

DIPLOMATIC CONFERENCE

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

Summary of second session's work

Introduction

As announced, the second session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was held from 3 February to 18 April 1975 at the International Conference Centre, Geneva. The Conference, which was convened by Switzerland as Depositary State of the Geneva Conventions, was presided over with distinction by Mr. Pierre Graber, President of the Confederation. It was attended by representatives of 121 countries. The time has now come to report on its proceedings which are so important to the Red Cross and to mankind as a whole.

The delegates dealt with diplomatic problems in only three days, most of them having been settled at the first session: the Conference already had its rules of procedure and its bureau. It therefore almost immediately resumed work where it had left off last year.

The assembly divided not only into four Committees, but into Drafting Committees and Working Groups as well. Altogether about five hundred sittings were held. Such fragmentation proved an effective method.

This year, the Conference maintained as a basis for discussion the two draft Protocols additional to the 1949 Geneva Conventions—one relating to international wars, the other to civil wars—which the ICRC had drawn

up with the assistance of government experts at preparatory conferences. The draft Protocols proved fairly relevant and appropriate to the purpose for which they were intended and to the expectations of the Powers. A considerable number of amendments made by the States themselves were submitted.

The ICRC, which had been given the status of a privileged expert, with a free right to speak, delegated to the Conference its members and experts in the codification of humanitarian law. They were asked to introduce each article and provide the requisite explanations and any supplementary opinion.

From the outset, it was felt that this session would not resemble the first and that it was imbued with a new spirit: a constructive spirit, a spirit of work and conciliation. Availing themselves almost entirely of the modern procedure of consensus, the Committees adopted seventy articles as against five the previous year, namely forty-seven of Protocol I and twenty-three of Protocol II, so that more than half the 122 provisions of substance have been covered, subject to their final adoption at a plenary meeting. So far, therefore, the results achieved are most encouraging to all who have co-operated in this big undertaking. One can now look to the future with hope and confidence.

At the final sitting, President Graber appealed to all parties to conflicts to draw inspiration from the drafts adopted even before they came into force.

A third session of the Conference is essential. The bureau has fixed the dates, namely from 21 April to 11 June 1976. Nothing that may allow the work to continue and to be completed at an early date must be overlooked.

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**DRAFT PROTOCOL I
RELATING TO THE PROTECTION OF VICTIMS
OF INTERNATIONAL ARMED CONFLICTS**

Part I—General Provisions

This Part (Articles 1 to 7) contains general provisions mainly intended to strengthen the application of the Geneva Conventions.

At the first session of the Conference, Committee I, which was responsible for considering these draft articles, adopted Article 1 (*General Principles*) which determines the scope of the Protocol and, for the purposes of the 1949 Conventions, extends the concept of international armed conflict.¹

Committee I continued its study of Part I and adopted by consensus all the articles, apart from some definitions of expressions used in the draft Protocol and appearing in Article 2 and the finalization of which hinges on the outcome of the work.

By virtue of Article 3 (*Beginning and end of application*), the application of the 1949 Geneva Conventions and the Protocol “shall cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except for those categories of persons who continue to benefit from the relevant provisions of the Conventions and this Protocol until their final release, repatriation or re-establishment”.

In order the better to ensure that the humanitarian aims of the Geneva Conventions are achieved, the Committee adopted *Article 4*, pursuant to which the application of the Conventions and of the Protocol, as well as the conclusion of the agreements therein provided, shall not affect the legal status of parties to a conflict. The second sentence in the article—which was adopted by 46 votes to 11, with 14 abstentions—reads thus: “Neither the occupation of a territory nor the application of the Conventions and the present Protocol thereto shall affect the legal status of the territory in question”.

The adoption of *Article 5*, which relates to the appointment of Protecting Powers and is regarded by many delegations as a key article, and the adoption of *Article 2 (d)* and *(e)* (definition of the expressions

¹ See *International Review*, May 1974.

“Protecting Power” and “substitute”) constitute a real strengthening of the system provided by the Geneva Conventions, with a view to guaranteeing the impartial scrutiny of their application. Committee I devoted much of its time to this fundamental question. While the article as a whole, which lays down specific and highly important functions for the ICRC, was adopted by consensus, some of its paragraphs were put to the vote.

Paragraph 1 (adopted by 72 votes to 1, with 2 abstentions) and paragraph 2 (adopted by consensus) reaffirm the obligation which the Geneva Conventions laid upon each of the parties to a conflict to appoint without delay, at the outset of the conflict, a Protecting Power (defined in Article 2 (d), adopted by consensus, as “a neutral or other State not a Party to the conflict, which has been designated by a Party to the conflict and accepted by the adverse party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol”), and to authorize, again without delay, the activity of a Protecting Power which the adverse party will have appointed and which it will itself have accepted as such. Paragraph 3 (adopted by 65 votes to nil, with 4 abstentions), assigning to the ICRC administrative duties which it has declared its readiness to accept, in case of any delay in the appointment or acceptance of the Protecting Powers, lays down that:

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

With paragraph 4 (adopted by 53 votes to 10, with 8 abstentions), the important question of a substitute for the Protecting Power was taken up (that is to say, in accordance with the definition given in Article 2(e), namely, “an organization acting in place of a Protecting Power in

accordance with article 5", which was adopted by consensus). The ICRC is prepared to act as a substitute, in the last resort, should the system of Protecting Powers laid down in the 1949 Geneva Conventions and reaffirmed in paragraphs 1 to 3 of the article fail. The text of paragraph 4 reads as follows:

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

The head of the ICRC delegation thanked the government representatives for their unflinching confidence in the International Committee, without which it would be unable to fulfil its task. He pointed out that this paragraph referred solely to the role of substitute which the ICRC might be called upon to discharge, a role quite distinct from the many specific activities the ICRC exercised by virtue of the Geneva Conventions, which recognized the ICRC's general right of initiative in the tasks it might be required to carry out on behalf of the victims of conflicts, with the consent of the parties concerned.

Several delegations had proposed the introduction of a paragraph 4 *bis*: "If the discharge of all or part of the functions of the Protecting Power, including the investigation and reporting of violations, has not been assumed according to the preceding paragraphs, the United Nations may designate a body to undertake these functions".

A member of the United Nations delegation told a working group, on behalf of his Organization, that the United Nations had specific responsibilities in the sphere of peace and security, that the Charter of the United Nations was the one and only source of power of the United Nations and its bodies, and that it was difficult to determine the legal link between the Organization's activities based on the Charter and any activities carried out by an unspecified body of the Organization, as provided for in this paragraph 4 *bis*. After prolonged discussion, the proposal was rejected by 32 votes to 27, with 16 abstentions.

