Report on the
Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts,
including the action taken on Resolutions V, XIII and XIV of the Twenty-second International Conference of the Red Cross

(Item III of the provisional agenda of the Commission I)

Report submitted by
the International Committee of the Red Cross

Geneva, August 1977
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I. INTRODUCTION

The wishes of the international community

1. The reaffirmation and development of humanitarian law has been the subject of numerous resolutions at various international meetings. A list of resolutions which have given impetus to this vast enterprise and at the same time have stimulated its progress is given below in chronological order:

2. 1965 - Twentieth International Conference of the Red Cross, Vienna, Resolution XXVIII, Protection of civilian populations against the dangers of indiscriminate warfare.

1968 - International Conference on Human Rights, Teheran, Resolution XXIII, Respect for human rights in armed conflicts.

- UN General Assembly, Resolution 2444 (XXIII), Respect for human rights in armed conflicts.


- UN General Assembly, Resolution 2597 (XXIV), Respect for human rights in armed conflicts.

1970 - UN General Assembly, Resolutions 2674, 2676 and 2677 (XXV), Respect for human rights in armed conflicts.

1971 - UN General Assembly, Resolutions 2852 and 2853 (XXVI), Respect for human rights in armed conflicts.

1972 - UN General Assembly, Resolution 3032 (XXVII), Respect for human rights in armed conflicts.

1973 - Twenty-second International Conference of the Red Cross, Teheran, Resolution XIII, Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.
1974 - UN General Assembly, Resolution 3319 (XXIX), Respect for human rights in armed conflicts.

1975 - UN General Assembly, Resolution 3500 (XXX), Respect for human rights in armed conflicts.

1976 - UN General Assembly, Resolution 31/19, Respect for human rights in armed conflicts.

Principal consultations

3. The following are the principal preparatory meetings, again given in chronological order, at which the draft Protocols additional to the Geneva Conventions were examined before being submitted to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (hereafter referred to as "CDDH" or "Diplomatic Conference").

   - Representatives of non-governmental organizations, Geneva.

1972 - Experts of National Red Cross Societies, Vienna.

1973 - Twenty-second International Conference of the Red Cross, Teheran. The report on the study of the draft Protocols by this Conference, published by the ICRC, became subsequently one of the Diplomatic Conference's official documents (CDDH/6).
The Diplomatic Conference

5. The Diplomatic Conference convened by the Swiss Federal Council, depositary of the Geneva Conventions of 12 August 1949, devoted four sessions, from 1974 to 1977, to the examination of the two draft Protocols drawn up by the ICRC.

6. More than a hundred States, either parties to the Conventions or members of the United Nations, were represented at the Conference and the ICRC participated in an expert capacity. Many organizations, which were represented with observer status, included recognized national liberation movements (see Resolution XIII of the Twenty-second International Conference), various international governmental and non-governmental bodies and a number of specialized institutes.

7. The ICRC's special function was threefold. Although the draft Protocol which it had drawn up had been taken out of its hands, it had to present and explain them, take part in discussions on fundamental humanitarian questions and, of course, express its views on those provisions in which it was directly concerned. The ICRC participated in discussion of all these matters in the Committees and their working groups and at the plenary meetings. The League of Red Cross Societies was also represented by experts to offer its views on all subjects concerning it. Special mention should here be made of the fruitful activities of the "Red Cross Group" at the Conference, several of whose proposals were considered. The group was composed of those members of government delegations who were also members of National Red Cross Societies, and of representatives of the League and of the ICRC.

8. To complete its work, the Conference split into three main Committees, whose task was to examine the draft Protocols, and an Ad Hoc Committee of the Whole on Conventional Weapons, each Committee splitting in turn into working groups and even sub-working groups. Besides the plenary Committees, there was also a Drafting Committee and a Credentials Committee.
9. The Conference's various bodies endeavoured as far as possible to reach solutions which would be acceptable to everybody and would be adopted by consensus rather than on a vote. As a result, although the discussion of certain subjects may have been somewhat lengthened by this method, hardly a tenth of the 150 articles adopted at the plenary meetings necessitated a vote; all the remainder were adopted without discussion.
II. THE TWO PROTOCOLS

Before examining the two Protocols in detail, we review below such general aspects as the purpose and history of the Geneva Conventions and the objectives and results of reaffirming and developing humanitarian law.

1. RUN-UP

10. The Geneva Conventions may have saved as many lives as have been saved by the action of the Red Cross itself. They bring, even into the horrors of conflict, an element of humanity and peace. Of the four existing Conventions, all dating from 1949, the first two deal with the protection of wounded, sick and shipwrecked persons, the third with prisoners of war and the fourth, so long in coming, with the protection of civilians.

11. The latest version of the Conventions, however, are more than a quarter of a century old - about the average time lapse between earlier revisions. They are fraught with omissions and imperfections. It was especially important to adapt them to modern conditions of conflicts. In addition, the law of war, stricto sensu, with rules governing the conduct of hostilities and the use of weapons, has lagged far behind, inasmuch as the Hague Conventions date from 1907, whereas the first aerial bombardment occurred in 1911. There was thus a serious deficiency, which it was vital to remedy, all the more so since the evolution of modern conflicts has increasingly shown a tendency for the Law of Geneva and the Law of the Hague to converge.

12. For more than 100 years, the International Committee of the Red Cross (ICRC) has served as architect for the Geneva Conventions. It has therefore been occupied since 1967, along with the rest of the Red Cross, in a new phase in the development of that law. It was determined to bring this law up to date through new agreements, but without undertaking a complete revision, which would have had the attendant risk of weakening the existing structure. This is why
the term "reaffirmation and development" of humanitarian law was used. It is nevertheless true that on certain points — relating for example to the protection of civilian population from bombing — there has been a revision and indeed a new creation.

13. The undertaking was more difficult than in 1949. Then, a single session was sufficient; this time, four were needed: matters were easier in 1949, and such questions as protection of civilians against the effects of war were precluded from the work programme.

14. The achievement in 1977 compares in importance and significance however with that of 1949. On 10 June, the plenipotentiaries of some hundred States, many of them of the Third World, accepted and initialed the texts of the two Protocols, containing about 150 new articles to be added to the 450 of the Conventions.

15. In Protocol I, the procedure for designating Protecting Powers and their substitutes was specified, in order to strengthen supervision over the application of the Conventions. The offer of good offices by the ICRC was provided for.

16. With regard to the wounded and sick — the traditional concern which gave rise to the Red Cross — success was complete. The articles adopted provide special protection for civilian medical personnel, comparable to that given hitherto to military medical personnel. Immunity was likewise extended to what are designated as civil defence organizations, which are entitled to use a special sign.

