PROTECTION OF WAR VICTIMS:
Protocol 1 to the 1949 Geneva Conventions

by HOWARD S. LEVIE

VOLUME 1

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DOCUMENTS ON PROTOCOL I


(Protocol I)
To: Blanche
SUMMARY OF CONTENTS

VOLUME 1

Part I General Provisions (Articles 1-7)
Part II Wounded, Sick and Shipwrecked
   Section I General Protection (Articles 8-20)

VOLUME 2

Part II Wounded, Sick and Shipwrecked (concluded)
   Section II Medical Transportation (Articles 21-31)
   Section III Missing and Dead Persons (Articles 32-34)
Part III Methods and Means of Warfare; Combatant and Prisoner-of-War Status
   Section I Methods and Means of Warfare (Articles 35-42)
   Section II Combatant and Prisoner-of-War Status (Articles 43 and 45-47)

VOLUME 3

Part III Methods and Means of Warfare; Combatant and Prisoner-of-War Status (resumed)
   Section II Combatant and Prisoner-of-War Status (Concluded) (Article 44)
Part IV Civilian Population
   Section I General Protection Against Effects of Hostilities
      Chapter I Basic Rule and Field of Application (Articles 48-49)
      Chapter II Civilians and Civilian Population (Articles 50-51)

vii
Chapter III  Civilian Objects (Articles 52-56)
Chapter IV Precautionary Measures (Articles 57-58)
Chapter V  Localities and Zones under Special Protections (Articles 59-60)
Chapter VI  Civil Defence (Articles 61-67)

VOLUME 4

Part IV Civilian Population (concluded)
   Section II  Relief in Favour of the Civilian Population (Articles 68-71)
   Section III Treatment of Persons in the Power of a Party to the Conflict
      Chapter I  Field of Application and Protection of Persons and Objects (Articles 72-75)
      Chapter II  Measures in Favour of Women and Children (Articles 76-78)
      Chapter III  Journalists (Article 79)

Part V Execution of the Conventions and of this Protocol
   Section I  General Provisions (Articles 80-84)
   Section II  Repression of Breaches of the Conventions and of this Protocol (Articles 85-91)

Part VI Final Provisions

Annex I Regulations Concerning Identification

Annex II Identity Card for Journalists on Dangerous Professional Missions

Index
TABLE OF CONTENTS

VOLUME I

Foreword ................................................................. xi
Introduction ............................................................. xiii
Acknowledgments .................................................... xvii
Preamble ................................................................. xix

Part I
General Provisions

Article 1 General Principles and scope of application .......... 1
Article 2 Definitions .................................................. 81
Article 3 Beginning and end of application ......................... 99
Article 4 Legal status of the Parties to the conflict ............... 115
Article 5 Appointment of Protecting Powers and of their substitute 127
Article 6 Qualified persons .......................................... 214
Article 7 Meetings ..................................................... 226

PART II
Wounded, Sick and Shipwrecked

Section I
General Protection

Article 8 Terminology ................................................. 241
Article 9 Field of application .......................................... 312
Article 10 Protection and care ....................................... 333
Article 11 Protection of persons ................................................. 353
Article 12 Protection of medical units ....................................... 397
Article 13 Discontinuance of protection of civilian medical units .... 409
Article 14 Limitations on requisition of civilian medical units ...... 421
Article 15 Protection of civilian medical and religious personnel .... 431
Article 16 General protection of medical duties .......................... 453
Article 17 Role of the civilian population and of aid societies ...... 473
Article 18 Identification .......................................................... 500
Article 19 Neutral and other States not Parties to the conflict ...... 527
Article 20 Prohibition of reprisals .............................................. 537
Twenty years of the practice of public international law in the service of my country have shown me how rare it is that a treaty can be negotiated and concluded that develops the law in such a way that it leaves the world a significantly better place. Even rarer are those treaties that can fairly be said to improve in real and meaningful ways the protections given by the law to individual human beings. The 1977 Protocol on International Armed Conflicts to the 1949 Geneva Conventions is one of those rare treaties.

At no time are individual human rights more in jeopardy than during war. The very occurrence of war is an affront to human rights and dignity and, at the same time, a demonstration of the primitive nature of our international legal system. But war remains a fact of modern life. Experience has shown that we can only slowly and through trial and error develop the law and make it less primitive and more effective in controlling the use of force by nation states. And yet, even in the midst of bitter hostilities and pervasive violence, it is possible to discern a traditional and vital current of legal protection for the helpless individual. In modern times this humanitarian ideal has been nurtured and sustained by the International Red Cross movement, and it is appropriate that the Geneva Protocol resulted from a draft proposed by the International Committee of the Red Cross. The new Protocol supplements the four Geneva Conventions of 1949, in a few places amending those Conventions, but mostly adding to them and filling revealed gaps in the protections they give to victims of war. Moreover, for the first time since the Hague Conventions of 1907, the Protocol revises and extends the limitations imposed by law upon the ways in which opposing armies may use force against each other and against each other's territory and population. Review of this law of combatant warfare had been resisted firmly and continually by governments, particularly by the major military powers, for fear of the potentially unrealistic and unacceptable restraints that might result. This Protocol, however, demonstrates either that this fear was unwarranted or that the right time had finally come. It is, in general, a realistic and careful attempt to provide better protection for civilians, prisoners, and the sick and wounded in the contexts of both guerrilla and conventional warfare. With a very few exceptions, it does not ask parties to an armed conflict to take precautions or accord protections that they cannot accept. Although only the experience of future wars will show how well it will be implemented in practice, it should afford both a realistic and a humane guide for states and their military forces.

The United States strongly supported and contributed to the efforts by the Red Cross and the Swiss Government and to the long negotiating process that was required to bring forth this Protocol. As head of the United States Delegation, it was clear to me that our actions were impelled by the obvious defects in the law that were revealed by recent wars, particularly those in Korea and Vietnam. We had been made aware, all too painfully, of the need for better implementation of the law. We had seen our soldiers grossly mistreated in captivity and deprived of their rights as prisoners of war; we were unable to obtain any protecting power or other mechanism to inspect the camps in which they were held and look after their interests. We were unable to ascertain the fate of those missing in action or to recover the remains of those who died in enemy territory. And those not personally involved in combat saw on their daily television news programs the agony of all those caught up in war, both military and civilian, and the damage done to the lives, the homes, and even to the environment of countries unfortunate enough to become a place of battle.

xi
These volumes provide an invaluable tool for both scholars and government officials in interpreting and applying the new law developed by means of the Geneva Protocol. Their organization, which permits easy and thorough research of the entire negotiating history of each of the more significant and substantive provisions, will make possible vast savings in research time and better confidence in the conclusions reached. Both the editor and the publishers are to be commended, and I hope that their example will be followed in the case of other important treaties developed in the future.

George H. Aldrich
Ambassador
INTRODUCTION

Almost as soon as the hostilities of World War II had come to an end, the International Committee of the Red Cross (ICRC) began a series of conferences of experts which ultimately resulted in the drafting of proposed new versions of the three conventions then extant in the area of the humanitarian protection of the various categories of victims of war (the "Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field" and the "Convention Relative to the Treatment of Prisoners of War," both dated 27 July 1929, and the "Hague Convention No. X for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906," dated 18 October 1907) and of one completely new convention (the "Convention Relative to the Protection of Civilian Persons in Time of War"). These drafts were reworked at the XVIIth International Conference of the Red Cross held in Stockholm in 1948 and again at a Diplomatic Conference held in Geneva in 1949, culminating in the four 1949 Geneva Conventions for the Protection of War Victims, conventions which have been ratified, or acceded to, by all but a very small handful of the nations of the world.

The Geneva-based ICRC then began to concern itself with restrictions on the methods and means of making war--the so-called "Hague Law" which had, up to this point, been contained primarily in the Hague Convention No. IV of 1907, and the Regulations attached thereto, dealing with the laws and customs of war on land. This concern of the ICRC eventually resulted in the preparation of a set of "Draft Rules for the limitation of the Dangers incurred by the Civilian Population in Time of War." These Draft Rules were presented to the XIXth International Conference of the Red Cross held in New Delhi in 1957. They were consigned to oblivion when that Conference requested the ICRC "to transmit the Draft Rules . . . to the Governments for their consideration." As one representative of the ICRC later aptly, but wryly, stated, "They met with a crushing silence from the Governments."

Undaunted by this reverse, and justifiably not entirely satisfied with either the effectiveness or the coverage of the four 1949 Geneva Conventions, sometime thereafter the ICRC began a series of conferences of experts in various pertinent fields to discuss what it originally termed the "Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts," but which later was changed to the "Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts." Based upon the materials prepared for and the discussions which occurred at these conferences, particularly the 1971 Conference of Government Experts, in January 1972 the ICRC brought forth two "Draft Additional Protocols" to the four 1949 Geneva Conventions, the first concerned with international armed conflicts and the second with armed conflicts not of an international character. An enlarged Conference of Government Experts met in Geneva in May and June 1972 to discuss those two drafts. The discussions were sufficiently encouraging to persuade the ICRC to request the Swiss Government to convene a Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts at which the working papers were to be redrafted (June 1973) versions of the Draft Additional Protocols. (An occasion reference will be found in the proceedings to the ICRC Commentary on the Draft Additional Protocols. This work, published by the ICRC in October 1973, was reprinted by the Diplomatic Conference Secretariat as a conference document (CDDH/3).)
At the very opening of this Diplomatic Conference, with approximately 125
nations represented, it was beset with divisions not unlike those to be found in
the General Assembly of the United Nations, divisions which did not appear to
augur well for its ultimate success. The first session of the Diplomatic Con-
fERENCE, which met from 20 February to 29 March 1974, sitting in Plenary, spent
much of its time in debating procedural matters (such as whether or not to seat
the "Provisional Revolutionary Government of the Republic of South Viet-Nam")
and Committee I spent much of its time debating a proposal for the inclusion in
Protocol I, concerned with international armed conflicts, of a provision placing
national liberation movements under that Protocol, rather than under Protocol II,
concerned with armed conflicts not of an international character. As a result,
it became necessary for a second session of the Diplomatic Conference to meet
from 3 February to 18 April 1975, a third session to meet from 21 April to
11 June 1976, and a fourth and final session to meet from 17 March to 10 June
1977. It is exclusively with the discussions of Protocol I which took place at
those four sessions of the Diplomatic Conference, and with the decisions which
were reached with respect to that Protocol, that these volumes are concerned.
Unfortunately, in order to bring this compilation of the documentation of the
Diplomatic Conference within reasonable limits (if approximately 2,000 pages in
four volumes can be so described), the editor was confronted with the necessity
of choosing between two alternatives, neither of which was particularly attrac-
tive: (1) to eliminate portions of the negotiating history of all, or most, of
the articles, the material to be eliminated to be selected on a subjective
basis; or (2) to omit in toto the negotiating history of a number of articles
deemed to be of relatively lesser importance, sometimes because they were mere
reaffirmations of existing law, but frequently for other reasons, those selected
for inclusion to be set forth with their full negotiating history. The editor
opted for this latter alternative. While there have conceded in been a few other
omissions, none of them had any impact on the ultimate decisions reached at the
Diplomatic Conference and they should not be considered as editorial selection
or censorship. Thus, for example, once the procedural problems had been dis-
posed of, at least for the time being, the first session of the Diplomatic Con-
fERENCE, sitting in Plenary, spent a number of meetings during which the heads
of the various national delegations, temporary or permanent, made presentations
in the course of which, in addition to the customary political polemics, they
stated, usually in general terms, but occasionally with specificity, the views
of their respective Governments on numerous aspects of the two ICRC Draft Addi-
tional Protocols, the Conference working documents. Because even the compar-
tively few specific statements made during this period were thereafter repeated
in Committee, usually in a far more concrete form, these general presentations
made in Plenary at the first session have not been included herein. (A further
example of the foregoing will be found in the discussion with respect to Arti-
 cle 44 of the Protocol appearing below.)

Some years after the 1949 Diplomatic Conference which put the four 1949
Geneva Conventions in their final form, the Swiss Government published a three-
(The editor of the present volumes has been advised that the Swiss Government
proposes to publish the Official Records of the proceedings of the 1974-1977
Geneva Diplomatic Conference in 17 volumes.) While such Official Records are,
of course, invaluable to the researcher, its use is somewhat arduous because, to
trace the evolution of a provision it is frequently necessary to consult liter-
ally dozens of different pages in many different volumes; and, in the last
analysis, the research will even then depend, to a considerable degree, upon the
skill of an anonymous indexer. As a result of the difficulties encountered by
the present editor in this respect, the format of these volumes is entirely
different. Considerable thought was given to the determination of what would be the most useful methodology of presentation to employ. Because the discussions at the Diplomatic Conference refer exclusively to the article numbers of the ICRC's Draft Additional Protocol (and to the interpolated Diplomatic Conference numbers of new proposals), there were strong arguments for basing the presentation on that numerical sequence. On the other hand, inasmuch as the future researcher would originally only be aware of the numbering of the article or articles of the 1977 Protocol I concerned with the problem then confronting him, it would considerably simplify the task of research at its very outset to base the presentation on the numerical sequence of the Protocol itself. The methodology actually adopted takes both of these factors into consideration. Under the caption of the successive article numbers and titles of the Protocol, each separate discussion begins with the cognate original proposal made by the ICRC in its 1973 Draft Additional Protocol and bearing its then article number (or, if there was none, then with the original proposal made at the Diplomatic Conference and, again, bearing its then article number) and concludes with the provision on that subject matter and under the article number and title finally approved by the Diplomatic Conference and included by it in the 1977 Protocol I. Between these two extremes, in chronological order, will be found the proposed amendments, discussions, reports, votes, explanation of votes, etc., the events which brought about and which help to explain the final result—all of which, except for the opening caption and the final Protocol provision itself, will refer to the number appearing in the original proposal. In other words, this article-by-article presentation will, in general, provide the student of the history of this Diplomatic Conference, in one place, the complete chronological evolution or negotiating history of each of the selected articles of the Protocol, demonstrating, to the full extent recorded by the various national delegations to and organs of the Diplomatic Conference, the reasons given for the actions taken and will thus, it is believed, assist the researcher substantially in reaching a valid conclusion as to the intention of the draftsmen in adopting a particular provision or in using a particular word or phrase. It is a "Final Record" of the Diplomatic Conference, but one which is presented in what appears to the editor to be a considerably more useable form than the customary Final Record of a Diplomatic Conference which has drafted a lengthy multilateral convention with the active participation of literally hundreds of national delegates from more than 100 nations.

It would, perhaps, be helpful to summarize what these volumes do and do not include. It will be found that they do include: (1) all of the articles of the 1977 Protocol I; and, with respect to the articles of the latter selected for complete presentation: (2) the proposals made by the ICRC in its Draft Additional Protocol I, bearing the original article numbers; (3) all of the national proposals formally made at the Diplomatic Conference; (4) all of the substantive discussions of the various proposals (and occasional procedural discussions where these latter had an impact on the substance); (5) relevant portions of the reports submitted by the various organs of the Diplomatic Conference and of the Committees thereof; (6) the decisions reached by the Committees and by the Plenary Meetings and the manner in which they were reached; and, with respect to the articles of the 1977 Protocol I not selected for complete presentation: (7) the original proposal, the article actually adopted, and, where deemed appropriate, a brief editorial note. It will be found that these volumes do not include: (1) invitation problems; (2) credentials problems; (3) procedural problems (except as noted above); (4) material with respect to Protocol II; (5) material with respect to the Ad Hoc Committee on Conventional Weapons; (6) discussions on the adoption of reports (unless the discussion became substantive); and (7) most footnotes (these were usually cross-references).
Regretfully, there must be added to the latter list the materials relating to the proposed articles which were totally rejected by the Diplomatic Conference, such as those relating to "superior orders," "reservations," etc.

As has already been mentioned, Committee I spent much of the first session (8 of 13 substantive meetings) in the discussion of what was basically a politically motivated proposal aimed at giving the members of so-called "national liberation movements" all of the protections accorded to members of national armed forces engaged in true international armed conflict—and, as it later became evident, without all of the obligations and responsibilities to which the latter are subject. A related problem arose with respect to Article 44 of the Protocol (Article 42 of the Draft Additional Protocol). Once again, because of the political implications with reference to national liberation movements, a number of strongly supported amendments were proposed, some of the more important of which were ultimately included in the article as adopted; and many of the national delegations deemed it appropriate to elaborate on their reasons for taking the positions that they did. As a result, it will be found that during the second (1975) session of the Diplomatic Conference, four complete meetings of Committee II (33-36, inclusive) were devoted exclusively to statements of position by the various national delegations; and that subsequently all but a very few of those statements were submitted in enlarged written form and published as an Annex to the Summary Records of the meetings. Where written statements were so submitted, they are reproduced herein in place of the original statements orally presented at the meetings. Where no written statement was submitted, the oral statement made at the meeting is interpolated with its original paragraph numbers. Moreover, after the vote had been taken on the article during the fourth (1977) session of the Diplomatic Conference, two more complete meetings of the Committee (55-56) were devoted to explanations of the votes cast, even though the vote had been 62-2-18; and after the vote on this article had been taken at the 40th Plenary Meeting, the rest of that meeting and all of the following one were similarly devoted to explanations of the votes cast, even though the vote had been 73-1-21. All of these explanations of the votes cast, oral and written, are presented herein. (Where other draft articles were mentioned in oral or written statements, while they have been included in the written statements set forth under Draft Article 42 (Protocol Article 44), only the appropriate oral statements have been used in the presentation of the pertinent other article.) As a result of all the foregoing, the material on Article 44 of the Protocol is by far the most voluminous of the more than 100 articles which eventually evolved from the deliberations of the Diplomatic Conference to become Protocol I. (Because of its extreme length and because of the fact that its presentation in normal course would have made Volume 2 either too long or too short, it has, unfortunately, been necessary to present Article 44 of Protocol I out of its numerical order.)

Every effort has been made to eliminate all of the discussion of the 1973 Draft Additional Protocol which became the 1977 Protocol II, concerned with the protection of victims of non-international armed conflicts. However, this has not always been completely possible because, on occasion, and in some Committees, or by some representatives, cognate provisions of the two Protocols were discussed in parallel, or with frequent cross-references. Similarly, at times two or more articles, or proposed amendments to them, have been so interrelated that they were discussed together. Where this occurred, it has sometimes been necessary to include the relevant materials under each of the articles involved, or to present the materials with respect to two or more articles together. And in several cases two articles, or parts thereof, of the Draft Additional
Protocol were merged into one article in Protocol I. In these latter cases the appropriate material has been merged in the presentation.

With one notable exception, the proceedings clearly identify every speaker by name and country, the exception being with respect to the President of the Conference and the Chairmen of the three Main Committees, all of whom were identified by title only. These gentlemen, who, at times, appear to have been held personally responsible for the inability of a group to reach a decision by consensus, were:

**Conference President** : Pierre GRABER, Switzerland

**Chairman, Committee I** : E. HAMBRO, Norway (1st & 2nd Sessions)
E.F. OFSTAD, Norway (3rd & 4th Sessions)

**Chairman, Committee II** : T. MALLIK, Poland (1st Session)
S.-E. NAHLIK, Poland (2nd, 3rd & 4th Sessions)

**Chairman, Committee III** : H. SULTAN, Egypt

Finally, it should be noted that if the Official Records of the Diplomatic Conference becomes available before the completion of this set of volumes, as appears probable, citations to the volume and page of the Official Records will be inserted for each document in order to facilitate cross-reference.

**ACKNOWLEDGMENTS**

As is not unusual, a number of persons other than the editor have contributed to the completion of this project. I acknowledge with gratitude the assistance rendered to me by: Ambassador George H. Aldrich, the head of the U.S. Delegation at the two Conferences of Government Experts and at all four sessions of the Diplomatic Conference, who, in addition to encouraging the completion of the project, kindly agreed to write a Foreword for these volumes; Mr. Waldemar A. Solf, Office of The Judge Advocate General, U.S. Department of the Army, and Captain Richard L. Fruchterman, Jr., JAGC, USN, both of whom served as U.S. Government Experts and both of whom were Members of the U.S. Delegation at all four sessions of the Diplomatic Conference, who were more than generous of their time and were ever ready to provide advice and assistance in solving the myriad problems which arose during the course of the editing; Ambassador Jean Humbert, of Switzerland, and the Secretariat of the Diplomatic Conference, the source of a steady flow of the major Conference documents from 1974 to 1978; Mr. Hans-Peter Gasser, Head of the Legal Division of the International Committee of the Red Cross in Geneva, and Mr. J.-J. Surbeck, a member of that Division, who furnished me with innumerable documents of the Diplomatic Conference which I found, during the course of editing, that I lacked; Mr. Michael J. Costello, of St. Louis and Brussels, my senior research assistant at Saint Louis University Law School during 1976-1977, who rendered yeoman service in the early work on the project; and Ms. Ruth C. DePue, who typed the final manuscript for photographing. Needless to say, the actual selection of the material to be included was solely my responsibility.

Howard S. Levie

Newport, R.I.
December 1978
PREAMBLE

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Believing it necessary, nevertheless, to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement those measures intended to reinforce their application,

Recalling that, in cases not covered by conventional or customary international law, the civilian population and the combatants remain under the protection of the principles of humanity and the dictates of the public conscience,

Have agreed on the following:

B. MEETING OF COMMITTEE I, 15 March 1974 (CDDH/I/SR.6):

29. [Mr. Antoine MARTIN (International Committee of the Red Cross) said that] [s]ince the 1949 Conventions did not include a real preamble, the clause known as the "Martens clause" which appeared in the preamble to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land had been introduced into the article on denunciation common to the four Geneva Conventions. But the Preamble, as the Commentary to the draft Protocols had indicated, was where that provision "would have been the most appropriately placed." Some recent treaties such as the 1961 Vienna Convention on Diplomatic Relations and the 1969 Vienna Convention on the Law of Treaties had introduced such a clause in their Preambles. That was why the ICRC, pursuant to the opinion of some experts, had placed that clause in the Preamble to the draft Protocol.

C. PROPOSED AMENDMENT:

CDDH/I/56
18 March 1974

Philippines

In the second line of the second paragraph of the preamble, after the word "of", insert the phrase "all classes of recognized international ...".

D. MEETING OF COMMITTEE III, 11 February 1975 (CDDH/III/SR.17):

25. Mr. FISSENKO (Byelorussian Soviet Socialist Republic) said that realistic measures were needed for the protection of civilian populations in armed conflicts. A reference to the United Nations resolution on the definition of aggression should certainly be included in the Protocols; the preamble to draft Protocol I was perhaps a good place for it.
E. PROPOSED AMENDMENT:

CDDH/1/337 and Add. 1  
21 April 1977  

Algeria, Bulgaria, Byelorussian S.S.R., Cuba,  
Czechoslovakia, Democratic People's Republic of Korea,  
German Democratic Republic, Hungary, Mongolia, Poland,  
Socialist Republic of Vietnam, Ukrainian S.S.R.,  
U.S.S.R.

Preamble

Recalling that every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State,

Add as paragraph 4

Bearing in mind the fundamental importance of resolution 3314 (XXIX) on the definition of aggression adopted by the United Nations General Assembly, wish to reaffirm their conviction that nothing in the Geneva Conventions and this Protocol may be construed as justifying or legitimizing acts of aggression or other acts which are contrary to international law.

F. MEETING OF COMMITTEE I, 25 April 1977 (CDDH/1/SR.67):

45. [Mr. ZIMMERMAN (International Committee of the Red Cross)] then commented on the two draft Preambles to the Protocols. Since a Preamble was by its nature part of an international instrument and an aid to its interpretation, it would probably be better to postpone consideration of the text until the Protocols had been completed, so that the Preambles might be studied in the light of the Protocols as a whole.

46. The first point to mention was that, on the advice of experts, the ICRC had drafted extremely short Preambles stating a few general ideas.

47. The draft Preamble proposed by ICRC for Protocol I did not call for lengthy comment; it was a brief and simple text designed to make three points:

(a) The first paragraph expressed a general wish which was in keeping with the Charter of the United Nations.

(b) In the second paragraph, in view of the impossibility of preventing all armed conflict, the High Contracting Parties proclaimed a double need: first, the need to reaffirm and develop the provisions protecting the victims of such conflicts and, second, the need to reinforce their application.

(c) The third paragraph, based on the famous "Martens clause" which appeared in the eighth paragraph of the Hague Convention No. IV of 1907, pointed out that where the law was silent the civilian population and combatants remained under the protection of universal principles. Since a clause similar to that in the third paragraph of the Preamble was contained in Article 1, paragraph 4, the Committee would have to decide whether or not it should be retained in the Preamble.
49. The CHAIRMAN suggested that the texts of the Articles and Preambles should be referred to Working Group C.

It was so agreed.

G. MEETING OF COMMITTEE I, 27 April 1977 (CDDH/I/SR.69):

24. Mr. GLORIA (Philippines), speaking on amendment CDDH/I/56, said that he was ready to agree to a compromise and to accept the decisions of the Committee.

25. Mr. GRAEFRATH (German Democratic Republic) submitted an amendment to the Preamble to draft Protocol I on behalf of the sponsors of amendment CDDH/I/337 and Add. 1. The purpose of the two new paragraphs proposed was to determine more clearly the place and the function of the Protocol in present international law, which prohibited the use of force by States in international relations. At the present time the maintenance of peace must not be just a wish of parties to a contract; it had to be a jus cogens rule of international law. The prohibition of the use of force must be reaffirmed unambiguously in the Preamble so as to prevent public opinion gaining the impression that the Protocols were intended simply to regulate warfare. The proposed paragraph 2 therefore had a preventive purpose. In order to avoid any lengthy discussion on its wording, the sponsors of the amendment had taken over, word for word, part of Article 2, paragraph 4, of the United Nations Charter. Moreover, the insertion of the proposed paragraph 2 would provide a link with the third paragraph of the Preamble to Protocol I, which referred to the need to protect the victims of armed conflicts. With regard to the proposed paragraph 4, he recalled that, after negotiations lasting many years, the United Nations General Assembly had adopted by consensus a definition of aggression. The definition specified the criteria of aggression and stated that aggression was a crime for which its instigators were responsible internationally and that no special advantage resulting from aggression was or should be recognized as lawful. Nothing in the Protocol should be able to be construed as restricting that definition. To exclude all doubts, therefore, the sponsors of amendment CDDH/I/337 and Add. 1 had considered it necessary to add paragraph 4 to the Preamble and to word it in a manner acceptable to all delegations.

H. PROPOSAL MADE TO WORKING GROUP C, COMMITTEE I, 5 May 1977 (CDDH/I/GT/120):

DRAFT SECOND, FOURTH AND FIFTH PREAMBULAR PARAGRAPHS

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 1949 and of this Protocol must be fully applied to all persons who are protected by those instruments, without any adverse distinction based on the legitimacy of
the use of force, under international law including the Charter of the United Nations.

I. TEXT OF THE PREAMBLE TO PROTOCOL I AS APPROVED BY WORKING GROUP C, COMMITTEE II, 6 May 1977 (CDDH/I/GT/121):

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary, nevertheless, to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement those measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 1949 and of this Protocol must be fully applied [in all circumstances] to all persons who are protected by those instruments, [without any adverse distinction based on the legitimacy of the use of force, [under international law [including the Charter of the United Nations, ]]]

Have agreed on the following:

J. REPORT OF WORKING GROUP C, COMMITTEE I, FOURTH SESSION (CDDH/I/350/Rev. 1):

33. The Preamble to Protocol I was taken up for consideration. The co-sponsors of CDDH/I/337 and Add. 1 introduced document CDDH/I/GT/120 in which the draft text of the second, fourth and fifth paragraphs of the Preamble was proposed. A lengthy debate ensued about the purpose of a Preamble and what could be included in its text.

34. Document CDDH/I/GT/121 based on the merger of the text in CDDH/I/GT/120 and the remaining paragraphs of the ICRC draft was presented to the Working Group as a result of the debate. It was argued by some that paragraph 3 of the ICRC text should in any case be included in any draft of the Preamble as it reflected the Martens clause. Although this opinion was shared only by a small number of delegations, it was decided to add this paragraph to CDDH/I/GT/121 in square brackets for consideration by the Committee.

35. Since, however, the last paragraph of CDDH/I/GT/121 did not meet with the approval of a large section of the Working Group, the co-sponsors of document CDDH/I/GT/120 undertook another exercise and produced the following paragraph to replace the former:
"Reaffirming further that the provisions of the Geneva Conventions of 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict."

36. This was readily accepted by all delegations present and it was decided to send the following draft to the Committee by consensus, paragraph 3 of the ICRC text having been placed at the very end in square brackets:

Preamble - Protocol I

"The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary, nevertheless, to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement those measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict,

[Recalling that, in cases not covered by conventional or customary international law, civilian population and the combatants remain under the protection of the principles of humanity and the dictates of the public conscience,]

Have agreed on the following:"

MEETING OF COMMITTEE I, 17 May 1977 (CDDH/I/SR.76):

11. The CHAIRMAN, noting that the Committee had completed the consideration of the final clauses of draft Protocol II, invited it to consider the Preamble to Protocol I (paragraph 36 of document CDDH/I/350/Rev. 1).

12. He pointed out that the Committee should in particular decide whether to retain the last sub-paragraph of the Preamble (Martens clause) by removing the brackets or whether to delete the sub-paragraph itself.
13. Mr. FRUCHTERMAN (United States of America) proposed the deletion of the whole sub-paragraph, which was unnecessary since the clause appeared in Article I of draft Protocol I.

14. Mr. de ICAZA (Mexico) said that, while the Martens clause was important, it was unnecessary to repeat it in the Preamble since it appeared in Article I.

15. Mr. AMIR-MOKRI (Iran) and Mr. BLOEMBERGEN (Netherlands) were also in favour of the deletion of the sub-paragraph.

The last sub-paragraph of the Preamble to draft Protocol I was deleted by consensus.

The remaining sub-paragraphs of the Preamble to draft Protocol I were adopted by consensus.

L. MEETING OF COMMITTEE I, 18 May 1977 (CDDH/I/SR.77, ANNEX):

Cyprus

Preamble to draft Protocol I

It may be recalled that, in the course of the deliberations of Working Group C, my delegation supported the idea that Protocol I should have a concise preamble reflecting the humanitarian objectives it is destined to serve. It was our view that certain fundamental principles should be reaffirmed, such as: the duty of every State to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of other States and to avoid attitudes and policies contravening the provisions of the United Nations Charter or the dictates of the resolutions of United Nations organs; also, that reference should be made to the prohibition of interference in the internal affairs of States and of acts of aggression, under any pretext whatever.

We stated the position of the Government of Cyprus that, if the above principles were strictly observed and the dictates of the United Nations and international law were adhered to by all, then many an international conflict would have been avoided and, therefore, human suffering needlessly emanating therefrom would be much less.

It is for the above reasons that we voiced support for the proposal of the socialist delegations appearing in document CDDH/I/337 and Add. 1, arguing that its essence in a reformulated way together with the ICRC text should form the basis of the preamble. My delegation is pleased because the outcome of the deliberations of Working Group C was very much on those lines and, therefore, we joined other delegations in supporting the text finally adopted by the Committee and for which we express satisfaction.

M. PREAMBLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

The High Contracting Parties,
Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary, nevertheless, to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement those measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict,

Have agreed on the following:

N. AMENDMENT PROPOSED BY THE PHILIPPINES (CDDH/439, 6 June 1977):

The Preamble to Protocol I should be amended to read:

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State,

Believing it necessary, nevertheless, to reaffirm and develop the provisions of the Geneva Conventions of 12 August 1949 by means of this Protocol which protects the victims of armed conflicts and supplements those measures intended to reinforce their application.

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the generally accepted principles of international law,

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature, origin, or causes of the armed conflict,

Have agreed on the following:
PLENARY MEETING, 7 June 1977 (CDDH/SR.54):

1. The PRESIDENT invited the Conference to consider the Preamble to draft Protocol I (CDDH/401) and the amendment thereto submitted by the delegation of the Philippines (CDDH/439). He asked the representative of the Philippines to introduce his delegation's amendment.

2. Mr. GLORIA (Philippines) said that his delegation's concern had been to establish the identity of the Conference as an independent international body, distinct and different from any other international organization. The intention was to give the objective sought by the Conference over the past four years its true significance by stressing the truly humanitarian aspect of the Conference.

3. With that object in mind, his delegation had considered it necessary to improve the third paragraph of the text in document CDDH/401 by some additions. In the fourth paragraph, reference was made to the Charter of the United Nations, whereas it would be more appropriate to invoke the generally-accepted principles of international law. It must be borne in mind that not all nations in the world community were members of the United Nations. That was true of some countries participating in the Conference. Their presence showed the importance of humanitarian law, which indubitably supplemented the rules of international law. Finally, the last paragraph of the text was somewhat confusing. That was unfortunate, in view of the intentions to disseminate throughout the world an instrument which should therefore be comprehensible to the layman and accordingly be drafted in clear and simple terms. He hoped that the Conference would consider his delegation's amendments in a spirit of justice and understanding.

4. The PRESIDENT suggested that, for the sake of convenience, the Conference should consider the Philippine amendment (CDDH/439) paragraph by paragraph.

5. The first paragraph of the Preamble, beginning with the word "Proclaiming ...", needed no comment.

6. He invited the Conference to give its views on the second paragraph beginning "Recalling that every State ...".

7. Mr. PAOLINI (France) thought it preferable to retain the text adopted by Committee I for the second paragraph (CDDH/401), which referred to the United Nations Charter; that was even more essential since the Conference had adopted a new article to be inserted before or after Article 70 in which both co-operation with the United Nations and the United Nations Charter were mentioned.

8. Mr. FREELAND (United Kingdom) agreed with the representative of France. There had been long and difficult discussions and negotiations before Committee I had reached agreement on the text of document CDDH/401, which should be considered as a whole.

9. Mr. ABDINE (Syrian Arab Republic) said that he greatly preferred the text adopted by Committee I for the second paragraph of the Preamble to draft Protocol I as mention was made of a principle contained in the United Nations Charter, which had become a principle of international law.
10. Mr. BLOEMBERGEN (Netherlands) shared the view of the United Kingdom representative that the text of the Preamble to draft Protocol I constituted a whole. The amendment submitted in document CDDH/439 did not offer any improvement on the original text adopted by consensus by Committee I.

11. Mr. SHERIFIS (Cyprus) considered that the words "in conformity with the Charter of the United Nations ..." and "or in any other manner inconsistent with the purposes of the United Nations ..." should be retained. Therefore he supported the text of the second paragraph as it stood in document CDDH/401.

12. Mr. MBAYA (United Republic of Cameroon) agreed with the French and United Kingdom delegations.

13. Mr. SHELDOW (Byelorussian Soviet Socialist Republic) said that the text of the second paragraph as proposed by the Philippine delegation weakened rather than improved the original text of the Preamble, which constituted a whole and was the outcome of long and difficult but constructive negotiations in Committee I. The Committee had adopted the text by consensus and therefore his delegation would support the second paragraph of document CDDH/401.

14. Mr. GLORIA (Philippines), in reply to a question by the PRESIDENT, said that he would defer to the majority opinion and withdraw his amendment concerning the second paragraph of the Preamble, but requested that the Conference consider the amendments proposed to other paragraphs.

15. The PRESIDENT agreed to his request.

The second paragraph of the Preamble appearing in document CDDH/401 was adopted by consensus.

16. The PRESIDENT invited the Conference to consider the third paragraph of the Preamble as worded in the amendment submitted by the Philippine delegation (CDDH/439).

17. Mr. BLOEMBERGEN (Netherlands) said that he could not support the proposal to refer, in the third preambular paragraph, to the provisions of the Geneva Conventions of 1949 instead of to the provisions protecting the victims of armed conflicts. The present additional Protocol sought not only to reaffirm the rules formulated in the Geneva Conventions of 1949 but also those in the annex to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land. Therefore it was necessary to use the broader formula, namely, "... the provisions protecting the victims of armed conflicts ...".

18. Mr. BRECKENRIDGE (Sri Lanka) said that, if mention were also made of The Hague Convention in the third preambular paragraph of the text proposed by the delegation of the Philippines, he would be prepared to support that text.

19. Mr. ABDINE (Syrian Arab Republic) considered that the third preambular paragraph of the original text was more broadly worded than that in the amendment by the Philippines. If reference were made to the Geneva Conventions of 1949, it would also be necessary to refer to the Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land and to the United Nations resolutions concerning humanitarian law. He was therefore in favour of the text adopted by Committee I.
20. Mr. CONDORELLI (Italy), Mr. MBAYA (United Republic of Cameroon),
Mr. GREEN (Canada) and Mr. MOKHTAR (United Arab Emirates) agreed with the com-
ments made by the previous speakers.

21. Mr. GLORIA (Philippines) pointed out, for the information of the
representative of Sri Lanka, that he did not consider it necessary to refer to
The Hague Convention. On the other hand, it seemed to him important to
specify - as the third preambular paragraph of document CDDH/401 did not - that
"... the provisions protecting the victims of armed conflicts ..." were those
of the Geneva Conventions of 1949 and of the present Protocol which supple-
mented those Conventions.

22. Mr. BRECKENRIDGE (Sri Lanka) thanked the representative of the Philip-
ines and said that he would support the amendment.

23. The PRESIDENT put to the vote the amendment to the third preambular
paragraph proposed by the delegation of the Philippines.

The amendment was rejected by 45 votes to 2, with 43 abstentions.

24. The PRESIDENT invited the Conference to consider the fourth preambular
paragraph of the amendment by the Philippines, designed to replace the refer-
ence to "the Charter of the United Nations" by a reference to the "generally
accepted principles of international law".

25. Mr. SHERIFIS (Cyprus) said that he could not support the deletion of
the reference to the Charter of the United Nations. However, if the delegation
of the Philippines were prepared to include the reference to "generally
accepted principles of international law" in the initial text, his delegation
might accept that solution; but it preferred that the text should remain
unchanged and hoped that the draft amendment would not be put to the vote.

26. Mr. ABDINE (Syrian Arab Republic) thought that the proposed amendment
could give rise to contradictory interpretations. If "accepted principles"
were invoked, he wondered by whom, in fact, those principles had been accepted.
The reference to the Charter was therefore clearer. His delegation would have
preferred mention of United Nations General Assembly resolution 3314 Annex
(XXIX) of 14 December 1974, concerning the definition of aggression; but it had
joined the delegations which were of the opinion that the initial text should
be preserved.

27. Mr. MBAYA (United Republic of Cameroon) concurred with the view
expressed by the representative of Cyprus. He pointed out that, whatever pre-
vious consensuses there might have been, his delegation would not oppose any
draft amendment, provided the text was thereby improved.

28. Mr. KABARITI (Jordan) said that, in the absence of any reference to
the resolutions of the United Nations and the Security Council, he preferred
mention of the Charter of the United Nations, as provided for in the original
text.

29. Mr. IPSEN (Federal Republic of Germany) recalled that a formula
similar to that of the amendment by the Philippines had been considered by a
preliminary group which had prepared the basic text. It had been rejected by
that group, as the prohibition of the use of force was already clearly laid
down in Article 2, paragraph 4, of the Charter of the United Nations. A reference to "generally accepted principles of international law" was far less clear. He therefore supported the original version of the fourth preambular paragraph.

30. Mr. GLORIA (Philippines) said that he could support the suggestion of the representative of Cyprus and include the two references proposed by the latter in his own text.

31. The PRESIDENT regretted that he could not take the suggestion made by the representative of Cyprus into consideration, the rules of procedure being framed as they were. He would put to the vote the amendment to the fourth preambular paragraph proposed by the Philippines.

The amendment was rejected by 50 votes to 2, with 28 abstentions.

32. Mr. MBAYA (United Republic of Cameroon), whose delegation had voted against the adoption of the amendment proposed by the Philippines, pointed out that it would have been possible to take into account the suggestions made by the representative of Cyprus and accepted by the representative of the Philippines. That might perhaps have enabled the Conference to avoid a vote and reach a consensus. He regretted the strictness with which the rule relating to the introduction of amendments had been applied.

33. Mr. de ICAYA (Mexico) said that his delegation had abstained in the voting on the fourth preambular paragraph because, in its view, a reference to the Charter of the United Nations in that text was essential. Nevertheless, he regretted that the suggestion made by the representative of Cyprus, for which he could have voted, had not been taken into account.

34. Mr. BRECKENRIDGE (Sri Lanka) said that he, too, felt some doubt about the procedure applied to the suggestion made by the Cypriot delegation, which he would have supported. He asked for a little more flexibility in applying the rules of procedure.

35. Mr. DONOSO (Ecuador) said that his delegation considered it very regrettable that no account had been taken of the suggestion made by the representative of Cyprus. The text, which referred only to the Charter and not to the principles of international law, of which humanitarian law formed a part, was indeed incomplete. For that reason, his delegation had abstained in the voting.

36. Mr. CONDORELLI (Italy) explained that his delegation had abstained in the voting because, in its eyes, the principles of international law matched the provisions of the Charter. Either reference seemed acceptable to him.

37. Mr. NEMATALLAH (Saudi Arabia) said that his delegation associated itself with the delegation of Sri Lanka in calling for a little more flexibility in applying the rules of procedure. In the circumstances, he regretted that his delegation had been obliged to abstain in the voting.

38. Mr. NUNEZ (Cuba) said that his delegation had voted against the amendment proposed by the Philippines, because it seemed necessary that the text should contain a reference to the Charter. He regretted, however, that the suggestion put forward by the representative of Cyprus had not been adopted.
all the more so since, in other circumstances, amendments submitted orally during a meeting had been accepted in the past.

39. Mr. ESPINO-GONZALEZ (Panama) said that his delegation had voted for the amendment, because it had been its understanding that the suggestion made by the representative of Cyprus would be taken into account.

40. Mr. RABARY-NDRANO (Madagascar) said that his delegation had voted against the amendment and took note of the procedure applied.

41. The PRESIDENT explained that he had not adopted the suggestion made by the representative of Cyprus, because the latter, when consulted on the matter, had stated that no formal proposal for an amendment was in question.

42. He invited the Conference to consider the amendment to the fifth preambular paragraph proposed by the Philippines.

43. Mr. GLORIA (Philippines) said that his delegation had decided to withdraw its amendment to the fifth preambular paragraph.

The original text of the fifth preambular paragraph (CDDH/401) was adopted by consensus.

The Preamble to draft Protocol I as a whole (CDDH/401) was adopted by consensus.

P. 1977 PROTOCOL I:

PREAMBLE

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary, nevertheless, to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict,

Have agreed on the following:
PART I

General Provisions
PART I

GENERAL PROVISIONS

ARTICLE 1 - GENERAL PRINCIPLES AND SCOPE OF APPLICATION

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 1. Scope of the Present Protocol

The present Protocol, which supplements the Geneva Conventions of August 12, 1949, for the Protection of War Victims, shall apply in the situations referred to in Article 2 common to these Conventions.

B. PROPOSED AMENDMENTS:

CDDH/I/5 and Add. 1 and 2  
7 March 1974

Algeria, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Morocco, Poland, Union of Soviet Socialist Republics, United Republic of Tanzania

Add a new paragraph reading:

"2. The international armed conflicts referred to in Article 2 common to the Conventions include also armed conflicts where peoples fight against colonal and alien domination and against racist regimes."

CDDH/I/11 and Add. 1 to 3  
8 March 1974

Algeria, Arab Republic of Egypt, Australia, Democratic Yemen, Guinea-Bissau, Ivory Coast, Kuwait, Libyan Arab Republic, Madagascar, Nigeria, Norway, Pakistan, Senegal, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, United Republic of Cameroon, Yugoslavia, Zaire

Add a second paragraph reading as follows:

"2. The situations referred to in the preceding paragraphs include armed struggles waged by peoples in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and defined by the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations."

CDDH/I/12 and Corr. 1  
8 March 1974

Argentina, Austria, Belgium, Federal Republic of Germany, Italy, Netherlands, Pakistan, United Kingdom of Great Britain and Northern Ireland

Replace Article 1 by the following:

"1. The High Contracting Parties undertake to respect and to ensure respect for the present Protocol in all circumstances."
2. The present Protocol shall apply in the situations referred to in Article 2 common to the Geneva Conventions of August 12, 1949, for the Protection of War Victims.

3. In cases not included in this present Protocol or in other instruments of conventional law, civilians and combatants remain under the protection and the authority of the principles of international law, as they result from established custom, from the principles of humanity and the dictates of public conscience."

CDDH/I/13
11 March 1974

Romania

Add the following at the end of the article:

"... and in armed conflicts in which the people of a colony, a non-self-governing territory or a territory under foreign occupation are engaged in the exercise of the right to self-determination and the right to self-defence against aggression, with a view to ensuring more effective protection for the victims of aggression and oppression."

C. MEETING OF COMMITTEE I, 11 March 1974 (CDDH/I/SR.2):

1. The CHAIRMAN invited the representative of the ICRC to introduce Article 1.

2. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the Commentaries (CDDH/3) to the draft Protocol were in a way a statement of reasons and that they contained references to earlier preparatory work.

3. Article 1 of draft Protocol I defined the scope of the provisions of the draft Protocol as a whole, which was intended not to revise but to supplement the Geneva Conventions of 1949. Hence any provisions of those Conventions that were not so supplemented would continue to apply as they stood and the application of the draft Additional Protocol would be governed by the general principles of the Conventions.

4. Article 1 came within the general provisions relating on the one hand to the application of the Protocol and, on the other, to the strengthened application of the Geneva Conventions of 1949. It had rightly been pointed out that, side by side with the development of the Geneva Conventions, the task of finding the most effective ways and means of ensuring their application was of paramount importance.

5. Draft Protocol I would apply in the situations covered by Article 2 common to the Geneva Conventions of 1949, namely in the case of a declared war or any other armed conflict that might arise between two or more Contracting Parties, even where the state of war was not recognized by one of them, and in the case of occupation of all or part of the territory of a Contracting Party, even where such occupation encountered no military resistance. Such situations came within the category of "international armed conflicts" as opposed to the situations covered by Article 3, common to the four Conventions of 1949, and by draft Protocol II, i.e., "non-international armed conflicts".

2
6. Several Government experts had wished to introduce a second paragraph or a supplementary article stipulating that armed struggles waged by peoples for the exercise of their right to self-determination were international armed conflicts within the meaning of the 1949 Conventions and of the draft Protocol. A number of representatives had also raised that point in the general debate at the present Conference.

7. Article 1 should be read in conjunction with Article 84, which concerned the new treaty situation that would arise on the entry into force of the Protocol and which incorporated the principles laid down in paragraph 3 of Article 2 common to the four Conventions. Certain Government experts had wished those provisions to be incorporated in Article 1.

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

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

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

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

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

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

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

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

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

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

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

19. In sponsoring the amendment, his delegation had taken three factors into consideration: first, the rules of substantive international law as they affected the problem; secondly, the needs of the international community, which required a clear statement that armed struggle carried out by peoples in affirmation of their right to self-determination came under the heading of international conflicts; and, thirdly, the humanitarian factor with which the Conference was particularly concerned, and which called for every effort to protect
26. In interpreting the four Geneva Conventions, it was important not to neglect the developments to which he had referred. The many United Nations resolutions reaffirming that wars of national liberation in southern Africa and Guinea-Bissau were to be considered as international conflicts within the meaning of those Conventions. Nor could the political history of decolonization in general over the past two decades be left out of account. The process of decolonization was relevant to the interpretation of many present-day international instruments.

27. In the light of all those factors, wars of national liberation such as those being waged in southern Africa or Guinea-Bissau clearly constituted international conflicts within the meaning of Article 2 common to the four Geneva Conventions.

28. Recourse to armed struggle by peoples under colonial or racist domination, which had been one of the most important developments in international society over the past two decades, had resulted in untold human suffering. One of the most tragic facts of contemporary international society was the continuation of colonial and racist oppression, in the light of which wars of national liberation might be expected to continue to play an important role in international relations. The Conference had a humanitarian duty to ensure that the Geneva Conventions and the Additional Protocols applied in full to such conflicts.

29. His delegation hoped that the amendment would be adopted in the same humanitarian spirit in which it was submitted.

30. Mr. CAMEJO-ARGUDIN (Cuba) said that his delegation had intended to submit an amendment of its own. The points it had wished to raise were, however, covered by the amendment introduced by the Egyptian delegate (CDDH/I/11 and Add. 1), which it would like to co-sponsor.

31. Mr. de BREUCKER (Belgium) said that the sponsors of the amendment were seeking to assimilate armed conflict for the purpose of self-determination to international armed conflict, in order to increase the protection accorded to combatants. That meant that the four Conventions and Protocol I would have to apply to such struggles.

32. However, as many delegations had pointed out, Protocol II already created heavy obligations. Application of the four Conventions and Protocol I would represent an even heavier burden. The requirements of those Conventions could in fact be fulfilled only by States. The four Conventions and Protocol I could not apply to entities which were not States.

33. Some speakers had mentioned certain United Nations resolutions designed to impose on both sides in a conflict specific provisions wider than those which might apply within the framework of Protocol II. It was, however, for the conscience of nations to say whether a given conflict should involve a wider application of humanitarian law.

34. Wars of liberation were anachronisms which would soon be ended, and ought not to be covered by Protocol I. It would be imprudent to create a precedent by changing the categories of international law because of the motivation behind a given type of conflict.
35. The amendment in document CDDH/I/11 and Add. 1 spoke of "peoples" but what were "peoples" in international law? It would be impossible to speak of an internal [international?] armed conflict every time an ethnic community wished to sever itself from a State. Even if that amendment were adopted, it was far from certain that the parties involved would be able to implement the provisions of the four Geneva Conventions and Protocol I.

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

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

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

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

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

41. Mr. CLARK (Nigeria) said he could assure the Belgian representative that some of the points he had made had not entered the sponsors' minds at all when they were drafting their amendment (CDDH/I/11 and Add. 1). While the smaller countries of Africa might not approve of all the ways of the United Nations, there was as yet no viable alternative open to them. His delegation
had therefore sponsored amendment CDDH/I/11 and Add. 1 in the belief that it was based on generally-accepted principles of international law and on United Nations resolutions, in particular resolution 2621 (XXV) and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. He understood the right to self-determination not as encouraging secessional and divisive subversion in multi-ethnic nations, but as applying to a struggle against colonial and alien domination, foreign occupation and racist regimes.

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

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

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

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

46. It was true that self-determination was mentioned in the Charter of the United Nations, but as a principle, not as a right. Nowhere in the Charter did the right to engage in armed struggle appear. No resolution of the United Nations could amend the Charter, which would remain inviolate until amended in the proper manner. Terms like "struggle for the self-determination of peoples" were all too vague. What was a "people"? Such terms were elastic, as Biafra and Bangladesh had shown. They could not be used as a basis for law-making.

47. It would not advance the cause of international humanitarian law to insert the proposed amendments in Protocol I, for endless political debate would ensue.
48. His delegation suggested some strengthening of Article 1, and was associated with amendment CDDH/I/12 and Add. 1, mentioned by the Austrian representative.

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

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

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

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

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

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

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

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

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

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

D. MEETING OF COMMITTEE I, 11 March 1974 (CDDH/I/SR.3):

1. Mr. BOULANENKO (Union of Soviet Socialist Republics) reminded those present that his delegation was one of the co-sponsors of proposed amendment CDDH/I/5 and Add. 1, which would add to Article 1 of draft Protocol I a new paragraph mentioning peoples fighting against colonial and alien domination and against racist regimes. The right of peoples to govern themselves was recognized in international law, and their struggles to that end were international armed conflicts covered by the Geneva Conventions and other agreements in the field of humanitarian law. Consequently, the sole object of the proposal was to embody in humanitarian law a rule which was already in existence and which took into account the realities of the times.
2. The three proposed amendments before the Committee were not contradictory and, though his delegation favoured the text of which it was a co-sponsor (CDDH/I/5 and Add. 1) as being more precise and more in conformity with United Nations General Assembly resolution 3103 (XXVIII), his delegation would consider the possibility of merging that text with the two others (CDDH/I/11 and Add. 1 and CDDH/I/13).

3. Mr. VIEYTE (Uruguay) said that the rules of humanitarian law should apply to all victims of armed conflicts, whoever they might be, and that subjective elements for the purpose of distinguishing between the various forms of armed conflict must be avoided.

4. Mr. BANYYEZA KO (Burundi) said that his delegation associated itself with the co-sponsors of amendment CDDH/I/11 and Add. 1. It believed that wars of national liberation should be regarded as international armed conflicts, and that a special paragraph should be devoted to them, separate from Article 1 of Protocol I. The right to self-determination had already been laid down in several international instruments and in General Assembly resolutions, notably 3103 (XXVIII) of 12 December 1973.

5. Mr. EL MISBAH EL SADIG (Sudan) said that his delegation was one of the co-sponsors of amendment CDDH/I/11 and Add. 1. The principles of humanitarian law should be reaffirmed and developed in the light of contemporary events, such as national liberation struggles.

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

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

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

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

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

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

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

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

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

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

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

17. Mr. PARTSCH (Federal Republic of Germany) said that it would be useful to hear the views of the representatives of the national liberation movements on the proposed amendments. The purpose of amendment CDDH/I/11 and Add. 1 was to restrict the contents of Article 1 to permanent, rather than transitory, situations.

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

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

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

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

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

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

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

26. Mr. KAKOLECKI (Poland) said that he was in favour of the amendments proposing to include struggles for national liberation under Article 1 of Protocol I. He also agreed that the sponsors might produce a joint draft. The amendments were consistent with international law, and the notions they invoked were not at all subjective. It was not difficult to determine what actual situation fell within the category of national liberation struggles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. MEETING OF COMMITTEE I, 12 March 1974 (CDDH/I/SR.4):

1. Mr. PRUGH (United States of America), replying to questions posed by the Cameroon representative at the second meeting, said that his delegation understood the desires of peoples to exercise their right of self-determination without outside interference.

2. His delegation's reservation about amendments CDDH/I/11 and Add. 1 and CDDH/I/13 was not based on any desire to banish political reality or on narrow legal considerations, but on the fact that those proposals presented a danger to humanitarian law applicable in armed conflicts, for the Geneva Conventions of 1949 were still too thin a shield as they stood.

3. The best way to enhance that protection was to apply Article 3 of the Geneva Conventions when the struggle was internal and Article 2 when it became international. To be sure, there could be an intermediate stage, as a party to the conflict acquired stature, control over land and population, and other attributes of independence and sovereignty. The question of police repression remained under Article 3 of the Geneva Conventions.

4. The adoption of amendments CDDH/I/11 and Add. 1 and CDDH/I/13 would raise serious problems in the application, for instance, of Article 23 of the Third Geneva Convention and of Article 4 of the Fourth, to movements fighting for self-determination. Liberation movements could not fulfill all their obligations under the Conventions and would thus be branded as being in
violation of those Conventions. The only benefit which those movements would receive from labeling their struggle as international would be enhanced political status, but nothing on the humanitarian plane. Protocol II was the instrument best suited to afford those movements the degree of humanitarian protection required, without imposing on them obligations which they could not accept.

5. Mr. QUENTIN-BAXTER (New Zealand) stated that neither of the two solutions proposed was entirely satisfactory, for both were based on the distinction between international and non-international conflicts, the very criterion which had made the application of the Geneva Conventions of 1949 difficult during the previous 25 years, since numerous conflicts had not tallied with the classical definition of the term "international".

6. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (General Assembly resolution 2625 (XXV)), mentioned in amendment CDDH/I/11 and Add. 1, followed the classical doctrine, save that it recognized that colonial territories had an existence distinct from that of the countries administering them, and that relations between the administering countries and the colonial territories did not have a purely internal character.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. International law admitted of several criteria for qualifying an armed conflict as international: first, the fact that two subjects of international law were engaged in the armed conflict. National liberation movements were subjects of international law, as was clearly shown by certain United Nations General Assembly resolutions, the fact that they had been invited to participate in the present Conference and by Article 42 of draft Protocol I. At the time of the Algerian war, the conflict arising out of the French interception of vessels on the high seas had been regarded as an international one. It had also been contended that an armed conflict became an international one once a State came to the aid of a national liberation movement.
24. The Second World War had shown that no State was safe from foreign occupation which could give birth to liberation movements, so it was important that the present discussion should not centre around the existing national liberation movements alone.

25. Mr. DRAPER (United Kingdom) said that amendments CDDH/I/5 and Add. 1, CDDH/I/11 and Add. 1 and CDDH/I/13 were dividing the Conference into two camps. He was doubtful about the first and the last of those proposals, especially as regards the medieval concept of just warfare. The text proposed in document CDDH/I/11 and Add. 1 seemed safer, though it was open to criticism from a purely legal standpoint; the subject seemed to be the principle of self-determination rather than law. The Geneva Conventions and the draft Protocols had been devised for entities capable of applying them: in other words, States. Obviously, the application of many of the provisions of the Geneva Conventions could not be extended to national liberation movements as envisaged in the text of document CDDH/I/11 and Add. 1 which, if adopted, would necessitate major changes in established humanitarian law; it would be a pity if essentially political considerations led the Conference to tamper with that law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44. He expressed some objections of a technical nature with regard to amendment CDDH/I/12 and Add. 1: first of all, Article 1 of draft Protocol I should deal not with general principles, but with the scope of the Protocol. The omission of a specific indication that the Protocol supplemented the Geneva Conventions was to be regretted. He considered that the Preamble was the best place for the Martens clause.
45. Mr. LONGVA (Norway), replying to the representative of the Netherlands, said that the sponsors of amendment CDDH/I/11 and Add. 1 did not contemplate introducing any form of discrimination between the parties. It should be noted in that respect that the national liberation movements were already applying the Conventions to a large extent. The problem involved might be compared with that of upholding the equality between the occupiers and the occupied, a problem which had never prevented military occupation from being regarded as international conflicts in the sense of the Geneva Conventions.

46. Mr. MONTEIRO (Mozambique Liberation Front - FRELIMO) said that a national liberation struggle could not be dissociated from certain principles of humanity. At its second congress held in June 1968, FRELIMO had reaffirmed the justice of a policy of clemency towards captured enemies. It had been shown in practice that, despite disparities in the resources of the parties involved, nothing prevented the national liberation movements from respecting the principles of humanitarian law.

F. PROPOSED AMENDMENTS:

CDDH/I/41 and Add. 1 to 7
14 March 1974

Algeria, Arab Republic of Egypt, Bangladesh,
Bulgaria, Burundi, Byelorussian Soviet Socialist
Republic, Chad, Congo, Cuba, Czechoslovakia,
German Democratic Republic, Ghana, Guinea-Bissau,
Hungary, India, Indonesia, Iraq, Ivory Coast,
Jordan, People's Democratic Republic of Korea,
Kuwait, Lebanon, Liberia, Libyan Arab Republic,
Madagascar, Mali, Mauritania, Mongolia, Morocco,
Nigeria, Pakistan, Poland, Qatar, Romania, Saudi
Arabia, Senegal, Sri Lanka, Sudan, Sultanate of
Oman, Syrian Arab Republic, Togo, Tunisia,
Uganda, Ukrainian Soviet Socialist Republic,
Union of Soviet Socialist Republics, United
Republic of Cameroon, United Republic of
Tanzania, Yemen, Yugoslavia, Zaire, Zambia

Add a second paragraph reading as follows:

"2. The situations referred to in the preceding paragraph include armed conflicts where peoples fight against colonial and alien domination and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and defined by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

CDDH/I/42
14 March 1974

Turkey

Add a second paragraph reading as follows:

"2. The present Protocol shall also apply to armed conflicts waged by the national liberation movements recognized by the regional intergovernmental organizations concerned against colonial and foreign domination and racist regimes in the exercise of the principle of the self-determination of peoples as set out in the Charter of the United Nations."

22
2. Mr. ABI-SAAB (Arab Republic of Egypt) said that he wished to revert to certain criticisms which had been directed at amendment CDDH/I/11 and Add. 1 to 3. First, it had been said that the Conference was not necessarily obliged to take into account the political decisions adopted by the United Nations. That was an indefensible position, because international law constituted an indissoluble body of complementary rules. The United Nations had been seeking to develop humanitarian law since 1968, and it had referred to the Geneva Conventions of 1949, in a large number of resolutions, which had been adopted - often by a large majority - by the very delegations which were attending the Diplomatic Conference, for the specific purpose of pointing out the direction of their development. No separation could therefore be made between the decisions of the United Nations and the work of the Conference.

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

4. Other critics had said that the proposal referred only to vague concepts which it would be difficult to translate into legal criteria; they had particularly criticized the terms "peoples" and "right of self-determination". It was true that the concept of "peoples" still had to be more precisely defined in legal terms; although that task was difficult, it was not impossible, and should not be used to disguise the essential point, that of finding a legal solution of a very real problem which was causing great suffering. Moreover, amendment CDDH/I/11 and Add. 1 to 3 referred to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 24625 (XXV)), which provided an adequate basis for determining, in a given situation, whether the right of peoples to self-determination was applicable. It did not matter whether the "right of peoples to self-determination" was called a "right" or a "principle"; what counted was that it was part of contemporary international law.

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

6. Amendment CDDH/I/11 and Add. 1 to 3 doubtless still contained some imprecisions, but no more than other texts of the same nature: unfortunately, international law always allowed for a wide margin of interpretation, which could always be abused in cases of bad faith. That was an unavoidable deficiency which must be mitigated, as far as possible, by satisfactory guarantees of implementation and by reducing the margin of divergent interpretations as far as possible. That was exactly the purpose of the proposed amendment, since the majority of States considered that the armed conflicts in question were of an international nature, while a minority rejected that view.
7. Some delegations had said that the national liberation movements would be unable to apply the provisions of the Conventions and the draft Protocol because the conditions of their struggle were different in practice from those of international conflicts. That was a false distinction: the material conditions of national liberation struggles were similar to those of resistance movements against foreign occupation, which were specifically mentioned in the Conventions and were classified as international conflicts; it had not been considered that the special conditions of the struggles of such movements would prevent them from applying the Conventions.

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

9. The sponsors of the proposal had also been accused of trying to introduce national liberation struggles into Protocol I with a view to "burying" Protocol II. Nothing of the kind: the victims of the situations referred to in Protocol II must unquestionably be protected on the same basis as others. On the contrary, those who opposed the amendment opposed also Protocol II. Similarly, the sponsors of amendment CDDH/I/11 and Add. 1 to 3 were not opposed to the adoption of amendment CDDH/I/12 and Add. 1 and Corr. 1, but the latter in no way solved the problem they had wished to tackle in their own proposal.

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

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

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

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

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

15. Mr. MONTEIRO (Mozambique Liberation Front - FRELIMO) said that the central question of the debate was whether the national liberation movements should be covered by Protocol I (international conflicts) or by Protocol II (non-international conflicts). It should be borne in mind that from the legal point of view those struggles had already been classified as international in other bodies and, quite recently, by the General Assembly of the United Nations in resolution 3103 (XXVIII); moreover, the national liberation movements had a clearly-defined status vis-a-vis a number of international and intergovernmental organizations and collaborated with them. The question was therefore one of harmonizing humanitarian law with the international law of which it formed a part.

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

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

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

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

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

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

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

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

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

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

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

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

28. In the view of his delegation, the Conference should not decide on the scope of draft Protocol I before knowing what the substance of both Protocols was to be; accordingly, the Committee should take no premature decision on Article 1.
29. Mr. OCOLA (Uganda) said that colonialism was invasion *par excellence*: the colonial armies came from Europe - they were not local forces. The struggle waged by colonized peoples against the invaders therefore could not be included among the situations envisaged in draft Protocol II.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. The arguments on which that amendment was based were those that had been invoked with regard to the earlier amendments. In that connexion, operative paragraphs 3 and 4 of resolution 3103 (XXVIII), adopted by the General Assembly on the report of the Sixth Committee, were of outstanding importance. Moreover, the new amendment reiterated some of the actual terms used by the jurists of the Sixth Committee, such as "peoples", "colonial and alien domination" and "racist regimes". Self-determination was one of the basic principles of the United Nations Charter, and its interpretation could not lead to any confusion. All such terms had now been incorporated in international legal terminology. The position of peoples engaged in liberation struggles was similar to that of people living in occupied territory, which was referred to in Article 2 common to the four Geneva Conventions. What was needed now was to cover a situation that had not been foreseen by the authors of the 1949 Conventions.

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

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

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

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

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

H. MEETING OF COMMITTEE I, 15 March 1974 (CDDH/I/SR.6):

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

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

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

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

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

7. What those who opposed amendment CDDH/I/41 and Add. 1 to 7 were trying to do was to give preferential treatment to the colonialist, racist and imperialist regimes. As the representative of Uganda had stated at an earlier meeting, those regimes could not claim members of the liberation movements as their subjects merely because they had occupied their countries for so long. The fact that such regimes had found their harsh laws incapable of subduing the indigenous inhabitants of the countries they occupied revealed the true state of affairs. The truth was that the United Kingdom, the United States of America and others did not wish to offend South Africa, Portugal and Israel, who were their agents in the perpetual exploitation of colonial peoples.
8. Mr. BARRO (Senegal) said that it was necessary to reflect on the consequences of adopting solutions that merely ratified a state of affairs which had lasted too long and would soon disappear, namely colonial and racial domination and exploitation, which was the cause of the dramatic events which daily shocked the conscience of mankind.

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

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

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

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

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

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

15. It had been suggested that the problem of national liberation wars
was merely a temporary one. That might be true if it referred to the
struggles actually taking place, for the peoples would certainly win their
battles and attain statehood. But no one could assert that there would be no
more such wars in the future. Peoples which had not yet begun their struggle
for liberation and independence would certainly decide to do so during the
coming century. Their struggles would equally be of an international nature
and those engaged in them would benefit from the decisions to be adopted by
the present Conference. Thus, the fear that the relevant laws would shortly
have to be redrafted was quite unjustified and could only be a pretext for
delaying the Conference's intention of providing the maximum protection for
human lives in times of violence.
16. For the first time in history, representatives of the whole third
world were attending a diplomatic conference on international humanitarian
law. Nobody could seriously imagine that those representatives had come to
Geneva with the sole intention of destroying the fabric and foundations of
that law, from which they stood to gain more than anyone. None of the argu­
ments against amendment CDDH/I/41 and Add. 1 to 7 had done anything to show
the necessity of continuing to exclude wars of independence from the category
of international conflicts.

17. With regard to amendment CDDH/I/12 and Add. 1 and Corr. 1, the recent
massacre at Wiriyamu in Mozambique and other atrocities committed by the
Portuguese in Angola and Guinea-Bissau or by the Pretoria regime in Namibia
and elsewhere, as also the whole history of the wars in South-East Asia, indi­
cated that the provisions of Article 3, common to the four Geneva Conventions
of 1949 or of draft Protocol II were quite inadequate to meet the situation.
Something much more than pious exhortations was required if international
humanitarian law was to be genuinely reaffirmed and developed.
18. Mrs. HELLER (Mexico) welcomed amendment CDDH/I/41 and Add. 1 to 7,
for her delegation had been among the first to suggest that the common elements
in documents CDDH/I/5 and Add. 1 and 2, CDDH/I/11 and Add. 1 to 3 and
CDDH/I/13 should be presented in a single consolidated text. From the posi­
tive efforts which had been made to arrive at an acceptable formula consonant

33


with the aims of the Conference, there had emerged new or complementary elements which ought to be taken into account in the preparation of a final document.

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

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

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

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

23. Mr. OBRADOVIC (Yugoslavia) welcomed the amendment submitted in document CDDH/I/41 and Add. 1 to 7, which combined the amendments in documents CDDH/I/5 and Add. 1 and 2, CDDH/I/11 and Add. 1 to 3 and CDDH/I/13 and drew attention to the most typical cases of armed conflicts in the struggle of peoples for self-determination, which his Government held to be international conflicts. He did not agree that the insertion of a text of that kind in Protocol I would lead to the introduction of a concept of discrimination between the parties engaged in such conflicts and he fully supported the views expressed at the fourth meeting by the Norwegian representative on the subject. He agreed with the Algerian representative (third meeting) that the Committee should make further efforts to find a solution acceptable to all.

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

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

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

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

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

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

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

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

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

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

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

It was so decided.

I. PROPOSED AMENDMENT:

CDDH/I/71 Argentina, Honduras, Mexico, Panama, Peru
20 March 1974

Amend the title and text of Article 1 to read as follows:

1. The present Protocol, which supplements the Geneva Conventions of August 12, 1949, for the Protection of War Victims, shall apply in the situations referred to in Article 2 common to these Conventions.

2. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

3. The High Contracting Parties undertake to respect and to ensure respect for the present Protocol in all circumstances.
4. In cases not included in the present Protocol or in other instruments of treaty law, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

J. DRAFT RESOLUTION (CDDH/I/78):

Canada, New Zealand

DRAFT RESOLUTION

"The Conference,

Recognizing that, in the interests of the development of international humanitarian law, it is necessary for the regime of the Geneva Conventions as supplemented by the present Protocols to be applicable to armed conflicts involving the exercise of the right of self-determination in accordance with the Charter of the United Nations,

Decides to set up an inter-sessional Working Group

1) To be convened by the Government of Switzerland in Geneva at least once before the resumption of the Diplomatic Conference on Humanitarian Law in 1975.

2) To be composed of thirty (30) delegations, representative of the various geographical groups, as follows:

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<tr>
<th>Region</th>
<th>Number</th>
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<tbody>
<tr>
<td>Latin America</td>
<td>5</td>
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<tr>
<td>Eastern Europe</td>
<td>4</td>
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<td>Africa</td>
<td>8</td>
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<tr>
<td>Western Europe and others</td>
<td>7</td>
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<tr>
<td>Asia</td>
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3) To consider, as its prime task, the problem of the right of peoples to self-determination in relation both to Protocol I and Protocol II, commencing with the relevant proposals advanced during the Diplomatic Conference.

4) To make a report to the resumed Diplomatic Conference, which will include agreed texts and, if necessary, such alternative formulations as are considered useful".

K. MEETING OF COMMITTEE I, 22 March 1974 (CDDH/I/SR.13):

1. Mr. MILLER (Canada), introducing draft resolution CDDH/I/78, said that, in the course of the Conference, the question of the exercise of the right of self-determination of peoples had assumed considerable importance in relation to the two draft Protocols and, indirectly, the four Geneva Conventions of 1949. The discussion had been very constructive and had produced some most detailed and interesting proposals; all those proposals had emphasized the need to apply the regime of the Geneva Conventions, as supplemented by the Protocols, to armed conflicts which involved the exercise of the right of self-determination within the meaning of the Charter of the United Nations.
2. Unfortunately, the discussion of that question had not begun as soon as would have been desirable in view of its importance, with the result that at a time when the Committee's work should be coming to an end, there were still uncertainties as to the precise wording to be given to that principle in the Protocols; and as to the repercussions that it might have on the Protocols as a whole and indirectly on the Geneva Conventions. It was absolutely essential that more time should be available for a thorough examination of that important question. The Canadian and New Zealand delegations were therefore proposing that a working group be set up to study the problem in depth before the Diplomatic Conference resumed in 1975.

3. In so doing they were not seeking in any way to prejudge, hamper or impede the decisions that the Committee might perhaps wish to take on the various proposals concerning the formulation of the right of self-determination, in Article 1 of draft Protocol I. In submitting draft resolution CDDH/I/78, the Canadian and New Zealand delegations were merely suggesting a method of work which might, perhaps, make it possible to reach a more widely acceptable formulation of the principle in question and to facilitate the work of the Conference in 1975. The draft resolution could be referred to the Conference in plenary session.

4. In the French version of operative paragraph 1, the comma after the word "humanitaire" should be deleted.

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

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

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

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

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

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

It was so agreed.

11. After a further procedural discussion in which Mr. TARCICI (Yemen), Mr. CLARK (Nigeria) and Mr. DRAPER (United Kingdom) took part, the CHAIRMAN proposed, at the suggestion of Mr. MISHRA (India), that the meeting be suspended so that unofficial discussions might take place with a view to reconciling the amendments to Article 1 in documents CDDH/I/41 and Add. 1 to 7 and CDDH/I/71, and avoiding a debate on them before they were put to the vote.

It was so agreed.

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

12. Mr. PRUGH (United States of America) requested that a discussion be held on the draft resolution submitted by the Canadian delegation (CDDH/I/78).

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

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

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

It was so agreed.

16. Mr. LISTRE (Argentina), speaking on behalf of the sponsors of the amendment to Article 1 (CDDH/I/71), said that it represented a compromise between amendments CDDH/I/12 and Add. 1 and Corr. 1 and CDDH/I/41 and Add. 1 to 7. In the Working Group, the Argentine delegation had stated that it wished to limit itself to a modification of amendment CDDH/I/41 and Add. 1 to 7, namely, to replace the words "colonial and alien domination" by "colonial domination and alien occupation". Subsequently, at the request of the sponsors of amendment CDDH/I/41 and Add. 1 to 7, the compromise formula "colonial and alien occupation" had been used.
17. Amendment CDDH/I/71 should obtain the support of the majority of the sponsors of amendment CDDH/I/41 and Add. 1 to 7. Moreover, it was not incompatible with amendment CDDH/I/12 and Add. 1 and Corr. 1 from which it had taken the so-called "Martens clause". The ICRC text was used in paragraph 1.

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

19. Mr. ABDINE (Syrian Arab Republic), speaking on behalf of the Arab group, said that the group would prefer amendment CDDH/I/41 and Add. 1 to 7, but, in a spirit of conciliation and to enable the Committee to extricate itself from the deadlock, it was ready to support amendment CDDH/I/71, which reconcile the different points of view. In paragraph 2 of the French version, however, the word "populations" should be replaced by the word "peuples", and the expression "de leur droit a l'auto-determination" by "du droit des peuples a disposer d'eux-memes", so that the text would be in conformity with the terminology of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43. The CHAIRMAN pointed out that by the adoption of that amendment all the other amendments submitted to Article 1 of draft Protocol I had been excluded.
44. Mr. CUTTS (Australia), explaining his vote, said that his delegation was in favour of the application of draft Protocol I to those struggling for self-determination; it could not, however, agree to certain terms in amendment CDDH/I/71 which introduced the concept of just or unjust war; it was for that reason that it had abstained. He regretted, moreover, that the Committee had not taken a separate vote on each paragraph, for he would have been able to support some of them unreservedly. He also deplored the fact that the discussion had been closed prematurely.

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

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


1. Mr. de BREUCKER (Belgium) said that his delegation had maintained on several occasions, both before and during the Conference, that the struggle of peoples against colonialist and racist regimes deserved understanding and sympathy and that adequate protection should be given to combatants engaged in such conflicts. It had participated in the Working Group's discussions to seek a solution to the problem of covering such conflicts in an appropriate text and had therefore welcomed the draft resolution submitted by Canada and New Zealand (CDDH/I/73).

2. He considered that the vote on amendment CDDH/I/71, submitted by Argentina, Honduras, Mexico, Panama and Peru had been premature, since further discussion might have led to a more precise text guaranteeing adequate protection for war victims. That amendment had discriminatory and subjective features which were out of place in the Geneva Conventions. He hoped that, despite the result of the vote, texts would be drawn up at the second session which would give effective protection to the victims of all forms of armed conflict in accordance with universally accepted standards and could be adopted by consensus.

3. His delegation considered that the Committee should examine the Canadian and New Zealand draft resolution (CDDH/I/78), take note of amendment CDDH/I/71 and reaffirm the need to maintain the universality of humanitarian law.

4. Mr. CAMEJO-ARGUDIN (Cuba) said that the amendment in document CDDH/I/71 had not been supported by all Latin-American countries because they were reluctant to vote against the United States Government. His delegation had voted in favour of the proposed amendment, on the understanding that the text was interpreted as referring not only to the national liberation movements present at the Conference and those recognized by the Organization of
African Unity and the League of Arab States, but also others such as the Puerto Rico liberation group.

5. Mr. HESS (Israel), explaining his delegation's negative vote on the amendment in document CDDH/I/71, said that his delegation's statements in plenary had indicated why, in its view, a clear distinction existed and must be maintained between international and non-international conflicts, and why subjective distinctions based on the motives or the cause of one or other party completely disregarded the fundamental principles of international humanitarian law. He supported, and would have voted in favour of paragraphs 1, 3 and 4 of that document, had that been possible.

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

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

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

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

10. Although supporting that principle, his delegation did, however, have strong reservations against some of the wording of document CDDH/I/71, and regarded the phrase "against colonial domination and alien occupation and racist regimes" as superfluous. It would have preferred the wording of document CDDH/I/71 and Add. 1 to 3.
11. Adoption of the amendment in document CDDH/I/71 did not amount to acceptance of the so-called "just war" concept. It was intended to ensure equal protection of all victims on both sides in wars of national liberation.

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

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

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

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

16. Mr. LEHMANN (Denmark) said that his delegation had voted against the proposed amendment because it introduced subjective and political criteria into a legal text whose purpose was humanitarian. The Conference should work for the adoption of humanitarian rules governing the largest possible number of victims of all armed conflicts, whatever their nature. Such protection could only be based on objective, non-political criteria. Considering the importance of the issue, his delegation would have preferred that no vote had been taken. It fully supported the draft resolution in document CDDH/I/78 which it hoped would lead to a consensus.

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

18. Mr. DAYAL (India) said that the introduction into the discussion before and after the vote of the idea of just and unjust wars, and consequently that of discrimination, had only confused the issue. The question before the Committee had simply been to decide whether a specific type of conflict which was a major phenomenon of the time should be recognized as an
international conflict. Different interpretations of the implications of that decision could only create difficulties in the work of the Conference.

19. Mrs. QUINTERO (Colombia) said she wished to reaffirm her country's unwavering attachment to the principle of the free self-determination of peoples, as enshrined in the United Nations Charter. Her delegation had abstained from the vote on amendment CDDH/I/71, however, for reasons of a juridical nature, since it was not satisfied with the way in which the concept of liberation struggles was linked to Protocol I. Nonetheless, in view of the importance of the issue, her delegation had been in favour of continuing the discussion in the hope of reaching a compromise solution, since it feared that adoption of the amendment might have immediate political rather than legal effects, thus jeopardizing the principle of universality on which the application of humanitarian law should be based.

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

21. He supported draft resolution CDDH/I/78, because an intersessional working group could establish the conditions under which the Geneva Conventions and the draft Additional Protocols could be applicable to struggles for self-determination.

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

23. Mr. NODA (Japan) said that his delegation had opposed amendment CDDH/I/71 because it implied a radical modification of the basic principles and the whole structure of the Geneva Conventions and the draft Protocols, even the titles of which would have to be changed. He hoped to hear the observations of the ICRC representative on the amendment and suggested that the ICRC should provide the Conference with a set of new draft Protocols as a basis for discussion at the second session of the Conference. The Japanese delegation felt that the convening of an intersessional working group as proposed by Canada and New Zealand might be helpful.
24. Mr. ECONOMIDES (Greece) said that, to be effective, international humanitarian law must be universal. The absence of a compromise solution might have serious consequences. The United Nations or some other international organization might be made responsible for deciding in the light of objective criteria - such as the duration, intensity or scope of a conflict - whether it was to be considered as having an international character. His delegation regretted that the Canadian and New Zealand draft resolution (CDDH/I/78) had not been discussed before the vote was taken on the amendment.

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

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

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

28. Mr. MBAYA (United Republic of Cameroon) said that under cover of an explanation of vote many speakers had merely repeated what they had said in the general debate. One had described national liberation movements as "collections of individuals in rebellion against their Government". That description might, for example, apply to a group of Portuguese in rebellion against the Portuguese Government, but could not possibly apply to movements of Africans seeking liberation from foreign domination. No speaker had replied to, or even mentioned, the point made at an earlier meeting by the representative of the Syrian Arab Republic that international humanitarian law already took cognizance of subjects of international law other than States. Some speakers seemed to wish to invent a third, intermediate, category of wars which were both international and non-international. It would be difficult to admit such a "mixed" category, but in any case it could not affect the fact that wars of national liberation were international.

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

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

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

32. Mr. YOKO (Zaire) said that all delegations had had the opportunity to express their views on Article I during the general debate and during the discussions in the Committee and the Working Group. An attempt had been made to reach a consensus, but it had become clear that that was impossible. After a very long discussion, the Committee had decided to apply its rules of procedure and proceed to a vote, which had given a majority of well over two-thirds. Certain members of the minority, who had been opposed to the principle of the amendment and not merely to its wording, were now trying to pretend that the question had not been maturely discussed. The Committee had accepted the principle that a two-thirds majority represented a practical consensus. Some delegations now seemed to be seeking to go back on that principle: they spoke of acceptance by "most of the delegations", or even of unanimity. The implication appeared to be that anything agreed upon by two or three Western countries was universal but that the delegations of the majority did not represent sovereign States at all. He appealed to the representatives of the minority, in a spirit of compromise and true democracy, to accept the decision of the overwhelming majority and not to try to reopen the discussion. The delegations which had voted for amendment CDDH/1/71 had done so because it represented a necessary development of international humanitarian law.

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

34. Mr. MARTIN HERRERO (Spain) said that his delegation had urged that draft resolution CDDH/1/78, submitted by Canada and New Zealand, should be discussed before a vote was taken on amendment CDDH/1/71. His delegation
could accept the four operative paragraphs of the Canadian proposal, but not the Preamble, which seemed to be in contradiction with operative paragraph 3.

35. Mr. QUENTIN-BAXTER (New Zealand) said that the joint resolution submitted by Canada and New Zealand (CDDH/I/78) was not backed by any bloc nor were its contents a threat to any minority. It was merely a proposal that an intersessional Working Group should be set up to consider as its primary task the problem of the right of peoples to self-determination in relation both to Protocol I and Protocol II, beginning with the relevant proposals advanced during the current session of the Conference and to submit to the resumed session a report containing agreed texts and, if necessary, such alternative formulations as were considered necessary.

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

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

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

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

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

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

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

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

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

45. The CHAIRMAN, replying to questions by Mr. MISHRA (India) and Mr. BOULANENKOV (Union of Soviet Socialist Republics), said that any text agreed upon by the informal meeting on draft resolution CDDH/I/78 need not be referred to Committee I but could be submitted direct to a plenary meeting of the Conference. No rule of procedure forbade such action.

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

47. Mr. MULLER (Finland) said that, although he could not fully approve the suggestion by the Chairman that any text agreed upon by the proposed informal meeting should go straight to the plenary meeting of the Conference, he would not object to such a procedure.
48. Mr. RATTANSEY (United Republic of Tanzania), supported by Mr. YOKO (Zaire), said that it would be contrary to procedure for joint draft resolution CDDH/I/78 to be submitted direct to the plenary; it should first be discussed by Committee I.

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

M. DRAFT REPORT OF COMMITTEE I, FIRST SESSION (CDDH/I/81):

9. The proposals in documents CDDH/I/5 and CDDH/I/13 were subsequently withdrawn by their sponsors, who said that they would support the amendment in document CDDH/I/41.

10. The majority of delegations were in favour of Article 1 mentioning that the international armed conflicts referred to in Article 2 common to the four Geneva Conventions included those armed conflicts in which peoples, in the exercise of their right to self-determination, fight against colonial and foreign domination and against racist regimes. Other delegations considered that the four Conventions and Protocol I could not be applicable to entities other than States.

11. At its sixth meeting, the Committee decided to refer the proposals in documents CDDH/I/11, 12, 41 and 42 to a Working Group whose task would be to explore the possibility of submitting a single amendment to Article 1. The Working Group, with the Rapporteur as Chairman, consisted of the delegations which had sponsored those amendments and other delegations wishing to take part; it met on 19 and 20 March. It was not possible, however, to reach agreement nor was it possible to determine whether the differences between the various proposals were a matter of form or of substance.

12. In connexion with the work of the Committee on Article 1, the following document was submitted:

Canada and New Zealand: CDDH/I/78

13. At its thirteenth meeting on 22 March, the Committee put to the vote the proposals and amendments to the ICRC text of Article 1. It was decided to give priority to document CDDH/I/71, as amended orally. A vote was taken by roll call and document CDDH/I/71 was approved by 70 votes to 21, with 13 abstentions.

16. This paragraph will appear with the last part of the report, when the Committee has finished its work.

N. PROPOSED AMENDMENT TO THE DRAFT REPORT OF COMMITTEE I (CDDH/I/82):

Austria, Belgium, Canada
Federal Republic of Germany, Netherlands,
United Kingdom, United States of America

AMENDMENT TO THE DRAFT REPORT
OF THE FIRST COMMITTEE (CDDH/I/81)
Replace the last sentence of paragraph 10 of the Draft Report by the following:

"Other delegations considered, however, that such a procedure was unacceptable in that, in their view, it involved the introduction into Protocol I of criteria of political motivation. Some of these delegations made it clear that they accepted that the four Geneva Conventions and Protocol I could apply to armed conflicts other than between States, but only in so far as the Parties to the conflict accepted the provisions thereof and were willing and able to apply them."

0. MEETING OF COMMITTEE I, 26 March 1974 (CDDH/I/SR.15):

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

Paragraph 9

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

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

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

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

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

13. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that, unlike the representative of the Soviet Union, he thought that the proposal in document CDDH/I/11 and Add. 1 to 3 had not been withdrawn. To reconcile the various views, however, the following sentence could be added at the end of paragraph 9: "Some sponsors of amendment CDDH/I/11 and Add. 1 to 3 subsequently withdrew their sponsorship and joined the sponsors of amendment CDDH/I/41 and Add. 1 to 7".

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

15. Mr. BOULANENKOV (Union of Soviet Socialist Republics) proposed the following text: "The sponsors of amendments CDDH/I/5 and Add. 1 and 2 and CDDH/I/11 and Add. 1 to 3, with the exception of Norway and Australia, subsequently withdrew their sponsorship and jointly sponsored CDDH/I/41 and Add. 1 to 7."
16. Mr. ABI-SAAB (Arab Republic of Egypt) pointed out that his delegation had never withdrawn its sponsorship of CDDH/I/11 and Add. 1 to 3.

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

Paragraph 9, as amended, was adopted.

Paragraph 10

18. Baron van BOETZELAER van ASPEREN (Netherlands) drew attention to the amendment to paragraph 10 proposed in document CDDH/I/82.

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

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

21. Mr. LONGVA (Norway) said that his delegation could accept paragraph 10 in its existing form, but had no objection either to the amendment in document CDDH/I/82 or to the Australian amendment. If the latter were adopted, a sentence should be added to the end of paragraph 10, to read: "It was emphasized that this would merely be a restatement of positive international law, and that it would not involve any subjective element or political motivation as criteria for the application of international humanitarian law."

22. Mr. MISRA (India) suggested that paragraph 10 should be worded as follows: "The great majority of delegations were in favour ... against colonial domination and alien occupation and against racist regimes. That fact was reflected in the vote on document CDDH/I/71 as amended orally. Most delegations expressed views on the amendments under reference. These views are summarized in the summary records of the second to fourteenth meetings of the Committee."

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

It was so agreed.

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

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

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

It was so agreed.

Paragraph 10, as amended, was adopted.

Paragraph 11

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

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

It was so decided.

Paragraph 11, as amended, was adopted.

Paragraph 12

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

Paragraph 16

30. Mr. MARIN-BOSCH (Mexico), Rapporteur, said that paragraph 16 of the draft report should be worded as follows: "In connexion with the proposal contained in CDDH/I/78, the Committee decided at its fourteenth meeting to make no comment."

31. Mr. ABDINE (Syrian Arab Republic) pointed out that, in accordance with rule 40 of the rules of procedure, draft resolution CDDH/I/78 had been rejected by the Committee in view of the adoption of amendment CDDH/I/71.

32. Mr. QUENTIN-BAXTER (New Zealand) pointed out that draft resolution CDDH/I/78 had been submitted by its sponsors, not as an amendment to Article 1 of the draft Protocol, but as a document designed to facilitate the work of the Committee and of the Conference.

33. Mr. ABDINE (Syrian Arab Republic) said that draft resolution CDDH/I/78 had been presented concurrently with other proposals and it had been decided to give priority to the examination of one of the other proposals - that appearing in document CDDH/I/71. In accordance with the rules of
procedure, the adoption of the latter proposal had resulted in the elimination of draft resolution CDDH/I/78.

34. The CHAIRMAN pointed out that no decision had been taken, pursuant to rule 40 of the rules of procedure, on the priority to be given to the examination of draft resolution CDDH/I/78. The matter had been left in abeyance.

35. Mr. MISHRA (India) said that draft resolution CDDH/I/78 did not relate specifically to Protocol I. It might be better to speak of it, not in reference to Article 1 of Protocol I, but rather to all the work of the Committee. He therefore suggested that the following paragraph should be added at the end of the Committee's report: "In connexion with the work of the Committee, the delegations of Canada and New Zealand submitted document CDDH/I/78. However, this document was not pressed to a vote by the sponsors."

36. Mr. ECONOMIDES (Greece), referring to the statement by the Syrian representative, stressed that the Chairman had not regarded draft resolution CDDH/I/78 as coming within the scope of rule 40 of the rules of procedure but as a new proposal which could be examined in plenary.

37. Mr. GIRARD (France) said that he did not think that paragraph 12 accurately reflected what had happened in the Committee. Some delegations seemed to wish to give the impression that the majority opinion had been uncontested.

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

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

40. Mr. QUENTIN-BAXTER (New Zealand) welcomed the wording proposed by the representative of India. The sole concern of the sponsors of draft resolution CDDH/I/78 was to reflect the facts accurately. On the other hand, the addition proposed by the representative of Nigeria was not acceptable. The fact that the sponsors had not pressed for their proposal to be put to the vote was not because of the adoption of amendment CDDH/I/71, but because their proposal did not conflict in any way with the amendments proposed to Article 1. Amendment CDDH/I/71 and draft resolution CDDH/I/78 could not be mutually exclusive. The text proposed by the Indian delegation would therefore afford complete satisfaction if that point was made clear in it.

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

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

43. Mr. MISHRA (India) pointed out that the representative of New Zealand was asserting that draft resolution CDDH/I/78 had not been nullified by the fact that amendment CDDH/I/71 had been adopted. It was accepted that draft resolution CDDH/I/78 had been dropped; it was perhaps not necessary to add the words proposed by the representative of Nigeria.
44. Mr. BOULANENKOV (Union of Soviet Socialist Republics) supported the addition proposed by the representative of Nigeria. At the fourteenth meeting, the representative of Canada had recognized that draft resolution CDDH/I/78, as it stood, had been ruled out by the adoption of amendment CDDH/I/71. He had not pressed for it to be put to the vote, but had suggested that an informal group should meet in order to draw up a document for submission to the Conference. A suggestion of that kind amounted to a withdrawal.

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

46. Mr. BARRO (Senegal) expressed the view that the Committee should consider that draft resolution CDDH/I/78 had never been submitted to it, since the situation which it was designed to cover had not arisen. The sponsors of the draft resolution had had in mind circumstances in which the Committee might not succeed in reaching agreement on Article 1.

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

48. Mr. YOKO (Zaire) said that he associated himself with the remarks made by the representative of Senegal. The sponsors of draft resolution CDDH/I/78 recognized themselves that its contents had been overtaken by events. The majority of the Committee seemed to take the view that that proposal, like other proposals which had become out of date, need not be mentioned. In consequence, he proposed that any mention of draft resolution CDDH/I/78 should be deleted.

49. Mr. SPERDUTI (Italy) said that it was not possible to declare that draft resolution CDDH/I/78 was out of date. Perhaps its wording was out of date following the adoption of amendment CDDH/I/71, but it could still be defended by its sponsors if it were suitably modified.

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

51. Mr. YOKO (Zaire) said that his delegation, in agreement with the delegation of Senegal, was withdrawing its proposal for the deletion of the passage in the report relating to draft resolution CDDH/I/78; both delegations accepted the Indian proposal, as amended by the Canadian delegation.

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

It was so decided.
P. MEETING OF COMMITTEE I, 26 March 1974 (CDDH/I/SR.16):

New paragraph 37

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

"In connexion with the work of the Committee, the delegations of Canada and New Zealand submitted document CDDH/I/78. However, that document was not pressed to a vote by the co-sponsors since the text of the proposal became out of date after the Committee's decision on document CDDH/I/71."

Paragraph 37 was approved.

New paragraph 38

31. Mr. MISHRA (India) said that the normal procedure was that a main Committee, when submitting its report to the plenary, should mention any important recommendations it had adopted. He accordingly proposed the insertion, before the annex, of a new paragraph 38 with the heading "Recommendation to the Plenary" and reading: "38. The Committee recommends the text of Article 1 of draft Protocol I as contained in paragraph 15 of this report for adoption by the Conference".

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

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

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

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

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

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

38. The CHAIRMAN said that adoption of the report would not imply any change of attitude on the part of delegations towards the substantive issues referred to. It merely meant agreeing that the report was a faithful reflection of what the Committee had done.
39. Mr. CUTTS (Australia) said that he was opposed to the suggested addition because it seemed an unusual procedure to make such an insertion in a text produced by the Rapporteur which, in section III, already gave extensive coverage to the point in question.

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

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

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

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

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

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

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

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

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

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

50. Mr. ABDINE (Syrian Arab Republic) said that there was no rule against committees making recommendations. It was not a decision of substance; in adopting the Committee's report containing the recommendation, the plenary would merely be noting that that was what the Committee had decided.
51. Mr. KHATTABI (Morocco), supported by Mr. YOKO (Zaire) and Mr. EL GHONEMY (Arab Republic of Egypt), asked that the Indian proposal for a new paragraph 38 should be put to the vote.

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

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

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

54. The CHAIRMAN invited the Committee to vote on the text proposed by India for a new paragraph 38.

The text of a new paragraph 38, proposed by the Indian delegation, was adopted by 51 votes to 23, with 9 abstentions.

Q. REPORT OF COMMITTEE I, FIRST SESSION (CDDH/48/Rev. 1):

12. At its thirteenth meeting on 22 March, the Committee put to the vote the proposals and amendments to the ICRC text of Article 1. It was decided to give priority to amendment CDDH/I/71, as amended orally. A vote was taken by roll call and amendment CDDH/I/71 was approved by 70 votes to 21, with 13 abstentions.

14. The text of the amendment approved was as follows:

AMENDMENT TO DRAFT ADDITIONAL PROTOCOL I

ARTICLE 1

Amend the title and text of the article to read as follows:

GENERAL PRINCIPLES

"1. The present Protocol, which supplements the Geneva Conventions of 12 August 1949 for the Protection of War Victims, shall apply in the situations referred to in Article 2 common to these Conventions.

"2. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

"3. The High Contracting Parties undertake to respect and to ensure respect for the present Protocol in all circumstances.
"4. In cases not included in the present Protocol or in other instruments of treaty law, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

35. In connexion with the work of the Committee, the delegations of Canada and New Zealand submitted document CDDH/I/78. However, this document was not pressed to a vote by the co-sponsors since the text of the proposal became out of date after the Committee's decision on amendment CDDH/I/71 at the thirteenth meeting.

36. At its sixteenth meeting, the Committee decided, by 51 votes to 23, with 9 abstentions, to include in its report the following:

Recommendation of the Committee:

37. The Committee recommends the text of Article 1 of draft Protocol I, as contained in paragraph 14 of the present report, for adoption by the Conference.

R. PLENARY MEETING, 29 March 1974 (CDDH/SR.22):

9. Mr. MISHRA (India) said that the Conference had so far confined itself to taking note of the reports of the Committees. The report of Committee I differed from the others by virtue of the recommendation appearing in paragraph 37. For that reason, he suggested that the Conference should adopt that report in its entirety in the form of a resolution (CDDH/53) reading:

"The Conference,

"Adopting the report of Committee I, containing its recommendation in paragraph 37,

"Welcomes the adoption of Article 1 of draft Protocol I by Committee I."

10. On the basis of the consultations it had held with a large number of other delegations, his delegation considered that it should be possible for the draft resolution to be adopted by consensus, with possible reservations.

11. Mr. CLARK (Nigeria), Mr. CHOWDHURY (Bangladesh), Mr. SAHOVIC (Yugoslavia), Mr. RATTANSEY (United Republic of Tanzania), Mr. TARCICI (Yemen) and Mr. KASASA (Zaire) supported the draft resolution submitted by the representative of India.

12. Mr. MURILLO RUBIERA (Spain) said that his delegation had voted against Article 1 in its amended form and would therefore not be able to welcome the adoption of that article by Committee I. His country's opposition to that article was based on questions of substance, for it could not agree that permanent and immutable categories of the law should be replaced by conceptions which lent themselves to various interpretations. Nevertheless, in a spirit of co-operation and compromise, his country would abstain if the draft resolution was put to the vote.

13. Mr. ABDINE (Syrian Arab Republic) supported the Indian draft resolution. As the report (CDDH/48) had been adopted by a large majority in
Committee I, he did not think that there was any need to vote on it in plenary meeting. A minority of countries had been against the adoption of Article 1 as amended on the pretext that it was incompatible with the principle of universality. On the contrary, that principle was inherent in Article 1, which aimed at expanding the scope of draft Protocol I by extending protection to new entities.

14. Mr. CUTTS (Australia) said that he supported the draft resolution submitted by the representative of India, thus changing the position that his delegation had adopted at the thirteenth meeting of Committee I (CDDH/1/SR.13), when it had abstained in the vote on Article 1 as amended. At that time his delegation had explained that, although it favoured a broadening of the field of application of draft Protocol I, it feared that the terms used in paragraph 2 of the amendment (CDDH/48, paragraph 14) might be too restrictive and exclude all conflicts other than those enumerated. After due consideration, his delegation had realized that if paragraphs 1 and 2 were taken together and if the word "include" in paragraph 2 was taken literally, the list could be interpreted as not being exhaustive. On the basis of that interpretation, his delegation supported the text of Article 1 which appeared in paragraph 14 of the report, as also the Indian draft resolution (CDDH/53).

15. Mr. ALDRICH (United States of America) noted that the draft resolution submitted by India represented an effort towards co-operation. In those circumstances, the United States delegation - which could not vote in favour of the draft resolution because of the contents of its Preamble - would be prepared to accept it if it was adopted without a vote.

16. Mr. LEGNANI (Uruguay) said that he approved of the report (CDDH/48), which accurately reflected what had taken place in Committee I, but that he would vote against paragraph 37 in accordance with the position taken earlier by his delegation.

17. Mr. ESPINO GONZALEZ (Panama), noting that some delegations were expressing reservations with regard to the operative part of draft resolution CDDH/53, proposed that the words "Welcomes the adoption" should be replaced by "Decides to adopt".

18. Mr. MILLER (Canada) said that his delegation had not been able to support the new wording of Article 1, since it could have been improved in such a way as to make it more universally applicable. Nevertheless, the draft resolution submitted by India seemed appropriate in the sense that it brought out the fact that it concerned one of the most important decisions of Committee I. Canada hoped that delegations would make good use of the interval that would elapse between the two sessions in order to consider the consequences of the adoption of Article 1. In a spirit of compromise, therefore, he could accept the Indian draft resolution if it was not put to the vote. In the same spirit, he asked the representative of Panama whether he would agree to withdraw his amendment in order to avoid giving rise to fresh controversies.

19. Mr. ESPINO GONZALEZ (Panama) withdrew his amendment.

20. Mr. DENG (Sudan) said that he supported the draft resolution submitted by India and welcomed the attitude that Australia had just adopted, as also the spirit of compromise which the United States representative had shown. He proposed that draft resolution CDDH/53 submitted by India should be adopted by consensus.
21. The PRESIDENT said that, if there were no objections, he would consider that the Conference adopted draft resolution CDDH/53 submitted by India by consensus.

It was so decided.

22. Mr. de ALCAMBAR PEREIRA (Portugal) said that if the amendment to Article 1, as it appeared in paragraph 14 of Committee I's report (CDDH/48), had been put to the vote, his delegation would have voted against that amendment.

23. The lines along which the Conference's proceedings had developed had served to reinforce the doubts felt by the Portuguese delegation about the Conference's resolve to develop humanitarian law in the direction of universality, impartiality and neutrality. That being so, the Portuguese delegation was not sure that it would be able to go on extending its co-operation to an undertaking that had been diverted from its original purpose.

S. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 1 - General Principles and Scope of Application

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

2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the Protection of War Victims, shall apply in the situations referred to in Article 2 common to those Conventions.

4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

T. PLENARY MEETING, 23 May 1977 (CDDH/SR.36):

39. The PRESIDENT invited the Conference to consider Article 1.

40. Mr. HESS (Israel) said that his delegation could accept paragraphs 1, 2 and 3 of Article 1, but would have to ask for a separate vote on paragraph 4.

41. Mr. ABADA (Algeria) said that his delegation had hoped that in order to save time, Article 1 would be adopted by consensus. If Israel insisted on a separate vote on paragraph 4, however, he would ask that the vote be taken by roll-call.
42. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) pointed out that paragraph 4 in the English text was numbered paragraph 2 in the Russian text.

43. The PRESIDENT said that paragraph 4 was numbered correctly in the English, French and Spanish texts. The mistake in the numbering of the Russian text would be corrected.

44. Mr. AL-FALLOUJI (Iraq) said that his delegation supported the Algerian representative's request for a roll-call vote. If Article 1 was not adopted by consensus, the vote on it would be of historic significance.

45. Mr. SKALLI (Morocco) said that, since Article 1 had already been approved at the first session, he regretted that one delegation should seek to prevent it from being adopted unanimously. He supported the representatives of Algeria and Iraq in their request for a roll-call vote.

46. Mr. de ICAZA (Mexico) pointed out that the text of paragraph 4 had originally been proposed as an amendment by his delegation and others. Under rule 39 of the rules of procedure, he would insist that any vote should be taken on the article as a whole.

47. The PRESIDENT asked the representative of Israel if he wished to press his motion for a separate vote on paragraph 4.

48. Mr. HESS (Israel) said he regretted that he would have to insist on a separate vote on paragraph 4.

49. Mr. GRIBANOV (Union of Soviet Socialist Republics) proposed that the Conference should vote on Article 1 as a whole.

50. Mr. EL-FATTAL (Syrian Arab Republic) supported that proposal.

51. The PRESIDENT said that under rule 39 of the rules of procedure, "a representative may move that parts of a proposal or an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon". He therefore put to the vote the motion by the representative of Israel for a separate vote on paragraph 4.

The motion was rejected.

52. Mr. ALDRICH (United States of America) asked whether Article 1 could now be adopted by consensus.

53. Mr. HESS (Israel) said that although his delegation could accept paragraphs 1, 2 and 3, it would have to ask for a vote on Article 1 as a whole.

54. Mr. ABADA (Algeria) said that his delegation insisted on a vote by roll-call.

55. Mr. AREBI (Libyan Arab Jamahiriya) said that since paragraph 4 had led to discussion, he would ask the Secretary-General to read out the text of the paragraph in full, in order to make it perfectly clear that it dealt with the struggle of peoples against colonial domination, alien occupation and racist regimes.

56. The SECRETARY-GENERAL read out the full text of paragraph 4.
57. Mr. MBAYA (United Republic of Cameroon) said that, since Article 1 had already been adopted, a two-thirds majority vote on that article would be necessary.

58. The PRESIDENT pointed out that Article 1 had already been adopted in Committee but not in plenary.

At the request of the Algerian and Egyptian representatives, the vote on Article 1 as a whole was taken by roll-call.

Lesotho, having been drawn by lot by the President, was called upon to vote first.

In favour: Lebanon, Liechtenstein, Luxembourg, Madagascar, Mali, Malta, Morocco, Mauritania, Mexico, Mongolia, Mozambique, Nicaragua, Nigeria, Norway, New Zealand, Oman, Uganda, Pakistan, Panama, Netherlands, Peru, Philippines, Poland, Portugal, Qatar, Syrian Arab Republic, Republic of Korea, German Democratic Republic, Democratic People's Republic of Korea, Socialist Republic of Viet Nam, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, United Republic of Tanzania, Romania, Holy See, Senegal, Somalia, Sudan, Sri Lanka, Sweden, Switzerland, Czechoslovakia, Thailand, Tunisia, Turkey, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yemen, Democratic Yemen, Yugoslavia, Zaire, Afghanistan, Algeria, Saudi Arabia, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, United Republic of Cameroon, Chile, Cyprus, Colombia, Costa Rica, Ivory Coast, Cuba, Denmark, Egypt, United Arab Emirates, Ecuador, Finland, Ghana, Greece, Honduras, Hungary, India, Indonesia, Iraq, Iran, Libyan Arab Jamahiriya, Jamaica, Jordan, Kenya, Kuwait.

Against: Israel.

Abstaining: Monaco, United Kingdom of Great Britain and Northern Ireland, Federal Republic of Germany, Canada, Spain, United States of America, France, Guatemala, Ireland, Italy, Japan.

Article 1 was adopted by 87 votes in favour, one against and 11 abstentions.

Explanations of vote

59. Mr. HESS (Israel), speaking in explanation of vote, said that his delegation regretted that it had been forced to vote against Article 1 as a whole. It fully accepted paragraphs 1, 2 and 3, but totally objected to paragraph 4 for the following reasons:

60. First, it felt that any reference to the motives and cause for which belligerents were fighting was in clear contradiction to the spirit and accepted norms of international humanitarian law and to the Preamble to Protocol I. Any delimitation between international and non-international conflicts should be based on objective criteria. It should apply to the just and the unjust, to the one who might be considered the aggressor by some and the victim by others. A rule which was intended to apply only to one type of belligerent was not a legal norm; it might well be a carefully-drafted condemnation of a well-deserved benediction, but it was not a norm of international humanitarian law.
61. Secondly, draft Article 1, paragraph 4, had within it a built-in non-applicability clause, since a party would have to admit that it was either racist, alien or colonial - definitions which no State would ever admit to. By including such language, the Conference had, to his regret, ensured that no State by its own volition would ever apply that article.

62. Thirdly, when drafting Article 1, paragraph 4, it had been pointed out by a number of delegations that, since obligations were being placed on non-State entities, it would be necessary carefully to rewrite the other articles of the Protocol in order to ensure the necessary changes to enable non-State entities to apply it.

63. However, the Conference had refrained from doing so and was now faced with a Protocol with detailed regulations which obligated non-State entities but could not be applied by them. For example, there were detailed regulations as to courts, tribunals, legal systems and appeals, but non-State entities by definition did not possess such organs. What remained were obligations without any international responsibility, a system which could not work.

64. Lastly, he said that, instead of drawing up concise, clear and valid rules that would have ensured correct treatment to all guerrilla fighters, the Conference had attempted to introduce political resolutions that were properly the responsibility of political organizations such as the United Nations into rules of international humanitarian law, and in so doing had achieved nothing but long-term damage to those rules by such politicization.

65. Mr. GRIBOV (Union of Soviet Socialist Republics) said that, in his delegation's view, Article 1 of draft Protocol I was one of the basic articles aimed at the reaffirmation and development of the 1949 Geneva Conventions. The purpose of Protocol I was to find the most effective means of applying the provisions of the Conventions in the context of present-day international relations. Article 1, which was of particular importance in that respect, correctly reflected such relations not only in confirming the provisions of Article 2 common to the four Geneva Conventions of 1949, but also in defending the rights of peoples fighting against colonial domination and alien occupation, and against racist regimes, in order to exercise their right to self-determination as enshrined in the Charter of the United Nations and in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

66. The establishment of a direct defence for the victims of colonialism, racism and aggression represented an important reaffirmation of the rules of international humanitarian law and a strengthening of the authority and practical application of those rules in armed conflict. His delegation fully supported the provisions of Article 1 of draft Protocol I, which had been drawn up by the joint efforts of delegations participating in the Conference.

67. The right of peoples to self-determination and their right to fight against colonialism, racism and aggression was a generally-recognized principle of international law. The Soviet Union, which throughout its history had consistently opposed colonialism and actively supported those who were struggling for their national liberation from colonial and racist domination, attached particular importance to the article.

68. Mr. ABI-SAAB (Egypt) said that his delegation deeply regretted that, despite the United States representative's appeal, the attitude of a single
delegation had prevented the adoption of the fundamental provisions of Article 1 by consensus. Paragraph 4 of the article was based on the principle of self-determination, which had been accepted by all members of the international community. As had been shown by the fact that the vast majority had voted in its favour, the paragraph should not have caused any problem to any State recognizing the principle of self-determination. It had been stated that the problem lay in the use of political language. Struggles against colonial domination, alien occupation and racist regimes were, however, specific applications of the principle of self-determination, which was unquestionably a legal principle: was it political to take into consideration some of the atrocious and murderous armed conflicts being waged in the present-day world? It had been stated that the language of the paragraph had been imported from the United Nations, which was a political forum, and was unsuited to a Conference which was a legal and humanitarian body. The vast majority of representatives at the Conference also represented their countries at the United Nations and would hardly put forward differing views in the two bodies on the same legal subject of the reaffirmation and development of humanitarian law.

69. It had also been said that the other articles of the Protocol had not been adjusted to the adoption of Article 1, paragraph 4, and that that situation would result in unequal treatment of the Parties. Almost throughout the second session of the Conference, an informal working group, representing all the regional groups and working with the participation of several delegations which had just abstained in the vote on Article 1, had met to examine the consequential effects of the adoption of that article in Committee. The Working Group had unanimously concluded that no consequential change was needed in any article, beyond the addition of a new paragraph to Article 84 concerning the accession of liberation movements to the Protocol.

70. International practice on the universal, regional and bilateral levels had established beyond doubt the international character of wars of national liberation. The purpose of the amendment which had been adopted as paragraph 4 of Article 1 had not been to introduce a new and revolutionary provision, but to bring written humanitarian law into step with what was already established in general international law, of which humanitarian law was an integral part.

71. His delegation therefore considered that the importance of the article lay in narrowing future divergencies in interpretation rather than in introducing new solutions. That in itself was a great advance, since experience had shown that the basic problem of humanitarian law had lain in the application of general principles to specific situations rather than in the acceptance of such general principles. All the provisions which bridged the gap between those two levels, beginning with paragraph 4 of Article 1, constituted the real advances achieved by the Conference, since such provisions closed the door to spurious interpretations and evasive attitudes when States were called upon to honour, by their action, the humanitarian principles and obligations which they readily accepted in abstract terms.

72. Mr. ULLRICH (German Democratic Republic) said that, in adopting Article 1 of draft Protocol I, the Conference had taken an important decision. The result of the vote was an expression of the will of most States represented at the Conference to reaffirm the peoples' right to fight against colonial domination, alien occupation and racist regimes in the exercise of the right to self-determination. The peoples could thereby rely on the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the
Charter of the United Nations, as well as on numerous resolutions adopted by the United Nations General Assembly.

73. The recognition of a people's struggle for liberation as an international armed conflict in the sense of Article 2 common to the four Geneva Conventions of 1949, represented an important extension of the field of application of the Conventions and of the Protocol. It took into account present realities and necessities.

74. Considering the efforts for peace and security and the promotion of world detente to be the most important international task, his Government saw in those efforts an inseparable connexion with the guarantee of the peoples' right to self-determination. It therefore consistently stood for the peoples struggle for liberation in the exercise of their right to self-determination, and opposed any attempt to falsify the content of Article 1 or to restrict its field of application.

75. His delegation was of the opinion that Article 1 positively enhanced international humanitarian law and that its present wording would be necessary as long as colonial domination and racist regimes existed.

76. Mr. DI BERNARDO (Italy) said that his delegation had abstained in the vote on Article 1 as a whole because of considerations which had remained unchanged since the adoption of the Article by Committee I.

77. Article 1 as adopted brought a vagueness into the concept of international conflict - a concept which was fundamental to the aim of respect for international humanitarian law. It could not be denied that the conflicts covered by paragraph 4 were indefinable from the point of view of objective elements. The struggle of an armed group against a Government within the meaning of Article 1 of Protocol I could be considered as an international or as an internal conflict not on the basis of appreciable objective elements but on that of a largely subjective element: the aim of the struggle. That factor seriously prejudiced the uncontroversial application of the rules of international law, since it completely blurred the borderline between international and non-international armed conflicts.

78. His delegation had consistently supported the practical application of the principle of self-determination of peoples, but it was convinced that, by giving scope for wide differences in interpretation, Article 1 of Protocol I as adopted could not serve the legitimate interests of peoples, since it rendered uncertain both the legal system applicable to their struggle and the guarantees to which those peoples were entitled.

79. Mr. HERCZEGH (Hungary) said that his delegation had voted for Article 1, considering it to be one of the key provisions of Protocol I. It attached particular importance to paragraph 4, which represented a great step forward in the development of international humanitarian law. The right of peoples to self-determination included their right to struggle against colonial domination and foreign occupation and against racist regimes. They should therefore enjoy the full protection of Protocol I in their struggle. After the adoption of Article 1 and its paragraph 4, no one could in good faith deny the international character of armed conflicts in which peoples exercised their right to self-determination.
80. Mr. AL-FALLOUJI (Iraq) said that his delegation had noted with great satisfaction the result of the vote on Article 1, in which only a single voice had been raised against the vast majority who had voted in favour of the historic article. His delegation attached particular importance to the first vote, which had shown that the Conference considered the article indivisible.

81. The most important paragraph of Article 1 was paragraph 3, stating that the Protocol supplemented the Geneva Conventions. Paragraph 4, which filled out that key paragraph, also contained a fundamental principle. There was no trend in the present-day world that was more inevitable than decolonization. Paragraph 4, which recognized that objective truth, thus filled a gap in international humanitarian law.

82. Mr. FREELAND (United Kingdom) said that his delegation had voted in favour of the motion for division because it had traditionally taken the position, in the proceedings of international bodies, that a delegation which asked for a separate vote should generally be allowed the opportunity to express its position in that way. It had seen no reason to depart from that position on the present occasion.

83. His delegation had abstained in the vote on Article 1 as a whole and would have abstained on paragraph 4 if a separate vote had been taken on it. At the first session of the Conference the United Kingdom delegation had voted against the amendment to include the paragraph now appearing as paragraph 4, partly because it had seen legal difficulty in the language used, which seemed to be cast in political rather than legal terms. The main reason for its opposition, however, was that the paragraph introduced the regrettable innovation of making the motives behind a conflict a criterion for the application of humanitarian law.

84. His delegation had nevertheless fully understood the wish of those who in 1974 had sponsored the amendment now appearing as paragraph 4 to classify as international armed conflicts various conflicts which by traditional criteria would have been considered internal but in which the international community was taking a keen interest. Those conflicts had been mentioned during the debates in 1974. They were conflicts which had been of major concern to the United Nations, all of them outside Europe; some of them had fortunately come to an end since 1974.

85. Not wishing to see the Protocol founder on that difference of opinion, his delegation had joined in the efforts at the subsequent three sessions of the Conference to fit the new idea contained in the amendment into the framework of the Protocol. One of its primary concerns at the first session had been that it might be argued that different rules of law should apply to opposing sides in a conflict to which the paragraph applied and that the text of other articles might be amended accordingly. His delegation had been relieved to find that that had not been so and that the cardinal principle of equality of application to all participants had been respected. In a spirit of cooperation, rather than in the unfortunate atmosphere of confrontation which had prevailed at the first session, solutions had been found to the problem of integrating the amendment and its consequences into the Protocol.

86. Thus, while still having certain doubts about paragraph 4 of the article for the reasons of law he had stated, his delegation had been able to move from a negative vote in 1974 to abstention on the article as a whole on the present occasion.
87. He wished to make a general point of interpretation which applied not only to the class of armed conflicts referred to in paragraph 4 but also to the traditional class of inter-State conflicts referred to in paragraph 1. In either case, for Protocol I to apply there must be armed conflict. That term was defined neither in the Conventions of 1949 nor in Protocol I. His Government considered, however, that the term "armed conflict" in that context implied of itself a certain level of intensity of fighting which must be present before the Conventions or the Protocol could apply in any situation.

88. In Article 1 of Protocol II, dealing with internal armed conflicts, Committee I had defined the level of intensity which must be reached before Protocol II could apply. That definition, which had been adopted by consensus, had been worked out carefully and after long debate. In his delegation's view, the armed conflicts to which Protocol I would apply could not be of less intensity than those to which Protocol II would apply. His delegation would accordingly interpret the term "armed conflict" as used in Protocol I in that sense.

89. Mr. CLARK (Nigeria) said that his delegation had voted for the article because it embodied the present state of international law applicable in armed conflict. The article was essential to draft Protocol I as a whole.

90. When his delegation had joined in sponsoring the proposal that had led to Article 1, paragraph 4, it had realized that the Conference was taking an important and innovative step in recognition of the legitimacy of the struggle of the national liberation movements in Africa and elsewhere against colonial domination, alien occupation, apartheid and racist regimes. The principle of self-determination which the article endorsed went beyond political notions; it was now a part of international law, as enshrined in the Charter of the United Nations and several multilateral instruments, including the Declaration on Principles of International Law concerning Friendly relations and Co-operation among States in accordance with the Charter of the United Nations. It was of historic importance that the increasingly intensive armed struggles for freedom and independence taking place in Namibia, Zimbabwe and South Africa would now be recognized by the world as international conflicts under international humanitarian law.

91. Mr. PAOLINI (France) said that his delegation had abstained in the vote on Article 1 for the reasons it had indicated in Committee I. Its abstention was justified by its concern at the lack of criteria for a precise distinction between non-inter-State armed conflicts covered by Protocol I and those covered by Protocol II. The confusion in paragraph 4 with regard to conflicts coming into one or other of those categories was bound to be a constant source of trouble and confusion both legally and politically.

92. Mr. MILLER (Canada) agreed with the view that the basic problem facing the Conference was the application of humanitarian law in specific situations of the present day. The point of concern to his delegation was whether the article fulfilled the task for which it was designed. Canada's support on many occasions for the right of peoples to self-determination was a matter of record. That right was a fundamental principle of the Charter of the United Nations and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. It was not, however, the issue on the present occasion. The Conference was not seeking through the article to give peoples the right to self-determination. The discussions in the United Nations and elsewhere on colonial domination, alien occupation and racist regimes had already been given an
international character and it was to be hoped that they would result in the elimination of the causes and the rectification of the results of such practices.

93. His delegation was concerned about another equally important principle: that of non-discrimination in humanitarian law, which the article had breached. Paragraph 4 might now encourage the very States that were alleged to be guilty of colonial domination or alien occupation, or of being racist regimes, not to apply the Protocol.

94. At the first session of the Conference his delegation had endeavoured to suggest alternative ways of dealing with the specific situations it wished to see covered, and it regretted that its suggestions had not been accepted. That was why it had been obliged to abstain on the article as a whole. It would have preferred to see the article adopted by consensus, and would then have made a similar statement to the present one. He hoped the situations intended to be covered by paragraph 4 would indeed be covered, but he had doubts on that score. If they were not, it was important that the other provisions of international humanitarian law on which the Conference was working should apply to them.

95. Mr. MBAYA (United Republic of Cameroon) said that his delegation wished to express its deep satisfaction at the adoption of Article I of draft Protocol I. The Conference had the dual task of reaffirming and developing international humanitarian law applicable in armed conflicts. It would have failed to fulfil the second of those two functions if it had not adopted the article. In doing so, the Conference had courageously taken into account the facts of the modern world by giving national liberation movements their rightful status and ensuring them adequate protection.

96. It was because of those considerations that his delegation had voted in favour of the admission of national liberation movements as observers at the Conference and had consistently supported the provisions for their protection which had been approved in committee by the vast majority of delegations.

97. There was a principle of international and domestic law that conventions must be interpreted and applied in good faith. A Party to a convention that was not in good faith would always find a pretext to dispute the nature of any provision, however clear it might be.

98. Mr. JEICHANDE (Mozambique) said that it was well known that the People's Republic of Mozambique was the result of an armed struggle for national liberation during which several countries had supported the massacre of people fighting for their freedom. He was surprised that certain delegations had abstained in the vote on Article 1 when women and children of Angola, Mozambique and Viet Nam had been murdered and the fighters of those countries had been executed without trial for no other crime than having rejected slavery, foreign domination and exploitation and having struggled against apartheid, racism and exploitation in favour of a society in which human rights would no longer be mere empty words.

99. Despite the nobility and justice of their cause, there had hitherto been no international legal instrument to cover the situation of freedom fighters. His delegation therefore welcomed the adoption of the article, which was of fundamental importance to the peoples of Zimbabwe, Namibia, South Africa, Palestine and all other peoples who were fighting for their freedom,
independence and human rights. The article was the very essence of the Protocol and should not be the subject of any reservations.

100. Mr. MENCER (Czechoslovakia) said that his delegation had voted in favour of Article 1, which was a key article of Protocol I. It attached particular importance to paragraph 4, which was an indispensable provision based on the exercise of the right of peoples to self-determination. The wording of the paragraph, which expressed in legal terms the reality of existing situations, had opened a new page in the history of international humanitarian law applicable in armed conflicts. Its adoption represented a development of international humanitarian law and was undoubtedly one of the major successes of the Conference. It also accorded with the views of the overwhelming majority of public opinion.

101. Mr. CERDA (Argentina) said that, as a sponsor of the amendment on which paragraph 4 of Article 1 had been based, his delegation welcomed the adoption of the article by so vast a majority. The paragraph undoubtedly represented the fundamental content of the article in that it reflected international recognition of the final liquidation of the colonial era - a process which had begun at the end of the Second World War - and recognition of the supreme nature of the human being which allowed of no form of discrimination. The right of all peoples to sovereignty over their own territory and the right to fight against unequal treatment were recognized in the definition of international aggression recently adopted by the United Nations General Assembly. The international community therefore had a duty to protect those participating in the struggle by making applicable to them the humanitarian rules of the Geneva Conventions of 1949 and of the Additional Protocols. It was in paragraph 4 that the overriding importance of Article 1 lay.

102. Mr. ABADA (Algeria) said that Article 1 was one of the most straightforward and clearest in the whole Protocol and that it was difficult to understand the mistrust and criticism with which it had been received. He welcomed, therefore, the overwhelming majority by which it had been adopted. By endorsing the principle of self-determination, which was already a universally accepted principle of international law, paragraph 4 contributed to the development of humanitarian law and helped to bring it into line with existing conditions. The article clearly constituted one of the fundamental elements of Protocol I, without which it would lose its consistency and validity, and even its acceptability. Any reservations with regard to the article would indicate a deep misunderstanding of the whole work of the Conference.

103. Mr. de BREUCKER (Belgium) said that his delegation had voted for the article because it could not but approve an article which restated, in paragraphs 1 and 2, the lofty general principles governing the application of humanitarian law. It had no comments to make on the first three paragraphs. With regard to paragraph 4, the Belgian delegation considered that it referred to a special type of armed conflict linked with the process of decolonization and very limited in duration and scale, and that it could in no way modify the respective scope of application of the two Protocols, one of which related to international and the other to non-international conflicts.

104. Mrs. ANCEL-LENNERS (Luxembourg) said that her delegation had voted for the article for the reasons given by the Belgian representative.

105. Mr. SAWAI (Japan) said that his delegation had been one of those which had opposed draft Article 1 when it had been voted on in Committee I during the
first session of the Conference. Its reasons for doing so had been stated at the fifth meeting of Committee I. It had subsequently noted that a number of provisions having a bearing on paragraph 4 of the article had been adopted in the main Committees either by consensus or by a large majority on the assumption that Article 1 would eventually be incorporated into Protocol I. Taking that development into account, his delegation had abstained on Article 1.

106. Mr. EL-FATTAL (Syrian Arab Republic) said that the vote on Article 1 was a historic occasion of great legal, humanitarian and political significance. Hitherto, international humanitarian law had suffered from a tragic lacuna, in that it provided no protection for combatants exercising their right to self-determination by struggling against foreign occupation, racism and colonialism. The right to self-determination was universally recognized by international lawyers, which made it imperative to provide the necessary protection for those fighting to defend that right in Africa and in other parts of the world.

107. The fact that one delegation had voted against the article came as no surprise. That delegation had already unashamedly declared that its Government did not apply the fourth Geneva Convention of 1949; it was not to be expected, therefore, that such a country would vote for an article which protected the people whose territory it was occupying. That disquieting voice had become as familiar as it was obnoxious and, as could now be seen, it was completely isolated from the civilized world.

108. Mr. MOKHTAR (United Arab Emirates) said that the adoption of Article 1 showed that the peoples of the world had a high respect for international humanitarian law and wished to enrich it for the sake of present and future generations. He failed to understand the assertion that the article politicized legal conference. To support the cause of oppressed peoples fighting for their fundamental rights was not a political matter, but essentially one of supporting right against wrong. The wide support which the article had received spoke for itself; he would merely stress, therefore, that the article was very important from the humanitarian standpoint and that, by adopting it, the nations concerned had stood up for their humanitarian aims. In voting for the article, his delegation had been guided by the same humanitarian principles.

109. Mr. TODORIC (Yugoslavia) said that the adoption of the article was of historic value for the peoples fighting against colonial domination, foreign occupation and racist regimes. The provisions of the article constituted an important element in the progressive development of international humanitarian law. The result of the vote had clearly confirmed the will of the international community to apply the principles of the United Nations Charter and the United Nations General Assembly resolutions on the right of peoples to self-determination, to which his country attached overriding importance.

110. Mr. KAKOLECKI (Poland) wished to express his delegation's profound satisfaction at the adoption of Article 1, with paragraph 4, by an overwhelming majority. It was a fact of great importance that the Conference had clearly confirmed and incorporated in Protocol I the existing principle of international law which recognized the international character of armed conflicts in which peoples were fighting in the exercise of their right to self-determination. That historic decision was a logical and indispensable reaffirmation and development of international law. The article should be applied as adopted and should not be the subject of any reservations. His delegation sincerely hoped that it would help to ensure humanitarian legal protection to freedom fighters struggling against colonial domination, alien occupation and racist regimes.
111. Mr. GHAREKHAN (India) said that his delegation had voted for the article in conformity with India's consistent policy of support for wars of liberation for self-determination against alien occupation and colonialism. At the first session, his delegation had co-sponsored the proposal now embodied in paragraph 4 of Article 1. It would have preferred the article to have been adopted unanimously by acclamation; the need for a vote was regrettable. It was satisfactory, however, that the article had been adopted by such an overwhelming majority; it would indeed have been ironical if it had been adopted without paragraph 4. His delegation noted with great satisfaction that representatives of national liberation movements who had been present as observers in 1974 were now attending the Conference as representatives of fully sovereign Governments, and hoped that the same would apply at future international gatherings to those still attending the Conferences as representatives of national liberation movements. The adoption of Article 1, with its paragraph 4, was an important achievement in the development of international humanitarian law.

112. Mr. GAYNOR (Ireland) said that his delegation had abstained in the vote for the same reasons for which it had abstained when Article 1 was adopted in Committee I. While his delegation fully sympathized with the aims behind the provisions of Article 1, it nevertheless regretted that a clearer and more precise definition of the situations to which paragraph 4 would apply had not been produced.

113. Mr. ARMALI (Observer for the Palestine Liberation Organization), speaking at the invitation of the President, expressed his deep satisfaction at the result of the vote, by which the international community had re-confirmed the legitimacy of the struggles of peoples exercising their right to self-determination. That had already been confirmed by a number of international texts, including resolutions of the United Nations General Assembly. All those present would doubtless recall with emotion the occasion on which the representatives of national liberation movements had taken their rightful places in the Conference to the unanimous applause of the international community. Ever since then, those representatives had co-operated in good faith, and, he believed, usefully, in the development of international humanitarian law and in the promotion of justice for peoples fighting for self-determination. Today's vote was the culmination of their concerted efforts. The overwhelming majority against the single vote cast by the Zionist representative was a source of deep satisfaction and would also be an encouragement to the peoples of southern Africa waging a just struggle for self-determination.

114. The Arab people of Palestine fell within all three of the categories mentioned in paragraph 4: they were under colonial domination; their territory was under foreign occupation, despite the assertions of the terrorist Begin; and they were suffering under a racist regime, since Zionism had been recognized in a United Nations resolution as a form of racism. He wished to express his gratitude to the justice- and peace-loving peoples who had given their support to the struggles of all peoples fighting for self-determination.

115. Mr. de ICAZA (Mexico) said that Article 1 was a well-balanced article. Paragraph 1 affirmed that the Protocol should be respected in all circumstances, thus excluding the possibility of distinctions being made between the circumstances surrounding, motivating or producing international armed conflicts. Paragraph 2 reiterated the well-known Martens clause. Paragraph 3 reaffirmed the application of the Protocol to the situations referred to in Article 2 common to the Geneva Conventions of 1949. Paragraph 4, resulting from an amendment sponsored by the delegations of Argentina, Honduras, Mexico, Panama
and Peru reflected the development of international law since the adoption of the Geneva Conventions of 1949, by recognizing that the right of peoples for self-determination constituted an international armed conflict. It was in line, therefore, with General Assembly resolution 1514 (XV) and with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

116. His delegation was glad to have contributed to the drafting and adoption of the article. It had opposed a separate vote because the deletion of one of the paragraphs would have destroyed the unity of the article and, thereby, its faithful reflection of existing international law.