The adoption of paragraphs 5 and 6 by consensus showed the desire of Committee I to remedy some of the problems that account for the unsatisfactory operation of the system of Protecting Powers instituted by the Geneva Conventions: paragraph 5—which for the purposes of Article 5 reaffirms the general rule laid down in Article 4 (see above)—stipulates that the appointment and acceptance of Protecting Powers will have no effect on the legal status of the parties to the conflict, or of any territory whatever, including occupied territory. Paragraph 6 provides that the maintenance of diplomatic relations between the parties to a conflict shall not prevent the appointment of Protecting Powers to ensure the application of the Conventions and of the Protocol.

Article 6 (Qualified persons) refers to the personnel whom the Contracting Parties will endeavour to train, in peace time, with the aid of National Red Cross (Red Crescent, Red Lion and Sun) Societies, with a view to facilitating the application of the Geneva Conventions. It mentions the assistance which such personnel might render the Protecting Powers and lays down the conditions under which they would be used outside the national territory. It should be read in conjunction with Articles 70 (*Measures for execution*), 71 (*Legal advisers in armed forces*) and 72 (*Dissemination*)—see Part V, Section I, below.

Article 7 (Meetings) lays down the manner in which the depositary of the Protocol shall convene a meeting of the Parties to the Geneva Conventions, to study general problems concerning the application of these instruments.

Part II—Wounded, Sick and Shipwrecked Persons

Section I—General protection

Committee II made rapid headway in the matter of protection for *the wounded and the sick*, the original and traditional domain of the Geneva Conventions, for it was to ensure that those wounded in war were given better care and, if possible, saved, that the Red Cross was founded, over a hundred years ago, and the first Convention concluded in 1864.

Up to 1949, army medical personnel alone had enjoyed special protection and been entitled to use the red cross emblem. When the Conven-

tions were revised, that immunity was extended by some rudimentary provisions to the personnel of State-recognized civilian hospitals. Yet the inadequacy of such a half-measure was soon realized. The matter was taken up in medical quarters, and that was how the ICRC introduced into its draft Protocols provisions that applied to civilian medical personnel as a whole. If members of that personnel are to be afforded special protection in addition to the general protection they receive as civilians, it is because they, unlike the latter, fulfil their mission in danger zones. They must be allowed through police cordons and not be regarded as suspects and undesirables.

Governments nowadays tend to set up really effective civilian medical services in case of an outbreak of war, and some even contemplate the merging of military and civilian services.

Such a merger, however, is possible only if civilian personnel and units are duly recognized by the competent authority, since they are less clearly defined and more diffuse than the compact and strictly registered military personnel. This explains why there was some hesitation, in 1949, about granting them the right to use the protective emblem. Only strict control can prevent any misuse in this respect. This is covered by Articles 12 to 17 of Protocol I.

Some other interesting new provisions, which have also been put forward in medical quarters, provide better protection for persons and for medical duties.

Article 11, for example, prohibits the subjection of protected persons to medical acts not warranted by their state of health. This was intended to prevent those heinous pseudo-medical experiments which have been known, and the removal of organs for transplant, an extremely topical problem. Blood and skin donors must be volunteers and must be protected by full guarantees. Persons in the power of an enemy may not be compelled to undergo any surgical operation.

Some thorny problems are at least partly settled by *Article 16*. Doctors will have the officially recognized right to work in accordance with their professional ethics, which are thus embodied, so to speak, in international law. They shall not be compelled to injure in any way persons who are in the hands of an enemy, or mankind in general, by means of scientific research into methods of destruction. It is sad to have to provide for such contingencies, but there are reasons for doing so.

Similarly, a person may not be punished for providing someone with care. To render relief is thus recognized as a sacred act that transcends any antagonism. This principle provides a solution to the painful problems of which there have, even in the recent past, been only too many examples such as the case of doctors threatened with death for an act of pure humanity which has been alleged to serve some military or political end.

The same article relates to non-denunciation of the wounded and the sick, by analogy with medical secrecy. Neither doctor nor nurse may be compelled to surrender the wounded in their care or to give an enemy authority information that may harm their charges; otherwise, the wounded would not dare to come forward for treatment. This is a real advance on existing law, something that the medical and para-medical professions will undoubtedly welcome.

Section II—Medical transports

The fundamental rules relating to medical transports are embodied in three articles of the First Geneva Convention of 1949 (Chapter VI comprising Articles 35 to 37). Article 36 had been considered adequate for settling relations between belligerents regarding the use of medical aircraft. Such aircraft were virtually grounded because their use was contingent on an agreement between belligerents.

With the general advance made in aviation, and in light aircraft in particular, it has become possible to evacuate the wounded more rapidly and thus shorten the time gap between the infliction of a wound and treatment. Yet these new possibilities also impose new demands as a result of the increase in speed and range of weapon delivery systems used in the air. The treaty provisions relating to medical air transports and their protection must therefore be considerably developed.

Air transports cannot, however, be dealt with otherwise than in the context of medical transports in general; hence the special section in Protocol I covering medical transports as a whole (Part II, Section II).

There were two ways of drafting this new section. For the sake of uniformity, the largest possible number of items concerning land, sea and air transports could be assembled in common provisions, and only those of too specific a nature dealt with separately; or else the different features of transport in the three elements could be treated separately and in detail instead of jointly.

The ICRC draft was based on the former method and comprised two chapters, one containing common provisions covering land and sea transports, and the other medical air transports alone.

Committee II weighed the pros and cons of the two methods and favoured the second. To avoid chapters consisting of a single article, the Committee avoided any sub-division, and the section is a unit.

In the definitions (*Article 21*), a clear distinction is made between the action of transporting and the means of medical transport. The latter in turn may be permanent or temporary, a distinction made once and for all in order to avoid any repetition in the different articles. A means of transport temporarily used for medical transport has the status of "medical transport" only while assigned to that purpose. The terms "medical vehicles", "medical ships and craft" and "medical aircraft" are applied to medical means of transport used on land, at sea or in the air. These definitions, which indicate the mode of operation, do away with the need for any special reference to amphibious vehicles or to vehicles that can move in all three elements.

In accordance with the concept governing the whole of Part II, that civilian and military victims shall receive the same protection, the term "medical transport" can apply to civilian and military means of transport alike (*Article 21*).

The ICRC draft contained four other articles common to land, sea and air transport: Search for wounded (*Article 22*), Application (*Article 23*), Protection (*Article 24*) and Notification (*Article 25*). These are no longer in the text adopted by Committee II.

A special provision on search for the wounded was regarded by some as superfluous and by others as incomplete. The Committee deleted it. As regards application, protection and notification, whatever suited one or other of the three means of medical transport was re-stated in the relevant provisions.

As regards respect and protection, medical vehicles are simply regarded as mobile medical units (*Article 22*).

The Second Convention is complemented by two articles on waterborne medical transports. *Article 23* refers to hospital ships and coastal rescue craft, and *Article 24* to medical ships and other craft. While the former article virtually relates only to units at sea, the latter refers specifically to all medical ships and other craft, whether at sea or on inland waterways. Owing to the entirely novel nature of the second article, the

Committee confined itself to taking cognizance of it and deferred its adoption to the following session in order that the States and maritime organizations concerned might make a more thorough study of the new proposals.

