Conference were made known. The General Assembly had concurred in the ICRC view-point and had expressed the hope that the Conference would make specific recommendations for consideration by governments. The representative of the Secretary-General hoped that the results of the work here undertaken would be as specific as possible and recalled that resolution 2677 (XXV) contained the General Assembly's decision to consider this question again, in all its aspects, at its twenty-sixth session. He indicated that the keen interest shown by the United Nations in these problems went back to the International Conference on Human Rights, held in Teheran in 1968, and mentioned resolution XXIII adopted by that Conference. The Secretary-General's representative then went on to give the historical background of United Nations activities in that sphere since that date, and mentioned in particular, the work undertaken and the resolutions adopted by the General Assembly at the twenty-third, twenty-fourth and twenty-fifth sessions. He spoke in detail of the five resolutions adopted in this respect by the General Assembly at its twenty-fifth session [resolutions 2673 (XXV) to 2677 (XXV)]. He thought that all these various questions taken together bore an urgent character and that their consideration should be speeded up. The General Assembly should be furnished with relevant subject-matter and given the opportunity to express its views on the appropriate specific measures that should be taken.

c) Role of the Red Cross

20. All the experts who spoke congratulated the ICRC on the initiative it had taken to convene the present Conference and expressed their thanks for the considerable amount of documentary material which it had prepared and which constituted a sound basis for discussion. Several experts voiced their determination to co-operate with the ICRC in this sphere.

Hopes were also expressed that the ICRC would receive certain guidelines for continuing its work.

III. SPECIFIC PROBLEMS DISCUSSED IN THE GENERAL DEBATE ³

21. Some experts held the view that it would be expedient no longer to distinguish, like the common Articles 2 and 3 of the four 1949 Geneva Conventions, between international and non-international armed conflicts. They considered that that distinction was no longer valid as most conflicts had changed in type, and they referred to the UN General Assembly resolution 2675 (XXV) on "Basic Principles for the Protection of Civilian Populations in Armed Conflicts", which contained provisions applicable to armed conflicts as a whole. One expert stated that the long-standing distinction was not practicable or realistic, as the concept of non-international armed conflict was completely changed by foreign assistance to Parties in conflict. He felt that the requirements of the Geneva Conventions relative to international armed conflicts should equally apply to non-international armed conflicts. The UN Secretary-General's representative drew attention to the fact that United Nations instruments on human rights were applicable in time both of peace and of armed conflict and that some of the provisions in the International Covenants on Human Rights from which derogations would not be permitted even in time of war.

22. Other experts, by contrast, were in favour of the distinction between international and non-international conflicts.

23. According to some experts, aggression should be defined and a distinction drawn between the victim of aggression and the aggressor. That definition and that distinction were, in their view, important for the achievement of the developments it was desired to bring about. One expert, however, stressed the necessary equality of application of international humanitarian law rules to all Parties to an armed conflict.

24. Concerning Document II entitled "Measures intended to reinforce the implementation of the existing law", a number of experts stated that they attached capital importance to the examination of that question by a Commission. Some affirmed that the strict observance of existing rules was a primary and fundamental necessity. The view was held that it was essential to provide the means to supervise the application of the rules and it was hoped that effective measures of supervision would be taken. It was pointed out that improvements in law were effective only if implementation were ensured and that this depended particularly on the dissemination of knowledge of the principles and on the existence of

an impartial international supervision. One expert stated that the question of reservations in respect of the humanitarian Conventions should be added to the problems raised in document II; according to him the possibility of making such reservations should be limited, if not precluded. A number of preliminary remarks were put forward concerning the supervision of the proper observance of the law, a point which was later examined closely by Commission IV.⁴ It was said that progressive development of international humanitarian law should be hoped for but that it might not be achieved if measures of effective supervision were not provided. It was felt that the UN and the ICRC could carry out complementary activities in that field. However, one expert pointed out that the United Nations was a political body and that its impartiality could therefore be called in question. Some recommended that consideration be given to extending the ICRC's role and the work of National Red Cross Societies in this respect. Others stated that rather than urge the setting up of new international organizations for the application of humanitarian law, existing institutions, particularly the ICRC, should be reinforced. One expert expressed doubt on the advisability of setting up a permanent fact-finding body, believing that an *ad hoc* body should be set up when necessary. The UN Secretary-General's representative underlined, in this connection, the importance of an international presence in areas where conflict occurred and he stated that Document II did not exactly express either the responsibilities of the United Nations and its agencies under the Charter or the United Nations standpoint. Referring to the desirability of separating the humanitarian from the political, he averred that it was untrue to say, as had been said by some, that United Nations undertakings were always political. The United Nations could, indeed, adopt forms of organization quite aloof from any political considerations, as was proved by the existence of UNICEF, the HCR, UNWRA, the World Food Programme, and so forth. He felt it was perfectly possible to set up within the United Nations a purely humanitarian and autonomous institution. Recognizing that the ICRC had a universal mission, he believed that the point to which the ICRC could go and wished to go, should be further specified before concluding whether existing international institutions were suitable or unsuitable.

25. Preliminary remarks were made on Document III ("Protection of the civilian population against dangers of hostilities") and on the questions to be discussed by Commission III. The main opinions expressed were the following: the scope of

³ During the plenary sessions, experts made observations and suggestions on which they later elaborated in the Commissions. This paper therefore deals with only the preliminary remarks of a general nature on each of the subjects for discussion.

⁴ See below, paras 527-555.

the subject and the developments which were necessary made it desirable to draw up an additional protocol; the reinforcement of protection for possible victims, and particularly the civilian population, was essential in view of the way in which weapons had developed; there should be as extensive a defence as possible, and even complete immunity, for the civilian population; 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; whatever the nature of a conflict, the civilian population's right to protection should be the same; protection of the civilian population did not mean protection solely of human life but also of the resources necessary for human existence, so that protection of property essential for survival should not be omitted, and starvation as a weapon should be forbidden; in view of the danger of air raids' killing entire populations over wide areas, and considering the inadequacy of relevant rules, air warfare should be subject to regulations; protection could be developed for civilian population living in occupied territories. It was pointed out that public opinion was manifestly in favour of protection for journalists on dangerous missions⁵.

26. Several experts, taking the view that it was important to examine the questions raised in Document IV ("Rules relative to behaviour of combatants") considered that developments were necessary in that field and they put forward various opinions, namely: the rules contained in the Regulations annexed to the Fourth Hague Convention of 1907, now considered as norms of customary law, should be worded in a manner more appropriate to modern times; the combatant status concept needed re-thinking in order to cover guerrilleros, and to provide at least minimum rules for the benefit of those other persons not having that status; the confusion between regular and irregular armed forces was one of the basic problems requiring study; the inequality of weapons available to combatants could affect their behaviour, and the definition of combatants varied depending on the wars in which they were engaged and the methods used; the concept of combatants should be clearly defined; the distinction between combatants and non-combatants was in jeopardy and it was important to stress the fact that the sick, expectant mothers and children were non-combatants to which the 1949 Geneva Conventions were still fully applicable; prisoner of war status should not be granted to combatants using illicit methods.

27. Several experts underlined that the questions raised in Document V ("Protection of victims of non-international armed conflicts") carry today great importance. The main opinions were: non-international or semi-international armed conflicts had been numerous since the conclusion of the 1949 Geneva Conventions and it appeared necessary to develop the law because the Conventions did not

always cover new situations; although the rules on international armed conflicts were detailed, those relating to non-international armed conflicts, which were on the increase, had proved clearly inadequate and the target was to render the greatest number of rules applicable to those conflicts in view of the fact that victims needed protection whatever the nature of a conflict; consistent with resolution XVII of the twenty-first International Conference of the Red Cross, Article 3, common to the four 1949 Geneva Conventions, should be made more precise or supplemented; an additional protocol to the common Article 3 should be drawn up; the question of the internationalization of non-international armed conflicts should be examined; such conflicts should be clearly defined; the problem should be studied both from the point of view of protection and from that of the conduct of hostilities; steps should be taken to ensure the acceptance of ICRC intervention as a neutral intermediary in non-international armed conflicts. In addition, some experts firmly stressed that national sovereignty and the principle of non-interference in internal affairs of States must be respected. It was stated that internal disturbances and internal tensions should not be dealt with by the Conference: one expert took the view that such situations could not be subject to international regulations and another that they were not within the competence of the Conference; in contrast, one expert considered that Article 3 contained within its provisions a minimum of rules applicable to such situations.

28. Several experts stated that Document VI, relative to "Rules applicable in guerrilla warfare", was worthy of further study and they advanced various preliminary opinions: it was necessary to draw up rules for guerrilleros but it was also stressed that guerrilleros should have the same obligations as other combatants; guerrilla organizations were not Parties to the Geneva Conventions, which were binding only on States; it was necessary to improve protection for guerrilleros, to make the Geneva Conventions fully applicable to them and to recognize their combatant status; concerning the drafting of an interpretative protocol in respect of Article 4 of the Third 1949 Geneva Convention, whilst one expert considered that some conditions of that Article should be modified as they were not suited to guerrilla warfare and wars of liberation, another estimated that protection for guerrilleros should be independent of that Article; one expert fully agreed that such an interpretative protocol, with reference to liberation movements, should be drawn up; the view was held that what mattered most was that the guerrilla forces should be commanded by a leader; one expert urged caution in providing any special protection for militant groups.

⁵ This subject was to be examined by Commission III on the basis of documents submitted by the UN Human Rights Commission (cf. Conference Rules of Procedure, Art. 2 (d)).

29. Concerning Document VII ("Protection of the wounded and sick"), several experts who stated they would speak at greater length in Commission I underlined how important it was to provide better protection for the wounded, the sick and the medical personnel.

30. Some experts made remarks on the question of weapons⁶. According to one of them, new weapons and techniques of war had made most rules obsolete and new regulations on the use of modern weapons were necessary. He stated that although atomic, biological and chemical weapons were being examined by the Disarmament Conference, the question of other weapons, such as fragmentation bombs, was not being broached. Another expert considered that the ICRC and the United Nations should concern themselves with drawing up rules forbidding the use of weapons of mass destruction; in that respect mention was made of the fact that the Institute of International Law was concerned with the question of the legality of such weapons. The question was asked whether a catalogue of weapons of which the use should be strictly forbidden or limited could not be drawn up. Some experts were in favour of a halt to the armaments race and of nuclear disarmament.

31. One expert stated that the conference should not overlook sea warfare. He advocated regulations for the behaviour of combatants at sea.

IV. METHODS FOR DRAFTING NEW RULES

32. As mentioned in paragraph 11, the experts held the view that the Geneva Conventions should not be revised but supplemented and developed. One expert, referring to United Nations methods for the codification of international law, felt that draft protocols should be drawn up, together with relevant comments. Such drafts and comments should form the basis of future work. The Chairman stated that the ICRC had no objection to such drafts being drawn up since it hoped that conclusions of as definite as possible a kind would be reached. Several experts agreed to the drawing up of additional or interpretative protocols. One suggested that the various planned protocols could consist of a single document supplementing the four 1949 Geneva Conventions.

⁶ In its documentary material, particularly in Document I ("Introduction"), the ICRC stated that weapons and their prohibition was not one of the subjects which it was submitting to the Conference, as that question was already being examined by other bodies, particularly the Disarmament Conference. However, the ICRC had examined various aspects of the question in connection with guerrilla warfare (Document VI) and particularly in relation to the protection of the civilian population (Document III). This aspect—weapons and civilian population—was examined attentively by Commission III. (See paras 476-477 below.)

REPORT OF COMMISSION I

Rapporteur: Dr. B. JAKOVLJEVIC (Yugoslavia)

INTRODUCTION

33. Commission I met ten times between 26 May and 9 June 1971. The Chairman, Dr. Nagendra Singh (India), had been elected by the plenum. During its first meeting, the Commission elected its officers, namely: Dr. Carlos Alberto Dunshee de Abranches (Brazil), Vice-Chairman; Dr. Bosko Jakovljevic (Yugoslavia), Rapporteur; Mr. Guy Winteler (ICRC), Secretary. Mr. Jean Pictet, ICRC representative, and Mr. Frédéric de Mulinen, ICRC legal expert, introduced and commented on the subjects to be dealt with by the Commission.

34. The task of the Commission was to examine the protection of wounded and sick. It decided to take ICRC document VII as the basis of its work. It also took into consideration the conclusions of the Conference of Experts of National Red Cross Societies, which had been held at The Hague, from 1 to 6 March 1971, and which were contained in a report circulated as a document of the Conference of Government Experts.

35. The Commission felt that the draft proposals prepared by the ICRC contained basic ideas which were essential for the reaffirmation and development of the law on the protection of the wounded and sick: in particular the extension and amelioration of the protection of civilian wounded and sick, medical personnel, establishments and units, as well as the protection of professional medical tasks in international conflicts, and the formulation of basic rules for armed conflicts not of an international character. It accepted the proposal that two distinct instruments should be drawn up, one for international and the other for non-international conflicts. The Commission expressed its appreciation to the ICRC for all its preparatory work and for the two draft protocols which represented a very sound basis for its work.

36. The Commission examined the two draft Protocols in six sessions from 27 May to 1 June, during which views and proposals were submitted. It elected a Drafting Committee which, on the basis of the discussions in the Commission, prepared new texts of the two draft Protocols. The Drafting Committee was composed of:

Dr. Nagendra Singh (India)
Mr. Albert Beer (United Kingdom)
Mr. Waldemar Solf (USA)

Dr. Inokentye Krasnopee (USSR)
Mr. René Coirier (France)
Mr. Francisco Javier Sánchez del Río (Spain)
Mr. Robert Auger (Canada)
Dr. Bosko Jakovljevic (Yugoslavia)
Mr. Jean Pictet and Mr. Frédéric de Mulinen (ICRC)

37. In addition to its elected members the Drafting Committee was open to all other members of the Commission, some of whom participated in its work. The Committee held seven sessions, between 27 May and 3 June 1971.

38. The texts prepared by the Drafting Committee, on the basis of ICRC drafts, were submitted to the Commission which examined them in two sessions on 4 June 1971, and, with certain amendments, accepted them. These two texts are annexed to this Report (see Annexes I and II) for consideration at the Plenary Session of the Conference.

39. Every subject contained in the Protocols was thus examined on three occasions—first in the Commission in principle, then in the Drafting Committee and again in the Commission when the final texts were agreed. The two Draft Protocols, therefore, were the result of careful consideration which was made possible by the wholehearted collaboration of all experts delegated by governments represented at the Conference.

40. At the start of the Commission's work, Mr. Pictet gave a general introduction on the subject. He pointed out that the ICRC, since its foundation, had never ceased to be concerned with the protection of wounded and sick and of medical personnel in armed conflicts. Since the 1949 Geneva Conventions were drawn up the ICRC had endeavoured to develop the provisions in those Conventions concerning civilian medical personnel. As early as 1955 it had taken the initiative in setting up a working group composed of interested international organizations (International Committee of Military Medicine and Pharmacy, World Medical Association and others) which prepared texts designed to improve and develop the protection of civilian sick and wounded and medical personnel in armed conflicts.

41. While in the first draft prepared by that group all the rules were contained in one instrument, in the final proposal two distinct instruments were drafted,

one for international and the other for non-international conflicts. The reason for this was that the subject had been treated in a different way in the existing Conventions. This required the formulation of different rules aimed at the humanitarian protection of war victims. During the course of the Commission's work, Mr. Pictet introduced each subject under discussion.

42. The main questions debated in the Commission are set out below together with an indication of the progress which these conclusions represent in comparison with the existing law.

Chapter I

PROTOCOL I: PROTECTION OF WOUNDED AND SICK IN INTERNATIONAL ARMED CONFLICTS ⁷

Title

43. The Commission examined the question of whether the proposed new additional Protocol should be supplementary to all four Geneva Conventions of 1949, or relate only to the Civilian (Fourth) Convention. Although the additional Protocol contained certain rules relating to all four Geneva Conventions, the Commission agreed that the additional Protocol should supplement only the Civilian (Fourth) Convention. This was because the Commission considered that the fundamental principles of the Protocol, and the greater part of its provisions, related to civilian wounded and sick and civilian medical personnel.

Preamble

44. The Commission considered that the new instrument should first reaffirm the existing rules concerning the wounded and sick in the Geneva Conventions of 1949, and then develop additional provisions so as to take account of subsequent developments.

Article 1: Application of the Protocol

45. The Commission considered whether the protection contained in this Protocol should relate only to persons considered as protected persons *stricto sensu* in all the four Geneva Conventions, or relate to the entire population of parties to a conflict, as formulated in Part II of the Civilian (Fourth) Convention. The Commission decided to adopt this latter concept since it considered that protected persons should be safeguarded not only when in the hands of the enemy, but also against enemy attacks when in their own national territory.

Article 2: Terms

46. Since several specific terms were repeated throughout the Protocol, it was decided to set out,

at the beginning, definitions of "protected persons", "medical establishments and units", "medical transports", "medical personnel" and "distinctive emblem", to be adopted for the purpose of the Protocol. It was also proposed (see Document CE Com. 1/5, submitted by the French experts) that a clause be inserted to the effect that the Protocol should be applied to the definitions in (b), (c) and (d) of that Article, regardless of whether what was defined had been already designed for medical purposes in peace time or for temporary medical purposes in time of war. This proposal was subsequently withdrawn.

Article 3: Protection and care

47. The Commission accepted the view that all wounded and sick persons were entitled to special protection. Maternity cases were specified as an additional category to those already included with wounded and sick. Furthermore, protection was not limited to protection from attacks; it included positive and active measures, so that those persons were entitled to receive medical care and attention, without delay and without discrimination.

Article 4: Respect for persons

48. The proposal contained in the text prepared by the ICRC (Article 3), to strengthen the protection of wounded and sick by expressly prohibiting acts endangering health and in particular pseudo-medical experiments, was accepted. This general prohibition was further developed, in paragraph 2, to include the removal and transplant of organs (which the Commission noted had become a more common feature of modern medical practice), when not intended to provide medical relief. Exempt from this prohibition were only those acts committed in conformity with legal provisions.

Articles 5 and 6: Civilian medical establishments and units

49. The Commission fully accepted the idea of extending protection to cover all kinds of fixed civilian medical establishments and units, including their stores, and mobile units. This was to be one of the basic extensions of existing law which corresponded to the views of States, expressed at the XXIst International Red Cross Conference in 1969, and in answer to an enquiry undertaken by the ICRC in 1970. This extension was also in conformity with the requirements of modern warfare, in which it was expected that almost all the civilian medical services would be placed under the control of the State, and where a tendency towards the integration of the functions of military and civilian medical services was observed.

50. As was the case with hospitals in the Civilian (Fourth) Convention of 1949, the protection estab-

⁷ See Annex I, Protocol I, p. 29.

lished under this Article was supplemented by a series of measures intended to secure its application. These included provisions that certificates should be issued, the emblem should be clearly visible, medical establishments and units should be separated, so far as possible, from military objectives, and that there should be a description of conditions which would not imply the discontinuation of protection (Article 6 of this Protocol).

51. In view of new techniques of warfare, the Commission besides requiring the marking by the red cross emblem, agreed that other modern ways of making the location of medical establishments known to adverse forces (paragraph 4 of Article 5) should be used.

Article 7: Civilian medical transport

52. A further important extension of the existing law which was agreed by the Commission related to the protection of transport of wounded and sick. The Commission was of the opinion that the act as such of transporting these victims should be protected. In this Article a clear distinction was made between the means of transport permanently used for the transportation of wounded and sick, medical personnel, medical equipment and supplies, which should be protected at all times (paragraph 1), and those temporarily used for that purpose, which were to be protected, and have the right to bear the emblem only during their humanitarian function (paragraph 2). This distinction had not been clearly formulated in the Civilian (Fourth) Convention of 1949.

53. The protection provided by Article 21 of the Civilian (Fourth) Convention was extended to include a rule that vehicles were to be protected not only in convoys but also when in isolation. Further, new rules provided for the protection of various means of transport on land (not only by vehicles), and covered transport by water.

54. The Commission agreed to exclude transport by air from the provisions of this Protocol since that type of transport was covered by special regulations in the Geneva Conventions. The Commission felt that it was necessary also to improve the rules concerning the transport by air of wounded and sick. This question was considered worthy of particular study, and the Commission decided to deal with it in the second part of its deliberations.

Article 8: Requisition

55. The provisions in the Geneva Conventions concerning limitations on the right of an occupying power to requisition civilian hospitals were extended to cover all civilian medical establishments protected by this Protocol. The Commission also agreed to cover explicitly, by this extended protection, the

services of medical personnel employed in these establishments.

Article 9: Civilian Medical Personnel

56. As a consequence of the extension of protection to all kinds of civilian medical establishments and units, it was also decided to extend protection by this Article to all their personnel. The Commission discussed whether such personnel should be organized only by the State. It was the general view that it was not always the State which organized such establishments, but often local county councils or other organizations. It was agreed therefore that medical personnel should be authorized or recognized only by the State, regardless of how such medical institutions were organized.

57. The Commission discussed the question of whether protection should cover both permanent and temporary personnel. It was agreed that this special protection should be granted only to those who more regularly and solely engaged in work at medical establishments and units. So far as other persons who might be assisting medical personnel, such as guides, were concerned, it was concluded that they should have protection as civilians through other provisions of this Protocol, and that they could not be protected by this Article.

58. The Commission was of the unanimous view that the protection of civilian medical personnel should continue throughout their employment and not only during working hours in their establishments.

59. To secure the application of this protection, other measures, analogous to those provided for hospitals, were included in this Article: identity cards, armlets with the emblem (paragraph 2), assistance to be received (paragraph 3), facilities when in the hands of the enemy (paragraph 4), and a list of personnel to be held by the management (paragraph 5).

Article 10: Protection in the discharge of medical duties

60. The idea that the discharge of medical duties should be specially protected (contained in Article 8 of the draft proposed by ICRC) was welcomed as an important innovation. The formulation of this Article was debated at length. It was agreed that while Article 4 prohibited harmful acts by medical personnel, such personnel should be protected by this Article against any pressure, or other acts designed to compel them to do anything which would be contrary to their professional rules.

61. The question was debated how to decide which acts were to be prohibited. It was proposed to list and define these acts. But difficulties of definition gave rise to a proposal, which was accepted, that instead of elaborating a definition, reference should be made to existing prohibitions contained in the four Geneva Conventions and this Protocol.

62. Concerning the type of person to be protected, one opinion was that in protecting the discharge of medical duties, only those responsible for medical treatment, namely doctors, should be safeguarded against the pressures described above and that an extension of protection to very large groups of persons would not be appropriate. It was finally agreed however that protection should extend to all medical personnel. It was concluded also that it was professional rules which should be observed rather than the dictates of professional conscience, since this latter was a matter for the individual.

63. An important issue debated was the question of protecting medical personnel from the necessity to notify an occupying power of the names of sick and wounded having recourse to their administrations. The Commission had in mind that during the Second World War, and in other armed conflicts, medical personnel had sometimes been compelled to denounce their patients and thus to expose them to severe penalties at the hands of an occupying power. The purpose of this provision was to encourage the population of occupied territories, members of resistance movements, and others, to seek medical care and attention without fear of denunciation. It was however pointed out that there were legal provisions concerning the notification of certain communicable diseases so as to protect the population in general. The Commission tried to reconcile these two requirements. It was finally agreed that in principle medical personnel should be protected against any demand by an occupying power that their patients should be denounced but that an exception to this general rule should be made concerning the notification of communicable diseases in accordance with existing regulations.

Article 11: The role of the population

64. The protection of the civilian population in caring for the wounded and sick in accordance with Article 18 of the First Geneva Convention was extended by this Article also to civilian victims of war. The Commission accepted the text proposed by the ICRC, and extended it to cover those who gave not only medical aid, but also other kinds of humanitarian assistance (water, food, etc).

Article 12: Use of distinctive emblem

65. The extension of the right to use the distinctive emblem by all those to whom this Protocol extended its protection, was considered a logical step and was accepted.

66. Besides the distinctive emblem, the emblem of the Staff of Aesculapius on a white background was also proposed, as an indicative emblem for all civilian medical personnel not working in establishments authorized by the State. The Commission felt, however, as did also the Conference of Red Cross

Experts in The Hague in March 1971, that this new emblem conferred no special protection, that it concerned a relatively limited number of persons, and that confusion might arise by the indication of two emblems in the same Protocol. It was decided therefore not to include in this Protocol any mention of the Staff of Aesculapius. It was agreed that it would be useful, however, if the ICRC, in co-operation with other interested international organizations, in particular the World Health Organization and the World Medical Association, gave further consideration to the problem of the use of this emblem.

67. In discussion about the use of the distinctive emblem experts from Israel proposed that the emblem of the Red Shield of David should be recognized in the same way as the Red Cross, Red Crescent and Red Lion and Sun. This emblem had been established by the parliament of Israel and was being used with the knowledge of the other Party. These experts proposed that the Red Shield of David should be added to the list of distinctive emblems mentioned in the Geneva Conventions and in this Protocol, or that a clause be added by which the protection afforded under this Protocol and the Geneva Conventions was not to be conditional upon the use of the three emblems already established in international humanitarian law. Other experts felt, however, that it would be neither reasonable nor possible at this time to accept any new emblem. It was pointed out that the ICRC received many requests for the introduction of new emblems and there was a danger that by accepting one others would also have to be allowed and that this would bring about such a multiplicity of protected emblems that the value of all would be undermined.

68. The three emblems were laid down in the Geneva Conventions of 1949 and the Conference was not authorized to introduce any changes in this respect. Furthermore it was pointed out that the Geneva Conventions had been accepted as a basis for the Commission's work and no proposal to introduce a new protective emblem was contained in the ICRC Draft Protocol. The Commission decided not to accept the proposal put forward by the experts of Israel.

Additional Article: Protection of National Red Cross Societies⁸

69. The Commission examined a proposal to include a rule extending and strengthening the protection of National Red Cross (Red Crescent, Red Lion and Sun) Societies in international armed conflicts, because the activity of those societies was important for the protection and assistance to be given to war victims. In this connection the Yugoslav and Swiss experts introduced a text (Document

⁸ See Annex III, p. 31, the proposal submitted by the Yugoslav and Swiss experts.

CE/Com. 1/3, see annex III) calling on Parties to conflicts to give the National Societies facilities, assistance and protection, and to permit their work under occupation. It broadened the legal base of their activities which exists in the Geneva Conventions of 1949. This proposal was submitted only for general consideration by the Commission; it concerned several fields of humanitarian action for the benefit of various groups of persons—wounded and sick, civilian population as well as other victims of war.

70. The Commission examined the proposal and concluded that it contained ideas of interest for the protection of humanitarian organizations in armed conflicts. The text therefore deserved further careful examination. It should be submitted in the first place to National Societies, at their next meeting, for consideration and comments, together with the report of the Hague Conference of March 1971, at which the ideas contained in this text were put forward. In developing this text the Commission felt that attention should be paid also to the protecting of voluntary agencies other than the Red Cross, and for them to work closely with the ICRC.

Chapter II

PROTOCOL II: PROTECTION OF WOUNDED AND SICK IN NON-INTERNATIONAL ARMED CONFLICTS⁹

71. The Commission accepted the view, proposed by the ICRC in its document VII, that an instrument concerning the development of protection of wounded and sick in armed conflicts not of an international character had to contain subjects other than those in the Protocol concerning international conflicts, because the latter had been covered in detail in the Geneva Conventions of 1949. On the other hand, taking into consideration that this Protocol dealt with a specific situation of internal conflict, it could contain only basic principles without entering too much into technical details.

Title

72. The Commission agreed that this Protocol should be supplementary to Article 3 of the Four Geneva Conventions of August 12, 1949 and considered it as an extension of that Article. However, if in the course of the development of humanitarian law a new and more complete instrument concerning non-international conflicts were elaborated, then the substance of this Protocol might be included as a chapter in that new instrument.

Article 1: Protection and care

73. The provisions concerning the protection of wounded and sick, and those assimilated to them, contained in Article 3 and paragraph 1 of Article 4 of

the additional Protocol relative to international armed conflicts, were reproduced in this Article.

74. In listing the various bases on which discrimination was prohibited, "caste" was added in addition to the criteria already mentioned in the Geneva Conventions.

75. A view was expressed that this special protection should also extend to children under fifteen. The Commission agreed, however, to limit the protection to wounded and sick and similar categories, and considered that children were already covered by the general rules of the protection afforded to civilians. If new rules were to be drawn up, this should be done in the context of the protection of the civilian population.

Article 2: Search and recording

76. The rules contained in the Geneva Conventions concerning international armed conflicts (Article 15 of the First Convention, Article 18 of the Second Convention and Article 16 of the Fourth Convention) were introduced in this Article for the purpose of their application to non-international conflicts.

77. The Commission considered the problem of how to adapt to non-international conflicts the rules relating to the communication of details of wounded, sick and dead which were in the hands of an adverse Party. It was pointed out that sometimes it would be difficult to communicate with the adverse Party. It was decided to draw up the rule in such a way that if it was not possible to communicate details to an adverse Party, the Party concerned should nonetheless publish them.

78. In this and other Articles it was agreed that because at least one Party to the conflict was not a State, all references to the Parties to the conflict would be made with a small "p".

Article 3: Role of the population

79. The rules contained in Article 11, paragraphs 2 and 3 of the First Protocol were agreed to apply to non-international conflicts.

Article 4: Medical personnel

80. A general rule establishing the protection afforded to medical personnel was elaborated in this Article for non-international conflicts.

81. The Commission debated at length the question of the definition of "chaplains". Some experts thought that the Protocol should mention only chaplains attached to armed forces, others pointed out that it would often be difficult in an internal conflict to establish who belonged to military forces.

⁹ See Annex II, p. 30, Protocol II.

It was further pointed out that the term "chaplain" related to Christians and did not embrace other religions. It was decided, therefore, that a term should be found to cover all denominations and religions. The Commission accepted the formulation "chaplains and others exercising similar functions" as covering all the religions and groups that existed.

82. In connection with this Article it was concluded that various terms, whose employment in non-international conflicts may give rise to difficulties, such as "prisoner of war", "enemy" etc., should be avoided, in this Protocol.

Article 5: Medical establishments and transport

83. In this Article a general rule was elaborated concerning the protection of medical establishments, units, their equipment and transport used solely for the care of wounded and sick, in non-international conflicts.

Article 6: Evacuation

84. The Commission decided to include in this Protocol a text proposed by the Canadian delegation (Article 7 of document CE Plen/2). This related to the evacuation of wounded and sick, and was analogous to the provisions of Article 17 of the Fourth Geneva Convention of 1949.

Article 7: Medical assistance by other States or by impartial humanitarian organizations

85. The Commission decided to include in the Protocol a text contained in the proposal of the Canadian delegation (Article 8 of document CE Plen/2). In this rule it was declared that a State's offer to send humanitarian aid, and to receive war victims, should not be considered as an unfriendly act, and should have no effect on the status of the parties to a conflict. A similar rule was adopted at the XXIst International Red Cross Conference in 1969 (resolution XXVI) and endorsed by the General Assembly of the United Nations (paragraph 8 of resolution 2675 (XXV) of 1970).

86. In debating this proposal a view was expressed that this rule might endanger sovereign rights of States to decide whether to accept foreign aid. It was agreed, however, that this Article did not imply any obligation to receive such aid. The purpose of this Article was only to encourage humanitarian initiative on behalf of war victims. The Canadian proposal was accepted and extended, so far as the offer of aid was concerned, to impartial humanitarian organizations.

Article 8: The distinctive emblem

87. In this Article the use of the accepted red cross (red crescent, red lion and sun) emblem was introduced to non-international armed conflicts, as

part of the protection accorded to medical establishments and their personnel.

Article 9: Legal status of the Parties to a conflict

88. This rule was taken from the last paragraph of Article 3 of the Geneva Conventions and applies to all rules contained in this Protocol.

Chapter III

*SAFETY OF MEDICAL TRANSPORT*¹⁰

89. In the second part of its Document VII, the ICRC raised the question of the safety of medical transport and gave the results of studies already undertaken (in particular the draft rules of the *Commission médico-juridique de Monaco*) concerning medical air transport. It had not, however, submitted draft texts.

90. The Commission considered that it was essential to develop international humanitarian law in the field of medical air and sea transport by formulating precise rules. It was not able, however, to propose any such rules in the time available.

91. It was agreed that a second conference of government experts, which should include qualified technical experts, should cover the whole problem of medical transport and should try to ensure that such transport was equipped with modern means of marking, pinpointing and identification.

92. Before the second conference the Commission considered that:

a) Governments should be asked to study technical problems, relating both to aircraft (especially helicopters) and to ships, with all due attention and on the basis of existing documentation. In this connection consideration should be given to the comments of one of the experts—See Annex IV. It went without saying that the governments would also have to deal with non-technical aspects (in particular those mentioned in the Monaco draft).

b) The ICRC, for its part, would have to continue its studies and keep closely in touch with the International Civil Aviation Organization (ICAO), Intergovernmental Maritime Consultative Organization (IMCO) and the International Telecommunication Union (ITU). Such contact should, in time, result in the universal and exclusive use of certain signals by medical transport (e.g. flashing blue light, radio code RX).

c) The ICRC would have to complete its documentation by including the points of view of governments, the ICAO, IMCO and the ITU.

¹⁰ See Annex IV, p. 32, statement by the expert from the USA.

ANNEXES

to the Report of Commission I

ANNEX I

FIRST ADDITIONAL PROTOCOL, CONCERNING THE PROTECTION OF THE WOUNDED AND SICK, TO THE FOURTH GENEVA CONVENTION OF AUGUST 12, 1949, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR

PREAMBLE

The Parties, while solemnly reaffirming the provisions of the Fourth Geneva Convention of August 12, 1949, relative to the protection of civilian persons in time of war, have agreed to the following additional provisions.

Art. 1: Application of the Protocol

The provisions of this Protocol shall apply to all cases specified in article 2 of the aforesaid Fourth Convention and, with the exception of articles 8 and 10, paragraph 3 and 4 of this Protocol, to the whole of the populations of the countries in conflict.

Art. 2: Terms

In this Protocol the expression:

- a) "Protected Person" means all those persons specified as protected persons in the four Geneva Conventions;
- b) "Medical Establishments and Units" means hospitals and other fixed medical establishments, medical and pharmaceutical stores of fixed medical establishments, mobile medical units, blood transfusion centres and other installations designed for medical purpose;
- c) "Medical Transportation" means transportation of wounded, sick, infirm, maternity cases, medical personnel, medical equipment and supplies by ambulances or by any other means of transportation excluding aircraft transportation.
- d) "Medical Personnel" means persons regularly and solely engaged in the operation and administration of medical establishments and units, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick, the infirm and maternity cases.
- e) "Distinctive Emblem" means the distinctive emblem of the red cross (red crescent, red lion and sun) on a white background.

Art. 3: Protection and care

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

In all circumstances these persons shall be treated humanely and shall receive medical care and attention necessitated by their condition with the least possible delay, and without any adverse distinction or discrimination founded on race, colour, caste, nationality, religion, political opinion, sex, birth, wealth or any other similar criteria.

Art. 4: Respect for persons

Any unjustified act or omission which endangers the health or physical or mental well-being of any protected person is prohibited.

Consequently, all experiments on and treatment of protected persons, including removal or transplant of organs, not intended to provide them with medical relief are prohibited. This prohibition applies even if the protected persons concerned have given consent to such experiments.

Art. 5: Civilian medical establishments and units

Civilian medical establishments and units may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict.

The Parties to a conflict shall provide these medical establishments and units with certificates identifying them for the purposes of this Protocol.

With authorization from the State, medical establishments and units shall be marked by means of the distinctive emblem.

In order to obviate the possibility of any hostile action, Parties to the conflict shall as far as military considerations permit take the necessary steps to make known the location of medical establishments and units and mark them with the aforesaid distinctive emblem in such manner as to be clearly visible to the adverse forces.

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.

Art. 6: Discontinuance of protection of civilian medical establishments and units

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 due warning has been given, naming, in all appropriate cases, a reasonable time-limit, and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these medical establishments and units, or the presence of small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

Art. 7: Civilian medical transportation

Ambulances and other vehicles used for medical transportation and serving civilian medical establishments and units shall be respected and protected at all times. They shall bear a certificate from the competent authority testifying to their medical nature.

Other means of transport used in isolation or in convoy, whether on land or on waterways, temporarily assigned for medical transportation, shall be respected and protected while being used for the aforesaid purpose.

With the consent of the competent authority, all vehicles and means of transportation mentioned above shall be provided with the distinctive emblem. However, the means of transportation mentioned in paragraph 2 above may display the distinctive emblem only while performing their humanitarian mission.

The provisions of article 6 shall also be applicable to medical transportation.

Art. 8: Requisition

The right of the Occupying Power to requisition civilian medical establishments and units, their movable and immovable assets as well as the services of their medical personnel, shall not be exercised except temporarily and only when there is urgent necessity for the care of protected persons 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 hospital accommodation.

The material and stores of medical establishments and units cannot be requisitioned so long as they are necessary for the needs of the civilian population.

Art. 9: Civilian medical personnel

Civilian medical personnel duly recognized or authorized by the State and regularly and solely engaged in the operation and administration of medical establishments and units and the duly authorized personnel of the National Red Cross Societies employed in the medical treatment of the protected persons, as well as the personnel engaged in the search for, removal and transporting of and caring for wounded and sick, the infirm and maternity cases, shall be respected and protected.

The aforesaid medical personnel shall be recognizable by means of an identity card bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped armband which they shall wear on the left arm while carrying out their duties. This armband shall be issued by the State and shall bear the distinctive emblem.

As far as possible, every assistance shall be given to the aforesaid personnel in order that they may carry out their humanitarian mission to the best of their ability. In particular they shall be permitted access to all places where their services may be required, subject to such supervisory and safety measures as may be considered necessary by the Parties to the conflict.

If the aforesaid personnel fall into the hands of the adverse party they shall be given all facilities necessary for the performance of their mission. In no circumstances shall they be compelled or required to perform any work outside their medical duties.

The management of each medical establishment and unit shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

Art. 10: Protection in the discharge of medical duties

In no circumstances shall the exercise of medical activities, consistent with professional rules, be considered an offence, no matter who the beneficiary may be.

In no circumstances shall medical personnel be compelled by any authority to violate any provision of the Geneva Conventions of August 12, 1949 for the protection of war victims, or of this Protocol.

No medical personnel shall be required to perform acts or do work which violates professional rules.

No medical personnel shall be compelled to inform an occupation authority of the wounded and sick under their care, unless failure to do so would be contrary to the regulations concerning the notification of communicable diseases.

Art. 11: The role of the population

The civilian and military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick, of whatever nationality.

The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed or cared for military or civilian wounded or sick.

Art. 12: Use of the distinctive emblem

The Parties shall take all necessary measures to ensure the proper use of the distinctive emblem and to prevent and repress any misuse thereof.

ANNEX II

ADDITIONAL PROTOCOL TO ARTICLE 3 OF THE GENEVA CONVENTIONS OF AUGUST 12, 1949, RELATIVE TO ARMED CONFLICTS NOT INTERNATIONAL IN CHARACTER

PROTECTION OF THE WOUNDED AND THE SICK

Art. 1: Protection and care

All wounded and sick, whether non-combatants or combatants rendered *hors de combat*, as well as the infirm,

expectant mothers and maternity cases, shall be the object of special protection and respect.

In all circumstances these persons shall be treated humanely and shall receive medical care and attention necessitated by their condition with the least possible delay, and without any adverse distinction or discrimination founded on race, colour, caste, nationality, religion, political opinion, sex, birth, wealth or any other similar criteria.

Any unjustified act or omission which endangers the health or physical or mental well-being of any person referred to in the first paragraph is prohibited.

Art. 2: Search and recording

At all times and particularly after an engagement, parties to the conflict shall without delay take all possible measures to search for and collect the wounded and the sick, to protect them against pillage and ill-treatment and to ensure their adequate care.

Parties to the conflict shall communicate to each other or, when this is not possible, publish all details of wounded, sick and dead of the adverse party in their hands.

Art. 3: Role of the population

The civilian population shall in particular respect the wounded and the sick and abstain from offering them violence.

No one may ever be molested or convicted for having nursed or cared for the wounded or sick.

Art. 4: Medical and religious personnel

Military and civilian medical personnel as well as chaplains and others performing similar functions shall be, in all circumstances, respected and protected during the period they are so engaged. If they should fall into the hands of the adverse party they shall be respected and protected. They shall receive all facilities to discharge their functions and shall not be compelled to perform any work outside their professional duties.

Art. 5: Medical establishments and transportation

Fixed establishments and mobile medical units, both military and civilian, which are solely intended to care for the wounded and the sick shall under no circumstances be attacked; they and their equipment shall at all times be respected and protected by the parties to the conflict.

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

Art. 6: Evacuation

The parties to the conflict shall endeavour to conclude local arrangements for the removal from areas where hostilities are taking place of wounded or sick, infirm, expectant mothers and maternity cases.

Art. 7: Medical assistance by other States or by impartial humanitarian organizations

An offer of medical assistance by another State or by an impartial humanitarian organization to aid in the relief of persons suffering as a consequence of the conflict shall not

be considered as an unfriendly act or have any effect on the legal status of the parties to the conflict.

An offer by another State to receive wounded, sick or infirm persons, expectant mothers and maternity cases on its territory shall not be considered as an unfriendly act or have any effect on the legal status of the parties to the conflict.

Art. 8: The distinctive emblem

The emblem of the red cross (red crescent, red lion and sun) on a white background is retained as the distinctive emblem of the medical services of the parties to a conflict. It shall not be used for any other purposes and shall be respected in all circumstances.

Art. 9: Legal status of the parties to a conflict

The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

ANNEX III

PROTECTION OF NATIONAL SOCIETIES IN INTERNATIONAL ARMED CONFLICT

Proposed by the Experts of Yugoslavia and Switzerland)

1. The Parties to the conflict shall give the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the ICRC and the League acting as a co-ordinating body for its members, all facilities, assistance and protection necessary for the performance of their humanitarian activity on behalf of the wounded and sick, prisoners of war, internees and other military and civilian victims of war.
2. The activity mentioned in paragraph 1 above, pursued in accordance with Red Cross principles as defined by the International Red Cross Conferences, consists in particular in the preparation of medical personnel, assistance to medical establishments and units, care for children and the infirm, social welfare work, collection, transportation and distribution of relief, reunion of families, tracing service.
3. All victims of armed conflicts are allowed to address themselves to National Societies of the territory in which they live, for assistance.
4. The Parties to the conflict shall not consider the offer of relief by a National Society, ICRC or the League, as an unfriendly act, and if accepted, shall exercise their legal rights so as to facilitate the transit, admission and distribution of relief to victims of war.
5. The Occupying Powers shall permit the branches of recognized Societies, existing in the occupied territory, to continue their activities on behalf of the population of that territory and the prisoners of war detained by that Occupying Power.
6. The protection of National Societies and the facilities accorded to them are subject to temporary measures

which the Parties to the conflict may consider essential to ensure their security, to meet other reasonable needs or which are dictated by military considerations.