117. Mr. AL-ATTIYA (Qatar) welcomed the adoption of Article 1 of Protocol I by such an overwhelming majority. In its present formulation, with its four paragraphs, the article constituted a decisive turning point in and confirmation of international humanitarian law. Paragraph 4 was a particularly important achievement since it embodied the principles of law established over the past thirty years concerning self-determination and the struggle against foreign domination and occupation and against racial segregation.

118. Mr. NAOROZ (Afghanistan) said that the importance of Article 1 was revealed by the fact that only one delegation had insisted on a vote on paragraph 4. The moment, as many previous speakers had said, was undoubtedly a historic one. His delegation had voted wholeheartedly in favour of the article, which embodied the fundamental right to self-determination and the right to struggle against alien domination. Much energy, effort and time had been put into the formulation of the article, which his delegation regarded as one of the key provisions of Protocol I. It was glad that it had been voted by such an overwhelming majority.

119. Mr. ALEXIE (Romania) said that his delegation had voted for Article 1, which it regarded as one of the fundamental articles of Protocol I. By giving specific recognition to the right of peoples to self-determination, enshrined in the United Nations Charter, Article 1 constituted a reaffirmation and development of international humanitarian law and an appropriate supplement to the 1949 Geneva Conventions. Romania had always supported the just struggle of peoples against colonial domination, foreign occupation and racist regimes in the exercise of their right to self-determination. It welcomed the adoption of an article of such great humanitarian value.

120. Mr. BRECKENRIDGE (Sri Lanka) said that his delegation had, from the beginning, supported Article 1 in the form in which it had been adopted today. As current co-ordinator of the non-aligned countries, it wished to mark the historic development of international humanitarian law contained in the article, since it reflected the principles which the non-aligned countries had always stood for and actively promoted. It wished to emphasize the importance of the article in the context of the final acceptance and application of the Protocol as a whole.

121. Mr. TOPERI (Turkey) said that his delegation was satisfied with the result of the vote, although it would have preferred the article to have been adopted by consensus. His delegation had voted for the article, which it regarded as one of the key provisions of Protocol I. The Turkish Government had always supported peoples struggling against colonial domination, foreign occupation and racist regimes in the exercise of their right to self-determination. In its view the article applied to armed conflicts recognized by regional
intergovernmental organizations such as the League of Arab States or the Organization of African Unity, which were universally and widely accepted.

122. Mr. ROUCOUNAS (Greece) said that his delegation had voted for Article 1 as a whole, regarding it as a humanitarian provision of great importance. Paragraph 4 was fully in accordance with modern international law as expressed in the United Nations Charter and as it had been applied during recent years. Since the first session of the Conference, the internal situation in Greece had changed, with the re-establishment of democratic legality. His delegation was therefore glad to take the opportunity to confirm his country's support for the right of peoples to self-determination and its opposition to any form of domination and foreign occupation. Paragraph 4 provided the necessary protection for peoples fighting in the exercise of those rights.

123. Mr. AREBI (Libyan Arab Jamahiriya) said that he had been glad to hear a very large number of delegations express the view that Article 1 was the cornerstone of Protocol I. On the other hand, he had been surprised to hear a certain number of delegations state that paragraph 4 would not be of benefit to peoples struggling for self-determination. Perhaps that view was not so surprising when one noted which delegations had abstained in the vote.

124. Mr. ALKAFF (Democratic Yemen) said that his delegation had voted for Article I, which constituted an important factor in the development of international humanitarian law. The provision of all possible forms of protection to peoples struggling against foreign occupation and racist regimes in the exercise of their right to self-determination was indeed an essential element of international humanitarian law. Democratic Yemen, which had achieved its independence through armed struggle, was fully aware of the significance of the article, which embodied a basic principle of Protocol I and should not be the subject of any reservations. The article could have been adopted by consensus had it not been for a single delegation which had insisted on a vote, thereby sabotaging international unanimity. However, the result of the vote had been satisfactory and would serve the development of international humanitarian law in the interests of all peoples.

125. Mr. BEN REHOUMA (Tunisia) expressed his delegation's satisfaction at the adoption of the article by a very large majority. By reiterating the universally recognized right of peoples to self-determination, the article extended the protection of international humanitarian law to millions of people who had placed their hopes in the Conference. The humanitarian concern expressed in the article was clear. It constituted a noteworthy landmark on the road to the abolition of colonialism and racism. There was no justification for invoking legalistic arguments as a pretext for obstructing the extension of humanitarian law to peoples exercising their right to self-determination.

126. Mr. EL HASSEEN EL HASSAN (Sudan) said that his delegation had voted in favour of Article I, which, in its view, constituted the cornerstone of Protocol I. Sudan had always assisted, with money, arms and training, national liberation movements struggling against colonialism and racism; some members of such movements were now sitting as representatives of independent States. The fact that, a few years before, there had been serious difficulty in securing acceptance of their right to attend the Conference as observers was eloquent proof of the importance of Article I and of the need to apply it.

127. Mr. SHERIFIS (Cyprus) said that his delegation could not but have voted in favour of Article I. It regarded Article I as the cornerstone upon
which Protocol I was based, since it stated the guiding principles of the Protocol and defined its scope of application. His delegation's vote was also dictated by certain cardinal principles which his Government had constantly followed since Cyprus had emerged from colonial rule to independence and statehood. Those principles were enshrined in the United Nations Charter, and high among them was the right of peoples to self-determination. Above all, his country, for easily comprehensible reasons, stood against occupation and aggression. All those principles were embodied in paragraph 4 of the article. He welcomed its adoption in such overwhelming fashion.

128. Mr. QAAWANE (Somalia) said that his delegation had voted for the article and shared the satisfaction expressed by a majority of speakers. He was glad that justice and democracy had prevailed and that humanitarian rights had been restored to all those waging a just struggle for national liberation and self-determination.

129. Mgr. LUONI (Holy See) and Mrs. CONTRERAS (Guatemala) stated that their explanations of votes would be submitted in writing.

U. PLENARY MEETING, 23 May 1977 (CDDH/SR.36, ANNEX):

EXPLANATIONS OF VOTE

Australia

Article 1 of draft Protocol I

The Australian delegation voted in favour of Article 1 because it contains principles which are consistent with the purpose of this Protocol and because it extends international humanitarian law to armed conflicts which can no longer be considered as non-international in character.

In requiring the High Contracting Parties to undertake to respect and to ensure respect for Protocol I in all circumstances, paragraph 1 affirms the fundamental obligation which binds each Party to the Protocol.

Neither Protocol I nor any other international agreement covers all the situations which may arise in international conflicts and it is important to affirm the applicability of international legal humanitarian principles to situations not so covered. Paragraph 2 does this.

Paragraph 3 provides that Protocol I shall apply to all the situations in which the Geneva Conventions of 1949 are applicable. This paragraph is essential if the Protocol is to supplement the Conventions.

In applying Protocol I to armed conflicts involving national liberation movements, paragraph 4 is a significant development in international humanitarian law and one which my delegation supported at the first session of the Conference. This development of humanitarian law is the result of various resolutions of the United Nations, particularly resolution 3103 (XXVIII), and echoes the deeply felt view of the international community that international law must take into account political realities which have developed since 1949. It is not the first time that the international community has decided to place in a special legal category matters which have a special significance.
In supporting paragraph 4, the Australian delegation should not be understood as expressing an opinion on the legitimacy of any particular national liberation movement.

In supporting Article 1 as a whole, Australia understands that Protocol I will apply in relation to armed conflicts which have a high level of intensity. Furthermore, Australia understands that the rights and obligations under the Protocol will apply equally to all parties to the armed conflict, and impartially to all its victims.

**Germany, Federal Republic of**

**Article 1 of draft Protocol I**

The delegation of the Federal Republic of Germany would have preferred to pronounce itself on the different paragraphs of Article 1 separately, for it attributes great importance to the obligations enshrined in the first three paragraphs of this article.

The Federal Republic of Germany welcomes the inclusion of the Martens clause in an operative article of Protocol I.

Since the delegation of the Federal Republic of Germany could only pronounce itself on the article as a whole, it decided to abstain in the vote. Its apprehensions regarding the disadvantages of paragraph 4 in the humanitarian context have outweighed its positive attitude towards the first three paragraphs.

The Federal Republic of Germany recognizes that the protection provided for in Protocol I should, in principle, be extended also to situations which were not regarded as international armed conflicts under traditional international law. It was in favour of broadening the field of application of Article 38 of draft Protocol II.

In order to extend the scope of application of draft Protocol I to conflicts which traditionally have not been regarded as international, it would have been necessary to find appropriate criteria of a basically legal character which can and will be applied in practice. However, the criteria contained in paragraph 4 as now adopted by the Conference do not meet these requirements. The terms "colonial domination", "alien occupation", "racist regimes" are not objective criteria but lend themselves to arbitrary, subjective and politically motivated interpretation and application. Moreover, they have been chosen rather with a view to short-term political problems and objectives, and thus do not fit well into a legal instrument intended to be of long-term value.

For these reasons the delegation of the Federal Republic of Germany decided to abstain in the vote.

**Guatemala**

**Article 1 of draft Protocol I**

The delegation of Guatemala abstained in the vote by which Article 1 as a whole of draft Protocol I was adopted, for this delegation maintains reservations with respect to paragraph 4 of that article.
The Government of Guatemala respects and supports the principle of the self-determination of peoples provided that, in conformity with resolution 1514 (XV) of the General Assembly of the United Nations, the territorial integrity of a State is not infringed.

**Holy See**

**Article 1 of draft Protocol I**

The delegation of the Holy See voted for Article 1 of Protocol I as a whole.

It would have preferred the article to be adopted by consensus, in view of the very real value of paragraph 2, which explicitly mentions the Martens principle and invokes the dictates of universal conscience, a term which the Holy See delegation prefers to "public conscience".

Since it was not adopted by consensus, the Holy See finds itself obliged to express certain reservations both as to the merits of paragraph 4 of the article adopted, which clearly reflects a particular historical situation undergoing rapid development, and as to its applicability in practice, given that different judgements may be passed on the same or similar situations. In such judgements, subjective factors often outweigh objective criteria.

Finally, the Holy See delegation took its decision in the belief that paragraph 4 does not mean any substantive change in the scope of application of Protocol I, since it will cover certain conflicts that might otherwise not be covered either by Protocol I or by Protocol II, because of their special nature and their extent.

The Holy See delegation considers that it is in the interests of the international community that all armed conflicts should be covered by humanitarian law. From that standpoint, it is clear that the adoption of Article 1 of Protocol I will not represent a genuine development of humanitarian law unless it is followed by the adoption of Protocol II.

Only if both Protocols are adopted will there be an assurance that in the future all armed conflicts will really be covered by humanitarian law and that a due balance will be preserved in the protection of the victims of such conflicts.

**Indonesia**

**Article 1 of draft Protocol I**

My delegation voted in favour of Article 1 of Protocol I as a whole, as it also did when this article was put to the vote in Committee I during the first session of the Diplomatic Conference in 1974.

However, as was also the case in 1974, my delegation voted in favour with the understanding that the liberation movements referred to in paragraph 4 of Article 1 are limited only to those liberation movements which have already
been recognized by the respective regional intergovernmental organizations concerned, such as the Organization of African Unity and the League of Arab States.

By making our vote conditional to the factor of recognition by these regional intergovernmental organizations, we endeavour to insert an element of objectiveness in evaluating whether a movement can be regarded as a liberation movement or not.

New Zealand

Article 1 of draft Protocol I

At the first session of this Conference, the New Zealand delegation summarized its position in relation to draft Article 1 of Protocol I in the following way. It recognized, first, that the protection of the Protocol should not be applied only to the classical situations dealt with in existing international instruments, but should extend to contemporary situations, taking into account United Nations doctrine; secondly, the delegation stressed the need to ensure that the rules of the Protocol should apply equally to the adverse parties, and that its application should not require political judgements to be made by the International Committee of the Red Cross or by any protecting agency; and, thirdly, the delegation noted that the provisions of the article should not seem to give any encouragement to disruptive forces within a national society.

The New Zealand delegation believes that the problems relating to the article have not been completely surmounted: in particular, a great deal is left to subjective appreciation, in deciding whether or not a situation falls within the ambit of Article 1, paragraph 4. Nevertheless, the text of the article does in large measure satisfy the requirements stated in the foregoing paragraph. For this reason, and because Article 1 as a whole is the very foundation of Protocol I, the New Zealand delegation has supported the adoption of the article.

Spain

Article 1 of draft Protocol I

Availing itself of the option, recently granted to delegations taking part in the Conference, to explain their votes in writing, the Spanish delegation wishes to say that it abstained in the vote on Article 1 of Protocol I on account of the wording of paragraph 4. The terms of that paragraph give the impression that the legal treatment of an armed conflict might be connected with the motives or aims that may have actuated the Parties to the conflict, and that might in turn be interpreted as a reflection of the philosophy, not now admitted by anyone, according to which the end justifies the means.

Moreover, the paragraph in question includes the concept of national liberation movements, which it is very difficult to define objectively and which, in the opinion of our delegation and for the above-mentioned reasons that were explained at the proper time, is out of place in this article.
The Spanish delegation expresses its respect for and understanding of the line of thought followed by the delegations which advocated and approved paragraph 4 and, lastly, it emphasizes its agreement with the preceding three paragraphs of the article.

V. 1977 PROTOCOL I:

Article 1 - General Principles and Scope of Application

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

2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.
ARTICLE 2 - DEFINITIONS

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 2. Definitions

For the purposes of the present Protocol:

(a) "the Conventions" means the four Geneva Conventions of August 12, 1949, for the Protection of War Victims;

(b) "First Convention", "Second Convention", "Third Convention" and "Fourth Convention" mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of August 12, 1949; the Geneva Convention relative to the Treatment of Prisoners of War, of August 12, 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 12, 1949;

(c) "protected persons" and "protected objects" mean persons and objects on whom or on which protection is conferred by the Articles, Chapters or Sections which concern them in Parts II, III and IV;

(d) "Protecting Power" means a State not engaged in the conflict, which, designated by a Party to the conflict and accepted by the adverse Party, is prepared to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol;

(e) "substitute" means an organization acting in place of a Protecting Power for the discharge of all or part of its functions.

B. PROPOSED AMENDMENTS:

Sub-paragraphs (a) and (b)

CDDH/I/36 Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America
12 March 1974

Reverse and combine sub-paragraphs (a) and (b).

Sub-paragraph (c)

CDDH/I/36 Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America
12 March 1974

Delete sub-paragraph (c) as unnecessary.

Sub-paragraph (d)

CDDH/I/36 Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America
12 March 1974
Replace sub-paragraph (d) with the following:

"(d) 'Protecting Power' means a State not engaged in the conflict which has been designated by a Party to the conflict and accepted by the adversary Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol."

Sub-paragraph (e)

CDDH/I/29 Polish
11 March 1974

Delete sub-paragraph (e) and substitute the following:

"(e) 'Substitute' means an organization offering every guarantee of impartiality and efficacy which has been entrusted by the Parties involved in the conflict with the task of acting in place of a Protecting Power for the discharge of all or part of its functions."

CDDH/I/36 and Corr. 1 Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America
12 March 1974

Replace sub-paragraph (e) with the following:

"(e) 'Substitute' means an impartial humanitarian body acting in place of a Protecting Power for the discharge of all or part of its functions."

CDDH/I/44 and Corr. 1 Algeria, Arab Republic of Egypt, Democratic Yemen, Jordan, Kuwait, Libyan Arab Republic, Morocco, Nigeria, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, Uganda, United Arab Emirates
15 March 1974

In sub-paragraph (e), delete the words "all or part of" so that the sub-paragraph will then read:

"(e) 'Substitute' means an organization acting in place of a Protecting Power for the discharge of its functions."

CDDH/I/38 Brazil
13 March 1974

Add the following sub-paragraphs:

"(f) 'Party to the Conventions' means a State which has consented to be bound by the four Geneva Conventions of 12 August 1949 for the Protection of War Victims and with respect to which the Conventions are in force;

"(g) 'Party to the conflict' means a State which takes part in an international armed conflict within the field of application of the present Protocol or which perpetrates or suffers occupation within the meaning of Article 2 common to the Conventions."
C. MEETING OF COMMITTEE I, 15 March 1974 (CDDH/I/SR.7):

16. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing Article 2 of draft Protocol I, said that that provision required more detailed study. The ICRC had never considered the draft Protocols as final. The United Nations General Assembly recognized, however, in resolution 3102 (XXVIII), that they provided an excellent basis for discussion at the Diplomatic Conference.

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

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

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

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

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

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

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

Sub-paragraph (c)

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

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

26. He acknowledged that that sub-paragraph was incomplete, in that it ought to have specified the nationality of those persons and objects entitled to protection, as had been mentioned at the 21Ind International Conference of the Red Cross (paragraph 12 of CDDH/6 - report on the draft Additional Protocols to the Geneva Conventions of August 12, 1949). However, in view of the difficulty of establishing a full list of the categories of persons and objects protected by the four Geneva Conventions and by the Protocol, the ICRC had preferred to give a very general, though admittedly incomplete, definition, so as
to show clearly that it was aware of the problem; it being understood that the Conference would undertake to make more specific provisions.

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

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

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

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

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

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

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

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

35. Mr. GLORIA (Philippines) said that he considered sub-paragraph (c) superfluous as "protected persons" and "protected objects" were defined in several articles either explicitly or by means of examples. He therefore favoured the deletion of that sub-paragraph.
36. Mr. BARRO (Senegal) pointed out that, although the expression "protected persons" was used in some articles, it was not mentioned in others, and that if the penalties referred to in Article 74 were to be applied in the event of breaches of the Protocol, the criteria governing protection of the various categories of person or object should be clearly specified. Too restrictive a definition should be avoided: it could well become out of date in a few years as a result of changes which might subsequently occur in the dangers arising from the development of weapons and methods of fighting.

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

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

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

It was so agreed.

Sub-paragraphs (d) and (e)

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

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

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

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

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

45. Mr. MILLER (Canada) said that a definition was hardly the proper place to specify that the State called upon to act as a Protecting Power should be ready to carry out those functions: that idea would be better placed in Article 5.
46. Mr. Antoine MARTIN (International Committee of the Red Cross), referring to the remark by the representative of the Syrian Arab Republic, stated that Protecting Powers were a long-standing institution in international customary law relating to States: regional organizations were covered by the word "substitute" in Article 2(e).

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

It was so agreed.

Proposed new sub-paragraphs (f) and (g) (CDDH/I/38)

48. Mr. CALERO-RODRIGUES (Brazil) asked the Committee not to consider his country's proposed amendment (document CDDH/I/38) to add sub-paragraphs (f) and (g) to Article 2, until it had decided on the terms of Article 1 of draft Protocol I.

It was so agreed.

D. MEETING OF COMMITTEE I, 18 March 1974 (CDDH/I/SR.8):

7. Mr. LIN Chia-sen (China) said that it would be useful to have a recapitulation of the decisions taken with regard to Article 2.

8. Mr. Antoine-MARTIN (International Committee of the Red Cross) reminded the Committee that there were no substantive objections to sub-paragraphs (a) and (b) of Article 2, which had been referred to the Drafting Committee for final recording. It had been decided to resume examination of sub-paragraph (c) when Article 74 was considered. Sub-paragraphs (d) and (e) would be considered together with Article 5.

E. PROPOSED AMENDMENTS:

Sub-paragraph (c)

CDDH/I/62 Syrian Arab Republic
18 March 1974

In sub-paragraph (c) define clearly the various categories of "protected persons" and "protected objects".

CDDH/I/72 Senegal
20 March 1974

Amend sub-paragraph (c) to read as follows:

"(c) 'Protected persons' shall be deemed to mean peoples and individuals who, by reason of their specially frail condition, of their status or of their role at the moment when protection is to be conferred, take no part in military operations although they may find themselves in a position of legitimate defence."
'Protected objects' shall be deemed to mean natural resources, the environment and, in general, all those objects which, at the moment when protection is to be conferred, are not specifically used or converted for military purposes.”

Sub-paragraph (d)

CDDH/45 Austria, Finland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland 18 March 1974

Article 2(d) of draft Protocol I uses the expression 'State not engaged in the conflict', while Article 9(3) and Articles 19, 32 and 57(1) all use 'a State' or 'States not party to the conflict'. In Article 37 the expression 'neutral flags' is used.

To avoid the difficulties which may result from this diversity of terms, and in view of the terms used in the four 1949 Conventions, the following corrections, which have already been suggested by certain government experts (see the Commentary to Articles 19 and 32) are submitted for the consideration of the Conference:

"1. In Article 2(d) replace 'a State not engaged in the conflict' by 'a neutral or other State not a party to the conflict'."

CDDH/1/62 Syrian Arab Republic 18 March 1974

Replace the wording of sub-paragraph (d) by the following:

"(d) 'Protecting Entity' means a person or an entity designated by a Party to the conflict and accepted by the adverse Party, and carrying out the functions assigned to a Protecting Power under the Conventions or those devolving on Protecting Entities under the present Protocol.

Sub-paragraph (e)

CDDH/1/62 Syrian Arab Republic 18 March 1974

In sub-paragraph (e), replace the words "Protecting Power" by the words "Protecting Entity".

F. MEETING OF COMMITTEE I, 20 March 1974 (CDDH/1/SR.11):

1. The CHAIRMAN said that since the discussion at the tenth meeting had shown that some delegations were not in a position to comment on Articles 3 and 4 until the field of application of the Protocol had been definitively established in Article 1, he would invite members of the Committee to consider Article 5 of draft Protocol I. He recalled that at an earlier meeting the Committee had decided to consider Article 5 in conjunction with Article 2(d) and (e), which gave definitions of the terms "Protecting Power" and "substitute".

3. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing Article 5, said that the article related to the question of the machinery for the application of the 1949 Geneva Conventions. At the early plenary
meetings of the Conference, several delegations had drawn attention to the need to strengthen that machinery. The application of the Geneva Conventions de-

pended partly on the Parties to those Conventions. In particular it was for

each party to the conflict to decide individually how the Conventions were to

to be applied. However, the application and supervision of the 1949 Conventions were not left entirely to the unilateral appreciation of the Parties to the

Conventions. The Conventions contained provisions for specific institutions

known as Protecting Powers to facilitate and guarantee the impartial supervi-
sion of their application. The system of self-scrutiny was therefore supple-

mented by the institution of a third independent scrutiny, as laid down in

Article 8 common to the Conventions (Article 9 of the Fourth Convention). The

term "Protecting Power" was defined in Article 2(d) of draft Protocol I. The

commentary on that sub-paragraph described the functions to be undertaken by

the Protecting Powers for the purposes of the Conventions and of draft Pro-
tocol I.

4. For various reasons, which the ICRC had outlined in its preliminary
documentation, the application machinery established in 1949 had not worked
satisfactorily. The ICRC had therefore sent to all the States Parties to the
Conventions a questionnaire concerning measures intended to reinforce the
implementation of these Conventions. The Conference of Government Experts had

given the problem detailed study and general agreement had been reached on some

points. The experts, like the Governments which had replied to the question-
naire, had been in favour of retaining and reinforcing the system of Protecting

Powers. The General Assembly of the United Nations had expressed the same view

in a number of resolutions. The experts had considered it advisable to re-

affirm the obligation incumbent on each Party to the conflict to designate a

Protecting Power at the beginning of any situation referred to in Article 2

common to the Conventions. On the other hand, the experts had considered that

there should be no obligation to accept the Protecting Power thus designated,

since neither the designation nor the acceptance of a Protecting Power could be

settled by an automatic procedure regardless of the consent of the Parties to

the conflict. Lastly, the great majority of the experts, like the Governments

which had replied to the questionnaire, had considered that the procedure

whereby the ICRC would be appointed as substitute for a Protecting Power should

be strengthened and simplified.

5. Various amendments to Article 5 had been submitted at the XXIIInd Inter-
national Conference of the Red Cross, as was mentioned in paragraphs 14 to 19
of the report of that Conference (CDDH/6). One proposal, in particular, was

that paragraph 3 of Article 5 should be replaced by another providing, in the

event of failure to appoint a Protecting Power, for the activities of a humani-
tarian organization such as the ICRC to be appointed by one party to the con-

flict and recognized by the other or, alternatively, appointed by the United

Nations or by a Conference of High Contracting Parties.

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

with the implementation of humanitarian conventions.

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

8. Mr. de BREUCKER (Belgium), introducing the amendments to Article 2(d) and (e) (CDH/I/36 and Corr. 1), on behalf of the sponsors, said that the Geneva Conventions provided no definition of the term "Protecting Power", which had its origin in customary law. According to the definition provided by the ICRC in Article 2(d), the State designated as Protecting Power should be "willing" to carry out the functions assigned to a Protecting Power under the Conventions and Protocol I. The word "willing" was not a suitable legal term and might be replaced by "has agreed" or "is prepared to", words implying not only consent but readiness to carry out the functions in question.

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

10. Mr. ABDINE (Syrian Arab Republic), introducing his delegation's amendments to Article 2(d) and (e) (CDH/I/62), pointed out that in the meaning of Article 2(d) the term "Protecting Power" applied solely to a State. In view of the difficulties which had arisen in implementing the system of Protecting Powers, it might perhaps be advisable to allow the parties to a conflict the freedom to choose from among other entities, as was the case when they resorted to arbitration. The Syrian proposal was that the parties concerned should be free to choose a person or an entity as a "Protecting Entity". Since it was the consent of the parties to the conflict which mattered, there could be no reason to limit the choice to States not engaged in the conflict.

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

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

16. [Mr. CRISTESCU (Romania)], [i]n conclusion, [he] said that his delegation accepted the proposal in document CDH/45 concerning Article 2.

18. Mr. ABDINE (Syrian Arab Republic) said that in the amendments submitted by his delegation to Article 5 (CDH/I/62) the word "Power" had been
replaced by the word "Entity" in order to bring the wording into line with that of the amendment to Article 2 in the same document.

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

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

G. MEETING OF COMMITTEE I, 20 March 1974 (CDDH/I/SR.12):

33. Mr. HUGLER (German Democratic Republic) said that it was essential to devise a practical system acceptable to all States. His delegation ..., agreed with the amendment to the definition of "substitute" in Article 2(e) proposed by Poland (CDDH/I/29).

H. MEETING OF COMMITTEE I, 13 February 1975 (CDDH/I/SR.21):

1. Mr. ROSENNE (Israel) said that, when preparing a legal text, it was the usual practice to bring all the definitions together in a single "Definitions" article which was discussed at the end, when it had become clear which terms needed to be defined. He suggested that the same procedure should be followed in the case of the draft Protocols instead of having a number of "Definitions" articles in different parts of the text.

2. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the definitions in Article 2 were general definitions which held good for the whole of draft Protocol I. The articles entitled "Definitions" at the beginning of a Part, Section or Chapter indicated the meaning to be given to the terms defined in the particular Part, Section or Chapter in question. Committee II was considering the definition of "area of military operations" and had suggested that a Joint Working Group of Committees I and II should be set up to consider whether or not a definition of that expression should be included in Article 2. Other questions of a similar nature might arise in Committee III, and be referred to Committee I.

3. Mr. ROSENNE (Israel) said that the present arrangement might render Protocol I unduly complicated. He hoped that an attempt would be made to consolidate all the necessary definitions in a single "Definitions" section.

Sub-paragraphs (a) and (b)

4. The CHAIRMAN, replying to a question from Mr. FERRARI-BRAVO (Italy), pointed out that the Committee had already decided to refer sub-paragraphs (a) and (b) to the Drafting Committee (see CDDH/I/SR.7).
Sub-paragraph (c)

5. Mr. Antoine MARTIN (International Committee of the Red Cross) said that, at the seventh meeting of the first session of the Conference (CDDH/I/SR.7), it had been decided to defer consideration of Article 2, sub-paragraph (c), containing the definition of "protected persons and protected objects", until the articles containing those expressions, namely, Articles 11 and 74 of draft Protocol I, had been examined.

Sub-paragraphs (d) and (e)

6. Mr. Antoine MARTIN (International Committee of the Red Cross) said that a Working Group was at present considering Article 5, paragraph 3; it would therefore be advisable to wait for the results of its work before taking a decision on the definitions of "Protecting Power" and "substitute", given in sub-paragraphs (d) and (e) respectively.

7. Mr. KNITEL (Austria) said that it would be unnecessary for the Committee to discuss sub-paragraphs (d) and (e) in plenary. He proposed that they should be referred to the Working Group.

It was so agreed.

Proposed new sub-paragraphs (f) and (g) (CDDH/I/38)

8. Mr. CALERO-RODRIGUES (Brazil), introducing the Brazilian amendment (CDDH/I/38), said that it was a purely technical one designed to clarify the terms "Party to the Conventions" and "Party to the conflict".

9. Mrs. DARIIMAA (Mongolia) said that she could not understand why, if it was a purely technical amendment, those terms had been selected for definition. If representatives were going to clarify every obvious term, draft Protocol I would not be complete unless every important term it contained was clarified. Clarifying every word would result in overloading the Protocol, which appeared undesirable. She therefore opposed the Brazilian amendment.

10. Mr. LONGVA (Norway) said that his delegation intended to submit further amendments to Article 2 and he understood that other delegations might do the same. He therefore proposed that the discussion of the article should be deferred and that, for the present, it should not be sent to the Working Group.

11. Mr. GRAEFRAUTH (German Democratic Republic) said that, by defining the expressions "Party to the Conventions" and "Party to the conflict" in terms of States, the Brazilian amendment excluded peoples fighting for their independence which had not yet established a State.

12. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam) said that he agreed with the Norwegian representative's proposal and with the views expressed by the representative of the German Democratic Republic. The issue was that of the scope of application of the 1949 Geneva Conventions; the Brazilian definitions were incompatible with the desire that those Conventions should apply universally to all armed conflicts. It was far too important a matter to be decided until the effect of the new text adopted for Article 1 on the whole of the rest of draft Protocol I had been studied.
13. Mr. ABADA (Algeria) agreed that the question was not yet ripe for solution. He accordingly supported the Norwegian proposal.

14. Mr. FREELAND (United Kingdom) also supported the Norwegian proposal. The brief discussion so far had been very useful, but it would be prudent to adjourn it and resume the debate at a later meeting.

15. Mr. CALERO-RODRIGUES (Brazil) said that he had no objection to the postponement of the discussion of his amendment.

16. Mr. GLORIA (Philippines) said there was no need to defer the discussion. The definitions were unnecessary and the amendment could simply be rejected.

17. The CHAIRMAN said that the majority of representatives appeared to support the Norwegian proposal. He therefore suggested the adjournment of the discussion of Article 2 until later.

It was so agreed.


Article 2. Definitions

Article 2, sub-paragraph (d). The Working Group adopted this sub-paragraph at its 19th meeting:

"'Protecting Power' means 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 adversary Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol."

Article 2, sub-paragraph (e). The Working Group adopted this sub-paragraph at its 13th meeting:

"'Substitute' means an organization acting in place of a Protecting Power in accordance with Article 5."

Article 2, sub-paragraphs (f) and (g). These two new proposals, which were originally introduced as an amendment by Brazil (CDDH/I/38), were withdrawn by their sponsor at the 19th meeting of the Working Group.

J. MEETING OF COMMITTEE I, 13 March 1975 (CDDH/I/SR.26):

4. The CHAIRMAN suggested that, since Article 2, sub-paragraphs (d) and (e), and Article 3 had already been agreed by consensus in the Working Group, no formal vote was needed on those articles.

Article 2, sub-paragraphs (d) and (e) were adopted by consensus.

92
K. ARTICLE ADOPTED BY COMMITTEE I, 13 March 1975 (CDDH/I/268):

Article 2. Definitions

(d) 'Protecting Power' means 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 adversary party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol.

(e) 'Substitute' means an organization acting in place of a Protecting Power in accordance with Article 5.

L. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 41. Organization and discipline

Armed forces, including the armed forces of resistance movements covered by Article 42, shall be organized and subject to an appropriate internal disciplinary system. Such disciplinary system shall enforce respect for the present rules and for the other rules of international law applicable in armed conflicts.

M. MEETING OF COMMITTEE III, 13 March 1975 (CDDH/III/SR.30):

35. Mr. de PREUX (International Committee of the Red Cross) explained that Article 41 was based, not on The Hague Regulations but on Article 1 of the Hague Convention No. IV of 1907, which was worded as follows: "The contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convention".

36. According to the terms of draft Protocol I, the organization which was indispensable for any armed force should be directed towards respect for the rules laid down in that instrument and should provide for the dissemination not only of rules but also of instructions, as it was stated in The Hague Convention. That requirement was expressed in terms of an internal disciplinary system giving official recognition to the rules of the Protocol, the law laid down at The Hague, the Geneva Conventions, The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, and customary law. In other words, armed forces should provide themselves with the necessary machinery to ensure that their own members observed international law. That requirement had seemed so fundamental to those who drafted The Hague Regulations that they had made it the subject of the Convention itself, to which the rules of application were annexed.

N. MEETING OF COMMITTEE I, 17 March 1975 (CDDH/I/SR.28):

15. Mr. WIELINGER (Austria) said that his delegation had voted for Article 5 of draft Protocol I because of its great interest in any measure that might help to improve the condition of all victims of armed conflicts and also because it regarded the provisions on Protecting Powers as key elements in that Protocol. It welcomed the fact that the provisions of Article 2, sub-paragraphs (d) and (e), and of Article 5 in no way derogated from the provisions
of the Geneva Conventions of 1949 but rather expanded the form of words used in
them, which was perhaps too succinct, while retaining the terminology they
employed to define the Protecting Powers.

O. PROPOSAL BY THE RAPPORTEUR, COMMITTEE III, 28 May 1976 (CDDH/III/335):

Article 41.

1. The armed forces of a party to a conflict consist of all organized
armed forces, groups, and units which are under a command responsible to that
party for the conduct of its subordinates, even if that party is represented by
a government or an authority not recognized by an adverse party. Such armed
forces shall be subject to an internal disciplinary system which, inter alia,
shall enforce compliance with the rules of international law applicable in
armed conflict. These rules include those established by applicable treaties,
including the Conventions and this Protocol, and all other generally recognized
rules of international law.

P. REPORT TO THE THIRD COMMITTEE ON THE WORK OF THE WORKING GROUP SUBMITTED
BY THE RAPPORTEUR, COMMITTEE III, 28 May 1976 (CDDH/III/338):

The Drafting Committee should note that the last sentence of paragraph 1 of
this article [41] sets forth at least a partial definition of the phrase, "the
rules of international law applicable in armed conflict". This phrase occurs
in a number of articles, and it might be well if it could be defined in
Article 2 of the Protocol. In that event, the Drafting Committee could delete
the last sentence of paragraph 1 of Article 41.

Q. REPORT OF COMMITTEE III, THIRD SESSION (CDDH/236/Rev. 1):

43. The Drafting Committee should note that the last sentence of para-
graph 1 of the article [41] sets forth at least a partial definition of the
phrase, "the rules of international law applicable in armed conflict". That
phrase occurred in a number of articles and it might be well if it could be
defined in Article 2 of draft Protocol I. In that event, the Drafting Com-
mittee could delete the last sentence of paragraph 1 of Article 41.

R. REPORT OF COMMITTEE III, THIRD SESSION (CDDH/236/Rev. 1/Annex I):

Article 41. Organization and Discipline

1. The armed forces of a party to the conflict consist of all organized
armed forces, groups, and units which are under a command responsible to that
party for the conduct of its subordinates, even if that party is represented by
a government or an authority not recognized by an adverse party. Such armed
forces shall be subject to an internal disciplinary system, which, inter alia,
shall enforce compliance with the rules of international law applicable in
armed conflict. These rules include those established by applicable treaties,
including the Conventions and this Protocol, and all other generally recognized
rules of international law.

ad Article 2. Definitions

On the recommendation of Committee I the definitions of "Conventions" and "First", "Second", "Third" and "Fourth" Conventions have been amalgamated in this article.

The following definition is suggested for inclusion in Article 2:

"Rules of international law applicable in armed conflict" means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are parties and the generally recognized principles and rules of international law which are applicable to armed conflict.

See also ad Article 41, paragraph 1.

ad Article 41, paragraph 1

The final sentence beginning "These rules include ..." has been omitted on the assumption that a definition of the meaning of "rules of international law applicable in armed conflict" which has been added in Article 2 will be acceptable.

T. ARTICLE ADOPTED IN COMMITTEE AND REVIEWED BY THE DRAFTING COMMITTEE, 5 April 1977 (CDDH/CR/RD/2/Rev.1):

Article 2. Definitions*

For the purposes of this Protocol:

(a) "First Convention", "Second Convention", "Third Convention" and "Fourth Convention" means, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of August 12, 1949; the Geneva Convention relative to the Treatment of Prisoners of War, of August 12, 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 12, 1949; "the Conventions" means the four Geneva Conventions of August 12, 1949, for the protection of war victims;

(b) "rules of international law applicable in armed conflict" means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are parties and the generally recognized principles and rules of international law which are applicable to armed conflict;

(d) "Protecting Power" means 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 this Protocol;

(e) "substitute" means an organization acting in place of a Protecting Power in accordance with Article 5.
*In 1974 sub-paragraphs (a) and (b) were referred by Committee I to the Drafting Committee, which has amalgamated them into a single sub-paragraph (a). The new sub-paragraph (b) has been inserted in consequence of the Drafting Committee's decision to include in the article a definition of the expression "rules of international law applicable in armed conflict". Sub-paragraph (c) has not yet been adopted by the main Committee. Sub-paragraphs (d) and (e) were adopted by Committee I on 13 March 1975 (CDDH/I/268).

U. MEETING OF COMMITTEE I, 16 May 1977 (CDDH/I/SR.74):

Sub-paragraph (c)

1. The CHAIRMAN observed that three amendments to Article 2(c) had been proposed. One had been submitted by Australia, Belgium, the United Kingdom of Great Britain and Northern Ireland and the United States of America (CDDH/I/36); it called for the deletion of sub-paragraph (c). A second, submitted by the Syrian Arab Republic (CDDH/I/62), called for clear definition, in that sub-paragraph, of the various categories of "protected persons" and "protected objects". A third had been submitted by Senegal (CDDH/I/72) - it called for the sub-paragraph to be reworded.

2. He invited the Committee to express its views first on amendment CDDH/I/36, the furthest removed from the ICRC text.

3. Mr. BLOEMBERGEN (Netherlands) said that Article 2(c) had become pointless, since protected persons and objects were covered by Article 74 of draft Protocol I as adopted by the Committee.

4. Mr. ABDINE (Syrian Arab Republic) said he believed that, for greater clarity, it would have been better to set out the various categories of persons and objects under the protection of the Protocols. If, however, it were no longer possible, at the present stage of the work, to draw up a complete list, he would agree to withdraw his delegation's amendment (CDDH/I/62), and join a consensus for deletion of Article 2(c).

5. Mr. DIAGNE (Senegal) withdrew his country's amendment so as to facilitate a consensus.

6. Mr. PAOLINI (France) and Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) requested further particulars as to the reasons for the proposed deletion of Article 2(c).

7. Mr. DRAPER (United Kingdom) explained that, in the view of the co-sponsors of amendment CDDH/I/36, the definition given in sub-paragraph (c) was a truism. It added nothing to the Protocol, and did not facilitate its interpretation.

8. Mr. GRAEFRATH (German Democratic Republic) said that the reason why a definition of protected persons and objects had been given in sub-paragraph (c) was that in the ICRC text "protected persons" and "protected objects" were mentioned in Article 74. The Committee, however, did not mention them in the text it had adopted for Article 74, and consequently it was no longer necessary to define them.
9. Mr. PAOLINI (France) and Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that, in view of those clarifications, they saw no objection to the deletion of Article 2(c).

Article 2(c) was deleted by consensus.

V. ARTICLE ADOPTED BY COMMITTEE I, 16 May 1977 (CDDH/I/374):

Article 2. Definitions

For the purposes of this Protocol:

(a) "First Convention", "Second Convention", "Third Convention" and "Fourth Convention" mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of August 12, 1949; the Geneva Convention relative to the Treatment of Prisoners of War, of August 12, 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 12, 1949; "the Conventions" means the four Geneva Conventions of August 12, 1949, for the protection of war victims;

(b) "rules of international law applicable in armed conflict" means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are parties and the generally recognized principles and rules of international law which are applicable to armed conflict;

(c) "Protecting Power" means 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 this Protocol;

(d) "substitute" means an organization acting in place of a Protecting Power in accordance with Article 5.

W. PLENARY MEETING, 23 May 1977 (CDDH/SR.36):

Article 2. Definitions

Article 2 was adopted by consensus.

X. 1977 PROTOCOL I:

Article 2. Definitions

For the purposes of this Protocol:

(a) "First Convention", "Second Convention", "Third Convention" and "Fourth Convention" mean, respectively, the Geneva Convention for the Amelioration of
the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949; the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; "the Conventions" means the four Geneva Conventions of 12 August 1949 for the protection of war victims;

(b) "rules of international law applicable in armed conflict" means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law which are applicable to armed conflict;

(c) "Protecting Power" means 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 this Protocol;

(d) "substitute" means an organization acting in place of a Protecting Power in accordance with Article 5.
ARTICLE 3 - BEGINNING AND END OF APPLICATION

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 3. Beginning and End of Application

1. In addition to the provisions applicable in peacetime, the present Protocol shall apply from the beginning of any situation referred to in Article 2 common to the Conventions.

2. In the territory of Parties to the conflict, the application of the present Protocol shall cease on the general close of military operations.

3. In the case of occupied territory, the application of the present Protocol shall cease on the termination of the occupation.

B. PROPOSED AMENDMENTS:

Paragraph 2

CDDH/1/14  Uruguay
11 March 1974

"2. In the territory of Parties to the conflict, the application of the present Protocol shall cease on the close of military operations and of situations governed by the Conventions and the present Protocol."

C. MEETING OF COMMITTEE I, 18 March 1974 (CDDH/I/SR.8):

Article 3. Beginning and End of Application

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

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

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

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

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

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

It was so decided.

D. PROPOSED AMENDMENTS:

Paragraphs 1, 2 and 3

CDDH/I/48 and
Corr. 1 and Add. 1
18 March 1974

Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Sudan, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Yugoslavia

In paragraphs 1, 2 and 3, before the words "the present Protocol", insert the words "the Conventions and".

Paragraph 1

CDDH/I/46
18 March 1974

India

Delete the words "from the beginning of any situation" and substitute the words "to the cases".

Paragraph 2

CDDH/I/47
18 March 1974

Syrian Arab Republic

For the words "on the general close of military operations", substitute the words "on the termination of the armed conflict".

CDDH/I/49
18 March 1974

United States of America

Revise paragraph 2 as follows:

"2. In the territory of Parties to the conflict, the application of the present Protocol shall cease on the general close of military operations, except that:
(a) Prisoners of war shall continue to benefit from the present Protocol until their release and repatriation;

(b) In the case of occupied territory, the application of the Conventions and the present Protocol shall cease only on the termination of the occupation;

(c) Protected persons in the sense of Article 4 of the Fourth Convention as supplemented by Article 64 of the present Protocol shall continue to benefit from the present Protocol until their final release, repatriation, or re-establishment.

(d) The persons referred to in Article 65 of the present Protocol whose liberty has been restricted for reasons related to a situation referred to in Article 2 common to the Conventions shall continue to benefit from Article 65 of the present Protocol until their release, repatriation, or re-establishment."

Note: Paragraph (d) would obviate the need for paragraph 5 of Article 65.

Paragraph 3

CDDH/I/49 United States of America
18 March 1974

Delete paragraph 3.

New Paragraph 4

CDDH/I/45 Israel
18 March 1974

Add as a new paragraph 4:

"4. Persons hors de combat shall continue, after the general close of military operations, to benefit from the protection afforded by the present Protocol."

CDDH/I/46 India
18 March 1974

Add a paragraph 4 reading as follows:

"4. The present Protocol shall continue to apply in the case of protected persons within the meaning of Article 2(c), whose release, repatriation, or resettlement takes place after the period mentioned in paragraphs 2 and 3."
E. MEETING OF COMMITTEE I, 18 March 1974 (CDDH/I/SR.9):

1. Mr. SABEL (Israel), introducing amendment CDDH/I/45, said that all the provisions in Article 3 concerning the beginning and end of the application of the Protocol should be examined carefully. One obvious lacuna was in the protection accorded to persons hors de combat, who might in certain cases require protection even after the "general close of military operations". The time restriction included in Article 3, paragraph 2, of the ICRC text was not to be found either in the Hague Convention of 1907 concerning the Laws and Customs of War on Land or in the 1949 Geneva Conventions, which stipulated that protection should be accorded to persons hors de combat in all circumstances, at any time and in any place. The ICRC text would accordingly represent a retrograde step. Article 65, paragraph 5, which was limited in scope, in no way covered the cases referred to in the Israeli amendment.

2. Mr. DIXIT (India), introducing amendment CDDH/I/46, said that the first part of the amendment was designed to clarify the text and to bring it into line with the 1949 Conventions; the second part was intended to cover a case which was omitted from the ICRC draft of Article 3.

3. Mr. ABDINE (Syrian Arab Republic), introducing amendment CDDH/I/47, said that the general close of military operations did not necessarily mean the end of an armed conflict.

4. Mr. KHAIRAT (Arab Republic of Egypt), introducing the amendment in document CDDH/I/48 and Add. 1 and Corr. 1 and Add. 1/Corr. 1, said that the first part of the amendment was intended to ensure that the provisions concerning the beginning and end of the application of the two Protocols and of the four Conventions should coincide, for otherwise discrepancies might arise. The second part of the amendment was designed to ensure that no sudden worsening of the treatment accorded to protected persons should occur after the close of military operations or the termination of occupation and that they should continue to enjoy all their rights and privileges. A proposal along the lines suggested had received a majority of votes during the Conference of Government Experts. In its Commentary (CDDH/3), the ICRC had expressed no objection to the addition of such a paragraph, but had considered that the case was already covered by Article 65, paragraph 5, of draft Protocol I. That article, however, only referred to the nationals of States not bound by the Convention and to the parties' own nationals, whereas the paragraph proposed in document CDDH/I/48 covered all protected persons. Moreover, it was not yet known what shape Article 65 would assume after it had been considered by the Diplomatic Conference.

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

6. Mr. CUTTS (Australia) said that all the proposals designed to cover gaps in the existing ICRC text seemed constructive and, to some extent, to overlap; the various sponsors might confer together with a view to producing a single consolidated text. As the United States draft was the most comprehensive, it might serve as the main basis of an effort to combine the different proposals.
7. The CHAIRMAN proposed that the sponsors of amendments CDDH/I/45 to CDDH/I/49 should meet informally with the representative of the ICRC with a view to producing a revised version of Article 3 for consideration at the Committee's next meeting.

It was so decided.

F. PROPOSED AMENDMENT:

CDDH/I/63 and Working Group of Committee I
Corr. 1
19 March 1974

Reword paragraph 1 as follows:

"In addition to the provisions to be applied at all times, the Conventions and the present Protocol shall apply from the outset of any case mentioned in Article 2 common to the Conventions."

G. MEETING OF COMMITTEE I, 19 March 1974 (CDDH/I/SR.10):

1. Mr. HAKSAR (India), speaking on behalf of the Working Group, said that it had drawn up a new version of paragraph 1 of Article 3, taking into account the proposed amendments. The new version bore the symbol CDDH/I/63 and Corr. 1. The Working Group had likewise studied paragraphs 2 and 3 of Article 3, together with the proposed new paragraph 4, but had not arrived at any conclusion concerning them.

2. Mr. CUTTS (Australia) said that he had hoped for more complete results from the Working Group. The Committee could postpone its consideration of Article 3 in order to give the Working Group time to continue its work on that article.

3. Mr. HAKSAR (India) said that he would prefer the article to be considered immediately, since all the delegations which had submitted amendments were present. Moreover, the points of view did not appear to be very divergent.

4. Mr. CUTTS (Australia) said that the amendments to paragraph 1 were not incompatible; they could be approved en bloc.

5. The CHAIRMAN announced that another amendment (CDDH/I/48 and Add. 1 and Corr. 1 and Add. 1/Corr. 1) had been received in connexion with paragraph 1. He asked whether its sponsors were willing to accept the version given in document CDDH/I/63 and Corr. 1.

6. Mr. EL GHONEMY (Arab Republic of Egypt) reserved the right to revert to the question, since the field of application of the new amendment largely depended on the definitive version of Article 1. Apart from that, his delegation had no objection to the solution proposed in document CDDH/I/63 and Corr. 1.

7. Mr. MBAYA (United Republic of Cameroon), supported by Mr. BIGAY (France), wondered why the word "situation" had been replaced by the word "case" in the English version of document CDDH/I/63 and Corr. 1 which was the
only text at present before the Committee. In French the turn of phrase would be rather inelegant.

8. Mr. MURILLO RUBIERA (Spain) said that the same difficulty would arise in the case of the Spanish version.

9. Mr. DIXIT (India) pointed out that the proposal submitted by his delegation in document CDDH/I/46 already suggested replacing the word "situation" by the word "case". The word "situation" lacked precision and clarity, and might give rise to difficulties. It had seemed more judicious to use the word "case", as in Article 2 common to the Geneva Conventions of 1949.

10. Mr. DRAPE (United Kingdom) said that he was not convinced that it would be a happy solution to replace the word "situation" by the word "case". Admittedly it was used in Article 2 common to the Geneva Conventions, but the ICRC itself had thought it better to use the word "situation", which had a wider meaning. In English, too, the phrase "from the outset of any case" was not very elegant. He would like to know how the Indian representative proposed to bring the new version of paragraph 1 into line with the other two paragraphs of Article 3.

11. Mr. PARTSCH (Federal Republic of Germany) wondered whether the reference to the Conventions in the new version of paragraph 1 would not give rise to difficulties.

12. Mr. KNITEL (Austria) shared the doubts of the previous speaker. The word "situations" was used in Article 141 of the Third Geneva Convention and was therefore in keeping with the terminology of the Conventions.

13. Mr. DIXIT (India), reverting to what had been said by the United Kingdom representative, pointed out that the words "from the outset" - which, moreover, were not used in amendment CDDH/I/46 - were used in Article 6 of the Fourth Convention. The terminology of the Conventions should be followed as far as possible. His delegation would nevertheless have no objection to replacing the word "outset" by the word "beginning".

14. The meaning of the word "case" was sufficiently broad, since it covered all the situations referred to in the Conventions.

15. Mr. PRUG (United States of America) fully endorsed the view of the Indian representative.

16. Mr. CLAR (Nigeria) said that he, too, entertained some doubts with respect to the terminology used in amendment CDDH/I/63 and Corr. 1.

17. Baron van BOETZELAER van ASPÉREN (Netherlands) said that the new amendment gave rise to language difficulties. That being so, the Indian and United States representatives might perhaps agree to revert to the word "situation".

18. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that the reference to the Conventions was a question of substance which the Committee should consider in plenary session. The Conventions included provisions concerning the beginning and end of application, and the amendment under discussion would amount to an amendment of those provisions.
19. Mr. CALERO-RODRIGUES (Brazil) said that the word "situation" seemed preferable to "case". In any event, the wording of Articles 1 and 3 should be uniform. The Committee might keep both words for the time being, pending a decision concerning Article 1.

20. Mr. ECONOMIDES (Greece) said that his delegation had no objection to the drafting amendments that had been proposed, although it preferred the word "situation" to "case". On the other hand, it considered the reference to the Conventions to be an amendment of substance.

21. Mr. Antoine MARTIN (International Committee of the Red Cross) explained that the draft prepared by the ICRC made no mention of the Conventions because there were already provisions in the latter concerning the beginning and end of their application (Article 5 of the First and Third Conventions; Article 6 of the Fourth Convention). A reference to the Conventions in Article 3 would have meant that a revision of some kind had been made to the relevant provisions of the Conventions.

22. Mr. FRUCHTERMAN (United States of America) said that the Working Group had replaced the words "in peacetime" by "at all times", since it was sometimes difficult to establish exactly what was peacetime.

23. With regard to the words "beginning" and "outset", the Committee could decide to place those words between square brackets, leaving it to the Drafting Committee to decide which of the words was the more appropriate. The Working Group had retained the word "outset" in order to keep to the wording of Article 6 of the Fourth Convention.

24. His delegation preferred the word "case" to "situation", but would accept the latter if the Drafting Committee decided to retain it.

25. Mr. KHAILAT (Arab Republic of Egypt), referring to the report of the 1972 Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, pointed out that most of the experts had agreed to the Conventions being mentioned. Furthermore, the ICRC itself referred to the Conventions in the articles of part I of the draft Protocol, with the exception of Article 3.

26. The CHAIRMAN suggested that the Committee should take a decision on the text adopted by the Working Group, in the following form:

"In addition to the provisions applicable at all times, the Conventions and the present Protocol shall apply from the outset [from the beginning] of any case [situation] mentioned in Article 2 common to the Conventions."

27. Mr. CLARK (Nigeria) said that the word "applicable" should also be included in square brackets in the English version.

28. Mr. PICTET (Switzerland), Mr. PARTSCH (Federal Republic of Germany), Mr. LYSAGHT (Ireland) and Mr. MURILLO RUBIERA (Spain) said that they were in favour of the original ICRC text of Article 3.

29. Mr. de BREUCKER (Belgium) said that his delegation, too, preferred the original text of Article 3, except that the words "at all times" were perhaps clearer.
30. Mr. KAKOLECKI (Poland), Mr. BARRO (Senegal) and Mr. LIN Chia-sen (China) said that they were unable to take a position on Article 3 until a decision had been taken on Article 1.

31. Mr. CLARK (Nigeria) and Mr. DIXIT (India) suggested that the text of the Working Group should be referred to the Drafting Committee, with the various alternatives shown within square brackets.

32. Mr. QUENTIN-BAXTER (New Zealand) and Mr. MURILLO RUBIERA (Spain) pointed out that the alternatives affected not merely the wording of the article but also its substance. It was not for the Drafting Committee to touch upon substance.

33. Mr. ECONOMIDES (Greece) said that, in view of the explanation given by the ICRC expert, his delegation reserved its position with regard to the mention of the Conventions.

34. Mr. de GERLICZY-BURIAN (Liechtenstein) said that he would prefer the ICRC text to be retained in its present form, since the attempts made to improve on it raised numerous difficulties. It might perhaps be preferable to replace "in peacetime" by "at all times", although such an amendment would not change the text much.

35. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that his delegation had no objection to the inclusion of a reference to the Conventions.

36. Mr. QUENTIN-BAXTER (New Zealand) said that if it was certain that the final provisions, particularly Articles 80 and 81, would not be redrafted, no question of substance would arise.

37. Mr. KAKOLECKI (Poland) felt that it would be desirable to place the reference to the Conventions in square brackets, since the decision on that point depended on the field of application of draft Protocol I.

38. Mr. LEGNANI (Uruguay) said that the paragraph under consideration would be clearer and more precise if the words "at all times" were accepted. It should furthermore be specified which provisions were applicable at all times.

39. Mr. LYSAGHT (Ireland) pointed out that, if Article 1 extended the field of application of draft Protocol I, it would be essential to amend the ICRC text of paragraph 1 of Article 3 accordingly.

40. Mr. MBAYA (United Republic of Cameroon) asked whether it could happen that provisions applicable in peacetime were not applicable in times of conflict.

41. Mr. Antoine MARTIN (International Committee of the Red Cross) said that in using the expression "in peacetime" the ICRC had based itself on the terminology of the Geneva Conventions. Some articles of those Conventions were in fact applicable in peacetime, namely, most of the final provisions and a number of other provisions such as the article on the dissemination of the Conventions. Provisions applicable in peacetime were obviously applicable also in times of armed conflict.
42. Mr. de la PRADELLE (Monaco) pointed out that Articles 10 and 23 of the First Convention were examples of provisions applicable both in peacetime and in times of armed conflict.

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

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

H. PROPOSED AMENDMENT:

CDDH/I/213
13 February 1975

Proposal for amendment of Article 3:
Beginning and End of Application

Delete the existing article and insert in lieu thereof the following new article:

"Article 3 - Beginning and end of application

Except for the provisions which shall be implemented in peacetime:

(1) The present Protocol shall apply from the beginning of any situation referred to in Article 2 common to the Conventions.

(2) The application of the present Protocol shall cease, in the territory of parties to the conflict, on the general close of military operations. Prisoners of War whose release, repatriation or re-establishment may take place after such date, shall meanwhile continue to benefit from the present Protocol.

(3) The application of the present Protocol in the case of occupied territories shall cease on the termination of the occupation."

I. MEETING OF COMMITTEE I, 13 February 1975 (CDDH/I/SR.21):

18. Mr. KNITEL (Austria) said that there appeared to be a mistake in the wording of the amendment proposed by the Working Group of Committee I (CDDH/I/63 and Corr.1) as reproduced on page 16 of document CDDH/56: the word "case" should be replaced by the word "situation".

19. Mr. PRUGH (United States of America) said that one delegation had insisted very strongly on the inclusion of the word "case" instead of the word "situation" and after a lengthy discussion that solution had been adopted.

20. He had introduced the United States amendments (CDDH/I/49) at the first session of the Conference (CDDH/I/SR.9, para.5) and did not wish to repeat what he had then said.
21. Mr. CUTTS (Australia), introducing the Australian amendment (CDDH/I/213), said that in his delegation's view, the ICRC draft of Article 3 was generally satisfactory, but one or two improvements could be made. His delegation proposed that the words "In addition to" at the beginning of the article, should be replaced by the words "Except for", because the former expression seemed to imply that the majority of the provisions of the Protocol were applicable in peacetime, which was not the case. Secondly, the exception in question applied to all three paragraphs of the article and not merely to paragraph 1; in the Australian amendment the words were accordingly taken out of paragraph 1 and made it into a kind of preamble. The third amendment, which was one of substance, was the addition of the second sentence to paragraph 2. Although, in general, the application of Protocol I should cease on the general close of military operations, there would still be a considerable number of persons in need of the protection of the Protocol after that time. The new sentence took account of those persons.

22. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that Article 2 common to the Geneva Conventions of 1949, referred to in the ICRC draft and in the Australian amendment (CDDH/I/213), did not cover all the situations that might arise. By adopting the new text of Article 1 of draft Protocol I at the first session (CDDH/I/SR.13), the Conference had broadened the scope of the situations referred to in Article 2 common to the four Geneva Conventions of 1949 to include cases in which one of the Parties to the conflict was a national liberation movement. He therefore proposed that, whichever text was adopted, the words "Article 2 common to the Conventions" should be replaced by "Article 1 of the present Protocol". Such an amendment would be in line with the decisions already taken by the Conference.

23. The CHAIRMAN invited the Ukrainian representative to submit his amendment in writing.

24. Mr. ROSENNE (Israel), recalling his delegation's statement at the Committee's ninth meeting (CDDH/I/SR.9, para. 1) during the first session of the Diplomatic Conference, said that all the provisions concerning the application ratione temporis of the provisions of draft Protocol I should be aligned on the corresponding provisions of the Conventions. A complete examination of the temporal aspect could only be completed satisfactorily when all the substantive provisions of draft Protocol I had been drawn up, the matters dealt with in Article 3 really concerning the "final clause" of the Protocol. The whole question should be referred back to the Working Group.

25. His delegation could accept the text proposed by the Working Group (CDDH/I/63 and Corr. 1), the wording of which, and in particular the expression "at all times", seemed preferable to that used in the Australian amendment (CDDH/I/213). On the other hand, favourable consideration should be given to the structural change proposed in that amendment.

26. Article 1 dealt only with the beginning of applicability of the provisions of the Protocol. With regard to the cessation of applicability, the Israel amendment (CDDH/I/45) drew attention to the fact that persons hors de combat might continue to require protection after the general close of military operations. The proposed Australian addition to paragraph 2 was in line with that suggestion, but it did not go far enough; it was not only prisoners of war who needed continued protection - wounded persons on the battlefield also needed it. The question of persons hors de combat had been considered in Committee II, which had taken the view that the substantive issue did not fall
within that Committee's competence but in that of Committee III. In his view, the Working Group might usefully deal with that question in its temporal aspects.

27. Despite the rather technical appearance of Article 3, it had implications of considerable practical importance.

28. Mr. SOOD (India) said that, in document CDDH/I/46, his delegation had submitted an amendment to paragraph 1 of Article 3, and had also proposed a new paragraph 4.

29. The words "beginning of any situation" in Article 3, paragraph 1, were very vague and it was therefore desirable to redraft that paragraph on the lines of Article 2 common to the four Geneva Conventions of 1949.

30. Article 3, paragraph 2, stated that "the application of the present Protocol shall cease on the general close of military operations". Article 118 of the Third Geneva Convention referred to "the cessation of active hostilities". Article 65, paragraph 5, of draft Protocol I used the term "general cessation of hostilities". His delegation thought it preferable to use the wording of the Conventions, otherwise difficulties of interpretation would arise.

31. Lastly, Article 3 gave no date after which the Protocol would continue to apply to protected persons within the meaning of Article 2, sub-paragraph (c), and his delegation was therefore proposing to add a new paragraph 4 to cover such cases.

32. Mr. PICTET (Switzerland) said that, in French at least, the Australian amendment was mainly a matter of drafting, with a single point of substance. He thought that drafting changes should be avoided as far as possible.

33. Mr. ABI-SAAB (Arab Republic of Egypt) said that amendment CDDH/I/48 and Add. 1 and Corr. 1, submitted by his delegation and several others, was in two parts. The first part proposed the inclusion in the three paragraphs of Article 3 of the words "the Conventions and" before the words "the present Protocol". There could be no discrepancy between the Conventions and the Protocol as to their scope of application in time. The Protocol was not an independent instrument capable of independent application, but was supplementary to the Conventions and could only be applied in conjunction with them. The possible argument that the Conventions should not be mentioned in order to avoid giving the impression of revising them was untenable. Technically, revision included additions to, deletions from or changes in the substance of a legal instrument. A "supplementary" Protocol constituted legally, by its very essence, an instrument of revision, whether it was so called or not; and there was no legal difference between adding to the substantive protection provided by the Conventions and extending their application in time.

34. The second part of the amendment proposed to add a paragraph 4 to the article in order to extend the application of the Conventions and the Protocol to protected persons remaining in the hands of the enemy until their release, repatriation or re-establishment. It corresponded to paragraph 2(c) of the United States amendment (CDDH/I/49), the Indian amendment (CDDH/I/46) and the Australian amendment (CDDH/I/213). The sponsors of amendment CDDH/I/48 and
Add. 1 and Corr. 1 hoped that a small working group would be able to arrive at a consolidated text.

35. Mr. TORRES AVALOS (Argentina) thought it would be wiser to deal with Article 3 paragraph by paragraph.

36. The CHAIRMAN said that the prevailing confusion was due to the lapse of time between the first and second sessions of the Conference. Normally, the Rapporteur of the Working Group would have made a report which the Committee would have discussed; but, in view of the confusion, he (the Chairman) felt that it would be better to discuss the whole article. The Israel representative had now suggested that, after the discussion on Article 3, that article should be referred to a working group. But, obviously, what had already been sent to the Working Group could not be referred back to it again.

37. Mr. ROSENNE (Israel) said that, speaking from memory, he was under the impression that when the text of Article 3, submitted by the Working Group of Committee I (CDDH/I/63 and Corr. 1), had been discussed at the Committee's tenth meeting (CDDH/I/SR.10), the text had met with some difficulty and that a new text had been drafted which contained words and phrases in square brackets. Was the Committee going to start from there?

38. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the Working Group on Article 3 had made only one proposal on paragraph 1, which was contained in document CDDH/I/63 and Corr. 1, in which there were no square brackets. He then quoted paragraph 43 of summary record CDDH/I/SR.10. The Committee had decided to postpone the vote on the choice between the two basic texts proposed for Article 3, paragraph 1.

39. The CHAIRMAN asked the Committee whether it wished to vote first on the ICRC text.

40. Mr. PRUGH (United States of America) said that the confusion had arisen because at the end of the Committee's tenth meeting, when the Committee had had the two proposals before it, the suggestion of using a bracketed form had been made but the matter had not been pursued. Many representatives had pointed out that everything would depend on the report from the Working Group which was considering Article 1. That report had never been dealt with in connexion with Article 3 because its presentation had been the concluding action of the Committee. Nothing further had been done to consider the impact of what had been done with Article 1. More discussion was therefore needed. The Egyptian representative's suggestion might reconcile the various points of view. The Working Group's text (CDDH/I/63 and Corr. 1) clearly did not take into account the situation with respect to the amendment to Article 1, which must now be considered.

41. It would therefore be appropriate for a group to try to reconcile the differences, and the Committee should also have a serious discussion.

42. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) thought that the Committee could not yet vote on paragraph 1, for several proposals had been made and in fact his delegation had just submitted an amendment to the end of the paragraph. It would therefore be better to set up a Working Group.

43. The CHAIRMAN pointed out that he was not insisting on a vote, but it would be inappropriate to send a matter already dealt with by one Working Group
to another. He was, however, inclined to agree with the Israel representative and set up a Working Group.

44. Miss BOA (Ivory Coast) asked whether paragraph 1 should not be discussed and then sent to the Drafting Committee as usual instead of setting up a Working Group. What countries would be represented on that Group?

45. The CHAIRMAN replied that since there were other proposals, including that of the Ukrainian delegation, the officers of the Committee I thought it best to ask a Working Group to deal with the matter instead of the Drafting Committee. That would in no way constitute a precedent. The Group would be open to any delegations interested.

46. Mr. de ICAZA (Mexico), Rapporteur, said that amendment CDDH/I/48 and Add. 1 and Corr. 1 seemed to be the same as amendment CDDH/I/63 and Corr. 1 and might therefore be set aside, thus leaving two texts only - amendment CDDH/I/63 and Corr. 1 and the ICRC text. He asked for guidance from the ICRC expert.

47. Mr. Antoine MARTIN (International Committee of the Red Cross) said that in fact amendment CDDH/I/48 and Add. 1 and Corr. 1 differed from amendment CDDH/I/63 and Corr. 1 because it inserted "the Conventions" before "the present Protocol". In introducing Article 1 of draft Protocol I at the first session (CDDH/I/SR.2), the ICRC had indicated why it had not included "the Conventions" in that article: first, because the Conventions already provided for the beginning and end of their application, in Article 5 of the First, Article 5 of the Third and Article 6 of the Fourth Geneva Conventions; and, second, and more important, the present Article 3 of draft Protocol I had been drafted in accordance with the wishes of a majority of Government experts, who had agreed that draft Protocol I did not revise but only supplemented the Geneva Conventions. The ICRC had therefore thought it best not to mention the Conventions in Article 3.

48. Mr. KNITEL (Austria) endorsed the proposal that the text should be referred to a Working Group.

49. Mr. TORRES AVALOS (Argentina) asked whether the Working Group would deal with the whole of Article 3 or just with paragraph 1.

50. Mr. PICTET (Switzerland) approved the suggestion to set up a Working Group but thought that it should not constitute a precedent and that it would be better to add no further amendments.

51. The CHAIRMAN said that only paragraph 1 would be referred to the Working Group. Paragraphs 2 and 3 would be discussed by the full Committee. However, the Ukrainian amendment (CDDH/I/215) had already been submitted.

52. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) maintained his amendment.

53. Mr. KNITEL (Austria) then proposed that the whole of Article 3 should be referred to the Working Group.

It was so agreed.
J. PROPOSED AMENDMENT:

CDDH/I/215
Ukrainian Soviet Socialist Republic
14 February 1975

At the end of paragraph 1, replace the words "Article 2 common to the Conventions" by the words "Article 1 of the present Protocol".


Article 3. Beginning and end of application

It was the view of some members of the small working sub-group that an amendment would be necessary to Article 38 dealing with sick, wounded and shipwrecked and persons hors de combat, in order to ensure that those persons also received protection beyond the close of general military operations.

Text of Article 3 adopted at the 17th meeting of the Working Group:

"Without prejudice to the provisions which shall be implemented at all times:

1. The Conventions and the present Protocol shall apply from the beginning of any situation referred to in Article 1 of this Protocol.

2. The application of the Conventions and the present 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."

L. MEETING OF COMMITTEE I, 13 March 1975 (CDDH/I/SR.26):

4. The CHAIRMAN suggested that, since Article 2, sub-paragraphs (d) and (e), and Article 3 had already been agreed by consensus in the Working Group, no formal vote was needed on those articles.

Article 2, sub-paragraphs (d) and (e), and Article 3 were adopted by consensus.

M. REPORT OF COMMITTEE III, THIRD SESSION (CDDH/236/Rev.1):

25. ... A question was also raised whether Article 38 bis should make clear that persons hors de combat who have not fallen into the power of an adverse party by the close of general hostilities remain entitled to the protection of Article 38 bis. This question might arise, for example, with respect to wounded stragglers who find themselves behind enemy lines at the close of hostilities. It was the view of the Committee that such persons would still be protected pursuant to Article 3, paragraph 2, as adopted by Committee I. This question should, however, be brought to the attention of Committee I so that if it disagrees with that interpretation, it can consider amending Article 3 accordingly.
N. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 3. Beginning and end of application

Without prejudice to the provisions which are applicable at all times:

(a) The Conventions and this Protocol shall apply from the beginning of any situation referred to in Article 1 of this Protocol;

(b) The application of the Conventions and of this 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, in either circumstance, for those persons whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release, repatriation or re-establishment.

O. PLENARY MEETING, 23 May 1977 (CDDH/SR.36):

Article 3. Beginning and end of application

Article 3 was adopted by consensus.

P. PLENARY MEETING, 23 May 1977 (CDDH/SR.36, ANNEX):

Cyprus

Article 3 of draft Protocol I

My delegation welcomes the unanimous adoption of Article 3, establishing the beginning and end of application of the Conventions and of Protocol I. We consider that the provision in paragraph (b) constitutes a forward development of humanitarian law inasmuch as it expands its application and as such we warmly welcome it. My delegation voices particular satisfaction because it is unequivocally stipulated in Article 3(b) that "in the case of occupied territories" the application of the Conventions and of the Protocol shall cease only at the termination of the occupation, with one exception alone, and that is the right direction, namely concerning the persons whose final release, repatriation or re-establishment takes place thereafter and who will benefit until then from the relevant provisions concerning them.

Thus, people subjugated by the might of a foreign army will aspire to the protection of the humanitarian law until their plight is ended. It is only to be hoped that the Occupying Power will respect its provisions.

Q. 1977 PROTOCOL I:

Article 3. Beginning and end of application

Without prejudice to the provisions which are applicable at all times:
(a) the Conventions and this Protocol shall apply from the beginning of any situation referred to in Article 1 of this Protocol;

(b) the application of the Conventions and of this 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, in either circumstance, for those persons whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release, repatriation or re-establishment.
ARTICLE 4 - LEGAL STATUS OF THE PARTIES TO THE CONFLICT

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 4. Legal Status of the Parties to the Conflict

The application of the Conventions and of the present Protocol, as well as the conclusion of the agreements therein provided, shall not affect the legal status of the Parties to the conflict or that of the territories over which they exercise authority.

B. PROPOSED AMENDMENTS:

CDDH/I/34 Australia 12 March 1974

Change the title to read:

"Legal status of Parties to the conflict and territories."

CDDH/I/43 Norway 15 March 1974

Add the following paragraphs:

"2. The territory of a colony or other Non-Self-Governing Territory has, under the Charter of the United Nations, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

3. Nothing in the Conventions or in the present Protocol shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."

C. MEETING OF COMMITTEE I, 18 March 1974 (CDDH/I/SR.8):

15. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing Article 4, said that its object was to ensure better the fulfilment of the humanitarian aims of the Conventions and of Protocol I. As in the case of the other articles, the ratio legis of Article 4 was given in the Commentary, which also indicated the agreements expressly provided for in draft Protocol I.

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

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

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

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

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

21. Mr. LONGVA (Norway), introducing his delegation's amendment (CDDH/I/43) proposing the addition of two new paragraphs to Article 4, said that the text should be considered in the light of amendment CDDH/I/11 and Add. 1 to 3. [See Article 1.] There was no question of taking up a position on the legitimacy of armed struggles: the purpose of the proposal was simply to ensure the application of humanitarian law to all armed conflicts. No subjective criteria concerning the motives of armed conflicts should be introduced, but guarantees should be provided that the victims of armed conflicts, irrespective of the camp to which they belonged, should enjoy equal protection. Such humanitarian protection should not, however, encourage any action which would dismember sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples.

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

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

24. With regard to the Soviet oral proposal, the Committee could consider it at the current meeting, but it would be desirable for the Soviet delegation to explain the reasons why it had been submitted.
25. Mr. BOULANENKOV (Union of Soviet Socialist Republics) said that the concluding phrase of the ICRC text of Article 4 would have the effect of legalizing colonial possessions. Since that question was controversial and since it would be futile to open a long discussion on it, the best course would be to delete the phrase in question.

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

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

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

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

30. Mr. de la PRADELLE (Monaco) said there was no need to postpone the consideration of Article 4, since that provision raised a question of principle on which the Committee could take a decision in principle without prejudice to the substance. The rule set out in Article 4 already appeared in paragraph 3 of Article 3 common to the four Geneva Conventions. It embodied the principle of the separation of humanitarian from political considerations; the protection of victims of armed conflicts should be ensured regardless of any political consideration. The fact that that rule was to be examined in connexion with Protocol II should not prevent the Committee from adopting a position of principle forthwith.

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

32. Mr. LONGVA (Norway) said that, in proposing that his amendment should be forwarded to the Working Group, he had intended not to add to the task of that body, but, on the contrary, to facilitate it. The two proposed paragraphs were based on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, in accordance with the Charter of the United Nations (General Assembly resolution 1625 (XXV)) and it was important that they should be referred to the Working Group.

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

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

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

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

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

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

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

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

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

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

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

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

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

D. MEETING OF COMMITTEE I, 18 March 1974 (CDDH/I/SR.9):

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

15. Mr. MISHRA (India) said that he had understood that the Norwegian amendment was not being referred formally to the Working Group, but that it could be borne in mind both by the Working Group on Article 1 and by the Committee in its discussions on Article 4.
16. The CHAIRMAN confirmed that the amendment had been submitted as a basis for both discussions and that the terms of reference of the Working Group were to discuss all the proposed amendments to Article 1 and prepare a consolidated text. All delegations were free to make proposals which could facilitate the work of that Group.

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

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

E. PROPOSED AMENDMENTS:

CDDH/I/52 18 March 1974
Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics

Delete the words "or that of the territories over which they exercise authority".

CDDH/I/59 and Add. 1 and 2 18 March 1974
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Romania, Sudan, Sultanate of Oman, United Arab Emirates

Insert a full stop after the word "conflict".

Replace the words "or that of the territories over which they exercise authority" by the words "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".

CDDH/I/73 20 March 1974
Senegal

Reword the existing text of Article 4 as follows:

"The application of the Conventions and of the present Protocol, as well as the conclusion of the agreements therein provided, cannot serve as a basis for any action or interpretation contrary to the rules and principles of international law set forth in the United Nations Charter, with particular reference to the status of the Parties to the conflict and of the territories under their control, and to their rights and obligations."

F. MEETING OF COMMITTEE I, 10 February 1975 (CDDH/I/SR.18):

69. Mr. Antoine MARTIN (International Committee of the Red Cross) said that, within the particular context of the system of Protecting Powers, the provision [Article 5, paragraph 4] constituted a reaffirmation of the general principle laid down in Article 4 of draft Protocol I, entitled "Legal status of the Parties to the conflict" and already considered at the first session of the Conference. A large majority of the experts consulted considered that a reaffirmation of that kind was necessary under the terms of the article relating to international machinery for supervising the application of humanitarian law.
In the case of Governments, nearly all of those which had replied to the ICRC’s questionnaire concerning measures intended to reinforce the implementation of the Geneva Conventions strongly favoured the inclusion of such a provision.

70. The previous year, when introducing at the eighth meeting (CDDH/I/SR.8) draft Article 4, the ICRC had made it clear that its purpose was to ensure a more thorough implementation of the humanitarian purposes of the Geneva Conventions of 1949 and draft Protocol I, since the Parties to the conflict might be afraid, though unjustifiably, that the application of those instruments might have political or legal consequences affecting their reciprocal status, and it was desirable to dispel all doubts in that connexion. Paragraph 4 which was now being introduced was based on the same ratio legis. At the first session of the Conference, during the discussion of Article 4 - with regard to which many delegations had not been prepared to express an opinion until the scope of draft Protocol I had been established in Article 1 - some representatives had criticized the words "or that of the territories over which they exercise authority" and, on being requested to clarify that point, the representative of the ICRC had replied that, in fact, those words had not been included in the draft submitted to the Conference of Government Experts, but that the ICRC had considered the addition of those words to be desirable in the light of recent events (CDDH/I/SR.8, para. 19). As in the case of Article 4, amendments had been submitted at the Conference, proposing the deletion of the phrase or improvements of its wording.

71. The ICRC naturally attached great importance to the inclusion of a provision of that kind in the article relating to the machinery for supervising application.

72. Mr. ABI-SAAB (Arab Republic of Egypt) said that his delegation, together with those of twelve other countries, had submitted an amendment to Article 4 (CDDH/I/59) which also applied to Article 5, paragraph 4, and was intended to clarify the last part of the phrase "... or that of the territories over which they exercise authority". The text submitted by the ICRC was open to different interpretations; and the purpose of the aforementioned amendment was to eliminate any ambiguity as to the compatibility of the provision with the fundamental rule of general international law underlying The Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, and the Fourth Geneva Convention of 1949, to the effect that occupation did not affect title to territory. He reserved the right to develop the argument further in the context of Article 4.

G. PROPOSED AMENDMENT:

CDDH/I/214

13 February 1975

Australia

Delete the existing article and insert in lieu thereof the following new article:

"Article 4. Legal Status of the Parties to the Conflict

The legal status of the parties to the conflict, or territories over which they exercise authority, shall not be affected by the application of the present Protocol."
H. MEETING OF COMMITTEE I, 13 February 1975 (CDDH/I/SR.21):

54. Mr. Antoine MARTIN (International Committee of the Red Cross) said that, at the first session of the Diplomatic Conference, it had become evident that many delegations were not prepared to discuss Article 4 until the field of application of draft Protocol I had been definitely established in Article 1 (see CDDH/48/Rev. 1, para. 28). Since the field of application had now been established, he thought that the Committee could proceed to discussion of Article 4.

55. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that amendment CDDH/I/52 was of particular importance and was supported by amendment CDDH/I/59 and Add. 1 and 2. If interpreted in a broad sense, the provisions of the original text of Article 4 could be extended to colonial and dependent territories and might be taken to mean that the status of those territories was permanent.

56. Mr. ROWE (Australia) said that, on reflection, his delegation had decided to withdraw its amendment (CDDH/I/34), but it hoped that the Working Group would endeavour to ensure that the titles of articles reflected their substance.

57. In the amendment just submitted by his delegation (CDDH/I/214), the references to "Conventions" and "agreements" had been omitted because his delegation considered it inappropriate for the Protocol to contain provisions concerning the legal effects of the application of the Conventions or those of any agreements which might be reached in the future. The legal effects of the latter should be provided for in the agreements themselves. His delegation had no serious objection to the original text and had merely submitted its amendment to ensure that the point raised would be considered by the Working Group.

58. Mr. EL ARABY (Arab Republic of Egypt) said that the sponsors of amendment CDDH/I/59 and Add. 1 and 2 were grateful to the sponsors of amendment CDDH/I/52 for their support. The purpose of the sponsors was to make the original wording of Article 4 clearer in order that there might be no controversy over future interpretations. It was in conformity with the United Nations Charter, The Hague Regulations, and the provisions of international law.

59. Mrs. DARIIMAA (Mongolia) said that the deletion of the word "Conventions" from the original text as suggested in the Australian amendment (CDDH/I/214) might lead to difficulties in a conflict between Parties to the Geneva Conventions and Parties to the Protocol only, for example national liberation movements. A situation wherein a party could occupy a territory by force and establish jurisdiction over it must at all costs be avoided. The original wording appeared to be more in accordance with humanitarian developments in the rules of international law.

60. Mr. ABDUL-MALIK (Nigeria) said that his delegation supported amendments CDDH/I/52, CDDH/I/59 and Add. 1 and 2 and CDDH/I/73 because it considered the last phrase of the original text to be the expression of an outdated colonial mentality which was not in line with the present situation, in which the main remaining colonial Power was progressively granting independence to its territories. His delegation had at first thought that the phrase should merely be deleted but on reflection it realized the need to take into consideration certain situations such as the occupation of a territory, as was done
in amendment CDDH/I/59 and Add. 1 and 2, for instance. The exact wording could be agreed upon by the Working Group.

61. Mr. BARRO (Senegal) said that his delegation had submitted its amendment (CDDH/I/73) because it feared that the expression used in the original text might become a pretext to give legality to the occupation of a territory during a conflict. With that amendment, the text would conform to the rules and principles of international law set forth in the United Nations Charter and would in no way legitimize a conflict started by a colonial Power in order to maintain domination over a territory in contravention of its people’s right to self-determination.

62. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the reference to the Conventions in the original text of Article 4 had been included because the majority of the experts consulted had considered it necessary, since the Geneva Conventions of 1949 contained no provision to that effect, except in common Article 3 concerning non-international armed conflicts. As draft Protocol I aimed at supplementing the Conventions, the experts had thought it essential to introduce such a clause in respect of provisions relating to international armed conflicts also.

63. It should be noted that Article 4 was reaffirmed in Article 5, paragraph 4, the wording of which should therefore conform as closely as possible to that used in Article 4.

The Committee decided to refer the study of Article 4 and the amendments to it to the Working Group.


Article 4. Legal Status of the Parties to the Conflict

Several delegations were in favour of a text reproducing the wording of Article 5, paragraph 5. Other delegations, however, expressed a preference for amendment CDDH/I/59 submitted by the Arab countries and supported by the Union of Soviet Socialist Republics, the Ukrainain Soviet Socialist Republic, and the Byelorussian Soviet Socialist Republic.

Not having been able to reach agreement, the Working Group decided to submit the following text to the Committee:

"The application of the Conventions and of the present Protocol, as well as the conclusion of the agreements therein provided, shall not affect the legal status of the Parties to the conflict [or of any territory, including occupied territory]. [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.]"

J. MEETING OF COMMITTEE I, 13 March 1975 (CDDH/I/SR.26):

5. The CHAIRMAN invited the Committee to vote on Article 4.
6. Mr. OBRADOVIC (Yugoslavia) said that his delegation had become a co-sponsor of the joint amendment in document CDDH/I/59 and Add. 1 and 2.

7. Mr. CRISTESCU (Romania) said that his delegation too was now a co-sponsor of the joint amendment and wished its name to be included in the first paragraph on page 3 of the Working Group's report (CDDH/I/235 and Corr. 1).

8. Mr. de ICAZA (Mexico), Chairman of Working Group A, said that two alternative texts for Article 4 were included in square brackets in the Working Group's report. A corrected version of the first of those was given in document CDDH/I/235/Corr. 1.

9. The CHAIRMAN said that the Committee would vote first on the text furthest removed from the original, namely, the second text; if that were adopted there would no longer be any need to vote on the first; if it were rejected the Committee could then vote on the first version.

The second text in square brackets in Article 4 was adopted by 46 votes to 11, with 14 abstentions.

Article 4 as a whole was adopted by consensus.

10. Mr. GIRARD (France) said that he had voted against the second alternative version, not because he had any objection to the substance, but because he considered that that proposal concerned a provision of international law which had no place in Article 4 of Protocol I.

11. Mr. CUTTS (Australia) said that he had voted against the second alternative version because, although he recognized that the occupation of a territory did not change its legal status, that was a statement of principles of international law which was irrelevant to the text under discussion.

12. Mr. FREELAND (United Kingdom) said that his delegation had also voted against that version not because it was opposed to the principle involved but because it considered it out of place in Article 4. He would have preferred the first alternative, which exactly reflected the agreed wording of Article 5, paragraph 5.

13. Mr. PICTET (Switzerland) said that his delegation did not dispute the correctness, in substance, of the text which had just been adopted. The only reason why it had voted against it was that it considered it to be a reaffirmation of a general principle of international law which, in that form, was in its opinion unnecessary in the Protocol. It therefore preferred the other alternative.

14. Mr. CARON (Canada), Mr. PARTSCH (Federal Republic of Germany), Mr. FACK (Netherlands) and Mr. de GERLICZY-BURIAN (Liechtenstein) said that they had voted against the second alternative for the same reasons as the preceding speakers.

15. Mr. SAARIO (Finland) and Mr. MURILLO RUBIERA (Spain) said that they had abstained because, although it was an established rule of international law that occupation did not affect the legal status of a territory, their delegations did not consider it necessary to include a specific provision on that point in the Protocol.

124
16. Mr. de BREUCKER (Belgium) said that he had voted against Article 4 as drafted because it contained two statements of principle which were quite unconnected: one quite rightly referred to the application of the Conventions and draft Protocol I; the other repeated the rule of international law that occupation did not change the title to a territory. Those two concepts should not be lumped together in the same article. Belgium attached importance to the rule that occupation could not change the legal status of a territory. The Fourth Geneva Convention of 1949 was based in part on that essential rule. If, during the consideration of other articles of the Protocol it appeared desirable to restate that principle in order to draw useful conclusions from it in the field of humanitarian law, then his delegation would certainly study the position with the closest interest.

17. Mr. BONDIOLI-OSIO (Italy) said that, although there was no difference of meaning between the two versions of Article 4, he preferred the former because it was simpler and better expressed the intention of the article.

18. Mr. WIELINGER (Austria) said that his delegation had voted against Article 4 only because, in its opinion, the wording of the article had no place in a document like Protocol I with regard to occupied territories; he agreed with the view of the delegation of Finland that it was a rule of international law that the occupation of a territory in no way affected the legal status of the territory in question.

19. Mr. AL-FALLOUJI (Iraq) said that his delegation had voted in favour of the second alternative because the purpose of the Conference was to reaffirm as well as to develop international humanitarian law applicable in armed conflicts. It was therefore necessary categorically to reaffirm that fundamental principle at the appropriate moment. The first alternative seemed to him too vague.

20. Mr. ABI-SAAB (Arab Republic of Egypt) said that he associated himself with what the Iraqi representative had said. He wished to remind those speakers who had said that the principle reaffirmed in the amendment just adopted had no place in Protocol I that not only the Hague Regulations but large parts of the Fourth Geneva Convention of 1949 were based on the principle in question. He failed to see how it could be out of place to mention one of the basic assumptions underlying the Conventions in a protocol designed to supplement those Conventions.

21. Mr. EL-MISBAH EL SADIG (Sudan) said that he agreed with the Iraqi and Egyptian representatives.

K. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 4. Legal status of the Parties to the conflict

The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question.
L. PLENARY MEETING, 23 May 1977 (CDDH/SR.36):

Article 4. Legal status of the Parties to the conflict

Article 4 was adopted by consensus.

M. 1977 PROTOCOL:

Article 4. Legal status of the Parties to the conflict

The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question.
ARTICLE 5 - APPOINTMENT OF PROTECTING POWERS AND OF THEIR SUBSTITUTE

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 5. Appointment of Protecting Powers and of their substitute

1. From the beginning of a situation referred to in Article 2 common to the Conventions, each Party to the conflict, which has not already entrusted the protection of its interests and those of its nationals to a third State, shall without delay designate a Protecting Power for the sole purpose of applying the Conventions and the present Protocol and shall without delay and for the same purpose permit the activities of a Protecting Power designated by the adverse Party and accepted as such.

2. In the event of disagreement or unjustified delay in the designation and acceptance of Protecting Powers, the International Committee of the Red Cross shall offer its good offices with a view to the designation of Protecting Powers acceptable to both Parties to the conflict. For that purpose, it may, inter alia, ask each of the Parties to provide it with a list of at least five States which they consider acceptable in that respect; these lists shall be communicated to it within ten days; it shall compare them and seek the agreement of any proposed State named on both lists.

3. Proposal I

If, despite the foregoing, no Protecting Power is appointed, the International Committee of the Red Cross may assume the functions of a substitute within the meaning of Article 2(e), provided the Parties to the conflict agree and insofar as those functions are compatible with its own activities.

Proposal II

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

4. The designation and acceptance of Protecting Powers for the sole purpose of applying the Conventions and the present Protocol shall not affect the legal status of the Parties to the conflict or that of the territories over which they exercise authority.

5. The maintenance of diplomatic relations between the Parties to the conflict does not constitute an obstacle to the appointment of Protecting Powers for the sole purpose of applying the Conventions and the present Protocol.

6. Whenever in the present Protocol mention is made of a Protecting Power, such mention also implies the substitute within the meaning of Article 2(e).
B. PROPOSED AMENDMENTS:

CDH/I/24  
11 March 1974  

Redraft Article 5 as follows:

"Article 5. Protecting Powers

1. The Conventions and the present Protocol shall be applied with the co-operation and under the scrutiny of Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict.

2. The Protecting Power may undertake any intervention or initiative which may enable it to verify or improve the application of any provision of the Convention or Protocol.

Where the Protecting Power is also a High Contracting Party, it shall make all efforts to ensure implementation of the Conventions and Protocol, and shall bring continuing violations to the attention of the High Contracting Parties.

3. From the beginning of a situation referred to in Article 2 common to the Conventions, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and the present Protocol.

4. A Protecting Power designated by one Party to the conflict shall be accepted by the other Party to the conflict unless it has reasonable grounds for concluding that the power so designated shall not be neutral in applying the provisions of the Convention and Protocol.

5. In the event of disagreement or unjustified delay in the designation and acceptance of Protecting Powers, the International Committee of the Red Cross shall offer its good offices with a view to the designation of Protecting Powers acceptable to both Parties to the conflict. For that purpose, it may, inter alia, ask each of the Parties to provide it with a list of at least five States which they consider acceptable in that respect; these lists shall be communicated to it within ten days; it shall compare them and seek the agreement of any proposed State named on both lists.

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

7. The designation and acceptance of Protecting Powers for the sole purpose of applying the Conventions and the present Protocol shall not affect the legal status of the Parties to the conflict or that of the territories over which they exercise authority.

8. The maintenance of diplomatic relations between the Parties to the conflict does not constitute an obstacle to the appointment of Protecting Powers for the sole purpose of applying the Convention and the present Protocol.

128
9. Whenever in the present Protocol mention is made of a Protecting Power, such mention also implies the substitute within the meaning of Article 2(e)."

**Paragraph 1**

CDDH/I/18

8 March 1974

Romania

Reword paragraph 1 as follows:

"1. In a situation referred to in Article 2 common to the Conventions, each Party to the conflict shall designate a Protecting Power for the sole purpose of applying the Conventions and the present Protocol and shall for the same purpose permit the activities of a Protecting Power designated by the adverse Party and accepted as such by it."

**Paragraphs 2, 3, 4, 5 and 6**

CDDH/I/18

8 March 1974

Romania

Delete paragraphs 2, 3, 4, 5 and 6 and add the following as new paragraph 2:

"2. If a Protecting Power is not designated in accordance with the preceding paragraph, the Parties to the conflict shall in their territories and for the sole purpose of applying the Conventions and the present Protocol, permit a humanitarian organization, such as the International Committee of the Red Cross, designated and accepted by those Parties or, where appropriate, designated by the United Nations Organization and recognized by the Parties, to act as substitute within the meaning of Article 2(e)."

**Paragraph 3**

CDDH/I/9

11 March 1974

Republic of Viet-Nam

Paragraph 3 to read as follows:

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

CDDH/I/31

11 March 1974

Greece

Delete proposals I and II and substitute the following:

"3. If, despite the foregoing, no Protecting Power is appointed, the Parties to the conflict shall accept the International Committee of the Red Cross as a substitute within the meaning of Article 2(e), insofar as that is compatible with its own activities."
C. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 2. Definitions

For the purposes of the present Protocol:

(d) "Protecting Power" means a State not engaged in the conflict, which, designated by a Party to the conflict and accepted by the adverse Party, is prepared to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol;

(e) "substitute" means an organization acting in place of a Protecting Power for the discharge of all or part of its functions.

D. PROPOSED AMENDMENTS TO ARTICLE 2(d) and (e):

Sub-paragraph (d)

CDDH/I/36 and Corr. 1 Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America
12 March 1974

Replace sub-paragraph (d) with the following:

"(d) 'Protecting Power' means a State not engaged in the conflict which has been designated by a Party to the conflict and accepted by the adversary Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol."

Sub-paragraph (e)

CDDH/I/29 Poland
11 March 1974

Delete sub-paragraph (e) and substitute the following:

"(e) 'Substitute' means an organization offering every guarantee of impartiality and efficacy which has been entrusted by the Parties involved in the conflict with the task of acting in place of a Protecting Power for the discharge of all or part of its functions."

CDDH/I/36 and Corr. 1 Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America
12 March 1974

Replace sub-paragraph (e) with the following:

"(e) 'Substitute' means an impartial humanitarian body acting in place of a Protecting Power for the discharge of all or part of its functions."
E. MEETING OF COMMITTEE I, 15 March 1974 (CDDH/I/SR.7):

Article 2. Definitions

Sub-paragraphs (d) and (e)

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

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

42. Mr. KUSSBACH (Austria) informed the meeting that Austria, Finland, Sweden, Switzerland and the United Kingdom had submitted an amendment (CDDH/45) for an editorial change to Article 2(d).

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

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

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

46. Mr. Antoine MARTIN (International Committee of the Red Cross), referring to the remark by the representative of the Syrian Arab Republic, stated that Protecting Powers were a long-standing institution in international customary law relating to States: regional organizations were covered by the word "substitute" in Article 2(e).
47. Mr. KUSSBACH (Austria), Mr. KAKOLECKI (Poland) and Mr. MURILLO RUBIERA (Spain) suggested that consideration of sub-paragraphs (d) and (e) of Article 2 be postponed until the Committee came to discuss Article 5.

It was so agreed.

F. PROPOSED AMENDMENTS TO ARTICLE 5:

CDDH/I/62 Syrian Arab Republic
18 March 1974

Replace the wording of Article 5 by the following:

1. From the beginning of a situation referred to in Article 2 common to the Conventions, each Party to the conflict shall without delay designate a Protecting Entity for the purpose of applying the Conventions and the present Protocol and shall without delay and for the same purpose permit the activities of a Protecting Entity designated by the adverse Party and accepted as such.

2. In the event of disagreement or delay in the designation and acceptance of the Protecting Entity, the International Committee of the Red Cross shall offer its good offices with a view to the designation of Protecting Entities acceptable to both Parties to the conflict. For that purpose, it may, inter alia, ask each of the Parties to provide it with a list of at least five Entities which they consider acceptable in that respect; these lists shall be communicated to it within ten days; it shall compare them and seek the agreement of any proposed Entity named on both lists.

3. If, despite the foregoing, no Protecting Entity is appointed, a Conference of the High Contracting Parties shall be held in conformity with Article 7 of the present Protocol to designate a substitute for the Protecting Entity.

4. The designation and acceptance of Protecting Entities shall not affect the legal status of the Parties to the conflict or that of the territories over which they exercise authority.

5. The maintenance of diplomatic relations between the Parties to the conflict does not constitute an obstacle to the appointment of Protecting Entities for the purpose of applying the Conventions and the present Protocol.

6. Whenever in the present Protocol mention is made of a Protecting Entity, such mention also implies the substitute within the meaning of Article 2(e).

Paragraph 3

CDDH/I/50 Italy
18 March 1974

Paragraph 3 to read as follows:

"3. Without prejudice to the obligation of Parties to the conflict under paragraph 1 of this Article and the rights of the ICRC under paragraph 2
thereof, from the outbreak of a situation referred to in Article 2 common to
the Conventions and until such time as the Protecting Powers begin to exercise
their functions, each of the Parties to the conflict shall accept the offer
made by the ICRC, if it deems it necessary, to act as a substitute within the
meaning of Article 2(e)."

CDDH/I/54
18 March 1974

Brazil

Replace paragraph 3 (Proposals I and II) by the following:

"3. If, despite the foregoing, no Protecting Power is appointed, the
International Committee of the Red Cross may either (a) nominate an interna-
tional body capable of assuming, with the agreement of the Parties, the func-
tions of a substitute, or (b), after consulting the Parties, assume such func-
tions itself."

CDDH/I/61
18 March 1974

Bangladesh

Proposal I

Delete the words "provided the Parties to the conflict agree".

Paragraph 4

CDDH/I/52
18 March 1974

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

Paragraph 4: Delete the words "or that of the territories over which they
exercise authority".

Paragraph 6

CDDH/I/51
18 March 1974

Australia

Amend paragraph 6 to read:

"Whenever in the present Protocol mention is made of a Protecting Power,
such mention also includes the substitute within the meaning of Article 2(e)."

G. PROPOSED AMENDMENTS TO ARTICLE 2:

Sub-paragraph (d)

CDDH/45
18 March 1974

Austria, Finland, Sweden, Switzerland, United Kingdom of
Great Britain and Northern Ireland

"Article 2(d) of draft Protocol I uses the expression 'State not engaged in
the conflict', while Article 9(3) and Articles 19, 32 and 57(1) all use 'a
State' or 'States not party to the conflict'. In Article 37 the expression
'neutral flags' is used."
To avoid the difficulties which may result from this diversity of terms, and in view of the terms used in the four 1949 Conventions, the following corrections, which have already been suggested by certain government experts (see the Commentary to Articles 19 and 32) are submitted for the consideration of the Conference:

"1. In Article 2(d) replace 'a State not engaged in the conflict' by 'a neutral or other State not a party to the conflict'."

CDDH/I/62
18 March 1974

Syrian Arab Republic

Replace the wording of sub-paragraph (d) by the following:

"(d) 'Protecting Entity' means a person or an entity designated by a Party to the conflict and accepted by the adverse Party, and carrying out the functions assigned to a Protecting Power under the Conventions or those devolving on Protecting Entities under the present Protocol."

Sub-paragraph (e)

CDDH/I/62
18 March 1974

Syrian Arab Republic

In sub-paragraph (e), replace the words "Protecting Power" by the words "Protecting Entity".

H. MEETING OF COMMITTEE I, 18 March 1974 (CDDH/I/SR.8):

17. [Mr. Antoine MARTIN (International Committee of the Red Cross).] The general rule in Article 4 was reaffirmed in Article 5, paragraph 4 of which related to the effects of designation and acceptance of Protecting Powers and of their substitute. The majority of the experts consulted were in favour of that reaffirmation, but others considered it to be superfluous.

I. PROPOSED AMENDMENT TO ARTICLE 5:

CDDH/I/64
19 March 1974

United States of America

Delete Proposals I and II and substitute the following:

"3. If, despite the foregoing, a Protecting Power is not appointed within 60 days of the time when one Party has first proposed the appointment of a Protecting Power, the Parties to the conflict shall accept the offer made by the International Committee of the Red Cross, if it deems it necessary, to act as a substitute within the meaning of Article 2(e)."

J. MEETING OF COMMITTEE I, 20 March 1974 (CDDH/I/SR.11):

1. The CHAIRMAN said that since the discussion at the tenth meeting had shown that some delegations were not in a position to comment on Articles 3 and 4 until the field of application of the Protocol had been definitively
established in Article 1, he would invite members of the Committee to consider Article 5 of draft Protocol I. He recalled that at an earlier meeting the Committee had decided to consider Article 5 in conjunction with Article 2(d) and (e), which gave definitions of the terms "Protecting Power" and "substitute".

3. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing Article 5, said that the article related to the question of the machinery for the application of the 1949 Geneva Conventions. At the early plenary meetings of the Conference, several delegations had drawn attention to the need to strengthen that machinery. The application of the Geneva Conventions depended partly on the Parties to those Conventions. In particular it was for each party to the conflict to decide individually how the Conventions were to be applied. However, the application and supervision of the 1949 Conventions were not left entirely to the unilateral appreciation of the Parties to the Conventions. The Conventions contained provisions for specific institutions known as Protecting Powers to facilitate and guarantee the impartial supervision of their application. The system of self-scrutiny was therefore supplemented by the institution of a third independent scrutiny, as laid down in Article 8 common to the Conventions (Article 9 of the Fourth Convention). The term "Protecting Power" was defined in Article 2(d) of draft Protocol I. The commentary on that sub-paragraph described the functions to be undertaken by the Protecting Powers for the purposes of the Conventions and of draft Protocol I.

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

5. Various amendments to Article 5 had been submitted at the XXIInd International Conference of the Red Cross, as was mentioned in paragraphs 14 to 19 of the report of that Conference (CDDH/6). One proposal, in particular, was that paragraph 3 of Article 5 should be replaced by another providing, in the event of failure to appoint a Protecting Power, for the activities of a humanitarian organization such as the ICRC to be appointed by one party to the conflict and recognized by the other or, alternatively, appointed by the United Nations or by a Conference of High Contracting Parties.
6. Finally, it was pointed out that paragraphs 24 to 31 of the Memorandum submitted by non-governmental organizations to the present Conference dealt with the implementation of humanitarian conventions.

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

8. Mr. de BREUCKER (Belgium), introducing the amendments to Article 2(d) and (e) (CDDH/I/36 and Corr. 1), on behalf of the sponsors, said that the Geneva Conventions provided no definition of the term "Protecting Power", which had its origin in customary law. According to the definition provided by the ICRC in Article 2(d), the State designated as Protecting Power should be "willing" to carry out the functions assigned to a Protecting Power under the Conventions and Protocol I. The word "willing" was not a suitable legal term and might be replaced by 'has agreed' or 'is prepared to', words implying not only consent but readiness to carry out the functions in question.

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

10. Mr. ABDINE (Syrian Arab Republic), introducing his delegation's amendments to Article 2(d) and (e) (CDDH/I/62), pointed out that in the meaning of Article 2(d) the term "Protecting Power" applied solely to a State. In view of the difficulties which had arisen in implementing the system of Protecting Powers, it might perhaps be advisable to allow the parties to a conflict the freedom to choose from among other entities, as was the case when they resorted to arbitration. The Syrian proposal was that the parties concerned should be free to choose a person or an entity as a "Protecting Entity". Since it was the consent of the parties to the conflict which mattered, there could be no reason to limit the choice to States not engaged in the conflict.

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

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

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

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

15. Mr. CRISTESCU (Romania) introduced the amendments to Article 5 contained in document CDDH/I/18, which were designed to retain and strengthen the role of Protecting Powers. That important question had been the subject of considerable controversy at the 1949 Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, and the pertinent provisions of the Conventions had been accepted with reservations by some delegations. It was important to avoid coming up against the same difficulties as had been encountered in 1949. It had to be acknowledged that subsequently the system of Protecting Powers had not worked well during international conflicts, particularly those involving small countries. The financial and economic implications of the system, particularly for developing countries, must not be overlooked. Moreover, the desire to ensure respect for the sovereignty of States explained the reservations that had been made against the Protecting Powers system. The object of the amendments in document CDDH/I/18 was to eliminate all automatic procedures in the functioning of the system, since its automatic character might be contrary to the wishes of States. To sum up, the amendments were designed to base the system on the agreement and good will of States. The advantage of the proposed paragraph 2 was that it enabled the United Nations to take the initiative, if necessary, in designating a Protecting Power.

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

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

18. Mr. ABDINE (Syrian Arab Republic) said that in the amendments submitted by his delegation to Article 5 (CDDH/I/62) the word "Power" had been replaced by the word "Entity" in order to bring the wording into line with that of the amendment to Article 2 in the same document.

19. Part of a sentence in paragraph 1 of Article 5 of the draft Protocol had been deleted because it implied too great a degree of automatic procedure.

20. In paragraph 2, the word "unjustified" had been deleted, since it could lend itself to various interpretations. Paragraph 3 provided for cases in which it had not been possible to designate a Protecting Entity. In such a situation, Syria would advocate a certain degree of automatic procedure in designating the Entity; that paragraph would also have the advantage of creating a mechanism to which recourse could be had in certain difficult cases in which the ICRC might have to intervene.

21. Mr. de BREUCKER (Belgium) pointed out that paragraph 2 of the amendments to Article 5 in document CDDH/I/18 duplicated paragraph 3 of Article 5 of the draft Protocol.

22. With respect to the Pakistani amendment (CDDH/I/24), he questioned the advisability of the last phrase in paragraph 2, which left it to the Protecting Power to draw the attention of the international community to continuing violations; that was too wide a mandate, more particularly when the Protecting Power was designated by a single Party; and it would entail such heavy responsibilities that very few States would accept them.

23. The Syrian amendment (CDDH/I/62) came near to the views of the Belgian delegation, but the use of the word "Entity" seemed superfluous, since the notion of a substitute already appeared in the Conventions.

24. Paragraph 1 of Article 5 of the draft Protocol was acceptable, but it could be shortened, particularly as several delegations would like the phrase "which has not already entrusted ... of its nationals ..." to be deleted. His delegation had no objection to its deletion.

25. Belgium intended to submit an amendment to define the functions of the Protecting Power strictly, precisely and realistically.

26. Mr. IJAS (Indonesia) said that the smooth working of the system of Protecting Powers could not be ensured if a degree of automatic procedure was introduced into its application; the agreement of the parties to the conflict appeared to be indispensable. Proposal I for Article 5, paragraph 3, appeared to meet that condition, but if one of the parties to the conflict refused to accept the proposed substitute, the United Nations could designate an international body with the agreement of the parties. He would therefore suggest that, if the Romanian delegation had no objection, Article 5, paragraph 3, of the draft Protocol could be replaced by the proposed paragraph 2 of the
amendments in document CDDH/I/18, with the word "humanitarian" replaced by the word "international".

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

28. Mr. WHANG (Republic of Korea) said that his delegation found Article 5 of draft Protocol I acceptable in general. Experience had shown that the application of the existing rules concerning the supervisory mechanisms was not entirely satisfactory. For that reason, the United Nations General Assembly at its twenty-sixth session (resolution 2852 (XXVI)) and at its twenty-seventh session (resolution 3032 (XXVII)) had invited the ICRC to devote special attention to the need to ensure better application of existing rules relating to armed conflicts, including the need for strengthening the system of Protecting Powers; the Government Experts, too, had stressed that need.

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

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

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

32. Mrs. HELLER (Mexico) said that her delegation favoured proposal I of the ICRC text of paragraph 3 of Article 5. Mexico would be ready to accept as a substitute any international institution or body proposed or accepted by the parties to the conflict, such as, for instance, the United Nations. The amendment to Article 5 proposed by Romania (CDDH/I/18) was the one her delegation considered most suitable. Nevertheless, it would be well to specify that the United Nations itself could act as substitute: the end of paragraph 2 of the Romanian proposal might therefore be amended to read: "... or, where appropriate, the United Nations or a body designated and recognized by that Organization ... ".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48. In addition to the organizations mentioned as examples by the Belgian representative, there was the Sovereign Order of Malta, whose humanitarian tradition went back several centuries; moreover, it was a subject of international law and was recognized by more than 40 Governments.
49. Mr. ABU-GOURA (Jordan), introducing amendment CDDH/I/44 and Corr. 1 to Article 2, said that the text of Article 2(e) of the draft Protocol did not in any way improve upon that of Article 10 of the first three Geneva Conventions or that of Article 11 of the Fourth Convention; it seemed to him that it would be preferable for all the High Contracting Parties, especially those under occupation, that the substitute should be defined as an organization exercising, with all guarantees of impartiality and effectiveness, the functions of the Protecting Power.

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

K. PROPOSED AMENDMENTS TO ARTICLE 5:

CDDH/I/67 and Add. 1

Delete the present text and substitute the following:

"1. From the outbreak of a situation referred to in Article 2 common to the Conventions, each Party to the conflict shall without delay designate, and each adverse Party shall accept, a Protecting Power to carry out the functions assigned to it under the Conventions and the present Protocol, and shall permit a Protecting Power so designated and accepted to carry out these functions.

2. If a Protecting Power has not been designated or accepted from the outbreak of a situation referred to in Article 2, the International Committee of the Red Cross shall have the right to exercise its good offices and mediation with the Parties to the conflict, to try to ensure the immediate designation and acceptance of such a Protecting Power as is agreeable to both such Parties. For that purpose it may inter alia ask each of the Parties to provide it with a list of at least five States ... (ICRC text to end of paragraph).

3. Without prejudice to the obligation of Parties to the conflict under paragraph 1 of this Article and the rights of the International Committee of the Red Cross under paragraph 2 thereof, the adverse Party shall, in the event of there being no Protecting Power effectively carrying out its function under the present Protocol, request or accept the offer of the services of the International Committee of the Red Cross to assume the functions of a Protecting Power under the present Protocol.

4. The designation and acceptance of Protecting Powers for the sole purpose of applying the Conventions and the present Protocol shall not affect the legal status of the Parties to the conflict or that of the territories over which they exercise authority."
5. The maintenance of diplomatic relations between the Parties to the conflict shall not relieve them from their obligations under the preceding paragraphs of this article.

6. Whenever hereafter in the present Protocol mention is made of a Protecting Power, such mention also implies the substitute within the meaning of Article 2(e)."

CDDH/I/77 Spain
21 March 1974

Amend Article 5 to read as follows:

"1. From the beginning of a situation referred to in Article 2 common to the Conventions, each Party to the conflict is required, without delay and for the sole purpose of applying the Conventions and the present Protocol, to designate a Protecting Power and, without delay and for the same purpose, to accept and permit on its territory, the activities of a Protecting Power designated by the adverse Party.

   The International Committee of the Red Cross may, if it deems it expedient, offer its services to the Parties to the conflict to facilitate the discharge of those obligations.

2. For the appointment of Protecting Powers, each Party to the conflict shall, within ... from the outbreak thereof, provide the adverse Party, through a neutral Contracting Power, the organs of the International Red Cross, or other impartial humanitarian institutions, with a list of at least five Powers, entities or bodies capable of assuming the duties of Protecting Powers as laid down in the Conventions. Such lists shall be examined and collated by the mediating Power or humanitarian institution which shall seek the consent of the States or entities listed, all within ...

   As soon as an affirmative reply has been received, the mediating Power or institution shall, within an equal period, seek the consent of the Parties to the conflict.

3. If, despite the foregoing, no agreement is reached on the appointment of a Protecting Power, the Parties to the conflict shall immediately consider any offer from the International Committee of the Red Cross to act as a substitute within the meaning of Article 2(e).

4. If the International Committee of the Red Cross deems it impossible to assume the functions of substitute, the Parties to the conflict shall, without any delay, accept as a substitute the Power or international or humanitarian organization with which the Committee arranges for the discharge of the duties of Protecting Power.

5. Protecting Powers and their substitute shall be considered and recognized not only as the agents of the Parties to the conflict but also, and especially, as the agents of the international treaty community constituted by the High Contracting Parties.

6. Independently of its possible discharge of the functions of substitute for the Protecting Power, the International Committee of the Red Cross, and any other impartial humanitarian body, may in all circumstances carry out the
humanitarian activities necessary for the achievement of the purposes laid down in Article 9 of the First, Second and Third Geneva Conventions and Article 10 of the Fourth Geneva Convention.

7. (Identical to paragraph 4 of the ICRC draft, subject to the deletion of the words "or that of the territories over which they exercise authority").

8. The fact that at any time a Party to the conflict may not be represented by a Protecting Power or its substitute shall not entitle it to ignore its obligations towards the Protecting Power or its substitute of the adverse Party. In that event, the procedure for appointment laid down in paragraph 2 of the present Article, shall be applied again without delay.

9. (Same as paragraph 5 of the ICRC draft, but with the word "obstaculiza" in the Spanish version replaced by the word "impede".)

Paragraph 1
CDDH/I/68  India
20 March 1974

"In the second and third lines of paragraph 1, delete the clause ", which has not already entrusted the protection of its interests and those of its nationals to a third State,"

CDDH/I/70  Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic
20 March 1974

"1. From the beginning of any of the situations referred to in Article 1 of the present Protocol, each Party to the conflict shall without delay designate a Protecting Power for the sole purpose of applying the Conventions and the present Protocol and shall without undue delay and for the same purpose permit the activities of the Protecting Power accepted by it following the designation of the same by the adverse Party."

Paragraph 2
CDDH/I/68  India
20 March 1974

Delete the second sentence, beginning with the words "For that purpose ..." and ending with the words "named on both lists".

CDDH/I/70  Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic
20 March 1974

Amend paragraph 2 as follows:

"2. In the event of disagreement over the designation and acceptance of Protecting Powers, an impartial humanitarian organization, such as the International Committee of the Red Cross, may, subject to the consent of the Parties to the conflict concerned, render its services for the purpose of ascertaining which Protecting Powers would be acceptable to the said Parties to the conflict, and for that purpose may ask each of the Parties to provide it with a list of at least five States which it considers acceptable in that respect;
such lists shall be communicated to the said organization within [   ] days following the receipt of the said request. Upon the receipt of such lists the said organization shall communicate them to each of the Parties to the conflict respectively and seek the consent of each of the Parties to any State named on the list provided by the adversary Party.

However, the designation and acceptance of the Protecting Powers shall be subject to the express consent of the Parties to the conflict concerned."

CDDH/I/75 Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Sudan, Sultanate of Oman, United Arab Emirates

20 March 1974

Delete the word "unjustified" in the first line of paragraph 2.

Paragraph 3

CDDH/I/70 Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics

20 March 1974

Amend paragraph 3 as follows:

"3. If, despite the foregoing, no Protecting Power is appointed, a humanitarian organization, offering every guarantee of impartiality and efficacy, may assume the functions of a substitute within the meaning of Article 2(e), provided the Parties to the conflict so agree."

CDDH/I/75 Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Sudan, Sultanate of Oman, United Arab Emirates

20 March 1974

Replace paragraph 3, Proposals I and II, by the following:

"3. If, despite the foregoing, no Protecting Power is appointed, the Parties to the conflict shall accept as a substitute for the Protecting Power an impartial humanitarian organization, such as the International Committee of the Red Cross, appointed by one of the Parties and accepted by the other Party, or, in the last instance, appointed by the Conference of the High Contracting Parties, in conformity with Article 7."

CDDH/I/76 Republic of Korea

20 March 1974

Delete Proposal I, and insert the words "without delay" between the words "accept" and "the offer" in the third line of paragraph 3, Proposal II.

Paragraph 4

CDDH/I/75 Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Qatar, Sudan, Sultanate of Oman, United Arab Emirates

20 March 1974

Paragraph 4: Insert a full stop after the word "conflict". Replace the words "or that of the territories over which they exercise authority" by the words "Neither the occupation of a territory nor the designation and acceptance
of such Protecting Powers shall affect the legal status of the territory in question."

Paragraph 5
CDDH/I/68
20 March 1974

After the words "between the Parties to the conflict" insert the words ", or the entrusting of the protection of a Party's interests and those of its nationals to a third State."

L. MEETING OF COMMITTEE I, 21 March 1974 (CDDH/I/SR.12):

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

Paragraph 1

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

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

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

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

14. Mr. HAKSAR (India) said that his delegation's amendments (CDDH/I/68) related to Article 5, paragraphs 1, 2 and 5 and that the amendments to paragraphs 1 and 5 were related. They had been submitted because the ICRC draft of Article 5 seemed by implication to make it mandatory that the Protecting Power
appointed under Article 45 of the 1961 Vienna Convention on Diplomatic Relations should automatically act as Protecting Power under the Protocol. Such an implication was undesirable for several reasons. The function and responsibilities of the Protecting Power under the Vienna Convention and under draft Additional Protocol I were not the same, and a State appointed as a Protecting Power under the Vienna Convention might not be willing to act as such under the Additional Protocol; in some cases the Parties might wish to entrust the different functions envisaged under the Vienna Convention and under the draft Additional Protocol to different States; and even the maintenance of diplomatic relations between parties to a conflict was no obstacle to the appointment of a Protecting Power for the purpose of applying the 1949 Conventions and the Additional Protocols.

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

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

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

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

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

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

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

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

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

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

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

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

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

28. At the eleventh meeting many delegations had advanced arguments in favour of the deletion of the words "which has not already entrusted the protection of its interests and those of its nationals to a third State," in paragraph 1 of Article 5. Moreover, those words had been omitted in the amendments to Article 5 submitted by the delegations of the Syrian Arab Republic (CDDH/I/62), Pakistan (CDDH/I/24), Romania (CDDH/I/18) and thirteen delegations (CDDH/I/75). His delegation fully supported that deletion.

29. In accordance with the CHAIRMAN's ruling that Article 5 would be discussed paragraph by paragraph, he would confine his remarks to paragraph 1, but he reserved his delegation's right to comment on the other paragraphs of Article 5 as they came up for discussion.
30. Mr. DRAPER (United Kingdom) said that the Netherlands delegation had become a sponsor of the amendment submitted by his own and the Belgian delegations (CDDH/I/67 and Add. 1), the main purpose of which was to strengthen the idea of obligation expressed in paragraph 1 of the ICRC text and to ensure that there was a single, clear-cut system for designating Protecting Powers that could be applied from the very outset of the conflict.

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

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

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

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

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

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

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

38. His delegation preferred the ICRC text to the amendment in document CDDH/I/67 and Add. 1, which seemed to deprive the Protecting Power of any general function of ensuring implementation of the Protocol.
39. Mr. MURILLO RUBIERA (Spain) said that his delegation's amendment to paragraph 1 (CDDH/I/77) stressed the legal and moral obligation of each party to the conflict to appoint a Protecting Power at the beginning of the conflict and to accept on its territory the activities of the adversary's Protecting Power. It should be made quite explicit in paragraph 1 that States were in duty bound to respect certain international rules, irrespective of their reasons for entering a conflict. The idea of appointing Protecting Powers was a substantial improvement on that of making diplomatic arrangements to protect interests.

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

41. Mr. NODA (Japan) said that his delegation could agree in principle with the ICRC draft of paragraph 1, but considered that the phrase "which has not already entrusted the protection of its interests and those of its nationals to a third State" should be deleted and therefore supported the proposals to that effect in documents CDDH/I/18, CDDH/I/62, CDDH/I/67 and Add. 1 and CDDH/I/70. Furthermore, it held the view that each party to the conflict should be under an obligation to accept a Protecting Power and therefore supported the Belgian, Netherlands and United Kingdom amendment (CDDH/I/67 and Add. 1).

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

Paragraph 2

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

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

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

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

47. Mr. ABDINE (Syrian Arab Republic), introducing his delegation's amendment to paragraph 2 (CDDH/I/62), said that it was proposed to delete the words "unjustified delay" because they were likely to give rise to useless discussion and to encourage the very delay they were intended to prevent.

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

49. A number of delegations had expressed the view that the wording of the draft Additional Protocols should be kept as close as possible to that of the Geneva Conventions of 1949. That was the purpose of the amendment to paragraph 2 in document CDDH/I/70; a similar provision was to be found in Article 8, paragraph 5, of draft Protocol II and in the amendment to Article 5, paragraph 3, of draft Protocol I in document CDDH/I/75.

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

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

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

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

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

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

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

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

Paragraph 3

58. Mr. CASSESE (Italy), introducing his delegation's amendment (CDDH/I/50), said it was designed to enable the ICRC to intervene as soon as possible after the outbreak of hostilities and to avoid the delay that the complex machinery envisaged in the ICRC text would cause. There was no intention of imposing any duty on the ICRC: under the Italian amendment, that body might offer to act as a substitute, but would decide for itself whether or not it should assume such functions.

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

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

M. PROPOSED AMENDMENTS TO ARTICLE 5:

Paragraph 2

CDDH/I/70
Corr. 1
20 March 1974
Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics

[In document CDDH/I/70/Corr. 1 the word "render" was substituted for the word "offer" in the phrase "subject to the consent of the Parties to the conflict concerned, offer its services ...".]

Paragraph 6

CDDH/I/80 and
Add. 1
22 March 1974
Argentina, Austria, Brazil, Holy See, Ireland, Liberia, Philippines, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon

Replace the word "substitute" by the words "any substitutes".
Article 5 bis:

CDDH/I/83
13 September 1974

Norway

Insert new Article 5 bis:

1. In conformity with Article 10, paragraph 1, common to the first three Conventions and Article 11, paragraph 1, of the Fourth Convention, the Parties may appoint any body established or designated by the United Nations for that purpose to assume the duties incumbent on the Protecting Power by virtue of the Conventions and the present Protocol.

2. If no Protecting Power has been appointed within the period of ... days from the beginning of a situation provided for in Article 2, common to the Conventions, and the International Committee of the Red Cross has not assumed all the functions of the Protecting Power under the Conventions and the present Protocol, including the investigation and reporting on violations, the said body will then undertake, by virtue of this Protocol, the functions of the Protecting Power or those of them not carried out by the International Committee of the Red Cross.

3. In cases where both the International Committee of the Red Cross and the said body are assuming the functions of the Protecting Power under the Conventions and the present Protocol, they shall act in concert and co-ordinate their activities.

N. MEETING OF COMMITTEE I, 7 February 1975 (CDDH/I/SR.17):

Paragraph 3

11. Mr. PRUCH (United States of America), referring to an address delivered by Mr. Baxter (United States of America) in December 1974, said that, despite all efforts to build up a system of humanitarian law applicable in cases of armed conflict, the progress achieved had been poor. He had noted one principle necessary in building up that law: the principle of openness and accountability, as exemplified in the obligation for belligerents to respond to requests for a Protecting Power or substitute, and the obligation to give account of the situation of detained civilians or prisoners-of-war. It was highly desirable to use that principle of openness and accountability as a basis for the discussions of Article 5 which, of all the articles before the Conference, was the one with the most direct humanitarian function.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33. Mr. MILLER (Canada) said that his country's delegation to the Sixth (Legal) Committee at the twenty-ninth session of the United Nations General Assembly in 1974 had stressed the importance it attached to any proposals designed to facilitate the implementation of the 1949 Geneva Conventions.
34. His delegation had not sponsored any of the amendments submitted, but hoped that the Committee would adopt a clear, precise text, stipulating that the Parties to a conflict could accept a substitute for a Protecting Power only if there was no agreement on the Power proposed.

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

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

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

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

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

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

41. The institution of Protecting Powers had in practice been followed before having been codified in the successive Geneva Conventions. It aimed at ensuring proper implementation and preventing violations during armed conflicts instead of resorting to sanctions after the harm had been done. The 1949 Conventions considered that institution an essential and obligatory component of the system provided in those Conventions, and in order to ensure the existence of a mechanism of surveillance in all circumstances, they provided for a whole range of substitutes for Protecting Powers in order to meet all the contingencies of the absence of such a Power.

42. Paradoxically, however, since 1949 the system of Protecting Powers and their substitutes had all but ceased to function. That might have been caused by the extension of the role of Protecting Powers under the Geneva Conventions of 1949 or by the nature of contemporary armed conflicts, but it was more immediately the result of the consensual character of the procedure of
the appointment of Protecting Powers and, to a lesser degree, of their substitutes.

43. Article 5 of draft Protocol I tried to remedy that situation in three different ways: first, paragraphs 4 and 5 provided assurances or clarifications designed to remove some of the presumed causes of the reluctance of States Parties to a conflict to appoint Protecting Powers; second, paragraph 2 aimed at facilitating the procedure of appointing such Powers by authorizing the ICRC to act as an intermediary between the Parties to the conflict in that respect; third, but the most important, came paragraph 3 with its two alternative versions, providing for the possibility for the ICRC to assume the functions of a substitute in case no Protecting Power was appointed.

44. However, neither of the alternative versions of paragraph 3 went far enough: the first contributed little that was new since it explicitly required the consent of both Parties to the conflict; the second version went further since it imposed an obligation on the Parties to accept the ICRC's offer. But the ICRC was under no obligation to make such an offer in all cases. Moreover, the representatives of the ICRC had made it abundantly clear at the 1972 Conference of Government Experts and later on that the ICRC would make such an offer only if certain conditions obtained, the first being the consent of the Parties to the conflict.

45. Thus, both alternatives remained resolutely consensual and did not go much further than what was possible at present. Indeed, the ICRC had already tried to fill the gap as far as it could and considered it, basing itself on its autonomous functions under the Conventions and on its right of initiative according to Article 9 common to three of the 1949 Conventions (Article 10 of the Fourth Convention) which safeguarded its right to undertake tasks and activities other than those specifically attributed to it in the Conventions, subject to the consent of the Parties to the conflict.

46. What was now needed was a provision which would leave no loophole and which would provide a safety net to be applied, as a last resort, in all cases of absence of a consensual designation of a Protecting Power or a substitute.

47. The Parties to the conflict must be placed under the obligation of accepting a substitute such as the ICRC or, as the Brazilian representative had suggested (CDDH/I/54), a regional body; and a procedure must be provided for the appointment of that substitute, by assigning that task in the final instance to the United Nations for example, as proposed by the Norwegian amendment (CDDH/I/83), or to the Conference of the High Contracting Parties as proposed by the Arab Republic of Egypt and co-sponsors in amendment CDDH/I/75.

48. It was true that there was no way physically to compel a reluctant party to co-operate with a substitute it had not accepted or to allow it to function in territories under its control. But at least, if the above approach were followed, such a negative attitude would constitute a characterized violation of a clear and specific obligation; and that in itself would be an important source of moral and political pressure towards compliance.

49. Such a solution would not undermine the essential role of the ICRC. On the contrary, it would enhance and supplement it, by covering those cases in which the ICRC could not or would not offer to act as a substitute.
50. The CHAIRMAN suggested that an informal meeting of the sponsors of the amendments to Article 5, paragraph 3, should be held on Monday morning, 10 February, and should be attended by representatives of the ICRC.

It was so agreed.

51. Mr. GIRARD (France) said that, although he understood the desire of some delegations to make the procedure regarding the substitute an automatic one, he considered that the Committee's main concern should be directed towards adopting a more efficient system than the one so far applied. The French delegation was in favour of Proposal I, in spite of the fact that it did not represent much change. It was not entirely opposed to Proposal II, although the text did place a fairly heavy responsibility on the ICRC. Furthermore, the words "if it deems it necessary" were very vague and the idea of necessity could be interpreted in various ways.

52. He had followed with interest the statements in support of strengthening the moral obligation of the Parties to the conflict. However, the proposal suggesting the appointment of a Conference of the High Contracting Parties as the final authority was hardly compatible with the desirability of very short time-limits. He approved of the suggested informal meeting of the sponsors of the amendments to Article 5, paragraph 3.

53. Mr. de BREUCKER (Belgium) said he did not consider the text of Proposal I very satisfactory, since it required the agreement of two Contracting Parties. It would be preferable forthwith to reserve for the ICRC the power to act as a substitute if the Parties to the conflict tried to evade or back out of their obligations. The words "in so far as those functions are compatible with its own activities" should be deleted, since they constituted a retrogression from Article 9 common to three of the 1949 Conventions. In any event, it would be advisable to protect the ICRC's right to exercise initiative.

54. On the other hand, Proposal II seemed to be entirely satisfactory. Paragraph 3 of amendment CDIHH/1/I/67 and Add. 1, submitted by Belgium, the Netherlands and the United Kingdom, endeavoured to establish, on the basis of the third paragraph of Article 10 of the first Geneva Convention of 1949, the obligation of the Party to the conflict holding prisoners of war or occupying enemy territory to apply to the ICRC: "... shall ... request or accept the offer of the services of the International Committee of the Red Cross to assume the functions of a Protecting Power under the present Protocol".

55. His delegation wished to participate in the informal meeting of the sponsors of amendments.

56. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam), having stressed the importance of the system of the Protecting Power for the effective application of the Geneva Conventions, referred to the origin of the deadlock in which the Committee found itself over Article 5: indeed, the impartiality of the Protecting Power was being called in question.

57. His country's experience had shown that public opinion constituted the very source of humanitarian law. That opinion, which was represented by non-governmental organizations, must therefore be taken into account. Consequently, the participation of the States and of the non-governmental organizations of the two parties was indispensable if the impartiality of the Protecting Power was to be guaranteed.
58. His delegation, while appreciating the work of the ICRC, considered that that body did not always provide the guarantees of impartiality which were required of a substitute for the Protecting Power. It opposed amendment CDDH/I/9, submitted by the Republic of Viet-Nam, from that point of view and recommended the adoption of amendment CDDH/I/70, submitted by the Byelorussian SSR, the Ukrainian SSR and the Union of Soviet Socialist Republics. It was prepared to consider other amendments along the same lines.

59. Mr. Bohyung LEE (Republic of Korea) said that he recommended the adoption of Proposal II and suggested that the words "without delay" be inserted before the words "the offer made by the International Committee ...", with a view to protecting the interests of the parties and of their nationals.

60. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that his country's delegation based itself on the provisions of the 1949 Geneva Conventions, taking into account the reservations made when those instruments had been drawn up. It could not accept the idea of a Protecting Power being imposed without the consent of the parties concerned and did not think that there could be any question of automatically granting an international organization the right to assume the role of Protecting Power. Proposal I was largely consonant with the amendment submitted by the Byelorussian SSR, the Ukrainian SSR and the Union of Soviet Socialist Republics (CDDH/I/70). The Soviet delegation was prepared to take part in the informal discussions between the sponsors of amendments to Article 5, paragraph 3.