17. Some of the provisions on the protection of persons and of medical duties, long called for by medical circles, will be greeted with satisfaction by the Red Cross. There is, in particular, recognition of the right of doctors and other medical personnel to care for all persons, in accordance with medical ethics.

18. A series of provisions on medical transport will again permit flights by medical aircraft. A technical annex provides means for identifying such aircraft.
19. Another series of rules deals with searches for missing persons and respect for the remains of the dead.

20. The greatest humanitarian achievement - and the very heart of the work of the Diplomatic Conference - was however protection of the civilian population against the dangers of indiscriminate warfare. We now have a set of rules on the general immunity to which the civilian population is entitled. It defines the population and civilian objects, as contrasted to military personnel and military objectives - the only ones which may be attacked - and protects them even from reprisal attacks. One article provides protection for historic monuments, places of worship and works of art. Another forbids starvation of civilians as a method of warfare. There is a special provision to protect the natural environment, this constituting an innovation. Another, under specified conditions, prohibits the destruction of works and installations containing forces which are dangerous for the population, and which are to be identified by a new sign.

21. With regard to cruel or indiscriminate weapons, the Diplomatic Conference confirmed the broad principles of the Law of the Hague, to the effect that belligerents do not have an unlimited choice of the means of making war; that weapons tending to cause unnecessary suffering are forbidden. Further, a Resolution of the Conference called for the convening of a special Diplomatic Conference to deal comprehensively with the subject of weapons.

22. There are articles relating to wars of liberation and guerrilla warfare. The article postulating that wars of liberation are international and not internal conflicts, as worded by the committee during the first session, was almost unanimously adopted without discussion. Another article, defining combatants, was adopted by a large margin, but only after long discussion which was finally settled by better defining who may engage in hostilities and by enlarging the category of such persons by relaxing the Hague Convention conditions which define regular combatants. The requirement that combatants should be distinguishable from the civilian population was confirmed. However, in guerrilla warfare, combatants are required to bear arms openly only during a military engagement and during the immediately preceding deployment of forces.
23. **Mercenaries**, the conference concluded - after defining the term restrictively - are not entitled to claim combatant or prisoner-of-war status, so that States have complete discretion subject to the provisions of Article 75 entitled **fundamental guarantees**. These provisions are a sort of mini-convention applicable equally to mercenaries and specifying the minimum protection to be granted any person affected by war and not expressly protected.

24. Under the heading methods and means of warfare, the Protocol is concerned, *inter alia*, with an important section of the law of the Hague, which it updates to modern conditions of warfare with respect to surrender, quarter, perfidy, ruses of war and other aspects of conduct in warfare.

25. The Protocols provide both national and international Red Cross organizations with solid legal grounds which will undoubtedly facilitate their relief activities. In this field, new articles forbid blockade and starvation of civilians. Parties to a conflict and neutral States must grant free passage to relief supplies, while retaining the right to monitor such relief.

26. **Penal sanctions** have been supplemented.

27. **Protocol II**, applicable in non-international conflicts, has 28 articles, or little more than half the number in the final draft, which was severely pruned towards the end of the Conference. It may be hoped that, being less demanding than the draft, the Protocol will be more scrupulously observed. Despite the truncation of the draft, Protocol II is a real advance in humanitarian law. Its scope was made less extensive than that of the common Article 3 of the 1949 Conventions, but this article has lost none of its validity.

28. On the whole, Protocol II is a simplified version of Protocol I adapted to the special conditions of non-international conflicts. The most important provisions are Article 4, setting forth fundamental guarantees for all persons taking no part in hostilities; Article 5, specifying the treatment to be granted to persons deprived of their freedom; Article 6, on penal prosecution; Articles 7, 13, 15 and 16, which protect the civilian population against the effects of war and
particularly against bombing and shelling; and Articles 7 - 12 which protect the wounded and sick, medical personnel, medical vehicles and the emblem of the red cross. Mention is also made of National Red Cross Societies. These rules are all innovations and valuable bases for action.

29. The Protocols will be open for signature after six months. They will enter into force six months after the first two instruments of ratification or accession have been deposited. These fundamental charters of humanity will then be off the ground, providing an essential supplement to the existing Conventions and making it possible in the future to save yet more lives than have already been saved by the Conventions if, God forbid, fresh conflicts should break out, an event desired by no one, for peace is more than ever the great hope of all peoples.

2. THE TWO PROTOCOLS

2.1. PROTOCOL I

2.1.1. PREAMBLE AND GENERAL PROVISIONS

30. Two preambular paragraphs have been added to the ICRC's draft of the Preamble proclaiming the earnest wish of the High Contracting Parties to see peace prevail among peoples: one paragraph excludes any interpretation of humanitarian law which could justify or authorize the use of force inconsistent with the Charter of the United Nations, the second prohibits the application of humanitarian law in any discriminatory fashion based on the causes espoused by or attributed to parties to a conflict.

31. In accordance with Article 1 (4), the Conventions and the Protocol shall now apply also to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined", inter alia, "in the Charter of the United Nations". This extension of
the scope of application is consistent with several United Nations General Assembly resolutions; in this connection, it may be pointed out that the ICRC itself had expressed the wish in 1949 that colonial wars should be subject to the Conventions.

32. Article 3, by specifying that in the case of occupied territories the application of the Conventions and of the Protocol shall cease on the termination of the occupation, goes beyond the provision in Article 6 of the Fourth Convention. Moreover, protected persons shall benefit from the relevant provisions of those instruments until their final release, repatriation or re-establishment.

33. The purpose of draft Article 4 was to dispel any fears that might be felt about the effect of the application of the Conventions and of the Protocol on the legal status of parties to a conflict. The Conference added the reaffirmation of the principle that the occupation of a territory shall not affect, either, the legal status of such territory.

34. The system of Protecting Powers set up by the Conventions is strengthened, in Article 5, by subsidiary procedures intended to facilitate the designation of such Protecting Powers or of their substitute, the definitions of which are given in Article 2. Article 5 also mentions the good offices of the ICRC in the event of difficulties and reaffirms the possibility of its appointment as a substitute (see also para. 105 below).

35. Article 6 deals with training qualified personnel to help in the application of the Conventions and of the Protocol. It will be seen later in this Report (paras. 102 and 105) and also in the Report on the Reinforcement in the Protocols Additional to the Geneva Conventions of the Role of National Societies (CPA/III/2), what tasks are assigned in this regard to the National Societies and the ICRC.