ANNEX IV

STATEMENT BY THE UNITED STATES DELEGATE ON SAFETY OF MEDICAL TRANSPORT

The discussions in Volume VII leading to the draft articles on "Safety of Medical Transport" raised many questions which are very valid and require an answer. However, the articles do not provide those answers in many instances and leave one still looking for the desired solutions.

In the discussion it is stated that remarkable improvements in the helicopter offer a real breakthrough in providing relief to the sick and wounded. It continues into a lengthy discussion of helicopter operations, giving operating altitudes, methods of operation, flying speeds and the like. With all due respect to the authors, I find their analysis inaccurate and misleading. Helicopters operate habitually over 350 meters (1150 feet) in altitude and rarely below 15-20 meters (50 to 65 feet) which is given as normal operating altitudes. Also, current models of the helicopter are approaching the speeds of light airplanes.

Article 1 is a good approach and provides an excellent foundation on which to build a protocol which would enable swift battlefield evacuation of wounded, but from that point on everything is devoted to world organizations and airline type operations with the evacuation of battle areas ignored and inhibited to the point of stripping them of protection and the actual prohibition to fly where belligerents are engaged in military operations.

There is a "golden period of surgery" when a wounded soldier's chance of survival, if placed in the hands of skilled medical personnel, is enhanced. The helicopter has the capability of rapid evacuation, spanning in minutes distances that it would take conventional ground means of evacuation literally hours to traverse, thus placing the seriously wounded in field medical facilities within this "golden period" and greatly increasing his probability of

survival. But, alas, Article 5 prohibits flying where belligerents are engaged—the very place where swift medical evacuation is needed most.

The discussion refers to "as they approach a combat area, it is important that their medical mission should be clearly and distinctly signalled to the troops of both sides" plus making the observation that "a helicopter approaching enemy units is liable to offer an excellent target". From this, the articles of the draft revert to "agreement" and "forbidding all aircraft mentioned in Articles 1 & 2 from flying in areas where belligerents are engaged in military operations" which takes us back to the basic problem with the 1949 Convention of keeping them grounded or flying their battlefield missions of mercy at their own peril.

The ideas on radio detection (radar), additional light signals and radio links are excellent and in keeping with advances in aircraft detection and anti-aircraft defence. The principles put forth regarding safety of medical transport are sound but appear to fall short of the desired goal of providing protection for evacuation of the battle areas.

Further in the discussion, it is stated that "it would be desirable that the adoption of an identification system using blue lights should be preceded by preliminary consultations carried out by the International Civil Aviation Organization (ICAO). I can find no place in Volume VII where this has been accomplished. With all due respect to the learned delegates at this table, I would question our qualifications to discuss electronic or radio-electrical identifications and to know if we are in fact giving protection or placing impossible demands which cannot be adhered to. We must study what the experts have to say before reaching any recommendations.

For these reasons, I would submit that this committee should recommend that further study and consideration should be given to this protocol by experts who are technically qualified in electronics, communications, aviation and naval operations before being considered by this committee. We can agree with the principle that additional protections are needed for the safety of medical transport but I would go one step further and recommend that consideration should also be given to battlefield evacuation by dedicated medical helicopters and that definitive guide lines should be established that would enable these helicopters to carry out their mission with some reasonable assurance of safety.

Thank you.

REPORT OF COMMISSION II

Rapporteur: M. J. de BREUCKER (Belgium)

INTRODUCTION

93. In accordance with the Rapporteur's suggestion, which was approved by the Commission at the beginning of the discussions, this report aims to reflect the views expressed without, however, mentioning the speakers' names.

94. Bearing in mind the need to set out the reactions to the subject matter, the views have in a number of places been grouped, although the Rapporteur has endeavoured constantly to report as faithfully as possible the various differences in opinion which emerged during the discussions.

95. Commission II began its work on Wednesday 26 May at 4 p.m. and completed it at 6.15 p.m. on 4 June.

96. Mr. E.G. Lee (Canada) was elected Chairman of Commission II by the Conference in plenary meeting. The Commission designated its Bureau at its first meeting: Colonel Tranggono (Indonesia) was elected Vice-Chairman and Mr. J. de Breucker (Belgium) Rapporteur. Mr. J.-P. Hocke (ICRC) carried out the duties of Secretary. Mr. C. Pilloud, ICRC representative, Mme D. Bujard and Mr. M. Veuthey, legal experts of the ICRC, introduced and made comments on the subjects dealt with by the Commission.

97. This report is in two parts:

1. *Part one* deals with the protection of victims of non-international armed conflicts (ICRC Document V).
2. *Part two* of this report deals with the rules applicable in guerrilla warfare (ICRC Document VI).

PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS

Chapter I

GENERAL DISCUSSION

98. The main points covered were:

- 1) Article 3 and the principle of its possible development.
- 2) The expediency of defining and identifying non-international armed conflicts.
- 3) What should be understood by international humanitarian law applicable in such conflicts.
- 4) The problem of ensuring respect for the provisions.

* * *

1) *Article 3 and the principle of its possible development*

99. Despite the difficulties that existed, very many experts recognized the necessity of developing or supplementing the provisions of Article 3 with one or more additional protocols.

100. One expert pointed out that Article 3, while not being perfect, was somewhat particular in that it was addressed to a Party whose identity did not actually exist, and which might never exist, and that it imposed obligations on that Party should it ever come into being. He further showed that it was inconceivable that that non-existent entity should be made to bear a mass of legal obligations at the same time as the legal authorities. It had moreover been indicated that Article 3 excluded internal troubles as it considered them as being subject to civil law. Finally, some experts showed that although that article did not contain any definition but simply a negative reference to another type of conflict—that to which the whole body of the 1949 Conventions applied—it did, despite its shortcomings, offer a considerable field of application. The development of the possibilities contained in that article should at no price limit that field of application but should result in governments being unable to deny such application should a non-international armed conflict occur on their territory.

101. Some experts mentioned the attitude of self-defence adopted by States which had recently attained independence and which had had the sad experience

of internal armed conflicts, and they considered that Article 3 had appeared to suffice.

102. One expert agreed except, perhaps, in so far as concerned the civilian population.

103. One expert recalled that some States had unfortunately made reservations concerning Article 3.

2) *Expediency of defining and identifying a non-international armed conflict or conflicts*

104. In general the experts were at pains to stress the complexity of the matter and the wide variety of types of conflict situations, ranging from internal tensions to civil war of classic type, with or without the intervention of foreign forces, in accordance with a situation that often developed into an escalation of violence.

105. Accordingly, many experts were of opinion that there was need to seek *a precise definition of non-international armed conflict based on objective criteria*.

106. Some of the experts holding that opinion felt that a definition such as the one proposed by the ICRC (Document V, p. 45) might serve as an adequate basis for the purpose; similarly, some of them were insistent that the definition should make a rigid distinction between non-international armed conflict, in its various manifestations, on the one hand, and internal disturbances or tensions coming within the exclusive competence of each State, on the other hand; one expert even dwelt with insistence on the notion of *armed conflict* in connection with social or economic disturbances, which should nevertheless not be confused with that notion.

107. Some experts pointed out that conventional international law makes a distinction between civil war and insurrection, apart from the distinction that exists between insurrection and rioting.

108. Other experts spoke of the possibility of classifying, in a fairly stringent manner, the types of non-international armed conflicts, by means of a listing (not exhaustive) of concrete situations.

109. Conversely, certain experts inclined to a radically different conception: they were in favour of giving support, above all, to a *declaration of the fundamental humanitarian rules that should be observed*

by the two parties to a conflict, without, however, raising the vexing problem of defining the conflict.

110. On that basis, one expert submitted a draft text¹¹ designed essentially as a code of rules to be applied by all Parties to an internal armed conflict; there was already, as he pointed out, an international consensus on the rules, which contained no provision running counter to national sovereignty. At the same time, the draft includes, in Article 1, an attempted definition of a flexible and general character.

111. There was need, in the opinion of another expert, to take steps to remove the distinction between international and non-international armed conflict, a distinction that he deemed obsolete. This draft proposal¹² replaces the idea of a protocol additional to Article 3 and to other possible instruments by the idea of a *single protocol*, additional to the Third and Fourth Conventions and covering *all* armed conflicts without distinction, as well as containing—in addition to fundamental rules—specific rules for the protection of civilian populations and rules concerning guerrilla activities. Several experts were in favour of this proposal.

112. Other experts objected to the idea of a single protocol on the ground that it would be of too vast a scope and give rise to numerous points that were still premature.

113. Certain experts laid stress on the view that special treatment should be reserved *for wars of liberation and for freedom fighters*, in compliance with texts and resolutions of the United Nations that advocated (a) the principle of self-determination and emancipation of colonial peoples, and (b) the application of the 1949 Conventions to conflicts of that type. Other experts, however, felt that such a distinction, being difficult to define save in terms of geography or political criteria, would not find a large measure of international agreement and would in consequence prove inefficacious.

* * *

3) *The meaning of international humanitarian law applicable to such conflicts*

114. In connection with the ICRC proposal which, in the specific case of non-international armed conflict cited on page 15 of Document V, requests the application of the whole of the international humanitarian law applicable in international armed conflicts, most of the experts recognized the complexity of such application, particularly if it had to be deemed automatic.

115. In particular, the question was raised whether the proposal envisaged not only the 1949 Conventions, but the 1907 Hague Convention No. IV, the 1925 Geneva Protocol, and the instruments relating to human rights. Two experts cited the right of

diplomatic asylum traditionally adopted in Latin America as an advanced form of international humanitarian law.

116. Several experts maintained that integral application of international humanitarian law was not possible.

117. One expert pointed out that the basic difference between the two types of armed conflict lies in the fact that in the case of an international conflict, the two parties are subject *ex aequo* to international law; conversely, in the case of civil war, only one of the Parties enjoys the status of independent State; hence the problem of determining what is meant by international humanitarian law applicable to the latter type of conflict.

118. One expert felt constrained to refer to the inevitable ambiguity of any formula capable of encompassing both the 1949 Conventions and the instruments relating to human rights (Declaration of Human Rights, Covenants) which go beyond the sphere of conflicts and which contain certain provisions not admitting of any derogation whatever, even in time of extreme public danger to the State.

119. Another expert, addressing himself to that point, stressed the view that the 1948 Universal Declaration of Human Rights should now be deemed an instrument of customary international law and, as such, binding on States; indeed, a declaration had been made to that effect in 1968 at the International Conference on Human Rights in Teheran. It should be borne in mind that the International Covenant on Civil and Political Rights had reproduced certain of the provisions that were applicable in any and every circumstance.

120. Even if international humanitarian law were confined to the four Conventions of 1949, it was also pointed out that, by the admission of the ICRC itself, the Fourth Convention, based on the criteria of nationality and foreign occupation, was not applicable as it stood. Hence the several vastly differing points of view.

121. Some experts expressed the opinion that the risk of uncertainty in the matter could be assumed in view of the preponderant concern to afford the widest possible application of international humanitarian law in the interest of war victims.

122. Others stressed the need for *a list* of the various basic rules applicable (minimum protection for all individuals, intensified protection for certain categories, the rights and freedoms to be protected, supervision of the implementation of the provisions); such rules to be incorporated in an additional protocol to Article 3.

¹¹ CE Plen/2bis, p. 57.

¹² CE Com II/1-2-3, p. 61.

123. A protocol formulated for all armed conflict, international or non-international, without distinction, was acceptable to others, who recommended a *quantitative* criterion.

124. It was considered necessary by some to show wariness for the considerable burden of obligation which international humanitarian law entailed as much for the "legal" authority as for the "insurgents". They added that the application of international humanitarian law could not go so far as to grant legal status to a rebellion or to prevent a State whose vital security was threatened from crushing it.

125. In a somewhat different trend of thought, some experts maintained that the scope of international humanitarian law could not go so far as to permit, either by application of the rules themselves, or by a system of supervision to which they would be subjected, or by an external prejudgment on the application of the rules themselves, interference in the internal affairs of a State, the principle of non-intervention in the internal affairs of a State being established by Article 2, para 7, of the Charter of the United Nations.

126. In conclusion, one expert announced that he would introduce a proposal¹³ which, rather than resulting in the transposition *en bloc* of international humanitarian law, would seek to make obligatory the negotiation between the Parties to the conflict, in liaison with the ICRC, of the agreements referred to in para. 3 of Article 3 *de lege lata* according to model agreements drawn up by the ICRC, which would repeat the provisions relevant to the situation envisaged.

* * *

4) *Question of ensuring respect for the provisions*

127. Certain experts expressed the opinion that an international body could lay down the rules applicable. The majority of experts considered that it would not be feasible to conduct supervision of their application through an outside agency.

128. The former opinion met with criticism from those who evoked the principle of non-intervention in the internal affairs of a State.

Chapter II

DEFINITION OF NON-INTERNATIONAL ARMED CONFLICTS

129. This subject was introduced by an ICRC representative, who stressed that Article 3 of the prevailing law did not define non-international armed conflict. Governments were therefore left considerable discretion in respect of events occurring on their territory. However, there could be no ground for the misinterpretation of that article: hostilities between

armed forces within a State constituted non-international armed conflict. Yet, in several non-international armed conflicts, one party or the other had contested that the conflict came within the meaning of Article 3.

130. In order to improve the situation, by limiting to a reasonable extent the State's right to decide, the ICRC representative considered that the concept of non-international armed conflict should be made more precise by a non-exhaustive list of examples (*inter alia*) of situations in which the existence of non-international armed conflict could not be disputed by the governments involved. (See proposal on page 46 of Document V).

131. In reply to a question, the ICRC representative stated that parts (a) and (b) of the proposal on page 46 were *not cumulative, but alternative*.

132. The author of document CE/Plen.2/bis spoke on Article 1 of his proposed draft protocol additional to Article 3. His draft, he said, was an attempt to draw up rules applicable in events within a State without interfering in its internal affairs but with the aim of alleviating suffering. The procedure he adopted, he said, was not to set out from too restrictive a definition but to speak of governmental military forces on the one hand and, on the other, of regular and irregular military forces not covered by Article 2, common to all the Conventions. Such a definition, in his own opinion, could not cover internal disturbances, which could not be considered to be non-international armed conflicts, although in case of need the provisions to be drawn up could be applied to them.

133. The author of documents CE/Com. II/1—3 then explained his draft. The idea was *not to draw a distinction between international and non-international conflicts*—Article 3 providing minimum norms applicable in all armed conflicts regardless of category—but to produce a single document in the form of an additional protocol to the Third and Fourth Geneva Conventions with provisions applicable to ALL armed conflicts and with rules for the protection of the civilian population irrespective of the criteria of nationality and enemy occupation. Nevertheless, document CE/Com.II/3 did refer to wars of national liberation, recommending that the Geneva Conventions, consistent with their Article 2, should apply to them. That point of view was approved by other experts.

134. By way of preliminary, two experts nevertheless pointed out that, in their opinion, it would not be advisable to draw up a single protocol for both types of conflict. One of the experts drew attention to the fact that international law relating to armed conflicts did draw a distinction between the two and that as the distinction was based on objective criteria it

¹³ CE Com II/5, p. 62.

would be difficult to change it; in addition, any attempt to eliminate that distinction, if accepted, would change the whole structure of international law. Consequently, a system applying simultaneously and completely to the two situations under consideration was inconceivable. Another expert held the view that it would be dangerous to have only one protocol applicable to all types of conflict, due to the fact that different situations and, hence, different needs had to be taken into account from case to case. He therefore advocated the drawing up of two additional protocols to the Geneva Conventions. The view was also expressed by one expert that the result might be to reduce protection to a lowest common denominator.

135. The Commission's discussion was thereafter concentrated on:

- the need to define international armed conflicts,
- the content and scope of a definition, and the terminology used in the draft proposals concerned.

1) *The need for a definition*

136. One expert was firmly opposed to such an attempt, considering that a correct definition would entail rights and obligations and that it would have to be applicable and applied.

137. Another expert stated that it would be difficult to reach a consensus on the criteria to be specified in the definition, which might exclude many situations and give rise to marginal cases open to endless legal discussion leading to a result at variance with the true objective, namely the extension of the scope of humanitarian law. On the other hand, he said, with good will from both sides, Article 3 as it stood could be applied in a great many circumstances.

138. In this connection, one expert reminded the Commission of the difficulties which the 1949 Diplomatic Conference had encountered and which, in his opinion, still existed, although they had not prevented the negotiators in 1949 from guaranteeing the victims of non-international armed conflicts at least basic protection. If, therefore, it was desired to ensure respect for a more complex set of rules in these conflict situations, the problem was entirely different; the more the regulation, the greater was the care required to ensure that, without a shadow of doubt, the definition covered the situations envisaged adequately.

139. In response to the argument concerning the negotiation of the 1949 Conventions, the U.N. Secretary-General's representative and several experts pointed out that more than twenty years had elapsed and that ideas had considerably changed. The representative of the Secretary-General also emphasized that many norms had been established to define the concept of "humanity" and of human rights, some

of which had been specifically designed to be applicable in both time of war and in time of peace. According to one expert, international law was becoming more and more a part of national law; an additional protocol could make the provisions agreed upon compulsory in national law "for future rebels", national law itself making provision for respect for international law. Whilst some experts feared that a definition might come into conflict with State sovereignty, one of them was of the opinion that a good definition, related to characteristic situations, would avoid invoking, in respect of such situations, Article 2, para. 7, of the Charter; the international conscience was more and more aware of the need for protection.

140. One expert underlined the fact that a definition, apart from avoiding uncertainty, could be important in the eyes of the public in some countries.

141. *The majority of the experts considered it necessary to define non-international armed conflict.*

142. Whilst in agreement, one expert pointed out that the unilateral commitment of the party signing the protocol applied not only to humanitarian law rules, but to any definition which might be included in the protocol. Even if a detailed definition appeared to be satisfactory, there was no assurance that it would be taken at its proper value by the Parties in conflict, or, more accurately, that it would be accepted by the insurgents: there was no reciprocity in such a case. It was therefore probable that parties to a conflict would have to reach agreement not only on the tenor of the humanitarian law they applied but even on the concept of internal armed conflict, whatever the definition in the protocol.

143. This point of view must be assumed to be related to the proposal put forward by the same expert on the possibility of a special agreement between parties in conflict.¹⁴

2) *The content and scope of a definition, and the terminology used in the draft proposals relating thereto.*

144. The type of armed conflict to be defined had been characterized, after lengthy discussions among the negotiators of the 1949 Conventions, by a converse reference to another type of armed conflict, namely, international armed conflict. More than one expert therefore thought that if the definition should postulate objective criteria which a government could not challenge—which was the ICRC's aim—care had to be taken to avoid too rigid a definition, on the grounds that the more specific the definition, the narrower the practical application, with the very real risk that protection would be reduced rather than increased and that the scope of Article 3 in force would be restricted.

¹⁴ CE Com II/5, p. 62.

145. Several experts expressed distrust of a detailed and exhaustive definition; one of them referred in this respect to the vicissitudes which, in the United Nations, the draft definition of *aggression* had suffered.

146. *Consequently, the adoption of a flexible general formula, accompanied by a non-exhaustive list of cases to which it applied, was recommended.*

147. In addition, several experts pointed out the necessity of clearly distinguishing between non-international armed conflicts and situations involving internal disturbances or tension or banditry and criminal behaviour covered by civil law.

148. Another expert's views were opposed to this assertion. He considered that under Article 3 *de lege lata*, there was no difficulty in applying the basic provisions of that article to cases of internal disturbances or tension.

149. The observations of the experts referred in addition to the terminology of the texts submitted by the ICRC (Document V, p. 46) and to the proposal (CE Plen/2/bis (Article 1 (1)) which were the main subjects of discussion.

150. (A) Regarding the text proposed by the ICRC, the idea of *hostile organized action* was the subject of criticism, as calling for supplementary definitions.

151. One expert even suggested that this organization should imply: (1) organized military forces engaged in armed conflict; (2) that each such military force should be subjected to a system of internal discipline appropriate to armed forces; (3) that such a system of discipline should require, as a minimum, that the members of each of the military forces concerned should observe the rules contained in the protocol. This expert embodied this triple requirement in a separate proposal¹⁵ specifying the type of military organization required on each side.

152. The words "causing military and civilian casualties" were thought by another expert to be superfluous.

153. One expert regretted that the alternative character of (a) and (b) in paragraph 1 of the ICRC proposal was not clearly specified.

154. While one expert was prepared to accept the distinction between "armed forces" in 1 (a) and "regular armed forces" in 1 (b) as applying to fluid situations in which a small civil war developed into a large one, the point was made that "armed forces" should be understood as military forces, in order to obviate any assimilation with terrorism, and that "regular armed forces" in 1 (b) should also be defined with precision so as to take account of militia forces not forming part of the regular army. If the intervention of the *Gendarmerie* sufficed to control

the elements opposed to it—one expert suggested—there would be a risk of equating an uprising or internal disturbances to an armed conflict; the ICRC draft was silent on the number and characteristic features of "regular armed forces" in 1 (b). In this regard, an expert pointed out that forces for the maintenance of order were not identical in nature in every country, and that the text might entail an unequal obligation upon States, depending on the situation of their forces, whether military forces, in the strict sense of the term, or police forces.

155. One expert who found both the ICRC proposal and that in CE Plen/2 bis acceptable in essence, proposed a definition for non-international armed conflict: "It is a conflict including the confrontation on the one side of government military forces and, on the other side, of armed forces of any sort, and involving recourse to military methods and weapons¹⁶".

156. With further reference to the Preamble and paragraphs 1 (a) and (b), another expert proposed adding after the words "hostile organized action" the words "of a military nature under the control of authority".¹⁷

157. In conclusion, one expert was in favour of defining a non-international armed conflict as a "conflict which occurs in a country where a number of people raise their weapons against the lawful government . . . and which becomes a civil war". He wished to make it clear that, if the persons combating the lawful government received the support of foreign elements, that would not change the nature of the non-international conflict.¹⁸ This first thesis treated in the Commission, received the support of another expert.

158. In addition to the foregoing criticism of paragraph 1 (a) and (b) of the ICRC proposal, several experts also criticized paragraph 2.

159. One expert considered that that paragraph covered situations that were likely to arise. Conversely, in regard to the wording of the paragraph another expert wondered whether any government in the world would accept such a definition. Paragraph 2 was considered by another expert to be academic: it seemed inconceivable that such a state of anarchy should remain unquelled by some form of intervention.

160. Regarding the text dealing with *factions*, one expert was of the opinion that it was necessary to avoid representing the situation as one in which hostile groups of young people fought in the streets;

¹⁵ CE Com II/8, p. 62.

¹⁶ CE Com II/10, p. 62.

¹⁷ CE Com II/6, p. 62.

¹⁸ CE Com II/9, p. 62.

whatever the size of the factions, they would not recognize themselves to be obliged to respect the Conventions. In his view, any such dispute should, at least, have a political character. This opinion concurred with that of another expert, the author of Proposal CE Com. II/6, already cited, who considered that a conflict of that kind between factions or armed forces should, at least, meet the criterion of political intention, which is, in fact, present in civil war: either to overthrow the established Power or to bring about secession from that Power.¹⁹

161. (B) Proposal CE Plen/2 b was also studied. Several experts expressed the opinion that the provisions of Article I were more flexible than those proposed by the ICRC on page 46 of Document V.

162. One expert, however, criticized the wording "the present provisions which *reaffirm* and supplement", on the ground that the word "reaffirm" implied the idea of a preexisting doubt; there was no doubt regarding the provisions of 1949. His criticism extended also to the term "regular or irregular military forces". What did it mean: volunteers? armed gangs?

163. In connection with the discussion of this preliminary draft, one expert referred to a comment by its author on the degree of suffering during a conflict. The degree of suffering was, in his view, a subjective matter: adroit publicity led at times to exaggeration, to the point of presenting the suffering or the responsibilities resulting from a conflict in a completely erroneous way.

164. Referring both to the ICRC draft and to that contained in CE/Plen/2b/Rev. 1, many experts pointed out that *the idea of the duration* of a conflict situation had not been sufficiently stressed. The element of continuity appeared to one of the experts to be a factor calculated to facilitate the conclusion of the special agreements mentioned in Article 3. Reference was then made to the wording of the proposal in CE/Com. II/5 which, without defining non-international armed conflict, did mention "military operations on a *scale* and of a *duration* comparable to those of a conflict between States".

165. Another expert, though not submitting a written proposal, stated that a practical definition should contain the following points:

- as to the nature of the conflict: recourse to weapons by both sides;
- as to its duration: not intermittent;
- as to its gravity: full-scale conflict;
- as to its aims: a cause which does not violate recognized principles of penal law.

166. The discussion having shown the complexity of the problem of defining non-international armed con-

flict and the wide variety of opinions, the Chairman suggested the setting up of a working party to continue the examination of the question and to put forward, if possible, proposals which would enable the Commission to resume discussion of the subject. The suggestion was accepted by the Commission.

167. The working party met at ICRC headquarters on Saturday, 29 May 1971, at 3 p.m.

* * *

168. The findings of the Working Party are contained in document CE/Com. II/13/Rev. 1 in the form of a report submitted by the Drafting Committee to Commission II.

169. The report contains the following passage: "The Committee were generally of the view that an 'armed conflict not of an international character' should be identified by objective characteristics rather than according to the intentions of the participants or other subjective criteria. There was also widespread agreement that the text should exclude what are, relative to international armed conflict, lower levels of internal conflict, even if carried on for political purposes. Thus riots, banditry, isolated acts of terrorism, common crimes, and the like would not be embraced within the definition".

170. The Committee submitted the following draft definition for the purpose of the application of the Protocol, as a point of departure for discussion:

This Protocol shall apply to any case of armed conflict not of an international character which is carried on in the territory of a High Contracting Party for a substantial period of time and in which

- (1) *organized armed forces carry on hostile activities in arms against the authorities in power and the authorities in power employ their armed forces against such persons, or*
- (2) *organized armed forces carry on hostile activities in arms against other armed organized forces, whether or not the authorities in power employ their armed forces for the purpose of restoring order.*

171. In addition, the draft text mentions the possibility of including a third paragraph:

- (3) *hostilities have reached such a level as to make application of the Protocol a humanitarian necessity.*

* * *

172. The Commission congratulated the Chairman and members of the Drafting Committee on the diligence and speed with which they had accomplished their task.

¹⁹ CE Com II/6, p. 62.

173. The discussion concentrated on the above-mentioned texts, the comments made on those texts by the Drafting Committee, and further suggestions and proposals.

174. An expert pointed out the impossibility of discussing or subsequently of voting on the definitions proposed referring to a protocol whose nature and extent were unknown.

175. *Several experts admitted that (1) and (2) covered different situations* which, in a way, created two fundamentally different types of non-international armed conflicts; one between the authorities in power and insurgents, the other between factions.

176. Some experts felt that (2) should be struck out while others felt that (1) and (2) could be combined. The ICRC representative indicated that, although the draft definition was based on its own proposal, he felt that hypothetical situations (1) and (2) were of limited scope, the limit being aggravated by an idea of time ("substantial period"), whereas its own proposal, by using the term "among others", had a more exemplary value.

177. The fear that the definition might limit the scope of the concept mentioned in Article 3, and which had already given rise to one proposal²⁰, caused one expert to suggest that the Drafting Committee's proposal be preceded by the following phrase: "This Protocol shall apply to all non-international armed conflicts within the meaning of Article 3. The existence of such a conflict shall not be denied, especially in any case of armed conflict not . . . etc."

178. *The relationship between that definition of non-international armed conflict and troubles, riots, acts of banditry and so forth* was also mentioned. One expert suggested that mention be made of the fact that the matter at stake in the conflict could not be an offence of a criminal nature. One expert pointed out that the definition could follow an eclectic and not purely objective criterion, so that a certain element of finality or purposefulness of the insurgent forces would be necessary to define the concept of internal armed conflict to which the protocol would apply, violations under penal law remaining excluded.

179. Three experts introduced a joint proposal specifically excluding minor troubles and common law crimes.²¹ However, one expert considered that care should be taken not to exclude explicitly troubles, for he feared that that would provide authorities with a pretext for not applying the protocol in the case of a conflict on their territory by calling it a riot.

180. *Another subject which came under discussion was the way in which the parties to a conflict were organized.* The Committee's draft used the words "organized armed forces" (insurgents) and "armed forces" (government).

181. An expert proposed that those words be replaced by "military forces" in both cases.

182. The above-mentioned joint proposal²² used the terms "organized armed forces" (insurgents) and "armed forces" (governments) with a supplementary reference to their internal discipline. Proposal CE/Com. II/11 was drafted in roughly the same terms.

183. An expert mentioned the case of government forces being simply the police, to show why he preferred an expression which avoided the word "military".

184. Another expert considered that, in the second line of the text submitted by the Committee, after the words "armed conflict not of an international character", the words "civil war" should appear in brackets.

185. *The time aspect* expressed by the words "for a substantial period of time" was similarly criticized as being vague by those who had previously defended other criteria. The joint proposal CE/Com. II/17 had also made that suggestion.

186. *The notion of the occupation of a territory* over which each of the parties to a conflict exercised authority was also strongly supported by some experts²³ who considered that it should be included in the definition. It was also pointed out that the use of those words could result in the planned protocol's becoming compulsorily applicable only after some time.

187. The idea of *intensity* as indicated by (3) in the Committee's definition was also taken up in the joint proposal (CE/Com. II/17) even though several other experts contested its value as they wondered who could be the judge of the degree of violence.

188. One expert introduced a new proposal²⁴ quite apart from the series of criteria to be included in or excluded from the definition. It suggested that the State concerned should first recognize the existence and the character of the conflict and its constituent parts.

189. As the discussion proceeded, an ICRC representative recalled the fact that certain proposals which tended to increase the number of criteria involved might limit the field of application of Article 3 of the existing humanitarian law.

190. At the conclusion of the discussion, no vote was taken, even to indicate the general sentiment. The Chairman of the Drafting Committee summa-

²⁰ CE Com II/12, p. 63.

²¹ CE Com II/17 and 17b, p. 65.

²² CE Com II/17 and 17b, p. 65.

²³ CE Com II/11, pp. 62 and 63 and CE Com II/4, p. 61.

²⁴ CE Com II/18, p. 65.

ized the trains of thought expressed during the debate as follows:

- 1) Some experts continued to be hesitant in accepting a protocol to Article 3;
- 2) The majority of the experts subscribed to the idea of a protocol and some of them considered that such an instrument should not contain any definition or, at most, a summary definition. Others, however, were in favour of a precise definition but could not fully support that proposed by the Drafting Committee.
- 3) Only a few experts were in favour of the third part of the Committee's tripartite definition and most were opposed to the second part.
- 4) There seemed to be a substantial amount of sentiment in favour of an express statement of the types of lower-level conflict (e.g. riots and disturbances) excluded from the scope of the protocol.

191. The Chairman of the Drafting Committee was of the opinion that parts 2 and 3 could be omitted and that attention could, at some later stage, be concentrated on part 1 in the light of statements made concerning the notions of discipline, organization, territory, duration, or degree of violence. He regretted the fact that the Commission had not been able to go any further, and stressed that it lay with the ICRC to decide how work on that subject was to continue. He considered also that States which were ready to assume the obligations of such a protocol should hasten to draft it. He suggested, as another possibility, that the protocol should not contain any definition of the circumstances in which it would be applied. It would be up to each State to define, on ratifying or adhering to the protocol, the types of domestic armed conflict to which it would be prepared to apply the essential rules of such an instrument. The procedure would be analogous to that by which States accept the compulsory jurisdiction of the International Court of Justice under the "optional clause". Naturally, the protocol would in no way restrict the scope of Article 3.

Chapter III

OBJECTIVE FINDING OF THE EXISTENCE OF ARMED CONFLICTS

192. A representative of the ICRC opened the debate, the object of which was to see whether it was possible to institute an objective procedure, preferably of a compulsory nature, to discover whether a given event occurring on the territory of a State constituted a situation of non-international armed conflict.

193. Even though Article 3 did not define the notion of non-international armed conflict, the ICRC representative stated that the authorities concerned would not be able to put an abusive interpretation thereon,

and when the conditions constituting such a conflict obtained, the humanitarian standards as envisaged by the said article would have to apply. However, in many conflicts of that nature, one or the other of the parties had denied the existence of a conflict as understood in Article 3. There were consequently two solutions, in no way mutually exclusive, whereby such discretionary State powers could be limited; either the notion of non-international armed conflict could be adequately defined or an objective procedure could be evolved whereby the existence of such a conflict could be objectively ascertained.

194. The ICRC representative then announced the opinions of the experts that the ICRC had consulted regarding this matter during 1970. These views could be found on pages 38 to 41 of Document V.

195. In concluding the introductory statement, the ICRC representative reminded the assembly that the ICRC did not itself wish to assume the possible role of a fact-finding body. It had always worked with the utmost discretion and was above all concerned with relieving war victims, and it expressed its intention to continue being able to enjoy the complete freedom of action and flexibility necessary for such work.

196. A discussion on the objective finding of the existence of armed conflicts followed the introductory statement. For greater clarity we shall divide the report of that discussion into two parts:

- the fact-finding procedure or body within or without the United Nations;
- the possible role of the ICRC as a fact-finding body.

* * *

1) *Fact-finding procedure within or without the United Nations*

197. Some experts were in favour of creating an international consultative body of inquiry, although feeling in that direction was not conclusive, but differed widely.

198. One expert, referring to the advisory opinion of the International Court of Justice concerning genocide, approved the principle of creating an autonomous body, or a body within the United Nations structure, responsible for such fact-finding missions. Such a body (1) would consist of experts appointed on a regional basis; (2) should be able to carry out on-the-spot inquiries; (3) would not, in applying such a procedure, affect the status of the parties in conflict.

199. Another expert, who was similarly in favour of a procedure of that type, considered that, whatever the nature of the fact-finding body, its duties had to be defined.

200. One expert pointed out that most of the States Members of the United Nations were opposed to

the establishment of permanent bodies responsible for fact finding and that that principle was not nowadays admitted by the international community. Nor should methods envisaged in Covenants on Human Rights be considered, as they were usually drawn up under political auspices and had not been ratified by many States. Apart from certain cases in which the Security Council—which had occasionally undertaken the ascertaining of facts—had declared itself competent, he did not consider that the problem could be solved in the short term.

201. Referring to the allusion to the Security Council, an expert considered it opportune to indicate that Article 39 of the Charter conferred on that body the power to carry out inquiries in order to ascertain “the existence of any threat to the peace, breach of the peace, or act of aggression” but that that did not mean it could make inquiries with a view to saying whether humanitarian law should be applied in the case in question. It was consequently difficult to see how the Security Council could be allotted such new power.

202. In view of the considerable international machinery available, ranging from the permanent organs of the United Nations and the *ad hoc* bodies set up by those organs, to certain international instruments such as the Convention on Racial Discrimination, it was felt that the complexity of the problem of non-international armed conflicts did not allow for use to be made of such machinery, however valuable it might otherwise be, and that therefore some other solution on the matter of definition had to be sought. While supporting that opinion and agreeing that the question of racial discrimination and the right to self-determination had moved from the national to the international arena, another expert could not subscribe to the idea that a universal body might be entitled to undertake inquiries and pass judgement thereon.

203. In keeping with that train of thought, which was shared by many of the participants in the discussion, one delegate felt that should a fact-finding body be created, it would have to be able to reach an objective decision which would be accepted, together with its consequences, by the government concerned. An objective assessment procedure necessarily brought face to face elements of domestic politics and the compulsory impartiality of the fact-finding body. It was felt that States would not ratify such a provision; international law was based on the concept of the sovereign State. In reply to that objection, one expert who favoured a consultative body of inquiry believed that if governments adopted a set of rules of a humanitarian nature, it would be in the interest of the State itself that those rules be respected as far as possible. The word “interference” was therefore out of place in that context.

204. Three experts also asked whether the fact-finding body would receive approval and facilities

from the government on whose territory it would be called upon to carry out its inquiry. If a State were to refuse to receive it, such a mission would not dare proceed. There were many examples of that. In that connection it was recalled that there was one solution, the effectiveness of which had been demonstrated during a recent non-international conflict. That was for a government, plagued by domestic conflicts, to invite impartial observers from different sources, who then published a report on their activities.

205. An expert expressed the view that it would be of value to study the decision-making process of an existing body such as that set up by the ICRC and the League of Red Cross Societies in 1969. The ICRC representative pointed out that the body referred to had a purely administrative function and could not, therefore, be taken into consideration.

206. In general, those experts who were reluctant to set up a fact-finding body were in favour of providing a definition of non-international armed conflict complete with objective criteria, which would make it possible to avoid recourse to such a procedure. Some were also in favour, in particular, of the negotiation of special agreements as envisaged in document CE/Com. II/5.

207. As the competence of the United Nations had been mentioned in this connection, the representative of the Secretary-General recalled the terms of paragraph 3 of Article 1 and Articles 55 and 56 of the Charter, which provided the basis for the principles on which U.N. action was built. The provisions of the U.N. Charter imposed on Member States the duty of cooperating with the U.N. in seeking solutions to humanitarian problems. It was therefore inconceivable that U.N. action be restricted, bearing in mind the provisions of the Charter.

208. Briefly commenting the ideas given on that subject in report A/8052, the United Nations Secretary-General's representative referred to the range of possibilities (bodies created by the U.N., either within or outside that organization, permanent or *ad hoc* committees chosen by the parties, etc.) which already existed or could exist in that field, and which could, simply by means of an advisory opinion—nothing less would suffice—permit the assessment of conditions under which humanitarian law could be applied.

209. Finally, the competence of *regional organizations* was discussed. It was shown that neighbouring States had occasionally, as had been the case in the OAU, been able to employ their good offices. However, it was mentioned that such bodies took a long time in reaching a conclusion, and another speaker said that the highly political nature of such an arrangement made an impartial assessment of the facts extremely difficult.

210. *There was general agreement that, under existing circumstances at least, it was not possible to envisage*

the establishment, by means of a protocol to the Conventions of Geneva, of a fact-finding body with any power of decision whatsoever.

211. The majority of the experts backed the prudent observations of the ICRC concerning the inherent difficulties with regard to the creation of a new organ (whether permanent or *ad hoc*) or to the utilization of an existent body.

2) Possible role of the ICRC as a fact-finding organ

212. The fact that the ICRC had made it clear that it did not in any way seek to fulfil the function of objectively determining the existence of a non-international armed conflict likewise gave rise to a lengthy exchange of views.

213. Some experts, endorsing the position taken by the ICRC, considered that the Red Cross could not take up the functions of determination and assistance; still less could it subordinate the one function to the other: the function of assistance was paramount, both as a matter of principle and in time. One expert was of opinion that in order fully to appraise local situations, the composition of the ICRC should be more representative of the world community; at the same time, he was not certain that, even so, the system would be preferable to one based, for example, on commissions of inquiry, composed of impartial observers and set up at the request of a government plagued by conflicts of that kind.

214. Other experts, however, could not assent to the reservation of principle entered by the ICRC; they wondered whether the International Committee would not be willing to review its position.

215. Two experts were in favour of the ICRC's assigning the task, if necessary, to a permanent commission whose function it would be to establish the facts upon the outbreak of a conflict; the commission—one of the experts suggested—would comprise a limited number of eminent persons, with competence in the matter, on the pattern of the Committee on Racial Discrimination set up pursuant to the United Nations Convention on the Elimination of all Forms of Racial Discrimination. He supported the proposal of the representative of the Secretary-General of the United Nations that that Commission should be empowered only to give advice after consulting the State on whose territory conflict had broken out, in order to obtain the views of the State in question.

216. Yet another expert wondered whether the reluctance of the ICRC to assume the function of determination might not be linked to the fact that the Red Cross was not prepared to accept the role of a decision-making organ, that is, to decide whether there existed or not a non-international armed conflict in terms of Article 3. He considered that the ICRC should in any event be enabled to ascertain whether the

conditions applicable to a non-international armed conflict were fulfilled; it should draw the attention of the parties to the conflict to the fact that the conditions precedent to the application of the relevant law had been fulfilled, and it could submit to them special agreements of the type cited in the proposal in CE Com. II/5.

217. One expert referred to what Article 3 said in regard to the ICRC's competence in the matter: "An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict". The fact was that on numerous occasions the ICRC had met with a refusal on the part of governments which, though well aware of Article 3, were unwilling, through an affirmative response to the ICRC, to admit that a non-international armed conflict was taking place in their territory. The expert accordingly suggested that in offering its services the ICRC should omit reference to Article 3.

218. A representative of the ICRC stated, in reply, that the foregoing view well illustrated the difference between a formal, public decision of some international organization and a decision of the ICRC to offer its services in the event of a conflict coming within the purview of Article 3. The latter decision clearly derived from information reaching the ICRC concerning actual events; it was, however, true that in offering its services the ICRC did at times omit reference to Article 3, and instead offered its services as an impartial humanitarian body.

Chapter IV

THE CONTENT OF A POSSIBLE PROTOCOL

219. A representative of the ICRC introduced this subject, which had been discussed at great length in Title IV of ICRC Document V. The additional protocol envisaged would repeat the essential rules of international humanitarian law. This would go slightly beyond the 1949 Conventions and would include provisions relating to the behaviour of combatants and to the protection of the civilian population against the dangers arising from hostilities, questions that were then being examined by Commission III on the basis of ICRC Documents III and IV.

220. In spite of the wide range of views, the rules should be simple and readily applicable by parties to a conflict, simplicity and brevity being conducive to the success of the undertaking.

221. However, the ICRC had not drafted a complete additional protocol; some parts had been worked out thoroughly; other parts comprised proposals for provisions; others again were no more than suggestions for examination by the experts.

222. The ICRC did, nonetheless, in accordance with the opinions of experts previously consulted, contemplate a complete protocol.