61. Mr. FERRARI-BRAVO (Italy), introducing his delegation's amendment (CDDH/1/50), said that, although experience might have shown that the system of a Protecting Power required improvement, the intervention of an impartial body to ensure the application of humanitarian law was in the interests of the entire international community. Admittedly, that system was in principle based on acceptance by the parties, but in view of the ultimate aim, attention must be paid forthwith to situations where it might prove impossible to reach agreement on the designation of a Protecting Power or a substitute. As to the proposal to convene a conference of Parties to the Geneva Conventions of 1949, such a procedure would involve delays incompatible with the urgency of action required by modern warfare. The intervention of an organization offering every guarantee of impartiality must be provided for in the Protocols. The question was not one of imposing an obligation on the ICRC, but rather one of avoiding its being handicapped in advance by having to seek the agreement of the Parties to the conflict at the diplomatic level.

62. The Italian amendment was reasonably close to Proposal II put forward by the ICRC for Article 5, paragraph 3, and the Italian delegation was prepared to consider any proposal that would lead to a consensus of opinion. In that spirit, it supported the CHAIRMAN's suggestion for a meeting of the sponsors of amendments.

63. The establishment of a time-limit for the intervention of the ICRC, suggested by several delegations, seemed to be dangerous in view of the nature of modern warfare, which called for rapid action. It would be better to leave it to the ICRC to select the time it considered most favourable for intervention. The main consideration was that States should be obliged to accept its intervention.

64. Mr. MURILLO RUBIERA (Spain) said that delegations attached the greatest importance to machinery for action by the Protecting Power. It was
essential to improve that machinery, in order to ensure better application of humanitarian principles. He would limit his remarks to Article 5, paragraph 3, of draft Protocol I and to paragraphs 3 and 4 of the amendment submitted by his Government (CDDH/I/77), but that did not mean that he underestimated the value of the proposals put forward by other delegations. With regard to the two alternatives proposed by the ICRC for Article 5, paragraph 3, he thought the difficulty lay in the need for efficient machinery, on the one hand, and for respect for the wishes of the Parties to the conflict, on the other. Delegations thus tended to favour a flexible automatic system to prevent action from being blocked by the opposition of one of the parties. A certain degree of automatic procedure could nevertheless be introduced, in view of the adoption at the first session of the Diplomatic Conference of an amendment to Article 1 of draft Protocol I, whereby the parties undertook to respect and to ensure respect for the Protocol in all circumstances. The first alternative proposed by the ICRC for Article 5, paragraph 3, had the weakness of delaying intervention, which could prove dangerous. It would be better to adopt the second alternative, which should nevertheless be improved, since it did not set any time-limit. The Spanish delegation therefore suggested introducing the words "immediately" and "without delay" into the text. In view of the heavy responsibility imposed on the ICRC by paragraph 3 of the Spanish amendment, it should be provided that the substitute could be replaced by another Power or another organization, and that was the purpose of paragraph 4 of the amendment. The Spanish delegation would willingly participate in the meeting of sponsors of amendments suggested by the Chairman.

65. Mr. PICTET (Switzerland) said that, as he had already stated at the first session of the Conference, his delegation preferred Proposal II (see CDDH/I/SR.11, para. 34), which seemed to it to be a satisfactory compromise between the various proposals. Indeed, his delegation would favour, if that were possible, the greater strengthening of the institution of Protecting Power and its substitute. It would be advisable to provide in paragraph 3 for a time-limit which should be short. That would enable the ICRC to seek, under the best possible conditions, the agreement between the Parties to the conflict which it considered necessary before offering itself as substitute.

66. Mr. KARASSIMEONOV (Bulgaria) said he agreed with the speakers who thought it indispensable to draw up a text acceptable to all members of the Committee. As had been suggested, a small working group should be entrusted with the study of all the amendments submitted; it could include the sponsors of the various amendments and any representatives who had suggestions to make.

67. The Bulgarian delegation preferred Proposal I since the selected text must be flexible, must not lay down an automatic system, must safeguard the sovereign independence of the States and must provide for the possibility of agreement between the Parties to the conflict. That text might be supplemented by certain amendments.

68. He supported the amendments submitted by the Byelorussian SSR, the Ukrainian SSR and the Union of Socialist Soviet Republics (CDDH/I/70), and by Brazil (CDDH/I/54), which made it possible to call upon a humanitarian organization other than the ICRC. The representative of the Democratic Republic of Viet-Nam, while recognising the vital role which the ICRC had played and would continue to play, had emphasized the importance of that possibility.

69. When drawing up the final text, consideration must be given to the statement of the President of the ICRC at the second session of the Conference
of Government Experts, held in 1972, to the effect that the ICRC would accept the duties of substitute for a Protecting Power only with the agreement of the Parties to the conflict.

0. MEETING OF COMMITTEE I, 10 February 1975 (CDDH/I/SR.18):

1. The CHAIRMAN invited the Committee to continue the consideration of Article 5, paragraph 3.

2. Mr. LEHMANN (Denmark) reminded the Committee that his delegation had already stated at the first session of the Diplomatic Conference and at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts that it attached the greatest importance to the question of control. Clearly, effective protection of human rights in time of peace as well as during armed conflicts called for some kind of international control - specifically, protection of the individual against arbitrary interference from his own national authorities. To be effective, control must be carried out by an independent and impartial body. Otherwise, all efforts to reform the rules of international law relating to armed conflicts would be thwarted.

3. The question, therefore, was what would be the most realistic way of modifying and strengthening the system of designating the Protecting Power, as laid down in the Geneva Conventions of 1949.

4. His delegation believed that the International Committee of the Red Cross (ICRC) by offering to act as a substitute for the Protecting Power, had made a break-through in the search for a strengthening of the system of control provided for in the 1949 Geneva Conventions. That offer deserved all possible support: acceptance of Article 5, paragraph 3, was therefore of crucial importance.

5. He fully endorsed the views expressed by the representatives of Pakistan, Switzerland and the Netherlands (CDDH/I/SR.11, paras. 17, 34 and 40) who had supported Proposal II concerning paragraph 3, which represented an advance so far as concerned the procedure for designating the Protecting Power. But the proposal could be improved. It in no way violated the principle of the sovereignty of States. Under international customary law, States were under no obligation to accept any kind of international control; on the other hand, there was nothing in such law which prevented them from concluding treaties by which they subjected themselves to a certain degree of international control.

6. To improve Proposal II, recourse could be had to the Italian delegation's suggestion in amendment CDDH/I/50 that "... until such time as the Protecting Powers begin to exercise their functions, each of the Parties to the conflict shall accept the offer made by the ICRC ... to act as a substitute ...".

7. The Canadian delegation had also proposed the fixing of a time-limit in respect of the ICRC offer and acceptance by the Parties to the conflict.

8. In conclusion, he pointed out that, at the present stage, the problem was to improve the control system envisaged for an armed conflict; Article 5 would appear to be the central provision. One should not lose sight, however, of the more traditional system of control, under which procedures were
established for settling disputes, and which was, in a sense, of a preventive character. The draft Protocols contained no such rules.

9. Mr. ROSENNE (Israel) said that, as his delegation had already pointed out at the first session, neither the institution of Protecting Power as envisaged in the 1949 Geneva Conventions nor the concept of substitute Protecting Power had been resorted to in the Middle East conflict.

10. Despite the intricacies of the general political problems in that area and the complications which might have arisen from a formal designation of the ICRC as a substitute Protecting Power, the ICRC had been operating on a de facto basis with the agreement of the Parties to the conflict.

11. Israel had no direct experience of the system of designating a Protecting Power, and he would therefore limit himself to one observation only.

12. His delegation shared the view expressed at the first session that it would be preferable not to overload Article 5 with reference to another type of Protecting Power altogether - as partly codified in Article 45 of the 1961 Vienna Convention on Diplomatic Relations. There was a difference between representation of national interests in the case of a temporary rupture of diplomatic relations and the element of "scrutiny" inherent in the "Geneva mandate". The Drafting Committee should make a careful study of that question.

13. Paragraph 3 envisaged two entirely different hypotheses. One was where no Protecting Power was appointed between two States which had broken off diplomatic relations; the other was where there had never been any Protecting Power - whether under the Vienna or Geneva mandate, or any other basis of customary international law - for the basic reason that there had never been any normal diplomatic relations between the two States in conflict. Israel was a case in point.

14. He then indicated some factors which influenced Israel's position. The control body must be effective and impartial. Its effectiveness did not depend solely on its means and staff; the real consent of the Parties to the conflict was also essential. His delegation therefore favoured Proposal II.

15. Some of the amendments before the Committee envisaged appeals to the United Nations or to an ad hoc conference of the High Contracting Parties to designate a Protecting Power or a substitute. That approach would not meet the basic requirements of effectiveness and impartiality. Other amendments raised the question of fixed time-limits for the appointment of a Protecting Power or substitute. Some of the periods suggested seemed rather long, but as against that, the introduction of a fixed time might enhance the effectiveness of the provisions currently being drafted.

16. Despite their large number, the amendments did not raise great questions of principle; there seemed to be a consensus in favour of an approach which was not based on any automatism in the designation of the Protecting Power or its substitute. The Drafting Committee or the Working Group should consider paragraph 3 in the light of the discussions which had just taken place.

17. Mr. LE MINH CHUC (Republic of Viet-Nam) said he believed that the agreement of the Parties which was required for assumption by the substitute of the functions of a Protecting Power was a normal concession to the sovereignty
of States, in the hope that the Parties would accept the offer made by the substitute, since they saw that to be in their joint interest. But that hope could be vain if one of the Parties washed its hands of the fate of any of its nationals captured by the enemy while reserving the right to deal with members of the adverse Party detained by it in the most inhumane manner.

18. An automatic system for designation of the substitute appeared to be acceptable. His delegation supported Proposal II.

19. Regarding the designation of the substitute, some delegations had expressed the view that the choice should not be limited to the ICRC alone, but should embrace a complex of suitable international humanitarian organizations. Other delegations had proposed an extension of the choice to bodies of a political, regional or international character. A political body would present the same difficulties which had arisen in regard to designation of the Protecting Power. One delegation had even provided a definition of the criterion of impartiality required in a substitute and had said: "Unjust equality is inequality, unjust impartiality is partiality". An international humanitarian body such as the ICRC, with its strong moral authority, its resources and its experience, could take on the role of substitute.

20. Mr. RECHEYNIK (Ukrainian Soviet Socialist Republic) observed that the fact that there were two alternatives for Article 5, paragraph 3, bore witness to the presence of difficulties. The statement by the ICRC representative had clearly shown that his organization had some conception of the problem and that it preferred Proposal I.

21. The many amendments submitted revealed a wide range of diverse and contradictory opinions. His delegation recognized that the good offices of the organization acting as a substitute for the Protecting Power could be of value; he therefore accepted the idea of such substitution where designation of a Protecting Power met with difficulties. But it should be remembered that the humanitarian organization acting as a substitute should function impartially and effectively. It was thus absolutely essential that both Parties to the conflict should be convinced of its impartiality. The word "effectiveness" implied that the organization must not merely be willing, but also able, to play that role. Consequently, the pool of substitutes should include other organizations than the ICRC and comprehensive information should be provided as to possible candidates.

22. His delegation could not accept an automatic system for designation of the Protecting Power, and would draw attention to the reservations expressed by his delegation and by those of the Byelorussian SSR and the Soviet Union concerning Article 10 common to the first three Geneva Conventions of 1949 (Article 11 of the Fourth Convention).

23. He did not believe that a problem of that type could be solved by laying down strict rules. Only the agreement of the two Parties could enable the Protecting Party to act effectively.

24. Mr. AGOES (Indonesia) said that he considered Article 5 to be a key provision and that a satisfactory solution should therefore be sought which would be acceptable to all.

25. His Government was of the firm belief that the designation and acceptance of the Protecting Power should not be based on an automatic process but
on the consent of the two Parties to the conflict, in line with the principle of the sovereignty of States. Failing agreement on the appointment of the Protecting Power, his Government would strongly favour giving the ICRC priority to assume the functions of substitute.

26. He was in favour of Proposal II, but would like it to be expressed in stronger terms, so that the ICRC could immediately function as a substitute when the system of appointment of the Protecting Power mentioned in Article 5, paragraphs 1 and 2, proved inapplicable. He suggested that the words "shall accept the offer made by" should be replaced by the words "shall permit".

27. In order to provide for cases where the ICRC could not assume the functions of a substitute, he proposed as a reserve solution that reference should be made to "an international organization designated by the Secretary-General of the United Nations", which could offer all guarantees of impartiality and efficacy.

28. Mrs. DARIIMAA (Mongolia) said that, while she recognised the importance of the part played by the ICRC, she considered that to name only that organization as a substitute would be to close the door on other international organizations which were equally able to contribute to the development of international humanitarian law. Such organizations already existed and new ones might be set up. Draft Protocol I should therefore be worded in terms that allowed forthwith for the creation of such organizations. Her delegation suggested that the words "the International Committee of the Red Cross" should be replaced by the words "an international humanitarian organization". If, however, other delegations insisted that the ICRC be named and given priority, her delegation would agree, as a compromise, to such a wording as: "the ICRC or other international humanitarian organizations".

29. In addition, her delegation was opposed to the fixing of a time limit, as proposed by several delegations; such a measure could lead to misinterpretation of draft Protocol I and to practical difficulties should no substitute be appointed by the end of the time limit.

30. With regard to amendment CDDH/I/75, which provided, as a last resort, for recourse to the conference of the High Contracting Parties pursuant to Article 7 of draft Protocol I, she was of the view that it would be difficult for that conference to meet in time of conflict because of the inevitable political tensions, and that one of the Parties might use such a meeting to delay application of the Protocol.

31. Mr. Tchoung Kouk DJIN (Democratic People's Republic of Korea) said he thought that if the aims of international humanitarian law were to be achieved and present-day realities taken into account the designation of the Protecting Power and its substitute must be based on the assurance that the interests of war victims would be scrupulously protected. The victims' sufferings were caused by the imperialist aggressors, and it was to the inhuman crimes committed by those aggressors that the Protecting Power or its substitute must put an end. Sovereignty and the right to self-determination must also be respected, and the Protecting Power must therefore be appointed on the initiative of the Parties to the conflict and with their consent. The same should apply to the designation of a substitute, which should be an international organization offering all guarantees of impartiality and efficacy. Throughout the world United States imperialists were infringing international law by interfering in the internal affairs of States and bringing misfortune to the peoples
concerned. They had been occupying South Korea, for example, for the last thirty years. It was natural that progressive men and women should condemn such practices. In view of the experience of its own country, his delegation reaffirmed that the designation of the Protecting Power or its substitute must offer all the necessary safeguards against the United States aggressors.

32. The CHAIRMAN reminded the meeting of the aims of the Conference and asked delegations to refrain, in their interventions, from making attacks on other countries and using language which implied that some victims were more entitled to protection than others. Moreover, any delegation which considered that its country was being criticized could ask to exercise its right of reply, and that might needlessly delay the Committee's work.

33. Mr. ZAFERA (Madagascar) said he considered Article 5 to be one of the key provisions of the Geneva Conventions of 1949.

34. Like others, his delegation was opposed to automatic designation. The sovereignty of the Parties to a conflict must be safeguarded, and their consent to the appointment of the Protecting Power was essential if the Conventions were to be correctly applied.

35. His delegation also thought that no specific time limit should be set for the designation of the Protecting Power or for the acceptance or rejection of that designation.

36. As to the ICRC, the responsibility it was prepared to assume in the last resort should not be imposed on it automatically, whatever function it might undertake. The greatest latitude must therefore be given to the Parties, whose authorization was just as vital for the designation of the substitute as for that of the Protecting Power.

37. He therefore supported the first variant proposed by the ICRC for paragraph 3.

38. Mr. GRAEFRAITH (German Democratic Republic) said he also considered Article 5 to be a key article. No Protecting Power or substitute could work effectively if its designation had not been approved by the Parties to the conflict and if it did not have their confidence.

39. As most of the speakers had pointed out, the Protecting Power system provided for in the Geneva Conventions of 1949 had not worked, and it was therefore unrealistic to imagine that States would be able to agree on that point in advance, as the Proposal II suggested by the ICRC for paragraph 3 and certain amendments envisaged.

40. The only possible solution was that contained in ICRC Proposal I and the amendments submitted to the same effect, for example amendment CDDH/1/70. The representative of the Democratic People's Republic of Korea had therefore been right in pointing out that the designation of the Protecting Power or its substitute should be subject to the authorization of the Parties.

41. If the number of bodies authorized to provide protection were increased, that could provoke competition between Protecting Powers or substitutes, and political bodies would then experience greater difficulties in performing their humanitarian function.
42. His delegation was in favour of the designation of a humanitarian organization with the consent of the Parties to the conflict.

43. Mgr. LUONI (Holy See) drew attention to certain points that were common to all the preceding statements, namely, that a substitute for the Protecting Power must be designated; that the substitute must be accepted by all Parties to the conflict; and that in the interests of the civilian populations to be protected the substitute must be able to fulfil its mission as soon as possible. The third point necessarily implied satisfaction of the second.

44. Several representatives had very aptly described the tragic consequences which would result if there were no Protecting Power. Attention had also been very rightly drawn to the difficulties and delays inherent in the diplomatic procedure currently applied in times of conflict to reach a solution acceptable to all the Parties.

45. As delegations were generally agreed that substitutes other than the ICRC could usefully replace Protecting Powers, his delegation wished to suggest that other international humanitarian organizations, duly approved by the Conference, be mentioned in draft Protocol I alongside the ICRC. Such organizations could either work with the ICRC or replace it, so that the Parties to a conflict would have a choice of several possibilities.

46. His proposal was designed solely to avoid, as far as possible, the dangerous drawbacks presented by the lack of a substitute for the Protecting Power, and it in no way diminished the esteem in which his delegation held the ICRC, which, in its view, was still the organization most fitted to assume the functions of substitute for the Protecting Power.

47. Mr. MURILLO RUBIERA (Spain) said that the meeting of the Working Group on amendments to Article 5, paragraph 3, had shown that delegations must answer three basic questions: which body was competent to act as a substitute, whether designation should be automatic, and whether a time limit should be set for designation.

48. Although he had already made known his delegation's views and did not wish to speak on the substance of the matter for the time being, he considered that some of the observations made in the course of the debate warranted further attention. He referred in particular to the observations made by the Belgian and the United Kingdom representatives regarding the influence which the wording adopted for Article 5, paragraph 3, of draft Protocol I might have on the legal system provided for in Article 10 of the Conventions.

49. Mr. CHOWDHURY (Bangladesh) pointed out that the provisions of Article 5 were intended to relieve the sufferings of the civilian population of Parties to the conflict and to afford it all the necessary protection, whatever the nature of its government. In the circumstances, any reference to imperialism or colonialism was out of place, since it was only a matter of applying legal principles.

50. With regard to the question of a substitute when no Protecting Power had been appointed, some representatives had stated that nothing should infringe the sovereignty of States, but in his view an acceptable Protecting Power must first be found. The ICRC should propose five names from which the Parties to the conflict could choose. What was essential was that if a substitute proved necessary, the ICRC should be able to ensure the protection of
human life and the property of the civilian population, and to act in the
capacity of substitute.

51. Careful study of the amendments submitted showed that the aim of all
delegations was to ensure that there was a substitute in order to reduce the
sufferings of the civilian population. It was important to adhere as closely
as possible to the text drafted by the ICRC, which took into account the struc-
ture of the two Protocols. His delegation had submitted an amendment
(CDDH/I/61) relating to Proposal I, the purpose of which was to enable the ICRC
to strengthen its position to the utmost. Cases had already occurred when Red
Cross representatives found themselves in difficult situations. Their activi-
ties must not be dependent on the whims of the Parties to the conflict.

52. His delegation preferred the text of Proposal I. Proposal II could,
however, be improved by deleting the words "if it deems it necessary".

53. Mr. Bohyung LEE (Republic of Korea), exercising his right of reply,
said that it was most regrettable that the delegation of the Democratic
People's Republic of Korea had revived a controversy on political questions
outside the scope of the Conference. His delegation denied the allegations of
the North Korean delegation.

54. Mr. DRAPER (United Kingdom) pointed out that the effective functioning
of a Protecting Power, or its substitute, from the outset of any armed conflict
until its conclusion, was essential if the rules of the Protocol were to have
any meaning. It was particularly vital that the Protecting Power should monitor
those rules from the outset of the conflict. It was at that stage that the
worst atrocities occurred, particularly in relation to prisoners of war.

55. Article 10 common to the 1949 Geneva Conventions (Article 11 of the
fourth Convention) provided an effective mechanism in the case of default of a
Protecting Power. Unfortunately, certain States had been unable to accept that
provision. In paragraphs 1 and 2 of Article 5, the monitoring mechanism for
the application of the Protocol was defective because it was based upon agree-
ment of the Parties. Only in Proposal II relating to paragraph 3 had any
attempt been made to bring draft Protocol I into line with the provisions of
the Conventions he had mentioned. In his delegation's view, the possibility of
war victims receiving the benefit of the humanitarian protection afforded by
Protocol I, should not be dependent on the hazards of an agreement made in the
course of armed conflict nor could that protection be sacrificed to the claims
of national sovereignty of the Parties to the conflict. His delegation there-
fore supported the adoption of Proposal II, which might be improved by a reason-
able time provision, as suggested by other delegations.

56. Moreover, Proposal II only provided for the case of no Protecting
Power being appointed, whereas Articles 10 and 11 of the Geneva Conventions and
amendment CDDH/I/67 provided also for the contingency of a Protecting Power
being appointed and ceasing to act during the conflict. That was a matter of
great importance, particularly for prisoners of war. Proposal II had the fur-
ther merit that it would enable the substitute to discharge "all or part of the
functions" of a Protecting Power (Article 2, sub-paragraph (e)). It was not an
automatic system but a safe one, offering guarantees of security in case of
disagreement.

57. His delegation did not believe that regional bodies or some new insti-
tution to be created within the United Nations family could effectively assume
the function of substitute. Such bodies lacked skill and expertise; moreover, it would be difficult for them to exclude political considerations entirely, as the ICRC had managed to do for a century.

58. His delegation was willing to participate in all meetings of the sponsors of amendments relating to Article 5, paragraph 3, in order to ensure effective implementation of the Protocol.

59. Mr. PRUGH (United States of America) said that it would be well to ascertain in advance what international humanitarian organizations existed, how they were organized, whether they were impartial or had the apparent ability to perform at least the essential humanitarian functions of a Protecting Power. In Article 6 of draft Protocol I the High Contracting Parties were requested to recruit and train personnel, to establish lists of persons so trained and to define the conditions governing their employment; perhaps the same request should be addressed to international humanitarian organizations. Such organizations might be asked in a separate paragraph to identify themselves to a central agency, such as the depositary State or the ICRC. A number of impartial humanitarian bodies existed, no doubt, but his delegation believed that States would wish to consider in peacetime, when they were free from the immediate pressures applied in conflicts, what organizations might consent to act, as a last resort, in the capacity of a substitute.

60. Mrs. MANTZOULINOS (Greece) said that the 1949 Geneva Conventions and the draft Protocols were due to the initiative of the ICRC. She saw no point in looking for some other body, alien to the "Law of Geneva". For the designation of the substitute an automatic mechanism should be adopted which in her delegation's view would in no way prejudice the sovereignty of the Parties. Her delegation had submitted an amendment to that effect (CDDH/1/31).

61. Mr. Antoine MARTIN (International Committee of the Red Cross), said that, after hearing all the statements concerning Article 5, paragraph 3, he wished to express thanks on behalf of the ICRC for the confidence shown in that organization.

62. Although it was true that the substitute system had so far never been used, it would be wrong to say that the system of Protecting Powers had not been used: it had served in three cases.

63. He endorsed the statements he had made in introducing Article 5, paragraph 3, at the seventeenth meeting (CDDH/1/SR.17). The ICRC was quite willing to assume the role of substitute, but only when all other possibilities, namely the machinery of Protecting Powers followed by that of substitutes as provided for in the first and second paragraphs of Article 10 common to the 1949 Geneva Conventions (first and second paragraphs of Article 11 of the fourth Convention) had been exhausted.

64. The words "or substitute within the meaning of the first and second paragraphs of Article 10 of the Conventions (Article 11 of the fourth Convention)" might be inserted after the words "Protecting Power" in paragraph 3.

65. In view of the supplementary nature of the Protocol, it had not been thought necessary expressly to reaffirm all the articles relating to the monitoring and application system set out in the 1949 Conventions. In pursuance of Article 10 common to those Conventions (Article 11 of the fourth Convention), an organization which offered all guarantees of impartiality and efficacy, as
well as any humanitarian organization, might be entrusted with the tasks incumbent on the Protecting Power by virtue of the Conventions. That provision common to the Conventions would retain its validity.

66. Other impartial humanitarian organizations had not been expressly designated because several experts had said during the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, that it would be difficult to mention such bodies in general terms and that it would be necessary to indicate which were envisaged, but there had been disagreement on that point. The ICRC had never considered that it had a monopoly in that regard and it would only assume the role of substitute if all other possibilities had been exhausted.

Paragraph 4

67. The CHAIRMAN suggested that the Committee should examine Article 5, paragraph 4.

68. Mr. de SALIS (Legal Secretary) read out the list of amendments relating to paragraph 4.

69. Mr. Antoine MARTIN (International Committee of the Red Cross) said that, within the particular context of the system of Protecting Powers, the provision constituted a reaffirmation of the general principle laid down in Article 4 of draft Protocol I, entitled "Legal status of the Parties to the conflict" and already considered at the first session of the Conference. A large majority of the experts consulted considered that a reaffirmation of that kind was necessary under the terms of the article relating to international machinery for supervising the application of humanitarian law. In the case of Governments, nearly all of those which had replied to the ICRC's questionnaire concerning measures intended to reinforce the implementation of the Geneva Conventions strongly favoured the inclusion of such a provision.

70. The previous year, when introducing at the eighth meeting (CDDH/I/SR.8) draft Article 4, the ICRC had made it clear that its purpose was to ensure a more thorough implementation of the humanitarian purposes of the Geneva Conventions of 1949 and draft Protocol I, since the Parties to the conflict might be afraid, though unjustifiably, that the application of those instruments might have political or legal consequences affecting their reciprocal status, and it was desirable to dispel all doubts in that connexion. Paragraph 4 which was now being introduced was based on the same ratio legis. At the first session of the Conference, during the discussion of Article 4 - with regard to which many delegations had not been prepared to express an opinion until the scope of draft Protocol I had been established in Article 1 - some representatives had criticized the words "or that of the territories over which they exercise authority" and, on being requested to clarify that point, the representative of the ICRC had replied that, in fact, those words had not been included in the draft submitted to the Conference of Government Experts, but that the ICRC had considered the addition of those words to be desirable in the light of recent events (CDDH/I/SR.8, para. 19). As in the case of Article 4, amendments had been submitted at the Conference, proposing the deletion of the phrase or improvements of its wording.

71. The ICRC naturally attached great importance to the inclusion of a provision of that kind in the article relating to the machinery for supervising application.
72. Mr. ABI-SAAB (Arab Republic of Egypt) said that his delegation, together with those of twelve other countries, had submitted an amendment to Article 4 (CDDH/I/59) which also applied to Article 5, paragraph 4, and was intended to clarify the last part of the phrase "... or that of the territories over which they exercise authority". The text submitted by the ICRC was open to different interpretations; and the purpose of the aforementioned amendment was to eliminate any ambiguity as to the compatibility of the provision with the fundamental rule of general international law underlying The Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning The Laws and Customs of War on Land, and the fourth Geneva Convention of 1949, to the effect that occupation did not affect title to territory. He reserved the right to develop the argument further in the context of Article 4.

Paragraphs 5 and 6

73. The CHAIRMAN asked the representative of the ICRC to introduce Article 5, paragraphs 5 and 6, so that paragraphs 4, 5 and 6 could be discussed simultaneously.

74. Mr. de SALIS (Legal Secretary) read out a list of the amendments relating to paragraphs 5 and 6.

75. Mr. Antoine MARTIN (International Committee of the Red Cross), referring to paragraph 5, said that a very large majority of the experts consulted and of Governments in their replies to question 5 of the ICRC questionnaire concerning the measures intended to reinforce the implementation of the four Geneva Conventions of 1949, had expressed the hope that such a provision would be incorporated. Some of them had even expressed the wish that in such cases the appointment of Protecting Powers should be made obligatory.

76. It had become apparent that the implementation of machinery for supervising the application of the Geneva Conventions of 1949 was distinct from the question of the maintenance or breaking-off of diplomatic relations between the Parties to the conflict. Some experts had drawn attention to the fact that the diplomatic mission of a Party to the conflict which remained on the spot would probably have great difficulty in carrying out all the duties assigned to it by the Conventions and by draft Protocol I to the Protecting Powers. It should be pointed out that a minority of experts had expressed their fears that the simultaneous presence of diplomatic representatives of the Parties to the conflict and of the Protecting Powers might cause disputes as to competence between the two authorities concerned, which would only be of disservice to the cause itself.

77. In its Commentary on draft Protocol I (CDDH/3), the ICRC did not refer to paragraph 6 because that provision was self-explanatory. However, some experts had expressed the view that to make the provision perfectly clear it would be better to say "whenever hereafter in the present Protocol mention is made of the Protecting Power".

78. It should be pointed out that the Committee had decided to examine the definition of the word 'substitute' in Article 2, sub-paragraph (e), together with Article 5 now under discussion.

79. With regard to that definition the ICRC concurred with the views of those who had expressed the hope that the organization replacing the Protecting Power could, if necessary, be called upon to exercise only a part of the
latter's functions: that might be the case where, in accordance with the wishes of the designated Protecting Power and with the approval of the Parties to the conflict, the said Power and the substitute shared the tasks in question; that would also be the case if the substitute, with the consent of the Parties to the conflict, agreed to undertake only a part of those activities.

80. At a meeting of the Committee's Working Group on Article 5, paragraph 3, a representative had asked whether the ICRC should be regarded as a substitute on the same footing and in the same capacity as the other substitutes that might be envisaged under the terms of the Geneva Conventions.

81. Although empowered to exercise its humanitarian initiative in favour of victims of conflicts in accordance with Article 9 common to the 1949 Conventions (Article 10 of the fourth Convention), and to perform the humanitarian tasks incumbent upon it under the Conventions and the principles of the Red Cross, the ICRC would be a substitute in the same capacity as any other substitute assigned to carry out the functions of Protecting Powers as defined by the Geneva Conventions.

82. The CHAIRMAN declared open the debate on Article 5, paragraphs 4, 5 and 6.

83. Mr. DRAPER (United Kingdom) said that his delegation was in favour of the ICRC text but together with Belgium and the Netherlands had submitted an amendment (CDDH/1/67 and Add. 1). Since Article 5, paragraph 1, already contained the binding obligation to designate a Protecting Power, that binding character should be restated in paragraph 5, in order to strengthen the ICRC text.

84. Mr. PICTET (Switzerland), referring to paragraph 5, said that, at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Switzerland had been among the minority which considered the inclusion of that paragraph in draft Protocol I unnecessary. He drew attention to the view already expressed that there could not be a Protecting Power while diplomatic relations were maintained. Besides, some experts feared that the simultaneous presence of diplomatic representatives and representatives of the Protecting Power might cause confusion or disputes as to competence. However, the Swiss delegation would not oppose the adoption of paragraph 5 if that was the wish of the majority.

85. Mr. CHOWDHURY (Bangladesh) observed that the United Kingdom delegation shared the opinion of Bangladesh that the ICRC should be under an obligation to intervene. Amendment CDDH/1/67 and Add. 1 was perfectly straightforward and should be adopted. Since countries might become belligerents without breaking off diplomatic relations, it was desirable to provide for such a contingency.

86. Replying to Mrs. DARIIMAA (Mongolia), who considered that the ICRC should not be obliged to intervene automatically as a substitute, Mr. CHOWDHURY (Bangladesh) specified that the obligation he had referred to concerned the preceding paragraph of Article 5 and that in any case action by the ICRC was subject to the consent of States.
P. MEETING OF COMMITTEE I, 11 February 1975 (CDDH/I/SR.19):

Paragraphs 3, 4, 5 and 6 (continued)

1. The CHAIRMAN said that a Working Group had been set up to deal with the two alternative proposals, I and II, which had been submitted for Article 5, paragraph 3 (CDDH/I). If delegations had other amendments to submit to that paragraph, they could be included as part of the Working Group's report.

2. He invited delegations to resume their discussion of Article 5.

3. Mr. OBRADOVIC (Yugoslavia) said that, in general, the text of Article 5 was acceptable to his delegation. While it preferred Proposal I for paragraph 3, it was prepared to be adaptable and hoped that the Working Group would be able to find a wording acceptable to all.

4. With regard to paragraphs 4 and 5, his Government did not consider them indispensable, since under prevailing international law, the maintenance of diplomatic relations during armed conflicts would not exempt the Parties to the conflict from having recourse to the Protecting Power under the Geneva Conventions of 1949. With all due respect for the views expressed by the representative of Switzerland at the eighteenth meeting (CDDH/I/SR.18) it seemed to him that, as far as the application of the provisions of the Geneva Conventions was concerned, there was an obligation for the Parties to armed conflicts to designate a Protecting Power even if diplomatic relations between them had not been broken off. It was obvious that the appointment of a Protecting Power had no effect on the juridical status of the Parties in question or on that of the territories in which they exercised their authority.

5. His delegation was aware of the argument which had been advanced at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts that, precisely because of some uncertainty about the interpretation of the act of designating a Protecting Power, as far as the status of the Parties and the territory was concerned, States would in actual cases refrain from designating a Protecting Power. In the same way, the fact that diplomatic relations had not been broken off had in some cases served as an excuse for not having recourse to the Protecting Power.

6. In view of those unfavourable factors, which in practice were inevitable, his delegation was not opposed to the inclusion of those paragraphs in Article 5, but it thought that some amendments might be made to the present text of paragraphs 4 and 5. As far as paragraph 4 was concerned, his delegation favoured the amendment submitted by the Arab countries (CDDH/I/75), since it made the provision much more clear. The text of paragraph 5 in amendment CDDH/I/67 and Add. 1 would also be entirely acceptable to his delegation, since it made the ICRC text of paragraph 5 clearer.

7. Mr. CUTTS (Australia) said that it was generally agreed that the system of Protecting Powers and substitutes was of the utmost importance for the operation of international humanitarian law in armed conflicts. It was also generally agreed that it was particularly important to set up effective machinery in draft Protocol I now under consideration because that devised in 1949 had proved ineffective. For one reason or another, States which had been engaged in armed conflict since that time had not chosen to appoint Protecting Powers.
8. For that reason, many delegations had urged that the appointment of a Protecting Power or a substitute should be automatic or compulsory in all cases of armed conflict, while others had urged that nothing should be done which might infringe the sovereignty of the States concerned and that a Protecting Power or substitute should be appointed only with the agreement of such States.

9. In his opinion, that apparent conflict seemed slightly unreal. It was true that the final sanction in the matter would be the sovereignty of the States concerned, which could not be forced to appoint a Protecting Power. On the other hand, international public opinion would not welcome a document which left to the belligerent parties the choice whether or not to invoke machinery to alleviate the sufferings of the victims of war. What was needed, therefore, was a text which would place the maximum pressure upon belligerent States to accept a machinery of Protecting Powers which would not in any way infringe their national sovereignty. That, he thought, was precisely what the ICRC had had in mind when it had devised its original draft of Article 5, which had clearly been designed to provide the maximum range of alternative methods of bringing the Protecting Power apparatus into operation and to bring maximum pressure to bear on the States concerned to make use of that machinery.

10. From that point of view, Article 5, paragraph 1, provided for the Parties to a conflict to act of their own volition in appointing Protecting Powers. If they failed to do so, the ICRC was empowered, under paragraph 2, to take steps to persuade the Parties to take such action. If that procedure still failed to produce results, paragraph 3 provided that the ICRC itself was empowered to act as a substitute or at least to offer to do so.

11. The two alternative texts provided by the ICRC for paragraph 3 were not far apart, since neither was intended to provide for the automatic or compulsory appointment of the ICRC as a substitute for a Protecting Power. His delegation preferred Proposal II, not because it made it more obligatory for the party concerned to accept the offer of the ICRC but because it appeared to do so. For those seeking the automatic application of the "substitute" provisions, which had been described as "automaticity", the ICRC text was really the best which could be hoped for, although some devices for tightening up the procedure had been proposed in some amendments. In answer to those who wished to emphasize the principle of State sovereignty, he said that world public opinion would not thank the Conference if it failed to make an effort to take the application of international humanitarian law a step further than it now stood.

12. Among the devices which had been suggested to strengthen the ICRC text, he agreed with the statement of the representative of Mongolia at the eighteenth meeting (CDDH/I/SR.18) that a rule calling for the expiry of a deadline might appear to weaken its application. Further consideration should also be given to the proposal made by the representative of Canada at the seventeenth meeting (CDDH/I/SR.17).

13. With regard to paragraph 4, his delegation could accept the ICRC formulation but would give careful consideration to the amendments which had been proposed to it.

14. Concerning paragraph 5, he was inclined to agree with the Swiss representative's statement at the eighteenth meeting (CDDH/I/SR.18) that such a provision was hardly necessary. In his view, the Protecting Power machinery was an alternative which would come into effect when diplomatic relations were broken off. It was difficult for him to envisage a situation in which the
maintenance of diplomatic relations could constitute an obstacle to the appointment of a Protecting Power in a situation which called for such an appointment. Like the Swiss delegation, however, his delegation would not object to that formulation if it was desired by the majority of the Conference.

15. Lastly, with regard to paragraph 6, his delegation had proposed an amendment (CDDH/I/51). Although that amendment was not of such a nature as to involve the sovereignty of States, he hoped that it would receive the consideration of the Drafting Committee. The use of the term "implies", at least in the English text, did not seem appropriate. In his opinion, it would be more direct and more accurate to say that mention of a Protecting Power included the substitute.

16. Mr. SOOD (India) said that his delegation had proposed the insertion of the words "or the entrusting of the protection of the party's interests and those of its nationals to a third State" in paragraph 5 (CDDH/I/68) because it felt that, once the conflict had started, the presence or absence of diplomatic relations should not prejudice the appointment of a "substitute" under Article 2, sub-paragraph (e). His delegation considered that the duties of a Protecting Power or substitute under Articles 5 and 2, sub-paragraph (e), were different in nature and scope from those of a third party entrusted with the protection of the interests of Parties to the conflict.

17. Miss GUEVARA ACHAVAL (Argentina) said that her delegation found it difficult to accept the present wording of Article 5, paragraph 4, because of its colonialist implications. It should be borne in mind that at the present time situations existed in occupied territories which were forever being called in question by third States, and that the approval of paragraph 4 might be interpreted as the acceptance of such illegal occupation.

18. Her delegation would therefore support amendments CDDH/I/52 and CDDH/I/77, which were designed to overcome that difficulty by deleting the phrase "or that of the territories over which they exercise authority".

19. Mr. KNITEL (Austria), introducing the amendment submitted by his delegation and others (CDDH/I/80 and Add. 1), explained that the amendment, which was designed to harmonise the new law as embodied in the draft Protocols and the existing law as embodied in the four Geneva Conventions of 1949, was influenced by the last paragraph of Article 10 common to the first three Conventions (Article 11 of the fourth Convention) which spoke of substitute organizations - in the plural - and not of one single organization.

20. In addition, his delegation would be able to support paragraph 5 as proposed in amendment CDDH/I/67 and Add. 1 if the words "and under the Conventions" were added at the end of that paragraph - his delegation would submit an amendment to that effect.

21. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that his delegation had been glad to co-sponsor amendment CDDH/I/52, since in the year 1975 most colonialist regimes had already collapsed and progress was being made towards the elimination of those which remained.

22. Mr. KARASSIMEONOV (Bulgaria) said that his delegation could not accept the words "the territories over which they exercise authority" in paragraph 4, since that phrase was obviously contrary to the spirit of the times, to current international law and to all the decisions taken by the United Nations. His
delegation therefore fully supported amendment CDDH/I/52, and also amendment CDDH/I/75.

Q. PROPOSED AMENDMENT:

CDDH/I/205
11 February 1975

United States

AMENDMENT TO ARTICLE 5, PARAGRAPH 3

Withdraws CDDH/I/64, 19 March 1974, and substitutes the following:

(a) Delete Proposals I and II and substitute the following:

"3. If, despite the foregoing, a Protecting Power is not appointed within 30 days of the time when one Party has first proposed the appointment of a Protecting Power, the International Committee of the Red Cross shall offer its good offices with a view to the designation of a substitute within the meaning of Article 2(e) acceptable to both Parties to the conflict. For that purpose, it may, inter alia, ask each Party to provide it with a list of at least three impartial humanitarian organizations, with the necessary capacity, which they consider acceptable in that respect; the International Committee of the Red Cross may be listed by a Party to the conflict; these lists shall be communicated to the ICRC within 10 days; the International Committee of the Red Cross shall compare them and seek the agreement of any proposed substitute named on both lists."

(b) Add new paragraph 3 bis:

"3 bis. If, despite the foregoing, a Protecting Power is not appointed within 60 days of the time when one Party has first proposed the appointment of a Protecting Power, the Parties to the conflict shall accept the offer made by the International Committee of the Red Cross, if it deems it necessary, to act as a substitute within the meaning of Article 2(e)."

(c) Add new final paragraph:

"The procedures provided in the foregoing paragraphs are without prejudice to and constitute no obstacle to the humanitarian activities which the ICRC or any other impartial humanitarian organization may, subject to the consent of the parties to the conflict concerned, undertake for the protection of wounded, sick, and ship-wrecked persons, medical personnel and chaplains, prisoners of war and civilian persons and for their relief, in accordance with Article 9 common to the Convention (Article 10, Fourth Convention)."


Article 2 (Definitions)

Article 2, sub-paragraph (d). The Working Group adopted this sub-paragraph at its nineteenth meeting:
"'Protecting Power' means 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 adversary Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol."

Article 2, sub-paragraph (e). The Working Group adopted this sub-paragraph at its thirteenth meeting:

"'Substitute' means an organization acting in place of a Protecting Power in accordance with Article 5."


Article 5 (Appointment of Protecting Powers and of their substitute)

After lengthy negotiations (more than ten meetings), a very large number of delegations expressed themselves in favour of the text of Article 5 which had been evolved mainly as a result of a compromise achieved within the Working Sub-Group. Fifteen other delegations, however, submitted a text proposing a new paragraph 4 bis, and some delegations accepted this subject to a few changes. Other delegations, on the other hand, stated that if that paragraph was approved, it would jeopardize the hard-won compromise reached on Article 5. The Working Group therefore decided to refer the text of the additional paragraph to the Committee and to recommend that it should vote on the matter before even discussing the remainder of Article 5.

Text of 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."

Text of Article 5 adopted by the Working Group:

Paragraph 1

"It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and the present Protocol by the application of the system of Protecting Powers, including inter alia their designation and acceptance, in accordance with the following paragraphs. Such Powers shall have the duty of safeguarding the interests of the Parties to the conflict."

(The German Democratic Republic and the Democratic Republic of Viet-Nam expressly reserved their position with regard to this paragraph.)

Paragraph 2

"From the beginning of a situation referred to in Article 1 of the present Protocol, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and the present Protocol and shall without delay and for the same purpose permit the activities of a
Paragraph 3

"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."

(Several delegations expressed reservations regarding the phrase "without prejudice to the right of any other impartial humanitarian organization to do likewise". The delegation of Switzerland proposed that the passage in question should read: "... the International Committee of the Red Cross or, failing that Committee, some other impartial humanitarian organization shall offer ...". The delegation of Spain proposed the deletion of the passage in question and the following amendment: "... 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, without prejudice to the action that might be undertaken by other impartial humanitarian organizations.")

Paragraph 4

"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."

Paragraph 5

"[In accordance with Article 4,] the designation and acceptance of Protecting Powers for the sole purpose of applying the Conventions and the present Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory."

Paragraph 6

"The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State according to the Vienna Convention on Diplomatic Relations does not constitute an obstacle to the appointment of Protecting Powers for the sole purpose of applying the Conventions and the present Protocol."
Paragraph 7

"Whenever hereafter in the present Protocol mention is made of a Protecting Power, such mention also includes any substitute."

T. MEETING OF COMMITTEE I, 13 March 1975 (CDDH/I/SP.26):

3. The CHAIRMAN announced that Working Group A had adopted its report on the first part of draft Protocol I (CDDH/I/235 and Corr. 1), which was now before the Committee. Since the Working Group had consisted of a large part of the Committee itself, it would probably not be necessary to repeat all the arguments already put forward in the Group. He therefore suggested that, instead of reopening the discussion on all the proposals, delegations should have an opportunity of expressing their views when explaining their vote. All views would be recorded in the summary records.

It was so agreed.

4. The CHAIRMAN suggested that, since Article 2, sub-paragraphs (d) and (e), and Article 3 had already been agreed by consensus in the Working Group, no formal vote was needed on those articles.

Article 2, sub-paragraphs (d) and (e) were adopted by consensus.

Article 5 - Appointment of Protecting Powers and of their substitute

Paragraph 4 bis

22. Mr. HERNANDEZ (Uruguay) said that the four Geneva Conventions of 1949 and Protocol I would have to be applied by all those who might be involved in armed conflicts. He accordingly thought it advisable that a few words should be inserted in paragraph 4 bis to make it clear that the "investigation and reporting of violations" referred specifically to the Conventions and the Protocols.

23. Mr. ABI-SAAB (Arab Republic of Egypt), supported by Mr. EL-MISBAH EL SADIG (Sudan), requested that consideration of Article 5, paragraph 4 bis, be postponed till the next meeting of the Committee.

It was so agreed.

U. MEETING OF COMMITTEE I, 14 March 1975 (CDDH/I/SR.27):

1. The CHAIRMAN suggested that, in accordance with the wishes of Working Group A (CDDH/I/235/Rev. 1), the text proposed for a paragraph 4 bis of Article 5 should be discussed and that the normal procedure should be followed for the other paragraphs.

It was so agreed.

2. Mr. de ICAZA (Mexico), Chairman of Working Group A, replying to a question by Mr. GRAEFRAITH (German Democratic Republic), said that when paragraph 4 bis had been discussed in the Working Group, a number of questions had been left in abeyance and the representatives of the United Nations Secretary-General and the ICRC had not yet replied to those questions.
Paragraph 4 bis

4. Mr. OFSTAD (Norway) said that his delegation supported the paragraph 4 bis proposed in the report of Working Group A (CDDH/1/235/Rev. 1). That paragraph was necessary in order to ensure that the victims of conflicts would have the assistance of a Protecting Power in as many situations as possible.

5. The main purpose of the text was to give the United Nations a locus standi in the designation of Protecting Powers. It did not create any new rights or obligations for the United Nations and thus did not in any way run counter to the provisions of the Charter. It left the United Nations free to act or not to act. Moreover, even if that text was not adopted, the United Nations could still offer to act as a Protecting Power under Article 5, paragraph 4, proposed by the Working Group. Furthermore, the United Nations Security Council could appoint Protecting Powers in cases affecting international peace and security. In such cases, its decision would be binding in accordance with Article 25 of the United Nations Charter.

6. The functions assigned to the United Nations under paragraph 4 bis were limited to the designation of a body to act as a Protecting Power. The United Nations could obviously choose a United Nations body which offered all guarantees of impartiality and effectiveness, such as the Office of the United Nations High Commissioner for Refugees, but it could also designate an outside body such as the ICRC or the World Council of Churches.

7. Although the Committee was not competent to discuss the creation of special United Nations bodies responsible for the implementation of the Geneva Conventions of 1949, the position taken by the United Nations Secretary-General on that matter, as recorded in his report entitled "Respect for Human Rights in Armed Conflicts" (United Nations document A/8052, paras. 246 and 249) should be borne in mind.

8. His delegation was prepared to accept the following amendments to the proposed text, provided that they were generally acceptable: first, the text might become Article 5 bis instead of a paragraph of Article 5; second, the words "including the investigation and reporting of violations" might be deleted; third, the word "assumed" might be replaced by the word "arranged", in order to avoid what some participants had called a subjective element. Lastly, the words "which offers all guarantees of impartiality and efficacy" might be inserted after the word "body".

9. Mr. CACERES (Mexico) said that his delegation would like to associate itself with the sponsors of the text proposed for paragraph 4 bis.

10. Mr. BETTAUER (United States of America) said that his delegation understood the motives which had inspired the authors of paragraph 4 bis. No country was more concerned than his own to improve the Protecting Powers system. His delegation was, however, compelled to oppose paragraph 4 bis.

11. The text proposed by Working Group A for Article 5 was the result of a difficult compromise which was not fully satisfactory to anyone, but which was none the less a positive step. His delegation was ready to defend it and to oppose any amendment which would have the effect of destroying that compromise and preventing draft Protocol I from achieving the widest possible adherence without reservations.
12. Moreover, as far as the substance of the text was concerned, the functions of a Protecting Power or substitute must be impartial in every aspect; to involve the United Nations in the process would be to introduce many political factors in the appointment of the substitute and in its performance of its functions.

13. The United Nations certainly had an important role to play in the promotion of human rights, but history had shown that that role was heavily political. In Working Group A, the representative of the United Nations Secretary-General had expressed doubts about the legal capacity of the United Nations, under the Charter, to carry out the role that would be assigned to it under paragraph 4 bis.

14. Mr. EL-FATTAL (Syrian Arab Republic) said that draft paragraph 4 bis reflected a strong trend of opinion which had first become apparent at the Diplomatic Conference of 1949. In its Resolution 2, that Conference had recommended that "... consideration be given as soon as possible to the advisability of setting up an international body, the functions of which shall be, in the absence of a Protecting Power, to fulfil the duties performed by the Protecting Powers". The United Nations Secretary-General had reflected that trend in paragraph 246 of his report (A/8052). It was not therefore true to say that paragraph 4 bis ran counter to the United Nations Charter or that it introduced an innovation. It was in perfect harmony with the Purposes and Principles of the United Nations Charter, from both the humanitarian and the security point of view. It was designed solely to establish an organic link between the Geneva Conventions of 1949 and the two draft Protocols, on the one hand, and the Articles of the Charter relating to the protection of human rights, on the other. To oppose it was to show a lack of confidence in the United Nations.

15. In conclusion, he pointed out that very few developing countries were represented in Working Group A.

16. Mr. CRISTESCU (Romania) said that the United Nations had always attached particular importance to the development of humanitarian law applicable in armed conflicts, as could be seen from the various resolutions adopted by the General Assembly since the International Conference on Human Rights held at Teheran in 1968.

17. His delegation thought that the United Nations could play a part in the designation of Protecting Powers, with the consent of the Party concerned, and that was why it had submitted its amendment (CDDH/I/18) to Article 5. It therefore endorsed the motives which had prompted the proposal in paragraph 4 bis, as also the comments of the Norwegian representative, but it stressed that the powers of the United Nations could not extend beyond those expressly assigned to it in the paragraph under consideration.

18. Mr. PICTET (Switzerland) said that his delegation appreciated the intentions of the authors of paragraph 4 bis, the more so since, like them, it thought that the Parties to a conflict should not be able to oppose the appointment of Protecting Powers or a substitute indefinitely. The lengthy discussions in the Working Group had, however, confirmed the fact that most delegations were still opposed to a more coercive system.

19. Furthermore, his delegation did not think that paragraph 4 bis in its present form would really strengthen the machinery provided for in Article 5. On the contrary, the adoption of that paragraph might upset the balance of
Article 5; that article was the outcome of difficult negotiations and his delegation, for its part, wholeheartedly endorsed it. His delegation was therefore unable to support paragraph 4 bis.

20. Mr. de BREUCKER (Belgium) paid a tribute to the authors of paragraph 4 bis, which bore witness to their anxiety to ensure a strict control, which the Parties would be unable to avoid, of the application of the Conventions. The absence of a Protecting Power or a substitute in a large number of conflicts had undoubtedly prompted the proposed text.

21. Paragraph 4 bis simply gave the United Nations the right to designate a body to undertake the functions of Protecting Power, without specifying what authority that body would exercise with respect to the Parties to the conflict.

22. If it was to be a body acting as a substitute, designated and accepted by the Parties to the conflict, it must be acknowledged that the designation of such a humanitarian and impartial body belonging to the United Nations family was already possible under the existing law (first paragraph of Article 10 of the first and second Geneva Conventions of 1949).

23. If it was to be a body which the United Nations was empowered to impose on the Parties - and that was the course advocated by the Norwegian delegation - the proposal could not be envisaged in the framework of the system which the Conference was developing. The system of Protecting Powers was based on a tripartite agreement: consent of the candidate Power, designation by one Party to the conflict, and acceptance by the other. According to paragraph 4 bis, the substitute would be imposed on the requesting Power in the same way as on the adverse Party and the constraint on both Parties would be established on behalf of an unspecified body which the Protocol would give the United Nations the right to designate. That would be sufficient to upset the balance of Article 5.

24. According to the views expressed by the observer for the United Nations in Working Group A, it was the duty of States to respect the Conventions above all and to set up control machinery in conformity with them. If the United Nations was to consider setting up a body superimposed on States in order to apply humanitarian law in a spirit of complete neutrality and impartiality, or if it considered itself able to entrust that task to an external body - as had indeed been suggested - it would have to be considered whether such a decision was in conformity with the Purposes and Principles of the United Nations Charter, and the Conference would not be competent to do so.

25. Moreover, the division of competence between the body designated by the United Nations and the Protecting Power, supposing that all or part of the functions of the Protecting Power had not been discharged, would raise extremely complex problems because of the parallel actions of one body that had been accepted and one that had been imposed. Such problems would be so complex that States might perhaps be discouraged from assuming the duties of Protecting Power.

26. His delegation was therefore unable to support Article 5, paragraph 4 bis within the Conference. Its attitude did not reflect in any way on the merit, which his country recognized, of the action of the United Nations in the matter of human rights, which was reflected in the establishment of appropriate instruments of great value ever since the adoption of the Universal Declaration of Human Rights. The United Nations was also active in the many bodies connected with it whose task it was to develop and to encourage respect for human rights and fundamental freedoms. The United Nations could and should continue.
its action in the field of human rights, since conflicts still broke out in the world, and, through the appropriate channels, it should call upon the Parties to such conflicts to respect the Geneva Conventions of 1949 and, when it was a case of applying Article 3 common to those Conventions, to extend the unduly narrow field of application of that article by making a wide use of the other provisions adopted in 1949.

27. Mr. EL ARABY (Arab Republic of Egypt) thanked the Mexican delegation for joining the authors of paragraph 4 bis.

28. He wholeheartedly endorsed the remarks of the representatives of Norway and of the Syrian Arab Republic. Referring to the statement made by the representative of the United Nations Secretary-General in Working Group A, he pointed out that the General Assembly had frequently advocated an improvement of the system of Protecting Powers; that was the reason for the proposal in paragraph 4 bis. He pointed out to the delegations which found it difficult to support that paragraph as it stood that the authors had asked in vain for proposals for its amendment. The Arab Republic of Egypt, as a sovereign State, was aware of the importance of the principle of consent but considered that it should be abandoned in the case dealt with in paragraph 4 bis.

29. Mr. BONDIOLI-OSIO (Italy) said that, in the opinion of his delegation, paragraph 4 bis should be considered in the light of the efforts already made to reach agreement on the text of Article 5.

30. Paragraph 4 bis introduced an additional constraint on the Parties to the conflict. Through the United Nations, a sort of court of appeal would be set up to supervise the way in which the Protecting Power performed its functions, and that might discourage the Government designated as Protecting Power from accepting that responsibility. Moreover, the fact that the competent authority, whether the United Nations General Assembly, Security Council or Secretary-General, was not specified could lead to difficulties of interpretation, as had been pointed out by the representative of the Secretary-General himself.

31. The Italian delegation realized, of course, that the authors of paragraph 4 bis had wished to ensure that the Protecting Power would be able, at all times, to discharge its functions to the fullest extent, in itself a most desirable thing; nevertheless, it was sometimes better to leave well alone, and his delegation was afraid that the adoption of draft paragraph 4 bis might upset the balance of Article 5, which provided for effective supervisory machinery while respecting the principle of the consent of the Parties to the conflict.

32. Mr. MIRILLO RUBIERA (Spain) said that his country had always given the most careful attention to the possibility of improving the Protecting Power system having regard both to the gaps in Article 10 of the Geneva Conventions of 1949 and to those cases where there was no Protecting Power or substitute. His delegation therefore fully understood the intentions of the authors of paragraph 4 bis and their desire to rectify an omission.

33. The text provided, however, for intervention by the United Nations for the purpose of designating a body to undertake the functions of a Protecting Power. Bearing in mind the competence of the United Nations in the sphere of human rights, the Spanish delegation wished to make certain comments on that point. First, the United Nations could always be asked to designate a body under the provisions of the first paragraph of Article 10 of the Conventions,
while respecting the three-sided agreement upon which it was intended that the system of the Protecting Power should be based; secondly, it should not be forgotten that, by providing that the United Nations should fill any gap that might occur, it was being proposed that the objective should be attained outside the framework of the Geneva Conventions and of the Protecting Power system; lastly, the United Nations, owing to its essentially political character, would introduce a disturbing element into the delicate machinery which Working Group A had endeavoured to set up in Article 5.

34. For those reasons, his delegation was not prepared to support paragraph 4 bis.

35. Mrs. CHEVALLIER (Holy See) said she agreed with those representatives who had expressed doubts as to the precise scope of paragraph 4 bis.

36. In principle, her delegation was prepared to consider favourably any proposal that would ensure that a Protecting Power or substitute was appointed as quickly as possible and that it would be able to carry out its functions normally in the event of a conflict. But she was concerned about the precise implications of the texts drafted by Working Group A, and she therefore wished to put two questions to the authors of paragraph 4 bis.

37. The first was, what would be the status, and more particularly the legal status, of the body to be designated by the United Nations under paragraph 4 bis? Reference had been made in a previous statement to the guarantees which such a body should offer, and she wished to know on what basis those guarantees would be assessed.

38. Secondly, over and above all the difficulties of a technical nature already referred to, would the designation by the United Nations of the body in question carry with it any coercive element?

39. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said he understood the objectives of the authors of paragraph 4 bis, the effect of which was to strengthen the machinery for appointing Protecting Powers and their substitutes. However, the paragraph also dealt with a special situation, namely one in which all or part of the functions of the Protecting Power, including the investigation and reporting of violations, might not have been carried out. But it was not possible to use a special situation as a basis for rules of humanitarian law that would constitute a principle governing the designation of the Protecting Power. Moreover, he had already emphasized that it was indispensable that the agreement of the Parties should be obtained in designating a body responsible for discharging the functions of the Protecting Power.

40. From the practical point of view, if the Protecting Powers or their substitute were designated without the agreement of the Parties, they would be unable to discharge their functions effectively.

41. From the legal point of view, it was surely inconceivable that the United Nations should be asked to designate a body to undertake the functions of the Protecting Power, when there was no mention of such a possibility in the 1949 Geneva Conventions. When one took into consideration the rather negative opinion expressed in Working Group A by the representative of the United Nations Secretary-General, paragraph 4 bis left a feeling of uncertainty and its adoption would lead to serious difficulties.
42. It would also be necessary to know which organ of the United Nations would designate the Protecting Power. Article 5 drafted by Working Group A provided for a tripartite arrangement for designating Protecting Powers and their substitute.

43. His delegation would vote against paragraph 4 bis.

44. Mr. FACK (Netherlands) said he felt bound to state that his delegation had doubts about paragraph 4 bis.

45. His country had always observed the provisions of the United Nations Charter, but it had to be remembered that the United Nations was concerned with the maintenance of world peace and security and that its aims were primarily political. The ICRC, on the other hand, was essentially an apolitical and humanitarian body.

46. The United Nations comprised four political organs, one legal organ and one administrative organ. He wondered which would be the body to be designated under paragraph 4 bis: the text and the commentaries were not very clear.

47. If it was a political organ, humanitarian protection would be subject to political judgment, and that was contrary to the aims of humanitarian law. In that connexion, the Committee should bear in mind the doubts expressed by the representative of the United Nations Secretary-General. There were of course certain bodies such as the Office of the United Nations High Commissioner for Refugees whose activities were of a humanitarian nature, but were nevertheless very limited in scope.

48. It was not certain whether the victims of armed conflicts would derive any benefit if the paragraph were adopted. In his view, the Article 5 drafted by Working Group A represented a balanced compromise which the Committee ought to adopt as it stood. Consequently, he would vote against paragraph 4 bis.

49. Mr. CUTTS (Australia) said that his delegation could not accept paragraph 4 bis. At the end it was stated that "the United Nations may designate a body to undertake these functions", but no reference was made to the consent of the Parties. The Parties to the conflict were thus under constraint where the designation of the Protecting Power was concerned.

50. There had been some differences of opinion in the Working Group over the designation and acceptance of the Protecting Power; then, after lengthy negotiations, the Group had reached a compromise on the machinery for the designation of a Protecting Power and the acceptance of the good offices of the ICRC with a view to the designation of a Protecting Power and, failing that, assumption of the functions of a substitute.

51. If paragraph 4 bis were adopted, the basic compromise would be jeopardized, for the paragraph stressed the element of constraint whereas Article 5 was concerned rather with the maintenance of State sovereignty.

52. If paragraph 4 bis were adopted, his delegation would have to reconsider its position with regard to Article 5 as a whole. The new provision contributed nothing to humanitarian law, and created a dangerous precedent. His views in that respect were the same as those of the Netherlands representative.
53. Mr. GRAEFARTH (German Democratic Republic) said he had already had occasion to explain his delegation's position in Working Group A. He appreciated the ideas of the authors of paragraph 4 bis and shared their desire to ensure implementation of the Conventions and draft Protocol I with a view to protecting the victims of armed conflicts, which still took place despite the general prohibition of the use of force against the territorial integrity or political independence of a State.

54. His delegation fully understood why certain States had insisted that violations of the Conventions and draft Protocol I should be the subject of investigations and reports, as laid down in paragraph 4 bis. The United Nations or some of its specialized agencies had, in certain well-known cases, investigated and reported on violations of human rights, the Geneva Conventions and especially of the fourth Geneva Convention of 1949. But, although he approved of the activities undertaken by those bodies, he did not feel that the United Nations or its specialized agencies should assume the functions of a Protecting Power or a substitute. A Protecting Power or a substitute could only exercise its functions with the consent of the Parties, as provided by the Geneva Conventions of 1949, and as the Committee had clearly reaffirmed when it unanimously adopted the definition given in Article 2, sub-paragraph (d), of draft Protocol I. The Committee had no power to alter that fundamental rule of the Conventions.

55. It would be dangerous to compel the Protecting Power or the substitute, to assume the functions of an authority called on to make investigations, or to link the humanitarian functions of the said Power to political issues in such a way that States would probably permit the body before which political and legal accusations of violations of the Protocol and Conventions were brought to determine whom a State must accept as Protecting Power or substitute.

56. He did not agree that the United Nations should be called upon to designate a body to undertake the functions of Protecting Power, without the consent of the Parties. He would therefore vote against paragraph 4 bis.

57. He expressed the hope that the authors of the paragraph would withdraw their proposal, for Working Group A had reached a carefully studied compromise on Article 5. Paragraph 4 bis - especially if corresponding reservations were not permitted - would not only make it impossible for certain delegations to adopt Article 5, but would challenge the acceptability of draft Protocol I as a whole. He still hoped that a vote on the paragraph could be avoided.

58. Mr. FREELAND (United Kingdom) said that, very reluctantly, he had come to the conclusion that his delegation must oppose the adoption of paragraph 4 bis. The object of Article 5 was to enhance the effectiveness in practice of the system for securing the operation of Protecting Powers. His delegation strongly supported that aim and would indeed have liked the compromise text to go further in the direction of ensuring that there were Protecting Powers or bodies to perform the function of Protecting Powers, in all situations of armed conflict to which Protocol I would apply. It seemed clear, however, that the proposal by Norway and certain Arab countries went too far, having regard to present international attitudes, for it introduced an element of constraint which other delegations found unacceptable. In Working Group A some delegations had taken as their point of departure a position of principle that the consent of the Parties was necessary in each case as a pre-condition for the functioning of Protecting Powers. From what they had said, there seemed a strong likelihood that, if paragraph 4 bis were to be adopted, that would call
in question the participation of those delegations in the Protocol. That result would not enhance the effectiveness of the system.

59. The Norwegian representative had indicated that paragraph 4 bis could become an Article 5 bis and therefore be accepted with reservations. But that outcome also would not enhance the effectiveness of the system.

60. The United Kingdom delegation would therefore vote against paragraph 4 bis, even if amended in accordance with the Norwegian proposal.

61. Mr. PARTSCH (Federal Republic of Germany) said that his delegation would have preferred Proposal II for Article 5, paragraph 3, of draft Protocol I. It had several objections to make regarding the automatic operation of paragraph 4 bis. As had been stated by the representative of the United Nations Secretary-General, that organization had special responsibilities in the field of peace and security. His delegation doubted whether those responsibilities were fully compatible with the functions envisaged in paragraph 4 bis. Under no circumstances should the United Nations system be mixed up with the existing machinery for safeguarding humanitarian law.

62. Miss MANEVA (Bulgaria) subscribed to the reservations formulated by the previous speakers. The text of paragraph 4 bis was imprecise and would give rise to difficulties. It ran counter to the principle of securing the consent of the Parties to the conflict for designation and acceptance of the Protecting Power.

63. She joined the representative of the German Democratic Republic in hoping that a vote on paragraph 4 bis could be avoided. If it could not, she would vote against the paragraph.

64. Mr. ABDUL-MALIK (Nigeria) said he considered that the six paragraphs of Article 5 proposed by the United States delegation and approved by Working Group A were an improvement on the ICRC text. They were also a compromise, but there were still some gaps. Paragraph 4 bis sought to fill those gaps. On numerous occasions, from Resolution 2 of the 1949 Diplomatic Conference to the latest statement by the representative of the United Nations Secretary-General, appeals had been made for the creation of standing machinery for the designation of Protecting Powers, but nothing concrete had been done; for that reason, the initiative of Norway and certain Arab countries was a happy one. It had his full support. Nevertheless, certain editorial changes should be made to the text to make it more consonant with the law of the United Nations and the Geneva regime.

65. The time had come to create a body of last resort; since paragraph 4 bis was a step in that direction, his delegation could, under the exceptional circumstances, accept its automatic operation, which would, however, be unacceptable in another context. All things considered, and despite its misgivings about other aspects of the text, his delegation could accept paragraph 4 bis.

66. Mr. TORRES AVALOS (Argentina) said that his delegation had studied paragraph 4 bis with interest. It had listened carefully to the statement made by the representative of the United Nations Secretary-General in Working Group A. It still had doubts, however, about the legal aspects.
67. He wondered whether the text of paragraph 4 bis was in conformity with the provisions of the United Nations Charter, and whether it could really be adopted. For that reason, although rather attracted by the underlying philosophy of the draft, his delegation would abstain in the vote.

68. The CHAIRMAN said he understood the Norwegian representative wished paragraph 4 bis (CDDH/I/235/Rev. 1) to be put to the vote. In view, however, of the appeal by two delegations, he asked the Norwegian representative whether he maintained his proposal.

69. Mr. LONGVA (Norway) said he did not withdraw the proposal.

70. The CHAIRMAN put paragraph 4 bis to the vote.

Paragraph 4 bis was rejected by 32 votes to 27, with 16 abstentions.

71. Mr. PICTET (International Committee of the Red Cross) said that while the ICRC was pleased to place the technical skill of its experts at the Diplomatic Conference's disposal, it did not consider that it should take a stand on provisions which mainly concerned Governments. It was for them alone to decide on the commitments they wished to undertake. That was the reason for the ICRC's frequent reticence during the Conference. In Article 5, at present under discussion, however, special functions of great importance were envisaged for the ICRC, and it would therefore be useful for delegations to know its views on the subject.

72. The ICRC had taken note of the Article 5 submitted to the Committee, and it welcomed the fact that the delegations participating in the discussions of Working Group A had attached prime importance to the strengthening of the Protecting Power system and had considered Article 5 to be a key provision.

73. No one, he thought, would be surprised or upset if he said that the ICRC had not found a perfect wording. It would perhaps still be possible to make certain adjustments of form at a later stage. In Article 5, paragraph 3, for instance, the ICRC was placed on a footing of competition with other bodies, not specified, and that might lead to practical difficulties. Without asking for a monopoly, which it had never contemplated, the ICRC would have liked a more definite priority to be established in its favour.

74. In paragraph 4, the wording was also unsatisfactory; there were repetitions and vague terms.

75. Everyone realized, of course, that the texts in question were the outcome of patient work and a real effort to achieve conciliation within Working Group A. The ICRC had therefore asked him, as its Vice-President, to inform the Committee that it was able, on the whole, to undertake the tasks assigned to it even if complex conditions were attached to them. He would like, however, in connexion with that agreement in principle, to make two comments on paragraph 4 for inclusion in the summary record.

76. The ICRC had been gratified by the confidence that had once again been placed in it. As it had often had occasion to say, it had never dreamt of acting as substitute for the Protecting Powers without the consent of the Parties to the conflict.

188
77. Paragraph 4 was concerned only with the role of substitute which the ICRC might be called upon to play. That role was therefore quite distinct from, and could in no way affect, the ICRC's main role under the Geneva Conventions. The Conventions expressly assigned many tasks to the ICRC, and they recognized, in Article 9 common to the Geneva Conventions of 1949 (Article 10 of the fourth Convention) that the ICRC had a general right of initiative in respect of the activities it might have to undertake on behalf of the victims of armed conflicts, with the agreement of the Parties concerned. The new provision could in no way restrict, therefore, the ICRC's traditional role.

78. The ICRC would like a similar provision to Article 9 to be included in the Protocols, in a place to be decided upon, not necessarily in Article 5.

79. His second comment concerned the procedure provided for in paragraph 4 for a possible offer by the ICRC, after undertaking consultations, to assume the task of substitute for the Protecting Powers. If, however, there had to be such consultations, without publicity of course, the ICRC could obviously not keep the result secret. It would have to say in the end whether its collaboration was accepted or not.

80. He hoped that the discussions would give rise to conclusions so that the control system, based mainly on the Protecting Powers, could function harmoniously without its even being necessary to resort to a substitute.

81. He thanked the representatives of Governments for the trust they continued to place in the ICRC, for without that trust the ICRC could not successfully discharge the functions of which it would, he believed, prove worthy.

82. The CHAIRMAN suggested that a vote should be taken on paragraphs 1 to 7 of draft Protocol I, Article 5.

83. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) pointed out that the present wording of Article 5, paragraphs 1 to 7, was the result of long and strenuous efforts and he urged delegations to accept the text as submitted.

84. The CHAIRMAN asked that members of the Committee should confine themselves to explanations of votes.

85. Mr. de ICAZA (Mexico), Rapporteur, who had acted as Chairman of Working Group A, said that the Drafting Committee must decide whether the word "parties" should be written with a capital or a small letter.

86. Mr. CRISTESCU (Romania) asked that a separate vote should be taken on paragraph 1.

It was so agreed.

87. Mr. CRISTESCU (Romania) said that Romania should be added to the delegations which had expressed reservations on paragraph 1.

Paragraph 1

Paragraph 1 was adopted by 72 votes to one, with 2 abstentions.
Paragraph 2

Paragraph 2 was adopted by consensus.

Paragraph 3

88. The CHAIRMAN observed that two delegations, those of Switzerland and Spain, had submitted amendment proposals.

89. Mr. PICTET (Switzerland) said that the purpose of his delegation's amendment was to stress the priority that should be given to the ICRC in the matter of good offices. He would not press for a vote to be taken on the proposal but would leave it to the Drafting Committee to find a solution.

90. Mr. MURILLO RUBIERA (Spain) said that his delegation maintained its amendment proposing priority for the ICRC. He suggested, moreover, that a separate vote should be taken on the last sentence of paragraph 3, beginning with the words, "For that purpose it may ...".

91. The CHAIRMAN suggested that a vote should first be taken on the Spanish amendment, then on the last sentence of paragraph 3 and finally on the paragraph as a whole.

It was so agreed.

The Spanish amendment was rejected by 13 votes to 20, with 37 abstentions.

The last sentence of paragraph 3 was adopted by 61 votes to none, with 4 abstentions.

Paragraph 3, as a whole, was adopted by 65 votes to none, with 3 abstentions.

Paragraph 4

92. Mr. EL ARABY (Arab Republic of Egypt) recalled that his delegation had pointed out to Working Group A the discrepancy between the text of paragraph 4 and that of paragraph 3 of Article 10 common to the 1949 Conventions. In fact, the latter had rightly been interpreted as containing a compulsory element. On behalf of the co-sponsors of amendment CDDH/1/75, he wished to submit an amendment to Article 5, paragraph 4.

93. Mr. GRAEFRATH (German Democratic Republic), speaking on a point of order, pointed out that under rule 38 of the rules of procedure, amendments to texts being voted upon could not be submitted orally after the vote had begun.

94. Mr. EL ARABY (Arab Republic of Egypt), supported by Mr. EL-FATTAL (Syrian Arab Republic) and Mr. EL-MISBAH EL SADIG (Sudan), proposed that voting be postponed on paragraph 4, for unless the new amendment to Article 5, paragraph 4, proposed by the co-sponsors of paragraph 4 bis was considered, they would have no alternative but to ask for a vote on amendment CDDH/1/75.

95. The CHAIRMAN, supported by Mr. BETTAUER (United States of America), Mr. CUTTS (Australia), Mr. BOBYLEV (Union of Soviet Socialist Republics) and Mr. PACK (Netherlands) requested that the voting should continue.
96. Mr. FACK (Netherlands) said that a proposal which could not be con-
sidered by the Committee could be submitted to a plenary meeting of the Confer-
ence.

97. Mr. TARCICI (Yemen) proposed that the meeting be suspended.

98. The CHAIRMAN put to the vote the proposal to suspend the meeting.

That proposal was rejected by 32 votes to 21, with 4 abstentions.

Paragraph 4 was adopted by 53 votes to 10, with 8 abstentions.

Paragraph 5

99. The CHAIRMAN put to the vote the deletion of the words in square brackets - "In accordance with Article 4" - in the text of that paragraph.

100. In support of the submission of Mr. EL ARABY (Arab Republic of Egypt) that the vote should be on the deletion of the brackets in question, Mr. ABI-SAA (Arab Republic of Egypt) pointed out that at the time of the adop-
tion of that paragraph in the Working Group, two versions of Article 4 had been
referred to the Committee from which to choose; one of those would have rendered superfluous the reference in Article 5, paragraph 4 to Article 4, hence the
brackets. But, as that version had not been adopted by the Committee, the
reference was logically valid and the vote should be on the deletion of the
brackets and not on the reference within them.

101. The CHAIRMAN asked representatives if they accepted paragraph 5 in
that form.

Paragraph 5 was adopted by consensus.

Paragraph 6

102. Mr. FREELAND (United Kingdom) said that, although he considered the
scope of the words "according to the Vienna Convention on Diplomatic Relations"
too restrictive, his delegation would vote for paragraph 6 on the understanding
that the Drafting Committee would be in a position to consider the replacement
of those words, for purposes of clarification, by a phrase such as "in accord-
dance with conventional or customary rules of international law relating to
diplomatic relations".

103. The CHAIRMAN, replying to Mr. EL-FATTAL (Syrian Arab Republic) and
Mr. SOOD (India), said that a question of drafting was involved.

Paragraph 6 was adopted by consensus.

Paragraph 7

Paragraph 7 was adopted by consensus.

Article 5 as a whole was adopted by consensus.
STATEMENT BY THE REPRESENTATIVE OF THE SOVEREIGN ORDER OF MALTA

104. Mr. DECAZES (Sovereign Order of Malta) said that during the Committee's deliberations that day, reference had been made to bodies which could, if necessary, act as substitute for the Protecting Power. In that connexion, he thought it would be a good moment to explain to delegations the very special and unique international status of the Sovereign Order of Malta and its activities.

105. The Sovereign Order of Malta was a subject of international public law with operational sovereignty, the right to appoint and receive envoys and the right to conclude treaties. It was one of the most long-standing subjects of international public law.

106. It had in fact enjoyed that status without interruption for centuries, and at the present time was diplomatically recognized by about forty Powers bound together by common humanitarian interests. Those countries were all represented at the present meeting, and he welcomed the occasion to thank them for the interest and support they constantly demonstrated.

107. The Order's traditional task was to assist the wounded victims of armed conflicts. It also provided aid to the victims of natural catastrophes. At the international level, it undertook, or participated in, organized works for refugees, emigrants, exiles, and the sick in general, particularly lepers and abandoned children.

108. In the exercise of its secular and humanitarian mission, the Order was inspired by the principles of total impartiality and neutrality. It offered assistance to all those who had need of it, without distinction of nationality, race, creed, status or location. It complied with the conventions in force in the context of international humanitarian law, including the Geneva Conventions.

109. For that purpose, it had forty ambassadors in Africa, Latin America, Asia, Europe and the Middle East, well equipped groups in many of the countries of those continents, and personalities who were members of the Order and qualified in the diplomatic, military, medical, legal and humanitarian fields.

110. Thus, as in the past, the Order had been able to intervene, rapidly and effectively, on the occasion of recent conflicts and natural catastrophes. It had, for example, been able to carry out the functions of substitute for the Protecting Power at the time of the Suez conflict of 1956.

V. ARTICLE ADOPTED BY COMMITTEE I (CDDH/I/268):

Article 2. Definitions

(d) 'Protecting Power' means 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 adversary Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol.

(e) 'Substitute' means an organization acting in place of a Protecting Power in accordance with Article 5.
W. ARTICLE ADOPTED BY COMMITTEE I (CDDH/I/271):

Article 5. Appointment of Protecting Powers and of their substitute

1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and the present Protocol by the application of the system of Protecting Powers, including inter alia their designation and acceptance, in accordance with the following paragraphs. Such Powers shall have the duty of safeguarding the interests of the Parties to the conflict.

2. From the beginning of a situation referred to in Article 1 of the present Protocol, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and the present Protocol and shall without delay and for the same purpose permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party.

3. 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.

4. 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.

5. In accordance with Article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and the present Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory.

6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State according to the Vienna Convention on Diplomatic Relations does not constitute an obstacle to the appointment of Protecting Powers for the purpose of applying the Conventions and the present Protocol.

7. Whenever hereafter in the present Protocol mention is made of a Protecting Power, such mention also includes any substitute.

193
X. MEETING OF COMMITTEE I, 17 March 1975 (CDDH/I/SR.28):

1. Mr. CRISTESCU (Romania) said that his delegation had voted against paragraph 1 of Article 5 of Protocol I, the provisions of which seemed to him to be an extension rather than a revision of Articles 8 and 9 of the Geneva Conventions of 1949. Article 5, paragraph 4, showed clearly that the procedure for the designation and the functioning of the substitute for the Protecting Powers was subject to the consent of the Parties to the conflict.

2. Mr. CARON (Canada) said that his delegation was convinced that Article 5, as adopted, strengthened the Protecting Power system, for it was clear, practical and progressive. In addition, it offered the advantage of having been adopted by consensus.

3. His delegation did not subscribe to the reservations expressed by some delegations with regard to the words "without prejudice to the right of any other impartial humanitarian organization to do likewise" since that expression merely stated a fact and in no way altered the obligation laid down in paragraph 3 or the priority given to the ICRC; moreover, the ICRC was the only body on which that paragraph imposed an obligation. As the Swiss representative had pointed out at the twenty-seventh (CDDH/I/SR.27) meeting of the Committee, Articles 9 and 10 common to the first three Conventions (Articles 10 and 11 of the fourth) remained fully valid.

4. Mr. ABI-Saab (Arab Republic of Egypt) said that his delegation had accepted Article 5, but had voted against its paragraph 4 since it considered that paragraph imperfect and dangerous. It was imperfect because it fell short of achieving the desired humanitarian objectives. Its basic defence was that it achieved consensus on a controversial issue which was subject to reservations in the Geneva Conventions of 1949. But that consensus was between East and West and did not rally the third world countries which had been very poorly represented in the discussions and, as shown by the vote on paragraph 4 bis, were dissatisfied with paragraph 4 which they considered insufficient to achieve the humanitarian purposes of the Conference. That was particularly unfortunate since it was in the third world that armed conflicts were taking place at present and were more probable in the future. The East and West were legislating on a subject in which third world countries were the most directly interested parties, without taking their views sufficiently into consideration.

5. Paragraph 4 was also dangerous. Indeed, Article 5, as adopted, dealt with two different aspects: first, the procedure of appointing the Protecting Powers; and in this respect its contribution (paragraph 3) was positive, though modest; and second, the substantive obligation for the Parties to accept a substitute and in that respect the present text was dangerous because being retrogressive in relation to the third paragraph of Article 10 common to the first three Geneva Conventions of 1949 (Article 11 of the fourth Convention), which imposed a much stronger obligation on the Parties than did Article 5, paragraph 4, the latter provision could be used retroactively to interpret the former in a restrictive manner, bringing it down to its own level.
6. It would therefore be a serious mistake to adopt that provision in plenary without specifying that it related exclusively to paragraph 1 of common Article 10, and that it had no incidence on paragraph 3 of that article.

7. He welcomed the statement by the ICRC representative at the twenty-seventh meeting (CDDH/I/SR.27) since it indicated a willingness on the part of the ICRC to play a more active role in the future than in the past. He also welcomed the declaration that the ICRC did not seek a monopoly in the humanitarian field, and expressed the hope that that organization would, in deed as well as in word, endeavour to join with other organs interested in the humanitarian field, in order to increase the possibilities open to the Parties to the conflict of finding an acceptable substitute. Such an attitude was particularly important now that paragraph 4, by specifically mentioning the ICRC, attributed to it a priority in negotiating with the Parties the possibilities of an acceptable offer from a suitable substitute.

8. Mr. AL-FALLOUJI (Iraq) said that his delegation had been surprised to hear some speakers refer to the United Nations as a political or basically political organization, while acknowledging the importance of its activities in connexion with human rights, and maintain that the United Nations had no competence in humanitarian matters. Such an attitude disregarded the spirit prevailing in the United Nations, and overlooked the fact that Article 1, paragraph 3, of its Charter stressed the need to solve problems of a humanitarian character. Moreover, the responsibility of the United Nations for the maintenance of peace was inseparable from the efforts made by the international community to alleviate the suffering caused by war. The United Nations itself had requested the Conference to consider the question of the protection of journalists engaged on dangerous missions in time of armed conflict, not because it judged itself unable to do so but because co-operation on that matter was essential.

9. His delegation thought that the texts of the draft Protocols should be adopted by consensus as far as possible, because in humanitarian law any article weakened by a vote was already doomed to ineffectiveness. Article 5, paragraph 4, had been rejected by a small majority with a large number of abstentions and with many representatives absent. That result did not absolve the Conference from its responsibility vis-a-vis the still unsettled problem of the defects in the Protecting Power system. It must be acknowledged, too, that the proposed text did not dispel the misgivings voiced about recourse to compulsory machinery. A consensus could and should still be sought and his delegation would do everything it could to co-operate with the other delegations to that end.

10. His delegation's vote should be interpreted as a mark of confidence in the mission and work of the United Nations, of the ICRC, and of every other international organization concerned with international humanitarian law. Yet his delegation thought it inconceivable that an attempt should be made to reaffirm and develop international humanitarian law without at the same time ensuring that the bodies responsible for applying it co-operated with each other and co-ordinated their activities.

11. Mr. LONGVA (Norway) said that if a formal vote had been taken on Article 5 his delegation would have abstained, since that article did not seem to provide an adequate solution to the vital problem of implementing the Geneva Conventions of 1949 and Protocol I. The new Article 5 should in no way be interpreted as limiting the applicability of Article 10 of the first three
Geneva Conventions of 1949 (Article 11 of the fourth Convention), since it merely developed the first paragraph of that article. If no Protecting Power were designated under those two provisions, the Parties to the conflict would have to assume their obligations under the subsequent paragraphs of Article 10 of the Geneva Conventions.

12. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam) said that although his delegation had accepted Article 5 as a whole, it had abstained in the vote on paragraph 1, since the words "duty" and "from the beginning of that conflict" in the first sentence seemed to indicate that the principle of ensuring respect for the Conventions by applying the Protecting Power system could take priority over the fundamental principle laid down in Article 1 common to the 1949 Geneva Conventions, which made it binding on the Parties "to respect and to ensure respect" for the Conventions "in all circumstances". Under Articles 8 and 9 common to the Geneva Conventions the Protecting Power had a purely supporting function in the application of the Conventions.

13. Mr. BLOEMBERGEN (Netherlands) said that, in Working Group A, his delegation had been ready to support any proposal which strengthened the Protecting Power system as defined in the 1949 Geneva Conventions. The attitude of his delegation was based on certain considerations. The first was that it would not be satisfied with a mere reaffirmation of the provisions of Articles 8, 9 and 10 of the Conventions but that it should rather strive to create further commitments for the Parties to the conflict, wherever circumstances permitted. The second consideration was that the designation and acceptance of Protecting Powers was a matter of extreme urgency. The victims of armed conflicts should benefit from the protection afforded by the Geneva Conventions and the Protocols as soon as possible after the outbreak of the conflict. His delegation therefore had expressed reservations concerning any elements in the procedure for designating the Protecting Power that would imply an avoidable loss of time. In his delegation's view, it was advisable, for the benefit of the victims, to fall back on the ICRC as a substitute after a relatively short time. That did not mean that the Parties to the conflict should not continue their efforts to reach agreement on the designation of a Protecting Power, in conformity with the provisions of Article 5, paragraphs 2 and 3.

14. His delegation felt reasonably satisfied with the first four paragraphs of Article 5 which imposed on the Parties to a conflict the duty to ensure the implementation of the Conventions and of Protocol I through the application of a system requiring them to designate and to accept a Protecting Power. A careful balance had thus been struck between the requirements of humanitarian law and respect for national sovereignty.

15. Mr. WIELINGER (Austria) said that his delegation had voted for Article 5 of draft Protocol I because of its great interest in any measure that might help to improve the condition of all victims of armed conflicts and also because it regarded the provisions on Protecting Powers as key elements in that Protocol. It welcomed the fact that the provisions of Article 2, sub-paragraphs (d) and (e), and of Article 5 in no way derogated from the provisions of the Geneva Conventions of 1949 but rather expanded the form of words used in them, which was perhaps too succinct, while retaining the terminology they employed to define the Protecting Power.

16. His delegation had also noted with satisfaction that the article allowed another State or a substitute to share a part of the functions of the Protecting Power that a State acting in that capacity might be unable to
perform. Article 5 in no way ruled out the possibility that the functions of a Protecting Power might be divided among several substitutes.

17. Mr. ABADA (Algeria) said that Algeria, a young State, attached primary importance to the notion of sovereignty, from which respect for the fundamental principle of the consent of the Parties logically derived. It was precisely because that principle was respected throughout Article 5 of draft Protocol I that his delegation had voted in favour of each of its paragraphs.

18. His delegation had welcomed the clarifications given by the representative of the ICRC concerning the third paragraph of Article 10 of the 1949 Conventions; those explanations had greatly facilitated the preparation of an acceptable text. His delegation would have been unable to accept any interpretation of that paragraph which could have implied any threats. The acceptance of draft Protocol I, Article 5, by consensus represented real progress in terms of practical achievement.

19. Mr. PICTET (Switzerland) said that one of the main objectives of the Conference was to strengthen the provisions relating to the application of the Conventions, and especially to the Protecting Powers system described in the first paragraph of both Articles 8 and 10 of the Geneva Conventions. The text of Article 5 which had just been adopted represented appreciable progress, but his delegation would have preferred the article to include an element of constraint. The progress achieved consisted, in the first place, of the statement in paragraph 1 that it was the duty of the Parties to a conflict to apply, from the beginning of that conflict, the Protecting Powers system, thus making possible an effective implementation of the Conventions and Protocol I in favour of the victims. Secondly, Article 5 instituted well-ordered machinery which would enable the system to function without delay, and which laid down a definite procedure, particularly in paragraph 3, to facilitate the designation and the acceptance of Protecting Powers. Lastly, Article 5, paragraphs 3 and 4, referred specifically to the ICRC, which was now called upon to play a leading part in putting the whole system into effect.

20. The fact that other impartial humanitarian organizations were mentioned as well as the ICRC could not be taken to mean that any rivalry could arise, to the detriment of the efficiency of the agreed machinery. Paragraphs 3 and 4 could therefore be interpreted as conferring on the ICRC some measure of priority both with regard to the offer of its good offices with a view to the designation of Protecting Powers and with regard to the offer to act as a substitute. He hoped that, in accordance with his previous request, the Drafting Committee would word the French text of paragraph 3 in such a way as to give greater emphasis to that priority.

21. Though it accepted Article 5, the Swiss delegation wished to state forcefully that that provision in no way affected the second to sixth paragraphs of Article 10 common to three of the 1949 Geneva Conventions (Article 11 of the fourth Convention); nor could it alter in any way the right conferred on the ICRC by Article 9 common to the Conventions to undertake, subject to the consent of the Parties, its traditional humanitarian activities for the protection of the victims of conflicts. He would like to see that point of view reflected in the Committee's report.

22. Mr. AGOES (Indonesia) said that his delegation had abstained in the vote on Article 5, paragraph 3, because it considered that the ICRC was the most suitable and the most efficacious organization to carry out the duties
described in that paragraph, and that there was no need to grant the same right to other humanitarian organizations which offered all guarantees of impartiality.

23. Mr. MURILLO RUBIERA (Spain) said that his delegation had abstained in the vote on draft Protocol I, Article 5, paragraph 3, thus expressing its disapproval of a rule which it considered illogical, defective and incomplete.

24. It was illogical because the procedure laid down in connexion with the offer of good offices did not give the ICRC the priority to which it was entitled in view of the obligation implied by the words "shall offer". In his delegation's opinion, the recognized right of other impartial humanitarian organizations to act thus should remain distinct from the obligation which that paragraph placed on the ICRC and the fulfilment of which could be accompanied by numerous other offers, since those organizations could do "likewise", in the same way as the institution which had not only the right but also the obligation to act whenever Protecting Powers had not been designated or accepted.

25. A multiplicity of offers would not make it any more likely that the Parties to a conflict would respect the obligation which, under Article 5, paragraph 2, they should discharge spontaneously from the very beginning of the conflict. What would ensure that the Parties to a conflict would feel bound to concern themselves with the designation and acceptance of Protecting Powers would be their knowledge that, if they did not do so of their own accord, a specific body would at once offer its good offices.

26. Moreover, paragraph 3 was defective because the machinery for communication of the lists which the ICRC might request in order to remedy the situation was described in confused and equivocal terms. It was impossible to speak of asking "the other Party" when, a few lines above, the provision was to "ask each Party". It was also the two Parties which should provide another list of five States which they would be willing to accept in their territory as Protecting Power of the adverse Party.

27. It could not be argued that it was a matter of drafting, for it was a requirement of the internal logic of the rule.

28. The drafting of a legal provision could always be improved but the obscurity of ideas reflected in a confused text could not be accepted by a legislator.

29. There was certainly obscurity in the term "other Party", without any reference in the text to a previously mentioned Party.

30. Confusion was compounded by the allusion, at the end of the text, to two lists on both of which the same State should be named. What were those lists? The text mentioned three specifically, whereas it was common knowledge that the machinery called for four - two for each Party. It was also well known that the same State proposed should appear on two lists from each Party to the conflict, one for designation and the other for acceptance. But the text must specify that clearly, without any need for explanation; the text did not do so and thus was certainly obscure.

31. Finally, paragraph 3 was incomplete because it should in any event envisage the likelihood that no State would appear on both lists.
32. By their very nature, procedural provisions - as in the present case - should specify the various phases of the process laid down. Even if they were over-detailed, they would at least have the advantage of achieving what they sought to achieve.

33. For those reasons, his delegation could not support paragraph 3.

34. Moreover, his delegation would have liked the efforts to ensure the availability of a Protecting Power to have been such as to make it possible to attain the essential objective: to ensure that, for whatever reasons, victims of conflicts were not deprived of the protection afforded by efficient application of the Conventions. Such was not the case, since there had been no real progress from the 1949 position. When all was said and done, paragraph 3 did not guarantee the availability of a Protecting Power.

35. Mr. CONDORELLI (Italy) said that his delegation had voted in favour of Article 5 because it had felt that the text, although certainly not the best, was simply the least bad that could be envisaged in the present circumstances.

36. Throughout the work that had preceded the Conference and even since the Conference had opened, his delegation had submitted proposals for the establishment of machinery for humanitarian protection that would be as automatic as possible, in order to ensure in all cases the availability of an impartial organization, as could be seen from the Italian amendment to paragraph 3 (CDDE/I/50). It was a pity that that point of view had not prevailed, for whenever the Parties to a conflict refused their consent, humanitarian needs would remain unsatisfied.

37. Nevertheless, the compromise version approved by the Committee was acceptable in so far as, under Article 5, paragraph 1, the system of Protecting Powers was mandatory, although subject to procedures requiring the consent of the Parties at all stages. In other words, a Party which, at any stage, refused to collaborate in the application of the system or hindered its operation would be committing an international crime.

38. Consequently, and in view of the procedure laid down in paragraph 3, the procedure prescribed in paragraph 4 for finding a substitute clearly presupposed that at least one of the Parties to the conflict had not fulfilled the obligations laid down in the preceding paragraphs.

39. Moreover, paragraph 4 empowered the ICRC to offer its services as a substitute, after due consultations with the Parties, but without the consent of the latter being necessary. It was only the exercise of the functions of substitute that was subject to acceptance by the Parties. Since, however, the latter were required to make every effort to facilitate the operation of a substitute, that provision was clearly breached if a Party to the conflict, having been obliged to accept the offer of the ICRC, did not allow the latter to carry out its functions. All that was admittedly theoretical for the ICRC had repeatedly stated that it had no intention whatsoever of intervening without the consent of the Parties concerned. Perhaps, however, it would one day deem it advisable to exercise that function in view of the particular nature of a conflict or the conduct of the Parties.

40. Mr. BOBYLEV (Union of Soviet Socialist Republics) said that, in common with others, his delegation considered the provisions of Article 5 to be of
fundamental importance. The text prepared by Working Group A and approved by the Committee was the result of painstaking efforts.

41. His country's position was clear: the activities of the Protecting Power designated by one of the Parties to the conflict must be subject to the consent of the other Party. The same held good in regard to the substitute. In the absence of a Protecting Power, the ICRC or other organizations which offered all guarantees of impartiality and efficacy would not automatically intervene. They should not be empowered to exercise the functions of Protecting Power except with the consent of the interested Parties.

42. His delegation had therefore voted in favour of Article 5 and thought that any attempt to amend the text would have untoward consequences. The fact that the Committee had approved it unanimously was encouraging and gave grounds for hope that, in the same spirit of collaboration, solutions would be found to the problems presented by the other articles.

43. Mr. de BREUCKER (Belgium) pointed out that, from the beginning of the work undertaken by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, his country had shown the keenest interest in everything pertaining to the supervision of the application of the four Geneva Conventions of 1949. During the present session of the Conference, it had joined in the efforts made to reaffirm the need for such supervision and to facilitate the implementation of the provisions to that end included in the Conventions, as was shown by amendment CDDH/1/67 and Add. 1, which it had submitted jointly with the United Kingdom and Netherlands delegations. Article 5 - the result of painstaking efforts by Working Group A - which had been approved by the Committee, supplemented the too brief terms of Article 8 of the first three Conventions and Article 9 of the fourth Convention, and similarly reaffirmed and supplemented the terms of the first paragraph of Article 10 of the first three Conventions and the first paragraph of Article 11 of the fourth Convention. With respect to the Conventions, nothing concerning the other obligations incumbent on the Detaining Power or the duties incumbent on the Protecting Power, its means of supervision and the field of application of such supervision, was weakened or called in question in the present Article 5 of draft Protocol I.

44. The sole purpose of Article 5 was to work out a designation procedure and, in the event of a breakdown of the machinery, a procedure for good offices, and then for substitution. The opening sentence of paragraph 1 rightly reminded the Parties that it was their duty to have recourse to the system. The second sentence confirmed, perhaps a little too discreetly, the highly important nature of the duties assumed by the Protecting Power.

45. Paragraph 2 described the procedure whereby a Protecting Power was entrusted with its powers.

46. In cases where, despite the obligation provided for in paragraph 2, designation or acceptance was lacking from the outset, a good-offices procedure was provided in paragraph 3. The finality of that procedure was the same as that of the preceding paragraph; furthermore, a specifically designated administrator, namely, the ICRC, was provided for its implementation. That explicit reference to the ICRC gave that organization priority with respect to other bodies which, according to the text, also had the right, if necessary, to offer their good offices. The drafting of that part of a sentence relating to the possible intervention of such bodies could be improved.
47. Paragraph 4, which was based on the regrettable supposition of there not being a Protecting Power - which should, in future, occur only in exceptional circumstances - again brought the ICRC to the fore, in the capacity of a substitute, but allowing any other impartial and effective organization the right to intervene. The Belgian delegation understood that paragraph to mean, firstly, that reliance had to be placed on the wisdom of the ICRC in its consultations with the Parties regarding the offer it might make and, secondly, that the Parties were under an obligation to do their utmost to facilitate the task of the substitute.

48. Article 5 approved by the Committee should enable the 1949 Geneva Conventions to be promptly and satisfactorily implemented. The words "from the beginning ...", appearing in the first three paragraphs, and "without delay" appearing in paragraphs 2, 3 and 4, took on a special meaning in that respect.

49. The few rules thus adopted should help to strengthen the supervision of the observance of human rights during armed conflicts.

50. Mr. FREELAND (United Kingdom) said that it would be clear from his delegation's explanation of its vote on paragraph 4 bis that the United Kingdom would have liked Article 5 to go further in the direction of ensuring that the functions of Protecting Powers would be exercised in all cases of armed conflict to which Protocol I would apply. His delegation recognized, however, that the text drafted by Working Group A - which was the result of a difficult compromise - went as far as it could in that direction in existing circumstances if the Protocol was to command that degree of adherence by the international community which should be the aim of all. It had therefore voted in favour of Article 5, all the more readily in view of the inclusion in the text of certain elements to which it attached importance. Examples were the mandatory terms of the first sentence of paragraph 4 and the clear statement in paragraph 1 of the duty of the Parties to the conflict to make the system of Protecting Powers work. As the Belgian representative had pointed out in connexion with the second sentence of paragraph 1, the reference to the duty of the Protecting Powers to safeguard the interests of the Parties to the conflict should be understood as meaning not that Protecting Powers were to serve the narrow national interests of the Parties. It should be read as applying to the interests of the Parties in a wider humanitarian sense, that was to say as meaning primarily their interests in relation to the well-being of their nationals who were victims of the conflict in question. That had been the meaning which, in his delegation's view, attached to the same expression in Article 8 of the first three Geneva Conventions of 1949 and Article 9 of the fourth Convention.

51. Mr. LOPUSZANSKI (Poland) said that his delegation attached great importance to the operation of the system of designation and acceptance of Protecting Powers, which was one of the key provisions of humanitarian law.

52. His delegation had voted in favour of Article 5 as drawn up by Working Group A. Although that article was not entirely to its satisfaction, it represented a genuine compromise between the principle of the protection of victims and that of the sovereignty of States, which gave grounds for hoping that the system of Protecting Powers would function satisfactorily on behalf of the victims of armed conflicts.

53. Mr. GIRARD (France) said that his country had been satisfied with the 1949 provisions and did not really see in what way they could be improved upon. His delegation's position on Article 5 was based, firstly, on the principle of
the universality and objectivity of international law - and in that respect the ICRC seemed to the French authorities to offer all the necessary guarantees of impartiality and efficacy, and further, on purely practical considerations, namely, that the fact that it had not been possible to apply the 1949 Conventions in certain cases was attributable to particular problems which could not be solved by provisions of conventions. Nevertheless, his delegation had made a point of participating in the preparation of the compromise which a number of delegations had thought necessary. During the debate in Working Group A, it had upheld the principle which it regarded as essential, namely, the consent of the Parties. If a Protecting Power or its substitute was imposed on a country, no positive results could be obtained and tension would inevitably be created between the country concerned - and its allies - and the substitute imposed on it.

54. Miss FAROUK (Tunisia) said that, while her delegation understood the concern of the delegations which would have welcomed more binding provisions and closer co-ordination between the United Nations and the Conference in order to ensure a more reliable system of protection, it had voted in favour of each of the paragraphs of Article 5. It thought that the provisions of that article maintained a suitable balance between respect for the sovereignty of States and improvement of the machinery of humanitarian law. Moreover, international law was a form of law which was in process of being developed, and what might appear to represent considerable progress but was at present thought by some to be premature might be achieved - in the not too distant future.

55. At all events, the aim of the Conference was to be effective and it was important that the text of draft Protocol I should be adopted by consensus.

56. In conclusion, she thanked the ICRC for its interpretation of paragraph 3 of Article 10 of the Conventions.

57. Mr. BETTAUER (United States of America) said that his delegation had associated itself with the consensus on Article 5, whose adoption by Committee I marked a significant step forward.

58. As he had pointed out at the time of the vote on paragraph 4 bis, at the twenty-seventh meeting (CDDH/1/SR.27), the United States delegation had always stressed the need for improving the system of designation and acceptance of the Protecting Power, in order to ensure that the law would be implemented.

59. The ideas in paragraphs 2, 3 and 4 of Article 5, which had just been approved, concerning the designation of Protecting Powers had already been put forward in a preliminary form by the United States delegation at the first session of the Conference of Government Experts, held in June 1971 (document CE/COM.IV/2). At the second session, in 1972, the United States delegation had submitted a formal amendment refining the ideas that had been put forward in 1971 (document CE/COM.IV/5). Those efforts had culminated in the adoption of Article 5, which set forth clearly the duty of Parties to secure the supervision and implementation of the Geneva Conventions of 1949 and Protocol I. A procedure was laid down by which the ICRC could offer its good offices to aid in the designation of Protecting Powers.

60. In addition, paragraph 4 of the article provided that Parties would accept an offer made by the ICRC or other organizations which offered all guarantees of impartiality and efficacy to act as a substitute for a Protecting Power. That was a new and crucial obligation, one that provided a final
fallback to ensure that the system would work. His delegation did not see the need to include the second sentence of that paragraph but saw no great harm in its inclusion.

61. Finally, his delegation supported the statement of the representative of the ICRC that the specification of responsibilities in Article 5 in no way interfered with the ICRC's right of initiative or undercut any of its rights and responsibilities, whether derived from the Geneva Conventions or elsewhere. He considered that so clear that it would not be necessary to insert a new article to that effect.

62. Mr. ABDUL-MALIK (Nigeria) said that his delegation had voted in favour of Article 5 as a whole, but had abstained in the vote on paragraph 4. As it had stated in connexion with paragraph 4 bis, it considered that paragraph 4 did not go far enough, although it included a number of interesting points. It had been pointed out in Working Group A that the ICRC should be accorded priority in the matter of humanitarian protection. His delegation considered, however, on the basis of the experience acquired in Africa by the Organization of African Unity, that other organizations offering all guarantees of impartiality and efficacy should be authorized to carry out the role of Protecting Power.

63. His delegation was glad to note that in the text approved by the Committee certain terms with a colonialist connotation which had appeared in the original draft of the article had been deleted.

Y. REPORT OF COMMITTEE I, SECOND SESSION (CDDH/219/Rev. 1):

Article 5, paragraph 1, of draft Protocol I

40. Paragraph 1 as reproduced below did not exist in the ICRC draft. It was proposed at the meeting of Working Group A held on 5 March; the Working Group accepted it and returned it to the Committee as part of Article 5. The numbering of the paragraphs of that article as it appears in the ICRC draft and as it appears in the following text and in the article adopted by the Committee (see below) is therefore different.

41. At its twenty-seventh meeting, on 14 March 1975, the Committee adopted paragraph 1 without change by 72 votes to 1 with 2 abstentions.

42. Text of paragraph 1 as adopted:

"1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and the present Protocol by the application of the system of Protecting Powers, including inter alia their designation and acceptance, in accordance with the following paragraphs. Such Powers shall have the duty of safeguarding the interests of the Parties to the conflict."

Article 5, paragraph 2, of draft Protocol I

44. Working Group A considered paragraph 2 at its meetings from 19 to 24 February 1975 and finally adopted a text which it returned to the Committee
which considered it and adopted it by consensus, without change, at its twenty-seventh meeting.

45. Text of paragraph 2 as adopted:

"2. From the beginning of a situation referred to in Article 1 of the present Protocol, each Party to the conflict shall without delay designate a protecting Power for the purpose of applying the Conventions and the present Protocol and shall without delay and for the same purpose permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party."

Article 5, paragraph 3, of draft Protocol I

47. Working Group A also considered paragraph 3 at its meetings from 19 to 24 February 1975 and finally adopted a text which it returned to the Committee.

48. The Committee considered it at its twenty-seventh meeting on 14 March 1975. Two delegations had suggested a different wording for the last part of the paragraph (see document CDDH/I/235/Rev. 1).

49. The Spanish delegation maintained its proposal, which was worded as follows:

"(The International Committee of the Red Cross) ... 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, without prejudice to the action that might be undertaken by other impartial humanitarian organizations."

50. This proposal was rejected by 20 votes to 13, with 37 abstentions. The Swiss delegation did not press its proposal to a vote, but expressed the wish that the Drafting Committee should find a suitable form of words to underline the priority of the ICRC as regards good offices.

51. A separate vote was requested on the last sentence of paragraph 3; it was adopted by 61 votes to none, with 4 abstentions. The rest of the paragraph was then adopted without change by 65 votes to none, with 3 abstentions.

52. Text of paragraph 3 as adopted:

"3. 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."
Article 5, paragraph 4, of draft Protocol I

54. After lengthy negotiations, the Working Group finally agreed upon a compromise text for paragraph 4, which it sent to the Committee.

55. At its twenty-seventh meeting on 14 March 1975, the Committee considered the text of paragraph 4 received from the Working Group, and adopted it by 53 votes to 10, with 8 abstentions.

56. Text of paragraph 4 as adopted:

"4. 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."

57. In the Working Group, the sponsor of amendment CDH/I/83 and the co-sponsors of amendment CDH/I/75 agreed, in a spirit of compromise, to combine their proposals in a new paragraph 4 bis.

58. Text of 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."

59. Some delegations expressed agreement with this text subject to minor changes. Other delegations, on the other hand, stated that if the paragraph were approved, it would jeopardize the hard-won compromise reached on Article 5 as a whole. The Working Group therefore decided to refer paragraph 4 bis to the Committee.

60. At its twenty-seventh meeting on 14 March 1975, after hearing the views of a large number of delegations on paragraph 4 bis, the Committee rejected it by 32 votes to 27, with 16 abstentions.

Article 5, paragraph 5, of draft Protocol I

62. Working Group A considered paragraph 5 at its meetings on 20 and 25 February and 7 March 1975, and reached agreement on a text which it referred to the Committee while keeping the opening phrase of the paragraph, "In accordance with Article 4," in square brackets.

63. At its twenty-seventh meeting on 14 March 1975, the Committee considered this text and adopted it by consensus after agreeing to the removal of the square brackets.
64. Text of paragraph 5 as adopted:

"5. In accordance with Article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and the present Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory."

Article 5, paragraph 6 of draft Protocol I

66. Working Group A considered paragraph 6 at its meetings held on 20 and 26 February and 7 March 1975, and reached agreement on a text which it returned to the Committee.

67. The Committee considered the proposed text at its twenty-seventh meeting on 14 March 1975, and adopted it by consensus subject to a clarification proposed by the United Kingdom delegation, which was referred to the Drafting Committee, replacing the words "according to the Vienna Convention on Diplomatic Relations" by the words "in accordance with conventional or customary rules of international law relating to diplomatic relations". (See document CDDH/I/271, page 3.)

68. Text of paragraph 6 as adopted:

"6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a party's interests and those of its nationals to a third State according to the Vienna Convention on Diplomatic Relations does not constitute an obstacle to the appointment of Protecting Powers for the purpose of applying the Conventions and the present Protocol."

Article 5, paragraph 7 of draft Protocol I

70. Working Group A also considered paragraph 7 during its meetings on 20 and 26 February and 7 March 1975 and reached agreement on a text which it referred to the Committee. The Committee considered it at its twenty-seventh meeting on 14 March 1975, and adopted it without change or discussion by consensus.

71. Text of paragraph 7 as adopted:

"Whenever hereafter in the present Protocol mention is made of a Protecting Power, such mention also includes any substitute."

72. After the adoption of this paragraph, Article 5 as a whole was adopted by consensus at the same meeting.

2. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 5. Appointment of Protecting Powers and of their substitute

1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and of this Protocol by the application of the system of Protecting Powers, including
inter alia the designation and acceptance of those Powers, in accordance with the following paragraphs. Protecting Powers shall have the duty of safeguarding the interests of the Parties to the conflict.

2. From the beginning of a situation referred to in Article 1, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and this Protocol and shall, likewise without delay and for the same purpose, permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party.

3. If a Protecting Power has not been designated or accepted from the beginning of a situation referred to in Article 1, 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 a Protecting Power 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 an adverse Party, and ask each adverse Party to provide a list of at least five States which it would accept as the Protecting Power of the first Party; these lists shall be communicated to the Committee within two weeks after the receipt of the request; it shall compare them and seek the agreement of any proposed State named on both lists.

4. 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; every effort shall be made by the Parties to the conflict to facilitate the operations of the substitute in the performance of its tasks under the Conventions and this Protocol.

5. In accordance with Article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and this Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory.

6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State in accordance with the rules of international law relating to diplomatic relations is no obstacle to the designation of Protecting Powers for the purpose of applying the Conventions and this Protocol.

7. Any subsequent mention in this Protocol of a Protecting Power includes also a substitute.

AA. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 5. Appointment of Protecting Powers and of their substitute

Article 5 was adopted by consensus.

207
Explanations of vote

1. Mr. ABDINE (Syrian Arab Republic) said that his delegation considered that Article 5 did not serve its purpose, for it left the Parties to a conflict to decide whether to designate and accept a Protecting Power. The article contained no mandatory provisions in the event of the Parties concerned failing to appoint a Protecting Power, and that was all the more serious because the designation and appointment of a substitute also depended on the goodwill of those Parties. The fact that the provisions of Article 5 were optional jeopardized the whole system. Moreover, the article made no contribution to the development of the relevant provisions of the Geneva Conventions of 1949. His delegation would have preferred a mandatory solution to fill the gaps in the 1949 Conventions, and regretted that the Conference had not adopted such a solution because of an outmoded concept of absolute sovereignty.

2. Mr. SULTAN (Egypt) said that his delegation reserved the right to provide an explanation of its vote in writing within twenty-four hours.

3. Mr. DI BERNARDO (Italy) said that although his delegation had participated in the drafting of Article 5 and had joined the consensus reached in that connexion, it considered that the text represented too limited a degree of improvement on the Geneva Conventions of 1949.

4. With regard to the establishment of machinery designed to ensure the observance of humanitarian law, the Conference would have disappointed those who shared his delegation’s view concerning the need to set on foot systems that were effective, impartial and as automatic as possible, in order to meet the humanitarian requirements of the victims of armed conflicts. The obvious inadequacies of Article 5 in that respect were not offset by Article 79 bis, which laid down an optional procedure relating to the observance of humanitarian rules in a specific situation but did not provide for continuous supervision designed to ensure compliance with those rules in respect of the conflict as a whole.

5. His delegation nevertheless recognized the usefulness of Article 5, which ought to be accepted because it improved, albeit moderately, the system of Protecting Powers. Under its provisions, Protecting Powers or substitutes were clearly mandatory in all conflicts and their absence would constitute a violation by the Parties to the conflict of the obligations incumbent upon them under those provisions.

6. His delegation therefore understood Article 5 to mean that a Party which at any stage refused to comply with the system or hindered its operation would be committing an illegal act under humanitarian law.

7. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that his delegation had voted in favour of Article 5, because it believed that it would further the aims of the Conventions and Protocols. His delegation believed that conscientious implementation of those instruments by all Parties, and especially by the Parties to a conflict, was essential.

8. Article 5 was a step forward in the system of appointing a substitute for a Protecting Power, because it clearly defined the circumstances in which such a substitute could operate.
9. His delegation considered Article 5 to be one of the basic articles in draft Protocol I, since it was designed to protect the interests of innocent victims of armed conflict.

10. Mr. GREEN (Canada) said that his delegation was in favour of strengthening the role and functions of the Protecting Power, although it would have preferred a mandatory system. Since the system proposed in the Geneva Conventions of 1949 had not proved satisfactory in conditions of armed conflict, his delegation supported the attempt made in Article 5 to strengthen that system, and in particular the proposals for the introduction of a substitute when it proved impossible to select a Protecting Power. It was grateful to the ICRC for its willingness to step in when necessary. His delegation was glad Article 5 referred to the absence of delay, thus providing a sense of purpose and importance. The provision requiring action to be taken with the consent of States was merely an acknowledgement of the realities of political life, as was the statement that the appointment of a Protecting Power did not affect the legal status of the parties.

11. Paragraph 6 acknowledged the fact that diplomatic relations might not be severed when an armed conflict occurred, and reaffirmed that the formal existence of such relations should not be construed as an obstacle to the appointment of a Protecting Power.

12. In his delegation’s view the whole purpose of Article 5 was to provide an alternative mechanism to supplement the institution of the Protecting Power, through the medium of the substitute and when necessary by means of the ICRC. His delegation's understanding was that, to the extent that Article 5 of draft Protocol I did not reproduce the content of the Conventions on the matter, the provisions of the latter remained valid.

13. Mr. VALLARTA (Mexico) said that his delegation welcomed the obligation which Article 5, paragraph 4, placed upon the Parties to the conflict to accept an offer by the ICRC or any other impartial organization to act as a substitute. It regretted that the approach embodied in Proposal I of the ICRC draft (CDDH/1) had not been accepted and that the functioning of the substitute was subject to the consent of the Parties to the conflict. It further regretted the rejection of the proposed text for a paragraph 4 bis submitted to Committee I, according to which the United Nations would have been able to designate a body to perform the functions of substitute when some or all of the functions incumbent upon the designated Protecting Power had not been carried out.

14. Mr. MARTIN HERRERO (Spain) pointed out that his delegation had submitted an amendment to Article 5, designed to prevent a situation in which an armed conflict could arise without a system of Protecting Powers being in force. His delegation, however, aware of the need for due regard to be given to the principle of the sovereignty of States, had divided its proposal into stages, the first maintaining the principle of free determination, the second the mandatory nature of the system.

15. His delegation had joined in the consensus on Article 5, believing the text to be a considerable improvement over the status quo. Nevertheless the text was unsatisfactory to the extent to which it departed from the Spanish delegation's own objectives.

16. Mr. EL HASSEEN EL HASSAN (Sudan) drew attention to certain errors in the Arabic version of Article 5.
17. The PRESIDENT said that the Drafting Committee would be requested to correct those mistakes.

18. Mrs. MANTZULINOS (Greece) said that her delegation wished to refer again to its amendment CDDH/I/31.

19. The Greek delegation was of the opinion that Article 5, as adopted, was not an efficacious development of the system of Protecting Powers and their substitute.

20. In that connexion her delegation wished to reiterate its amendment CDDH/I/31, submitted at the first session of the Conference, which proposed that if despite the procedure laid down for the designation of the Protecting Power none was appointed the Parties to the conflict should accept the ICRC as substitute in so far as that was compatible with its own activities.

AB. PLENARY MEETING, 24 May 1977 (CDDH/SR.37, ANNEX):

Belgium

Article 5 of draft Protocol I

Since the beginning of the proceedings the Belgian delegation has taken the keenest interest in all matters relating to the control and application of the four Geneva Conventions.

Article 5 complements the formula expressed in Article 8 of the first three Geneva Conventions of 1949 (Article 9 of the fourth Convention). It gives shape to and adjusts a mechanism which, by complementing the 1949 provisions, should make it possible to ensure their prompt and proper implementation. In that respect, the words "from the beginning of that conflict" in the first three paragraphs and the words "without delay" in paragraphs 2, 3 and 4 are of particular significance. In the mechanism described by this article, the designation in paragraph 3 of the ICRC as a body offering its good offices for the designation of a Protecting Power is, in our view, perfectly appropriate. It bears witness to the decades of confidence that States have shown in ICRC for its devotion to the humanitarian cause. Paragraph 4, based on the hypothesis - which in future should be an exceptional case - that there is no Protecting Power, again refers to the ICRC but this time as a substitute. In the view of the Belgian delegation, the essential point of paragraph 4 is that any offer the ICRC might make should be left to the wisdom of ICRC in its consultations with the Parties and that there is an obligation on the Parties to do all they can to facilitate the operations of the substitute. Lastly, although Article 5 essentially reaffirms Article 8 of the first three Geneva Conventions of 1949 (Article 9 of the fourth Convention) and the first paragraph of Article 10 of the first three Conventions (Article 11 of the fourth Convention), the specific obligations incumbent on the detaining Power under the terms of paragraphs 2 and 3 of that Article 10 (Article 11 of the fourth Convention) are in no way either weakened or called into question by the provisions of this Article 5 inserted in the Protocol. Our delegation would have liked, however, to see those paragraphs reaffirmed.

210
Egypt

Article 5 of draft Protocol I

The Egyptian delegation has participated in the consensus, in spite of the disappointment and misgivings it entertains in regard to this article. Since the two sessions of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and throughout the work of Committee I on this article, the Egyptian delegation has staunchly advocated a water-tight system for the implementation of the Geneva Conventions of 1949 and the Protocol. For experience has amply demonstrated since 1949 that the main weakness of the Conventions lies in their system of implementation. The Conventions consider the institution of Protecting Power an essential cog in their mechanism, and the great care they took in providing for a whole series of substitutes in common Article 10 of the Conventions reflects the same concern to provide an instance of implementation in all circumstances. But the system did not work, precisely because of the voluntary procedure of the appointment of the Protecting Power or its substitute, with the exception of the third paragraph of common Article 10.

We have tried hard during the elaboration of this article in Committee to fill this gap and to provide for an automatic appointment of a substitute, by virtue of the Protocol itself, in the event of the Parties failing to agree. In spite of the verbal support of a large majority of delegations, this solution, which would have closed an important gap in the Geneva Conventions, was rejected, and its rejection was justified by the search for a consensus. But this consensus was basically between East and West, but not so much with the countries of the third world, the main victims of recent armed conflicts, which preferred a more compulsory system of implementation.

In spite of the procedural advances the present article achieves, it has failed to grapple with the real weakness of the Conventions and remains within the traditional realm of the will of the Parties.

Moreover, paragraph 4 of the article is also dangerous, because it falls short of common Article 10, third paragraph (Article 11 in the fourth Convention), which imposes on the Parties a much stricter obligation than the present paragraph 4 of Article 5, to request or accept the offer of the services of a humanitarian organization to fulfil the humanitarian tasks of the Protecting Power. The proper interpretation of this last paragraph is that the detaining Power is legally obliged to accept such an offer once it is made. This provision remains in force and cannot be prejudiced by the adoption of Article 5. In consequence, it cannot be retroactively interpreted in the light of paragraph 4 of Article 5 to dilute its stricter obligation and reduce it to the purely voluntary level of the article just adopted.

While participating in the consensus on Article 5, the Egyptian delegation regrets that the Conference has missed the opportunity to achieve an important advance in the system of implementation of humanitarian law; and implementation is, after all, the real test of law.
Article 5 of draft Protocol I

The Greek delegation considers that the system of Protecting Power and substitutes as adopted is not an efficacious development of the institution of Protecting Powers. In this connexion, the Greek delegation reiterates the amendment which it submitted at the first session of the Conference (CDDH/1/31) and which proposed that, if despite the procedure provided for the designation of a Protecting Power, there should be no such Power, the ICRC would automatically act as substitute.

Nigeria

Article 5 of draft Protocol I

We wish to indicate our support for the consensus reached on Article 5 of draft Protocol I.

However, we would like to express the following views, which should be reflected in the records of this Diplomatic Conference.

1. The duty of the Parties to a conflict referred to in paragraph 1 of this article does not, in our view, imply the imposition of a duty which a third party will attempt to discharge for either Party without due regard for the wishes of the Party concerned. It is the hope of my delegation that no attempt will be made by a Protecting Power to discharge any duty under this article without the express consent or agreement of the Party on whose behalf such a duty is being discharged.

2. Determination of the scope of the duty of a Party to a conflict by that Party should be in full exercise of the sovereignty of that Party.

3. With regard to the mention "of any other impartial humanitarian organization to do likewise" in paragraph 3 of the article, we are of the opinion that the important role that relevant regional organizations, like the Organization of African Unity, can play and is expected to play in this regard should be welcome. Such a role is in line with the Principles and Purposes of the Charter of the United Nations.

AC. 1977 PROTOCOL I:

Article 5. Appointment of Protecting Powers and of their substitute

1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and of this Protocol by the application of the system of Protecting Powers, including inter alia the designation and acceptance of those Powers, in accordance with the following paragraphs. Protecting Powers shall have the duty of safeguarding the interests of the Parties to the conflict.

2. From the beginning of a situation referred to in Article 1, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and this Protocol and shall, likewise without
delay and for the same purpose, permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party.

3. If a Protecting Power has not been designated or accepted from the beginning of a situation referred to in Article 1, 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 a Protecting Power 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 an adverse Party, and ask each adverse Party to provide a list of at least five States which it would accept as the Protecting Power of the first Party; these lists shall be communicated to the Committee within two weeks after the receipt of the request; it shall compare them and seek the agreement of any proposed State named on both lists.

4. 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; every effort shall be made by the Parties to the conflict to facilitate the operations of the substitute in the performance of its tasks under the Conventions and this Protocol.

5. In accordance with Article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and this Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory.

6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State in accordance with the rules of international law relating to diplomatic relations is no obstacle to the designation of Protecting Powers for the purpose of applying the Conventions and this Protocol.

7. Any subsequent mention in this Protocol of a Protecting Power includes also a substitute.
ARTICLE 6 - QUALIFIED PERSONS

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 6. Qualified persons

1. In peacetime the High Contracting Parties shall endeavour to train qualified personnel to facilitate the application of the Conventions and of the present Protocol and in particular the activities of the Protecting Powers.

2. The recruitment and training of such personnel lies within the national competence.

3. Each High Contracting Party shall establish a list of persons so trained and shall transmit it to the International Committee of the Red Cross.

4. The conditions governing the employment of these persons outside the national territory shall, in each case, form the subject of special agreements.

B. PROPOSED AMENDMENTS:

CDDH/I/17
8 March 1974

Paragraph 1
Delete the words "and in particular the activities of the Protecting Powers."

Paragraph 2
Insert the word "composition," before the word "recruitment."

Paragraph 3
Delete the paragraph.

Paragraph 4 (new paragraph 3), first line
Replace the words "these persons" by the words "such personnel."

CDDH/I/66
19 March 1974

Delete the present text and substitute the following:

"1. In peacetime the High Contracting Parties shall impart training to a sufficient number of persons capable of carrying out the application of the Conventions and of the present Protocol, and in particular the activities of the Protecting Powers.

2. The recruitment and training of such persons lies within the national competence."
3. Each High Contracting Party shall maintain a register containing a list of persons so trained and shall transmit such list to the International Committee of the Red Cross.

4. The conditions governing the employment of such persons outside the national territory shall, in each case, form the subject of a special agreement."

Paragraph 2

CDDH/1/76

Republic of Korea

20 March 1974

Add the following new sentence at the end of paragraph 2:

"The International Committee of the Red Cross may offer the services of its personnel to the national authorities if the national authorities so request."

Paragraph 4

CDDH/1/55

Brazil

18 March 1974

Replace paragraph 4 by the following:

"The conditions governing the employment of the personnel outside the national territory shall, in each case, form the subject of special agreements of which the Contracting Parties shall be at least the State to which the personnel belongs, on the one hand, and the State to which the territory in which that personnel is called upon to work belongs, on the other hand."

New Paragraph 5

CDDH/1/40

Philippines

8 March 1974

Add a new paragraph after paragraph 4 bringing the total number of paragraphs to 5:

"5. National Red Cross Societies (Red Crescent, Red Lion and Sun) may offer their services to the competent authorities entrusted with recruiting and training this qualified personnel."

C. MEETING OF COMMITTEE I, 20 March 1974 (CDDH/I/SR.11):

46. [Mrs. CHEVALLIER (Holy See) said that her delegation] ... would also like to see paragraph 3 of Article 6 of the draft Protocol amplified and provision made for the possibility of designating an organization to collaborate with, or assist the substitute [for a Protecting Power]. The task of such a collaborating or assistant organization would be to help the substitute in its mission, to co-operate with it and, if necessary, to replace it in one or more of its missions.
47. It went without saying that the organization collaborating with, or assisting, the substitute must meet all the conditions required for such a function, notably, the possession of adequate machinery and experience.

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

D. PROPOSED AMENDMENT:

CDDH/I/84 German Democratic Republic
11 September 1974

Redraft paragraph 4 as follows:

"4. The conditions governing the employment of these persons outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned."

E. MEETING OF COMMITTEE I, 10 February 1975 (CDDH/I/SR.18):

59. Mr. PRUCH (United States of America) said that it would be well to ascertain in advance what international humanitarian organizations existed, how they were organized, whether they were impartial or had the apparent ability to perform at least the essential humanitarian functions of a Protecting Power. In Article 6 of draft Protocol I the High Contracting Parties were requested to recruit and train personnel, to establish lists of persons so trained and to define the conditions governing their employment; perhaps the same request should be addressed to international humanitarian organizations. Such organizations might be asked in a separate paragraph to identify themselves to a central agency, such as the depositary State or the ICRC. A number of impartial humanitarian bodies existed, no doubt, but his delegation believed that States would wish to consider in peacetime, when they were free from the immediate pressures applied in conflicts, what organizations might consent to act, as a last resort, in the capacity of a substitute.

F. MEETING OF COMMITTEE I, 11 February 1975 (CDDH/I/SR.19):

23. The CHAIRMAN asked the representative of the International Committee of the Red Cross (ICRC) to introduce Article 6.

24. Mr. Antoine MARTIN (International Committee of the Red Cross) said that for a long time past various circles - in particular medical - had hoped that groups would be set up consisting of qualified persons capable of carrying out the functions entrusted by the Geneva Conventions to the personnel of Protecting Powers or their substitutes and that they would be trained.

25. In 1965, the XXth International Conference of the Red Cross had adopted resolution XXII entitled "Personnel for the Control of the Application of the Geneva Conventions" which had considered it necessary in case of armed conflict to supply Protecting Powers or their substitutes with a sufficient number of persons capable of carrying out such control impartially, and which
invited States Parties to the Conventions to envisage setting up groups of competent persons capable of carrying out those functions. The ICRC had stated that it was ready to help train such persons but, so far, as he had had the occasion to point out several times, no one had come forward and no group had been formed.

26. In 1971, the first session of the Conference of Government Experts, to which that question had been submitted, had noted it with interest and had expressed the hope that the ICRC would include it in a questionnaire concerning measures for strengthening the implementation of the Geneva Conventions, to be sent to all Parties to those Conventions. The majority of Governments had replied in favour and, while many of them had considered ways and means of making such personnel available to the Protecting Powers, some had also considered the role which might be assigned to such personnel at the national level in peacetime.

27. In 1972, at the second session of the Conference of Government Experts, there had been a marked tendency to envisage such personnel as playing a part also in peacetime, especially as regards dissemination and instruction, as well as in times of armed conflict, in particular with a view to facilitating the work of the Protecting Powers. The commission entrusted to study that question had made a proposal on which the ICRC had largely based Article 6 at present under consideration. The ICRC had certainly been the first to recognize that it was not clear why that provision which followed the article relating to the Protecting Power system, regarded merely as incidental the role which such qualified personnel could play within the framework of such a system. It was obvious that the functions which that personnel could perform in peacetime on the national territory or, should the occasion arise, on that of a third State, had no direct link with the machinery of the Protecting Power system, but were connected with the question of the implementation of the Conventions under Part V of the present draft Protocol - a Part which included Article 71 concerning the use of qualified legal advisers in armed forces, and also Article 72 which dealt with the dissemination of humanitarian rules.

28. The ICRC nevertheless considered that the two ideas on which Article 6 was based should be retained - first, to train qualified personnel which could ensure the better implementation of the Conventions and of Protocol I in national territory and, second, to ensure that that personnel could, should the need arise, be made available to a Protecting Power or to a substitute. The ICRC recognized, however, that Article 6 might be made clearer in order to establish its link with the Protecting Power system and that another formula might be considered for paragraph 1. For example, consideration might be given to some such text as the following:

"1. In peacetime the High Contracting Parties shall endeavour to train qualified personnel with a view to ensuring the application of the Conventions and of the present Protocol and to enabling the Protecting Powers or their substitute to carry out the functions incumbent on them under these instruments."