36. The general problems concerning the application of the Conventions and of the Protocol may be considered at meetings which may be convened under Article 7.
37. The purpose of Part V - Execution of the Conventions and of this Protocol - is to ensure the execution of the Conventions and of the Protocol by laying down rules on three fundamental aspects: in order that it should be applied, humanitarian law must be known and if necessary supplemented; all persons of good will must be given the opportunity to collaborate; breaches must be punished.

38. Section I - Articles 80 to 84 - deals with measures for execution; activities of the Red Cross and other humanitarian organizations (see paras. 102 and 104 below and the report referred to in para. 35); legal advisers in armed forces; dissemination (see the report entitled "Implementation and Dissemination of the Geneva Conventions" (CPA/IV. 3c/1); and rules of application. Mention should be made here of Resolution 21 (IV) on dissemination of knowledge of humanitarian law, adopted by the Conference at its final plenary meeting, specifying the tasks to be carried out by the ICRC and by National Societies.

39. Section II - Articles 85 to 91 - supplements the corresponding provisions of the Conventions by developing the mechanism for the prevention and repression of breaches and by including among grave breaches a number of acts which had not previously been so designated.

40. Section II of draft Protocol I has been considerably expanded. For example, Articles 85, 87, 89, 90 and 91 are all either entirely or partly new. On the other hand, the Conference did not retain the draft article on superior orders, and the draft article on extradition was shortened and inserted in Article 88 (Mutual assistance in criminal matters). Lack of time prevented the consideration of a draft code applicable to violations of humanitarian law, but this draft will be published together with the official documents of the Diplomatic Conference.

41. The Conference introduced only a very few changes to the draft of Part VI - Final provisions - and all that will be done here will be to mention those changes.

42. Under Article 96, the authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1 (4) (see supra para. 31), may
undertake to apply the Conventions and the Protocol, during the said conflict, by means of a unilateral declaration addressed to the depositary. Such declaration shall, upon its receipt by the depositary, have the effect of rendering the Conventions and Protocol equally binding upon all parties to the conflict.

43. The draft article on reservations was not retained, in view of the difficulty of having either the principle of such an article or a list of articles to which no reservations may be formulated, accepted. The Protocol will thus be subject, like the Conventions, to customary law: therefore, only reservations compatible with the object and purpose of the Protocol are allowed.

44. Besides a general article on the procedure to be adopted for amendments (Article 97), it was deemed necessary to provide for a simpler procedure for more frequent revisions of Annex I to the Protocol (Regulations concerning Identification: see paras. 50 to 54 below).

2.1.2. WOUNDED, SICK AND SHIPWRECKED - MEDICAL TRANSPORTATION

(a) General protection

45. Articles 8 to 20 (Section I of Part II) are concerned with the wounded, sick and shipwrecked and Articles 21 to 31 (Section II of Part II) with medical transportation. These articles fully meet the wishes of the Twentieth (Resolution XXX) and Twenty-first (Resolution XVI) International Red Cross Conference for protection of civilian medical and nursing personnel.

46. Henceforth, civilian medical and religious personnel and units - subject to supervision and authorization by the State, so as to avoid abuses - shall enjoy protection analogous to that accorded since 1864 to military medical personnel, and extended in 1949 only to State-recognized civilian hospitals (Article 15).
47. The following main gains may also be noted:

- definitions are given of the terms employed (wounded, sick, shipwrecked, medical personnel, medical unit, medical transportation, distinctive emblem, etc.) thereby adding precision to the text and making it less likely to cause misunderstanding (Article 8);

- the protection of the physical and mental health and integrity of persons whose liberty has been restricted owing to the conflict has been ensured; physical mutilations or scientific experiments on such persons, for instance, are specifically forbidden (Article 11);

- medical duties are provided with general protection, as under no circumstances shall any person be punished for carrying out medical duties compatible with medical ethics, regardless of the person benefiting therefrom. Furthermore, no person engaged in medical activities shall be compelled to give any information concerning the person under his care, except as required by the law of the party to which the person engaged in medical activities belongs (Article 16);

- the role of the civilian population and of aid societies and their right to go to the aid of the wounded and sick are reaffirmed and extended to the shipwrecked, while the possibility given to parties to a conflict to appeal to the civilian population to collect and care for the wounded is extended in two ways: they may appeal to the civilian population as well as to aid societies such as the National Red Cross (Red Crescent, Red Lion and Sun) and their appeal may be made for the benefit of the shipwrecked and for the search for the dead. On this latter point it may be considered that Resolution XV of the Twenty-second International Conference of the Red Cross, urging the reinforcement in the Protocols of the role of National Societies, has been fulfilled (Article 17);

- the prohibition of reprisals against protected persons and objects is reaffirmed and is extended henceforth to civilian medical personnel and units (Article 20).

48. Besides these important improvements, the problem of medical transportation has been reconsidered. Hospital ships, lifeboats and other rescue craft mentioned in the Second Convention, may now carry civilian wounded, sick and shipwrecked, without forfeiting their right to protection
Protection has also been granted to ships and craft, other than the hospital ships referred to in the Second Convention, which may be fitted out - in emergency cases - as medical vessels or medical craft (Article 23).

49. But it is especially in the case of aircraft that the improvements are most significant. Medical air transport, the growing importance of which is clear to everyone, suffered for a time the disadvantages of scientific evolution: before 1949, it was thought that the sign of the red cross (red crescent, red lion and sun) painted on the fuselage indicated sufficiently clearly the nature of the medical aircraft which had to be protected; however, when the 1949 Conventions were being drafted, it was pointed out that, with the advances made in long-range weapons, protection could not depend on visual identification. Protection was therefore subordinated to formal agreement between the belligerents on the flight plan (routes, heights, times, etc.) with the result that in practice medical aircraft were grounded. But science, which had earlier been responsible for medical aircraft inactivity, now came to its rescue: although weapons systems can fire on an aircraft when it is not visible, other devices may identify medical aircraft before they become visible if they are suitably equipped. The necessary technical details are given in Annex I to the Protocol (see para. 50 - 54) and should make it possible for the provisions adopted in the Protocol - which give detailed rules on the rights and duties of medical aircraft and their occupants, depending on the zones over which they are flying - to be observed efficaciously at all times and to restore to medical aviation its capital role (Articles 24 - 31).

