REPORT

on the study by the

XXIIInd International Conference of the Red Cross

of the

Draft Additional Protocols to the

Geneva Conventions of August 12, 1949

GENEVA

January 1974
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FOREWORD

Original version: the French text of the present REPORT shall, in the event of different interpretation in the English or Spanish versions, be decisive. In Part I of the ANNEXES the original version is shown beneath the reference number of each document.

Amendments to draft Protocols I and II: Pursuant to the decision of the Commission on Humanitarian Law not to put amendments to articles to the vote, the ICRC has reproduced all amendments submitted to the Commission in the Part I of the ANNEXES, under the title Amendments to draft Protocols additional to the Geneva Conventions of August 12, 1949, submitted to the Commission on International Humanitarian Law (DH/4/Corr. 1 to DH/4/Corr. 16). Amendment DH/4/Corr. 13 on a draft Code of International Crimes and Procedure has been reproduced in the original language (English) in the French and Spanish versions of the Report, as the ICRC could not translate it.
### ABBREVIATIONS

<table>
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<tr>
<td>Chap.</td>
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<td>Common Article 3</td>
<td>Article 3 common to the four Geneva Conventions of August 12, 1949</td>
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<td>Declaration of St.Petersburg of 1868</td>
<td>Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime, signed at St. Petersburg, November 29 - December 11, 1868.</td>
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ICRC: International Committee of the Red Cross


para. (paras.): paragraph (paragraphs)


UN: United Nations.

INTRODUCTION

The XXIIInd International Conference of the Red Cross was held at Teheran from 8 to 15 November 1973. It appointed three Commissions, one of which the Commission on International Humanitarian Law, considered the two draft Protocols additional to the Geneva Conventions which are to be the basis for the discussions of the Diplomatic Conference convened by the Swiss Government for the period from 20 February to 29 March and meeting in Geneva in order to adopt those Protocols in final form.

The Conference adopted three resolutions on International Humanitarian Law.

Several delegates made proposals which could not be discussed at length in the Commission in view of the limited time available. The Commission therefore noted these proposals and decided to have them included in this Report, which the International Committee of the Red Cross undertook to prepare and submit to the Diplomatic Conference.

The Report consists of four chapters and annexes. The four chapters make up the summary report on the proceedings of the Commission on International Humanitarian Law concerning the two draft Protocols. The subjects discussed are listed in logical order under the following main headings: general discussion, draft Protocol I, draft Protocol II, and other matters.

The annexes contain all the written amendments to the Protocols as submitted by the delegations attending the XXIIInd International Conference of the Red Cross, the report of the Commission on International Humanitarian Law submitted to the Plenary meeting of the Conference, and the resolutions on the Protocols adopted by the Conference.
Chapitre I

GENERAL DISCUSSION

1. Delegates who spoke on the reaffirmation and development of international humanitarian law first commended the ICRC and its legal experts on the considerable work accomplished, and on achieving an equitable balance between humanitarian considerations and the exigencies of military operations, thus providing a useful basis for discussions at the Diplomatic Conference.

2. The Government of Switzerland was then commended for convening the Diplomatic Conference. The General Commissioner of that Conference said that Switzerland would spare no effort to ensure its success, and he appealed to all governments to associate themselves with that undertaking. He stressed the importance of the widest possible attendance, for which reason the Swiss Government had invited all States parties to the 1949 Conventions and all Member States of the United Nations. It had likewise invited some non-governmental organizations to attend as observers. In addition the Swiss Government hoped that those national liberation movements recognized by intergovernmental regional organizations might also be suitably represented.

3. One delegate, whilst agreeing to attendance at the Diplomatic Conference by States not parties to the Geneva Conventions, considered that such States should not have the right to vote. He expressed the hope that national movements recognized by the Organization of African Unity might take part in the Conference and be given an opportunity to state their views on matters of direct concern to them so that the Conference might benefit
from the experience gained in their struggles. This view was supported by several other delegates, who proposed an additional paragraph to the draft resolution on the reaffirmation and development of international humanitarian law applicable in armed conflicts, requesting the Diplomatic Conference to invite representatives of national liberation movements to attend.