29. With regard to paragraphs 2, 3 and 4 which did not call for any special comment, he would simply refer the Committee to the text of the Commentary to the draft Protocols.

30. The ICRC had carefully studied the various amendments proposed and was prepared to answer any questions concerning them.
31. Mr. KNITEL (Austria) said that he would be glad to know between whom the special agreements referred to in paragraph 4 would be concluded.

32. Mr. Antoine MARTIN (International Committee of the Red Cross) said that it was intended that the special agreements referred to in Article 7, paragraph 4, would be concluded between the party supplying the qualified personnel and the party receiving them. Amendments had been submitted by Brazil (CDDH/I/55) and the German Democratic Republic (CDDH/I/84) with a view to making the text clearer on that point.

33. Mr. PRUGH (United States of America) said that he would be glad to hear the ICRC representative's comments on the advisability of inserting a reference in paragraph 1 to the part that might be played by national Red Cross societies.

34. Mr. Antoine MARTIN (International Committee of the Red Cross) said that the ICRC, in close collaboration with representatives of the League of Red Cross Societies and of national Red Cross Societies (Red Crescent, Red Lion and Sun) was drafting a general provision for strengthening the Red Cross Societies' role in humanitarian law. Any amendments submitted on the subject would be dealt with under that general provision and not under separate articles. It would therefore be advisable for the Committee to await submission of the text in question before considering such amendments.

35. Mr. MILLER (Canada) said that he would be glad to see the English version of the ICRC proposal for paragraph 1 in writing.

36. Mr. Antoine MARTIN (International Committee of the Red Cross) explained that the ICRC was not empowered to make formal amendments to its own draft articles. He had merely made a tentative suggestion on the lines of which delegations might submit an amendment if they so wished.

37. Mr. MILLER (Canada) said he would be satisfied to see the English version in the summary record provided it had received the prior approval of the ICRC representative.

38. Mr. ZAFERA (Madagascar) said that his delegation, which supported the basic ideas in Article 6, endorsed the ICRC representative's suggestion for paragraph 1. A reference might be made in paragraph 2 to the part the ICRC might play in qualifying personnel.

39. Mr. CHOWDHURY (Bangladesh) said that his delegation, too, supported the basic ideas in Article 6. Its amendment to paragraph 1 (CDDH/I/66) entailed the replacement of the words "shall endeavour to train" by the words "shall impart training" and placed emphasis on the number and capability of persons to be trained. His delegation's amendments to the other paragraphs, which were of a drafting nature, would be considered by the Drafting Committee.

40. Mr. GLORIA (Philippines) said that his delegation, which fully supported the provisions of Article 6, would like to see the addition of a new paragraph 5, as proposed in its amendment (CDDH/I/40). As parts of a great humanitarian organization, the Red Cross societies, with whose work he had long been familiar, should be given an important part to play under Article 6. The Philippines Red Cross Society had offered its assistance to the Advocate-General of the Armed Forces of the Philippines when he had published a manual simplifying the provisions of the four Geneva Conventions of 1949. The
societies, which had always been to the fore in implementing the Conventions, carried out their humanitarian work not only in armed conflicts but in other times of calamity. They were in the best technical position to apply most of the provisions of the Conventions and Protocols, and particularly those of Article 6. While each Contracting Party was required to play its part, better results would be obtained if the national Red Cross, Red Crescent or Red Lion and Sun societies could offer their services to the authorities responsible for recruiting and training the qualified personnel. There should be effective coordination between the Government and the national Red Cross Society in all aspects of training and recruitment.

41. Mr. Bohyung LEE (Republic of Korea) said that his delegation found draft Article 6, the terms of which were no doubt intended to supplement the provisions of Article 5, generally acceptable. The possible need of developing countries for the assistance of an international organ such as the ICRC should, however, be taken into consideration in paragraph 2. That was the purpose of his delegation's amendment (CDDH/I/76).

42. Mrs. DARIMAA (Mongolia) said that her delegation failed to understand the purpose of the list referred to in paragraph 3. If the ICRC was expected to accept the list without question there would be no point in submitting it; if, on the other hand, the ICRC rejected any of the persons listed, it would be acting as a supranational authority, which it could not be. It was the sovereign right of States to determine the competence or otherwise of their own nationals.

43. She agreed with the proposal of the German Democratic Republic (CDDH/I/84) for the addition of the words "between the Parties concerned" at the end of paragraph 4. Without that addition the agreement of one of the Parties might be overlooked. The Brazilian amendment (CDDH/I/55) was too restrictive.

44. Mr. SATO (Japan) said that the basic concepts of Article 6 were acceptable to his delegation, although some of the proposed amendments might be useful. The maintenance of a body of qualified persons would be an important element in an over-all system to facilitate the dissemination of information and to ensure the full implementation of the Conventions and Protocols. Article 6 should therefore be read in conjunction with Articles 71 and 72.

45. Article 6, paragraph 2, left the recruitment and training of qualified personnel to the discretion of the Contracting Parties. Their decision on the number and level of training of qualified persons to be recruited would be influenced primarily by the availability of human and financial resources and by other internal circumstances. It might therefore be appropriate to leave paragraph 2 as it stood. His delegation would, however, like to have an indication of the number of personnel and level of training envisaged, so that the Contracting Parties could take that into account in applying the provisions of the article.

46. The concept of qualified persons would be particularly useful in cases in which a Contracting Party was required to act as a Protecting Power. His delegation therefore could not agree to the deletion from paragraph 1 of the reference to the activities of the Protecting Powers; nor could it support the deletion of paragraph 3, since a list of qualified persons would be essential to facilitate the use of their services.

219
47. Mr. ROSENNE (Israel) said that his delegation had no difficulty about Article 6 as submitted by the ICRC. Although it could accept in principle the idea that the national societies might offer their services, it regretted that it was unable in present circumstances to support the Philippine amendment (CDDH/I/40). The comments he was about to make would also relate to any general proposal that might be put forward in respect of the national societies.

48. His delegation had drawn attention on various occasions to its position concerning the use in Israel's armed forces of the Red Shield of David as the distinctive emblem of the medical services, while respecting the inviolability of other emblems. At the twelfth (closing) meeting of Committee II (CDDH/II/12, para. 41) at the first session of the Conference, his delegation had indicated that Israel's national society was the Red Shield of David Society. One of the incongruous results of the non-recognition of its distinctive emblem was that the Society remained excluded from the International Red Cross, despite the fact that it possessed all the necessary qualifications and stood in high repute for its spontaneous response to calls for aid to victims of distress and disaster, regardless of race, creed or nationality. Such exclusion was compatible neither with the aims of universality and non-discrimination, which were the hallmarks of the International Red Cross, nor with the Conference's objective of strengthening the role of the national societies - an unattainable aim so long as unjustified restrictions continued to be placed on the acceptance of qualified national societies within the framework of the International Red Cross.

49. His delegation's inability to vote in favour of the provision in question indicated its dissatisfaction with the existing state of affairs.

50. Mr. CALERO-RODRIGUES (Brazil), referring to the Mongolian representative's comments, said that he did not consider his delegation's amendment (CDDH/I/55) to be more restrictive than that of the German Democratic Republic (CDDH/I/84). The fact that two Contracting Parties had been specified did not mean that others would be precluded from signing agreements. The ICRC representative had drawn attention to the need to clarify paragraph 4 and that was the intention of his delegation's amendment.

51. Mr. RECHETNIK (Ukrainian Soviet Socialist Republic) said that the fundamental task of the personnel in question would be to facilitate the application of the Conventions and of the Protocol. That task would also require the services of the military and civilian medical and judicial authorities.

52. It was unnecessary to refer in particular to the activities of the Protecting Powers or their substitutes, since those activities were covered by the application of the Conventions and of the Protocol. The reference at the end of paragraph 1 could therefore be deleted.

53. He supported the Mongolian representative's comments on the list referred to in paragraph 3. It was not a proper function of the ICRC to examine the qualifications of national personnel; to require a Contracting Party to submit such a list would be an unwarranted interference in its internal affairs. He supported the amendment of the German Democratic Republic to paragraph 4. Its use of the word "parties" made it broader than the Brazilian amendment, which referred only to States.

54. Mr. Antoine MARTIN (International Committee of the Red Cross), replying to questions asked by representatives, noted that the representatives of
Mongolia and of the Ukrainian Soviet Socialist Republic had expressed some concern about the wording of Article 6, paragraph 3. He emphasized that the ICRC in no circumstances wished to supervise the training of qualified personnel to facilitate the "application of the Conventions and of the present Protocol and in particular the activities of the Protecting Powers". If doubt existed concerning the interpretation of paragraph 3, the wording should be amended.

55. Pointing out that Article 6 had been drafted by one of the Commissions of the Conference of Government Experts convened by the ICRC, he referred to the Commentary on paragraph 3 of the article, and said that it would be useful for the ICRC, which closely followed the application and the dissemination of the Geneva Conventions, to have lists of qualified personnel. If, in accordance with Article 5, paragraph 2, the ICRC was entrusted with procedure concerning the designation and acceptance of Protecting Powers, it would certainly be useful for it to have the names of persons who could be called upon to play a part within the framework of the international supervisory machinery.

56. Replying to the request by the representative of Japan for an indication of the number of persons who should be trained and the way in which they should be trained in order to ensure the application of Article 6, he said that the ICRC had no right whatsoever to interfere in the internal affairs of a State. It would, however, be glad to make suggestions upon request concerning the personnel mentioned in Article 6 and would be glad to train such personnel if so requested.

57. Replying to the representative of the Philippines, who had referred to his delegation's amendment (CDDH/I/40) concerning the part to be played by national Red Cross societies, he pointed out that that question would be re-examined when the text relating to the general provision for strengthening the role of those societies was examined. In any case, as it was obvious that national Red Cross Societies could at any time offer their services in order to ensure the better application of the Geneva Conventions, he felt that amendment CDDH/I/40 might be unnecessary.

58. Replying to the representative of the Republic of Korea, he said that the ICRC, while deeply honoured by the proposal in amendment CDDH/I/76, considered that it was rather a declaration of good will than a legal obligation, and that the amendment was not absolutely essential.

59. The CHAIRMAN suggested that Article 6 should be referred to the Working Group.

It was so agreed.

G. MEETING OF COMMITTEE I, 12 February 1975 (CDDH/I/SR.20):

7. Mr. CRISTESCU (Romania) said he must apologize for not having been able to introduce at an earlier meeting his delegation's amendment to Article 6 (CDDH/I/17), which was designed to ensure that the personnel covered by that article remained under the jurisdiction of their State of origin.

9. The CHAIRMAN pointed out that Article 6 had been passed to the Working Group, of which the Rapporteur was Chairman.
H. REPORT TO COMMITTEE I OF THE WORK OF WORKING GROUP A, 13 March 1975
(CDDH/1/235/Rev. 1):

Article 6. Qualified Persons

Article 6, which was considered by the Working Group at its seventeenth and eighteenth meetings, was adopted in the following form:

Paragraph 1

"In peacetime the High Contracting Parties shall endeavour, with the assistance of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of the present Protocol, and in particular the activities of the Protecting Powers."

Paragraph 2

"The recruitment and training of such personnel lies within the national competence."

Paragraph 3

"The International Committee of the Red Cross will hold at the disposal of the High Contracting Parties lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose."

Paragraph 4

"The conditions governing the employment of such personnel outside the national territory shall, in each case, form the subject of special agreements between the parties concerned."

I. MEETING OF COMMITTEE I, 13 March 1975 (CDDH/1/SR.26):

24. The CHAIRMAN proposed that the Committee adopt Article 6 by consensus.

25. Mr. GLORIA (Philippines) said that his delegation had no objection to the rest of the article, but it had proposed that paragraph 3 be amended because it was not in consonance with the draft of the International Committee of the Red Cross (ICRC). In the new version given in document CDDH/1/235, it appeared that the whole intention of the ICRC had been reversed.

26. The CHAIRMAN invited the Committee to consider Article 6 paragraph by paragraph.

Paragraph 1

Paragraph 1 was adopted by consensus.

Paragraph 2

27. Mr. CRISTESCU (Romania) said that his delegation understood that it was not only the recruitment and training of qualified personnel to facilitate the
application of the Geneva Conventions of 1949 and of the two Protocols and, in particular, the activities of the Protecting Powers which lay within the national competence, but also the composition of such personnel.

It was so agreed.

Paragraph 2 was adopted by consensus.

Paragraph 3

28. Mr. CRISTESCU (Romania) said that, since paragraph 3 had been discussed at length in the Working Group and certain reservations had been expressed, he proposed that a vote be taken.

29. Mr. RECHETNIK (Ukrainian Soviet Socialist Republic), supported by Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic), said that it had been agreed in the Working Group that the Russian version of paragraph 3 should correspond with the English, French and Spanish versions except that three words - "esli sochtut nuzhnym" ("if they deem it necessary") - would be added at the end. On that understanding, the Russian-speaking delegations would not oppose a vote on the version of paragraph 3 given in document CDDH/1/235.

30. The CHAIRMAN invited the Committee to vote on Article 6, paragraph 3, in the English, French and Spanish versions of document CDDH/1/235, it being understood that the Russian version would be as read out by the Ukrainian representative.

Paragraph 3 was adopted by 67 votes to one, with 4 abstentions.

31. Mr. CRISTESCU (Romania) said that he had abstained from voting because his delegation considered that the paragraph imposed excessive obligations on the Contracting Parties.

Paragraph 4

Paragraph 4 was adopted by consensus.

Article 6 as a whole was adopted by consensus.

J. ARTICLE ADOPTED BY COMMITTEE I, 13 March 1975 (CDDH/I/272):

Article 6. Qualified Persons

1. In peacetime the High Contracting Parties shall endeavour, with the assistance of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of the present Protocol, and in particular the activities of the Protecting Powers.

2. The recruitment and training of such personnel lies within the national competence.

3. The International Committee of the Red Cross will hold at the disposal of the High Contracting Parties the lists of persons so trained which the High
Contracting Parties may have established and may have transmitted to it for that purpose.

4. The conditions governing the employment of such personnel outside the national territory shall, in each case, form the subject of special agreements between the parties concerned.

K. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 6. Qualified persons

1. The High Contracting Parties shall, also in peacetime, endeavour, with the assistance of the national Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of this Protocol, and in particular the activities of the Protecting Powers.

2. The recruitment and training of such personnel are within domestic jurisdiction.

3. The International Committee of the Red Cross shall hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.

4. The conditions governing the employment of such personnel outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned.

L. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 6. Qualified persons

Article 6 was adopted by consensus.

M. 1977 PROTOCOL I:

Article 6. Qualified persons

1. The High Contracting Parties shall, also in peacetime, endeavour, with the assistance of the national Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of this Protocol, and in particular the activities of the Protecting Powers.

2. The recruitment and training of such personnel are within domestic jurisdiction.

3. The International Committee of the Red Cross shall hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.
4. The conditions governing the employment of such personnel outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned.
ARTICLE 7 - MEETINGS

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 7. Meetings

The depositary of the Conventions shall convene a meeting of the High Contracting Parties, at the request of two-thirds of them, to study general problems concerning the application of the present Protocol; it may convene such a meeting at the request, also, of the International Committee of the Red Cross.

B. PROPOSED AMENDMENTS:

CDDH/I/16 Romania 8 March 1974

Redraft this article to read as follows:

"Article 7 - Diplomatic Conference

The depositary of the Conventions, at the request of two-thirds of the Parties thereto, shall convene a diplomatic conference with a view to amending or revising the present Protocol."

CDDH/I/28 Pakistan 11 March 1974

Replace the present Article 7 by the following amended Article 7:

"Article 7 - Meeting of the High Contracting Parties

1. The depositary of the Conventions shall convene a meeting of the High Contracting Parties, at the request of two-thirds of them, to study general problems concerning the application of the Conventions and Protocol; it may convene such a meeting at the request, also, of the International Committee of the Red Cross.

2. On request of the International Committee of the Red Cross the depositary shall convene a meeting of the High Contracting Parties in order to consider the prohibition of weapons, projectiles, substances, methods and means which uselessly aggravate the suffering of disabled adversaries or render their death inevitable in all circumstances. A meeting of the High Contracting Parties shall also be convened by the depositary on the request of the International Committee of the Red Cross, with the object of specifying and prohibiting weapons and methods of warfare which are likely to affect combatants and civilians indiscriminately.

3. The Protecting Powers or the International Committee of the Red Cross shall bring to the notice of High Contracting Parties serious and continuing breaches of the Conventions and Protocol. The High Contracting Parties shall endeavour to bring the Parties to the conflict back to an attitude of respect for the Conventions and the Protocol.
4. In cases where the conciliation procedure common to the Conventions and Protocol has failed, the Protecting Power may, if it considers the question of interpretation or application sufficiently important, request the depository to convene a meeting of the High Contracting Parties to resolve the disagreement. The depository shall immediately circulate this request to the High Contracting Parties, and shall convene such a meeting if desirable. A meeting of the High Contracting Parties, so convened, shall take appropriate steps to settle the disagreement.


Delete the present text and substitute the following:

"The depositary of the present Protocol shall convene a meeting of the High Contracting Parties at the request of one or more of the said Parties and upon the approval of a majority of the said Parties, to consider problems concerning the application of the Conventions and the present Protocol. It may also convene such a meeting at the request of the International Committee of the Red Cross."

CDDH/I/62 18 March 1974

Replace Article 7 by the following:

"Article 7 - Conferences

The High Contracting Parties shall hold a conference whenever circumstances require, to study any problem concerning the application of the Conventions and of the present Protocol. The conference shall be convened by the depositary of the Conventions at the request of the International Committee of the Red Cross or of one-third of the High Contracting Parties."

CDDH/I/65 19 March 1974

Replace Article 7 by the following:

"A Review Conference shall be convened by the depositary of the Conventions either at the request of one-third of the High Contracting Parties or 10 years from the date the present Protocol comes into force to review the working of the present Protocol with reference to its implementation and consider and adopt appropriate amendments."
C. MEETING OF COMMITTEE I, 11 February 1975 (CDDH/I/SR.19):

60. Mr. Antoine MARTIN (International Committee of the Red Cross), introducing Article 7, said that it had given rise to much discussion during the preparation of draft Protocol I.

61. In 1971, at the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, a proposal entitled "Possibility of ensuring the better application of the Geneva Conventions of 1949" had requested the ICRC to prepare a special study on the role to be played by the High Contracting Parties in order to ensure that those Conventions were duly respected.

62. The same year, in a questionnaire on measures to be taken for strengthening the application of the four Geneva Conventions of 1949, the ICRC had asked States Parties to the Geneva Conventions whether they could and should exercise collective control action in pursuance of Article 1 common to those Conventions and, if so, what procedure was envisaged in that respect. Some of the replies to the questionnaire had been in the affirmative but many had replied in the negative and others had expressed doubts about the effectiveness of such a proposal.

63. Some of the experts consulted had emphasized the need to develop the article on inquiry procedure common to the Conventions of 1949; some of them had hoped for the establishment of a legal body with the power to inquire into, and report on, any violations of the Conventions, and others had called for the establishment of collective control either within the framework of the United Nations or by a conference of the High Contracting Parties.

64. After a close study of all those proposals, the ICRC had finally decided to limit itself to including in the draft Protocol submitted to the present Conference a provision concerning only the examination by the proposed meetings of the general problems relating to the application of the Protocol. The meetings of the High Contracting Parties would not take decisions concerning the application of the 1949 Geneva Conventions, because the ICRC considered, as did other experts, that the "convention community" of the Parties to the Protocol would be unable to give a decision on problems of the application of the Conventions of 1949 which linked another "convention community."

65. Mr. ABU-GOURA (Jordan), referring to the suggestion in Article 7 that "a meeting of the High Contracting Parties shall be convened at the request of two-thirds of them", said that it would be difficult to obtain such a majority. He considered that meetings should be convened at the request of one or more of the High Contracting Parties and "with the approval of a majority of the said parties", as proposed in amendment CDDH/1/48 and Add.1 and Corr.1, of which his delegation was a sponsor.

66. Mr. EL ARABY (Arab Republic of Egypt), speaking as a sponsor of amendment CDDH/1/48 and Add.1 and Corr.1, said that such an important meeting as that envisaged in Article 7 should not be confined to dealing with general problems concerning the application of Protocol I; it should deal also with the application of the 1949 Geneva Conventions. The procedure followed in calling meetings of the High Contracting Parties should be similar to that followed by the United Nations when convening Special and Emergency Special Sessions of the General Assembly.
67. Mr. EL-MISBAH EL SADIG (Sudan) said that the object of amendment CDDH/I/48 and Add.1 and Corr.1 was to simplify the convening of a meeting of the High Contracting Parties and the ICRC’s task by proposing that such a meeting could be requested by "one or more of the said Parties". It would be difficult to obtain the two-thirds majority proposed in Article 7 of draft Protocol I.

68. Mr. CHOWDHURY (Bangladesh), supporting the basic idea in Article 7, pointed out that amendment CDDH/I/65, submitted by his delegation, suggested that a review conference should be convened by the depositary of the 1949 Geneva Conventions either at the request of one-third of the High Contracting Parties or ten years from the date of the coming into force of the Protocol.

69. Mrs. DARIMAA (Mongolia) asked how Article 7 would be put into practice. She considered that the article lacked consistency and pointed out, that in international practice meetings such as those proposed in Article 7 were convened at the request of the High Contracting Parties only.

70. Mr. de BREUCKER (Belgium) said that he saw no need for such meetings as those proposed in Article 7 to be convened by a two-thirds majority in order to consider matters which by the time the meeting was convened might be a thing of the past.

71. He wondered whether the provisions of Article 7 and those of Article 86 were related.

72. Mr. CUTTS (Australia) said that Article 7 made necessary provision for the possibility of reviewing problems which might arise from the application of Protocol I. The question to be decided was how the meetings of the High Contracting Parties should be convened. It was highly desirable that the ICRC, in addition to the High Contracting Parties, should be in a position to request the depositary to convene a meeting of those Parties. However, the two-thirds majority suggested in Article 7 might lead to difficulties and his delegation would prefer such meetings to be convened at the request of half the number of the High Contracting Parties.

73. His delegation could support amendment CDDH/I/48 and Add.1 and Corr.1 if the words "one or more of the said Parties" were deleted.

74. Mr. Antoine MARTIN (International Committee of the Red Cross) drew attention to the commentary on Article 7 (CDDH/3) and said that doubts had been expressed by some of the Government experts regarding the proposed two-thirds majority required for calling a meeting of the High Contracting Parties. As stated in the commentary, however, the majority of the experts had pointed out that it was necessary to determine at what moment the figure of two-thirds would be taken into consideration, and a proposal had been submitted at the 1972 Conference of Government Experts to the effect that no such meetings could be convened until at least one-half of the Parties to the Conventions had become Parties to the Protocol. None of the suggestions put forward in that respect had, however, been approved by a majority of the experts.

75. Replying to the representative of Mongolia, he said that the text of Article 7 had been drafted by the ICRC bearing in mind the majority opinion of the Conference of Government Experts. Many experts considered that the ICRC should have the right to make a request to the depositary for the convening of a meeting of the High Contracting Parties because the ICRC had the task,
according to the 1949 Geneva Conventions and its own statute, to follow closely questions relating to the application and the implementation of the Geneva Conventions. Furthermore, the ICRC had a continuing link with the depositary. If the last sentence of Article 7 proved unacceptable, the ICRC would be the first to agree that it should be deleted.

76. Referring to the statement by the representative of Belgium, he pointed out that the draft prepared for the 1972 Conference of Government Experts provided that the proposed meeting of High Contracting Parties would study problems concerning the application of Protocol I and in addition any amendments to the Geneva Conventions proposed by Parties to that Protocol. A number of experts had then said that the amendment procedure was complex and that it should be introduced in Part VI - Final Provisions. The ICRC had supported that point of view by introducing in Part VI a detailed article on amendment procedure. Several of the amendments submitted to Article 7 should therefore be dealt with when the Committee considered Article 86 of draft Protocol I.

D. MEETING OF COMMITTEE I, 12 February 1975 (CDDH/I/SR.20):

2. Mr. HUSSAIN (Pakistan) said that Article 1 common to the four Geneva Conventions of 1949 stated that the High Contracting Parties undertook to respect and to ensure respect for the Conventions in all circumstances. The experience of contemporary armed conflicts had shown, however, that observance was far from satisfactory. His delegation accordingly welcomed the insertion of Article 7 in draft Protocol I, providing for the possibility of convening a meeting to study general problems concerning the application of the Conventions and Protocol. The absence of such a forum had been a serious impediment to the smooth working of the Conventions. In the view of his delegation, however, restriction of such meetings to the study of general problems was unnecessary and was likely to constitute a handicap to the proper implementation of the Protocol, since any problem arising out of a concrete case would seem to be excluded. In his view, the meeting itself should decide what problems it would deal with and its freedom of action should not be unduly circumscribed by the wording of the article. In Pakistan's amendment (CDDH/I/28), the present draft Article 7 became paragraph 1 while paragraphs 2 and 3 referred to problems concerning the use of weapons causing unnecessary suffering and indiscriminate weapons and to problems arising out of serious and continuing breaches of the Protocols.

3. There was nothing essentially new in such provisions: Article 1 common to the four Geneva Conventions of 1949 and Article 70 of draft Protocol I implied that, if a Party failed to carry out its obligations, the other Contracting Parties were bound to endeavour to bring it back to an attitude of respect for its engagements.

4. His delegation regarded Article 7 as one of the most crucial articles in draft Protocol I, since it was just as important to ensure implementation of what had already been settled in the Conventions as to embark on fresh law-making.

5. Mr. BLOEMBERGEN (Netherlands) said that his delegation was not convinced that Article 7 was the best way of dealing with the problems to which it referred. As other speakers had pointed out, the question of possible amendments to the Protocol was already dealt with in Article 86. The suggestion that a
meeting for the consideration of amendments might develop into a kind of review conference was a very interesting idea; his Government would always be happy to participate in any conference designed to improve humanitarian law.

6. Article 7, however, referred to general problems concerning the application of the Protocol. The utility of a meeting of the High Contracting Parties seemed doubtful because, with the existing tight conference schedule, it seemed likely that the problems to be dealt with would have been by-passed by events before the meeting could be convened. In any case, questions of the application and interpretation of the Protocol could always be put before the International Court of Justice at the Hague, which was at all times available to settle legal disputes or give an Advisory Opinion. Any provision on that point, however, should be included in the final provisions and not at the beginning of the Protocol.

10. Mr. EL ARABY (Arab Republic of Egypt) said that he would reply to comments made at the previous meeting (CDDH/I/SR.19) on amendments CDDH/I/48 and Add.1 and Corr.1.

11. The first comment had related to the words "one or more of the said Parties". The intention of the sponsors was to provide machinery for convening a meeting of the High Contracting Parties at the request of any party. The meaning would remain unchanged if the expression "any party" were used, as some representatives had suggested. Such a meeting would, of course, not take place unless a majority accepted it.

12. The second comment had been on the type of problem to be dealt with by such a meeting. The sponsors wished it to be possible for the meeting to discuss more than merely general matters, but again they realized that a majority would be required to take a decision on the matter.

13. The last observation had been on whether the problems to be discussed should include the Conventions of 1949 as well as the draft Protocols. The sponsors had no intention of asking for a revision of the Conventions at such meetings, but, under Article 1 of the four Conventions, the High Contracting Parties were collectively responsible for ensuring respect for the Conventions, while Article 1 of the Protocol made it clear that the Protocol was supplementary to the Conventions. For those reasons the sponsors of the amendment (CDDH/I/48 and Add.1 and Corr.1) wished to maintain their text, which he hoped would be acceptable to the majority.

14. Mrs. DARIJMAA (Mongolia) said that she had searched in vain in the Statutes of the International Committee of the Red Cross for a provision that the High Contracting Parties could present instruments approving its Statutes, as was provided in the rules of other international organizations. The Swiss Government was not a depositary of the Statutes of the ICRC. An interesting and unusual legal problem arose in that Article 7 provided that the depositary of the Conventions "may convene such a meeting at the request, also, of the International Committee of the Red Cross". Since the first sentence of Article 7 provided that the depositary could convene a meeting at the request of two-thirds of the High Contracting Parties, a situation could arise in which two-thirds of the Parties to the Geneva Conventions were put on an equal footing with the ICRC. Since the Statutes had not been approved by Governments, she thought that a careful examination of the provision was needed.
15. Mr. PARTSCH (Federal Republic of Germany) said that, in principle, his
delegation was in favour of Article 7.

16. Several representatives had referred to the United Nations method of
convening conferences; but the United Nations was a permanent body with a fixed
budget, whereas Article 7 referred to ad hoc conferences within a quite dif-
ferent framework. In general, his delegation thought that the United Nations
General Assembly could not be taken as a model in the present context.

17. His delegation was in favour of enabling a meeting of the High Con-
tracting Parties to study also the application of the Conventions. But it was
important that the study should be confined to general problems; specific
cases should not be discussed.

18. With regard to the bodies that would be able to request the convening
of such a meeting, he pointed out that there was not obligation on the part of
the depositary to convene a meeting at the request of the ICRC: it was merely
authorized to do so. There was thus no question of placing two-thirds of the
High Contracting Parties on the same footing as the ICRC.

19. Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic) said that
the number of amendments submitted to Article 7 showed the interest it had
aroused. Its original wording seemed rather complicated, however, and he
thought that the point raised by the Mongolian representative might be covered
by the deletion of the last sentence, which would be in line with other amend-
ments submitted.

20. Mr. PICTET (Switzerland) said that, since Switzerland was the depository
of the Conventions, its interest in Article 7 was obvious.

21. The Swiss delegation was opposed to any attempt to widen the scope of
the meetings referred to in Article 7. The question of amendments to Protocol
I was dealt with in Article 86. The meetings provided for in Article 7 would
not be an appropriate place for the negotiation and adoption of amendments
which should be the task of diplomatic conferences preceded, where necessary,
by the work of experts and by the usual consultations. The idea of having an
assembly of Contracting Parties that would become a kind of collective control
body seemed neither feasible nor desirable. The difficulty of organizing such
meetings would be great, and there was a danger of their being unable to act
in time. Such an arrangement would also give to any State the possibility of
intervening in an international conflict which might produce reactions among
the parties to it that would make effective control difficult. If a control
organ was to be set up, it should be a permanent body, not an occasional one.
It would be preferable for the meetings to confine themselves to general prob-
lems, as the existing text of Article 7 provided; such meetings could be useful,
as an exhaustive discussion of general problems might eventually lead to the
introduction of the amendment procedure provided for in Article 86. His dele-
gation feared, however, that it might prove impossible to avoid the discussion
of concrete situations, with all the resultant drawbacks.

22. As the depository State, Switzerland was ready to assume the duties
that would be entrusted to it if Article 7 was adopted. His delegation never-
theless thought that, precisely because they were important, such meetings
should not be frequent and should be convened only if a large number of High
Contracting Parties so desired. It would be unwise to fix the figure at less
than the two-thirds mentioned in Article 7.

232
23. Mr. FREELAND (United Kingdom) suggested that amendment CDDH/I/48 and Add.1 and Corr.1 might form the basis of a compromise, if everything after the words "upon the approval" were deleted and replaced by the words "of two-thirds of the said Parties, to consider general problems concerning the application of the present Protocol".

24. Mr. GIRARD (France) said that conventions of such a kind should be as permanent as possible. He agreed with the representative of Switzerland that amendments to the Conventions should be dealt with under the final clauses. His delegation would have been prepared to support the original text, but it could also accept the wording of amendment CDDH/I.48 and Add.1 and Corr.1 if it were modified on the lines suggested by the United Kingdom representative.

25. Mr. GRAEFARTH (German Democratic Republic) supported the United Kingdom proposal, which could provide a good starting point for the discussion in the Working Group.

26. Mr. Antoine MARTIN (International Committee of the Red Cross), replying to the Mongolian representative, said that the proposal in the last phrase of the original text had been supported at the meetings of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, since they knew that the International Committee of the Red Cross closely followed the implementation of the Geneva Conventions. Since, however, the proposal had aroused some objection, the ICRC would have no objection to it being withdrawn.

27. He firmly maintained the point of view he had expressed at the nineteenth meeting (CDDH/I.SR.19) during his introductory statement on the draft article, namely, that the meetings should examine only general problems relating to the application of the Protocol. The study of such questions might result in a desire to amend the Protocol, in accordance with the provisions of Article 86.

28. The term "High Contracting Party" applied to Parties to the Protocol, not to the Parties to the Conventions. The moment at which the figure of two-thirds would be taken into consideration should be discussed in the Working Group or some similar body, which could also study the other matters left open in the original text.

The Committee decided to refer Article 7 and the amendments to it to the Working Group.

E. WORKING DOCUMENT FOR DRAFT PROTOCOL I, 13 February 1975 (CDDH/I/210):

"The depository of the present Protocol shall convene a meeting of the High Contracting Parties at the request of one or more of the said Parties and upon the approval of two-thirds of the said Parties to consider general problems concerning the application of the present Protocol."
F. REPORT TO COMMITTEE I ON THE WORK OF WORKING GROUP A, 13 March 1975
(CDDH/I/235/Rev.1):

**Article 7 (Meetings):**

Many delegations expressed support for the text submitted in document CDDH/I/210, which combined the substance of several amendments. This text reads as follows:

"The depositary of the present Protocol shall convene a meeting of the High Contracting Parties at the request of one or more of the said Parties and upon the approval of two-thirds of the said Parties to consider general problems concerning the application of the present Protocol."

A considerable proportion of the delegations, however, expressed a liking for amendment CDDH/I/48, which reads as follows:

"The depositary of the present Protocol shall convene a meeting of the High Contracting Parties at the request of one or more of the said Parties and upon the approval of a majority of the said Parties to consider problems concerning the application of the Conventions and the present Protocol. It may also convene such a meeting at the request of the International Committee of the Red Cross."

Having failed to reach agreement, the Working Group submits to the Committee the following text:

"The depositary of the present Protocol shall convene a meeting of all the High Contracting Parties at the request of one or more of the said Parties and upon the approval of [two-thirds] [a majority] of the said Parties, to consider [general] problems concerning the application [of the Conventions and] of the present Protocol."

Some delegations urged the inclusion in the report of a statement to the effect that Article 7 should be considered in relation to Article 86 of Protocol I.

For lack of time, the amendment to Article 7 submitted by Pakistan under the symbol CDDH/I.28 could not be considered in its entirety. Paragraph 1 of that amendment was withdrawn by its sponsor in favour of the text sent back to the Committee by the Working Group. Paragraphs 2, 3 and 4, could not be considered, however and it was therefore decided to put them in square brackets after the draft of Article 7 submitted by the Working Group.

These paragraphs read as follows:

**Paragraph 2**

["On request of the International Committee of the Red Cross the depositary shall convene a meeting of the High Contracting Parties in order to consider the prohibition of weapons, projectiles, substances, methods and means which uselessly aggravate the suffering of disabled adversaries or render their death inevitable in all circumstances. A meeting of the High Contracting Parties shall also be convened by the depositary on the request of the International..."
Committee of the Red Cross, with the object of specifying and prohibiting weapons and methods of warfare which are likely to affect combatants and civilians indiscriminately."

Paragraph 3

"The Protecting Powers or the International Committee of the Red Cross shall bring to the notice of High Contracting Parties serious and continuing breaches of the Conventions and Protocol. The High Contracting Parties shall endeavour to bring the Parties to the conflict back to an attitude of respect for the Conventions and the Protocol."

Paragraph 4

"In cases where the conciliation procedure common to the Conventions and Protocol has failed, the Protecting Power may, if it considers the question of interpretation or application sufficiently important, request the depositary to convene a meeting of the High Contracting Parties to resolve the disagreement. The depositary shall immediately circulate this request to the High Contracting Parties, and shall convene such a meeting if desirable. A meeting of the High Contracting Parties, so convened, shall take appropriate steps to settle the disagreement."

Conclusion

The Working Group considered in depth the articles set forth and, although there are certain points on which it was unable to reach a consensus, there are grounds for hoping that the necessary decisions can be taken, and that the articles will be adopted by Committee I without further detailed discussion.

G. MEETING OF COMMITTEE I, 17 March 1975 (CDDH/I/SR.28):

64. The CHAIRMAN recalled that it had been decided that the Committee would proceed to vote on Article 7 without opening a new discussion. Working Group A, having failed to reach agreement, had submitted a text to the Committee (CDDH/I/235/Rev.1). The Committee had to decide, first whether to retain the words "[two-thirds]" or "[a majority]", then whether to retain the word "[general]" and, finally, whether to retain the words "[of the Conventions and]."

65. Mr. TORRES AVALOS (Argentina) said that, as was stated in the report of Working Group A, some delegations had urged the inclusion in the report of a statement to the effect that Article 7 should be considered in relation to Article 86 of draft Protocol I, in view of the close link between the two articles. There could indeed be some confusion between the idea of "general problems" and that of amendment, which was the subject of Article 86, and it could lead to complications and misinterpretation. He suggested, therefore, that the vote on Article 7 should be postponed.

66. The CHAIRMAN invited the Committee to vote on that proposal.

The Argentine proposal was rejected by 43 votes to 7, with 17 abstentions.
67. The CHAIRMAN invited the Committee to vote on Article 7.

68. Mr. CONDORELLI (Italy) said that it would be preferable to vote first on the retention of the word "general", then on the question of the majority and finally on retention of the words "of the Conventions and".

It was so agreed.

70. The CHAIRMAN invited the Committee to vote on the retention of the word "general".

The Committee decided, by 42 votes to 24, with 6 abstentions, to retain the word "general".

71. The CHAIRMAN invited the Committee to vote on the retention of the words "a majority".

The Committee decided, by 35 votes to 29, with 8 abstentions, to retain the words "a majority".

72. The CHAIRMAN invited the Committee to vote on the retention of the words "of the Conventions and".

The Committee decided, by 62 votes to none, with 10 abstentions, to retain the words "of the Conventions and".

73. The CHAIRMAN read out the following final text for Article 7, it being understood that the amendments submitted by the Pakistan delegation would be considered later.

"The depositary of the present Protocol shall convene a meeting of all the High Contracting Parties at the request of one or more of the said Parties and upon the approval of a majority of the said Parties, to consider general problems concerning the application of the Conventions and of the present Protocol."

Article 7, as amended, was adopted by consensus.

H. ARTICLE ADOPTED BY COMMITTEE I, 17 March 1975 (CDDH/1/273):

Article 7 - Meetings

The depositary of this Protocol shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties, and upon
the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol.

J. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 7 - Meetings

    Article 7 was adopted by consensus.

K. PLENARY MEETING, 24 May 1977 (CDDH/SR.37, ANNEX):

    Spain

    Article 7 of draft Protocol I

    The Spanish delegation voted against this article since owing to its lack of clarity it is impossible to know with certainty the scope of the obligations it entails. It will be necessary to know how and in conformity with what norms or criteria the nature of the breaches committed and the responsibilities any High Contracting Party may have incurred will be decided. It will also be necessary to establish how and in what manner the eventual co-operation between the High Contracting Parties, to which the articles refers, will be established. Consequently it is uncertain whether such co-operation would conform to the standard established by the Charter of the United Nations.

L. 1977 PROTOCOL I:

    Article 7 - Meetings

    The depositary of this Protocol shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol.
PART II
Wounded, Sick and Shipwrecked
Section I
General Protection
PART II

WOUNDED, SICK AND SHIPWRECKED

SECTION I

GENERAL PROTECTION

ARTICLE 8 - TERMINOLOGY

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 8. Definitions

For the purposes of the present Part:

(a) "the wounded and the sick" means persons, whether military or civilian, who are in need of medical assistance and care and who refrain from any act of hostility. The term includes inter alia: the wounded, the sick, the shipwrecked, the infirm, as well as expectant mothers, maternity cases and new-born babies;

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

(c) "medical unit" means medical establishments and units, whether military or civilian, especially all installations of a medical nature, such as hospitals, blood transfusion centres and their medical and pharmaceutical stores. Medical units may be fixed or mobile, permanent or temporary. Permanent units are those assigned exclusively and for an indeterminate period to medical purposes. Temporary medical units are those assigned exclusively but for one or more limited periods to medical purposes;

(d) "medical personnel" means:

i. military medical personnel as defined in the First and Second Conventions, including medical transport crews;

ii. civilian medical personnel, including members of the crews of means of medical transports, whether permanent or temporary, duly recognized or authorized by the State and engaged exclusively in the operation or administration of medical units and means of medical transport, that is to say personnel assigned to the search for, removal, treatment or transport of the wounded and the sick;

iii. the medical personnel of civil defence organizations referred to in Article 54, and the medical personnel of the National Red Cross (Red Crescent, Red Lion and Sun) Societies;
(e) "distinctive emblem" means the distinctive emblem of the red cross (red crescent, red lion and sun) on a white background.

(f) "distinctive signal" means any signalling and identification system for medical units and means of transport as envisaged in Chapter III of the Annex.

B. PROPOSED AMENDMENTS:

Title of Part II

CDDH/II/27 United Kingdom of Great Britain and Northern Ireland
11 March 1974

Change the title of Part II from "WOUNDED, SICK AND SHIPWRECKED PERSONS" to "THE WOUNDED AND SICK".

Rationale: to achieve consistency between this title and the proposed United Kingdom amendment to Article 8 (a).

Introductory Phrase

CDDH/II/17 Poland
11 March 1974

Replace the introductory phrase of Article 8 by the following:

"The terms used in the present Part have the following meaning:"

Sub-paragraph (a)

CDDH/II/19 and Bulgari, Byelorussian Soviet Socialist Republic, German Democratic Republic, Hungary, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics
Corr. 1
11 March 1974

1. Replace the present text of sub-paragraph (a) by the following:

"For the purpose of the present Part:

'Wounded and sick' means persons, whether military or civilian, who because of trauma, disease or other physical or mental disability are in serious need of medical assistance and care and who refrain from any act of hostility. The term shall also be construed to include other persons in serious need of medical assistance who refrain from any act of hostility including the infirm, pregnant women, maternity cases and new-born babies."

Sub-paragraph (c)

CDDH/II/3 Yugoslavia
6 March 1974

Third line of sub-paragraph (c), after "stores" delete the full stop and insert: ", first-aid teams."
Sub-paragraph (d)

CDDH/II/19
11 March 1974
Bulgaria, Byelorussian Soviet Socialist Republic, German Democratic Republic, Hungary, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics

Replace the present text by the following:

"(d) 'medical personnel' means personnel, whether permanent or temporary, duly recognized and authorized by the State and engaged exclusively in the operation or administration of medical services, medical units and medical transport, and includes the personnel assigned to the prevention of disease and the search for, removal, treatment or transport of the wounded, the shipwrecked and the sick. The term includes inter alia military medical personnel as defined in the First and Second Geneva Conventions, the medical personnel of civil defence organizations referred to in Article 54 of Protocol I, civilian medical personnel registered by the State, personnel of the National Red Cross (Red Crescent, Red Lion and Sun) Societies attached to medical services and units, and military or civilian medical transport crews."

Sub-paragraph (d) i

CDDH/II/13
11 March 1974
Proposal submitted by the experts of Australia, Belgium, France, Italy, Japan, Netherlands, Norway, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland

Article 24 of the First Convention, to which specific reference is made in this definition, makes no mention of personnel engaged in the operation of medical units, whereas it does provide that personnel employed on very similar duties, namely, personnel engaged in the administration of such units, shall be respected and protected.

The text proposed by the ICRC in 1972, as well as that put forward by the Commission, repeated the terms "personnel engaged exclusively in the operation or administration of medical units".

So as not to exclude personnel of this kind, we propose that sub-paragraph (d) i should be re-worded as follows:

"(d) i. military medical personnel, as defined in the First and Second Conventions, including medical transport crews, as well as personnel engaged exclusively in the operation or administration of medical units."

Sub-paragraph (d) ii

CDDH/II/3
6 March 1974
Yugoslavia

Delete the word "exclusively" after the word "engaged" in the third line.
Add the words:

"and other voluntary relief organizations;"

Rationale

The text of the draft, which speaks of the medical personnel of civil defence organizations and the national Red Cross Societies, is too narrow. It could be interpreted as excluding humanitarian action by other organizations, although that is certainly not what the authors of the draft Protocols intended. The Protocols should obviously be so worded as to facilitate and encourage dedication to the alleviation of the suffering caused by war.

By "voluntary relief organizations" is understood the institutions which Article 125 of the Third Geneva Convention and Article 142 of the Fourth Convention refer to as "religious organizations, relief societies, or any other organizations assisting prisoners of war" or "protected persons". And these two Articles of the Conventions specify that the representatives of such organizations shall receive all necessary facilities from the Detaining Powers.

Proposed amendment to Article 9 et al

In Articles 9, 17, 19, 20, 21 and 22 for "the wounded, the sick and the shipwrecked", read "the wounded and the sick".

Rationale

Since the definition of "the wounded and the sick" given in Article 8 (a) explicitly includes "the shipwrecked" as defined in Article 8 (b) there seems to be no point in employing in one place the term "the wounded and the sick" and in the above Articles the term "the wounded, the sick and the shipwrecked". It would therefore seem preferable to use the same expression throughout.


26. Mr. PICTET (International Committee of the Red Cross), introducing Articles 8 to 20 of draft Protocol I, observed that they dealt with a question which from the very outset had been the subject matter of the Geneva Conventions, namely, the protection of the sick and wounded. An essential new point was the protection of civilian medical personnel, for which inadequate provision had been made in the Fourth Geneva Convention of 1949. The articles submitted by the ICRC were the result of work which had been carried out since 1955 by the Red Cross and major medical organizations ....

27. Article 8 pertained to definitions. Previously there had never been an article devoted entirely to definitions, but it had been considered that the
insertion of such an article would make for simplification and avoidance of
repetition. In his view, the best procedure would be to defer the discussion of
each definition until the examination of the corresponding articles. Otherwise,
confusion might arise and time be wasted.

28. Mr. SOLF (United States of America) supported the proposal of the ICRC
representative.

29. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) stated that he be-
lieved it would be preferable to examine first of all the definition of the
terms "wounded", "sick", and so on. The Committee could not properly discuss
the content of the other articles until it had reached agreement on the precise
medical, legal and humanitarian significance of those terms.

30. Mr. NAHLIK (Poland) said that, from the point of view of legal proce-
dure, the first step should be to circumscribe the subject to be discussed, and
thus to establish the definitions first of all. Such was the general procedure
in conferences on the codification of international law.

31. Mr. COIRIER (France) pointed out that the definitions would never be
perfect until the Committee had settled the questions of substance. The sim-
plest approach would be to give provisional definitions of the terms contained
in Article 8 and then return to each definition as the texts on matters of sub-
stance were drafted.

32. Mr. PICTET (International Committee of the Red Cross) said that the
object of his proposal was to prevent each sub-paragraph of Article 8 giving
rise to a discussion on substance. The French proposal, however, appeared to be
acceptable since the definitions adopted would have a provisional character and
would be reviewed after the elaboration of the corresponding articles.

The French proposal was adopted by consensus.

33. Mr. PICTET (International Committee of the Red Cross), speaking on sub-
paragraphs (a) and (b) of Article 8, explained that the ICRC had continued its
work after the texts presented to the Committee had been printed. Consequently,
he would at times be led to suggest amendments to the proposals set out in the
draft Protocols. Some experts had proposed extending the concept of "ship-
wrecked persons" to cover aircraft occupants in peril and persons in distress in
inhospitable regions as a result of the destruction of their means of transport.
That question was partly covered by the second paragraph of Article 16 of the
Fourth Geneva Convention of 1949, but the provision there was inadequate.

34. Although a majority of experts had not agreed, the ICRC thought that in
view of certain specific cases which had occurred recently, it might now be
better to consider the idea anew. If so, an amendment to sub-paragraph (b)
should be submitted to the Committee. Article 39 of the draft Protocol per-
tained to a particular case, namely, occupants of aircraft in distress.


1. The CHAIRMAN invited the Committee to resume consideration of Article 8
of draft Protocol I.
2. Mr. HAAS (Austria) and Mr. MAKIN (United Kingdom) suggested that, since their proposals, set out in documents CDDH/II/4 and CDDH/II/27, respectively, were purely drafting amendments, they should be referred to the Drafting Committee.

It was so agreed.

3. Mr. NAHLIK (Poland) said that the purpose of his delegation's amendment (CDDH/II/17) was to prevent an unduly restrictive interpretation being placed on the provisions of draft Protocol 1, which did not exist as an independent instrument, but merely represented a supplement to the Geneva Conventions of 1949 and to international law on armed conflicts as a whole.

4. Having consulted with the representative of Australia, he proposed that the English translation of his amendment should read: "Expressions used in the present part shall have the following meaning".

16. The CHAIRMAN invited the Committee to resume consideration of amendments to Article 8 which had been issued in the three working languages.

Sub-paragraph (c)

17. Mr. JAKOVLJEVIC (Yugoslavia), introducing his delegation's amendment to sub-paragraph (c) (CDDH/II/3), said that, as a result of the development of modern means and methods of warfare, increasing numbers of temporary first-aid personnel had to be trained to assist in caring for a much larger number of wounded and sick. His delegation considered that such personnel should receive the same protection as medical personnel. He noted that "civilian medical personnel" were covered by sub-paragraph (d) ii, but first-aid teams were not always composed of medical personnel, and the words "first-aid teams" should be added at the end of sub-paragraph (c).

18. Mr. von NOORDEN (Federal Republic of Germany) said he could support the Yugoslav amendment although he thought that first aid was also covered by the term "treatment" in sub-paragraph (d) ii.

19. Mr. COCKCROFT (South Africa) said that the addition of the words "first-aid teams" to sub-paragraph (c) would restrict the types of personnel to be protected. It would be better to use the term "paramedical personnel", which would cover all personnel caring for the wounded and sick.

20. Mr. EL-SHAMi (Jordan) suggested the term "auxiliary" with which Mr. COCKCROFT (South Africa) agreed.

21. Mr. JAKOVLJEVIC (Yugoslavia), replying to a question by Mr. KRASNOPEEV (Union of Soviet Socialist Republics), said that the first-aid teams to which he was referring were temporary teams training for emergency situations.

22. Mr. MARRIOTT (Canada) considered that such personnel were covered by the phrase "civilian medical personnel, including members of the crews of means of medical transport, whether permanent or temporary, duly recognized or authorized by the State ...", in sub-paragraph (d) ii.

23. Mr. COIRIER (France) suggested that, since the term "medical personnel" had a broad meaning, reference should be made to first-aid posts detached from hospitals.
24. Mr. MAKIN (United Kingdom) pointed out that such posts were defined in Article 54 as forming part of civil defence and should not be mentioned in two articles.

25. Mr. MARTIN (Switzerland), said that, since first-aid posts were in fact units, they were already covered by the phrase "medical establishments and units" in sub-paragraph (c).

26. Mr. TRAMSEN (Denmark) said he agreed with the preceding speaker, adding that the terms "medical" or "first-aid" might even be superfluous.

27. Mr. BRAVO (Mexico) said that the Yugoslav proposal might lead to confusion, as even individual soldiers had first-aid kits and were in a position to deal with emergencies.

28. Mr. JAKOVLJEVIC (Yugoslavia) said he was glad that there was so much agreement in principle on the need to protect first-aid teams, but was afraid that restrictive wording might cover only professional medical staff, to the exclusion of civilians.

29. Mr. MARTIN (Switzerland) suggested that, since other articles, such as Article 54 (a), also referred to first aid, the Committee should discuss the other texts before deciding on the Yugoslav and French proposals.

30. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) endorsed that view and stressed the importance of clear definitions in the Protocol.

31. The CHAIRMAN suggested that the first Yugoslav amendment in document CDDH/II/3 and the French proposal on first-aid posts, as well as all other suggestions should be referred to the Drafting Committee, which would decide on them and report back to the Committee.

It was so agreed.

E. MEETING OF COMMITTEE II, 12 March 1974 (CDDH/II/SR.4):

1. The CHAIRMAN invited the Committee to continue consideration of the amendment by Poland to Article 8 (CDDH/II/17).

2. Mr. NAHLIK (Poland) explained that the purpose of his delegation's amendment to the introductory phrase was to avoid an over-restrictive interpretation of the terms used in Article 8. He was, however, prepared to agree to the following change in the wording of the proposal: "For the purposes of the present Protocol and of the Geneva Conventions, the terms used shall be interpreted as follows": He proposed that the text be referred to the Drafting Committee.

3. Mr. ABSOLUM (New Zealand) supported the proposal to refer the amendment to the Drafting Committee.

4. Mr. SOLF (United States of America) said that the Committee was not competent to take a decision to apply to the 1949 Geneva Conventions the terms defined in Article 8. The following wording might be used for the introductory phrase: "For the purposes of the present Protocol, the terms used shall be
interpreted as follows: "; the Drafting Committee could then be asked to prepare a definitive text.

5. Mr. ABSOLUM (New Zealand), supported by Mr. HAAS (Austria), said that he, too, was of the opinion that the Committee was not competent to take a decision affecting the 1949 Geneva Conventions.

6. Mr. EL-SHAMI (Jordan) said that it was inadvisable to refer to the Drafting Committee proposals on which the Committee had not reached agreement. It was for the Committee to take a decision; all that the Drafting Committee was required to do was to prepare a definitive text that had already been approved in principle.

7. Mr. NORRIS (United Kingdom) said that the Polish sub-amendment might create difficulties for States which had ratified the 1949 Geneva Conventions but would not ratify the Protocol.

8. Mr. MARTIN (Switzerland) said that if the Polish amendment referred only to part II of the Protocol, it did not differ greatly from the ICRC text. The Committee could in that case ask the Drafting Committee to draft the text. If, however, the amendment was intended to apply to the Geneva Conventions, a question of substance would arise.

9. Mr. NAHLIK (Poland) said that he had no strong feelings about his sub-amendment, but suggested that his amendment, as set out in document CDDH/II/17, should be referred to the Drafting Committee.

10. Mr. BOTHE (Federal Republic of Germany) said he could not agree that the definitions contained in Article 8 could apply to the Geneva Conventions, but they should apply to the whole of Protocol I, and not only to part II.

11. The CHAIRMAN suggested that the Polish amendment should be regarded as a drafting change and that it should consequently be referred to the Drafting Committee.

It was so agreed.

Sub-paragraph (a)

12. The CHAIRMAN invited the Committee to examine the amendment to Article 8 (a) contained in document CDDH/II/19.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he was glad to see that a definitions article had been included in the Protocol. Nevertheless, there were certain omissions in sub-paragraph (a); for example it said nothing about the infirm or persons suffering from shock. Moreover, the list in the second sentence of the sub-paragraph was incomplete. Furthermore, expectant mothers and new-born babies could not be included with "the wounded and the sick". Women and children were dealt with in Articles 67, 68 and 69. Special conditions should apply to each of the various categories.

14. Mr. EL-SHAMI (Jordan) said that he, too, considered that expectant mothers and new-born babies could not be regarded as wounded or sick persons.

15. Mr. DEEDDES (Netherlands) said it was understandable that the USSR representative should wish to distinguish between the wounded and the sick, and
the other persons entitled to protection. Nevertheless, the list given in the second sentence was of value, since it would provide a clear indication to those applying the Protocol of what was in the mind of those who had drafted it and of the categories of persons to be protected.

16. Mr. MAKIN (United Kingdom) said he was glad to see that the ICRC had tried to improve the texts of the substantive articles by giving a definition in Article 8 of what was meant by "the wounded and the sick". If amendment CDDH/II/19 were accepted, it would be necessary to specify in each article of the draft Protocol the particular category of persons involved. The second sentence of the ICRC text of Article 8 (a) might be slightly amended to read "... the wounded, the sick, including the shipwrecked, the infirm ...".

17. Mr. MARTIN (Switzerland) asked the USSR representative whether it was really his intention to request the deletion of the second sentence, which seemed to be indispensable for defining the categories of persons considered to be on the same footing as the wounded and the sick.

18. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), supported by Mr. COCKROFT (South Africa), said there seemed to be no need to list all the persons that might be concerned, especially as the list would never be complete.

19. Mr. URQUIOLA (Philippines) pointed out that the persons listed in the second sentence, whether shipwrecked persons, expectant mothers or new-born babies, were fully entitled to the protection provided for in the Protocol, since they met the two conditions stipulated in the first sentence: they were in need of medical assistance and care and they did not engage in any act of hostility.

20. Mr. TRAMSEN (Denmark) said it might be clearer to say "due to physical or mental incapacity".

21. Mrs. DARIIMAA (Mongolia) drew attention to the latent contradiction between the reference to new-born babies and the stipulation "and who refrain from any act of hostility".

22. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) said that if amendment CDDH/II/19 were accepted, there was a risk that children, for instance, might be excluded from the provisions relating to general protection, when Article 11, in particular, was fully applicable to them. He therefore believed that the paragraph should be left un-amended, so as to ensure that persons in that category were fully covered by those provisions.

23. Mr. ABSOLUM (New Zealand) said he thought that the general definition of the "wounded and the sick" given in the first sentence of Article 8 (a) was both useful and concise and that the non-exhaustive list in the following sentence was equally useful in ensuring that the term was applicable to expectant mothers and new-born babies. He disagreed with the comment that such persons were adequately protected by Articles 67 and 68. The only category in the list that was perhaps out of place was that of the "shipwrecked", in that such persons might not necessarily be in need of medical assistance and might not therefore fall within the general definition.

24. Mr. CLARK (Australia) said that, though he agreed with that view, he was inclined to support the ICRC text, which was broader in scope than the amendment in document CDDH/II/19.
25. Mr. COIRIER (France) said that it was necessary that the Protocols should be specific and readily understandable. It seemed to him that the ICRC text was clearer and more specific than the language of the proposed amendment.

26. Mr. SOLF (United States of America) said that it was not simply a matter of supplementing the first two Geneva Conventions of 1949 but also of re-affirming the fourth Convention, Article 16 of which should be borne in mind. The ICRC text seemed to meet those requirements. The most he would be prepared to say was that the inclusion of the shipwrecked might cause some difficulty, as the representatives of New Zealand and Australia had pointed out. In his opinion, however, the inclusion of the shipwrecked as stated in the printed text included shipwrecked persons only while they were in peril at sea.

27. Mr. MAKIN (United Kingdom) said that he too had been about to draw attention to Article 16 of the fourth Convention. It might be better to say that the persons concerned were "in serious need of medical assistance". Apart from that, he found the ICRC text perfectly acceptable.

28. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), supported by Mr. DENG (Sudan), said he was not opposed to the protection of expectant mothers, maternity cases or children; but it was difficult to see how persons in those categories could be included in the expression "the wounded and the sick". The provisions of Article 67 ought perhaps to be strengthened. He was not satisfied with the wording and would prefer to use that proposed by the Danish representative.

29. Mr. KHALIFA (Saudi Arabia) pointed out that some categories of civilians, such as old people, were not referred to in the text.

30. Mr. TARSIN (Libyan Arab Republic) said that the expression "other disorder of physical or mental health" was sufficiently wide to cover the categories of persons envisaged.

31. Mr. DEDDES (Netherlands) said that, in his view, the protection to be given to expectant mothers, maternity cases and children should be mentioned in the definition, and it appeared in the ICRC text. Like the United Kingdom representative, he thought it would be useful to specify that the persons concerned were "in serious need of medical assistance".

32. Mr. ABDINE (Syrian Arab Republic) said that the wording of sub-paragraph (a) of the ICRC text was almost faultless: the two sentences were complementary, in that the first provided an objective definition of the conditions to be fulfilled, while the second illustrated the subjective application of that definition without being in any way limitative.

33. Mr. TRAMSEN (Denmark) said he supported the previous speaker.

34. Mr. ABOU-HEIF (Kuwait) suggested that the difficulty might be overcome by replacing the words "The term includes inter alia" in the second sentence by the words "so far as the protection to which they are entitled is concerned, the following shall be regarded as being in the same category as the persons mentioned". Thereafter the wording would follow the ICRC text.

35. Miss MINOGUE (Australia) said that the Kuwait representative's proposal should enable the Drafting Committee to settle the matter, though it might be better to replace the word "means" by the word "covers".
36. Mr. WATANABE (Japan) said that, since there was a considerable difference in substance between the ICRC text of sub-paragraph (a) and the proposed amendment, the matter should not be referred to the Drafting Committee. His delegation preferred the ICRC text.

37. Mr. MARTIN (Switzerland), speaking on a point of order, said that several delegations had expressed a preference for the ICRC text, subject to certain drafting amendments. The Committee should decide by a vote whether it was in favour of the ICRC text or of the amendment to sub-paragraph (a) (CDDH/II/19). The text which obtained the most votes would then be sent to the Drafting Committee. That would facilitate the work of the Drafting Committee.

38. Mr. LOUKIANOVITCH (Byelorussian Soviet Socialist Republic) said it was impossible to draw up an exhaustive list of the categories of person to be protected; he therefore preferred the text of sub-paragraph (a) in document CDDH/II/19. To avoid influencing the Drafting Committee, however, it would be better to send it the text of the amendment without first proceeding to a vote.

39. Mr. STARING (United States of America), Mr. CALCUS (Belgium) and Mr. VOZZI (Italy) said they wholeheartedly supported the Swiss representative's motion.

40. Mr. ALFONSO MARTINEZ (Cuba) said it would be premature for the Committee to come to a decision on the Soviet Union or any other amendment, since whatever conclusions the Drafting Committee reached would have to be submitted to a plenary meeting of the Committee, which would then have to take a decision.

41. The CHAIRMAN suggested that the Committee should decide by consensus whether to refer the matter to the Drafting Committee.

42. Mr. MARTIN (Switzerland) said that he maintained his motion.

43. Mrs. DARIIMAA (Mongolia) urged the Swiss representative to withdraw his motion; it would be better if the Drafting Committee prepared a text which took account of the ideas expressed by the various representatives.

44. Mr. ALFONSO MARTINEZ (Cuba) said that the Committee should avoid the suggestion that the amendments and the ICRC text were in opposition. He wondered what would happen if several amendments were proposed to a single article or to the same paragraph. Would the Committee have to refer to the Drafting Committee the results of several different votes? His delegation was against the Swiss proposal.

45. Mr. ABSOLUM (New Zealand) and Mr. RIFAAT (Lebanon) said that such questions should be decided by the Committee, not the Drafting Committee.

46. The CHAIRMAN suggested that a Working Party should be set up and asked to submit to the Committee a specific proposal concerning the text of an amendment to Article 8 (a), taking into account the Soviet Union amendment and the sub-amendments presented orally during the meeting.

47. Mr. MARTIN (Switzerland) said the Committee would have to choose between his motion and the Chairman's suggestion regarding the creation of a Working Party.
The Swiss representative's motion was adopted by 53 votes to 12, with 6 abstentions.

48. The CHAIRMAN invited the Committee to decide which text should serve as a working basis for the Drafting Committee: the ICRC text or the text in the Soviet Union amendment (CDDH/II/19).

49. Mr. ALFONSO MARTINEZ (Cuba) said it was not clear what the Committee would vote on. So far as his delegation was concerned, there could be no doubt that the text which should be used as the basis for the Drafting Committee's work was the ICRC text.

50. Mr. MARRIOTT (Canada) said that the Committee had no choice but to decide by a vote whether it wished to adopt the Soviet Union amendment.

51. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) said that his delegation was in favour of the ICRC text. Nevertheless, he thought the simplest solution would be to transmit the question to the Drafting Committee.

52. Mr. NORRIS (United Kingdom) reminded the Committee that the text of his delegation's amendments to Article 8 had not yet been circulated; any decision to refer the matter to the Drafting Committee should take account of that fact.

53. Mr. LOUKIANOVITCH (Byelorussian Soviet Socialist Republic) inquired whether the Committee would vote on each amendment, including the amendments and sub-amendments presented orally, or simply on the ICRC text and the Soviet Union amendment. What would the Drafting Committee be expected to do if the Committee adopted either of those texts?

54. Mr. AL-BARZANCHI (Iraq) said he favoured setting up a Working Party, with a membership representative of all the geographical regions, to prepare an amendment taking into account the ideas of all the delegations.

55. The CHAIRMAN said that, in accordance with rule 40 of the rules of procedure, he would ask the Committee to come to a decision on the Soviet Union amendment.

56. Mrs. MANTZOULINOS (Greece) and Mr. ALFONSO MARTINEZ (Cuba) said they did not see how the Committee could take a vote until all the amendments to Article 8 had been circulated and examined.

57. Mr. MAIGA (Mali) said it was too soon for the Committee to reach a final decision on the amendment and sub-amendment to Article 8 (a). The best course would be to refer those texts to the Drafting Committee, which would say which amendment it preferred, unless it decided in favour of the ICRC text. It would be pointless to set up a Working Party, since the Drafting Committee itself was in fact the Working Party best placed to deal with the matter.

58. The CHAIRMAN said that the Committee would take a decision on the point at its next meeting.
F. PROPOSED AMENDMENTS:

**Title of Part II**

CDDH/II/45
12 March 1974

*Australia*

Change the title of Part II to read: "THE WOUNDED, SICK AND SHIPWRECKED".

**Entire article**

CDDH/II/46
12 March 1974

*United Kingdom of Great Britain and Northern Ireland*

Delete the content of the whole Article and insert the following:

"Article 8 - Definitions"

(a) 'wounded and sick' means persons, whether military or civilian, who are in serious need of medical assistance and care and who refrain from any act of hostility. The term also includes the shipwrecked, the infirm, pregnant women, maternity cases and new-born 'babies';

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

(c) 'medical units' means medical establishments and units, whether military or civilian, including all installations of a medical nature, such as hospitals and blood transfusion centres, and the medical and pharmaceutical storage buildings of such establishments and units. Medical units may be fixed or mobile, permanent or temporary. Permanent medical units are those assigned exclusively and for an indeterminate period to medical purposes. Temporary medical units are those assigned exclusively but for one or more limited periods to medical purposes, while exclusively devoted to such purposes;

(d) 'medical personnel' means:

i. military medical personnel as described in the first and second Conventions, including medical transport crews;

ii. civilian medical personnel, whether permanent or temporary (including medical transport crews and civil defence medical personnel), duly recognized or authorized by the State and engaged exclusively in the operation or administration of medical units and medical transport, including personnel assigned to the search for, removal, diagnosis, treatment or transportation of the wounded and sick;

iii. medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies duly recognized or authorized by the State;
(e) 'distinctive emblem' means the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white background;

(f) 'distinctive signal' means any signalling and identification system specified for the exclusive use of medical units and transport in chapter III of the Annex."

Rationale

To improve the accuracy of the definitions.

Sub-paragraph (a)

CDDH/II/42
12 March 1974

Amend sub-paragraph (a) to read:

"For the purposes of the present Part:

the 'wounded and the sick' means persons, whether military or civilian, who are in need of medical assistance and care and who refrain from any act of hostility. The term includes, inter alia, the infirm, as well as expectant mothers, maternity cases and new-born babies."

Sub-paragraph (b)

CDDH/II/42
12 March 1974

Replace the words "shipwrecked persons" by "the shipwrecked".

CDDH/II/57
12 March 1974

Amend Article 8 (b) to read as follows:

"shipwrecked persons" means persons, whether military or civilian, who are in peril at sea or in the air as a result of the destruction, loss or disablement of the vessel or aircraft in which they were travelling, or for any other reason, and who refrain from any act of hostility. If in peril on land as a result of the destruction, loss or disablement of their means of transport, or for any other reason, the above mentioned persons shall be assimilated to shipwrecked persons.

Sub-paragraph (d) ii

CDDH/II/42
12 March 1974

Redraft sub-paragraph (d) ii as follows:

"(d) ii. civilian medical personnel, including members of the crews of means of medical transports, whether permanent or temporary, duly recognized or authorized by the State and engaged exclusively in the operation or administration of medical units and means of medical transport, and includes the
personnel assigned to the search for, removal, treatment or transport of the wounded and the sick."

Sub-paragraph (d) iii
CDDH/II/30 Denmark, France, Sweden
12 March 1974

Amend sub-paragraph (d) iii to read:

"the medical personnel of civil defence bodies assigned to the discharge of the tasks mentioned in Article 54, and duly recognized or authorized medical personnel of the national Red Cross (Red Crescent, Red Lion and Sun) Societies."

Sub-paragraph (e)
CDDH/II/42 Australia
12 March 1974

Redraft sub-paragraph (e) as follows:

"(e) 'distinctive emblem' means the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white ground."

Sub-paragraph (f)
CDDH/II/42 Australia
12 March 1974

"(f) 'distinctive signal' means any signalling and identification system specified for the use of medical units and means of transport as envisaged in chapter III of the Annex."

Proposed New Definition
CDDH/II/58 Holy See
12 March 1974

Add the following definition:

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

i. army chaplains of whatever religious denomination;

ii. ministers of religion serving the people;

iii. chaplains engaged in civil defence as defined in Article 54 and ministers of religion of the national Red Cross (Red Crescent, Red Lion and Sun) Societies and voluntary relief agencies."
Rationale

It is desirable that the expression "chaplains and other persons performing similar functions" (Article 15, paragraph 6, of draft Protocol I) should be defined. No definition is given in the 1949 Geneva Conventions.

G. MEETING OF COMMITTEE II, 13 March 1974 (CDDH/II/SR.5):

Sub-paragraph (a)

23. The CHAIRMAN invited the Committee to continue its consideration of Article 8 (a).

24. Mr. CLARK (Australia) said that his delegation had submitted its amendment to Article 8 (a) (CDDH/II/42) because it seemed pointless to repeat the words "the wounded, the sick" in the second sentence and because the term "shipwrecked" was defined in sub-paragraph (b).

25. Mr. MAKIN (United Kingdom) said that his delegation's amendment to Article 8 (CDDH/II/46) was purely formal and might be referred to the Drafting Committee.

26. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) introduced his delegation's new amendment to sub-paragraph (a), reading as follows:

"'Wounded and sick' means persons, whether military or civilian, who because of trauma, disease or other physical or mental disorder, are in serious need of medical assistance and care and who refrain from any act of hostility. The term shall also be construed to include other persons in serious need of medical assistance who refrain from any act of hostility including the infirm, pregnant women, maternity cases and new-born babies."

27. He considered that it would be better to retain the title proposed by the ICRC for part II of draft Protocol I and urged the United Kingdom representative to withdraw his amendment (CDDH/II/27).

28. Mr. EL-SHAM (Jordan) said he did not quite understand the reason for the phrase "who are in serious need". A simple cut on the finger might lead to tetanus or might have fatal consequences.

29. Mr. COCKCROFT (South Africa) and Mr. MARTINS (Nigeria) said they agreed with the Jordanian representative's remarks.

30. Mr. MARRIOTT (Canada) said that he could support the new Soviet Union amendment to sub-paragraph (a) but would prefer the word "disorder" to be replaced by "disability". The term would then cover any person who, even if not sick, suffered from a disability.

31. Mr. JAKOVLJEVIC (Yugoslavia) and Mrs. DARIIMAA (Mongolia) said that the new USSR amendment combined the ICRC text with the earlier amendment (CDDH/II/19) in a way that faithfully reflected the opinions expressed during the debate. The USSR text could therefore be referred to the Drafting Committee.
32. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he agreed that the word "disability" was preferable to "disorder", and accepted the change. With regard to the word "serious", his delegation had not been sure that it was necessary, but had kept it in view of the United Kingdom representative's proposal. If that representative would agree to its deletion the USSR delegation would have no objection to doing so.

33. Mr. VANNUGLI (Italy) said he considered the text to be generally acceptable and asked the United Kingdom representative why he wished to retain the word "serious".

34. Mr. MAKIN (United Kingdom) said that, although in 1972 the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts had unanimously decided to include that qualification in their report, the ICRC had not retained it. The term might be important, particularly to protect the military, since a person suffering from a slight disability could not be considered to be wounded. However, he would not oppose the deletion of the word provided the motivation of the proposal was clearly stated in the summary record.

35. He would maintain his amendment to the title of part II of draft Protocol I (CDDH/II/27) unless "shipwrecked persons" were not included in the definition of wounded and sick.

36. Mr. SOLF (United States of America) said he supported the new text proposed by the USSR delegation, with the Canadian representative's suggestion concerning the word "disability" and the deletion of the word "serious". The United States shared the United Kingdom's understanding that the term "need" excluded trivial ailments such as a headache. The definition of "wounded and sick" would assume its full importance when it had to be decided who would be entitled to medical transport by air.

37. Mr. COIRIER (France) said that, although he did not have the French text of the new USSR amendment, he believed it to be acceptable. The word "serious" added nothing of value, and the expression "in need of medical assistance and care" was strong enough by itself.

38. Mr. SCHULTZ (Denmark) said he agreed that it was difficult to define the terms "wounded" and "sick" and pointed out that in Article 16 of the Fourth Convention reference was made to "the infirm". The main question was whether the persons concerned were capable of fighting or not. He agreed with the Canadian representative that the provisions should be applicable to everyone who was incapable of carrying arms or refrained from doing so.

39. The CHAIRMAN said that there seemed to be a consensus concerning the new text of sub-paragraph (a) submitted by the USSR delegation as amended during the debate. It would replace the texts in documents CDDH/II/19, CDDH/II/42 and CDDH/II/46 and could be referred to the Drafting Committee, which would prepare a final text.

It was so agreed.

40. Mr. NAHLIK (Poland), speaking on a point of order, drew attention to a substantive discrepancy between the French and English texts of the Australian amendment (CDDH/II/42).
41. The CHAIRMAN said that the error would be corrected.

Sub-paragraph (b)

42. Mr. PICTET (International Committee of the Red Cross), introducing document CDDH/II/57 concerning Article 8 (b), said that it had been drafted by the ICRC to meet requests from certain delegations for the ICRC's opinion on the point in question. It was wrongly called an amendment, since the ICRC could only make suggestions which could be considered only if they were taken up by a delegation.

43. Certain experts had proposed that the meaning of the term "shipwrecked persons" should be extended to cover persons in difficulties in the air or even on land, such as persons in distress in deserts or mountains. The provisions of Article 16, paragraph 2, of the Fourth Geneva Convention of 1949 were quite inadequate in that respect.

44. Mr. SCHULTZ (Denmark), Mr. MARTIN (Switzerland), Mrs. MANTZOUNI (Greece), Mr. BRAVO (Mexico) and Mr. HAAS (Austria) said that they supported the suggestion of the ICRC and wished to become sponsors of the proposal which seemed to fill a gap very satisfactorily.

45. Mr. VANNUGLI (Italy), Mr. MARTINS (Nigeria) and Mr. de la PRADELLE (Monaco) also supported the proposal which covered all situations, especially that of persons in distress in the desert.

46. Mr. URQUIOLA (Philippines) said that he welcomed the ICRC proposal, but wished to suggest the addition of the words "on land" after the words "at sea", and the replacement of the words "vessel or aircraft" by the words "means of transport".

47. Mrs. DARIIMAA (Mongolia) said that she greatly appreciated the ICRC proposal, but would like the condition "who refrain from any act of hostility" to be repeated in the second sentence.

48. Mr. PICTET (International Committee of the Red Cross) said he was gratified to see that ICRC suggestion (CDDH/II/57) had met with general approval in the Committee. The points made by the Philippine and Mongolian representatives were judicious and might be referred to the Drafting Committee.

49. Mr. SOLF (United States of America) said that, while he appreciated the underlying idea of the ICRC suggestion, he felt obliged to warn the Committee of the danger of taking final decisions by consensus on definitions at that stage, before taking cognizance of the substance of the articles affected by that definition. That proposal had been made repeatedly at the 1972 Conference of Government Experts and had always been rejected. In particular, the greatest possible caution should be exercised with regard to the provisions concerning medical transport.

50. Mr. MACKENNEY (Chile) said it was not clear whether the term "in peril at sea" also applied to similar situations on lakes.
H. PROPOSED AMENDMENTS:

Sub-paragraph (b)

CDDH/II/57/Rev.1 Austria, Denmark, Greece, Iran, Mexico, Switzerland
14 March 1974

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

"(b) 'shipwrecked persons' means persons, whether military or civilian, who are in peril at sea or in the air as a result of the destruction, loss or disablement of the vessel or aircraft in which they were travelling, or for any other reason, and who refrain from any act of hostility. If in peril on land as a result of the destruction, loss or disablement of their means of transport, or for any other reason, the abovementioned persons shall be deemed to be shipwrecked persons."

CDDH/II/73 Syrian Arab Republic
14 March 1974

Reword sub-paragraph (b) as follows:

"(b) 'shipwrecked persons' means persons, whether military or civilian, who are in any kind of peril at sea, in the air or on land, and who refrain from any act of hostility."

Sub-paragraph (c)

CDDH/II/19/1 Bulgaria, Byelorussian Soviet Socialist Republic, German Democratic Republic, Hungary, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics
13 March 1974

Add in sub-paragraph (c) the words "anti-epidemic establishments" to the enumeration given in connexion with the term "medical establishments".

I. MEETING OF COMMITTEE II, 14 March 1974 (CDDH/II/SR.6):

Sub-paragraph (b)

5. Mr. MARRIOTT (Canada), referring to the ICRC proposal (CDDH/II/57) which had been taken up by the delegations of Austria, Denmark, Greece, Iran, Mexico and Switzerland (CDDH/II/57/Rev.1), said that he did not believe provision should be made for persons in peril "in the air". Provision was made for that case in Article 39 which pertained to aircraft occupants. He did not therefore see the point of the proposal and reminded those present of the warning by the United States representative, at the fifth meeting, of the danger of reaching decisions without being aware of the content of the articles.

6. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) did not consider that it was possible to approve the notion of "shipwrecked persons" as described in amendment CDDH/II/57/Rev.1.

7. Mr. EL-SHAIFEI (Arab Republic of Egypt) expressed support for the Australian amendment (CDDH/II/42). In addition, he felt that the text proposed in amendment CDDH/II/57/Rev.1 was more complete than the initial text, and that a
few editorial changes would answer the remarks made during the discussion on the obligation of those concerned to refrain from any act of hostility.

8. Mr. ABDINE (Arab Republic of Syria) believed that satisfaction could be given to the Canadian representative either by deleting in amendment CDDH/II/57/Rev.1 "as a result of the destruction ... or for any other reason"; or by inserting in the first sentence after "at sea", the words "on land" and then deleting the second sentence.

9. Mr. ERASMOPEEV (Union of Soviet Socialist Republics) said that he could not agree that one and the same article could apply to peril at sea, on land and in the air.

10. Mr. MAKIN (United Kingdom) said he agreed with the Canadian representative that peril in the air was already covered by Article 39 and should not appear in two different places in the Protocol. As for people in peril on land, he thought it quite wrong to deal with a substantive issue in a definitions article. He considered it laughable to suggest that people could be shipwrecked on land, and the problem, if it existed, should be dealt with elsewhere in the Protocol.

11. Mr. JAKOVLJEVIC (Yugoslavia) said that he considered that amendment CDDH/II/57/Rev.1 was excellent and could be referred to the Drafting Committee for preparation of the final text.

12. He supported the Syrian proposal to insert the words "on land" in the first sentence of the amendment and to delete the second sentence.

13. Mr. de la PRADELLE (Monaco) believed that it was only after mature reflection that the ICRC had decided to widen the scope of the term "shipwrecked persons", which applied not merely to the sea but also to the air. The situation was more delicate in the case of assimilation to shipwrecked persons, namely, extension to persons in peril on land. The words "as a result of military operations" could perhaps be added in amendment CDDH/II/57/Rev.1 in order to make it clear that not only ordinary passengers were involved; or the words "or the immobilization of the aircraft", could be inserted after the word "aircraft", in order to cover hijacking. By and large, he believed that, subject to minor editorial changes, the amendment was of great value.

14. Mr. PICTET (International Committee of the Red Cross), replying first of all to a question asked at the fifth meeting by the representative of Chile, said that persons shipwrecked on lakes and inland waters were covered, not by the first part of the amendment but by the second. In drafting its proposal, the intention of the ICRC had been to supplement Article 16 of the Fourth Geneva Convention of 1949, and to extend protection to all persons in distress, who would not necessarily be wounded, sick, prisoners of war or civilians. The definitions were purely provisional, and the matters of substance would be examined in due course. It was for the Drafting Committee to devise a better and simpler formula, so that those persons could be included in the definition.

15. Mr. CLARK (Australia) stated that in his opinion the definition given in draft Protocol I was satisfactory, the proposed amendment was superfluous and persons in peril on land were covered by the Geneva and The Hague Conventions.

16. Mr. ROSENBLAD (Sweden) said that he did not think that idea expressed in the amendment should be entirely rejected. Aircraft occupants as defined in
Article 39 of draft Protocol I, could well be included in the definition of "shipwrecked", which appeared in the original ICRC text.

17. Mr. MATHIESEN (Norway) agreed with the Canadian representative that there was no need to make provision for the case of persons in peril "in the air".

18. Mr. MARTIN (Switzerland) said that what his delegation had had chiefly in mind were the natural disasters which generally struck in peacetime, but which could also strike during hostilities. That would supplement not only the First and Second Conventions of 1949 but also Article 16 of the Fourth Geneva Convention of 1949. When all questions of substance had been studied, the Committee could revert to the definitions, which were of a provisional nature.

19. Mr. DEDDES (Netherlands) said that he did not think the amendment was necessary.

20. Mr. COIRIER (France) said that shipwrecked persons should not be included in an article based on the need for medical assistance to the wounded and the sick, who were undoubtedly incapable of inflicting harm, which was not necessarily the case of all shipwrecked persons.

21. Mr. SCHULTZ (Denmark) said that too detailed definitions were dangerous and requested the deletion of sub-paragraph (b) of Article 8.

22. Mr. PICTET (International Committee of the Red Cross), in reply to a question from Mrs. DARIDMAA (Mongolia) said that the word "vessel" in Article 8 applied to all vessels, whether military or civilian. Shipwrecked persons enjoyed the protection of the Second Geneva Convention of 1949, and it was not necessary that they be wounded or sick.

23. Mrs. MANTZOLINOS (Greece) said that the amendment was important because it defined the category of shipwrecked persons in the air and it extended humanitarian protection to others who were deemed to be shipwrecked persons.

24. Mr. MARTIN (Switzerland) stressed that it was the notion of shipwrecked persons that should be extended. The extension of that notion should be thoroughly studied.

25. Mr. QUACH TONG DUC (Republic of Viet-Nam) proposed that the second sentence of amendment CDDH/II/57/Rev. 1 should read as follows: "The above-mentioned persons in peril in inland waters ... shall be deemed to be shipwrecked persons."

26. Mr. BOTHE (Federal Republic of Germany) said that the question should be studied further, with a view to finding a provision covering situations which did not come under the Conventions or the Protocol. Far greater precision was needed to ensure full and effective protection in all cases. "Article 8 - Definitions" was not the proper place to deal with that question.

27. Mr. TAMALE MUGERWA (Uganda) said that he did not think it possible to leave the question in abeyance. It was a question of substance and, at the same time, of form. With respect to the substance, it remained to be decided whether the notion of shipwrecked persons should be extended to those in peril on land or in the air. Once that was settled, the Drafting Committee could provide the form. He thought, moreover, that the amendment applied to persons in
hostile or alien surroundings following the destruction, loss or disablement of their means of transport. If the words 'or for any other reason' were retained, the notion of shipwrecked persons would be too wide.

28. Mr. MARRIOTT (Canada) agreed with the representative of the Federal Republic of Germany that the situations to be considered should first of all be clearly stated. The Committee could then revert to the definitions to see whether or not they were satisfactory.

29. Mr. SOLF (United States of America) stated that he, too, supported the suggestion made by the representative of the Federal Republic of Germany. The Committee should locate the flaws in protection and, in that context, take Article 39 of draft Protocol I, Article 12, of the Second Geneva Convention and Articles 16 and 17 of the Fourth Geneva Convention into account.

30. Mr. COCKCROFT (South Africa) supported the statements made by the two previous speakers.

31. The CHAIRMAN suggested that the Committee should approve the Swiss proposal for an unofficial Working Group to draw up and submit to the Committee a definitive text, taking into account the various points of view expressed in the course of the discussions.

32. Mr. MARTIN (Switzerland) stated that the representative of the ICRC might be asked to convene that Working Group.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that in his opinion the Working Group would find itself confronted with an impossible task, since the Committee had not sufficiently studied the question. It would be preferable to accept the proposal of the Federal Republic of Germany.

34. Mr. NAHLIK (Poland) said that he thought the setting up of working groups to study each group of amendments involved risks. It would result in the establishment of intermediary bodies between the Committee and the Drafting Committee. He therefore asked whether it would not be simpler to entrust that task to the Drafting Committee, since rule 47 of the rules of procedure authorized the sponsors of amendments to put forward their points of view to that Committee.

35. Mr. MAKIN (United Kingdom) said that he agreed with the remarks of the two previous speakers regarding a Working Group. The representative of the Federal Republic of Germany had proposed that the question be studied with a view to discovering whether there were any omissions in the protection afforded by the Protocol or the Conventions. He himself was not convinced that such omissions existed. In any event, the question was not one to be dealt with in the context of definitions.

36. The CHAIRMAN said that it was difficult to refer the question to the Drafting Committee, since that Committee had not been established. The Asian Group, in particular, had not appointed its representatives.

37. Mr. MARTIN (Switzerland) said that he was not opposed to the question being referred to the Drafting Committee, which could study the question in the way indicated by the representative of the Federal Republic of Germany, but that Committee should meet immediately.
38. Mr. NAHLIK (Poland) and Mr. AL-BARZANCHI (Iraq) made an urgent appeal to the Asian Group to appoint their representatives to the Drafting Committee, in order to avoid further delay in the start of its work.

39. Mr. ABSOLUM (New Zealand) observed that the task before the Committee was to re-examine the Geneva Conventions and the draft Protocols with the aim of identifying any gaps in the protection afforded to persons in peril on land or in the air as a result of the loss of their means of transport and, on the basis of such an examination, to draft a new article which might or might not include a definition. In his view such a task could not be appropriately assigned to the Drafting Committee.

40. Mr. MARTIN (Switzerland) pointed out that he had withdrawn his proposal for a Working Group, on the understanding that the Drafting Committee would be authorized to study the question thoroughly.

41. The CHAIRMAN proposed that the various proposals concerning Article 8 (b) be referred to the Drafting Committee.

It was so agreed.

Sub-paragraph (c)

42. Mr. STOLLBERG (German Democratic Republic) introduced amendment CDDH/II/19/Corr.1.

43. Mr. MARRIOTT (Canada) said that he was prepared to agree to that amendment, but would prefer the words "disease control establishments" in the English text in place of "anti-epidemic establishments".

44. Mr. MAKIN (United Kingdom) said that his delegation's amendment (CDDH/II/46) was purely a matter of editing and should be referred to the Drafting Committee.

45. Mr. AL-BARZANCHI (Iraq) expressed the view that the words "anti-epidemic establishments" had too restricted a meaning; stress should be laid on prevention.

46. Mr. VANNUGLI (Italy) said that before referring the question to the Drafting Committee, the Committee should decide whether a new concept should be introduced, namely establishments for the prevention of infectious diseases. There would then remain the problem of choosing the terms to be applied in the various languages. It would be unwise to give too precise a definition, which might exclude certain categories of establishments.

47. Mr. EL-SHAM (Jordan) stated that the English expression "health centre" might better describe all the establishments engaged in disease prevention.

48. Mr. COIRIER (France) expressed the opinion that the French expression "installations de caractere sanitaire", covered prevention, since hospitals were more and more concerned with the prevention of diseases.

49. Mr. MARTIN (Switzerland) and Mr. KRASTNOPEEV (Union of Soviet Socialist Republics) said that establishments for the prevention of diseases should be included in sub-paragraph (c) which should be referred to the Drafting Committee.
50. Mr. COCKCROFT (South Africa) supported that proposal and expressed the hope that persons with medical qualifications would be able to take part in the work of the Committee.

The Committee decided to refer the study of Article 8 (c) and amendments CDDH/II/19/Corr.1 and CDDH/II/46 to the Drafting Committee.

J. PROPOSED AMENDMENT:

CDDH/II/76
15 March 1974

Reword sub-paragraph (b) as follows:

"(b) 'shipwrecked persons' means persons, whether military or civilian, who are in peril at sea as a result of the destruction, loss or disablement of the vessel in which they were travelling, provided that they refrain from any act of hostility. By extension, military or civilian persons who are on land as a result of the destruction, immobilization, loss or disablement of the means of transport in which they were travelling, and who are in peril or in enemy territory, and who refrain from fighting, shall be deemed to be shipwrecked persons."

K. MEETING OF COMMITTEE II, 15 March 1974 (CDDH/II/SR.7):

Sub-paragraph (d)

2. The CHAIRMAN invited the Committee to examine Article 8, sub-paragraph (d) and the relevant proposed amendments.

3. Mr. CALCUS (Belgium), introducing the amendment to Article 8 (d) i (CDDH/II/13), pointed out that Article 24 of the First Geneva Convention of 1949, on the protection of the administrative personnel of medical units, made no mention of the personnel engaged in the operation of such units. The amendment aimed at ensuring the protection of that category of personnel.

4. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that after consultation with the representatives of Australia and the United Kingdom, his delegation had altered the text of his proposed amendment to sub-paragraph (d) (CDDH/II/19) to read:

'Medical personnel means personnel, whether permanent or temporary, duly recognized and authorized by the State and engaged exclusively in the operation or administration of medical services, medical units and medical transport, and includes the personnel assigned to the prevention of disease and the search for, removal, treatment or transport of the wounded, the shipwrecked and the sick. The term includes inter alia military medical personnel as defined in the First and Second Geneva Conventions, the medical personnel of civil defence organizations referred to in Article 54 of Protocol I, civilian medical personnel registered by the State, personnel of the national Red Cross (Red Crescent, Red Lion and Sun) Societies attached to medical services and units, and military or civilian medical transport crews'.
5. The ICRC text was satisfactory in general, but it was preferable to mention "medical services" and not to limit protection to the medical personnel of the Red Cross societies.

6. Mr. KLEIN (Holy See), referring to his delegation's amendment to Article 8 (d) (CDDH/II/58), said that religious personnel and medical personnel were mentioned together in a number of articles in the Geneva Conventions of 1949. It was desirable that the former should be defined in order to avoid any misunderstanding. He had no objection to the addition of the proposed definition at the end of Article 15 of Protocol I.

7. The reason for proposed amendment CDDH/II/18 was the importance of the services rendered by voluntary relief organizations, which had worked on many occasions at the side of the Red Cross Societies. Mention should therefore be made of them at the end of Article 8 (d) iii, since the Protocol should obviously be so worded as to encourage dedication to the alleviation of the suffering caused by war.

8. Mr. DEDDES (Netherlands) said that the Soviet amendment held some dangers. The number of protected personnel should be limited to some extent, for otherwise the special protection of that personnel, wearing the distinctive emblem, would cease to have any meaning, because there would be too many of them.

9. Mr. MARRIOTT (Canada) agreed with the Netherlands representative that authority to carry a "distinctive sign" should be limited to specific cases. It appeared, however, that the USSR representative had intended to mention personnel exclusively engaged in the operation or administration of medical services in the sense of Article 24 of the First Geneva Convention of 1949.

10. Mr. CLARK (Australia), supported by Mr. NAHLIK (Poland), pointed out that the word "chaplain" appearing in amendment CDDH/II/58 applied only to the ministers of certain religions. It would be preferable to find an expression applicable to the religious and philosophical concepts of all countries, especially those of Africa and the Middle East. The question could be studied by the Drafting Committee.

11. Mr. ROSENBLAD (Sweden), introducing the amendment to sub-paragraph (d) iii (CDDH/II/30), said that the term "civil defence bodies" was more appropriate than "civil defence organization", in view of conditions in various parts of the world. Moreover, Article 54 of Protocol I, to which the ICRC text referred, enumerated the humanitarian tasks included in civil defence, without reference to any particular civil defence organization. Further, it would be preferable to specify that the medical personnel must be "duly recognized or authorized".

12. Mr. SCHULTZ (Denmark) said that it was necessary to add the words "duly recognized or authorized" in order to indicate that the persons concerned were duly qualified by their training. That amendment moreover was in line with that of the USSR regarding personnel "recognized and authorized by the State". During the study of their text, the sponsors had agreed to add at the end of the paragraph the words: "or other voluntary relief organizations", which accorded with the Holy See amendment.

13. Mr. CLARK (Australia) said that after discussions between his and the USSR delegation, part of sub-paragraph (d) ii of the amendment submitted by his delegation (CDDH/II/42) had been incorporated in the USSR amendment.
14. Mr. MAKIN (United Kingdom) said that part of the amendments submitted by his delegation in document CDDH/II/46 were already incorporated in the USSR amendment. He proposed also the insertion of the word "diagnosis" after "removal" in sub-paragraph (d) ii.

15. Mr. JAKOVLJEVIC (Yugoslavia), introducing document CDDH/II/3, pointed out the disparity between Article 20 of the Fourth Geneva Convention of 1949 and Article 8 (d) in draft Protocol I. Article 20 of the Convention made no mention of "medical personnel" but referred to "persons regularly and solely engaged in the operation and administration of civilian hospitals ...". The term "medical personnel" limited the categories of persons to be protected. On the other hand, the third paragraph of Article 20 of the Convention referred to "other personnel who are engaged in the operation and administration of civilian hospitals ...", which meant that temporary personnel should be protected for as long as they were assigned to a specific task, either in a medical unit or in an emergency where, for instance, there were a great many casualties. In order to protect those persons, either the word "exclusively" should be deleted from the third line in Article 8 (d) ii of draft Protocol I, or a distinction should be drawn, as had been done in Article 20 of the Fourth Geneva Convention of 1949, between regular and part-time personnel. Either of those alternatives would be acceptable to the Yugoslav delegation.

16. Mr. AL-BARZANCHI (Iraq) said that he would prefer the sub-division of sub-paragraph (d) of Article 8 to be retained. His delegation had supported the amendment to sub-paragraph (d) i as proposed in document CDDH/II/13. Chaplains appeared to be covered by the words "personnel engaged in the operation or administration of ...".

17. Mr. MARTIN (Switzerland) said that the sponsors of document CDDH/II/19 had tried to merge sub-paragraphs (d) i, ii and iii of Article 8 into one, which had led to a certain amount of confusion. He therefore preferred the text of the draft Protocol. With regard to sub-paragraph (d) iii, he supported the wording "... assigned to the discharge of the tasks mentioned in Article 54, ..." proposed in document CDDH/II/30, but he was not in favour of retaining the word "bodies" in the English version and preferred the French wording. In addition, he supported the proposal of the representative of Denmark that the words "or other voluntary relief organizations" should be added to the second sentence. However, he saw no need to delete the word "exclusively" from Article 8 (d) ii, as had been suggested by the representative of Yugoslavia.

18. Mr. EL-SHAFIE (Arab Republic of Egypt) said that he hoped the Committee would bear in mind the amendment to Article 15 (CDDH/II/70), proposing that the words "Chaplains and other persons performing similar functions" should be replaced by "Religious personnel".

19. Mr. DEDDES (Netherlands) repeated that a limit should be placed on the number of medical personnel entitled to wear the distinctive emblem of the Red Cross. He was anxious that the words "... and other persons performing similar functions ..." (CDDH/II/58) should be retained, since they were equally applicable to members of non-religious bodies.

20. Mr. MARRIOTT (Canada) said that the amendment submitted by the delegation of the Holy See (CDDH/II/18) appeared to him to be covered by Article 63 (a) of the Fourth Geneva Convention of 1949 and by Articles 60 to 62 of draft Protocol I. If the Conference extended the use of the emblem of the Red Cross to too many organizations, it might later have reason to regret it.

266
21. Mr. MATHIESEN (Norway) said that organizations entitled to use the emblem should be recognized as Red Cross Societies or approved by a national government. He suggested that the Holy See amendment (CDDH/II/18) should be changed to read: "... and other voluntary relief organizations registered with the public authorities".

22. Mr. COIRIER (France) said that he agreed with the representative of the Netherlands in that the more protection was extended, the lesser its effectiveness became.

23. Mr. MAKIN (United Kingdom) said that the Committee appeared to be undecided whether the definition of the word "chaplain" should appear in Article 8 or Article 15. In his view, the proper place was Article 8 and if that were agreed, paragraph 6 of Article 15 should be deleted.

24. Mr. HAAS (Austria) said that he did not altogether agree with the United Kingdom representative. Whereas Article 8 purported to define "medical personnel", the delegation of the Holy See attached importance to the religious rather than the medical aspect of that category of persons. He shared the opinion of the representative of Switzerland that the sub-divisions within sub-paragraph 8 (d) should be retained.

25. Mr. CHUWA (United Republic of Tanzania) said that in view of the large number of ideological and political sects and movements, it should be specified that those to be protected were those which were recognized, either internationally or locally.

26. Mr. JAKOVLJEVIC (Yugoslavia), supported by Mr. BEREKET (Turkey), said that it should be specified in the Holy See amendment (CDDH/II/18) that the organizations referred to had to be specially qualified. He read out Article 26 of the First Geneva Convention of 1949, and suggested that the wording of that article be used.

27. Mr. MARRIOTT (Canada) said that before the Drafting Committee reached a decision on amendment CDDH/II/18 they should take into account amendment CDDH/I/39 and Add.1 and 2 for the insertion of a new article after Article 70.

28. Mr. NAHLIK (Poland) said that, unlike the representative of the United Kingdom, he considered that it was enough to introduce into Article 15 the definition of "chaplain" which appeared in amendment CDDH/II/58 or, if absolutely necessary, to make it the subject of an entirely new article.

29. Mr. MARTINS (Nigeria) said he would prefer that definition to appear in a new sub-division of Article 8 (d).

30. Mr. KLEIN (Holy See) said that it was not whether the amendment appeared in Article 8 or Article 15 which was important, but that the term "chaplain" should appear in the text. It was used in all the four Conventions of 1949. There was no question, however, of obliging medical units to have chaplains. Perhaps the words "if they have them" might be added. Like the representative of Switzerland, he considered that the proposal of the representative of Denmark for the addition of the words "and other voluntary relief organizations" was acceptable.

31. Mr. SOLF (United States of America) said that he understood that the proposed amendment CDDH/II/58 covered the different religions. With regard to
the proposed amendment CDDH/II/19, he agreed with the representatives of the Netherlands and of Canada that it would be appropriate to limit the protection to members of medical units. He asked the representative of the Union of Soviet Socialist Republics what he meant by "registered by the State".

32. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) replied that he meant the civilian medical personnel attached to medical units or to public health services.

33. Mr. PICTET (International Committee of the Red Cross) thanked the representative of the Holy See for mentioning the Red Cross Societies in his proposed amendment. He did not think it was necessary, however, since Red Cross Societies, abiding by the principle of political and religious neutrality, did not have chaplains.

34. Mrs. MANTZOULINOS (Greece) said she was of the same opinion.

35. Mr. MARTOSUHARDJO (Indonesia) said that the reference to chaplains should appear in Article 15 and not in Article 8.

36. Mr. ABSOLUM (New Zealand) said he agreed with the United Kingdom that there might be advantage in including a definition of army chaplains in Article 8 (d) but, if so, he would prefer a more precise formulation than that suggested by the Holy See (CDDH/II/58). In particular, the term "Ministers of religion serving the people" was open to very wide interpretation.

37. Mr. ROSENBLAD (Sweden) said he agreed with the representative of Indonesia that chaplains should be mentioned in Article 15. He also agreed with the representative of Denmark that medical personnel should be attached to medical units and duly recognized and qualified.

38. Mr. CLARK (Australia) said that the proposed amendment to sub-paragraph (d) ii (CDDH/II/42), put forward by his delegation, concerned matters of form and could be referred to the Drafting Committee.

39. Mr. ROME (Israel) said that his country requested that the distinctive emblem of its armed forces medical services and of its National Relief Society, namely the Red Shield of David, be afforded the same recognition as was given in sub-paragraph (e), to the emblems of the Red Cross, Red Crescent and Red Lion and Sun. Otherwise, Israel would be obliged to make a reservation similar to that which it had made when signing the 1949 Conventions. For practical reasons, Israel would find it impossible to accept the situation created by the provisions of the draft Protocol. The recognition of the Red Shield of David would represent simply the acceptance of a long-existing fact in no way inconsistent with the humanitarian aims of the Conventions and Protocols.

40. Mr. MAKIN (United Kingdom) said that he would leave it to the Drafting Committee to decide on his delegation's proposed amendment to Article 8 (f) (CDDH/II/46), which was similar to that of the Australian delegation on the same subject.

41. The CHAIRMAN suggested that the delegations which had proposed amendments to sub-paragraph (d) in documents CDDH/II/13, CDDH/II/18, CDDH/II/19, CDDH/II/30, CDDH/II/42, CDDH/II/46 and CDDH/II/58 might fall in with the Swiss representative's suggestion and confer among themselves before referring those amendments to the Drafting Committee. He proposed that the Committee should
refer to the Drafting Committee all the other proposed amendments that had been discussed so far during the session.

It was so agreed.


[Page 1]

At its three meetings, held on Wednesday, 20 March, and on Thursday, 21 March, the Bureau agreed on the wording of Articles 8 and 9, taking into consideration as far as possible all the amendments that had been referred to it.

It took no decision on the amendment by the Holy See (CDDH/II/58) because it felt that the problem of "chaplains and other persons performing similar functions" could be more usefully dealt with in a special Article 15 bis to be placed after Article 15 and replacing paragraph 6. Similarly, it did not take a decision on the amendment by Austria and some other delegations (CDDH/45), since the question dealt with therein concerned several articles, not all of which fell within the competence of Committee II.

The Bureau of the Drafting Committee was assisted by Mr. J. Pictet, Vice-President of the International Committee of the Red Cross (ICRC), and by Mr. J. Sanchez del Rio y Sierra (Spain), as well as by the sponsors of certain amendments.

[Page 2]

The report of the Bureau on Articles 8 and 9 of draft Protocol I, accompanied by the fresh draft of those two articles (see below), was submitted to the Drafting Committee at its second, third, fourth and fifth meetings, held on Friday, 22 March, Saturday, 23 March, and on Monday, 25 March, respectively. At the close of those meetings, the Drafting Committee adopted the wording of Article 8 and Article 9, paragraph 1. The text of the latter was presented in square brackets because some of the members of the Drafting Committee were of the opinion that the field of application of the Protocol would be less controversial if the paragraph in question was omitted. The Drafting Committee had no further opportunity of discussing Article 9, paragraphs 2 and 3, and therefore submits a version of the paragraphs prepared by its Bureau in which the two paragraphs are combined in a single paragraph 2. All the texts were submitted to Committee II at its twelfth meeting held on Tuesday, 26 March. It is understood that the text of Article 8 was adopted only provisionally, since it will have to be reviewed again after the wording of all the substantive articles has been considered and adopted.

"PART II - The wounded, sick and shipwrecked

Section I. General Protection

"Article 8. Definitions

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

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

[Page 3]

(c) 'medical units' means establishments and [other] units, whether military or civilian, organized for medical purposes, such as the search for, removal, transportation, diagnosis or treatment of the wounded and sick [and shipwrecked], as well as the prevention of disease. The term includes, for example, hospitals, blood transfusion centres, preventive medicine centres and institutes, medical depots and medical and pharmaceutical stores of the medical units. Medical units may be fixed or mobile, permanent or temporary. Permanent medical units are those assigned exclusively and for an indeterminate period to medical purposes, temporary medical units are those devoted exclusively to medical purposes for limited periods;

(d) 'medical personnel' means:

i. military medical personnel, as described in the First and Second Conventions, including medical transport crews, as well as personnel engaged exclusively in the operation or administration of medical units;

ii. civilian medical personnel, whether permanent or temporary, duly recognized and authorized by the competent authority, including medical transport crews, as well as personnel engaged exclusively in the operation or administration of medical units or transports;

iii. medical personnel (as defined in the preceding two sub-paragraphs) of civil defence, assigned to the discharge of the relevant tasks mentioned in Article 54 [of the present Protocol], and medical personnel of the national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid Societies duly recognized and authorized by the competent authority;

[Page 4]

(e) 'distinctive emblem' means the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white ground;

(f) 'distinctive signal' means any signalling or identification system specified for the exclusive use of medical units and transports in chapter III of the annex [of the present Protocol]."
M. MEETING OF COMMITTEE II, 26 March 1974 (CDDH/II/SR.12):

20. Mr. NAHLIK (Poland), Rapporteur of the Drafting Committee, introducing the Committee's report (CDDH/II/Inf/3 and Corr.1), said that for technical reasons - lack of interpreters and of secretariat - the Committee's work had had to be conducted in one language only; its members had agreed that that language should be English. The English version of the report, including the revised articles in part II, was therefore so far the only official one.

21. The Drafting Committee had referred the various articles to a small Working Group composed of the four officers, assisted by Mr. Pictet, the Vice-President of the ICRC, Mr. Sanchez del Rio y Sierra (Spain) and the sponsors of certain amendments. The Working Group had been able to reach unanimous agreement in most cases, with only a few exceptions.

22. As all amendments had been referred first by Committee II to the Drafting Committee, then by that Committee to its Working Group without any formal vote, the Working Group had done its best to take into consideration practically all the amendments referred to it, with but two exceptions. Those exceptions were: the amendment by the Holy See (CDDH/II/58) since the Working Group had thought that it would be more appropriate to devote a special article to the question concerned - a special article to be placed after the present Article 15; and the amendment by Austria and a few other delegations (CDDH/45), since it related to many articles some of which did not come within the competence of Committee II.

23. The title of part II of draft Protocol I had been changed as recommended (CDDH/II/45).

24. In the introductory phrase of the proposed revised working of Article 8, "Protocol" had been substituted for "part", as some of the terms explained appeared also in parts of the Protocol other than in part II. Some members of the Drafting Committee had felt that, according to the proper drafting technique, each sub-paragraph should consist of a single sentence; for the time being, however, in sub-paragraphs (a) and (c) it was not possible to express all the ideas concerned in one sentence. He hoped that some way of overcoming that drafting difficulty would be found at the second session of the Conference.

25. In sub-paragraph (b), the words "or on other waters" had been inserted to cover waters other than the sea, while the word "travelling" had been deleted since it could be construed as including passengers only but not crews.

26. According to amendments submitted, the enumeration in sub-paragraph (c) listed so far both the functions and the types of establishments; some members of the Drafting Committee had expressed doubts whether the latter enumeration was not redundant. The reference to the shipwrecked had been included between brackets because some members of the Drafting Committee had thought it superfluous.

27. In sub-paragraph (d) it had been felt necessary to include not only "medical personnel" in the proper sense of the term as well as their transport crews, but also administrative personnel, whose work was essential in order that the medical personnel could perform their duties. Sub-paragraphs (d) i and (d) ii were similar in presentation, but sub-paragraph (d) iii was different because of the reference to civil defence, which was dealt with in another
part of the Protocol. It had been considered necessary to mention national voluntary aid societies other than the Red Cross societies. There had been some discussion whether the word "the" should be included at the beginning of the first line of sub-paragraph (d) iii and "or" substituted for "and" in the last line.

28. Sub-paragraphs (e) and (f) had presented no problems.

31. Mr. PICTET (International Committee of the Red Cross) said that the French version was not the one he had prepared, which took account of the various points raised in the discussion, but merely a translation of the English text. He undertook to distribute his own text as soon as possible. In all the language versions, the order of the second and third sentences of Article 8 (c) should be reversed.

36. Mr. SOLF (United States of America) suggested that in Article 8 (c) ... the word "such" be substituted for the word "the" before the words "medical units". In Article 8 (d) i ..., the phrase, "whether permanent or temporary", should be inserted after the word "Conventions".

37. Mr. SCHULTZ (Denmark) proposed that, instead of going into the substance of the matter the Committee should merely take note of the report of the Drafting Committee. With regard to Article 8 (d) iii, it should be made clear that the medical personnel of national Red Cross societies as well as of "other national voluntary aid societies" should be "duly recognized and authorized by the competent authority". Such recognition and authorization was granted under sub-paragraph (d) i to military medical personnel, and under sub-paragraph (d) ii to civilian medical personnel, but not - under sub-paragraph (d) iii - to medical personnel of national Red Cross Societies. His delegation had already raised that point at the seventh meeting of the Committee. Consequently, in Article 8 (d) iii the passage in brackets, "as defined in the preceding two sub-paragraphs", in the first line should be repeated ... after the words "and medical personnel", so as to be reconsidered at the second session of the Conference.

38. Mr. JAKOVLJEVIC (Yugoslavia), Chairman of the Drafting Committee, on a point of order, proposed that, since the final text was available in English only, the Committee merely take note of the report.

39. The CHAIRMAN requested members of the Committee not to go into drafting details but to confine themselves to points of a general character.

40. Mr. AL-BARZANCHI (Iraq) said that texts which had been discussed only by the Working Group and not by the Drafting Committee as a whole should not have been mentioned in the report. The second sentence of Article 8 (a) should be deleted.

41. Mr. ROSENNE (Israel) said he wished to have it put on record that his delegation maintained its reservation with regard to Article 8 (e) and the distinctive emblem as it affected his country's national society. His delegation understood Article 8 (d) iii as referring also to the medical personnel of Israel's national society, the Red Shield of David Society. That followed his delegation's statements in the plenary meetings and in the course of the Committee's discussions (CDDH/II/SR.7). ...
42. He agreed with the representative of Denmark that the Committee should merely take note of the report of the Drafting Committee.

43. Mr. CLARK (Australia) said that there would have to be a change in the title of part II if the word "persons" was to be deleted after the words "the wounded and sick" and after "shipwrecked". In Article 8 (c), he could agree to the insertion of the word "the" before the words "medical and pharmaceutical stores" and ... to the substitution of the word "such" for the word "the" before the words "medical units". In paragraph (d) ii, the words "including medical transport crews", ... should be placed after the words "civilian medical personnel" ... . In paragraph (d) iii, first line, the word "the" should be deleted as suggested by the Rapporteur of the Drafting Committee. He urged that adoption of the report of the Drafting Committee be deferred until the French and Spanish versions were available.

44. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) said that the Committee had been asked to adopt the Drafting Committee's report rather than go into the substance of the report. Articles 8 and 9 might be discussed once more in substance when the Committee dealt with the Drafting Committee's suggested version at the second session of the Conference. ...

45. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation would be unable to discuss Article 9, when only one part had been discussed by the Drafting Committee. With regard to Article 8 (c), rescue units, with very few exceptions, were military rather than medical units. Only the United States of America had medical rescue units attached to airborne troops. Protection might be extended even to military rescue units, but that would not fall within the purview of the present part of the draft Protocol. As for Article 8 (d) it was merely a list of functions which would be better covered by some more general criterion, thus avoiding the need for sub-paragraphing.

46. Mr. HAAS (Austria) proposed that the last sentence in the penultimate paragraph on page 1 of the Drafting Committee's report (CDDH/II/Inf/3 and Corr.1) be deleted and replaced by the following sentence: "It also deferred any decision on the amendment by Austria and some other delegations, since the question dealt with therein concerned several articles not all of which fell within the competence of Committee II".

47. Mr. MAKIN (United Kingdom) asked that the words in brackets in Article 8 (f), last line, be inserted also in Article 8 (d) iii ... after the words "Article 54", and be referred to the main Drafting Committee, which would ensure uniformity.

48. Mr. EL-SHAMII (Jordan) said he felt that pregnant women, even if engaged in hostile activities, should enjoy special care, since two lives were at stake and the unborn infant should not have to suffer.

49. Mrs. DARIIMBAI (Mongolia) said that the term "on water", in Article 8 (b), was too vague. While "at sea" denoted the high seas, where rescue operations could be carried out easily since the high seas were not under national sovereignty, the same did not apply to other stretches of water which might be part of the territory of a sovereign State. Rescue operations "on water" might thus infringe national sovereignty.
50. Mr. TAMALE MUGERWA (Uganda) said that in Article 8, sub-paragraph (b), the distinction between "at sea" and "on water" made it appear that sea was not water. He therefore suggested the substitution of the words "other waters" for "water". The words "and units" in the first line of sub-paragraph (c) were unnecessary and should be deleted. In sub-paragraph (d) iii, the word "body" should be substituted for "authority" in the last line.

N. PROPOSED AMENDMENT:

CDDH/II/87 Republic of Viet-Nam
21 September 1974

Complete the title of draft Protocol I, Part II, as follows:

"WOUNDED, SICK, SHIPWRECKED AND MISSING PERSONS"

Add a sub-paragraph (b) (bis) drafted as follows:

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

O. MEETING OF COMMITTEE II, 14 February 1975 (CDDH/II/SR.20):

12. The CHAIRMAN said that the Republic of Viet-Nam had submitted a new Section III of Part II of draft Protocol I, consisting of Articles 32 bis, 32 ter and 32 quater (CDDH/II/90). Since the amendment covered the same subject as Article 18 bis, it could be discussed together with that article.

13. Mr. QUACH TONG DUC (Republic of Viet-Nam) said that, as the new Chapter proposed by his delegation would be entitled "The Missing and Dead", the title of Part II should accordingly become "Wounded, sick, shipwrecked and missing persons". An addition should also be made to Article 8 (Definitions) to include a definition of 'missing', to indicate that a missing person, whether military or civilian, was one who had not returned to his unit after a military operation or mission, or who had not returned to his home because of circumstances associated with the hostilities. That would cover both members of the armed forces and civilian officials who might be kidnapped, captured or taken away to an unknown destination by the armed forces of the other Party to the conflict.

14. The fate of such missing persons was uncertain. They might have been captured or detained by the other Party or have gone over to it, whether of their own free will or under compulsion, or they might have taken refuge somewhere among the population. They might have died from disease, exhaustion or wounds, while outside enemy hands.

P. PROPOSED AMENDMENT:

CDDH/II/239 United Kingdom of Great Britain and Northern Ireland, United States of America
20 February 1975
Amend provisional Article 8 ... as follows:

1. **Delete** the last sentence of Article 8, paragraph (c).

2. **Add** a new paragraph (g) as follows:

"(g) 'Permanent medical' units and 'permanent medical personnel' are those assigned exclusively and for an indeterminate period to medical purposes. 'Temporary medical units' and 'temporary medical personnel' are those units and personnel who are exclusively devoted to medical purposes for limited periods during the whole of such periods. The expression 'medical units' and 'medical personnel' shall be construed accordingly."

Q. MEETING OF COMMITTEE II, 21 February 1975 (CDDH/II/SR.22):

32. Mr. SOLF (United States of America), speaking on a point of order, said that the definition of temporary personnel in Article 8 of draft Protocol I, as adopted by the Drafting Committee and provisionally adopted by the Working Group, was unsuitable and a new formulation was necessary. He requested the Chairman to rule that the Drafting Committee would undertake a revision of that definition. His delegation had prepared an amendment, which would be circulated shortly.

33. The CHAIRMAN assured the United States representative that all provisions of Article 8 had been accepted only provisionally. He had set aside three days for discussion on the revision of articles concerning definitions, when amendments could be considered.


"Part II - The wounded, sick and shipwrecked

Section I. General Protection

"Article 8. Definitions

For the purposes of the present Protocol:

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

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

(c) 'medical units' means establishments and [other] units, whether military or civilian, organized for medical purposes, such as the search for,
removal, transportation, diagnosis or treatment of the wounded and sick [and shipwrecked], as well as the prevention of disease. The term includes, for example, hospitals, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such medical units. Medical units may be fixed or mobile, permanent or temporary. Permanent medical units are those assigned exclusively and for an indeterminate period to medical purposes, temporary medical units are those devoted exclusively to medical purposes for limited periods;

(d) 'medical personnel' means:

i. military medical personnel, as described in the First and Second Conventions, whether permanent or temporary, including medical transport crews, as well as personnel engaged exclusively in the operation or administration of medical units;

ii. civilian medical personnel, whether permanent or temporary, duly recognized and authorized by the competent authority, including medical transport crews, as well as personnel engaged exclusively in the operation or administration of medical units or transports;

iii. medical personnel (as defined in the preceding two sub-paragraphs) of civil defence, assigned to the discharge of the relevant tasks mentioned in Article 54 [of the present Protocol] and medical personnel [likewise, as defined in the preceding two sub-paragraphs] of the national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid Societies duly recognized and authorized by the competent authority.

(e) 'distinctive emblem' means the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white ground;

(f) 'distinctive signal' means any signalling or identification system specified for the exclusive use of medical units and transports in chapter III of the annex [of the present Protocol]."


2. Mr. SOLF (United States of America) said that the amendment to Article 8 submitted by the United States and the United Kingdom delegations (CDDH/II/239), which concerned the definition of permanent and temporary medical personnel, had a bearing on Article 15. He proposed that it should be referred to the Drafting Committee.

3. Mr. MAKIN (United Kingdom) supported that proposal.

4. Mr. MARTIN (Switzerland), also supporting the proposal, suggested that the Drafting Committee should consider whether Article 8 might not be made clearer by transposing paragraphs (e) and (f) and inserting the new paragraph (g) at the beginning of the article instead of at the end.

276
It was agreed to refer amendment CDDH/II/239 to Article 8 to the Drafting Committee for consideration in connexion with Article 15, paragraphs 1 and 2.

T. ADDENDUM TO THE REPORT OF THE DRAFTING COMMITTEE, COMMITTEE II, 28 February 1975 (CDDH/II/240/Add.1):

The Drafting Committee herewith submits to Committee II the texts of Articles 8, 11, 14, 15, 17 and 18 of draft Protocol I, Part II, Section I, which either did not appear in its report of 21 February 1975 or have been referred back to it.

Article 8. Definitions

1. Delete the last sentence of Article 8, paragraph (c).

2. Add a new paragraph (e) as follows:

(e) "Permanent medical units" and "permanent medical personnel" are those assigned exclusively and for an indeterminate period to medical purposes. "Temporary medical units" and "temporary medical personnel" are those exclusively devoted to medical purposes for limited periods during the whole of such periods. In the absence of specific qualification, the terms "medical units" and "medical personnel" respectively will cover both permanent and temporary categories.

Note: Sub-paragraphs (e) and (f) become (f) and (g).

U. MEETING OF COMMITTEE II, 4 March 1975 (CDDH/II/SR.29):

1. The CHAIRMAN invited the Committee to consider the draft texts contained in addendum I to the report of the Drafting Committee (CDDH/II/240/Add.1).

2. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the addendum filled in some of the gaps in the report of the Drafting Committee (CDDH/II/240) and dealt with some of the provisions that had been referred to that Committee.

3. The new sub-paragraph (e) of Article 8 was based on the United States and United Kingdom amendment in document CDDH/II/239. It included definitions of permanent and temporary medical units and personnel which had not previously appeared in the articles. Paragraph 4 of Article 11, which had been referred back to the Drafting Committee, had been slightly modified. Article 14 covered one of the matters not dealt with in the report of the Drafting Committee (CDDH/II/240). Article 15 had been amended to bring it into line with the new sub-paragraph (e) of Article 8. Article 17, paragraph 1, had been slightly re-drafted as a result of the Committee's decision at its twenty-eighth meeting. Article 18 had been referred to the Drafting Committee as a result of discussions in the Working Group.

4. In view of decisions taken at the first session of the Conference, no action was required at present on Article 8. The new sub-paragraph (e) had
been included in the report for information, as it provided a working basis for other provisions: for instance, paragraph 2 of Article 15 could now be deleted.

5. The CHAIRMAN suggested that the Committee take note of the new sub-paragraph (e) of Article 8.

It was so agreed.

V. REPORT OF THE WORKING GROUP ON QUESTIONS RELATING TO ARTICLES 15, 16 AND 18 [OF PROTOCOL II] TO BE SETTLED BY COMMITTEE II, 18 March 1975 (CDDH/II/269):

Question 2

The Working Group found that the various categories of persons who are at present covered by Article 8 (d) of Protocol I as amended by new Article 8 (e) are as follows:

(1) military medical personnel (as referred to in Articles 24 and 25 of the First Convention and Articles 36 and 37 of the Second Convention)

(2) civilian medical personnel (Article 8 (d) ii of Protocol I)

(3) medical personnel of civil defence (Article 8 (d) iii of Protocol I)

(4) medical personnel of relief societies (Article 8 (d) iii of Protocol I)

(5) all other persons carrying out medical duties in an auxiliary capacity (Article 25 of the First Convention)

(all these categories can be permanent or temporary)

The categories cover all supporting personnel, i.e., medical personnel who have not completed their medical studies together with personnel with no medical qualifications or working as auxiliaries or assistants. This category might have increased significance under the circumstances of an internal conflict.

Medical personnel can therefore be described strictly with reference to their duties, and the use of the term need not imply the possession of a recognized academic qualification or other certificate of achievement in medical skills.

Taking all this into consideration, the Working Group has therefore prepared a definition of medical personnel, which is attached to this report, to facilitate the wording of Article 15, Protocol II.

Article 11, paragraph (f) [of Protocol II]

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

(i) the medical personnel of Parties to the conflict, whether military or civilian;

(ii) medical personnel of the National Red Cross (Red Crescent, Red Lion and Sun) Society and of other voluntary aid societies recognized by a Party to the conflict.

"Permanent medical personnel" are those persons assigned exclusively and for an indeterminate period to medical purposes. "Temporary medical personnel" are those persons exclusively devoted to medical purposes for limited periods, during the whole of such periods. In the absence of specific qualification, the term "medical personnel" shall cover both permanent and temporary categories.

W. MEETING OF COMMITTEE II, 21 March 1975 (CDDH/II/SR.42):

69. Mr. OSTERN (Norway) said that he doubted whether the Working Group's definition in Article 11, sub-paragraph (f) [of Protocol II], included civil defence personnel as referred to in Article 8, sub-paragraph (d) iii (CDDH/II/240). If the Committee decided that it did include such personnel, the reference to civil defence in Article 8 should be either deleted or included in both articles.

71. Mr. SOLF (United States of America) associated himself with the question asked by the United Kingdom representative. Concerning the doubts expressed by the Norwegian representative, he said that he had never understood the need to include a separate category for medical defence personnel in the definition in Article 8, sub-paragraph (d) iii. The Drafting Committee had considered such a category redundant, but a decision would, of course, have to be deferred until the Committee discussed the clauses on civil defence.

72. His delegation preferred the formula in document CDDH/II/269, but agreed that if the definition in Article 8 was retained it would be necessary to add the words "medical personnel of civil defence organizations".

X. REPORT OF THE WORKING GROUP, COMMITTEE II, 7 April 1975 (CDDH/II/296):

7. The articles which the Working Group recommend are based on the assumption that the provisional definition of "the shipwrecked" in Article 8 (b) will be amended along the lines of the Annex to this report. The Annex is intended only to be indicative of the kind of change that is needed and is not put forward as a formal proposal at this time.

Annex to Report of Working Group on Articles 21-25

Change definition of shipwrecked, Article 8 (b) to read:

(b) 'the shipwrecked" means persons, whether military or civilian, who are in peril at sea or on other waters as a result of the destruction, loss or disablement of the vessel or aircraft in which they were travelling and who refrain from any act of hostility. The term shall also be construed to cover
those who have been rescued until they are established ashore or on another
vessel, or otherwise acquire another status under the Conventions, provided they
continue to refrain from any act of hostility.

Y. MEETING OF COMMITTEE II, 8 April 1975 (CDDH/II/SR.49):

68. The CHAIRMAN suggested that the Committee take note of the annex to the
report of the Working Group (CDDH/II/296) concerning the definition of "ship-
wrecked persons" in Article 8, sub-paragraph (b), which would be studied at the
third session of the Conference.

It was so agreed.

Z. MEETING OF COMMITTEE II, 26 April 1976 (CDDH/II/SR.57):

28. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the
Cuban representative had raised an important question of principle which would
affect not only paragraph 5 [of Article 31] but other portions of the text. The
question was what interpretation should be given to the words "adequate facili-
ties for the necessary medical treatment". His delegation appreciated the com-
ments made by the representatives of some countries which might not have the
necessary medical facilities available, but account should also be taken of the
humanitarian considerations involved. He suggested that a definition of "ade-
quate facilities for the necessary medical treatment" should be included in
Article 8 - Definitions, to be interpreted to mean the level of facilities
accorded by a given country to its own citizens.

29. The CHAIRMAN said that that was the reason why he had felt it more
appropriate to defer adoption of Article 8.

30. Mr. SOLF (United States of America) said that the representative of
the Union of Soviet Socialist Republics had made a most constructive suggestion.
The same issue had had to be faced in connexion with Article 11, where the pre-
vailing standard was that used for citizens of the detaining power. It would be
appropriate to consider the matter in connexion with that article and with Arti-
icle 8.

37. Mr. MARRIOTT (Canada) said that the words "wounded and sick" in para-
graph 5 carried the precise meaning given in Article 8, sub-paragraph (a). Pre-
sumably, therefore, the words used in other languages should be those that would
appear in the definition in Article 8.

AA. PROPOSED AMENDMENT:

CDDH/II/374 Austria, Guatemala, Holy See, Nicaragua
25 May 1976

Article 8. Definitions

Insert a paragraph (d) bis worded as follows:

"'Religious personnel' means persons such as chaplains exclusively engaged
in the work of their ministry and attached to:
i. the armed forces of one of the Parties to the conflict, or to

ii. the medical units or medical transport units of one of the Parties to the conflict, whether they be civilian or military, or to

iii. medical units or medical transport units placed at the disposal of one of the Parties to the conflict under the terms of Article 9, paragraph 2, of the present Protocol.

Such attachment may be either permanent or temporary."

Note: The delegation of the Holy See has withdrawn its amendment CDDH/II/58 of 12 March 1974.
They form an integral part of medical units and establishments which could not function properly without their help. Hence they are entitled to the same protection as medical personnel.

With respect to paragraph (e), it is to be noted that permanent medical units or personnel are "assigned" to medical purposes, whereas temporary units or personnel are "devoted" to such purposes. These different words have been chosen in order to make it clear, that the protection of permanent units or personnel starts at the time of the order, assignment or similar act creating the unit or giving a medical task to the personnel. The protection of temporary units or personnel, however, commences only when they have in fact ceased to do other than medical work.

The words "unless otherwise specified" is a deviation from the language used in the corresponding provision of Article 21. Article should be changed accordingly by the Drafting Committee of the Conference.

Sub-paragraph (f) should be re-examined after adoption of the provisions on identification of civil defence in order to avoid any inconsistency or any confusion in relation to the protective sign of civil defence.

Draft Protocol I

Part II

Article 8. Definitions

For purposes of this Protocol:

(a) The words "wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance and care and who refrain from any act of hostility. These words shall also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility.

(b) "Shipwrecked" means persons, whether military or civilian, who are in peril at sea or on other waters as a result of misfortune affecting either them or the vessel or aircraft carrying them, and who refrain from any act of hostility. These persons shall be considered shipwrecked during their rescue until they acquire another status under either the Conventions or this Protocol, provided that they continue to refrain from any act of hostility.

(c) "Medical units" means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment — including first aid treatment — of the wounded, sick and shipwrecked, and for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such medical units. Medical units may be fixed or mobile, permanent or temporary.

(d) "Medical personnel" means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated in sub-paragraph (c)
and also those persons assigned exclusively to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term shall include:

i. medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defence [units] [bodies].

ii. medical personnel of National Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict.

iii. medical personnel of medical units or medical transports described in Article 9, paragraph 2, of this Protocol.

(e) "Permanent medical units" and "permanent medical personnel" are those assigned exclusively to medical purposes for an indeterminate period. "Temporary medical units" and "temporary medical personnel" are those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms "medical units" and "medical personnel" respectively cover both permanent and temporary categories.

(f) "Distinctive emblem" means the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies.

(g) "Distinctive signal" means any signal or message specified for the exclusive identification of medical units or transports in Chapter III of the Annex to this Protocol.

AD. MEETING OF COMMITTEE II, 31 May 1976 (CDDH/II/SR.75):

1. The CHAIRMAN invited the Rapporteur of the Drafting Committee to submit the Drafting Committee's report on Article 8 (e) bis (CDDH/II/377).

2. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that a definition of religious personnel was needed, since such personnel were referred to in various places in the articles on the wounded and sick. In explanation of the final paragraph in square brackets, he said that Article 15, paragraph 5, as adopted by Committee II, might be interpreted as covering only permanent religious personnel, while the new amendment submitted by the Drafting Committee was intended to cover both permanent and temporary religious personnel. If that idea was acceptable, the square brackets would, of course, be removed.

3. Mr. KLEIN (Holy See), referring to the permanent or temporary character of religious personnel, said that their temporary attachment to medical units in no way affected their permanent qualifications as religious personnel. Historians or lawyers, for example, might be temporarily attached to diplomatic missions, while their basic status remained unchanged. Likewise, who could question the permanent status of nurses or doctors who might need temporary protection while serving in medical units of the armed forces? In the same way,
it should be possible to ensure the temporary protection of chaplains who were temporarily replacing other religious personnel who might be killed, sick or overworked.

4. Mr. KUSSBACH (Austria) said that his delegation fully supported the views expressed by the representative of the Holy See, as well as the Drafting Committee's proposal (CDDH/II/377), and in particular the last paragraph in square brackets.