Medical air transports are covered by eight articles (26 to 32).

Article 26 relates to general protection. It introduces the detailed provisions. The following three articles form a whole and fix the status of medical aircraft in the three different zones over which they may fly. The nature and demarcation of those zones have no relation to the concept of territory or maritime sector in legal terms. There is merely a *de facto* situation reflected in the armed forces' material control over an area of land or water, regardless of sovereignty.

First, there are land zones under the control of friendly forces, where there is no need for an agreement between opposing belligerents in order that medical aircraft may operate (*Article 26 bis*). Unilateral notification is recommended merely as an additional precaution for the safety of the aircraft, particularly when it flies within the range of the adverse party's ground-to-air missile systems. Taking into account situations prevailing at sea where, unlike land, control is the exception, maritime zones not under the control of an adverse party are subject to the same conditions as land sectors controlled by friendly forces.

The provisions relating to zones under friendly control are not the same for zones controlled by an adverse party (*Article 28*). To fly over the latter, an agreement between the opposing parties is essential. In the interest of medical aircraft and their occupants, this article lays down that any aircraft carrying out such a flight in the absence of an agreement or without complying with the requirements of such an agreement, either by mistake or for some urgent consideration related to safety in flight, shall take every step to identify itself, and that the adverse party shall take precautions before attacking such an aircraft.

Article 27 relates to the difficult and thorny question of the intermediate zone known as contact zone, which it defines as a land zone in which the advanced troops of the opposing forces are in contact with each other, particularly where they are exposed to direct firing from the ground. Over those parts of the contact zone which are under the control of friendly forces and in those where control is not definite, protection cannot be entirely effective unless an agreement has been concluded.

Thus there are an increasing number of precautions, ranging from a simple recommendation regarding notification of flight over friendly

zones to a mandatory agreement before flying over enemy zones, passing through the discretionary though highly recommended agreement for flight over a contact zone.

Article 29, entitled “*Restrictions*”, governs incompatibility between medical aircraft and certain military activities. It adapts to medical aircraft provisions which specify conditions under which medical units may or may not be deprived of protection.

Article 30 deals with the content of notifications, agreements and replies to requests for agreement, and with the acknowledgement of simple notifications.

Article 31 (Landing) and *Article 32 (States not parties to the conflict)* have so far only been dealt with in a general way by Committee II. A detailed study is deferred to the third session.

It is not enough to state that medical and religious personnel, medical units and means of transport are protected; it is necessary that they be identified, hence *Article 18*, which connects Protocol I with its Annex, with respect to the identification and marking of protected persons and objects. This article calls, in a general sense, upon parties to a conflict to ensure identification of medical personnel, units and means of transport.

Medical personnel shall display the distinctive emblem and carry an identity card. Besides the distinctive emblem, medical units and means of transport shall be authorized to use distinctive signals so that they may be more easily identified. The various distinctive signals are described in detail in the Annex.

The provisions of the Conventions and Protocol relating to the distinctive emblem extend to the distinctive signals.

Committee II adopted its Technical Sub-Committee’s report and the principles contained in the draft *Annex* prepared during the first session. The Technical Sub-Committee will meet again during the second and third weeks of the third session to put the final touches to the draft.

It was found essential for delegations to include experts to deal with those questions when they are discussed at the third session.

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Part III—Methods and Means of Combat—Prisoner-of-War Status

Section I—Methods and Means of Combat

The examination of the provisions in Part III of the ICRC draft was assigned to Committee III. Section I contains nine articles: Arts. 33 and 34 deal with the basic rules of combat and with weapons; Art. 35 with prohibition of perfidy; 36 and 37 with respect for emblems; 38 and 39 with safeguard of an enemy *hors de combat*, including flyers in distress; 40 with prisoner-of-war status for legitimate combatants operating as commandos or guerrilla fighters, and 41 with organization and discipline. All the basic rules of this section have been taken direct from the Regulations respecting the Laws and Customs of War on Land, annexed to the Hague Convention No IV of 1907 (essentially, Articles 22 and 23) or from the Convention itself. These principles have never been officially disputed and remain in force in spite of numerous breaches; though they stem from customary law at least several centuries old, they have to be reaffirmed and adapted to the conditions which prevail today in the conduct of war.

The Committee considered all those articles in the course of a preliminary discussion which did not give rise to any objections as to their substance. About forty amendments, however, were presented and referred to the Working Group. The latter, having devoted, as will be seen, most of its sessions to Part IV, had little time left, as the Conference was drawing to a close and was able to examine and adopt only Articles 33, 34, 36 and 37, relating to the prohibition of superfluous injury, to weapons and emblems. The corresponding provisions in Protocol II, Articles 20 to 23, were also presented to Committee III which considered them in a general discussion, during which about a dozen amendments were submitted, but the Working Group did not have time to study them.

The four articles approved by Committee III were adopted by consensus. Only with regard to Article 33, which is of considerable significance, were a number of particular points put to the vote. This article is worded as follows:

Article 33 - Basic rules

1. In any armed conflict, the right of Parties to the conflict to choose methods or means of warfare is not unlimited.

2. It is forbidden to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.
3. It is forbidden to employ methods or means of warfare which are intended or may be expected to cause widespread, long-term, and severe damage to the natural environment.

A vote was taken on the term "methods of warfare" in paragraph 2. It was maintained by 58 votes to one, with 7 abstentions. Paragraph 3 was adopted by a vote of 57 to 4, with 3 abstentions.

The title "Basic rules", which was expressly adopted, gives an indication of the predominant feature of the principles contained in this article, from which stem, at least from paragraphs 1 and 2, all the other prohibitions regarding the conduct of hostilities. Corresponding provisions are to be found in Article 43 (Part IV), which is also entitled "Basic rules" (see below).

Paragraph 3, which refers to the protection of the natural environment, is entirely new and has no corresponding provisions in the Hague Regulations. A similar provision has been introduced in Part IV, in Article 48 *bis* (see below).

An alternative text sought to prohibit acts that might disturb "the stability of the ecological system". As this wording lacked precision, it was decided to adopt the formula prohibiting methods of warfare causing "widespread, long-term and severe damage to the environment". This new wording reflects the concern for the survival of the human race raised by modern means of warfare and technical developments. The adoption of its three paragraphs does not necessarily mean that discussion on Article 33 is over. Several proposals are under consideration. Their examination had to be broken off at this present session for lack of time, and it will be the task of the third session to continue. The problems concern the distinction between combatants and the civilian population, the utilization of methods and means of combat capable of destroying large areas and subduing the population, the periodical examination of the methods and means of combat that have to be prohibited, and the prohibition of aggression, without prejudice to the application of *jus in bello*.