223. Such a project prompted the ICRC representative to make the following comments:

- 1) The existence of Article 3 as a basic provision should be stated in a preamble.
- 2) The additional protocol should apply to a type of non-international armed conflict specified in the definition. The ICRC had, incidentally, submitted other proposals relating to internal disturbances and tension.
- 3) The principle, contained in Article 3, that the application of the planned protocol would have no effect on the legal status of the parties to a conflict, should be restated.
- 4) The provisions of the third paragraph of Article 3 concerning special agreements in virtue of which Parties to a conflict would apply all or part of the other provisions of the four Geneva Conventions should be restated.
- 5) In order to dispel any doubts or misgivings on the part of experts about the obligations which rebels should assume and the means of compelling them to do so, the ICRC representative wished to state that the ICRC had always held the view that Article 3 was binding not only on the governments of Contracting States but also on the population as a whole and, hence, on rebel forces. The obligation dated from 1949. This would not be changed if Article 3 were expanded by means of an additional protocol.

* * *

224. The author of CE/Plen. 2 bis explained that document. In drafting it he had taken as his starting point the basic humanitarian provisions which should be applied in ALL internal armed conflicts as soon as government military forces went into action. In such an event, everybody, on both sides, would be entitled to the protection afforded by the basic principles without there being any necessity to distinguish between armed conflict and internal disorder, because governments, having accepted those provisions, could make them applicable even in internal disorders, in view of the fact that they in no way changed the State's own penal law. Moreover, the proposals would not prevent Parties engaged in internal armed conflict of a particularly serious nature from introducing rules not included in the protocol, by means of negotiated agreements.

225. The fact that the draft proposals would require no change in State penal law was related to the following points:

- 1) *CE/Plen. 2 bis did not provide for the abolition of the death penalty*, a requirement which the author considered to be excessive, seeing that in the cases

in question governments applied existing emergency legislation or immediately promulgated emergency legislation repressing by the most severe penalties the crime of having taken up arms against the State.

- 2) *The draft did not aim to grant prisoner-of-war status to the combatants of the insurgent party*, as the author did not wish to imply that captured rebels could not be brought to justice for having taken up arms against the State.

226. Nevertheless, CE/Plen. 2 bis contained two essential provisions:

- 1) *The postponement of the death penalty*; this did not affect the validity of legal proceedings by the State against rebels, nor its right to punish them after the close of hostilities, in the absence of an amnesty. Apart from the fact that such a stay of execution would give the persons concerned hope of a reversal of the situation or the grant of an amnesty, it would encourage insurgents to respect the civilian population and the laws and customs of war in their dealings with captured government forces.
- 2) *The presence of a neutral, impartial and objective body* as an observer (see Article 1 (4)) with the proviso that the work of such a body could be interrupted or wound up if required by operational necessity or by security, as, for example, in the case of terrorists making contact through such a body with other terrorists.

227. The author emphasized that the provisions were not founded on any idea of reciprocity: they should apply no matter what the attitude of the opposing party.

228. He concluded by adopting the ICRC point of view and agreeing that rules should be as simple and clear as possible, so that they would be understood and heeded by everyone.

* * *

229. The ensuing discussion bore on the provisions proposed by the ICRC and the author of document CE/Plen. 2 bis, some of which were the subject of special study.

230. The *general statements* of the experts should be examined first.

231. One expert, after listening to the author of CE/Plen. 2 bis, thought the ICRC proposals were too complicated; they were, moreover, based on the 1949 Conventions, which themselves were based on conventional methods of warfare and could not effectively be adapted to internal conflicts. He preferred CE/Plen. 2 bis and saw no contradiction between it and documents CE/Com. II/1—3, which did away with any distinction between international

and non-international armed conflicts. The author of doc. CE/Com. II/1-3 supported that point of view.

232. In contrast, one expert singled out as an essential difference between international and non-international conflicts the obligation on a State involved in non-international conflict to enforce order; this implied a situation differing from that prevailing in international conflict and, therefore, the need for a different legal instrument.

233. One expert stated that the discussion in Committee II had confirmed his impressions that Article 3 should not be expounded. The time was not ripe, because the international situation had not changed since 1949. Moreover, the developing countries were not as well represented at the Conference here as they would have been at a diplomatic Conference; further, developing countries needed stability and order to preserve their very existence.

234. An expert, in common with a good many other experts, paid tribute to both drafts, which contained two essential points, namely:

- 1) a restatement of the provisions of Article 3, which was the interpretative part of the protocol requiring further study;
- 2) an effort to make other provisions applicable to internal conflicts, either by extension of existing rules in the four Conventions or by the adoption of new provisions applicable to conflicts not covered by the 1949 Conventions. In this respect, he called attention to the value of his draft on special agreements²⁵ which introduced the principle of co-operation between the ICRC and Parties to conflict based on standard agreements. It left to the Parties the possibility of deciding on arrangements for extending provisions in the light of unforeseeable elements of the conflict, but it obliged the Parties to negotiate.

235. An ICRC representative nevertheless objected that its own experience had shown how difficult it was to negotiate such agreements, even in international armed conflicts.

236. Other experts formally reiterated the view that the rights conferred by Article 3 and a protocol additional to that article on the wounded, the sick, civilians, and so forth, *were not derived from contractual provisions between parties to a conflict*, but from Article 3 and the additional protocol itself, in the interest of the intended beneficiaries: they were therefore *individual* rights.

237. The representative of the Secretary-General of the United Nations asked whether there was any objection to reproducing or referring to a criterion involving respect for human rights as recognized in the 1966 Covenants, and about which no reservations could be made even in times of armed conflict. Taking

up again this same question, an expert proposed that the essence of the fundamental rights contained in the United Nations Covenant on Civil and Political Rights could be reproduced in Article 1 of a possible additional protocol to the common Article 3 of the Geneva Conventions, so as to reaffirm the principle embodied in the covenant and the restrictive nature of the derogations that could be made (cases of public emergence; not exceeding the purpose of the safeguards; no derogation from Article 4 (2)). The same Article could also refer to the minimum rules for the treatment of prisoners, adopted by ECOSOC in 1957 (the idea of which was embodied in the draft ICRC declaration concerning internal disturbances). The proposed Article 1, reiterating fundamental rights, could, in the opinion of that expert, be followed by proposal CE/Plen. 2 bis and by a third article which would indicate:

- that the ICRC and other impartial bodies were entitled to carry out their activities;
- that the application of that provision would not affect the legal status of the Parties to the conflict;
- that Article 3 would remain in force between the Parties without prejudice to the provisions of the present protocol.

238. Another expert, likewise referring to additional provisions that might be inserted in the additional protocol to Article 3, drew attention to the *instruments relating to human rights*. The Commission's task was to combine the provisions of the Geneva Conventions with the instruments relating to human rights, the aim of the additional protocol to Article 3 being to guarantee the protection of human rights in time of armed conflict.

239. He felt that, from that point of view, it would be a grave error to apply international pressure of any kind, beyond that envisaged in the instruments relating to human rights. A fundamental responsibility on the part of States was involved. There was no contradiction between the instruments of international law and the stability of States. Furthermore, care should be taken not to increase the obligations of States through a mass of texts, especially where the developing countries were concerned. That approach made the creation of an observer corps, as recommended in document CE/Plen. 2 bis, unacceptable; the solution lay not in setting up such Commissions, but in drawing up international instruments that would engage the responsibility of States. The combination of the requirements of non-interference in the domestic affairs of a State and those relating to the protection of victims would inevitably continue to present some thorny problems.

240. Another expert also took up the matter of non-intervention. Though preferring the approach reflected

²⁵ CE Com II/5, p. 62.

in CE/Plen. 2 bis to the ICRC proposals, he could not accept the criterion of "the intervention of government forces on one side" since that might cover internal disturbances or tension not within the purview of Article 3 or indeed of the other provisions of the Geneva Conventions. To extend the application of international humanitarian law to all conflicts involving governmental forces would be tantamount to interference in the domestic affairs of States. After all, responsibility for the observance of international law lay with the States.

241. In replying to the argument based on non-interference in domestic affairs, the author of proposal CE/Plen. 2 bis said that he failed to understand at what point interference arose, once the State in question had accepted Article 3 by ratifying or adhering to the 1949 Conventions, and once it had also accepted the terms of the protocol.

242. Another expert, also dealing with the entire concept of the two drafts being studied, emphasized the necessity of a minimum of prudence in the adoption of new interpretative or supplementary rules to Article 3 which bound 128 States. New countries were apprehensive of anything which could limit the powers of their governments at a time when they were struggling for their very existence, a thesis which in no way departs from general requirements of international order.

243. The importance of not introducing too many rules whose application in national law would prove difficult, was stressed by another expert, the tendency of States in such circumstances being to disregard those agreements not conforming to national law.

244. In conclusion, the originator of proposal CE/Com. 1-3, joining in the tribute paid to the work accomplished by the ICRC and by the author of proposal CE/Plen. 2 bis, announced the impending circulation of two documents, one dealing with the basic principles regarding the protection of the civilian population in all armed conflict²⁶, the other with the right of the civilian population to receive aid during armed conflicts²⁷ (Istanbul Resolution XXVI) without dwelling on the form or kind of instruments intended to contain these provisions.

* * *

245. In addition to these general appreciations, the experts also expressed opinions on the various points raised by the ICRC proposals and document CE/Plen. 2 bis.

246. The prevailing opinion was that for a definitive appraisal of the rules concerning the wounded and sick and the protection of the civilian population against dangers of hostilities, it was essential to have the relevant final reports on the proceedings of Commissions I and III.

1) *Sick and wounded, general protection of the civilian population, etc.*

247. Referring to discussions taking place in another Commission, an expert stated that the treatment and safeguarding of the sick and wounded was of the utmost interest for any possible broadening of Article 3.

248. Most of the delegates were receptive to the proposals referring to this category of protected persons.

249. Two experts underlined the provision according to which civilian nationals should not be punished for giving assistance to the sick and wounded.

250. One expert felt that the proposal CE/Plen. 2 bis went very far towards extending its protection to such a broad range of categories—expectant mothers, maternity cases, children under 15 years of age, medical personnel protected by the insignia, medical establishments and transport. He formally approved, moreover, a provision stipulating that medical aid from a foreign State to all victims of a conflict could not be considered an unfriendly act or as changing the legal status of the parties to the conflict.

251. In reference to the protection of the civilian population, one expert asked that more be done in the way of detailed article-by-article study of the Fourth Convention to catalogue all the provisions applicable in non-international armed conflicts.

252. To sum up, these questions did not give rise to a very marked divergence of opinion, beyond certain suggestions for the improvement of the texts.

2) *Abolition or stay of execution of the death penalty; the question of penal action*

253. These questions gave rise to differing and complex points of view.

254. The question of the *application or non-application of capital punishment*, following due process of law such as mentioned in Article 3, for the mere fact of having participated in armed rebellion, even though this was conducted according to the laws and customs of armed conflicts, caused comment by some of the experts, who pointed out that in their national law capital punishment was not the penalty for that kind of infraction. Some experts approved this provision without reservation.

255. Other experts emphasized how the adoption of such a provision in the envisaged protocol might embarrass a government at a time when it was experiencing the greatest threat to its security. It was

²⁶ CE Com III/19, p. 65.

²⁷ CE Com II/14, p. 64.

also mentioned that, contrary to the provisions of the Third Convention for prisoners of war, where allegiance to the captors did not exist, one could not depreciate the citizen's obligation to respect law and order, and the security of the State of which he was a national, especially as, in the views of these experts, there was no guarantee that insurgents would agree to reciprocal clemency.

256. The United Nations itself had formally deprecated capital punishment only in the case referred to in Resolution 2394 (XXIII) on capital punishment in South Africa.

257. An expert suggested that this delicate question be dealt with by harmonizing the legislation of each State on the basis of international instruments relative to Human Rights; another considered that it would be expedient to undertake a comparative study of national legislation on the subject.

258. To sum up, it may be said that the majority of the experts felt they were not in a position to endorse without reservation a provision making inroads so deeply into the internal laws of States.

259. They felt the same way about an amnesty at the end of a conflict. Some experts proposed nothing more than a recommendation in this regard, as they took the view that the question was within the competence of the State.

260. *The stay of execution of the death penalty* recommended by the ICRC and CE/Plen. 2 bis was not unanimously approved.

261. An expert pointed out that sentence of death, not followed by immediate execution, inflicted such mental suffering on the condemned person that fairness demanded that a stay of execution should yield to a more clement measure.

262. On the other hand, some experts saw in the stay of execution an encouragement to terrorism by insurgents who, for the duration of the conflict, would have the guarantee of being preserved from the worst form of punishment, despite their rebellion.

263. A less categorical point of view was put forward by other experts who alluded to the aphorism that time settles many problems, tending to result in the commutation of sentences; it was also felt that a stay of execution and of the application of penal law after the end of a conflict could only contribute to the dignity of judicial procedure.

264. A representative of the ICRC pointed out that an analogy might be drawn with Article 101 of the Third Convention which granted a six month stay of execution in the event of the death penalty being pronounced on a prisoner of war.

265. In regard to the ICRC proposal that no punishment be imposed for the *mere* fact of having served with the armed forces, this was branded by an expert as leading to the abandonment of all rules—to chaos; whereas another expert, referring to the final words of the proposal, i.e. "... unless imperative security requirements make this necessary", had come to the conclusion that the suggestion was unrealistic.

3) *Granting of prisoner-of-war status or treatment to captured combatants*

266. This subject was not broached in Document CE/Plen. 2 bis; it was, however, included in Document V and was also discussed by the Commission.

267. Several of the experts expressed the opinion that to impose on a State the obligation of treating rebels as prisoners of war would be equivalent to granting rebels the privilege of a right to participate in a civil war. Following the same line of thought, it was pointed out that this was outside the confines of Convention III, which was based on the idea of nationality and allegiance.

268. Reiterating the observation of the representative of the Secretary-General of the United Nations in favour either of a qualified status or at least of minimum rules of treatment such as the minimum rules for the treatment of detainees, adopted by the Economic and Social Council in 1955, one expert proposed placing emphasis on the distinction between the status of prisoner of war in the event of international conflict and adequate treatment in the case being studied by the Commission.

269. This opinion was based on Resolution XVIII of the XXIst International Conference of the Red Cross and on Resolutions 2444 (XXIII), 2597 (XXIV) and 2676 (XXV) of the United Nations General Assembly.

270. A brief statement was made by the representative of the ICRC on the subject, all implications of which had been dealt with on pages 61-66 of Document V and on pages 6-23 and 52-55 of Document VI.

271. Page 65 of Document V, in particular, contains two proposals for new rules:

- the granting of prisoner-of-war treatment to members of the regular armed forces and to combatants who have satisfied the conditions of an interpretative protocol to Article 4 (2) of the Third Convention;
- for combatants not satisfying the conditions of the interpretative protocol mentioned above, the non-application of capital punishment as well as the guarantees of Article 3 *de lege lata*.

272. These proposals seek to allay the misgivings expressed in the second report of the U.N. Secretary-

General (A/8052) urging the application of international law on human rights in order to ensure a minimum standard of treatment for detainees.

273. On this point, several experts mentioned *wars of liberation* to which, in their opinion, the United Nations resolutions had given an international character. One expert proposed that prisoner-of-war status be granted to combatants in wars of liberation.

274. He also asked that the conditions imposed by Article 4 (2) of the Third Convention be made more flexible, two of the conditions—(b) that of having a fixed distinctive sign and (c) that of carrying arms openly—being impracticable in armed conflict conducted by an urban resistance movement. This question is dealt with more fully in the second part of the report of Commission II.

4) *Supervision of the application of interpretative or supplementary provisions to Article 3*

275. The idea of impartial observers being present in the territory of Parties to a conflict had, as we have said, been disputed by one expert; others had defended it. It was also pointed out that system had proved its worth.

276. Other experts insisted on a possible role for the ICRC or other impartial organizations in this field; the scope of that role had to be broad.

277. However, as stressed by one expert, the supervision of the application of these provisions should be basically combined with a sure and unchallengeable knowledge of those provisions acquired by adequate instruction on the rules to be observed, in order to preclude the excuse of orders from superiors or an inclination on the part of rebels to disregard those rules to suit their combat methods. This consideration was taken up again by some experts, one of whom felt it was easy to formulate these precepts as simple instructions to the armed forces or to any person involved in a conflict of this kind.

5) *Miscellaneous*

278. Some of the experts referred to the role that could be played by the National Society of the Red Cross of the country in question. One expert proposed that governments be encouraged to arrange that, in certain cases, the National Society be employed by both Parties to the conflict, notably for services of a humanitarian nature or for the forwarding of supplies.

279. One expert requested also that the Commission emphatically reaffirm the prohibition of collective punishment covered by the provisions of Article 33 of the Fourth Convention.

280. One expert raised the question of a distinctive sign not recognized in the Geneva Conventions (the

red shield of David) but which related to the proposals contained in document CE/Plen. 2 bis and ICRC documents on the display in non-international armed conflict of the distinctive signs mentioned in the four Conventions. The same expert suggested that in the absence of recognition of the sign concerned it should be granted the same protection (on an equal footing with the others) if it is notified to the other Parties to the conflict.

281. One expert, replying to this remark, stated that the question of international recognition of that particular emblem, in international armed conflict governed by the four Geneva Conventions, was settled in Commission I. He further stated that the question of recognition of the red shield of David in internal conflicts, envisaged in Doc. CE/Plen. 2 bis, raised the question of duty to respect not only the red cross and red crescent emblems but also the unhampered activities of Palestinian societies using those distinctive signs. In addition, in that connection, he referred to the attitude adopted by the ICRC as revealed in its studies and documents on that question and in relation especially to the desirable uniformity rather than the proliferation of emblems.

Chapter V

NON-INTERNATIONAL ARMED CONFLICTS IN WHICH THE PARTY OPPOSING THE AUTHORITIES IN POWER HAS AN ORGANIZATION DISPLAYING MANY OF THE CONSTITUENT FEATURES OF A STATE

282. An ICRC representative opened the debate by pointing out that for a long time it was accepted that a non-international armed conflict did not become an actual civil war until the lawful government had recognized a state of war; and that such recognition entailed the application of the law of armed conflict almost in its entirety. Gradually, however, consideration of subjective criteria, that is those depending solely on the will of the government, such as formal recognition of a state of war, was abandoned in favour of objective criteria such as the existence of certain factual situations. Consequently, the applicability of the rules of the law of armed conflict was no longer linked to the existence of a state of war in the legal sense, but rather to *de facto* situations and to a material state of war. That is what the Geneva Conventions achieved in connection with international conflicts (Article 2) and in connection with non-international armed conflicts (Article 3).

283. Thereafter, even if only one of the parties to non-international armed conflict, that is, the lawful government, were from the outbreak of hostilities fully subject to the law of nations and enjoyed full international standing, it did not mean that the insurgent party had absolutely no rights or duties.

Both parties were obliged to apply a minimum of rules, i.e. Article 3. However, the ICRC wondered whether once a certain balance of forces had been struck between the two Parties, that is to say when the rebel party exhibited some of the component elements of the State, *it might not be as well to apply humanitarian law more broadly*, regardless of the recognition of a state of war by the authorities in power.

284. The ICRC proposal, on page 15 of Document V, reads as follows:

“ When, in case of non-international armed conflict, the Party opposing the authorities in power presents the component elements of a State—in particular if it exercises public power over a part of the territory, disposes of a provisional government and an organized civil administration, as well as of regular armed forces—the Parties to the conflict shall apply the whole of the international humanitarian law applicable in international armed conflicts ”.

285. Several experts asked for clarification and expressed misgivings over the tenor of the text.

- 1) There was a difficulty inherent in the legal scope of the words “ the Party [...] presents the component elements of a State ”, in view of the hitherto autonomous and discretionary powers of assessment exercised by any State in determining whether the leadership of another entity effectively possessed component elements of that kind. Such a difficulty, furthermore, was accompanied by the danger of creating new concepts of positive law in connection with the recognition of States, by making treaty references to the component elements of a State.
- 2) There was a possible conflict between the proposed rule and the provisions of Article 2, para. 3 of the Geneva Conventions which, in the case of a conflict between Powers—one of them not being Party to the Conventions—stipulated that the participating Parties should nevertheless remain bound by the said provisions in their mutual relations and that they would, furthermore, be bound by the Conventions involving the said Power provided that the latter accepted and applied such provisions. Consequently, in view of the principle of reciprocity, the above-mentioned proposal would lead, in the case of a “ quasi-State ”, to a universal extension of the application of humanitarian law.
- 3) There was the risk of a fragmentation of internal armed conflict into many different types of conflict according to a progressive scale, each concrete case calling for a precise assessment of its position on that scale in order to determine the scope of the law applicable to the type of conflict.
- 4) The exact scope of the notion of “ the whole of the international humanitarian law applicable in international armed conflicts ” went beyond the 1949

Conventions even though it had not yet been established that all the provisions of the said Conventions were applicable to conflicts of that kind (e.g. protecting powers).

- 5) The expression “ regular armed forces ”, as used by the ICRC, called for comment regarding the manner of defining their regular nature. The point was important to the status of prisoners of war in the event of capture.

286. One expert, referring to the ICRC proposal considered that:

- 1) the provisions of Article 3 should be reaffirmed in their entirety;
- 2) the following words should be added to the envisaged conditions: “ as soon as the insurgent party has fulfilled the conditions envisaged in Article 4 A, ch. 2, of the Third Geneva Convention ”.

287. Another expert, while accepting the spirit of the ICRC proposal, suggested the following improvements:

- 1) to refrain from reference to “ the component elements of a State ”, and instead merely to cite such objective criteria;
- 2) to substitute the words “ the four 1949 Conventions ” for “ the whole of international humanitarian law ”;
- 3) to reaffirm the principle mentioned in the last paragraph of Article 3 to the effect that “ the application of the preceding provisions shall not affect the legal status of the Parties to the conflict ”.

288. Finally, without prejudice to the aim of finding an adequate definition of non-international armed conflicts, one expert made the point that the ICRC proposal specifically envisaged the case of a conflict which, in accordance with the criteria given, exhibited an obvious degree of balance and maturity between the forces on the two sides; he considered that such a characteristic situation could not be allowed to remain *extra muros* from international humanitarian law. He therefore submitted a proposal²⁸ which followed very closely the proposal presented by the ICRC (Document V, page 15). The latter proposal, which concerned “ advanced ” non-international armed conflicts, had very clear objective criteria (territory, administration, regular armed forces, etc.). It was felt that those criteria should include also the allegiance of the communities involved.

289. An ICRC representative offered the following comments in reply to the foregoing remarks:

— the words “ component elements of a State ” could, in fact, be deleted;

²⁸ CE Com II/4, p. 61.

- the term “ the whole of international humanitarian law ” went further than the 1949 Conventions and included, in particular, the 1907 Hague Conventions and the 1925 Geneva Protocol;
- the proposed text would not in any way change the existing criteria relating to State recognition;
- the particular situation envisaged was similar to that of an international conflict and even involved measures typical of such a conflict, as for example conscription by the secessionist authorities; that was, therefore, a factual situation in which simple observation of the facts made it possible to ascertain that international humanitarian law had been broadly applied. Such, moreover, was the trend of public opinion. The ICRC would, however, like to see the practice clearly defined in law.

Chapter VI

FOREIGN STATE AID IN NON-INTERNATIONAL ARMED CONFLICT

290. A representative of the ICRC introduced the subject, pointing out that in an increasing number of non-international armed conflicts one or other of the Parties, and sometimes both, received assistance from a foreign State. Such outside intervention increased the scale of hostilities and the number of victims. Being concerned about that fact, the ICRC had consulted experts in 1970 on the nature which an armed conflict assumed by reason of such intervention. Those expert conclusions are fully reported on pages 18-21 of ICRC Document V. The ICRC representative stated that it was not for the ICRC to judge the legitimacy or otherwise of foreign State aid to one or other of the Parties to a conflict. It intended to examine that question solely from the humanitarian point of view, and it was in that spirit that, on page 21, it had proposed that:

“ When, in case of non-international armed conflict, one or the other Party, or both, benefits from the assistance of operational armed forces afforded by a third State, the Parties to the conflict shall apply the whole of the international humanitarian law applicable in international armed conflicts ”.

291. By “ the whole of international humanitarian law ” was meant not only the Geneva Conventions, but also the Hague Conventions and other instruments which it might be desired to take into consideration. He pointed out that the difficulty of applying the Fourth Convention due to concepts of nationality and foreign occupation was considerably lessened in respect of the nationals of States where such foreign forces were operating. In addition, he stated that the ICRC did not wish to devise a third category of conflict; it sought only to extend international humanitarian law as far as possible in the situations

under consideration, with a view to better protecting war victims.

292. Several experts, with a view to examining whether conclusions of a humanitarian order could be reached, raised the question of *what right* a State had in international law to lend another assistance in the form of armed forces. The views of some experts on this subject are summarized below.

293. On the basis of the U.N. General Assembly resolution 2675 (XXV), the Universal Declaration of Human Rights (Art. 29) and the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States (*inter alia* the principle of sovereign equality and the duty to abstain from intervention in internal affairs of the State), one expert deplored the assistance given by a foreign State to the detriment of a government in power. Such assistance came within the meaning of recourse to armed force, which was not permissible in international law. *He concluded that broader protection should be granted to a State which was the victim of aggression, and that that State should have discretion to assess the nature of crimes committed as a result of such intervention.*

294. Another expert also deplored such action as interference in the internal affairs of a foreign State and an attack on its territorial integrity within the meaning of Article 2 (4) and (7) of the Charter of the United Nations, resolutions 2131 (XX) and 1514 (XV), and the Principles of International Law concerning Friendly Relations and Co-operation among States, apart from the increase in victims and escalation of internal conflict caused by such action. Consequently, such behaviour by a foreign State was a serious threat to international peace, whether that State was intervening in response to an appeal from the authorities engaged in conflict with insurgents or as a result of a collective action provision such as laid down in regional agreements consistent with the Charter, even though, according to the provisions of such agreements themselves, intervention for the latter reason was legitimate only in the case of assistance to a State against external enemies. Consequently, foreign military assistance to a legal government was legitimate only to help that government against insurgents who were also receiving help from abroad. That situation was a threat to world peace, implying a certain internationalization of the conflict which, at the humanitarian level, made it incumbent on the Parties to apply the provisions of Article 3. Such assistance by a foreign State to insurgents was absolutely illegal; it implied a degree of internationalization of the conflict between States which would apply at least to Article 2, whereas the relationship between the authorities in power and the insurgents would be covered by internal penal law subject to basic humanitarian safeguards.

295. Two other experts also underlined the non-intervention principle, the fact that assistance to

governments which were representative only of a minority of the population ran counter to international law, and that assistance to a government against the people was unjustified interference condemned by various resolutions and international instruments. The same applied when a State organized subversion or armed interference against a foreign government which had the support of its people. Such intervention by a State, in the opinion of the experts, should not ignore international humanitarian law. *It therefore entailed the complete application of international humanitarian law in accordance with Article 2 of the Geneva Conventions.*

296. One expert made a point of reminding the meeting of his proposal²⁹ which he had submitted and according to which the fact that persons combating the authorities in power accepted foreign aid made no change in the non-international nature of the conflict.

* * *

297. Considering the problem from a strictly humanitarian point of view, one of the experts maintained that the factors to be taken into account when examining the matter were, on the one hand, *the timing of the foreign intervention*—which could cause or merely follow events—and, on the other hand, *the intensity of intervention*—whether the foreign forces were merely of “stop-gap” value or were determinant in the conduct of the internal conflict.

298. In any case, the same expert was of the opinion that the Geneva Conventions did not cover the situation. Article 2 reflected an inter-State view of humanitarian relief; Article 3 made no provision for the situation and the intervention of a foreign element made the situation “international” but not “inter-State”. *He therefore concluded that to extend humanitarian law “en bloc” to the relationship between insurgents and the established government, following such intervention, was inconceivable.* The problem being of genuine importance, however, he suggested a procedure be sought for the compulsory negotiation of such special agreements as were provided for in his proposal.³⁰

299. Another expert pointed out that the ICRC, whilst proposing the application of humanitarian law as a whole to a certain type of non-international armed conflict—that in which a foreign State intervened—also proposed a provision to that effect in an additional protocol to Article 3. However, the Conventions being left unchanged, the protocol additional to Article 3 would, in his opinion, introduce a special category of armed conflict which would not come under Article 3 since it would imply nothing less than the application of all four Geneva Conventions; it would in practice come within the scope of Article 2. The result would be a radical change in the structure of the four Conventions, in spite of the unanimous agreement not to change them. Even the reaffirmation

that such application would in no way affect the status of Parties to a conflict would not suffice to dispel the confusion which would arise in this connection.

300. Several experts thought the following conclusions, with minor variations, could be deduced from the solution proposed by the ICRC.

301. In their opinion, two hypotheses had to be envisaged:

1) *The intervention of a foreign State on the side of the insurgents*

If the ICRC proposal were adopted, then as soon as a foreign State sent its troops over the border to help the rebels, thereby trespassing to begin with on the territorial rights of the neighbouring State, the State which suffered such aggression would have to treat its own rebels as prisoners of war and its local population as that of an occupied territory. Consequently all that would be needed to legitimize the activities of the rebels and to qualify them as prisoners of war, should they be taken, would be a perfect synchronization of the activities of the foreign State with those of the rebel movement or even simply the despatch of a small detachment of its troops over the border.

No government could accept that. Furthermore, it would put a premium on foreign intervention on the side of rebels. Consequently, regardless of whether a foreign State intervened or not, the relations between the rebels and the legitimate government would have to continue to be subject to Article 3, while Article 2 would of course apply to relations between government forces and those of the foreign State.

2) *Intervention of a foreign State on the side of the legal authorities*

Such intervention might result from a request made by a State threatened by rebellion. A State was, in fact, entitled to make such a request. But there, once again, the arrival of such troops to reinforce those of the government would in no way change the nature of the relations between the legal government and the rebels. Such relations would continue to be subject to Article 3 and the rebels captured would not enjoy the immunities granted to prisoners of war. To adopt any other solution would leave the government stranded between the devil and the deep blue sea—it would have either to fight without outside help or to accept the price of such help, namely it would have to grant immunity to those who had risen up in arms against it.

302. Such a point of view led many experts to conclude, in contradiction with the ICRC, that the granting of status to rebels should be refused in the event of intervention by a foreign State on one side or the other.

²⁹ CE Com II/9, p. 62.

³⁰ CE Com II/5, p. 62.

303. One of the experts provided the following conclusion in the form of a proposal³¹:

“ When, in the course of a non-international armed conflict, the armed forces of a party to the Geneva Conventions engage in hostilities with the armed forces of another party to the Conventions, the Conventions as a whole shall apply to those armed forces in their relations with each other and with persons protected by the Conventions ”.

304. While fully supporting that version, another expert pointed out that some behaviour of foreign States had helped to aggravate a domestic situation far more than the despatch of troops would have done. Examples of such behaviour were the despatch of arms and State recognition.

305. The opinion was then expressed that while foreign intervention was undesirable, it was very difficult to foresee and constituted an historical inevitability. Consequently, any effort to lay down rules on the matter would by their very implementation tend to recognize intervention indirectly and to complicate it by raising various subjects for polemic such as legitimacy, designation of the aggressor, etc. Should a stipulation covering that hypothesis be deemed desirable, the speaker would agree to the above-mentioned proposal provided that a clause were inserted specifying that it would be applicable only to those conflicts not covered by existing law or by other stipulations of the suggested additional protocol.

306. After certain stands had been taken on the interplay of the law of intervention and international law, some other experts firmly reminded the Commission that *international humanitarian law applied to the aggressor State and to the victim State alike*, in so far as their rights and obligations were concerned, and that no discrimination could be made in that respect on the grounds of the real or presumed guilt of a State.

307. Some experts pointed out that volunteer participation in internal conflicts did not change the character of the conflicts. On the other hand, participation of mercenaries in internal conflicts was a flagrant violation of the principle of non-interference and of the basic provisions of the Hague Conventions.

308. An ICRC representative then thanked the speakers for their statements. While fully understanding the legal objections raised against the ICRC attitude, he felt that, in the event of foreign intervention on an appreciable scale—since the hypothesis under consideration involved “ operational armed forces ”—humane sentiments would prevent it from concurring in view of the *appalling discrimination in treatment* between, on the one hand, captives granted prisoner-of-war status and, on the other, captives whose only safeguard was the minimum guarantees of Article 3. The reason why only the minimum guarantees of Article 3 applied in the latter

case was that the captives concerned would have fallen into the hands of governmental troops and could therefore be condemned for the mere fact of having belonged to the armed forces. For that reason the ICRC had, in the case of Vietnam, requested that all the Geneva Conventions be applied. In other cases, the Parties themselves had asked for a broadening of the applicable provisions of international humanitarian law. The ICRC representative considered that its experience clearly indicated the path to be followed.

* * *

309. A representative of the ICRC, when opening the debate, also mentioned the matter of the application of the Geneva Conventions to the United Nations Peace-Keeping Forces.

310. Several statements were made on that subject and it was suggested that it be included in the agenda of the IVth Commission.

311. The representative of the Secretary-General stressed that the problem of applying the Geneva Conventions to the United Nations Peace-Keeping Forces was not a topical issue and should not therefore concern the Conference. In fact, each regulation issued by the Secretary-General for those forces, such as that currently applying to the peace-keeping forces in Cyprus, implied not only respect for the letter of international Conventions applying to the conduct of military staff but also the most scrupulous respect for the very spirit of such treaties. Moreover, the question of the training and discipline of the military personnel belonging to the United Nations Peace-Keeping Forces had hitherto been considered the responsibility of the various governments which provided national contingents and not that of the Organization. The problem of the United Nations Peace-Keeping Forces had, for some time, been under study by a United Nations special committee on peace-keeping operations. That committee had submitted reports to the General Assembly.

Chapter VII

WARS OF LIBERATION

312. An ICRC representative introduced the subject by reminding the experts that the problem of conflicts resulting from the struggle of peoples for independence and self-determination had been dealt with at great length in the United Nations Secretary-General's report A/8052 on respect for human rights in time of armed conflicts (paras. 195 to 237). He stressed that the main difficulty was to characterize conflicts, a matter which was all the more important as the extent of the international humanitarian law that could be applied depended on it. The ICRC representative outlined the various trends that could currently be

³¹ CE Com II/16, pp. 64 and 65.

observed in writings on international law, three of which he singled out for particular attention, namely:

1) Some experts consulted by the ICRC considered that wars of liberation were not international conflicts. They considered, in fact, that a situation of armed conflict was characterized, not by subjective and teleological notions, but by the existence of certain material elements. They wondered, moreover, why "freedom fighters" enjoyed broader protection than rebels fighting in any other sort of non-international armed conflict.

2) Other experts tended to consider wars of liberation as international wars. They based that opinion on several criteria, and especially on the fact that the notion of self-determination was given expression in the United Nations Charter, was considered as a right in international covenants on human rights, and was included in the Declaration on the principles of international law concerning friendly relations and co-operation among States consistent with the United Nations Charter. They also recognized that insurgents had full status in international law, basing their opinion partly on the fact that a conflict of this kind brought belligerents of different States into opposition.

3) Certain experts stressed the fact that United Nations resolutions had been adopted in connection with specific cases and they expressed the hope that recognition might be given to the general nature of the principle of self-determination. Only then would conflicts originating from refusal to allow people to exercise the right of self-determination assume an international character. They thought it possible to go even further and to consider that the violation of any human right laid down in an international instrument could result in a conflict of an international nature.

313. The ICRC representative read out and commented on the ICRC proposal on page 33 of document V.

314. Following the ICRC statement, the representative of the United Nations Secretary-General stated that the problem of protecting civilians and combatants in conflicts resulting from the struggle of peoples for their freedom and their self-determination had been examined in detail in Chapter X of document A/8052 in response to the request made in General Assembly resolution 2597 (XXIV). The chapter dealt with the legal designation of the conflict and made particular reference to the General Assembly resolutions. Mention had been made, *inter alia*, of General Assembly resolution 2625 (XXV), a "Declaration on the Principles of International Law concerning Friendly Relations and Co-operation between States"; resolution 2627 (XXV), a "Declaration made on the occasion of the 25th Anniversary of the United Nations", and resolution 2708 (XXV) concerning the "Application of the Declaration on the Granting of Independence to Colonial Countries and Peoples". As stressed in paragraph 212 (document A/8052), the

question of deciding the legal designation of conflicts resulting from the struggle of peoples for their freedom and self-determination remained a basic and delicate question that the General Assembly itself and the States parties to the Geneva Conventions might wish to examine. At the same time, while expressing concern that humanitarian treatment be assured for combatants and civilians involved in such conflicts, the Secretary-General's report contained a whole series of concrete suggestions which might be incorporated into a general instrument on armed conflicts or into the minimum rules to be applied to such conflicts.

315. All the experts who had taken the floor thanked the ICRC for the objectivity of its report.

316. One expert felt that it would be necessary to overcome a basic contradiction if some legal solution were to be found to the problem.

317. Firstly, it did not appear that Article 2, common to the Geneva Conventions, was applicable to the situations under consideration, as many people had maintained. That provision was, in fact, basically simple and did not need to be interpreted. It only applied to conflicts between States. It was his opinion that the term "Power" which appeared in the wording of that provision left no room for doubt. It concerned conflicts between States. In the light of the analysis of that Article 2, it could not conceivably be applied except in the case of a conflict between political entities which had become States. It automatically came into play without any stand being taken on the aims of the Parties in conflict.

318. However, account had to be taken of a second element, namely the development of the idea that peoples had a right to self-determination. That idea was embodied in the United Nations Charter, in international covenants on human rights, in many resolutions adopted by the United Nations General Assembly, in particular in the resolution adopted by the fifteenth United Nations General Assembly on the granting of independence to colonial countries and peoples, and also in the Declaration on the principles of international law concerning friendly relations and co-operation among States. Consequently, when a people had to fight for the right to self-determination, it was difficult to deny that the matter was one of international interest, as the international community had several times stated. The situation was, therefore, international but not inter-State. There existed, so to speak, a situation of transition, and positive international law did not offer any criteria making it immediately possible to move from the potential to the actual. There was most certainly a strong tendency for international law to become a law among peoples but that had not yet happened and positive international law remained an inter-State law.

319. It would, however, be overstepping the *ratio legis* of Article 2 (3) to consider that that article

governed the envisaged situation. Moreover, if Article 3 only covered situations of non-international armed conflict, it did not apply either. What was to be done in such a situation? The creation of an ideal international humanitarian law doomed to remain a dead letter was to be avoided. Account had to be taken also of the interests of the Parties to a conflict. It was by no means sure that to apply the law in its entirety was in the interest of people under domination. The two Parties would in any case feel the need to apply humanitarian law during the actual fighting. Following that line of thought the question was raised whether the basis of a solution might not lie in the concluding of special agreements.³²

320. Another solution might however be to undertake, as soon as the hostilities reached certain proportions and a certain duration, to treat belligerents as combatants in so far as was possible, subject to reciprocity and without prejudice to the legal status of the Parties to the conflict. The main point was to understand that if the States were expected to commit themselves, they would do so only to cover the treatment of combatants and of civilians without in any way affecting the legal status of the Parties to the conflict.

321. Most of the experts of Commission II who spoke on the subject considered that wars of liberation were international armed conflicts.

322. They justified their opinion with many criteria: the principle of self-determination had been given expression in the United Nations Charter and in international covenants on human rights; several resolutions adopted by the United Nations General Assembly required that international humanitarian law be respected. They stated, moreover, that that principle had been reaffirmed in the Declaration on the principles of international law concerning friendly relations and co-operation among States in accordance with the United Nations Charter. One expert laid particular stress on two of the principles of that Declaration: firstly, that prohibiting the use of force, and secondly that concerning the right of peoples to self-determination. There was no doubt as to the international nature of armed struggles covered by those two principles.

323. One expert argued that such struggles could be considered as international conflicts as they were the struggles of a people trying to cast off foreign domination. During the Second World War, it was agreed that conflicts involving the expulsion of an occupant were of an international nature. Should a distinction be made between occupation that had lasted since the end of the XIXth century and that which had lasted only 4 or 5 years? Would the criteria for defining the conflict really be so different if the occupation had lasted a long time? The expert considered that it sufficed for the people to take up arms against an occupying State regardless of the

length of the occupation. Such peoples were potential subjects of law in accordance with Article 2.

324. Two other experts who analysed the historical causes of such situations came to the same conclusions. They had no doubt that it was owing to assistance treaties between States concluded during the colonial era that certain Powers had managed to overcome those peoples that were now struggling for freedom. They felt that that historical fact should not be forgotten.

325. Lastly, other criteria according to which wars of liberation could be considered as international armed conflicts lay in the fact that the interpretation of the common Article 2 of the four Geneva Conventions no doubt made it possible to maintain that that provision covered the situations envisaged. Indeed the terminology used in Article 2, that is "High Contracting Parties", did not refer to a constituted State and that was a generally accepted principle of international law. Consequently, a war of liberation was a conflict between two Parties subject to international law. A third Party therefore had the right, according to one expert, to conclude any sort of international contract with a population struggling for its freedom.

326. It was then queried whether it would be expedient to coin a definition of war of liberation for the purpose of applying international humanitarian law to it.

327. Attention was drawn to the fact that it was not strictly necessary to do so, especially as such a definition already existed, so to speak, in the Declaration on the principles of international law concerning friendly relations and co-operation among States in accordance with the United Nations Charter.

328. Those experts in favour of the idea that wars of liberation were international conflicts examined certain other aspects of such conflicts.

329. They stressed the fact that peoples struggling for self-determination frequently received international aid in all forms, whether purely economic or involving the despatch of war material. They insisted that such aid was quite legitimate, as considered by the United Nations General Assembly which had, on several occasions, asked its Member States to provide moral and material support for liberation movements. They pointed out that many countries kept more or less permanently in touch with such movements. Those experts considered that such a situation might strengthen the international nature of the conflict.

330. They then considered the nature of violated law.

331. They held the view that the right of peoples to self-determination—which was a collective right—could not be considered on the same footing as those

³² CE Com II/5, p. 62.

other rights granted in international covenants on human rights, such as the right to free speech and religious freedom, which were personal. Only violation of the former could bring the conflict into the international arena. Furthermore, wars of liberation could not originate in the defence of an individual right; the only acceptable criterion was national liberation.

332. Approaching the problem from a different angle, certain experts preferred that the determination of armed conflicts—international or non-international—should be based on material and objective criteria. They pointed out that if a certain tendency to consider as international conflicts arising out of the right of peoples to self-determination manifested itself within the international community, the fact remained that that opinion was not shared unanimously. The resolutions on the subject adopted by the General Assembly or other organs of the United Nations were no more than the concrete expression of certain aspirations and did not sanction a generally recognized principle of international law or reflect the practice of States. They further pointed out that the resolutions had remained largely inoperative.