5. A few days earlier his delegation, together with other delegations, had submitted an amendment to Article 15, paragraph 5. That amendment (CDDH/II/373) should be viewed in its relation to the above-mentioned proposal and to Article 2 of the annex prepared by the Technical Sub-Committee (CDDH/II/371). In one of its recent meetings, the latter had decided to defer the debate on amendment CDDH/II/373 until the Drafting Committee had dealt with the question of the definition of religious personnel in the context of Article 8. Since the Drafting Committee had now completed its work, the full Committee could revert to its original problem concerning the assimilation of the status of religious personnel to that of medical personnel with respect to the duration of their functions, whether of a permanent or temporary nature.

6. What must not be overlooked was the fact that the purpose of granting special protection to medical and religious personnel was not to give such personnel a privileged position but solely to serve the interests of the victims of an armed conflict. Since such victims were clearly entitled to medical attention, there surely could be no doubt that they were in all cases equally entitled to receive religious consolation.

7. It was immaterial whether such personnel were attached on a permanent or a temporary basis; the only important thing was their permanent religious character. He could not agree that the granting of protection to both permanent and temporary religious personnel would lead to an unjustifiable proliferation of persons who were entitled to wear the Red Cross emblem; in that respect he saw no reason for discriminating against religious personnel as opposed to medical units. Both should be entitled to have either permanent or temporary status.

8. Mrs. DARIMAA (Mongolia) pointed out certain discrepancies between the English, French and Russian texts of the Drafting Committee's report (CDDH/II/377).

9. The CHAIRMAN assured the representative of Mongolia that such problems would be dealt with by a working team, consisting of members of the Secretariat and the Drafting Committee, which would be set up between the third and fourth sessions.

10. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee of the Conference would certainly review the text in all four languages in order to ensure conformity and remove any possible discrepancies.

11. Mrs. RODRIGUEZ-LARRETA DE PESARESI (Uruguay) said that her delegation was prepared to support the Drafting Committee's amendment. She also supported the proposal of the Holy See and of Austria to remove the square brackets round the final paragraph.

284
12. Miss MINOGUE (Australia) said that her delegation fully supported the inclusion of religious personnel in the list of definitions; it was high time for their status to be formally established. The Committee had, in fact, been concerned with civilians from the outset and had always envisaged that religious personnel would have a role to play in civilian medical units.

13. Her Government's concept of civilian personnel had widened to permit a great deal of flexibility, in order to encompass the permanent or temporary attachment of such religious personnel as chaplains. She therefore supported the proposal to remove the square brackets round the last paragraph. Some delegations, she noted, were concerned about the possible proliferation of the use of the distinctive emblem, but in her opinion such fears were outweighed by the very real need for the formal attachment of religious personnel to medical units in situations of armed conflict.

14. Mr. SODHI (India) said that his delegation was in general agreement with the inclusion of the final paragraph of amendment CDDH/II/373. However, since religious personnel throughout the world were known by many different descriptions, he suggested that the words "priests, etc." should be inserted after the word "chaplain" in the first paragraph.

15. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, pointed out that some delegations might prefer to avoid the use of the term "etc.". He therefore asked the representative of India if he would agree to the use of the expression "priests and similar persons".

16. Mr. SODHI (India) said that expression would be acceptable to his delegation.

17. Mr. HEREDIA (Cuba) supported the Rapporteur's suggestion.

18. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that the first paragraph might be amended to read "such as chaplains or priests".

19. Mr. SODHI (India) said he could agree to that suggestion also.

20. Mr. KLEIN (Holy See) said he was somewhat concerned by the suggestion, because of the diversity of religious personnel. The Catholic Church used the term "priests", but that might not be appropriate in the case of other religions. He would prefer to retain the word "chaplain", since that term did not refer to Christian religious personnel exclusively and had also been used on previous occasions in the Geneva Conventions.

21. Mr. KUSSBACH (Austria) said he agreed with the representative of the Holy See. In order to keep the paragraphs as homogeneous as possible, it was desirable to adhere as closely as possible to the Geneva Conventions.

22. Mr. MARRIOTT (Canada) said that in his opinion the Committee should adopt the wording proposed by the Drafting Committee, which had already been agreed upon at the second session.

23. Mr. SODHI (India) said that the term "priests" was very comprehensive, since it could refer not only to Christian religious personnel but also to Hindus, Sikhs, Moslems and the like.
24. Mr. SOLF (United States of America) agreed fully with the views expressed by the representatives of the Holy See, Austria and Canada. The question of terminology had been extensively debated at the previous session and the majority had felt that the word "chaplains" most clearly described the category of religious personnel which could be attached to medical units.

25. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that his suggestions had been merely drafting ones and that he had not intended to endorse any proposal as to the substance. The inclusion of the expression "similar persons", might indeed seem to reopen a question which had already been settled.

26. Mr. SODHI (India) said that he would not press his proposal.

27. The CHAIRMAN invited the Committee to vote on the first paragraph of the text submitted by the Drafting Committee (CDDH/II/377).

The first paragraph was adopted by consensus.

28. The CHAIRMAN invited the Committee to agree to the deletion of the square brackets round the second paragraph.

It was so agreed.

The second paragraph, as amended, was adopted by consensus.

Sub-paragraph (e) (bis) as a whole, as amended, was adopted by consensus.

AE. MEETING OF COMMITTEE II, 1 June 1976 (CDDH/II/SR.77):

Article 8. Definitions

Sub-paragraph (a)

1. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, recalled that most of the definitions had been discussed extensively during the first session of the Conference. The most important change in Article 8 (a) was in the position of the inverted commas round the words "wounded" and "sick". The expression had previously been "wounded and sick". The change had been made to enable the expression to be used with different conjunctions.

2. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) asked for the Russian text to be aligned with the English with respect to the words "in need of immediate medical assistance" and to the word "infirm".

3. The CHAIRMAN said that any discrepancies in translation would be taken up by the Drafting Committee, to which they could be directly referred.

Sub-paragraph (a) was adopted by consensus.
Sub-paragraph (b)

4. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that there were two new elements in the definition of "shipwrecked" now proposed. The first was the inclusion of the words "misfortune affecting either them or the vessel or aircraft carrying them". The previous definition ("as a result of the destruction, loss or disablement of the vessel or aircraft in which they were travelling") would have excluded anyone who had fallen overboard, since there would be no loss or disablement of his vessel.

5. The other change was in the second sentence of the definition and extended the notion of "shipwrecked" to persons who had been picked up by a vessel or aircraft and were being rescued. The Committee had defined medical transports as transports carrying exclusively the wounded and sick and shipwrecked and medical personnel. Therefore it had to be made clear that a transport carrying persons who were being rescued was still carrying "shipwrecked" persons in the sense of the definition. Otherwise the transport might not be protected as a medical transport. The point had raised no controversy.

6. Mr. SANDOZ (International Committee of the Red Cross) suggested that in the French text the word "l'expression" should be replaced by "le terme", and the words "par suite du sort malchanceux" by "par suite de la malchance". Moreover, "a s'abstenir" in the last sentence should read "de s'abstenir".

7. Mr. PENNANEAC'H (France) agreed to those amendments.

Sub-paragraph (b) was adopted by consensus.

Sub-paragraph (c)

8. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that a note on sub-paragraph (c) had been inadvertently omitted from the report. The note read: "It was the unanimous understanding of the Drafting Committee that the "medical" purposes referred to in that sub-paragraph included dental treatment, and the term 'hospitals and other similar units' included recovery centres providing medical treatment."

9. Some minor drafting changes had also been made.

Sub-paragraph (c) was adopted by consensus.

Sub-paragraph (d)

10. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, drew attention to the second and third paragraphs of the Drafting Committee's report (CDDH/II/379) concerning interpretation of the words "those persons assigned exclusively to the administration of medical units".

11. With respect to the square brackets round the words "units" and "bodies" in sub-paragraph (d) (i), he said that the Drafting Committee/Working Group on Civil Defence had discussed whether the wording should be "units" or "bodies" but had come to no conclusion. The report of that body (CDDH/II/384/Rev.1) would explain in greater detail why the brackets had been included.
12. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the Russian text should be aligned with the English with respect to the word "administration", which occurred twice.

13. Mr. SANDOZ (International Committee of the Red Cross) suggested that the word "mentionnes" should be added in sub-paragraph (d) (iii) of the French text, after the words "le personnel sanitaire des unites ou moyens de transport sanitaire".

14. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the omission in the French text was due to a typing error.

Sub-paragraph (d) was adopted by consensus.

15. Mr. HESS (Israel), speaking on a point of order, said that he had had an explanation of vote to make concerning sub-paragraph (d) (ii), but since he had a similar explanation to make concerning sub-paragraph (f), he took it that he could make his statement later.

16. The CHAIRMAN concurred.

Sub-paragraph (e)

17. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, drew attention to two notes concerning paragraph (e) on page 3 of the report (CDDH/II/379). The notes had been discussed by the Committee at the second session of the Conference.

Sub-paragraph (e) was adopted by consensus.

Sub-paragraph (f)

18. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the definition of religious personnel adopted by the Committee at the seventy-fifth meeting (CDDH/II/SR.75) should be introduced as a new sub-paragraph (f), and the two following sub-paragraphs renumbered (g) and (h) respectively.

19. With respect to sub-paragraph (f), he drew attention to the note in the sixth paragraph of the report of the Drafting Committee (CDDH/II/379) on the question of civil defence. The provisions concerning that matter had not yet been decided. There were also a few minor drafting changes. Sub-paragraph (f) was essentially based on the provisions considered by the Committee at the first session of the Conference.

20. Mr. HESS (Israel) recalled his delegation's statements in the Committee during the first session of the Conference, as recorded in summary records CDDH/II/SR.7, paragraph 39, and CDDH/II/SR.12, paragraph 41, in which his delegation had maintained its reservation with regard to Article 8 (e), since Israel used the Red Shield of David as the distinctive emblem of the medical services of its armed forces and national Society, while respecting the inviolability of the distinctive emblem of the Geneva Conventions of 1949. That position had not changed and it now applied to Article 8, sub-paragraph (g). Furthermore, his delegation understood Article 8, sub-paragraph (d) (ii) as referring also to the medical personnel of its National Relief Society, the Red Shield of David Society.
Sub-paragraph (f) was adopted by consensus.

Sub-paragraph (g)

21. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that a few minor drafting changes had been made in sub-paragraph (g).

22. Mr. SANDOZ (International Committee of the Red Cross) suggested that the French text of the second line should be amended to read "... signalisation destinee exclusivement a permettre l'identification des unites ...".

23. Mr. PENNANEAC'H (France) concurred.

Sub-paragraph (g), as amended, was adopted by consensus.

24. Mr. MAKIN (United Kingdom) pointed out that the introductory phrase of the article had not been approved by the Committee. Moreover, the word "the" should be inserted between "For" and "purposes".

25. He suggested that the points raised by the Drafting Committee in the introduction to the report concerning the meaning of "administration", "devoted" and "assigned" and the point made orally by the Rapporteur concerning dental personnel and equipment should be included in the report of Committee II to the plenary Conference, since they were important interpretative statements, particularly for those not present at the meetings of the Committee or indeed at the Conference.

26. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, although the Committee had hitherto relied on its summary records and documentation to provide interpretation, the points could be made in the report if the Committee so wished.

It was so agreed.

The introductory phrase of Article 8, as amended, was adopted.

Article 8 as a whole, as amended, was adopted.

AF. ARTICLE ADOPTED BY COMMITTEE II, 1 June 1976 (CDDH/II/387):

Article 8. Definitions

For the purposes of this Protocol:

(a) The words "wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance and care and who refrain from any act of hostility. These words shall also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility.

(b) "Shipwrecked" means persons, whether military or civilian, who are in peril at sea or on other waters as a result of misfortune affecting either them
or the vessel or aircraft carrying them, and who refrain from any act of hostility. These persons shall be considered shipwrecked during their rescue until they acquire another status under either the Conventions or this Protocol, provided that they continue to refrain from any act of hostility.

(c) "Medical units" means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment - including first aid treatment - of the wounded, sick and shipwrecked, and for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such medical units. Medical units may be fixed or mobile, permanent or temporary.

(d) "Medical personnel" means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated in sub-paragraph (c) and also those persons assigned exclusively to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term shall include:

(i) medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defence [units] [bodies].

(ii) medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict.

(iii) medical personnel of medical units or medical transports described in Article 9, paragraph 2, of this Protocol.

(e) "Permanent medical units" and "permanent medical personnel" are those assigned exclusively to medical purposes for an indeterminate period. "Temporary medical units" and "temporary medical personnel" are those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms "medical units" and "medical personnel" respectively cover both permanent and temporary categories.

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

(i) the armed forces of a Party to the conflict, or

(ii) medical units or medical transports of a Party to the conflict,
or

(iii) medical units or medical transports described in Article 9, paragraph 2, of this Protocol.

The attachment of religious personnel may be either permanent or temporary, and the relevant provisions of sub-paragraph (e) apply to them.

(g) "Distinctive emblem" means the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white ground when used for the protection of
medical units and transports, or medical and religious personnel, equipment or supplies.

(h) "Distinctive signal" means any signal or message specified for the exclusive identification of medical units or transports in Chapter III of the annex to this Protocol.

AG. REPORT OF COMMITTEE II, THIRD SESSION (CDDH/235/Rev.1):

Proceedings of the Committee

17. At its seventy-fifth meeting, on 31 May 1976, the Committee took note of the report of the Drafting Committee on sub-paragraph (e) bis of Article 8 (CDDH/II/377). It approved sub-paragraph (e) bis, defining "religious personnel", by consensus.

18. At its seventy-seventh meeting, on 1 June 1976, the Committee took cognizance of the report of the Drafting Committee on Article 8, sub-paragraphs (a), (b), (c), (d), (e), (f) and (g) (CDDH/II/379). It adopted Article 8 by consensus, embodying therein sub-paragraph (e) bis, which became sub-paragraph (f), so that the article now contains an additional element, namely sub-paragraph (h).

19. The United Kingdom representative had asked that the Committee's report should recapitulate certain explanatory remarks made by the Rapporteur of the Drafting Committee in his written report to the Committee (CDDH/II/379), as well as in his oral introduction of the report. That request was agreed to by the Committee.

20. The explanatory remarks are reproduced below:

"With regard to sub-paragraph (c), it is the unanimous understanding of the Drafting Committee that the medical purposes mentioned in that paragraph include dental treatment. The expression 'hospitals and other similar units' include rehabilitation centres providing medical treatment.

One delegation asked that a note be added to this report to explain the interpretation of the words 'those persons assigned exclusively to the administration of medical units' (sub-paragraph (d)). These words include persons who look after the administration of medical units and establishments, without being directly concerned in the treatment of the wounded and sick. This would include office staff, ambulance drivers, plumbers, cooks, and other skilled workers. They form an integral part of medical units and establishments which could not function properly without their help. Hence they are entitled to the same protection as medical personnel.

With respect to sub-paragraph (e), it is to be noted that permanent medical units or personnel are 'assigned' to medical purposes, whereas temporary units or personnel are 'devoted' to such purposes. These different words have been chosen in order to make it clear that the protection of permanent units or
personnel starts at the time of the order, assignment or similar act creating the unit or giving a medical task to the personnel. The protection of temporary units or personnel, however, commences only when they have in fact ceased to do other than medical work.

The words 'unless otherwise specified' are a deviation from the language used in the corresponding provision of Article 21. The article should be changed accordingly by the Drafting Committee of the Conference.

Sub-paragraph (f) should be re-examined after the adoption of the provisions on identification of civil defence in order to avoid any inconsistency or any confusion in relation to the protective sign of civil defence."

AH. PROPOSED AMENDMENT:

CDDH/II/436 Australia, Austria, France, Holy See
2 May 1977

Article 8. Definitions

1. Reopen the discussion on Article 8, adopted at the third session.

2. In sub-paragraph (f) defining "Religious personnel", insert under (i) "or Civil Defence bodies" between "the armed forces" and "of a Party to the conflict". The new version will be:

(i) the armed forces or Civil Defence bodies of a Party to the conflict.

Object: To give recognition and protection to religious personnel of Civil Defence bodies in order to ensure the "religious assistance" which, in Article 54 of Protocol I, is regarded as one of the tasks of Civil Defence.

AI. MEETING OF COMMITTEE II, 13 May 1977 (CDDH/II/SR.98):

Amendment to Article 8. Definitions

Sub-paragraph (d) (i)

35. Mr. BOTHE (Federal Republic of Germany) said that after the adoption of the terminology concerning civil defence, the question of the words in brackets could be settled by adopting the same terminology as in Article 8. In English it was neither "units" nor "bodies" but "organizations"; in French it was "organisme".

36. Mr. MAMONOV (Union of Soviet Socialist Republics) agreed to the proposal of the representative of the Federal Republic of Germany.
Sub-paragraph (f)

37. Mr. BOTHE (Federal Republic of Germany) explained that since it was proposed to reconsider an article already adopted, a two-thirds majority was required.

38. The CHAIRMAN asked members of the Committee if they agreed to re-open the discussion on sub-paragraph (f), in order to consider a proposal by Australia, Austria, France and the Holy See (CDDH/II/436).

It was so agreed.

39. Mr. KLEIN (Holy See) reminded the Committee that it had agreed by consensus in Article 54 and in Article 59, paragraph 9, to the principle of religious personnel being present in civil defence bodies. It was therefore proposed, in document CDDH/II/436, that the words "or civil defence bodies" should be added in sub-paragraph (f) (i).

40. Mr. SANCHEZ DEL RIO (Spain) said that, although he was not opposed to the principle of inserting those words, logically they should come in a new sub-paragraph (f) (iv).

41. Mr. BOTHE (Federal Republic of Germany) supported that proposal.

42. Miss MINOGUE (Australia) and Mr. SCHULTZ (Denmark) also supported it.

43. Mr. SOLF (United States of America) had no objections but wished the words "Civil defence bodies" to be replaced by the words "Civil defence organizations" in the English text.

44. Mr. BOTHE (Federal Republic of Germany) suggested that the full stop at the end of sub-paragraph (f) (iii) should be replaced by a comma and that the word "or" should be added.

It was so agreed.

The amendments to Article 8 were adopted by consensus.

AJ. ARTICLE ADOPTED BY COMMITTEE II, 13 May 1977 (CDDH/II/446):

Article 8. Definitions

For the purposes of this Protocol:

(a) The words "wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance and care and who refrain from any act of hostility. These words shall also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility.

(b) "Shipwrecked" means persons, whether military or civilian, who are in peril at sea or on other waters as a result of misfortune affecting either them or the vessel or aircraft carrying them, and who refrain from any act of
hostility. These persons shall be considered shipwrecked during their rescue until they acquire another status under either the Conventions or this Protocol, provided that they continue to refrain from any act of hostility.

(c) "Medical units" means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment - including first-aid treatment - of the wounded, sick and shipwrecked, and for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such medical units. Medical units may be fixed or mobile, permanent or temporary.

(d) "Medical personnel" means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated in sub-paragraph (c) and also those persons assigned exclusively to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term shall include:

(i) medical personnel of a Party to the conflict, whether military or civilian, including those described in the first and second Conventions, and those assigned to civil defence organizations.

(ii) medical personnel of National Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict.

(iii) medical personnel of medical units or medical transports described in Article 9, paragraph 2, of this Protocol.

(e) "Permanent medical units" and "permanent medical personnel" are those assigned exclusively to medical purposes for an indeterminate period. "Temporary medical units" and "temporary medical personnel" are those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms "medical units" and "medical personnel" respectively cover both permanent and temporary categories.

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

(i) the armed forces of a Party to the conflict, or

(ii) medical units or medical transports of a Party to the conflict, or

(iii) medical units or medical transports described in Article 9, paragraph 2, of this Protocol, or

(iv) civil defence organizations of a Party to the conflict.

The attachment of religious personnel may be either permanent or temporary, and the relevant provisions of sub-paragraph (e) apply to them.
(g) "Distinctive emblem" means the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies.

(h) "Distinctive signal" means any signal or message specified for the exclusive identification of medical units or transports in Chapter III of the Annex to this Protocol.

BA. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 21. Definitions

For the purposes of this Part:

(a) 'medical transport' means the transport by land, sea or air of the wounded, the sick and the shipwrecked and of the medical personnel and equipment protected by the Conventions and the present Protocol;

(b) 'means of medical transport' means any means of transport, be it military or civilian, permanent or temporary, assigned exclusively to medical transport, under the control of a competent authority of a Party to the conflict. Permanent means of medical transport are those which are assigned for an indeterminate period to medical transport. Temporary means of medical transport are those which are assigned to one or more medical transport operations and shall be considered as such throughout the said assignment;

(c) "medical ships and craft" means any means of medical transport by sea, including hospital ships, lifeboats of all kinds and small medical service craft, whether civilian or military;

(d) "medical vehicle" means any means of medical transport by land;

(e) "medical aircraft" means any means of medical transport by air.

BB. PROPOSED AMENDMENTS:

Sub-paragraph (a)

CDDH/II/3 Yugoslavia
6 March 1974

In sub-paragraph (a) replace "sea" by "water".

CDDH/II/4 Austria
7 March 1978

In Articles 9, 17, 19, 20, 21 and 22 for "the wounded, the sick and the shipwrecked", read "the wounded and the sick".

Rationale

Since the definition of "the wounded and the sick" given in Article 8 (a) explicitly includes "the shipwrecked" as defined in Article 8 (b) there seems to
be no point in employing in one place the term "the wounded and the sick" and in the above articles the term "the wounded, the sick and the shipwrecked". It would therefore seem preferable to use the same expression throughout.

CDDH/II/79 and 217  Belgium, Canada, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America 19 March 1974

Revise sub-paragraph (a) as follows:

(a) "Medical transportation" means the transportation by land, water, or air of the wounded and sick and of medical personnel, equipment and supplies protected by the Convention and by the present Protocol;

CDDH/II/251  Australia 10 March 1975

Delete paragraph (a) and insert:

(a) "Medical transportation" means the transportation by land, water or air of the wounded and sick and the medical personnel, equipment and supplies protected by the Conventions and by the present Protocol.

Sub-paragraph (b)

CDDH/II/79 and 217  Belgium, Canada, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America 19 March 1974

Revise sub-paragraph (b) as follows:

(b) "Medical transport" is any means of transportation, be it military or civilian, permanent or temporary, assigned exclusively to medical transportation, under the control of a competent authority of a Party to the conflict. "Permanent medical transports" are those which are assigned for an indeterminate period to medical transportation. "Temporary medical transports" are those which are assigned to one or more medical transportation missions while devoted exclusively to the performance of such mission;

CDDH/II/251  Australia 10 March 1975

Delete paragraph (b) and insert:

(b) "Medical transport" is any means of transportation such as hospital ships, life boats of all kinds and small medical service craft, vehicles, or aircraft be they military or civilian, permanent or temporary, assigned exclusively to medical transportation, under the control of a competent authority of a Party to the conflict. Permanent medical transports are those which are assigned for an indeterminate period to medical transportation. Temporary medical transports are those which are assigned to one or more medical transportation missions while devoted exclusively to the performance of such mission.

Sub-paragraph (c)

CDDH/II/3  Yugoslavia 6 March 1974

In sub-paragraph (c) replace "sea" by "water".

296
CDDH/II/79 and 217 Belgium, Canada, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America 19 March 1974

Revise sub-paragraph (c) as follows:

(c) "Medical ships and craft" means any medical transport by water, including hospital ships, lifeboats of all kinds and small medical service craft, whether civilian or military;

Australia 10 March 1975

Delete paragraphs (c), (d) and (e).

Sub-paragraphs (d) and (e)

CDDH/II/79 and 217 Belgium, Canada, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America 19 March 1974

In sub-paragraphs (d) and (e) delete the words "any means of".

Australia 10 March 1975

Delete paragraphs (c), (d) and (e).

BC. MEETING OF COMMITTEE II, 14 March 1975 (CDDH/II/SR.36):

1. The CHAIRMAN reviewed the amendments to Articles 21 and following, the most important being that contained in document CDDH/II/249 and Corr.1, since its sponsors wished it to take the place of the ICRC text as a basis for discussion by the Committee. The amendment proposed that Section II, "Medical Transports", should be divided into four chapters. In the new text, only Article 21 of the ICRC draft would be retained in its original form.

3. Mr. de MULINEN (International Committee of the Red Cross) said that there were few provisions on medical transports in the Geneva Conventions of 1949: a general article and an article on air transport in the first Convention of 1949 and similar provisions in the fourth, although the second Convention was more explicit, particularly so far as concerned hospital ships.

4. Solutions should be found that would be applicable to all areas of combat, whether on land, or sea or in the air because, in a coastal region or archipelago, for example, various types of medical transport might be needed at the same time. In drawing up their text, the authors of the ICRC draft had borne in mind the discussions on that question at the previous conferences. There had been two possible solutions: first, to propose common provisions containing also details on land and sea transport and a special chapter on medical transport by air; and second, to propose minimum common provisions, followed by separate chapters, one for each of the three modes - land, sea and air. The ICRC had chosen the first solution.

5. So far as concerned translation, he urged the need for taking the previous decisions of the Committees and Working Groups into account; the English word "transportation" should be rendered "transport" in French, and the French
term "moyens de transport" should be translated "transport" in English, not "means of transport".

15. [Mr. CLARK (Australia) said] [h]is delegation would like the Committee to give preliminary consideration to the definitions before discussing the substantive articles.

16. Mr. FIRM (New Zealand) asked what would become of the ICRC proposals if the Committee decided by a two-thirds majority to adopt document CDDH/II/249 and Corr.1 as a basis for discussion.

17. The CHAIRMAN replied that, in that event, with the exception of Article 21, the ICRC text of Chapter I would be replaced by document CDDH/II/249 and Corr.1.

18. The CHAIRMAN, referring to Article 21, reminded the Committee that at the first session the Committee had decided to postpone the decisions on the definitions proposed in Article 8 of draft Protocol I and Article 11 of draft Protocol II until the discussions had been concluded. He wondered whether it would not be advisable to take a similar decision with regard to Article 21, the more so as some of the expressions defined in that article would also be encountered in certain articles of draft Protocol II.

BD. MEETING OF COMMITTEE II, 17 March 1975 (CDDH/II/SR.37):

Article 21. Definitions

2. The CHAIRMAN invited the Committee to consider Article 21 of draft Protocol I.

3. Mr. de MULINEN (International Committee of the Red Cross) said that the ICRC draft of Article 21 was self-explanatory. Two corrections should be made to the English version: in sub-paragraph (a), the words "medical transport" should be replaced by the words "medical transportation"; and in sub-paragraph (b), the words "means of medical transport" should be replaced by the words "medical transports".

4. The CHAIRMAN invited the Committee to consider the amendments to Article 21 sub-paragraph by sub-paragraph.

Sub-paragraph (a)

5. The CHAIRMAN invited the representative of Austria to introduce the amendment in document CDDH/II/4.

6. Miss BASTL (Austria) said that the Austrian amendment had now been withdrawn in respect of both Article 21 and Article 22.

7. The CHAIRMAN invited one of the co-sponsors to introduce the amendment in document CDDH/II/79.

8. Mr. MAKIN (United Kingdom) said that amendment CDDH/II/79 incorporated both the corrections referred to by the ICRC representative and the Yugoslav amendment (CDDH/II/3). It also included the word "supplies" after the word "equipment", because the French word "materiel" was wider than the English term
"equipment" and covered supplies also. It omitted any reference to the ship-
recked because, according to the present definition, the "shipwrecked" meant
those who were in peril at sea or on other waters whereas, if they were taken
aboard a medical transport, they would cease to be in peril. It might be de-
sirable, however, when the Committee reconsidered Article 8, to take another
look at the definition of "shipwrecked" and to define it in such a way that the
shipwrecked could be carried on medical air and sea transports, but not on med-
ical land transports. As things stood, there seemed to be a gap in Articles 8
and 21 in that respect.

9. The CHAIRMAN invited the Australian representative to introduce amend-
ment CDDH/II/251.

10. Mr. CLARK (Australia) said that the Australian amendment (CDDH/II/251)
differed only in minor details from amendment CDDH/II/79. He wondered whether
the question of the shipwrecked might not be covered by Article 22 which dealt
with the search for and evacuation of the wounded, sick and shipwrecked.

Sub-paragraph (b)

11. Mr. MAKIN (United Kingdom) said that the only significant difference
between the text in amendment CDDH/II/79 and the ICRC text was in the re-wording
of the last line, which was in fact the same as that proposed in the Australian
amendment (CDDH/II/231). While that re-wording was largely a matter of style,
the inclusion of the word "exclusively" was a matter to which the co-sponsors
attached importance.

12. Mr. CLARK (Australia) said that the Australian amendment to sub-
paragraph (b) sought to include sub-paragraphs (c), (d) and (e) as examples of
medical transport; it seemed to his delegation clearer and more concise than
either the ICRC text or amendment CDDH/II/79.

Sub-paragraph (c)

13. Mr. MAKIN (United Kingdom) said that the only significant change pro-
posed by the co-sponsors of amendment CDDH/II/79 to sub-paragraph (c) was the
replacement of the word "sea" by the word "water", which was the same as the
Yugoslav amendment (CDDH/II/3). The words "means of" had again been omitted, as
in sub-paragraph (b).

Sub-paragraphs (d) and (e)

There were no comments.

14. The CHAIRMAN invited the Committee to consider Article 21 as a whole.
The Committee could then either refer the article to the Drafting Committee, or
set up a Working Group to propose a new draft of the article, or postpone fur-
ther discussion until the Committee had completed its consideration of the Sec-
tion on medical transport, as it had done in the case of Article 8 of draft
Protocol I and Article 11 of draft Protocol II, which also dealt with defini-
tions.

15. Mr. CALCUS (Belgium) said that the word "aquatique" which occurred in
the French versions of amendments CDDH/II/79 and CDDH/II/251 was not a very
happy choice. He suggested that it be replaced by either "par voie d'eau" or by
"par voie maritime".
16. Mr. KLEIN (Holy See) proposed that, in sub-paragraph (a), the words "medical personnel and equipment" be replaced by the words "medical and religious personnel and medical equipment".

17. Mr. CZANK (Hungary) said that the ICRC text was an excellent one, but a few minor modifications were required to make it absolutely clear. Some of those changes - the distinction in English between "transportation" and "transports", the addition of the word "supplies" and the replacement of the word "sea" by the word "water" - had already been made in amendments CDDH/II/79 and CDDH/II/251. He would further propose, however, that, at the beginning of sub-paragraph (b) in both amendments, the word "transportation" - which constituted a definitio idem per idem - be replaced by some other word, such as "conveyance". He was opposed to the Australian suggestion (CDDH/II/251) that sub-paragraphs (c), (d) and (e) of the ICRC text should be deleted. They would need to be maintained if the Committee decided to have separate provisions for land, water and air medical transports. Amendments CDDH/II/79 and CDDH/II/251 amounted basically to improvements to the wording of the ICRC text; he therefore thought that there would be no substantive problems concerning Article 21 and that the text, with the amendments, could be referred to the Drafting Committee.

18. Mr. SOLF (United States of America) said that he fully endorsed the views of the Hungarian representative; Article 21 could be referred to the Drafting Committee.

19. Mr. MARRIOTT (Canada) said he presumed that the Drafting Committee would be invited to handle Section II entitled "Medical Transports" in the same way as it had handled other sections: i.e., to complete its consideration of the whole section before reporting back to Committee II. In particular, since Article 21 was concerned with definitions, it might find it better to continue with the drafting of the subsequent articles before tackling Article 21.

20. Mr. POZZO (Argentina) said he agreed with those speakers who had advocated the replacement of the word "sea" (via maritima) in sub-paragraphs (a) and (c); the question of the term by which it should be replaced was a matter which should be decided, on a consensus basis, either in the Drafting Committee or in a Working Group.

21. Mr. KRASTNOPEEV (Union of Soviet Socialist Republics) said that, before deciding to refer Article 21 to the Drafting Committee, Committee II should bear in mind that the question of the replacement of the word "sea" by the word "water" was not a matter of drafting but a matter of substance. The word "sea" was the one adopted in the second Geneva Convention of 1949, which contained rules which had been tested and proved in practice. To replace that term by "water" or to decide that the word "sea" should be extended to cover territorial waters, inland waterways, rivers or lakes, any of which might become a theatre of military operations in the nature of a naval engagement, might have important consequences for the subsequent articles relating to hospital ships, etc. He personally was in favour of replacing "sea" by "water" but, before sending Article 21 to the Drafting Committee, he wished to see in more detail what the substantive consequences of that change in definition would be.

22. To rescue shipwrecked persons by taking them out of the water was to some extent a question of transport and should be dealt with in the Section on transport. The question was purely a drafting one and could be settled in the Drafting Committee. In any event, the definitions referred to the Drafting

300
Committee would be merely provisional; they would not be finally settled until the Committee had taken decisions on all the articles in the Section entitled "Medical Transports".

23. Mr. MARTIN (Switzerland) said that the representative of the Union of Soviet Socialist Republics had said many of the things he himself had intended to say, in particular in connexion with the "sea" and "water" problem. He wondered whether the Drafting Committee could get very far in its consideration of the definitions before Committee II had completed its consideration of the other articles in Section II, which would give rise to plenty of discussion.

24. He did not think that the versions in the different languages should try to follow each other too slavishly.

25. Mr. de MULINEN (International Committee of the Red Cross) said that, while all the other questions that had been raised were merely matters of drafting or of harmonizing the different languages, the question of "sea" or "water" was a matter of substance.

26. The CHAIRMAN said he agreed with the ICRC representative; all the other matters could be referred to the Drafting Committee, but the question of "sea" or "water" was one on which the Committee itself should take a decision. Either it could vote on the matter at once or it could decide to postpone a decision until it had considered the other articles in the section.

27. Mr. MARRIOTT (Canada) said that it was the considered opinion of the Canadian delegation that the replacement of "sea" by "water" was not a substantive problem but merely a drafting one. The term "sea" as used in the Geneva Conventions of 1949 and other international law texts had invariably been extended without any difficulty to cover all inland waterways whenever such waterways were affected by international activities. The purpose of the amendment was simply to bring the terminology into line with current practice; it was therefore not a substantive question, but one of clarification.

28. Mr. SOLF (United States of America) said that the revised definition of the term "the shipwrecked", adopted by the Committee for Article 8 (b) (CDDH/II/240) included the phrase: "persons ... who are in peril at sea or on other waters ...". At that time, the same question had been discussed and the Committee had provisionally decided to use the expression "on other waters".

29. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that it would be premature to vote on the subject. The Committee had not yet considered the articles which would be affected by a change in the definition. To put the words "sea" and "water" in square brackets would avoid any problem for the Drafting Committee. It was a waste of time to continue discussing the question in the abstract; it must be considered in connexion with the matters of substance which would arise during the consideration of the subsequent articles.

30. Mr. ROSENBLAD (Sweden) said that the Drafting Committee might need some guidance on the matter. In his view there was already a consensus in favour of replacing the word "sea" by the word "water".

31. Mr. MALLIK (Poland) said he agreed with the USSR representative that it was premature to discuss the problem from the substantive standpoint. In discussing amendments to Article 21, the Committee should not forget that the
article referred to medical land transport as well as to water transport. The Drafting Committee could only draft Articles 21 to 25 if it considered them as a whole. It might, therefore, be preferable to consider setting up a Working Group to deal with the drafting of the entire section.

32. Mr. ONISHI (Japan) said that, as far as he knew, the expression "medical transport" was used only in the amended English text of Article 21, sub-paragraph (a) for defining medical transports. He therefore proposed that it might be desirable to amalgamate sub-paragraphs (a) and (b) to avoid the introduction of an expression which had no practical application in the Protocol.

33. Mr. de MULINEN (International Committee of the Red Cross) said that when the ICRC had said that the question whether to say "sea" or "water" was important, it had meant that it must be clear. It had been seen that "sea" could be interpreted in different ways. The question of whether the Drafting Committee or Committee II took the decision was, however, secondary.

34. Mr. MARTINS (Nigeria) said his delegation preferred the term "water", which was all-embracing and easily comprehensible to the layman. It was, however, inclined to the view that it was merely a matter of drafting.

35. Mr. MAIGA (Mali) said that the Malian delegation thought that the Committee should take account of current events: the third United Nations Conference on the Law of the Sea had just begun and the Sixth Committee of the United Nations General Assembly was studying the Law of the Non-navigational Uses of International Water Courses. Both those activities were relevant to the question before the Committee. Rather than any of the terms that had been suggested, he would propose the use of the expression "international waterway" ("voie d'eau internationale"), which had the merit of taking into account the situation not only of countries with a seaboard but also of the land-locked countries.

36. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said he thought that Article 21 could now be referred to the Drafting Committee. As to the choice between "sea" and "water", there seemed to be a consensus that protection should be provided for medical transports on waters that could not be described as sea. He saw no reason for a vote, since no delegation seemed opposed to the idea of such protection.

37. The CHAIRMAN suggested that the matter be referred to the Drafting Committee on the understanding that its report would only be made on the whole of Section II and that, if there were divergent views in the Drafting Committee, two solutions might be suggested, one being placed in square brackets.

It was so agreed.


1. We have held five meetings between 19 March and 4 April and submit our report and proposed articles herewith. As will be seen from these articles we have concluded that it is more satisfactory to have separate articles dealing with vehicles, hospital ships and coastal craft, and other medical ships and
craft, and thereby as far as possible to include all the provisions relating to those three kinds of transport in the relevant article.

2. On this basis the Working Group concluded that there was no requirement for a separate article on Notification, the relevant provisions being included in Article 23, paragraph 3, and Article 24, paragraph 3. The Working Group is of the opinion that notification would be of no practical value in the case of medical vehicles. Similarly the provisions regarding protection have been included in the relevant articles.

3. The Working Group considers that reference to search and evacuation is undesirable. This function is fully covered in the First, Second and Fourth Conventions and in Article 17 of the Protocol. To refer to the matter again would be to cast doubt on the meaning of the Conventions, and if search and evacuation were mentioned the other functions of medical transport when carrying medical personnel should also be included, and those are already fully covered under the definition of medical personnel. Consequently, no article corresponding to ICRC Article 22 is recommended.

4. It follows from this approach that either there should be individual chapters on definitions, vehicles, ships and craft, and aircraft, or one chapter on medical transport. The Working Group feel unable to recommend chapters containing in some cases only one article, and therefore propose that there should be no separate chapters, and that Section II under the title 'MEDICAL TRANSPORT' should cover the whole of the subject matter dealt with in ICRC Articles 21 to 32 inclusive, the titles of the articles making clear the subject of each article.

7. The articles which the Working Group recommend are based on the assumption that the provisional definition of "the shipwrecked" in Article 8 (b) will be amended along the lines of the Annex to this report. The Annex is intended only to be indicative of the kind of change that is needed and is not forward as a formal proposal at this time.

Article 21. Definitions

For the purposes of the present Protocol:

(a) "medical transportation" means the conveyance by land, water or air of the wounded and sick and the shipwrecked and of medical and religious personnel, medical equipment and supplies protected by the Conventions and by the present Protocol;

(b) "medical transport" is any means of transportation, be it military or civilian, permanent or temporary, assigned exclusively to medical transportation, under the control of a competent authority of a Party to the conflict. "Permanent medical transports" are those which are assigned for an indeterminate period to medical transportation. "Temporary medical transports" are those which are assigned to medical transportation missions for limited periods while devoted exclusively to the performance of such missions. In the absence of specific qualification the terms "medical transports", "medical ships and craft", "medical vehicles" and "medical aircraft" will cover both permanent and temporary categories;

(c) "medical ships and craft" mean any medical transport by water;
(d) "medical vehicles" mean any medical transport by land;

(e) "medical aircraft" mean any medical transport by air.

Annex to Report of Working Group
on Articles 21-25

Change definition of shipwrecked, Article 8 (b) to read:

(b) "the shipwrecked" means persons, whether military or civilian, who are in peril at sea or on other waters as a result of the destruction, loss or disablement of the vessel or aircraft in which they were travelling and who refrain from any act of hostility. The term shall also be construed to cover those who have been rescued until they are established ashore or on another vessel, or otherwise acquire another status under the Conventions, provided they continue to refrain from any act of hostility.

BF. MEETING OF COMMITTEE II, 8 April 1975 (CDDH/II/SR.49):

2. Mr. DEDDES (Netherlands), Chairman of the Working Group, introduced the report (CDDH/II/296). He paid a tribute to the spirit of co-operation which had enabled the Group's members to keep the discussions concise and to the point. The ICRC draft and amendment CDDH/II/249 had also helped the Working Group in its discussions. It had become clear that the question of medical transports other than air transport had not been very extensively discussed during the two sessions of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, and that was why Article 24, entitled "Other medical ships and craft" had been placed in brackets.

3. A very wide range of nationalities and languages had been represented in the Group. The fact that many members were also members of the Drafting Committee had made drafting easier.

4. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group and the Drafting Committee, said that those two bodies did not recommend the adoption, by Committee II, at the current session, of Article 24 of draft Protocol I or the revised definition of the shipwrecked annexed to the report (CDDH/II/296). That was why both texts were placed in brackets.

5. The wording adopted for Articles 21 to 23 was based on various amendments submitted to the ICRC draft. The definition of medical transport was dealt with in Article 21. The only thing which needed to be said about medical vehicles (Article 22) was that they should be protected and respected in the same way as mobile medical units under Article 35 of the first Geneva Convention of 1949.

8. Referring to the annex to the report, he said that the Working Group considered that there were problems about the transport of the shipwrecked in medical vehicles on land, although shipwrecked persons might need to be transported to a hospital to check if they were sick or not. Furthermore, the fate of persons who fell overboard was not dealt with. Such matters should therefore be looked at again at the third session.
General discussion

9. Mr. CALCUS (Belgium) said he was not satisfied with the present wording in French of Article 21, sub-paragraphs (a) and (c), which did not correspond to what had been adopted by the Drafting Committee. Sub-paragraph (a) should read: "L'expression 'transport sanitaire' s'entend du transport par voie terrestre, par voie maritime ou sur autres eaux ou par voie aérienne des blesses, des malades, des naufragés, ainsi que du personnel sanitaire et religieux et du matériel sanitaire protégé ...". Sub-paragraph (c) should read: "L'expression 'navire et embarcation sanitaire' s'entend de tout moyen de transport sanitaire par voie maritime ou sur autres eaux".

10. Mr. SANCHEZ DEL RIO (Spain) observed that in the Spanish version the adjective "acuatica" had been used. That might raise a smile, since the word in question applied to certain birds and not to means of transport. The words "via maritima" and not "via acuatica" should be used.

11. Mr. de MULINEN (International Committee of the Red Cross) said that the French wording "voie maritime et autres eaux" did not accurately render the English, which had been the Drafting Committee's main working language. He asked whether the words "par voie d'eau" might not be used.

12. Mr. MARCHAISSEAU (France) did not agree with that proposal, for the expression in question meant that the vessel had sprung a leak and was going to sink. "Voie maritime et autres eaux" was the best wording.

13. Mr. MARRIOTT (Canada) asked for the insertion of the preposition "of" before the words "the shipwrecked" in the second line of Article 21, sub-paragraph (a).

17. Mr. BOTHE (Federal Republic of Germany) suggested that the words "ainsi que" be inserted before "des naufrages" in the French text of sub-paragraph (a).

18. Mr. CALCUS (Belgium) said he doubted whether such an unwieldy addition would help to improve the style of the article.

19. Mr. MARCHAISSEAU (France) proposed the following wording: "... ainsi que des naufrages et du personnel sanitaire et religieux, ainsi que du matériel ...". That wording was perhaps rather awkward, but it came slightly nearer the meaning of the English text.

20. Mrs. DARIIMAA (Mongolia) said that she had compared the English, French and Russian versions of the text under discussion. The new wording of the French text read "par voie maritime et autres eaux", while the English said simply "water" and the Russian "voda". Could "water" be considered equivalent to "maritime"? Were inland waterways included in that expression? Moreover, the French text spoke of "matériel et fournitures sanitaires", while the Russian used a word which had a wider meaning and was closer to the English "equipment". She wondered what would be the effect on the other language versions of the corrections made in the French text.

21. The CHAIRMAN pointed out that in international conferences it was enough to agree on one text, which constituted the original authentic text and for which the language services found the necessary equivalents in the other languages. At the International Court of Justice, for instance, it was always
stated which of the texts, French or English, was authentic. In the present instance the Committee must rely upon the technical services of the Conference, which naturally could call on representatives for help.

22. Mr. SANCHEZ DEL RIO (Spain) said that he was ready to confer with the other Spanish-speaking delegations during the suspension of the meeting in order to improve the wording of the Spanish text of the article.

23. Mr. ONISHI (Japan) proposed that the order of sub-paragraphs (c) and (d) should be transposed and that in sub-paragraph (b) the words "medical vehicles" should be placed before "medical ships and craft".

24. Mr. MAKIN (United Kingdom) said that, in the text of the annex to the report (CDDH/II/296), only the word "shipwrecked" should be placed in quotation marks. It might also be useful to place an asterisk after sub-paragraph (a) of Article 21, with a note to the effect that, in what followed, reference should be made to all the other articles dealing with the shipwrecked, so as to make the wording uniform, particularly with regard to the Canadian proposal for the insertion of the word "of".

25. Speaking as Rapporteur of the Working Group, he agreed with the Japanese proposal. Regarding the transport of the wounded and the sick who died during transport, it should be pointed out that no difficulties had arisen in that connexion since 1864. As to transport for the purpose of interment, that kind of operation should not be confused with medical transport.

26. The CHAIRMAN suggested that the different language groups, with the exception of the English group, should meet during the suspension of the meeting in order to come to an agreement on all stylistic questions. He invited the Committee to adopt the English text of Article 21.

Article 21 was adopted by consensus.

BG. ARTICLE ADOPTED BY COMMITTEE II, 8 April 1975 (CDDH/II/302/Rev.1):

Article 21. Definitions

For the purposes of the present Protocol:

(a) "medical transportation" means the conveyance by land, water or air of the wounded and sick and of the shipwrecked and of medical and religious personnel, medical equipment and supplies protected by the Conventions and by the present Protocol;

(b) "medical transport" is any means of transportation, be it military or civilian, permanent or temporary, assigned exclusively to medical transportation, under the control of a competent authority of a Party to the conflict. "Permanent medical transports" are those which are assigned for an indeterminate period to medical transportation. "Temporary medical transports" are those which are assigned to medical transportation missions for limited periods while devoted exclusively to the performance of such missions. In the absence of specific qualification the terms "medical transports", "medical vehicles", "medical ships and craft" and "medical aircraft" will cover both permanent and temporary categories.
(c) "medical vehicles" mean any medical transport by land;
(d) "medical ships and craft" mean any medical transport by water;
(e) "medical aircraft" mean any medical transport by air.

CA. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 8. Terminology

For the purposes of this Protocol:

(1) "Wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility;

(2) "Shipwrecked" means persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided that they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Conventions or this Protocol;

(3) "Medical personnel" means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under (5) or to the administration of medical transports. Such assignment may be either permanent or temporary. The term includes:

(a) medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defence organizations;

(b) medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict;

(c) medical personnel of medical units or medical transports described in Article 9, paragraph 2;

(4) "Religious personnel" means military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached:

(a) to the armed forces of a Party to the conflict;

(b) to medical units or medical transports of a Party to the conflict;
(c) to medical units or medical transports described in Article 9, paragraph 2; or

(d) to civil defence organizations of a Party to the conflict.

The attachment of religious personnel may be either permanent or temporary, and the relevant provisions mentioned under (11) apply to them;

(5) "Medical units" means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment - including first aid treatment - of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary;

(6) "Medical transportation" means the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies protected by the Conventions and by this Protocol;

(7) "Medical transports" means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict;

(8) "Medical vehicles" means any medical transports by land;

(9) "Medical ships and craft" means any medical transports by water;

(10) "Medical aircraft" means any medical transports by air;

(11) "Permanent medical personnel", "permanent medical units" and "permanent medical transports" mean those assigned exclusively to medical purposes for an indeterminate period. "Temporary medical personnel", "temporary medical units" and "temporary medical transports" mean those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms "medical personnel", "medical units" and "medical transports" cover both permanent and temporary categories;

(12) "Distinctive emblem" means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies;

(13) "Distinctive signal" means any signal or message specified for the identification exclusively of medical units or transports in Chapter III of Annex ... to this Protocol.

CB. PLENARY MEETING, 24 May 1977 (CDDH/SR.37)

Article 8. Terminology

Article 8 was adopted by consensus.
Article 8 of draft Protocol I

With regard to paragraph 12 of Article 8 of draft Protocol I, the delegation of Israel wishes to declare that Israel uses the Red Shield of David as the distinctive emblem of the medical services of its armed forces and of the National Aid Society, while respecting the inviolability of the distinctive emblems of the 1949 Geneva Conventions.

CD. 1977 PROTOCOL I:

Part II

Wounded, Sick and Shipwrecked

Section I. General Protection

Article 8. Terminology

For the purposes of this Protocol:

(a) "wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility;

(b) "shipwrecked" means persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided that they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Conventions or this Protocol;

(c) "medical personnel" means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph (e) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term includes:

(i) medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defence organizations;

(ii) medical personnel of national Red Cross (Red Crescent Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict;
(iii) medical personnel of medical units or medical trans-ports described in Article 9, paragraph 2;

(d) "religious personnel" means military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached:

(i) to the armed forces of a Party to the conflict;

(ii) to medical units or medical transports of a Party to the conflict;

(iii) to medical units or medical transports described in Article 9, paragraph 2; or

(iv) to civil defence organizations of a Party to the conflict.

The attachment of religious personnel may be either permanent or temporary, and the relevant provisions mentioned under sub-paragraph (k) apply to them;

(e) "medical units" means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment - including first-aid treatment - of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary;

(f) "medical transportation" means the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies protected by the Conventions and by this Protocol;

(g) "medical transports" means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict;

(h) "medical vehicles" means any medical transports by land;

(i) "medical ships and craft" means any medical transports by water;

(j) "medical aircraft" means any medical transports by air;

(k) "permanent medical personnel", "permanent medical units" and "permanent medical transports" mean those assigned exclusively to medical purposes for an indeterminate period. "Temporary medical personnel", "temporary medical units" and "temporary medical transports" mean those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms "medical personnel", "medical units" and "medical transports" cover both permanent and temporary categories;

(l) "distinctive emblem" means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground when used for the protection of
medical units and transports, or medical and religious personnel, equipment or supplies;

(m) "distinctive signal" means any signal or message specified for the identification exclusively of medical units or transports in Chapter III of Annex I to this Protocol.
ARTICLE 9 - FIELD OF APPLICATION

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 9. Field of application

1. The present Part shall apply, without distinction on grounds of nationality, to all the wounded, the sick and the shipwrecked of the armed forces and of the civilian population on the territory of the Parties to the conflict and to all military and civilian medical personnel, units and means of transport on such territory.

2. The provisions of Article 27 of the First Convention apply to permanent medical units and means of transport and their medical personnel lent for humanitarian purposes to a Party to a conflict by a State which is not a Party to the conflict or by a society recognized by such a State.

3. The provisions of Article 27 of the First Convention also apply to medical units and means of transport and their medical personnel lent for humanitarian purposes by an organization of an international character, provided the said organization fulfils the requirements imposed on the government of a State which is not a party to the conflict under the terms of the aforementioned Article 27.

B. PROPOSED AMENDMENTS:

CDDH/II/4
7 March 1974

Austria

In Articles 9, 17, 19, 20, 21 and 22 for "the wounded, the sick and the shipwrecked", read "the wounded and the sick".

Rationale:

Since the definition of "the wounded and the sick" given in Article 8 (a) explicitly includes "the shipwrecked" as defined in Article 8 (b) there seems to be no point in employing in one place the term "the wounded and the sick" and in the above Articles the term "the wounded, the sick and the shipwrecked". It would therefore seem preferable to use the same expression throughout.

Paragraph 1

CDDH/II/19

Bulgaria, Byelorussian Soviet Socialist Republic, German Democratic Republic, Hungary, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics

Replace the words "without distinction on grounds of nationality" by the words "without any discrimination". 
Amend paragraph 1 to read:

"1. The present Part shall apply in the area under the control of the Parties to the conflict, without any discrimination, to all the wounded and the sick and the shipwrecked of the armed forces and of the civilian population and to all military and civilian medical personnel, medical units and medical transports."

Delete paragraph 1 and renumber paragraphs 2 and 3 as paragraphs 1 and 2, respectively.

Revise paragraph 2 as follows:

"2. The provisions of Article 27 of the First Convention apply to permanent medical units and transport (other than hospital ships) and their medical personnel lent for humanitarian purposes to a Party to the conflict by a State which is not a Party to the conflict or by a recognized society of such a State."

Rationale

(a) to improve the drafting generally.

(b) to make it clear that this paragraph does not apply to hospital ships, which are dealt with in Article 25 of the Second Convention of 1949.

After the words "of an international character" add the words "such as the International Committee of the Red Cross and the League of Red Cross (Red Crescent and Red Lion and Sun) Societies."
CDDH/II/20

Austria, Belgium, Federal Republic of Germany, France, Norway
11 March 1974

After the words "of an international character", insert the words:

"such as the International Committee of the Red Cross and the League of
Red Cross Societies".

CDDH/II/28

United Kingdom of Great Britain and Northern Ireland
11 March 1974

Revise paragraph 3 as follows:

"3. The provisions of Article 27 of the First Convention shall apply to
medical units and transport (other than hospital ships) and their medical
personnel lent for humanitarian purposes to a Party to the conflict by an
organization of an international character, provided the said organization
fulfils the requirements imposed on the government of a State which is not a
Party to the conflict under the terms of the aforesaid Article 27."

C. MEETING OF COMMITTEE II, 15 March 1974 (CDDH/II/SR.7):

42. Mr. PICTET (International Committee of the Red Cross) said that
Article 9 was the result of the work of the second session of the Conference
of Government Experts on the Reaffirmation and Development of International
Humanitarian Law applicable in Armed Conflicts. It was more restrictive than
Article 11 which covered persons in good health, prisoners of war and civil-
ians. Perhaps it would be advisable to add to it the words "subject to the
provisions of Article 11" or "without prejudice to the provisions of Article
11". That question could be referred to the Drafting Committee. Similarly,
the Drafting Committee might consider whether it would not be preferable in
Article 9 (1) to replace the expression "on the territory of the parties to
the conflict" by the words "on land, at sea or in the air".

43. Mr. NAHLIK (Poland), as co-sponsor of the proposed amendment
CDDH/II/19 to Article 9, paragraph 1, said that he thought that the expression
"without distinction on grounds of nationality" might be misinterpreted to
imply that distinction other than that on grounds of nationality, such as
distinction of race, religion, etc, might be justified. It was therefore
essential to exclude any kind of adverse distinction by using the words "with-
out any discrimination". In Article 9, paragraph 3, where mention was made
of organization of an international character, he believed it would be suitable
to give as examples the International Committee of the Red Cross and the
League of Red Cross Societies, in recognition of the merits of those two
organizations.

45. Mr. BOTHE (Federal Republic of Germany), introducing the amendment
proposed in document CDDH/II/20, pointed out that it was identical to that
submitted by the Polish representative in connexion with Article 9, paragraph
3 (CDDH/II/19).

46. Mr. MAKIN (United Kingdom), said that the amendment proposed in
document CDDH/II/28, was intended mainly to improve the wording of Article 9,
and that the only change of substance was intended to make it clear that
paragraphs 2 and 3 of that article were not applicable to hospital ships, which were dealt with under Article 25 of the Second Geneva Convention of 1949.

47. Mr. CLARK (Australia) said that the purpose of the proposed amendment in document CDDH/II/41 was to replace the words "territory of the parties to the conflict" in Article 9 by "area under the control of the parties to the conflict", as the word "area" could be applied to the high seas or to regions in dispute. He agreed with the Polish representative concerning the expression "without any discrimination". The terms "the wounded, the sick and shipwrecked" had been widely debated in the Committee and were defined in Article 8. Similarly, the terms "military personnel", "military transports" and "civilian population" had already been discussed.

48. His delegation did not propose the deletion of paragraph 1 of Article 9, but considered that its field of application should be made clear.

49. Mr. SOLF (United States of America) introduced the draft amendment in document CDDH/II/49, the object of which was to delete paragraph 1 of Article 9, and said that the defects of the paragraph had already been pointed out by the ICRC representative. Some articles in part II applied to the high seas, not only to the territory of the parties to the conflict. Furthermore, Articles 19 and 32 of draft Protocol I dealt with the measures to be taken by States not parties to the conflict, and that was in contradiction with paragraph 1 of Article 9. The words "without distinction on grounds of nationality" were grossly inadequate. The concept of non-discrimination should preferably be placed in Article 10. There was therefore no need for paragraph 1 of Article 9.

50. Mr. HAAS (Austria), whose delegation had submitted the proposed amendment in document CDDH/II/4, said that if the words "wounded and sick" were used in the title of part II of draft Protocol I they should also appear in Article 9. If, however, the words "Wounded, sick and shipwrecked persons" were retained, then they should figure in the body of the article. It was for the Drafting Committee to decide which wording to use and where.

51. Mr. SCHULTZ (Denmark) said that he supported documents CDDH/II/19 and CDDH/II/20 proposing to amend Article 9, paragraph 3. They tended to high-light the role of the International Committee of the Red Cross and of the League of Red Cross Societies. He requested that his country be added to the list of sponsors of the proposed amendment in document CDDH/II/20.

52. Mr. NAHLIK (Poland), supported by Mr. VILLARINHO PEDROSO (Brazil), suggested that all the delegations sponsoring draft amendments to the same paragraph or the same article should meet to draw up combined texts, to facilitate the work of the Drafting Committee, which would have very little time. The delegations in question could hold consultations on the following Monday and submit their joint proposals on Tuesday morning. That, of course, would be feasible only in the case of draft amendments which supplemented one another. Article 9 was a different matter, because the draft amendments introduced were mutually exclusive and would have to be put to the vote in Committee II.

53. Mr. MAKIN (United Kingdom) said that he could see no possibility of following up the suggestion made by the Polish representative, because representatives would have to attend a plenary meeting of the Committee on

315
Monday morning. In any event, the sponsors of proposed amendments would be able to attend the meetings of the Drafting Committee.

D. PROPOSED AMENDMENT:

CDDH/45 Austria, Finland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland 18 March 1974

Article 2 (d) of draft Protocol I uses the expression "State not engaged in the conflict", while Article 9(3) and Articles 19, 32 and 57 (1) all use "a State" or "States not party to the conflict". In Article 37 the expression "neutral flags" is used.

To avoid the difficulties which may result from this diversity of terms, and in view of the terms used in the four 1949 Conventions, the following corrections, which have already been suggested by certain government experts (see the Commentary to Articles 19 and 32) are submitted for the consideration of the Conference:

In Article 9(2) replace the words "a State which is not a Party to the conflict" by "a Neutral or other State which is not a Party to the conflict".

In Article 9(3) replace the words "of a State which is not a Party to the conflict" by "of a neutral State" (cf. Article 27 of the First Geneva Convention of 1949 to which this Article refers).

E. MEETING OF COMMITTEE II, 18 March 1974 (CDDH/II/SR.8):

1. Mr. KUSSBACH (Austria), introducing the paragraphs relating to Article 9 of the amendments which his delegation had submitted together with those of Finland, Sweden, Switzerland and the United Kingdom (CDDH/45), said that the purpose of the proposals was to bring the article into line with Article 27 of the First Geneva Convention of 1949.

2. Mr. TORRES-BERNADEZ (United Nations) asked whether the term "organization of an international character" in Article 9, paragraph 3, covered nongovernmental as well as intergovernmental organizations. Assuming that the term was intended to cover intergovernmental organizations, he drew the Committee's attention to the fact that the provisions of Article 27 of the First Geneva Convention of 1949 could not always be appropriate for intergovernmental organizations unless applied in a somewhat flexible manner. For instance, the requirement that medical personnel and units should be placed under the "control" of the party to the conflict receiving assistance might well be incompatible with rules governing assistance from an organization such as the United Nations. Moreover, obligations of Member States under the Charter and the competences and powers of United Nations organs, should in no way be affected by a provision of that kind.

3. Mr. NAHLIK (Poland) said that the proposal in document CDDH/II/49 to delete paragraph 1 of Article 9 was the most far-reaching amendment and, if maintained, should be voted on first. On the other hand, rather than deleting paragraph 1, it might be possible to amend it so that protection would apply not only within the territory of States parties to a conflict, but also on the high seas, in outer space, in antarctic regions and, in fact, in any part of
the world which was not under national sovereignty. With regard to the amendments introduced by the Austrian representative (CDDH/45), the term, "neutral State" was ambiguous, since it might refer either to permanently neutral countries, such as Austria and Switzerland, or to countries which were neutral in a specific conflict. The term "not party to the conflict" appeared to be more pertinent. With regard to the question raised by the representative of the United Nations, the term "organization of an international character" was indeed ambiguous and should be defined, possibly in part I of the Protocol, under "General Provisions", distinguishing between intergovernmental and non-governmental organizations. The ICRC was not even a non-governmental organization, since in the legal sense it existed as an entity under Swiss law.

4. Mr. VIGNES (World Health Organization - WHO) said that the proposals in amendments CDDH/II/19 and CDDH/II/20 to insert the words "such as the International Committee of the Red Cross and the League of Red Cross Societies" after the words "of an international character" in paragraph 3, were either dangerous or pointless, since other organizations might well be called upon to render assistance.

5. Mr. MAKIN (United Kingdom), referring to Article 9, paragraph 1, said that neither the ICRC text nor the Australian amendment (CDDH/II/41) fully covered the situation, since both excluded chaplains and personnel in vital areas. Paragraph 1 should be either deleted or referred to the Drafting Committee; if it was deleted, the title of the article would have to be amended. With regard to paragraph 2, it was doubtful whether strict neutrality would be compatible with lending personnel to one or the other party to an armed conflict, a question which would also arise in connexion with Article 57. Moreover, the paragraph was incomplete, since it failed to mention the possibility of capture of personnel lent by a non-party to the conflict. The same problem arose with regard to paragraph 3. There should be a reference in those paragraphs to Article 32 of the First Geneva Convention of 1949. The meaning of the term "a society recognized by such a State" in paragraph 2 was not clear and, moreover, reference to the ICRC or the Leagues of Red Cross Societies might infringe upon the neutrality of those bodies. Finally, the term "organization of an international character" might lend itself to an even broader interpretation than a mere reference to intergovernmental and non-governmental organizations, and might cover such bodies as international airlines.

6. Mr. SOLF (United States of America) said that he agreed with most of the views expressed by the United Kingdom representative. In his opinion, however, no medical services lent by an organization of an international character, whether regional, intergovernmental, non-governmental or any other, constituted intervention or a non-neutral act, provided assistance was rendered for humanitarian purposes. He could agree that Article 9, paragraph 1, should be referred to the Drafting Committee, although he would still prefer it to be deleted.

7. Mr. CALCUS (Belgium) said he shared the views of the United Nations and WHO representatives concerning the words "organization of an international character" in paragraph 3. He supported the Polish representative's proposal that those words be defined, but thought that such definition should be given elsewhere in the Protocol. If the Committee agreed to such a course, the amendment in document CDDH/II/20, of which his delegation was a sponsor, would be unnecessary and could be withdrawn.
8. Mr. KLEIN (Holy See) said he agreed that Article 9 was more limited in scope than the First Geneva Convention of 1949: chaplains were mentioned in all the relevant articles of the latter instrument, but not in Article 9 of draft Protocol I. It might be advisable to draw the Drafting Committee's attention to the explanation that chaplains were referred to in Article 15, paragraph 6.

9. Mr. PICTET (International Committee of the Red Cross), referring to questions raised by the United Nations representative, said that the words "organization of an international character" were intended to cover both governmental and non-governmental organizations. If there were any doubts, it would be better to define the expression, as had been proposed.

10. With regard to the applicability of Article 27 of the First Geneva Convention of 1949, he agreed that the reference to that article in Article 9, paragraph 3, raised a problem, since Article 27 had been designed for non-governmental organizations, i.e. mainly for national Red Cross Societies, whereas Article 9, paragraph 3, of the Protocol extended the provision to governmental organizations. Article 27 of the First Geneva Convention of 1949 should therefore be considered to be applicable mutatis mutandis, bearing in mind the special nature of governmental organizations and, in the case of the United Nations in particular, the obligations imposed by the Charter. In general, however, the stipulations concerning authorization and notification had to be strictly respected, in the interests of medical units and their security. As far as the extremely useful and direct reference to the international organizations of the Red Cross was concerned, it would undoubtedly be preferable for it to appear in a more general provision, as proposed in several amendments.

11. Mr. BOTHE (Federal Republic of Germany) said that he agreed with the purpose of the amendments in document CDDH/45 and with the views expressed by the Polish representative. Neutrality could play an important part in the settlement of international armed conflicts, and it was essential to avoid any impression that neutrality had become obsolete.

12. He could support the amendments to Article 9 in documents CDDH/II/19 and CDDH/II/20 because they would provide useful clarifications; reference to some organizations as examples need not close the door to others. He had no objection to referring Article 9 to the Drafting Committee, which might be able to redraft the text so as to exclude the references to Article 27 of the First Geneva Convention of 1949.

13. Mr. HAAS (Austria) said that the amendments in document CDDH/45 were the result of a compromise and had been submitted in a document of the plenary meeting because they went beyond the terms of reference of Committee II. Nevertheless, he hoped that the Drafting Committee would take them into account. He endorsed the United Kingdom representative's comments on Article 9, paragraph 1.

14. Mr. EL-SHAFEI (Arab Republic of Egypt), referring to the Austrian amendment in document CDDH/II/4, said that, in the likely event that the definition of the term "shipwrecked persons" was retained in Article 8(b), he would prefer the word "shipwrecked" to be retained in Article 9, in the interests of consistency.

15. He supported the amendments to paragraphs 1 and 3 in document CDDH/II/19; the latter amendment seemed preferable to the corresponding one in document
CDDH/II/20. He could also support the United Kingdom amendments (CDDH/II/28) and endorsed the rationale given for those proposals. With regard to the Australian amendment to paragraph 1 (CDDH/II/41) and the proposal by Canada and other countries to delete paragraph 1 (CDDH/II/49), he was strongly in favour of retaining that paragraph as it stood.

16. Mr. ABSOLUM (New Zealand) said that he agreed with the co-sponsors of amendment CDDH/II/49 that nothing would be lost by deleting paragraph 1. Some indication of the field of application for the whole Protocol was already provided by Article 1 and there seemed to be no compelling advantage in trying to establish a modified or restricted field of application for part II. He also agreed with the United Kingdom representative that if paragraph 1 were deleted, the title of Article 9 would have to be changed.

17. Mr. EL-SHAM (Jordan) said that he was in favour of maintaining paragraph 1 and supported the Australian amendment (CDDH/II/41).

18. Mr. JAKOVLJEVIC (Yugoslavia) said that he supported the amendment to paragraph 1 in document CDDH/II/19, the amendment to paragraph 2 in document CDDH/45 and the amendment to paragraph 3 in document CDDH/II/20.

19. Mr. VIGNES (World Health Organization) said that while he was not in favour of an amendment to paragraph 3 along the lines proposed in documents CDDH/II/19 and CDDH/II/20, he would prefer the words "such as" to be replaced by the word "including".

20. Mr. ALFONSO MARTINEZ (Cuba) said he was opposed to the deletion of paragraph 1. In connexion with the United Kingdom representative's comments, his delegation thought that the paragraph referred to the territories of parties to the conflict under national or international law, as defined in part I of draft Protocol I, and that the provisions of the Protocol could not affect the legal rights of the parties.

21. With regard to Article 9, paragraph 2 of draft Protocol I, he wondered why only permanent medical units and means of transport were mentioned, since Article 27 of the First Geneva Convention of 1949 made no distinction between permanent and temporary units.

22. He was satisfied with the ICRC text of paragraph 3, which could cover organizations such as the United Nations as well as purely humanitarian ones. It would be better not to refer to specific organizations as examples.

23. Mr. MARTIN (Switzerland) said that his delegation had become a sponsor of document CDDH/II/49 because it considered it paradoxical that the field of application of part II should be different from that of the whole of draft Protocol I as it was defined in Article 1. Article 9, paragraph 1, should restate the provision contained in Article 1 or should describe possibilities of extending that field of application.

24. Mr. SCHULTZ (Denmark) and Mr. HAAS (Austria), speaking as co-sponsors of the amendment to Article 9, paragraph 3 (CDDH/II/20) said they could accept the WHO representative's suggestion that the word "including" should be substituted for "such as".

25. Mr. VILLARINHO PEDRÓSO (Brazil), supported by Mr. JAKOVLJEVIC (Yugoslavia), said that his delegation understood the ICRC's intention to be
to define the scope of the whole Protocol in Article 1 and to describe the specific fields of application of certain parts of that instrument. Accordingly, there was no more reason to delete Article 9, paragraph 1, than Article 44. In view of the difficulties with regard to specific terms used in the paragraph, he suggested that the wording should be considered by the Drafting Committee, on the basis of the Australian amendment (CDDH/II/41).

26. Mr. PICTET (International Committee of the Red Cross) said he could agree to the deletion of the word "permanent" in paragraph 2. The ICRC had certainly not intended to use that word in any restrictive sense.

27. With regard to the Swiss representative's comment, he stated that Article 9 did not in effect modify the field of application in relation to that of the Conventions. Its purpose was to make it clear that the Protocol was applicable to all wounded civilians, including those living in the territory of the parties of the conflict. The articles governing the field of application of the Fourth Convention (Articles 4 and 13) were in fact very complicated.

28. Mr. AL-BARZANCHI (Iraq) said that the field of application of part II of draft Protocol I should cover not only areas under the control of the parties to the conflict, but also those outside national sovereignty, as well as nationals of countries Parties to the Protocol but not parties to the conflict, such as those rescuing wounded persons from the sea.

29. He was glad that the ICRC representative had agreed to the deletion of the word "permanent" in Article 9, paragraph 2, as he too considered it to be restrictive.

30. He supported the inclusion in paragraph 3 of the reference to the ICRC and the League of Red Cross (Red Crescent and Red Lion and Sun) Societies proposed in document CDDH/II/19, paragraph 2. The restrictions in Article 27 of the First Geneva Convention of 1949 should apply to all other intergovernmental and non-governmental organizations.

31. Mr. BOGLIOLOLO (France) said that he was in favour of maintaining paragraph 1 with a more comprehensive wording. He too welcomed the deletion of the word "permanent" in paragraph 2 and could agree to the WHO representative's suggestion with regard to paragraph 3.

32. The CHAIRMAN said that, in the absence of any objection, he would take it that the Committee wished to ask the Drafting Committee to consider the amendments to Article 9 contained in documents CDDH/45, CDDH/II/4, CDDH/II/19, CDDH/II/20, CDDH/II/28, CDDH/II/41 and CDDH/II/49.

It was so agreed.


Article 9. Field of application

[1. The present part shall apply, without any discrimination, to all combatant and non-combatant military personnel of the parties to a conflict and
to the whole of the civilian population of the parties to a conflict, particu-
larly to the wounded, sick and shipwrecked, as well as to medical units and
medical transport under control of any of such parties.]

Proposal of the Bureau of the Drafting Committee:

"2. Articles 27 and 32 of the First Convention shall apply, mutatis
mutandis [by analogy] [by extension], to permanent medical units and transport
(other than hospital ships to which Article 25 of the Second Convention
applies) and their personnel lent for humanitarian purposes to a Party to a
conflict:

(a) by a State which is not a Party to that conflict;
(b) by a recognized [and authorized] aid society of such a State; or
(c) by an organization of an international character, whether govern-
mental or non-governmental, including international organizations of the Red
Cross [the International Committee of the Red Cross and the League of Red Cross
Societies]."

G. MEETING OF COMMITTEE II, 26 March 1974 (CDDH/II/SR.12):

19. The CHAIRMAN invited the Committee to consider the report of the
Drafting Committee (CDDH/II/Inf./3 and Corr.1).

29. [Mr. NAHLIK (Poland), Rapporteur of the Drafting Committee, said that] [w]ith regard to Article 9, after some discussion it had been decided to omit
any mention of the territorial application because it would be hard to find
a wording which would not be given too restrictive an interpretation. Some
members had felt that any enumeration of the categories of persons to whom the
part applied might also be liable to such interpretation, while a mention of
civilian population would entail a change in the title of the whole part. They
had also thought that the kind of people to whom the part applied had been
dealt with sufficiently in other articles and they had therefore been in favour
of deleting the whole of sub-paragraph 1. That was why that paragraph was
presented in brackets. If it were deleted, the title of the article would have
to be changed.

30. In the proposed new sub-paragraph 2 - a combination of sub-paragraphs
2 and 3 of the ICRC draft - which the full Drafting Committee had not had time
to discuss, the word "aid" should be substituted for the word "relief" in sub-
paragraph (b), since that was the word used in the Geneva Conventions. The
term "organization of an international character" had been used because the
ICRC was a juridical person under Swiss law and therefore international in
activities but not in status. That term also covered intergovernmental organi-
sations such as those in the United Nations system. The ICRC and the League
of Red Cross Societies had been presented between brackets because only some
members of the Committee had considered it essential to mention them specifi-
cally. The expression "mutatis-mutandis" had been used, although some members
found it unusual, since it covered both the other suggested expressions, namely,
"by analogy" and "by extension". The phrase in parentheses in the introductory
sentence of sub-paragraph 2 had been included at the suggestion of the United
Kingdom delegation.

321
35. Mr. BRAVO (Mexico) said he believed that the question of persons shipwrecked in a hostile environment was to be dealt with in Article 10. In Article 9, paragraph 1, the territorial qualification should be re-inserted. In Article 9, paragraph 2, his delegation preferred the expression "by analogy" or "by extension" to "mutatis mutandis."

41. Mr. ROSENNE (Israel) said that . . . [a]s for Article 9, he felt that, in principle, it was desirable to avoid vague formulas such as mutatis mutandis which had not appeared in the draft suggested by the ICRC.

51. [Mr. TAMALE MUGERWA (Uganda).] According to his recollection of the discussions in the Drafting Committee, the delegations in favour of omitting paragraph 1 of Article 9, had supported its deletion because they had failed to agree on an acceptable version. He did not consider that an adequate reason. The present text was too restrictive and should be redrafted in order to express the ideas the Committee wished to include.

52. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to take note of the report of the Drafting Committee (CDDH/II/Inf/3 and Corr.1) together with the comments made by delegations at the present meeting as the basis for discussion at the second session of the Conference.

It was so agreed.

H. MEETING OF COMMITTEE II, 14 February 1975 (CDDH/II/SR.20):

37. Miss BASTL (Austria) said that amendment CDDH/II/4 submitted by her delegation had been withdrawn. Introducing amendment CDDH/45 on behalf of the sponsors, she said that draft Protocol I introduced new terms of neutrality, namely "States not parties to the conflict" and "States not engaged in the conflict", which appeared in Articles 2, 9, 19, 32 and 57 and consequently concerned Committees I, II and III. Article 9, paragraph 3 of draft Protocol I linked the behaviour of a State not a party to the conflict with the provisions of Article 27 of the First Geneva Convention of 1949, but since that article used only the term "neutral State" she saw no reason for the change in terminology.

38. If, however, the new term was intended to enlarge the field of application - as suggested in the Commentary to the draft Protocols (CDDH/3) - her delegation could not accept such an idea. The introduction of a term not used in the Conventions would be contrary to the understanding that the rules decided on by the Conference should supplement, not supersede, existing regulations. Moreover, it would be confusing to have regulations directed to neutral States in the Conventions and additional regulations for States not parties to the conflict in the Protocols, and there would inevitably be difficulties of interpretation.

39. Furthermore, the term "States not parties to the conflict" might endanger the very concept of neutrality. Neutral status, where States did not, and did not intend to, enter into armed conflict carried certain well-defined rights and duties. It implied a policy in wartime which was foreseeable and could be relied upon. The use of an ill-defined and vague term, with no legal protection, would weaken the concept of neutrality and upset international legal safety.

The Drafting Committee . . . dealt with draft Protocol I, Part II, Section I, Articles 9 to 20 (except Articles 14, 18 and 18 bis).

It now submits to the Committee II for approval the text of the above articles as given on the following pages. Some passages have been placed in brackets in cases where the Drafting Committee did not consider itself competent, or where a final decision must await the result of the studies of ad hoc working groups.

Article 9. Field of application

[1. The present part shall apply, without any discrimination, to all combatant and non-combatant military personnel of the Parties to a conflict and to the whole of the civilian population of the Parties to a conflict, particularly to the wounded, sick and shipwrecked, as well as to medical units and medical transport under control of any of such parties.]

[1. In order to ameliorate the condition of the wounded, sick and shipwrecked, the present Part shall apply, without any discrimination, to all those affected by a situation referred to in Article 2 common to the Conventions.]

2. Articles 27 and 32 of the First Convention shall apply to permanent medical units and transport (other than hospital ships, to which Article 25 of the Second Convention applies) and their personnel lent for humanitarian purposes to a Party to a conflict:

(a) by a [neutral or other] State which is not a Party to that conflict;

(b) by a recognized and authorized aid society of such a State;

(c) by an impartial international humanitarian organization, such as the International Committee of the Red Cross or the League of Red Cross Societies.

J. MEETING OF COMMITTEE II, 24 February 1975 (CDDH/II/SR.23):

5. [Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee.] To come to specific articles, and first Article 9, it would be noted that two alternatives were proposed for paragraph 1: the first was that adopted by the Drafting Committee at the first session; the Committee, however, now preferred the second alternative because it wished to make sure that all the persons that the Protocol was intended to cover were in fact covered by the article and it felt that that would be done with greater certainty by using a general formula such as "all those affected by a situation referred to in Article 2 common to the Conventions" rather than by an enumeration of categories as in the original version.

14. The CHAIRMAN invited the Committee to consider the report (CDDH/II/240) article by article. Article 8 - Definitions - would be postponed till the first week after Easter.
Article 9. Field of application

Paragraph 1

15. The CHAIRMAN invited the Committee to vote on the second alternative for Article 9, paragraph 1.

The second alternative for paragraph 1 was adopted by 39 votes to 1, with 14 abstentions.

Paragraph 2

16. The CHAIRMAN said that he did not think that the question of the inclusion or not of the words "neutral or other" in square brackets in paragraph 2 (a), was a matter which could be decided by Committee II. A similar point arose in connection with some of the articles of draft Protocol I, including those dealt with by other Committees.

17. Mr. KUSSBACH (Austria), speaking on behalf of the co-sponsors of amendment CDHH/45, said that the co-sponsors hoped that the point might be dealt with by consensus. The amendment was entirely non-controversial and was designed merely to bring the text into line with that of the Geneva Conventions. No question of substance was involved. The Conference Secretariat had expressed the view that, according to the rules of procedure, the matter should be decided in Committee.

18. Mr. SOLF (United States of America) said that there had been no disagreement concerning the amendment in the Drafting Committee, which had decided to leave the matter for decision by some other body - Committee II or Committee I.

19. Mr. MARTIN (Switzerland) said he supported the Austrian representative. The point was a very simple one which had already been fully discussed in the Committee at the twentieth meeting (CDHH/II/SR.20) in connexion with Article 19 and had twice been referred to the Drafting Committee. The latter, however, had felt that it was a matter for the Committee itself to decide. He appealed to the Committee to adopt the amendment by consensus.

20. The CHAIRMAN said that he had been convinced by the arguments of the Austrian and Swiss representatives and would now invite the Committee to adopt by consensus paragraph 2, with the words in square brackets, bearing in mind that the words in question would have consequences for other articles of draft Protocol I and that if another Committee were to adopt a different formulation, the matter would have to be decided by the main Drafting Committee of the Conference.

Paragraph 2, with the words in square brackets, was adopted.

Article 9 as a whole, as amended, was adopted.

K. ARTICLE ADOPTED BY COMMITTEE II, 24 February 1975 (CDHH/II/274):

1. In order to ameliorate the condition of the wounded, sick and shipwrecked, the present Part shall apply, without any discrimination, to all those affected by a situation referred to in Article 2 common to the Conventions.
2. Articles 27 and 32 of the first Convention shall apply to permanent medical units and transport (other than hospital ships, to which Article 25 of the second Convention applies) and their personnel lent for humanitarian purposes to a Party to a conflict:

(a) by a neutral or other State which is not a Party to that conflict;

(b) by a recognized and authorized aid society of such a State;

(c) by an impartial international humanitarian organization, such as the International Committee of the Red Cross or the League of Red Cross Societies.

L. MEETING OF COMMITTEE II, 5 March 1975 (CDDH/II/SR.30):

12. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had asked him to draw the attention of Committee II to the use of the words "to care for the wounded and sick, and the shipwrecked" in paragraph 1 of Article 17. That formula should be used in all provisions in which reference was made to those three categories of persons. The same formula should also be used in the French and Spanish versions, viz: "blesses et malades, ainsi que les naufragés" in the French version and "los heridos y los enfermos, así como los naufragos" in the Spanish version. Committee II should be asked to reconsider Article 9, paragraph 1, and Article 10, paragraph 1, where the same combination of words occurred. Alternatively, the Drafting Committee of the Conference could be asked to make the necessary changes.

13. Mr. AL-FALLOUI (Iraq) said that in his opinion the Committee should use the definitions given in Article 8.

14. Mr. MARRIOTT (Canada) suggested that the Committee authorize the Drafting Committee to correct any errors in drafting with regard to the words "wounded and sick, and the shipwrecked" which might have appeared in articles already approved by the Committee.

It was so agreed.

M. MEETING OF COMMITTEE II, 25 May 1976 (CDDH/II/SR.73):

44. The CHAIRMAN said that a letter dated 30 April 1976 had been received from Mr. Pictet, Vice-President of the ICRC, and Mr. Haug, President of the Swiss Red Cross and Head of the delegation of the League of Red Cross Societies (CDDH/II/Inf.266), commenting on the adoption by the Committee of Articles 9 and 23 of draft Protocol I dealing with the provision of medical units and of hospital ships to the parties to the conflict; those articles specified that such units and ships might be lent by neutral or non-belligerent States or by an impartial international humanitarian organization. An amendment had been adopted whereby the words "such as the International Committee of the Red Cross or the League of Red Cross Societies" had been inserted after the words "by an impartial international humanitarian organization". The letter stated that the two organizations concerned had accepted that amendment, although they had felt that it would probably become superfluous if an article could be drafted that
defined the part to be played by the various Red Cross societes. Committee I had subsequently adopted Article 70 bis, which did exactly that; thus reference to the ICRC or the League of Red Cross Societies in Articles 9 and 23 was no longer necessary. The letter concluded by asking that the attention of the Drafting Committee should be drawn to the matter.

45. The Committee had to decide what action to take in connexion with the letter and, in particular, whether a decision could be taken at that meeting or whether the letter should first be translated and circulated. Since Articles 9 and 23 had been adopted by the Committee, they could be amended only by a two-thirds majority.

46. Mr. WARRAS (Finland) suggested that the letter should be translated and circulated - that would allow time for a study of the question.

47. Mr. JAKOVLJEVIC (Yugoslavia) and Mr. khairat (Egypt) supported that suggestion.

48. Mr. MARRIOTT (Canada) pointed out that the Drafting Committee of the Conference had already accepted Article 9 and the Chairman of that Committee would be unwilling to reopen the topic.

49. Mr. BOTHE (Federal Republic of Germany) said that the letter had already been brought to the attention of the Drafting Committee, which had considered that the matter was one of substance, and therefore outside its competence. If, therefore, it was decided to reconsider Article 9, such reconsideration would not be affected by any drafting decisions already taken.

50. The CHAIRMAN asked whether it was agreed that the letter should be translated and circulated.

It was so agreed.

N. MEETING OF COMMITTEE II, 31 May 1976 (CDDH/II/SR.75):

40. Mr. PICTET (International Committee of the Red Cross) said that the references to the ICRC and the League of Red Cross Societies in Articles 9 and 23 of draft Protocol I were inappropriate since neither organization provided the services in question, the national Red Cross societies being responsible for doing so in accordance with the relevant articles of the the Geneva Conventions. Although the ICRC had raised no objection to similar references discussed at the first and second sessions of the Conference, it had noted that they might become superfluous if a satisfactory article was adopted on the role of the Red Cross organizations. That requirement had been met with the subsequent adoption of Article 70 bis. ICRC had taken up the point in the Drafting Committee since it had considered it to be merely a matter of drafting; the Drafting Committee had, however, considered that it should be referred to the Committee.

41. Mr. MAKIN (United Kingdom) said that the reasons given for the proposed deletion of the references to the ICRC and the League of Red Cross Societies did not appear to be valid. Article 70 bis referred in all its paragraphs to the provision of facilities by the various parties. Article 27 of the first Geneva Convention of 1949, referred to in Article 9 of draft Protocol I, stipulated the conditions under which the assistance in question could be
made available by a recognized society, while Article 32 of the same Convention conferred privileges on those involved. There thus appeared to be no connexion between Article 70 bis of draft Protocol I and those provisions.

42. The original text proposed by the ICRC had been based on a proposal made at the 1972 session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, by the representative of Monaco, who had suggested that international organization might be able to assist and had instanced Arab airlines as an international airline that might be able to lend aircraft. There had been no reference in the original Article 9, paragraph 3, either to a humanitarian or to an impartial organization. The words had drifted in later and, having been approved for Article 9, had then been used again for Article 23. In reply to a question he had asked at the time, ICRC had stated that neither it nor the League of Red Cross Societies had any medical units to lend. If the reference to the two organizations was to be deleted this could raise doubts as to the desirability of retaining the words "impartial" and "humanitarian".

43. The Committee should take no hasty decision on the matter. Delegations should consider it carefully during the interval before the fourth session of the Conference, to which it should be deferred.

44. Mr. PICTET (International Committee of the Red Cross) said that he could agree to the United Kingdom representative's suggestion that further consideration of the matter should be deferred until the fourth session of the Conference.

45. Mr. SOLF (United States of America) said that the United Kingdom representative had correctly described the origin of the paragraph in question. A lively debate had taken place at the Conference of Government Experts in 1972 as to where developing countries engaged in armed conflict might be able to obtain medical aircraft. His delegation and other sponsors of the text had intended to make the broadest possible provision in that respect. The important points were that the aircraft should be medical aircraft as so defined and that they should be under the control of the party to the conflict on whose side they operated; the source from which they came was irrelevant. In Article 9, paragraph 3, the ICRC had extended the provisions of Article 27 of the first Geneva Convention of 1949 to include all other kinds of medical transport and medical units. The tendency to limit the source of such transport and units to impartial international humanitarian organizations had appeared at the first session of the Conference.

46. He could not agree that the matter should be deferred until the fourth session of the Conference. The Committee should make every effort to dispose of all relatively simple matters at the current session so that it could concentrate on complicated issues such as civil defence and relief at the fourth session. He did not share the view of the United Kingdom representative that the reference to the International Committee of the Red Cross or the League of Red Cross Societies could not be deleted without deleting the preceding words. The majority of the Committee had wished to provide some degree of flexibility, which would be done by keeping the words "by an impartial international humanitarian organization". Others had proposed that a long list of possible organizations should be given, but most had agreed that the most important criterion was that the units and transport in question
should be under the control of the party to the conflict concerned, a point that was covered in the relevant articles of the Geneva Conventions.

47. He formally proposed that the words "such as the International Committee of the Red Cross or the League of Red Cross Societies" in Article 9, paragraph 2 (c), and Article 23, paragraph 2 (f), should be deleted.

48. Mr. GEORGIJEVSKI (Yugoslavia) said that his delegation was opposed to the deletion of the references to ICRC and the League of Red Cross Societies in Articles 9 and 23.

49. Mr. KLEIN (Holy See) said that no restriction should be placed on the activities of any humanitarian or charitable organization by listing others by name. The reference to an impartial international humanitarian organization should suffice.

50. Mr. KHAIRAT (Egypt) said that his delegation was satisfied with the text of Articles 9 and 23 of draft Protocol I as already approved and had found the argument of ICRC and the League of Red Cross Societies unconvincing. He supported the United Kingdom representative's proposal to defer further consideration of the matter until the fourth session of the Conference.

51. Mr. MARTIN (Switzerland) said that he shared the United States representative's desire that the Committee should make every possible progress. In view of the fact that the matter needed careful consideration, however, he agreed that a decision on it should be deferred until the fourth session of the Conference.

52. The CHAIRMAN put to the vote the United Kingdom proposal that further consideration of the matter should be deferred until the fourth session of the Conference.

The United Kingdom proposal was adopted by 37 votes to none, with 8 abstentions.

O. PROPOSED AMENDMENT:

CDDH/II/435 Australia, United States of America
Corr.1
2 May 1977

Amend paragraph 1 to read:

"1. This part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked shall apply to all persons affected by a situation referred to in Article 1, without any discrimination founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status or any other similar criteria."

328
P. MEETING OF COMMITTEE II, 13 May 1977 (CDDH/II/SR.98):

45. The CHAIRMAN reminded the Committee that at its seventy-fifth meeting on 31 May 1976, it had decided to refer to the fourth session of the Conference the question of deleting the words "such as the International Committee of the Red Cross, or the League of Red Cross Societies" after "by an impartial international humanitarian organization" in Articles 9 and 23. A two-thirds majority was therefore not necessary to re-open the discussion.

46. Mr. PICTET (International Committee of the Red Cross) said that, at the second session of the Conference, Committee II had adopted Articles 9 and 23 of draft Protocol I, which provided that medical units and hospital ships could be lent to Parties to the conflict by a neutral State or an impartial international humanitarian organization. As the result of an amendment, the words "such as the International Committee of the Red Cross or the League of Red Cross Societies" had been added at the end as an example.

47. In their letter of 30 April 1976 to the President of the Diplomatic Conference, Professor Haug, head of the delegation of the League of Red Cross Societies, and Mr. Pictet as head of the ICRC delegation, had said that the mention of the Red Cross as an example was unnecessary and even harmful, and asked for it to be deleted. The letter had been distributed to members of the Conference and submitted to the Drafting Committee. Taking the view that the question was beyond its competence, the Drafting Committee had referred it at the third session to Committee II, which had not considered itself sufficiently well-informed and had postponed the matter to the current session.

48. Why was it that the international Red Cross organizations wished their names to be deleted from Articles 9 and 23? When the amendments referring to them had first been submitted, they had not opposed them, as they were waiting to see if it would be possible to arrive at a whole general article which would give an adequate basis for the role of the Red Cross in the application of the Protocol. That article had since been adopted by Committee I as Article 70 bis, which was completely satisfactory to the international Red Cross institutions. Mention of them in Articles 9 and 23 was therefore superfluous.

49. In point of fact, neither ICRC nor the League owned medical units or hospital ships and probably never would. Even if they should come to have them, they would never lend them to a Government but would operate them under their own responsibility and their own flag.

50. Finally, using the ICRC and the League as examples gave the impression that the term "impartial humanitarian organization" applied only to non-governmental organizations and excluded governmental ones. It was quite possible, however, that a specialized United Nations body such as the World Health Organization or the Office of the High Commissioner for Refugees would have adequate facilities to provide medical units or hospital ships. He therefore requested, on behalf of the two international Red Cross delegations, that the text should end with the words "an impartial humanitarian organization", without anything more.

51. Miss MINOGUE (Australia), Mr. WARRAS (Finland) and Mr. QUERNER (Austria) supported the ICRC representative.
52. Mr. JOSEPHI (Federal Republic of Germany) asked whether it would not be advisable to delete the whole of sub-paragraphs (c) in Article 9 and 2 (b) in Article 23, since they would no longer have the same meaning. Asked by the CHAIRMAN if he wished to propose a formal amendment to that effect, he said he would be satisfied if the examples given in those sub-paragraphs could simply be deleted.

53. Mr. JOMARD (Iraq), supported by Mr. HARSANA (Indonesia) and by Mr. KHARAT (Egypt), drew attention to the fact that if the reference to the International Committee of the Red Cross and the League of Red Cross Societies was deleted, the meaning of those sub-paragraphs would be changed. He would therefore support a proposal that the sub-paragraphs should be deleted.

54. Miss MINOGUE (Australia) was of the opinion that it was not possible to delete those sub-paragraphs, which were part of a list of different categories of bodies that could lend permanent medical units and transport. On the other hand, it would perhaps be possible to envisage a cross reference to paragraph 4 of Article 70 bis of draft Protocol I.

55. After an exchange of views between the CHAIRMAN, Miss MINOGUES (Australia), Mr. SCHULTS (Denmark), Mr. JOMARD (Iraq), Mr. MAKIN (United Kingdom), Mr. MARRIOTT (Canada), Mr. PICTET (International Committee of the Red Cross) and Mr. KRASNOPEEV (Union of Soviet Socialist Republics), Mr. BOTHE (Federal Republic of Germany), Rapporteur, proposed that the words "mentioned in Article 70 bis" should be inserted in the sub-paragraphs in question.

56. The CHAIRMAN, noting that the representative of Iraq did not wish to press for the discussion to be reopened, put to the vote the ICRC proposal that the reference to the ICRC and the League of Red Cross Societies should be deleted from the sub-paragraphs in question.

The amendment proposed by the ICRC was adopted by 38 votes to 4, with 8 abstentions.

Amendment to Article 9

Paragraph 1 (CDDH/II/435 and Corr.1)

57. Mr. SOLF (United States of America) said that, in view of the decisions taken by Committee III on Article 65 of Protocol I and by Committee I on Article 2 of Protocol II, the Australian and United States delegations had reconsidered the opinion they had expressed earlier and were now in favour of keeping the list that followed the words "without any discrimination".

After the Committee had agreed to reopen consideration of the provision, the amendment to paragraph 1 of Article 9 submitted by Australia and the United States of America was adopted by consensus.

Q. ARTICLE ADOPTED BY COMMITTEE II, 13 May 1977 (CDDH/II/447):

Article 9. Field of application

1. This part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked shall apply to all persons affected
by a situation referred to in Article 1, without any discrimination founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status or any other similar criteria.

2. Articles 27 and 32 of the first Convention shall apply to permanent medical units and transport (other than hospital ships, to which Article 25 of the second Convention applies) and their personnel lent for humanitarian purposes to a Party to a conflict:

(a) by a neutral or other State which is not a party to that conflict;
(b) by a recognized and authorized aid society of such a State;
(c) by an impartial international humanitarian organization.

R. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 9. Field of application

1. This Part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked shall apply, to all those affected by a situation referred to in Article 1, without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria.

2. The relevant provisions of Articles 27 and 32 of the First Convention shall apply to permanent medical units and transports (other than hospital ships, to which Article 25 of the Second Convention applies), and their personnel, made available to a Party to the conflict for humanitarian purposes:

(a) by a neutral or other State which is not a Party to that conflict;
(b) by a recognized and authorized aid society of such a State;
(c) by an impartial international humanitarian organization.

S. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

21. Mrs. SUDIRJO (Indonesia) said that her delegation, although generally in favour of Article 9, had some doubts concerning paragraph 2 (c). It had therefore abstained when a vote had been taken on that paragraph at Committee level.

22. In her delegation's view, the organization mentioned in that paragraph must fulfil the qualifications of being genuinely impartial and humanitarian. It was essential, therefore, that paragraph 2 (c) should be more specific, for instance by adding the words "such as the International Committee of the Red Cross or the League of Red Cross Societies". To leave paragraph 2 (c) in its present form would give room for organizations to declare themselves "impartial and humanitarian", while in fact they were an instrument of certain political or ideological views. It was difficult for her delegation to accept paragraph
2 (c) in its present form and it was on that understanding that it joined in the consensus.

Article 9 was adopted by consensus.

T. 1977 PROTOCOL I:

Article 9. Field of application

1. This Part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked, shall apply to all those affected by a situation referred to in Article 1, without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria.

2. The relevant provisions of Articles 27 and 32 of the First Convention shall apply to permanent medical units and transports (other than hospital ships, to which Article 25 of the Second Convention applies) and their personnel made available to a Party to the conflict for humanitarian purposes:

(a) by a neutral or other State which is not a Party to that conflict;

(b) by a recognized and authorized aid society of such a State;

(c) by an impartial international humanitarian organization.
A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 10. Protection and care

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

2. In all circumstances they shall be treated humanely and shall receive with the least possible delay and without any adverse distinction the medical care necessitated by their condition.

B. PROPOSED AMENDMENTS:

Paragraph 1

Add the following words at the end of the paragraph:

"And the shipwrecked shall be respected and protected before and during rescue and transport to the land, where their status shall depend on their state of health and shall correspond to the Articles of the First Convention and the present Protocol."

C. Rationale

To achieve conformity with the United Kingdom proposed amendment to Article 8 (a) (see CDDH/II/46).

Paragraph 2

Replace the words "without any adverse distinction" by the words "without any discrimination".
"2. In all circumstances they shall be treated humanely and shall receive to the fullest extent possible and with the least possible delay and without any discrimination the medical care and attention necessitated by their condition."

CDDH/II/50  
Canada, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America, Union of Soviet Socialist Republics

Revise paragraph 2 to read:

"2. In all circumstances they shall be treated humanely and shall receive the medical care and attention necessitated by their condition to the fullest extent possible, with the least possible delay, and without any adverse distinction or discrimination founded on race, colour, caste, nationality, religion or faith, political opinion, sex, social status, or any other similar criteria."

New paragraph 3

CDDH/II/70  
Arab Republic of Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Saudi Arabia, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Palestine Liberation Organization

Add a new paragraph to read:

"3. In case surgical intervention is considered necessary to save the life of the wounded and the sick as judged by common medical practice, the written consent of the person while fully conscious is required."

New paragraphs 3, 4, and 5

CDDH/II/75  
International Committee of the Red Cross

Add three new paragraphs as follows:

3. At all times, and particularly after an engagement, the Parties to the conflict shall take the necessary measures to search for and to collect the wounded, the sick, the shipwrecked and the dead.

4. Whenever circumstances permit, the Parties to the conflict shall conclude an armistice, a cease-fire or local arrangements permitting the search for and the collection, evacuation or exchange of the wounded, the sick and the shipwrecked.

5. For the purposes of the present article, military personnel or civilians who are in peril on land as the result of the loss or disablement of their means of transport, and who refrain from any act of hostility, shall be deemed to be shipwrecked persons.

C. MEETING OF COMMITTEE II, 18 March 1974 (CDDH/II/SR.8):

33. Mr. PICTET (International Committee of the Red Cross), submitting the text of Article 10, and of the three new paragraphs proposed (CDDH/II/75), said
that the reason why it had been thought necessary to refer in paragraph 1 to a provision which already appeared in the Conventions was that it had seemed difficult to omit, at the beginning of a chapter covering the wounded and the sick, the key principle that they must be respected and protected.

34. It had also appeared advisable to supplement that article with three paragraphs concerning the steps to be taken to search for the wounded, the sick and the shipwrecked, since the provisions of the Conventions were vague and of limited scope. The last of those paragraphs was designed to solve the problem of the "air-shipwrecked" and of persons in peril in a hostile environment (deserts, etc.), rather than that point being covered within the framework of Article 8 (CDDH/II/57).

35. He therefore suggested that three new paragraphs (CDDH/II/75) should be added to Article 10. The search referred to in the new paragraph 3 could be undertaken by naval or merchant vessels belonging to parties to the conflict and to other nations. It had been considered necessary to add the new paragraph 4 because only the First Convention of 1949 contained general provisions on that subject, those of the other Conventions being much too restrictive. It was also essential that such persons as air force personnel who had been shot down and soldiers whose transport had broken down should be covered by the Protocol: that was the reason for the new paragraph 5.

D. MEETING OF COMMITTEE II, 19 March 1974 (CDDH/II/SR.9):

1. The CHAIRMAN invited the representatives whose delegations had submitted amendments to Article 10 to introduce them.

2. Mr. DENISOV (Ukrainian Soviet Socialist Republic), introducing the amendment (CDDH/II/19) to Article 10, paragraph 1, sponsored by his own and other delegations, said that he wished to make it clear from the outset that his delegation accepted the definition of shipwrecked persons suggested by the ICRC in Article 8 (b) of draft Protocol I. The amendment was concerned with the protection, required by international humanitarian law, of military or civilian shipwrecked persons; in other words the persons to whom the definition applied. He did not see why the term "shipwrecked persons" should be extended to cover persons on land; the status of such persons had already been defined in the First, Third and Fourth Geneva Conventions of 1949.

3. Mr. NAHLIK (Poland) said that the amendment (CDDH/II/19) to Article 10, paragraph 2, whereby the words "without any adverse distinction" would be replaced by the words "without any discrimination" was a drafting change and was intended simply to bring the text of that article into line with that of Article 9, and where the expression "without any discrimination" had been retained in order to exclude any possibility of discrimination for whatever reason: race, language, religion and so forth.

4. Mr. MAKIN (United Kingdom) said that his delegation's amendment (CDDH/II/26) was intended to improve the English text of Article 10 by replacing "the wounded and the sick" by "the wounded and sick". He supported the amendment by the Ukrainian SSR and other delegations to Article 10, paragraph 1, but considered that reference should be made not merely to the First Convention of 1949 but to all four Geneva Conventions of 1949.
5. Mr. CLARK (Australia), introducing amendment CDDH/II/40, said that in suggesting the expression "without any discrimination" his delegation had wished to avoid any restrictive interpretation of the article in question, such as might occur with the enumeration, as in amendment CDDH/II/50, of a certain number of examples of discrimination.

6. The addition of the words "to the fullest extent possible" was based on realistic considerations: the wounded and the sick referred to in Article 10 must be treated humanely and must receive, to the fullest extent possible, the care which their condition rendered necessary.

7. The amendment to Article 10, paragraph 1 (CDDH/II/19) with the change suggested by the United Kingdom representative, offered many advantages.

8. Mr. SOLF (United States of America) said that in amendment CDDH/II/50, of which his delegation was a sponsor, the words "without any adverse distinction", which appeared in the ICRC draft, had been retained. As was the case in the four Geneva Conventions of 1949, the amendment listed the criteria which must not be taken into consideration in providing treatment and care to the sick and the wounded. In that respect, the amendment followed the decisions of the Conferences of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held in 1971 and 1972. The sponsors had also proposed the words "or any other similar criteria" in order to show that the list was not exhaustive. If the Committee were to decide not to enumerate the criteria which should not be taken into consideration in that case, it would be necessary to revert to the terms of Article 12 of the First Geneva Convention of 1949 and to make it clear that only urgent medical reasons would authorize priority in the order of treatment to be administered.

9. In principle, he supported the amendment to Article 10, paragraph 1 in document CDDH/II/19, but agreed with the United Kingdom delegation that reference should be made to all four Geneva Conventions of 1949 and not only to the First.

10. The CHAIRMAN pointed out that at the eighth meeting the representative of the ICRC had submitted an ICRC suggestion to amend Article 10 (CDDH/II/75).

11. Mr. AL-BARZANCHI (Iraq), supported by Mr. TARSIN (Libyan Arab Republic), stated that the aim of the sponsors of amendment CDDH/II/70 was to mention in the Protocol the current medical practice of obtaining the consent of the person concerned in cases where surgical intervention was considered necessary. That was an essential precaution in case the sick person, his relatives or his friends should subsequently claim that the operation had not been necessary and that it had been carried out in order to harm the patient.

12. Mr. MARRIOTT (Canada) supported the amendments to Article 10 proposed in document CDDH/II/19, on the understanding that it would be advisable to refer to the pertinent articles in the four Geneva Conventions of 1949. With regard to amendments CDDH/II/40 and CDDH/II/50, the Canadian delegation preferred the latter, which enumerated the different criteria on which discrimination might be based. It was legitimate to wonder whether the provision embodied in the proposed new paragraph 3 (CDDH/II/70) was applicable at the height of the battle, when there were large numbers of wounded. He wondered what form the proposed document would take. It might perhaps be necessary to provide an international document for the purpose. He suggested that at the
end of the proposed text a sentence might be added to the effect that, if the person was not fully conscious, written consent would be obtained in accordance with the practice established by the authorities holding the said person.

13. Mr. KLEIN (Holy See) pointed out that, although it was necessary to provide the sick and wounded with the requisite medical care, such patients also needed food, clothing and beds, as well as moral support, entertainment and books. Many of them also required spiritual help. Paragraph 2 of Article 10 should not, therefore, be of a strictly medical character. The wording might, for example, be "... medical care and help of every kind that their condition may require".

14. Mr. BOTHE (Federal Republic of Germany), referring to amendments CDDH/II/19, CDDH/II/40 and CDDH/II/50, pointed out that, on the one hand, an unduly general clause might be difficult to apply since it placed too great a responsibility on the person whose duty it was to implement it, and, on the other hand, an enumeration was always in danger of being incomplete. It was true, however, that amendment CDDH/II/50 ended with the words "or any other similar criteria", thus making the enumeration open-ended. The best course might perhaps be to have a general clause and to speak of "discrimination", adding the words "such as ..." or "including ...". Thus, it would not be possible for discrimination to be based on arbitrary criteria and a text of that kind would, for instance, help soldiers on the field of battle to take an equitable decision.

15. He associated himself with the remarks made by the representative of Canada regarding amendment CDDH/II/70. It would perhaps be preferable to discuss that question in conjunction with Article 11, which deals with problems of medical treatment.

16. He noted with satisfaction that in document CDDH/II/75 the ICRC had reverted to a suggestion made by the delegations of the United Kingdom and the Federal Republic of Germany, in which they proposed that the question of persons in peril on land should not be dealt with in the definitions but in a substantive provision. It would, in principle, be expedient to strengthen the provisions of Article 15 of the Second Geneva Convention of 1949 and Article 16 of the Fourth Geneva Convention. It was, however, open to question whether the suggestion by the ICRC was sufficiently precise. It should be made clear that the persons envisaged were not those in danger owing to the weapons of the enemy, but only those in peril by reason of the fact that they found themselves in a hostile environment, such as, for example, the desert or the jungle. Such persons fell into two categories: those who were defenceless and who would perish if nobody came to their assistance, and those who might possibly still be able and willing to carry on the fight. That second category of persons must not have the right to protection. It was therefore necessary to draw a distinction between the two categories; for civilians and medical personnel, the expression "who refrain from any act of hostility" was sufficient, but for military personnel it was necessary to add the words "and who are hors de combat as defined in Article 38".

17. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) said that it would be better to retain the text of Article 10, paragraph 1, as set out in the ICRC draft and to discard the amendment to Article 10 proposed in document CDDH/II/19.

18. With regard to paragraph 2 as proposed in document CDDH/II/50, the Government Experts attending the 1971 and 1972 Conferences had considered that
it was necessary to enumerate the criteria for discrimination. It would be better to adhere to the wording that they had advocated.

19. His delegation supported the position of the sponsors of amendment CDDH/II/70. The text should, however, be reworded since it was not clear what would happen if a wounded or sick person was incapable of giving his written consent.

20. He was also in favour of the idea embodied in amendment CDDH/II/75, but felt that the text should be referred to the Drafting Committee.

21. Mr. TAMALE MUGERWA (Uganda), referring to amendments CDDH/II/19 and CDDH/II/40, said that he would prefer to see the words "without any adverse distinction" retained. He could not accept amendment CDDH/II/50 because, in his view, it reduced the potential number of cases of discrimination. Although he approved of the idea in amendment CDDH/II/70, he associated himself with the preceding speakers who had drawn attention to the practical difficulties of applying such a provision. The text would have to be reworded.

22. Mr. DEDDES (Netherlands) said that he could accept the idea put forward in the amendment proposed to Article 10, paragraph 1 in document CDDH/II/19, provided reference was made to all four Geneva Conventions of 1949 and not to only one of them. Like the representative of Uganda, he thought it only natural that there should be some classification of the many wounded on the battlefield; to that extent some "discrimination" was inevitable. He could not, therefore, accept the amendment to Article 10, paragraph 2 in document CDDH/II/19. While he realized that any enumeration such as that given in document CDDH/II/50 was bound to be incomplete, he considered that the end of the sentence "... or any other similar criteria" might meet the concern expressed by some delegations.

23. With regard to the new paragraph 3 proposed in document CDDH/II/70, he did not think it necessary for written consent to be given for all surgical operations; at any event, such a provision could hardly be applied in practice, owing to lack of time or to language difficulties, for example. Moreover, the arguments advanced by the sponsors of the amendment were unconvincing since the instances they had cited were already covered by Article 10, paragraph 2, of draft Protocol 1, where it was said that medical care and attention must be "necessitated by the condition of the patient", and by Article 11, as amended in document CDDH/II/43, which prohibited "any unjustified act or omission".

24. Mr. NAHLIK (Poland), referring to the amendments proposed to Article 10, paragraph 2, spoke of the historical development of methods of codification since the times of Hammurabi; although it had once been customary to include in texts long lists for the benefit of the simple, progress had rightly ordained that modern codes never included enumerations which might subsequently prove incomplete or liable to deliberate misinterpretation. He therefore considered the expression "without any discrimination" much clearer and sufficient in itself. Moreover, that was the terminology used by the United Nations, and it was better to standardize legal terminology. With regard to children, he pointed out that their case was dealt with in Article 68 of draft Protocol 1 and that the words "subject to the provisions of Article 68" could perhaps be added. Furthermore, he thought that the phrase "shall receive ... the medical care necessitated by their condition" should suffice to meet the concern of the Netherlands representative.
25. Mrs. DARIIMAA (Mongolia), referring to paragraph 4 of document CDDH/II/75, asked how the "shipwrecked" could in practice be exchanged. She requested the ICRC representative to state at what point of time a "shipwrecked" person ceased to be regarded as such.

26. Mr. PICTET (International Committee of the Red Cross) replied that the general wording used already appeared in the First, Second and Fourth Geneva Conventions of 1949; while he recognized the cogency of that observation so far as the substance was concerned, he thought that any attempt to establish distinctions in respect of each category would give rise to a much longer text. He saw no reason why the present wording should not be retained.

27. With regard to the terms "discrimination" and "adverse distinction", he pointed out that the word "discrimination" had pejorative overtones, although the two expressions were really equivalent.

28. Mr. TRAASEN (Denmark) said that Article 10 should mention the shipwrecked but should restrict the scope of the term, as proposed by the delegation of the Ukrainian SSR and others (CDDH/II/19). On the other hand, he could not accept amendment CDDH/II/70 suggesting a new paragraph 3 concerning written consent in the case of surgical intervention, since the persons in question might, for instance, be illiterate.

E. MEETING OF COMMITTEE II, 21 March 1974 (CDDH/II/SR.10):

1. Mr. MARRIOTT (Canada) drew attention to the need for clarity of wording in order that the draft Protocol should be understandable to all. He therefore supported the inclusion of the criteria listed in the amendment in document CDDH/II/50.

2. With regard to the amendment suggested by the ICRC (CDDH/II/75), he suggested that the proposed new paragraph 5 was unnecessary: its intent could be covered by the addition of the phrase "and those in peril on land" at the end of the new paragraph 3.

3. Mr. SOLF (United States of America) supported the inclusion of criteria (CDDH/II/50) in order to give some guidance to medical personnel in the field. The third paragraph of Article 12 of the First Geneva Convention of 1949 was also pertinent. He supported the proposal by the representative of the Federal Republic of Germany at the ninth meeting concerning general prohibition of discrimination based on matters irrelevant to medical care, with a list of examples, and the comment by the representative of the Holy See that "health care" was a more comprehensive expression than "medical care".

4. He had no objection in principle to the new paragraphs 3 and 4 suggested by the ICRC (CDDH/II/75), although there were already binding obligations on all the parties to the Geneva Conventions. He noted that those provisions were proposed in Article 13 of draft Protocol II where they were used to establish norms for non-international armed conflict. With regard to the proposed new paragraph 5, his delegation shared the concern about the safety of people exposed to great danger in a hostile environment on land, but concurred in the view that military personnel must be hors de combat. He supported the suggestion by the representative of Canada that the paragraph was unnecessary and that the same idea could be expressed in the new paragraph 3, perhaps by the addition of a sentence such as: "They shall also take the practicable
measures necessary to search for and assist other persons who are exposed to grave danger on land because of a hostile environment, provided that they refrain from any hostile act if civilians and, if military, are hors de combat.

5. Mr. MAKIN (United Kingdom) explained that his delegation's amendment (CDDH/II/26) did not mean that the wounded had also to be sick in order to be protected. The expression had been used in Articles 14 and 15 of the First Geneva Convention of 1949.

6. He was in favour of some sort of list of criteria (CDDH/II/50) but thought that the actual wording could be left to the Drafting Committee, taking account of the various suggestions made.

7. He agreed with the comments made by the representatives of the Netherlands and Denmark that in some circumstances it might not be practicable to obtain any consent for surgical operations, let alone written consent (CDDH/II/70), and suggested the deletion of the word "written" and the inclusion of the words "wherever practicable".

8. While his delegation could accept the new paragraphs 3 and 4 suggested by the ICRC (CDDH/II/75) in principle, the subject was already covered more fully in Article 15 of the First Geneva Convention of 1949, Article 18 of the Second Geneva Convention and Articles 16 and 17 of the Fourth Geneva Convention. It might therefore be confusing to insert new paragraphs with a more restrictive wording. The subject matter of the proposed new paragraph 5 was already covered by paragraph 2 of Article 58 of Protocol I with regard to combatants, and any rewording of the article should therefore be considered by Committee III. With regard to civilians, Article 54 (a) of draft Protocol I seemed to cover the situation. He agreed with the representatives of the Federal Republic of Germany (ninth meeting) and the United States of America that any new wording should refer to "people in a hostile environment" and that they should be hors de combat.

9. Mr. PICTET (International Committee of the Red Cross) said that there were three translation errors in the English text of the ICRC's amendment (CDDH/II/75). The title should be "suggested amendment" because the ICRC could not propose amendments; in paragraph 5, the phrase "or any other cause" did not exist in the French original; and the wording "shall be deemed to be shipwrecked persons" did not give the exact sense of "sont assimilées aux naufrages".

10. With regard to the suggestion by the representative of the Federal Republic of Germany, he thought it preferable to mention persons in a hostile environment, such as a desert, in Article 10 rather than in Article 8. A simple mention would also be sufficient in paragraph 3. The precise wording could be left to the Drafting Committee.

11. The ICRC had suggested the inclusion of the new paragraphs 3 and 4 because people had died during the Second World War because they had not been rescued after having been shipwrecked. With regard to paragraph 3, Article 18 of the Second Geneva Convention of 1949 expressed the obligation to search for and protect casualties but limited it to the periods "after each engagement" and Article 16 of the Fourth Geneva Convention only established the obligation to "facilitate the steps taken" in such a search. The new paragraph 4 was less important but had been suggested because, although the subject matter was partly covered by Article 15 of the First Convention of 1949, Articles 15 and 18
of the Second Convention and Article 17 of the Fourth Convention, only the provisions in the First Convention were sufficiently general.

12. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) agreed with the representatives of the United Kingdom and the United States that the amendment proposed to paragraph 1 of Article 10 (CDDH/II/19) must apply to all the Geneva Conventions of 1949. That amendment, which his delegation considered very important, should be combined with the new paragraphs 3 and 4 suggested by the ICRC (CDDH/II/75). The present wording of the proposed new paragraph 5 might be wrongly interpreted: it should state specifically that the protection should apply only to the wounded and sick until they were rehabilitated and to non-combatants but not to healthy combatants. The matter was of special importance to countries whose territories largely consisted of desert, jungle and other hostile environment.

13. With regard to the amendment proposed in document CDDH/II/70, he agreed that abuse of surgical intervention must be prevented but it would often not be possible to obtain even oral consent from the person concerned. In any case, it was often preferable to save the lives of several people rather than to undertake a long and complicated operation.

14. Mr. DENG (Sudan) said that he had no strong objection to the amendment to Article 10, paragraph 1, proposed in document CDDH/II/19. With regard to paragraph 2, his delegation supported the amendments in documents CDDH/II/19 and CDDH/II/40, but was not satisfied with the term "with the least possible delay" in the latter amendment and in document CDDH/II/50, since it might lead to difficulties of interpretation.

15. With regard to the enumeration of specific cases of discrimination, he agreed with the representative of the Federal Republic of Germany that some particular cases of discrimination might be listed by way of example, prefaced by some such phrase as "such as". He also agreed with some of the arguments put forward by the representative of the ICRC and the representative of Poland. The amendment in document CDDH/II/50 reflected the criteria listed in Article 12 of the First Geneva Convention of 1949, adding three further criteria. Nevertheless, in order to avoid any restrictive interpretation, he still thought that the paragraph should be phrased in general terms and should read: "In all circumstances they shall be treated humanely and shall receive without delay and without any discrimination the medical care necessitated by their condition'.

16. His delegation supported amendment CDDH/II/26. With regard to the amendment to Article 10 in document CDDH/II/70, he supported the suggestion by the representative of Canada that the new paragraph 3 should state that the written consent of the person if fully conscious was required.

17. Mr. ABSOLUM (New Zealand) noted that the discussion had revealed that the protection given to the wounded and the sick was not necessarily appropriate for the shipwrecked and that the advantage would seem to lie in giving the shipwrecked a separate status. That was particularly the case in the light of the efforts to extend the term "the shipwrecked" to persons in peril on land or in the air as a result of the loss of their means of transport.

18. With regard to amendments CDDH/II/40 and CDDH/II/50 it was, of course, necessary to insert a phrase like "to the fullest extent possible" as, given
shortages of supplies and facilities, many parties to a conflict would be manifestly incapable of providing all the medical care that the wounded and sick might need.

19. On the question of whether or not it would be preferable to list types of discrimination, he considered that the important thing was that the text, as it was ultimately translated into military manuals, should be clear and comprehensible to the man in the field. In his view, the insertion of examples would be helpful and for that reason he favoured the formulation set out in CDDH/II/50.

20. While he sympathized with the motives of the co-sponsors of the amendment to Article 10 contained in CDDH/II/70, he wondered whether there might not be some conflict between it and Article 11 which created the obligation not to refrain from providing medical treatment which might be essential to the health of a patient. Moreover, the words "while fully conscious" gave rise to some difficulty, as a patient might well be conscious but in such a state of mind that he was incapable of exercising a rational judgement about whether or not surgery would be in his best interests.

21. Mr. CALCUS (Belgium) said that his delegation favoured the enumeration of criteria, as in amendment CDDH/II/50.

22. With regard to the amendment to Article 10 in document CDDH/II/70, he felt that it was almost impossible to demand the written consent of a wounded person before surgical intervention. Military doctors worked on the basis of providing the maximum amount of care to the maximum number of patients. There was also the problem of language. Thirdly, it was unlikely that a patient would give written consent for an amputation. If the Committee wished to adopt that amendment, it should include some such reservation as "whenever written consent can be obtained".

23. With regard to the new paragraph 5 suggested by the ICRC (CDDH/II/75), the concept of persons shipwrecked should be considered separately.

24. There seemed to be general agreement with the representative of the Holy See that "care" was to be interpreted in a broader sense than that of purely "medical care".

25. Mr. WATANABE (Japan) said that in regard to paragraph 1, his delegation supported the amendments in documents CDDH/II/19, CDDH/II/40 and CDDH/II/50. It preferred the proposed text of paragraph 2 in document CDDH/II/50 to that in document CDDH/II/40 since the enumeration of criteria would make the provision more understandable. His delegation would not be opposed to the amendment in document CDDH/II/70 in principle, but would prefer to have that issue dealt with under Article 11.

26. Mr. ALFONSO MARTINEZ (Cuba), referring to amendment CDDH/II/50, wished to place on record that his delegation was in favour of a more general statement in paragraph 2 of Article 10 concerning the sick and the wounded. Under Article 85 of draft Protocol I, Article 10 was not subject to reservations and it therefore needed a text which was unequivocal. Recent conflicts had largely taken place in developing countries, where it might prove impossible to give the wounded all "the medical care and attention necessitated by their condition". Without submitting any formal amendment, he wished to draw attention to
the urgency of finding a compromise formula. For example, the words "circumstances permitting" might be inserted in paragraph 2 of Article 10.

27. He supported the amendment to Article 10 in document CDDH/II/19, but felt some concern about the definition of the term "shipwrecked".

28. With regard to the amendments suggested by the ICRC (CDDH/II/75), the same difficulty might arise in connexion with paragraph 3 as that pointed out with regard the proposed amendment to paragraph 2 in document CDDH/II/50. Paragraph 4 seemed to be fully covered by Article 15 of the first Geneva Convention of 1949.

29. Mr. AL-BARZANCHI (Iraq), referring to the proposed amendment to Article 10 in document CDDH/II/70, said that he recognized the difficulty of obtaining written consent before a surgical intervention but regarded that condition as a safeguard to be applied whenever possible. He did not agree that there would be any language problem, with interpreters easily available. Since every prisoner of war had an index card, he could notify consent or refusal on that card.

30. Shipwrecked persons could be treated as a separate entity, with protection and care to cease after rescue and revival.

31. With regard to amendments CDDH/II/40 and CDDH/II/50, he did not think enumeration of criteria was necessary.

32. As far as the proposal by the representative of the Holy See was concerned, the term "medical care" rather than "medical treatment" should cover that point. The suggestions put forward by the ICRC (CDDH/II/75) would seem to be covered by the Geneva Conventions.

33. Mr. MATHIESEN (Norway) asked for some clarification of the term "means of transport" in the new paragraph 5 suggested in document CDDH/II/75. He proposed that that amendment should be sent to the Drafting Committee.

34. Mr. PICTET (International Committee of the Red Cross) suggested that it might be simplest to add the words "and any other persons in danger" after the word "shipwrecked" in the suggested new paragraph 5.

35. Mr. COIRIER (France) said that he had already stated his delegation's position with regard to shipwrecked persons in connexion with Article 8. While he supported the amendments to Article 10 in document CDDH/II/19, he thought that shipwrecked persons should be treated as a separate entity.

36. Mr. SKARSTEDT (Sweden) said that the proposed new paragraph 3 in document CDDH/II/70 concerned a very specialized question which he suggested would be more appropriately discussed under Article 11. The new version of Article 11 proposed in document CDDH/II/43 might well cover the theme of paragraph 3, namely special protection in case of surgical intervention.

37. Mr. SCHULTZ (Denmark) said that he was against the proposed new paragraph 3 suggested in document CDDH/II/70. The idea of obtaining written consent to surgical intervention was contrary to normal medical practice in his own and other European countries. As Article 10 was one of those to which no reservations could be made, under Article 85 of draft Protocol I, paragraph 3 would cause difficulties for such countries, since failure to comply with it
might constitute an unwilling breach of an international instrument. That was an essential consideration for the Drafting Committee to take into account when discussing where, if at all, a provision on written consent should be placed. In any case, he agreed with the Swedish representative that the subject should not be discussed under Article 10.

38. Mr. MARTIN (Switzerland) said that he doubted whether the question of protection of shipwrecked persons and persons in peril was merely a drafting matter. A thorough and systematic study should be made of the question, in order to ascertain, firstly, the essential measures of protection required for the categories of person in question and, secondly, whether such provisions should be included in Article 10 or whether the whole question of shipwrecked and associated persons should be dealt with elsewhere, as under the 1949 Geneva Conventions.

39. He supported the suggestion made by the representative of the Federal Republic of Germany at an earlier meeting that a working party should be appointed to go into the whole question.

40. Mr. VILLARINHO PEDROSO (Brazil) supported the Swedish representative's proposal.

41. The CHAIRMAN said that he proposed to refer the amendments to Article 10 in documents CDDH/II/19, CDDH/II/26, CDDH/II/40, CDDH/II/50, CDDH/II/70 and CDDH/II/75 to the Drafting Committee, including the question whether or not the amendment in document CDDH/II/70 should be incorporated in Article 11 of draft Protocol I.

It was so agreed.

F. MEETING OF COMMITTEE II, 6 February 1975 (CDDH/II/SR.14):

15. Mr. SOLF (United States of America) reminded the Committee of the decision that the proposal in document CDDH/II/70 to add a new paragraph requiring the written consent of patients before any surgical intervention was undertaken should be dealt with in connexion with Article 11, not Article 10.

51. The CHAIRMAN asked the Committee whether it wished to vote on the question of obtaining the written consent of the patient.

52. Mr. SCHULTZ (Denmark) said that his delegation was prepared to vote on that question, but wished it to be clear that it was being considered as part of Article 11, not of Article 10, since Article 85 provided that no reservations could be formulated to the latter article.

G. MEETING OF COMMITTEE II, 7 February 1975 (CDDH/II/SR.15):

23. Mr. SOLF (United States of America) said that his delegation had no serious objection to the original wording of the draft article [14] except that it would be clearer if the words "including prisoners of war" were inserted after the words "sick and wounded members of the armed forces" in paragraph 1. Since the first and third Geneva Conventions of 1949, as well as Article 10 of
draft Protocol I, said that medical care should be provided without discrimination on the basis of medical need, the drafters' intention must have been to include prisoners of war held by the Occupying Power. ...

25. ... Paragraph 1 of the amendment [CDDH/II/21] [to Article 14] adequately conveyed the limitation which appeared in Article 56 [of the fourth Geneva Convention of 1949] and therefore the additional inflexible priority for civilian use of medical units, other than hospitals, was inconsistent with the principle set forth in Article 10 of draft Protocol I.

32. Mr. MAKIN (United Kingdom) ... With regard to the amendment in CDDH/II/19, it would be inconsistent with Article 10 of draft Protocol I to exclude members of the occupation administration from the provisions of Article 14.


The Drafting Committee ... dealt with draft Protocol I, Part II, Section I, Articles 9 to 20 (except Articles 14, 18 and 18 bis).

It now submits to the Committee II for approval the text of the above articles as given on the following pages. ...

Article 10. Protection and care

1. All the wounded, sick and shipwrecked, to whichever party they belong, shall be respected and protected.

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

I. MEETING OF COMMITTEE II, 24 February 1975 (CDDH/II/SR.23):

Article 10. Protection and care

Article 10 was adopted.

J. ARTICLE ADOPTED BY COMMITTEE II, 24 February 1975 (CDDH/II/275):

Article 10. Protection and care

1. All the wounded and sick, and the shipwrecked, to whichever party they belong, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any other than medical grounds.
K. PROPOSALS FROM THE WORKING GROUP, COMMITTEE II, 4 March 1975 (CDDH/II/250):

1. Add a new paragraph to Article 10.

10.3 A record of all medical procedures, including examinations, surgical operations, laboratory and other tests, and all other medical procedures carried out, shall be kept for each of the wounded and sick. Similar records shall be kept for all persons described in Article 11 of the present Protocol. These records shall be made available at all times for inspection by the Protecting Power.

L. MEETING OF COMMITTEE II, 5 March 1975 (CDDH/II/SR.30):

3. Miss MINOGUE (Australia), Chairman of the Working Group on Article 11, said that her Working Group had already submitted certain proposals in document CDDH/II/250. However, that document was of an indicatory nature only, since the members were not satisfied with the present formulation and intended to submit a revised version in the near future.

M. REVISED PROPOSALS FROM THE WORKING GROUP, COMMITTEE II, 5 March 1975 (CDDH/II/250/Rev.1):

1. Add a new paragraph to Article 10.

10.3 A record of all medical procedures undertaken shall be maintained for each of the wounded and sick. Such records shall also be maintained for all persons described in Article 11 of the present Protocol and shall be made available at all times for inspection by the Protecting Power.

N. MEETING OF COMMITTEE II, 7 March 1975 (CDDH/II/SR.32):

1. The CHAIRMAN invited the Chairman of the Working Group on Articles 10 and 11 to submit the Working Group's proposals (CDDH/II/250/Rev.1).

2. Miss MINOGUE (Australia) said that the special Working Group had endeavoured to provide a synthesis of the views expressed in the full Committee. It had reduced its task to drafting a provision making violation of Article 11 a grave breach of draft Protocol I and to finding a formula for the recording of voluntary donations of blood or skin by persons described in paragraph 1 of Article 11, which would constitute evidence that the requirements of paragraph 3 had been complied with.

4. The Group had learned that the Geneva Conventions at present contained no definite obligation on a Detaining Power to keep medical records of the persons it was detaining. The Working Group had considered that that gap should be closed and that, at the same time, a system should be provided within which records of blood or skin donations could also be kept. It had considered where such a provision - which was, of course, wider than the provisions of any one article - might be kept and had decided that Article 10 would be the best place. There might be some procedural problems in adding a new paragraph to that article, which had already been approved, but as the Group's proposal did not in any way affect the provisions already approved, it had been thought that the Chairman should be able to permit further discussion.
5. The Working Group believed its proposals were simple and self-explanatory and that they filled an important gap in the Conventions and the Protocol. It was for the Committee to decide where they should be placed.