Article 34 on weapons is also a new draft and has no precedent in international law. It was, however, adopted without much difficulty and did not give rise to extensive discussions. Its text is as follows:

Article 34 - New weapons

In the study, development, acquisition, or adoption of a new weapon, means, or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, under some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

It should be noted that the problem of weapons is also being thoroughly examined by an ad hoc Committee of the Conference as will be seen later. At all events, Article 34, as adopted, repeats a principle which existed in the national legislation of some States and which will thus become a rule of international law.

Articles 36 and 37 (Recognized emblems and emblems of nationality) deal with emblems, and the discussions were more laborious than had been expected. In *Article 36*, after all, it was only a matter of confirming the protection afforded by Article 23 (*f*) of the Hague Regulations to the red cross emblem and the flag of truce, with the addition of the new protective emblems, signs and signals which had since appeared on the international scene. Finally, agreement was reached by reintroducing the original expression, forbidding "improper use", which had been coined at The Hague; the word "improper" had been dropped in the ICRC draft. Another difficulty lay in the fact that many States were not parties to the Hague Convention for the Protection of Cultural Property. There could, moreover, be other protective emblems, signs or signals, which were internationally but not universally recognized. The text finally adopted forbids their deliberate misuse. The distinctive emblem of the United Nations was also protected against improper use.

Article 37 deals with emblems of nationality and contains three paragraphs: the first concerns neutral or other States "that are not parties to the conflict"; the second concerns the signs of parties in conflict; the third says that existing rules applicable to the use of flags in the conduct of armed conflict at sea are not affected. The provision forbidding parties in conflict the use of the flags or other emblems of neutral States is absolute. It is forbidden to make use of flags or other emblems of an enemy "while engaging in attacks or in order to shield, favour, protect or impede military operations". An absolute prohibition would have gone beyond the authors' intention; one has only to imagine the complex situations that might arise in occupied territory.

Section II—Prisoner-of-War Status

Article 42 (New category of prisoners of war), extending the protection provided by the Third Geneva Convention relative to the Treatment of Prisoners of War, was tackled by Committee III. Fifteen amendments were submitted and more than forty speakers took part in the general discussion. In view of the complexity of the problem and the differences of opinion that have still to be reconciled, it was decided that the Working Group should consider this article at the third session.

Part IV—Civilian Population

The provisions of Part IV present the basic principles for protection of the civilian population in international armed conflicts. They specify in particular that the civilian population and civilian objects shall be protected against indiscriminate attacks and they forbid the use of such methods of warfare as famine or the destruction of foodstuffs essential to the survival of the civilian population.

This part was divided between Committee II (Articles 54-62) and Committee III (Articles 43-53).

Section I—General Protection against Effects of Hostilities

Article 43 (Basic rule) was adopted by consensus at the first session of the Conference.¹ It sets forth the general obligation that parties to a conflict shall distinguish at all times “between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives”.

Article 44 (Field of application). Paragraphs 2 and 3 of this article were adopted at the first session by votes, respectively, of 51 to 1, with 18 abstentions, and 73 to 0, with two abstentions.² Paragraph 1 was adopted at the second session by 60 to 0 with 7 abstentions. Paragraph 1 states: “The provisions contained in the present Section shall apply to

¹ See *International Review*, May 1974.

² *Ibid.*

any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects..." Paragraph 2 defines the word "attacks" as "acts of violence committed against the adversary, whether in defence or offence". Paragraph 3 emphasizes that the provisions of the section are supplementary to the Fourth Geneva Convention, to other international conventions binding upon the High Contracting Parties and to other rules of international law relating to the protection of civilians and civilian objects.

Article 45 (Definition of civilians and civilian population). This was the third and last of the articles assigned to Committee III and adopted at the first session, also by consensus.³ All the articles referred to below were adopted either in Committee II or Committee III during the second session. Article 45 defines the terms "civilians" and "civilian population" and also specifies in paragraph 3 that: "The presence within the civilian population of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character".

Article 46 (Protection of the civilian population). This article, adopted by consensus, was the subject of long discussion. It asserts the fundamental principle that the civilian population and individual civilians "shall enjoy general protection against dangers arising from military operations". To this end, the article specifically forbids acts of violence which have the primary object of spreading terror among the civilian population, as well as indiscriminate attacks. The term "indiscriminate attacks" means those "of a nature to strike military objectives and civilians or civilian objects without distinction" (paragraphs 1, 2 and 3). Paragraphs 4, 5 and 6, respectively, prohibit reprisals against the civilian population, the use of the civilian population "to shield military objectives from attack or to shield military operations" and the non-observance of the precautionary measures provided for in Article 50 (see below).

Article 47 (General protection of civilian objects). This article, which prohibits subjecting civilian objects to attacks or reprisals, was also adopted by consensus, after paragraphs 2 and 3 had been adopted by votes, respectively, of 58 to 3, with 9 abstentions, and 64 to 0, with 6 abstentions. Civilian objects are defined in paragraph 1 as "all objects which are not military objectives". Paragraph 2 defines "military objectives" as "those objects which by their own nature, location, purpose or use

³ See *International Review*, May 1974.

make an effective contribution to military action and whose total or partial destruction... offers... a definite military advantage". Paragraph 3 provides, in case of doubt, that an object normally dedicated to civilian purposes shall be presumed to be serving only those purposes.

Article 47 is followed by an *Article 47 bis (Protection of cultural objects and of places of worship)*. This article, adopted by consensus, protects historic monuments, places of worship and works of art against damage which might be caused by military operations.

Article 48 (Objects indispensable to the survival of the civilian population). This article was the subject of long discussion prior to its adoption by consensus. It prohibits the starvation of civilians as a method of warfare. To this end, it forbids damage to foodstuffs, food producing areas, livestock, drinking water and other objects indispensable to the survival of the civilian population. This prohibition does not apply, however, if such objects are used solely for sustenance of the armed forces of a party to a conflict or in direct support of military action. In any event, these objects are not to be made the subject of reprisals.

Article 48 bis (Protection of the natural environment), to supplement Article 48, was also adopted by consensus. This is designed to provide special protection to the natural environment "against widespread, long-term and severe damage" resulting from war or the methods and means of warfare.

Article 49 (Works and installations containing dangerous forces). This article gave rise to rather long discussion. In view of the serious consequences for the civilian population which could result from the destruction of works containing dangerous forces, such as dams, dykes and nuclear electric generating stations, the Committee reached the conclusion that any attack against these objects would have to meet very strict criteria. It set forth the following conditions to permit an attack against a dam, dyke or nuclear electric generating station or any military objective adjacent to those works:

- (1) if the works are used "in regular, significant and direct support of military operations", and
- (2) if such attack is "the only feasible way to terminate such support".