333. Proceeding further, one expert objected to the justification of the international character of conflicts being based on Article 1 (2) of the United Nations Charter, which did not constitute an acceptable point of departure in that regard; for, he added, the aim of the United Nations was the promotion of good relations between nations, but that principle applied in inter-State relations.

334. In the opinion of this expert, it was a breach of the principle of Article 1 (2) of the Charter to apply it, in the name of self-determination, to certain governments in a matter concerning their internal conduct.

335. Moreover, the Declaration relating to the principles of international law dealing with friendly relations and cooperation between States, according to the Charter of the United Nations (General Assembly resolution 2625 (XXV)), in no way changed the position of wars of liberation in positive international law.

336. Those who maintained that wars of national liberation should be covered by international humanitarian law evoked the idea of *the just war*, a concept to be precluded from such law. Furthermore, to limit the concept to specified geographical zones and to specific motives would lead to a *lex specialis*, contrary to the very conditions in which the law should be applied. Motivation could not serve to remove the conflict from one category to another. If motivation were propounded as a basis of law, one would naturally be led to claim that a victim of aggression had a right to humanitarian protection superior to that of the aggressor: a very dangerous proposition, if it were accepted that any selective discrimination between motives could only lead to prejudicial consequences. It was neither humane nor just to let people hope they

would enjoy special protection when the existing state of the law did not provide for it.

337. In the same sense, an expert made the point that to accept the idea of *war of liberation* as a legal term could lead to discrimination, vis-à-vis governments, between certain rebels and others who, by reason of the cause for which they were fighting, should benefit from a prisoner-of-war status and not incur punishment from their government. That would be to ignore the fact that every government considered rebellion against its authority as a grave and reprehensible act. Moreover, even if the idea of war of liberation could provide material for a political slogan of little use from the humanitarian point of view, it would be no less appropriate to seek standards likely to afford a minimum of protection to those affected by that type of conflict.

338. To the same end, another expert suggested that the adoption of a principle implying that all the rules were applicable to a war of liberation, would amount to according a status to a minority striving to overthrow the government of the country.

339. The position of the experts inclining to the latter view was challenged on several points. One expert emphasized that the fact of considering such conflicts as international conflicts could in no case constitute encouragement to participate in a struggle. Subject peoples would always struggle to gain their independence: that was a natural reaction. Moreover, it was not a question of encouraging rebellion but of protecting those who were suffering.

340. Even if the United Nations Charter should not constitute an adequate basis for defining conflicts deemed to be international conflicts, other instruments, in particular international covenants relating to human rights, had been drawn up since then.

341. As regards motivation, an expert remarked that even where internal conflicts were concerned, there was no desire to apply the rules to bandits; that already impinged on the sphere of motivation.

342. The question of rules applicable in specified areas of the world was raised. Several experts expressed opposition to the idea. They hoped that general rules would be drawn up and applied where people were struggling for independence.

343. Finally, several experts stressed that “freedom fighters” had shown willingness to apply international humanitarian law, as indicated by the relevant ICRC report. Clearly that posed the *problem of reciprocity*, a problem that must be considered with a degree of flexibility; indeed, reciprocity did not mean that respect for the rules would have the same complexion on one side as on the other; it was necessary to take into account the possibilities on either side. What was important was that there should be the greatest

possible measure of reciprocity, and that it should be applied in all good faith.

344. At this stage of the debate, an ICRC representative made mention of the fact that for many years the ICRC had been giving aid to victims of such conflicts and that it was its earnest concern to ensure improved protection. (See Doc. V, p. 28 ff.)

345. He called attention to the fact that the United Nations resolutions calling for the application of the Geneva Conventions in these situations often remained a dead letter.

346. It had to be acknowledged that it was difficult to impose such an obligation on a government. In practice, the application of international humanitarian law as a whole in such situations was the more difficult as such struggles rarely reached the stage of a non-international armed conflict, which was well characterized.

347. Regarding the application of the Fourth Convention, it was asked whether the authority in power could really be considered the occupying power for the entire civilian population.

348. The ICRC's view was that the legal solution in no way prejudiced the special steps that the international community, and in particular the United Nations, wished to continue to take for the benefit of captive combatants and of other victims of these conflicts; in this respect, he wondered whether the United Nations could not envisage measures other than the resolutions adopted until now. In his report (para. 229), the Secretary-General had made special mention of a declaration of fundamental humanitarian rules which should be observed by both sides in such conflicts and recommended or proposed to the Parties without raising the question of the designation of the conflict.

349. The ICRC representative declared furthermore that it would continue to envisage approaches by the Secretary-General or influential governments, through

diplomatic channels, to the Parties to these conflicts to obtain, for all practical purposes, an improvement of conditions for captured combatants on both sides, as well as for the populations stricken by hostilities.

* * *

350. A large majority of the experts who spoke on this issue considered it necessary to strengthen the protection of victims of struggles for self-determination and independence.

351. Certain among them thought that the problem of the protection of victims could be solved by reaffirming the international character of those struggles, which would entail the application of international humanitarian law as a whole and oblige the authorities in power to assume their obligations.

352. One expert suggested that they should rather study the second solution envisaged by the International Committee in Document V, p. 32, which *a priori* it had not adopted.

353. Another expert had in view a special provision to be included in a protocol and which was similar in tenor to the proposal set out in CE Com. II/1-3.

354. In the view of another expert, it was possible to overcome the difficulty either by means of special agreements³³ or by inducing governments to pledge themselves to treat "freedom fighters" in a humane manner, subject to the condition of reciprocity, from the moment that the conflict assumed a certain importance and was of a given duration—without modifying the status of the Parties to the conflict.

355. Other experts considered it necessary to establish a body of basic rules affording at least a minimum of protection to the victims.

356. Finally, one expert supported the ICRC proposal.

³³ CE Com II/5, p. 62.

ANNEXES

to the Report of Commission II concerning the Protection of Victims of Non-International Armed Conflicts.

CE/Plen. 2 bis

CANADIAN DRAFT PROTOCOL TO THE GENEVA CONVENTIONS OF 1949 RELATIVE TO CONFLICTS NOT INTERNATIONAL IN CHARACTER

prepared and submitted
by the Canadian Experts

CHAPTER I — APPLICATION

Article 1 — Purpose and Application of the Protocol

1) The present provisions, which reaffirm and supplement existing provisions of the Geneva Conventions of August 12, 1949 (hereinafter referred to as “the Conventions”), apply to all cases of armed conflict occurring in the territory of one of the High Contracting Parties, involving government military forces on one side and military forces whether regular or irregular on the other side, and to which common Article 2 of the Conventions is not applicable.

2) The present provisions shall apply as a minimum with respect to all persons, whether military or civilian, combatant or non-combatant, present in the territory where a conflict such as is described in (1) of this article is occurring.

3) The Parties to the conflict should endeavour to bring into force all or part of the provisions of the Conventions not included in this Protocol.

4) Each Party to the conflict should arrange for, or agree to, the presence in territory under its control of impartial observers who shall report, to the Party who has so arranged for or agreed to their presence, on the observance by persons in the territory under the control of that Party of the provisions of this protocol. Where such action has not been taken by a Party to a conflict other States may request and encourage that Party to consider having recourse to such impartial observers.

CHAPTER 2 — SPECIAL PROTECTION

Article 2 — Protection and Care

1) All persons who are wounded or sick as well as the infirm, expectant mothers, maternity cases and children under fifteen, shall be given particular protection and respect.

2) They shall in all circumstances be treated humanely and, with the least possible delay, shall receive the care

necessitated by their condition, without any adverse distinction.

Article 3 — Search and Recording

1) At all times and particularly after an engagement, Parties to the conflict shall without delay take all possible measures to search for and collect the wounded and the sick, to protect them against pillage and ill-treatment and to ensure their adequate care.

2) Parties to the conflict shall endeavour to communicate to each other all details on persons who are wounded, sick or who have died while in their hands.

Article 4 — Role of the Population

1) All persons shall respect the wounded and the sick and in particular shall abstain from offering them violence.

2) No one may ever be molested or convicted for having nursed the wounded or sick.

Article 5 — Medical Personnel

1) Military and civilian medical personnel and chaplains shall, in all circumstances, be respected and protected during the period they are engaged. If they should fall into the hands of an adverse Party they shall be respected and protected. They shall receive all facilities to discharge their functions and shall not be compelled to perform any work outside their mission.

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) Personnel so authorized 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 so entitled to wear the emblem.

Article 6 — Medical Establishments and Transports

1) Fixed establishments, including blood transfusion centres and mobile medical units, both military and civilian, which are solely intended to care for the wounded and the sick, the infirm and maternity cases, shall under no circumstances be attacked; they and their equipment shall at all times be respected and protected by the Parties to the conflict.

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

may be marked by the emblem of the red cross (red crescent, red lion and sun) when being used solely for such purpose.

3) With authorization from a Party to the conflict, fixed and mobile medical establishments and units shall be marked by means of the emblem of the red cross (red crescent, red lion and sun) on a white background.

Article 7 — Evacuation

The Parties to the conflict shall endeavour to conclude local arrangements for the removal from areas where hostilities are taking place of wounded or sick, infirm, expectant mothers, maternity cases, and children under fifteen.

Article 8 — Medical Assistance by Other States

1) An offer of medical assistance by another State to aid in the relief of any persons suffering as a consequence of the conflict shall not be considered as an unfriendly act or have any effect on the status of the Parties to the conflict.

2) An offer by another State to receive wounded, sick or infirm persons, children under fifteen, expectant mothers and maternity cases on its territory shall not be considered as an unfriendly act or have any effect on the status of the Parties to the conflict.

Article 9 — The Distinctive Emblem

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

CHAPTER 3 — RELIEF

Article 10 — Consignment of Medical Supplies, Food and Clothing

1) Each Party to the conflict shall allow the free passage of all consignments of medical and hospital stores, essential foodstuffs, clothing and tonics intended only for non-combatants belonging to or under the control of another Party to the conflict.

2) The obligation of a Party to the conflict to allow the free passage of the consignments is subject to the condition that that Party is satisfied that there are no serious reasons for fearing that the consignments may be diverted from their destination or intended use.

3) The Party to the conflict which allows the passage of the consignments may make such permission conditional on the distribution to the intended beneficiaries being made under the local supervision of the ICRC or other appropriate agency.

4) Consignments shall be forwarded as rapidly as possible and the Party to the conflict which permits their free passage shall have the right to prescribe under what reasonable technical arrangements the passage is to be allowed.

5) The Party to the conflict to whom a consignment has been made may not refuse it unless the consignment is not needed to meet the needs of those persons for whose benefit it was intended.

6) An offer of supplies as described in paragraph 1 of this article shall not be considered as an unfriendly act or have any effect on the status of the Parties to the conflict.

Article 11 — Applications to Relief Organizations

1) All persons belonging to or under the control of a Party to the conflict shall have the right to make application to the ICRC, the National Red Cross (Red Crescent, Red Lion and Sun) Society or other organization in the country in which the conflict is occurring which might assist them.

2) The several organizations referred to in this article shall be granted by the authorities, within the bounds set by military or security considerations, all facilities for carrying out their purposes.

CHAPTER 4 — HOSTAGES, PILLAGE, REPRISALS AND TORTURE

Article 12 — Hostages, Pillage and Reprisals

- 1) The taking of hostages is prohibited.
- 2) Pillage is prohibited.
- 3) Reprisals against persons and property are prohibited.

Article 13 — Prohibition of Torture, etc.

All persons shall be treated humanely and in particular no Party to the conflict shall, with respect to persons belonging to it or under its control, take any measure of such a character as to cause them physical suffering or extermination. This prohibition applies not only to murder, torture, mutilation and medical or scientific experiments not necessitated by the medical treatment of such persons, but also to any other measures of brutality whether applied by civilian or military agents.

CHAPTER 5 — PENAL PROCEDURES

Article 14 — Individual Responsibility, Collective Penalties

No person may be punished for an offence he or she has not personally committed. Collective penalties, and likewise all measures of intimidation or of terrorism, are prohibited.

Article 15 — Passing and Execution of Sentences

With respect to any accused person, the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, including the right to be represented by counsel, which are recognized as indispensable by civilized peoples, are prohibited.

Article 16 — Appeals

A convicted person shall be advised of his rights of appeal or petition and such rights shall not be denied except in accordance with laws normally applicable thereto.

Article 17 — Presence of Red Cross Representatives

1) Representatives of the National Red Cross (Red Crescent or Red Lion and Sun) Society and of the International Committee of the Red Cross, shall have the right to attend the trial of any accused person, unless the hearing is, as an exceptional measure, to be held *in camera* in the interests of security.

2) Where an accused is to be tried for an offence arising out of his participation in the conflict, the punishment for which may be death, the National Red Cross (Red Crescent or Red Lion and Sun) Society and the ICRC shall be notified of the date and place such trial is to take place.

Article 18 — Death Penalty

1) Death sentences imposed upon persons whose guilt arises only by reason of having participated as combatants in the conflict shall not be carried out until after hostilities have ceased.

2) Death sentences imposed on any person shall not, in any event, be carried out until the convicted person has exhausted all means of appeal and petition for pardon or reprieve.

CHAPTER 6 — PERSONS IN RESTRICTED LIBERTY

Article 19 — Persons Whose Liberty Has Been Restricted

All persons who for any reason are confined, detained, interned or whose liberty has otherwise been restricted shall be humanely treated, and in particular shall:

a) receive necessary medical attention including periodical medical examinations and hospital treatment;

b) be allowed to practise their religion and to receive spiritual assistance from ministers of their faith;

c) be adequately fed, clothed and sheltered, having particular regard to their health, age, condition and employment;

d) be enabled to receive individual or collective relief sent to them;

e) be removed if the area in which they are confined, detained, interned or restricted, becomes particularly exposed to dangers arising out of the conflict;

f) if female, be confined in separate quarters under the direct supervision of women; and

g) shall be allowed to send and receive letters and cards, except that where it is considered necessary to limit the number of letters and cards sent by a person the said number shall not be less than two letters and four cards monthly.

Article 20 — Interned Families

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life. Internees may request that their children who are left at liberty without parental care shall be interned with them and, except where compliance with the request would be contrary to the interests of the children concerned, it shall be granted.

Article 21 — Placing and Marking of Internment Camps

1) Places of internment shall not be set up in areas particularly exposed to dangers arising out of the conflict.

2) Whenever military considerations permit, internment camps shall be indicated by the letters IC placed so as to be clearly visible in the daytime from the air. The Parties to the conflict may, however, agree upon any other system of marking. No place other than an internment camp shall be marked as such.

3) The Parties to the conflict shall give each other information concerning the location of internment camps.

CHAPTER 7 — GENERAL

Article 22 — Dispersed Families

A Party to the conflict shall, to the extent possible, take or permit such measures or enquiries as shall facilitate the renewing of contact by members of families dispersed by or during the conflict. Parties to the conflict in particular shall encourage the work of organizations engaged on this task provided they conform to security regulations.

Article 23 — National Red Cross and Other Relief Societies

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

Article 24 — Responsibilities

Each Party to the conflict is responsible for the treatment accorded by its agents to all persons belonging to it or under its control irrespective of any individual responsibility which may be incurred.

Explanatory Notes—Draft Protocol submitted
by the Canadian Experts
Conference Document CE/Plen. 2 bis

Article 1 (1) (2)

The provisions are intended to apply to all persons, whether combatant or non-combatant, present in the territory where the conflict is occurring. By making the

protocol applicable to all persons in the territory the necessity of having to deal with or define the status of rebel forces is avoided.

Article 1 (3)

The protocol would not take the place of any of the Geneva provisions, and to that end Parties are urged to attempt to bring into force all or part of the other provisions of those Conventions not included in this protocol. Parties are also urged, of course, at their discretion, to arrange for the presence of impartial persons to observe the implementation of the terms of this protocol.

Articles 2-13

The substantive provisions of the protocol, the provisions respecting wounded and sick and medical personnel as suggested by the ICRC in their Draft Additional Protocol on page 33 of Volume VII of the preparatory material, have, for the most part, been incorporated into our draft. We have, however, made small changes which will be evident from a reading of our protocol as amended. For instance, we have not included a paragraph 3 in our Article 2 similar to paragraph 3 of Article 1 of the ICRC draft, because prohibition against interference in the health and well-being of persons is dealt with as a matter of normal protection in Article 13 of our draft. We have also provided for the special protection of children under 15 in paragraph 1 of Article 2. Paragraph 2 of Article 8 of our draft which introduces the idea of voluntary evacuation to third States of certain categories of persons is a new idea.

Article 5 (2) (3) (4)

We have included as ancillary to the section on protection of medical personnel, two sections relating to the use, by those medical personnel authorized to do so by the Parties to a conflict, of the red cross emblem and identity card. This has been done because we believe that all medical personnel, whether military or civilian, who are authorized to do so by a Party to a conflict must, in order to ensure their protection and the humane treatment of those they are attending, have the right to be clearly identified by a recognized international symbol.

Article 6

The sections in the ICRC draft protocol on medical establishments and transports have been expanded somewhat, and include provisions relating to the means of distinguishing them through the use of the red cross symbol.

Article 7

A section similar to Article 17 of the Fourth Geneva Convention has been included in our protocol, extending to non-international conflicts the provision calling upon Parties to a conflict to endeavour to evacuate the wounded and sick from areas of hostilities.

Article 8

We have also included provisions clarifying the status and intentions of States which offer medical assistance to

one of the Parties to a conflict, reasserting that such an offer is not to be considered as an unfriendly act, and does not affect the status of Parties.

Article 9

We have retained the ICRC section reaffirming the status of the red cross emblem.

Article 10 (1)

In the belief that some obligation should rest on each of the Parties to a conflict to permit the passage through its territory of medical supplies and essentials of life to non-combatants in territories controlled by other Parties, we have adapted Article 23 of the Fourth Convention to apply to non-international situations. Once again, the obligation imposed by this provision is similar to, and no more onerous than, that imposed by Article 23 of the Fourth Convention.

Article 10 (2) (3)

It continues to allow all Parties to exercise their discretion in determining that the supplies are in fact intended solely for the use of non-combatants before their free passage is permitted. The idea contained in paragraph 5, respecting the rights of the intended beneficiary to refuse the offer of assistance, is new. A paragraph 6 has been added by way of an amendment to our draft which reads:

“ 6) An offer of supplies as described in paragraph 1 of this article shall not be considered as an unfriendly act or have any effect on the status of the Parties to the conflict. ”

Article 11

There can be little doubt that the valuable and impartial relief work carried out in past conflicts by the ICRC has proved most helpful and useful to all Parties concerned. In order to continue their work, and to make provision for its extension in non-international conflict situations, we have included the concept expressed in Article 30 of the Fourth Geneva Convention, deleting, of course, the references in that Article to Protecting Powers.

Articles 12, 13

Articles 33 and 34 of the Fourth Convention have been included in our protocol so that the protection against pillage, reprisals and the taking of hostages is extended as a basic humanitarian right to cover all conflicts. Similarly, the provisions of Article 32 of the Fourth Convention have been included to prohibit the causing of physical suffering, extermination, torture, mutilation, brutality and medical experimentation not necessitated by medical treatment. Article 13 as amended also provides a general obligation respecting humane treatment of all persons.

Articles 15, 16, 17, 18

We have also included those provisions found in Articles 3, 33, 72, 73 and 74 of the Fourth Convention relating to collective penalties, the passing and execution of sentences without due legal procedures, the right to

appeal, and the right of the ICRC to attend or have notice of trials of accused persons. Based on Article 75 of the Fourth Convention, a provision has been included requiring Parties to a conflict to delay executions of those condemned to death by reason only of their participation in a conflict until all means of appeal are exhausted, and until hostilities have ceased. This, of course, would not prevent executions for conduct which would amount to a war crime in an international conflict. Nor would it impede a State's action with respect to persons found guilty of organizing the uprising.

Articles 19, 20, 21, 22

Believing that those provisions in the Fourth Geneva Convention which relate to persons whose liberty has been restricted could and should be a part of any basic standard of humanitarian law applicable to all conflicts, we have taken from Articles 38, 82, 83, and 92 those provisions which will extend to non-international conflict situations the minimum standard of humane treatment now guaranteed by the Geneva Conventions to persons whose liberty has been restricted as a consequence of an international conflict. We have also included a provision relating to the receipt and transmission of mail. These provisions offer the elementary requirements of humane treatment through medical attention, religious freedom, material essentials of life, and basic elements of family life, and set out the manner of placing and marking of internment camps. Included as well in this protocol is the concept of Article 26 of the Fourth Convention, which calls for measures to be taken in so far as possible to reunite separated members of families.

Articles 23, 24

Finally, we have included the concept now contained in Article 63 permitting National Red Cross, Red Crescent, Red Lion and Sun Societies and other humanitarian organizations to continue their humanitarian activities, subject only to exceptional measures applied by the Parties for reasons of security. We have taken from Article 29 of the Fourth Convention the provision placing on the Party itself responsibility for the treatment accorded all persons under its control, irrespective of any individual responsibility which may be incurred.

We are hopeful that we have put forward only those basic provisions of the Geneva Conventions which Parties to a conflict would consider already required by existing international law. We believe that these provisions, or some similar rules, must cover all persons directly affected by any form of armed conflict, and that such rules *can* do so without jeopardizing the sovereignty of States.

CE/Com.II/1

Proposal Submitted by the Norwegian Experts

The Norwegian Experts submit for consideration by Committees II and III the question of whether the proposed additional Protocol to Article 3 relative to non-international armed conflicts, the proposed Protocol

relative to the protection of civilian population in time of armed conflict and the proposed Protocol interpreting Article 4 of the Third Geneva Convention as well as the proposed draft model rules covering guerrilla warfare, could be replaced by *a single international instrument* applicable in all armed conflicts.

In the opinion of the Norwegian Experts such an international instrument could take the form of an additional Protocol to the third and fourth Geneva Conventions.

CE/Com.II/2

Outline for a draft additional Protocol to the Third and Fourth Geneva Conventions as proposed in document CE/Com.II/1

- 1) Basic rules applicable in all armed conflicts.
- 2) Special rules for the protection of civilian populations in all armed conflicts.
- 3) Special rules for guerrilla warfare:
 - a) Rules for the protection of civilian populations in guerrilla warfare.
 - b) Rules concerning status as prisoners of war in guerrilla warfare.

CE/Com.II/3

Draft article to be incorporated in an additional protocol to the Third and Fourth Geneva Conventions, submitted by the Norwegian Experts

In accordance with Article 2 of the Geneva Conventions relative to the protection of war victims of August 12, 1949, the said Conventions shall apply as a whole in the following situations of armed conflict:

1. Wars of national liberation conducted by peoples under colonial or alien domination or foreign occupation struggling for their liberation and self-determination.
2. In any armed conflict where the armed forces of one of the High Contracting Parties participate in military operations on the territory of another High Contracting Party.
3. In any other armed conflict where hostilities have reached a level making the application of the Conventions a humanitarian necessity.

CE/Com.II/4

Proposal by the Spanish Experts

When, in armed conflicts not of an international character, the adversary of the constitutional Power is in effective control of a considerable area of the territory of the State and has an organized and functioning administration and organized armed forces under regular command, both Parties shall apply all the rules of the Geneva Conventions of August 12, 1949, and similar or related legal instruments applicable in international and non-international armed conflicts.

Proposal submitted by the French Experts

In the event of non-international armed conflict involving military operations on a scale and of a duration comparable to those of a conflict between States, the Parties to the conflict, in liaison with the ICRC and, if need be, on the basis of model agreements drawn up by the ICRC, should negotiate special agreements with a view to applying to the conflict other provisions of the present Convention or any other special provisions deemed relevant.

CE/Com.II/6

Proposed amendment submitted by the Belgian Experts

(See p. 46 of Document V)

“ The Regulation envisaged might include ”:

(1) To para. 1 of the proposed regulation (p. 46)

*After “ hostile organized action ” add the words:**“ of a military nature under a responsible authority ”.*(2) To para. 2 *add:**“ if those factions are fighting each other to overthrow the authorities in power or to found a new State by secession ”.*

CE/Com.II/8

Definition of non-international armed conflicts for a draft protocol to the Geneva Conventions of 1949, submitted by the United Kingdom Experts

This Protocol shall apply to any armed conflicts not of an international character occurring in the territory of a Party to the Geneva Convention(s) of 1949 and to this Protocol and in which:

- i) organized military forces are engaged in armed conflicts with each other; and
- ii) each such military force is subjected to an internal disciplinary regime appropriate to military forces; and
- iii) such disciplinary regime requires, as a minimum, the observance by the members of the military force concerned of the rules contained in this Protocol.

CE/Com.II/9

Proposal submitted by the Indonesian Expert

Without the intention to convert the definition as described in Article 3, the Indonesian Expert would like to propose to set up the understanding of a “ conflict not of an international character ” as follows:

“ For the purpose of this Convention, a non-international armed conflict is a conflict which occurs in a country where a number of people raise their weapons against the lawful government of that country and which becomes a civil war. Foreign assistance accepted

by those fighting against the lawful government, or the presence of foreign elements on their side, shall not change the nature of said conflict as a non-international conflict. ”

It is not the intention of the Indonesian expert to submit a draft definition, but rather the essence which should be contained in a definition. He is at the Commission's disposal in what way the above-said clarification should be set up.

CE/Com.II/10

Proposal submitted by the Austrian Experts

The Austrian Experts suggest that an internal conflict be defined as “ a conflict not of an international character in which government military forces are engaged in hostilities against military forces of any sort and in which military methods and weapons are employed ”.

CE/Com.II/11

Definition of Non-International Armed Conflicts for the Draft Protocol to the Geneva Conventions of 1949, submitted by the Italian Experts

The present Protocol shall apply in the event of armed conflict not of an international character in the territory of one of the contracting States, provided that the Party or Parties in conflict, other than the government of the State concerned, fulfil the following conditions, namely:

1. the armed forces of that Party or of those Parties in conflict should be organized and subject to internal discipline of a kind which ensures the observance of the rules contained in this Protocol;
2. that Party or those Parties in conflict should exercise effective authority over some part of the territory.

COMMENT

The above draft article takes into account four requirements, namely:

- 1) to allow for conflicts which, whilst not of an international character, entail military operations which—as mentioned in the French proposal CE/Com.II/5—are comparable with those occurring in a conflict between States;
- 2) to describe those conflicts directly, thereby specifying the conditions which should obtain in order for the Protocol to be applicable;
- 3) to cover both civil war (e.g. war between insurgents and the government in power) and the possibility of *armed struggle between factions*;
- 4) to specify only the conditions which should be fulfilled *by the Parties to the conflict, other than the governments of States*, reference to the conditions to be fulfilled by the government being superfluous.

Three points should be made clear:

- 1) it does not seem necessary to make any reference to the *duration of the armed conflict*, this element being implied by the conditions proposed above;

- 2) the additional Protocol, if worded along the lines proposed above, *would not restrict the present scope of Article 3* which would therefore be applicable in other non-international conflicts;
- 3) the Italian proposal does not cover the eventuality of a non-international conflict in which the parties, other than the government, *would have recourse only to guerrilla warfare*. Article 3, as it stands, and other *strictly humanitarian* provisions will be applicable.

CE/Com.II/12

Proposal submitted by the Australian Experts

The ICRC has made it clear to this Commission that it does not wish to see the words "armed conflict not of an international character", at the beginning of Article 3, restricted or otherwise interfered with in any way, but simply seeks the establishment of criteria that are sufficiently obvious to make it difficult for a government to deny the existence of an armed conflict within its territory. One way of leaving intact the opening words of Article 3 and at the same time achieving the object of the ICRC is to supplement the Article by a provision in the proposed Protocol on the following lines:

"This Protocol shall apply to any armed conflicts not of an international character etc. and for the purposes of this Protocol the words 'armed conflict not of an international character' *include—*"

There would then follow the definition arrived at by the Drafting Committee.

CE/Com.II/13 rev.1

Report of the Drafting Committee to Commission II

The Drafting Committee were charged with the task of attempting to arrive at a definition of an "armed conflict not of an international character" for the purpose of a Protocol to Article 3 common to the four Geneva Conventions of 1949. The Committee had before it the following drafts, amendments, and other proposals, which, for ease of reference, are identified by the Delegations presenting them:

The Proposal submitted by the Norwegian Experts
(Doc. CE Com. II/3, as explained in Docs.
CE Com. II/1 and 2)

The Proposal submitted by the Canadian Experts
(Doc. CE Plen/2bis, as explained in Explanatory Notes)

The Proposal submitted by the Spanish Experts
(Doc. CE Com. II/4)

The Proposal submitted by the French Experts
(Doc. CE Com. II/5)

The Proposal submitted by the Belgian Experts
(Doc. CE Com. II/6)

The Proposal submitted by the United Kingdom
Experts

(Doc. CE Com. II/8)

The Proposal submitted by the Indonesian Expert
(Doc. CE Com. II/9)

The Proposal submitted by the Austrian Experts
(Doc. CE Com. II/10)

The Proposal submitted by the Australian Experts
(Doc. CE Com. II/12)

The Committee became aware at the outset that these proposals actually concerned two separate but related matters. The greater number of them were directed to a definition of "armed conflict not of an international character" for the purposes of a protocol to Article 3 of the Conventions. Other proposals, such as the one submitted by the Norwegian experts, looked to widening the scope of application of the Geneva Conventions of 1949 as a whole and thus related basically to Article 2. The Committee accordingly gave separate consideration to the two matters.

In presenting this report, the Committee wish to make it clear that they regard the texts set forth in this report as no more than a satisfactory starting point for further debate on the question of definitions. The experts on the Committee have varying views on the matters dealt with and reserve their positions on each of the texts.

The Committee considered that their principal function was to bring about such reconciliation of the applicable texts as might be practicable in order to produce a composite definition of the types of conflict to which the Protocol to Article 3 would apply. The Committee have also thought it desirable to refer to certain variants on the main text which might be taken into account in the discussions in the Commission.

It was understood that certain types of conflict that could be called "classical civil wars" might or might not call for the application of the Geneva Conventions of 1949 in their entirety or in substantial part and that the draft prepared by the Committee would not make express reference to that situation.

The Committee were generally of the view that an "armed conflict not of an international character" should be identified by objective characteristics rather than according to the intentions of the participants or other subjective criteria. There was also widespread agreement that the text should exclude what are, relative to international armed conflict, lower levels of internal conflict, even if carried on for political purposes. Thus riots, banditry, isolated acts of terrorism, common crimes, and the like would not be embraced within the definition.

The Committee submit the following draft of a definition of the scope of application of the Protocol:

This Protocol shall apply to any case of armed conflict not of an international character which is carried on in the territory of a High Contracting Party for a substantial period of time and in which

- (1) *organized armed forces carry on hostile activities in arms against the authorities in power and the authorities in power employ their armed forces against such persons, or*

- (2) *organized armed forces carry on hostile activities in arms against other armed organized forces, whether or not the authorities in power employ their armed forces for the purpose of restoring order.*

Several members of the Drafting Committee were of the view that additional elements should be added to the definition in paragraph (1), such as (a) the occupation of a part of the territory of the State by the armed forces carrying on hostilities against the authorities in power or (b) the subjection of such armed forces to a system of military discipline.

It would naturally be for the Commission to decide whether the second category of conflicts, as defined in paragraph (2), should be included within the definition.

The view was also expressed within the Drafting Committee that there should be a third category of non-international armed conflicts to which the Protocol would also apply, to be described as follows:

- (3) *hostilities have reached such a level as to make application of the Protocol a humanitarian necessity.*

The Committee were of the view that it would be desirable to include in the Protocol an express provision to the effect that the instrument leaves the scope and application of Article 3 of the Conventions altogether unimpaired.

CE/Com.II/14

Rules for International Humanitarian Relief to the Civilian Population in Disaster Situations created by armed conflicts. Proposal submitted by the Norwegian Experts

1. Relief by impartial international humanitarian organizations for civilian populations in disaster situations created by armed conflicts should be treated as a humanitarian and non-political matter and should be so organized as to avoid prejudicing sovereign and other legal rights in order that the confidence of the Parties to a conflict in the impartiality of such organizations may be preserved.
2. Disaster relief for the benefit of civilian populations is to be provided without discrimination and on the basis of the relative importance of individual needs and in the order of emergency. The offer of such relief by an impartial international humanitarian organization should not be regarded as an unfriendly act.
3. Parties to this Protocol are requested to exercise their sovereign and other legal rights so as to facilitate the transit, admission and distribution of relief supplies provided by impartial international humanitarian organizations for the benefit of civilian populations in disaster areas.
4. All authorities in disaster areas should facilitate disaster relief activities by impartial international humanitarian organizations for the benefit of civilian populations.

Proposal submitted by the Danish Experts

To provide for basic protection applicable in all circumstances—including “in time of public emergency which threatens the life of a nation”—it could be envisaged in a possible protocol concerning non-international conflicts to refer to the central provisions in the United Nations Covenant on civil and political rights. This could be done for instance by inserting, as the first article, words to the following effect:

(Article 1)

“The States Parties to this Protocol, recognizing their obligations under existing international law to protect fundamental freedoms and human rights, agree to refrain from derogations from these rights and freedoms, except in the case of a public emergency which threatens the life of a nation. Any derogation shall be notified to the other States Parties to the Protocol and shall not exceed the scope strictly necessary to deal with the situation. In no case may the human rights provisions referred to in Article 4 (2) in the UN Covenant on civil and political rights be derogated from.”

In the same article one might also refer to the Standard Minimum Rules for the Treatment of Prisoners adopted by ECOSOC in August 1957.

By suggesting this article we would at the same time underline that the basic human rights provisions also apply in time of internal disturbances.

The second article could then read:

(Article 2)

“In case the public emergency referred to in Article 1 involves government military forces on one side and military forces—whether regular or irregular—on the other side, the following (additional) rules shall apply: (This second article would be followed by the proposals put forward by ICRC and the Canadian experts.)

One could contemplate a third article stipulating:

(Article 3)

“that the Parties to the conflict could not deny to the ICRC or to other humanitarian bodies the right to carry on their activity, except in case of situations involving strict military necessity;
that the application of the preceding provisions should not affect the legal status of the Parties to the conflict;
that Article 3 common to all four Geneva Conventions of 1949 remain in force as between the Contracting Parties, irrespective of the present Protocol.”

CE/Com.II/16

Proposal concerning Intervention in Non-International Conflicts—submitted by the United States Experts

When, in the course of a non-international armed conflict, the armed forces of a party to the Geneva

Conventions engage in hostilities with the armed forces of another Party to the Conventions, the Conventions as a whole shall apply to those armed forces in their relations with each other and with persons protected by the Conventions.

CE/Com.II/17

Joint Proposal by the French and Belgian Experts

(Document CE/Com. II/13 rev. 1, p. 3 para. 3)

This Protocol shall apply to any case of armed conflict not of an international character, of evident intensity, waged in the territory of a High Contracting Party for a substantial period of time and in which organized armed forces carry on hostile activities against the authorities in power and the authorities in power employ their armed forces against such persons.

The present Protocol shall not apply to riots, banditry, isolated acts of terrorism, crimes, offences and the like under State laws.

CE/Com.II/17b

Amendment to CE/Com. II/17, proposed by the Ethiopian, Belgian and French Experts

The last line of the first paragraph should be completed as follows:

...“the said forces being subject to the rules of discipline appropriate to armed forces.”

CE/Com.II/18

Proposed Amendment to Document CE/Com. II/13 rev. 1, submitted by the Rumanian Experts

The draft definition on page 3 should read as follows:

“If a State recognizes the existence and nature of an armed conflict on its territory, and also the various features mentioned below, this Protocol shall apply to any case of armed conflict not of an international character which is carried on in the territory of a High

Contracting Party for a substantial period of time and in which

- (1) organized armed forces carry on hostile activities against the authorities in power and the authorities in power employ their armed forces against such persons,
or
- (2) organized armed forces carry on hostile activities against other organized armed forces, whether or not the authorities in power employ their armed forces for the purpose of restoring order.”

CE/Com.III/19

Proposal originally submitted to Commission III by the Norwegian Experts

(Doc. III, Title II, Ch. 3)

Basic principles and rules for the protection of civilian populations in all armed conflicts:

1. Fundamental human rights continue to apply in situations of armed conflict.
2. In the conduct of military operations, every effort should be made to spare civilian populations from the ravages of war and all necessary precautions should be taken to avoid injury, loss or damage to the civilian populations.
3. Civilian populations should not be the object of military operations. Neither should they be used as a shield for military operations.
4. Civilian populations, or individual members thereof, should not be the object of reprisals, forcible transfers or other assaults on their integrity.
5. Dwellings and other installations that are used only by civilian populations should not be the object of military operations.
6. All Parties to an armed conflict shall facilitate the provision of international humanitarian relief to civilian populations.

RULES APPLICABLE IN GUERRILLA WARFARE

INTRODUCTION

357. In introducing the subject an ICRC representative first pointed out that guerrilla warfare was a method of waging war and not a category of conflict. Guerrilla warfare had been greatly developed in the 20th century, in wars of independence, in resistance to occupying powers, and even in internal conflicts. In many instances the ICRC succeeded in bringing about improvements in conflicts involving guerrilla warfare, and accordingly included the question in the report on Reaffirmation³⁴ which it submitted to the XXIst International Conference of the Red Cross, Istanbul, 1969. Following that Conference, the ICRC held a series of consultations with experts—on a private, personal basis—on the subject of guerrilla warfare. This initiative was reflected in part in the “Preliminary Report on the Consultations with Experts regarding Non-International Conflicts and Guerrilla Warfare” (D1953), which the ICRC presented to the Secretary-General of the United Nations for the 25th session of the General Assembly.

358. The two main proposals of the ICRC concerning guerrilla warfare appeared in Document VI, “Rules Applicable in Guerrilla Warfare”:

1. an *Interpretative Protocol of Article 4A(2) of the Third Geneva Convention, 1949*, relaxing the conditions to be fulfilled by combatants in order to obtain, in the event of capture or surrender, the status of prisoners of war (see Document VI, pp. 6-23 and 52-53);

2. *Standard Minimum Rules* (see Document VI, pp. 52-55) which could be proposed whenever, in the course of a guerrilla-type conflict, the Parties fail to agree on a definition of the conflict. The rules would comprise:

— a *preamble* explaining the scope of application of the rules, the method of acceptance (“triangular”) through the intermediary of the ICRC and not directly between the Parties, which often do not recognize one another and even strive to deprive the opposing Party of any claim to legitimacy;

— a section on the *definition of combatants* and their treatment in the event of capture or surrender; this section would reproduce the conditions under which combatants on either side would be entitled to be treated as, or have the status of, prisoners of war;

— a section on the *definition of civilian population* and its protection in the event of occupation or against the dangers arising from hostilities; this section would reproduce Articles 16-34 of the Fourth Geneva Convention as well as the principles set forth in Resolution XXVIII (Vienna) and General Assembly Resolution 2444 (XXIII) of the United Nations.

— a third section on the *principles and rules to govern behaviour between combatants* (“Types of hostilities”) which would reproduce Articles 22-41 of the Hague Regulations together with a number of special considerations bearing on weapons, reprisals, hostages, protection of the wounded and sick;

— a final section on *procedures for the implementation of the rules*, which would refer to the activities of the ICRC and the Red Cross generally, mainly as regards visiting, and rendering assistance to, conflict victims; it would also refer to control procedures, particularly the despatch of international observers. The final section would likewise contain a provision to the effect that acceptance of the rules should in no way be construed as excluding the application of other provisions of national or international law that would better protect conflict victims.

359. In conclusion the ICRC representative observed that, granted the peculiar difficulties of guerrilla situations, it should not be impossible—as experience showed—to formulate, and impose respect for, certain basic humanitarian rules, and thereby to obviate situations in which, for lack of an objective and realistic codification of rules, the same tragic experiences were repeated in successive conflicts.

* * *

360. In the ensuing discussion, experts offered the following comments:

Chapter I

GENERAL COMMENTS

361. The experts reached agreement on the present importance of guerrilla warfare. In common with the

³⁴ Report on Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts, Geneva, May 1969.

ICRC, they stressed the point that *it was not a category of conflict but a form of warfare* that can manifest itself alike in internal and in international conflicts.

362. While one expert thought it pointless to attempt a definition of guerrilla warfare, several others touched upon certain of the characteristics of this form of warfare which, though of ancient date, gave rise today to an acute problem. It resulted from the inequality of the means for making war of the two Parties. One expert described guerrilla warfare as the "poor man's warfare", waged by those who could oppose neither aircraft nor modern weapons to the invader or the occupying party.

363. The problem also resulted from the extent of the support which guerrilla fighters frequently received from the civilian population. Accordingly, some experts linked guerrilla warfare to the idea of a mass rising of the civilian population and a defence of the people in enemy-occupied territory. Another expert, however, referred to the possibility of intimidating manoeuvres in certain cases. To those elements one should add the clandestine and intermittent nature of guerrilla warfare and its extreme mobility—a factor guaranteeing the efficacy of its operations and offsetting its technical inferiority—as well as the importance of sabotage and espionage. Two experts, citing chapter and verse, showed that guerrilla warfare had developed into a military doctrine on which several States had based their defence policy, while one of the two experts drew a clear distinction between the standard form of guerrilla warfare, implying a popular defence against a foreign invader—for example, the Spanish people's resistance to Napoleon—and revolutionary guerrilla warfare, which had a doctrinal origin and devoted the means at its disposal to the overthrow of the established order in a country. The same expert added that it would be difficult for combatants having recourse to guerrilla warfare of this type to forgo methods which characterized it and on which its efficiency depended.

364. Most of the experts, though conscious of the use of guerrilla warfare in both those types of conflict, deemed it expedient to confine themselves to *studying the phenomenon within the compass of international conflicts*; non-international conflicts would be studied in a different context. (For that reason, guerrilla warfare figures in the second part of the present report, the first part having to do with non-international armed conflict.) Nevertheless, one expert pointed out that guerrilla warfare might with advantage afford scope for reflection on several questions common to both internal and non-international armed conflicts. He did, however, state, in common with other experts, that guerrilla warfare was employed in particular in wars of national liberation, that is, in cases where entire communities of civilians were denied the enjoyment of their basic rights; it was the only means for such communities to

defend themselves as human beings and as civilians. One expert stressed that there were three main possibilities to be taken into consideration regarding guerrilla warfare and that applicable humanitarian law should be drawn up in terms of those three possibilities, namely:

1. that guerrilla warfare occurred during international conflict and was therefore a method of warfare waged against one of the Parties to such conflict;
2. that guerrilla warfare occurred during internal armed conflict, as a method of warfare waged on the side of or in liaison with insurgents;
3. that the formation of guerrilla units by one of the Parties to such a conflict was characteristic of an internal armed conflict.