4. Some delegates proposed another amendment requesting the Conference to consider the possibility of inviting those national liberation movements recognized by regional intergovernmental organizations to attend as observers in accordance with United Nations procedure. Following a discussion on this matter, the Commission agreed to insert in the operative part of the resolution on the reaffirmation of international humanitarian law applicable in armed conflicts a paragraph requesting the Diplomatic Conference to give due consideration to inviting the aforesaid movements to attend, under certain conditions. 1/

5. In general delegates stressed the urgent need to reaffirm and to develop international humanitarian law. However, one delegate emphasized the value of the Geneva Conventions which should not, in his view, be replaced by others or altered fundamentally but reworded in such a way as to provide better protection for prisoners of war, civilians and the environment. That task should be undertaken with due regard to the present-day situation, the state of international relations and the development of new military techniques. Another delegate pointed out that the effectiveness of the rules of international humanitarian law depended entirely on the practical possibility of their being applied in both letter and spirit. A code of theoretical ideals would not help the cause of the International Committee of the Red Cross and might even encourage, rather than restrain, armed conflicts. To yet another delegate, concerned over the applicability of the Conventions and additional Protocols, those Protocols appeared complex for two reasons. Firstly, there was the question of the situation which would prevail after the coming into force of the additional Protocols, i.e. a situation in which a community of States would comprise those which were parties to the Conventions only, and those which were parties to both the Conventions and

1/ See Annexes, Part III. Resolution on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.
the Protocols. Secondly, the proposed additional Protocols were so structured that anyone requiring to apply them had to look up the Conventions as well. It should be remembered that not everybody was an expert on the subject, so that if humanitarian law was to be easily applicable and not become a dead letter, it would be advisable to keep the proposed Protocols as simple as possible.

6. On this point the delegate was supported by another, who requested that the Protocols' provisions be clear and simple to ensure uniform interpretation by all States parties to the Conventions who were to become parties to the additional Protocols. Several other delegates expressed the hope that all provisions would be adapted to the social and economic conditions of developing countries.

7. Some delegates pointed out that any new international humanitarian law should be based on the rule requiring each State to refrain, in its international relations, from the use of force or threats thereof against the territory or independence of other States. Any war of aggression, waged in violation of international law and of the United Nations Charter, was a crime against peace, for which the State which initiated such a war should be held responsible. The development of international humanitarian law should on no account imply that war was acceptable to the international community, nor undermine the principles of State sovereignty and non-interference in internal affairs. It was those very considerations which demanded a distinction between just and unjust wars, between aggressors and victims of aggression, since the purpose of humanitarian law was to provide protection only to victims of acts of aggression. Other delegates were opposed to that view. To safeguard the universality of international humanitarian law, every effort should, in their opinion, be made to keep it apart from political, ideological and subjective considerations, while top priority should be given to objective criteria, such as preventing avoidable suffering, distinguishing the civilian population from combatants and civilian objects from military objectives, and preventing treacherous methods of war, so as to provide all conflict victims with the protection to which they are entitled. 2/

2/ See below, Chapter II, paragraph 39.
connection that the protection of humanitarian law must be provided, regardless of the reason for which the authority responsible for a prisoner prior to his capture resorted to armed force. Such considerations are a matter of *ius ad bellum* and should in no way affect the treatment of prisoners.

8. Some delegates raised the question of the connection between "the law of The Hague" and "the law of Geneva". They pointed out that it had sometimes been considered necessary to draw a sharp distinction between the two. The former dealt with the use of force and means and methods of combat; and the latter referred to the protection of victims of armed conflicts. These delegates were convinced that whatever might be said in favour of such a distinction - which had now become a matter of tradition - it was impossible at the present time to try to alleviate the suffering of war victims without considering the means and methods which caused that suffering.

9. Referring to the "law of the Hague", one delegate expressed regret that the draft Protocols failed to give the so-called "Martens clause" the place it deserved. That clause, he said, reflected the way in which the drafters of Conventions at Brussels in 1874 and at the Hague in 1899 and 1907 had dodged the issue and proved unable to define combatants. As a result, Articles 1 and 2 of the 1907 Hague Regulations stated the *jus* and *de jure* conditions with which people must comply to qualify for consideration as combatants, but did not altogether exclude other belligerents from the scope of humanitarian principles. On the question of combatants in particular, the so-called "Martens clause" should be reaffirmed, in order to emphasize that humanitarian law, which will be developed, did not embody all the humanitarian aspirations of peoples and nations, although some such aspirations were reflected in other legal instruments. Another delegate, anxious to avoid too narrow an interpretation of the provisions of the two Protocols, proposed the insertion of a paragraph 3/ reaffirming the so-called "Martens clause" in each Protocol.