8. [Mr. MAKIN (United Kingdom).] Something seemed to have gone wrong with the drafting. Article 10 was a non-reservable article, which should contain nothing that might be open to disagreement by anyone. He accordingly proposed that, if such a paragraph were deemed necessary, it should not be included in Article 10; that the first sentence should be deleted; and that the second sentence should be radically redrafted.

10. Mr. SOLF (United States of America) said that the United Kingdom representative had already said many of the things he had intended to say. The question of medical records belonged rather in Article 11 than in Article 10. He believed that some provision should be made for the keeping of records of the wounded and sick described in Article 11, but an international law provision should not be extended to all wounded and sick persons irrespective of their state of liberty or nationality. With that proviso, the concept of the paragraph should be referred to the Drafting Committee.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), referring to the proposed new Article 10, paragraph 3, said that any difficulty about a two-thirds majority could be got round by making the paragraph into a new article dealing with the keeping of medical records. The absence of such a provision in the Geneva Conventions was a gap that needed filling. There must be some basic document from which it could be ascertained whether sick and wounded prisoners of war had received correct treatment or whether abuses had been committed. The purpose of the new paragraph was to make good that omission.

14. With regard to the first sentence of the new paragraph 3, there was already provision in most national legislations for the keeping of medical records, so that no additional burden on medical staff would be involved; but he did not know what would be the position in the developing countries. He could not see the point of the first part of the second sentence, since blood or skin donors seemed to be already covered by the first proposal, but the provision that the medical records of treatment given to the persons to which reference was made in Article 11 must be available for inspection by the Protecting Power was indispensable. It in no way concerned the treatment of their own sick and wounded by either side nor did it constitute an unwarranted interference in internal affairs. That provision could constitute an important supplementary guarantee against abuse in the treatment of prisoners of war. If the provision needed redrafting, it could be redrafted without difficulty. There was a Russian saying that a telegraph pole was a redrafted Christmas tree. It was highly important, however, that such a provision should be retained, whether it was placed in Article 10, in Article 11 or in a separate Article 10 bis.

16. Mr. DEDDDES (Netherlands) said that it was evident that there was something missing from the Geneva Conventions in respect of the keeping of medical records. He appreciated the point that such a provision should not be included in Article 10, which was non-reservable; but he would strongly support it as a separate article or as an additional paragraph to Article 11. The latter would seem perhaps the more logical solution since it was a question of the protection of persons. The keeping of records was a normal procedure both in peacetime and in wartime conditions, so that the provision would not constitute an
excessive burden. When redrafting the text, the Drafting Committee should ensure that it was made applicable not only to the sick and wounded and to the persons covered by Article 11, but also to donors of blood and skin.

17. Mr. CZANK (Hungary) said that the arguments put forward by the United Kingdom representative were in general reasonable and should be taken into consideration. He agreed with the representatives of the Netherlands and the Union of Soviet Socialist Republics that the provision would fit better into Article 11 than into Article 10. As it stood, the text referred to all persons described in Article 11; but the United Kingdom representative had been right in suggesting that there might be some persons covered by that article for whom medical records would not normally be kept. It might be better, therefore, to insert the words "paragraph 3" after the words "Article 11", since the question had originally arisen in connexion with that paragraph.

19. Mr. MARTINS (Nigeria) said that the provision would create a serious problem for developing countries with inadequate medical facilities and a shortage of trained personnel. It might be difficult for some developing countries to keep records at all. The inspection clause implied that the Protecting Power might lay down rules concerning the standards of the medical records, and developing countries might be accused of not complying with the clause. There was further the problem of the storage of the records; many hospitals in developing countries simply did not have the space and, in tropical conditions, papers were liable to be destroyed by damp or other causes. He thought, however, that it would not be too difficult to keep records of skin grafts.

20. Mr. MARRIOTT (Canada) said that, as a member of the Working Group and as the author of the original draft of Article 10, paragraph 3, he was very glad to see the support it had received. He agreed with the Hungarian and United Kingdom representatives that, if the provision were made to cover all the persons described in Article 11 it would be rather too wide, but the amendment proposed by Hungary should deal with that problem. When the United Kingdom representative had referred to interference in internal affairs, he had perhaps been thinking of draft Protocol II; but the present discussion referred to draft Protocol I, and there should therefore be no difficulty in that regard.

21. He shared the Nigerian representative's concern about the difficulties of record-keeping in tropical conditions, but thought there was little danger that the Protecting Power would fail to take those conditions, and in particular the level attained in the training of para-medical personnel, into account when fixing the standards of records it expected to find. He agreed that the articles should be referred to the Drafting Committee, which should have no great difficulty in finding a solution if there was a general consensus on the principles involved.

22. Mr. URQUIOLA (Philippines) said he agreed with the principle of maintaining medical records as proposed in the new paragraph 3 for Article 10 (CDDH/II/250/Rev.1) but, before referring the article to the Drafting Committee, Committee II must decide whether such record-keeping should be obligatory or optional.

23. Mr. AL-FALLOUJI (Iraq) said that, in his delegation's view, there should be freedom of choice. More important issues, such as the question of distinctive markings, had been made optional and it would be logical to follow the same procedure in the case of record-keeping.
24. Mr. MAKIN (United Kingdom) said that the issue was not whether record-keeping should be optional or compulsory but whether it should be confined to persons covered by Article 11, paragraph 3, or should cover the entire populations of countries at war. His delegation was strongly of the view that it should not be made obligatory for the latter category.

25. Mr. KHAI RAT (Arab Republic of Egypt) said that he shared the United Kingdom representative's view. The representative of Bangladesh had clarified the point on an earlier occasion.

27. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that there were three possible fields of application for the proposed new paragraph 3 of Article 10. First, it might cover all wounded and sick persons which really meant that it would cover the entire population; second, it might apply only to the persons mentioned in Article 11, paragraph 1; third, it might apply only to those mentioned in Article 11, paragraph 3, namely, the donors and recipients of blood or skin. The Drafting Committee would welcome the Committee's guidance on the choice to be made among the three alternatives.

29. Mr. CZANK (Hungary) said that he was somewhat confused by the three possibilities mentioned by the Rapporteur of the Drafting Committee. He could see only two. The first was to adopt the text as it stood, with the reference in the second sentence to Article 11 as a whole and the second was to refer in the second sentence only to paragraph 3 of that article. He would prefer the latter course.

30. He disagreed with the Rapporteur of the Drafting Committee that in covering all wounded and sick persons the provision would cover the entire population.

31. Miss MINOQUE (Australia) said that the Working Group's discussion had shown that there was at present no obligation to maintain medical records for prisoners of war, who would certainly be among the groups described in Article 11, paragraph 1. While not necessarily wounded or sick, they were people deprived of their liberty. In view of the danger of confusion in that regard, it would be wise to redraft the proposed paragraph 3 of Article 10 before taking a decision on it.

32. Mr. ONISHI (Japan) said that the Committee's original discussion on the question of safeguards against the abuse of blood transfusion or skin grafting had now become confused with the question of recording of medical procedures. Both questions were important and should be kept separate. The Committee should concentrate on the first and, if possible, set up a Working Group to deal with the second.

33. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, after listening to the views expressed during the debate, he proposed as a compromise that medical record-keeping should be made optional by an 'endeavour' clause for persons specified in Article 11, paragraph 1, and compulsory for those referred to in Article 11, paragraph 3. In view of the general feeling that the reference to "each of the wounded and sick" contained in the Working Group's proposal (CDDH/II/250/Rev.1) was too broad, he proposed that that reference should be dropped.
34. Mr. AL-FALLOUJI (Iraq) said he agreed with the Rapporteur's proposals, which he suggested should be approved by consensus and referred to the Drafting Committee for final drafting.

35. Mr. MARRIOTT (Canada) said that, while the idea of extending record-keeping to all persons deprived of their liberty went somewhat further than some delegations found acceptable, there should be little difficulty in making it obligatory for the wounded and sick among that group. He agreed that it should also be obligatory for donors of blood or skin, but there was no need to mention the recipients if records were maintained for the wounded and sick.

36. Miss MINOGUE (Australia) said that her delegation found the Rapporteur's proposal satisfactory and had hoped that it would be acceptable to the Working Group. That possibility had, however, been removed by the Canadian representative's observations.

37. Mr. CHOWDHURY (Bangladesh) said that he appreciated the care taken to preserve the prohibition in Article 11, paragraphs 1 and 2. An endeavour should be made to produce a text that met with the approval of the entire Committee, and the Rapporteur's proposal should make that possible. His delegation had been concerned to ensure that the exception in paragraph 3 should not be taken advantage of to force a person to donate blood against his will. An "endeavour" clause for the persons specified in Article 11, paragraph 1, would probably suffice, since there was likely to be little objection to record-keeping in necessary cases.

39. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that his proposal be submitted to the Drafting Committee together with the Canadian representative's observations, in order to determine whether there were differences of substance or merely of drafting. In the former case, the Drafting Committee might resubmit the proposals to the Committee as clear-cut alternatives.

40. Mr. URQUIOLA (Philippines) said that the proposals of the Rapporteur of the Drafting Committee and the Canadian representative seemed to vary substantially. He could support the Canadian idea if the record-keeping were made optional, not mandatory, so as to take into account the views of the developing countries. However, the Committee must decide which was to be the guiding principle for the Drafting Committee.

41. Mr. MARRIOTT (Canada) said that he did not regard his proposal as being in serious conflict with that of the Rapporteur of the Drafting Committee, and he would do nothing to prevent the Drafting Committee from reaching a consensus.

42. Mr. AL-FALLOUJI (Iraq) said he thought that the Committee could take an immediate decision. The word "endeavour" would be satisfactory to his delegation.

43. The CHAIRMAN suggested that, as there appeared to be a consensus, the proposed new paragraph 3 of Article 10 (CDDH/II/250/Rev.1) should be referred to the Drafting Committee.

It was so agreed.

The Drafting Committee, in considering Article 11, has had the following mandate:

(1) to draft a provision on medical record-keeping based on the proposals made by the representatives of the Federal Republic of Germany and of Canada;

* * *

In fulfilling this mandate, the Drafting Committee submits to Committee II the following new text of Article 11:

Article 11. Protection of persons

* * *

6. Each Party to a conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1 of this Article, if that donation is made under the responsibility of that Party. In addition, each Party to a conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained or otherwise deprived of liberty, as a result of hostilities or occupation. These records shall be available at all times for inspection by the Protecting Power.

P. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 10. Protection and care

1. All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.

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

Q. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 10. Protection and care

Article 10 was adopted by consensus.

R. 1977 PROTOCOL I:

Article 10. Protection and care

1. All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.
2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.
ARTICLE 11 - PROTECTION OF PERSONS

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 11. Protection of persons

1. All unjustified acts or omissions, harmful to the health or to the physical or mental well-being of the persons protected by the Conventions or by the present Protocol pursuant to Article 2 (c), and especially of persons who have fallen into the hands of the adverse Party, or who are interned, detained or deprived of liberty as a result of hostilities, shall be prohibited. This prohibition applies even if the individual in question gives his consent to such act.

2. It accordingly is prohibited to carry out on such persons physical mutilations or medical or scientific experiments, including grafts and organ transplants, which are not justified by the medical, dental or hospital treatment of the persons concerned and are not in their interest.

B. PROPOSED AMENDMENTS:

CDDH/II/43 Australia, Austria, Hungary, Netherlands, Poland, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America

12 March 1974

Replace the whole of the Article by the following:

"1. The physical or mental health and integrity of a person who has fallen into the hands of the adverse Party, or who is interned, detained or deprived of liberty as a result of hostilities, shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the medical or dental needs of the person concerned and is not consistent with accepted medical standards which would be applied to other nationals of the Party under similar medical circumstances.

2. In particular the following acts are prohibited unless indicated by the medical or dental needs of the persons described in paragraph 1:

(a) physical mutilation

(b) medical or other scientific experiments of any kind; or

(c) the removal or transplant of organs or tissues including blood.

3. The provisions of this Article cannot be waived by the individual concerned except that an individual may, voluntarily and without any coercion or inducement, donate blood for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls for the benefit of both the donor and the recipient."

353
Paragraph 1

CDDH/II/70 Arab Republic of Egypt, Iraq, Jordan, Kuwait, Lebanon, 
Libyan Arab Republic, Mauritania, Saudi Arabia, Sultanate of 
Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, 
Palestine Liberation Organization

13 March 1974

In paragraph 1, omit the word "unjustified".

Paragraph 2

CDDH/II/29 Uruguay

11 March 1974

Redraft paragraph 2 as follows:

"2. It accordingly is prohibited to carry out on such persons, even with 
their consent, physical mutilations or medical or scientific experiments, in-
cluding grafts and organ transplants, which are not justified by the medical, 
dental or hospital treatment of the persons concerned and are not in their 
interest."

New Paragraph 3 [to Article 10]

CDDH/II/70 Arab Republic of Egypt, Iraq, Jordan, Kuwait, Lebanon, 
Libyan Arab Republic, Mauritania, Saudi Arabia, Sultanate of 
Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, 
Palestine Liberation Organization

13 March 1974

Add a new paragraph 3 as follows:

"3. In case surgical intervention is considered necessary to save the life 
of the wounded and the sick as judged by common medical practice, the written 
consent of the person while fully conscious is required."

C. MEETING OF COMMITTEE II, 19 March 1974 (CDDH/II/SR.9):

Article 10. Protection and care

11. Mr. AL-BARZANCHI (Iraq), supported by Mr. TARSIN (Libyan Arab Repub-
lic), stated that the aim of the sponsors of amendment CDDH/II/70 was to men-
tion in the Protocol the current medical practice of obtaining the consent of 
the person concerned in cases where surgical intervention was considered nec-
essary. That was an essential precaution in case the sick person, his rela-
tives or his friends should subsequently claim that the operation had not been 
necessary and that it had been carried out in order to harm the patient.

12. [Mr. MARRIOTT (Canada) said that] it was legitimate to wonder whether 
the provision embodied in the proposed new paragraph 3 (CDDH/II/70) was appli-
cable at the height of the battle, when there were large numbers of wounded. 
He wondered what form the proposed document would take. It might perhaps be 
necessary to provide an international document for the purpose. He suggested 
that at the end of the proposed text a sentence might be added to the effect

354
that, if the person was not fully conscious, written consent would be obtained in accordance with the practice established by the authorities holding the said person.

15. [Mr. BOTHE (Federal Republic of Germany) said that] [h]e associated himself with the remarks made by the representative of Canada regarding amendment CDDH/II/70. It would perhaps be preferable to discuss that question in conjunction with Article 11, which dealt with problems of medical treatment.

19. [Mr. SANCHEZ DEL RIO Y SIERRA (Spain) said that] [h]is delegation supported the position of the sponsors of amendment CDDH/II/70. The text should, however, be reworded since it was not clear what would happen if a wounded or sick person was incapable of giving his written consent.

21. Mr. TAMALE MUGERWA (Uganda) [said that] [a]lthough he approved of the idea in amendment CDDH/II/70, he associated himself with the preceding speakers who had drawn attention to the practical difficulties of applying such a provision. The text would have to be reworded.

23. [Mr. DEDDES (Netherlands) said that] [w]ith regard to the new paragraph 3 proposed in document CDDH/II/70, he did not think it necessary for written consent to be given for all surgical operations; at any event, such a provision could hardly be applied in practice, owing to lack of time or to language difficulties, for example. Moreover, the arguments advanced by the sponsors of the amendment were unconvincing since the instances they had cited were already covered by Article 10, paragraph 2, of draft Protocol I, where it was said that medical care and attention must be "necessitated by the condition of the patient", and by Article 11, as amended in document CDDH/II/43, which prohibited "any unjustified act or omission".

28. Mr. TRAMSEN (Denmark) said that ... he could not accept amendment CDDH/II/70 suggesting a new paragraph 3 concerning written consent in the case of surgical intervention, since the persons in question might, for instance, be illiterate.

D. MEETING OF COMMITTEE II, 21 March 1974 (CDDH/II/SR.10):

7. [Mr. MAKIN (United Kingdom)] agreed with the comments made by the representatives of the Netherlands and Denmark that in some circumstances it might not be practicable to obtain any consent for surgical operations, let alone written consent (CDDH/II/70), and suggested the deletion of the word "written" and the inclusion of the words "wherever practicable."

13. [Mr. KRASNOPEEV (Union of Soviet Socialist Republics) stated that] [w]ith regard to the amendment proposed in document CDDH/II/70, he agreed that abuse of surgical intervention must be prevented but it would often not be possible to obtain even oral consent from the person concerned. In any case, it was often preferable to save the lives of several people rather than to undertake a long and complicated operation.

16. [Mr. DENG (Sudan) said that] [w]ith regard to the amendment to Article 10 in document CDDH/II/70, he supported the suggestion by the representative of Canada that the new paragraph 3 should state that the written consent of the person if fully conscious was required.
20. [Mr. ABSOLUM (New Zealand) noted that] [w]hile he sympathized with the motives of the co-sponsors of the amendment to Article 10 contained in CDDH/II/70, he wondered whether there might not be some conflict between it and Article 11 which created the obligation not to refrain from providing medical treatment which might be essential to the health of a patient. Moreover, the words "while fully conscious" gave rise to some difficulty, as a patient might well be conscious but in such a state of mind that he was incapable of exercising a rational judgement about whether or not surgery would be in his best interests.

22. [Mr. CALCUS (Belgium) said that] [w]ith regard to the amendment to Article 10 in document CDDH/II/70, he felt that it was almost impossible to demand the written consent of a wounded person before surgical intervention. Military doctors worked on the basis of providing the maximum amount of care to the maximum number of patients. There was also the problem of language. Thirdly, it was unlikely that a patient would give written consent for an amputation. If the Committee wished to adopt that amendment, it should include some such reservation as "whenever written consent can be obtained".

25. Mr. WATANABE (Japan) said that ... [h]is delegation would not be opposed to the amendment in document CDDH/II/70 in principle, but would prefer to have that issue dealt with under Article 11.

29. Mr. AL-BARZANCHI (Iraq), referring to the proposed amendment to Article 10 in document CDDH/II/70, said that he recognized the difficulty of obtaining written consent before a surgical intervention but regarded that condition as a safeguard to be applied whenever possible. He did not agree that there would be any language problem, with interpreters easily available. Since every prisoner of war had an index card, he could notify consent or refusal on that card.

36. Mr. SKARSTEDT (Sweden) said that the proposed new paragraph 3 in document CDDH/II/70 concerned a very specialized question which he suggested would be more appropriately discussed under Article 11. The new version of Article 11 proposed in document CDDH/II/43 might well cover the theme of paragraph 3, namely special protection in case of surgical intervention.

37. Mr. SCHULTZ (Denmark) said that he was against the proposed new paragraph 3 suggested in document CDDH/II/70. The idea of obtaining written consent to surgical intervention was contrary to normal medical practice in his own and other European countries. As Article 10 was one of those to which no reservations could be made, under Article 85 of draft Protocol I, paragraph 3 would cause difficulties for such countries, since failure to comply with it might constitute an unwilling breach of an international instrument. That was an essential consideration for the Drafting Committee to take into account when discussing where, if at all, a provision on written consent should be placed. In any case, he agreed with the Swedish representative that the subject should not be discussed under Article 10.

41. The CHAIRMAN said that he proposed to refer the amendments to Article 10 in documents CDDH/II/19, CDDH/II/26, CDDH/II/40, CDDH/II/50, CDDH/II/70 and CDDH/II/75 to the Drafting Committee, including the question whether or not the amendment in document CDDH/II/70 should be incorporated in Article 11 of draft Protocol I.

It was so agreed.
Article 11. Protection of persons

42. The CHAIRMAN drew attention to the amendments to Article 11 submitted by Uruguay (CDDH/II/29), Australia and other countries (CDDH/II/43) and the Arab Republic of Egypt and other countries (CDDH/II/70).

43. Mr. PICTET (International Committee of the Red Cross) said that the ICRC draft of Article 11 did not embody any new principle. In the interests of precision and uniformity, the Government Experts had asked the ICRC to prepare an article setting forth prohibitions in respect of the protection of persons. Paragraph 1 was general; paragraph 2 was concerned with detail: grafts and transplants were referred to only as examples.

44. Mr. MOURAD (Syrian Arab Republic), introducing the amendment to Article 11 in document CDDH/II/70, said that his delegation thought that the word "unjustified" in paragraph 1 should be deleted, since it opened the way to abuses which would be difficult to control. It could also give rise to differences between parties which would be difficult to keep objective. The prohibition should be in general terms, covering all acts or omissions, whether unjustified or not.

45. Miss MINOGUE (Australia) introduced amendment CDDH/II/43, which represented a considerable degree of agreement on a subject that was basic to the whole concept of draft Protocol I, and indeed to the Geneva Conventions of 1949: the protection of the individual against any form of violence to his person. The sponsors of the amendment thought that the ICRC draft did not go quite as far as they would have wished on that very important matter.

46. The English version of the ICRC text of Article 11, paragraph 1, referred to the "well-being" of the person. That did not seem to be an accurate interpretation of the French term integrite, nor did it convey the concept of physical and mental wholeness which the French word implied and which expressed so well the essence of what the sponsors wished to convey. They felt that the word "integrity", though not widely used in English in that sense, conveyed precisely the meaning required.

47. The new draft article contained a prohibition of any medical procedure not indicated by the medical needs of the person and which would not be used in similar circumstances on other nationals of the party concerned. The word "indicated" had been chosen because, when used in conjunction with medical or dental needs, it implied a conscious exercise of professional judgment. The idea of consistency with generally accepted medical standards applied to the party's nationals was designed to avoid any kind of discrimination against individual persons or groups of persons on racial, religious, economic or any other grounds.

48. With regard to the completely new paragraph 3, in the face of the absolute prohibition of any form of medical procedure which was not absolutely essential - a prohibition which even the person concerned could not gainsay - a person whose own medical condition was sound would be unable even to give a life-saving blood donation to a suffering comrade or a sick child. That seemed contrary to the very spirit of humanitarian law. The sponsors had therefore endeavoured to devise a formula which, invoking all known safeguards to both donor and recipient, would permit such a blood donation to be given on a completely voluntary basis.
49. It had been suggested to the sponsors that provision should also be made for donations of other organs or tissues that might be required for transplant. In no other instances, however, were the same safeguards available as in the case of blood. Her delegation had therefore decided, after careful thought, that the risks involved in widening the provision were too great and that blood transfusion was the only exception that should be made at the present time.

50. Mr. MARTOSUHARDJO (Indonesia) said that his delegation adhered to the widely accepted principle of respect for the physical and mental integrity of the human body. In no circumstances should the human body be interfered with, except for medical reasons to maintain or save the life of a person.

51. He supported amendment CDDH/II/43.

52. Mr. COIRIER (France) said that amendment CDDH/II/43 was excellent. He wondered, however, whether part II of Protocol I was the appropriate place for Article 11. He would like to hear from the ICRC representative whether there was any reason for the position of Article 11. The subject might, perhaps, have more relevance to Article 65.

53. Mr. PICTET (International Committee of the Red Cross) said that the ICRC attached no particular importance to the position of Article 11. He suggested that the Drafting Committee might be asked to consider the question.

54. Mr. CHUWA (United Republic of Tanzania) drew attention to the case of freedom fighters, which was a matter of great concern to representatives who were involved in battles for liberation. Many freedom fighters who had fallen into the hands of the adversary had been treated as criminals, subjected to mental and physical torture and even hanged. That had happened in the Far East, for example, and was happening in Rhodesia. That was an urgent humanitarian matter.

55. Mr. MAKIN (United Kingdom) said that he shared the concern of the French representative about the position of Article 11. He suggested that when the Committee agreed on a text, the article might be referred by representatives to their colleagues on Committee III which was dealing with Articles 63 to 66, to ensure that Committee III did not duplicate the work on the subject. In any case, it did not seem to be a matter for the Committee's Drafting Committee.

56. Mr. ROSENNE (Israel) said that his delegation was in favour of the approach and, on the whole, the drafting of the amendment in document CDDH/II/43. He had been impressed by the Australian representative's reasons for introducing - he considered quite correctly - the concept of the integrity of the human person.

57. Mr. KLEIN (Holy See) suggested that, in connexion with physical mutilation and medical and scientific experiments mentioned in paragraph 2 of amendment CDDH/II/43, it would be well to mention the new "science of man" which could alter human personality and enable persons to be manipulated by their masters.

58. Mr. VIGNES (World Health Organization) suggested that the words "including blood" should be deleted from paragraph 2 (c) of amendment CDDH/II/43, in order to remove a contradiction between those words and the reference to donating blood in paragraph 3.
E. MEETING OF COMMITTEE II, 6 February 1975 (CDDH/II/SR.14):

Article 11. Protection of persons

15. Mr. SOLF (United States of America) reminded the Committee of the decision that the proposal in document CDDH/II/70 to add a new paragraph requiring the written consent of patients before any surgical intervention was undertaken should be dealt with in connexion with Article 11, not Article 10.

16. Mr. PICTET (International Committee of the Red Cross) said that draft Article 11 contained nothing new in principle. As was pointed out in the ICRC Commentary, the Government Experts had in 1972 instructed the ICRC to select a qualifying term for the acts or omissions prohibited under the article. It had selected the adjective "unjustified". The reference to "grafts and organ transplants" had been added merely as an example, to keep the text abreast with current medical practice.

17. Mr. HERNANDEZ (Uruguay), introducing amendment CDDH/II/29, said that his delegation maintained its amendment which it regarded as containing the most adequate expression of the two fundamental aspects of the problem - the question of the will of the patient concerned and the question whether the operation was medically justified - and one which was fully consonant with the purpose of draft Protocol I.

18. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the proposal in amendment CDDH/II/43 to set out principles governing medical assistance for persons who had fallen into enemy hands was commendable. Moreover, the sponsors had agreed to introduce some drafting changes into paragraphs 2 and 3. Persons in enemy hands must not become guinea-pigs, and it should be provided that blood transfusions and skin grafts should be given only to persons of the same nationality as the donor and his comrades in prison. That would provide an additional guarantee against misuse.

19. The CHAIRMAN requested the representative of the USSR to organize the necessary consultations among the co-sponsors.

20. Mr. KHAIRAT (Arab Republic of Egypt) said that the sponsors of amendment CDDH/II/70 thought that the word "unjustified" should be deleted from Article 11, paragraph 1, in order to exclude the possibility of abusive medical intervention.

21. Mrs. MINOGUE (Australia) said that she could support the proposal for meetings between the co-sponsors, but considered that the matter could not be solved in a hurry.

22. Mr. MARRIOTT (Canada) said that the Soviet proposal raised practical difficulties, although he appreciated the spirit in which it had been made. There were often multinational forces on both sides in a conflict, and a blood bank with units to be used only for the nationals of a given country would be difficult to administer, yet it would be contrary to humanitarian principles to deny any person the assistance he needed. He would therefore have difficulty in accepting the USSR proposal.

23. He wondered whether the sponsors of amendment CDDH/II/70 had considered their proposal to delete the word "unjustified" in the light of amendment
CDDH/II/43, which seemed to be widely accepted; their objections could be regarded as fully covered by the word "endangered" in that amendment.

24. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that to save time he would not press for an immediate decision on his proposal, but would like delegations to give it some thought.

25. Mr. SOLF (United States of America) reaffirmed his delegation's general support for amendment CDDH/II/43, and thought that any issues still outstanding could be settled by the co-sponsors.

26. However, the word "hostilities" in paragraph 1 of that amendment was not as broad as the expression used in Article 2 common to the four Geneva Conventions of 1949 - "occupation ... even if the said occupation meets with no armed resistance". It would be useful to broaden the safeguard to cover all the situations referred to in that Article of the Conventions.

27. It had been suggested with some logic that the content of Article 11 might be more appropriately removed to Article 65. However, the representatives now participating in Committee II had been dealing with the problem in detail since 1971, and should continue to do so, in view of their special competence.

28. His delegation could not agree with the sponsors of amendment CDDH/II/70 that the word "unjustified" should be deleted on the grounds that all acts or omissions, whether justified or not, should be prohibited. With regard to the proposal in amendment CDDH/II/70 that written consent should be required before a life-saving operation was performed, he pointed out that the physical integrity of the patient would be endangered if the patient did not consent and the surgeon did not operate. If the amendment were adopted, the omission would be justified, even if the patient's physical integrity were endangered thereby.

29. The first sentence of paragraph 1 of amendment CDDH/II/43 and of the ICRC draft provided for over-all protection of protected persons against any improper act or omission which might endanger their health and integrity. However, some acts that endangered health might be necessary: for instance, if a detained person were to attack a nurse, her use of the force necessary to protect herself would be legally justified.

30. Where medical justification was concerned, a patient with a brain tumor who required a dangerous operation would be in even greater danger if the operation were not performed. Deletion of the word "unjustified" would place the doctor in a dilemma, because he would endanger his patient's health whether he operated or not. Whatever he did would violate the article. Such a dilemma must not be allowed to arise, and an adjective qualifying "act or omission" was essential. The word "unjustified" was legally sound, and his delegation could also accept "wrongful" or "inhumane".

31. With respect to the proposal in amendment CDDH/II/70 that written consent should be required for surgical intervention, while it was true that in United States medical practice the informed consent of the patient, preferably in writing, was generally required before surgery, such a precaution was not required under emergency circumstances, and would be incompatible with battlefield surgery. His delegation could therefore not agree to that proposal.

32. Mr. BOGLIOLO (France) said that his delegation was in general agreement with the proposal in amendment CDDH/II/43. He agreed with the Canadian
representative that it would be very dangerous to introduce the idea of nationality in connexion with blood transfers, for that would weaken humanitarian law. He also agreed with the United States representative that the word "unjustified" was necessary.

33. With regard to the proposal that the patient's written consent should be required for surgery, he pointed out that some patients would be unable to give their consent. It was in fact impossible to take into account all the situations that might arise.

34. Mr. ONISHI (Japan) said that his delegation sympathised with the intention behind amendment CDDH/II/70. On the other hand, he agreed with the United States representative that omission of the word "unjustified" would introduce a risk of passive abuse. His delegation therefore had misgivings about that proposal.

35. Mr. AGUDO (Spain) said that the controversy over the word "unjustified" might be merely due to a question of translation. If the three language versions were harmonized, the problem could be solved, and his delegation could then accept amendment CDDH/II/45.

36. Mr. SCHULTZ (Denmark) said he agreed with the United States representative concerning the need for a qualifying adjective. The words "all acts or omissions not consistent with generally accepted medical standards and controls" might, however, be used instead.

37. The CHAIRMAN asked whether the Committee wished to vote on amendment CDDH/II/70.

38. Mr. OULD MINNIH (Mauritania) said that the Committee should avoid taking a vote if possible. It would be less time-consuming to take a decision by consensus.

39. Mr. GOZZE-GUCETIC (Yugoslavia) endorsed the Danish proposal, and asked whether the sponsors of amendment CDDH/II/70 could accept it.

40. Mr. KHAIRAT (Arab Republic of Egypt) said he needed time to consult with the other sponsors of amendment CDDH/II/70 on the matter.

41. Mr. SOLF (United States of America) said it was premature to take a vote at that stage, since the sponsors were to meet that day and might be able to reach agreement.

42. Mr. SCHULTZ (Denmark) said that attention had already been drawn to the fact that the proposal in document CDDH/II/70 to add a new paragraph 3 concerning written consent for surgical interventions was in fact an amendment to Article 10, but that it had been agreed to transfer it to Article 11 because of differences in the medical ethics of various countries. For many countries, written consent would impose a burden on patients and surgeons alike. The question of written consent should therefore be left open. He also considered that the word "unjustified" should be deleted.

43. Mrs. DARIIMAA (Mongolia) said that, while her delegation fully understood the concern which had led the Arab countries to submit their amendment (CDDH/II/70), the problem was too complex to be decided by a vote. She
therefore suggested that the sponsors should hold informal discussions with those who objected to the amendment and should try to agree on a mutually acceptable wording.

44. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that amendment CDDH/II/70 referred to the original text submitted by the ICRC, whereas amendment CDDH/II/43 concerned the prohibition of unjustified acts or omissions, of which it then gave details, and to medical procedure not consistent with accepted medical standards, thus covering the point at issue.

45. The question of written consent by the patient was covered by the ethical code of the medical profession published by the World Health Organization.

46. Mr. MAKIN (United Kingdom) pointed out that the first sentence in amendment CDDH/II/43 referred to general, not purely medical, acts and omissions and was very similar to the wording of Article 13 of the third Geneva Convention of 1949. The omission of the word "unjustified" would, for example, prohibit the generally accepted practice of using force to prevent a prisoner of war from escaping. It might be preferable to use the word "unlawful" which was the one used in Article 13 of that Convention. In view of the much wider context, the problem could not be solved by mere reference to medical standards and practices.

47. Mr. DEDDES (Netherlands) said that if the wording of the article was based on amendment CDDH/II/43 it would be unnecessary to omit the word "unjustified", which was also used in that amendment.

48. Under battle conditions, it was often impossible to obtain the written consent of a patient and the matter should be left to the ethical conscience of the medical practitioner, who would always act in the interests of the patient.

49. Article 11 should be left in its present place, since it was a modification of Article 10, whereas Article 65 expressly listed prohibited acts.

50. Mr. ROSENBLAD (Sweden) said that, while he understood the underlying motives of amendment CDDH/II/70, he also saw the disadvantages of such a provision. The essential objective was to save the life of a wounded or sick person, even if he was unconscious or unable to write. He supported the Mongolian representative's suggestion that the problem might be solved through an informal meeting between the sponsors of amendments CDDH/II/70 and CDDH/II/43.

The Committee decided to refer the study of Article 11 and the amendments under discussion to the Drafting Committee, on the understanding that the sponsors of the amendments would submit a compromise text after informal consultations.

51. The CHAIRMAN asked the Committee whether it wished to vote on the question of obtaining the written consent of the patient.

52. Mr. SCHULTZ (Denmark) said that his delegation was prepared to vote on that question, but wished it to be clear that it was being considered as part of Article 11, not of Article 10, since Article 85 provided that no reservations could be formulated to the latter article.

53. The CHAIRMAN reminded the Committee that Article 85 had not yet been discussed by Committee I, to which it had been allocated. Nevertheless, he
thought that the other Committees could make suggestions concerning that article in the meantime.

54. Mrs. DARIMAA (Mongolia) suggested that the difficulty of illiterate or unconscious patients could be covered by some such wording as "written consent is not required in the case of force majeure".

55. Mr. MAKIN (United Kingdom) said that before the vote was taken he would like it made clear, always assuming that it was agreed that the amendment would form part of Article 11, that it applied to all sick and wounded persons: Article 11 in its existing form applied especially to persons who had fallen into the hands of the adverse Party.

56. Mr. KRASNOPEEEV (Union of Soviet Socialist Republics) said that the matter had been discussed by the medical profession for many years, but that no solution had been found to cover all circumstances. He thought it should be left to the professional conscience of the doctor concerned, because in many cases any delay would result in the death of the patient.

57. Mr. KHAIRAT (Arab Republic of Egypt) suggested that the vote should be postponed until the sponsors of the amendment had had time to discuss the wording with the sponsors of amendments to Article 11.

58. The CHAIRMAN said he understood that the Committee wished that matter also to be referred to the Drafting Committee after informal discussion between the sponsors of the various amendments with a view to agreeing on a mutually acceptable text.

It was so agreed.

F. MEETING OF COMMITTEE II, 10 February 1975 (CDDH/II/SR.16):

43. Mr. CALCUS (Belgium), introducing the amendment submitted by the Belgian experts to Article 16, paragraph 2 (CDDH/II/1), said that all too frequently drugs were administered to prisoners to elicit confessions. The case of drugs, however, was but one example; any treatment calculated to change human behavior should be prohibited. The text proposed by the Belgian experts mentioned only prisoners because they were the most frequent victims of such treatment.

58. Mr. ROSENBLAD (Sweden) suggested that in Article 16, paragraph 3, the words "to their families" should be followed by the words "In particular, no person exercising a medical activity shall be compelled to administer medications to prisoners of war or to apply other methods to them for obtaining information."

64. Miss MINOGUE (Australia) expressed her agreement with the representatives of Belgium and Sweden on the subject of behavior-changing drugs. That subject was actually covered by the new wording of Article 11.


59. [Mr. BOTHE (Federal Republic of Germany) said that] [t]he Belgian amendment [to Article 16 of the Draft Additional Protocol] had been withdrawn
on the understanding that the prohibition of the administration of drugs to induce revelation was clearly stated in Article 11 as amended in document CDDH/II/43.


Article 11. Protection of persons

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

*Attention is drawn to the words "related to a situation referred to in Article 2 common to the Conventions" in draft Articles 65(3), 67(2) and 68(3) which deal with similar situations.

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

(a) physical mutilations;

(b) medical or scientific experiments;

(c) removal of tissue or organs for transplantation.

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

[4. The persons described in paragraph 1 of this article have the right to refuse surgical operations. A signed statement of refusal is required if a surgical operation is refused by such a person.]

I. MEETING OF COMMITTEE II, 24 February 1975 (CDDH/II/SR.23):

6. [Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that] [i]n the case of Article 11, the Drafting Committee had not taken any decision on paragraph 4 as far as substance was concerned. It had dealt with that paragraph from a drafting point of view only.

7. He wished to draw attention to the various passages in square brackets in the text and to the foot-notes indicating points which remained to be determined.

8. The CHAIRMAN invited the Committee to comment on the report of the Drafting Committee (CDDH/II/240).
9. Mr. CLARK (Australia) said he wished to congratulate the Chairman and Rapporteur of the Drafting Committee on their excellent report, which had the general support of the Australian delegation, and in particular on having taken steps to ensure that the views of all delegations submitting amendments were taken into account and that the precise shade of meaning required for the various provisions was conveyed in all the working languages. That reconciliation of the various versions might be very significant in the implementation of the Protocols.

11. The revised draft of paragraph 4 of Article 11 seemed out of place in that article; but his delegation was willing to listen to arguments concerning the inclusion and placing of a new article dealing with the point.

Paragraphs 1 and 2

21. Mr. MAKIN (United Kingdom) drew attention to the foot-note on page 5 of the report (CDH(II)/240) which referred to the phrase "as a result of hostilities or occupation". A different formulation had been used in draft Articles 65, paragraph 3, 67, paragraph 2 and 68, paragraph 3, as well as in the text just adopted for Article 9, but it was important that, throughout draft Protocol I, the same wording should be used to express the same idea. He suggested that the wording in question be referred to the main Drafting Committee.

22. The CHAIRMAN said he agreed with the United Kingdom representative.

It was so agreed.

23. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said there was an error in the Russian version of paragraph 1: the words "medical procedure" had been translated as "medical experiment".

Paragraphs 1 and 2 were adopted.

Paragraph 3

24. Mr. CHOWDHURY (Bangladesh), supported by Mr. MAIGA (Mali), said that he had certain reservations about paragraph 3. He knew of recent cases in which persons had been forced to give blood to an extent which had led to their death. It would be difficult to provide adequate safeguards against the abuse of the exceptions in paragraph 3 by the forcible taking of blood or tissue on the pretext of a donation. He would have preferred the provision to be omitted but would not oppose its inclusion.

25. Miss MINOGUE (Australia) said that paragraph 3 had been prompted by the concern that no life should be lost because of the inability of a prisoner or detainee, or a resident of an occupied territory, to make a donation of blood or tissue. It had been drafted so as to provide every possible form of protection for the donor. Its authors had considered that its absence would have far more serious consequences than would the danger of abuse to which its inclusion might give rise. The conditions under which the exceptions could be applied had been specified as clearly as possible and the medical standards and controls referred to were recognized throughout the world. The authors hoped that the paragraph, which they believed to be in conformity with the best standards of humanitarian law, would be endorsed by the Conference.
26. Mr. CHOWDHURY (Bangladesh) said that while he admitted the need for paragraph 3 and had noted the care the sponsors had taken in their choice of language, certain incidents with which he was familiar had prompted him to draw attention to the possibility of abuse. That was no doubt why there had been no such exception in the original text. There were potential dangers both in its inclusion and in its omission. He would have preferred the original text to stand, but if there was a consensus in favour of the exceptions clause he would not oppose it.

27. Mr. SCHULTZ (Denmark) said that the representative of Bangladesh had rightly drawn attention to the danger of abuse but such a consideration should not be allowed to prevent the introduction of any reasonable regulation, since the question of abuse could be raised in relation to almost all the regulations of the draft Protocols and of the Geneva Conventions themselves.

28. Mr. DEDDES (Netherlands) said that he shared the Danish representative's view. It was essential to make provision for blood donations. The paragraph provided adequate safeguards, but there was always some risk of abuse of any regulation.

29. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, while the concern voiced by the representative of Bangladesh was justified, he too considered that the safeguards offered sufficient protection against abuse. If other delegations considered them insufficient, they could perhaps suggest additional measures of protection.

30. Mr. MARTIN (Switzerland) said that, in stipulating the conditions in which donations of blood or tissue could be made, the provision itself would help to prevent abuse. Without it there would be no criteria to determine whether or not such abuse had taken place.

31. Mr. KUSSBACH (Austria) said that the important point raised by the representative of Bangladesh might be met by amending the text of paragraph 2 (c) on the lines of that in amendment CDDH/II/43, to read: "(c) the removal of tissues, including blood, or of organs for transplant".

32. Mr. MODICA (Italy) said that paragraph 2 (c) referred to transplantation and not to transfusion. An exceptions clause relating to donations of blood was therefore inappropriate.

33. Mr. MAIGA (Mali) said that it was contradictory to use the words "provided that they are given voluntarily" in paragraph 3 when paragraph 2 prohibited the acts in question even with the consent of the persons concerned. Paragraph 3 could give rise to many abuses. He suggested that the words "including blood transfusions which are not justified by the medical treatment of the persons concerned and are not in their interest" should be added at the end of paragraph 2 (c).

34. Mr. DEDDES (Netherlands) said that, while he had no objection to the Austrian representative's proposal, the words "including blood" were superfluous, since, anatomically speaking, blood was a tissue.

35. Mr. ROSENBLAD (Sweden) said that, in international humanitarian law it was better to have specific provisions than no provision at all, since silence might invite abuse. Those responsible for applying the provisions needed some
guidance such as that given in paragraph 3. The same consideration applied to Article 14.

36. The CHAIRMAN said that the Secretary of the Committee had drawn his attention to the fact that, since paragraph 3 had been adopted in principle before being referred to the Drafting Committee, any proposal for its deletion would require a two-thirds majority in accordance with rule 32 of the rules of procedure. He suggested that the Drafting Committee should endeavour to improve the wording of the paragraph when it met to draw up the final text of Article 14, at which time the representatives of Bangladesh and Mali might be present.

37. Mr. MAIGA (Mali) said that he would be glad to attend the Drafting Committee's meeting. He could not agree that a two-thirds majority would be required for the deletion of the paragraph. The Committee had just adopted by a simple majority the second alternative text for Article 9, paragraph 1, despite the fact that the first alternative had been approved at the first session of the Conference.

38. The CHAIRMAN said that the first alternative text of Article 9, paragraph 1, had been approved at the first session of the Conference by a Working Group only and not by the Committee as a whole.

39. Mr. CHOWDHURY (Bangladesh) said that he too would be glad to attend the Drafting Committee's meeting. According to his recollection, only the principle of the prohibitions in Article 11, and not the exceptions in paragraph 3, had been accepted at the first session. Deletion of the exceptions clause would not, therefore, require a two-thirds majority.

40. The anxiety he had expressed had been founded not on mere conjecture but on actual cases, known to the League of Red Cross Societies, in which prisoners of war had been forced to give blood against their will.

41. The CHAIRMAN said that paragraph 3 would be referred to the Drafting Committee.

[Paragraph 4]

42. Mr. KAIRAT (Arab Republic of Egypt) said that his delegation had cosponsored amendment CDH/II/70 on which paragraph 4 had been based. Its purpose was to endorse existing medical practice by providing protected persons with the right to refuse surgical operations and to require such refusal to be made in writing. The amendment had been considered under Article 10 at the first session of the Conference but it had since been thought more appropriate to include it in Article 11.

43. Mr. EL MEHDI (Mauritania) said that his delegation supported the provisions of the paragraph.

44. Mr. MAKIN (United Kingdom) said that he could see a number of difficulties in the text of paragraph 4. First, it would be difficult to compel a person to sign a statement of refusal. Second, a statement signed in field conditions might be lost. Third, it would be difficult for the doctor to make a patient from the adverse Party understand what was at stake if neither spoke the other's language. Fourth, the reservation in the original proposal that the terms of the paragraph should apply only if the individual concerned was fully conscious had been removed. Lastly, it was not clear what was meant by the term
"surgical operations"; would it cover, for example, the removal from a patient's leg of a bullet which, if not removed, might subsequently make amputation necessary?

45. There should be some room for compromise between those in favour of the provision and those opposed to it, possibly by making it an "endeavour" clause rather than the complete prohibition which the first sentence was intended to be.

46. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, while he fully appreciated the concern of its authors, he had certain doubts about the provision. A refusal to undergo surgery in peacetime was accepted by the surgeon only in certain well-defined conditions which protected him from legal action and absolved him from responsibility if the refusal led to the patient's death. In war conditions there was not always time for the surgeon to consult the patient before carrying out an operation. The statement of refusal was designed to protect the surgeon rather than the patient. It was necessary to know what kind of surgical operation was referred to and to ensure protection for the patient rather than for the surgeon.

47. Mr. BOGLILOLO (France) said that the conditions in which surgical operations were carried out in peacetime were totally different from those in wartime. The purpose of the text was to protect the surgeon carrying out a major operation which might entail danger to life or require the amputation of a limb. There was no question of requiring a signed statement of refusal in the case of a minor operation for the removal of a bullet, for example. Some words might be added to make the text more explicit.

48. The CHAIRMAN suggested that paragraph 4 should be referred back to the Drafting Committee for revision.

It was so agreed.

J. ADDENDUM TO THE REPORT OF THE DRAFTING COMMITTEE, COMMITTEE II, 28 February 1975 (CDDH/II/240/Add.1):

Article 11. Protection of persons

[4. The persons described in paragraph 1 of this article have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.]

K. MEETING OF COMMITTEE II, 4 March 1975 (CDDH/II/SR.29):

1. The CHAIRMAN invited the Committee to consider the draft texts contained in addendum I to the report of the Drafting Committee (CDDH/II/240/Add.1).

2. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the addendum filled in some of the gaps in the report of the Drafting Committee (CDDH/II/240) and dealt with some of the provisions that had been referred to that Committee.
3. ... Paragraph 4 of Article 11, which had been referred back to the Drafting Committee, had been slightly modified. ...

6. Miss MINOGUE (Australia) said that her delegation had always hoped that Article 11, as the cornerstone of the section, if not of the whole of draft Protocol I, might be accepted by consensus of the Committee rather than that any part of it should be put to the vote. Following reference of paragraph 3 to the Drafting Committee as a result of questions raised by the representatives of Bangladesh and Mali at the twenty-third meeting (CDDH/II/SR.23), a small Working Group, representing the original sponsors of revised Article 11, had met the representative of Bangladesh and endeavoured to find a formula which would strengthen the protection afforded to donors of blood or of skin for grafts among persons deprived of their liberty. The representative of Bangladesh had emphasized the difficulty of obtaining free consent from such persons, a matter which had always been a major concern of the sponsors. After considering various possibilities, the Group had eventually returned to the text now before the Committee. The representative of Bangladesh had authorized her to say that the authors of the article had chosen their words carefully and well and that he could not suggest any improvements. The Group had accepted a suggestion that violation of the article should be treated as constituting a grave breach; the representative of Mali had subsequently accepted that suggestion and withdrawn his opposition to paragraph 3.

7. The Group proposed that the Committee should unanimously request the General Committee to ensure that when Article 74 was discussed by Committee I, the latter should be informed of Committee II's wish that whatever formula was finally adopted it should provide for a breach of the requirements of Article 11 to be regarded as a grave breach.

8. The revised text of paragraph 4, which had also been referred to the Drafting Committee, was the result of an effort to produce a text which would attract general acceptance.

9. Mr. MARTIN (Switzerland) suggested that since paragraph 3 had not been changed, it should be voted on or accepted by consensus.

10. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, although he was one of the sponsors of paragraph 3, after hearing the representatives of Bangladesh and Mali, he still had some doubts. How was it possible to ensure that the donation of blood or of skin for graft was voluntary in the case of persons deprived of liberty? He was strongly of the opinion that the Committee ought not to take a final decision on the article until Committee I had dealt with Article 74, on repression of breaches of the Protocol.

11. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, referring to the suggestion by the representative of Switzerland, said that paragraphs 2 and 3 had not been included in the addendum to the Drafting Committee's report, since it was understood that they had been accepted in the original report (CDDH/II/240).

12. Mr. GREEN (Canada) said that as he understood them, the reservations of the representative of Bangladesh were related to the fear that persons deprived of liberty might be compelled against their wishes to give blood and tissue: that would amount to a grave breach. He also understood some of the fears expressed by the representative of the Union of Soviet Socialist Republics. Deletion of the article, however, might lead to a situation where a
person deprived of liberty was denied the right to give blood even to save the life of a comrade likewise without liberty. While the taking of blood against the wishes of a person might amount to a grave breach, to deny to a prisoner the right to give blood to save the life of a comrade, when such denial might in fact result in the death of that comrade, could itself lead to an accusation of grave breach against a medical officer, and to a charge that, by not allowing the first prisoner to give blood, he had allowed or forced the second prisoner to die. The Committee was therefore faced with the question, which was the lesser evil: the right to allow a person to give blood if he wished, in order to save the life of a comrade, or the refusal to allow a doctor to take blood even if a voluntary offer were made, or even to ask for volunteers if that were the case. In his view it was a question of deciding merely to allow someone to volunteer to give blood, should he so desire, for the sake of those who were his own comrades-in-arms.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he was not advocating the deletion of Article 11; he was merely suggesting that paragraph 3 should be accepted provisionally. How could a person deprived of liberty be sure that blood donated by him would go to a comrade or compatriot? It might be given to enemy soldiers, in which case he could be accused of collaboration when he returned home. It was essential to provide safeguards that would relieve a person deprived of liberty from any responsibility in the matter.

14. Mr. SOLF (United States of America) said that he was entirely satisfied with the solution produced by the small Working Group. The words "including biological experiments, wilfully causing great suffering or serious injury to body or health" in the Articles of the four Geneva Conventions of 1949 relating to grave breaches (Article 50 of the first Convention, Article 51 of the second Convention, Article 30 of the third Convention and Article 147 of the fourth Convention) should cover any serious violation of Article 11. The Working Group’s report had been endorsed by the Drafting Committee and he did not see what further safeguards could be added to paragraph 3 or what other wording could make the standards more rigorous. He was concerned, in common with the representative of the Union of Soviet Socialist Republics, about abuses of those standards. Nevertheless, the establishment of standards and the provision of penal sanctions against those who abused them was all that international law-making could do to deter such abuses. Failure to establish standards would only perpetuate the abuses of the past.

15. In his opinion, there was ample material available to warrant action on paragraph 3: to place it in square brackets would mean no action at the present session.

16. Miss ZYS (Poland) said that, as one of the sponsors of the original revision of Article 11, she had long had doubts about paragraph 3. She had read reports of thousands of prisoners in the Second World War, many of them her own compatriots, who had been forced to give blood to help the enemy, sometimes dying as a result. In every case-history she had read there had been abuse by the Detaining Power; in no case had the blood thus extorted been used to save the life of a fellow-prisoner or compatriot. While she recognized that doctors should not be denied the possibility of obtaining blood donations, the Conference was concerned with protecting the victims of armed conflict from abuse, and it was essential to provide greater safeguards. If the choice was between doctor and victim, then the victim was entitled to the greater safeguards. She was therefore in favour of accepting paragraph 3 provided that
additional safeguards against abuses might be incorporated and a more satisfactory text ultimately produced.

17. She agreed with the Australian representative that Article 11 was the key article of draft Protocol I.

18. Mr. SCHULTZ (Denmark) said that the risk that it might be abused was no argument for not introducing a new and reasonable provision in international law. History showed that there had been considerable abuse of international rules in the past by Occupying Powers, but the introduction of new provisions in the draft Protocols was a move to curb such abuse and thus help to humanize warfare. In the case of paragraph 3, it would be better not to concentrate too much on the possibility of abuse.

19. He was surprised that a representative who had frequently stressed the need for a humanitarian attitude and advocated the treatment of patients without distinction, should warn against the danger of donated blood being used for enemy soldiers. The risk existed, of course, but the principles embodied in Article 10 should apply in the present case. Everyone wished to fight the enemy, but only by legal and reasonable means. It would be dangerous, in the context of blood donation, to introduce the principle of distinction between friends and enemies.

20. He agreed with the representative of Canada that the disadvantages of introducing such a distinction outweighed the advantages. He accordingly supported paragraph 3 as it stood.

21. Mrs. DARIIMAA (Mongolia) said that experience in the Second World War and in present-day wars provided ample evidence of the need to ensure the greatest possible protection for prisoners in occupation conditions. As far as "voluntary" donations of blood were concerned, it was difficult to be sure whether a prisoner had really given without coercion or inducement. In her opinion, paragraph 3 needed very careful consideration to ensure that it was drafted so as to prevent a recurrence of the unprofessional action of some doctors in the Second World War. She endorsed the view of the representatives of Bangladesh and Mali that the paragraph should not receive final acceptance at the present stage.

22. Mr. URQUIOLA (Philippines) said he agreed with the Australian representative on the importance of Article 11. The representative of the Union of Soviet Socialist Republics had made a valid point in stressing the possible danger of accusations of collaboration against a prisoner who had donated blood or skin for graft: but, on the other hand, the Danish representative had argued persuasively against the principle of distinction. In his opinion, the Committee would have to take a decision of substance before discussing paragraph 3, namely, whether donations of blood or skin for graft should be used only for a friend or compatriot of the donor, or whether they should be used for anyone irrespective of the party to which he belonged.

23. Mr. CZANK (Hungary) said that Article 11 was very important; the great problem was how to include additional safeguards in paragraph 3 and how to express explicitly in Article 74 that the violation of paragraph 3 would constitute a grave breach of the Protocol.

24. One additional guarantee could be provided by inserting in paragraph 3 a mandatory requirement for a statement of consent on the part of the donor of
blood or skin. The Philippine representative had raised the very important question of who could give blood for whom. That point should be considered in conjunction with Article 10, and the two articles harmonized so that contradictions were avoided. Such matters could be referred to the Drafting Committee and, as the representative of the Union of Soviet Socialist Republics had suggested, Committee II should accept the text provisionally while awaiting the outcome of the discussion on Article 74.

25. Mr. MARRIOTT (Canada) said he agreed with the Danish representative that to surround international law with a web of administrative procedures would not prevent abuses. The maintenance of professional ethics even in peacetime could never be guaranteed: all professions had their black sheep. Those who had expressed disquiet about paragraph 3 of Article 11 should consider Article 13 of the third Geneva Convention of 1949, which read: "Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner-of-war in its custody is prohibited and will be regarded as a serious breach of the present Convention." He could not see how the Committee could really do any more to ensure humanitarian treatment than what had already been proposed. It would be a mistake to defer further consideration.

26. Miss MINOGUE (Australia) said that the authors of the proposal had always been aware that the problem was an extremely difficult one, and that there was no absolute safeguard against evil intent on the part of the medical profession. One safeguard that had been examined was the possibility of blood and skin donations for fellow nationals only, even though that concept was anathema to the Group because it drew a distinction between wounded and sick persons, according to their allegiance. However, it had been concluded that such a provision could boomerang against the party of the blood donor himself, since if blood of a special group were needed for a sick enemy and a prisoner of that blood group was unwilling to give it, his refusal might rebound against the prisoners. The possibility had therefore been abandoned on practical as well as ideological grounds.

27. One point to which insufficient attention had been given was that paragraph 3 provided that such donations must be given "voluntarily and without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient" (CDDH/II/240). The conditions in which a donor might give blood were very strictly laid down, and should themselves provide protection against many of the abuses which the representative of Poland had mentioned.

28. She agreed with the Canadian representative that a decision should not be delayed. She did not feel that there was substantial disagreement: there was in fact a consensus in the Committee on the desirability of such a paragraph. Any suitable additional provisions would, she was sure, be accepted, but she hoped that the Committee would not decide to insert a provision limiting donations to fellow-nationals, for that would be quite contrary to Article 10 and out of harmony with the whole spirit of draft Protocol I.

29. She could accept a clause stating that a breach of the article would be a grave breach.

30. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said he agreed with the representatives of Poland and the Soviet Union. He did not object to
laying down the rule in paragraph 3. The problem was how to establish safeguards against abuse of that paragraph. The question might be referred to Committee I which could make abuse a war crime, and provision to that effect could be included in national laws, in accordance with the first Geneva Convention of 1949. Another possibility was to adopt the Philippine suggestion of the principle of blood donations exclusively for fellow-nationals.

31. Mr. PICTET (International Committee of the Red Cross) said that ever since 1863, the principle had been accepted that the wounded should be treated without distinction of nationality, and that assistance to the wounded should never be considered as participation in a conflict. Nevertheless, he could well understand that the Committee was seeking guarantees, for it would be inadmissible for a Detaining Power to abuse its authority and force prisoners of war to give blood to the enemy. It was therefore legitimate that blood donations should be surrounded by all possible safeguards. Paragraph 3 offered such guarantees, but it was for the Committee to decide whether they were sufficient. In case of doubt the guiding principle, the golden rule, should always be the interest of the victims, and the Committee had to try to reconcile the interests of the various categories of victim concerned, and to ensure that the Detaining Power did not shift its responsibilities on to the adverse Party.

32. Mr. FRUCHTERMAN (United States of America) said his delegation supported the Danish representative's view that no distinction must be made between the wounded and sick, and that any such provision would open the door to discrimination against one party. His delegation found paragraph 3 in its present form acceptable but thought that the Hungarian representative's suggestions might be incorporated.

33. There was an important and appropriate provision in the penultimate paragraph of Article 30 of the third Geneva Convention of 1949, which read "Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency." The addition of one more sentence to paragraph 3 incorporating that provision, even omitting the words "upon request" so as to make it mandatory for the detaining authorities to issue an official certificate, might be enough to enable the Committee to adopt paragraph 3.

34. Mr. ONISHI (Japan) said that from the humanitarian viewpoint it would be ideal if any prisoner who wished to give blood, even to the enemy, should be able to do so. But Article 11 stressed the worst side of the enemy, and humanitarian feelings on the detainee's part would thus be rather contradictory. The most important need, however, was to protect the weaker side, namely the detainees, and since blood donations were essential for the reasons given by the Australian representative, it would be best if such donations could be reserved for fellow nationals.

35. Mr. MARTIN (Switzerland) said that, despite the agreement of the representatives of Bangladesh and Mali, the discussion on paragraph 3 was being reopened. Some of the proposals made, if adopted, would mean that the Committee would have to return to Article 10, which had already been adopted by consensus. That could not be done: there were some principles which could not be
changed. To reserve blood for the nationals of a given country conflicted with humanitarian ideals. At most the text should be returned to the Drafting Committee for inclusion of the words of the third Geneva Convention of 1949 suggested by the United States representative. In any case, paragraph 3 should not be placed in brackets until the matter of grave breaches of the Convention had been considered. As far as his own delegation was concerned, paragraph 3 could well be adopted as it stood.

36. Mrs. MANTZOLINOS (Greece) said that, like the representatives of Australia, Canada, Denmark, Switzerland and the United States of America, she regarded prisoners and the wounded as human beings needing protection, irrespective of whether they were compatriots or enemy nationals. Greece had had experience in many fields of the practices of Occupying and Detaining Powers: practices such as those referred to by the representatives of Bangladesh and Poland were already covered in that they constituted "grave breaches" of the Geneva Conventions. It was not the task of the Committee to reiterate existing judicial denunciations of certain practices, but rather to reinforce the "golden rule" of Geneva law to which the representative of the ICRC had referred. In the context of blood donation, therefore, her delegation supported the Australian proposal which provided that no distinction whatever should be made in the medical treatment given to the wounded and sick or to prisoners.

37. Mr. MAKIN (United Kingdom) said he agreed with the Greek representative on the question of not confining blood or tissue donations to any particular nationality.

38. Two suggestions for tightening paragraph 3 had been made; one that a breach of the paragraph should be regarded as a grave breach, and the other that consent should be in writing. He proposed that the consent in writing should be witnessed by a person of the same nationality as the donor; that would provide an additional safeguard. He would not, however, insist on that proposal if the medical representatives on the Committee thought it would make the process unworkable.

39. Mr. CHOWDHURY (Bangladesh) said that, after his discussions with the Australian representative, he had agreed that paragraph 3 could stand. He now felt that the United Kingdom proposal would go some way to providing an additional safeguard, although there might be cases of a signature being extorted by coercion. A balance must be struck between fears which were not unfounded and the need not to deprive the sick and wounded of essential blood.

40. Miss ZYS (Poland) suggested that the words "and provided that it in no way benefits the adverse Party" be inserted in paragraph 3. Adoption of the United Kingdom suggestion would also be a step forward, even though such a signature could in fact be extorted by force from a detainee. However, the aim should be to prevent a Detaining Power from shifting its responsibilities on to the adversary.

41. Mr. LIAS (Indonesia) said that he had listened with great interest to the statement by the representative of Bangladesh. There was no completely certain way of avoiding abuses; he therefore thought it unnecessary to redraft paragraph 3, which was sufficiently clear, though it would be desirable to add the requirement, proposed by the Hungarian and United Kingdom representatives, that the giving of blood should be made subject to written consent signed in the presence of two co-prisoners. From the medical standpoint, there should be
no difficulty about obtaining such written consent since blood donors must be healthy individuals.

42. Mr. MARRIOTT (Canada) said that he did not think that the requirement of written consent provided any additional protection. On the other hand, the United States suggestion that the paragraph might contain a provision on the lines of the third paragraph of Article 30 of the third Geneva Convention of 1949 might give considerable protection in practice, not only to prisoners but to other detained persons. He hesitated to suggest a precise wording: if the principle were adopted, the Drafting Committee would have no difficulty in producing a text.

43. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that some such provision was necessary because the giving of blood was the only type of medical operation for which no regulation had yet been made. He feared, however, that a provision on the lines of Article 30 of the third Convention might result in the Red Cross being inundated with certificates, because blood transfusion was a very frequent operation. He suggested that a small Working Group be set up to consider with the ICRC how such an arrangement might be made.

44. Mr. KHAILAT (Arab Republic of Egypt) said that he had the impression that most representatives wished to retain paragraph 3, while some desired the insertion of further guarantees against abuse. He thought that the Committee was now in a position to take a decision on the two most important safeguards that had been proposed: the provision that an infringement of the article should constitute a "grave breach", and the requirement of the donor's written consent. Once a decision on those two matters of substance had been taken, the paragraph could be referred to the Drafting Committee or to a Working Group.

45. The CHAIRMAN invited the representative of Australia to convene a small Working Group composed of interested representatives, preferably with a working knowledge of English, to help her draft the new provisions that would be needed.

46. Miss MINOGUE (Australia) said she would gladly do so. It seemed to her that two new provisions would be needed: an additional sentence to paragraph 3 to cover the requirement of written consent or a medical record, as proposed by Canada; and a new "grave breach" paragraph. Her original proposal had been that violation of the paragraph, rather than of the article as a whole, should constitute a "grave breach". She still preferred that solution because she thought that violations of paragraphs 1 and 2 were already covered by the Conventions, but some delegations seemed to think that the provision should refer to violations of the whole article.

L. PROPOSALS FROM THE WORKING GROUP, COMMITTEE II, 4 March 1975 (CDDH/II/250):

Proposals from Working Group on Article 11, Protocol I

1. Add a new paragraph to Article 10.

10.3 A record of all medical procedures, including examinations, surgical operations, laboratory and other tests, and all other medical procedures carried out, shall be kept for each of the wounded and sick. Similar records shall be kept for all persons described in Article 11 of the present Protocol. These records
shall be made available at all times for inspection by the Protecting Power.

2. Add the following paragraph as sub-paragraph 4 of Article 11, and the existing sub-paragraph 4 becomes sub-paragraph 5.

11.4 Compulsory removal of blood or of skin for grafts or any act or omission prohibited in paragraph 3 of this article, which seriously endangers the physical or mental health and integrity of a person who has fallen into the hands of the adverse party or who is interned, detained or deprived of liberty, shall constitute a grave breach of this Protocol.

M. MEETING OF COMMITTEE II, 5 March 1975 (CDDH/II/SR.30):

3. Miss MINOGUE (Australia), Chairman of the Working Group on Article 11, said that her Working Group had already submitted certain proposals in document CDDH/II/250. However, that document was of an indicatory nature only, since the members were not satisfied with the present formulation and intended to submit a revised version in the near future.

4. The Working Group was unanimous in considering that only one addition should be made to Article 11, namely, a new sub-paragraph defining acts which would constitute "a grave breach" of the Protocol.

N. REVISED PROPOSALS FROM THE WORKING GROUP, COMMITTEE II, 5 March 1975 (CDDH/II/250/Rev.1):

Proposals from Working Group on Article 11, Protocol I

1. Add a new paragraph to Article 10.

10.3 A record of all medical procedures undertaken shall be maintained for each of the wounded and sick. Such records shall also be maintained for all persons described in Article 11 of the present Protocol and shall be made available at all times for inspection by the Protecting Power.

2. Add the following paragraph as sub-paragraph 4 of Article 11, and the existing sub-paragraph 4 becomes sub-paragraph 5.

11.4 The following wilful acts directed against the persons described in paragraph 1 of this article which seriously endanger the physical or mental health and integrity of such persons, constitute grave breaches of this Protocol:

(a) The compulsory removal of blood for transfusion or skin for grafts, or any failure to comply with the standards and procedures prescribed by paragraph 3 of this Article;

or
(b) Any act or omission contrary to the prohibitions stated in paragraphs 1 and 2 of this Article.

0. MEETING OF COMMITTEE II, 7 March 1975 (CDDH/II/SR.52):

1. The CHAIRMAN invited the Chairman of the Working Group on Articles 10 and 11 to submit the Working Group's proposals (CDDH/II/250/Rev.1).

2. Miss MINOGUE (Australia) said that the special Working Group had endeavoured to provide a synthesis of the views expressed in the full Committee. It had reduced its task to drafting a provision making violation of Article 11 a grave breach of draft Protocol I and to finding a formula for the recording of voluntary donations of blood or skin by persons described in paragraph 1 of Article 11, which would constitute evidence that the requirements of paragraph 3 had been complied with.

3. The original attempt to draft a "grave breach" provision had been complicated by the appearance of a new draft Article 74 submitted by the ICRC, and the Working Group had decided to reformulate its proposal so that it would fit into the general framework of that provision, which might well be where the Drafting Committee of the Conference would decide to place it. The Group had also considered whether the "grave breach" provisions should cover the whole article or only paragraph 3. Initially there had been a feeling that breaches of paragraphs 1 and 2 were already covered by existing provisions of the Geneva Conventions; but on reflection it had been considered that the existing cover might not be adequate and that such an offence would be so serious that the provision ought to cover all sections of the article.

4. The Group had learned that the Geneva Conventions at present contained no definite obligation on a Detaining Power to keep medical records of the persons it was detaining. The Working Group had considered that that gap should be closed and that, at the same time, a system should be provided within which records of blood or skin donations could also be kept. It had considered where such a provision - which was, of course, wider than the provisions of any one article - might be kept and had decided that Article 10 would be the best place. There might be some procedural problems in adding a new paragraph to that article, which had already been approved, but as the Group's proposal did not in any way affect the provisions already approved, it had been thought that the Chairman should be able to permit further discussion.

5. The Working Group believed its proposals were simple and self-explanatory and that they filled an important gap in the Conventions and the Protocol. It was for the Committee to decide where they should be placed.

6. Mr. MARRIOTT (Canada) suggested that the word "which" in the proposed paragraph 4 of Article 11 should be replaced by the words "if they", so as to avoid the suggestion that the procedures in question necessarily endangered health. The question might be only one of drafting but it might also be one of substance.

7. Mr. MAKIN (United Kingdom) said that the addition of a new paragraph to Article 10, which had already been adopted by the Committee, would seem to be a matter requiring a two-thirds majority. The proposed new Article 11 seemed to be a very long way from the anxieties of the representative of Bangladesh concerning the possible abuse of blood and skin donations from prisoners and
detainees, which had originally suggested the need for safeguards. The first sentence, which appeared to cover all the wounded and sick, whether civilian or military and whether involved or not in the conflict, amounted to an unwarranted interference in the internal affairs of States. It would impose a very great burden on countries where paper or other required facilities were scarce. The second sentence referred to all the persons described in Article 11, and such persons were not necessarily even wounded or sick. He questioned the need for an article prescribing the maintenance of medical records for healthy persons.

8. Something seemed to have gone wrong with the drafting. Article 10 was a non-reservable article, which should contain nothing that might be open to disagreement by anyone. He accordingly proposed that, if such a paragraph were deemed necessary, it should not be included in Article 10; that the first sentence should be deleted; and that the second sentence should be radically re-drafted.

9. Although there had been a general consensus that some new provision on the lines of the proposed new Article 11, paragraph 4, was necessary, he was not happy about the drafting of the Working Group's text. It should be referred to the Drafting Committee, but no decision should be taken until Committee I had completed its consideration of Article 74 concerning grave breaches of the Protocol. It might be that the very concept of "grave breaches" would be omitted. In the meantime, it should be placed in square brackets and treated as ad referendum.

10. Mr. SOLF (United States of America) said that the United Kingdom representative had already said many of the things he had intended to say. The question of medical records belonged rather in Article 11 than in Article 10. He believed that some provision should be made for the keeping of records of the wounded and sick described in Article 11, but an international law provision should not be extended to all wounded and sick persons irrespective of their state of liberty or nationality. With that proviso, the concept of the paragraph should be referred to the Drafting Committee.

11. His delegation endorsed the principle that there should be a provision along the lines of the proposed new paragraph 4 in Article 11. Apart from the ambiguity pointed out by the Canadian representative, the new draft failed to take account of the fact that Article 11 referred not only to unjustified acts but also to omissions: the new "grave breach" provision should be drafted so as to cover both types of violation of Article 11.

12. His delegation endorsed what the Working Group had been trying to do in its draft of paragraph 4, but thought it might with advantage be referred to the Drafting Committee. The Committee would certainly have to look at it again when it knew the final draft adopted for Article 74, but he did not think it would be necessary to put the paragraph in square brackets. A simple foot-note that it was subject to re-examination would suffice. He was confident that a two-thirds majority could be mustered for the reconsideration of the paragraph at that time.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), referring to the proposed new Article 10, paragraph 3, said that any difficulty about a two-thirds majority could be got round by making the paragraph into a new article dealing with the keeping of medical records. The absence of such a provision in the Geneva Conventions was a gap that needed filling. There must be some
basic document from which it could be ascertained whether sick and wounded prisoners of war had received correct treatment or whether abuses had been committed. The purpose of the new paragraph was to make good that omission.

14. With regard to the first sentence of the new paragraph 3, there was already provision in most national legislations for the keeping of medical records, so that no additional burden on medical staff would be involved; but he did not know what would be the position in the developing countries. He could not see the point of the first part of the second sentence, since blood or skin donors seemed to be already covered by the first proposal, but the provision that the medical records of treatment given to the persons to which reference was made in Article 11 must be available for inspection by the Protecting Power was indispensable. It was in no way concerned the treatment of their own sick and wounded by either side nor did it constitute an unwarranted interference in internal affairs. That provision could constitute an important supplementary guarantee against abuse in the treatment of prisoners of war. If the provision needed redrafting, it could be redrafted without difficulty. There was a Russian saying that a telegraph pole was a redrafted Christmas tree. It was highly important, however, that such a provision should be retained, whether it was placed in Article 10, in Article 11 or in a separate Article 10 bis.

15. Article 11, paragraph 4, could be dealt with later; but whatever decision was finally adopted concerning Article 74, Committee II should still inform the Conference of its view that it regarded such abuses as a grave breach of Protocol I and such a provision as an important extension of the protection it afforded to the wounded and sick and as an important development of humanitarian law.

16. Mr. DEDDES (Netherlands) said that it was evident that there was something missing from the Geneva Conventions in respect of the keeping of medical records. He appreciated the point that such a provision should not be included in Article 10, which was non-reservable; but he would strongly support it as a separate article or as an additional paragraph to Article 11. The latter would seem perhaps the more logical solution since it was a question of the protection of persons. The keeping of records was a normal procedure both in peacetime and in wartime conditions, so that the provision would not constitute an excessive burden. When redrafting the text, the Drafting Committee should ensure that it was made applicable not only to the sick and wounded and to the persons covered by Article 11, but also to donors of blood and skin.

17. Mr. CZANK (Hungary) said that the arguments put forward by the United Kingdom representative were in general reasonable and should be taken into consideration. He agreed with the representatives of the Netherlands and the Union of Soviet Socialist Republics that the provision would fit better into Article 11 than into Article 10. As it stood, the text referred to all persons described in Article 11; but the United Kingdom representative had been right in suggesting that there might be some persons covered by that article for whom medical records would not normally be kept. It might be better, therefore, to insert the words "paragraph 3" after the words "article 11", since the question had originally arisen in connexion with that paragraph.

18. The idea contained in the proposed new paragraph 4 of Article 11 constituted a valuable safeguard. However, Article 74 was now under review and new suggestions concerning it had recently been made by the ICRC in document CDDH/210. The best solution might be for Article 74 to be extended to cover
the point raised in connexion with Article 11. He therefore proposed that the provision be adopted ad referendum.

19. Mr. MARTINS (Nigeria) said that the provision would create a serious problem for developing countries with inadequate medical facilities and a shortage of trained personnel. It might be difficult for some developing countries to keep records at all. The inspection clause implied that the Protecting Power might lay down rules concerning the standards of the medical records, and developing countries might be accused of not complying with the clause. There was further the problem of the storage of the records; many hospitals in developing countries simply did not have the space and, in tropical conditions, papers were liable to be destroyed by damp or other causes. He thought, however, that it would not be too difficult to keep records of skin grafts.

20. Mr. MARRIOTT (Canada) said that, as a member of the Working Group and as the author of the original draft of Article 10, paragraph 3, he was very glad to see the support it had received. He agreed with the Hungarian and United Kingdom representatives that, if the provision were made to cover all the persons described in Article 11 it would be rather too wide, but the amendment proposed by Hungary should deal with that problem. When the United Kingdom representative had referred to interference in internal affairs, he had perhaps been thinking of draft Protocol II; but the present discussion referred to draft Protocol I, and there should therefore be no difficulty in that regard.

21. He shared the Nigerian representative's concern about the difficulties of record-keeping in tropical conditions, but thought there was little danger that the Protecting Power would fail to take those conditions, and in particular the level attained in the training of para-medical personnel, into account when fixing the standards of records it expected to find. He agreed that the articles should be referred to the Drafting Committee, which should have no great difficulty in finding a solution if there was a general consensus on the principles involved.

22. Mr. URQUIOLA (Philippines) said he agreed with the principle of maintaining medical records as proposed in the new paragraph 3 for Article 10 (CDDH/II/250/Rev.1) but, before referring the article to the Drafting Committee, Committee II must decide whether such record-keeping should be obligatory or optional.

23. Mr. AL-FALLOUJI (Iraq) said that, in his delegation's view, there should be freedom of choice. More important issues, such as the question of distinctive markings, had been made optional and it would be logical to follow the same procedure in the case of record-keeping.

24. Mr. MAKIN (United Kingdom) said that the issue was not whether record-keeping should be optional or compulsory but whether it should be confined to persons covered by Article 11, paragraph 3, or should cover the entire populations of countries at war. His delegation was strongly of the view that it should not be made obligatory for the latter category.

25. Mr. KHAIRAT (Arab Republic of Egypt) said that he shared the United Kingdom representative's view. The representative of Bangladesh had clarified the point on an earlier occasion.
6. As far as the proposed new paragraph 4 of Article 11 was concerned, he would be in favour of the provisional adoption of the present text while awaiting the opinion of other interested committees.

27. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that there were three possible fields of application for the proposed new paragraph 3 of Article 10. First, it might cover all wounded and sick persons which really meant that it would cover the entire population; second, it might apply only to the persons mentioned in Article 11, paragraph 1; third, it might apply only to those mentioned in Article 11, paragraph 3, namely, the donors and recipients of blood or skin. The Drafting Committee would welcome the Committee's guidance on the choice to be made among the three alternatives.

28. The CHAIRMAN said that, before deciding what should be done with the proposed new paragraphs, the Committee must take a decision on the original paragraphs 3 and 4 of Article 11, which it had decided at its twenty-third meeting (CDDH/II/SR.23) to refer to the Drafting Committee.

29. Mr. CZANK (Hungary) said that he was somewhat confused by the three possibilities mentioned by the Rapporteur of the Drafting Committee. He could see only two. The first was to adopt the text as it stood, with the reference in the second sentence to Article 11 as a whole and the second was to refer in the second sentence only to paragraph 3 of that article. He would prefer the latter course.

30. He disagreed with the Rapporteur of the Drafting Committee that in covering all wounded and sick persons the provision would cover the entire population.

31. Miss MINOGUE (Australia) said that the Working Group's discussion had shown that there was at present no obligation to maintain medical records for prisoners of war, who would certainly be among the groups described in Article 11, paragraph 1. While not necessarily wounded or sick, they were people deprived of their liberty. In view of the danger of confusion in that regard, it would be wise to redraft the proposed paragraph 3 of Article 10 before taking a decision on it.

32. Mr. ONISHI (Japan) said that the Committee's original discussion on the question of safeguards against the abuse of blood transfusion or skin grafting had now become confused with the question of recording of medical procedures. Both questions were important and should be kept separate. The Committee should concentrate on the first and, if possible, set up a Working Group to deal with the second.

33. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, after listening to the views expressed during the debate, he proposed as a compromise that medical record-keeping should be made optional by an "endeavour" clause for persons specified in Article 11, paragraph 1, and compulsory for those referred to in Article 11, paragraph 3. In view of the general feeling that the reference to "each of the wounded and sick" contained in the Working Group's proposal (CDDH/II/250/Rev.1) was too broad, he proposed that that reference should be dropped.
34. Mr. AL-FALLOUJI (Iraq) said he agreed with the Rapporteur's proposals, which he suggested should be approved by consensus and referred to the Drafting Committee for final drafting.

35. Mr. MARRIOTT (Canada) said that, while the idea of extending record-keeping to all persons deprived of their liberty went somewhat further than some delegations found acceptable, there should be little difficulty in making it obligatory for the wounded and sick among that group. He agreed that it should also be obligatory for donors of blood or skin, but there was no need to mention the recipients if records were maintained for the wounded and sick.

36. Miss MINOGUE (Australia) said that her delegation found the Rapporteur's proposal satisfactory and had hoped that it would be acceptable to the Working Group. That possibility had, however, been removed by the Canadian representative's observations.

37. Mr. CHOWDHURY (Bangladesh) said that he appreciated the care taken to preserve the prohibition in Article 11, paragraphs 1 and 2. An endeavour should be made to produce a text that met with the approval of the entire Committee, and the Rapporteur's proposal should make that possible. His delegation had been concerned to ensure that the exception in paragraph 3 should not be taken advantage of to force a person to donate blood against his will. An "endeavour" clause for the persons specified in Article 11, paragraph 1, would probably suffice, since there was likely to be little objection to record-keeping in necessary cases.

38. He had discussed the proposed new paragraph 4 of Article 11 with the representatives of Australia and the United States of America and the latter had suggested that the paragraph be redrafted to read:

"Any wilful act or omission in violation of paragraphs 1 and 2 of this article, including the compulsory removal of blood for transfusion or skin for grafts, or any failure to comply with the standards and procedures described by paragraph 3 of this article which seriously endangers the physical or mental health or integrity of any persons described in paragraph 1 of this article shall be a grave breach of this Protocol".

All delegations agreed that any violation of the prohibitions in paragraphs 1 and 2 would be a grave breach, and that the proviso in paragraph 3 that any donations of blood or skin had to be given voluntarily, without any coercion or inducement, must be rigidly observed. He hoped those considerations would be kept in mind in the final drafting. His delegation would like to see the matter decided by consensus.

39. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that his proposal be submitted to the Drafting Committee together with the Canadian representative's observations, in order to determine whether there were differences of substance or merely of drafting. In the former case, the Drafting Committee might resubmit the proposals to the Committee as clear-cut alternatives.

40. Mr. URQUIOLA (Philippines) said that the proposals of the Rapporteur of the Drafting Committee and the Canadian representative seemed to vary substantially. He could support the Canadian idea if the record-keeping were made optional, not mandatory, so as to take into account the views of the developing
countries. However, the Committee must decide which was to be the guiding principle for the Drafting Committee.

41. Mr. MARRIOTT (Canada) said that he did not regard his proposal as being in serious conflict with that of the Rapporteur of the Drafting Committee, and he would do nothing to prevent the Drafting Committee from reaching a consensus.

42. Mr. AL-FALLOUJI (Iraq) said he thought that the Committee could take an immediate decision. The word "endeavour" would be satisfactory to his delegation.

43. The CHAIRMAN suggested that, as there appeared to be a consensus the proposed new paragraph 3 of Article 10 (CDDH/II/250/Rev.1) should be referred to the Drafting Committee.

-It was so agreed.-

44. The CHAIRMAN said that, since the proposals of the Working Group on Articles 10 and 11 (CDDH/II/250/Rev.1) contained a new paragraph 4 for Article 11, the existing paragraph 4 should be renumbered paragraph 5. He suggested that paragraph 3 of Article 11 in document CDDH/II/240 and paragraph 4 of the same article in document CDDH/II/240/Add.1 should be adopted by consensus and referred to the Drafting Committee.

-It was so agreed.-

P. REPORT OF THE DRAFTING COMMITTEE, COMMITTEE II, 19 March 1975 (CDDH/II/272):

Report on Draft Protocol I,
Article II

The Drafting Committee, in considering Article 11, has had the following mandate:

(1) to draft a provision on medical record keeping based on the proposals made by the representatives of the Federal Republic of Germany and of Canada;

(2) to draft a provision on grave breaches based on the various proposals made during the debate;

(3) to propose a solution as to the place of these provisions and the paragraphs of Article 11 already adopted by the Committee or the Drafting Committee;

(4) to examine paragraphs 3 and 4 of Article 11, as contained in document CDDH/II/240 and CDDH/II/240/Add.1 as to whether any change might be required in the light of the new provisions referred to sub (1) and (2).

It is understood that the provision on grave breaches is subject to reconsideration when Committee I deals with the articles on grave breaches.
In fulfilling this mandate, the Drafting Committee submits to Committee II the following new text of Article II:

Article II. Protection of persons

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

*Attention is drawn to the words "related to a situation referred to in Article 2 common to the Conventions" in draft Articles 65 (3), 67 (2) and 68 (3) which deal with similar situations.

2. In particular it is prohibited [Subject to the provision of paragraph 1, it is, in particular, prohibited] to carry out on such persons, even with their consent:

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

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

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person described in paragraph 1 of this Article and which either violates any of the prohibitions contained in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of the present Protocol.

5. The persons described in paragraph 1 of this Article have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.

6. Each Party to a conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1 of this Article, if that donation is made under the responsibility of that Party. In addition, each Party to a conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained, or otherwise deprived of liberty, as a result of hostilities...
or occupation. These records shall be available at all times for inspection by the Protecting Power.


2. The CHAIRMAN said that certain provisions of Article 11 had been left in abeyance, and he invited the Committee to consider the report of the Drafting Committee on that article (CDDH/II/272).

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Committee had asked the Drafting Committee to draft provisions on medical record-keeping and on grave breaches, to propose an appropriate place for those provisions and to consider whether any consequential changes might be required in the light of the new paragraphs, in what were then paragraphs 3 and 4 of Article 11.

4. The sequence of paragraphs 1 to 3 remained unchanged. Those paragraphs contained the basic prohibition of what might be described as inappropriate medical treatment. Paragraphs 4 to 6 provided additional safeguards: the most important was the provision on grave breaches, which had been placed first, followed by those on the right to refuse surgical operation and on record-keeping. Paragraph 4, on grave breaches, would have to be reconsidered when the question had been dealt with by Committee I, but it had been the unanimous view of Committee II that a provision should be drafted meanwhile to show its ideas on the subject. There were two conditions in the definition of a grave breach: first, there had to be a violation of paragraphs 1, 2 or 3 of the article, and, secondly, such violation had to be such as seriously to endanger the physical or mental health or integrity of any persons described in paragraph 1. Paragraph 5 remained unchanged.

5. With regard to paragraph 6, he reminded the Committee that it had agreed as a compromise to have different degrees of obligation for different categories of persons with regard to medical record-keeping, which would be compulsory for the procedures mentioned in paragraph 3 and strongly recommended in other cases. Since Article 11 applied to the relationship between the Occupying or Detaining Power on the one hand, and the population in the occupied territory or the detained persons on the other, it must be made clear that record-keeping was not required, in an occupied territory, for cases in which the Occupying Power was not involved. That was the purpose of the phrase "if that donation is made under the responsibility of that Party". The second sentence of the paragraph took the form of an "endeavour" clause applicable to detained persons in cases other than those covered by paragraph 3.

6. A small drafting change had been made in paragraph 3, the words "for transfusion" having been added after the word "blood". The Drafting Committee had also reconsidered the article as a whole in the light of the new provision on record-keeping and of the need to draft parallel provisions for draft Protocol II. It had considered certain drafting changes appropriate for paragraphs 1 and 2, in particular since several delegations had felt that some clarification of the meaning of those paragraphs was necessary. It had been in unanimous agreement on the wording of the changes but had placed the passages concerned in square brackets since they did not come within its terms of reference. The square brackets had been omitted from the French text, where they had been placed round the words "autrement" and "qui seraient, dans des circonstances analogues, appliquees a des ressortissants de la Partie accomplissant l'acte
qui ne sont en rien prives de liberte" in paragraph 1, and round the words "Sous reserve des dispositions de l'alinea 1" in paragraph 2.

7. The party envisaged as the one conducting the medical procedure in question, was clearly the Detaining or Occupying Power and the standards which it should apply were those which it normally applied to its own nationals. In order that there should be no excuse for applying different standards to free and to detained persons, it should be made clear that the standards to be applied were those applicable to free persons in similar medical circumstances. The Drafting Committee had intended the word "medical" to appear before the word "circumstances" in the second set of square brackets.

8. It had been asked whether paragraph 2 was intended to exclude any lifesaving amputation as being a physical mutilation, or the taking of skin for grafting on to another part of the person from which it had been taken, as in the case of burns, for example, as being a removal of tissue. Subject to the provisions of paragraph 5, both those operations would be permitted under paragraph 1, which prohibited only those procedures which were not indicated by the state of health of the person concerned and which were not consistent with accepted medical standards. The examples quoted were procedures both indicated by the state of health of the person concerned and consistent with accepted medical standards. They were also not prohibited by paragraph 2, which must be read in conjunction with paragraph 1. But, to make the point still clearer, it was proposed to replace the words "In particular it is prohibited" by the words "Subject to the provisions of paragraph 1, it is, in particular, ...".

9. Mr. GAYET (France) said that the word "ablation" used in the French text of paragraph 2 (c) could relate only to tissues or organs which were removed and rejected, as in the case of an appendectomy or tonsillectomy. He proposed that it should be replaced by the word "prerevement".

It was so agreed.

10. Mr. MARRIOTT (Canada) said that the word "provision" in the passage in square brackets in paragraph 2 should read "provisions".

11. The CHAIRMAN suggested that the Committee should adopt the Drafting Committee's text, as amended, by consensus.

12. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that a decision would first have to be taken on whether or not to retain the passages in square brackets.

13. The CHAIRMAN invited the Committee to consider those passages. The Committee decided to retain the word "otherwise" in the first set of square brackets in paragraph 1.

14. The CHAIRMAN said that the wording in the second set of square brackets in paragraph 1 was far clearer than the original text. The phrase in the second set of square brackets was approved, the word "medical" having been inserted before the word "circumstances".

15. Mr. FIRN (New Zealand) said that he would be interested to know the purpose of the foot-note to paragraph 1.
16. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had decided to refer to "hostilities or occupation", whereas in other relevant articles the phrase "related to a situation referred to in Article 2 common to the Conventions" was used. The Drafting Committee of the Conference would have to decide which term should be used throughout the relevant articles.

17. Mr. FIRN (New Zealand) said that reference to Article 2 common to the Geneva Conventions might make the scope of the paragraph narrower than would a reference to Article 1 of the draft Protocol, paragraph 2 of which covered wars of national liberation.

18. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that he understood that the current interpretation of Article 1 of the draft Protocol to be that such situations would also be covered by reference to Article 2 common to the Geneva Conventions of 1949.

Paragraph 1, as amended, was approved by consensus.

19. The CHAIRMAN invited the Committee to take a decision on the phrase in square brackets in paragraph 2.

The phrase in square brackets was approved.

Paragraph 2, as amended, was approved by consensus.

20. The CHAIRMAN said that paragraphs 3 and 4 had been approved before being referred to the Drafting Committee.

Paragraphs 5 and 6 were approved.

Article 11 as amended was adopted by consensus.

R. ARTICLE ADOPTED BY COMMITTEE II, 20 March 1975 (CDDH/II/276):

Article 11. Protection of persons

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

*Attention is drawn to the words relating to a situation referred to in Article 2 common to the Geneva Conventions of 1949 in draft Article 65, paragraph 3, Article 67, paragraph 2, and Article 68, paragraph 3, which deal with similar situations.
2. Subject to the provision of paragraph 1, it is, in particular, prohibited to carry out on such persons, even with their consent:

(a) physical mutilations;

(b) medical or scientific experiments;

(c) removal of tissue or organs for transplantation.

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

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person described in paragraph 1 of this article and which either violates any of the prohibitions contained in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of the present Protocol.

5. The persons described in paragraph 1 of this article have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.

6. Each Party to a conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1 of this article, if that donation is made under the responsibility of that Party. In addition, each Party to a conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained, or otherwise deprived of liberty, as a result of hostilities or occupation. These records shall be available at all times for inspection by the Protecting Power.

S. MEETING OF COMMITTEE I, 2 April 1975 (CDDH/I/SR.37):

97. Mr. JACOBY (Amnesty International) observed that both during and after the war in the Middle East, which had broken out in October 1973, the Governments of the Syrian Arab Republic and of Israel had made grave accusations and counter-accusations concerning violations of the many provisions of the Geneva Conventions pertaining to the protection of victims of war from torture and inhumane treatment. They had referred in particular to the relevant provisions of the third Geneva Convention entitled "Convention relative to the Treatment of Prisoners of War".

98. As 1973 was the year in which Amnesty International had launched its Campaign for the Abolition of Torture, it was inevitable that many of those accusations were brought directly to its attention. In order to examine the conflicting allegations and denials, Amnesty International, with the permission of the two Governments concerned, had sent a mission of investigation to the area. That mission, composed of a Norwegian lawyer, a Swedish lawyer and a Dutch physician, met with the full co-operation of the respective authorities.
in its investigations among former prisoners of war. The report of the Committee would be published on 10 April 1975.

99. Perhaps the most important part of the report consisted in five recommendations to the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law applicable in Armed Conflicts. Amnesty International considered that those recommendations should be made available immediately to the Conference, now that it was in the process of considering the problems of monitoring compliance with the Geneva Conventions.

100. The five recommendations could be summarized as follows:

(3) The obligation to keep full documentation about the medical treatment of wounded prisoners of war should be fully observed. Signed medical documents should constitute a dossier for each prisoner of war, available for inspection and carried back when the prisoner was repatriated. The Detaining Power should at all times keep its own duplicates of those documents, which should remain available for inspection;

T. MEETING OF COMMITTEE II, 15 April 1975 (CDDH/I/SR.54):

57. Mr. SOLF (United States of America) said his delegation would like to make a few comments on the text of the draft report. He was worried about the history of draft Protocol I, Article 11, paragraph 5. It had first appeared in document CDDH/II/70 introduced at the first session as an amendment (new paragraph 3) to Article 10. During discussions towards the end of the first session of the Conference, several delegations had requested its inclusion under Article 11, as Article 10 might not be reservable. The summary records of the first session showed that Article 10 and all amendments thereto had been referred to the Drafting Committee (see CDDH/II/SR.10, para. 41). During the current session the amendment had been discussed under Article 11. But the report of the Drafting Committee's consideration of Article 11, on pages 9 and 10 of the draft report, did not reflect the fact that the Drafting Committee had considered the amendment dealing with written consent to surgery. He therefore proposed that, under the amendments considered under document CDDH/II/70, by the Drafting Committee, reference be also made to the amendment dealing with written consent to surgery which after considerable discussion now appeared in paragraph 5 of Article 11.

58. The CHAIRMAN suggested that a foot-note to that effect under the text of paragraph 5, Article 11, would perhaps give the proper stress, since it appeared to be of importance to the United States delegation and to many others.

U. MEETING OF COMMITTEE II, 26 April 1976 (CDDH/II/SR.57):

28. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the Cuban representative had raised an important question of principle which would affect not only paragraph 5 [of Article 31] but other portions of the text. The question was what interpretation should be given to the words "adequate facilities for the necessary medical treatment". His delegation appreciated the comments made by the representatives of some countries which might not have the necessary medical facilities available, but account should also be taken of
the humanitarian considerations involved. He suggested that a definition of "adequate facilities for the necessary medical treatment" should be included in Article 8 - Definitions, to be interpreted to mean the level of facilities accorded by a given country to its own citizens.

29. The CHAIRMAN said that that was the reason why he had felt it more appropriate to defer adoption of Article 8.

30. Mr. SOLF (United States of America) said that the representative of the Union of Soviet Socialist Republics had made a most constructive suggestion. The same issue had had to be faced in connexion with Article 11, where the prevailing standard was that used for citizens of the detaining power. It would be appropriate to consider the matter in connexion with that article and with Article 8.

V. MEETING OF COMMITTEE I, 3 June 1976 (CDDH/I/SR.60):

70. Mr. GIRARD (France), referring to the introductory part of Article 74, paragraph 3, drew attention to the fact that this text tended to make a grave breach of the acts or omissions defined in Article 11 even if they were committed by a State against its own nationals, on its own territory. Such a provision, contrary to all French doctrine on jurisdiction, was unacceptable in principle, even though such a situation was hardly probable. It had been asked that the question should be referred to Committee II. As long as it had not been settled in one way or another, his delegation would formally object to that part of paragraph 3.

71. Mr. BLOEMBERGEN (Netherlands), Mr. KUNUGI (Japan) and Mr. de BREUCKER (Belgium) were of the same opinion as the representative of France on that point.

72. The CHAIRMAN confirmed that the question would be referred to Committee II.

W. PROPOSED AMENDMENT:

CDDH/II/438  France, Netherlands, Belgium
9 May 1977

1. Amend the text of paragraph 4 of Article 11 as follows:

2. Paragraph 4 of Article 11 would be worded:

"4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who has fallen into the power of a Party other than his own and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol."

Note: The aim of this proposal is to bring the text of Article 11 into line with the text of Article 74 as adopted by Committee I and pursuant to a request for its reconsideration made at the 60th meeting of Committee I (CDDH/I/SR.60, pages 13, 14).
X. MEETING OF COMMITTEE II, 13 May 1977 (CDDH/II/SR.98):

Amendment to Article 11

Paragraph 4 (CDDH/II/438)

58. Mr. PENNAEH (France) proposed that in the light of the provisions of Article 74 and the interests of national sovereignty, it was desirable to amend the original text of paragraph 4 of Article 11. He also expressed concern about the provisions of paragraph 3, but in a spirit of compromise did not propose to seek to re-open the discussion at that paragraph.

59. Miss MINOGUJE (Australia) reminded the Committee that her delegation had been one of those most active in drafting Article 11 at the second session of the Conference, regarding it as one of the most important of all those prepared by Committee II, since it extended the scope of international humanitarian law in a number of areas in order to improve the care available to the wounded and sick in time of conflict.

60. The article was of particular interest to her delegation in that it would make it possible for people who had fallen into the hands of the adverse Party to save the lives of their fellow men through the free gift of their blood and skin, which were two of the most powerful tools of modern medicine.

61. After two years of reflection, some delegations seemed to think that the Committee had gone too far at the second session; they would like to restrict the provisions of Article 11 to donations that would be used for the treatment of persons of their own Party. Although disappointed, her delegation would not oppose a consensus on Article 11. The revised paragraph should specify, however, that the availability of the precious items in question extended to all the categories of persons mentioned in paragraph 1 of Article 11. However, the Australian delegation hoped that the Committee would be willing to extend the proposed amendment to cover all the categories of persons mentioned in paragraph 1 of the article by using the same formulation "or who is interned, detained or otherwise deprived of liberty by a Party other than the Party on which he depends".

Y. MEETING OF COMMITTEE II, 13 May 1977 (CDDH/II/SR.99):

1. The CHAIRMAN invited the Committee to complete its consideration of Article 11, paragraph 4, and pointed out that a compromise solution had been reached since the ninety-eighth meeting.

2. Mr. BOHNE (Federal Republic of Germany) explained that the solution consisted in replacing the new proposal the word "power" by "hands" and the words "his own" by "that on which he depends", in conformity with the text of paragraph 1.

3. Mr. CONSALUES (Netherlands) stressed the fact that Article 74, paragraph 5, referred solely to war crimes, i.e., grave breaches which presupposed a victim (or "infringement of a legal right") belonging to a State in conflict with the State to which the perpetrator belonged. What was important here was not the perpetrator's nationality but the State for which he had acted.
4. When the victims of the breach were not enemies (e.g. stateless persons, nationals of neutral States or of countries allied to the State on which the person committing the breach depended, or nationals of that State), the circumstances were completely different, as the case then became one of "crimes against humanity". So far this latter notion had only been dealt with - always excepting the charter of the Nurnberg International Military Tribunal - in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (United Nations General Assembly resolution 260 (III), Annex). But his delegation wished to call attention to the fact that crimes against humanity could in no case be covered by the provisions of Protocol I; which was why it had endorsed the proposal of the French delegation.

5. Mr. SOLF (United States of America) expressed his approval of the proposed amendment.

Paragraph 4 of Article 11, as amended, was adopted by consensus.

Z. ARTICLE ADOPTED BY COMMITTEE II, 13 May 1977 (CDDH/II/448):

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who has fallen into the hands of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

AA. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 11. Protection of persons

1. The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1, shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

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

(a) physical mutilations;

(b) medical or scientific experiments;

(c) removal of tissue or organs for transplantation, except where these acts are justified in conformity with the conditions provided for in paragraph 1.

392
3. Exceptions to the prohibition in paragraph 2 (c) may be made only in the case of donations of blood for transfusion or of skin for grafting provided that they are given voluntarily and without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient.

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person which is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

5. The persons described in paragraph 1 have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.

6. Each Party to the conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1, if that donation is made under the responsibility of that Party. In addition, each Party to the conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1. These records shall be available at all times for inspection by the Protecting Power.

AB. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 11. Protection of persons

23. Mr. PAOLINI (France) said that his delegation was in favour of the adoption of Article 11. With regard to paragraph 3, however, it regretted that the provision for donations of blood for transfusion or of skin for grafting had not been limited to cases of emergency. The condition concerning the free consent of the donor was open to question in the case of prisoners of war or inhabitants of occupied territories. The wording of paragraph 3 left room for abuses. In his delegation's view, the provision should have stipulated that the recipients should belong to the same Party to the conflict as the donors.

24. With regard to paragraph 4, he welcomed the fact that his delegation's amendment limiting application of the article to "any person who is in the power of a Party other than the one on which he depends" had been adopted. The text thus took into account the obligation of the Parties to the conflict to respect national legislation in the absence of any deontological text of an international nature.

25. Mr. AREBI (Libyan Arab Jamahiriya) said that his delegation fully supported the views expressed by the representative of France concerning paragraph 3.

26. Mr. EL HASSEEN EL HASSAN (Sudan) pointed out two typing errors in paragraph 3 of the Arabic text and the omission of one word in the first line of paragraph 4 after the word "Protocol".

393
27. Mr. WOLFE (Canada) supported the statement by the representative of France and said that paragraph 4 in its present form limited the application of the article to a country's own nationals.

Article 11 was adopted by consensus.

AC. PLENARY MEETING, 24 May 1977 (CDDH/SR.37, ANNEX):

Australia

Article 11 of draft Protocol I

The Australian Government sees it as a considerable advance in the development of humanitarian law that a provision has been introduced in Article 11 whereby a person "in the power of a Party other than the one on which he depends" is enabled to make a free gift of two life-saving therapeutic substances which are available only from human sources.

The group of persons with which this article deals are extremely vulnerable in time of armed conflict and the Australian delegation considers that they should be given maximum protection against any unjustified act or omission which endangers their physical or mental health.

Hence paragraph 4 makes it a grave breach for any person to fail to comply with the safeguards set out in the article protecting the donor of blood or of skin. This is the most severe sanction available in the context of the Conventions or the Protocol.

Article 11 is intended to develop Article 4 of the fourth Geneva Convention of 1949 and the Australian delegation considers that the article, and in particular paragraph 4 thereof, should be interpreted in the same way as the words "persons who at a given moment and in any manner whatsoever find themselves in case of conflict or occupation in the hands of a Party to the conflict or Occupying Power of which they are not nationals" which appear in Article 4 of the fourth Geneva Convention of 1949.

Israel

Article 11 of draft Protocol I

With regard to paragraph 5 of Article 11 of draft Protocol I, the delegation of Israel wishes to declare that, in its opinion, the discretion is always a medical one and is to be used by medical personnel treating the persons mentioned in the article. Article 11, paragraph 5, can in no circumstances be used as an excuse for not providing correct medical treatment.

United States of America

Article 11 of draft Protocol I

My delegation was a co-sponsor of the formula adopted as Article 11 - Protection of Persons. My Government believes it important that its understanding of paragraphs 1 and 2 be stated as a matter of record.
Paragraphs 1 and 2 apply to:

1. "Persons who are in the power of an adverse Party". This includes all prisoners of war and all civilians protected by the fourth Geneva Convention of 1949, whether in the territory of the detaining Power or in occupied territory. It includes those who are relatively free to pursue their normal pursuits, as well as those who are interned or otherwise deprived of liberty. It applies also to

2. other persons, including the Party's own nationals, who are interned, detained, or otherwise deprived of liberty as a result of hostilities or occupation.

It is the further understanding of my Government that the evils against which this article is directed are "unjustified acts or omissions, by or on behalf of the occupying or detaining Power or by any detaining authorities that endanger the physical or mental health or integrity of the persons described in paragraph 1."

AD. 1977 PROTOCOL I:

Article 11. Protection of persons

1. The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

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

(a) physical mutilations;

(b) medical or scientific experiments;

(c) removal of tissue or organs for transplantation, except where these acts are justified in conformity with the conditions provided for in paragraph 1.

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

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other
than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

5. The persons described in paragraph 1 have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.

6. Each Party to the conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1, if that donation is made under the responsibility of that Party. In addition, each Party to the conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1. These records shall be available at all times for inspection by the Protecting Power.
ARTICLE 12 - PROTECTION OF MEDICAL UNITS

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 12. Medical units

1. Permanent medical units shall at all times be respected and protected; they shall never be the object of attack. Temporary medical units shall be respected and protected during their assignment to medical duties.

2. In order to benefit from the special protection provided for in paragraph 1 above, civilian medical units shall either belong to the State or be recognized or authorized by the competent authority thereof.

3. The Parties to the conflict are urged to make known to each other the location of fixed medical units.

4. The Parties to the conflict shall ensure that medical units, insofar as is possible, are situated in such a manner that attacks against military objectives cannot imperil their safety. Under no circumstances shall they be used in an attempt to protect military objectives from attack.

B. PROPOSED AMENDMENTS:

Title

CDDH/II/1
27 February 1974

Amend the title of this Article to read: "Protection of medical units."

CDDH/II/13
11 March 1974

Amend the title of this Article to read: "Protection of Medical Units".

Grounds for proposal

Medical units are already defined in Article 8.

Article 12 follows logically after Articles 10 and 11, which deal with protection.

Article 13, moreover, speaks of the discontinuance of protection of such units.

Furthermore, it is specifically stated in the ICRC Commentary that the purpose of the present provision (Article 12) is to extend protection to all civilian installations of a medical nature whether fixed or mobile.
Replace the present title by "Protection of medical units".

Paragraph 1

Replace the last sentence of paragraph 1 by the following:

"These rules shall be applied to temporary medical units only during their assignment to medical duties."

Redraft paragraph 1 as follows:

"1. Permanent medical units shall at all times be respected and protected; they shall not be the object of attack. Temporary medical units shall be respected and protected during their assignment to medical purposes, while exclusively devoted to such purposes."

Amend paragraph 1 to read as follows:

"1. Permanent medical units shall at all times be respected and protected; they shall never be the object of attack. Temporary medical units shall be respected and protected while exclusively devoted to such medical purposes."

Delete the present text of paragraph 2 from the words "belong to the State" to the end of the paragraph, and substitute the following: "... either belong to one of the Parties to the conflict, or be recognized and authorized by the competent authority of that Party"
Paragraph 3

CDDH/II/22 United Kingdom of Great Britain and Northern Ireland 11 March 1974

Redraft paragraph 3 as follows:

"3. The Parties to the conflict are invited to make known to each other the location of fixed civilian medical units."

CDDH/II/25 Cuba 11 March 1974

Add to paragraph 3 the words "if they deem it expedient to do so", and a second sentence reading "Failure to do so shall not absolve the Parties from the obligations referred to in paragraph of the present article".

Paragraph 4

CDDH/II/16 Romania 11 March 1974

Delete the phrase "in so far as is possible"

CDDH/II/22 United Kingdom of Great Britain and Northern Ireland 11 March 1974

"4. The Parties to the conflict shall ensure that medical units are situated as far as possible so that attacks against military objectives cannot imperil their safety. Under no circumstances shall they be used in an attempt to protect military objectives from attack."

Rationale

To improve the drafting.

C. MEETING OF COMMITTEE II, 5 February 1975 (CDDH/II/SR.13):

19. Mr. PICTET (International Committee of the Red Cross) said that the purpose of Article 12 was to extend protection to civilian medical units. With regard to paragraph 2 of the article, he pointed out that all extension of protection implied control by the authorities. In paragraph 4, although the expression "in so far as is possible" was imprecise, its inclusion was justified, since medical units had to be operational, i.e., they had to perform their function of ensuring the survival of the wounded. For that reason, they might have to approach military objectives.

20. Mr. CALCUS (Belgium) referring to amendment CDDH/II/13, said that medical units were already defined in Article 8. Since Article 12 dealt with protection, the title of the article should be amended to include that word.
21. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) agreed that the word "protection" should be included in the title of Article 12. That point was covered in the first part of amendment CDDH/II/19, but there was also a link between title and content. The proposal concerning paragraph 1 in the same amendment was essentially a difference in drafting and was similar to amendment CDDH/II/39 submitted by Australia.

22. Mr. MAKIN (United Kingdom) said that the purpose of his delegation's amendment (CDDH/II/22) in so far as it referred to paragraph 1, was, in part, the same as that of amendments CDDH/II/19 and CDDH/II/39. The remarks made by the representative of the Union of Soviet Socialist Republics applied also to the corresponding part of amendment CDDH/II/22. He preferred the wording of amendment CDDH/II/39, which was shorter and clearer. For reasons of consistency, however, he would propose the replacement of the word "never" by "not", the latter word being used in many places in the draft Protocol. The use of the word "never" might be taken to imply some difference in interpretation.

23. Miss MINOGUE (Australia) said that she accepted the replacement of the word "never" by "not".

24. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) proposed that, to save time, discussion of the amendment to paragraph 2 proposed in amendment CDDH/II/19 should be postponed for the time being, since it entailed questions of terminology that would be settled in plenary session. The wording of the paragraph could be adjusted later in the light of the decisions taken.

25. Mr. MAKIN (United Kingdom), referring to the statement by the representative of the ICRC that the aim of Article 12 was to extend protection to civilian units, said that the article, as at present worded, made no reference to such units; it was for that reason that the United Kingdom amendment (CDDH/II/22) introduced the word "civilian" into paragraph 3. His delegation also preferred the word "invited" to "urged" in paragraph 3. It might be thought that better protection would be obtained either by not informing the other Party to the conflict of the position of fixed civilian medical units, or by camouflage.

26. Mr. FIVERO RASARIO (Cuba) said that he was not ready to speak on his delegation's amendment (CDDH/II/25).

27. Mr. MAKIN (United Kingdom) said that the change in paragraph 4 proposed in his delegation's amendment (CDDH/II/22) was merely one of drafting and could be referred to the Drafting Committee.

28. The CHAIRMAN invited representatives to open the general discussion on Article 12.

29. Mr. PICTET (International Committee of the Red Cross) said that he had no objection to the amendment proposed to the title of Article 12, but a similar amendment would have to be made to the title of Article 15. He suggested that the matter should be referred to the Drafting Committee.

30. The CHAIRMAN said that the Drafting Committee would be requested to take the point into account.
31. Mr. MARTIN (Switzerland), referring to the United Kingdom amendment to paragraph 3 of Article 12 (CDDH/II/22), said that the definition of "medical unit" in Article 8 (c) referred to both civilian and military units and it was possible that the two might be combined in the future. To refer only to civilian units in the present context might cause confusion: it would be better to leave the text as it stood.

32. The United Kingdom amendment to paragraph 4 seemed to apply only to mobile medical units, whereas according to the definition in Article 8 there might be fixed units, which could not be moved. He preferred the existing wording, since it might sometimes be impossible, for technical or financial reasons, to move the units.

33. Mr. MARRIOTT (Canada) suggested that the words "whenever possible" might be better.

34. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that all the amendments to paragraph 1 seemed to be matters of drafting.

35. With regard to paragraphs 3 and 4, the provisions could not be mandatory, since they concerned matters which should be decided by Governments or military headquarters. Regarding the United Kingdom amendment to paragraph 3, he would not oppose the replacement of "urged" by "invited" but could not accept the insertion of the word "civilian", since it was impossible to foresee war conditions.

36. He supported the Cuban amendment to paragraph 5 (CDDH/II/25).

37. In paragraph 4 he would prefer the words "in so far as is possible" to be retained. The paragraph covered both fixed and mobile units and a medical unit might sometimes have to be placed near a military objective.

38. Mr. ROSENBLAD (Sweden) said that he supported the Cuban amendment to paragraph 3 (CDDH/II/25), since it took account for the realities of modern warfare.

39. Mr. SOLF (United States of America) said that he supported the amendment to the title of Article 12, the substance of the amendments to paragraph 1 and especially the Australian amendment (CDDH/II/39) as modified by the Australian representative, and the amendment to paragraph 2 in document CDDH/II/19.

40. With regard to paragraph 3, the question whether or not to notify the other party of the location of fixed medical units - whether civilian or military - was a matter of choice for the respective authorities in war. He had no objection to the second sentence proposed by Cuba (CDDH/II/25).

41. Regarding paragraph 4, he agreed with all the previous speakers but strongly objected to the Romanian proposal for the deletion of the words "in so far as is possible" (CDDH/II/16). Whatever the wording, the essence of the phrase should be retained. Deletion would be disastrous. It would, for example, prohibit warships, which were legitimate targets, from having sick bays, or the use of mobile units in collecting the wounded (Article 15 of the first Geneva Convention of 1949).
42. Mr. TRANSEN (Denmark) endorsed the views of the previous speaker, especially concerning sea warfare. It would be disastrous to delete the words "in so far as is possible". It might be necessary to have hidden mobile medical units close to military targets. He could not support the Canadian representative's proposal of the words "whenever possible". Paragraph 4 should be drafted so as to enable parties to a conflict to place their medical units in such a way that attacks would not imperil their safety.

43. The CHAIRMAN declared the discussion ended. He would submit Article 12, together with the amendments, to the Drafting Committee.

D. MEETING OF COMMITTEE II, 6 February 1975 (CDDH/II/SR.14):

Paragraph 1

3. Mr. CZANK (Hungary), supported by Mr. MARTIN (Switzerland), said that there was a lack of symmetry about the two sentences in paragraph 1. The first sentence, as amended by the United Kingdom, said that permanent medical units should not be the object of attack, but there was no corresponding statement about temporary medical units in the second sentence. That omission might conceivably give rise to misunderstandings. He therefore proposed that the second sentence should be amended to read: "This rule is also applicable to temporary medical units, but only during their assignment to medical duties".

4. Mr. ONISHI (Japan) said that there was in fact no need for two sentences; the paragraph could simply refer to "medical units". The distinction between permanent and temporary units was already defined in Article 8 (c).

Title

5. Mr. KHAIRAT (Arab Republic of Egypt) said that, according to the ICRC Commentary (CDDH/3), the purpose of Article 12 was to extend the protection provided by Article 18 of the first Geneva Convention of 1949 to all civilian medical installations, whether fixed or mobile. He therefore proposed that the title of the article should be "Civilian medical units".

6. Mr. SOLF (United States of America) said he welcomed the Egyptian representative's statement. His delegation had always considered that military medical units were adequately covered by the first and second Geneva Conventions of 1949 and that Article 12 should apply to civilian medical units, but it understood that the consensus had been that paragraphs 1, 3 and 4 should apply to military medical units as well.

7. Mr. MAKIN (United Kingdom) endorsed the views expressed by the Egyptian and United States representatives; the same point was made explicitly in the United Kingdom amendment to paragraph 3 (CDDH/II/22).

8. Mr. MARTIN (Switzerland) said that the question was whether military medical units received corresponding protection in the first Geneva Convention of 1949. If they did, then Article 12 could apply to civilian units only; but if Article 12 provided additional protection, then it should be extended to cover military medical units.

9. Mr. PICTET (International Committee of the Red Cross) said that, whereas Article 12 was basically intended to extend protection to civilian units, the
protection provided did, in paragraph 3, go slightly beyond what was provided for military medical units in Article 19 of the first Geneva Convention. That was why specific reference to civilian units had been omitted. The ICRC did not think the point was an important one and would be prepared to agree to a reference to civilian military units.

10. Mr. AGUDO (Spain) said that the protection provided by the article should be extended to military medical units - especially search and transport units - which did not form part of the military medical service in the strict sense.

11. Mr. SCHULTZ (Denmark) said that if Article 12 applied only to civilian medical units, it would be unnecessary in Article 8 (c) to define "medical unit", for the purposes of Part II of draft Protocol I, as covering both military and civilian units; that definition would have to be amended.

12. Mr. SOLF (United States of America) said he disagreed with the Danish representative: many of the provisions of Article 18 - Identification - did apply to military medical units.

13. He had no strong feelings on whether Article 12, with the exception of paragraph 2, should apply to all medical units or to civilian units only. Paragraphs 3 and 4 were not explicitly covered by the first and second Geneva Conventions of 1949, but they would be of little use to military medical units. Combatants would seldom notify the location of fixed military medical units, and military medical units - especially mobile units - would often have to operate in dangerous areas in the performance of their duties.

14. The CHAIRMAN suggested that Article 12 and all the amendments thereto should be referred to the Drafting Committee, except for the Romanian amendment (CDDH/II/16), which involved a substantive change in the legal purport of paragraph 4, and would therefore have to be discussed and voted on in the Committee itself when the Romanian representative had the opportunity to introduce it.

It was so agreed.


The Drafting Committee ... dealt with draft Protocol I, Part III, Section I, Articles 9 to 20 (except Articles 14, 18 and 18 bis).

It now submits to the Committee II for approval the text of the above articles as given in the following pages. ...

Article 12. Medical units

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

2. Paragraph 1 of this article shall apply to civilian medical units provided that they:

(a) belong to one of the Parties to the conflict; or
(b) are recognized or authorized by the competent authority of one of the Parties to the conflict; or

c) are authorized as required by Article 9, paragraph 2, of the present Protocol and Article 27 of the First Convention.

3. The Parties to the conflict are invited to notify to each other the location of fixed medical units. Absence of such notification shall not exempt any of the Parties from the obligation to comply with the provisions of paragraph 1 of this article.

4. Under no circumstances shall medical units be used in an attempt to protect military objectives from attack. Whenever possible the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.

F. MEETING OF COMMITTEE II, 24 February 1975 (CDDH/II/SR.23):

Article 12. Medical units (CDDH/1) (concluded)

49. Mr. PICTET (International Committee of the Red Cross) said that the title of the article should read: "Protection of medical units".

It was so agreed.

Article 12, as amended, was adopted.

G. ARTICLE ADOPTED BY COMMITTEE II, 24 February 1975 (CDDH/II/277):

Article 12. Protection of medical units

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

2. Paragraph 1 of this article shall apply to civilian medical units provided that they:

   (a) belong to one of the Parties to the conflict; or

   (b) are recognized or authorized by the competent authority of one of the Parties to the conflict; or

   (c) are authorized as required by Article 9, paragraph 2, of the present Protocol and Article 27 of the First Convention.

3. The Parties to the conflict are invited to notify to each other the location of fixed medical units. Absence of such notification shall not exempt any of the Parties from the obligation to comply with the provisions of paragraph 1 of this article.

4. Under no circumstances shall medical units be used in an attempt to protect military objectives from attack. Whenever possible the Parties to the
conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.

H. MEETING OF COMMITTEE II, 18 March 1975 (CDDH/II/SR.38):

50. Mr. de MULINEN (International Committee of the Red Cross) said that the ICRC had realized that there might be a danger of dealing with the protection of medical transport under a joint provision, and had at one time considered the idea of separate treatment. The reference to Articles 12 and 13 in the present text of Article 24 would cover ships as well as other means of medical transport and the words "whether alone or in convoy" in Article 24 would cover ships of all sizes. ...

I. PROPOSED AMENDMENT:

CDDH/II/412 and Add.1 18 April 1977
France, Germany, Federal Republic of, United Kingdom of Great Britain and Northern Ireland, United States of America

Amend paragraph 2 (b) replacing "or" by "and", so that it will read:

"(b) are recognized and authorized by the competent authority of one of the Parties to the conflict; or".

J. MEETING OF COMMITTEE II, 13 May 1977 (CDDH/II/SR.99):

6. Mr. SOLF (United States of America) pointed out that other articles in Protocol I already specified that civilian medical units must be "recognized and authorized by the competent authority". With regard to that point, it had already been observed that two different problems were involved: recognition and authorization. The question had been considered when sub-paragraphs (c) and (f) of Article 11 of draft Protocol II were discussed, and there the words used were "recognized and authorized". Consequently, there was no reason to adopt a different wording in the case of paragraph 2 (b) of Article 12.

7. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) considered that the explanations given by the representative of the United States of America were very clear and hoped that the Committee would adopt the paragraph by consensus.

Article 12, paragraph 2 (b) thus amended, was adopted by consensus.

K. ARTICLE ADOPTED BY COMMITTEE II, 13 May 1977 (CDDH/II/450):

Article 12. Protection of medical units

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

2. Paragraph 1 of this article shall apply to civilian medical units provided that they:

(a) belong to one of the Parties to the conflict; or
(b) are recognized and authorized by the competent authority of one of the Parties to the conflict; or

(c) are authorized as required by Article 9, paragraph 2, of the present Protocol and Article 27 of the first Convention.

3. The Parties to the conflict are invited to notify to each other the location of fixed medical units. Absence of such notification shall not exempt any of the parties from the obligation to comply with the provisions of paragraph 1 of this article.

4. Under no circumstances shall medical units be used in an attempt to protect military objectives from attack. Whenever possible, the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.

L. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 12. Protection of medical units

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

2. Paragraph 1 shall apply to civilian medical units, provided that they:

   (a) belong to one of the Parties to the conflict;

   (b) are recognized and authorized by the competent authority of one of the Parties to the conflict; or

   (c) are authorized in conformity with Article 9, paragraph 2, of this Protocol or Article 27 of the First Convention.

3. The Parties to the conflict are invited to notify each other of the location of their fixed medical units. The absence of such notification shall not exempt any of the parties from the obligation to comply with the provisions of paragraph 1.

4. Under no circumstances shall medical units be used in an attempt to shield military objectives from attack. Whenever possible, the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.

M. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 12. Protection of medical units

Article 12 was adopted by consensus.
28. Mr. RABARY-NDRANO (Madagascar) said that his delegation joined in the consensus concerning paragraphs 1, 2 and 3. It considered, however, that paragraph 4 should be mandatory for mobile as well as fixed medical units, especially in view of the lack of resources of developing countries. Furthermore it could happen that a factory or similar establishment already situated next to a fixed medical unit could be taken over for military purposes after the outbreak of war.

29. Mr. WOLFE (Canada), raising a drafting point, said that in his view the phrase "and shall not be the object of attack" in paragraph 1 was redundant and did not appear elsewhere in the Protocol where the phrase "respected and protected" was used.

30. Mr. URQUIOLA (Philippines) said that the word "sited" in paragraph 4 was too vague. He would prefer the word "situated".

N. PLENARY MEETING, 24 May 1977 (CDDH/II/SR.37, ANNEX):

Madagascar

Article 12 of draft Protocol I

My delegation joined in the consensus, but while it has no difficulty in interpreting paragraphs 1, 2 and 3 of the text adopted, it is rather puzzled by paragraph 4, where it is stated that "Under no circumstances shall medical units be used in an attempt to shield military objectives from attack".

The text does not specify whether the medical units in question are fixed or mobile. My delegation would have no difficulty in the case of mobile medical units, since to place them near military objectives in an armed conflict would be tantamount to a deliberate attempt to protect the military objective concerned from military attacks.

The case of fixed medical units is anything but clear, for a fixed medical unit may have been situated in peacetime at the side of an undertaking or a workshop, for instance, a power station, which because of circumstances might suddenly become a military objective. A power station might supply electricity both to the fixed medical unit and to an undertaking which happened to contribute to the war effort. My delegation would find it difficult to allow the adverse party to consider such a situation to be one in which the fixed medical unit concerned was providing legal protection for a military objective - the power station, for instance - against attack.

O. 1977 PROTOCOL I:

Article 12. Protection of medical units

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

2. Paragraph 1 shall apply to civilian medical units, provided that they:
(a) belong to one of the Parties to the conflict;

(b) are recognized and authorized by the competent authority of one of the Parties to the conflict; or

(c) are authorized in conformity with Article 9, paragraph 2, of this Protocol or Article 27 of the First Convention.

3. The Parties to the conflict are invited to notify each other of the location of their fixed medical units. The absence of such notification shall not exempt any of the Parties from the obligation to comply with the provisions of paragraph 1.

4. Under no circumstances shall medical units be used in an attempt to shield military objectives from attack. Whenever possible, the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.
ARTICLE 13 - DISCONTINUANCE OF PROTECTION OF CIVILIAN MEDICAL UNITS

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 13. Discontinuance of protection of civilian medical units

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

2. The following shall not be considered as harmful acts:

   (a) the fact that members of the armed forces are receiving medical treatment in such medical units;

   (b) the presence in the medical unit of small arms and ammunition which have been taken from the sick and the wounded and not yet handed over to the competent services;

   (c) the fact that the medical unit is guarded by an armed picket, sentries, or escort responsible for keeping order.

B. PROPOSED AMENDMENTS:

Paragraph 1

CDDH/II/17  
11 March 1974  
Poland

After the words "reasonable time limit" insert the words "for the discontinuance of the acts in question."

Paragraph 2

CDDH/II/15  
11 March 1974  
Canada

Revise paragraph 2 to read as follows:

"The following shall not be considered as harmful acts:

   (a) that the personnel of the unit are armed, and that they use the arms in their own defence, or in that of the wounded and sick in their charge;

   (b) that in the absence of armed orderlies, the unit is protected by a picket or by sentries or by an escort;
(c) that small arms and ammunition taken from the wounded and sick and not yet handed to the proper service, are found in the unit;

(d) the fact that members of the armed forces are receiving medical treatment in such medical units."

CDDH/II/25
11 March 1974

Cuba

In paragraph 2 (c) insert between "armed picket" and "sentries" the words "a reasonable number of".

CDDH/II/38
12 March 1974

Australia

"(b) the presence in the medical unit of small arms and ammunition which have been taken from the wounded and the sick and not yet handed over to the appropriate services"

CDDH/II/47
12 March 1974

United Kingdom of Great Britain and Northern Ireland

Revise paragraph 2 as follows:

"2. The following shall not be considered as harmful acts:

(a) the fact that members of the armed forces are receiving medical treatment in such medical units;

(b) the presence in a medical unit of small arms and ammunition which have been taken from the wounded and sick and not yet handed over to the competent services;

(c) the fact that a medical unit is guarded by an armed picket, sentries, or escort responsible for keeping order."

Rationale

To improve the drafting, and to make paragraph 2(b) accord with the proposed United Kingdom amendment to Article 8(a).

C. MEETING OF COMMITTEE II, 6 February 1975 (CDDH/II/SR.14):

59. Mr. PICTET (International Committee of the Red Cross), introducing the article [13], said that it referred to civilian medical units because military units were covered by Articles 21 and 22 of the first Geneva Convention of 1949. Conditions (1) and (4) of Article 22 of that Convention had been omitted in Article 13. It had originally been thought that civilian medical personnel should not be armed, but on reflection it might be felt that they should be authorized to carry arms since they were subject to the same dangers as military personnel and had to protect themselves against attacks by bandits and animals and maintain order among convalescent enemy soldiers.
60. Miss ZYS (Poland) said that, after consultation with other delegations at the first session, her delegation had decided to withdraw its amendment (CDDH/II/17), in order not to make too many changes in the original text.

61. Mr. MARRIOTT (Canada) said that his delegation's amendment (CDDH/II/15) followed Article 22 of the first Geneva Convention of 1949 as closely as possible. He agreed with the representative of the ICRC that provision should be made for civilian medical personnel to be armed.

62. Mr. RIVERO ROSARIO (Cuba) explained that the purpose of his delegation's amendment (CDDH/II/25) was to ensure that there should not be an unlimited number of sentries.

63. Mr. CLARK (Australia) said that his delegation's amendment (CDDH/II/38) was a purely drafting change to cover the new definition of the wounded and sick and only applied to the English text. The Drafting Committee might find a more suitable word to describe the services.

64. Mr. MAKIN (United Kingdom) announced that in order to simplify the Committee's work, his delegation was prepared to withdraw its amendment (CDDH/II/47) and would like to become a sponsor of the Canadian amendment (CDDH/II/15).

65. Mr. MARRIOTT (Canada) questioned the need for the Cuban amendment (CDDH/II/25). In his experience, it was almost always difficult for medical units to find enough sentries.

66. Mr. SOLF (United States of America) said that his delegation was prepared to support the Canadian amendment (CDDH/II/15). He agreed that the carrying of arms by civilian medical personnel and sentries protecting them should not be considered as harmful, but in occupied territory or in areas in which fighting was taking place the right of the party in control of the area to disarm such personnel should be reserved.

67. Mr. CZANK (Hungary) said that the proposal that civilian medical units should be armed was a new one which his delegation was not prepared to endorse fully at that state, although it did not wish to exclude it completely. He asked the Canadian representative to define the arms which might be carried by such personnel, since sub-paragraph (a) of this amendment (CDDH/II/15) referred to "arms" in general and sub-paragraph (c) to "small arms".

68. Mr. MARRIOTT (Canada) replied that the wording of sub-paragraph (a) was identical to that of sub-paragraph (1) of Article 22 of the first Geneva Convention of 1949. The meaning of the word was that understood by the countries which had ratified that Convention.

69. Mr. MARTIN (Switzerland) pointed out that the question of arming civilian personnel would be dealt with under Article 54 on civil defense and would cover light weapons used to maintain order. However, in sub-paragraph (b) of the original text of the article, the small arms taken from the sick and wounded would be used collectively by all personnel, whereas those used by the armed pickets, sentries or escorts referred to in sub-paragraph (c) would presumably belong to them individually.
70. Mr. ONISHI (Japan) said that, on the whole, his delegation could support the Canadian proposal. He asked the representative of the ICRC to explain why it had been considered necessary in the original text of the article to change the wording agreed upon by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, which referred to wounded, sick and shipwrecked members of the armed forces who were in such medical establishments and units for medical treatment, whereas paragraph 2 (a) of the ICRC draft referred only to members of the armed forces receiving medical treatment in such units.

71. Mr. RIVERO ROSARIO (Cuba) explained that his delegation's amendment (CDDH/II/25) was not intended to limit the number of sentries, but to ensure that there were not so many sentries that the implementation of Article 13 was endangered.

72. Mr. PICTET (International Committee of the Red Cross) said that he would reply to the Japanese representative's question at the next meeting after consulting the report of the Conference of Government Experts.

73. The CHAIRMAN suggested that the clarification might be given in the Drafting Committee, of which Japan was a member.

The Committee decided to refer the study of Article 13, with the relevant amendments to the Drafting Committee.


The Drafting Committee... dealt with draft Protocol I, Part II, Section I, Articles 9 to 20 (except Articles 14, 18 and 18bis).

It now submits to the Committee II for approval the text of the above articles as given on the following pages. Some passages have been placed in brackets in cases where the Drafting Committee did not consider itself competent, or where the final decision must await the result of the studies of ad hoc working groups.