365. A number of experts turned their attention to *the question of reciprocity*. Some considered that any regulatory control of the activities of guerrillas should conform to the principle of reciprocity, and it would not be proper to give preferential treatment to one of the Parties. If guerrillas were granted certain rights, they should, by that token, also assume obligations: to abide by the laws and customs of war; to refrain from attacking civilian populations, as such, and non-military targets. One expert pointed to an omission in this respect in the ICRC proposal, while others stressed the inequality in the means of waging war at the disposal of the two Parties to a conflict, an inequality that was crucial to the problem; the latter group of experts considered it undeniable that guerrilla activities corresponded, at the very least, to specific situations that differed from standard situations; on that ground, they advocated the idea of *relative reciprocity*. One expert pointed out that the Geneva Conventions did not insist upon the idea of reciprocity in such situations, since the problem of reciprocity was not based on the application of the principle by the two Parties to a conflict. He added, however, that where an internal conflict was concerned, one could speak of reciprocity only within the context of national law.

366. Another expert, likewise endorsing the idea of relative reciprocity, was of the opinion that it should be assessed not only by reference to the means at the disposal of each of the Parties, but within the general context of international law, which prohibited *aggression*: if aggression occurred, it might entail reprisals, including recourse to guerrilla warfare.

367. Some experts sought to discard the idea of reciprocity and, to that end, cited the following passage from the Reaffirmation report of the ICRC (p. 83): "Reciprocity is a *de facto* element which should not be neglected. It can play an important role in the effective application of the rules concerned. To admit this element, which is more of a sociological order, as a principle of international law in the field considered would, however, be very

dangerous". They likewise cited a doctrinal writing on the need for developing implementation machinery other than reciprocity, *inter alia* international supervision.

368. The question of the *implementation of humanitarian rules* in guerilla warfare which several experts pointed out would be taken up in Commission IV prompted some preliminary comments. In the first place, one expert stressed the highly important role of bodies entrusted with supervising the application of humanitarian law upon the capture of combatants, particularly the importance of international supervision of proceedings in which prisoner-of-war status might be denied to captured persons.

369. An expert endorsed the idea of control suggested by the ICRC in its standard rules (Document VI, pp. 54, 55). Another expert proposed the inclusion in the rules of a provision patterned on the text according to which "an impartial humanitarian body such as the ICRC could offer its services to the Parties to a conflict".

370. Several experts formally proposed not to draw up a *special protocol* for guerilla warfare, but to insert in the protocol already envisaged provisions taking account of the conditions peculiar to that kind of warfare.

371. In conclusion, many experts regretted that there was not more time for the Conference to study the important problems to which guerilla warfare gave rise. Some of them felt that the thoughts they had expressed on the matter were far from representing a complete and definitive approach to the problem.

Chapter II

PRISONER-OF-WAR STATUS FOR GUERRILLEROS

372. An expert pointed out that a great step forward had been made in 1949 by the establishment of the four conditions of Article 4. The cumulative conditions imposed by that Article could not always, however, be fulfilled by guerrillas; *hence a number of experts considered it expedient to adapt them to this form of combat*, in order to avoid any inequality of treatment among captured combatants.

373. They advocated in a general way that prisoner-of-war status be granted all participants captured in combat, proceeding from:

- 1) the idea of membership of a responsible organization, and
- 2) the observance by the guerrillas of the laws and customs of war.

374. (1) *The idea of organization* could, according to some, cover simple membership of a group. Other experts were categorical in demanding a firm link between the guerrilla organization and the State Party to the conflict. An expert stressed, furthermore, the responsibility of the State supporting the guerrillas. One expert stated that the absence of organization or the existence of secret societies was unacceptable for the maintenance of humanitarian values; the identity of the leader of the group should be known at least to his subordinates. Likewise, the idea of organization should exclude treachery, which leads to an escalation of violence, the taking of hostages and reprisals. Based on discipline it should be able to prove itself by identification, for example a membership card, by analogy with Article 17, para. 3, of the Third Convention. According to several experts, this idea should comprise an organization commander responsible for his subordinates; the obligation for military commanders to give precise directives to their troops should be extended to guerrilleros.

375. For the same reason, an expert stated that guerilla warfare should be conducted like conventional war, that is to say, in a military manner. He referred in this respect to the terms of his proposal,³⁵ which took this necessity into account.

376. (2) *Observation of the laws and customs of war*. By this must be understood behaviour conforming to the essential principles of international law, in particular Article 23 of the Hague Regulations. Some experts felt that the group as a whole should apply the laws and customs of war.

377. The experts in favour of improved protection for guerrilleros felt that the two other conditions of Article 4 (A) (2), namely the requirement of *a permanent distinctive sign* and *the carrying of arms openly*, was in contradiction to the very nature of guerilla warfare.

378. One expert had some doubts as to whether the problem of the protection, under the Third Geneva Convention, of combatants in guerilla warfare could be solved through a Protocol interpreting Article 4 of the Third Geneva Convention. The conditions to be satisfied in order to obtain status as a prisoner of war as contained in this provision, seemed to him to contradict the very logic of guerilla warfare, and he doubted that this contradiction could be eliminated by an interpretation of the Article. Conditions to be satisfied in order to obtain prisoner-of-war status for combatants in guerilla warfare should, in the view of this expert be independent of Article 4 of the Third Geneva Convention. He stressed that there may be a close interrelationship between inhuman treatment of captured guerilla fighters and desperate actions by such combatants. According to this expert,

³⁵ CE Com II/10, p. 62.

the only absolute condition which should be maintained for status as a prisoner of war in guerrilla warfare—when hostilities had reached a certain level—was membership of a guerrilla organization. By guerrilla organization he meant a movement with a high command capable of ensuring generally the execution of its orders, including as far as possible respect for the laws and customs of war. This was the same condition as proposed by the Secretary-General in UN doc. A/8052, para. 191 (b) (ii). The expert supported his view by referring to General Assembly resolution 2676 (XXV) and Directive 381-46 of the United States Military Assistance Command, Vietnam. The same expert raised the problem of the protection of members of regular forces captured by guerrilla units. Guerrilla units seldom had permanent control over sufficient territory to establish prisoner-of-war camps, and they often lacked the material means to conform with other provisions of the Third Geneva Convention. In UN doc. A/8052, para. 181, the Secretary-General suggested that guerrilla units in such cases might hand over prisoners to an allied or neutral State as authorized in the Convention. The expert was of the opinion that this was a situation where the ICRC or the UN could and should assume a more direct responsibility for the prisoners and not limit themselves to the traditional control functions.

379. According to another expert, even though it could not be denied that the conditions embodied in Article 4(A) (2) needed review, many such prisoners could already be reached by the application of existing law, especially section 3 of the said Article 4 which dealt with “members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power”.

380. Moreover, the provision known as the Martens Clause, which formed part of positive law, should allow for account to be taken of the development of the principles of international law as currently being drawn up by the United Nations (Res. 2676 (XXV)). Finally, he believed that account should be taken of the opinions of guerrilla movements when drawing up rules about that kind of fighting.

381. Other experts felt that no exceptions for guerrilla fighters could be made to the current terms of Article 4(A) (2) as the distinctive sign was an essential factor of loyalty and the open carrying of arms was the most appropriate means of distinguishing a combatant from a civilian, such a distinction being in the nature of protection for civilian population and a basis on which to apply humanitarian law. They could not see how the status of combatant could, in fact, be displayed without those conditions. In that connection, one expert used the following phrase “a guerrilla fighter may camouflage himself or blend into the countryside but he may not disguise himself as a civilian nor may he melt into the crowd”. Moreover, one expert felt that any derogation

from those conditions for the benefit of guerrilla fighters could only be for political motives, alien to the concept of humanitarian law.

382. One of the experts put forward the observation that, as the status of combatants was determined by Article 1 of the Hague Regulations, amendments to Article 4 of the Third Convention would only affect the category of prisoners of war and not that of combatants. He therefore wondered whether the term “combatant” should be used for this category of persons, and observed, in addition, with regard to the first paragraph on page 52 of Document VI, that, according to Article 3 of the Hague Regulations, armed forces could consist of combatants and non-combatants.

383. Another expert considered that the amendments proposed by the ICRC did not allow the protection by the Third Convention of a greater number of combatants than those in the present context.

384. The Secretary-General’s representative referred to the concrete suggestions made in that part of the Secretary-General’s report (A/8052) devoted to the guerrilla problem, and which were based on the premise that that form of combat constituted an existent fact that called for new specific rules. It was in that sense that the drawing up of a protocol or of a new convention relative to combatants, containing the measures to be taken with regard to guerrilleros, was suggested in para. 193 of the Secretary-General’s report (A/8052). A problem which should be treated by suitable rules in this legal instrument concerned the conditions enumerated in Article 4 of the Third Convention as the ones that had to be fulfilled for obtaining prisoner-of-war status, and which should be eased. Another important question was to ensure an efficacious procedure for the implementation of new provisions.

385. In the context of the *non-international armed conflict*, the majority of the experts were very cautious in their views as to the possibility of applying the Third Convention to captured guerrilleros. They proposed rather to mention *humane treatment in general* (food, accommodation, legal guarantees), in accordance with the wording of common Article 3 of the four Geneva Conventions, or in accordance with the minimum rules elaborated by the United Nations for the treatment of detainees. Others maintained that guerrilleros taking part in a non-international conflict were liable under the penal laws of the country in which they operated.

Chapter III

PROTECTION OF CIVILIAN POPULATIONS

386. Several experts expressed their lively concern at the fact that the civilian population constituted the

main victim of this form of struggle, as much because of operations conducted by the guerrilleros as because of those conducted by governmental anti-guerrilla forces, which were not always able to distinguish between their adversaries and non-combatants, particularly since guerrilleros sometimes employed civilians as a shield.

387. Relations between guerrilleros and civilians were, as a matter of fact, quite complex; they depended on the guerrilleros' behaviour, on the civilian population's feelings of allegiance, and so forth. Sometimes the civilian population also served as a network furnishing information for guerrilleros; at other times, it was compelled to suffer the vexatious measures or the reprisals that they inflicted.

388. Other experts maintained that, where entire civilian populations were forcibly denied the exercise of their collective and individual rights, guerrilla warfare became the only method open for them, in self-defence, to attain their denied rights.

389. Two experts expressed their unqualified approval of the proposals formulated on page 53 of Document VI with regard to the civilian population; two others considered that they would not be able to come to any conclusion before taking cognizance of the resolutions put forward by Commission III.

390. One expert said that the Contracting State, in accordance with Article 5 of the Third Geneva Convention, had no right, under the pretext of difficulties, to distinguish guerrilla fighters from the civilian population and to attack and impose collective reprisals on the latter.

391. Another expert mentioned also that guerrilleros must not attack the civilian population, or even non-military objects. Moreover, terrorization of civilians and the systematic intimidation of innocent populations must be reprovved and censured. Several experts thought that any dissimulation that would blur the fundamental distinction between military forces and civilians could not be tolerated.

392. Finally, some experts made the observation that, by not applying the death penalty to captured combatants, the escalation of violence might be avoided or impeded.

Chapter IV

METHODS OF WARFARE

393. According to one expert, the question of the behaviour of combatants was, together with the status of combatants, one of the essential problems of guerrilla warfare. He proposed that the discussion of

that item (and more particularly the discussion of Document IV) be referred to Commission III. Others maintained that the existing rules were rigid and inadequate and that they did not in any way allow the guerrillas to follow them. They therefore had to be made more flexible and sufficiently general so that they could be applied in practice. One expert unreservedly supported the proposals made by the ICRC (in Document VI, page 54) while another pointed out that that point involved the whole of international humanitarian law.

394. Referring to torture, one of the experts considered that it did not suffice to prohibit it but that an end had to be put to it in practice and a special instrument might be drawn up in which States committed themselves to that end.

395. Finally, two experts mentioned the difficulties involved in applying the rules concerning the behaviour of combatants in *non-international armed conflicts*, while another suggested that the taking of hostages might be explicitly forbidden, during such conflicts. Such action was already forbidden according to the terms of Article 3, as were reprisals.

Chapter V

CONCLUSIONS AND PROPOSALS

396. As had already been indicated, most of the experts were not in favour of creating a special set of rules for guerrilla warfare by means of a special protocol. On the other hand, however, many experts did support the idea of standard minimum rules as mentioned on pages 50 *et seq.* of Document VI. They would be rules that could in the case of conflicts, be proposed when no agreement could be reached by the Parties involved.

397. A wish was expressed that the relationship between any such possible rules and the Geneva Conventions be clarified. It was also felt that item 5 of the draft rules ("final provision") on page 55 of Document VI was very important and that it should be included in any general body of rules.

398. It was pointed out that *Art. 5 (2) of the Third Geneva Convention* applied whenever there was any doubt as to the definition of captured combatants. That article provided that such persons would benefit from the protection of Convention III "until such time as their status has been determined by a competent tribunal". There already was a considerable measure of guarantee for guerrilleros. Without actually "sanctifying" the guerrilla fighter, as one expert put it, the experts split into two main groups which were both in favour of treating captured guerrilleros better. One group wished to see the application

of the minimum guarantees of Article 3—the other wished to see some kind of modification of the conditions of Article 4 (A) (2) of the Third Convention.

399. One of the experts, referring to the text of the ICRC proposals on pages 50 to 55 of Document V, made the following proposals:

— With reference to the definition of “combatants” he felt it necessary to add to the words “armed forces” in paragraphs 1 and 2, the words “of a Party to a conflict”;

— in paragraph (b) on page 52, the words “which should be fixed and recognizable at a distance” should be added at the end to give the following wording: “clearly display their combatant status by openly bearing their arms and by making clear their distinction from the civilian population either by wearing a distinctive sign or by any other means which should be fixed and recognizable at a distance”;

— in the third paragraph on page 52, the words “Combatants... taken by the enemy” should be replaced by “Combatants... having laid down their arms”.

400. Another expert pointed out that the terms defining combatants (the first para. on page 52) and those defining the civilian population (second para. on page 53) did not correspond to those on page 52 of Document III which should read:

“Persons belonging to the armed forces or organizations attached thereto *or* (not “and”) participating directly in military operations should be considered as combatants”, and:

“Persons not belonging to the armed forces or any organization directly attached thereto *or* (not “and”) who do not participate directly in military operations should be considered as members of the civilian population”.

401. Other corrections requested by many experts included the replacement of the outdated reference to “civilized peoples” at the top of page 53 by some more adequate term.

402. An expert proposed that the next Conference study the question of guerrilla warfare not as a separate subject but within the framework of a study on the protection of combatants using this method of warfare in international and national armed conflicts.

403. The representative of the ICRC closed the discussion and stressed that, owing to the limited time available, the debates had been of a purely preliminary nature. He agreed with the two comments on the definition of combatants and the civilian population as well as with the allusion to “civilized peoples” which had been taken from Article 3 and which could be replaced by the words “adequate guarantees”. He called for a looser definition of the involvement of a Party in a conflict in order to cover liberation movements which, he pointed out in replying to an expert, had in the past been consulted and would certainly be consulted again in future.

404. In any event, any suggestion on this matter would be welcomed by the ICRC.

REPORT OF COMMISSION III

Rapporteur: Mr. C. ZEILEISSEN (Austria)

INTRODUCTION

405. According to the agenda proposed by the ICRC, Commission III was to consider problems relating to the protection of the civilian population against the dangers of hostilities and to the behaviour of combatants. In addition, the Conference Bureau, as suggested by the ICRC, assigned to that Commission the study, on the basis of documentary material transmitted to the Conference by the U.N. Secretary-General for that purpose, of the protection of journalists on dangerous missions.

406. The Conference Bureau drew up a working programme to include the general study of these various subjects. The programme was modified in the course of the meetings. The Commission devoted eleven meetings to the examination of Part One of Document III, three meetings to Part Two, two to the protection of journalists, one to the study of Document IV, and one to the examination of the Commission's report.

* * *

407. The Chairman of Commission III, Dr. S. Dabrowa (Poland) had been elected by the Conference meeting in plenary session. The Commission's first action was to elect other officers, namely: Professor H. Sultan (U.A.R.), Vice-Chairman—who took the chair at two of the Commission's meetings—and Dr. C. Zeileissen (Austria), Rapporteur; Mr. G. Malinverni, legal expert of the ICRC, was Secretary. The subjects for discussion were introduced and commented by the representative of the ICRC, Mr. R.-J. Wilhelm, Mr. J. Mirimanoff-Chilikine and Mr. J. de Preux, legal experts of the ICRC.

* * *

408. The present report is in summary form and is impersonal; the names of countries and experts are shown only in the proposals submitted in writing which are attached to the report. Also attached is a list of the experts who participated in the Commission's work, as well as the basic rules proposed by the ICRC. The basic rules proposed for the protection of the civilian population may be found in Document III, Part I, Title IV.

PART ONE

PROTECTION OF CIVILIAN POPULATION AGAINST DANGERS OF HOSTILITIES

Chapter I

GENERAL DISCUSSION

(Document III, Part I, Title I, Chapters 1 to 3;
and Title III, Chapter 6)

409. The general discussion began towards the end of the first meeting on Wednesday afternoon, 26 May, and continued in the second and third meetings. It mainly concentrated on questions raised in the relevant chapters of Document III and on the ICRC proposals on pages 124 to 128 of the English text.

410. In their introduction, the ICRC experts stressed the need to reaffirm and develop the rules relating to the protection of the civilian population, in spite of all the difficulties which may have to be overcome. They referred to the progress which had been made since the 1956 Draft Rules, such as Resolution XXVIII of the XXth International Conference of the Red Cross, and U.N. General Assembly Resolutions 2444 (XXIII) and 2675 (XXV), all of which had been adopted unanimously. The rules proposed by the ICRC were designed to meet such situations as those which had been encountered in the armed conflicts which had occurred since the Second World War (See Doc. I, "Introduction", Chap. IV/1).

411. Several problems were specifically put to the experts: the field of application of the basic rules; the situations covered; the links those rules would have with prevailing legal instruments; the degree of urgency to be attributed to the study of illicit targets, that is to say, objectives which it is forbidden to attack.

412. In general, the necessity of reaffirming and developing provisions for the protection of the civilian population was emphasized, particularly because there was no instrument embodying that subject as a whole. The representative of the United Nations Secretary-General considered, moreover, in the light of the texts adopted by the General Assembly, that it was generally agreed that the plight of a suffering population should be alleviated as much as possible in time of war. The view was held that a protocol should take into account the various situations and forms of warfare (conventional, guerrilla, blockade) and three of the experts stressed the objective, namely: the protection of the civilian population

against the dangers arising from hostilities. Consequently, one of them suggested that the title of the protocol should be changed from "Protection of the Civilian Population in Time of Armed Conflict" to "Protection of the Civilian Population Against the Dangers Arising from Hostilities". Another expert was of the opinion that, in this respect, a repetition of the provisions of the Fourth Geneva Convention should be avoided.

413. One expert stated that it had been wise, in the study and in the concrete proposals contained in Document III, to have stressed the illicit objectives, namely civilians and civilian objects. His view was shared by another expert who expressed some doubt about the value of proposals relating to military objectives.

414. Many experts spoke on the importance and necessity of applying the law in force. There was, in their opinion, no doubt that the principles contained in several resolutions of the United Nations General Assembly, the International Conference of the Red Cross and the Institute of International Law were the expression of positive law, both written and unwritten. Some experts considered that implementation of the law should be given priority over its reaffirmation and development; another insisted that the implementation of provisions in force should be subject to scrutiny. Yet another proposed studying the legal provisions which are violated during armed conflicts and the motives behind such violations. Another expert stated that consideration should also be given to the covenant on civil and political rights containing minimum rules for protection and not only to the rules of positive law. A representative of the ICRC pointed out that there were already rules restricting the conduct of military operations and that, therefore, what was especially required was to reaffirm and develop them.

415. One expert emphasized that the development of standards of civilian population protection during international armed conflict should be based both on the prevailing general international law forbidding aggression and on humanitarian law developments. In his opinion, the matter involved was increased protection for the civilian population of a State which was the object of aggression.

416. Several experts said that proposals should be realistic and based on experience in order to be

applicable to actual situations; the law in force could be better applied through national and international measures. A question which arose was: what experience should be taken into account? The ICRC representative pointed out that some military authorities had taken a long time to realize that indiscriminate bombardment of towns during the Second World War did not, in fact, achieve military ends; he was of the opinion that where a method of warfare had not been put to the test, the adage *in dubio pro reo* should be taken as a guide; in other words, in the interest of the civilian population, it should not be used.

417. Referring to the field of application of the fundamental rules of the Protocol for the protection of the civilian population, a representative of the ICRC stated that that instrument had been devised for all armed conflicts, without distinction between those which were international and those which were not. This approach was based on the relevant international resolutions, which did not make this distinction concerning the civilian population, and it corresponded with the views expressed by the Secretary-General in his second report (A/8052, paras. 41 and 42), as well as by all the experts consulted by the ICRC in 1970. Among the experts who gave an opinion there appeared a wish supporting the idea of covering all armed conflicts, though another tendency expressed doubts on the subject. It should be noted that this divergence of opinion appeared several times in the debates. The representative of the Secretary-General of the United Nations stated that, in this regard, he completely shared the views of the ICRC.

418. The question of linking the Protocol with the legal instruments in force was also taken up in the general discussion. A representative of the ICRC drew attention to the three possibilities which could, theoretically, be envisaged: first, to link it with the Fourth Geneva Convention of 1949; secondly, to link it with the Regulations annexed to the Hague Convention of 1907 (Convention Regulations No. IV); thirdly, a separate Protocol could be devised. Some experts supported the first possibility, others the last one; the second, however, received no approval. Differing views were expressed later in this regard.

419. In general, the experts hoped that precise preliminary provisions would be submitted to them in order that they might express their views with a full knowledge of the facts. One of them felt that it might be dangerous to split the Protocol into basic and operative rules because the provisions embodied in the latter might be considered limited, which would restrict their scope. He therefore preferred not to proceed with the separation. Several suggestions were made concerning the penal provisions. One expert proposed that violations of the basic rules should no longer be subject to prescription; the representative of the United Nations Secretary-

General expressed the hope that a provision might in any event stipulate the prohibition of the death sentence for minors and pregnant women and that another might reaffirm the principle of the non-retroactivity of penal law.

420. Several questions of substance were dealt with also. They concerned three groups of problems. Firstly, illicit objectives, covering the distinction, definition and protection of the civilian population and property; secondly, illicit methods, concerning weapons, famine and terrorisation; and thirdly, measures for strengthening the protection of the civil population concerning the respect and safeguard of such a population, and zones of refuge.

421. Even though, as was pointed out by many experts, it was very difficult, in practice, to make a distinction between civilians and persons engaged in military operations in the new forms of armed conflict, it was agreed that such distinction fell within the ambit of positive law. Some experts considered that it was necessary to define the civilian population. One of them expressed a preference for the second amended ICRC version³⁶ and approved the idea of providing a definition, with concrete examples, of non-military objectives. In discussing the protection to be granted to civilians, many experts considered that account should be taken of the different situations in which civilians might be found. They might be either inside or outside the fighting area and they might participate in the military effort or even in actual military operations. While one expert felt that protection of the entire population should be considered, others believed that various types of persons should be taken into account. The representative of the United Nations Secretary-General mentioned refugees and journalists and another expert distinguished three types of persons who quite obviously had nothing to do with the fighting: owing to their condition (children, women and old people), owing to their function (medical, para-medical and civil defence staff), and owing to their situation (wounded, sick and prisoners).

422. Several experts spoke on the question of arms. While admitting the importance of the problem for the civilian population, they differed as to how the matter should be tackled. Some of them believed that that subject was principally the concern of other international bodies such as the SALT, the CCD and the United Nations General Assembly, while others believed that the prohibition of weapons of mass destruction should be ceaselessly proclaimed. Some experts expressed the wish that those arms that were not specifically examined by those bodies should be considered by the Commission. One expert proposed that the ICRC draw up a document on the introduction into the humanitarian law of armed conflicts of a provision prohibiting the use of weapons

³⁶ CE Com. III/6, p. 90.

of mass destruction. He underlined the fact that the necessity to reinforce the concept of civilian population made it essential to prohibit such weapons.³⁷ It was, in the opinion of one expert, necessary once again to invite those States which had not adhered to the 1925 Geneva Protocol, to do so. Famine and terrorism were mentioned among the methods considered as illicit owing to their effects on the civilian population.

423. When discussing ways of strengthening the protection of the civilian population, some experts mentioned respect and safeguarding measures. Such measures imposed reciprocal obligations on all parties to a conflict. The representative of the United Nations Secretary-General stated that the establishment of refuge zones, already feasible in peace-time, had been advocated in the Secretary-General's Report A/8025, Chapter IV. In his opinion, that was the most effective way to guarantee fully the protection of the population, and he pointed out that the moving of populations was considered only on the basis that it would be a purely voluntary measure.

Chapter II

THE DISTINCTION BETWEEN THE CIVILIAN POPULATION AND MILITARY OBJECTIVES; DEFINITION OF CIVILIAN POPULATION

(Document III, Title II, Chapters 1 and 2)

424. The principle of the distinction between the civilian population and military objectives and the question of defining the civilian population in this context were discussed by Commission III during its third and fourth meetings on the basis of the relevant draft provisions proposed by the ICRC (pages 24 and 26 of Document III).

425. In this introductory statement, a representative of the ICRC emphasized the legal value of the distinction between the civilian population and military objectives. The principle of distinction had been generally recognized and, *inter alia*, had been restated in resolution XXVIII of the XXth International Conference of the Red Cross and in resolutions 2444 (XXIII) and 2675 (XXV) of the General Assembly of the United Nations. The government experts agreed that it was important to make this distinction, but one expert stated that he could accept the principle of distinction in a juridical instrument only if it did not imply a definition of the civilian population.

426. Part of the discussion on the formulation of the principle in question dealt with the problem of determining to what extent participation in military operations should deprive persons of civilian status. One expert suggested the deletion of the word "directly" which appeared in the ICRC proposal

("... persons who directly participate in military operations...")³⁸, whereas others pleaded for its retention. Two proposals were made to extend the ICRC text: one would cover also indirect participation ("... persons who directly or indirectly participate..."), and the other would add "immediate" ("... persons taking a direct or immediate part in military operations...").³⁹ In relation to the latter proposal as well as to a similar one concerning the definition (see below, para. 436), a representative of the ICRC explained that the ICRC had avoided the word "immediate" in its proposals because it might have expressed not only a link of causality but also a temporal connection, and thus would have permitted the inclusion of irregular combatants in the civilian population. Some experts wondered whether there was not a danger that the wording of the ICRC proposal could be so construed as to mean that persons forming part of the armed forces, although not directly participating in military operations, might nevertheless be part of the civilian population.

427. Several experts proposed the deletion of the last four words of the ICRC text ("... as much as possible")⁴⁰, and two others argued for the deletion of the whole final phrase ("... to the effect that the latter be spared as much as possible"). In the opinion of these experts, there was no need to weaken the principle of distinction by alluding to the practical difficulties of its implementation; they concurred with the representative of the Secretary-General of the United Nations in pointing out that such an allusion had not appeared, for example, in resolution 2675 (XXV). Some experts, on the other hand, expressly favoured the retention of the whole phrase, since it took into account the realities of combat and thus possessed the character of an action rule which, in their view, the legal instrument to be worked out should have. One of these experts later proposed the following text, which contained a still higher degree of flexibility: "In the conduct of military operations, endeavours shall be made at all times to distinguish between military objectives and non-military objects, so that the latter be spared as much as possible. Consequently, attacks shall in all circumstances be restricted as far as possible to military objectives alone."⁴¹ Another expert nevertheless believed that the differences of opinion existing on this matter made it advisable to adopt a text which had already been agreed upon unanimously by another forum, namely the relevant paragraphs of resolution 2675 (XXV), and he proposed the following text to cover the principle of distinction between the civilian population and military objectives:

³⁷ CE Com III/27, p. 93.

³⁸ CE Com III/11, p. 91.

³⁹ CE Com III/6, p. 90.

⁴⁰ CE Com III/5, p. 90, CE Com III/7, p. 90, CE Com/14, p. 91.

⁴¹ CE Com III/38, p. 95.

“ In the conduct of military operations, a distinction must be made at all times between, on the one hand, persons who directly participate in military operations and, on the other hand, persons who belong to the civilian population. Civilian population as such should not be the object of military operations. In the conduct of military operations every effort should be made to spare the civilian population ”.⁴²

This text was expressly supported by other experts, one of whom later proposed a similar text in which the words “ during armed conflicts ” in the first paragraph are omitted (see below, Chapter III, para. 3).⁴³

428. One expert stated that the words “ In the conduct of the military operations . . . ”, at the beginning of the ICRC text, should not be understood to include police operations.

429. The replacement of the words “ *il faut* ” by “ *on doit* ” in the French version of the ICRC text was proposed by one expert and supported by others.

430. One expert believed that it was logical to formulate the principle of distinction so as to differentiate between military objectives, on the one hand, and civilian persons and non-military objects necessary for their survival, on the other. He proposed the following text:

“ In the conduct of military operations, a clear distinction should at all times be made between persons taking a direct and immediate part in military operations and those who are members of the civilian population so that the latter, their dwellings, their property and other amenities which they use, or of which they have need, shall never be the object of military operations and in all circumstances be spared from the ravages of war. Consequently, attacks must in all circumstances be restricted to military objectives alone ”.⁴⁴

431. One expert asked for clarification of the connection between the two paragraphs of the ICRC text (found on page 130 of Document III) and questioned the wisdom of including a reference to the notion of military objectives in the principle of distinction.

432. Concerning the question of defining the civilian population, a representative of the ICRC, in his introductory statement, mentioned that the experts consulted by the ICRC in 1970 had been in favour of a negative definition. He also pointed out the importance of the functional criterion which excluded from protection civilians directly participating in military operations. The ICRC, in its proposed texts, had consciously departed from traditional terminology by using in English the terms “ directly ”, and in the other languages (French and Spanish) the terms “ military operations ”. Of the two texts, the ICRC

itself preferred the first because it expressly mentioned civilians whose activities contributed directly to the military effort, but even at the Hague Conference of Red Cross Experts there had been differences of opinion on the question of including this provision. In the course of the discussion the ICRC representative also stressed that definitions exist in the Geneva Conventions of 1949 with a certain degree of precision. He added that it would be necessary, in order that the provisions to be adopted should be more efficacious, to have a certain number of definitions if they might be of some use, in particular a definition of the civilian population as a whole, since the Fourth Geneva Convention only defined categories of protected persons in its Article 4.

433. Several experts were against including a definition of civilian population in the juridical instrument envisaged; some, nevertheless, took part in the discussion on the formulation of such a definition.

434. The first text of a definition proposed by the ICRC (page 26 of Document III) was supported by two experts; another gave his support in principle, if certain improvements were made, and still another proposed to have the word “ and ” replace “ or ” in the first sentence (“ . . . persons who do not form part of the armed forces . . . or who do not directly participate in military operations . . . ”) and to have the reference to organizations attached to the armed forces omitted⁴⁵; with regard to the word “ and ”, a representative of the ICRC pointed out that it would eliminate the functional criterion and thus allow the inclusion of irregular combatants in the civilian population.

435. The second proposal of the ICRC (page 26 of Document III) was supported unconditionally by two experts. One expert, supported by another, preferred to have the text altered to include an element of “ immediateness ”⁴⁶ (“ . . . not participating directly and immediately in military operations . . . ”; see para. 426 above). Two other experts said they could accept the ICRC text if the word “ directly ”⁴⁷ were deleted whereas another argued for the retention of that word.

436. Three experts advocated a combination of the two ICRC texts with the second proposal followed by a new sentence dealing with civilians whose activity contributed directly to the military effort. One of these experts proposed the following text:

“ Civilian population comprises persons who are not members of the armed forces or who take no

⁴² CE Com III/4, p. 90.

⁴³ CE Com III/17, p. 91.

⁴⁴ CE Com III/6, p. 90.

⁴⁵ CE Com III/20, p. 92.

⁴⁶ CE Com III/15b, p. 91.

⁴⁷ CE Com III/11, p. 91.

direct and immediate part in military operations. Persons whose activity may directly contribute to the military effort shall not thereby lose their civilian status.”⁴⁸

437. One expert submitted amendments to both ICRC proposals in order to exclude from civilian population those who “indirectly contribute” to military operations.⁴⁹

438. In addition, three experts proposed new formulae not directly related to the ICRC proposals for an article dealing with the definition of civilian population. These proposals were:

- (a) “All individuals not actively participating in military operations are considered to be members of the civilian population, including, despite their military status, members of army medical services. The civilian population shall in no circumstances be the target of armed attacks.”⁵⁰
- (b) “Persons who are not members of the armed forces or of organizations dependent upon such forces and persons not directly participating in military operations are civilians and as such are entitled to the protection accorded to the civilian population.”⁵¹
- (c) “Civilians are those persons who are neither members of the armed forces nor are participating directly in military operations.”⁵²

439. Another proposal relating to the definition of civilian population was made later by an expert during the discussions on general and special protection (see below, Chapter III, para 453). This proposal, whose aim was to ensure the protection of civil police forces, was as follows:

“Members of civil police forces are part of the civilian population. Police action against a legitimate combatant who endangers the life of the civilian population in a way contrary to international law does not affect the civilian status of a policeman.”⁵³

Chapter III

PROTECTION OF CIVILIAN POPULATION

(Document III, Part I, Title II, Chapter 3)

440. Certain aspects of the protection of the civilian population against dangers arising from military operations on the basis of the ICRC’s draft provisions on general protection (page 38 of Document III) and on special protection of certain categories of civilians (pages 43 and 47 of Document III) were discussed by Commission III during part of its fourth meeting and during its fifth and sixth meetings.

441. Some of the comments made by experts on this subject doubted the justification of including a rule of general protection in the juridical instrument envisaged. Two experts maintained that such a principle was implied by the principle of distinction; one of these experts called attention to his previous proposal of a text following the wording of resolution 2675 (XXV) which would cover both principles (see above, Chapter II, para. 427) while the other proposed a very similar text (see above, Chapter II, para. 427). Another expert took a related point of view, stating that the principle of general protection derived from the principle of distinction.

442. Several experts expressed the opinion that such a rule of general protection as proposed by the ICRC was not useful, if no clear indication were given on what was to be understood as “general protection”. It was again pointed out in this context that the legal instrument envisaged should contain action rules which could be applied without difficulty in conditions of combat (see above, Chapter II, para. 427). Three proposals made by experts to replace the ICRC text could be seen as attempts to meet these demands. The first of the proposals—of which it was mentioned that a similar text had been applied with positive results in a recent non-international conflict—combined the rules of general and special protection in the following text:

“The civilian population shall enjoy general protection against dangers arising from military operations.

In particular:

- (i) Children must not be molested or killed. They must be protected and cared for.
- (ii) Youths and school children must not be attacked unless they are engaged in open hostility against the military forces.
- (iii) Women must be protected against any attack on their person and honour and in particular against rape or any form of indecent assault.
- (iv) Male civilians who are hostile to the military forces are to be dealt with firmly but fairly. They must be humanely treated.
- (v) All military and civilian wounded must be given necessary medical attention and care. They must be respected and protected in all circumstances.
- (vi) Foreign civilian nationals on legitimate business in areas of military operations must not be molested.”⁵⁴

⁴⁸ CE Com III/6, p. 90.

⁴⁹ CE Com III/3, p. 90.

⁵⁰ CE Com III/2, p. 90.

⁵¹ CE Com III/8, p. 90.

⁵² CE Com III/9, p. 90.

⁵³ CE Com III/22, p. 92.

⁵⁴ CE Com III/23, p. 92.

The second proposal followed rather closely the wording of some of the operative provisions in resolution 2675 (XXV) and reads as follows:

“ Basic Principles and Rules for the Protection of the Civilian Population in all Armed Conflicts: ”

1. Fundamental human rights continue to apply in situations of armed conflict.

2. In the conduct of military operations, every effort should be made to spare the civilian population from the ravages of war and all necessary precautions should be taken to avoid injury, loss or damage to the civilian population.

3. The civilian population should not be the object of military operations. Neither should they be used as a shield for military operations.

4. The civilian population, or individual members thereof, should not be the object of reprisals, forcible transfers or other assaults on their integrity.

5. Dwellings and other installations that are used only by the civilian population should not be the object of military operations.

6. All parties to an armed conflict shall facilitate the provision of international humanitarian relief to the civilian population.”⁵⁵

Another suggestion was to replace the first two sentences of the first paragraph of the ICRC text by the following:

“ In the conduct of military operations, the Parties to the conflict shall make every effort to spare the civilian population from the ravages of war. The civilian population as such shall not be the target of military operations.”⁵⁶

One expert suggested the following wording: “ The civilian population shall at all times be entitled to efficient and general protection against the dangers arising from military operations and shall never be the object of such operations. The civilian population as a whole, and the individuals comprising it, shall never in any circumstances be the object of reprisals.”⁵⁷

443. Some experts questioned the concept of special protection. Here it was argued, on the one hand—as before in the case of general protection—that the meaning of such a concept did not clearly appear from the proposals made by the ICRC, which should have been more specific; on the other hand, it was pointed out that the principle of general protection might be weakened if it was stated that certain categories of civilians were under special protection. One of these experts proposed to use the word “ protection ” without further qualification to cover both “ general ” and “ special ” protection and to describe certain categories of civilians as “ special protected categories ”.⁵⁸ Similar considerations led another expert to propose the deletion of the word “ general ” in the first paragraph of the ICRC text on general protection.

444. A representative of the ICRC spoke in favour of the dual conception of general and special protection and explained that special protection could be useful in certain cases.

445. Several experts made comments of a more specific character in connection with the drafting of the text on general protection proposed by the ICRC. As to the first sentence of paragraph 1 of this text, one expert wished to qualify “ general protection ” as “ effective ” and directed against “ all the dangers ” arising from military operations.⁵⁹ Another was in favour of having the word “ general ” replaced by “ every ”⁶⁰ and still another, who was equally in favour of the word “ effective ”, proposed the addition of “ and should never be the target of such operations ” at the end of the sentence,⁶¹ thus including the essence of the second sentence of paragraph 1 of the ICRC text. This second sentence was expressly declared satisfactory by two experts and a like notion appeared in the proposals made by another expert⁶²; a similar view appeared in the proposal cited above at the end of para. 441. One expert wished to make this sentence also refer to indirect attacks.⁶³

446. The third sentence of paragraph 1 in the ICRC text was expressly approved by two experts, while several others gave the view that it had either to be reworded or deleted. Two of the latter experts thought that the sentence was a superfluous repetition of a provision of the Fourth Geneva Convention of 1949, to which a representative of the ICRC replied there was no repetition since that provision dealt only with protected persons within the meaning of the Fourth Convention. One expert, who was later supported by others, explained that he could not accept the sentence in its present form because it might lead to the *a contrario* conclusion that whole areas could be legitimate targets of military operations; he proposed to have the sentence worded as follows: “ Neither should it be used, by its presence, to render certain military objectives immune from attack.”⁶⁴

447. There was no agreement in the Commission on the merits of the second paragraph of the ICRC proposal on general protection. Some experts maintained that such a provision would be of dubious value and that it was a statement of fact which had no place in the juridical instrument envisaged. Others

⁵⁵ CE Com III/19, p. 92.

⁵⁶ CE Com III/12, p. 91.

⁵⁷ CE Com III/13, p. 91.

⁵⁸ CE Com III/18, p. 92.

⁵⁹ CE Com III/15, p. 91.

⁶⁰ CE Com III/10, p. 91.

⁶¹ CE Com III/13, p. 91.

⁶² CE Com III/15, p. 91.

⁶³ CE Com III/10, p. 91.

⁶⁴ CE Com III/16, p. 91.

were for its retention because it was at least useful as a reminder. Several experts showed themselves to be in favour of a text which would apply to all persons who found themselves within (or near) a military objective, whether they contributed to the military effort or not; one of them proposed the deletion of the words "... whose activities directly contribute to the military effort..." and "... within the strict limits of these activities..." from the paragraph. One expert suggested to replace the phrase "... assume the risks..." by another wording which would exclude the interpretation that civilians carry any responsibility in that matter; another expert argued that both Parties to an armed conflict carried a responsibility for the civilian population.

448. As regards the third paragraph of the ICRC text on general protection, two experts considered it to contain an unnecessary repetition of a provision of the Fourth Geneva Convention of 1949, to which a representative of the ICRC recalled that this was not the case, since the scope of that provision was limited to protected persons. One expert expressly approved of the paragraph as it stood, while another believed that it should be made to conform with the wording of resolution 2675 (XXV) so that there should be some reference also to forcible transfers and to other assaults on the integrity of the civilian population. A representative of the ICRC commented, concerning forcible transfers, that such a wording would not easily be acceptable by States in relation to non-international armed conflicts. One expert proposed to mention also the individuals who compose the civilian population in this article.⁶⁵

449. A representative of the ICRC, when introducing the ICRC's proposals on special protection, stated that children and women were the obvious categories of civilians to enjoy such protection; the ICRC had nevertheless not proposed a text on the special protection of women because it had not yet formed a clear opinion on the scope of such protection. The representative of the United Nations Secretary-General referred to the relevant resolutions of the United Nations and ECOSOC Commission on the Status of Women favouring special protection for women in general, and he was supported in this view by some government experts, one of whom even argued that women who actively took part in military operations should enjoy a certain protection, e.g. from rape and indecent assault. The notion that all women were entitled to general protection appeared also in the text cited in para. 452 below. Two other experts believed that special protection should be given to women only under special circumstances, namely to expectant mothers, to maternity cases and to the mothers of small children.

450. It was not contested by government experts that children should enjoy special protection. One expert suggested deleting the age limit of fifteen years contained in the ICRC proposal because there existed

no uniform criterion in that matter; a representative of the ICRC and other government experts expressed themselves to be in favour of such an age limit. Some experts believed that it was necessary to state that also the attacked party carried the responsibility of keeping children safe from the dangers of military operations; they thought that the second paragraph of the relevant ICRC proposal should be reworded to receive a more peremptory character. One of them proposed the following to replace the ICRC text: "Children under the age of fifteen years shall be entitled to special protection. Parties to the conflict shall undertake to keep them at a safe distance from military operations."⁶⁶ Two experts, on the other hand, expressly approved of the ICRC text as it stood.