10. One delegate raised the question of the connection between international humanitarian law and human rights.

2/ See Annexes, Part I, DH/4/Corr.3
In his view, it was essential to state clearly that the scope of each was complementary to that of the other, the neither excluding the other. He proposed the insertion 4/ in both Protocols of an article stipulating that no provision of either instrument should be interpreted in such a manner as to modify or abrogate any fundamental human right. Another delegate pointed out that according to Article 60 of the 1969 Vienna Convention, the unconditional nature of international humanitarian law had been duly recognized.

11. Another proposal by one delegate was the insertion in both Protocols of a provision stating that no provision of either Protocol should impede humanitarian activities which the ICRC might undertake in situations not within the purview of the Protocols.

4/ See Annexes, Part I, DH/4/Corr.2
Chapter II

DRAFT PROTOCOL ADDITIONAL
TO THE GENEVA CONVENTIONS OF AUGUST 12, 1949
AND RELATING TO THE PROTECTION OF VICTIMS
OF INTERNATIONAL ARMED CONFLICTS

1. PART I - GENERAL PROVISIONS

Article 2. - Definitions

12. Several delegates stressed that among the difficulties yet to be overcome were those raised by Article 2 (e). It was essential, in their opinion, to enumerate precisely and fully those persons and objects protected by Protocol I. 5/

Article 4. - Legal status of the Parties to the conflict

13. One delegate proposed the deletion 6/ of the reference to territories over which the Parties to the conflict exercised authority.

Article 5. - Appointment of Protecting Powers and their substitute

14. Many delegates were in favour of strengthening the .

5/ See also below, Chap. II, paras. 50 and 65
application of the Conventions, believing that to improve those provisions of the Conventions concerning their implementation was one of the essential objectives of reaffirming and developing humanitarian law.

15. Some delegates considered that the system of Protecting Powers should be improved by introducing a measure of automatic procedure in their designation and acceptance, and by strengthening the position of the ICRC as substitute. One delegate held the view that now there was no suitable alternative to the system of Protecting Powers or of a substitute, to ensure that the Geneva Conventions were applied as they should be. Another delegate supported Proposal II in Article 5 (3), according to which Parties to a conflict would under certain conditions, be obliged to accept an offer of the International Committee of the Red Cross to act as substitute.

16. In one delegate's view, Proposals I and II in Article 5 (3) provided no guarantee of the appointment of a substitute in the event of failure to appoint a Protecting Power. He proposed an amendment incorporating parts of both proposals and aimed specifically at strengthening the position of the substitute.

17. Another delegate suggested that where no Protecting Power was appointed, the ICRC should be accepted as substitute until one was appointed. This view was supported by another delegate, who considered that the role of the ICRC as a substitute should be extended as much as possible.

18. One delegate proposed that Article 5 (3), i.e. Proposals I and II be replaced by an article which would, in the event of failure to appoint a Protecting Power, provide for the activities of a humanitarian organization such as the ICRC, appointed by one Party to the conflict and recognized by the other, or appointed by the United Nations or by a conference of High Contracting Parties.

19. Other delegates disagreed with that proposal, pointing

out that the system of Protecting Powers and their substitute could work only on the basis of consent by Parties to the conflict. In their opinion, it was essential that the principles of national sovereignty and non-interference in the internal affairs of any State be observed in all circumstances. One delegation regarded acceptance by the Parties to the conflict as a *sine qua non*. Another delegate pointed out that it was not enough for a Protecting Power to be automatically appointed; that Power must be in a position to carry out the function effectively, hence the need to obtain the consent of the Parties to the conflict.

**Article 6.** Qualified persons

20. Several delegates proposed a joint amendment 9/ inserting this article a new paragraph which would provide for National Red Cross Societies co-operation in the recruitment and training of qualified personnel.

**Article 7.** Meetings

21. An amendment 10/ to this article proposed, in the main, that meetings of the High Contracting Parties be convened, not to examine general problems - as had been suggested by the ICRC - but *special* ones concerning the application of the Conventions and of Protocol I. Such meetings might also be convened at the request of the General Assembly of the United Nations.

2. **PART II - WOUNDED, SICK AND SHIPWRECKED PERSONS**

A. **SECTION I - GENERAL PROTECTION**

**Article 8.** Definitions

22. Referring to sub-paragraph (d) (ii) of the French version of this article, one delegate considered that the term "personnel sanitaire" was inappropriate as a definition of the medical profession, in particular civilian doctors. The term did not appear anywhere in the

9/ See Annexes, Part I, DH/4/Corr. 10
10/ See Annexes, Part I, DH/4/Corr. 7
Conventions, which referred instead to "personnel médical" (Fourth Convention Art. 56) or "personnel des hôpitaux" (Fourth Convention, Art. 20). He requested that the term "personnel médical" be retained, as it was free of ambiguity and equally applicable to paramedical personnel.