(b) Regulations concerning Identification

50. Various resolutions of International Conferences of the Red Cross recommended that increased protection be secured for civilian medical personnel and for the victims of armed conflicts. These resolutions included, more particularly, the following: Twentieth Conference, Resolution XXX; Twenty-first Conference, Resolutions XIII and XVI; Twenty-second Conference, Resolution XIII.
51. Despite technical developments, the original protective markings prescribed in the Geneva Conventions of 1864 remained unchanged in the Geneva Conventions of 1949, even though the use of modern means of identification had been found to be necessary already in the Second World War: weapons and methods of combat had changed, making purely visual means of identification obsolete. The 1949 Diplomatic Conference did not have the opportunity to study identification devices, but it adopted resolutions 6 and 7 recommending that modern means of identification and communication be used for hospital ships. There is a direct link between those two resolutions and the Regulations concerning Identification adopted by the Diplomatic Conference in 1977.

52. In 1950, exchanges of views took place between the ICRC and various governments on the draft of telecommunication regulations for medical vessels and aircraft to follow up resolutions 6 and 7. In 1961, a draft was communicated to the States parties to the Geneva Conventions. Some adopted it while others stated that it was advisable to apply international regulations issued by specialized international organizations. In 1970, the ICRC invited a group of technical experts to prepare the draft regulations.

53. The Regulations concerning Identification, annexed to Protocol I, were adopted by consensus. They contain the basis for the employment of the most modern identification systems. Under Article 98 of Protocol I, the ICRC is entrusted with the additional task of consulting the High Contracting Parties every four years to decide upon any revisions that might have to be made. In this way, protective identification could be adapted to future technical developments and attempts to find solutions to outstanding problems could be continued, as for instance under-water acoustic identification to protect medical vessels against the danger of being attacked by torpedos. This particular problem was raised on 30 March 1921 at the Tenth International Red Cross Conference in Geneva, in the report submitted by the Netherlands Red Cross on its activities during the First World War. On page 13 of this report, it is said that on 2 July 1917 the German Government requested that, for exchange of disabled persons by sea, the hospital ships should be escorted by at least two paddle-steamers, as only the noise made by the paddles could be recognized by submarines. Today, there are practically no paddle-steamers at sea, and research is going on to find a modern solution.
to this problem.

54. The Diplomatic Conference adopted three resolutions urging that the technical problems relating to identification in the air and at sea and to radiocommunication, should be dealt with by the appropriate bodies, namely:

- Resolution 17, addressed to the International Civil Aviation Organization (ICAO): use of certain electronic and visual means of identification;

- Resolution 18, addressed to the Inter-Governmental Maritime Consultative Organization (IMCO): use of visual signalling for identification of hospital ships;

- Resolution 19, addressed to the International Telecommunication Union (ITU); use of radio frequencies and radio-communications for announcing and identifying medical transports.

These three resolutions urge governments to co-operate with these specialized organizations in their quest for solutions.

2.1.3. MISSING AND DEAD PERSONS

55. The Twentieth International Conference Resolution XXIII entitled "Tracing of Burial Places" makes several recommendations for the seeking of missing persons in time of war and for the tracing of graves and the identification of bodies. The Twenty-second Conference Resolution V entitled "The Missing and Dead in Armed Conflicts" reveals similar concern.

56. Three articles, 32 to 34, in Protocol I respond, in large measure, to the recommendations in the aforesaid resolutions. Article 32 - an important advance in humanitarian law - sets forth the previously inadequately defined principle that families are entitled to know what has become of their members. Articles 33 and 34 consolidate this principle; they supplement the Geneva Convention provisions on persons reported missing and on remains of deceased.
57. The duty of parties to a conflict to seek persons reported missing is now clearly expressed, as is their duty to transmit information through the Protecting Power or the ICRC Central Tracing Agency. Also mentioned is the duty of parties to a conflict to try to reach an agreement to allow search parties - even including enemy personnel - to seek, identify and remove the dead from battle areas.

58. Parties to a conflict must respect the mortal remains of persons killed during fighting; they must also respect, maintain, protect and mark their graves. They must also, as soon as possible, help families to visit graves, and assist in the repatriation of the mortal remains and personal effects of persons killed during the fighting. Provisions are made also for the maintenance of graves after the conflict and also for the right - under specific conditions - to exhume bodies.

2.1.4. METHODS AND MEANS OF WARFARE

59. To protect civilians against the dangers of indiscriminate warfare, and to supplement the rules on the conduct of hostilities - some of which date back to 1899 and other to 1907 and are obviously inadequate for conditions today - the Twentieth Conference, in Resolution XXVIII, restated the principles contained in Article 22 of the Hague Regulations that parties to a conflict do not have an unlimited choice of means of harming an enemy. The draft submitted by the ICRC to the Diplomatic Conference therefore reaffirmed the principle and also the specific prohibitions in Article 23 of the Hague Regulations.

60. The Diplomatic Conference unhesitatingly took the lead from the ICRC (See Articles 35 to 42). In addition to the principle already mentioned, the Protocol includes two others, prohibition of superfluous injury or unnecessary suffering, and prohibition of refusing to give quarter; widespread long-term and severe damage to the environment must be avoided. Rules on the use of signs have been made more precise and have been supplemented and adapted. Perfidy has been defined and prohibited, some instances being cited. This is not the case for ruses of wars. According to Article 41, "A person who is recognized or who, in the circumstances, should be recognized to be hors de combat
shall not be made the object of attack"; a person is hors de combat if he is in the power of an adverse party, if he clearly expresses his intention to surrender, or is incapable of defending himself; in such cases any attempt to escape or commit a hostile act is immediately to forfeit protection.

61. The Conference was reluctant to consider as hors de combat persons parachuting from aircraft in distress and who would obviously avoid capture by landing in friendly territory. The reason for the hesitation was that the Conference recognized that such aircrews would often be able to resume operations. However, the meeting overcame its hesitation on the grounds that it would be too unjust to leave a man's life to chance, and finally decided that persons parachuting from an aircraft in distress should not be attacked no matter on what territory they land (Article 42).

62. Units which take prisoners and have no means of evacuating them as required by the Third Convention should release them, with all feasible precautions for their safety (Art. 41 (3)).

63. Respect for principles and rules is not dependent on combatants alone. It depends also on the means available to them. A step has been taken, timidly but in the right direction, on the subject of weapons. Article 36 makes it an obligation on High Contracting Parties to determine whether the use of a new weapon, in some or all circumstances, might be prohibited by the Protocol or any other rule of international law. In addition, the Conference continued its efforts to reach agreement on the prohibition of certain weapons which cause avoidable suffering. This question was discussed by a special commission and is dealt with later in this Report (section III: PROHIBITION OR LIMITATION OF USE OF CERTAIN WEAPONS, paras. 108 ff.)