Paragraph 3 states: "In all cases, the civilian population and individual civilians shall remain entitled to all the protection accorded them

by international law, including the precautionary measures provided by Article 50" (see below). In any case, paragraph 4 prohibits making any of the objects mentioned above the subject of reprisals. Paragraph 6 provides the possibility for parties to a conflict to conclude further agreements to protect objects containing dangerous forces.

Article 50 (Precautions in attack) specifies the various measures which must be observed in the course of military operations, in order that the civilian population, civilians and civilian objects may be spared. The article was adopted by 66 votes to 0, with 3 abstentions.

Article 51 (Precautions against the effects of attacks) further strengthens the provisions laid down in the preceding article by calling upon the parties to a conflict to take more general steps to protect the civilian population "against the dangers resulting from military operations". The article was adopted by consensus.

Article 52 (Non-defended localities), which was adopted by consensus, lays down the conditions necessary for assigning to certain localities, under an agreement between the parties to a conflict, the status of non-defended locality.

Article 53 (Demilitarized zones) states the methods governing the conclusion and observance of agreements on the establishment of demilitarized zones by the parties to a conflict. By such agreements, each of the parties is committed to abstention from extending its military operations to zones thus demarcated. The article was adopted by consensus.

Committee II made a preliminary study of the articles of the chapter on civil defence (Chapter VI). For lack of time, however, it deferred further study to the third session of the Conference.

Section II—Relief in favour of the Civilian Population

Articles 60, 61 and 62 of this section, also assigned to Committee II, were not considered at the second session. They bear the following headings: "*Field of application*", "*Supplies*" and "*Relief actions*".

Section III—Treatment of Persons in the Power of a Party to the Conflict

Articles 63 to 65 and 67 to 69 were not examined, for no decision was reached on whether to assign them to Committee I or Committee III. The question will be settled at the third session.

Article 66 (Objects indispensable to the survival of the civilian population) was considered by Committee III in cursory fashion and, time being short, also deferred to the third session.

Protection of Journalists Engaged in Dangerous Professional Missions in Areas of Armed Conflicts

Committee I considered draft Article 69 *bis* on this question. While it left the decision regarding the definitive place and number of the provision to the Drafting Committee, it adopted the following text by consensus:

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

Part V—Execution of the Conventions and the Present Protocol

Section I—General Provisions

This section (Articles 70 to 73) is essentially intended to improve the implementation of humanitarian rules applicable in armed conflicts. Committee I, which was responsible for studying it, adopted all its provisions.

Article 70 (Measures for execution), adopted by consensus, stipulates that the High Contracting Parties shall, without delay, take all measures necessary for the discharge of their obligations under the Geneva Conventions, give orders and instructions to ensure observance of the Conventions, and supervise their execution.

Article 70 bis (Activities of the Red Cross and other humanitarian organizations) will be given special attention by the Red Cross. It was drafted by a working group presided over by Mr. Kai Warras (Secretary

General of the Finnish Red Cross) and comprising representatives of the National Societies who participated in the Conference as members of governmental delegations, and of the ICRC and the League. The text, which was adopted by consensus, reads as follows:

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

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

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

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

Article 71 lays down that the High Contracting Parties shall at all times ensure that legal advisers are available, where necessary, to advise military commanders on the application of the Geneva Conventions and on appropriate instruction to be given on the subject to the armed forces. The text was adopted by consensus.

Article 72 provides for the dissemination of knowledge of the Geneva Conventions, one of the essential measures to ensure the application of humanitarian law. The Red Cross has long shown through its activities the importance which it attaches to that task. The text adopted reads thus:

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

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

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

While there was consensus on the first two paragraphs, paragraph 3 was adopted by only 22 votes to 17, with 19 abstentions. The article as a whole, which was put to the vote at the request of a delegation, was adopted by 49 votes to 0, with 10 abstentions. Everything would nevertheless suggest that, subject to some changes, the Conference will accept this provision by consensus.

Article 73 (Rules of application), adopted by consensus, reaffirms—for the purposes of the Protocol—a provision common to the 1949 Conventions whereby the Contracting Parties shall communicate to one another as quickly as possible their official translations of the Protocol and of the laws and regulations which they may adopt to ensure the application thereof.

Committee I, at the third session of the Conference, will examine Section II of Part V (Articles 74 to 79) on the repression of breaches of the 1949 Geneva Conventions and of the Protocol, and the final clauses (Part VI, Articles 80 to 90) and the Preamble to the draft Protocol. These chapters, which have already been the subject of numerous draft amendments and new proposals, will probably give rise to considerable discussion.

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DRAFT PROTOCOL II RELATING TO THE PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS

Draft Protocol II, necessitated by the distinction between international and non-international armed conflicts, restates, in simplified form, the basic provisions of the 1949 Geneva Conventions and draft Protocol I; it contains the rules deemed to be essential to ensure for the victims of non-international armed conflicts effective protection against arbitrary action by the parties to the conflict and against the dangers arising from hostilities.

In accordance with a decision reached by the Conference at its first session, draft Protocol II, divided among the three main Committees, was examined simultaneously with draft Protocol I.

It should be noted that, notwithstanding the difficulties raised by the very nature of Protocol II, because of the special political and material conditions in which non-international armed conflicts take place, and also because of the balance that must be found between the exigencies of humanity and those of State security, the Conference, in a spirit of conciliation that was quite outstanding, made substantial progress in the codification of this hitherto little developed field of international humanitarian law.

Part I—Scope of the Present Protocol

This Part contains the provisions which seek to determine the “material” and “personal” fields of application of Protocol II (Articles 1 and 2) and to lay down a number of saving clauses relating to the legal status of the parties to the conflict and to the principles of State sovereignty and non-interference in internal affairs (Articles 3 and 4); it also states the principle of equal rights and duties for all parties to a conflict (Article 5).

Article 1 (Material field of application), the purpose of which is to define the material situations which would automatically entail the application of Protocol II, was considered generally as being the keystone of the whole Protocol; for the majority of the delegations, the extent and content of the rules depended on the general scope of the Protocol. Committee I accordingly devoted a large part of its deliberations to the drafting of this provision; it made every effort to bridge apparently

irreconcilable views of delegations, some wanting a broad definition covering all situations of non-international armed conflicts, while others favoured a precise definition covering only those armed conflicts which were strongly characterized and of a high degree of intensity. Thanks to the spirit of co-operation shown by the delegations and their earnest desire to find a solution to this thorny problem, Committee I managed to put together a balanced text, which was adopted by consensus.

The main feature of paragraph 1, which states the material conditions under which Protocol II shall be applied, is the reaffirmation of Article 3 common to the Geneva Conventions of 12 August 1949, whose conditions of application are not modified by Article 1 of Protocol II. Thus, thanks to this saving clause, common Article 3, which remains unchanged, will continue to apply to all non-international armed conflicts, including those which might not be covered by Protocol II. The effect of this solution, which had been proposed by the ICRC, is that there will be two separate instruments in force, both applicable in cases of non-international armed conflict; the drawbacks that might result from this somewhat complex situation are substantially offset by the obvious advantage, from the humanitarian aspect, that there will be no gaps in the protection for victims of those conflicts.