451. The ICRC proposal on the protection of the civilian medical and civil defence personnel was expressly supported by one expert, whereas another believed that the term "civil defence personnel" would have to be more clearly defined.

452. Some experts were in favour of extending special protection to certain categories which were not covered in the ICRC texts. One expert mentioned old people and ministers of religion in this context, and another put forward the following proposal: "Belligerents shall give women, children, old people, the wounded, the sick and the disabled members of the civilian population entitled to general protection the benefit of special care and assistance."⁶⁷ Another expert also expressed his view that all religious men and women dedicated strictly to worship and to helping those of their own faith should be given special protection. One expert raised the question of according special protection to civil police forces. He proposed to achieve this aim by expressly including such forces in the civilian population (see above, Chapter II, para. 439). The importance of this question was emphasized by another expert, who also made a written communication on the subject.⁶⁸ A representative of the ICRC and another government expert argued that this was a very intricate problem for which a solution would not easily be found at the present stage. The ICRC representative added that the International Federation of Senior Police Officers had taken the initiative of obtaining from governments an interpretation of Art. 63 of the Fourth Geneva Convention of 1949 in favour of civil police forces.

453. Another category of civilians to be accorded special protection was mentioned by the representative of the Secretary-General of the United Nations, who pointed out that not all refugees were adequately protected by the Fourth Geneva Convention of 1949 and asked that a special study be made on the subject.

⁶⁵ CE Com III/13, p. 91.

⁶⁶ CE Com III/21, p. 92.

⁶⁷ CE Com III/32, p. 94.

⁶⁸ CE Com III/34, p. 94.

A representative of the ICRC agreed that the protection of the Fourth Geneva Convention did not extend to all kinds of refugees; on the other hand, he believed that all refugees would benefit from the principle of general protection.

Chapter IV

DISTINCTION BETWEEN NON-MILITARY OBJECTS AND MILITARY OBJECTIVES —DEFINITION OF NON-MILITARY OBJECTS —PROTECTION OF NON-MILITARY OBJECTS

(Document III, Part I, Title II,
Chapters 4, 5 and 6)

454. During its eighth meeting Commission III held a discussion which covered the distinction between non-military objects and military objectives, the definition of non-military objects and the protection of non-military objects, on the basis of the relevant draft provisions prepared by the ICRC (pages 52, 63, 68, 69, 72 and 73 of Document III).

455. Opinions were divided among experts as to the function and scope of a principle of distinction between non-military objects and military objectives in present times. One expert expressed the fear that certain methods of warfare, e.g. the indiscriminate bombing of cities, made obsolete any distinction of the kind envisaged. Another expert said that, when considering this matter, the Commission should set aside the question of nuclear methods of warfare which were tantamount to an equilibrium intended specially to make widespread conflict improbable or impossible and concentrate rather on military practices actually employed; this was also the view of a representative of the ICRC. Some government experts argued the existing legal rules on the protection of civilians and non-military objects were applicable to all types of armed conflict; one of them mentioned the St. Petersburg Declaration, the Hague Conventions of 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949, and maintained that these instruments contained such rules and that the nuclear bombing of civilian population which had occurred at the end of the Second World War was contrary to the basic principles of international law. One expert proposed a new text on the principle of distinction which was more rigid than the ICRC proposal and read as follows: "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."⁶⁹ Other experts were in favour of a more flexible formulation of the principle and doubted that the ICRC text was applicable in practice because of the

necessarily limited information the attacking party would have on the objects to be attacked. Two formulations of this type were proposed. One was to replace the phrase "... a distinction must be made ..." in the first paragraph of the ICRC text by "... endeavours shall be made at all times to distinguish ..." and to insert "... as far as possible ..." in the second paragraph⁷⁰; the other was to replace the ICRC text by the following: "In the conduct of military operations, all possible efforts shall be made to distinguish between military objectives and non-military objects, so that the latter be spared as much as possible."⁷¹

456. In introducing the draft provision on the definition of non-military objects, a representative of the ICRC explained that the ICRC was also open to the concept of defining military objectives if an adequate formulation for that purpose could be found; he added that the ICRC would be interested to hear the views of government experts on the definition of military objectives found at the Edinburgh session of the Institute of International Law (1969). One expert, in reply to the ICRC, pronounced himself to be in favour of the Edinburgh definition; he proposed that three paragraphs of the relevant resolution of the Institute of International Law should be added to the basic rules proposed by the ICRC. Another expert favoured a new definition which would read as follows: "Objects considered to be non-military are those not directly producing arms, military equipment and means of combat or which are not employed directly and immediately by the armed forces even if as a result of a change in their utilization they may subsequently assume a preponderantly military character."⁷² This proposal also implied a reformulation of the idea expressed in the second part of paragraph 1 of the ICRC text and in this respect resembled another proposal which would have this paragraph read: "Objects reputed to be non-military are those necessarily or essentially designed for and used predominantly for the civilian population. Once they are occupied by military personnel or used for military purposes, they become military objects."⁷³ The idea contained in the last sentence of the previous proposal was not retained by another expert whose suggestion was the following one: "Objects reputed to be non-military are those necessarily or essentially utilized by the civilian population which shall include, among other objects, houses and constructions which shelter the civilian population or which are used by it, foodstuffs and food producing areas, water resources and constructions designed to regulate such resources."⁷⁴

⁶⁹ CE Com III/27, p. 93.

⁷⁰ CE Com III/38, p. 95.

⁷¹ CE Com III/24, p. 92.

⁷² CE Com III/27, p. 93.

⁷³ CE Com III/24, p. 92.

⁷⁴ CE Com III/28, p. 93.

PRECAUTIONS TO SPARE THE CIVILIAN POPULATION AND NON-MILITARY OBJECTS

(Document III, Part I, Title II, Chapter 7)

457. On the question of non-military objects whose utilization was later changed to military purposes—which had been taken up in some of the proposals cited in para. 456—one expert expressed the opinion that it was insoluble and should therefore not be considered further. Another expert, on the contrary, believed that further attention and time should be devoted to finding an adequate solution. A third expert, underlining a certain contradiction in the last part of the definition given, was in favour of creating a rule which would prohibit the use of a previously non-military object for military purposes; this idea was considered impractical by other experts.

458. During the discussions of the ICRC text on general protection of non-military objects one expert stressed that the obligation contained in its second paragraph not to destroy or damage certain non-military objects also was valid for the attacked party; this opinion was shared by a representative of the ICRC. Two proposals were made to alter the ICRC text on general protection by other formulations, one of which would be more rigid and the other more flexible. The first proposal read: “Non-military objects are entitled to general protection from the devastation of war. They must not be made the object of attack, nor be damaged or destroyed or made the object of reprisals, on condition that they are not used directly and immediately in the conduct of military operations.”⁷⁵ The other was to change the second paragraph of the text to the following: “Non-military objects indispensable to the survival of the civilian population must be neither destroyed nor damaged, nor be made the object of reprisals, unless there are other adequate provisions to ensure the well-being of the civilian population.”⁷⁶

459. There were no comments made by experts on the provision of special protection of non-military objects proposed by the ICRC. The provision on installations containing dangerous forces, on the other hand, was considered insufficient by two experts, both of whom proposed new texts to provide absolute protection for such installations. One of these proposals was to change the wording of the ICRC text after “. . . the release of natural or artificial elements” to read “. . . those objects designed for essentially peaceful purposes or having no or no longer any relationship with the conduct of military operations are not the aim of any military attack. The interested States or Parties are invited to complete this protection by further agreements.”⁷⁷ The other proposal envisaged the following to replace the ICRC text: “Civil engineering constructions, dams, dykes, power plants and networks and objectives of national economic interest for peaceful purposes shall be assiduously protected and spared by combatants so as to protect civilian population from the hazards resulting from the destruction, damage or disruption of the operation of such non-military objects.”⁷⁸

460. The question of precautions to be taken to spare the civilian population and non-military objects as well as the basic rules relating to such precautions were discussed by Commission III during part of its ninth meeting on the basis of the relevant draft provisions proposed by the ICRC (English text pages 82, 83, 84 and 88 of Document III).

461. The distinction between the basic rules relating to precautions, on the one hand, and rules of application, on the other, was criticized by two experts, who argued that the relationship between the two groups of provisions as envisaged was not clear and that this might unnecessarily confuse the persons who would have to apply them in practice; the 1956 Draft Rules of the ICRC had not contained such a distinction. One of these experts stressed several times that he preferred the drafting of the 1956 rules to the ones now put forward by the ICRC. A representative of the ICRC explained that the distinction had been proposed by the ICRC because the rules of application, with regard to non-international armed conflicts, might not be fully acceptable to governments. The ICRC representative recalled that the 1956 rules had not met in general with any positive response from most governments when they had been first proposed.

462. When introducing the ICRC proposals, a representative of the ICRC proposed that the titles of the two types of provisions containing the basic rules relative to precautions should be changed to “measures of respect” and “measures of safeguard” respectively; some experts expressly approved of this new terminology.

463. Two experts argued that the wording of the draft provisions containing the basic rules was too legalistic and would not easily be understood by persons actually engaged in directing military operations. One expert declared that he preferred the first of the two versions of the ICRC draft on measures of respect. One expert proposed to add the words “against a military objective” after the word “attack”, in the second line of the first paragraph of the ICRC proposal, for the purpose of specifying that any attack whatsoever against the population which should be given absolute protection was prohibited, and to add at the end of the same

⁷⁵ CE Com III/27, p. 93.⁷⁶ CE Com III/24, p. 92.⁷⁷ CE Com III/26, p. 93.⁷⁸ CE Com III/27, p. 93.

paragraph the words "... which are within the area of a military objective under attack". Later the same expert amended his proposal with the addition of a further phrase: "... or which are not in a general way secure from the dangers resulting from direct attack on the said objective."⁷⁹ Another expert was in favour of a more flexible wording of the same paragraph, so as to read: "When a party to a conflict orders or launches an attack, he shall take all practicable steps to spare the civilian population and individuals, and non-military objects designed for their use."⁸⁰ Another expert proposed, as a wording of wider significance, "those who order or undertake an attack should warn the civilian population at risk so that it may seek shelter".⁸¹

464. Concerning the ICRC proposal on "identification", some experts thought that it placed too heavy a burden on military commanders who often did not have the necessary intelligence information to make certain whether a particular objective was military or non-military in character. To this one expert gave his opinion that the attack should only be launched if it was quite clear that the objectives concerned were military in character.

465. The ICRC proposal on "warning" was expressly approved by two experts, while others argued that it might give rise to the interpretation that a warning given beforehand to the civilian population would in some way absolve the attacking party from its duties concerning general protection of civilian population and non-military objects; the expert preferred the 1956 rule on this matter.

466. One expert found that the ICRC proposal on "proportionality" was concerned mostly with the conduct of military operations and did not quite harmonize with the other provisions. Another expert was opposed to the second paragraph of the ICRC proposal. Still another thought that the implementation of such a provision required very thorough information on the consequences of an attack to be launched; the principle of proportionality should guide the intention and spirit of the attacking party and it was therefore difficult to lay it down as a legal norm. One expert wished to add an additional paragraph to the provision on proportionality, which would link it to the rule on identification and would read: "No military advantage may justify an operation in which it is impossible to make a clear distinction between non-military and military objectives."⁸²

467. One expert wished that the provision on "choice of weapons and methods of inflicting injury to the enemy" should be more precisely formulated. Another expert proposed to add what he called a reaffirmation of rules on the prohibition of certain weapons and methods of attack contained in the resolution adopted by the Institute of International Law at Edinburgh in September 1969 at the end of

the provision ("It is reaffirmed that...")⁸³. Another expert took the same position; he thought it imperative that the legal instrument envisaged contain a provision prohibiting weapons and methods of warfare which did not allow for a distinction between the civilian population and non-military objects on the one hand and military objectives on the other⁸⁴.

Chapter VI

ZONES UNDER PARTICULAR PROTECTION

(Document III, Part I, Title III, Chapter 1)

468. In the course of its ninth and tenth meetings, Commission III studied certain aspects of the problem posed by the concept of zones of special protection. The experts were invited to give their views on the ICRC ideas outlined in Document III (pages 99-102) and in Chapter IV of the U.N. Secretary-General's second report (A/8052). Based on its own experience, the ICRC was desirous of giving priority to the fundamental regulations and it considered the establishment of zones as a supplementary measure of protection. The ICRC had advocated two categories of zones (undefended populated areas and populated areas under special protection), which would not involve the transfer of civilian population and would only be designated during armed conflict.

469. There was no agreement among experts on the value of the concept of zones of refuge advocated in the Secretary-General's report. One government expert considered it to be the best solution for the problem of protecting civilians in wartime. The representative of the United Nations Secretary-General also took a very favourable view and called to attention the merits of establishing such zones. He referred in this connection to the system of the protection of cultural property under the UNESCO Hague Convention of 1954 where useful ideas and similar analogy could be found for the consideration of the present suggestion. One government expert thought the concept of zones an interesting idea which deserved further study. Several experts, on the other hand, pointed out that the establishment and maintenance of zones would lead to great difficulties in practice. The evacuation of the civilian population to the zones, housing and food supply, the maintenance of order and adequate sanitary conditions, communications with the outside world—all these were questions to be considered; the special situation in non-industrialized societies was also mentioned in this

⁷⁹ CE Com III/29b, p. 94.

⁸⁰ CE Com III/37, p. 95.

⁸¹ CE Com III/27, p. 93.

⁸² CE Com III/30, p. 94.

⁸³ CE Com III/33, p. 94.

⁸⁴ CE Com III/36, p. 95.

connection. It was also pointed out that in some countries geographical factors would surely prevent the creation of zones. One expert expressed the fear that the creation of zones under special protection would weaken the protection of the civilian population in other areas.

470. A representative of the ICRC and a government expert emphasized that in case of armed conflict the territories designated as zones under special protection would have to be subject to impartial and effective scrutiny to prevent abuse by the belligerents. Another expert elaborated on this idea and proposed the institutionalization of such scrutiny on a prepared contingency planning basis similar to the system used by some nations in relation to United Nations Peace-keeping operations.

471. Some attention was given by the Commission to the question of how and when to establish zones under special protection. Here several experts thought that an agreement would have to be reached before the outbreak of hostilities. Some experts believed that the creation of a zone would have to be through a unilateral declaration which should then in some way be recognized by the other party.⁸⁵ One expert believed such zones could not be related unilaterally during hostilities; they would in those circumstances have to be created by agreement. One expert maintained the usefulness of model-treaties as found in the Fourth Geneva Convention of 1949.

Chapter VII

PROTECTION OF THE CIVILIAN POPULATION AGAINST CERTAIN BOMBARDMENTS AND WEAPONS

(Document III, Part I, Title III, Chapters 2 and 3)

472. The tenth meeting was devoted to examining the protection of the civilian population against certain bombardments and against the effects of certain weapons; both questions were set out in the relevant chapters of Document III.

473. Several experts put forward a number of considerations concerning both subjects. One of them wondered whether it was the right moment and the right place to deal with such complex and controversial matters which, though of vital importance, would tend to delay or compromise work relating to the protection of the civilian population. On the other hand, another expert declared that, in his opinion, positive international law already prohibited indiscriminate bombardments and weapons; their prohibition was the logical consequence of the principle of distinction between persons belonging to the civilian

population and those engaged in hostilities; he was of the opinion that the ICRC, as it proceeded in its work, should therefore put forward precise and detailed provisions. In the view of another expert, the relevant ICRC proposals of 1956 represented a maximal approach, those of 1971 a minimal approach: a *via media* should be found; specific prohibitions might be envisaged in the same way that the prohibition of dum-dum bullets had been provided for in the past. Some experts thought that articles 6 to 8 of the resolution of the Institute of International Law (cf. Document III, Annex XXIV), which were aimed at indiscriminate methods and weapons, might be added to the fundamental rules, and they hoped it would be expressly stated that the rules would thus be reaffirmed; the omission of that point would, in their opinion, lead to dangerous ambiguity. In introducing the subject, the ICRC representative had been anxious to stress that the fundamental rules previously studied were so conceived as to cover every situation, and that consequently the proposals relating to illicit means and methods were intended solely to complete the rules and make them precise, without introducing the slightest derogation.

474. As regards the question of bombardments, the experts were invited by a representative of the ICRC to give their views on the scope of the relevant provisions of the Hague Conventions of 1907 (adopted at a time when artillery was still at an early stage of development and war planes had not come into existence), and on articles 10 and 6 of the Draft Rules of 1956 and articles 8 and 6 of Resolution No. I of the Institute of International Law, all of which related to the bombardment of zones and to terrorization. (Cf. Document III, Annexes XIX and XXIV.)

475. According to one expert, the provisions of the Draft Rules of 1956 regarding zone bombardment and terrorization should be included in the fundamental rules; they would cover what are known as *free-fire zones*. The representative of the Secretary-General of the United Nations pointed out that paragraph 42 of the second report (A/8052) dealt with the question of saturation bombing. One expert thought that if all indiscriminate bombing were prohibited, that would cover strategic bombing; but, he continued, as long as economic warfare remained a paramount factor in the outcome of hostilities, such bombing would represent a very effective method of warfare, as experience in the Second World War had shown; hence, a problem did exist although a way could, perhaps, be found for its solution; he realized, however, that it was urgent that an appropriate body should take up the question.

476. The ICRC representative pointed out that the Red Cross was deeply conscious of the importance of the question of weapons, as it had been from its

⁸⁵ CE Com III/35, p. 95.

**PROTECTION OF THE CIVILIAN POPULATION
AGAINST CERTAIN EFFECTS OF ECONOMIC
WARFARE; INTERNATIONAL RELIEF
ACTION FOR CIVILIAN POPULATION; OTHER
PROBLEMS**

(Document III, Part I, Title III, Chapters 4, 5 and 6)

earliest days. In accordance with Istanbul resolution XIV, which in particular requested the United Nations to pursue its efforts in the field of weapons of mass destruction and the ICRC to devote great attention to the question, the ICRC had followed closely the work undertaken by various international organizations, both intergovernmental and non-governmental, cited in Annex XXV to Document III. He referred to the specific steps taken regularly by the ICRC to promote universal accession to the 1925 Geneva Protocol, the latest step having been taken in 1970. The experts were invited to give their opinion on the concrete proposals of the ICRC set out on page 117 of the English text, and on those put forward by the experts of National Red Cross, Red Crescent and Red Lion and Sun Societies at the Hague Conference (1-6 March 1971) and which appeared in Chapter IV/D of the report on the work of that Conference.

477. As was the case during the general discussion, three tendencies were confirmed regarding the question of weapons, in particular weapons of mass destruction. According to the first tendency, biological, chemical and nuclear weapons should not be the subject of discussion at the Conference of Government Experts called by the ICRC, at least for the time being, since they were being studied by other bodies such as the CCD. Those inclining to the second tendency likewise recognized that a solution could not be found within the Commission; they held that since better protection of the civilian population essentially depended on the non-utilization of weapons of mass destruction, it would be appropriate to affirm the necessity for their prohibition. Bearing in mind that the use of any kind of chemical and biological weapons had been expressly prohibited by the 1925 Geneva Protocol, it was also suggested that the States which had not yet done so should be invited to accede to the 1925 Geneva Protocol. The third tendency drew a distinction between weapons which were being studied and discussed by CCD or other bodies, such as biological, chemical and nuclear weapons, and those which were not under study by any body, such as anti-personnel and delayed-action bombs; public opinion would be greatly disappointed if neither the United Nations, nor CCD, nor any other body took up the question of those weapons. This expert, referring to the proposal of the Secretary-General of the United Nations to undertake a study of the question of napalm, considered that all weapons (not solely incendiary weapons) not at present the subject of discussion should be studied with the closest attention. Finally, several experts, without expressly endorsing any one of those tendencies, thought that, at all events, it was incumbent upon them to express an opinion on the subject of weapons; one delegate referred to the fear assailing countries which, though not engaged in armed conflict, would nevertheless suffer the effects of weapons of mass destruction, the use of which should not be authorized. Two other experts put forward a more precise proposal.⁸⁶

478. The eleventh meeting examined the relevant chapters of Document III, dealing with the protection of the civilian population against certain methods of economic warfare, international relief action and other problems. Since the matters were interrelated, the ICRC representative introduced jointly questions concerning certain methods of economic warfare and relief actions. It was, he said, the repeated experience of delegates of the ICRC that the destruction of non-military objects indispensable to the survival of the civilian population, as well as blockade, affected first and foremost—and often vitally—the civilian population, in particular children. Experts were invited to give their opinion on the proposals of the ICRC on page 120 in the English text, on the principles of Istanbul, resolution XXVI (Document III, Annex XVI), on the suggestion put forward by one expert⁸⁷ and on the proposals of experts from National Societies which met at The Hague (see report on the Conference, Chapter IV/B). Some experts observed that even if the right of the civilian population to receive international humanitarian relief were widely recognized, international law in this field was not sufficient and should accordingly be further developed and formalized. One expert pointed out that since the adoption of General Assembly resolution 2675 (XXV), there could be no doubt that the principles of Istanbul resolution XXVI were applicable to situations of armed conflict, whether international or not.

479. Several experts supported the proposals of the ICRC, which were aimed at prohibiting the destruction of non-military objects indispensable to the survival of the civilian population, while another expert drew attention to a proposal he had made on the subject.⁸⁸

480. Several experts having condemned famine as a means of warfare, the discussion turned to blockade and Article 23 of the Fourth Geneva Convention of 1949. One expert wondered whether it was useful and realistic to make proposals concerning relief action if blockade was considered a licit method of warfare, as the experts consulted by the ICRC in 1970 deemed it to be. One expert advised the introduction nevertheless, even in the event of a blockade, of an obligation to ensure the provision of supplies for the

⁸⁶ CE Com III/33, p. 94 and CE Com III/36, p. 95.

⁸⁷ CE Com II/14, p. 64.

⁸⁸ CE Com III/24, p. 92.

population. In the opinion of another expert, such a method was licit, being expressly provided for in Article 41 of the United Nations Charter as a non-military measure; it was however objected that a distinction should be drawn between Article 41 of the United Nations Charter, in which blockade represented a sanction decided by the Security Council to achieve the aims of the Organization, and the case of a Party resorting to that method during an armed conflict. According to one expert, the problem was also related to the law of maritime warfare and to the law of neutrality, and presented in consequence very complicated and highly delicate aspects. Nevertheless, a number of experts agreed that blockade should be limited and examined the provisions of Article 23 of the Fourth Geneva Convention. Some thought it desirable to explore the possibility of extending the obligations of the Parties to a conflict (or of imposing such obligations) both for the passage of relief supplies and for their acceptance, since it had been recognised that, during a period of armed conflict, the armed forces always had priority over the civilian population. One expert wondered whether it was possible to envisage expanding the list of beneficiaries mentioned in Article 23 above to the entire civilian population and to all armed conflicts. On the other hand, another expert felt that the provisions of the law in force were adequate, and that it was more important to ensure their effective application; yet another expert asserted that it was always advisable to arrange for the agreement of the authorities concerned, but that the latter should no longer be permitted arbitrarily to reject offers of relief.

481. One expert submitted a number of ideas on the transport of relief supplies by ship. Such transport might be covered by provisions similar to those applicable to hospital ships, but would be submitted to strict inspection to obviate war contraband; only food and medicines for the civilian population would be allowed to be carried; the ships would, on the other hand, be protected from attack and be allowed to pass through the blockade, since the military advantages of a blockade often appeared to be dubious and out of proportion to the suffering imposed on the civilian population, especially on children.

482. Several experts insisted on the necessity of incorporating in the Draft Protocol compulsory rules governing relief supplies, since the relevant resolutions had merely the force of recommendations. In their view, resolution XXVI and the proposal put forward⁸⁹ would serve as a point of departure, and it was proposed that the ICRC should combine the two texts. Another expert entered reservations as regards the latter proposal since its purpose was related also to that of Article 10 of the Fourth Geneva Convention.⁹⁰ Mention was also made, by way of example, of the relevant rule formulated by the Secretary-General in his second report (A/8052, para. 42). One expert advised including in the preamble a clause reaffirming

the general principles of international law which forbid large-scale bombardments, nuclear weapons, and so forth.

483. In conclusion, a representative of the ICRC pointed out that, in his opinion, the texts under consideration simply developed Article 23 without derogating from the sovereign rights of the Parties to a conflict. These texts had the merit of affirming that offers of relief supplies could no longer be considered as an unfriendly gesture and that they were related to all kinds of situations and all types of armed conflict, and referred to the need for co-ordination in the provision of relief.

484. Many of the experts hoped, as they had stated in the initial debate, to receive fully formulated preliminary provisions. As regards the title and layout of the Draft Protocol, one expert referred to his own remarks during the general discussion and argued in favour of a preamble: he asked that the ICRC should take up a strict position on that point. As regards the aim of the Protocol, only one expert expressed an opinion: it should not constitute an instrument parallel to the Fourth Geneva Convention, but rather tend to develop the norms at present in force. Many of the experts spoke on the subject of application, and opinions varied. One expert observed that the proposals put forward in the Second Commission were extremely modest and did not concern the civilian population. It was very difficult not to admit that the Protocol could be extended to all armed conflicts.⁹¹ It would be dangerous to limit the fundamental rules solely to international conflicts, since that might give rise to dual morality; his opinion was supported by others, while one expert referred to the work of the First Commission and suggested that two distinct protocols should be worked out, each with its own sphere of application. Both would contain precise rules followed by a commentary; that opinion was endorsed by other experts. One of them felt that at the initial stage they might seek a consensus on norms applicable in international armed conflicts—a less difficult task—and during a second phase consider which of those measures could be applied in non-international armed conflicts. Another expert considered that it was premature to take position at the present time, and that the ICRC should remain free to decide. He observed that the problems of technique in the conduct of hostilities were the same in all warfare, and that differences in means and methods might result from the different situations of the Parties to a conflict, whether international or non-international. As to the possible link of the protocol or protocols with the Conventions already in force, one expert was in favour of linking them to the Fourth Geneva Convention, while another pleaded for an independent

⁸⁹ CE Com II/14, p. 64.

⁹⁰ CE Com III/43, p. 97.

⁹¹ CE Com III/41, p. 96.

legal instrument. Another expert emphasized the need to elaborate precise rules relating to the penal responsibility of persons violating the fundamental rules. The question of reservations was raised by several experts who, in general, thought that the possibility of entering reservations should be excluded, since the rules under consideration were of a general nature. One expert remarked that, to the extent that the drafts would reproduce general imperative principles of international law, no derogation would any longer be possible. Some of those principles could belong to the *jus cogens*, and the International Court of Justice had had occasion to declare that it was impossible to provide for reservations to the *jus cogens*. It therefore appeared desirable to some experts not to provide for reservations and, as was pointed out by one expert, such a possibility was now available under Article 19 of the Vienna Convention on the Law of Treaties. One expert brought up the idea whereby machinery would be envisaged enabling any State which was a Party to the Protocol under consideration automatically to become a party to the Fourth Geneva Convention. As regards the method to be employed in the future, one expert suggested that the ICRC should draw inspiration from the work of the International Law Commission, the fully formulated proposals being followed by a brief commentary. Several experts considered that any decision on the problem raised in Chapter VI, particularly concerning reservations, would be premature.

485. A representative of the ICRC took note of the many suggestions put forward, as regards both substance and form. He pointed out that it seemed to be agreed that the protection that should be available to the civilian population should be ensured in every situation of armed conflict; since the Second World War it was predominantly conflicts of a non-international character that had developed, and it was

necessary to fill certain gaps. Moreover, in order that the ICRC might take account of provisions contained in military manuals, he expressed the hope that interested governments would make available, as far as possible, extracts from relevant codes, in particular instructions on aerial warfare and bombing, since a thorough knowledge of such material was implicit in the drafting of future rules. He added that the ICRC would always welcome suggestions which experts might wish to present.

* * *

486. It might be mentioned at this stage that the question of the protection of the civilian population against the dangers arising from military operations was broached during the fifteenth meeting. A working paper drawn up by the experts of five governments and entitled "Outline of an Instrument on the Protection of the Civilian Population Against the Dangers of Hostilities" was brought to the Commission's attention.⁹² This working paper consisted of a preamble and about 30 articles contained in six different chapters. One of the co-authors introduced the paper and replied to questions, seeing that the Commission had decided not to re-open discussion on the subject because the paper had been introduced at a late stage of the debate. He explained the authors' reason and aim; the paper sought to take into account various comments and proposals put forward during the first nine meetings. It was hoped that it would be of help to the ICRC and to governments in their further consideration. It took into account the trend which he considered had emerged concerning numerous points. It was based on ICRC proposals put forward in 1956 and in 1971, as well as on proposals advanced by the experts of Commission III, and so forth.

⁹² CE Com III/44, p. 97.

PART TWO
STRENGTHENING OF THE GUARANTEES AFFORDED BY
INTERNATIONAL HUMANITARIAN LAW FOR NON-MILITARY
CIVIL DEFENCE ORGANIZATIONS *

Chapter I

GENERAL DISCUSSION

487. The Commission's twelfth, thirteenth and fourteenth meetings were devoted to the study of this problem. A representative of the ICRC, introducing the subject, referred to resolution No. XV of the XXIst International Conference of the Red Cross (Istanbul, 1969) which required the ICRC to continue the studies that it had been undertaking for many years in the field under consideration and to submit such studies to a conference of government experts. He stressed that the main point was to strengthen the guarantees granted civil defence organizations by Article 63 of the Fourth Geneva Convention. Such strengthening consisted in better defining the nature and tasks of the bodies referred to in that article, in defining the guarantees from which they were to benefit in occupied territories and, above all, in ensuring that they had sufficient protection to allow them to operate in all circumstances and not only in cases of occupation. Referring to the concrete proposals submitted to the Commission in the ICRC document III (pages 151-156), he pointed out that more detailed rules had to be prepared on those matters and had to be attached to the Protocol on the protection of the civilian population; States might or might not adhere to the rules. He suggested that those proposals be examined firstly from the point of view of an international armed conflict and that, subsequently, the essential elements of those rules which should be applied to a non-international conflict could be considered. A wish had already been expressed by an expert that such a procedure be followed and that was in fact what the ICRC itself had envisaged when it had included among the basic rules of the Protocol a general stipulation concerning civil defence organizations.

488. During the general debate that preceded the examination of the various concrete proposals, most of the experts who took the floor congratulated the ICRC on having formulated those proposals which they considered constituted a very good basis on which to prepare more definitive rules. One expert quite rightly recalled the part played by the specialized bodies in the Scandinavian countries in the preparation of those proposals. Another expert stressed how useful they would be for countries which did not yet

have any civil defence and which could take those proposals into account when organizing such services. Two experts mentioned that Article 63 of the Fourth Convention only covered the case of occupation and they felt that the merit of the ICRC proposals lay precisely in extending protection to cover all circumstances.

489. However, some experts voiced some doubts about the advisability of preparing detailed regulations. They feared that the creation of two categories of civilians—those entitled to general protection and those who, belonging to the civil defence, would have special protection—might give rise to great difficulties.

490. Several of the experts who were in favour of the ICRC proposals felt that stress ought to be laid on protecting the *function*, in other words, the tasks carried out by the bodies under consideration, rather than on the definition of such bodies, because of the difficulties involved in making any definition of that kind. They considered that the function should be the criterion for the regulations. Other experts, however, did not feel that that criterion would suffice for drawing up the desired regulations. In their opinion, account had to be taken also of the organization as such, for the Occupying Power or the Parties to a conflict ought to know who were the persons benefiting from the guarantees that they would be required to grant under the terms of the regulations, and because Article 63 itself, which needed to be strengthened, introduced two ideas: that of the tasks and that of the organization. In that connection, an expert asked the ICRC to make, in subsequent studies, some alternative proposals taking account of those two possible approaches.

491. One expert hoped that the regulations would also contain a provision concerning the return of civil defence workers who might have fallen into enemy hands to the region in which they had been operating. The ICRC representative made it clear that a stipulation of that type had, in fact, by analogy with the provision for the return of military medical and nursing staff, been considered in ICRC studies. Similarly, by analogy with Article 27 of the First Geneva Convention, the possibility had been entertained of allowing the civil defence bodies of neutral

* Document III, Part II.

countries to come to the assistance of those in countries parties to a conflict. Such a course would be particularly useful in the case of conflicts in developing countries. Those two ideas had not been included in existing ICRC proposals but might be so at some future date.

492. Several statements were made about specific aspects of the ICRC proposals and are mentioned below in connection with the various proposals.

Chapter II

DEFINITION

493. In presenting the provisions coming under this heading, the ICRC representative stressed that their aim was by no means to lay down in each country the type of organization that civil defence services would be required to be set up, as some experts appeared to think, but only the conditions which should be fulfilled by such services in order that the protection which governments wished to grant should benefit from the guarantees contained in the regulations. Such regulations, would, above all, have to make the "non-military" nature of such services quite clear; as civil defence had to collaborate with military units or had to assume a military appearance, it was essential that such factors should not be a pretext for the adversary to deny bodies fulfilling the necessary conditions the benefits of special protection. The definition was, therefore, very flexible; in answer to a question that had been put earlier, the expert explained that it could apply to a fire-fighting service which met such conditions.

494. While approving the stipulations coming under A and C (Document III, p. 151-152), one expert considered that they could be grouped more logically and made a proposal to that effect.

495. One expert, referring to the permission for the personnel mentioned in the regulations to carry light weapons (letter B (d)), considered that it would be preferable, by analogy with Article 22 of the First Geneva Convention, to mention simply personnel that could be "armed" for police functions or for self-defence.

Chapter III

CIVIL DEFENCE DUTIES

496. In submitting the provisions appearing under this title, a representative of the ICRC stressed that they, too, had not been formulated in order to lay down what the tasks of civil defence should be, but to attempt to specify more clearly and completely than had been done in Article 63 those tasks of a humanitarian nature which should entitle those undertaking them to special guarantees. Fire-fighting

was one of the tasks which had given rise, in previous studies, to the greatest difficulties: although it was indispensable to the safeguard of the population, it could also be directly linked with the military effort by contributing to the preservation of military objectives.

497. Several experts, emphasizing the close link between the proposals relating to the definition and those covering duties, suggested that, for greater clarity, the future regulations should combine those two elements. An expert submitted a proposal to this effect.⁹³

498. Referring to the maintenance of order (letter f), one expert, supported by others, was of the opinion that this police function be qualified in a restrictive sense, and he proposed to that effect the addition of the words "in the immediate area". It was also his view that the work mentioned in letter g (preparatory measures) was too broad in scope and that it was not advisable to provide for them in the regulations.

499. Some experts also questioned the usefulness of including "care of wounded and sick" (letter b). Whilst recognizing that civil defence personnel were called upon to give first aid, they also considered that such care was incumbent mainly on regular medical personnel. In any case, they considered it appropriate that, in this regard, there should be concordance between the regulations proposed and those which had been studied by Commission I.

500. It was, above all, the duties connected with fire-fighting which were discussed at length. In the opinion of one expert, the ICRC proposal appeared to be too restrictive, and all fire-fighting services should be included in the category of protected duties. It was difficult, in his opinion, to draw a distinction between the various forms of fire-fighting; all of them, in fact, directly or indirectly contributed to the protection of the civilian population, and even when fighting a fire in a military objective, firemen did not thereby lose their civilian status. Others, on the other hand, were of the opinion that, in present-day forms of warfare, soldiers attacking a military objective would certainly not regard as civilians or spare those who strove to preserve such an objective; only personnel performing tasks of an indisputably humanitarian nature would have a chance of being spared from attack. Two experts, adopting a reserved attitude, thought the question should be more thoroughly studied. One of them, while underlining that the purpose of fire-fighting was generally, especially during armed conflict, to save life and property, stated that the possibility of entrusting such duties to military units should not be ruled out in certain cases.

501. Referring to tasks of a marginally humanitarian nature, an expert recalled a suggestion that had been

⁹³ CE Com III/42, p. 96.

made during previous ICRC work, namely to allow for the possibility of exceptional cases where civil defence workers, who otherwise might have lost their right to special protection, might be permitted to carry out activities which, although not of a combat nature, were related to the war effort. Seconded by another expert, he made a proposal to that effect.⁹⁴

Chapter IV

PROTECTION AND MARKINGS

502. Several experts considered that the word "protection" made for confusion and misunderstandings. In the opinion of one of them, the personnel of the organizations in question enjoyed special protection not because they belonged to a particular body, but rather that they should be enabled to carry out their work with greater ease and particularly that they might not be obliged by the Occupying Power to undertake any other activities. It was proposed that in so far as the matter of terminology was concerned, the words "guarantees" or "status" might rather be used. One expert also suggested that a lead be taken from Art. 5 of the 1954 Hague Convention for the Protection of Cultural Property in order to lay down the rights and obligations of the Occupying Power vis-à-vis civil defence organizations.

503. The question of markings, in particular, gave rise to a wealth of comment which clearly showed the advantage of giving priority to its solution. One expert recommended that the choice of markings as envisaged in the regulations should not be left to the discretion of each country but that uniform markings be internationally adopted, laid down in the regulations and used as a protective sign. An ICRC representative confirmed that that had indeed been the intention of

the authors of the proposals which had been submitted to the experts.

504. In answer to several other questions, the ICRC representative pointed out that, pursuant to the proposals examined and approved by Commission I for extending the use of the Red Cross emblem to medical and nursing staff duly organized and authorized by the State, it would be possible to allow the emblem to be used also by the medical services of civil defence organizations.

505. One expert considered the words "in the zone of military operations" to be too vague. He wondered whether that applied to air attacks. He also queried the meaning of the term "personnel permanently assigned" for the tasks mentioned in the regulations. He felt that it was not possible for all the members of the civil defence to be permanently on duty, but they should all the same be authorized to wear the protective sign when carrying out their humanitarian work. Another expert, however, considered that it was dangerous to extend the use of the protective sign too far and, in particular, to grant its use to those who only occasionally undertook civil defence work. Other experts supported his opinion that such a sign should be reserved for personnel permanently engaged in civil defence and constantly ready for action. That was how the word "permanently" was to be understood.

506. In that connection the ICRC representative pointed out that, according to the proposals in Document III, *temporary* civil defence staff could display the emblem while carrying out their duties, and he stressed the need to restrict the use of the protective marking in order that its efficacy might be maintained.

⁹⁴ See CE Com III/39, p. 95.

ANNEXES

to Parts One and Two of the Report of Commission III

CE/Com.III/1-2

Proposal for the definition of the civilian population submitted by the Belgian experts

(Doc. III, pp. 25 and 26)

1. "The civilian population shall in no circumstances be the target of armed attack."
2. "All individuals not actively participating in military operations are considered to be members of the civilian population, including, despite their military status, members of army medical services."

CE/Com.III/3

Proposal submitted by the Saudi Arabian experts

(Doc. III, p. 26)

First proposal, page 26, 4th line: after the word "participate" *add* the words "or indirectly contribute".

Second proposal, page 26, 3rd line: after the word "participate" *add* the words "or indirectly contribute".

CE/Com.III/4

Proposal on the wording of the "Principle of the Distinction" submitted by the Danish experts

(Doc. III, pp. 24-25)

The rule should read as follows:

"In the conduct of... who belong to the civilian population.

The civilian population as such should not be the object of military operations.

In the conduct of military operations, every effort should be made to spare the civilian population."

CE/Com.III/5

Proposal submitted by the experts of the United Arab Republic

In Document III, page 25, line 3, delete, at the end of the concrete proposal submitted by the ICRC on "The Principle of the Distinction", the following words: "as much as possible".

CE/Com.III/6

Proposal submitted by the Rumanian experts

A. *The Principle of the Distinction* (Doc. III, pp. 25 and 26)

1. "In the conduct of military operations, a clear distinction should at all times be made between, on the one hand, persons taking a direct and immediate part in military operations and, on the other hand, persons who are members of the civilian population, so that the latter and their dwellings, property and other amenities which they use shall never be the object of military operations and shall in all circumstances be spared from the ravages of war."

2. Proposal submitted by the ICRC.

B. *Definition of Civilian Population* (Doc. III, p. 26)

"The civilian population comprises persons who are not members of the armed forces or who take no direct and immediate part in military operations. Persons whose activity may directly contribute to the military effort shall not thereby lose their civilian status."

CE/Com.III/7

Proposal submitted by the Norwegian experts

(Doc. III, p. 25)

The Norwegian experts support the proposal submitted by the UAR experts to the effect that the words "as much as possible" be deleted from the ICRC proposal relative to the "Principle of the Distinction".

CE/Com.III/8

Proposal submitted by the Mexican experts

(Doc. III, p. 26)

"Civilians are those persons who are not members of the armed forces or of organizations attached to the armed forces and persons not directly participating in military operations and, as such, are entitled to be protected."

CE/Com.III/9

Proposal submitted by the Canadian experts

(Doc. III, p. 26)

"Civilians are those persons who are neither members of the armed forces nor are participating directly in military operations."

CE/Com.III/10

Proposal submitted by the Saudi Arabian experts

In the concrete proposal submitted by the ICRC in Doc. III, page 38, the last word but one of the first line, "general", should be replaced by "every"; in line 4, the words "or indirectly" should be added after the word "directly".

CE/Com.III/11

Proposal submitted by the French experts

1. In the draft text relating to the Distinction (Doc. III, page 24), delete the word "directly".
2. In the second proposal on the Definition of the Civilian Population (Doc. III, page 26), delete the word "directly".

CE/Com.III/12

Proposal submitted by the French experts

(Doc. III, p. 38)

General Protection

Replace the first two phrases of the first paragraph of the proposal by:

"In the conduct of military operations, the Parties to the conflict shall make every effort to spare the civilian population from the ravages of war. The civilian population as such shall not be the target of military operations."

From the second paragraph, delete the words "whose activities directly contribute to the military effort" and "within the strict limits of these activities and...".

CE/Com.III/13

Proposal on "General Protection" submitted by the Rumanian experts

(Doc. III, p. 38)

1. "The civilian population shall enjoy at all times effective and general protection against the dangers arising from military operations and shall never be the target of such operations."
2.
3. "The civilian population as a whole, like the individuals of which it consists, shall never in any circumstances be the object of reprisals."