2.1.5. COMBATANT AND PRISONER-OF-WAR STATUS

64. In the section on methods and means of warfare (paras. 59 to 63 above), there is no question but that combatants are required to conform to recognized and reaffirmed rules. In the matter of combatant and prisoner-of-war status, the main aim of the Protocol is, in contrast, to modify the
rules so that legal requirements are more consistent with the facts of life.

65. Considering that modern international armed conflicts are waged between combatants of very different sorts and not necessarily in the traditional mould, the Conference gave a general definition covering all combatants entitled to participate in hostilities. The definition covers partisans fighting against an occupant, people who have taken up arms in response to orders from the State and members of national liberation movements as well as members of regular armies. This met the objective of Resolution XVIII of the Twenty-first Conference. It was settled with no great difficulty.

66. Not so with the regulation of combatant behaviour in the field. The difficulties arose not because anyone contested every combatant's obligation to comply with international law applicable in armed conflicts, but from the fact that, unlike the soldiers of the regular army who wear uniforms to distinguish them from the population, guerrilla fighters, especially those of national liberation movements, are resolved to avoid any sign which makes them conspicuous. It was argued that the one-sidedness of a conflict between combatants armed with light weapons and powerful army units with the most modern equipment completely precludes the display of a distinctive sign; to display such a sign would be to court defeat. Obviously in such conditions it is a moot point whether participants in hostilities should always be distinguishable from the population, to spare the latter as much as possible, as postulated in Resolution XXVIII of the Twentieth Conference. At the Twenty-second Conference the ICRC proposals on this subject were met with some sharp criticism. Some delegates held that the ICRC proposals went too far; others that they did not go far enough. Nevertheless, it was perhaps on this very point that the Diplomatic Conference demonstrated most clearly its determination to find, in spite of everything, a solution to problems which might have been thought insoluble. The article finally adopted, Article 44, providing that guerrilla fighters must carry their weapons openly during each military engagement, is not perfect, and may sometimes be difficult to interpret, but it is worthwhile. Unlike provisions on breaches of other rules applicable in armed conflict, this article specifies that failure to observe it may involve forfeiture of the right to prisoner-of-war status. However, here again problems of interpretation arise.
67. Elastic rules on the distinctiveness of combatants entitled to participate in hostilities may give rise to doubt. Consequently, Article 45 sets forth a series of guarantees designed to protect combatants from arbitrary action.

68. The law of The Hague on spying is reaffirmed and supplemented by rules applicable in occupied territory (Article 46).

69. Mercenaries set a problem about which a number of delegations had strong feelings. A compromise was reached denying mercenaries the right to claim prisoner-of-war status, but allowing the captor discretion to give such status. The principle that no one may for any reason be deprived of fundamental guarantees is still valid. The definition of "mercenary", in Article 47, is restrictive.

70. In drawing up this section of the Protocol, the Diplomatic Conference had essentially to reach a balance between the protection of guerrilla fighters who were not to be deprived of their effectiveness, and the protection of the population which should not be threatened by the lack of distinction between combatants and non-combatants. The price to be paid by neither should be exorbitant. In general, the Conference considered that it had reached a result avoiding such a sacrifice.

2.1.6. CIVILIAN POPULATION: GENERAL PROTECTION AGAINST EFFECTS OF HOSTILITIES

71. We have seen, in paragraphs 59 - 63 above, how the new provisions on methods and means of warfare, by limiting the choice of means by which harm may be inflicted on an enemy, are expected to meet the recognized necessity of protecting the civilian population against the effects of hostilities. Section I of Part IV, entitled "General protection against effects of hostilities", proceeds from the recognized principle that civilian populations and civilian property should be respected and protected and reaches two logical conclusions: namely, that it is forbidden to attack the civilian population as such, and that persons participating in hostilities must always be distinguishable from the civilian population so that the latter may be spared as much as possible. These two rules were suggested in Resolution XXVIII entitled "Protection of Civilian Populations against
the Dangers of Indiscriminate Warfare" adopted by the Twentieth International Red Cross Conference.

72. Articles 48 and 51 restate these two basic rules and make them applicable to any military operation likely to affect the population, individual civilians and civilian property. All attacks against the population itself, acts of violence intended to spread terror and indiscriminate attacks are forbidden. By indiscriminate attacks is meant those likely to strike both military objectives and civilians and civilian property without distinction because of the methods or weapons used. In view of the protection which must be granted the civilian population it is also forbidden to utilize civilians in an attempt to shelter military objectives from attack or to shield, favour or impede military operations. Article 50 defines a civilian as any person who is not a combatant within the meaning of Articles 4 of the Third Convention or 43 of the Protocol.

73. Civilian property must also be respected, unlike military objectives which are "objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage" (Art. 52). This general article is followed by others dealing especially with types of objects which, for their intrinsic value or because of the danger which damage to them would entail, must be protected, namely cultural objects, places of worship, objects indispensable to the survival of the civilian population, the natural environment, and works and installations containing dangerous forces (dams, dykes and nuclear electrical generating stations).

74. Article 57 - Precautions in attack - and Article 58 - Precautions against the effects of attacks - lay down a number of rules to ensure maximum respect in all circumstances for the principle that combatants must be distinguishable from the population and that military objectives must be distinguishable from civilian property. Article 59 - Non-defended localities - and Article 60 - Demilitarized zones - will henceforth make it possible for zones and localities to be made immune from active hostilities; such zones and localities will be more extensive than the safety and hospital zones and localities provided for in the First and Fourth Conventions.
2.1.7. RELIEF TO THE CIVILIAN POPULATION

75. The latest International Red Cross Conferences all showed concern to ensure efficient relief action (Twentieth Conference, Resolutions XVII and XVIII; Twenty-first Conference, Resolution XXIV, stating the principles and rules for Red Cross relief in disasters; Twenty-second Conference, Resolution VIII). The Protocol contains provisions in the general context of protection for the civilian population and for the civilian population's right to have the essentials for its survival, as a corollary to the prohibition of the use of famine against civilians as a weapon of war (Part IV, Section II, Articles 68 - 71).

76. Article 68 defines the field of application of this section on relief for civilian population which supplements the relevant provisions of the Fourth Convention. Article 69 deals with basic needs in occupied territories. The objects of which an occupying power must ensure supply to the civilian population to the fullest extent of the means available are no longer only food and medicaments, as provided by Article 55 of the Fourth Convention, but also clothing, bedding, means of shelter, other essentials, and objects necessary for religious worship. Relief in occupied territories is still governed by the provisions of the Fourth Convention which are supplemented by Article 71 of the Protocol on personnel participating in relief actions.