23. Another amendment 11/ proposed that the provision of first aid be included among the duties of civilian medical personnel.

24. Referring to sub-paragraph (e), one delegate said that one distinctive emblem (the Red Shield of David) was not recognized in the Conventions, an unjustifiable discrimination which should be eliminated. Another delegate expressed concern lest the protection provided by the emblem mentioned in the Conventions be undermined by the multiplication of those who will be authorized to display it.

Article 9.- Field of application

25. A proposal 12/ was made to mention the International Committee of the Red Cross and the League of National Red Cross Societies as examples of an "organization of an international character".

Article 17.- Role of the civilian population

26. Some delegates requested that National Red Cross Societies be specifically mentioned in paragraph 2. 13/

B. SECTION II - MEDICAL TRANSPORTS

27. Various comments of a general nature were made on Section II, Part II.

28. One delegate was in favour of maximum protection for medical aircraft. Another delegate, however, considered 11/, 12/ and 13/ See Annexes, Part I, DH/4/Corr. 10
that the provisions of that section of the Protocol were discriminatory and has been drafted solely to safeguard the interests of the more technologically-developed countries and to ensure that the wounded, sick and shipwrecked persons of those countries should be better protected than those of developing countries. He proposed that all medical aircraft be placed under the command of some neutral and impartial organization acceptable to all Parties to the conflict.

3. PART III - METHODS AND MEANS OF COMBAT

PRISONER-OF-WAR STATUS

29. An introductory statement was made by one delegate who disapproved of two such vastly different subjects as methods and means of combat on the one hand, and prisoner-of-war status on the other, being included in the same part of the Protocol. He believed that the question of prisoner-of-war status should be dealt with in a Part on its own. Other delegates noted with regret that in Section I at any rate, the ICRC had merely reaffirmed the principles of the Declaration of St. Petersburg of 1868 and the Hague Conventions of 1899 and 1907, with no attempt to adapt them to modern conditions of warfare. \[14/\] The hope was expressed that the provisions of that Section would be closely related to those concerning the protection of the civilian population.

A. SECTION I - METHODS AND MEANS OF COMBAT

Article 33.- Prohibition of unnecessary injury

30. One delegate considered that this article was by no means satisfactory and that it should specify that it referred also to unnecessary injury to combatants. An amendment \[15/\] was proposed, prohibiting the use of weapons "which have indiscriminate effects".

\[14/\] See also Chapter IV below, para. 94
\[15/\] See Annexes, Part I, DH/4/Corr. 1
Article 34.- New weapons

31. It was generally considered that there was a need to specify that the High Contracting Parties ensure not only that the use of new weapons or methods of warfare shall not cause unnecessary injury but also that they have no indiscriminate effects. 16/ One delegate proposed an amendment 17/ requesting the High Contracting Parties to ensure that the use of new weapons or methods "will be in conformity with the principles and rules of international humanitarian law."

Article 35.- Prohibition of perfidy

32. One delegate considered it advisable to elaborate the definition of perfidy in the light of recent experience of guerrilla warfare. An amendment was proposed 18/ to paragraph 2 of this article, specifying, in fine, that ruses of war should not be regarded as perfidious acts.

Article 40.- Independent missions

33. One delegate proposed the deletion from paragraphs 1 and 2 of the words "...and other combatants referred to in Article 4 of the Third Convention, as well as those combatants referred to in Article 42." 19/

B. SECTION II - PRISONER-OF-WAR STATUS

Article 42.- New category of prisoners of war

34. Serious objections were raised to this article, which was regarded as insufficiently clear by some delegates and too rigid by others.

35. In the view of one delegate, paragraph 2 was so confusing that its precise meaning escaped him in fact. He insisted that a clear distinction between combatants and civilian population was an underlying principle of humanitarian law.

16/ See Annexes, Part I, DH/4/Corr. 1
17/ See Annexes, Part I, DH/4/Corr. 5
18/ and 19/ See Annexes, Part I, DH/4/Corr. 16
36. Another delegate objected to any easing of the conditions of Article 4 A (2) of the Third Convention. He put forward an amendment 20/ imposing two conditions for the granting of prisoner-of-war status to members of resistance movements, i.e. that such movements belonged to a party to a conflict whose government or authority was struggling against occupation by a foreign power; that such movements fulfilled all the conditions laid down in Article 4 A (2) of the Third Convention.