CE/Com.III/14

Proposal on "General Protection" submitted by the Spanish experts

(Doc. III, p. 38)

The Spanish experts support the proposal made by the experts of the United Arab Republic for the deletion of the words "as much as possible" from the concrete proposal

submitted by the ICRC on the distinction to be made between persons participating directly in military operations and civilians.

CE/Com.III/15

Proposal on "General Protection" submitted by the Brazilian experts

(Doc. III, p. 38)

"The civilian population *as such* shall enjoy at all times *effective* and general protection against *all* the dangers arising from military operations. In particular, it shall *never* be the target of attack."

CE/Com.III/15b

Proposal on "General Protection" submitted by the Brazilian experts

(Doc. III, p. 38)

Amendment to the previous definition (CE Com. III/15) of the civilian population:

"Persons who are not serving in the armed forces or in organizations attached to such armed forces, and persons who are not participating directly and *immediately* in military operations are civilians and, as such, constitute the civilian population."

CE/Com.III/16

Proposal on "General Protection" submitted by the Hungarian experts

(Doc. III, p. 38)

The third sentence of the first paragraph of the ICRC proposal should be amended as follows: "neither should it be used, by its presence, to render certain military objectives immune from attack."

CE/Com.III/17

Proposal on the wording of the "Principle of the Distinction" and on the wording of the "Principle of General Protection", submitted by the Swedish experts

(Doc. III, p. 38)

1. The proposal on the "Principle of the Distinction" should read as follows:
"In the conduct of military operations, a distinction must be made at all times between, on the one hand, persons who directly participate in military operations and, on the other hand, persons who belong to the civilian population."
2. The proposal on the "Principle of General Protection" (first paragraph) should read as follows:
"The civilian population as such should not be the object of military operations. In the conduct of military operations, every effort should be made to spare the civilian population."

Proposal on "General Protection" submitted by the Swiss experts

(Doc. III, p. 38)

The expressions "general protection" and "particular protection" should not be used, but only "protection".

"Particular protection" might be replaced by the words "*special protected categories*".

CE/Com.III/19

Proposal submitted by the Norwegian experts

(Doc. III, p. 38)

Basic principles and rules for the protection of the civilian population in all armed conflicts:

"1. Fundamental human rights shall continue to apply in situations of armed conflict.

2. In the conduct of military operations, every effort should be made to spare the civilian population from the ravages of war and all necessary precautions should be taken to avoid injury, loss or damage to the civilian population.

3. The civilian population should not be the object of military operations. Neither should it be used as a shield for military operations.

4. The civilian population, or individual members thereof, should not be the object of reprisals, forcible transfers or other assaults on their integrity.

5. Dwellings and other installations that are used only by civilian populations should not be the object of military operations.

6. All Parties to an armed conflict shall facilitate the provision of international humanitarian relief to the civilian population."

CE/Com.III/20

Proposal on the definition of "Civilian Population" submitted by the United Kingdom experts

(Doc. III, p. 26)

"Civilians are those persons who do not form part of the armed forces or who do not actively participate in military operations.

Persons whose activities contribute directly to the military effort do not, for that reason, lose their status as civilians."

CE/Com.III/21

Proposal submitted by the Brazilian experts

(Doc. III, p. 47)

"Children under the age of fifteen years shall be entitled to special protection. Parties to the conflict shall undertake to keep them at a safe distance from military operations."

Proposal submitted by the Austrian experts

(Doc. III, pp. 43, 50 and 132)

For protecting the members of civil police forces, the following should be added:

"Members of civil police forces form part of the civilian population. Police action against a legitimate combatant who endangers the life of members of the civilian population in a way contrary to international law does not affect the civilian status of a policeman."

CE/Com.III/23

Proposal submitted by the experts of the Federal Republic of Nigeria

(Doc. III, pp. 38, 44 and 47)

Introductory comments

The experts of the Federal Republic of Nigeria, having considered the concrete proposals of the ICRC in Document III are of the view that the expression "general protection" is rather vague and needs some further elaboration both as to the classification of the civilians and also as to the specific treatment to be meted out to such civilians. In this connection, the Nigerian delegation submits the following proposal:

"The civilian population shall enjoy general protection against dangers arising from military operations. In particular:

- (i) Children must not be molested or killed. They must be protected and cared for.
- (ii) Youths and school children must not be attacked unless they are engaged in open hostility against the military forces.
- (iii) Women must be protected against any attack on their person and honour and in particular against rape or any form of indecent assault.
- (iv) Male civilians who are hostile to the military forces are to be dealt with firmly but fairly. They must be humanely treated.
- (v) All military and civilian wounded must be given necessary medical attention and care. They must be respected and protected in all circumstances.
- (vi) Foreign civilian nationals on legitimate business in areas of military operations must not be molested."

CE/Com.III/24

*Proposal submitted by the experts of the United States of America for the suggested rewordings of proposals in Document III**Page 52*

"In the conduct of military operations, all possible efforts shall be made to distinguish between military objectives and non-military objects, so that the latter be spared as much as possible."

“Objects reputed to be non-military are those necessarily or essentially designed for and used predominantly for the civilian population. Once they are occupied by military personnel or used for military purposes, they become military objects.”

Pages 68 and 69

Change last paragraph of ICRC proposal to read:

“Non-military objects indispensable to the survival of the civilian population must be neither destroyed nor damaged, nor be made the object of reprisals, unless there are other adequate provisions to ensure the well-being of the civilian population.”

CE/Com.III/25

Proposal on Definition of Non-Military Objects submitted by the Brazilian experts

The Brazilian experts suggest that the definition proposed by the ICRC on page 63 be replaced by paragraphs 2 and 3 of the resolutions adopted by the Institute of International Law meeting in Edinburgh in September 1969:

- “2. There can be considered as military objectives only those which, by their very nature or purpose or use, make an effective contribution to military action, or exhibit a generally recognized military significance, such that their total or partial destruction in the actual circumstances gives a substantial, specific and immediate military advantage to those who are in a position to destroy them.
3. Neither the civilian population nor any of the objects expressly protected by conventions or agreements nor yet
- a. under whatsoever circumstances the means indispensable for the survival of the civilian population
 - b. those objects which, by their nature or use, serve primarily humanitarian or peaceful purposes such as religious or cultural needs
- can be considered as military objectives . . . ”

CE/Com.III/26

Proposal submitted by the Austrian experts

(Doc. III, p. 73)

“So as to spare the civilian population from the dangers which may result from the destruction of constructions and installations—such as hydroelectric dams, nuclear power stations and dykes—following the release of natural or artificial elements, those objects designed for essentially peaceful purposes or having no, or no longer any, relationship with the conduct of military operations, shall not be the target of any military attack.

The interested States or Parties are invited to complete this protection by further agreements.”

Proposal on “Non-Military Objects” submitted by the Rumanian experts

(Doc. III)

Distinction (p. 52)

“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.”

Définition (p. 63)

“Objects considered to be non-military are those not directly producing arms, military equipment and means of combat, or which are not employed directly and immediately by the armed forces, even if, as a result of a change in their utilization, they might subsequently assume a preponderantly military character.”

General Protection (p. 68)

“Non-military objects shall enjoy general protection from the devastation of war. They must not be made the object of attack, nor be damaged or destroyed or made the object of reprisals, on condition that they are not used directly and immediately in the conduct of military operations.”

Protection of Non-Military Objects (p. 73)

“Civil engineering constructions, dams, dykes, power plants and networks and objectives of national economic interest for peaceful purposes shall be assiduously protected and spared by combatants so as to protect civilian population from the hazards resulting from destruction or damage caused to such non-military objects.”

Warning (p. 83)

“Those who order or launch an attack must warn the civilian population in danger of such attack, so that it may take shelter.”

Choice of Weapons and Methods of Inflicting Injury on the Enemy (pp. 83 and 84)

To ensure the effectiveness of the rule proposed by the ICRC, it would be useful if it drew up documentation and proposals, based on United Nations studies and resolutions, for the introduction into international humanitarian law applicable in armed conflicts of rules for the prohibition of all weapons of mass destruction.

CE/Com.III/28

Proposal on the “Definition of Non-Military Objects” submitted by the experts of the United Arab Republic

(Doc. III, p. 63)

“Objects considered as non-military shall be those necessarily or essentially utilized by the civilian population, which shall include, among other objects, houses

and constructions which shelter the civilian population or which are used by it, foodstuffs, water resources, constructions and installations designed to regulate such resources.”

CE/Com.III/29

Proposal submitted by the Italian experts
(Doc. III, pp. 82-85)

“Active” Precautions

“When a party to a conflict orders or launches an attack on a military objective, it shall take all necessary steps to spare the civilian population and individuals, as well as the non-military objects intended for their use which are within the area of the military objective under attack.”

The same limitations should be specified in the Regulations of Execution.

CE/Com.III/29b

Proposal submitted by the Italian experts
(Amendment to the Proposal CE/Com.III/29)

To the last part of the Proposal, add the following:

“. . . or which are not in a general way secure from the dangers resulting from direct attack on the said objective.”

CE/Com.III/30-31

Proposal submitted by the Hungarian experts
(Doc. III, p. 85)

The Hungarian experts propose the addition of the following to the rules on Proportionality:

“No military advantage may justify an operation in which it is impossible to make a clear distinction between non-military objects and military objectives.”

CE/Com.III/32

Proposal submitted by the Rumanian experts
(Doc. III, p. 47)

Special Protection

“Members of the civilian population entitled to general protection—women, children, old people, the wounded, sick and infirm—shall receive from the belligerents the assistance and care that they might require”.

CE/Com.III/33

Proposal submitted by the Brazilian experts
(Doc. III)

The Brazilian Government experts suggest adding to the provisions on page 85 relating to the choice of weapons and methods of inflicting injury on the enemy the words: “It is reaffirmed that:”, followed by paragraphs 6,

7 and 8 of the resolutions adopted by the Institute of International Law at Edinburgh in September 1969 (see pp. 076 and 077), namely:

“6. Existing international law prohibits, irrespective of the type of weapon used, any action whatsoever designed to terrorize the civilian population.

7. Existing international law prohibits the use of all weapons which, by their nature, affect indiscriminately both military objectives and non-military objects, or both armed forces and civilian populations. In particular, it prohibits the use of weapons the destructive effect of which is so great that it cannot be limited to specific military objectives or is otherwise uncontrollable (self-generating weapons), as well as of “blind” weapons.

8. Existing international law prohibits all attacks for whatsoever motive or by whatsoever means for the annihilation of any group, region or urban centre with no possible distinction between armed forces and civilian populations or between military objectives and non-military objects.”

CE/Com.III/34

Proposal submitted by the Swiss experts
(Doc. III, p. 43)

Protection of members of police forces

The Swiss experts draw the attention of the delegates to the draft *Declaration Applying the fourth Geneva Convention to Police Officers*, drawn up by the International Federation of Senior Police Officers (F.I.F.S.P.).

The Swiss experts, wishing to emphasize the importance of this question, invite the government experts to study this document and call upon the ICRC to adopt its basic concepts.

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 Art. 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 Art. 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 Art. 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 Art. 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."

CE/Com.III/35

Proposal submitted by the Spanish experts

(Doc. III, pp. 99, 100 and 102)

Perhaps the idea of the existence of zones or areas not containing military objectives which, by virtue of the general protection, may not be attacked, should be studied further. Declaration of the existence of such zones could be unilateral, entailing subsequent inspection by an impartial international organization. Such declaration and inspection could be made not only in time of peace but also during armed conflict. In this way, without it being necessary to introduce exceptions that would weaken the general protection, the relevant rules could more effectively be implemented.

CE/Com.III/36

Proposal submitted by the Spanish experts

(Doc. III, p. 117)

In view of the fact that the Draft Protocol is based on the distinction between civilian population and non-military objects, on the one hand, and military objectives, on the other hand, it is imperative that the Protocol contain a provision prohibiting weapons and methods of warfare which do not allow such a distinction to be observed. Rules 6, 7 and 8 contained in the resolution adopted by

the Institute of International Law at Edinburgh on 9 September 1969 clearly specify the extent of that prohibition.

CE/Com.III/37

Proposal submitted by the United Kingdom experts

(Doc. III, pp. 82-84)

"Active" Precautions

"When a Party to a conflict orders or launches an attack, he shall take all practicable steps to spare the civilian population and individuals, and non-military objects designed for their use."

CE/Com.III/38

Proposal submitted by the United Kingdom experts

(Doc. III, p. 52)

Objects for the use of the civilian population:

Distinction

"In the conduct of military operations, endeavours shall be made at all times to distinguish between military objectives and non-military objects, so that the latter be spared as much as possible.

Consequently, attacks shall in all circumstances be restricted as far as possible to military objectives alone."

CE/Com.III/39

Proposal submitted by the Swedish experts

(Doc. III, pp. 151-156)

Non-Military Civil Defence Organizations

The Swedish experts would recommend the adoption of an additional article in the proposed Draft Regulations. This article could be worded as follows:

"The organizations as such do not lose the protection entitled to them, even if their personnel, as an exception, perform temporary activities not included in the previous article. These organizations may, in particular, perform the following tasks:

- a) preventive and protective measures on behalf of the civilian population (construction and superintendence of shelters; evacuation of populations; raising the alarm in case of air-raids or danger of radioactivity; fire-fighting, precautions against radioactive contamination, etc.);
- b) rescue of persons, first aid, care of wounded and sick;
- c) provision of material and social assistance to populations in need of such aid;
- d) protection of property essential for the existence of the civilian population;
- e) maintenance of essential public utility services needed by the civilian population;

- f) maintenance of order as far as may be required for accomplishing their humanitarian tasks;
- g) preparatory measures (training of personnel; technical studies; public information, etc.);

provided, however, that these activities do not involve fighting activities or otherwise affect their civilian status. Such activities shall not have the benefit of special protection.”

CE/Com.III/40

*Proposal on the “ outline for draft regulations ”
submitted by the Brazilian experts*

(Doc. III, pp. 151-156)

When one of the Parties to a conflict is not bound by this Protocol, the two Parties should set up an *ad hoc* Committee, the aim of which would be to ensure the application of the rules for the protection of the civilian population.

CE/Com.III/41

Proposal submitted by the Spanish experts on other problems relating to the protection of the civilian population

(Doc. III, pp. 124-127)

This Protocol should be applicable to all armed conflicts, since the civilian population should enjoy the same protection in all cases and also because the creation of a double standard for the combatants cannot be countenanced.

In view of its limited relationship to the Hague Convention of 1907 and in view of the fact that the Fourth Geneva Convention is applicable only in international armed conflicts, it would seem that this Protocol should be a separate one.

The general provisions of the Protocol tend to exclude the possibility of making reserves.

CE/Com.III/42

Proposal submitted by the Belgian experts

(Doc. III, p. 151)

Outline for Draft Regulations—Non-Military Civil Defence Organizations :

“ 1. Special protection and guarantees for the discharge of their duties may be claimed by persons fulfilling the following conditions, namely:

- (1) that they are members of an organization which:
 - a) carries out in time of armed conflict humanitarian work on behalf of the civilian population, without any distinction based on race, nationality, religious belief, political opinions or any other criteria;

- b) was set up by their government or, in the case of voluntary agencies, that they were officially authorized to perform these tasks;
- c) is of a non-military character and has no combatant missions whatsoever;

(2) that they dedicate themselves, within the organization, to one of the following tasks for the benefit of the civilian population:

- a) to warn of impending air attack, or of radioactive, biological or chemical contamination;
- b) to search for, rescue, evacuate, transport and care for casualties;
- c) to protect property, especially in case of fire;
- d) to provide material and social assistance for the population;
- e) to maintain public utility services;
- f) to maintain order *in disaster areas* so as to render humanitarian aid.

2. The non-military character of the organizations referred to in 1 (1) above is not affected:

- (1) if they are under the authority of the Ministry of War or the Ministry of Defence;
- (2) if their personnel is compulsorily recruited;
- (3) if they are organized on a military pattern;
- (4) if they take orders from a military command;
- (5) if there is *occasional* military collaboration.

3. The tasks enumerated in 1 (2) may be performed on a military site but only in so far as their humanitarian character is retained, which may include, however, care of wounded soldiers or soldiers in distress.”

Commentary

The following are not covered in the tasks conferring a right to special protection:

- construction and superintendence of shelters;
- maintenance of order in general;
- preparatory measures which have been made known.

CE/Com.III/43

Proposal on “ International Relief for the Civilian Population ”, submitted by the experts of the USSR

(Doc. III, p. 123)

Any draft articles to be worked out by the ICRC with the aim of developing the rules in force dealing with the humanitarian activities of the ICRC or any other impartial humanitarian international organization must be in full correspondence with the provision set forth in Article 10 of the Fourth Geneva Convention that such activities are subject to the consent of the Parties to the conflict concerned.

Working paper submitted by the experts of Mexico, Sweden, Switzerland, United Arab Republic and Netherlands

OUTLINE OF AN INSTRUMENT ON THE PROTECTION OF THE CIVILIAN POPULATION AGAINST THE DANGERS OF HOSTILITIES

Note: The present paper is an attempt to combine ideas and formulations from the 1970 proposals of the ICRC as well as from those of 1956 and—on some points—from other sources including proposals submitted by various experts. It is tentative in nature and does not represent final conclusions as to formulation. It aims primarily at indicating what might be included in an instrument and the structure of such an instrument. In some parts it does not even seek to formulate provisions but only to indicate contents which may be appropriate for inclusion.

Preamble

The preamble might contain:

- Reminder of the existing legal prohibitions upon the use of force.
- Reminder that armed conflicts nevertheless occur.
- Reminder of the existence of a body of rules of international law which relate to armed conflicts and which include conventions of a universal character and principles which have been applied by international tribunals and have been confirmed by the United Nations.
- Reminder that this body of rules has retained its full validity despite infringements which they have suffered.
- Noting, in particular, the continued validity of the fundamental principle that the right of the Parties to an armed conflict to adopt means of injuring the enemy is not unlimited.
- Noting that methods and means used in modern armed conflicts call for a restatement and an elaboration of rules protecting the civilian populations in such conflicts, without in any way derogating from the existing rules and formulations.

Chapter I. *Object and field of application*

Art. 1. Basic rule:

In an armed conflict the Parties shall confine their operations to the destruction or weakening of the military resources of the enemy. This general rule is given detailed expression in the following provisions.

Scope of the instrument

Art. 2. This article should lay down that the instrument shall apply in armed conflicts of an international character. It should also prescribe whether and to what extent it should be applicable in armed conflicts which are not of an international character.

Art. 3. This article should lay down that the obligations imposed upon the Parties to a conflict by virtue of the

present instrument with regard to the protection of the civilian population are complementary to those which already devolve upon the Parties by virtue of other rules of international law to which they may be subjected by virtue of adherence to conventions or otherwise.

Art. 4. The present rules shall apply to acts of violence committed against the adverse Party by force of arms, whether in defence or offence. Such acts are referred to hereafter as "attacks".

Chapter II. *Protected Persons*

Art. 5. Definition of the Civilian Population

For the purpose of the present articles, the civilian population consists of all persons not belonging to one or the other of the following categories:

- (a) Members of the armed forces
- (b) Persons who do not belong to the forces referred to above, but who are directly participating in military operations.

Art. 6. Attacks against the civilian population, as such, are prohibited. This prohibition applies both to attacks on individuals and on groups of civilians.

Art. 7. The civilian population taken as a whole, or groups of it or individual members of it, must never be made the object of reprisals, forcible transfers or other assaults on their integrity.

Art. 8. Women must be protected in particular against rape or any form of indecent assault.

Art. 9. Children under the age of fifteen shall never be allowed to participate in military operations. The Parties to the conflict shall make every effort to keep them away and safe from military operations.

Art. 10. The Parties to the conflict shall facilitate the task of medical personnel.

The Parties to the conflict shall authorize the civil defence service personnel to accomplish their mission, where their functions are mainly exercised in favour of the civilian population and individuals.

Chapter III. *Protected Objects*

Art. 11. Definition of non-military objects

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.

Objects not falling within this category are non-military and may not be the subject of direct attack.

Art. 12. 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.

Art. 13. Non-military objects which are indispensable to the survival of the civilian population, such as foodstuffs, standing and harvested crops, cattle, water resources and constructions designed for the regulation of such resources must never be subjected to attacks directly launched against them, nor be attacked by way of reprisals.

Art. 14. Non-military 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.

Art. 15. In order to safeguard the civilian population from the dangers that might result from the destruction of constructions and installations, such as hydroelectric plants, dams, nuclear power stations or dykes, following the release of natural or artificial forces, the interested States or Parties are invited:

- a) to agree on a special procedure, in time of peace, whereby protection may be assured in all circumstances to such of these installations as are designed essentially for peaceful purposes;
- b) to agree, during a period of armed conflict, on granting protection to such of these installations whose activity does not have any, or no longer has any, connection with the conduct of military operations.

The preceding provisions do not in any way discharge the Parties to the conflict from fulfilling their obligations to take precautions as required under the articles mentioned below.

Art. 16-17. Possible articles on:

undefended populated areas,
open cities,
populated areas under particular protection.

Chapter IV. *Precautions in attacks on military objectives*

Art. 18. The person responsible for ordering or launching an attack shall:

- a) make sure that the objective or objectives to be attacked are military objectives within the meaning of the present rules, and are duly identified;
- b) select, when there is a choice to be made between several objectives which will obtain an equal military advantage, that which entails the least danger to the civilian population and to non-military objects;
- c) refrain from or, if possible, suspend the attack, if it is apparent that, even if carried out with the precautions prescribed in Art. . . ., the loss and destruction inflicted upon the civilian population or protected objects would be disproportionate to the military advantage anticipated;
- d) whenever the circumstances allow, warn the civilian population in danger to enable it to take shelter. Such warnings must never, however, discharge the persons responsible for the attack from the duty of observing the preceding provisions of this article.

Art. 19. The person responsible for ordering or launching an attack must take all possible precautions, both in the choice of weapons and methods to be used and in the carrying-out of the attack, so as not to cause losses or damage to the civilian population or individuals, or to the non-military objects for their use, in the vicinity of the military objective under attack. In particular, in towns and other places with a large civilian population, which are not in the vicinity of military or naval operations, the attack shall be conducted with the greatest degree of precision. It must not cause losses or destruction *beyond* the immediate surroundings of the objectives attacked.

The person responsible for the attack must refrain from or, if possible, suspend the attack if he perceives that the conditions set forth above cannot be respected.

Art. 20. The Parties to the conflict shall take, as far as possible, all necessary steps to protect the civilian population and individuals, and the non-military objects for their use, which are subject to the authority of the Parties, from the dangers arising from military operations.

They shall seek to remove military objectives from threatened areas—subject to the provisions of Art. 49 of the Fourth Geneva Convention of 1949—and to avoid the permanent presence of military objectives in towns or other densely populated areas.

Art. 21. The Parties to the conflict are prohibited from placing or keeping members of the civilian population subject to their authority in or near military objectives with the idea of inducing the enemy to refrain from attacking those objectives.

The Parties to the conflict are prohibited from placing or using non-military objects, which are accorded special protection under present rules or other rules binding the Parties, in or near military objectives with the idea of inducing the enemy to refrain from attacking those objectives.

Chapter V. *Prohibited methods and means of warfare*

Note: Weapons, the very elimination of which are the subject of active discussions in other forums, are not dealt with in this working paper. This has regard to nuclear weapons and biological and chemical weapons. The latter category is, moreover, already explicitly prohibited by the 1925 Geneva Protocol.

Art. 22. Methods and means of warfare which are calculated to cause unnecessary suffering or the harmful effects of which could spread to an unforeseen degree, or which could escape, either in space or in time, from the control of those who employ them, remain prohibited.

This general rule is without prejudice to present or future prohibitions of specific methods and means of warfare.

Art. 23. Any action whatsoever, irrespective of the type of weapon or method used, designed to terrorize the civilian population is prohibited.

Art. 24. It is prohibited to attack indiscriminately, as a single objective, an area including several military objectives at a distance from one another, where elements

of the civilian population, or dwellings, are situated among the said military objectives.

Art. 25. 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.

Art. 26. If the Parties to the conflict make use of mines, they are bound, without prejudice to the stipulations of the Eighth Hague Convention of 1907, to chart the mine-fields. 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.

Art. 27. Napalm bombs and other incendiary weapons shall be prohibited for use in circumstances where they may affect the civilian population, as calculated to cause unnecessary suffering.

Note: This provision—and particularly the restriction upon the prohibition contained in it—is submitted on a tentative basis together with the suggestion that the weapons covered by it be made the subject of a special study under the authority of the Secretary-General of the United Nations.

Art. 28. 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, as calculated to cause unnecessary suffering.

Art. 29. Without prejudice to the precautions specified in Art. . . . , weapons capable of causing serious damage to the civilian population shall, as far as possible, be equipped with a safety device which would render them harmless

when they escape from the control of those who employ them.

Chapter VI. *Relief actions*

Art. 30. The Parties to a conflict shall exercise their authority in such a way as to facilitate actions aiming at assistance and aid, including medical supplies, essential foodstuffs and other supplies vital to the survival of the civilian population. The offer of such assistance shall not be regarded as an unfriendly act, especially when coming from impartial international organizations.

Chapter VII. *On implementation.*

CE/COM.III/45

Proposal on the working paper CE/Com.III/44 submitted by the Spanish experts

The Spanish experts, while supporting the working document CE/Com.III/44 submitted by the experts of Mexico, Sweden, Switzerland, the United Arab Republic and the Netherlands, restate their two proposals previously submitted by them:

1. It seems necessary that the Protocol or Convention should apply, without exception, to all categories of armed conflict.
2. It seems necessary to include a clause generally prohibiting the use of arms or methods of combat which by their very nature do not permit a distinction to be made between military objectives, on the one hand, and the civilian population and non-military objects, on the other.

PART THREE

PROTECTION OF JOURNALISTS ON DANGEROUS MISSIONS *

PROTECTION OF JOURNALISTS ON DANGEROUS MISSIONS

(Documents of the United Nations)

507. The question of granting special protection to journalists engaged in dangerous missions was examined by Commission III during its fifteenth and sixteenth meetings on the basis of the relevant documentation made available by the Secretary-General of the United Nations. It was explained by a representative of the ICRC in his introductory statement that in view of the close co-operation between the United Nations and the ICRC in humanitarian matters and also in view of the unanimous decisions recently taken by the Commission on Human Rights with regard to journalists, the ICRC had agreed to a request made by the Secretary-General of the United Nations and placed this matter on the agenda of the present Conference of Government Experts; this step was taken quite independently of the position the ICRC might adopt on the question. The representative of the Secretary-General of the United Nations, in his introductory statement, mentioned *inter alia* that the initiative on the protection of journalists taken up by the General Assembly of the United Nations in resolution 2673 (XXV) and pursued by the Commission on Human Rights concerned independent journalists, to be distinguished from "war correspondents" covered in the Geneva Conventions of 1949; he recalled that the Commission on Human Rights thought it would be important for the United Nations to have the views of the government experts assembled at the present Conference. Several experts pointed out the need for adequate protection of journalists on dangerous missions, both for the journalists' own safety and for the freedom of the press, which could not but contribute to the respect and development of humanitarian law.

508. Several government experts made general comments on the draft articles on the protection of journalists proposed by the Commission on Human Rights during its last session. Some of these experts approved fully of the draft articles while a certain number of others gave their support in principle and subject to certain reservations. Some experts limited themselves to advocating further studies in the matter to be undertaken, while others took a purely negative point of view.

509. Several experts—including some who approved of the Commission on Human Rights project in principle—argued that it was not necessary to create another category of persons to enjoy special protection from the dangers of military operations and that this would weaken the concept of general protection which applied to all civilians including journalists. Some of these experts, on the other hand, joined others in believing that the control of the application of the Geneva Conventions of 1949 would be strengthened if journalists—who were able to inform the public on the conduct of military operations—would enjoy greater protection. Referring to the publicity provided for in Article 7 of the Draft Convention (E/CN.4/L.1149/Rev. 1) an ICRC representative pointed out that information forwarded by the ICRC Central Tracing Agency on conflict victims, in accordance with the Geneva Conventions, was individual, humanitarian and not for the public.

510. Those experts who pronounced themselves on this question stated that journalists should merit special protection only as far as the information they transmitted to the public was unbiased and truthful; one expert suggested that the envisaged Committee on the protection of journalists should take into account adequate rules to be followed by journalists. Some experts advised that a precise rule and not just a "preamble" should specify that journalists must provide complete, objective and honest information. One expert expressed the fear that a journalistic activity enjoying special protection might be used as a guise for other activities detrimental to the country in which they were carried out.

511. Some experts gave their doubts on the composition and function of a committee on the protection of journalists; to this the representative of the Secretary-General of the United Nations pointed out that a proposal had yet to be drafted by a working group to be convened in the near future.

512. Some comments were made on ways to make a future Convention binding on those parties to a conflict who were not States; one expert gave the opinion that the Convention should become "general international law", which would automatically be binding for all subjects of international law.

* United Nations documents E/CN. 4/L 1149/Rev. 1, E/CN. 4/SR 1134 and 1135, 2673 (XXV).

513. Some comments were made on the scope of the special protection to be conceded to journalists; one expert pointed out in this context that to give foreign journalists equality of status with local journalists might, in some cases, not be a very great advantage. Another expert proposed that the Convention envisaged should also accord special treatment to wounded and sick journalists. Still another thought that it would be sufficient to extend the treatment accorded to war correspondents in the Geneva Conventions of 1949 to independent journalists.

514. One expert suggested that journalists, to ensure their protection, might wear a special uniform; the same expert later made a written proposal to add the following paragraph to the draft articles of the Commission on Human Rights: "A journalist who holds a safe conduct card shall not wear a military

uniform which resembles that of any of the belligerents" ⁹⁵.

515. One expert expressed the opinion that the problem of protecting journalists should be dealt with in the United Nations. Though he had no objection in principle to a specific convention on this issue, he believed that other groups deserved more urgent attention. It was also pointed out that such a convention should not compete with the 1949 Geneva Conventions and that it should be open to the largest number of States irrespective of membership in the U.N. Further, it was stressed that the rights of journalists should be counterbalanced with their obligations to the admitting State.

⁹⁵ CE Com III/J1, p. 102.

ANNEX
to Part Three of the Report of Commission III

*Proposal on the protection of journalists engaged on
dangerous missions submitted by the Australian experts*
(CE/Com III/J. 1. See U.N. Doc. E/CN. 4/L 1149/Rev.1)

The following paragraph to be added to Article 4:

“ A journalist who holds a safe conduct card shall not
wear a military uniform which resembles that of any of the
belligerents. ”

PART FOUR

RULES RELATIVE TO BEHAVIOUR OF COMBATANTS *

RULES RELATIVE TO BEHAVIOUR OF COMBATANTS

(Document IV)

516. At its seventeenth meeting, the Commission examined the question of rules for combatants. The validity of the Hague Rules was not in general contested. It was recognized that these Rules were part of customary law applying to the whole international community and that one should not dwell upon its substance. Improvements had, however, been suggested in the wording. One expert pointed out that, even in that respect, care should be taken not to go too far. In that vein, one expert said that a detailed explanation of Rule 1 (page 5) was not necessarily desirable. Referring to Rule 3 (page 7), he said that if a situation were clear, the existing Rules would be satisfactory, and if a situation were confused, everything would depend on the captor's self-control. He felt, also, that the term "quarter" was clear.

517. Several experts asked, nevertheless, for clarification of the existing text of the Hague Rules and occasionally even for slight changes to be made. Thus it was suggested that the words "and methods" be added after the words "or material", in Rule 2 (page 6). It was then suggested that the phrase "or surrendered unconditionally" replace the existing text. Rule 1 (page 5) was criticized by an expert who felt that the words "to harm" and "right" appearing therein were inadequate. This expert suggested rewording this rule to read that the right of the belligerents to select means of combat is limited.

518. The discussion demonstrated a general desire that the existing legislation be retained but adapted so that it catered more adequately for modern war. It referred in general to the problem of surrender, and in particular to the treatment of occupants of aircraft in distress. Reference was also made to the question of uniforms and to guerrilla warfare, to ruse and treachery and to the distinction to be made in this regard, and, finally, to weapons. An expert noted that the question of maritime warfare had been omitted though he did not think it could be assumed that that law was wholly satisfactory. In conclusion, various suggestions were made in reference to a proposed amendment ⁹⁶.

* Document IV.

519. Several experts expressed reservations about complicating the existing law of surrender. They believed it should set out the general principles but that it should not try to formulate detailed rules for the wide variety of battlefield situations.

520. Several experts who spoke on the subject were in favour of a rule for the safety of airmen in distress, even if they fell behind their own lines. A proposal to that effect was made ⁹⁷. In general terms, it was agreed that a rule be adopted to prohibit firing on an enemy who had been wounded, or who had surrendered, or with whom an agreement had been reached. One expert considered that an airman in distress was analogous to a shipwrecked seaman and should be considered as such by applying the corresponding article of the Second Geneva Convention of 1949 which dealt also with those washed ashore.

521. Ruse and treachery were covered in the discussion on the above-mentioned amendment. It was mentioned, in particular, that one could hardly speak of forbidding acts that had already been declared illicit. The wish was also expressed by one of the experts that *de facto* protection emblems used and known to the enemy should not be ignored. Other experts asked that the prohibition of treachery be included in Rule 1 which declared that belligerents did not have a totally free choice of methods; especially the use of civilian clothing by belligerents should not be allowed. Mention was then made of the question of markings and, in particular, of the misuse of the neutrality marking which, it was proposed, should be forbidden to all those not meeting the requisite conditions. Several experts doubted whether any detailed definition could cover all the possibilities inherent in ruses and treachery. An expert suggested revising the rules on spies and settling the matter of sabotage (see Document IV, pages 16 and 17).

522. Most of the experts who spoke on the subject considered that the rules that they had envisaged should be valid also as rules of unwritten law for domestic conflicts as well as for international conflicts. They did, however, admit that problems such as the wearing of civilian clothing could not be solved on the same basis. One expert still hoped to see a

⁹⁶ See CE Com III/C.1, p. 105.

⁹⁷ See CE Com III/C.3, p. 105.

standardization of terminology which varied widely between the Hague Conventions and those of Geneva, of 1949. The consensus was that the Hague Law should be supplemented without any of its provisions being questioned. One expert underlined the necessity of giving consideration, in the further work, to the

prohibition of the use of weapons of mass destruction, taking into account Article 23, sub-paragraphs (a) and (e), of the Annex to the Fourth Hague Convention, resolution XIV of the Red Cross Conference at Istanbul, and resolution 2674 (XXV) adopted by the United Nations General Assembly.

ANNEXES
to Part Four of the Report of Commission III

CE/Com.III/C.1

Proposal submitted by the experts of the Federal Republic of Germany

Behaviour of Combatants:

Ruse and Perfidy in Armed Conflicts

I. Proposal for amendments to the law of war on land and in the air

Article a

Permissible stratagems

The use of stratagems in armed conflicts is allowed. All such acts of war carried out to mislead, delude or otherwise cause an enemy to act to his own detriment are included in this context.

Article b

Prohibition of perfidious means

1. It is forbidden to have recourse to illicit stratagems in order to gain the enemy's trust with a view to betraying that trust.

2. The following are specifically forbidden:

(a) *Murder or wounding of persons who are hors de combat;*

(b) *Illicit use of protected persons;*
The use of persons protected by international law, for the purpose of impeding the activities of the enemy outside certain localities or regions, is prohibited.

(c) *Improper use of internationally recognized emblems;*
Improper use of the flag of truce, the badges of the Geneva Convention, the blue-and-white insignia for the protection of cultural property or any other internationally recognized protective emblem is prohibited.

(d) *Improper use of enemy flags, insignia or uniforms;*

(e) *Simulation of surrender;*
It is prohibited to give a false impression of a wish to surrender.

(f) *Feigning of distress by protected person;*
Feigning distress, wounds or shipwreck, and feigning distress in the air or death, with the object of obtaining humanitarian aid with a view to a resumption of the fighting, are prohibited.

(g) *Abuse of ceasefire agreements;*

The conclusion of a treaty with the intention of gaining military advantage thereby, or the negotiation of a bogus ceasefire for the purpose of relieving the pressure of military operations, is prohibited.

II. Special proposal on the law of war at sea

Article a

Permissible stratagems

As in I above

Prohibition of perfidious means

As in I above, but with para. 2 (d) as follows:

(d) *Misuse of national flags and insignia of the enemy*

Misuse of national flags and of the military insignia of the enemy during military action, or their misuse with the intention of gaining a respite, is prohibited.

III. Special proposal on the law of neutrality

Article n

Misuse of neutral flags

It is a breach of neutrality for a merchant ship of one of the Parties to the conflict to fly a neutral flag for its own protection, thereby endangering neutral ships.

CE/Com.III C/2

Proposal submitted by the Brazilian experts:

(Doc. IV, p. 16, Rule 8)

Rules relative to behaviour of combatants

A further rule should prohibit the taking of hostages.

CE/Com.III/C.3

Proposal submitted by the Israeli experts

(Doc. IV)

Draft rules relative to the protection of airmen in distress

1. Airmen and other occupants of an aircraft in distress, including aircraft making involuntary or forced landings (hereinafter—"airmen in distress"), shall be considered *hors de combat*.

2. Airmen in distress shall not be attacked in the course of their descent.

3. Airmen in distress shall be given, upon reaching the ground, a reasonable opportunity to lay down their arms and surrender.
4. Airmen in distress who, upon reaching the ground, refuse to lay down their arms and surrender, or attempt to escape, may be subjected to the use of only such force as is strictly necessary in the circumstances to capture them; no fire shall be opened on such airmen without first enabling them to surrender and only after due warning has been given.
5. The protection granted to prisoners of war shall apply to airmen in distress, irrespective of whether or not they wear their uniform at the time of their capture.
6. The Contracting Parties undertake to bring the provisions contained in the present Rules to the knowledge of their troops as well as to that of the civilian population. They also undertake to enact any necessary legislation to provide effective penal sanctions for persons committing or ordering to be committed any violations of these Rules.

REPORT OF COMMISSION IV

Rapporteur: Mr. F. KALSHOVEN (Netherlands)

INTRODUCTION

523. Commission IV had as its task to discuss Doc. II of the documentation provided by the ICRC entitled "Measures intended to reinforce the implementation of the existing law". This subject is also treated in other volumes, notably Docs. III, V and VI, and thus various aspects of it have been touched upon by other Commissions. This unavoidably has led to certain repetitions in the statements made. On the other hand, perhaps in order to avoid such repetition, particularly in view of the limited time available for the work of the Commission, experts may have refrained from taking the floor in Commission IV.

524. The Commission decided that there would be no reference to present conflicts, in order to avoid political debates.

525. In order to save time, Commission IV decided to discuss the document chapter by chapter and, in view of its importance, to begin with Chapter II, followed by Chapters III and IV, leaving the discussion of Chapter I to the end.

526. The Commission met every day from Monday, 7 June, starting at 9.30 a.m., to Thursday, 10 June, 12.30 p.m.; its chairman was Mr. Sergio González Gálvez, Vice-President of the Conference. The Commission appointed as its Vice-Chairman Mr. C. O. Hollist and as Rapporteur Mr. F. Kalshoven. Mr. C. Pilloud, representative of the ICRC, and Mr. A. Martin, legal expert of the ICRC, introduced and commented on the subjects dealt with by the Commission. Mr. G. Winteler, legal expert of the ICRC, acted as Secretary.

Chapter I

REMARKS ON THE REINFORCEMENT OF THE RULES RELATIVE TO THE SUPERVISION OF THE REGULAR OBSERVANCE OF THE LAW IN FORCE

527. Two preliminary observations of a very general nature arose out of the debate. One concerned the character of the law involved. Several experts emphasized the imperative character of the humanitarian law of armed conflict. In this connection,

reference was made to Article 1, common to the four Geneva Conventions of 1949, stating that the contracting States were under a duty not only to respect but also to ensure respect for the Conventions in all circumstances.

528. Developing this theme somewhat further, one expert expressed the view that Article 1 constituted a bridge between the measures of application provided for in the Geneva Conventions of 1949 and those arising from the Charter of the United Nations as well as from regional organizations. Thus Article 1 constituted a legal basis for action by the High Contracting Parties through international organizations such as the United Nations. Article 1 also, according to this view, provided the legal basis for "collective action by the international community" as postulated in Commission on Human Rights resolution 9 (XXVII).

529. The second remark dealt with the requirement of good faith. As was pointed out by a number of experts, this was an absolutely essential requirement for the effective operation of any system of enforcement of the law under consideration.

530. A number of experts pointed out that, when discussing supervision of the regular application of the law in force, a clear distinction had to be made between international and non-international armed conflicts. In this connection, one expert emphasized that most of the problems discussed in the report would vanish if a satisfactory definition of non-international armed conflicts were agreed upon, and if in particular it were generally recognized that wars of liberation had an international character.

531. The greater part of the discussion, either expressly or implicitly, was based on situations of international armed conflict. A few experts, however, made express reference to supervision in non-international armed conflict. As one of these experts emphasized, there was an even greater need for the presence of impartial observers in non-international than in international armed conflicts.

532. A number of experts said that, in their opinion, the existing provisions contained in common Articles 8 and 10 (9 and 11 of the Fourth Convention) and the machinery envisaged therein was sufficient to achieve the necessary scrutiny. Other experts, however,

considered that the possibility of creating new machinery, or of using existing international institutions not expressly mentioned in the articles referred to, should be taken into consideration.

533. As far as existing machinery was concerned, attention was paid to the reasons why it did not function satisfactorily. Reference was made to the reasons mentioned in Document II, pp. 16 and 17. It was pointed out that most of those reasons did not constitute insurmountable obstacles and ensued from particular circumstances rather than being structural in character. One expert, however, pointed out that the factor mentioned under (d) on p. 16, Doc. II, was of fundamental importance. This view was shared by all the other experts who spoke on the point of the non-political character of the designation of Protecting Powers. This point will be reverted to later on in the present chapter (see para. 536).

534. Particular attention was paid to a situation not expressly considered in Document II, viz. the situation where one of the Parties to an international armed conflict denied the applicability of the Conventions. Several experts urged that some procedure be found to cover this situation and rectify the shortcomings of the Geneva Conventions in this respect.

535. Emphasis was placed on the necessity of applying the existing law and the machinery provided therein, and of making available to the Parties to an international armed conflict a variety of choice from which to select the most appropriate solutions. It was pointed out that Articles 8 to 10 (9 to 11 of the Fourth Convention) already offered such a variety of choice which, in the view of some experts, was sufficient. Others held a different view, namely that additional machinery should be set up. This question will be considered later on in this report.