77. Relief actions other than those in occupied territories, covered by Article 70, shall be undertaken if the supplies mentioned above are inadequate for the population, subject however - a restriction not included in the initial draft - to the agreement of the parties concerned in such relief actions. Relief actions or offers of relief actions shall not be considered interference in a conflict. The responsibility is imposed on parties to a conflict to protect relief consignments and facilitate their rapid distribution and it is incumbent on High Contracting Parties to allow and facilitate the passage of relief consignments under certain conditions and to facilitate effective co-ordination of relief actions.

78. Article 71 deals with the personnel participating in relief actions. Such participation is subject to the approval of the party in whose territory the relief work is undertaken. The personnel must be respected and protected and given
every possible assistance by the party concerned. On the other hand, the relief personnel may not exceed the terms of their mission; failure to observe this condition may entail termination of the mission.

2.1.8. TREATMENT OF PERSONS IN THE POWER OF A PARTY TO A CONFLICT

79. Section III of Part IV supplements the rules concerning humanitarian protection of civilians and civilian objects in the power of a party to a conflict (See next paragraph). The heading of Article 74, "Reunion of dispersed families" is taken, incidentally, from Resolution XIX adopted by the Twentieth International Red Cross Conference. This article makes it an obligation for parties to a conflict to facilitate the reuniting of dispersed families and the efforts of humanitarian organizations working to that end.

80. Article 72 states the complementary nature of this Section III, particularly to Parts I and III of the Fourth Geneva Convention and to human rights applicable in armed conflict. A wide loophole in the earlier provisions for protecting the population is remedied by Article 73, which extends to refugees and stateless persons the protection afforded the civilian population by Parts I and III of the Fourth Convention.

81. Article 75 - Fundamental guarantees - is important as a sort of international humanitarian law "safety net" for persons not specified in the Geneva Conventions or Protocol I. This article prohibits any violence to the life, health, or physical or mental well-being of persons it protects; it also sets forth the obligation to provide any person arrested with certain elementary legal guarantees. Many of the provisions contained in this article are based on the International Covenant on Civil and Political Rights.

82. The Section concludes with two chapters, one relating to women and children and the other to journalists. Women and children are entitled to special respect and must be protected against all forms of indecent assault. Parties to a conflict shall endeavour to avoid pronouncement of the death penalty on pregnant women or mothers having dependent children for an offence related to the armed con-
flict, and in any case the death penalty shall not be executed (Article 76). Every effort shall be taken to ensure that children who have not reached the age of fifteen years shall not take a direct part in hostilities; should they nevertheless do so, they shall continue to receive the benefit of the special protection to which they are entitled. If children must for imperative reasons be evacuated, every effort shall be made to ensure that the evacuation is carried out under the best possible conditions and that their return as soon as possible will give rise to no difficulties (Articles 77 and 78). In response to a series of UN General Assembly Resolutions, Article 79 specifies that journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians - the status of war correspondent accredited to the armed forces being governed by the Third Geneva Convention. Journalists may obtain a special identity card attesting to their status as journalists on a dangerous professional mission.

2.1.9. CIVIL DEFENCE

83. In response to the wish expressed in Resolution XV of the Twenty-first International Conference, a chapter on civil defence was included in the initial draft of the Protocol. Difficult negotiations were conducted before it was finally adopted, in a radically altered form, at the fourth session of the Diplomatic Conference. The chief difficulty lay in the fact that, in some States, civil defence is a responsibility of the army, while others considered that the whole system of protection established by the Conventions and the Protocols would be endangered if special protection were to be granted to military bodies. Divergent views also appeared on other subjects, in particular on the definition of civil defence: some delegations felt that protection could be granted only for clearly defined activities, while others believing that the future should not be prejudged, preferred a loose definition. There were also differences on the question of the carrying of arms by civil defence personnel.

84. Despite such disagreements, a solution was found. The definition of civil defence was finally made in the form of a limitative list of tasks; but the tasks themselves were described in a very flexible way which should permit the civil defence to adapt to any new circumstances that
might arise in the future (Article 61).

85. Article 62 sets forth the general principle of respect and protection for civilian units responsible for civil defence. The operation of civil defence in occupied territories is governed by Article 63, and is aimed chiefly at safeguarding the interests of the civilian population. Article 64 deals with the assistance which may be provided to parties to a conflict by civilian civil defence organizations of States not parties to the conflict, whose offers, in occupied territories, may not be refused by the occupying Power unless this Power can itself assure the adequate performance of civil defence tasks. It also provides for international co-ordination of civil defence actions when appropriate. Article 65 refers, in a manner which is limitative and similar to the provisions for medical units, to the circumstances in which the right to protection of civilian civil defence organizations may cease. It also deals with the bearing of light individual weapons by civilian civil defence personnel. An international distinctive sign has been established to identify civil defence organizations, an equilateral blue triangle on an orange ground (Article 66 of the Protocol and Article 15 of its Annex I).

86. Article 67 provides a solution to the difficult problem of the assignment of members of the armed forces and of military units to civil defence organizations. Respect and protection is accorded to such personnel and units, but under strict conditions. The buildings and equipment devoted to civil defence must also be marked with the international distinctive sign of civil defence. Military personnel assigned to civil defence, if they fall into the hands of the enemy, shall be treated as prisoners-of-war. The buildings and matériel of such units shall remain subject to the laws of war, but may not in principle be diverted from their civil defence purpose so long as they are required for civil defence tasks.

2.2. PROTOCOL II

87. Aware of the need to strengthen protection for the victims of non-international armed conflicts, the National Societies of the Red Cross have shown an active and sustained interest in the development of international humanitarian law in this
field. In 1965, Resolution XXXI concerning the protection of victims of non-international armed conflicts was adopted at the Twentieth International Conference at Vienna. In 1969, at the Twenty-first Conference, Resolution XVII specifically pointed out the inadequacies of the common Article 3 of the Geneva Conventions of 1949. Lastly, in 1973, at the Twenty-second Conference, a draft of Protocol II devoted exclusively to non-international armed conflicts was submitted by the ICRC. Although it was already apparent that there were divergent views on certain basic points, there was nevertheless general agreement for the principle of a distinct instrument relating to armed conflicts of a non-international character.

88. This prolonged process led to the adoption by consensus of Protocol II by the Diplomatic Conference. The text adopted, shorter than the initial draft (28 articles instead of 48) resulted from a last-minute compromise. The drafting and negotiation went through three phases: (a) the ICRC draft (b) the draft produced by the Committees of the Diplomatic Conference; (c) the Pakistani amendment.