Paragraph 2 of Article 1 says that Protocol II shall not apply to situations of internal disturbances and tensions which do not constitute situations of armed conflicts.

The wording of Article 1, which steers a middle course and is a significant advance in the development of international humanitarian law, is as follows:

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

Adopted by consensus, *Article 2* defining the “personal” field of application of Protocol II, shall apply “to all persons affected by an

armed conflict as defined in Article 1"; under paragraph 2, persons whose liberty has been restricted for reasons related to the armed conflict shall be entitled to some guarantees of protection, even after the end of the armed conflict and until they are released.

In adopting *Articles 3 (Legal status of the parties to the conflict)* and *4 (Non-intervention)* by consensus, Committee I expressed its determination to introduce in Protocol II two saving clauses which it considered essential to safeguard the jurisdiction of sovereign States and maintain the well-established international law principles of State sovereignty and non-interference in internal affairs.

Article 3, restating one of the clauses of Article 3 common to the four Geneva Conventions, says that the application of the provisions of Protocol II shall not affect the legal status of the parties to the conflict; it reaffirms the rule that the application of international humanitarian law in cases of non-international armed conflict has no bearing upon the legal characterization of relations between the parties to the conflict.

Article 4 (Non-intervention), based largely on the text of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, of 24 October 1970, clearly states that nothing in Protocol II may affect the sovereignty of a State or the responsibility of the government in power to maintain or re-establish law and order, or justify intervening, directly or indirectly, in an armed conflict.

Article 5 lays down that Protocol II must be applied by all parties to a conflict, whether they be the government in power or the insurgents, and that the rights and duties under the Protocol apply equally to all. This article, adopted by consensus by Committee I, is based on the principle underlying *Article 3* common to the four Geneva Conventions, namely that an engagement entered into by a State is binding not only upon the government but also upon all authorities and individuals on the territory of the High Contracting Party. In the context of Protocol II, this means that the commitment undertaken by the State is binding upon the insurgent party.

Part II—Humane Treatment of Persons in the Power of Parties to a Conflict

The purpose of Part II (Articles 6-10) is to protect all persons who are not or are no longer taking part in hostilities against abuses of power

and inhumane and cruel treatment by the military or civilian authorities of the party to the conflict into whose hands they have fallen. In addition to the fundamental guarantees in Article 6, which apply under all circumstances to all protected persons, Article 8 provides special rules for the protection of persons whose liberty has been restricted. It should be observed however that Protocol II does not make captured combatants the beneficiaries of the treatment accorded to prisoners of war.

Article 6 (Fundamental Guarantees) was adopted by consensus by Committee I, which accepted the ICRC draft almost without change. This article, which sets forth in its first paragraph the general principle of humane treatment for protected persons and in its second paragraph a number of prohibited acts, reads as follows:

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, their honour and their religious convictions and practices. They shall in all circumstances be treated humanely, without adverse distinction.
2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:
 - (a) violence to the life, health and physical or mental well-being of persons, in particular murder, and cruel treatment such as torture and mutilation or any form of corporal punishment;
 - (b) taking of hostages;
 - (c) acts of terrorism;
 - (d) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
 - (e) slavery and the slave trade in all their forms;
 - (f) pillage;
 - (g) threats to commit any of the foregoing acts.

The original ICRC draft included a third paragraph concerning the protection of women against rape, enforced prostitution and any form of indecent assault, but Committee I decided to make this a separate article, covering children as well. This article, currently designated as *Article 6 bis*, was adopted by consensus.

Following a general discussion, Committee I decided to postpone consideration of paragraph 1 of *Article 7 (Safeguard of an enemy hors*

de combat) until Committee III had reached a decision concerning the corresponding provision in Protocol I, i.e. Article 38. Committee I also decided to transfer paragraph 2 of Article 7, concerning the release of captured combatants, to *Article 8 (Persons whose liberty has been restricted)*, of which it now constitutes paragraph 5.

In adopting *Article 8* by consensus, Committee I made a substantial advance in the development of international humanitarian law applicable in non-international armed conflicts, in that rules were formulated for the first time to provide fit and proper conditions of internment or detention for persons deprived of freedom for reasons relating to an armed conflict.

Article 8 makes a distinction between two categories of protected persons, those deprived of freedom by internment or detention, and those under house arrest, who will benefit from different degrees of protection, appropriate to their respective situations. For persons deprived of freedom, it provides a number of binding rules, regarded as minimum standards which the parties to a conflict are required to respect:

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

- (a) the wounded and the sick shall be treated in accordance with Articles 12 and 12 *bis*;
- (b) the persons referred to in paragraph 1 shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and dangers of the armed conflict;
- (c) they shall be allowed to receive individual or collective relief;
- (d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;
- (e) they shall, if subjected to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

Article 8 then sets forth rules which the parties to the conflict are encouraged to observe as far as they can:

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

- (a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;
- (b) they shall be allowed to send and receive letters and cards. The parties to the conflict may limit their number if they deem it necessary;
- (c) places of internment and detention shall not be located close to the combat zone. The persons referred to in the opening paragraph of paragraph 1 above shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out in adequate conditions of safety;
- (d) they shall have the benefit of medical examinations.

Paragraph 4 of Article 8 encourages the parties to the conflict to facilitate visits to protected persons by representatives of an impartial humanitarian organization. Paragraph 5 sets forth measures which the parties to the conflict should take to provide for the safety of protected persons if they decide to liberate them.

Article 9 (Principles of Penal Law) and *Article 10 (Penal Prosecutions)* were studied superficially by Committee I, and referred to a special working group which will continue their examination during the third session of the Conference.

Part III—Wounded, Sick and Shipwrecked Persons

The purpose of this Part (Articles 11 to 19) is to secure protection and respect for the wounded, sick and shipwrecked victims of a non-international armed conflict, and the medical care which their state of health may require.

When examining this Part, Committee II sought, as fully and as consistently as possible, to extend to non-international armed conflicts the humanitarian principles of the 1949 Geneva Conventions and Protocol I.

Article 12 (Protection and care), which was adopted by consensus, lays down the principle of immunity for all wounded, sick and shipwrecked persons. To this obligation of respect, paragraph 2 adds the obligation for the parties to the conflict to give protected persons “to the fullest extent practicable and with the least possible delay” the medical care and attention required, with “no distinction... founded on any other than medical grounds”.

Article 12 bis (Protection of persons) restates the essential provisions of Article 12 (3) in the ICRC draft. These provisions, which Committee II preferred to incorporate in a separate article, grant persons deprived of liberty special protection against any acts endangering their health and any medical procedure not called for by their state of health, such as pseudo-medical experiments, physical mutilations, medical or scientific experiments and removal of tissue or organs for transplantation.