37. Another amendment 21/ proposed the replacement of Article 42 as drafted by the ICRC by another not imposing any conditions, members of organized resistance movements being considered as members of the armed forces of a party to a conflict.

C. POSSIBLE THIRD PARAGRAPHS TO ARTICLE 42

38. Lengthy discussions took place on the controversial problem raised by this paragraph, according to which members of organized liberation movements should be treated as prisoners of war if fulfilling the conditions laid down in paragraph 1 of the article. On the whole, opinion was divided between two main alternatives.

39. Some delegates pointed out that they had never passed up an opportunity – especially when relevant resolutions were being discussed in the United Nations General Assembly – to declare themselves in favour of humanitarian principles and measures to alleviate suffering in struggles for self-determination and national liberation especially in relation to relief for victims and the treatment of captured combatants. On the other hand, they considered that the universal character of humanitarian law should be preserved, and therefore opposed the idea of a new classification of armed conflicts based on political causes. International law recognized only two kinds of conflict, based on objective criteria, i.e. international and non-international.

20/ See Annexes, Part I, DH/4/Corr. 16
21/ See Annexes, Part I, DH/4/Corr. 1
conflicts. This distinction should be respected. These delegates were therefore not prepared to admit that national liberation wars should be regarded as international armed conflicts.

40. In addition, the same delegates pointed out how difficult it was in the minds of many, for political, social and economic reasons, to apply Protocol II, even though it only posited fundamental rules. The questions now arising were how could liberation movements respect all the Conventions, and even whether they could fulfil the conditions laid down in Article 42 (1).

41. Some delegates requested that the proposed new paragraph be abandoned altogether.

42. Many delegates objected to that suggestion, pointing out that wars of national liberation were in fact international armed conflicts, to which all the Geneva Conventions were applicable. This meant at the outset that members of such movements should, if captured, be treated as prisoners of war. 22/

43. Other delegates agreed with the ICRC's proposal contained in the note to Article 42, and requested that this note become paragraph 3 of the article. 23/

44. Other delegates proposed the insertion, after Article 1 of the Protocol I 24/, of a new article which would make the Geneva Conventions and Protocol I applicable to any armed conflict for the right to self-determination.

45. One delegate was not satisfied with a mere declaration on the application of Protocol I to freedom fighters, nor with the ICRC's proposal in Article 42. In his view, that article laid down conditions unacceptable to liberation movements, for which the sole advantage was that their combatants would be treated as prisoners of war in the event of capture. The mere fact of

24/ See Annexes, Part I, DH/4/Corr. 1
requiring such combatants to make themselves distinguishable from the civilian population deprived the movements of their most effective method of combat. In addition, their organizational basis and finances precluded their fulfilling the conditions laid down, especially those concerning the treatment of sick and wounded persons. He nevertheless wished armed struggles for self-determination and national liberation to be mentioned in the Preamble and Article 1 of Protocol I.

46. On the question of national liberation wars and the treatment of their combatants, one delegate submitted two amendments 25/, one on the methods and means of combat in such wars, the other on the treatment of civilians deprived of freedom and of captured combatants. 26/ Another delegate said that mercenaries in the armed forces engaged in fighting national liberation movements should not be regarded as combatants, nor treated as such when captured.

4. PART IV - CIVILIAN POPULATION

A. SECTION I - GENERAL PROTECTION AGAINST EFFECTS OF HOSTILITIES

47. Most delegates stressed the importance of the provisions on the protection of the civilian population. The wars of the twentieth century had demonstrated the increasing suffering and number of victims among the civilian population. For that reason the priority objective of the additional Protocols should, in their view, be to strengthen the protection of the civilian population under international law. The population should be safeguarded against destructive methods likely to annihilate it and armed forces, and against methods involving the civilian population in conflict, that is to say, depriving it of the immunity to which it is entitled so long as it is innocent of any participation in the conflict.

25/ See Annexes, Part I, DH/4/Corr. 15
26/ See also Chapter IV below, para. 98
48. Several delegates welcomed the new articles drafted by the ICRC as an improvement on previous drafts.

49. Some delegates stressed the need to maintain the distinction between combatants and the civilian population in order to protect the latter from attacks. 27/

50. A delegate pointed out that in spite of the definition contained in Article 45, the question of which population should be protected under the provisions of this Part of the Protocol was debatable. Whether it was the population of the adversary, that of occupied territories or that of a given country was not made clear. 28/ Neither were any criteria laid down on nationality, an omission which was bound to affect the study of the articles.