2.2.1. HOW PROTOCOL II WAS EVOLVED

89. The ICRC draft, the initial compromise proposal based on consultations with experts, followed the same general pattern as that of Protocol I, taking into account the special conditions of non-international armed conflicts. The text finally adopted followed the same form.

90. The correspondence in subject matter in the two Protocols led the President of the Conference and the ICRC to propose parallel study of the two drafts, Part by Part, by the Committees. This procedure was adopted and resulted in a certain tenuity of the text as compared to the initial draft. What could be described as the "maximalist" tendency of delegates who sought to achieve comparable Protocols for the two categories of conflicts, international and non-international, sometimes led to the adoption of highly detailed rules, like those in Protocol I, and even to the addition of principles which were not included in the ICRC draft - such as general protection of civilian objects.
Prior to the plenary meetings of the fourth session, it became obvious that the draft approved by the Commissions would not be universally acceptable. The Pakistan delegation on its own initiative undertook to work out a simplified draft of Protocol II which might allay the concerns of some delegations. This draft aimed at providing only simple rules, likely to be universally applied and respected by all concerned, with full guarantee of respect for national sovereignty and the principle of non-interference in the internal affairs of a State on whose territory a conflict took place. It will be recalled that these concerns were apparent when the ICRC presented its draft at Teheran.

The Pakistani proposal, a simplified version of the text adopted in Committee, was dealt with by the plenary as an amendment to the draft, which was retained as the basis for the work. Protocol II, in its final form, corresponds to the Pakistani proposal but with some rules added. This result was the outcome of a last-minute consensus described by most of the delegates as a "realistic compromise" arrived at after numerous consultations which produced an agreement amongst an inter-regional group.

2.2.2. MAIN CHARACTERISTICS OF PROTOCOL II

Definition of the field of application constitutes the cornerstone of Protocol II, the very nature of which was affected by this decision on its scope. At the Twenty-second International Conference at Teheran, widely divergent views were expressed on this point. Some delegates wanted a narrow field of application, in which the Protocol would take effect only in conflicts of great intensity, along with a complete set of regulations. Others favoured a wide field of application, with the Protocol applying to all non-international armed conflicts including those of minor intensity, with regulations limited to the most basic provisions.

The ICRC draft proposed an intermediate solution: the Protocol would apply to all armed conflicts not covered by Article 2, common to all the Geneva Conventions of 1949, on the condition that the armed forces or other armed groups in conflict should be organized and under responsible command. The Diplomatic Conference went beyond this proposal. After long and difficult discussion, the defi-
nition of a non-international armed conflict, for the purposes of Protocol II, was carefully worked out.

95. After eliminating the negative reference to Article 2 common to the Geneva Conventions which had been proposed by the ICRC, the delegations deemed it necessary to add three criteria which would constitute the conditions for the application of Protocol II, namely the dissident armed forces or other organized armed groups under responsible command would have to exercise control over a part of the territory; would have to carry out sustained and concerted military operations; and would have to be capable of implementing the Protocol. It should be noted that, in conformity with the ICRC draft, situations of internal disturbances and tensions were excluded from the field of application of the Protocol.

96. This relatively high threshold for application made possible the adoption of Protocol II. It should be emphasized, as expressly stated in the text of Article 1, that Article 3 common to the Geneva Conventions of 1949 remains in force without modification of its own field of application, which is far more extensive than that of Protocol II.

97. The fundamental guarantees for the protection of the human person were substantially augmented and developed. Particularly worthy of mention are the rules for humane treatment which forbid collective punishments and provide special protection for children, rules for the treatment of persons deprived of their liberty, along with judicial guarantees. The ICRC draft provided also for the postponement of the execution of death sentences in certain cases. This provision was not retained nor was the principle of safeguarding an enemy hors de combat. With these two exceptions, all the rules concerning humane treatment were adopted, along the lines of those initially proposed.

98. Article 3 common to the Conventions sets forth the principle of respect and protection of the wounded and sick, but without specifying the procedures for this protection. This deficiency has now been largely remedied, as unanimously desired by the Twenty-first International Conference at Istanbul. Henceforth, civilian medical and religious personnel, medical units and transports and medical activities will be respected and protected. Protection of the
99. While the general principle of protection of the civilian population has been established in Protocol II (Article 13), the rules for the conduct of hostilities were nevertheless simplified in the final text. The ICRC draft contained several basic rules about the methods and means of combat, which were eliminated. It was possible to insert only the principle of quarter in the provision concerning fundamental guarantees (Article 4 (1)). Rules for the protection of the civilian population have been reduced to what were regarded as the essentials. Apart from the civilian population itself, three categories of objects are afforded special protection: objects indispensable to survival, works and installations containing dangerous forces, and cultural objects and places of worship (Articles 14-16).

100. Beginning with the second session of the Diplomatic Conference, the "Red Cross Group" consisting of delegates belonging to the National Societies of their countries, gave special attention to the subject of relief, studying the possibility of strengthening the Red Cross role in Protocol II in conformity with the desire expressed in Resolution XV of the Twenty-second International Conference at Teheran. A draft article was worked out during the third and fourth sessions (see report "Reinforcement in the Additional Protocols of the role of National Societies" (CPA/III/2)). The "Red Cross Group" however, after numerous discussions, decided not to propose an amendment.

101. In Commission II, an ad hoc working group had prepared a single draft article combining the procedures for relief activities and the activities of the National Red Cross Societies. As this draft did not dispel all concerns about interference in the internal affairs of States, it was not adopted by the Conference. A single and concise provision, relating both to relief societies and relief actions, reads as follows:

Article 18 - Relief societies and relief actions

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.
2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

A distinction should be made between the organization of relief within the frontiers of the State where the conflict is taking place (para. 1) and the relief supplied from the outside (para. 2). It is mainly the responsibility of the State in question to organize relief, with the assistance of relief societies on its own territory. In this respect, the provision is perfectly clear, and the role of the National Red Cross Society is specified in the first paragraph. External assistance is usually of a supplementary character, and the National Societies of other countries may offer their co-operation and carry out relief actions if the State concerned gives its approval. The ban on starvation of civilians as a method of combat (Article 14), makes it likely that such offers of assistance will be accepted if the urgency of the needs is so great that the authorities cannot meet their obligations unaided.