Article 13 (Search and evacuation), adopted by consensus, provides that the parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, protect them against pillage and ill-treatment, search for the dead and arrange for the last respects to be paid to their remains. Paragraph 3 further says that every endeavour shall be made to arrange for the removal of the wounded and sick, aged persons and children from a besieged or encircled area, or an area of similar danger.

Paragraphs 1 and 2 of *Article 14 (Role of the civilian population)*, which were adopted by consensus, reaffirm the rules of the Geneva Conventions, applicable in international armed conflict and of considerable importance in non-international armed conflict. Paragraph 1 enjoins the civilian population to respect the wounded and sick, to whichever party they belong, and to commit no act of violence against them, an injunction made particularly necessary in situations where people are divided by violent hatreds. Further, both paragraphs 1 and 2 permit the civilian population and relief societies, even on their own initiative, to shelter and care for the wounded and sick. In case of need, the parties to the conflict may appeal to the civilian population and relief societies for assistance. It was particularly desirable to provide for this contingency in non-international armed conflicts, as in such conflicts very little medical assistance might sometimes be available.

Article 15 (Protection of religious and medical personnel), adopted by consensus, ensures that medical and religious personnel shall be respected and protected, shall be granted all available help for the discharge of their duties, and "shall not be compelled to carry out tasks which are not compatible with their humanitarian role".

Article 16 (General protection of medical duties), adopted by consensus, lays down that no person shall be punished for having carried out medical activities compatible with medical ethics, and also that no person shall be compelled either to act in a manner contrary to the rules

designed to protect the wounded and sick or to refrain from acts required by those rules. This same article lays down, subject to national law, the principle of non-denunciation of the wounded and sick. For persons engaged in medical activities, whether to conceal or reveal information concerning persons cared for by them is a matter governed solely by professional ethics. No person engaged in medical activities may be penalized for failing to give information concerning the wounded and sick under his care.

Article 17 (Protection of medical units and transports), adopted by consensus, lays down that “medical units and transports shall be respected and protected at all times and shall not be the object of attack”. Nevertheless, this protection shall cease if it is used to commit acts harmful to the adverse party and a warning setting wherever appropriate a reasonable time limit remains unheeded. In particular, the fact that personnel of the unit or the transport are equipped with individual weapons for their own defence shall not be considered as a harmful act.

Article 18 (The distinctive emblem and signals) provides that only medical religious personnel and medical units and transports may display the distinctive emblem, which shall be respected in all circumstances. Parties to a conflict may agree upon the use of signals to identify medical units and transports. Each party to the conflict shall supervise the use of the signals and prevent any misuse of them.

In this Part, Committee II will still have to examine at the third session of the Conference Article 11 (*Definitions*), Article 14 (3) and Article 19 (*Prohibition of reprisals*).

Other articles in Protocol II to be dealt with by Committee II include Articles 30 and 31 (*Civil defence*) (in Chapter II of Part V), which were briefly discussed, and Articles 33 to 35 (*Relief*) (in Part VI), which have not yet been touched upon.

Part V—Civilian Population

This Part (Articles 24 to 32) contains three Chapters. Chapter I (Articles 24 to 29) states the basic principles of the protection of the civilian population against the effects of hostilities; discussion on this Chapter was assigned to Committee III. Chapter II, consisting of

Articles 30 and 31, deals with civil defence and was assigned to Committee II for examination. Chapter III contains only Article 32 concerning special measures in favour of children.

In the examination by Committee III of the provisions relating to the protection of the civilian population against the effects of hostilities, the discussion revealed two opposing views on how those rules should be developed within the framework of non-international armed conflict. On the grounds that the intensity of non-international armed conflicts is often as great as that of international armed conflicts, and that the suffering caused to the civilian population is the same in both cases, some delegations took the view that Protocol II should restate the rules which by and large correspond in form and substance to those found in Protocol I. On the other hand, a number of delegations were opposed to such detailed rules in the context of non-international armed conflicts, as they considered that it was necessary to view the problem realistically and take into account the necessity of restoring law and order and maintaining the internal authority of the State. These delegations called for simple rules which would not necessarily be the counterpart of those in Protocol I, so as not to discourage ratifications or make it impossible for provisions to be applied.

Discussions therefore essentially turned on the choice to be made between a long or a short form of article. On the whole, the articles adopted respect the structure and terminology of those in Protocol I and restate the principles in a simplified form.

Article 24 (Basic rules) reaffirms, in paragraph 1, the distinction between the civilian population and combatants, and between the civilian objects and military objectives, with a view to prohibiting indiscriminate attacks.

Paragraph 2 reinforces paragraph 1 with regard to the precautionary measures to be taken in the conduct of military operations in order to protect the civilian population. Some delegations had proposed supplementing this provision by repeating the wording of *Article 50 (Precautions in attack)* of Protocol I. However, the majority expressed their preference for the ICRC text, with some slight amendments.

This article had already been discussed at the first session. Paragraph 1 had been adopted *ad referendum*, pending the definition of the field of application of Protocol II. It was adopted by consensus at the second session. Paragraph 2 was adopted by 50 votes to 0, with 11 abstentions.

Article 25 (Definition) states what should be understood by the terms “civilian population” and “civilian”; it restates the essential points of Article 45 of Protocol I which had been adopted, *ad referendum*, at the first session. It was not the subject of any particular amendments at the second session and its adoption was confirmed by consensus.

Article 26 (Protection of the civilian population). This basic rule, which constitutes a significant step forward in the codification of international humanitarian law applicable in non-international armed conflicts, reads as follows:

The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances:

1. The civilian population as such, as well as individual civilians, shall not be made the object of attack. Acts or threats of violence which have the primary object of spreading terror among the civilian population are prohibited.
2. Civilians shall enjoy the protection afforded by this Chapter of the Protocol unless and for such time as they take a direct part in hostilities.
3. The employment of means of combat, and any methods which strike or affect indiscriminately the civilian population and combatants, or civilian objects and military objectives, are prohibited.

An attack by bombardment by any methods or means which treats as a single military objective a number of clearly separate and distinct military objectives located in a city, town, village, or other area containing a concentration of civilians or civilian objects is to be considered as indiscriminate.

4. ¹

5. The Parties to the conflict shall not use the civilian population or civilians in attempts to shield military objectives from attacks.

The above final text restates the essential parts of Article 46 of Protocol I. In this connection, several delegations, again basing their argument on their plea for a more realistic attitude, said they would have liked the article to be shortened.

This article had already been discussed at the first session, and at that time no conclusion had been reached. At the second session, the introductory paragraph and paragraphs 1, 2 and 5 were adopted by

¹ Final decision on this paragraph is to await resolution of the problem of reprisals in general in Protocol II.

consensus. Paragraph 3 was divided into two parts; the first was adopted by 29 votes to 15, with 16 abstentions, and the second by 25 votes to 13, with 24 abstentions. The difficulty of the problem was reflected in the high number of abstentions.