Article 46. - Protection of the civilian population

51. Referring to sub-paragraph 3 (a), one delegate suggested that the phrase "and are at some distance from each other" be reworded in such a way as to provide better protection to the civilian population.

52. Another delegate proposed the deletion of sub-paragraph 3 (b) 29/ since no military advantage could, in his view, justify loss or destruction, even if accidental, among the civilian population.

Article 48. - Objects indispensable to the survival of the civilian population

53. Several delegates jointly submitted an amendment 30/ to insert, after the list of objects to be protected, some reference to the salubrity and balance of the environment. They pointed out that the importance of protecting the environment for the survival of humanity, both in peace and in war, was now acknowledged.

27/ See also Chapter II above, para. 35
28/ See also Chapter II, paragraph 12 above and Chapter II, paragraph 65 below
29/ See Annexes, Part I, DH/4/Corr. 5
30/ See Annexes, Part I, DH/4/Corr. 6
54. One delegation proposed the insertion, after Article 48, of a new article on the protection of cultural objects.

Article 49.– Works and installations containing dangerous forces

55. One delegation proposed an amendment to paragraph 2, imposing stricter obligations on both parties to the conflict by forbidding the location of military objectives in the vicinity of the objects mentioned in paragraph 1.

Article 50.– Precautions in attack

56. In the view of one delegate, this article suggested that Parties to a conflict would have intelligence services which many developing countries did not possess. Furthermore, the article assumed that all Parties to a conflict had exactly the same sense of proportion. In fact, what might appear to be reasonably proportionate to one Party might seem unreasonable to another. He therefore regarded Article 50 as altogether unrealistic.

57. Two conflicting amendments were put forward on subparagraph 1 (b) of this article. One amendment requested that the words "if possible" be deleted, it being considered dangerous to weaken a provision which should be peremptory and absolute if civilian population and objects were to be effectively protected. The other amendment was to the effect that the obligations of persons launching an attack should, on the contrary, be less demanding.

Article 54.– Definition

58. One delegate strongly recommended caution in defining the functions of civil defence and those who undertake them. In his own country, civil defence had developed in accordance with the requirements of the struggle for independence, and with the concept of participation by the civilian population so that the objectives of

31/ See Annexes, Part I, DH/4/Corr. 4 (Rev. 1)
32/ See Annexes, Part I, DH/4/Corr. 16
33/ See Annexes, Part I, DH/4/Corr. 5 and 16
civil defence differed from those of other countries. He believed, therefore, that if there had to be a provision defining civil defence functions, it should allow other tasks in addition to those listed.

Article 55.— Zones of military operations

59. A suggestion was made that the possible additional paragraph to this article be deleted. 34/

Article 59.— Identification

60. One delegation opted for Proposal I in paragraph 4 of this article. 35/

B. SECTION II — RELIEF IN FAVOUR OF THE CIVILIAN POPULATION

Article 62.— Relief actions

61. Two amendments were proposed on this article. 36/ One of these was for the insertion, at the end of paragraph 1, of a specific reference to the relief work undertaken by National Red Cross Societies, the ICRC and the League of Red Cross Societies. The other amendment, on paragraph 2, required Parties to a conflict and any High Contracting Party through whose territory supplies must pass to grant free passage, after having ascertained that relief actions were being carried out in accordance with paragraph 1. To provide better protection for relief workers, one delegate proposed the insertion at the end of paragraph 3 of a phrase stating that such workers would be duly respected, protected, recognized, and allowed to perform their work without delay.

34/ and 35/ See Annexes, Part I, DH/4/Corr. 16
36/ See Annexes, Part I, DH/4/Corr. 10 and 16
C. SECTION III - TREATMENT OF PERSONS IN THE POWER OF A PARTY TO THE CONFLICT

Measures in favour of women and children

Article 68.- Protection of children

62. One delegate considered that the economic and social conditions of developing countries should be taken into account, by inserting somewhere in this article a sentence stating that Parties to a conflict should provide children with the care and aid their age and situation required to the maximum extent they could afford.

Article 69.- Evacuation of children

63. An amendment was proposed providing for assistance by National Red Cross Societies to the authorities concerned for the implementation of this article.