Article 13. Discontinuance of protection of civilian medical units

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

2. The following shall not be considered as acts harmful to the enemy:

   (a) that the personnel of the unit are armed for their own defence, or for that of the wounded and sick in their charge;

   (b) that the unit is protected by a picket or by sentries or by an escort;

   (c) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the unit;
(d) the fact that members of the armed forces [or other combatants] are receiving medical treatment in the unit.

E. MEETING OF COMMITTEE II, 24 February 1975 (CDDH/II/SR.23):

50. Mr. BRAVO (Mexico) said that he had expressed the view in the Drafting Committee that there should be a definition of the type of weapons with which the personnel referred to in paragraph 2 (a) would be armed. He had proposed that the expression "personal weapons" (armas individuales) should be used and, to satisfy other delegations, had agreed that the reference should be to light personal weapons. The expression "dotado con armas" used in the Spanish text was dangerous in that it set no limitation to the calibre, power, range or other characteristics of the weapons a medical unit could have at its disposal. His delegation wished its reservation on the subject to be clearly recorded in the summary record, since, with the development of weaponry, the danger to which he had referred might become increasingly serious.

51. Mr. MARTIN (Switzerland) said that he had pointed out on an earlier occasion that the references to weapons for self-defence in Articles 13 and 58 should be in similar terms. He accordingly suggested that Article 13, paragraph 2 (a), should read: "that the personnel of the unit bear small arms for their own defence or for that of the wounded and sick in the charge".

52. Mr. HERNANDEZ (Uruguay) said that he shared the Mexican representative's anxiety. An ambulance carrying sick or wounded could not, for example, be permitted to have a machine-gun mounted on its roof. A precise definition of the arms which the personnel of the unit were entitled to carry should be given in the correct military terms, for otherwise the provision would be open to the employment of any type of weapon.

53. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, said that the majority of members of the Drafting Committee had considered that the use of qualifying adjectives would create confusion and would be inconsistent with the provisions of Article 22 of the first Geneva Convention of 1949, the corresponding paragraph of which made no reference to small arms or light individual weapons. It had been considered important to follow the same formula for civilian medical units as for military medical units.

54. Discussion in the Drafting Committee had shown that there was a considerable divergence of views between different countries on the meaning of the term "small arms", which in his country meant any individually served weapon, while personal weapons could be construed as weapons owned by individuals. It had been considered advisable to use the same formula as that employed in the Geneva Conventions, which had given rise to no problems.

55. Mr. SANCHEZ DEL RIO (Spain) said that the expression to which the Mexican representative had objected was a mistake in the Spanish text. The problem might be solved by replacing the words "este dotado con armas" by the words "este armado". The general term "arms" could cover any kind of weapon but it would be difficult for an individual to be armed, for example, with a cannon.
56. Mr. BRAVO (Mexico) said that a vote had been taken on the introduction of the term "dotado con armas" and he had opposed it. He was opposed also to the term "este armado", which could cover almost any type of weapon. He therefore wished his reservation on both terms to be recorded.

57. Mr. MARTIN (Switzerland) said that the Conference had been convened not only to reaffirm but also to develop humanitarian law. Having heard the explanation of the Vice-Chairman of the Drafting Committee with regard to Article 22, sub-paragraph (1), of the first Geneva Convention of 1949, however, he would be prepared to accept Article 13, paragraph 2 (a) of draft Protocol I without any definition of the type of arms permitted. If any amendment was to be made, it should apply equally to military medical units and civil defence units.

58. Mr. AL-FALLOUI (Iraq) said that the arms in question were obviously personal ones since they were arms of defence: there was no reason why that should not be stated.

59. The CHAIRMAN said that a vote could be taken if the Mexican representative so wished.

60. Mr. BRAVO (Mexico) said that his delegation would not be opposed to voting on the proposal or to raising it in a plenary meeting of the Conference if delegations so desired.

Paragraphs 1 and 2

61. The CHAIRMAN suggested that a separate vote should be taken on paragraphs 1 and 2 of Article 13.

Paragraph 1 was approved by consensus.

62. The CHAIRMAN recalled the Mexican proposal to include the words "et dote d'armes individuelles legeres".

63. Mr. AL-FALLOUI (Iraq), speaking on a point of order, observed that he had supported the Mexican amendment to include the word "personal", but thought that "individual" was too confusing.

64. Mr. BRAVO (Mexico) said that he could agree to the text mentioned by the Chairman.

65. Mr. MARTIN (Switzerland) thought it would be better to send the text back to the Drafting Committee. An individual weapon was something that was not a collective weapon, whereas "personal" meant "belonging to one person". The difficulty could be overcome, however, by making it clear that Article 22 (1) of the first Geneva Convention of 1949 must be interpreted in the same way as Article 13.

66. The CHAIRMAN pointed out that the summary record would suffice to show how the words were interpreted. He did not wish to refer the matter back to the Drafting Committee and would prefer the Committee to vote.

67. Mr. POZZO (Argentina) endorsed that view.
68. Mr. MAKIN (United Kingdom) said that he could not believe that those who were opposed to the existing wording would consider it legitimate to blow up a hospital if there were one armed individual guarding it; nevertheless, that was the gist of their comments. There was nothing to say that individuals who were armed should not be attacked. The question at stake was the protection of the unit.

69. Mr. BRAVO (Mexico) said that he had no objection to the original text, which had been changed by the Drafting Committee. In that connexion he agreed with the United Kingdom representative.

70. Mr. CZANK (Hungary) said that he had voted in the Drafting Committee to accept the text because in the context of the various articles of the Protocol it was fairly sure not to be misused. Civilian units would not be armed with large weapons.

71. Paragraph 1 of Article 12 stated that "medical units . . . shall never be the object of attack". If that rule was observed, such units did not need weapons for their own defence. Moreover, paragraph 2 (a) of Article 13 provided that "the personnel of the unit are armed for their own defence". He wondered what kind of weapons the escort mentioned in paragraph 2 (b) would have.

72. He would suggest the use of the word "individual" rather than "personal", because that would make it clear that individual weapons were carried and could be used by one person, and the possibility of dispute over ownership could thus be excluded. Alternatively, the New Zealand suggestion could be adopted. The words "for their own defence" should not, however, be omitted.

73. Mr. MAIGA (Mali), Rapporteur, speaking on a point of order, thought that some confusion had arisen and that guidance from the ICRC should be sought. The article was entitled "Discontinuance of protection of civilian medical units"; there was no mention of the military in the title.

74. Mr. PICTET (International Committee of the Red Cross) agreed that Article 13 dealt with civilian medical units. Members of the armed forces receiving treatment in the unit were mentioned only in paragraph 2 (d).

75. Mr. KHAIRAT (Arab Republic of Egypt) thought that the question of substance must be decided before the paragraph was sent to the Drafting Committee. His delegation would be satisfied with the words "light individual weapons" and agreed that the words "for their own defence" must be retained.

76. Mr. AL-FALLOUJI (Iraq) thought that the important thing was to retain the principle that civilian units should be unarmed except for their own defence.

77. The CHAIRMAN asked whether the Mexican representative could agree to the version "dotes d'armes legeres individuelles".

78. Mr. BRAVO (Mexico) agreed to that version.

The amendment was adopted by 35 votes to none, with 17 abstentions.
Paragraph 2 (b)

79. Mr. RIVERO ROSARIO (Cuba) expressed his delegation's dissatisfaction at the Drafting Committee's failure to take into account its proposal (CDDH/II/25) to insert the words "a reasonable number of" between "picket" and "sentries". A large number of sentries could well invalidate the article. He would not, however, press for a vote.

80. Mr. PICTET (International Committee of the Red Cross) suggested that the word "protegee" in the French text should be changed to "gardee" to bring it into line with Article 22 of the first Geneva Convention of 1949.

81. Mr. MAKIN (United Kingdom) proposed that the word "guarded" should be used in the English text also.

It was so agreed.

Paragraph 2 (b) was adopted.

Paragraph 2 (d)

82. The CHAIRMAN drew attention to the words "or other combatants" in square brackets in paragraph 2 (d).

83. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that in addition to members of the armed forces there were a number of categories of persons assimilated thereto. The Drafting Committee was not sure whether such categories were already implied in the expression "members of the armed forces" and would like to have the views of the Committee on that matter.

84. Mr. POZZO (Argentina) thought that the term "armed forces" should be reserved for nationals of a State.

85. The CHAIRMAN put the words "or other combatants" in paragraph 2 (d) of Article 13 to the vote.

The words "or other combatants" were approved by 48 votes to one, with 2 abstentions.

Article 13 as a whole, as amended, was adopted.

F. ARTICLE ADOPTED BY COMMITTEE II, 24 February 1975 (CDDH/II/278):

Article 13. Discontinuance of protection of civilian medical units

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

2. The following shall not be considered as acts harmful to the enemy:
(a) that the personnel of the unit are equipped with light individual weapons for their own defence, or for that of the wounded and sick in their charge;

(b) that the unit is guarded by a picket or by sentries or by an escort;

(c) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the unit;

(d) that members of the armed forces or other combatants are receiving medical treatment in the unit.

G. MEETING OF COMMITTEE II, 18 March 1975 (CDDH/II/SR.38):

50. Mr. de MULINEN (International Committee of the Red Cross) said that the ICRC had realized that there might be a danger of dealing with the protection of medical transport under a joint provision, and had at one time considered the idea of separate treatment. The reference to Articles 12 and 13 in the present text of Article 24 would cover ships as well as other means of medical transport and the words "whether alone or in convoy" in Article 24 would cover ships of all sizes. . . .

H. MEETING OF COMMITTEE II, 8 April 1975 (CDDH/II/SR.49):

42. [Mr. SOLF (United States of America) said that] . . . the civilians mentioned in Article 13 of the second Geneva Convention of 1949 were included in Article 13 of the Protocol as persons who might become prisoners of war and could be removed from hospital ships by warships. It was not necessary to distinguish them from other civilians who should not be prisoners of war and consequently were immune from capture at sea.

I. PROPOSED AMENDMENT:

CDDH/II/378 Canada, Germany, Federal Republic of, United Kingdom of
28 May 1976 Great Britain and Northern Ireland, United States of America

Amend paragraph 2 (d) to read:

"(d) that members of the armed forces or other combatants are in the unit for medical reasons."

J. MEETING OF COMMITTEE II, 31 May 1976 (CDDH/II/SR.75):

35. The CHAIRMAN pointed out that the Chairman of the Drafting Committee of the Conference thought that the problem raised in that Committee concerning Article 13, paragraph 2 (d) of draft Protocol I, was a matter of substance with which the Drafting Committee was not competent to deal. He asked whether Committee II would agree to reopen consideration of Article 13, paragraph 2 (d). Under rule 32 of the rules of procedure, such reopening would require a two-thirds majority vote.
The Committee agreed to reopen consideration of Article 13, paragraph 2 (d)

36. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the matter before Committee II with regard to Article 13, paragraph 2 (d) was a consequence of the discussions in that Committee with respect to the protection of medical units under draft Protocol II. When dealing with the articles of draft Protocol II corresponding to those of draft Protocol I, the Drafting Committee had found a formula which it considered to be better than that adopted for draft Protocol I. It had been the general feeling that the text arrived at later should accordingly be introduced into the corresponding provisions of draft Protocol I.

37. The wording now before the Committee in the amendment submitted by the delegations of Canada, the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland and the United States of America (CDD/II/378) was such a provision. The words "that members of the armed forces or other combatants are receiving medical treatment in the unit" in Article 13 of draft Protocol I were not appropriate, since there might be occasions when military forces or other combatants were in a unit for medical reasons but did not receive medical treatment. Such military personnel might be merely awaiting medical treatment. The Drafting Committee had felt that it was inappropriate that the presence of those persons should be considered to be "an act harmful to the enemy". The Drafting Committee had therefore adopted another formula for Article 17, paragraph 3 (d) of draft Protocol II, the words "receiving medical treatment" being replaced by "for medical reasons". The Drafting Committee suggested that the same phrase should be adopted for Article 13, paragraph 2 (d) of draft Protocol I. However, as there was a feeling that the matter might be one of substance, several delegations had asked that the question be reconsidered and that Committee II adopt the same formula for draft Protocol I as it had already adopted for draft Protocol II.

38. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that it was not only a question of deciding whether an article of draft Protocol I was in conformity with draft Protocol II, since it was not always possible for the texts of articles to correspond perfectly. What was important was that Committee II had adopted the wrong formula for draft Protocol I. He agreed with the formula "medical reasons".

The amendment to Article 13, paragraph 2 (d) (CDDH/II/378), was adopted by consensus.

Article 13, paragraph 2 (d), as amended, was adopted by consensus.

K. ARTICLE ADOPTED BY COMMITTEE II, 31 May 1976 (CDDH/II/382):

Article 13. Discontinuance of Protection of civilian medical units

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

(a) that the personnel of the unit are equipped with light individual weapons for their own defence, or for that of the wounded and sick in their charge;

(b) that the unit is guarded by a picket or by sentries or by an escort;

(c) that the small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the unit;

(d) that members of the armed forces or other combatants are in the unit for medical reasons.

L. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 13. Discontinuance of protection of civilian medical units

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

2. The following shall not be considered as acts harmful to the enemy:

(a) that the personnel of the unit are equipped with light individual weapons for their own defence, or for that of the wounded and sick in their charge;

(b) that the unit is guarded by a picket or by sentries or by an escort;

(c) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units;

(d) that members of the armed forces or other combatants are in the unit for medical reasons.

M. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 13. Discontinuance of protection of civilian medical units

Article 13 was adopted by consensus.

N. 1977 PROTOCOL I:

Article 13. Discontinuance of protection of civilian medical units

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

2. The following shall not be considered as acts harmful to the enemy:

(a) that the personnel of the unit are equipped with light individual weapons for their own defence or for that of the wounded and sick in their charge;

(b) that the unit is guarded by a picket or by sentries or by an escort;

(c) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units;

(d) that members of the armed forces or other combatants are in the unit for medical reasons.
ARTICLE 14 - LIMITATIONS ON REQUISITION OF CIVILIAN MEDICAL UNITS

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 14. Requisition

1. An Occupying Power may requisition civilian medical units, their equipment, their material and the services of their personnel only temporarily and in case of urgent necessity, and solely for the purpose of providing medical care for sick and wounded members of the armed forces and of the occupation administration.

2. The Occupying Power shall ensure that arrangements are made for the care and treatment of the civilian patients of these units and shall take into account the civilian population's need for medical treatment.

B. PROPOSED AMENDMENTS:

CDDH/II/21 and Add.l 11 March 1974

[Signatories listed here]

Article 14

The article should be headed "Protection of Civilian Medical Units in Occupied Territories" and read:

"1. The Occupying Power shall take into account the civilian population's need for medical services and shall ensure that arrangements are maintained for the care and treatment of civilian patients by civilian medical units.

2. Civilian medical units, their equipment, their material and the services of their personnel shall not be requisitioned by the Occupying Power so long as they are necessary for the civilian population's need for adequate medical treatment. Requisitions, if made, shall be subject to the following conditions:

(i) That they are only temporary and are only made in case of urgent necessity,

(ii) That they are made solely for the purpose of providing medical care for sick and wounded members of the Armed Forces (including Prisoners of War) and of the Occupation Administration,

(iii) That immediate arrangements are made for the continuing care and treatment of any patients affected by the requisition,

(iv) That the obligations of the Occupying Power under paragraph 1 of this Article are maintained."
CDDH/II/37
12 March 1974

Australia

Revise paragraph 1 as follows:

"1. An Occupying Power may requisition civilian medical units, their equipment, their material and the services of their personnel only temporarily and in case of urgent necessity, and solely for the purpose of providing medical care for the wounded and the sick of the armed forces and of the occupation administration."

CDDH/II/16
11 March 1974

Romania

Add at the end of paragraph 1 the clause "and provided the medical care of the civilian population is not adversely affected thereby".

CDDH/II/19
11 March 1974

Bulgaria, Byelorussian Soviet Socialist Republic, German Democratic Republic, Hungary, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics

Delete the words "and of the occupation administration."

CDDH/I 1/3
6 March 1974

Yugoslavia

After the word "shall" replace the remaining part of the sentence by the following text:

"make arrangements in due time for the needs of the civilian population for medical treatment."

CDDH/II/16
11 March 1974

Romania

Delete the words "shall take into account"

C. MEETING OF COMMITTEE II, 7 February 1975 (CDDH/II/SR.15):

10. Mrs. BUJARD (International Committee of the Red Cross), introducing Article 14, said that it was an adaptation and extension of Article 57 of the fourth Geneva Convention of 1949. In accordance with Article 57 of the fourth Geneva Convention of 1949, the Occupying Power, which in principle must provide for its own needs, had the right to requisition civilian hospitals. Such
hospitals could only be requisitioned temporarily in case of urgent need and requisitioning was subordinate to the condition that every appropriate measure must be taken to ensure that the civilian population received care and treatment. The Occupying Power was not authorized to bring patients from its own territory to be treated in the hospitals of the occupied country.

11. Article 14 of draft Protocol I extended Article 57 in two ways - first, it made possible the requisitioning of all medical units such as they were defined in Article 8 (c); second, such requisitioning was possible not only in the case of the wounded and sick of the armed forces, but also of civilians belonging to the occupation administration.

12. She wished to make a drafting amendment to the French text of Article 14 as it appeared in draft Protocol I and on page 103 of document CDDH/56: the first part of paragraph 2 should read "La Puissance occupante pourvoira au soin et au traitement des civils hospitalisés . . . .".

13. The CHAIRMAN invited a representative of the relevant sponsors to introduce each of the amendments.

14. Mr. WARRAS (Finland) said that the sponsors of the amendment in document CDDH/II/21 and Add.1 felt strongly that the conditions for requisition should be established as clearly as possible in order to safeguard the treatment of civilians in occupied territories. They had therefore laid down as a first priority the continuation of medical treatment for civilians in those territories. Paragraph 2 of the amendment laid down the conditions to which requisition was subject, bearing in mind the obligations outlined in paragraph 1. The first two conditions were the same as those in paragraph 1 of the original draft and the last two emphasized the consequences of the principle established in paragraph 1. The title of the article had been changed because it suggested a more positive approach to the problem of safeguarding the needs of the civilian population of occupied territories.

15. Mr. CLARK (Australia) said that he wished to withdraw his delegation's amendment (CDDH/II/37) and to support the amendment in document CDDH/II/21 and Add.1. From a drafting point of view however, he would suggest that the word "the" before the term "armed forces" in paragraph 2 (ii), be deleted and that the initial letters in the expression "armed forces" be written in lower cases in order to bring the wording into line with that of Article 1.

16. Miss ZYS (Poland) said that the purpose of the amendment submitted by several socialist countries of Eastern Europe (CDDH/II/19) was to limit to essential and temporary cases the extent of the requisition of property in occupied territory, which should be confined to the service of essential needs. The Occupying Power must avoid the danger of abusive and permanent requisition becoming the regular practice, as it had done under Nazi and other occupations. It was important to avoid creating a precedent with regard to the legality of the establishment of a special administration by the Occupying Power.

17. Mr. GOZZE-GUCETIC (Yugoslavia) said that his delegation's amendment (CDDH/II/3) was intended to emphasize the Occupying Power's obligation to care not only for the sick but also for all needs of the civilian population, and to clarify and strengthen the original text. The wording was almost the same as that of the original paragraph 2 and should also apply to the text of amendment CDDH/II/21 if that was adopted.
18. The CHAIRMAN suggested that, since the Romanian representative was not present to introduce his amendment (CDDH/II/16), it should be referred to the Drafting Committee as it was mainly a drafting amendment.

It was so agreed.

19. Mr. SCHULTZ (Denmark) said that his delegation fully supported the amendment in document CDDH/II/21 and Add.1 and would like to be added to the list of sponsors.

20. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that most of the amendments proposed to Article 14 consisted of improvements to the wording of the article. His delegation supported the amendment in CDDH/II/21, except that it would prefer to see the words "in Occupied Territories" deleted from the proposed new title. According to Article 42 of The Hague Regulations respecting the Laws and Customs of War on Land "Territory is considered occupied when it is actually placed under the authority of the hostile army". That definition would not cover areas in which hostilities were still in progress, so that to include the words "occupied territories" in the title might restrict the scope of the protection provided to civilian medical units under the article, and that would be contrary to the purpose of the amendment.

21. Mr. BOTHE (Federal Republic of Germany) said that there appeared to be more problems of drafting than of substance in the ICRC draft of Article 42. If it were adopted as amended by document CDDH/II/21 and Add.1, it would cover not only Article 57 of the fourth Geneva Convention of 1949 but also parts of Articles 55 and 56.

22. Care must be taken to ensure that the article remained an extension of the articles of the Convention and did not inadvertently become restrictive. Article 57 of the fourth Geneva Convention of 1949 did not provide for the requisitioning of civilian hospitals for use by the occupation administration, whereas under the proposed Article 14, a hospital, being a medical unit, might be requisitioned for such purposes. Such an inconsistency must be removed by the Drafting Committee. The suggestion just made by the representative of the Ukrainian Soviet Socialist Republic to extend the article to the combat zone deserved careful consideration.

23. Mr. SOLF (United States of America) said that his delegation had no serious objection to the original wording of the draft article except that it would be clearer if the words "including prisoners of war" were inserted after the words "sick and wounded members of the armed forces" in paragraph 1. Since the first and third Geneva Conventions of 1949, as well as Article 10 of draft Protocol I, said that medical care should be provided without discrimination on the basis of medical need, the drafters' intention must have been to include prisoners of war held by the Occupying Power. Those words were in fact included in amendment CDDH/II/21 and Add.1, paragraph 2 (ii).

24. With regard to that amendment, which had broad support, the change of title was misleading since Article 14 dealt with requisitions only and did not purport to touch on other protections, whereas the new title suggested that civilian medical units in occupied territory were protected only against improper requisitioning.
25. His delegation had no objection to reversing the order of the two paragraphs of the original text, as proposed in that amendment, and considered the language of paragraph 1 an improvement on the original draft. The main thrust of paragraph 2 was to establish an inflexible priority for civilian patients without regard to the relative need for medical care of the members of armed forces and of the civilian population. Article 57 of the fourth Geneva Convention of 1949 was, however, more flexible and provided the means for allocating hospital space according to relative medical need. Paragraph 1 of the amendment adequately conveyed the limitation which appeared in Article 56 and therefore the additional inflexible priority for civilian use of medical units, other than hospitals, was inconsistent with the principle set forth in Article 10 of draft Protocol I.

26. His delegation had no problem with the four conditions listed in paragraph 2 of that amendment.

27. The Romanian amendment (CDDH/II/16) provided a reasonable compromise between the original draft and that of amendment CDDH/II/21 and Add.l and should be considered by the Drafting Committee.

28. Amendment CDDH/II/19 was consistent with Article 57 of the fourth Geneva Convention of 1949, but the personnel of the occupation administration were also entitled to have their medical needs considered.

29. Mr. SANCHEZ DEL RIO (Spain) said that the need for simplicity should be one of the Committee's constant concerns. The ICRC text was preferable, not only because it used far fewer words to say the same thing, but also because it maintained the structure of Article 57 of the fourth Geneva Convention of 1949 and thus made it clear what changes had been made. He would not be opposed to the amendments submitted by Romania (CDDH/II/16), Yugoslavia (CDDH/II/3), Bulgaria and others (CDDH/II/19), but amendment CDDH/II/21 and Add.l was too complicated.

30. Mr. MARTIN (Switzerland) said he had doubts about the title of the article in amendment CDDH/II/21 and Add.l: did the expression "Occupied Territories" cover the zone of military operations? Requisitioning of civilian medical units might also occur in those zones. He also wondered what was the precise meaning of "occupation administration", and why, in the French text, the expression "administration d'occupation" used by the ICRC had been changed to "administration occupante" in the proposed amendment. At first sight it might appear that the ICRC expression was wider in scope, covering administrative units and personnel of the occupied country who had been called into the service of the Occupying Power. The terminology of the articles in the Protocol should maintain an analogy with those of the original Conventions. For that reason, he was more inclined to support the ICRC version.

31. Mr. CALCUS (Belgium) said that he too wondered what was the precise meaning of the expressions "administration d'occupation" and "administration occupante".

32. Mr. MAKIN (United Kingdom) said that he agreed with the United States representative that the first sentence of paragraph 2 of amendment CDDH/II/21 and Add.l came near to infringing the fundamental Red Cross principle that medical care should be given without discrimination on the basis of medical need. He would have difficulty in accepting that sentence unless it was made clear that the question of what was 'necessary for the civilian population's
need for adequate medical treatment" was subject to the medical judgement of the medical authorities of the Occupying Power, which, under Article 56 of the fourth Geneva Convention of 1949, had the duty of ensuring and maintaining medical services in the occupied territory. With regard to the amendment in CDDH/II/19, it would be inconsistent with Article 10 of draft Protocol I to exclude members of the occupation administration from the provisions of Article 14.

33. Mr. Krasnopeev (Union of Soviet Socialist Republics) said that, in his view, the expression "occupation administration" meant the administration set up by the Occupying Power, which would normally consist, at first, of members of the armed forces, but might subsequently include members of the local administration who would have been incorporated into the State apparatus of the Occupying Power. To retain the reference to the occupation administration would open the way for all manner of abuses on the part of the Occupying Power, which could use its position of strength to interpret its medical needs to the detriment of the civilian population of the occupied territory. It was ridiculous to claim that the Occupying Power would not be in a position to provide for the medical care of its own administrative personnel. As it stood, the text constituted an invitation to the Occupying Power to use the resources of the occupied country rather than its own. In accordance with the laws and customs of war, the medical resources of an occupied territory might be reserved for the sole use of the Occupying Power.

34. Mr. ONISHI (Japan) said that if Article 57 of the fourth Geneva Convention meant that Occupying Powers had the right to requisition civilian medical units other than hospitals, Article 14 was superfluous. If, on the other hand, they did not have such a right under Article 57, then it was surely undesirable to extend their freedom by including a new article to that effect.

35. Mr. MARRIOTT (Canada) said that the extension was required to take account of the changes that had occurred in medical services since 1949. He himself would have preferred the expression "medical services" to "medical treatment" in paragraph 2 of amendment CDDH/II/21 and Add.1.

36. He did not share the concern of the sponsors of amendment CDDH/II/19. Some of the members of the occupation administration would arrive with the armed forces, and in any case their numbers would be limited. Paragraph 2 (i) of amendment CDDH/II/21 and Add.1 stressed that the requisitioning of civilian medical resources must be temporary and limited to cases of urgent necessity.

37. The word "adequate" which had been inserted in the first sentence implied that not all the civilian population's medical needs had absolute priority over those of the occupying armed forces. Certain forms of medical treatment could be postponed. For example, a patient requiring cosmetic plastic surgery would not have priority over a wounded soldier. The requirement in paragraph 1 that "arrangements should be maintained" meant that there should be no interruption in the provision of medical services to the civilian population.

38. Mrs. BUJARD (International Committee of the Red Cross) said that the addition of the reference to the "occupation administration" was meant to cover the civilian personnel, nationals of the Occupying Power, who followed the armed forces into the occupied territory in order to set up an administration. Only a limited number of persons were involved and such mention should not open the door to abuses.
39. Mr. CZANK (Hungary) said that paragraph 2 of amendment CDDH/II/21 and Add.l was a marked improvement on paragraph 1 of the ICRC text. The amendment said that "civilian medical ... services ... shall not be requisitioned ...", unless certain conditions were fulfilled; the ICRC text started by saying that they "may" be requisitioned in certain circumstances. The Canadian representative had clearly explained the implications of "adequate medical treatment" in the first sentence of paragraph 2. His delegation would also be in favour of incorporating the Yugoslav amendment to paragraph 2 (CDDH/II/3), to the effect that the arrangements should be made "in due time".

40. Mr. MARTIN (Switzerland) said that, having heard the statements by the representatives of the Union of Soviet Socialist Republics and of the ICRC, he was now in favour of amendment CDDH/II/19, to delete the words "and of the occupation administration".

41. The CHAIRMAN said that the discussion on Article 14 was closed. He suggested that the amendments in documents CDDH/II/3 and CDDH/II/16, which were essentially drafting amendments, be referred to the Drafting Committee and that the other amendments be put to the vote.

It was so agreed.

Amendment CDDH/II/19 was adopted by 24 votes to 19, with 5 abstentions.

42. The CHAIRMAN said that, since amendment CDDH/II/21 and Add.l differed considerably from the ICRC text it might be wise to vote on it, in order to simplify the work of the Drafting Committee.

43. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), Mr. BOSCH (Uruguay) and Mr. MARTIN (Switzerland) supported that view.

Amendment CDDH/II/21 and Add.l was adopted by 40 votes to 3, with 11 abstentions.

44. Mr. SOLF (United States of America) explained that his delegation had abstained from voting on amendment CDDH/II/21 and Add.l because, like the United Kingdom delegation, it felt that the words, "so long as they are necessary for the civilian population's need for adequate medical protection" had not been fully explained by the co-sponsors.

45. He had noted the partial explanation given by the Canadian representative but could not support his views before being satisfied on the question of relative medical needs.

46. Mr. MAKIN (United Kingdom) said he associated his delegation with the remarks of the last speaker.

47. Mr. GOZZE-GUCETIC (Yugoslavia) said that the amendment submitted by his delegation (CDDH/II/3) and the Romanian amendment (CDDH/II/16), which he supported, were both designed to clarify amendment CDDH/II/21 and Add.l in respect of the needs of the civilian population. They should be taken into account by the Drafting Committee.

48. The CHAIRMAN said that that would be done. The discussion on Article 14 had now been concluded.
D. ADDENDUM TO THE REPORT OF THE DRAFTING COMMITTEE, COMMITTEE II, 28 February 1975 (CDDH/II/240/Add.1):

The Drafting Committee herewith submits to Committee II the text of Articles 8, 11, 14, 15 17 and 18 of draft Protocol I, Part II, Section I, which either did not appear in its report of 21 February 1975 or have been referred back to it.

Article 14. Limitations on requisition of civilian medical units

1. The Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied.

2. The Occupying Power shall not therefore requisition civilian medical units, their equipment, their material or the services of their personnel, [civilian medical equipment or material or the services of civilian medical personnel] so long as these resources are necessary for the provision of adequate medical services for the civilian population and for the continuing medical care of any wounded and sick already under treatment.

3. Provided that the general rule stated in paragraph 2 of this article continues to be observed, the Occupying Power may requisition the said resources, subject to the following specific conditions:

   (a) that these resources are necessary for the adequate and immediate medical treatment of the wounded and sick members of the Armed Forces of the Occupation or of prisoners of war; and

   (b) that the requisition continues only while such necessity exists; and

   (c) that immediate arrangements are made to ensure that the medical needs of the civilian population, as well as those of any wounded and sick under treatment, who are affected by the requisition, continue to be satisfied.

E. MEETING OF COMMITTEE II, 4 March 1975 (CDDH/II/SR.29):

47. Mr. BÖHLE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the only problem on which that Committee could not take any action in connexion with Article 14 had been that constituted by the words in square brackets in paragraph 2; but that problem had been removed by the withdrawal by the Australian delegation of the amendment concerned. The text of Article 14 had given the Drafting Committee a considerable amount of work, but the Committee felt that the wording it now proposed faithfully reflected the decisions taken in Committee II.

48. The CHAIRMAN invited the Committee to adopt by consensus the draft text of Article 14 as given in document CDDH/II/240/Add.1, without the passage in square brackets in paragraph 2.

The draft text of Article 14 in document CDDH/II/240/Add.1, without the passage in square brackets, was adopted.

428
F. ARTICLE ADOPTED BY COMMITTEE II, 4 March 1975 (CDDH/II/279):

Article 14. Limitations on requisition of civilian medical units

1. The Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied.

2. The Occupying Power shall not therefore requisition civilian medical units, their equipment, their material or the services of their personnel, so long as these resources are necessary for the provision of adequate medical services for the civilian population and for the continuing medical care of any wounded and sick already under treatment.

3. Provided that the general rule stated in paragraph 2 of this article continues to be observed, the Occupying Power may requisition the said resources, subject to the following specific conditions:

(a) that these resources are necessary for the adequate and immediate medical treatment of the wounded and sick members of the Armed Forces of the Occupation or of prisoners of war; and

(b) that the requisition continues only while such necessity exists;

and

(c) that immediate arrangements are made to ensure that the medical needs of the civilian population, as well as those of any wounded and sick under treatment, who are affected by the requisition, continue to be satisfied.

G. MEETING OF COMMITTEE II, 10 April 1975 (CDDH/II/SR.51):

18. [Mr. SKARSTEDT (Sweden) said that] it was not realistic to try to prohibit requisition, but it was necessary, as well as realistic, to limit the extent of the requisition of civil defence equipment in occupied territories by mentioning the conditions governing such requisition. His delegation had at first felt that in drafting such conditions the wording of Article 14 of draft Protocol I should be followed, in so far as it was applicable. It had found, however, that the conditions described in Article 14 were so special that they were not applicable in the field of civil defense. . . .

H. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 14. Limitations on requisition of civilian medical units

1. The Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied.

2. The Occupying Power shall not therefore requisition civilian medical units, their equipment, their material or the services of their personnel, so long as these resources are necessary for the provision of adequate medical services for the civilian population and for the continuing medical care of any wounded and sick already under treatment.

429
3. Provided that the general rule in paragraph 2 continues to be observed, the Occupying Power may requisition the said resources, subject to the following particular conditions:

   (a) that the resources are necessary for the adequate and immediate medical treatment of the wounded and sick members of the Armed Forces of the Occupying Power or of prisoners of war;

   (b) that the requisition continues only while such necessity exists; and

   (c) that immediate arrangements are made to ensure that the medical needs of the civilian population, as well as those of any wounded and sick under treatment who are affected by the requisition, continue to be satisfied.

I. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

   Article 14. Limitations on requisition of civilian medical units

   Article 14 was adopted by consensus.

J. 1977 PROTOCOL I:

   Article 14. Limitations on requisition of civilian medical units

   1. The Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied.

   2. The Occupying Power shall not, therefore, requisition civilian medical units, their equipment, their materiel or the services of their personnel, so long as these resources are necessary for the provision of adequate medical services for the civilian population and for the continuing medical care of any wounded and sick already under treatment.

   3. Provided that the general rule in paragraph 2 continues to be observed, the Occupying Power may requisition the said resources, subject to the following particular conditions:

   (a) that the resources are necessary for the adequate and immediate medical treatment of the wounded and sick members of the armed forces of the Occupying Power or of prisoners of war;

   (b) that the requisition continues only while such necessity exists; and

   (c) that immediate arrangements are made to ensure that the medical needs of the civilian population, as well as those of any wounded and sick under treatment who are affected by the requisition, continue to be satisfied.
ARTICLE 15 - PROTECTION OF CIVILIAN MEDICAL AND RELIGIOUS PERSONNEL

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 15. Civilian medical and religious personnel

1. Civilian medical personnel shall be respected and protected.

2. Temporary civilian medical personnel shall be respected and protected for the duration of their medical mission.

3. All possible help shall be afforded medical personnel in the combat zone.

4. The Occupying Power shall afford civilian medical personnel in the occupied territories every assistance to enable such personnel to perform their medical functions to the best of their ability. The Occupying Power may not require that in the performance of those functions such personnel give priority to the treatment of nationals of that Power. Under no circumstances shall such personnel be compelled to carry out tasks unrelated to their mission.

5. Civilian medical personnel shall have access to any place where their services are essential, subject to such supervisory and safety measures as the Party to the conflict may judge necessary.

6. Chaplains and other persons performing similar functions who are permanently attached to civilian medical units shall be respected and protected. The provisions of the Conventions and of the present Protocol concerning the protection and identification of permanent medical personnel shall apply equally to such persons.

B. PROPOSED AMENDMENTS:

Paragraph 3

CDDH/II/16 Romania 11 March 1974

Delete the word "possible"

CDDH/II/23 United Kingdom of Great Britain and Northern Ireland 11 March 1974

Revise paragraph 3 as follows:

"3. All feasible help shall be afforded to medical personnel in the combat zone."

Rationale "Possible" is too absolute in its meaning to convey the real intention behind this paragraph.
Replace the word "possible" by the word "feasible"

**Paragraph 6**

**Holy See**

13 March 1974

In the first line either delete the word "permanently" or after the word "permanently" insert the words "or temporarily".

Rationale: Civilian religious personnel, whether permanent or temporary, should be accorded the same treatment as temporary civilian medical personnel, for whom paragraph 2 provides that they "shall be respected and protected for the duration of their medical mission".

Equality of treatment for civilian medical and religious personnel should be laid down by using the same terminology in both cases.

**Arab Republic of Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Saudi Arabia, Sultanate of Oman, Syrian Arab Republic, Tunisia, United Arab Emirates, Palestine Liberation Organization.**

13 March 1974

In paragraph 6 replace "Chaplains and other persons performing similar functions" by "Religious personnel".

**Brazil**

14 March 1974

Replace the first sentence by the following:

"Chaplains of armed forces as well as other persons performing similar religious functions who are effectively attached to civilian medical units shall be respected and protected."

C. MEETING OF COMMITTEE II, 15 March 1974 (CDDH/II/SR.7):

6. Mr. KLEIN (Holy See), referring to his delegation's amendment to Article 8 (d) (CDDH/II/58), said that religious personnel and medical personnel were mentioned together in a number of articles in the Geneva Conventions of 1949. It was desirable that the former be defined in order to avoid any misunderstanding. He had no objection to the addition of the proposed definition at the end of Article 15 of Protocol I.

18. Mr. EL-SHAFEI (Arab Republic of Egypt) said that he hoped the Committee would bear in mind the amendment to Article 15 (CDDH/II/70), proposing that the words "Chaplains and other persons performing similar functions" should be replaced by "Religious personnel".
23. Mr. MAKIN (United Kingdom) said that the Committee appeared to be undecided whether the definition of the word "chaplain" should appear in Article 8 or Article 15. In his view, the proper place was Article 8 and if that were agreed, paragraph 6 of Article 15 should be deleted.

28. Mr. NAHLIK (Poland) said that, unlike the representative of the United Kingdom, he considered that it was enough to introduce into Article 15 the definition of "chaplain" which appeared in amendment CDDH/II/58 [to Article 8] or, if absolutely necessary, to make it the subject of an entirely new article.

30. Mr. KLEIN (Holy See) said that it was not whether the amendment appeared in Article 8 or Article 15 which was important, but that the term "chaplain" should appear in the text. It was used in all the four Conventions of 1949. There was no question, however, of obliging medical units to have chaplains. Perhaps the words "if they have them" might be added. Like the representative of Switzerland, he considered that the proposal of the representative of Denmark for the addition of the words "and other voluntary relief organizations" was acceptable.

35. Mr. MARTOSUHARDJO (Indonesia) said that the reference to chaplains should appear in Article 15 and not in Article 8.

37. Mr. RESENBLAU (Sweden) said he agreed with the representative of Indonesia that chaplains should be mentioned in Article 15.

D. PROPOSED AMENDMENT:

CDDH/II/201
6 February 1975

Austria, France, Holy See, Switzerland

In paragraph 6, replace the sentence "Chaplains and other persons performing similar functions who are permanently attached to civilian medical units shall be respected and protected." by "Religious personnel attached to civilian medical units - such as chaplains - shall be respected and protected . . . ".

E. MEETING OF COMMITTEE II, 7 February 1975 (CDDH/II/SR.15):

49. The CHAIRMAN invited the ICRC representative to introduce the Committee's text for Article 15.

50. Mr. BUJARD (International Committee of the Red Cross) said that Article 15 was one of the most important in the section under consideration. Until now, only civilian hospital staff had been protected, but as early as 1949 it had become obvious that all civilian medical personnel needed protection. Investigations by the ICRC had shown that, in the event of armed conflict, most countries would provide for the civilian medical service to work in close co-operation with military medical services or even to merge with them.

51. It might be argued that it was not essential to provide special protection for civilians, who were already protected per se, but civilian medical personnel was very different from the civilian population in general, since very often they had to work in dangerous conditions and sometimes even in battle areas. In order to accomplish their mission they must be effectively protected and easily identified.
52. In paragraph 6, the term "chaplains" had been amplified by the addition of "and other persons performing similar functions". The chaplain was a Western, Christian concept and did not cover all religions and philosophies.

53. The CHAIRMAN said that there were three proposed amendments to paragraph 3 of Article 15 - CDDH/II/16, submitted by the Romanian delegation; CDDH/II/23, submitted by the United Kingdom delegation; and CDDH/II/24, submitted by the United States delegation, the last two being identical - and three amendments to paragraph 6 - CDDH/II/59/Rev.1, submitted by the Holy See, now replaced, however, by the recently issued amendment CDDH/II/201; amendment CDDH/II/70, submitted by the Arab Republic of Egypt and twelve other delegations, and CDDH/II/72, submitted by Brazil.

54. Mr. MAKIN (United Kingdom) said that his delegation was proposing in CDDH/II/23 to replace the word "possible" by the word "feasible" because it was felt that "all possible help shall be afforded medical personnel in the combat zone" might mean that medical supplies would have to be diverted to satisfy doctors in the combat zone, which he did not think was the intention.

55. If the Romanian amendment to paragraph 3 (CDDH/II/16) were adopted, the sentence would not make sense in English.

56. Mr. SOLF (United States of America), referring to his delegation's amendment (CDDH/II/24), said that he had nothing to add to the last speaker's remarks.

57. Mr. KHAIRAT (Arab Republic of Egypt) said that amendment CDDH/II/70 which proposed to replace the words "Chaplains and other persons performing similar functions" by "Religious personnel", was designed to take account of all persons carrying out religious functions.

58. Mr. DUNSHEE de ABRANCHES (Brazil) said that the only difference between his own delegation's amendment (CDDH/II/72) and amendment CDDH/II/70 was the inclusion in the latter of the word "effectively".

59. Mr. KUSSBACH (Austria) said that amendment CDDH/II/201, submitted by Austria, France, Holy See and Switzerland, proposed the replacement of the sentence "chaplains and other persons performing similar functions who are permanently attached to civilian medical units shall be respected and protected" by the sentence "Religious personnel attached to civilian medical units - such as chaplains - shall be respected and protected ...".

60. Chaplains were only one type of servant of religion: there were many others. Nevertheless, since the word was already in the first Geneva Convention of 1949, it should be retained, though given less emphasis. The expression "religious personnel" was, in the co-sponsors' view, clearer than "other persons".

61. The amendment was similar to that in amendment CDDH/II/70, but preferable because it was more balanced. The co-sponsors were, however, prepared to discuss the matter with the co-sponsors of amendment CDDH/II/70 to find a compromise solution.

62. The delegations of Australia, Belgium, Guatemala, Japan and Nigeria had joined the list of co-sponsors of amendment CDDH/II/201.
63. The CHAIRMAN requested the Austrian representative to consult the co-sponsors of amendments CDDH/II/70 and CDDH/II/72 with a view to submitting a further text to the next meeting.

64. Mr. DUNSEE de ABRANCHES (Brazil) said he was agreeable to the Chairman's request and would join in those consultations.

65. Mr. CHOWDHURY (Bangladesh) said he agreed that, in case of armed conflict, civilian medical personnel should be able to give the necessary help to the civilian population. Article 15 was well drafted and afforded every protection for the provision of medical services.

66. It had been suggested that paragraph 6 should be amplified in order to cover religious personnel of all confessions, and his delegation would support amendment CDDH/II/201.

67. As a general principle, his delegation felt that, wherever possible, the articles drafted by the ICRC should be retained.

68. Although his delegation had no objections to replacing the word "possible", by the word "feasible" in paragraph 3, he must point out that someone would have to decide what was feasible in the event of armed conflict. It would therefore be safer for the civilian population if the word "possible" were used.

69. The CHAIRMAN requested representatives who were not of English mother tongue to consider possible translations of the word "feasible" into other languages.

F. MEETING OF COMMITTEE II, 10 February 1975 (CDDH/II/SR.16):

8. Mr. KUSSBACH (Austria) said that the sponsors of amendments CDDH/II/70, CDDH/II/72 and CDDH/II/201 had met before the meeting in an attempt to combine the three amendments to Article 15. Unfortunately, some of the sponsors of amendment CDDH/II/70 had been unable to be present. The participants had succeeded in reaching agreement on a text which appeared to be acceptable both to the sponsors of amendments CDDH/II/201 and CDDH/II/72 and to the Egyptian representative, whose delegation was one of the sponsors of amendment CDDH/II/70. The text would read as follows: "Religious personnel attached to civilian medical units - such as chaplains . . . shall be respected and protected . . .". The Spanish version apparently required the additional words: " . . . efectivamente destinado a . . .".

9. He invited the other sponsors of amendment CDDH/II/70 to state as soon as possible, before the following morning, whether they accepted the new wording and wished to be listed among the sponsors of the revised amendment.

10. Mr. HESS (Israel), referring to Article 15, paragraph 6, said that in his country, search for and burial of bodies was carried out by religious burial societies known as "Chevra Kadisha". In the army, burial units were part of the Army Chief Rabbinate Corps which corresponded to the corps of chaplains in many other armed forces. Civilian burial societies were part of the civilian rabbinical authorities.
11. It was his delegation's understanding that the personnel of those societies, both military and civilian, were entitled to the protection provided for in the Conventions and in the Protocol, but he would like the ICRC to confirm that.

12. Also in connexion with paragraph 6, he pointed out that the Red Shield of David was the distinctive emblem of the medical services of Israel's armed forces and also of all his country's civilian medical units. To compel Israel to use the existing emblems for its personnel would create an absurd situation in which rabbis and other Jewish religious personnel in the Israeli armed forces would be required to identify themselves by a Red Cross, Red Crescent or Red Lion and Sun.

13. In principle, his delegation supported the proposal in Article 15, paragraph 6, but would not be able to vote for it until that point had been satisfactorily settled. It would send a memorandum on the subject to the President of the Conference.

14. Mr. PICTET (International Committee of the Red Cross), referring to the first point raised by the representative of Israel, said that as in certain armies burial was carried out by religious personnel, and since their performance of that duty was in accordance with the Geneva Conventions, that personnel must be covered and protected by the Conventions and Protocols, in the same way as any other medical and religious personnel.

15. Mr. DEDDES (Netherlands), referring to the new wording of paragraph 6 proposed by the Austrian representative, said that he would suggest inserting the words "and other persons performing similar functions" after the words "such as chaplains", so as to give the same protection to persons ministering to the spiritual needs of others without regarding their duties as being of a religious nature, namely persons who acted from humanitarian considerations.

16. Miss MINOGUE (Australia) said she agreed with the United Kingdom delegation that the word "possible" in the English version of paragraph 3 was too absolute. It could be replaced by the word "feasible" or by "all assistance possible".

17. Her delegation also suggested that the second sentence of paragraph 4 should be worded as follows: "The Occupying Power may not require that in the performance of those functions such personnel give priority to the treatment of any person except on medical grounds only"; that would highlight the Red Cross principle that medical requirements should be the only acceptable criterion for determining the priority to be given to medical care.

18. Lastly, she favoured the idea behind the new version of amendment CDDH/II/201.

19. Mr. SANCHEZ DEL RIO (Spain), referring to the amendments to paragraph 3 in documents CDDH/II/23 and CDDH/II/24, said that the word "factible" was not appropriate; it would be better to keep the word " posible", which could be softened by some such term as "en la medida que sea posible" or by other similar wording used in the 1949 Geneva Conventions.

20. He suggested that the words "subject to the provisions of Article 14" ("a salvo de lo dispuesto en el articulo 14") should be added at the end of the sentence of paragraph 4.
21. Lastly, the word "effectively" seemed superfluous in the new version of amendment CDDH/II/201.

22. Mr. ROSENBLAD (Sweden) pointed out that in Article 15, paragraph 3, reference was made to the "combat zone", in Articles 27 and 52, to the "contact zone", in Article 55, to "zones of military operations" and in Article 6 of the Annex, to "the battle area". Coordination, with the assistance of military experts, was needed to harmonize the terminology in that respect.

23. A vote on Article 15, paragraph 6, and the various amendments thereto, would be premature; the question should first be discussed by a Working Group.

24. Mr. MARTINS (Nigeria) expressed concern about the manner in which his delegation's amendment to Article 15 would be dealt with.

25. The CHAIRMAN said that since that amendment had been presented orally, a written text should be submitted to the Committee for consideration, if possible before the next meeting.

26. Mr. PICTET (International Committee of the Red Cross), introducing Article 16, said that it was necessary to confirm in writing the need, hitherto implicit, to extend to medical personnel the protection afforded to the wounded. Since the wounded had to be protected and cared for in any event, it was natural that the protection of medical personnel should also be guaranteed. Paragraph 3 raised the delicate question of medical secrecy. The question had been given much attention in medical circles and required a more flexible solution, leaving the decision to the physician and placing in him the confidence he deserved.

27. Mr. CLARK (Australia) proposed that the word "medical" should be replaced by "professional" in the English text of paragraph 2 of his amendment to Article 16 (CDDH/II/36). His delegation's amendment to paragraph 3 (CDDH/II/35) was purely formal and could be referred to the Drafting Committee.

28. Mr. MAKIN (United Kingdom) said that his delegation's amendment to paragraph 1 could also be considered by the Drafting Committee. He would also support the amendment to paragraph 2 proposed by the Australian representative.

29. Mr. MARRIOTT (Canada) said that he too supported that proposal.

31. Mr. KLEIN (Holy See), referring to the amendment proposed by the Netherlands delegation, observed that the term "religious personnel" was that used in the heading of Article 15. Furthermore, it was specified in the ICRC Commentary (CDDH/3, p. 24, para. 6) that the words "other persons performing similar functions" were meant to extend the term "chaplain". The original text had the merit of specifically mentioning the religious aspect, without, of course, implying any disdain for the ideological or philosophical aspects. If it was considered desirable to bring lay persons into hospitals for the benefit of patients with no religious convictions, that should be done, but those persons should not pass for religious personnel. In other words, those lay persons should be the subject of a separate paragraph; but the dangers entailed by such an extension of the scope of the provision must be borne in mind.

32. Mr. SOLF (United States of America) said that he shared the Swedish representative's views on the various terms used to designate the combat zone. In both Article 15 and Article 55, he understood the term "combat zone" to mean
the zone which had not yet come under the entire control of either party and in which military operations were being carried out. He associated himself with the Swedish representative's suggestion concerning the terminology in question.

33. Mr. MAKIN (United Kingdom), referring to the last sentence of Article 15, paragraph 6, observed that the provisions of draft Protocol I relating to identification were to be found in the annex to that Protocol, and that the possibility of including a reference to religious personnel in that annex would have to be considered in due course.

34. Mr. MARTIN (Switzerland), referring to the questions of terminology raised by the Swedish and United States representatives proposed that the term "zone of military operations" should be substituted for the term "combat zone" in Article 15, paragraph 3, and that the term "occupied territories" should be retained in paragraph 4. Within the general context of the protection of persons, the Committee was, in his view, entitled to adopt definitions for its own use without seeking the opinion of other committees, which might need to make certain fine distinctions in the terminology they used in connexion with other subjects.

35. Mr. ROSENBLAD (Sweden) said that at the first session of the Conference he had drafted a memorandum on the question, which he was prepared to submit to the Committee should it so desire.

36. Mr. MARRIOTT (Canada) said that the definition of zones was a technical question and that factors such as the geographical advance of armed forces and the variety of situations existing in regions like South-East Asia might make delimitation very difficult. In his view, the question might usefully be referred to a working group composed of ICRC representatives and military personnel, in addition to members of the medical profession.

37. Mr. GOZZE-GUCETIC (Yugoslavia) observed that modern law distinguished between the "combat zone" or "contact zone", which had the same meaning and designated the area in which armies were engaged in combat, and the larger "zones of military operations" covered by various operational units. That distinction was in fact made in the Geneva Conventions.

38. Mr. SCHULTZ (Denmark) said that, whatever terms were used, the important point was to reach agreement on their meaning. A number of definitions designed to apply to all the Protocols had been proposed for inclusion in Article 2, and the terms under discussion might be dealt with in the same way. His delegation fully supported the Canadian representative's proposal and considered that the Working Group should be a joint body of the three main Committees.

39. Mr. MARTINS (Nigeria), referring to the English text of paragraphs 3 and 4 of Article 15, said that he would like the word "possible" in paragraph 3 to be replaced by the word "available"; he would also like the word "available" to be inserted before the word "assistance" in paragraph 4 and in all cases in which the word "assistance" was used.

40. Mr. MARTIN (Switzerland), supporting the Danish representative's proposal, asked that the officers of Committee II should be requested to arrange with the Secretariat for a group composed of members of Committees I, II and III to study the terms under discussion and for provision to be made for Article 2 of draft Protocol I to include definitions valid for all the Protocols.
41. The CHAIRMAN noted that the discussion on Article 15 was closed. He classified the amendments considered in three groups. Those submitted by the United States (CDDH/II/24) and the United Kingdom (CDDH/II/23) delegations concerning paragraph 3 were limited to questions of drafting; they would therefore be sent to the Drafting Committee. The amendment submitted by Romania (CDDH/II/16) for the same paragraph would be considered at the meeting on the following day if that country's representative was present. The three amendments concerning paragraph 6 (CDDH/II/59/Rev.1, CDDH/II/70 and CDDH/II/72) would be revised by all the sponsors to form one single amendment, which would be put to the vote at the seventeenth meeting.

42. In addition, three amendments had been proposed orally during the discussion; they would have to be submitted in writing. The amendment proposed by the Netherlands, which differed from the ICRC proposals and the amendments submitted jointly by several delegations, would be voted on at the next day's meeting, before amendment CDDH/II/201. The Australian delegation's amendment would be circulated as soon as possible. The problem of defining the expressions "combat zone" and "zone of military operations" was not within the exclusive competence of the Committee; it concerned the other Committees also. He suggested that two representatives of Committee II should join in a Working Group formed to study that problem jointly with representatives of the other two Committees. It would probably only be possible to reach a final conclusion in plenary meeting.

It was so agreed.

G. PROPOSED AMENDMENTS:

CDDH/II/201/Rev.1 Australia, Austria, Belgium, France, Ghana, Guatemala, Holy See, Japan, Nigeria, Sweden, Switzerland
11 February 1975

In paragraph 6, replace the sentence "Chaplains and other persons performing similar functions who are permanently attached to civilian medical units shall be respected and protected." by "All religious personnel attached to civilian medical units - such as chaplains - shall be respected and protected . . .".

CDDH/II/205 Australia
10 February 1975

Amend paragraph 4, second sentence to read:

"The Occupying Power may not require that in the performance of those functions such personnel give priority to the treatment of any person except on medical grounds only."

H. MEETING OF COMMITTEE II, 11 February 1975 (CDDH/II/SR.17):

1. Mr. DEDDES (Netherlands) said that his amendment to the oral amendment suggested by the co-sponsors of amendment CDDH/II/70 (see CDDH/II/SR.16) was as follows: after the words "such as chaplains" add the words "and other persons performing similar functions . . .".
2. Mr. BOGLIOLO (France) proposed the deletion of the word "similar" as being ambiguous.

3. The CHAIRMAN said that if the principle of the amendment were accepted, it could be applied to any of the relevant texts.

4. Mr. SOLF (United States of America) pointed out that the word "similar" was already to be found in paragraph 6 of the ICRC text.

5. Mr. MARTIN (Switzerland) said the expression "similar functions" had led to the submission of joint amendment CDDH/II/201/Rev. 1, which had avoided the term. If the idea were to be reintroduced, it would mean departing from the idea of religious personnel. Joint amendment CDDH/II/201/Rev.1 would probably provide a means of avoiding difficulties. He would like to see all amendments in writing so that he would know what he was talking about in referring to them. A comparison might be possible between joint amendment CDDH/II/201/Rev.1 and paragraph 6 as drafted by the ICRC. A new paragraph 7 might also be drafted.

6. Mr. KLEIN (Holy See) thought that the title of Article 15 would have to be altered if the amendment submitted by the Netherlands delegation was adopted. It must not be forgotten that what was involved was primarily the religious domain.

7. Mr. DEDEDES (Netherlands) observed that the important thing was the assistance provided by chaplains and persons performing similar functions. There was no clear distinction between the two categories of persons.

8. Mr. DARIIMAA (Mongolia) recalled that at the first session the Conference had decided that, to be considered, amendments must be submitted in the official languages. What the Committee had before it was an oral amendment, and that was contrary to the rules of procedure.

9. The CHAIRMAN noted that the Netherlands delegation had modified its oral amendment, which merely repeated the ICRC text. The Committee could therefore choose between paragraph 6 of the basic text and combined amendments whose wording had not yet been fixed in writing. He suggested that consideration of the written text be deferred to the next meeting.

It was so agreed.

I. PROPOSED AMENDMENT:

CDDH/II/216  Netherlands
13 February 1975

Add a new paragraph:

"7. Persons, attached to civilian medical units, who are giving not religious but other spiritual help, shall be protected and respected."

1. The CHAIRMAN said that the Netherlands amendment to Article 15 (CDDH/II/216) had not yet been distributed in all four languages. He therefore suggested that the Committee continue its consideration of Article 16, on the understanding that it would revert to Article 15 as soon as all delegations had had the opportunity to study the Netherlands amendment.

2. Mr. KUSSBACH (Austria) said that there was no direct link between the Netherlands amendment (CDDH/II/216) and the amendment of which his delegation was a sponsor (CDDH/II/201/Rev.1). Consequently, there was no reason why the Committee should not vote on the latter amendment immediately.

3. The CHAIRMAN said that unless there was an objection, he would take it that the Committee agreed to vote on amendment CDDH/II/201/Rev.1 before amendment CDDH/II/216 had been circulated in all the working languages.

It was so agreed.

4. The CHAIRMAN put amendment CDDH/II/201/Rev.1 to the vote.

The amendment was adopted by 30 votes to none, with 8 abstentions.


The Drafting Committee ... dealt with draft Protocol I, Part II, Section I, Articles 9 to 20 (except Articles 14, 18 and 18 bis).

It now submits to the Committee II for approval the text of the above articles as given on the following pages. Some passages have been placed in brackets in cases where the Drafting Committee did not consider itself competent, or where a final decision must await the result of the studies of ad hoc working groups.

Article 15. Protection of Civilian medical and religious personnel

1) Civilian medical personnel shall be respected and protected.

2) Temporary civilian medical personnel shall be respected and protected for the duration of their medical mission.

Paragraphs 1 and 2 may be combined after revision of the definitions "temporary" and "permanent".
3) If needed all available help shall be afforded to civilian medical personnel
in the [combat zone]2

2 The term to be used remains to be determined in the light of the
results to be obtained by the Working Group which has been created for this
purpose.

4) The Occupying Power shall afford civilian medical personnel in occupied
territories every assistance to enable them to perform, to the best of their
ability, their humanitarian functions. The Occupying Power may not require
that, in the performance of those functions, such personnel shall give priority
to the treatment of any person except on medical grounds. Under no circum-
stances shall such personnel be compelled to carry out tasks unrelated to their
mission.

5) Civilian medical personnel shall have access to any place where their
services are essential, subject to such supervisory and safety measures as the
relevant Party to the conflict may judge necessary.

6) Religious personnel attached to civilian medical units - such as chaplains -
shall be respected and protected. The provisions of the Conventions and of
the present Protocol concerning the protection and identification of permanent
medical personnel shall apply equally to such persons.

442
that text was brought into line, the drafting problems with respect to Article 15 and many other articles would be solved.

91. Mr. AL-FALLOWI (Iraq) agreed to that suggestion.

92. Mr. MAIGA (Mali), Rapporteur, thought that the problem could be solved by the addition of the words "for the duration of their medical mission" at the end of paragraph 1.

93. Mr. PICTET (International Committee of the Red Cross) pointed out that the characteristic of permanent medical missions was that they were protected even beyond the duration of their medical mission. The words "for the duration of their medical mission" could apply only to temporary personnel.

94. Mr. SCHULTZ (Denmark) drew attention to amendment CDDH/II/239, putting forward a new proposal concerning Article 8. Agreement on a definition on the lines proposed there might solve the problem.

95. Mr. MARTIN (Switzerland) pointed out that Article 12 dealt with medical units, which should be protected "at all times", in fact, that meant during the time that they were on duty. It would be better, however, if paragraph 1 of Article 15 dealt with permanent units and paragraph 2 with temporary ones. The point would be covered by the addition of the words "at all times" at the end of paragraph 1.

96. The CHAIRMAN asked whether the Drafting Committee could agree to that suggestion pending adoption of the definitions.

97. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, reiterated that the Drafting Committee wished to reserve the question until the definition of "temporary medical personnel" had been decided upon. He did not see any contradiction with respect to Article 12, since as the definitions stood at present it was clear that a temporary medical unit was such only while it was devoted exclusively to medical activities.

98. There was, however, no corresponding qualification for temporary medical personnel: so long as there was no such qualification in the definition, it was needed in the paragraph on protection. If and when it was made clear that temporary medical personnel were considered medical personnel only while exclusively devoted to medical duties, paragraph 2 would no longer be needed. The question was whether to settle the matter forthwith or when the definitions were discussed.


Paragraphs 1 and 2

2. Mr. SOLF (United States of America) said that the amendment to Article 8 submitted by the United States and the United Kingdom delegations (CDDH/II/239), which concerned the definition of permanent and temporary medical personnel, had a bearing on Article 15. He proposed that it should be referred to the Drafting Committee.

3. Mr. MAKIN (United Kingdom) supported that proposal.
4. Mr. MARTIN (Switzerland), also supporting the proposal, suggested that the Drafting Committee should consider whether Article 8 might not be made clearer by transposing paragraphs (e) and (f) and inserting the proposed new paragraph (g) at the beginning of the article instead of at the end.

It was agreed to refer amendment CDDH/II/239 to Article 8 to the Drafting Committee for consideration in connexion with Article 15, paragraphs 1 and 2.

Paragraphs 3 - 6

5. The CHAIRMAN suggested that the Committee should approve paragraph 3, subject to the report by the joint Working Group of Committees II and III appointed to deal with the words "combat zone" in square brackets.

6. Mr. OSTERN (Norway) asked why the words "If needed" had been inserted at the beginning of paragraph 3 (CDDH/II/240).

7. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, explained that the words had been introduced to meet an objection raised by certain representatives, namely, that the duty to provide help might be too heavy a burden and that it should not be taken as a matter of course.

8. Mr. OSTERN (Norway) suggested that paragraph 3 should be reworded to read: "All available help shall be afforded on request to civilian medical personnel . . . " Otherwise the problem might arise of who should decide whether help was needed.

9. Mr. HESS (Israel) said that his delegation could not imagine any situation such as that implied by the second sentence of paragraph 6, in which religious personnel in the Israel services, of Jewish faith, would be obliged to identify themselves by the Red Cross. The only satisfactory solution would be for them to identify themselves by the Red Shield of David as a fully recognized distinctive emblem.

10. Mr. MARTIN (Switzerland) inquired why the words "except on medical grounds" had been added to the second sentence of paragraph 4.

11. Mr. BOTHE (Federal Republic of Germany) Rapporteur of the Drafting Committee, said that the words merely stated something that was implicit in the paragraph and were therefore only a drafting addition. They were intended to cover a situation where a decision on priority of treatment was unavoidable and to ensure that the decision was based solely on medical considerations.

12. Mr. MAKIN (United Kingdom) suggested that the Committee should defer its decision on the whole of paragraph 3 until a report had been received from the Working Group. Once it had been determined exactly what zone was meant by the words in square brackets, it might be necessary to redraft the whole sentence; in any case doubts had been expressed about the wording of the paragraph as it stood.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) supported the United Kingdom representative's proposal. It was obviously necessary to define the term "combat zone". For example, in some combat zones, help to civilian personnel would be subject to two conditions: the presence there of civilian
medical units or personnel, and the need for such help. The words "If needed" had been inserted for that reason.

14. Mr. MODISI (Botswana) proposed that in paragraph 5 the word "judge" should be replaced by the word "deem".

15. Mr. MAKIN (United Kingdom) supported that proposal.

It was agreed to postpone a decision on paragraph 3 until a report had been received from the Working Group on the term "combat zone".

The Committee approved paragraphs 4, 5 (as amended by Botswana) and 6 by consensus.

N. MEETING OF COMMITTEE II, 27 February 1975 (CDDH/II/SR.26):

9. Mr. FIRN (New Zealand) said that the first change in the text of Article 19 proposed in document CDDH/II/242 was that the words "by analogy" should be replaced by "to the extent that they are applicable". The sponsors of the amendment thought that "by analogy" did not accurately reflect the true position of States not parties to the conflict. Those words might seem to imply that such States were being asked to apply the provisions relating to the wounded, sick and shipwrecked as if they were parties to the conflict. In fact, not all those provisions were capable of being applied by such States. For example, paragraph 5 of Article 15, which dealt with the relationship between an Occupying Power and civilian medical personnel, could clearly not apply to such personnel in the territory of a third State.

O. REPORT OF THE DRAFTING COMMITTEE, COMMITTEE II, 28 February 1975 (CDDH/II/240/Add.1):

The Drafting Committee submits herewith to Committee II the text of Articles 8, 11, 14, 15, 17 and 18 of draft Protocol I, Part II, Section I, which either did not appear in its report of 21 February 1975 or have been referred back to it.

Article 15. Protection of medical and religious personnel

Note: Delete paragraph 2 and change the numbering accordingly.

P. MEETING OF COMMITTEE II, 4 March 1975 (CDDH/II/SR.29):

49. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the deletion of paragraph 2 of Article 15 was a logical consequence of the new definition of "temporary medical units" and "temporary medical personnel" adopted by the Drafting Committee in Article 8 (e). With that new definition, paragraph 1 of Article 15 covered both types of personnel so that paragraph 2 was no longer necessary. The Drafting Committee thought that there should be no further problems in connexion with Article 15.

50. The CHAIRMAN invited the Committee to decide by consensus on the deletion of paragraph 2 and the renumbering of the subsequent paragraphs.
51. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the definition of the expression "combat zone", which occurred in paragraph 3, had not yet been decided. The definition adopted might affect the whole tenor of the article. Time should be allowed for further consideration.

52. Mr. MARTIN (Switzerland) said that, like the Rapporteur of the Drafting Committee, he saw no reason why the Committee should not decide by consensus to delete paragraph 2 and then adopt the whole article, making a suitable reservation with respect to paragraph 3. Paragraphs 1, 4, 5 and 6 had already been adopted by consensus and the Committee should not go back on what it had once decided.

53. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he still wished for more time. There was no need for such haste.

54. The CHAIRMAN said that, in that case, Article 15, along with Articles 17 and 18 and the final drafting of Article 11, would be included in the agenda for the Committee's thirtieth meeting.

Q. MEETING OF COMMITTEE II, 5 March 1975 (CDDH/II/SR.30):

5. The CHAIRMAN pointed out that in document CDDH/II/240/Add.1 the Drafting Committee had proposed the deletion of paragraph 2 of that article, which it considered superfluous. That paragraph might be more appropriately included in Article 8, the definitions article. He suggested, therefore, that the Committee provisionally adopt the Drafting Committee's proposal by consensus.

It was so agreed.


For the purposes of Protocols I and II the following terms are recommended:

Zones of Military Operations means, in an armed conflict, the territory where the armed forces of the adverse Parties taking a direct or an indirect part in current military operations, are located.

Combat area means, in an armed conflict, that area where the armed forces of the adverse Parties actually engaged in combat, and those directly supporting them, are located.

Contact area means, in an armed conflict, that area where the most forward elements of the armed forces of the adverse Parties are in contact with each other.

S. REPORT OF THE DRAFTING COMMITTEE, COMMITTEE II, 26 March 1975 (CDDH/II/286):

The Drafting Committee has considered Articles 15 para. 2, 17 para. 1 and 18 para. 3 of Protocol I in the light of the report of the Mixed Working Group on "combat zones" and similar expressions. As a result, it submits the following proposals:
Article 15, para. 2

If needed, all available help shall be afforded to civilian medical personnel in an area where civilian medical service is disrupted by reason of combat activity.

T. MEETING OF COMMITTEE II, 2 April 1975 (CDDH/II/SR.44):

2. The CHAIRMAN invited the Rapporteur of the Drafting Committee to introduce the report of that Committee on Article 15, paragraph 2, Article 17, paragraph 1 and Article 18, paragraph 3, of draft Protocol I (CDDH/II/286).

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, in the light of the report by the Joint Working Group and subsequent discussion in the Committee, the Drafting Committee had endeavoured to avoid the use of such military terms as "combat zones" and, instead, to find a more general phrasing for situations to which Articles 15, paragraph 2, 17, paragraph 1 and 18, paragraph 3 of draft Protocol I would apply.

4. The following textual changes should be made to the Drafting Committee's report: the last part of Article 15, paragraph 2 should read "where civilian services are disrupted by reason of combat activity", the corresponding French text being: "ou les services sanitaires civils sont desorganises en raison d'une activite de combat".

The Drafting Committee's proposals concerning Article 15, paragraph 2, Article 17, paragraph 1 and Article 18, paragraph 3 were adopted by consensus.

Article 15 as a whole was adopted by consensus.

U. ARTICLE ADOPTED BY COMMITTEE II, 2 April 1975 (CDDH/II/280):

Article 15. Protection of civilian medical and religious personnel

1. Civilian medical personnel shall be respected and protected.

2. If needed, all available help shall be afforded to civilian medical personnel in an area where civilian medical services are disrupted by reason of combat activity.

3. The Occupying Power shall afford civilian medical personnel in occupied territories every assistance to enable them to perform, to the best of their ability, their humanitarian functions. The Occupying Power may not require that, in the performance of those functions, such personnel shall give priority to the treatment of any person except on medical grounds. Under no circumstances shall such personnel be compelled to carry out tasks unrelated to their mission.

4. Civilian medical personnel shall have access to any place where their services are essential, subject to such supervisory and safety measures as the relevant Party to the conflict may deem necessary.

5. Religious personnel attached to civilian medical units - such as chaplains - shall be respected and protected. The provision of the Conventions
and of the present Protocol concerning the protection and identification of permanent medical personnel shall apply equally to such persons.

V. PROPOSED AMENDMENT:

CDDH/II/373 Austria, Belgium, France, Holy See, Nicaragua, Spain, 21 May 1976 Switzerland, Venezuela

In the second sentence of paragraph 5, delete the word "permanent" between the words "identification of" and "medical personnel".

W. MEETING OF COMMITTEE II, 25 May 1976 (CDDH/II/SR.73):

Paragraph 5

22. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, informed Committee II that the Drafting Committee was considering a definition of the term "religious personnel". He was therefore of the opinion, which he knew was shared by a number of members of the Drafting Committee, that it would be more profitable to discuss amendment CDDH/II/373, together with the definition of "religious personnel". In fact, as far as procedure was concerned, he suggested that all the outstanding problems relating to religious personnel, namely the definition of "religious personnel", the reconsideration of Article 15, paragraph 5, and any amendments thereto, in particular amendment CDDH/II/373, and the square brackets round the words "and religious" in Article 2 of the annex to draft Protocol I (CDDH/II/371), should be discussed together.

23. Mr. KUSSBACH (Austria), speaking as one of the sponsors of amendment CDDH/II/373, said that he supported the procedure which the Rapporteur of the Drafting Committee had suggested. He was ready to introduce the amendment when the question of religious personnel was considered in connexion with Article 8 of draft Protocol I. In his view, it would be better to consider the amendment at the same time as the definition.

24. The CHAIRMAN said that, if he heard no objection, he would take it that that was the Committee's wish.

It was so agreed.

X. MEETING OF COMMITTEE II, 31 May 1976 (CDDH/II/SR.75):

29. The CHAIRMAN drew attention to the amendment submitted by Austria, Belgium, France, the Holy See, Nicaragua, Spain, Switzerland and Venezuela (CDDH/II/373) proposing the deletion of the word "permanent" in the second sentence of paragraph 5 of Article 15 of draft Protocol I as adopted by Committee II.

30. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the word "permanent", which appeared in Article 15, paragraph 5, as adopted by Committee II, implied that only "permanent" religious personnel existed. Since the Committee had just approved the notion of "temporary religious personnel", it might be advisable to delete the word.
In any event it had been decided that paragraph 5 would have to be reconsidered; there was therefore no procedural obstacle to the deletion.

31. Mr. MACKENNEY (Chile) said that the question of amending Article 15, paragraph 5, had already arisen in connexion with temporary civilian medical personnel, as referred to in the annex to draft Protocol I, article 2.

Article 15, paragraph 5, as amended (CDDH/II/373), was adopted by consensus.

Y. PROPOSED AMENDMENT:

CDDH/II/388 Canada, United Kingdom of Great Britain and Northern Ireland, 3 June 1976 United States of America

Amend the last sentence of paragraph 3 to read:

"They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission."

Z. MEETING OF COMMITTEE II, 9 June 1976 (CDDH/II/SR.81):

1. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, introducing at the invitation of the Chairman, amendment CDDH/II/388, submitted by the Canadian, United Kingdom and United States delegations, said that the general feeling which had emerged from the discussion of Article 15 of each of the draft Protocols had been that it would be advisable to use the same wording in both. As the text of Article 15 of draft Protocol II had been adopted after more debate than the corresponding article of Protocol I, the Drafting Committee had considered that the latter should be amended to bring it into line with the former. The change, which was not merely a point of drafting, had been proposed by several delegations and would necessitate a re-opening of the debate on Article 15.

2. Mr. MARRIOTT (Canada) proposed that the debate on Article 15 of both draft Protocols I and II should be re-opened. As far as Article 15 of draft Protocol II was concerned, the only change proposed was to replace the word "role" by "mission", which was more consistent with the general aim of the Protocol and of the medical service.

It was decided by consensus to re-open the debate on Article 15 of draft Protocols I and II.

The revised texts of Article 15, paragraph 3, of draft Protocol I, and of Article 15, paragraph 1 of draft Protocol II (CDDH/II/388), were adopted by consensus.
Article 15. Protection of civilian medical and religious personnel

1. Civilian medical personnel shall be respected and protected.

2. If needed all available help shall be afforded to civilian medical personnel in an area where civilian medical services are disrupted by reason of combat activity.

3. The Occupying Power shall afford civilian medical personnel in occupied territories every assistance to enable them to perform, to the best of their ability, their humanitarian functions. The Occupying Power may not require that, in the performance of those functions, such personnel shall give priority to the treatment of any person except on medical grounds. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

4. Civilian medical personnel shall have access to any place where their services are essential, subject to such supervisory and safety measures as the relevant Party to the conflict may deem necessary.

5. Religious personnel attached to civilian medical units - such as chaplains - shall be respected and protected. The provisions of the Conventions and of the present Protocol concerning the protection and identification of medical personnel shall apply equally to such persons.

AB. PROPOSED AMENDMENT:

CDDH/II/411 and Add.1
15 April 1977

Austria, France, Germany, Federal Republic of, Holy See, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America

Amend the first sentence of paragraph 5 to read:

"5. Civilian religious personnel shall be respected and protected . . .".

AC. MEETING OF COMMITTEE II, 13 May 1977 (CDDH/11/SR.99):

8. Mr. SOLF (United States of America) noted that the wording of paragraph 5 had been adopted before that of the definition of religious personnel included in paragraph 8. Notwithstanding the comments that had been made in the Drafting Committee, the amendment did not involve any question of substance, and its adoption should not create any difficulty.

Article 15, paragraph 5, as amended, was adopted by consensus.

AD. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):
Article 15. Protection of civilian medical and religious personnel

1. Civilian medical personnel shall be respected and protected.

2. If needed all available help shall be afforded to civilian medical personnel in an area where civilian medical services are disrupted by reason of combat activity.

3. The Occupying Power shall afford civilian medical personnel in occupied territories every assistance to enable them to perform, to the best of their ability, their humanitarian functions. The Occupying Power may not require that, in the performance of those functions, such personnel shall give priority to the treatment of any person except on medical grounds. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

4. Civilian medical personnel shall have access to any place where their services are essential, subject to such supervisory and safety measures as the relevant Party to the conflict may deem necessary.

5. Civilian religious personnel shall be respected and protected. The provisions of the Conventions and of this Protocol concerning the protection and identification of medical personnel shall apply equally to such persons.

AE. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 15. Protection of civilian medical and religious personnel

Article 15 was adopted by consensus.

31. Mr. SHERIFIS (Cyprus) expressed satisfaction at the adoption by consensus of Article 15. His delegation attached great importance to paragraph 3 of the article and hoped that the provisions in that paragraph would be respected by all concerned, both at present and in the future.

AF. PLENARY MEETING, 24 May 1977 (CDDH/SR.37, ANNEX):

Israel

With regard to paragraph 5 of Article 15 of draft Protocol I, the delegation of Israel wishes to declare that Jewish religious personnel of Israel will identify themselves by the Red Shield of David. Any different interpretation, according to which such Jewish personnel would have to identify themselves by another emblem, would not be acceptable.

AG. 1977 PROTOCOL I:

Article 15. Protection of civilian medical and religious personnel

1. Civilian medical personnel shall be respected and protected.
2. If needed, all available help shall be afforded to civilian medical personnel in an area where civilian medical services are disrupted by reason of combat activity.

3. The Occupying Power shall afford civilian medical personnel in occupied territories every assistance to enable them to perform, to the best of their ability, their humanitarian functions. The Occupying Power may not require that, in the performance of those functions, such personnel shall give priority to the treatment of any person except on medical grounds. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

4. Civilian medical personnel shall have access to any place where their services are essential, subject to such supervisory and safety measures as the relevant Party to the conflict may deem necessary.

5. Civilian religious personnel shall be respected and protected. The provisions of the Conventions and of this Protocol concerning the protection and identification of medical personnel shall apply equally to such persons.
ARTICLE 16 - GENERAL PROTECTION OF MEDICAL DUTIES

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 16. General protection of medical duties

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

2. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to rules of professional ethics or to abstain from acts required by such rules.

3. No person engaged in medical activities may be compelled to give to any authority of the adverse Party information concerning the sick and the wounded under his care should such information be likely to prove harmful to the persons concerned or to their families. Compulsory medical regulations for the notification of communicable diseases shall however be respected.

B. PROPOSED AMENDMENTS;

Paragraph 1

CDDH/II/36
12 March 1974

Amend paragraph 1 as follows:

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

CDDH/II/48
12 March 1974

Revise paragraph 1 as follows:

"1. In no circumstances shall any person be punished for carrying out medical activities compatible with professional ethics."

Rationale

In the English text at least, the phrase "regardless of the person benefiting therefrom" is ambiguous. It is capable of being construed as meaning that, provided regard is paid to the person benefiting therefrom, a person carrying out medical activities might, impliedly, be open to punishment. For this reason, and as the phrase adds nothing to the substance of the paragraph, it is therefore best to omit it altogether.

CDDH/II/53
12 March 1974

In paragraph 1 replace the word "professional" by "medical".
Paragraph 2

CDDH/II/1 Submitted by Belgian experts
27 February 1974

The rule in Article 16, paragraph 2, is worded in abstract form. The ICRC Commentary gives a rather striking example. It might therefore be inserted as an example ("in particular") in the prohibition in question. Since, however, the case of drugs is only a particular case, it would seem that any treatment calculated to change the behaviour of persons should also be prohibited as being contrary to the rules of professional ethics.

We therefore propose that the following addition should be made to paragraph 2 of Article 16:

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

CDDH/II/36 Australia
12 March 1974

Revise paragraph 2 as follows:

"2. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to:

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

or

(b) the Conventions or the present Protocol.

Moreover, they shall not be compelled to abstain from acting in accordance with such medical ethics or rules, the Conventions or the present Protocol."

CDDH/II/53 Canada, Federal Republic of Germany, Netherlands, Sweden, Union of Soviet Socialist Republics, United States of America
12 March 1974

Replace existing paragraph 2 by:

"2. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to:

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

(b) the Conventions or the present Protocol.

Moreover, they shall not be compelled to abstain from acts required by such rules, the Conventions or the present Protocol."
Paragraph 3

CDDH/II/24 United States of America 11 March 1974

Change the second sentence to read: "Regulations for the compulsory notification of communicable diseases shall, however, be respected."

CDDH/II/29 Uruguay 11 March 1974

Delete the words "should such information be likely to prove harmful to the persons concerned or to their families."

CDDH/II/35 Australia 12 March 1974

Redraft paragraph 3 as follows:

"3. No person engaged in medical activities may be compelled to give any authority of the adverse Party information concerning the wounded and the sick under his care if this information would be likely to prove harmful to the persons concerned or to their families. Compulsory medical regulations for the notification of communicable diseases shall however be respected."

CDDH/II/71 Brazil 14 March 1974

Delete the last sentence of paragraph 3.

CDDH/II/88 (CDDH/56/Add.2) Republic of Viet-Nam 21 September 1974

Amend paragraph 3 to read as follows:

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

Paragraph 4

CDDH/II/71 Brazil 14 March 1974

Add a paragraph 4 as follows:

"4. Paragraph 3 does not apply in cases of compulsory medical regulations from the notification of communicable diseases, wounds by firearms, or other evidence related to a criminal offence."

C. MEETING OF COMMITTEE II, 10 February 1975 (CDDH/II/SR.16):

Article 16. General protection of medical duties
26. Mr. PICTET (International Committee of the Red Cross), introducing Article 16, said that it was necessary to confirm in writing the need, hither-to implicit, to extend to medical personnel the protection afforded to the wounded. Since the wounded had to be protected and cared for in any event, it was natural that the protection of medical personnel should also be guaranteed. Paragraph 3 raised the delicate question of medical secrecy. The question had been given much attention in medical circles and required a more flexible solution, leaving the decision to the physician and placing in him the confidence he deserved.

27. Mr. CLARK (Australia) proposed that the word "medical" should be re­placed by "professional" in the English text of paragraph 2 of his amendment to Article 16 (CDDH/II/36). His delegation's amendment to paragraph 3 (CDDH/II/35) was purely formal and could be referred to the Drafting Committee.

28. Mr. MAKIN (United Kingdom) said that his delegation's amendment to paragraph 1 could also be considered by the Drafting Committee. He would also support the amendment to paragraph 2 proposed by the Australian representative.

29. Mr. MARRIOTT (Canada) said that he too supported that proposal.

30. The CHAIRMAN said that, in his view, the amendments to paragraph 2 of Article 16 in documents CDDH/II/1, CDDH/II/36 and CDDH/II/53 were very similar. He expressed the hope that their sponsors could arrange to meet with a view to producing a joint proposal.

43. Mr. CALCUS (Belgium), introducing the amendment submitted by Belgian experts to Article 16, paragraph 2 (CDDH/II/1), said that all too frequently drugs were administered to prisoners to elicit confessions. The case of drugs, however, was but one example; any treatment calculated to change human be­haviour should be prohibited. The text proposed by the Belgian experts men­tioned only prisoners because they were the most frequent victims of such treat­ment.

44. The two amendments to paragraph 2 submitted by other delegations covered his proposal (CDDH/II/1) and he would agree to its being combined with one of those amendments.

45. Mr. SOLF (United States of America), introducing the joint amendment to Article 16, paragraph 2 (CDDH/II/53), said that the amendment would restore the proposals made by Commission I of the second session of the Conference of Government Experts on the Reaffirmation and Development of International Human­itarian Law applicable in Armed Conflicts, which were contained in paragraphs 2 and 3 of Article 19 proposed by that Commission.

46. The most important change proposed in the joint amendment was the lim­i­tation of the scope of the rules of medical ethics under consideration to those intended for the benefit of the wounded and sick, rather than to those intended for the benefit of the medical profession. Some codes of professional ethics prohibited doctors from co-operating in the performance of medical procedures by unlicensed personnel. Although such policies might be appropriate in many communities, it was necessary to use skilled and highly trained paramedical personnel on board small ships or in isolated units where no licensed physicians were available. The co-sponsors wished to ensure that rules of professional ethics did not prevent the use of doctors in the training of such personnel. He noted, in that connexion, that the English and French texts of the printed
report of the second session of the Conference of Government Experts erroneously stated in paragraph 1.53 that a proposal to correct the matter had been rejected. The Spanish version agreed with the actual report of Commission I, prepared by the Rapporteur, which showed that a formula correcting the problem had been agreed to.

47. Mr. PICTET (International Committee of the Red Cross) said that, if a mistake had occurred in the report of the Conference of Government Experts, and if any doubt remained, the report of the Rapporteur of Commission I of that Conference would prevail.

48. Mr. SOLF (United States of America) said that amendment CDDH/II/24 seemed to him to be clearer than the original.

49. Mr. DUNSHEE de ABRANCHES (Brazil) said that his amendment (CDDH/II/71) would delete the last sentence of paragraph 3 and add a new paragraph 4. His proposal would tend to bring the text under discussion into harmony with certain laws covering the compulsory transmission of information.

50. Mr. NGUYEN QUI DON (Republic of Viet-Nam) said that his delegation's amendment in document CDDH/56/Add.2 proposed a minor drafting change linking paragraph 3 to paragraph 1 of Article 16.

51. The CHAIRMAN requested the sponsors of similar amendments to paragraph 2 to work out a joint text as soon as possible.

52. Mr. MAKIN (United Kingdom) said that the introduction to paragraph 1 differed from the introduction to paragraphs 2 and 3. He wondered why the notions of punishment and constraint had not been combined. The ICRC Commentary was not clear on that point but the Drafting Committee would probably be able to correct the position. Furthermore, the thinking of the experts in 1972 was not clearly expressed in paragraph 3 where the adverse Party should be the party adverse to the doctor and not the one adverse to the patient as suggested in the Commentary.

53. Mr. PICTET (International Committee of the Red Cross) pointed out that, according to the wishes of medical circles, the "adverse Party" mentioned in paragraph 3 meant the country of the adverse nationality of the wounded.

54. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) raised the question which was the better of the two expressions, "medical ethics" and "professional ethics". He hoped the ICRC would circulate among representatives the World Health Organization's definition of medical ethics according to which a physician must not carry out decisions of his authorities, even if in writing, that are contrary to his duty. In the article under consideration that prohibition extended to those who might give certain orders to doctors. Physicians had two aims in time of war: the first was to cure the sick and wounded, who were then sent back to the front (France had been said to have won the First World War by retrieving its wounded); but physicians also had obligations in respect of civilian medical assistance. Their conscience would tell them whether or not they should transmit information without being specifically obliged to do so. He himself proposed the term "professional ethics". The modification submitted by Belgium was designed to prevent physicians from being obliged to act in a manner contrary to their duty. In one of the amendments it was proposed that the use of psychotropic medicines should be prohibited,
although those were sometimes indispensable for the treatment of certain psychiatric patients.

55. Mr. BOGLIOLO (France) requested additional explanations regarding the Brazilian amendment (CDDH/II/71). Physicians, who were also citizens, were deeply distressed by the obligation to report wounds caused by firearms in time of war. That did not apply to the obligation to report communicable diseases.

56. Mr. PICTET (International Committee of the Red Cross) said that international law took precedence over national law. Article 16 dealt, of course, with a very difficult subject. To exclude wounds caused by firearms would deprive the provision of its substance, since it was that type of wound which was the most widespread in time of war.

57. Mr. MARRIOTT (Canada) supported amendment CDDH/II/53 for the reasons stated by the United States delegation. His country needed a large body of auxiliary medical personnel. As to the choice between the terms "professional" and "medical" ethics, he hoped that, for reasons of clarity, the second would be adopted. He fully supported the views expressed by the representative of the Union of Soviet Socialist Republics regarding psychiatric treatment, which should be in conformity with medical ethics. As to wounds caused by firearms, he thought that the term "criminally inflicted wounds" could be adopted.

58. Mr. ROSENBLAD (Sweden) suggested that in Article 16, paragraph 3, the words "to their families", should be followed by the words "in particular, no person exercising a medical activity shall be compelled to administer medicaments to prisoners of war or to apply other methods to them for obtaining information".

59. Mr. DEDDES (Netherlands), referring to amendment CDDH/II/71, on paragraph 4, said that wounds caused by firearms during wartime raised different problems. Physicians should not be obliged to denounce a member of a resistance movement who had wounded a member of the occupying forces.

60. Mr. ONISHI (Japan) supported the amendment submitted by Australia (CDDH/II/36) to the effect that "ethics" be qualified by the word "medical". He supported the representatives of France and the Netherlands, who considered that the transmission of such information should be compulsory in the case of communicable diseases. That would have to be the subject of a mandatory provision in Article 16.

61. Mr. DUNSFEE de ABRANCHES (Brazil) said he hoped that speakers would participate in the drafting of the new paragraph 4.

62. Mr. CALCUS (Belgium) expressed his agreement. He re-read his amendment, CDDH/II/1, so that the English version could be brought into line with the French text.

63. Mr. SCHULTZ (Denmark) supported the representative of the Netherlands. In his country, which had experienced five years of occupation, acts of resistance and sabotage had been considered criminal acts during the Second World War. The provision of information by medical personnel should not be made compulsory to the detriment of underground movements. In the present case, the reference to criminal offences should be deleted.
64. Miss MINOGUE (Australia) expressed her agreement with the representatives of Belgium and Sweden on the subject of behaviour-changing drugs. That subject was actually covered by the new wording of Article 11.

65. Mr. RIVERO ROSARIO (Cuba) said that as far as amendment CDDH/II/71 was concerned, and more specifically the amendment relating to paragraph 4, the performer of a medical action was free to decide whether or not he would give information to a third party. He, himself, would prefer that no reference should be made to what were called criminal offences, since such a reference could give rise to abusive interpretations.

66. Mr. DENISOV (Ukrainian Soviet Socialist Republic) supported the representatives of Denmark and Cuba. The question arose, who was competent to define a criminal offence.

67. Mr. MARRIOTT (Canada) approved amendment CDDH/II/1. He hoped, nevertheless, that the wording would be re-examined, because cases amenable to psychiatric treatment became more numerous in time of war. As to wounds caused by firearms, there was a risk of conflict between peace-time and war-time law.

68. Mr. SOLF (United States of America) said that paragraph 3 of Article 16 had been studied in 1971 and 1972. Its scope was confined to occupied territories and it concerned medical personnel not authorized to supply information. At the present time, an extension of the field of application to national territories was being considered. There was no question, however, of interfering with the application of national legislation.

69. Mr. DUNSHEE de ABRANCHES (Brazil) said he thought that, once a State had ratified Protocol I, international law would take precedence over national law. In the event of armed conflict, however, that law did not exclude criminal acts. It could not be suspended by rules which freed a physician from the duty of reporting a criminal act.

70. The CHAIRMAN suggested that representatives should study in advance the articles which followed Article 16, so as to be in a position to submit their amendments in writing, preferably a few days before the debate on the article in question. He proposed that amendments CDDH/II/36 (para. 1), CDDH/II/53 (para. 1), CDDH/II/24 and CDDH/II/35, together with the amendment to Article 16 submitted by the Republic of Viet-Nam (CDDH/II/88), should be sent to the Drafting Committee. Voting would take place at the next meeting on amendments CDDH/II/48 and CDDH/II/71, and amendment CDDH/II/29 would be discussed if its sponsor (Uruguay) was present. Finally, an oral report would be made at the seventeenth meeting by the sponsors of amendments CDDH/II/1 (para. 2), CDDH/II/36 (para. 2) and CDDH/II/53 (para. 2).

D. PROPOSED AMENDMENTS:

Article 16 as a whole

CDDH/II/209 United Kingdom of Great Britain and Northern Ireland
11 February 1975

Replace the present text by the following:
No person engaged in medical activities may be punished nor subjected to physical or mental torture, unpleasant or disadvantageous treatment, nor any form of coercion for:

(a) carrying out medical activities compatible with medical ethics, irrespective of the person benefiting therefrom;

(b) refusing to perform acts or to carry out work contrary to either medical ethics designed for the benefit of the wounded and sick, or the Conventions or the present Protocol, or abstaining from acts or work required by such ethics, the Conventions or the present Protocol;

(c) withholding from any member of the party adverse to that person information concerning the sick and wounded under his care, or who have been under his care, if that information is likely, in his opinion, to prove harmful to the sick and wounded concerned or to their families in relation to the armed conflict. Regulations for the compulsory notification of communicable diseases shall, however, be respected.

Paragraph 2

CDDH/II/212
11 February 1975

Amend paragraph 2 to read:

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

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

(b) the Conventions or the present Protocol."

Proposed new paragraph

CDDH/II/211
11 February 1975

1. Delete last sentence of paragraph 3.

2. Add new paragraph 4:

"Regulations for compulsory notification of communicable diseases shall be respected; as shall those for reporting injuries which, according to domestic law previously in force, give grounds for suspicion that a criminal offence has been committed."
E. MEETING OF COMMITTEE II, 11 February 1975 (CDDH/II/SR.17):

10. The CHAIRMAN stated that amendment CDDH/II/36 submitted by the Australian delegation and not applicable to the French version had been returned to the Drafting Committee. An amendment submitted by the United Kingdom, in English only and not circulated, proposed a totally different wording for Article 16. He said that the Committee should choose between the two texts.

11. Mr. MAKIN (United Kingdom) said he believed his amendment had already been circulated as document CDDH/II/206 [209]. It would probably not be possible to discuss it at the present meeting. He was willing to withdraw amendment CDDH/II/48 which pertained only to paragraph 1.

12. The CHAIRMAN said that the decision would be deferred to the eighteenth meeting so that the document could be translated and studied. The same applied to amendments CDDH/II/36 and CDDH/II/53, which also concerned paragraph 2.

13. Mr. BOTHE (Federal Republic of Germany) said he was prepared to submit at the eighteenth meeting a fresh version of paragraph 2 which at present existed only in English and in typescript.

14. The CHAIRMAN said he thought it would be better to wait until the amendment had been circulated in all the languages. He would be prepared to put to the vote an amendment, submitted by the Brazilian delegation, which was furthest removed from the ICRC draft and from all other amendments.

15. Mr. DUNSHEE de ABRANCHES (Brazil) said that he had prepared a fresh text, which, however, had not yet been circulated in the various languages. Consideration of the document should therefore be deferred.

F. MEETING OF COMMITTEE II, 12 February 1975 (CDDH/II/SR.18):

1. Mr. HERNANDEZ (Uruguay), introducing his amendment to paragraph 3 (CDDH/II/29), said that Article 16 covered a wide scope and lacked clarity. It would be improved by the deletions proposed in his amendment and in the amendments by Belgium (CDDH/II/1) and by Brazil, the Netherlands and Spain (CDDH/II/211).

2. The CHAIRMAN said that decisions on Article 16 should be taken at the nineteenth meeting.


5. The CHAIRMAN said that Article 16 and the related amendments had already been discussed by the Committee, which had agreed to refer to the Drafting Committee those amendments which were not concerned with substance. Among the amendments on which no decision had yet been taken was that submitted by the United Kingdom delegation (CDDH/II/209).

6. Mr. MAKIN (United Kingdom), introducing his delegation's amendment (CDDH/II/209), said that there were three main differences between it and the ICRC draft. First, the opening words of paragraph 1 had been replaced by a longer introductory phrase which related to the entire article, and the three paragraphs of the ICRC draft had been combined into a single paragraph. His
delegation would not press for the adoption of the introductory phrase, provided it was the understanding of the Committee that physical or mental torture, unpleasant or disadvantageous treatment and any form of coercion were indeed prohibited.

7. Secondly, the word "irrespective" had been substituted for the word "regardless" in paragraph 1 of the ICRC draft. His delegation therefore withdrew its earlier amendment to that paragraph (CDH/II/48).

8. Thirdly, the phrase "any authority of the adverse Party" in paragraph 3 of the ICRC draft had been replaced, in sub-paragraph (c) of the amendment, by the phrase "any member of the party adverse to that person" in order to make it clear that the provision referred to the party adverse to the doctor. Furthermore, the phrase "or who have been under his care" had been added, to ensure that the provision would continue to apply once the patient had left the doctor's surgery. The phrase "in his opinion" had also been added to make the meaning clearer.

9. The CHAIRMAN said that, in his view, a distinction should be made between the drafting points and questions of substance involved in the United Kingdom amendment. As he saw it, there were five differences of substance between the ICRC draft and the United Kingdom amendment. It would no doubt be necessary to vote separately on each of those five points, which were, first, the mention of "physical or mental torture, unpleasant or disadvantageous treatment" in the introductory phrase; second, the word "irrespective" in sub-paragraph (a) and the omission of the phrase "in no circumstances" which appeared in the ICRC draft of paragraph 1; third, the phrase "any member of the party adverse to that person" in sub-paragraph (c); fourth, the phrase "in his opinion" in the same sub-paragraph; and lastly, the phrase "in relation to the armed conflict", also in that sub-paragraph, which somewhat limited the scope of the provision as drafted by the ICRC.

10. Mr. PICTET (International Committee of the Red Cross) said that the text of the United Kingdom amendment was by and large a good one. However, he was a little concerned about the specific mention of torture in the introductory phrase. There was a general prohibition on the use of torture against any person, and to mention torture specifically in Article 16 might have the effect of weakening that prohibition.

11. Mr. MARRIOTT (Canada) asked whether the phrase "under his care, or who have been under his care" referred only to the medical personnel caring directly for the patient or whether it could be construed to include other people who had legitimate access to the patient's medical record.

12. He thought that the phrase "in relation to the armed conflict" in sub-paragraph (c) might usefully be deleted, as its meaning was not clear to his delegation.

13. Mr. PICTET (International Committee of the Red Cross) said that, in his view, the first of the two phrases mentioned by the Canadian representative should be interpreted in the broadest sense. In other words, it would also include people with access to the medical records.

14. Mrs. DARIIMAA (Mongolia) said that paragraph 1 of the ICRC draft, which referred to the broad concept of punishment, was more general in scope than the introductory phrase of the United Kingdom amendment, which contained a
list of prohibited actions. Lists could help to provide a legal basis for national rules, but they could cause difficulties if they were not exhaustive. For that reason, her delegation preferred the ICRC text.

15. With regard to sub-paragraph (c) of the United Kingdom amendment, she thought that the term "that person" should be put in the plural - "those persons" - at least in the Russian version.

16. Mr. BOTHE (Federal Republic of Germany) said that several of the amendments proposed to paragraph 2 of the ICRC text had been amalgamated and issued as amendment CDDH/II/212. He requested that the vote on sub-paragraph (b) of the United Kingdom amendment be deferred until the Committee had taken cognizance of that text.

17. Mr. MAKIN (United Kingdom) said that, in the light of the comments by the ICRC representative, his delegation was ready to withdraw both the introductory phrase and sub-paragraph (a) of its amendment. It was also willing to withdraw sub-paragraph (b) in favour of amendment CDDH/II/212. The only part it wished to maintain was sub-paragraph (c).

18. The CHAIRMAN said that since the United Kingdom representative had withdrawn part of his amendment, the Committee should now confine itself to the three points of substance arising from sub-paragraph (c), namely, the phrases "any member of the party adverse to that person", "in his opinion" and "in relation to the armed conflict".

19. Mr. CZANK (Hungary) said he found paragraph 1 of the ICRC draft satisfactory as it stood, subject perhaps to the substitution of the word "irrespective" for the word "regardless". With regard to paragraph 2, his delegation was in favour of the amendment in document CDDH/II/212, which had been discussed in detail by a Working Group of the Drafting Committee. Finally, the ICRC text of paragraph 3 was acceptable to his delegation, subject to the replacement of the second sentence by the sentence in amendment CDDH/II/24.

20. Mr. BOTHE (Federal Republic of Germany) asked whether the sponsors of amendment CDDH/II/212 would be given the opportunity of introducing it.

21. The CHAIRMAN said that he would like to dispose of the United Kingdom amendment before taking up any others.

22. Mr. SCHULTZ (Denmark) said he associated himself with the Canadian representative's views on the phrase "in relation to the armed conflict". Before that phrase was put to the vote, it would be useful if the United Kingdom representative could explain both its meaning and its possible relationship to amendment CDDH/II/211.

23. Mr. AL-FALLOUJI (Iraq) said a very important aspect of the article was the introduction of the concept of punishment which, in the legal sense, was the second phase of a crime. Medical activities might be hindered by certain acts which could not be qualified in legal terms as punishable crimes, so that if Article 16 was to provide effective protection, it would be necessary to think very carefully about the word "punished". His delegation intended to raise that question in the Drafting Committee.

24. Mr. CLARK (Australia) suggested that the words "in his opinion" in the United Kingdom amendment be replaced by the words "in his judgement". There
seemed to be no need to include the phrase "in relation to the armed conflict", which seemed to limit the scope of the provision. He shared the Canadian representative's doubts about that phrase, and agreed that some explanation was required from the United Kingdom representative.

25. Mr. MAKIN (United Kingdom) said that the purpose of the phrase "in relation to the armed conflict" was the same as that of amendment CDDH/II/211, namely to allow medical personnel to give information on matters that were unrelated to the armed conflict, for example, traffic accidents. It would be superfluous to adopt both that part of his delegation's amendment and amendment CDDH/II/211, since they were alternative ways of expressing the same idea.

26. He had no objection to the Australian representative's suggestion that the word "judgement" be substituted for the word "opinion". The only purpose of the phrase "or who have been under his care" was to ensure that the provision did not cease to apply as soon as the patient ceased to be under the doctor's care.

27. The CHAIRMAN asked whether the Committee was ready to vote on the first of the three phrases in sub-paragraph (c) of the United Kingdom amendment which he had read out earlier.

28. Mr. KHAIKATAR (Arab Republic of Egypt), speaking on a point of order, asked whether amendment CDDH/II/29, submitted by Uruguay, had been withdrawn, since that amendment was related to one in document CDDH/II/209.

29. The CHAIRMAN said that as the representative of Uruguay had not been present during the discussion of Article 16 he would suggest that a separate vote be taken on his amendment (CDDH/II/29) later, since the two amendments, though admittedly related, dealt with different aspects of the same problem.

34. The CHAIRMAN said he would now put to the vote the phrase "the party adverse to that person" in sub-paragraph (c) of the United Kingdom amendment (CDDH/II/209).

The phrase "the party adverse to that person" was adopted by 26 votes to 1, with 10 abstentions.

35. Mr. GOZZE-GUCETIC (Yugoslavia) pointed out that the French text did not include any wording corresponding to the words "to that person" in the English version.

36. The CHAIRMAN said that the Drafting Committee would bring the French version into line with the English.

37. He then put to the vote the phrase "in his opinion" in paragraph (c) of the same amendment.

The phrase "in his opinion" was adopted by 40 votes to none, with 9 abstentions.

38. The CHAIRMAN asked whether the Committee thought that the phrase "in relation to the armed conflict", which was similar to the amendment submitted by Brazil, Netherlands and Spain (CDDH/II/211), should be left to the Drafting Committee, which would bring it into line with that amendment.
39. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that to the extent that that amendment extended the rule concerning notification of infectious diseases to cases of suspected criminal acts, it became a question of substance and not a mere drafting one.

40. The CHAIRMAN said he agreed with that view and suggested that the Committee might first perhaps consider amendment CDDH/II/211. He invited the representative of Brazil to introduce the amendment.

41. Mr. DUNSHEE de ABRANCHES (Brazil), introducing amendment CDDH/II/211, said that the co-sponsors had taken into consideration some useful remarks by the representatives of Australia, Canada, Cuba, Denmark and France.

42. The first sentence of the proposed new paragraph 4 incorporated the United States drafting amendment to the last sentence of paragraph 3, relating to communicable diseases (CDDH/II/24). The sponsors proposed an addition providing that doctors should also respect regulations which required the reporting of the treatment of an injury that gave grounds for suspicion that a criminal offence had been committed by their patients. Their draft amendment, however, established two conditions: first, that the doctor's obligation to report the treatment of an injury should be already imposed by domestic law in force prior to the outbreak of armed conflict; second, that the doctor should be free to decide whether the circumstances of each case gave grounds for suspicion of a criminal offence, according to the normal deontological rules.

43. The sole purpose of the amendment was to prevent the possibility that paragraph 3 of the future Protocol I might be used for the benefit of an ordinary criminal who might be wounded and seek the help of a doctor. Paragraph 1 of the present Article 3 provided that "In addition to the provisions applicable in peacetime, the present Protocol shall apply from the beginning of any situation referred to in Article 2 common to the Conventions". Some fear had been expressed that the amendment might be interpreted as applicable against, for example, a wounded guerrilla if he were considered as a political criminal. That was not the case, since Protocol I covered only international armed conflicts. In that Protocol, the situation of "members of independent missions" or "members of organized resistance movements" was clearly provided for in Articles 40 and 42.

44. Mr. MARRIOTT (Canada), referring to the point raised by the representative of the Union of Soviet Socialist Republics who felt that communicable diseases and criminal offences should not be linked together in the same paragraph, said that his delegation did not agree with that view. The proposed new paragraph 4 provided for respect for the ordinary law, as opposed to the protection of medical persons from the type of coercion referred to in paragraph 3.

45. With regard to the point raised by the representative of Iraq, he wished to make it clear that the second half of the amendment referred only to injuries and not to any other aspect of crime.

46. Mr. DEDDES (Netherlands) said that he considered the joint amendment (CDDH/II/211) to be much more a drafting amendment than one of substance.

47. Mr. SCHULTZ (Denmark) said he had some doubts about that amendment, because even if the domestic law previously in force was considered, the provision might still be used against underground movements after a military occupation. He would prefer to see at the end of the last sentence, some wording
along the lines of the United Kingdom proposal, such as "a criminal offence having no relation to the armed conflict has been committed".

48. Mr. CZANK (Hungary) said he also had some doubts about the amendment, as the reporting of injuries would already be covered by existing law. It was hardly necessary then to add the new provision. With regard to the phrase "injuries which ... give grounds for suspicion", it would be necessary to specify that there were grounds for serious suspicion otherwise the wording would be too general. He was not convinced, however, that it was reasonable to include such a provision.

49. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that Protocol I could hardly be expected to deal with all the numerous cases which could arise in armed conflict; in any event, since the whole Protocol dealt with the situation of armed conflict, there was no need to include specific reference to it. His delegation objected to the idea of obliging doctors to notify authorities when they suspected that a criminal offence had been committed, although doctors would be free to do so if they considered it necessary. Again, was a doctor competent to decide what constituted a criminal offence? If the joint amendment (CDDH/II/211) were accepted, it would have the effect of narrowing the scope of the article.

50. Mr. AL-FALLOUJI (Iraq) said he agreed with the representative of the Union of Soviet Socialist Republics that there was a risk in including the reference to criminal offences. Doctors should not be turned into informers or intelligence agents. The duties of a physician should not include an obligation to give information, although he did of course preserve his right to do so as an ordinary citizen.

51. Mr. DUNSHEE de ABRANCHE (Brazil) said that he could accept the oral sub-amendment suggested by Denmark, which it regarded as an improvement to its text. He did not agree, however, that his delegation's amendment could be construed as obliging a doctor to inform the police, since it proposed that the domestic law in force before the outbreak of armed conflict should be applied. A second addition should perhaps be made stipulating that the domestic law would also be respected.

52. Mr. SANCHEZ DEL RIO (Spain) said that, as one of the co-sponsors of amendment CDDH/II/211, he wished to state his agreement with the representative of Brazil concerning the Danish amendment.

53. Mr. SCHULTZ (Denmark) said that he had suggested his oral amendment as a means of expressing his doubts concerning the paragraph as a whole. Having heard similar doubts expressed by other delegations, he was not convinced that the new paragraph, even with his added words, was the best solution. The ICRC text of paragraph 3 might after all be the best, and he consequently wished to withdraw his oral amendment. He noted, however, that that amendment had been taken over by the co-sponsors of amendment CDDH/II/211.

54. The CHAIRMAN said he would now put to the vote the joint amendment (CDDH/II/211), it being understood that the Danish sub-amendment had been taken over by the co-sponsors of the joint amendment.

The joint amendment as amended, was rejected by 32 votes to 9, with 14 abstentions.
55. The CHAIRMAN asked if the United Kingdom representative wished to retain the phrase "in relation to the armed conflict".

56. Mr. MAKIN (United Kingdom) said that as he had voted against amendment CDDH/II/211, he wished to withdraw his own amendment.

57. The CHAIRMAN invited the Committee to consider the amendment to Article 16 by Australia and seven other countries (CDDH/II/212). He asked whether it was considered to be a drafting amendment or not.

58. Mr. BOTHE (Federal Republic of Germany) said that there were slight differences of substance in the joint amendment in relation to the original ICRC text; the Belgian amendment (CDDH/II/1) had been withdrawn. He felt therefore that the joint amendment was an amendment of substance rather than a drafting matter and the sponsors would like a vote on the new wording.

59. There had been a drafting problem because the prohibition to induce positive action and the prohibition to induce abstention or omission were now expressed in one sentence. The Working Group had used the English version, as further work would be required on the French version. The main improvement was the fact that the rules which medical personnel might not be forced to violate were spelled out in a more complete and detailed manner. The relevant norms were to be found, first in the Geneva Conventions and the Protocols themselves; secondly, in the rules of medical ethics designed for the benefit of the wounded and sick, as opposed to those rules concerning only the interests of the profession; thirdly, in other rules designed for the same purpose and applicable in a specific case. The Belgian amendment had been withdrawn on the understanding that the prohibition of the administration of drugs to induce revelation was clearly stated in Article 11 as amended in document CDDH/II/43.

60. The CHAIRMAN put to the vote the joint amendment (CDDH/II/212).

The joint amendment was adopted by 48 votes to none, with 5 abstentions.

61. The CHAIRMAN said that there remained to be settled the question of the Uruguayan amendment. He asked whether the Committee wished to vote on it.

62. Mr. AL-FALLOUJI (Iraq) suggested that, in the light of the discussion, the amendment might be considered to have been withdrawn.

63. Miss MINOCUE (Australia) said that the Committee's view had already been expressed through its support of the United Kingdom amendments to sub-paragraph (c) (CDDH/II/209).

64. The CHAIRMAN said that the Drafting Committee would submit a final version of Article 16, as a whole, as amended.

H. MEETING OF COMMITTEE II, 14 February 1975 (CDDH/II/SR.20):

Article 20. Prohibition of reprisals

53. Mr. AL-FALLOUJI (Iraq) said that he was in sympathy with the Australian amendment. The extension of the concept of reprisals to include retaliation
was important in the case of Article 20, which he regarded as supplementing Article 16, paragraph 1.


Article 16. General protection of medical duties

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

2. Persons engaged in medical activities shall neither be compelled to perform acts nor to carry out work contrary to, nor to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or the Conventions or the present Protocol.

3. No person engaged in medical activities shall be compelled to give to any member of the party adverse to him information concerning the wounded and sick who are, or who have been, under his care, if this information would be likely, in his opinion, to prove harmful to the persons concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.


Article 16 was approved by consensus.

K. ARTICLE ADOPTED BY COMMITTEE II, 25 February 1975 (CDDH/II/281):

Article 16. General protection of medical duties

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

2. Persons engaged in medical activities shall neither be compelled to perform acts nor to carry out work contrary to, nor to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or the Conventions or the present Protocol.

3. No person engaged in medical activities shall be compelled to give to any member of the party adverse to him information concerning the wounded and sick who are, or who have been, under his care, if this information would be likely, in his opinion, to prove harmful to the persons concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.
L. MEETING OF COMMITTEE II, 4 April 1975 (CDDH/II/SR.46):

Consideration of draft Protocol II (CDDH/1)

Article 16. General protection of medical duties

Paragraphs 3 and 4

Statement by the Head of the Norwegian delegation

1. The CHAIRMAN called on Mr. Hambro, Head of the Norwegian delegation, who had asked to make a statement.

2. Mr. HAMBRO (Norway) said that it was not his intention at that stage to request Committee II to reopen a debate on a question that had already been settled. That Committee, however, by adopting the texts of paragraphs 3 and 4 of Article 16 of draft Protocol II, had taken a decision of such importance that he felt bound to make a formal declaration as Head of the Norwegian delegation. His Government deeply regretted the inclusion in those paragraphs of the words "subject to national law". It was unacceptable to his Government that an international legal norm of the importance of the Protocol should be made subject to the national law of any country. In its view, such a provision was contrary to the very essence of international law and would be extremely dangerous for the whole body of humanitarian law. When the matter came up in plenary, the Norwegian delegation would propose the deletion of those words. To emphasize the importance that his delegation attached to the matter, he wished to state that it was unlikely that Norway would be able to ratify Protocol II if the words "subject to national law" were maintained.

3. Mr. AL-FALLOUJI (Iraq) said that Article 16 was the fruit of patient, meticulous work and the result of a compromise which he had considered ideal, since it had been adopted unanimously and represented a rapprochement between two systems. The decision to include the words "subject to national law" had been taken in full knowledge of the facts. Deletion of those words would imply that States would be ignoring their own national law. His delegation categorically rejected such an attitude. There was an unfortunate tendency to give international humanitarian law too political a character, to place too many conditions in its path, and to forget that the real question was the protection of the victims of war. His delegation could in no circumstances accept the deletion of the words in question. Its attitude applied not only to Article 16, but to all the articles of draft Protocol II, to all the other Committees, and to the work of the Conference as a whole.

4. The CHAIRMAN said that he was not going to open the discussion since Article 16 of draft Protocol II had already been adopted by consensus and was no longer before the Committee. Such a discussion could be reopened, of course, at a plenary meeting of the Conference.

M. PROPOSAL BY THE AD HOC WORKING GROUP, COMMITTEE II, 8 June 1976 (CDDH/II/397):

Article 16 [General protection of medical duties]

3. No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse Party, or to his own Party except as
required by the law of the latter Party, any information concerning the wounded and sick who are, or who have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.

N. MEETING OF COMMITTEE II, 9 June 1976 (CDDH/II/SR.81)

Article 16. General protection of medical duties

Paragraph 3

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, introducing document CDDH/II/397 said that the title was incorrect: the proposal was submitted by the Drafting Committee of the Conference. It had been studied by an Ad Hoc Working Group and referred back to the Drafting Committee. The wording of paragraph 3 of Article 16, as adopted by the Committee at its twenty-fourth meeting on 25 February 1975, had given rise to considerable debate in the Drafting Committee. In particular, the phrase "party adverse to him" had caused difficulties of translation. The new text also added, as had always been implicit in the former wording, that no person engaged in medical activities should be compelled to give, even to his own party, the information in question except if so required by national legislation. Although the Drafting Committee of the Conference considered that there was no change of substance, it had felt that the new text should be submitted to Committee II so that it should be clear that it was in conformity with its previous decision.

4. Speaking as a representative of the Federal Republic of Germany, he proposed, first, that Article 16, paragraph 3, should be reconsidered and, secondly, that the text in document CDDH/II/397 should be adopted.

It was decided by consensus to reconsider Article 16, paragraph 3.

5. Mr. HOSTMARK (Norway) reserved the position of his delegation on the paragraph, drawing attention to the statement made by the Head of the Norwegian delegation in connexion with Article 16 of draft Protocol II at the Committee's forty-sixth meeting (CDDH/II/46).

6. Mr. SCHULTZ (Denmark) pointed out that the changes in the text before the Committee were merely matters of drafting: the substance remained unchanged. The statement made by the Head of the Norwegian delegation at the second session had referred to draft Protocol II only.

The revised text of Article 16, paragraph 3, of draft Protocol I was adopted by consensus.

7. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he supported the adoption of paragraph 3 by consensus but wished to emphasize that the decision taken placed medical personnel in a difficult position by subjecting their decisions to national legislation rather than to medical ethics.
Article 16. General protection of medical duties

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

2. Persons engaged in medical activities shall neither be compelled to perform acts nor to carry out work contrary to, nor to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or the Conventions or the present Protocol.

3. No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse party, or to his own party except as required by the law of the latter party, any information concerning the wounded and sick who are, or who have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.

Article 16 was adopted by consensus.
R. 1977 PROTOCOL I:

Article 16. General protection of medical duties

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

2. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics or to other medical rules designed for the benefit of the wounded and sick or to the provisions of the Conventions or of this Protocol, or to refrain from performing acts or from carrying out work required by those rules and provisions.

3. No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse Party, or to his own Party except as required by the law of the latter Party, any information concerning the wounded and sick who are, or who have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.
ARTICLE 17 - ROLE OF THE CIVILIAN POPULATION AND OF AID SOCIETIES

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 17. Role of the civilian population

1. The civilian population shall respect the wounded and the sick, even if they belong to the adverse Party, and shall commit no act of violence against them.

2. Relief societies and the civilian population shall be permitted, even in invaded or occupied areas, spontaneously to offer shelter, care and assistance to such wounded and such sick persons.

3. No one shall be molested, prosecuted or convicted for having given shelter, care or assistance to sick or wounded persons, even if they belong to the adverse Party.

4. The Parties to the conflict may appeal to the charity of the civilian population or of relief societies to offer, under their supervision, voluntary shelter, care and assistance to the sick and the wounded and shall, in such case, grant protection and the necessary facilities to those who respond to their appeal. If the adverse Party gains or regains control of the area, that Party also shall afford the same protection and facilities.

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

B. PROPOSED AMENDMENTS:

Title

CDDH/II/54 Australia, Canada, Federal Republic of Germany, Italy, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America 12 March 1974

Change title to read "Role of the civilian population and relief societies".

Paragraph 1

CDDH/II/14 Israel 11 March 1974

Following the words "wounded and the sick" insert and "combatants hors de combat".
Explanatory note

The protection of the wounded and sick is ensured by two separate Articles in Protocol I, Article 10, which refers generally to protection and care, and Article 17 which refers to the role of the civilian population. Combatants hors de combat however are granted protection under Article 38 in Part III dealing with "Methods and Means of Combat". It is necessary therefore that the obligations of the civilian population as to combatants hors de combat be likewise specifically stated.

An example in mind would be an unarmed soldier falling into the hands of an enemy civilian population or an airman in distress in the same situation. In both examples the combatants, though not being wounded, are entitled to protection from acts of violence by the civilian population.

CDDH/II/34 Australia 12 March 1974
Redraft paragraph 1 as follows:

"1. The civilian population shall respect the wounded and the sick and the shipwrecked even if they belong to the adverse Party, and shall commit no act of violence against them."

CDDH/II/203 Australia 10 February 1975
Omit the words "even if they belong to the adverse Party".

Paragraph 2

CDDH/II/1 Proposal submitted by the experts of Belgium 27 February 1974

The expression "Relief societies" seems to us to be too general. Failing separate mention of national Red Cross Societies, we suggest that the following expression be inserted after the words "Relief societies":

"such as national Red Cross (Red Crescent, Red Lion and Sun) Societies".

CDDH/II/11 Belgium, Denmark, France, Federal Republic of Germany, Switzerland 11 March 1974
Replace the words "Relief Societies and the civilian population" by the words "The civilian population and relief societies such as national Red Cross (Red Crescent, Red Lion and Sun) Societies."
Replace the words "shelter, care and assistance" by the words "shelter, aid and care."

Reword the opening phrase of paragraph 2 to read as follows: "The civilian population and relief societies such as the national Red Cross (Red Crescent and Red Lion and Sun) Societies shall be permitted.

Begin paragraph 2 with the words "National Relief Societies such as the Red Cross (Red Crescent, Red Lion and Sun) Societies . . .".

Change "shelter, care and assistance" to read "shelter and care".

Replace the words "shelter, care and assistance" by the words "medical assistance or care."

Paragraph 3

Replace the words "shelter, care or assistance" by the words "shelter, aid and care."

Redraft paragraph 3 as follows:

"3. No one shall be molested, prosecuted or convicted for having given shelter, care or assistance to sick or wounded persons or the shipwrecked, even if they belong to the adverse Party."
Change "shelter, care or assistance" to read "shelter and care".

Amend paragraph 3 to read as follows:

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

Redraft paragraph 3 as follows:

"No one shall be molested, prosecuted or convicted for having given medical assistance or care to the wounded and sick and the shipwrecked."

Proposal by the experts of Belgium

It seems strange to us to place the charity, often improvised, of the civilian population before that of relief societies.

We suggest that the Drafting Committee might divide the paragraph into two:

beginning with the relief societies and mentioning national Red Cross Societies, and

then going on with an appeal to the charity of the civilian population.

If this is not acceptable, we would at least like to see the draft amended so as to mention the charity of relief societies before that of the civilian population.

Replace the words "shelter, care and assistance" by the words "shelter, aid and care".
Replace the word "charity" by "humanitarian feelings".

Redraft paragraph 4 as follows:

"4. The Parties to the conflict may appeal to the charity of the civilian population or of relief societies to offer, under their supervision, voluntary shelter, care and assistance to the wounded and the sick and shall, in such case, grant protection and the necessary facilities to those who respond to their appeal. If the adverse Party gains or regains control of the area, that Party also shall afford the same protection and facilities."

Change "shelter, care and assistance" to read "shelter and care."

Redraft the second sentence of paragraph 4 as follows:

"4. . . . If the adverse Party gains or regains control of the area, that Party also shall afford the same protection and facilities for so long as they are needed."

Redraft paragraph 4 as follows:

"4. The Parties to the conflict may appeal to the charity of the civilian population or of relief societies to offer, under their supervision, medical assistance or care to the wounded and sick and the shipwrecked and shall, in each case, grant protection and the necessary facilities to those who respond to their appeal. If the adverse Party gains or regains control of the area, that Party also shall afford the same protection and facilities."

Paragraph 5

In paragraph 5, for "the wounded, the sick and the shipwrecked", read "the wounded and the sick".

(For Rationale see Article 9)
CDDH/II/25  
11 March 1974  
Cuba

Replace the word "charity" by "humanitarian feelings".

CDDH/II/34  
12 March 1974  
Australia

Redraft paragraph 5 as follows:

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

CDDH/II/203  
10 February 1975  
Australia

Amend paragraph 5 to read:

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

C. MEETING OF COMMITTEE II, 11 February 1975 (CDDH/II/SR.17):

18. Mr. PICTET (International Committee of the Red Cross) introduced Article 17, which corresponded to Article 18 of the first Geneva Convention of 1949. Paragraph 3 was designed to supplement Article 16 in respect of assistance. In paragraph 5 there was something missing: it had been discovered that no mention had been made of aircraft. The Drafting Committee could see to that. The term "aircraft" would be inserted before "ships", while the verb "assist" would precede "care for".

19. The CHAIRMAN said he had arranged the amendments in a certain order which he submitted to the Committee. He would begin with amendment CDDH/II/54 which concerned the title of Article 17 only.

20. Mr. URQUIOLA (Philippines) suggested that the title of Article 17 should be brought into line with the wording of other amendments.

21. Miss MINOGUE (Australia) said she had retained the words "role of the civilian population" in subsequent amendments, to tally with the initial title.

22. The CHAIRMAN said that, if there were no objections to it, joint amendment CDDH/II/54 would be regarded as having been adopted by consensus.

It was so agreed.
23. Mr. URQUIOLA (Philippines) said he was pleased to see that, thanks to amendment CDDH/II/54, the relief societies were mentioned in the new title of Article 17.

24. Mr. HEISS (Israel), introducing amendment CDDH/II/14, said that the protection of the wounded and sick was mentioned in Articles 10 and 17. The protection of combatants hors de combat, even if not wounded, should be added to Article 17.

25. Miss MINOQUE (Australia), introduced amendment CDDH/II/34 concerning paragraphs 1, 3 and 5. She expressed the wish that the shipwrecked should be mentioned in those texts. Referring to paragraph 3, she said she no longer supported amendment CDDH/II/54.

26. Miss BASTL (Austria) withdrew amendment CDDH/II/4 to paragraph 5.

27. Mr. CALCUS (Belgium) said it would be desirable to consider amendments CDDH/II/1 and CDDH/II/11 together as they dealt with the same subject. The term "relief societies" was too general. The words "such as national Red Cross (Red Crescent, Red Lion and Sun) Societies" should be added.

28. Mr. TERNOV (Byelorussian Soviet Socialist Republic) introduced amendment CDDH/II/19, which made the same point. He observed that amendments CDDH/II/12 and CDDH/II/54 were identical.

29. Mr. BOGLIOLO (France) said that the French amendment to paragraph 2 (CDDH/II/12), which would replace the words "shelter, care and assistance" by the words "shelter, aid and care" was closer to the chronological order of events than the original.

30. Mr. MAKIN (United Kingdom) said that in his opinion the French amendment (CDDH/II/12 and the United Kingdom amendment (CDDH/II/54) were not mutually exclusive. In English, the word "assistance" had a wider meaning than "medical assistance" or "medical care". Consequently, either the word should be deleted from the paragraph in question, or it should be made clear that medical assistance was meant.

31. Mr. NGUYEN QUI DON (Republic of Viet-Nam) said that his delegation proposed that paragraph 3 should be amended by inserting the words "on the sole condition that the fact is reported to the local authorities" (CDDH/II/89). That was in the interests of the wounded and sick themselves, because the civilian population might not have the necessary means of caring for the sick.

32. Miss MINOQUE (Australia) said her delegation proposed that what was meant in paragraphs 2, 3 and 4 should be stated to be medical assistance or care (CDDH/II/203), so as to avoid any possibility of conflict with domestic legislation concerning treason or other crimes or unlawful acts. By specifying the medical nature of the assistance, it would be possible to avoid, or at least minimize, the rise of people seeking protection for having given shelter to persons who were neither sick nor wounded.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, in his opinion, the question whether the civilian population should be mentioned before or after the relief societies in paragraph 4 was one of pure form.
34. The Israel amendment to paragraph 1 (CDDH/II/14) was not in order, because the question of combatants hors de combat did not come within the competence of Committee II, which, in the context under discussion, should be concerned only with the wounded, sick and shipwrecked.

35. It should be brought out in Article 17, paragraph 3 that no one should be molested, prosecuted or convicted for having given shelter, care or assistance to sick or wounded persons "even if they belong to the adverse Party". The Australian amendment to amendment CDDH/II/34 deleting those words (CDDH/II/203, para. 3) was therefore not acceptable either. In addition, the inclusion of the words "medical assistance or care" would restrict the scope of the article in a way that was incompatible with its humanitarian aim.

36. Lastly, he was opposed to the amendment submitted by the Republic of Viet-Nam (CDDH/II/89).

37. Mr. MARRIOTT (Canada) said he thought that in paragraph 4 the civilian population should be mentioned before relief societies since the function of the latter, being better known, did not need to be given prominence.

38. The wording suggested in amendments CDDH/II/11 and CDDH/II/16 for paragraph 2 was more logical and should be adopted.

39. The questions raised in connexion with the words "aid", "care" and "assistance" were drafting questions. In his opinion, the terms "medical assistance" and "medical care" did not necessarily mean assistance or care provided by members of the medical profession.

40. The amendment to paragraph 3 proposed by the Republic of Viet-Nam (CDDH/II/89) was unacceptable, since it dangerously restricted the article's scope. One might ask, for example, who the "local authorities" would be in the event of occupation.

41. Mr. MAKIN (United Kingdom) said that amendment CDDH/II/14 proposed by the Israel delegation raised an interesting point, but that he shared the view of the representative of the Union of Soviet Socialist Republics that it was out of place in Article 17. It seemed to him that it was more appropriate to Articles 38 and 39, which were being dealt with by Committee III.

42. Amendment CDDH/II/25, proposed by the Cuban delegation, was a linguistic one which probably affected only the Spanish text. He considered the word "charity" should remain in the English version. All the other amendments, with the exception of that proposed by the delegation of the Republic of Viet-Nam, seemed to have the same aim and could be referred to the Drafting Committee.

43. Mr. KLEIN (Holy See) said that disinterested aid should not be prevented on technical grounds. Warm clothing or a packet of biscuits could be as useful as medical care. He was not opposed to the mention of "charitable aid" or "humanitarian feelings", since they corresponded to the ICRC motto "Inter arma caritas".

44. Mr. URQUIOLA (Philippines) said that the provisions of paragraph 1 of Article 17 were covered by those of paragraph 5. Moreover, the idea of assistance should not be dropped from paragraphs 3 and 4, for in the broader sense it could include, for instance, intervention by relief societies to enable
people to receive letters from their families or their own country. He saw no harm in replacing "assistance" by "aid" since in his view the two words were synonymous.

45. Mr. MARTIN (Switzerland) said that his delegation supported amendment CDDH/II/54. He urged that the use of the word "assistance" be avoided in paragraphs 3 and 4 since, in his opinion, "assistance" could be given either a very narrow or a very broad interpretation. Assistance was the responsibility of the relief societies, and it would be more appropriate to deal with it in Article 54 as one of the tasks of those bodies. The same applied to the word "aid", which in a medical context meant "care" and in all other cases meant "assistance".

46. Mr. FRUCHTerman (United States of America) said that his delegation shared the views of the Soviet Union and United Kingdom representatives on amendment CDDH/II/14, which was out of place in Article 17. On the other hand, his delegation supported the amendments to the effect that the national Red Cross Societies should be mentioned by their various names.

47. His delegation would like to see paragraph 4 clarified by the addition at the end of the words "for as long as they are needed".

48. He agreed with the United Kingdom delegation in preferring the word "charity" to the expression "humanitarian feelings".