Article 26 bis (General protection of civilian objects), which says that civilian objects shall not be made the object of attack, was not originally included in the ICRC draft. But the proposal made by several delegations to introduce this rule in Protocol II was approved by Committee III, and it thereupon drafted a short article, which was a simplified version of Article 47 of Protocol I. When put to the vote, this article was adopted by 35 votes to 8, with 27 abstentions.

Article 28 (Protection of works and installations containing dangerous forces) prohibits attack against works whose destruction would release forces dangerous to man. Paragraph 1 states that:

works or installations containing dangerous forces, namely dams, dykes, and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, when such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

This provision produced some lively discussion, in the course of which totally divergent views were expressed. Some delegations considered that such works should enjoy absolute immunity, as would result from Article 49 (1) in Protocol I. They took the view that, besides the protection of the population against the effects of dangerous forces released by the destruction of such works and installations, their immunity was justified in the interest of the preservation of a common heritage. An opposing but minority view called for the withdrawal of the protection of such works and installations when they were used for military purposes.

The article as a whole was finally adopted by 23 votes to 0, with 21 abstentions.

The purpose of *Article 28 bis (Protection of the natural environment)*, which was adopted on the basis of the English text, is to protect the environment against the employment of methods or means of combat which might cause "widespread, long-term and severe damage to the natural environment". This article is the counterpart of Article 48 *bis* of Protocol I.

Committee III adopted, also, *Article 29 (Prohibition of forced movement of civilians)*, which says:

1. The displacement of the civilian population shall not be ordered by a Party to the conflict for reasons relating to that conflict unless the security of the civilians involved or imperative military reasons so demand. Should a Party to the conflict undertake such displacements they shall take all possible measures in order that the civilian population be received under satisfactory conditions of hygiene, health, safety and nutrition.
2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict except in cases in which individuals finally convicted of crimes are required to leave that territory or, having been offered the opportunity of leaving the territory, elect to do so, or individuals are extradited in conformity with law.
3. ¹

Work under Way and Provisions Awaiting Examination

Part IV (Articles 20-23)—*Methods and Means of Combat*—was studied by Committee III. The draft articles were submitted by the ICRC expert, and various amendments were proposed. Many delegates felt strongly that these provisions should be identical to the corresponding ones in Protocol I, particularly Article 21, designed to prohibit perfidy (*Article 35 in Protocol I*). No decision was taken however and the discussion will resume next year.

The question of prohibiting reprisals in Protocol II was the subject of long examination in the three main Committees, which finally referred the matter to the third session of the Conference and asked the delegations and the ICRC, in the meanwhile, to seek solutions to facilitate the remaining work.

Chapter III in Part V—*Measures in favour of children*, Part VI—*Relief*, Part VII—*Execution of the Present Protocol*, and Part VIII—*Final Provisions*, were not discussed and will be examined during the third session.

¹ Final decision on this paragraph is to await resolution of the problem of reprisals in general in Protocol II.

Weapons

An *ad hoc* Committee was instructed to consider the matter of so-called conventional weapons that may cause unnecessary suffering or have indiscriminate effects.

This committee, under the chairmanship of Mr. H. Diego Garces (Colombia), began with a study of the work of the Conference of Government Experts on the Use of Certain Conventional Weapons, convoked and organized by the International Committee of the Red Cross and held from 24 September to 18 October 1974 at Lucerne. Several delegations expressed the views of their governments. The committee then re-examined the question of conventional weapons whose use might be restricted or even prohibited. In particular, it studied a working paper submitted by seven delegations. This document, a revised version of a text which had been presented earlier, had the support of many governments, which asked to be considered as its co-sponsors. The complete list of co-sponsors is as follows: Algeria, Austria, Egypt, Lebanon, Mali, Mauritania, Mexico, Norway, Sudan, Sweden, Switzerland, Venezuela and Yugoslavia. Comments and proposals were made concerning various categories of weapons. Particular attention was given to incendiary weapons, small-calibre high-velocity projectiles, blast and fragmentation weapons, delayed-action and treacherous weapons. These questions were also taken up by several delegations in their discussions of Articles 33 and 34 of draft Protocol I. The matter of periodic re-examination of the weapons used by different armies, for example, was discussed at length.

With regard to the work remaining, the *ad hoc* Committee asked the International Committee of the Red Cross to convene a second Conference of Government Experts and made suggestions about the agenda for such a conference. On the basis of this, the ICRC, on 19 March, proposed to the Diplomatic Conference an agenda with the following items:

1. Brief review of the report of the first session and of the discussions in the *ad hoc* Committee.
2. *Incendiary Weapons*
 - (a) Introduction and consideration of new information. New facts and new arguments.

- (b) Study of the possibility, contents and form of any ban or restriction on use.

This would include examination and clarification of data, definitions related thereto, alternative weapons systems and conclusions as to what the data suggest as desirable and possible.

3. *Small-calibre projectiles*
(Same sub-divisions as in para. 2)
4. *Delayed-action weapons and treacherous weapons*
(Same sub-divisions as in para. 2)
5. *Blast and fragmentation weapons*
(Same sub-divisions as in para. 2)
6. *Other categories of weapons and new weapons*
(Same sub-divisions as in para. 2)
7. Other business
8. Report and follow-up

In proposing this agenda, the ICRC stated that the Conference would have to have at least 22 working days at its disposal and be so organized that two meetings could take place at the same time. It also recommended that the work should not be carried out only in plenary sessions but that a general working group and such special working groups as might be required should be set up. In addition, the ICRC asked the delegations to submit their comments on the Rules of Procedure which, with some changes, should be comparable to those in force at the first Conference.

The ICRC drew attention to the fact that it could not itself assume the costs of the Conference and counted on governments to finance it, as in the case of the first Conference. The costs of the second Conference were estimated at S.Frs. 750,000, taking into account the increased cost of living and the expenses for summary records of the plenary sessions.

The proposed agenda and related suggestions and remarks were welcomed by the *ad hoc* Committee, whereupon the ICRC formally proposed that the second Conference of Government Experts be held at Lugano, Switzerland, from 28 January to 26 February 1976. On the

last day of the Diplomatic Conference, the ICRC distributed the revised Rules of Procedure to direct the work of the second Conference, the purpose of which is set forth as follows in Rule 2:

2. The purpose of the second session is to continue work on conventional weapons that may cause unnecessary suffering or have indiscriminate effects, in accordance with the work programme submitted by the ICRC and approved by the *ad hoc* Committee at the second session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (CDDH, Geneva, 3 February-18 April 1975). The second session will focus on such conventional weapons as have been, or may become, the subject of proposed bans or restrictions of use; it will ascertain the essential facts on which international rules could be based, to the extent that these rules appear desirable and possible, and will examine the possibility, contents and form of such proposed bans or restrictions.