5. PART V - EXECUTION OF THE CONVENTIONS AND OF THE PRESENT PROTOCOL

A. SECTION I - GENERAL PROVISIONS

Article 71.- Legal advisers in armed forces, and
Article 72.- Dissemination

64. Several delegates considered that National Red Cross Societies should be allowed to assist the relevant authorities of the High Contracting Parties in the application of the Conventions and Protocol I, and also

37/ and 38/ See Annexes, Part I, DH/4/Corr. 10
be given a role in the dissemination of international humanitarian law.

B. SECTION II - REPRESSION OF BREACHES OF THE CONVENTIONS AND OF THE PRESENT PROTOCOL

55. Several delegates stressed the importance of legal penalties for breaches of international humanitarian law, and regarded the ICRC's proposals on this question as inadequate. One delegate considered that the system of the Geneva Conventions should be strengthened by clearly defining, in the Protocol, those persons and objects to be protected and by providing a comprehensive list of serious breaches committed against those persons and objects. Another delegate thought that one of the most imperative tasks was to contribute actively to preventing war crimes and, by the same token, strengthening the protection of victims of armed conflicts against inhuman acts. He submitted an amendment requesting that all humanitarian law instruments mention war crimes in the first place; that all persons infringing the rules and customs of war be declared war criminals; and that measures to prevent war crimes be clearly defined. In his view, war criminals should not only be punished but should not be entitled to the protection of the Conventions. On the other hand, they should be treated humanely in the event of capture.

66. One delegate submitted a draft Code of International Crimes and Procedure. He reviewed the work undertaken on the repression of breaches since the twentieth International Conference of the Red Cross held at Vienna in 1965 and considered it high time that the Diplomatic Conference should deal with the question with the attention it deserved. In his view, the adoption of the proposed code - regarded by many as an ambitious and somewhat unrealistic proposition - would play a decisive role in the effective application of international humanitarian law in view of the code's preventive nature. The code would, furthermore, avoid

39/ and 40/ See Annexes, Part I, DH/4/Corr. 15
42/ XXth Internat. Conf. Red Cross, Res. XXVI, Vienna 1965
trials of the vanquished by the victors by making it possible to put on trial war criminals of all Parties to the conflict, whether victorious or vanquished.

Article 77.- Superior orders

67. An amendment was proposed 43/ to replace paragraph 1 of this article by another, calling upon the civil and military authorities of Parties to a conflict to give orders and instructions calculated to ensure respect of the Conventions and Protocol I and to supervise the execution thereof.

6. PART VI - FINAL PROVISIONS

Article 85.- Reservations

68. One delegate said that the reasons which had compelled the ICRC to preclude reservations on certain articles mentioned in paragraph 1 of this article were understandable, and that his delegation had no intention of expressing reservations incompatible with the spirit and objectives of Protocol I. Nevertheless, he considered that the right of States freely stipulate reservations on acceding to international treaties should not be impaired. He therefore suggested that Article 85 be deleted altogether.

69. Another delegate held the opposite view. He considered that the right to express reservations should be limited and that the ICRC's proposals in that connection were well-founded, since there was no body which could decide whether or not a reservation was compatible with the aims of a treaty. The idea of precluding reservations was, in his view, a utopic one.

43/ See Annexes, Part I, DH/4/Corr. 16
Chapter III

DRAFT PROTOCOL ADDITIONAL
TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949
AND RELATING TO THE PROTECTION OF VICTIMS
OF NON-INTERNATIONAL ARMED CONFLICTS

1. GENERAL PROVISIONS

70. The majority of delegates who spoke on Protocol II admitted that there was an urgent need to reaffirm and develop international humanitarian law in non-international armed conflicts in order to provide better protection to victims of such conflicts. It was pointed out that far too many non-international conflicts had spread devastation in several parts of the world and that mankind was now acutely aware of the need to expand humanitarian law by including therein basic rules which could not be ignored by any human conscience.

71. One delegate thought that the Conventions drew a distinction between victims of international and non-international armed conflicts. He submitted an amendment, namely: "The Geneva Conventions grant protection to all war victims, without making any distinction between international armed conflicts and non-international armed conflicts". On the other hand, other delegates commended the ICRC for having drawn up a separate Protocol for victims of non-international armed conflicts, in due observance of the

44/ See Annexes, Part I, DH/4/Corr. 15
distinction which international law made between the types of conflicts. One delegate carried this idea one step further by suggesting that Protocol II should be renamed the Fifth Geneva Convention.