49. Mr. HESS (Israel), referring to the observations made on amendment CDDH/II/14, said that his delegation believed that combatants hors de combat should also be protected, and if that notion could not be incorporated in the text of Article 17 it should be introduced elsewhere.

50. His delegation was sorry it could not support the proposals that the national Red Cross Societies should be mentioned among relief societies. Israel had pointed out on several occasions that the members of medical services attached to the Israel armed forces used the distinguishing emblem of the "Red Shield of David" but Israel respected all other emblems. The national relief society of Israel, Agudat Magen David Adom (the Red Shield of David Society), which used that emblem, was still excluded from the International Red Cross although it fulfilled all the necessary conditions and enjoyed a high international reputation for its relief work, among the victims of war and calamity. The exclusion was compatible with the objectives neither of the International Red Cross nor of the Conference. For that reason, his delegation would not vote for amendment CDDH/II/1.

51. Mrs. DARIIMAA (Mongolia) said she thought amendment CDDH/II/14 would introduce a change of substance and extend the scope of the Geneva Conventions by putting on a footing of equality, on the one hand, and sick and the wounded and, on the other hand, combatants hors de combat, who might still be armed. From that point of view, the amendment was not acceptable, because provisions relating to such combatants were included in the Geneva Conventions.

52. Referring to amendment CDDH/II/19, she said she thought it would be better not to mention any relief society in particular, for to do so might introduce discrimination and create problems for the soldiers, who must be able rapidly to understand all the provisions of Protocol I.
53. She did not wish to speak on the linguistic problem raised by draft amendment CDDH/II/25, submitted by the delegation of Cuba, but she thought the term with the broadest meaning should be adopted. The proposal of the Republic of Viet-Nam, being likely to delay administration of the care which the condition of a wounded person might need, was contradictory to the humanitarian feelings by which those concerned should be animated.

54. Mr. KLEIN (Holy See) said he was not very happy about the statements by the Swiss representative, who considered that "assistance" was the affair of the relief societies. That notion was liable to run counter to the spirit of the Geneva Conventions by restricting and discouraging the role of private initiative. Besides, relief organizations were not always at hand when assistance was needed.

55. Mr. AL-FALLOUJI (Iraq) said that his delegation would give its full support to the Committee's work.

56. He did not think that the title of Article 17 should be changed as proposed in amendment CDDH/II/54, for any such modification would be liable to restrict the role of the relief societies to the provisions of Article 17. Nor did he support amendment CDDH/II/14, as he considered that combatants, even when hors de combat, should not be placed on the same footing as the sick and wounded. On the other hand, he supported amendment CDDH/II/1, which proposed that the various national Red Cross Societies should be mentioned. He supported draft CDDH/II/12, which would replace "assistance" by "aid", while requesting that "aid" should be mentioned before "care". The notion of aid should in his opinion be maintained, since, apart from the sick and wounded, there might be women in labour or new-born infants requiring immediate help.

57. The discussions should be very wide-ranging but relevant. He hoped that the drafting of the various articles would not be allowed to serve the purposes of propaganda.

58. Mr. HESS (Israel) stated that, to facilitate the discussions, his delegation had decided to withdraw amendment CDDH/II/14.

59. Mr. MARTIN (Switzerland) said he was prepared to support the CDDH/II/12 proposal to replace "assistance" by "aid". Thus, Article 17 would have to do with immediate material aid such as was recommended by the representative of the Holy See, while Article 54, which provided for the organization of assistance as part of civil defence, would retain all its significance.

60. Mr. DENISOV (Ukrainian Soviet Socialist Republic) pointed out with regard to the amendment submitted by the delegation of the Republic of Viet-Nam that it was a matter for every citizen to decide for himself, that it was a question of conscience, and that each person had to decide whether he should or should not make a declaration to the local authorities. Furthermore, draft Protocol I did not relate only to international armed conflicts; its provisions were equally applicable to other movements, such as national liberation or freedom from domination movements. The declaration provided for under the amendment might therefore be contrary to Article 1 of draft Protocol I, which had been adopted by Committee I.

62. The CHAIRMAN said that the debate on Article 17 was closed. The majority of the amendments would be forwarded to the Drafting Committee. There
would, however, be a vote by show of hands on the amendment submitted by the
delegation of the Republic of Viet-Nam and on the substance of draft amendments
CDDH/II/11, CDDH/II/16 and CDDH/II/19.

63. He put to the vote the substance of draft amendments CDDH/II/11,
CDDH/II/16 and CDDH/II/19.

The guiding principle behind the three amendments was adopted by 45
votes to none, with 7 abstentions.

64. The CHAIRMAN put to the vote the amendment submitted by the delegation
of the Republic of Viet-Nam (CDDH/II/89).

The amendment was rejected by 23 votes to 2, with 27 abstentions.


The Drafting Committee . . . dealt with draft Protocol I, Part II, Section
I, Articles 9 to 20 (except Articles 14, 18 and 18 bis).

It now submits to the Committee II for approval the text of the above arti-
cles as given on the following pages. Some passages have been placed in brac-
kets in cases where the Drafting Committee did not consider itself competent,
or where a final decision must await the result of the studies of ad hoc work-
ing groups.

Article 17. Role of the civilian population and of relief societies

1. The civilian population shall respect the wounded and sick, and the
shipwrecked, even if they belong to the adverse party, and shall commit no act
of violence against them. The civilian population and relief societies, such
as the national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be
permitted, even in invaded or occupied areas(1), spontaneously(2) to care for
the wounded and sick, and the shipwrecked, and no one shall be harmed, prose-
cuted or convicted for having done so.

(1) This expression might also be considered by the Working Group on
"combat zone" and other similar expressions.

(2) Some delegates recommend that the word "spontaneously" be deleted
because they consider it to be restrictive.

2. The Parties to the conflict may appeal to [the good will](3) of the
civilian population and the relief societies referred to in paragraph 1 of this
article to care for the wounded and sick, and the shipwrecked, [and to collect
the dead] and shall grant both protection and the necessary facilities to those
who respond to this appeal. If the adverse party gains or regains control of
the area, that party also shall afford the same protection and facilities for
so long as they are needed.

(3) Some delegates preferred the term "charity".

3. [Reserved for further consideration]
16. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that Article 17 presented the Committee with a number of alternatives. Regarding foot-note (1) to paragraph 1, it would be better to wait for the report on "combat zone" by the Working Group. With regard to footnote (2), some representatives had recommended deletion of the word "spontaneously" on the ground that it might prohibit organized action to care for the wounded and sick and the shipwrecked.

17. Foot-note (3) to paragraph 2 applied only to the English text. Some representatives had preferred the word "charity" which was used in the Geneva Conventions, and the Cuban representative had proposed replacing the words "good will" by "humanitarian feelings".

18. The words in square brackets "and to collect the dead" had been added to paragraph 2 in order to bring the paragraph into line with new paragraph 3 (replacing former paragraph 5) on transport questions. It might be better to defer a decision on that point until proposed Article 18 bis had been considered.

19. Mr. SANCHEZ DEL RIO (Spain) pointed out that in the Spanish text, the seventh line of paragraph 1 should read: '"... a recogerlos y prestarles cuidados . . ."'.

20. Mr. GREEN (Canada) proposed that the words "harmed, prosecuted or convicted" at the end of paragraph 1 should be replaced by the words "harmed, convicted or punished".

21. Mr. SCHULTZ (Denmark) said he agreed with the view that in paragraph 1, the word "spontaneously" would restrict aid by relief societies, and proposed its deletion.

22. Mr. MODISI (Botswana) said that the word "spontaneously" should be retained. He did not see how it could deter organizations from giving aid of their own volition.

23. Mr. MAKIN (United Kingdom) said it would be well to be very cautious about adopting any part of Article 17 until a decision had been taken about the wording of paragraph 3. The article was in danger of becoming extremely confused.

24. With regard to the use of the word "spontaneously", the situation was likely to be very different in invaded areas, which would probably be immediately behind the battle-field, and occupied areas. In the former, it would not be reasonable for a Party to the conflict to permit anything other than spontaneous help, whereas in the latter he saw no reason why organized help should not be permitted. It was therefore not desirable to refer to invaded or occupied areas together.

25. Concerning paragraph 2, he considered that the expression "to collect the dead" was entirely out of place in it. It was contrary to the obligations of the Parties to the conflict as set out in Article 17 of the first Geneva Convention of 1949; the expression had in fact been taken from the second Convention. Action along the lines envisaged by the expression "to collect the
dead" would make it harder to identify the victims, whereas in the case of shipwreck such action was essential. Perhaps the words "to collect the dead" might be replaced by the words "to search for and report the location of the dead".

26. In his view, once the wording of paragraph 3 had been agreed upon, the text of the whole article should be referred back to the Drafting Committee in order to clarify which areas were being referred to in each paragraph.

27. Mr. SOLF (United States of America) said that he, too, thought that the word "spontaneously" in paragraph 1 should be deleted. Spontaneous action by the civilian population, and organized assistance to the wounded, sick and shipwrecked would occur where appropriate, as paragraph 2 made clear, even if paragraph 1 did not contain the word "spontaneously", which was restrictive.

28. He would prefer not to postpone the decision on the expression "in invaded or occupied areas" in paragraph 1 until the work on the text of paragraph 3 had been completed.

29. In paragraph 2, the Committee would have to decide between the terms "good will", "charity" and "humanitarian feelings".

30. He did not himself consider that an appeal to the civilian population to locate the dead and bring them to a single place would in any way endanger the implementation of Articles 17 or 18 bis. It was merely a request to assist as appropriate and there was no requirement anywhere that the dead were to be buried where they fell.

31. Mr. BOGLIOLO (France) drew attention to the fact that the expression "to collect the dead" did not appear anywhere in the French text of paragraph 2.

32. He was beginning to be convinced by the arguments which had been advanced for the deletion of the word "spontaneously" in paragraph 1.

33. Mr. AL-FALLOUJI (Iraq) said he considered that the word "spontaneously" could be applied appropriately to action by the civilian population, but he could not see how it could be applied to organized action by a competent relief organization in the twentieth century. It would be better to delete it.

34. He wished to understand exactly what the Chairman meant when he said that a matter should be referred back to the Drafting Committee. Did he, in fact, mean that a new Working Group would be set up to resolve a particular problem?

35. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the representative of Iraq had raised a very important issue concerning the procedure which the Committee should follow in the future. He wondered whether it was a good idea to refer all questions which had not been resolved in Committee II to the Drafting Committee. For instance, a matter of substance was involved in any decision on whether organized assistance and civilians should be placed on the same footing. In his view, an organized society could provide spontaneous assistance in areas where no organized work was being undertaken; but, if it did so, one of the Parties to the conflict might well ask it who had authorized it to intervene. He felt it would be better to leave the reference to specific relief societies, such as the national Red Cross (Red Crescent, Red Lion and Sun) Societies, in paragraph 1 since that would afford them protection.
Again, civilians should not be penalized for acting spontaneously to care for the wounded, sick and shipwrecked, and it would therefore be wrong to delete the word "spontaneously" from paragraph 1.

36. He was perfectly satisfied with the wording of paragraph 1, unless the definition of the terms "invaded" or "occupied areas" was altered by action taken in another Committee.

37. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that in the French and Spanish texts the words "[and to collect the dead]" had inadvertently been omitted from paragraph 2.

38. Mr. CLARK (Australia) said that the word "charity", which had initially been used in paragraph 2, had been considered to have religious connotations, while the words "good will", although more secular, had a a strong suggestion of business. He thought that the alternative words could both be deleted without detriment to the aims of paragraph 2.

39. Mr. FRUCHTERMAN (United States of America) said that, in order to cover every situation and to make it clear that spontaneous action, where appropriate, was desirable, the words "or otherwise" should be inserted after the word "spontaneously" in paragraph 1.

40. He agreed with the Australian representative that the words "good will" or "charity" should be deleted from paragraph 2.

41. Mr. HEREDIA (Cuba) said he thought that the most suitable words to replace the other alternatives proposed were "humanitarian feelings".

42. Mr. KLEIN (Holy See) considered that the word "charity" was appropriate to the nineteenth century. The words "humanitarian feelings" had been used by the French philosophers of the eighteenth century. What should be expressed in the article was something deep in the heart of every human being; he therefore suggested the word "generosity".

43. Mr. MARTIN (Switzerland) said that immediate care should be provided for the wounded, sick and shipwrecked and hence it must of necessity be spontaneous. He realized, however, that the word "spontaneously" could be interpreted restrictively and it would probably be best to delete it. That was a matter of substance which the Committee must decide, not the Drafting Committee.

44. The CHAIRMAN drew the Committee's attention to rules 48, 40 and 50 of the rules of procedure and to the fact that at the beginning of the present session the Committee had decided to take all decisions of substance itself and to refer only drafting matters to the Drafting Committee and its Working Groups.

45. The Committee would shortly have to take a decision concerning the expression "in invaded or occupied areas" in paragraph 1, in view of the fact that a Working Group had been set up to consider the term "combat zone" and other similar expressions. A decision would also have to be taken concerning the inclusion of the word "spontaneously" and the two other alternatives which had been proposed.
46. In paragraph 2, the Committee had to take a decision concerning the expression "the good will" and the various alternatives which had been proposed, and also concerning the expression "and to collect the dead". In the latter case, the Committee could decide to leave the matter in abeyance until the Working Group dealing with Article 18 bis had reached a decision.

47. Mr. SCHULTZ (Denmark) said that, as it was incumbent upon the Committee to develop humanitarian law, it should not feel bound by the use of the word "spontaneously" in former Article 18. The inclusion of the word "spontaneously", or indeed another similar word in the text, would give the Occupying Power an excuse to say that the assistance given by the Red Cross Society was not spontaneous and should accordingly be prohibited. Every possible opportunity should be given to provide assistance to the wounded, sick or shipwrecked. He was in favour of deleting the word "spontaneously", but, if that suggestion was not generally acceptable, he would support the United States proposal.

48. Mr. WARRAS (Finland) said that the term "spontaneously" should not be interpreted in a restrictive sense in the context of paragraph 1. The intention was that the civilian population and relief societies should be given the widest possible opportunity to help the wounded, sick and shipwrecked, both spontaneously and otherwise. In this view, the question of authorization for relief assistance, such as that given by the Red Cross, should not be dealt with under Article 17; it should be covered by a general provision. He accordingly supported the United States proposal.

49. With regard to paragraph 2, he was of the opinion that the word "

50. Mr. GREEN (Canada) said he agreed with the Finnish representative that none of the words suggested as alternatives to the words "good will", and for that matter "good will" itself, served any purpose. Moreover, relief societies existed for the very purpose of caring for the wounded, sick and shipwrecked. Consequently, there was no need to appeal to them.

51. Further, if under paragraph 1, the civilian population was permitted spontaneously to care for the wounded, sick and shipwrecked, it would be incongruous, under paragraph 2, to permit the Parties to the conflict to appeal to the good will of the civilian population and relief societies to undertake that care. The words "the good will of" could be deleted.

52. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the discussion on the word "spontaneously" had been very useful; it was clear that the term could be misleading. It was unfortunate that Latin could not be used, as the expression sua sponte might have solved the problem. The words "on their own initiative" also covered the meaning of "spontaneously" and avoided the implication that improvised rather than organized help was what was meant. It was essential that the civilian population and relief societies should be able to help without having to be asked to do so. The United States proposal would avoid the difficulties by adding the words "or otherwise" after "spontaneously"; that would be acceptable, but he suggested that the words "even on their own initiative" should also be considered.
53. Mr. MAKIN (United Kingdom) thought that the argument about spontaneity was beside the point, since paragraph 1 clearly dealt with situations in which the civilian population and relief societies acted on their own initiative, and paragraph 2 with those in which they acted on the initiative of somebody else. He would be happy to agree with the United States proposal, even through it covered a confusion of thought. He still had doubts about the wisdom of agreeing on the text of paragraph 2 before the text of paragraph 3 was available. He withdrew his suggestion that paragraph 2 should be referred back to the Drafting Committee, but thought that paragraphs 2 and 3 should be considered together, since there might be an overlap between them.

54. Mr. SANCHES DEL RIO (Spain) said that, in Spanish, the word "espostanamente" was an adverb and must therefore modify a verb. If yet another adverbial form was added, as in the United States proposal, that would amount to saying "in any way whatsoever". For that reason, he thought that, if "spontaneously" was not used, no adverb should be used at all. As a compromise, he would accept the suggestion made by the Rapporteur of the Drafting Committee that "even on their own initiative" should be used instead of "spontaneously".

55. With regard to paragraph 2, the point that he had raised previously was still valid, namely that the omission of any reference to "charity" for "good will" would make the provisions of that paragraph optional for the Occupying Power and mandatory for the civilian population. That would be a radical alteration in meaning. He therefore considered that some expression of that kind was necessary.

56. Mr. FRUCHTERMAN (United States of America) said that his delegation was prepared to withdraw its proposal in favour of that made by the Rapporteur of the Drafting Committee.

57. Mr. PONCE (Ecuador) said he agreed that the deletion of any reference to "good will" would alter the meaning of paragraph 2 and make it mandatory in character. The best way out of the difficulty was to follow the suggestion made by the Cuban representative.

58. Mr. MARTIN (Switzerland) said that, since the United States delegation had withdrawn its proposal, he would withdraw his suggestion that the word "spontaneously" should be deleted. He accepted the suggestion made by the Rapporteur of the Drafting Committee.

59. Mr. CZANK (Hungary) said he supported the insertion of the words "even on their own initiative", since they conveyed the idea of "spontaneously". If "spontaneously" was not replace, there was the danger that the words "shall be permitted" might be taken to mean that the civilian population would have to obtain some kind of authorization before they could take action. That was restrictive, and must therefore be excluded.

60. The omission of the word "charity" and the other similar terms mentioned would not make any difference to the meaning of paragraph 2. If some form of words had to be used, he would support the Cuban representative's proposal.

61. Mr. MAIGA (Mali) said that "spontanement" meant "de plein gre"; that was equivalent to "even on their own initiative" so that the suggestion made by the Rapporteur of the Drafting Committee was acceptable to him.
62. Mrs. RODRIGUEZ LARRERA DE PESARESI (Uruguay) supported the proposal made by the Rapporteur of the Drafting Committee, which very clearly explained the significance of "spontaneously". In paragraph 2, she would prefer the words "may appeal to the generosity and humanitarian feelings of the population".

63. Mr. MODISI (Botswana) also supported the replacement of "spontaneously" by the words "even on their own initiative", although he thought that spontaneity and initiative were not synonymous.

64. Mr. AL-FALLOUJI (Iraq) said that he, too, found the words "even on their own initiative" acceptable. As far as paragraph 2 was concerned, he now thought, after listening to the Spanish representative, that some form of words was necessary to make it clear that that paragraph was not mandatory in character.

65. Mr. TRAMSEN (Denmark) said he accepted the suggestion made by the Rapporteur of the Drafting Committee.

66. The CHAIRMAN said that the Committee must now decide whether Article 17, paragraph 1, should be sent back to the Drafting Committee. The question of the use of the word "spontaneously", however, was one of substance, so that a decision was required. As there appeared to be no objection to the proposal by the Rapporteur of the Drafting Committee that that word should be replaced by the words "even on their own initiative", he would take it that those words had been approved by consensus.

67. With regard to paragraph 2, however, the situation was less clear, as at least four suggestions had been made. He asked the Committee whether it was prepared to accept the expression "humanitarian feelings".

68. Mr. MARRIOTT (Canada) proposed that a vote should first be taken on whether all reference to feelings should be deleted.

69. Mr. CZANK (Hungary) thought that the logical procedure would be to vote first on the original word "charity" and then on the Cuban proposal.

70. The CHAIRMAN said that he agreed with the Hungarian representative, but only in part. The proposal that diverged most widely from the others was that all reference to "feelings" should be deleted, and, according to rule 40 of the rules of procedure, that should be voted on first, followed, as the case might be, by the Cuban proposal.

The proposal that all reference to "feelings" should be deleted from paragraph 2 of Article 17 was adopted by 27 votes to 8, with 14 abstentions.

71. The CHAIRMAN said that it was still necessary to decide whether paragraph 2 should be sent back to the Drafting Committee, or whether the entire article should be dealt with in that way, since paragraph 3 was not ready.

72. Mr. MAKIN (United Kingdom) said he wished to repeat his suggestion that no decision should be taken with regard to paragraph 2 until paragraph 3 was ready. He thought that the whole of Article 17 should be returned to the Drafting Committee.
73. The CHAIRMAN said that after the Committee's decision on Article 18 bis, which was currently being studied by a special Working Group, it should also decide whether the question of collecting the dead should be dealt with in that article or in Article 17.

F. REPORT OF THE DRAFTING COMMITTEE, COMMITTEE II, 28 February 1975 (CDDH/II/240/Add.1):

Article 17. Role of the civilian population and of relief societies

1. The civilian population shall respect the wounded and sick, and the shipwrecked, even if they belong to the adverse party, and shall commit no act of violence against them. The civilian population and relief societies, such as the national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be permitted, even on their own initiative, to care for the wounded and sick, and the shipwrecked, even in invaded or occupied areas, and no one shall be harmed, prosecuted, convicted, or punished for having done so.

[3. Parties to the conflict may appeal to commanders of civilian ships and craft to take on board and care for the wounded and sick, and the shipwrecked, and to collect the dead. Ships and craft responding to such appeals, and those who give shelter on their own initiative to such casualties shall be granted special protection and facilities for the discharge of their mission of assistance.]

Note: Some delegations desire to apply the principle of this provision to aircraft as well. As this involves important questions of substance, the Drafting Committee recommends that consideration of this proposal should be deferred.

G. MEETING OF COMMITTEE II, 4 March 1975 (CDDH/II/SR.29):

3. [Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee said that] . . . Article 17, paragraph 1, had been slightly redrafted as a result of the Committee's decision at its twenty-eighth [twenty-fourth?] meeting. . . .

H. MEETING OF COMMITTEE II, 5 March 1975 (CDDH/II/SR.30):

6. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had redrafted paragraph 1 in the light of the decision taken by Committee II that the word "spontaneously" in paragraph 2 of the original ICRC draft of Article 17 should be replaced in the new paragraph 1, by the words "even on their own initiative".

7. It had adopted paragraph 2, but had enclosed the new paragraph 3 in square brackets, since that paragraph involved questions of substance. The text was essentially along the lines of the original paragraph 5, although the word "charity" had been deleted in accordance with a decision taken by the Committee with respect to paragraph 2 of that same article.
8. Lastly, some delegations had wished to apply the principle laid down in the proposed new paragraph 3 to aircraft as well, but the general feeling in the Drafting Committee had been that a decision on that point should be deferred until Committee II had dealt with the provisions regarding medical transport.

9. The CHAIRMAN suggested that the Committee adopt paragraph 1 of Article 17 by consensus.

It was so agreed.

10. The CHAIRMAN further suggested that the Committee, as the Rapporteur of the Drafting Committee had proposed, defer its decision on paragraph 3 until it had dealt with the question of medical transport.

It was so agreed.

11. Mr. MAKIN (United Kingdom) said he wished to state for the record that his delegation considered paragraph 3 of Article 17, and particularly the phrase beginning with the words "may appeal", a permissive clause which did not change the existing law on the subject as laid down in the second Geneva Convention of 1949.

12. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had asked him to draw the attention of Committee II to the use of the words "to care for the wounded and sick, and the shipwrecked" in paragraph 1 of Article 17. That formula should be used in all provisions in which reference was made to those three categories of persons. The same formula should also be used in the French and Spanish versions, viz: "blesses et malades, ainsi que les naufragés" in the French version and "los heridos y los enfermos, así como los naufragos" in the Spanish version. Committee II should be asked to reconsider Article 9, paragraph 1, and Article 10, paragraph 1, where the same combination of words occurred. Alternatively, the Drafting Committee of the Conference could be asked to make the necessary changes.

13. Mr. AL-FALLOUJI (Iraq) said that in his opinion the Committee should use the definitions given in Article 8.

14. Mr. MARRIOTT (Canada) suggested that the Committee authorize the Drafting Committee to correct any errors in drafting with regard to the words "wounded and sick, and the shipwrecked" which might have appeared in articles already approved by the Committee.

It was so agreed.

I. PROPOSED AMENDMENT:

CDDH/II/256 New Zealand, Nigeria, United Kingdom of Great Britain and
10 March 1975 Northern Ireland

In the text of Article 17 submitted in document CDDH/II/240/Add.1 delete "to collect the dead" and substitute "to search for and report the location of the dead".

491

Article 17, para. 1

No change

K. MEETING OF COMMITTEE II, 2 April 1975 (CDDH/II/SR.44):

2. The CHAIRMAN invited the Rapporteur of the Drafting Committee to introduce the report of that Committee on Article 15, paragraph 2, Article 17, paragraph 1 and Article 18, paragraph 3, of the draft Protocol I (CDDH/II/286).

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, in the light of the report by the Joint Working Group and subsequent discussion to avoid the use of such military terms as "combat zones" and, instead, to find a more general phrasing for situations to which Articles 15, paragraph 2, 17, paragraph 1, and 18, paragraph 3 of the draft Protocol I would apply.

The Drafting Committee's proposals concerning Article 15, paragraph 2, Article 17, paragraph 1 and Article 18, paragraph 3 were adopted by consensus.

8. Mr. MAKIN (United Kingdom) said that he would like to raise a point in connexion with paragraph 2 of Article 17. His delegation was a co-sponsor of the joint amendment in document CDDH/II/256 which should have been headed "Amendment to Article 17 (2)" , not 17 (3). It felt that it was not right that civilian populations and relief societies should be expected to collect the dead, with the possible exception of those at sea. The procedure for the collection of the dead was adequately laid down in Article 15 of the first Geneva Convention of 1949.

The joint amendment to Article 17, paragraph 2 (CDDH/II/256) was adopted by consensus.

Article 17, paragraph 2 as a whole was adopted by consensus.

L. ARTICLE ADOPTED BY COMMITTEE II, 2 April 1975 (CDDH/II/282):

Article 17. Role of the civilian population and of relief societies

1. The civilian population shall respect the wounded and sick, and the shipwrecked, even if they belong to the adverse Party, and shall commit no act of violence against them. The civilian population and relief societies, such as the national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be permitted, even on their own initiative, to care for the wounded and sick, and the shipwrecked, even in invaded or occupied areas, and no one shall be harmed, prosecuted, convicted, or punished for having done so.

2. The Parties to the conflict may appeal to the civilian population and the relief societies referred to in paragraph 1 of this article to care for the wounded and sick, and the shipwrecked, and to search for and report the location of the dead; they shall grant both protection and the necessary facilities to those who respond to this appeal. If the adverse Party gains or
regains control of the area, that party also shall afford the same protection and facilities for so long as they are needed.

3. [Reserved for further discussion].

M. REPORT OF THE DRAFTING COMMITTEE, COMMITTEE II, 23 April 1976 (CDDH/II/334):

With regard to Articles 17 (Protocol I) and 14 (Protocol II), the Drafting Committee considers that the decision of Committee II to reserve the adoption of part of these articles for further study does not mean that they have been referred back once more to this Committee.

The Drafting Committee has therefore no authority to take decisions regarding these articles. It considers that the questions remaining unsettled are matters of substance on which a discussion in Committee II would be needed so as to guide its own work.

N. MEETING OF COMMITTEE, 29 April 1976 (CDDH/II/SR.59):

57. The CHAIRMAN drew attention to paragraph 3 of Article 17 of draft Protocol I and to paragraph 3 of Article 14 of draft Protocol II. As indicated in paragraph 1 of the Drafting Committee's report (CDDH/II/334), Committee II had reserved the adoption of those provisions for further study.

58. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that no new decision had been taken since the presentation of paragraph 3 of Article 17 in square brackets in the Drafting Committee's report to the second session of the Committee (CDDH/II/240/Add.I). The only remaining question of substance was whether paragraph 3 should apply to aircraft and land vehicles as well as to the ships and crafts referred to in the original draft. The decision had been postponed until the provisions on medical air transport were known.

59. Mr. CLARK (Australia) introduced his delegation's amendment to paragraph 5 of Article 17 (CDDH/II/203). The amendment sought to develop existing law by including aircraft. It also included vehicles, but after participating in the Working Group on Medical Transports his delegation would not press the point.

60. It would be reasonable in an article concerned with the role of the civilian population to refer to the role of aircraft under the control of civilians: otherwise it would be assumed that no civilian possessed aircraft. Paragraph 5 was concerned with the role of civilians and the humanitarian assistance they could offer to alleviate the suffering of the wounded and sick. Modern aircraft could obviously speed up transport and treatment of the wounded and sick in medical units.

61. Paragraph 5 provided that parties "may appeal" to commanders of civilian ships and craft. It did not seem unreasonable to extend that appeal to civilian aircraft: no obligation was involved. He understood that a practice had developed in recent conflicts of parties appealing to the commander of civilian aircraft to take on board some wounded or sick with other passengers and fly them out of the danger zone. The commander of such craft would have to decide whether he could take such persons on board.
62. In maintaining its proposed amendment, his delegation had taken the considered view that civilian aircraft answering the appeal envisaged in paragraph 5 could not be considered temporary medical aircraft, since they would not be under the operational control of the party seeking their help, nor would they be exclusively assigned to medical purposes as required by the definition of "temporary" medical aircraft in draft Protocol I, Article 21, sub-paragraph (b).

63. If the inclusion of a reference to aircraft in the first sentence of paragraph 5 was acceptable, he would suggest that the second sentence should be redrafted to state clearly that it was the party making the appeal that had the obligation to grant special protection and facilities to such ships, craft and aircraft.

64. He appreciated that an adverse party would have difficulty in recognizing civilian aircraft not marked with the distinctive emblem or light or using distinctive signals, and in affording them special protection - even if it were known what the words "special protection and facilities" meant in that context.

65. Mr. ALBA (France) said that he agreed with the substance of the Australian amendment but did not like the French version. The verbs should be in the present tense and it was better to say "ramasser" rather than "receuil-lir" in relation to the dead.

66. The CHAIRMAN said that the texts in the various languages would be harmonized if the Australian amendment was adopted.

67. Mr. SOFF (United States of America) said that he was opposed to the Australian amendment, as amended orally. A carefully designed regulation for the protection of medical aircraft and restrictions on their use which would remove the fear of the parties concerned that medical aircraft might abuse their privileges had just been adopted. The amendment introduced, in a rather loose way, provided for the introduction into a situation of conflict of aircraft not subject to the control of a party to the conflict or to the regime which had been adopted in Articles 21 and 26 to 32 of draft Protocol I. It would simply create loopholes and not be to the advantage of the persons picked up. He did not see why, if the owner or operator of a civil aircraft wished to respond to an appeal for his services, he could not submit himself to the control of a party to the conflict, so that he would have the legal protection which temporary medical aircraft would have.

68. Article 21, which laid down the general requirements, was intended to provide for aircraft from almost any source; there was no requirement that they should be State aircraft or belonging to a party to the conflict. One of the medical tasks which might conceivably be envisaged for paragraph 3 was search. Searching in the vicinity of the contact zone or where hostilities were taking place was prohibited without advance agreement and if an appeal was being made for assistance in that field it was obvious that advance agreement was essential.

69. Mr. MAKIN (United Kingdom), speaking on a point of order, said that it was his understanding that the Committee had agreed on two paragraphs of Article 17, instead of five as originally proposed by the ICRC. There appeared to be three proposals before the Committee at the present time; firstly, to have only two paragraphs; secondly, to adopt as paragraph 3 the text which appeared in square brackets as paragraph 3 in the Drafting Committee's earlier report.
(CDDH/II/240/Add.1); thirdly, to adopt the Australian amendment, as amended verbally by the Australian representative, as paragraph 3. In his view, the best course would be to consider the Australian amendment, as orally amended, first.

70. The CHAIRMAN said that the Australian amendment should be voted on first and, if it was rejected, the Committee would vote on the text of Article 17 suggested by the Drafting Committee (CDDH/II/240/Add.1).

71. Mr. SCHULTZ (Denmark), referring to the words "special protection" in paragraph 3 of the Drafting Committee's text (CDDH/II/240/Add.1) and in paragraph 5 of the Australian amendment (CDDH/II/203), asked whether there was any definition in draft Protocol I of a qualified protection and whether it meant that those concerned would be protected and given the necessary facilities for carrying out their mission of assistance. He thought it would be better to omit the word "special" in relation to protection and to insert the words "the necessary" before the word "facilities". Perhaps the end of the sentence might read "shall be protected and granted the necessary facilities for the discharge of their mission of assistance".

72. Mr. MAKIN (United Kingdom) said that he found it difficult to envisage how either of the two paragraphs would operate. Both were based on Article 21 of the second Geneva Convention of 1949, which allowed parties to a conflict to appeal to the charity of commanders of neutral merchant vessels, yachts or other craft to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead. A neutral ship was unlikely to respond to such an appeal unless it had a guarantee from both sides that it would not be attacked while carrying out its task. The words which the representative of Denmark had questioned were taken from Article 21. He assumed it simply meant that the neutral craft should not be attacked while picking up the shipwrecked from the sea. That article was part of the existing law and seemed reasonably successful. If, however, the word "neutral" was omitted a curious position arose. A party could order its own ships and craft to undertake such a mission and appeal to the enemy's ships and craft to do so but it was not clear what the response would be or who would give them protection. He was not sure what the proposed texts would achieve. The only change in the law which it was proposed to make was to appeal to enemy ships and craft to pick up the shipwrecked, which they often did. He was therefore not sure that an article on the subject was really needed. The position on land was already covered in earlier paragraphs.

73. The CHAIRMAN said that he regarded the statement which the United Kingdom representative had just made as an oral amendment. After the conclusion of the discussion and in accordance with rule 40 of the rules of procedure, the Committee would vote first on the United Kingdom oral amendment, which was furthest removed from Article 17, paragraph 3. If that amendment was rejected, the Committee would then vote on the Australian amendment (CDDH/II/203) and, if that in turn was rejected, lastly on the text submitted by the Drafting Committee.

74. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the principle involved in the Australian amendment was that civilian aircraft should be afforded protection to enable them to collect the wounded, dead and shipwrecked. The United Kingdom representative had expressed serious doubts about the need for such a paragraph. In an armed conflict it was most unlikely that a civilian aircraft would respond to an appeal; its first interest would be self-preservation. Moreover, unauthorized flights over the territory of a party
to a conflict would not be permitted. He did not think that the position of
civilian aircraft in the event of armed conflict could be covered in the way
proposed in the Drafting Committee's text (CDDH/II/240/Add.1) or the Australian
amendment (CDDH/II/203). It was tantamount to calling upon a civilian pilot to
risk his life. If a party to a conflict agreed to permit overflights of its
territory it was of course at liberty to do so, but the matter should not be
dealt with in a regulation.

75. Mr. SANDOZ (International Committee of the Red Cross) said that, in the
light of the present discussion, he felt that he should explain the ICRC's
intention in paragraph 5 of its text, which had now become paragraph 3. It con-
cerned civilian ships. In the case in question, the adverse party would agree
to provide certain facilities to the other party. The text was based on Article
21 of the second Geneva Convention of 1949. As far as the special protection to
be given to those ships was concerned, he referred to the comments made by the
ICRC representative when paragraph 5 of its text had been discussed. It depend-
ed on the circumstances. Special protection could not always be given.

76. With regard to air transport, the fact that the ICRC had not mentioned
aircraft in paragraph 5 was simply an unintentional omission but they should be
included.

77. Mr. MARRIOTT (Canada) said that, before listening to the discussion,
he had had an open mind on the question. Now, while he had sympathy with the
Australian position, he felt that more weight should be given to the remarks
made by the United States and Soviet Union representatives. He was in even
fuller agreement with the United Kingdom representative. While at first sight it
seemed to be an unhumanitarian act to vote against the original proposal,
that in fact was not the case, because it did not add anything of practical
value.

78. The CHAIRMAN put to the vote the oral amendment by the United Kingdom
representative that Article 17, paragraph 3, should be deleted.

The amendment was adopted by 22 votes to 11, with 13 abstentions.

0. ARTICLE ADOPTED BY COMMITTEE II, 29 April 1976 (CDDH/II/365):

Article 17. Role of the civilian population and of relief societies

1. The civilian population shall respect the wounded and sick, and the
shipwrecked, even if they belong to the adverse party, and shall commit no act
of violence against them. The civilian population and relief societies, such as
the national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be
permitted, even on their own initiative, to care for the wounded and sick, and
the shipwrecked, even in invaded or occupied areas, and no one shall be harmed,
prosecuted, convicted, or punished for having done so.

2. The parties to the conflict may appeal to the civilian population and
the relief societies referred to in paragraph 1 of this article to care for the
wounded and sick, and the shipwrecked, and to search for and report the loca-
tion of the dead; they shall grant both protection and the necessary facilities
to those who respond to this appeal. If the adverse party gains or regains
control of the area, that party also shall afford the same protection and facil-
ities for so long as they are needed.
P. REPORT OF COMMITTEE III, THIRD SESSION (CDDH/236/Rev.1):

25. Several proposals which were not accepted by the Committee may require consideration by other Committees. Committee II should be asked to consider whether Article 17, which it has already adopted, should be amended by adding a reference to the protection of persons hors de combat. Certainly it seems that such persons should be respected by the civilian population. The Committee believes that the proper place for this to be stated is Article 17, rather than Article 38 bis. . . .


9. The CHAIRMAN reminded the Committee that the question had been referred to it by Committee III, as appeared from the report of that Committee on its third session (CDDH/236/Rev.1, para. 25).

10. Mr. BOTHE (Federal Republic of Germany) thought that the Committee was being asked to reconsider a decision it had already taken. If the Committee approved the recommendations of Committee III, there was no technical difficulty in incorporating that recommendation into the text of Article 17. The first question to be decided was, however, whether the Committee wished to reconsider an earlier decision.

11. Mr. SOLF (United States of America) thought that there was no reason to reconsider the question, because it had already been examined in detail at the previous sessions. Indeed, it was quite clear from paragraph 1 and paragraphs 2(a), (b) and (c) of Article 38 bis; paragraph 1 of Article 17 and the definition of "attacks" given in paragraph 2 of Article 44 that Article 17, which prohibited acts of violence against the wounded, sick and shipwrecked, covered the persons hors de combat listed in paragraph 2(c) of Article 38 bis.

12. It would be recalled, in that connexion, that the Committee had had occasion, at its second session, to consider a proposal by a delegation to insert the words "and combatants hors de combat" after the words "the sick" (CDDH/II/14) in Article 17. Some delegations had objected to that proposal because combatants were not within the competence of Committee II, and others because persons hors de combat could not be put on the same footing as persons protected under the first Geneva Convention of 1949. After a discussion the sponsor delegation had withdrawn its proposed amendment (CDDH/II/SR.17), and that withdrawal was wholly justified. In reality, persons hors de combat who were wounded, sick or shipwrecked were covered by Article 17; persons who were in the power of an adverse Party were protected by the third Geneva Convention of 1949 if they were prisoners of war, and by the fourth Convention if they were civilians; persons hors de combat because they had expressed an intention to surrender were protected by Article 38 bis against the enemy, but not against the military or civilian police of their own country.

13. In short, the wounded, sick and shipwrecked, whether friend or foe, were protected by Article 17, so that it was not necessary to repeat in Article 17 the protection implicitly provided by paragraph 1 of Article 38 bis.

14. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation unreservedly approved the explanations and position of the United States delegation.
15. Mr. GONSALVES (Netherlands) observed that his delegation had had no knowledge of the proposal, which had not been submitted in the regular and prescribed form. He considered that Committee III should take the necessary steps, possibly by redrafting Article 38 bis.

16. The CHAIRMAN said he agreed with the suggestion of the representative of the Netherlands that the question should be referred back to Committee III.

It was so agreed.

R. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 17. Role of the civilian population and of aid societies

1. The civilian population shall respect the wounded, sick and shipwrecked, even if they belong to the adverse Party, and shall commit no act of violence against them. The civilian population and aid societies, such as national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas. No one shall be harmed, prosecuted, convicted or punished for such humanitarian acts.

2. The Parties to the conflict may appeal to the civilian population and the aid societies referred to in paragraph 1 to collect and care for the wounded, sick and shipwrecked, and to search for the dead, and report their location; they shall grant both protection and the necessary facilities to those who respond to this appeal. If the adverse Party gains or regains control of the area, that Party also shall afford the same protection and facilities for so long as they are needed.

S. PLENARY MEETING, 27 May 1977 (CDDH/SR.37):

Article 17. Role of the civilian population and of aid societies

Article 17 was adopted by consensus.

T. PLENARY MEETING, 27 May 1977 (CDDH/SR.37, ANNEX):

Holy See

The delegation of the Holy See joined in the consensus of the Conference for the adoption of Article 17 of Protocol I - "Role of the civilian population and of aid societies".

The delegation of the Holy See did so in the conviction that the reference to the national Red Cross (Red Crescent, Red Lion and Sun) Societies does not imply any limitation on the initiative and the action of other aid societies.
Israel

With regard to Article 17 of draft Protocol I, the delegation of Israel wishes to declare, that, in accordance with the views expressed in Committees II and III, the protection provided by Article 17 applies also to persons parachuting from an aircraft in distress and to other persons hors de combat.

U. 1977 PROTOCOL I:

Article 17. Role of the civilian population and of aid societies

1. The civilian population shall respect the wounded, sick and shipwrecked, even if they belong to the adverse Party, and shall commit no act of violence against them. The civilian population and aid societies, such as national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas. No one shall be harmed, prosecuted, convicted or punished for such humanitarian acts.

2. The Parties to the conflict may appeal to the civilian population and the aid societies referred to in paragraph 1 to collect and care for the wounded, sick and shipwrecked, and to search for the dead and report their location; they shall grant both protection and the necessary facilities to those who respond to this appeal. If the adverse Party gains or regains control of the area, that Party also shall afford the same protection and facilities for so long as they are needed.
ARTICLE 18 - IDENTIFICATION

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 18. Identification

1. Each Party to the conflict shall endeavour to ensure the identification of medical personnel, units and means of transport.

2. The High Contracting Parties shall provide civilian medical personnel, units and permanent means of transport with a document attesting to their medical nature.

3. With the assent of the competent authority, medical personnel, units and means of transport shall be marked by the distinctive emblem.

4. Besides the distinctive emblem, the Parties to the conflict may authorize the use of distinctive signals to signalize medical units and means of transport. In case of an emergency, temporary means of medical transport may be signalized by such signals without being marked with the distinctive emblem.

5. The application of the provisions of paragraphs 2 to 4 of the present article is governed by Chapters I to III of the Annex. The signals mentioned in Chapter III of this Annex shall be used solely to identify medical units and means of transport and shall in no case be used for purposes other than those envisaged by the present Protocol.

6. The provisions of the Conventions relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof shall be applicable to distinctive signals.

B. PROPOSED AMENDMENTS:

CDDH/II/33
Australia
12 March 1974

Insert "medical" before personnel, units and transports wherever these expressions appear in the Article.

Paragraph 1

CDDH/II/55
Australia, Canada, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America
12 March 1974

Revise paragraph 1 to read as follows:

"Each Party to the conflict shall endeavour to ensure the identification of medical personnel, medical units and medical transports, including adopting and implementing reasonable methods and procedures for the recognition and protection of medical units and transports using the distinctive emblem or a distinctive signal."
Paragraph 2

In paragraph 2 change "the High Contracting Party" to read "Each Party to the conflict".

Paragraph 4

Delete the last sentence beginning with the words "In case of an emergency ...".

Redraft paragraph 4 as follows:

"4. Besides the distinctive emblem, a Party to the conflict may authorize the use of distinctive signals to distinguish medical units and means of transport. In case of an emergency, temporary means of medical transport may be distinguished by such signals without being marked with the distinctive emblem."

Revise paragraph 4 to read as follows:

"4. In addition to the distinctive emblem, a Party to the conflict may authorize the use of distinctive signals to identify and recognize medical units and transports. In case of emergency threatening their safety, medical transports may be identified by such signals without being marked with the distinctive emblem."

Delete the last sentence reading as follows:

"In case of an emergency, temporary means of medical transport may be signaled by such signals without being marked with the distinctive emblem."

Revise paragraph 5 to read as follows:
"5. The application of the provisions of paragraphs 1 to 4 of the present Article is governed by Chapters I to III of the Annex. Signals designated in Chapter III of this Annex for the exclusive use of medical units and transports shall not, except as provided therein, be used for any purpose other than to identify medical units and transports."

**Paragraph 6**

CDDH/II/55  
**Australia, Canada, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America**  
12 March 1974

Insert the words "and of the present Protocol" after the word "conventions".

CDDH/II/210  
**Australia**  
11 February 1975

**Draft Amendment to Article 18**

Paragraph 1 - Withdraw from CDDH/II/55 and amend paragraph 1 to read:

"Each party to the conflict shall endeavour to adopt and implement methods and procedures for the recognition and protection of medical units and means of transport using the distinctive emblem or a distinctive signal."

Paragraph 4 - Withdraw from CDDH/II/55 and amend paragraph 4 as follows:

"In addition to the distinctive emblem a party to the conflict may authorise the use of distinctive signals to identify or recognise medical units and transports. In case of emergency threatening their safety medical transports may be identified by such signals without being marked with the distinctive emblem."

C. **MEETING OF COMMITTEE II, 12 February 1975 (CDDH/II/SR.18):**

3. Mr. de MULINEN (International Committee of the Red Cross) said that Article 18 developed chapter VII of the first Geneva Convention of 1949 (the distinctive emblem). It contained all the basic principles concerning identification in general and signaling in particular: it was a key article and formed a link between draft Protocol I and its technical annex. Present-day techniques, despite their wide possibilities, were subordinated to the rules of protection and to elementary military and tactical requirements, which formed the basis of the article.

4. The purpose of paragraph 1 was to urge all countries to endeavour to ensure the identification of medical personnel, units and means of transport. Paragraph 2 contained additional provisions concerning the civilian side, for which protection had been introduced only in 1949, whereas the military medical sector was already widely protected under the Conventions. Paragraph 3 established the principle that the distinctive emblem could not be used without the assent of the competent authority. Paragraph 4 introduced a new provision permitting the use of distinctive signals, in addition to the distinctive emblem, for medical units and means of transport, but not for personnel. Paragraph 5 expressly contained the link between draft Protocol I and the annex. Paragraph 6 provided that the provisions of the Conventions relating to supervision
of the use of the distinctive emblem and the prevention of any misuse should be extended to include distinctive signals.

5. The CHAIRMAN invited the sponsors of amendments to introduce their proposals.

6. Mr. CLARK (Australia) said that he wished to withdraw his amendment to Article 18, paragraph 4 (CDDH/II/33), and his sponsorship of the amendments to paragraphs 1 and 4 in document CDDH/II/55. He was submitting new amendments (CDDH/II/210).

7. Mr. SOLF (United States of America), introducing the amendment to paragraph 1 in document CDDH/II/55, said that the paragraph dealt with the obligation of the Parties to a conflict to ensure identification of medical personnel, units and means of transport. The sponsors of the amendment considered that the original ICRC draft was in very general terms and did not make it clear whether the paragraph referred to the identification of each party's own personnel, units and transport or whether it referred also to the means for recognizing protected medical units and transport of the other party. Formerly, it had been possible for anyone with good vision to see the visual emblem at short distance, if the light was good; but with the introduction of electronic means of identification, such as radio and secondary surveillance radar, Protocol I should contain a provision on the lines indicated in the amendment; and the most appropriate place was Article 18.

8. Mr. MAKIN (United Kingdom), introducing the amendment to paragraph 2 in document CDDH/II/55, said that it was a substantive amendment whose object was to make it clear that the obligation to provide civilian medical personnel, units and permanent means of transport with documents did not apply in peace-time. He doubted whether, even with the amendment, all countries would accept such an obligation and wondered whether countries should not be asked to endeavour to provide documents, instead of the provision being made mandatory.

9. Mr. KUCHENBUCH (German Democratic Republic), introducing the amendment to paragraph 4 in document CDDH/II/19, said that the ... reason for the amendment was that since the first sentence of the paragraph made it clear that the distinctive emblem was the main identification sign for medical units and medical means of transport, distinctive signals could only be an additional means of identification: they could not replace the distinctive emblem or be used as the only emblem.

10. Mr. SOLF (United States of America) introduced the amendment to paragraph 4 in document CDDH/II/55. The first point, the replacement of the word "Besides" by the words "In addition" was a drafting matter. The main purpose of the amendment was to make it clear that the distinctive emblem was the primary means of identification and that only in extreme circumstances - for example, where the safety of a medical aircraft was threatened by attack - would it be possible to use distinctive signals without the distinctive emblem.

11. With regard to paragraph 5, the sponsors of the amendment considered that paragraph 1 was governed by chapters I to III of the annex to draft Protocol I as well as paragraphs 2 to 4. Only a few of the signals in the annex were distinctive signals, and the Technical Sub-Committee on Signs and Signals at the first session had reorganized the annex so that distinctive signals appeared in chapter III and common communication matter in chapter IV (see CDDH/49/Rev.1, Annex II, Appendix I). Exceptions had been made in the case of light
signals, however, and the Technical Sub-Committee had decided that Parties to a conflict might agree to use light signals in certain emergencies. The sponsors of the amendment therefore considered that certain exceptions should be recognized.

12. The amendment to paragraph 6 was proposed in the interests of clarity.

13. After a brief discussion, the CHAIRMAN said that all the amendments now before the Committee contained matters of substance. He accordingly invited representatives to open the general debate on Article 18.

14. Mr. MARTIN (Switzerland) said that the amendment to paragraph 1 in document CDDH/II/55 referred, inter alia, to the methods and procedures to be adopted for the recognition and protection of medical units and transports, whether using the distinctive emblem or a distinctive symbol, whereas the ICRC text contained only the general principle set out in the first part of the amendment. In his view, paragraph 1 should confine itself to stating the general principle that "each Party to the conflict shall endeavour to ensure the identification of medical personnel, units and means of transport", since paragraph 4 of the ICRC text dealt with part of the subject matter of the second part of the amendment, namely the use of distinctive emblems or signals, while the methods and procedures for identification were given in the annex to draft Protocol I. He accordingly supported the ICRC text of paragraph 1, read in conjunction with paragraphs 4 and 5 of that text.

15. With regard to the proposal in document CDDH/II/55 relating to paragraph 2, he did not think it practicable to prepare identity cards only after a conflict had broken out; they were generally prepared by health services in peace time. He therefore supported the original ICRC text of paragraph 2.

16. Mr. CALCUUS (Belgium) said that he fully supported the amendment to paragraph 1 in document CDDH/II/55. The correct French translation of the term "transports" in that paragraph and elsewhere was "moyens de transport".

17. In his opinion, the amendments to the last sentence of paragraph 4 in documents CDDH/II/19 and CDDH/II/55 related to a matter of substance and should be discussed in the Committee.

18. Mr. AL-FALLOUJI (Iraq) pointed out that Article 18 was entitled "Identification" and it had been agreed that paragraph 1 of each article should state the object of the article concerned. That had been done in the ICRC text and his delegation accordingly found it acceptable. Amendment CDDH/II/55 dealt with other matters besides the question of principle. The second sentence of the amendment raised the important question whether a distinctive signal could be used in the place of a distinctive emblem, which was bound to cause controversy. A military aircraft would have no difficulty in transmitting on a given frequency or emitting a blue light. Consequently, it was important that the distinctive emblem should not be used except in a genuine emergency.

19. Mr. BOGLIOLO (France) said that the question of distinctive emblems and distinctive signals had been discussed at length in 1973 in an intergovernmental committee of experts and it had been recognized that, in the case of most countries, evacuation of the wounded would not be carried out by aircraft bearing a distinctive emblem; they would, therefore, have to employ luminous signals or radar when engaged on such a mission. The number of small aircraft or helicopters required for use solely in transporting wounded would be very much beyond
the capacity of most countries and they would frequently use aircraft which had been engaged in military combat at one time of the day for humanitarian activities at another. That was why it was necessary to make provision for distinctive signals.

20. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he agreed with the Swiss representative that the order in the ICRC text of Article 18 was more logical than the order proposed in the amendments. The general principle of identification should obviously be dealt with first.

21. The amendments to paragraphs 1 and 4 related to matters of substance, but the others were mostly of a drafting nature. In paragraph 4, it was not logical to refer to distinctive signals without a prior reference to distinctive emblems, which historically had been used to distinguish medical units and transports from their military counterparts. With regard to the French representative's explanation of the technical problems involved, he suggested that, if the second sentence of paragraph 4 were deleted, the distinctive emblem and distinctive signals referred to in the first part of the paragraph could be dealt with in the annex.

22. Mr. KHAIRAT (Arab Republic of Egypt) said that he shared the views expressed by the representatives of Switzerland and Iraq concerning paragraph 1. The amendment in document CDDH/II/55 gave equal importance to the distinctive emblem and the distinctive signal. Cases where it was impossible to use the distinctive emblem were dealt with in paragraph 4.

23. He supported the amendment to paragraph 2 in document CDDH/II/55, as it made the paragraph more comprehensive.

24. Mr. AL-FALLOUJI (Iraq) said that, in general, he supported the ICRC text of Article 18, although he might wish to suggest some modifications later.

25. Mr. RIVERO ROSARIO (Cuba) said that he, too, preferred the ICRC text of paragraph 1 to the text proposed in amendment CDDH/II/55.

26. He agreed with the proposal to delete the last sentence of paragraph 4 (CDDH/II/19). In his view the first sentence of that paragraph was also superfluous.

27. Mr. MARTIN (Switzerland) said that the amendment to paragraph 2 in document CDDH/II/55 raised an important question. He found it hard to accept that a High Contracting Party not a Party to the conflict would not be under an obligation to issue a document attesting to the medical nature of civilian medical personnel, units and permanent means of transport. In his view, the text should refer both to the High Contracting Parties and to each Party to the conflict.

28. In the French text, the word "identifie" should be applied to emblems in paragraph 3, and the word "signaliere" should be applied to signals in paragraph 4.

29. He would need further information about possible cases of emergency before being able to express an opinion on the desirability of deleting the second sentence of paragraph 4. It might be important to retain it on humanitarian grounds.
30. Mr. HESS (Israel) recalled that, as was well known, medical personnel and units in the Israel armed forces were identified by the Red Shield of David as the distinctive emblem. He referred to the full statement of his country's position at the seventeenth meeting (CDDH/II/SR.17).

31. Mr. SOLF (United States of America) said that many delegations appeared to be in favour of confining paragraph 1 to a statement of the general principle, without entering into technical details. He suggested that the ICRC text of paragraph 1 might be retained and the technical details set out in a separate paragraph. But there were also technical problems. Should the words "distinctive emblem or a distinctive signal" be used? Or should "or" be replaced by "and/or"? Or again, should the text be limited to distinctive signals? There was no difficulty in recognizing distinctive emblems, but more complicated procedures were involved in the recognition of distinctive signals.

32. There appeared to be three points of view about paragraph 4. The French representative had suggested that the distinctive signal might be used instead of the distinctive emblem in the case of medical emergencies. The second point of view was that under no circumstances should the distinctive signal be used unless the transport was also marked with the distinctive emblem. The third was that the distinctive signal should normally be used only when a distinctive emblem was also displayed but that in extreme emergencies it should be possible to use any means available to identify transports in temporary use for medical purposes. He suggested that the Chairman should set up a Working Group consisting of delegations representing the three points of view in order to try to agree upon a mutually acceptable text.

33. Mr. MARRIOTT (Canada) said that he supported the United States proposal with regard to paragraph 1, but most of the speakers who had indicated their preference for the ICRC text of paragraph 1 had not stated whether they wished the second part of the amendment to that paragraph to be included elsewhere in the article.

34. With regard to the use of distinctive emblems or, for instance, flashing blue lights, it was necessary to face the facts. There were very few countries which would have sufficient helicopters to enable them to set aside a sufficient number for exclusively medical purposes, and he was sure that, when necessary, any helicopters available would be used to evacuate the wounded, whether or not they were marked with a distinctive emblem. Helicopters entering a contact zone would not have more than about five seconds to identify themselves as medical helicopters; he also doubted whether any emblem painted on the narrow front end of a helicopter would be recognizable. Consequently, it was necessary to have a distinctive signal for the safety of the aircraft.

35. Mr. MARTIN (Switzerland) said that methods and procedures as distinct from the principle of identification could be dealt with either by introducing a new paragraph 4 bis or by an addition to paragraph 4. He supported the United States proposal that a Working Group should be set up to deal with the question; he assumed that a representative of the ICRC would be a member of that group, as that would ensure that the Group would be aware of the conclusions reached at the meeting of Government experts held in 1972.

36. Mr. CALCULS (Belgium) said he agreed with the French representative about the difficulty of ensuring that transport aircraft were marked with the distinctive emblem. He fully supported the amendment to paragraph 4 in document CDDH/II/55, but he thought that the expression "in case of emergency" should be
altered, since it might give the impression that only medical emergencies were being considered. Some form of wording more appropriate to the situation of countries like Belgium was needed. Such countries might well use transport aircraft both to take military stores to the battlefield and to bring back wounded from it. He supported the United States representative's suggestion that a Working Group should be set up; his delegation would be willing to participate in it.

37. Mr. MAKIN (United Kingdom) said that the United States representative had clearly set out the three points of view on the question; but, in his view, there were also a number of intermediate possibilities. The exception provided for did not necessarily have to apply to all forms of transport. For example, it could be restricted to aircraft only, or to helicopters only. Different military issues were involved, depending on whether transport on land, air or sea was involved. Perhaps it would be possible to work out a compromise. He, too, supported the suggestion that a Working Group should be set up.

38. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, in order to save time, the sponsors of amendment CDDH/II/19 were withdrawing it.

39. Mr. CLARK (Australia), referring to the United States representative's suggestion with regard to the amendment to paragraph 1 proposed by the Australian delegation (CDDH/II/210), said that, in his view, that amendment could be placed in a new paragraph 2; the statement of principle now contained in the ICRC version would thus be left intact. He supported the proposal to set up a Working Group.

40. Mr. ONISHI (Japan) said that the principle of a distinctive emblem was accepted; but that was not sufficient under the conditions prevailing in modern warfare, so that some other means of identification was necessary. He did not think, therefore, that it was very important to say that the emblem should be considered as the principal means of identification and that any other method of identification should be regarded as being merely supplementary to that emblem.

41. With regard to paragraph 2, he could not agree with the views expressed by the representative of Switzerland. In the case of a country such as Japan, which had decided to refrain from war, no form of identification was needed by the personnel and units concerned in peacetime. If a country such as Switzerland wished to provide such identification, it was at liberty to do so under the Geneva Conventions. It was not necessary to make that procedure compulsory for all countries.

42. As to paragraph 4, his delegation supported the original ICRC draft. It considered the Australian proposal (CDDH/II/210) to be acceptable, but thought that it should refer specifically to temporary medical transport, since permanent units should in any case have been marked with the distinctive emblem. That applied, in particular, to the temporary use of aircraft, which would not carry the distinctive emblem.

43. Mr. de MULINEN (International Committee of the Red Cross) said that the discussion had shown the importance of Article 18. Without a real consensus on that article and all its provisions, a workable technical annex would not be possible. The proposal that a Working Group should be set up had the full support of the ICRC.
44. The Group should include representatives of the four working languages. The question of temporary means of medical transport, referred to in the second sentence of paragraph 4, had to be considered in the light of the conditions existing on the battlefield. The relationship between the distinctive emblem and distinctive signals must also be made absolutely clear.

45. So far as the annex to draft Protocol I was concerned, there was a close connexion between Article 18 and the arrangements for the revision of Article 16 of that annex. If the final version of Article 16 of the annex provided for easy and frequent revision of the annex, it would be possible to go into greater detail. If, however, a diplomatic conference was required before the annex could be revised, it would be better not to go into detail. The Working Group should therefore consider Article 16 of the annex in relation to Article 18.

46. Mr. ROSENBLAD (Sweden) supported the proposal for setting up a Working Group. His delegation would be glad to participate in it.

47. The CHAIRMAN pointed out that, as far as paragraph 1 was concerned, the Committee had to consider only amendment CDDH/II/55. He asked whether or not the Committee wished to vote on that amendment.

48. Mr. SOLF (United States of America) said that the United States delegation and the other sponsors of the amendment in question were prepared to accept paragraph 1 as drafted by the ICRC, provided that the first paragraph of the Australian proposal (CDDH/II/210) was included in Article 18 as a new paragraph 2.

49. The CHAIRMAN asked whether representatives were prepared to vote on a new paragraph without seeing it in writing.

50. Mr. MARTIN (Switzerland) suggested that, as the United States delegation had accepted the original paragraph 1, the amendments could be discussed by the Working Group. The Group could decide on the precise form of the text and its place in Article 18.

51. Mr. SOLF (United States of America) accepted that suggestion, on the understanding that the adoption of the original version of paragraph 1 did not imply any rejection of the substance of the additional words appearing in amendment CDDH/II/55.

52. The CHAIRMAN inquired whether the Committee wished to vote on the replacement, in paragraph 2, of the words "High Contracting Parties" by "Parties to the conflict".

53. Mr. MARTIN (Switzerland) thought that a question of principle was involved and that only the ICRC representative could give the Committee guidance. Would such a change in wording apply only to Article 18, or to wherever the words "High Contracting Parties" appeared? He had already suggested that the expression "High Contracting Parties and Parties to the conflict" might be used. He did not think that a vote on the question should be taken at that time.

54. Mr. de MULINEN (International Committee of the Red Cross) said that it was usual, in the Geneva Conventions and draft Protocol I, to speak of "High
Contracting Parties". In the present case, it might be advisable for the Working Group to study the problem from a practical point of view.

55. The CHAIRMAN said that it was clear that there was a consensus that that question too should be referred to the Working Group.

56. As far as paragraph 4 was concerned, it was precisely the problems relating to that paragraph that had led to the suggestion that a Working Group should be set up. There was therefore no need to take a vote on the amendments relating to it.

57. Document CDDH/II/55 also proposed an amendment to paragraph 5, but it was purely a matter of drafting that could be referred either to the Drafting Committee or to the Working Group.

58. There appeared to be no opposition to the amendment proposed to paragraph 6 in the same document.

The amendment to paragraph 6 was approved by consensus.

59. The CHAIRMAN said, that the discussion on Article 18 being completed, it remained to set up the Working Group. It had been suggested to him that the delegations of the following countries would be willing to participate: Belgium, Cuba, France, India, Iraq, Nigeria, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America. The International Committee of the Red Cross would also be willing to participate. He would suggest Algeria as another African country.

60. Mr. SCHULTZ (Denmark) and Mr. CLARK (Australia) said that their delegations would like to join the Group.

61. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) felt that the smaller the group, the more likely it was to be successful in its work. As the amendment with which his delegation was associated (CDDH/II/19) had been withdrawn, he was prepared to give up his seat on the Working Group.

62. Mr. MAKIN (United Kingdom) suggested that the problem could be resolved by making membership of the Group open to all who wished to attend its deliberations, rather than attempting to achieve a balanced composition.

63. The CHAIRMAN replied that it was his responsibility to appoint the members of the Group. He proposed that the representative of Iraq should be the Chairman.

64. Mr. AL-FALLOUJI (Iraq) expressed his willingness to become the Chairman of the Working Group. The problem of size could be overcome by setting up smaller groups to deal with particular questions.


Article 18. Identification

1. Each party to the conflict shall endeavour to ensure the identification of medical personnel, units and transports.
2. Each party to the conflict shall endeavour to adopt and implement reasonable methods and procedures for the recognition of medical units and transports using the distinctive emblem and distinctive signals.

3. In occupied territory and in zones of military operations civilian medical personnel and civilian religious personnel mentioned in Article 15 of the present Protocol shall be recognisable by means of the distinctive emblem and an identity card certifying their status.

4. With the assent of the competent authority medical units and transports shall be marked with the distinctive emblem. (Hospital ships and ... shall be marked as provided in the Second Convention and ...)

5. In addition to the distinctive emblem a party to the conflict may, as provided in Chapter III of the Annex to the present Protocol, authorise the use of distinctive signals to identify medical units and transports. The only exception to this rule is the use by medical transports of distinctive signals in the special cases covered in that chapter without displaying the distinctive emblem.

6. The application of the provisions of paragraphs 1 - 5 of this article is governed by Chapters I to III of the Annex to this Protocol. Signals described in Chapter III of this Annex for the exclusive use of medical units and transports shall not, except as provided therein, be used for any purpose other than to identify the medical units and transports specified in that chapter.

7. This article does not authorise any wider use of the distinctive emblem in peace time than is prescribed in Article 44 of the First Convention.

8. The provisions of the Conventions and the present Protocol relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof shall be applicable to distinctive signals.

Annex Chapter III, Article .... - Special cases

[When unarmed temporary medical aircraft cannot be marked either in due time or because of their characteristics with the distinctive emblem, they may use distinctive signals alone for their identification.]

E. MEETING OF COMMITTEE II, 21 February 1975 (CDDH/II/SR.22):

6. The CHAIRMAN invited the Chairman of the Working Group on Article 18 to introduce his report and the Working Group's new version of that article.

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1This provision requires new drafting of definition of temporary personnel in Article 8.

2Hospital ships, etc.: to be settled in connection with medical transports.

3This article has only indicative value for better understanding of paragraph 5 of Article 18.
7. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on Article 18, said that the text itself of Article 18, as revised by the Working Group, constituted the Working Group's report. The Group had worked patiently for a week and although it was a large group, that had not proved to be a disadvantage. Sub-groups for each of the working languages had been formed and all tendencies and views were reflected in the present consolidated text. The Swedish representative had repeatedly pointed to the risk that the distinctive emblem and the distinctive signals could be abused. Paragraph 1 stated the basic principle that each party to the conflict should endeavour to ensure the identification of medical personnel, units and transports. The subsequent paragraphs set out reasonable means of applying that principle, including references to distinctive signals and emblems. An effort had been made to cover all possibilities concerning the order of signals and emblems. In paragraph 5, a reference to Chapter III of the Annex to draft Protocol I, concerning special cases, had been included for the better understanding of the paragraph.

8. The CHAIRMAN said that as there were considerable differences between the Working Group’s text and the ICRC text, he hoped the Chairman of the Working Group would be ready to reply, if necessary, to questions on the subject.

9. Mr. SOLF (United States of America) said the Working Group and its Chairman were to be congratulated on their excellent work and on having managed to reach a consensus.

10. Mr. MARTIN (Switzerland) said he agreed entirely with the United States representative on the excellent work done by the Working Group. He wished to raise one point, however: the phrase "High Contracting Parties", which was used in paragraph 2 of the ICRC text, had been altered to "Each Party to the conflict" in the new Article 18. In some cases in time of armed conflict, it was indeed each Party to the conflict which was involved, but when it was a question of taking measures in peacetime to be applied in the event of armed conflict, the High Contracting Party was involved. In the part of the Annex to draft Protocol I dealing with identification, the term "High Contracting Parties" was used. He would like to ask why there was no reference to the High Contracting Parties in Article 18, since there might be High Contracting Parties which were not parties to the conflict and yet suffered the effects of a conflict such as accidental bombing; those parties should also be provided with identification in accordance with Article 18.

11. Mr. MARRIOTT (Canada) asked if the next step in the procedure was that the new version of the article would go to the Drafting Committee.

12. The CHAIRMAN said that his reply to that question must wait till the end of the discussion.

13. Mr. SANCHEZ DEL RIO (Spain) said that he had been about to ask the same question. He had his doubts about the second sentence of paragraph 6, which stated that signals described in Chapter III of the Annex to draft Protocol I should not be used for any purpose other than to identify the medical units and transports specified in that chapter. As the first sentence of that paragraph stated that the application of the provisions of paragraphs 1-5 of Article 18 was governed by Chapters I to III of the Annex, it seemed to him that the second sentence was superfluous.

14. Mr. BOGLIOLO (France) said that in paragraph 6 of the French version, the word "ne" had been omitted before the word "pourront".
15. Mr. de MULINEN (International Committee of the Red Cross), replying to the question raised by the representative of Switzerland, said that much attention had been given to the use of the phrases "High Contracting Parties" and "Parties to the conflict" and it had been decided that Article 18 should be confined to Parties to the conflict, since it was not possible in all cases to impose on the whole State the obligations mentioned in paragraphs 1 and 2. An effort should also be made to avoid complicated bureaucratic procedures during peacetime. The idea put forward by the Swiss delegation could find a solution in Article 70, which encouraged the High Contracting Parties to take all necessary measures in peacetime in preparation for a possible state of armed conflict.

16. Mr. MAKIN (United Kingdom) said he agreed with the remarks made by the United States representative concerning the part played by the Chairman of the Working Group in bringing the Group to a consensus over the consolidated text.

17. In paragraph 6 of the Working Group's version, the word "designated" would be better than the word "described". There were also a number of spelling and punctuation errors, but those could be brought to the attention of the Secretariat directly.

18. Mr. HESS (Israel) said that already during the discussion on Article 15, paragraph 6, he had emphasized the absurdity of the situation whereby medical and religious personnel of Jewish faith would have to identify themselves by signs other than that of the Red Shield of David. Those earlier remarks applied also to paragraph 3 of Article 18.

19. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on Article 18, replying to the question raised by the representative of Switzerland concerning the words "High Contracting Parties", said that the Working Group had had a lengthy debate on the subject, and had reached the conclusion that it was necessary to take a realistic view. If a general and rigid order of identification were imposed on all High Contracting Parties, that would be quite unacceptable to some States. When in armed conflict, however, some identification must be used and it was that consideration which had guided the discussions. With regard to paragraph 6, account had been taken of the wishes of those who desired an open solution to the question of distinctive signals and emblems. The distinctive emblem was the basic principle of identification, but in some specific cases where it could not be used and only the distinctive signals used, the door had been left open by the inclusion of the reference to the Annex to draft Protocol I.

20. The CHAIRMAN asked whether the representatives of Switzerland and Spain were satisfied with the replies to their questions.

21. Mr. MARTIN (Switzerland) said that he was satisfied by the replies given by the representative of the ICRC and by the Chairman of the Drafting Committee, it being understood that his delegation's idea would be covered by Article 70 of draft Protocol I.

22. Mr. SANCHEZ DEL RIO (Spain) said that he accepted the proposed solution, but still felt that the second sentence of paragraph 6 was superfluous, since it referred to Chapter III of the Annex, Article 1 of which described the conditions governing the use of distinctive emblems and signals. He did not see the point of repeating those conditions in Article 18. He was in agreement with the substance of paragraph 6.
23. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on Article 18, said that as the representative of Spain was in agreement on the substance, the question was one with which the Drafting Committee would be able to deal.

24. The CHAIRMAN, replying to the questions raised by the representatives of Canada and Spain concerning the Committee's procedure, said that the procedure was based generally on rule 48 of the rules of procedure which did not contain a very strict ruling on the question. His view was that it was not absolutely necessary to refer the text to the Drafting Committee, since if a Working Group was appointed it was on the same level as the Drafting Committee and dealt with matters of substance as well as of drafting. He felt that, since there was no objection to the substance of Article 18, the Working Group might be regarded as an ad hoc drafting committee.

25. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on Article 18, confirming the Chairman's view, said that from the start the Working Group had regarded its task as one of substance, form and drafting.

26. Mr. BOTHE (Federal Republic of Germany) said that his delegation had a number of drafting points to raise.

27. Mr. MARRIOTT (Canada) said that he wished to suggest some small amendments of style and translation, some of which were essential if a satisfactory text was to be produced.

28. Mr. CALCUS (Belgium) said that there were some mistakes in the French text. If the text was not to go to the Drafting Committee, the corrections must be made in the Committee itself.

29. Mr. CLARK (Australia) said that he, too, had some minor amendments to suggest.

30. The CHAIRMAN suggested that, if there were no objections, the substance of the new version of Article 18 should be approved.

It was so agreed.

31. The CHAIRMAN, referring to the question of passing the text on to the Drafting Committee, pointed out that it was not necessary for the Drafting Committee to produce a text in all languages: the translation was normally left to the Secretariat. If the Committee thought it necessary to make amendments, he urged that it limit itself to minor changes only.

34. He suggested that, if there were no objections, the text of Article 18 should be transmitted to the Drafting Committee for minor drafting amendments.

It was so agreed.
The Drafting Committee herewith submits to Committee II the texts of Articles 8, 11, 14, 15, 17 and 18 of draft Protocol I, Part II, Section I, which either did not appear in its report of 21 February 1975 or have been referred back to it.

**Article 18. Identification**

1. Each Party to the conflict shall endeavour to ensure the identification of medical personnel, units and transports.

2. Each Party to the conflict shall also endeavour to adopt and implement reasonable methods and procedures for the recognition of medical units and transports using the distinctive emblem and distinctive signals.

3. In occupied territory and in zones of military operations\(^1\) civilian medical personnel\(^2\), and the civilian religious personnel mentioned in Article 15 of the present Protocol, shall be recognisable by the distinctive emblem, and an identity card certifying their status. [In occupied territories and in zones of military operations, permanent civilian medical personnel and the civilian religious personnel mentioned in Article 15 of the present Protocol shall be recognisable by the distinctive emblem and an identity card certifying their status; in the case of temporary personnel of both categories the obligation to carry an identity card may be dispensed with.]

4. With the assent of the competent authority medical units and transports shall be marked by the distinctive emblem. (Hospital ships and ... shall be marked as provided in the Second Convention and ...).\(^3\)

5. In addition to the distinctive emblem a Party to the conflict may, as provided in Chapter III of the Annex to the present Protocol, authorise the use of distinctive signals to identify medical units and transports. The only exception to this rule is the use by medical transports of distinctive signals, without displaying the distinctive emblem, in the special cases covered in that chapter.

6. The application of the provisions of paragraphs 1 - 5 of this article is governed by Chapters I to III of the Annex to this Protocol. Signals designated in Chapter III of the Annex for the exclusive use of medical units and transports shall not, except as provided therein, be used for any purpose other than to identify the medical units and transports specified in that chapter.

7. This article does not authorise any wider use of the distinctive emblem in peacetime than is prescribed in Article 44 of the First Convention.

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\(^1\)The expression "zone of military operations" is not definitive. It is considered by an ad hoc Working Group.

\(^2\)This provision requires new drafting of definition of temporary personnel in Article 8.

\(^3\)Hospital ships, etc.: to be settled in connection with medical transports.
8. The provisions of the Conventions and the present Protocol relating to
supervision of the use of the distinctive emblem and to the prevention and re-
pression of any misuse thereof shall be applicable to distinctive signals.

Annex Chapter III, Article .... - Special cases

[When unarmed temporary medical aircraft cannot be marked, either for lack
of time or because of their characteristics, with the distinctive emblem, they
may use distinctive signals alone for their identification.]

G. MEETING OF COMMITTEE II, 5 March 1975 (CDDH/II/SR.30):

15. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting
Committee, pointed out that foot-note 2 in document CDDH/II/240/Add.1 should be
deleted, since the new Article 8 had already been approved.

16. The sentence within square brackets in paragraph 3 was the result of
suggestions made during the discussion in the Drafting Committee. It had been
thought useful to make a distinction between permanent and temporary medical
personnel with regard to the obligation to carry an identity card.

17. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he considered
the sentence within square brackets in paragraph 3 a very important provision,
since in extraordinary combat conditions it might not be possible to provide
temporary civilian medical personnel with identity cards. He suggested that the
Committee either take a decision on that sentence immediately or else defer it
until the Technical Sub-Committee on Signs and Signals had submitted its report.

18. Mr. SCHULTZ (Denmark) said the sentence within square brackets called
for the wearing of a distinctive emblem and the carrying of an identity card by
permanent civilian medical personnel, but nothing was said about the former re-
quirement in the case of temporary personnel. He suggested, therefore, that
the meaning might be clearer if the word "permanent" was deleted.

19. Mr. SANCHEZ DEL RIO (Spain) said that if the sentence within square
brackets were adopted, there would, in his opinion, be an element of confusion
between two different types of civilian medical personnel, namely, those who
were serving for a specific period of time and those whose service might be
described as purely fortuitous. He thought, therefore, that the words within
square brackets should be deleted.

20. Mr. MAKIN (United Kingdom) said that the difficulties experienced by
the Danish representative might be resolved if he gave due consideration to the
use of the word "recognisable" in both sentences. It was generally agreed that
protection should be given to civilian medical personnel, whether permanent or
temporary, but the problem would always be how to recognise the fact that they
possessed Red Cross status. It was advisable that such personnel should wear
the Red Cross emblem, for which purpose they would require suitable authorisa-
tion. That authorisation could best be established by an identity card, al-
though there was no obligation for the personnel referred to in the first

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4This Article has only indicative value for better understanding of para-
graph 5 of Article 18. It is a recommendation for the Technical Sub-Committee.
sentence to have such a card. By creating an obligation to carry such a card, the proposed second sentence within square brackets would only give rise to confusion and doubt.

21. Mr. MARTIN (Switzerland) said that the sentence within square brackets created two categories of medical personnel, one of which, the permanent personnel, was required to carry both the distinctive emblem and an identity card, while the other, the temporary personnel, seemed to be exempt from that obligation. As the representative of the ICRC had pointed out in the Technical Sub-Committee on Signs and Signals, both the emblem and the identity card were intended to serve for the protection of the personnel in question. It was obvious, of course, that in situations of emergency it might be impossible to provide temporary personnel with identity cards, although they should still receive the same protection. Since, therefore, the sentence within square brackets might indeed lead to some confusion, he hoped that the Technical Sub-Committee would give some thought to its possible revision.

22. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that sometimes military medical personnel were unable to wear a distinctive emblem in order to discover the position of their troops. As to civilian medical personnel, it was unlikely that their presence on the battlefield would reveal the position of troops. For that reason every country would seek in all cases to protect their civilian medical personnel by means of a distinctive emblem, so as to facilitate their identification even by their own side. In the circumstances it was necessary for permanent civilian medical personnel to possess an identity card, whereas for temporary civilian medical personnel a distinctive emblem was sufficient. To require the latter category of medical personnel to carry an identity card also was therefore unnecessary.

23. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that some misunderstanding seemed to have arisen from the fact that different kinds of obligations might be involved. For example, some might consider that there was an absolute obligation to carry both the distinctive emblem and the identity card, which would mean that it would be a crime for medical personnel not to be in possession of both of them. Others, on the contrary, might consider that, while both the emblem and the card were a necessary prerequisite for protection, failure to carry the card, while not a crime, might still deprive the personnel in question of the desired protection. As he understood the sentence within square brackets, it meant that the identity card was not a prerequisite for the protection of temporary personnel, but was essential in the case of permanent personnel.

24. Mr. AL-FALLOWI (Iraq) said that carrying an identity card and wearing a distinctive emblem was a condition for protection in the case of both the permanent and temporary personnel referred to in Article 15. However, unanimity on that requirement had not been reached in the Working Group, of which he had been Chairman.

25. Some of the less developed countries had recourse to greater numbers of temporary medical personnel than the developed countries, and the question of the carrying of identity cards by such personnel might be resolved if a small Working Group was set up to discuss the subject.

26. Mr. SCHULTZ (Denmark) said that he agreed with the views expressed by the United Kingdom and Iraqi representatives. He had been a member of the same Working Group as those representatives and wished to support the first sentence
of Article 18, paragraph 3 (CDDH/II/240/Add.1). The second bracketed sentence seemed to him illogical.

27. Mr. SOLF (United States of America) said that he could not agree that protection of medical personnel depended on the wearing of a distinctive emblem and the carrying of an identity card certifying their status. Protection was provided to medical personnel because of their function; the distinctive emblem was merely evidence of protection.

28. He agreed with the representative of the Union of Soviet Socialist Republics that a distinction should be drawn between military and civilian personnel: military personnel of the enemy could be attacked, but civilian personnel were protected and must not be attacked. He assumed that one of the reasons why it was thought necessary to provide distinctive emblems for civilian medical and religious personnel was that they might be mistaken for enemies in areas of danger.

29. Article 15, paragraph 1, of draft Protocol I specified that "civilian medical personnel shall be respected and protected", and paragraph 5 provided that "Civilian medical personnel shall have access to any place where their services are essential ...". Presumably other civilians might be excluded from such places. It was therefore desirable that civilian medical personnel should be recognisable by the wearing of a distinctive emblem and the carrying of an identity card showing that they were entitled to wear the emblem. While there was no obligation on civilian medical personnel to carry such a card, it was for their own protection to do so when permitted access to a dangerous area from which other civilians were excluded. He therefore agreed with the United Kingdom and Danish representatives that, for their own protection and for the efficient performance of their functions, those who were entitled to wear a distinctive emblem should also carry an identification card to prove the fact.

30. Mr. PICTET (International Committee of the Red Cross) said that the carrying of an identity card was a means of justifying the wearing of a distinctive emblem. However, the absence of such a card would not deprive civilian medical personnel of protection.

31. He failed to see why a distinction had been drawn between permanent and temporary civilian medical personnel in Article 18, paragraph 5, suggested by the Drafting Committee (CDDH/II/240/Add.1). The carrying of an identity card proved the qualifications of the holder, whether permanent or temporary. It was therefore in everyone's interest that such cards should be carried.

32. Mr. BOITHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said he fully agreed with the United States representative and with the ICRC representative. He had tried to find a word to replace "shall" in the third line of Article 18, paragraph 3 (CDDH/II/240/Add.1), but had been unable to do so.

33. Mr. MARTIN (Switzerland) said that there was no obligation for the persons covered by paragraph 3 to carry an identity card.

34. He objected to a distinction being drawn between permanent and temporary civilian medical personnel. There was a shortage of medical practitioners and the fourth Geneva Convention of 1949 should be expanded to give temporary civilian medical personnel the same status as permanent military medical personnel.
35. Mrs. DARIIMAA (Mongolia), while she strongly supported the issue of distinctive emblems and identity cards to both permanent and temporary civilian medical personnel, said that the difficulties faced by the developing countries must be appreciated. Such countries suffered from a shortage of medical practitioners and found it both difficult and costly to recruit and train temporary medical personnel. In addition, it was burdensome for the developing countries to find the funds for printing identity cards and manufacturing distinctive emblems.

36. Mr. OSTERN (Norway) said he shared the views of the United States and United Kingdom representatives concerning the question of the protection of medical personnel in time of combat.

37. He suggested, however, that paragraph 3 might be made clearer by repeating the wording of Article 40 of the third Geneva Convention of 1949 and stating in what capacity a person was entitled to protection.

38. Mr. AL-FALLOUJI (Iraq) said that he supported the wording of the first sentence of Article 18, paragraph 3.

39. The needs of the developing countries must be borne in mind so far as the provision of identity cards was concerned. He therefore suggested that Committee II approve Article 18, paragraph 3, as drafted by the Drafting Committee and at the end of the paragraph provide that identity cards need not be issued by a Party to the conflict if it so decided. He also suggested that the phrase underlined in the bracketed passage of paragraph 3 be redrafted to indicate that temporary personnel of both categories were not compelled to carry identity cards.

40. Mr. CHOWDHURY (Bangladesh) said that Article 15 provided that civilian medical personnel should be respected and protected and given all possible help in the combat zone, while those who had prepared draft Protocol I had considered that efforts should be made to ensure that both civilian medical and religious personnel should be protected.

41. He shared the views of the representative of Mongolia and considered that both permanent and temporary civilian medical personnel should carry identification cards. He therefore suggested that the bracketed second sentence of Article 18, paragraph 3, be deleted in order to avoid any discrimination.

42. The CHAIRMAN said that it resulted from the discussion that the Committee had as many as six possible courses of action before it: first, it could defer a decision on the paragraph until the Technical Sub-Committee on Signs and Signals had completed its work; second, it could refer the matter back to the Drafting Committee or one of its Working Groups; third, it could add a sentence to paragraph 1, as suggested by the Iraqi representative; fourth, it could adopt the first alternative text as it stood; fifth, it could adopt the second alternative text with the amendment proposed by the Norwegian representative and, lastly, it could adopt the second alternative text as it stood.

43. He further said that both the proposal to defer a decision on the paragraph until the Technical Sub-Committee had completed its work and the proposal to refer the matter back to the Drafting Committee had now been withdrawn.
44. Mr. AL-FALLOUJI (Iraq) said that, after carefully re-reading the paragraph, he realised that it carried no obligation. He therefore withdrew his amendment.

45. Replying to a question by Mr. JAKOVLJEVIC (Yugoslavia), the CHAIRMAN said that he interpreted the provision as being optional.

46. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that no objection had been raised to the explanation given by the United States and ICRC representatives. The provision should be read in conjunction with the "endeavour" clauses in paragraphs 1 and 2. While identity cards were useful for obtaining effective protection, there was no strict obligation to carry them.

47. The CHAIRMAN put to the vote the second alternative text of paragraph 3 which appeared in square brackets in the Drafting Committee's report.

The second alternative text of paragraph 3 was rejected by 28 votes to 14, with 16 abstentions.

48. Mr. PONCE (Ecuador) said that the Spanish version carried an apparent obligation and should be brought into line with the English and French versions.

49. The CHAIRMAN suggested that the Spanish-speaking delegations be asked to produce an amended version with the assistance of the translation service. It was so agreed.

50. The CHAIRMAN said that the Committee should now take a decision on Article 18, paragraph by paragraph.

Paragraph 1

51. Mr. CLARK (Australia) said that in the Drafting Committee, his delegation had requested that the word "medical" be made to refer not only to personnel but also to units and transport. He had understood that the suggestion had been accepted.

52. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that he had understood the feeling of the Drafting Committee to be that the qualification "medical" in the existing text clearly referred to each of the three nouns that followed it.

53. Mr. KLEIN (Holy See) said that the reference should be to "medical and religious personnel", which was the term used throughout the Geneva Conventions.

54. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the proposal of the representative of the Holy See would call for the redrafting of the end of the paragraph, to read: "medical and religious personnel and medical units and transports".

55. The CHAIRMAN said that that wording would also meet the point raised by the Australian representative. He put the amendment to the vote.

The Rapporteur's amendment was adopted by 31 votes to 2, with 20 abstentions.

519
56. Mr. MAKIN (United Kingdom), speaking in explanation of vote, said that he had voted against the amendment because the reference to civilian religious personnel would require definition in Article 8, which at present contained no such definition.

Paragraph 1, as amended, was approved by consensus.

Paragraph 2

Paragraph 2 was approved by consensus.

Paragraph 3

57. Mr. MAKIN (United Kingdom) suggested that the word "the" before the words "civilian religious personnel" and the words "mentioned in Article 15 of the present Protocol", be deleted consequent on the decision taken on paragraph 1.

58. The CHAIRMAN put the United Kingdom representative's amendment to the vote.

The amendment was adopted by 30 votes to none, with 14 abstentions.

59. Mr. MARRIOTT (Canada) said that the word "shall" before the words "be recognizable" was mandatory. He suggested that it be replaced by the word "should".

60. Mr. MARTIN (Switzerland) said that there was no obligation to carry a distinctive emblem but if one was carried it must be the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun).

61. Miss MINOGUE (Australia) said that she would have liked the words "in the case of temporary personnel of both categories the obligation to carry an identity card may be dispensed with", in the second alternative text, to be retained, or the proposal made by the Iraqi representative, and since withdrawn, to be adopted.

62. In reply to a question by Mrs. DARIIMAA (Mongolia), the CHAIRMAN said that, in his view, the provision was optional: no-one could be compelled to carry an identity card. He put the Canadian amendment to the vote.

The Canadian amendment was adopted by 29 votes to none, with 20 abstentions.

63. Mr. MARTIN (Switzerland) said that the French and Spanish versions would require to be brought into line with the decision just taken on the English text.

64. The CHAIRMAN suggested that the French- and Spanish-speaking representatives be asked to make the necessary adjustments with the assistance of the translation service.

It was so agreed.

Paragraph 3 of the first alternative version submitted by the Drafting Committee, as amended, was approved by 50 votes to none, with 5 abstentions.
65. Mr. SANCHEZ DEL RIO (Spain) said that he had voted erroneously in favour of the text, which had not been given sufficient study. Care should be taken to bring the other language versions closely into line with the English version of the Canadian amendment.

66. The CHAIRMAN said that he did not see why the word "should" could not be translated readily into all the other languages.

67. Mr. AL-FALLOUJI (Iraq) said that he had abstained in the vote because it was not clear what was being voted on. He had withdrawn his amendment on the understanding that the provision was of an optional nature. If it had ceased to be so, his amendment should stand.

68. The CHAIRMAN said that, since there seemed still to be some doubts on the text of paragraph 3, it should be referred back to the Drafting Committee with a request that the various versions be brought into line.

It was so agreed.

Paragraphs 4 to 8

69. The CHAIRMAN said that the second sentence of paragraph 4 could not be adopted until the medical transport question had been settled.

70. He suggested that the Committee meanwhile approve the first sentence of paragraph 4 and the remainder of Article 18.

It was so agreed.

H. ADDENDUM TO THE REPORT OF THE DRAFTING COMMITTEE, COMMITTEE II, 7 March 1975 (CDDH/240/Add.2):

Article 18 - Identification

Text Proposed by the Drafting Committee

In accordance with the decision of Committee II, the Drafting Committee has reviewed Article 18, paragraph 3, with a view to bringing the different language versions of the text into line.

"3. In occupied territory and in zones of military operations\(^1\) civilian medical personnel and civilian religious personnel should be recognizable by the distinctive emblem and an identity card certifying their status."

\(^1\)The expression "zone of military operations" is not definitive. It is considered by an ad hoc Working Group.
I. MEETING OF COMMITTEE II, 7 March 1975 (CDDH/II/SR.32):

Article 18. Identification

Paragraph 3

45. The CHAIRMAN said that the only problem now remaining with respect to draft Protocol I concerned the consequences for texts other than English of the already adopted Canadian proposal to replace the word "shall" by the word "should" in paragraph 3 of Article 18.

46. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had decided to replace the word "shall" in the expression "shall be recognizable" by the word "should", which implied something optional and recommended. The Drafting Committee had, after a long discussion, proposed the translations "se feront en general reconnaître" and "se daran a reconocer por regla general".

47. The CHAIRMAN said that he would not put the point to the vote since it was merely a question of drafting.

J. MIXED GROUP REPORT, 18 March 1975 (CDDH/II/266 and CDDH/III/255):


For purposes of Protocol I and II the following terms are recommended:

Zone of Military Operations means, in an armed conflict, the territory where the armed forces of the adverse Parties taking a direct or an indirect part in current military operations, are located.

Combat Area means, in an armed conflict, that area where the armed forces of the adverse Parties actually engage in combat, and those directly supporting them, are located.

Contact Area means, in an armed conflict, that area where the most forward elements of the armed forces of the adverse Parties are in contact with each other.


The Drafting Committee has considered Articles 15 para. 2, 17 para. 1 and 18 para. 3 of Protocol I in the light of the report of the Mixed Working Group on "combat zones" and similar expressions. As a result, it submits the following proposals.

Article 18, para. 3

Replace the words "in zones of military operations" by: "in areas where fighting is taking place or is likely to take place".
L. MEETING OF COMMITTEE II, 2 April 1975 (CDDH/II/SR.44):

Article 18. Identification

Paragraph 3

Report of the Drafting Committee (CDDH/II/286)

2. The CHAIRMAN invited the Rapporteur of the Drafting Committee to introduce the report of that Committee on Article 15, paragraph 2, Article 17, paragraph 1 and Article 18, paragraph 3, of draft Protocol I (CDDH/II/286).

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, in the light of the report by the Joint Working Group and subsequent discussion in the Committee, the Drafting Committee had endeavoured to avoid the use of such military terms as "combat zones" and, instead, to find a more general phrasing for situations to which Articles 15, paragraph 2, 17, paragraph 1, and 18, paragraph 3 of draft Protocol I would apply.

5. As to Article 18, paragraph 3, the last words of the French text should read: "ou semblent probables".

The Drafting Committee's proposals concerning Article 15, paragraph 2, Article 17, paragraph 1 and Article 18, paragraph 3, were adopted by consensus.

M. REPORT OF THE WORKING GROUP, COMMITTEE II, 7 April 1975 (CDDH/II/296):

5. The Working Group has also considered the wording of the second sentence of Article 18(4) and recommend the following:

"The ships and craft referred to in Article 23 of the present Protocol shall be marked in accordance with the Second Convention."

N. MEETING OF COMMITTEE II, 8 April 1975 (CDDH/II/SR.49):

Article 18. Identification

Paragraph 4

66. The CHAIRMAN, referring to paragraph 5 of the report of the Working Group (CDDH/II/296), pointed out that Committee II had still to adopt the wording of the second sentence of draft Protocol I, Article 18, paragraph 4, recommended by the Working Group, which read as follows:

"The ships and craft referred to in Article 23 of the present Protocol shall be marked in accordance with the provisions of the Second Convention".

67. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group, pointed out that the Canadian delegation had proposed that the wording at the end of that sentence be changed to: "... shall be marked in accordance with the second Convention".
The second sentence of Article 18, paragraph 4, with the above change, was adopted by consensus.

Article 18 as a whole, as amended, was adopted by consensus.

0. **ARTICLE ADOPTED BY COMMITTEE II, 8 April 1975 (CDDH/II/283/Rev.1):**

**Article 18. Identification**

1. Each Party to the conflict shall endeavour to ensure the identification of medical and religious personnel and medical units and transports.

2. Each Party to the conflict shall also endeavour to adopt and implement reasonable methods and procedures for the recognition of medical units and transports using the distinctive emblem and distinctive signals.

3. In occupied territory and in areas where fighting is taking place or is likely to take place, civilian medical personnel, and civilian religious personnel should be recognizable by the distinctive emblem, and an identity card certifying their status.

4. With the assent of the competent authority medical units and transports shall be marked by the distinctive emblem. The ships and craft referred to in Article 23 of the present Protocol shall be marked in accordance with the provisions of the second Convention.

5. In addition to the distinctive emblem a Party to the conflict may, as provided in Chapter III of the annex to the present Protocol, authorize the use of distinctive signals to identify medical units and transports. The only exception to this rule is the use by medical transports of distinctive signals, without displaying the distinctive emblem, in the special cases covered in that chapter.*

6. The application of the provisions of paragraphs 1-5 of this article is governed by Chapters I to III of the annex to this Protocol. Signals designated in Chapter III of the annex for the exclusive use of medical units and transports shall not, except as provided therein, be used for any purpose other than to identify the medical units and transports specified in that Chapter.

7. This article does not authorize any wider use of the distinctive emblem in peacetime than is prescribed in Article 44 of the first Convention.

8. The provisions of the Conventions and the present Protocol relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof shall be applicable to distinctive signals.

*The Committee recommends to the Technical Sub-Committee the following wording for a provision to be included in Chapter III of the annex:

**Special cases (indicative only)**

When unarmed temporary medical aircraft cannot be marked either for lack of time or because of their characteristics, with the distinctive emblem, they may use distinctive signals alone for their identification.
P. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 18. Identification

1. Each Party to the conflict shall endeavour to ensure that medical and religious personnel and medical units and transports are identifiable.

2. Each Party to the conflict shall also endeavour to adopt and to implement methods and procedures which will make it possible to recognize medical units and transports which use the distinctive emblem and distinctive signals.

3. In occupied territory and in areas where fighting is taking place or is likely to take place, civilian medical personnel and civilian religious personnel should be recognizable by the distinctive emblem and an identity card certifying their status.

4. With the consent of the competent authority, medical units and transports shall be marked by the distinctive emblem. The ships and craft referred to in Article 23 of this Protocol shall be marked in accordance with the provisions of the Second Convention.

5. In addition to the distinctive emblem a Party to the conflict may, as provided in Chapter III of Annex ... to this Protocol, authorize the use of distinctive signals to identify medical units and transports. Exceptionally, in the special cases covered in that Chapter, medical transports may use distinctive signals without displaying the distinctive emblem.

6. The application of the provisions of paragraphs 1 to 5 of this Article is governed by Chapters I to III of Annex ... to this Protocol. Signals designated in Chapter III of Annex ... for the exclusive use of medical units and transports shall not, except as provided therein, be used for any purpose other than to identify the medical units and transports specified in that Chapter.

7. This Article does not authorize any wider use of the distinctive emblem in peacetime than is prescribed in Article 44 of the First Convention.

8. The provisions of the Conventions and of this Protocol relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof shall be applicable to distinctive signals.

Q. PLENARY MEETING, 27 May 1977 (CDDH/SR.37):

Article 18. Identification

Article 18 was adopted by consensus.

32. Mr. HUSSAIN (Pakistan) drew attention to the fact that paragraph 5 still contained blanks for the numbers of annexes, which would have to be filled in later, in the final text.
Article 18. Identification

1. Each Party to the conflict shall endeavour to ensure that medical and religious personnel and medical units and transports are identifiable.

2. Each Party to the conflict shall also endeavour to adopt and to implement methods and procedures which will make it possible to recognize medical units and transports which use the distinctive emblem and distinctive signals.

3. In occupied territory and in areas where fighting is taking place or is likely to take place, civilian medical personnel and civilian religious personnel should be recognizable by the distinctive emblem and an identity card certifying their status.

4. With the consent of the competent authority, medical units and transports shall be marked by the distinctive emblem. The ships and craft referred to in Article 22 of this Protocol shall be marked in accordance with the provisions of the Second Convention.

5. In addition to the distinctive emblem, a Party to the conflict may, as provided in Chapter III of Annex I to this Protocol, authorize the use of distinctive signals to identify medical units and transports. Exceptionally, in the special cases covered in that Chapter, medical transports may use distinctive signals without displaying the distinctive emblem.

6. The application of the provisions of paragraphs 1 to 5 of this Article is governed by Chapters I to III of Annex I to this Protocol. Signals designated in Chapter III of the Annex for the exclusive use of medical units and transports shall not, except as provided therein, be used for any purpose other than to identify the medical units and transports specified in that Chapter.

7. This Article does not authorize any wider use of the distinctive emblem in peacetime than is prescribed in Article 44 of the First Convention.

8. The provisions of the Conventions and of this Protocol relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof shall be applicable to distinctive signals.
ARTICLE 19 - NEUTRAL AND OTHER STATES NOT PARTIES TO THE CONFLICT

A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 19:- States not parties to a conflict

States not parties to a conflict shall by analogy apply the provisions of the present Protocol to the wounded, the sick and the shipwrecked and to civilian medical and religious personnel belonging to the Parties to the conflict who may be received or interned on their territory, and to any dead collected.

B. PROPOSED AMENDMENTS:

CDDH/45 Austria, Finland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland
18 March 1974

In Article 19 replace the words "States not parties to a conflict" by "Neutral or other States not parties to a conflict".

CDDH/II/4 Austria
7 March 1974

In Article 19 for "the wounded, the sick and the shipwrecked", read "the wounded and the sick".

CDDH/II/32 Australia
12 March 1974

Replace the comma after the word "wounded" by the word "and".

CDDH/II/52 United Kingdom of Great Britain and Northern Ireland
12 March 1974

Redraft Article 19 as follows:

"States not parties to the conflict shall apply the provisions of the present Protocol to the wounded, and sick and to medical and religious personnel belonging to the Parties to the conflict who may be received or interned in their territory and to any dead of such Parties who may be found."

Rationale

To improve the drafting and accurately to reflect the intention behind the Article.
Redraft Article 19 as follows:

"Article 19. States not Parties to the conflict

States not Parties to the conflict shall apply the provisions of the present Protocol to the wounded and sick and the shipwrecked, medical and religious personnel belonging to the Parties to the conflict who may be received or interned in their territory and to any dead who may be found."

C. MEETING OF COMMITTEE II, 14 February 1975 (CDDH/II/SR.20):

36. Mr. PICTET (International Committee of the Red Cross), introducing Article 19, said that it had been considered appropriate to replace the former term "neutral" by "States not Parties to a conflict", since there were not varying degrees of neutrality, such as non-belligerence.

37. Miss BASTL (Austria) said that amendment CDDH/II/4 submitted by her delegation had been withdrawn. Introducing amendment CDDH/45 of behalf of the sponsors, she said that draft Protocol I introduced new terms for neutrality, namely "States not parties to the conflict" and "States not engaged in the conflict", which appeared in Articles 2, 9, 19, 32 and 57 and consequently concerned Committees I, II and III. Article 9, paragraph 3 of draft Protocol I linked the behaviour of a State not a party to the conflict with the provisions of Article 27 of the first Geneva Convention of 1949, but since that article used only the term "neutral State" she saw no reason for the change in terminology.

38. If, however, the new term was intended to enlarge the field of application - as suggested in the Commentary to the draft Protocols (CDDH/3) - her delegation could not accept such an idea. The introduction of a term not used in the Conventions would be contrary to the understanding that the rules decided on by the Conference should supplement, not supersede, existing regulations. Moreover, it would be confusing to have regulations directed to neutral States in the Conventions and additional regulations for States not parties to the conflict in the Protocols, and there would inevitably be difficulties of interpretation.

39. Furthermore, the term "States not parties to the conflict" might endanger the very concept of neutrality. Neutral status, where States did not, and did not intend to, enter into armed conflict carried certain well-defined rights and duties. It implied a policy in wartime which was foreseeable and could be relied upon. The use of an ill-defined and vague term, with no legal protection, would weaken the concept of neutrality and upset international legal safety.

40. Mr. MAKIN (United Kingdom), introducing amendment CDDH/II/52, said that the only substantive point was the omission of the word "civilian" before the words "medical and religious personnel". There seemed no reason to exclude military personnel from the benefits of Article 19 and thus prohibit neutrals from applying the appropriate provisions of that article. The present amendment should incorporate the amendment in document CDDH/45.
41. Miss MINOGUE (Australia) introduced amendment CDDH/II/215, which superseded amendment CDDH/II/32. It was mainly a matter of drafting, but one proposal was substantive. By using the words "any dead who may be found" instead of "any dead collected", as in the original draft, her delegation sought to make the collection of the dead obligatory. Adoption of Article 18 bis would entail an additional obligation to return the deceased's belongings and hence the amendment proposed was doubly pertinent.

42. The CHAIRMAN suggested that the Australian and United Kingdom amendments (CDDH/II/215 and CDDH/II/52) should be referred to the Drafting Committee.

   It was so agreed.

43. Miss BASTL (Austria) pointed out that amendment CDDH/45 was a matter which concerned Committees I and III as well as Committee II.

   It was agreed to refer amendment CDDH/45 to the Drafting Committee.


   The Drafting Committee . . . dealt with draft Protocol I, Part II, Section I, Articles 9 to 20 (except Articles 14, 18 and 18 bis).

   It now submits to the Committee II for approval the text of the above articles as given on the following pages. Some passages have been placed in brackets in cases where the Drafting Committee did not consider itself competent, or where a final decision must await the result of the studies of ad hoc working groups.

   Article 19 [Neutral or others] States not Parties to a conflict

   [Neutral or other] States not Parties to a conflict shall, by analogy, apply the provisions of the present Protocol to the wounded and sick, the shipwrecked, and medical and religious personnel belonging to the Parties to the conflict who may be received or interned in their territory, and to any dead of the Parties to that conflict who may be found.

E. MEETING OF COMMITTEE II, 24 February 1975 (CDDH/II/SR.23):

12. [Mr. CLARK (Australia) said that] [h]is delegation regretted that the words "by analogy", which made for uncertainty and ambiguity, had been retained in Article 19. If a majority agreed that some wording was needed to clarify the point, it would suggest the phrase "with necessary modifications".

16. The CHAIRMAN said that he did not think that the question of the inclusion or not of the words "neutral or other" in square brackets in paragraph 2 [a] [of Article 9], was a matter which could be decided by Committee II. A similar point arose in connexion with some of the articles of draft Protocol I, including those dealt with by other Committees.

17. Mr. KUSSBACH (Austria), speaking on behalf of the co-sponsors of amendment CDDH/45, said that the co-sponsors hoped that the point might be dealt with by consensus. The amendment was entirely non-controversial and was
designed merely to bring the text into line with that of the Geneva Conventions. No question of substance was involved. The Conference Secretariat had expressed the view that, according to the rules of procedure, the matter should be decided in Committee.

18. Mr. SOLF (United States of America) said that there had been no disagreement concerning the amendment in the Drafting Committee, which had decided to leave the matter for decision by some other body - Committee II or Committee I.

19. Mr. MARTIN (Switzerland) said he supported the Austrian representative. The point was a very simple one which had already been fully discussed in the Committee at the twentieth meeting (CDDH/II/SR.20) in connexion with Article 19 and had twice been referred to the Drafting Committee. The latter, however, had felt that it was a matter for the Committee itself to decide. He appealed to the Committee to adopt the amendment by consensus.

20. The CHAIRMAN said that he had been convinced by the arguments of the Austrian and Swiss representatives and would now invite the Committee to adopt by consensus paragraph 2 [of Article 9], with the words in square brackets, bearing in mind that the words in question would have consequences for other articles of draft Protocol I and that if another Committee were to adopt a different formulation, the matter would have to be decided by the main Drafting Committee of the Conference.

F. PROPOSED AMENDMENT:

CDDH/II/242 Australia, Canada, New Zealand, United Kingdom of Great Britain and Northern Ireland
25 February 1975

Amend Article 19 as submitted in document CDDH/II/240 as follows:

"[Neutral or other] States not Parties to a conflict shall, to the extent that they are applicable, comply with the provisions of this Part in respect of such persons protected by it who may be received or interned within their territory, and to any dead of the Parties to that conflict whom they may find."


1. The CHAIRMAN drew attention to amendment CDDH/II/242 submitted by Australia, Canada, New Zealand and the United Kingdom of Great Britain and Northern Ireland, which had just been circulated. In view of the fact that it differed on several points, some of which might be of substance, from the text submitted by the Drafting Committee in its report (CDDH/II/240), he suggested that the Committee should defer further discussion of Article 19 until its next meeting.

2. Mr. SOLF (United States of America), speaking on a point of order, said that under rule 32 of the rules of procedure the Committee could not take up amendment CDDH/II/242 unless a two-thirds majority was in favour of doing so, because a decision had already been taken on the substance of Article 19.

3. The CHAIRMAN said that there were six differences between amendment CDDH/II/242 and the text produced by the Drafting Committee: first, the
phrase "to the extent that they are applicable"; second, the verb "comply with"; third, the phrase "of this Part"; fourth, the phrase "such persons protected by it"; fifth, the word "within"; and lastly, the phrase "whom they may find". The second, third and last of those differences seemed to affect the substance of the article; the others - although they might relate only to drafting - could, in view of their late submission, be considered a disavowal of the Drafting Committee's work. Consequently, unless he heard any objection, he would take it that the Committee agreed to defer consideration of the matter until its next meeting.

It was so agreed.

H. MEETING OF COMMITTEE II, 27 February 1975 (CDDH/II/SR.26):

1. The CHAIRMAN, referring to the amendment to Article 19 proposed by four delegations (CDDH/II/242) pointed out that the text of that article had already been considered by the Drafting Committee (CDDH/II/240). He therefore asked the sponsors of the amendment, which involved not merely drafting changes but also changes of substance, why they had found it necessary to submit it at so late a stage in the proceedings. Some representatives might consider the amendment to be a disavowal of the work of the Drafting Committee.

2. Mr. FIRN (New Zealand) explained that each of the sponsors of amendment CDDH/II/242 had had comments to make on Article 19 in the form in which it had been drawn up by the Drafting Committee (CDDH/II/240). In the view of their respective delegations, there was nothing in the rules of procedure to preclude any delegation from submitting amendments before a decision of the Committee had been taken. The sponsors had therefore tried to assist the deliberations of the Committee by agreeing on a common text; that text had been submitted to the Secretariat and was available in all the official languages.

3. There were six changes in the version of Article 19 submitted in document CDDH/II/242 as compared with that prepared by the Drafting Committee. In his delegation's opinion, those changes were all of a drafting nature. Even if the Committee had already taken a decision on the substance of Article 19 - and the summary records were unclear on that point - it could still consider the amendments in document CDDH/II/242.

4. Mr. FRUCHTERMAN (United States of America), speaking on a point of order, said that, as the reconsideration of a matter of substance was involved, a two-thirds majority vote was necessary before that was possible.

5. The CHAIRMAN agreed with the United States representative and asked him whether he would like a vote to be taken on the admissibility of the amendments.

6. Mr. FRUCHTERMAN (United States of America) replied that, in his view, a vote should be taken to determine whether the Committee was prepared to reconsider the substance of Article 19.

7. Mr. FIRN (New Zealand) said that the question why the amendment had been submitted at the present stage was linked with the question whether or not a decision had been taken on the substance of Article 19. The Committee had not discussed Article 19 at its twenty-fifth meeting (CDDH/II/SR.25). The four sponsors had all intended to make comments on that article and had produced the
composite amendment submitted in CDDH/II/242. The record of the Committee's earlier discussion of Article 19 was somewhat confused and there was no reference to any decision on substance, although it might be argued that that was implicit in the summary record. There was no clear record of a decision, however as was the case with other articles. Even if a decision on the substance of Article 19 had been taken, the New Zealand delegation held that the changes proposed in document CDDH/II/242 were only of a drafting nature; that could be made clear, however, only if he was allowed to go into the substance of the amendment.

8. The CHAIRMAN said that in his opinion, as also in that of the United States representative and the Drafting Committee, at least some of the proposed changes were of a substantive nature. Where doubt existed, it was safer to assume that matters of substance were involved. In the interpretation of legal rules, experience showed what had been intended only as a drafting change could sometimes be taken as a change in substance. According to rule 32 of the rules of procedure, a motion for the reconsideration of a question that had already been settled required a two-thirds majority. Under the same rule, he was required to allow two speakers to oppose the motion, after which it should be immediately put to the vote. He would, however, request the United States representative not to press the point and would ask the New Zealand representative to continue.

9. Mr. FIRN (New Zealand) said that the first change in the text of Article 19 proposed in document CDDH/II/242 was that the words "by analogy" should be replaced by "to the extent that they are applicable". The sponsors of the amendment thought that "by analogy" did not accurately reflect the true position of States not parties to the conflict. Those words might seem to imply that such States were being asked to apply the provisions relating to the wounded, sick and shipwrecked as if they were parties to the conflict. In fact, not all those provisions were capable of being applied by such States. For example, paragraph 5 of Article 15, which dealt with the relationship between an occupying Power and civilian medical personnel, could clearly not apply to such personnel in the territory of a third State.

10. The second change was the replacement of "apply" by "comply with". That was a drafting change and did not affect the obligations imposed by Article 19.

11. The third change was that "present Protocol" should be replaced by "this Part", by which Part II was intended. The reason was that it was only in that Part that the rights of the wounded, sick and shipwrecked and of medical and religious personnel were protected. He did not think that the proposed change would deny the persons protected by Part II any of the rights embodied in the rest of draft Protocol I. Part I laid down the basic obligations imposed on all High Contracting Parties, and Parts III and IV were concerned with the situation on the battlefield and with the relations between the belligerent Power, especially as an Occupying Power, and the population. None of the provisions of those three Parts was applicable to a third State, with the exception of Articles 60 to 62, which were concerned with relief; in those articles, however, the obligations of the third State were explicitly regulated. Finally, Part V imposed obligations on all High Contracting Parties, whether Parties to the conflict or not, and accordingly did not come within the scope of Article 19. A specific reference to Part II rather than to the Protocol as a whole was not a substantive change; it would help third States to determine
what their obligations were. If, however, the Committee thought that the reference to Part II alone was inappropriate, his delegation was prepared to reconsider the matter.

12. The fourth proposed change related to the persons to whom States not parties to the conflict were to apply the provisions of Article 19; those persons were enumerated in the text drawn up by the Drafting Committee, but the sponsors thought that it would be more concise, as also consistent with Article 20, to refer simply to "such persons protected by it".

13. The fifth change, namely the replacement of "in" by "within" was purely a question of style.

14. In the sixth and last change, "who may be found" would be replaced by "whom they may find"; that change from the passive to the active clarified the obligations of States not parties to the conflict with respect to the dead.

15. He hoped that there would be general agreement that the changes proposed were not controversial and that no further reference to the Drafting Committee was needed.

16. The CHAIRMAN said that there must be a clear distinction between the various bodies and stages of the work. All matters of substance were discussed by the Committee; if an article was sent to the Drafting Committee, that meant that it had been accepted in substance. It should be stated explicitly in the summary records that articles had been accepted in substance and sent to the Drafting Committee for drafting purposes. The point at issue was whether the amendments proposed were of a substantive or a drafting nature. Both he and the acting Chairman of the Drafting Committee thought that some of them were substantive.

17. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he was neither in favour of nor against the motion, but would like the Chairman to rule on what parts of the amendment were substantive.

18. Mr. MARTIN (Switzerland) agreed with the representative of the Union of Soviet Socialist Republics that it was necessary to decide what was substantive in the amendments. In his view, the only substantive change was the replacement of the words "the present Protocol" by "this Part". It appeared, however, that the sponsors were willing to withdraw that particular proposal. The remaining amendments were only of a drafting nature and a vote would not be necessary.

19. The CHAIRMAN pointed out that he was obliged to follow rule 32 of the rules of procedure.

20. Mr. CZANK (Hungary) said that he supported amendment CDDH/II/242 as an improvement on the Drafting Committee's text, except for one point, namely the replacement of the words "the present Protocol" by "this Part". That was a substantive amendment which could affect other parts of the Protocol. He agreed with the views of the representative of Switzerland.

21. Mr. FRUCHTERMAN (United States of America) said that he would withdraw his point of order on the understanding that the sponsors of amendment CDDH/II/242 would agree to re-incorporate the reference to the present Protocol.

533
22. Mr. FIRN (New Zealand) confirmed that understanding on behalf of himself and the other sponsors.

23. Mr. CLARK (Australia) said that his delegation had been concerned about the words "by analogy" in Article 19 as it was an important article defining the rights and obligations of neutrals and other States.

24. The article should therefore be clearly expressed and understood by all parties. His delegation was of the view that the words "by analogy" in English were ambiguous and uncertain and did not assist in the clear interpretation of Article 19. His delegation understood that in the French the words "by analogy" were satisfactory. There was a subtle nuance involved.

25. The Australian delegation would prefer the deletion of the words "by analogy" but the words "to the extent that they are applicable" were acceptable in order to achieve clarity in the English text.

26. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, said that, with regard to the title and the opening words of the article, the Drafting Committee had decided to place the words "Neutral or other" in square brackets, in order to leave the decision to the plenary meeting.

27. Regarding the words "by analogy", a number of representatives had agreed with the Australian representative that they were not sufficiently precise and the Drafting Committee would have sought another term had it been starting afresh. Since, however, the term had been used in exactly the same context in Article 4 of the first Geneva Convention of 1949 and Article 5 of the second Geneva Convention, and been included in the 1929 Geneva Convention, the Drafting Committee had decided that it would be better to retain it. It entailed only a modest extension of the classes of persons protected by the first and second Conventions of 1949.

28. Miss BASTL (Austria) pointed out that in paragraph 2 (a) of Article 9 the Committee had approved the wording "a neutral or other State".

29. The CHAIRMAN said that it had been understood that those words would appear in all relevant articles.

30. He invited the Committee to vote on each part of amendment CDDH/II/242.

The amendment replacing the words "by analogy", by "to the extent that they are applicable", was approved by 27 votes to 10, with 11 abstentions.

The amendment replacing the word "apply" by "comply with" was approved by 13 votes to 12, with 24 abstentions.

31. Mr. FIRN (New Zealand), speaking on a point of order, said that the agreement of the sponsors of amendment CDDH/II/242 to replace the word "Part" by "Protocol" had been subject to consequential redrafting. It would therefore be necessary to replace the subsequent word "it" by "this Part".

32. Mr. SOLF (United States of America) supported that view.
33. Mr. MARTIN (Switzerland), also supporting the suggestion, said that, although previously he had been against any change in the Drafting Committee’s text (CDDH/II/240), he now realized that that text would in fact limit the people to be protected.

34. Miss MINOGUE (Australia) said that, by referring to persons protected by the Part instead of listing them as in the Drafting Committee’s text, the amendment was in fact making the article more concise.

35. Mr. AL-FALLOUJI (Iraq) pointed out that the reference to the Part of draft Protocol I was more comprehensive than the original listing, which did not, for example, include pregnant women or newborn children.

It was agreed by consensus that the wording of Article 19 should be amended to read: "... the provisions of this Protocol in respect of such persons protected by this Part ...".

It was agreed by consensus that the word "in" before "their territory" should be replaced by "within".

The amendment replacing the words "who may be found" by "whom they may find" was approved by 12 votes to 3 with 31 abstentions.

Article 19, as amended, was approved by consensus.

36. The CHAIRMAN appealed to members of the Committee to decide on matters of substance in future before referring any articles to the Drafting Committee, in order to avoid a recurrence of the kind of discussion that had just taken place.

I. ARTICLE ADOPTED BY COMMITTEE II, 27 February 1975 (CDDH/II/284):

Article 19. Neutral or other States not parties to a conflict

Neutral or other States not parties to a conflict shall, to the extent that they are applicable, comply with the provisions of this Protocol in respect of such persons protected by this Part who may be received or interned within their territory, and of any dead of the Parties to that conflict whom they may find.

J. MEETING OF COMMITTEE II, 11 March 1975 (CDDH/II/SR.34):

3. Mr. OSTERN (Norway) said that the Committee had approved at the twenty-sixth meeting (CDDH/II/SR.26) the text of Article 9 of draft Protocol I concerning States not Parties to a conflict covered by that Protocol. While stating the conditions on which those States would deal, within their territory, with certain groups of persons belonging to the Parties to the conflict, Article 19 of draft Protocol I laid down the principle that such treatment was not considered to be an act hostile to the Parties to the conflict. . . .
K. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401):

Article 19. Neutral and other States not Parties to a conflict

Neutral and other States not Parties to a conflict shall apply the relevant provisions of this Protocol to persons protected by this Part who may be received or interned within their territory, and to any dead of the Parties to that conflict whom they may find.

L. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE FOR ADOPTION (CDDH/401/Corr.1):

Corrigendum

Please read the paragraph as follows: "Neutral and other States not Parties to the conflict . . ." instead of

"Neutral and other States not Parties to a conflict . . ."

M. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 19. Neutral and other States not Parties to the conflict

Article 19 was adopted by consensus.

N. 1977 PROTOCOL I:

Article 19. Neutral and other States not Parties to the conflict

Neutral and other States not Parties to the conflict shall apply the relevant provisions of this Protocol to persons protected by this Part who may be received or interned within their territory, and to any dead of the Parties to that conflict whom they may find.
A. DRAFT ADDITIONAL PROTOCOL (CDDH/1):

Article 20. Prohibition of reprisals

Measures of reprisals against the wounded, the sick and the shipwrecked, as well as against the medical personnel, units or means of transport mentioned in this Part, are prohibited.

B. PROPOSED AMENDMENTS:

CDDH/II/4 Austria 7 March 1974

In Articles 9, 17, 19, 20, 21 and 22 for "the wounded, the sick and the shipwrecked", read "the wounded and the sick".

Rationale

Since the definition of "the wounded and the sick" given in Article 8 (a) explicitly includes "the shipwrecked" as defined in Article 8 (b) there seems to be no point in employing in one place the term "the wounded and the sick" and in the above Articles the term "the wounded, the sick and the shipwrecked". It would therefore seem preferable to use the same expression throughout.

CDDH/II/24 United States of America 11 March 1974

Change "wounded, the sick and the shipwrecked" to read "wounded and sick".

Replace the words "mentioned in this Part" by "protected by this Part of the present Protocol".

CDDH/II/31 Australia 11 March 1974

Replace the comma after the word "wounded" by "and".

Replace the words "mentioned in" by the words "protected by".

CDDH/II/213 New Zealand 13 February 1975

After the words "means of transport" add the words "and against religious personnel".
Withdraw amendment CDDH/II/31, delete existing Article 20 and insert the following:

"Article 20: Prohibition of Reprisals

Measures in the nature of reprisals against the persons and objects protected by this Part are prohibited."

C. MEETING OF COMMITTEE II, 14 February 1975 (CDDH/II/SR.20):

44. Mr. PICTET (International Committee of the Red Cross), introducing Article 20, said that the prohibition of reprisals covered the whole health field and had been extended to civilian personnel in general. The article covered the changes in draft Protocol I.

45. Mr. FRUCHTERMAN (United States of America) withdrew his delegation’s amendment (CDDH/II/24) in favour of the Australian amendment (CDDH/II/214).

46. Mr. FIRN (New Zealand) withdrew his delegation’s amendment (CDDH/II/213) in favour of the Australian amendment (CDDH/II/214).

47. Mr. CLARK (Australia) said that an endeavour had been made in his delegation's amendment to Article 20 (CDDH/II/214) to improve the text by picking up in the phrase "Measures in the nature of reprisals" all acts which might be called by any name but [are] reprisals against the persons or objects protected by Part II of draft Protocol I.

48. Further, looking at the persons protected by Part II, it seemed to the Australian delegation that the ICRC text was inadequate to afford protection particularly to the personnel to which reference was made. An examination of all the articles of Part II of draft Protocol I revealed a need to grant persons protection from reprisals for having, for example, offered medical care or assistance to the wounded and sick and shipwrecked.

49. Mr. MARTINS (Nigeria) asked why the reference to religious personnel, which had appeared in the New Zealand amendment (CDDH/II/213), was now excluded.

50. The CHAIRMAN suggested that the Australian amendment should be voted on, since it involved a broader concept, which might include retortion.

51. Mr. MAKIN (United Kingdom) pointed out that the question of the prohibition of reprisals was dealt with in other parts of draft Protocol I and the wording used should be identical in all of them. He therefore questioned whether Committee II should take any final decision on the text of Article 20.

52. Mr. ROSENBLAD (Sweden) said that the expression "measures in the nature of reprisals" in amendment CDDH/II/214 might cause confusion; it was better to use the wording of the Geneva Conventions, which constituted a traditional and accepted concept.
53. Mr. AL-FALLOUJI (Iraq) said that he was in sympathy with the Australian amendment. The extension of the concept of reprisals to include retaliation was important in the case of Article 20, which he regarded as supplementing Article 16, paragraph 1.

54. Mr. SOLF (United States of America) observed that it was unnecessary to broaden the concept of reprisals in Article 20 to include retaliation, since retaliation was prohibited by a substantive part of draft Protocol I. He did not believe that the Australian amendment affected retortion.

55. He was in full agreement with the wording "protected by this Part" in the Australian amendment, because the Protocol itself recognized that there were circumstances in which protected objects were used for acts harmful to the enemy after they ceased to be protected. The purpose of the second part of the United States amendment (CDDH/II/24), which had been withdrawn, had been similar.

56. Mrs. MANTZOLINOS (Greece) said that the expression "the persons and objects protected by this Part" included religious personnel.

57. With regard to the expression "measures in the nature of reprisals", she agreed with the United Kingdom representative that the terminology used in all references to reprisals in the Protocol should be identical. In Committee III, which dealt with reprisals against the civilian population, the traditional term used in the Conventions had been retained.

58. Mr. MARRIOTT (Canada) pointed out that in the French text of the first Geneva Convention of 1949 the words "les mesures de représailles" were used, whereas in the English text the corresponding term was "reprisals".

59. Mr. CLARK (Australia) said that in the expression "measures in the nature of reprisals" the operative word was "reprisals" and it should not be confused with retaliation.

60. He personally did not consider that it was desirable to follow tradition blindly; indeed, it was incumbent on the Conference to develop the law. The measures referred to were prohibited when they related to "the persons and objects protected by this Part". The persons in question included religious personnel.

61. Mr. AL-FALLOUJI (Iraq) said that he was well aware that there were special provisions covering reprisals but they related to the civilian population. Article 20 was concerned with a specific case, namely that of people who were most exposed to special risks; as the risks increased, the guarantees against reprisals had to be increased proportionately.

62. The Australian compromise did not satisfy him fully. There was no necessity to link the provisions of Article 20 with the general principles relating to reprisals set out elsewhere in the Conventions and the Protocols. His delegation would like the Conference to adopt a text for Article 20 which ensured that the guarantees were on a par with the risks incurred.

63. The CHAIRMAN put to the vote the words "measures in the nature of reprisals" in the Australian amendment (CDDH/II/214).
The words "measures in the nature of reprisals" in the Australian amendment were adopted by 15 votes to 8, with 32 abstentions.

64. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to refer the remainder of the Australian amendment to the Drafting Committee.

It was so agreed.


The Drafting Committee . . . dealt with Draft Protocol I, Part II, Section I, Articles 9 to 20 (except Articles 14, 18 and 18 bis).

It now submits to the Committee II for approval the text of the above articles as given on the following pages. Some passages have been placed in brackets in cases where the Drafting Committee did not consider itself competent, or where a final decision must await the result of the studies of the ad hoc working groups.

Article 20. Prohibition of reprisals

[Measures in the nature of reprisals] [Measures of reprisals] [Reprisals] against the persons and objects protected by this Part are prohibited.

E. MEETING OF COMMITTEE II, 24 February 1975 (CDDH/II/SR.23):

8. The CHAIRMAN invited the Committee to comment on the report of the Drafting Committee (CDDH/II/240).

13. [Mr. CLARK (Australia) said that] Article 20 had been the subject of an amendment by the Australian delegation [CDDH/II/214] in an attempt to develop the law and afford better protection to all the classes of persons and objects mentioned in Part II. The law concerning reprisals was far from settled and it might be found not to be applicable to peoples fighting wars of self-determination to which draft Protocol I had now been extended. However, any development of the law by the international community must have wide support if it was to be successfully applied; the Australian amendment to Article 20 had been adopted only by a small majority, with a large number of delegations not voting. His delegation had therefore decided to withdraw its amendment. In taking that decision it had been mindful that the question of reprisals would arise in acute form in Committees I and III. Perhaps, therefore, a final decision on Article 20 should be delayed until those Committees had concluded their deliberations on the subject. In any case, it was essential to ensure conformity on that important article.


4. The CHAIRMAN drew attention to the text proposed by the Drafting Committee (CDDH/II/240), in which three alternative terms appeared in square brackets. The term "measures in the nature of reprisals" had originally been proposed by the Australian delegation (CDDH/II/214) and had been approved by
the Committee, although the Australian representative had stated that his
delegation would not insist on that wording. The question of reprisals, how-
ever, was also being considered by other Committees in relation to other
provisions and it was his understanding that Committee III had agreed to use
the single word "reprisals" in the articles with which it was concerned.
Furthermore, that word had been retained by the Conference of Government
Experts on the Reaffirmation and Development of International Humanitarian
Law applicable in Armed Conflicts and appeared in the Geneva Conventions of
1949 and in various other international conventions. For those reasons, he
asked whether the Committee would be willing to reintroduce the word "repir-
sals". A two-thirds majority would be required for that decision.

5. Mr. SKARSTEDT (Sweden) confirmed that Committee III had agreed to use
the word "reprisals" where appropriate in the articles referred to it for
consideration.

6. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting
Committee, said that in proposing the three alternative terms in square brac-
ket, the Drafting Committee's intention had been to leave open the possibility
of reverting to the word "reprisals". He agreed that the decision to be taken
was one which would require a two-thirds majority, and expressed the view that
the Committee should take account of the agreement reached in Committee III.

7. The CHAIRMAN invited the Committee to vote on the reintroduction of
the word "reprisals" in Article 20.

The word "reprisals" was approved by 32 votes to none, with 9
abstentions.

8. The CHAIRMAN said that, in the absence of any objection, he would take
it that the Committee wished to approve by consensus the text of Article 20
submitted by the Drafting Committee (CDDH/II/240) which, in the light of the
decision just taken, would read: "Reprisals against the persons and objects
protected by this Part are prohibited.".

It was so agreed.

G. ARTICLE REVIEWED BY THE DRAFTING COMMITTEE AND TRANSMITTED TO THE CONFERENCE
FOR ADOPTION (CDDH/401):

Article 20. Prohibition of reprisals

Reprisals against the persons and objects protected by this Part are
prohibited.

H. PLENARY MEETING, 24 May 1977 (CDDH/SR.37):

Article 20. Prohibition of reprisals

Article 20 was adopted by consensus.
33. Mr. AREBI (Libyan Arab Jamahiriya) and Mr. ABDINE (Syrian Arab Republic) drew attention to a mistake in the Arabic text, which should be corrected by the Drafting Committee.

34. Mr. CHARRY SAMPER (Columbia) said that his delegation was opposed to any kind of reprisals and expressed regret that the term had not been adequately defined.

35. Mr. de ICAZA (Mexico) said that his delegation intended to submit a statement on reprisals in writing.

I. PLENARY MEETING, 24 May 1977 (CDDH/SR.37,ANNEX):

Egypt

Article 20 of draft Protocol I

The Egyptian delegation considers that the application of Article 20 of draft Protocol I makes it imperative that both Parties to the conflict should equally abide by it.

In the case of a breach by a Party to the conflict of the provisions of Article 20, the other Party shall be entitled to take action accordingly.

J. 1977 PROTOCOL I:

Article 20. Prohibition of reprisals

Reprisals against the persons and objects protected by this Part are prohibited.