536. Various suggestions for a more satisfactory functioning of the existing law were put forward. A suggestion of fundamental importance, which at the same time constituted an answer to the question put by the ICRC on page 30 of Document II, under (a), was that it was indeed desirable expressly to stipulate that the appointment of a Protecting Power or of a substitute, solely for the purpose of applying the Geneva Conventions of 1949, had no effect on the status of the Parties and in particular involved no recognition of the opposite Party as a State.

537. Specific proposals for ensuring a better application of the provisions of the Geneva Conventions regarding the appointment of Protecting Powers or substitutes were put forward by two experts (see Annex II, CE/Com. IV/2 and CE/Com. IV/3). Another proposal before the Commission was the project adopted on 17 April 1971 by the *Commission médico-juridique de Monaco* containing draft regulations for the execution of the Geneva Conventions of August 12, 1949, for the protection of war victims (this

project is summarized in Annex I). Those experts who commented on the different proposals considered that they constituted interesting working papers that should be studied carefully and could be discussed more fully at a later stage.

538. The specific question raised by the ICRC on page 31 of Document II, under (b), was answered by experts who pointed out the improbability that diplomatic representatives of a belligerent State would be permitted to exercise the prerogatives of Protecting Powers. It was, on the other hand, generally felt that the fact that diplomatic relations were not severed did not constitute an obstacle to the appointment of Protecting Powers, and that that solution was to be preferred to the previous one.

539. Attention was also paid by some experts to the suggestion made by the ICRC, on page 34 of Document II, that examination could be made of the problems of constituting groups of competent persons for the functions of supervision under the direction of the Protecting Powers or their substitutes. In this connection, a specific proposal was put forward (see Annex II, CE/Com. IV/4). It was considered that this might constitute another valuable contribution to the various ways and means of ensuring the implementation of the Conventions.

540. Turning now to the question of whether new organizations could be added to those enumerated in Articles 8 and 10 (9 and 11 in the Fourth Convention), one expert explained the qualities that any supervisory body would have to possess. It had to be impartial and effective, and had to enjoy the confidence, and indeed have the consent, of both Parties to the conflict. He considered that States would be least likely to fulfil these conditions. In his view, the ideal solution would be to entrust the task of supervision to a person. This person would, however, owing to practical considerations, have to be linked with an international organization, preferably a universal one, that would have the necessary resources at its disposal. He suggested that a number of persons meeting the above-mentioned qualifications be listed; the list might include such persons as the Secretary-General of the United Nations or a person nominated by him, the High Commissioner for Refugees, or even a representative of UNESCO.

541. Other experts considered the possibility of setting up bodies consisting of several persons. One suggestion was that there should be an international panel from which Parties to a conflict could select individual supervisors. Another suggestion was that national teams be set up within States. It was urged that the instruction and training of such individuals should be a task that the ICRC would carry out.

542. Other experts, who also advocated the idea of setting up additional international machinery, were less definite in their description of such machinery.

One expert pointed out that the tendency in the United Nations was against the creation of new organs. According to another expert, that tendency could be perceived as opposing *ad hoc* organs but not permanent organs. Again, one expert emphasized that for the time being it would be wiser to begin with an organ the use of which would be optional.

543. Several experts expressed as their opinion that additional machinery should be envisaged, within the framework or at least under the aegis of the United Nations. In this connection, one expert stated that the role of the United Nations in this respect must be considered as imperative. Others preferred to consider the role of the United Nations as one among various other possibilities.

544. Other experts were opposed to the idea of giving the United Nations a task in this respect. They entertained some doubts about the possibility of having truly impartial United Nations organs, and they feared that any such organ would be open to political influences. The representative of the Secretary-General stated that experience had shown that it was quite possible for the United Nations to found humanitarian bodies of incontrovertible objectivity and efficaciousness. This view was shared by other experts.

545. Another possibility envisaged by some experts was to entrust supervisory functions to regional bodies, which could function either independently or in co-operation with the United Nations.

546. The powers of any such new organ would, according to most experts, have to consist in scrutiny of the observance of the Geneva Conventions. Several experts made it explicit that no powers of decision ought to be given such an organ. Some experts preferred to limit the task of such an organ to fact finding. In this connection, a representative of the ICRC pointed to Article 132 of the POW Convention, which already envisaged the possibility for Parties to an armed conflict to institute appropriate enquiry procedure. This provision, however, had never been applied.

547. Several experts referred to the provisions concerning supervision contained in the Hague Convention of 1954 for the protection of cultural property in the events of armed conflict. One expert described the experiences obtained when those provisions were applied in the Middle East conflict. It was, however, pointed out by the representative of the ICRC that these provisions had been applied only once and that the protection of cultural property could not be considered to be on the same plane as that of human beings.

548. General observations concerning any setting up of new machinery were the following. It was pointed out that any supervisory body would have to have sufficient resources at its disposal and that it would have to be set up within the legal possibilities. In this

connection, some experts emphasized that such a body would have to respect the generally recognized principles of international law. Another expert stated that that body would have to respect the sovereignty of States.

549. It was generally agreed that any additional machinery would have to be considered as complementary to the existing machinery and, in particular, to the ICRC.

550. Another general remark was that it would be useful to include in the questionnaire which the ICRC was requested to send to Governments some questions whether States would accept new supervisory machinery to be set up.

551. A final observation, made by many experts, was that Article 10, para. 1, and especially para. 3 (Article 11, paras. 1 and 3 of the Fourth Convention), rather than providing the Parties to an armed conflict with mere discretion to seek a substitute for Protecting Powers in case these failed to be appointed, laid a legal obligation upon them to seek such a substitute, notably by asking a humanitarian organization such as the ICRC to assume the humanitarian functions performed by the Protecting Powers under the Conventions or by accepting the services offered by such an organization.

552. Much attention was devoted to the role which the ICRC was able and willing to perform in this respect. A number of experts asked what significance was to be given to "limitation to humanitarian functions". As one expert pointed out, the task of establishing whether the Conventions were being observed should certainly be considered a humanitarian function.

553. In the course of the debate, the representative of the ICRC explained that the Committee had recently given careful attention to this question and that it had arrived at the conclusion that all the tasks falling to a Protecting Power under the Conventions could be considered humanitarian functions. In other words, the ICRC was ready to take upon itself all the functions envisaged for Protecting Powers in the Conventions.

554. This statement was gratefully welcomed by many experts. One of them pointed out, however, that this gave rise to a problem of interpretation, as paras. 2 and 3 of Article 10 (Article 11) now seemed to coincide. Another expert asked whether the functions now envisaged by the ICRC would include not only scrutiny of the observance of the Conventions, but also the establishment of violations and the publication of its findings that would have to be made.

555. As was emphasized by various experts, other appropriate non-governmental organizations could also perform the functions envisaged in Article 10 (11).

REMARKS AND SUGGESTIONS ON THE REINFORCEMENT OF THE RULES RELATIVE TO PENAL SANCTIONS FOR VIOLATIONS OF THE LAW IN FORCE

556. All the experts were of the opinion that it was necessary to provide for and develop sanctions against persons committing any of the serious breaches mentioned in Articles 50 of the First Convention, 51 of the Second, 130 of the Third, and 147 of the Fourth.

557. The question which then arose was what measures were the most suitable to achieve that aim.

558. *Setting up of an international tribunal*

Several experts suggested the setting up of an international tribunal for the purpose of trying Parties accused of serious crimes, those accused of minor offences being tried by State judiciaries. One of the experts expressed the opinion that the United Nations General Assembly would soon produce a definition of aggression, a question which was linked to the drafting of a world penal code.

559. The setting up of such an international tribunal presupposed a change in the second paragraph of Article 49 of the First Convention, Article 50 of the Second, Article 129 of the Third and Article 146 of the Fourth, which provided for the imposition of penal sanctions only by national courts.

560. Other experts, holding the view that the setting up of international tribunals was linked to the idea of a world State, considered that the time was not ripe for them. The main obstacle lay in the extradition and interrogation of criminals, not in the actual establishment of the tribunals.

561. One expert suggested that if agreement on the establishment of an international criminal tribunal could not be reached, States might agree to some kind of international presence at all proceedings in which persons were tried for war crimes or in which they might be denied prisoner-of-war status after having committed belligerent acts.

562. The characterization and repression of these violations should, according to some experts, be provided for in special laws. The ideal thing would be for the ICRC to draw up model laws which would permit the standardization of penalties for breaches of international law. The same aim could be achieved by the systematic publication of national laws of the Parties. Such publicity would contribute to the uniformization of legislations.

563. Some experts considered that special legislation would be pointless, as all the crimes covered by the Conventions were penalized by the national laws of the Contracting Parties. As some offences mentioned in the Conventions were not so penalized, some experts thought it preferable for special laws to be promulgated.

564. If the ICRC had not worked out model laws, it was because it had come up against the obstacle of two totally different systems of penal legislation, that based on English law and that based on Continental law.

565. Model laws would have to be drawn up by regional organizations.

566. A number of shortcomings in the Conventions should be remedied. They concerned, in particular, the question of superior orders. That problem had not been provided for in the Conventions, and it was necessary to specify precisely under what conditions an accused person could plead that he had received orders from a superior, as a justification for his commission of an act forbidden by the Conventions. In order to remedy that deficiency it would be necessary to be guided by the work of the United Nations which itself took as a basis the principles laid down by the Nuremberg tribunal.

567. Article 71 of the Fourth Convention provided for notification of all proceedings by an Occupying Power against protected persons. As the Convention did not make any provision for cases where there was no Protecting Power, a remedy should be found for that lacuna.

568. The Conventions, moreover, made no provision for breaches by omission.

569. Compulsory extradition of criminals, who should in no case be considered "political" criminals, should be ensured. Too many criminals in the Second World War were enjoying a quiet life through lack of international laws for their extradition.

570. Anxious to see just retribution for war crimes, some experts considered that States should be able to make reservations in respect of Article 85 of the Third Convention, whereas others stated that such reservations were contrary to the object and purpose of the Conventions.

571. In contrast, others were of the opinion that a more effective guarantee for the punishment of perpetrators of war crimes would be consistent with that aim and that purpose.

572. Most of the experts held the view that the questionnaire to be submitted to governments should contain questions on that problem.

Chapter III

OBSERVATIONS CONCERNING THE PROBLEM OF REPRISALS

573. Some experts were of the opinion that the problem of reprisals exercised by belligerents should not be dealt with in the framework of "Measures intended to reinforce the implementation of the existing law". They stated that reprisals should no longer be considered as a measure of law enforcement and mentioned in this respect the United Nations Charter and the Declaration relative to the principles of international law concerning friendly relations and co-operation among States, adopted by the General Assembly of the United Nations at its 25th session, enjoining States to discharge their duty of refraining from acts of reprisal involving the use of force. It was further pointed out that the Security Council had condemned military reprisals. Reprisals being among the most barbarous of the methods in the conventional law of war, they should henceforth be considered as abolished, or at least should be bound by the severest limits and defined in the strictest possible fashion.

574. There were many experts who considered, however, that reprisals inflicted by belligerents still held an important place in the law of armed conflicts. One of the experts declared that the prohibition inscribed in the Charter of the United Nations was within the framework of *jus ad bellum*, while the present Commission was discussing *jus in bello*. In the conduct of hostilities, reprisals were still a legal device that was reasonably efficacious. Another expert held the view that it was impossible to outlaw at the present moment the system of reprisals, in view of the backward nature of the international community. Some experts considered that it was necessary to be realistic and that reprisals were, in certain cases, still justified, although the scope for lawful reprisals was very circumscribed.

575. Concerning reprisals by belligerents during the conduct of hostilities, the ICRC considered that it would be desirable to reaffirm strongly the limits which the requirements of humanity imposed upon reprisals. In this connection, it mentioned three principles: (1) the principle that reprisals must respond to an imperative necessity; (2) the principle of proportionality; and (3) the principle according to which reprisals resorted to by belligerents should in any case not be contrary to the laws of humanity, i.e. belligerents should not forget that the law of armed conflicts was a compromise between humanitarian considerations and military necessities. An observation was made that those principles were inadequate and could not be reaffirmed as they stood. One of the experts pointed out that they were already accepted by international customary law. In connection with the principle of proportionality, he stated that the question of nuclear weapons had to be treated with

extreme caution, and that there was there much food for thought for the Nuclear Powers. Another expert observed that in the sphere of the law of combat it was necessary not so much to draw up a list of prohibitions, as to avoid the vicious circle of reprisals and counter-reprisals. He approved the reaffirming of the three principles mentioned by the ICRC.

576. One expert pointed out that there was already general agreement on the prohibition of acts of reprisal against protected persons under the Geneva Conventions and that, in time of peace, reprisals were prohibited in accordance with the Charter of the United Nations.

577. The following observations were made with regard to the ICRC's conclusions as to the possible development of the 1949 Geneva Conventions:

(a) There was widespread agreement regarding the concrete proposal presented in Document III and examined by Commission III, whereby "the civilian population as a whole, and individual members thereof, should never be the object of reprisals". One of the experts declared that the prohibition of reprisals against non-military objects (schools, libraries, churches, etc.) should be added to this proposal. Mention was made of resolution 2675 (XXV) adopted by the United Nations General Assembly, entitled "Basic Principles for the Protection of Civilian Populations in Armed Conflicts", which affirmed that the civilian population should not be the object of reprisals.

(b) Concerning the problem of reprisals and the protection of victims of non-international armed conflicts, some experts agreed that common Article 3 should expressly stipulate the prohibition of reprisals against protected persons. Others, however, thought that the question should be further discussed. One expert pointed out that this question fell under national and not international law and that only the prohibition of those reprisals which would consist in the non-application of the minimum provisions enumerated in Article 3 should be considered.

Chapter IV

REMARKS AND SUGGESTIONS ON THE DISSEMINATION OF HUMANITARIAN PRINCIPLES AND RULES, NATIONAL LEGISLATION FOR THEIR APPLICATION, AND INSTRUCTIONS TO BE GIVEN TO THE ARMED FORCES

578. All experts agreed that the dissemination of knowledge of the Geneva Conventions was of capital importance. Education of the population was a better guarantee of respect of the humanitarian principles than any penalty.

579. Such education should reach both military personnel and civilians at all levels. Several suggestions and examples of appropriate methods were mentioned, namely:

A. For armed forces

— Simple manuals for troops and in-depth instruction to officers;

— Films, libraries, lectures, seminars and courses;

— Examinations on the law of armed conflict before being commissioned;

— Legal advisers, assistants to military commanders (as suggested by the Conference of Red Cross Experts at The Hague in March 1971);

— Development of a sense of responsibility among soldiers by teaching them that they may refuse to obey orders the execution of which would constitute a serious breach of humanitarian rules;

— Orders to every soldier to carry with him a card containing the essential points of international humanitarian law.

B. For civilians

— The introduction into primary and secondary schools of a set of lectures on humanitarian principles and rules, in the courses on Civics. One expert suggested that professional categories following the vocation of tending the sick, the wounded and persons in distress should be given such instruction. In addition, the ICRC drew the experts' attention to the campaign it had just undertaken for the introduction of courses on humanitarian law in universities.

C. On the international plane

— States should submit to the United Nations and (or) the ICRC their military manuals, thus permitting comparisons to be made and action to be taken. An ICRC representative pointed out that military manuals were often not available to the public, for which reason they were not communicated to the ICRC. The question had therefore to be given consideration.

580. It was suggested that the ICRC publish a yearbook of useful information and, in particular, of national legislation relating to the application of the Geneva Conventions.

ANNEXES

to the Report of Commission IV

ANNEX I

Report submitted by Working Group of Commission IV

INTRODUCTION

1. The working group was established by Commission IV to set out the proposals made by experts on the subject of Chapter II of the ICRC Document II, that is, measures for the reinforcement of the rules relative to the supervision of the regular observance of the law in force (pp. 10 to 34, English text).
 2. The report of the working group is framed as an Annex to the report of Commission IV. The working group has set out the various proposals emanating from the experts, whether by papers submitted or in the course of the debate.
 3. The working group was charged with preparing guidelines for the ICRC in framing a questionnaire to be sent to all States Parties to the Geneva Conventions of 1949 to ascertain the views of States on better methods of supervising the implementation of the existing international humanitarian law.
 4. The method adopted by the working group was to set out in Part I the proposals put before the Commission, in short form. The record of the debate was before the working group.
 5. The working group sets out in Part II some suggested guidelines for the ICRC in sending out a questionnaire directed to all Parties to the Geneva Conventions of 1949 relative to the proposals set out in Part I of this report and other matters which might properly have a place in the questionnaire.
 6. This report is concerned solely with an exposition of the proposals made on this topic and does not purport to make any selection or evaluation of those proposals.
- Part I*
- A. PROPOSALS SUBMITTED IN WRITING**
7. *Draft Regulations for the execution of the Geneva Conventions of 1949 prepared by the Commission médico-juridique de Monaco.*
 - (a) The purpose of the Regulations was to remind States of the mechanisms for scrutiny existing in the Geneva Conventions of 1949 applicable to international and non-international armed conflicts, respectively.
 - (b) Under the Regulations there may be recourse either to a neutral State designated as the Protecting Power or to a substitute organization so designated, but in all cases the ICRC may intervene within its traditional role of affording humanitarian relief.
 - (c) The Regulations provide for a scheme to recruit and train a staff of supervisors called "delegates", before the armed conflict occurs, capable of carrying out, with the approval of the Parties in conflict, effective scrutiny of the application of the Conventions.
 - (d) In default of an agreed designated Protecting Power, the Regulations provide that there should be designated an *ad hoc* general or regional body set up by a number of Parties to the Geneva Conventions of 1949, taking no part in the armed conflict, such a body to function under Article 1 of the four Geneva Conventions.
 - (e) In non-international armed conflicts, the Regulations provide that the Parties to such conflicts should try to conclude special agreements operating the system of the Regulations applicable to international armed conflicts, that is, the appointment of a Protecting Power or of the *ad hoc* body, in default.¹
 8. (a) A further proposal (Doc. CE/Com. IV/2) put before the Commission was that the two Parties to an international armed conflict "shall appoint by mutual agreement" a Protecting Power or a substitute organization to act in that capacity.
 - (b) If such a Power or substitute has not been appointed within 30 days after either Party's first proposal for such an appointment, then the ICRC shall request both the Detaining Power and the other Party to the armed conflict to submit a list of an unspecified minimum number of possible Protecting Powers or substitute organizations, acceptable to the Party submitting such list.
 - (c) Both Parties would be required to submit their list to the ICRC within 10 days.

¹The full text of the Draft Regulations has been communicated to the experts.

- (d) Thereupon the ICRC should endeavour to get the agreement of any proposed Protecting Power or substitute organization whose name appears in both lists.
- (e) If such a Power or organization is not appointed within a further period of 20 days, then the ICRC shall be accepted as a substitute for a Protecting Power.
- (f) This proposal was limited to international armed conflicts where normal diplomatic relationships did not exist, or had been severed, and had no application to armed conflicts not of an international character.
9. (a) A further proposal as to existing possibilities for a better application of the Geneva Conventions of 1949 (Doc. CE/Com. IV/3), was that greater use should be made of the existing machinery in the Geneva Conventions of 1949, common Article 10/10/10/11, para. 3). In particular, the ICRC should make the maximum use of its *legal right* under that provision, so that, without the consent of the Detaining Power, the ICRC should assume all the humanitarian functions of a Protecting Power under the Geneva Conventions of 1949.
- (b) This proposal also suggested closer and more active cooperation between the ICRC and the United Nations in securing respect for human rights in armed conflicts.
- (c) This proposal was reinforced by the requirement that all Parties to the Geneva Conventions have "to ensure respect" for them "in all circumstances" (common Article 1). Accordingly the ICRC might undertake a special study of the collective enforcement of the Geneva Conventions, under the principle of Article 1 common to the four Geneva Conventions and, in particular, might examine detailed practical measures to implement the principle of collective enforcement.
10. A further proposal (Doc. CE/Com. IV/4) was that *ad hoc* supervision teams could be trained on a national basis by a number of States. These teams should be able to perform the function of a supervisory fact-finding team in relation to the observance of the Geneva Conventions. Such teams might consist of one representative of the National Red Cross Society, one jurist and one representative of an international non-governmental organization of recognized international standing. Such teams might be registered both with the ICRC and the United Nations. They could be made available on request according to agreement between the Parties to the conflict.
11. That the existing system of Protecting Powers set out in the Geneva Conventions of 1949 should remain unchanged, implemented in good faith, and that no new organization of any kind be created to reinforce the rules relating to the supervision of the existing humanitarian law.
12. That some permanent international agency within the family of the United Nations might be set up, but that it should enjoy an autonomous status as in the case of the High Commissioner for Refugees.
13. That there should be teams of personnel trained in different States in time of peace to act as supervisors and available on call by the States in conflict.
14. That there should be collective supervision and enforcement by all States Parties to the Geneva Conventions not engaged in the conflict, operating under the theory of collective responsibility implicit in Article 1 common to the Geneva Conventions of 1949.
15. That Regional Organizations might be considered as providing some mechanism to act as supervisory organs.
16. That the provisions of Article 10/10/10/11, para. 3, common to the four Geneva Conventions of 1949 need to be tightened up and made more clearly obligatory.
17. That the system of supervision established by the Hague Convention of 1954 for the protection of cultural property be adopted with any necessary modifications.
18. That the ICRC or an organization which, though closely associated with the ICRC, enjoys a certain degree of autonomy in its structure and functioning, act as a substitute organization in default of a Protecting Power.
19. That the ICRC should offer its maximum co-operation to United Nations organs in their efforts to ensure respect for human rights in international armed conflicts.
20. That a compulsory system of periodic reports on State legislations and other measures of internal law enacted by Parties to the Geneva Conventions of 1949, be established so that the relevant provisions of these Conventions may already be implemented in time of peace. Such reports should be submitted by the States concerned to the ICRC.
21. That the ICRC should produce an annual publication showing the practice of States in regard to the supervision of the regular observance of international humanitarian law.
22. That diplomatic missions should not, in general, perform the functions of Protecting Powers even where diplomatic relations have not been severed.
23. That reservations to the existing system under the Geneva Conventions of 1949, affecting supervision should be withdrawn or reconsidered, unless the reservations are designed to strengthen the humanitarian purposes of these Conventions.

B. PROPOSALS MADE ORALLY BY EXPERTS IN THE COURSE OF THE DISCUSSIONS

11. That a private individual or body of individuals linked to an international Organization perform the supervisory functions.

WORKING GROUP

Colonel G. I. A. D. Draper
Dr. H. Hassouna
Mr. C. O. Hollist

9 June 1971

ANNEX II

Proposals submitted in writing by experts

CE/Com.IV/2

Proposal submitted by the experts of the United States of America

Draft Procedure for appointment of Protecting Powers

1. In any situation in which nationals of one Party to this Agreement are captured or detained by another Party to this Agreement, and normal diplomatic relations do not exist between them or are severed, the two Parties shall appoint by mutual agreement a Protecting Power or an organization as a substitute for a Protecting Power.

2. In any situation covered by the preceding paragraph, if a Protecting Power or substitute organization has not been appointed within thirty days after either Party first proposes such appointment, the International Committee of the Red Cross shall request the Party which is the Detaining Power and the other Party each to submit a list of at least . . . possible Protecting Powers or substitute organizations acceptable to it. The two Parties shall submit such lists to the ICRC within ten days. The ICRC 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 ICRC shall be accepted as a substitute for a Protecting Power.

3. The representatives of Protecting Powers and substitute organizations shall, without delay, be given access to each captured or detained person in accordance with the Geneva Conventions of 1949 on the Protection of War Victims, if applicable, and in any event in accordance with general international law.

CE/Com.IV/3

Proposal submitted by the experts of the United Arab Republic

Existing possibilities for a better application of the Geneva Conventions of August 12, 1949

1. In cases where the institution of the Protecting Power fails to operate, the ICRC is urged to make maximum use of its legal right, under paragraph 3 of Article 10/10/10/11 of the Geneva Conventions of August 12, 1949, in order to assume the humanitarian functions performed by the Protecting Power under the Conventions.

25. That there should be no one system of supervision, but that a number of different systems should be available to States in armed conflict, on selection, so that they have a number of options for supervision.
26. No specific proposal was made for a supervisory mechanism in non-international armed conflicts, but it was proposed that the supervision mechanisms in international and non-international armed conflicts should be kept distinct.

Part II

GUIDELINES FOR QUESTIONNAIRE TO BE SENT BY THE ICRC TO STATES CONCERNING REINFORCEMENT OF THE RULES RELATIVE TO THE SUPERVISION OF THE REGULAR OBSERVANCE OF THE LAW IN FORCE

27. A questionnaire on this topic might be framed by the ICRC and sent to all States Parties to the Geneva Conventions of 1949.
28. This questionnaire might take the following form:
- Each of the separate proposals listed in Part I of this report might be elaborated and the States requested to add their comments on each such proposal.
 - If none of the proposals listed in Part I above is agreeable to any particular State or States, then suggestions might be requested for modified or new proposals from such State or States.
 - States might also be asked whether they would have any objection to their comments upon the proposals being communicated to the other States concerned, or published generally by the ICRC, or whether they would not wish them to be communicated to any body other than the ICRC.
 - States might be asked whether they are in favour of further studies being carried out upon this topic.
 - A terminal date might be included in the questionnaire; States would be requested to submit their comments to the ICRC within a period not longer than . . . months from the date of receipt of the questionnaire.
 - States might be invited to make general comments on the report on the work of Commission IV of the Conference of Government Experts, and for that purpose a copy of the report might be attached to the questionnaire.
 - A note might be attached to the questionnaire indicating to all States that the ICRC would like to receive the fullest possible comments on the questionnaire in order that those comments may assist the whole international community in the effective development of international humanitarian law.

2. The ICRC is urged to maintain closer and more active co-operation with the United Nations with a view to furthering its role in ensuring respect for human rights in armed conflicts.
3. Noting that Article 1 common to the four Geneva Conventions provides that the High Contracting Parties undertake not only to respect the Conventions but also to ensure their respect in all circumstances, the ICRC is requested to prepare a special study on the role to be played by the High Contracting Parties to effectuate the collective interest of the conventional community in ensuring respect for the Conventions. The study may cover both the principle inherent in Article 1 and the practical measures for its operation.

CE/Com.IV/4

Proposal submitted by the experts of Norway

A readiness system to provide personnel for supervision of the application of the Geneva Conventions.

The Norwegian experts recall the plea made in resolution No. XXII at the XXth International Conference of the Red Cross, Vienna, 1965, regarding: "Personnel for the Control of the Application of the Geneva Conventions".

One possible approach to further progress in this field could be to adopt the system of ear-marking which is currently in force in some nations vis-à-vis the United

Nations. *Ad hoc* supervision teams could be trained on a national basis by many States. They could be given sufficient background knowledge to be able to perform the functions of a supervisory/fact-finding team, in relation to the observance of the Geneva Conventions. A possible suggested composition of such a team could be the following:

- one representative of the national Red Cross
- one international lawyer
- one representative from an international non-governmental organization, of high international standing.

The representative from an international non-governmental organization could for instance be invited from one of the following suggested organizations:

- Amnesty International
- Friends World Committee for Consultation (Quakers)
- International Association of Democratic Lawyers
- International Commission of Jurists
- World Veterans Federation

The teams could be registered both with the ICRC and with the United Nations and be made available upon request, under an agreement between the Parties to the conflict.

We believe that the suggested efforts may be conducive to a greater knowledge of, and a closer adherence to, the provisions of the Geneva Conventions.

REPORT ON THE FINAL THREE PLENARY SESSIONS OF THE CONFERENCE

I. INTRODUCTION

581. When the four Commissions had completed their proceedings, three final plenary meetings were held to consider the following agenda items:

- (1) Commission reports,
- (2) Follow-up action,
- (3) Miscellaneous matters.

582. At the first of the three plenary meetings, the four rapporteurs submitted their reports and a summary of each Commission's work. Each report was open to discussion but no fundamental issue was debated since the reports had already been approved by the respective Commissions.

583. The President of the ICRC then addressed the Conference as follows:

"Now that this conference is drawing to a close, the time has come to explain briefly how the International Committee of the Red Cross intends to follow up your discussions. The work of the conference has shown that solutions are possible and desirable and that it is therefore necessary to continue the work to reaffirm and develop humanitarian law.

The ICRC will draw up a full report, the gist of which will comprise the reports of the four Commissions. It will be sent to the Governments of all States parties to the Geneva Conventions and will be available to the United Nations. Those Governments, whether they took part or not in this conference, will be invited to make known their opinions and any suggestions, in accordance with resolution XIII of the XXIst International Conference of the Red Cross at Istanbul in 1969. It is in fact our wish to associate them in our efforts. The same applies to all the National Red Cross Societies to which the report will also be conveyed.

The headway made by the conference has been somewhat varied.

For instance, two draft protocols have been drawn up in Commission I on the protection of the wounded and the sick, whereas the important problem of medical aviation was hardly approached. On that subject, the ICRC has been requested to draw up a draft with the assistance of specialists.

While Commission II devoted much of its time to non-international armed conflicts, it hardly glanced at the problem of guerrilla warfare, which is of acute concern to us. In addition, the problem of internal

disturbances, to which the ICRC attaches great importance, was not broached.

In Commission III, the subjects as a whole were dealt with, and in a field which in our opinion is essential, namely the protection of civilian populations, the results were encouraging. There too, the ICRC has been asked to draw up more detailed drafts.

Commission IV covered its agenda without however reaching precise conclusions on some items. The ICRC has been invited to carry on its studies, possibly by sending a questionnaire to Governments.

The considerations which I have just outlined clearly lead to the conclusion that a second session will be necessary. This, incidentally, we had expected when sending out our letter of invitation, and many experts expressed the wish for such a second meeting.

In the circumstances, I wish to inform you that the ICRC has decided to convene that session. In view of the arrangements which will have to be made by one and all, it could take place in April or May next year. The meeting place I may inform you, after consulting the Government of the Netherlands, will be Geneva. Attendance could also be on a broader basis. The ICRC will shortly examine the question but would be pleased to know right away any suggestion you may have. It would be expedient to allow for a slightly longer session than the present one.

The ICRC will endeavour to draw up for the next session a series of draft protocols bearing in mind as far as possible the various opinions expressed here but without necessarily proposing compromise solutions or seeking systematically a kind of common denominator easily acceptable to all Parties. Each article will be accompanied by a brief comment but, of course, the eight fascicles which you have received will still be the basic documentary material as well as, of course, the report on the present conference.

That is the programme which the ICRC intends to follow in the immediate future; it goes without saying that it will devote its full attention to any remarks which you may make during the present proceedings. It intends also to continue its close and fruitful collaboration with the Secretary-General of the United Nations and with the Human Rights Division. In this connection, it should be noted that the twenty-sixth session of the General Assembly will again have on its agenda the protection of human rights in armed conflict. The ICRC would be pleased if the Governments which kindly delegated experts to this session would be in favour of the adoption by the General Assembly of a resolution which takes into account the

programme which I have just had the honour of explaining to you.”

584. The last two items on the agenda were merged and discussed by the second and closing sessions. A summary of the proceedings is given below.

II. PROGRESS

A. *General Considerations*

585. The experts expressed their satisfaction at the outcome of the Conference. Two of them pointed out that it was the first time for a quarter of a century that a conference had met to discuss international humanitarian law problems. During that long period, one of them stated, the Geneva Conventions had proved their worth but also their shortcomings. It was therefore necessary, he added, both to adapt the rules to new types of conflict and to draw up new rules. In the view of another expert, the conference was the first step in that direction; the starting signal had been given for the drawing up of important documents with a view to improving the Geneva Conventions; results had even exceeded hopes, for common trends had emerged and certain texts had been found acceptable. The Conference had shown, he said, that difficulties were not insuperable; that there were genuine chances of reaching agreement.

586. Another expert pointed out that at that stage unanimity on all proposals could not be expected and that considerable thought and exchanges of views were always necessary for international negotiations to result in agreement. However, common denominators had been found for many points. According to another expert, one important aspect of the conference had been the exchange of views among the experts and the general survey carried out by them. One expert particularly appreciated the spirit which had prevailed throughout.

587. Although one expert expressed regret that in some subjects both the material prepared by the ICRC and the discussions in commission were sometimes lacking in realism, insufficient account having been taken of military requirements and of specialist opinions on the subject, those experts who took the floor considered, on the whole, that even though some points had not been thoroughly studied—it having been hardly possible to do so—the conference had been productive. In this connection, one expert mentioned its educational effect and another compared it to a seminar.

B. *Results*

588. Some experts, speaking at length on results, were particularly satisfied with the two draft protocols adopted by Commission I. The first of these is related

to the protection of the wounded and the sick (CE/Com. I Report - Annex I) and intended to supplement the Fourth Geneva Convention; the second is related to non-international armed conflicts (CE/Com. I Report - Annex II), and designed to supplement Article 3 of the four Geneva Conventions. The United Nations Secretary-General's representative shared the feeling of satisfaction.

589. Other experts were particularly appreciative of the proposals submitted by their colleagues in the various Commissions, especially of CE/Com. III/44 submitted to Commission III; the draft protocol defining non-international armed conflict (CE/Plen. 2bis); and the draft rules relating to the appointment of Protecting Powers (CE/Com. IV/2) submitted to Commission IV. In this connection, one expert stated that the best results were obtained in the non-controversial fields which did not have a markedly political aspect (Commissions I and III).

III. PROSPECTS

A. *General Considerations*

590. The need for rules to take into account present-day and predictable future realities was emphasized.

591. Some experts pointed out that what was most important was to safeguard peace, that respect for human rights was a factor for peace, whereas disregard of those rights and racial discrimination in all its forms were a serious threat to peace. They therefore underscored the importance of a better application of existing rules. One of them stressed that although new rules were necessary, to ensure their effective application was equally so.

592. The view was held that the difficulty inherent in the problems before the Conference was to a great extent due to the rapid development of fighting techniques, especially in guerrilla warfare, and to the new forms of warfare. One expert hoped that the ICRC would study ways and means of making existing rules applicable to those new forms of warfare, as the right to protection should be identical whatever the type of conflict.

593. It was also pointed out that the development of international humanitarian law should be based on respect for every nation with due regard for the national sovereignty of every State.

594. Another expert laid stress on the importance of disseminating knowledge of humanitarian principles, particularly in universities.

595. Some experts briefly dwelt on problems which were closely connected with those submitted to the Conference.

596. One of them stated that international humanitarian law could not dispense with a distinction between aggressor and victim. Another, underlining the fact that international law forbade aggression, pointed out that there was a close connection between humanitarian action and the prohibition of aggression.

597. One expert expressed the view that to ban weapons which caused excessive harm was a prerequisite of respect for human rights; another expressed regret that the Conference had not devoted more attention to the problem of weapons of mass destruction.

598. One expert was of the opinion that new regulations should take the form of a protocol additional to the 1949 Geneva Conventions, making the revision of those Conventions unnecessary.

B. ICRC-UN Co-operation

599. As at the plenary meetings at the beginning of the Conference, several experts expressed their approval of the co-operation between the UN and the ICRC, which had been manifest, in the opinion of some of them, in the fact that the ICRC had to a considerable extent taken into account, in the documentary material it had prepared for the Conference, the United Nations Secretary-General's two reports A/7720 and A/8052, and in the presence at the Conference of the Director of the UN Human Rights Division, Mr. Marc Schreiber.

600. A number of experts expressed the hope that that co-operation would continue. In that respect, the UN Secretary-General's representative stated that a report on the Conference would be submitted to the UN General Assembly. One expert pointed out that the examination of the Conference's work by the UN General Assembly at its next session was a tangible sign of that co-operation.

601. It was pointed out by several experts that, in view of the wide scope of international humanitarian law, the two institutions could not work in competition but only in concert. The UN Secretary-General's representative asserted that the UN did not seek any monopoly and that the co-operation between the two institutions could only act as a stimulus. According to one expert, nothing but advantage was to be gained from the experience and resources available to the two bodies, for the work ahead, like the expectations, was enormous. In the opinion of yet another expert, joint effort was even essential. The UN Secretary-General's representative drew attention to the need to avoid the setting up of two distinct legal systems, one UN and the other ICRC, as there could in fact be only one international law. He also mentioned that the UN had been called upon to concern itself with international humanitarian law problems solely because that part of the law appeared to be incomplete. In view of the world organization's humanitarian and human rights

responsibilities, it could not remain aloof from those questions. The United Nations, seeking only to remedy deficiencies in that field, could not but welcome the work accomplished by other bodies, in particular by the ICRC.

602. Some experts nevertheless held the view that there were problems which could better be dealt with by one rather than the other of the two institutions. According to one expert, for instance, the prohibition of certain weapons, such as mentioned in Document CE/Com. III/44, should be studied by the UN. The same opinion was held by another expert with respect to the protection of journalists on dangerous missions. For yet another expert, the duty of making public opinion ready and receptive to those problems should also come within the purview of the United Nations.

C. Next Conference

603. During his address at the closing plenary meeting, the ICRC President announced that it had been decided to organize a second conference. All the experts who took the floor approved that decision. Those of one State submitted a draft resolution stating, *inter alia*, that the government experts welcomed the ICRC decision to prepare for and convene a further conference of government experts to carry on the work with a view to convening a diplomatic conference. However, as one expert pointed out that to adopt a resolution would be inconsistent with the conference rules of procedure, the Chairman stated that the document would be recorded without being submitted to a vote. In that way, the text was subsequently supported by five delegations.⁹⁸ In connection with a further conference, a number of suggestions were made on attendance, place, its purpose, its nature, working methods and publicity:

(a) Attendance

604. Several experts stated that European representation at the conference was disproportionately large, that of some other continents being inadequate.

605. Some expressed the hope that for the next conference the invitation would be extended to a larger number of African, Asian and Latin American countries. One of them emphasized the need to have the opinion of experts representing the major legal systems and schools of thought throughout the world.

606. Others, contending that any selection could only be arbitrary, went so far as to suggest that every State in the world be invited.

607. One expert questioned the advisability of a larger attendance; others considered that the decision should be left to the discretion of the ICRC.

⁹⁸ See CE/Plen. 3, p. 121.

608 One expert suggested that those protocols which were ready, for instance those approved by Commission I, together with questionnaires, be sent to all signatories to the Geneva Conventions with a request for their written remarks. Those States which, in their replies, showed interest in the question would be invited to the next conference. Another expert suggested that liberation movements be also invited to send representatives.

(b) *Place*

609. One expert was of the opinion that, in order for the ICRC to maintain its unique position outside Europe also, it would be advisable for the next conference to be held in a town other than Geneva, preferably in the capital of one of the States of the "Third World".

610. Another, although in favour of Geneva, underlined the importance of holding meetings also away from the headquarters city and referred to United Nations practice in that respect. Yet another was in favour of Geneva as the city of international humanitarian law. One was in favour of Geneva for financial reasons⁹⁹.

(c) *Purpose of the next conference*

611. Although some experts were of the opinion that the next conference should consider problems which had not been discussed, many emphasized that it need not necessarily continue discussion of all subjects examined previously, but could to advantage concentrate on those subjects in which most headway had been made. However, opinions were divided on what subjects should be granted priority. Various examples were given: the wounded and the sick; Article 3 common to the four Geneva Conventions; protection of the civilian population; guerrilla warfare; liberation movements; reprisals; and supervision. One expert believed that the agenda should be restricted to items on which agreement could be reached; in respect of such items, the ICRC could prepare draft protocols. The United Nations Secretary-General's representative also held the view that it was preferable to concentrate on a few subjects with a view to achieving results, especially if the next conference were to last only for a few weeks.

612. In that respect, one expert stated that to limit items to those in respect of which agreement could easily be reached was to run the risk of the common denominator being very low, a fact which would be a barrier to the development of international humanitarian law.

(d) *Nature of the next conference*

613. One expert suggested that the next conference should be held at the diplomatic level in order to avoid

loss of time. However, most of his colleagues, aware of the considerable time and preparation required before convening a diplomatic conference, were clearly in favour of a second conference of experts, which many considered a prerequisite for the next diplomatic conference. One expert even said that it was too early to start talking of a diplomatic conference.

(e) *Working methods*

614. After expressing the hope that the next conference would be longer, some experts suggested limiting the number of commissions and even advocated a single commission with, if need be, the formation of working groups. In that respect, reference was made to the Vienna conference on the law of treaties, which had no commissions.

615. Several experts wished the work to be based on concrete proposals, on draft articles already worked out. According to some, that was the only way to achieve rapid progress. One expert pointed out that that was the working method of, for instance, the UN International Law Commission. Another, comparing that method with that which consisted in submitting a whole range of proposals, was firmly in favour of the former.

616. It was suggested that, until the next conference, contact be maintained between the ICRC and some of the experts.

(f) *Publicity*

617. The view was held that more publicity should be given to the work of the next conference by means of regular press releases. One expert suggested a daily "hand-out" to the press.

618. On the other hand, one expert thought that too much publicity should not be given to the work.

619. In conclusion, several experts thanked the ICRC for the copious documentary material made available and stated that the ICRC's preparatory work had contributed considerably to the success of the Conference. One expert emphasized that the Conference had strengthened the ICRC's unique position in humanitarian work.

620. The ICRC President, after reviewing the major aspects of the Conference, delivered a closing address in which he thanked all experts for the appreciable work accomplished.

⁹⁹ In his address at the closing session, the ICRC President announced that the next conference would be held in Geneva.

ANNEX

to the Report on the Final Three Plenary Sessions of the Conference

CE/Plen/3

Document submitted by the experts of Brazil the United States of America, Ethiopia, India, Japan and the United Kingdom

The experts of Brazil, the United States of America, Ethiopia, India, Japan and the United Kingdom,

CONVINCED that the effective implementation and development of international humanitarian law relative to armed conflicts is an urgent and important task for the international community,

DESIROUS of expressing their gratitude to the ICRC for its devoted and skilful work in the preparation and convening of the Conference,

MINDFUL of the unique qualifications and experience of the ICRC in the development of international humanitarian law relative to armed conflicts,

BELIEVING in the importance of continuing collaboration between the ICRC and the United Nations,

TAKING NOTE of United Nations General Assembly resolution 2677 (XXV), in accordance with which the results of the Conference will be brought to the knowledge of the General Assembly,

WELCOME the decision of the ICRC to prepare and convene a further Conference of Government Experts for the continuation of their work, in order that a diplomatic conference may be convened to bring this essential humanitarian endeavour to a satisfactory conclusion.