2.3. THE POSITION OF THE RED CROSS

102. The activities of the National Red Cross Societies are recognized in several provisions of the two Protocols. In Protocol I, paragraphs 2 and 3 of Article 81, refer in particular to the activities of National Societies, the facilities which must be accorded them, and the assistance that other Red Cross organizations and the League of Red Cross Societies may extend to victims of conflicts. In addition, National Societies shall take part in the training of personnel to facilitate the application of the Conventions and the Protocols (Article 6). Their right to care for the wounded and sick in territories where combats take place is confirmed in Article 17. They may be called upon to transmit information on missing persons (Article 33). Their medical personnel must be respected and protected (Article 8).
103. Under Article 18 of Protocol II National Societies may offer their services for the discharge of their traditional functions in armed conflicts. For further details on this see the report "Reinforcement in the Additional Protocols of the role of National Societies" (CPA/III/2).

104. The position of the International Committee of the Red Cross, defined by the Geneva Conventions, has been confirmed and developed. For example, under Article 81 of Protocol I, parties to a conflict shall grant the ICRC all the facilities within their power to enable it to carry out the humanitarian functions assigned to it by the Geneva Conventions and the Protocol to ensure protection and assistance for the victims of conflicts. The ICRC's right of initiative has also been confirmed since it may "carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned".

105. In Article 5, dealing with the appointment and functions of Protecting Powers, a major role has been assigned to the ICRC in designating these Protecting Powers. The same article also provides that the ICRC may act as a substitute for the Protecting Powers with the agreement of the parties in conflict. The ICRC shall in addition participate in the training of qualified personnel to facilitate the application of the Conventions and the Protocol (Article 6). Article 33 assigns to the ICRC and the Central Tracing Agency the role of intermediary in transmitting information about missing persons. Articles 97 and 98, referring to amendments to Protocol I and revision of its Annex I, provide a specific role for the ICRC in these procedures. This is also the case with regard to amendments which may be made to Protocol II (Article 24).

106. Protocol II does not refer to the role which the ICRC may play in application of the Protocol. On the basis of Article 3 common to the Geneva Conventions, the ICRC can always offer its services to the parties, since Protocol II serves only to develop and supplement this common Article 3.

107. Overall, the position of the Red Cross in humanitarian law has been appreciably strengthened by the two Protocols adopted by the Diplomatic Conference.
III. PROHIBITION OR RESTRICTION
OF USE OF CERTAIN WEAPONS

108. The Twenty-first International Red Cross Conference, in Resolution XIV, "taking into account the danger threatening mankind in the form of new techniques of warfare, particularly weapons of mass destruction," specifically requested the ICRC "to continue to devote great attention to this question, consistent with its work for the reaffirmation and development of humanitarian law and to take every step it deems possible". The Twenty-second Conference invited the ICRC, in its Resolution XIV, "to call in 1974 a conference of government experts to study in depth the question of prohibition or restriction of the use of conventional weapons which may cause unnecessary suffering or have indiscriminate effects..."

109. Between these two Conferences, two sessions took place of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. At the request of experts from nineteen governments at the second session, the ICRC consulted a group of experts on the problem of the use of certain conventional weapons that may cause unnecessary suffering or have indiscriminate effects, a report on which the ICRC published in 1973.

110. As early as 1971, the General Assembly of the United Nations had also invited the ICRC to give particular attention to the need to take "measures to improve the protection of the civilian population during armed conflicts, including legal restraints and restrictions on certain methods of warfare and weapons that have proved particularly perilous to civilians". (Resolution 2852 (XXVI)). The United Nations since that time has repeatedly expressed its concern over the use of certain conventional weapons that may be regarded as causing avoidable suffering or having indiscriminate effects, notably napalm and other incendiary weapons. (See Resolutions 2932 A (XXVII), 3076 (XXVIII), 3255 A (XXIX), 3464 (XXX) and 31/64).
111. In 1974, complying with the Twenty-second International Conference Resolution XIV, the ICRC convoked at Lucerne, from 24 September to 18 October, a Conference of Government Experts on the Use of Certain Conventional Weapons, whose report it published in 1975. At the end of that Conference, the desirability of a second session was generally accepted. The second session was therefore convoked by the ICRC at Lugano from 26 January to 28 February 1976. The report on that session was published in 1976.

112. At the first session of the Diplomatic Conference, an Ad Hoc Committee was set up on conventional weapons, and it met during each of the four sessions. Unlike the other three Committees, the Ad Hoc Committee had no ICRC draft as a working basis: its proceedings had to be based on proposals and working papers put forward by various governments. The 1973 report on the work of the group of experts, mentioned above, and the reports on the conferences of government experts held in Lugano and Lucerne provided the Committee with valuable details.

113. At the fourth session of the Conference the Ad Hoc Committee formed a working group to examine the various proposals on the prohibition or limitation of the use of certain conventional weapons. Within this group there was widespread agreement to condemn the use of weapons designed to wound by means of fragments not detectable by X-rays. There was also a wide area of agreement concerning mines and booby traps, especially on the recording of minefields, on remotely delivered mines, on the use of mines and other devices in inhabited areas, and on banning the use of certain explosive and non-explosive devices. On incendiary weapons, a solid basis for discussion was established. For the other types of weapon discussed - in particular, fuel-air explosives and small-calibre ammunition - documents were presented, but did not receive unanimous approval. Thorough technical discussions will probably have to take place on these subjects before any agreement can be reached.

114. With regard to the follow-up to the work of the Ad Hoc Committee, it was finally agreed that no provisions banning or limiting the use of certain conventional weapons would be proposed to the Diplomatic Conference, which, in the view of many delegations, was not the appropriate forum for the adoption of such instruments. A draft article on the constitution of a permanent committee for the purpose of examining and adopting recommendations on proposals aimed
at the prohibition or limitation of the use of certain conventional weapons did not receive a majority of votes sufficient for it to be retained (draft article 86 bis).

115. With the exception of the two general articles reaffirming the fundamental rules concerning the use of weapons (Article 35) and instituting the obligation to determine the legality of using any new weapon (Article 36) (see above, paras 59 and 60), the record of the Conference in relation to weapons appears at first sight to be poor. However, nearly all the delegates demonstrated their firm intention not to let the results of years of hard work vanish into thin air. A consensus was at last reached on a resolution which recommended that a government conference should be convened, in 1979 at the latest, to produce agreements prohibiting or limiting the use of certain conventional weapons and instituting a procedure for such agreements to be revised and for new proposals to be examined. So a definite appointment has been made, and it may be reasonably hoped that neither the good work done by the Ad Hoc Committee and by the Conferences of experts, nor the hopes expressed by the International Red Cross Conferences will have been in vain.