72. All delegates saw draft Protocol II as an attempt to strike a balance between the requirements of humanity and State security. As a result, some delegates felt obliged to point out that no provision of Protocol II should neither prevent a State from restoring order on its own territory, nor confer a special status on an insurgent party. If suitable precautions were not taken in that connection, these delegates feared that Protocol II would not be ratified, or, although in force, would not be applied.

73. One delegate expressed doubts on the ability of developing countries to apply Protocol II. Those countries were engaged in the difficult task of nation-building and - especially in the case of newly independent countries - in that of uniting different ethnic groups who viewed such efforts with suspicion or even aspired to secession. In his view, Protocol II, by granting a measure of protection to rebellious forces, was likely to encourage rebellion and endanger the security of the State.

74. Some delegates restated the view that Protocol II should in no way undermine State sovereignty or justify interference in a State's internal affairs. One delegate commended the ICRC for having inserted an article (Article 4) on non-intervention in the Protocol, thus making Part I thereof much more acceptable to his delegation.

75. Some delegates pointed out that the provisions which might finally be adopted depended to a large extent on the scope of Protocol II. It was a matter of choosing between two alternatives: on the one hand, a limited scope, the Protocol being applicable only in very intensive conflicts and containing a very full set of rules; on the other hand, a Protocol applicable to all, even minor, non-international armed conflicts, with rules confined to basic provisions. One delegate said that at the first session of the Conference of Government Experts in 1971, his delegation had submitted a draft Protocol intended to provide victims of non-international armed conflicts with basic protection which would
be more extensive and specific than that provided by common Article 3. That draft Protocol had been intended to be applicable in all conflicts including non-intensive ones. In his view, that approach was preferable and more likely to achieve the objective of Protocol II, i.e. the observance of fundamental humanitarian rules in all non-international armed conflicts. Another delegate was opposed to that view, and stressed the need for a rigid field of application in which the concept of non-international armed conflict should be clearly defined.

76. One delegate, although he had no criticism to make of the systems of two Protocols, thought that Protocol II should as far as possible contain rules similar to those of the Conventions and Protocol I. Another delegate considered that on the question of protecting the civilian population at any rate, the rules in both Protocols should be identical. Yet another delegate disagreed with both these views and expressed the conviction that whatever field of application of Protocol II were finally adopted, its substance should remain simple and not necessarily include provisions reflecting those of Protocol I. Problems of dissemination and interpretation were acute during a non-international armed conflict, so that it was essential that rules be easily comprehensible and applicable.

2. PART I - SCOPE OF THE PRESENT PROTOCOL

Article 1.- Material field of application

77. Some delegates considered that the concept of non-international armed conflicts was not defined sufficiently clearly in this article. Doubts were expressed as to whether draft Protocol II actually went further than common Article 3. The negative reference to common Article 2 and the exclusion of situations of internal disturbance and tension made it difficult to identify non-international armed conflicts. According to some delegates, more details should have been provided on, for instance the duration and intensity of hostilities and on the physical organization of rebel forces. One delegate verbally proposed an amendment to Article 1, making Protocol II applicable to all non-international armed conflicts taking place on the territory of a High
Contracting Party between organized armed rebel forces and the armed forces of the government in power, especially in cases where:

- hostilities had lasted for some length of time;
- the rebel forces were in control of part of the territory;
- the parties to the conflict had the physical means to apply and to enforce application of the Protocol;
- the rebel forces were fairly large in number and identifiable as rebels during their military operations by an instantly recognizable distinctive emblem.

78. Other delegates held the opposite view, and favoured a broader and more flexible Article 1. One delegate considered this desirable for humanitarian reasons, and that all individuals should at all times be protected by the general principles outlined in Protocol II. He therefore suggested the deletion of paragraph 2 of the article. Another delegate expressed the hope that a more simple formula might be adopted, such as the draft proposal his delegation had submitted at the first session of the Conference of Government Experts in 1971. That proposal was that the provisions of Protocol II should apply to all non-international armed conflicts between government military forces and regular or irregular forces to which Article 2 common to the Conventions did not apply. Yet another delegate submitted an amendment rewording paragraph 1 of the article.

3. PART II - HUMANE TREATMENT OF PERSONS IN THE POWER OF THE PARTIES TO THE CONFLICT

Article 8.- Persons whose liberty has been restricted

79. One delegate proposed an amendment requiring parties to the conflict to supply lists of places of detention. 46/

45/ and 46/ See Annexes, Part I, DH/4/C corr. 16
Article 9.- Principles of penal law and
Article 10.- Penal prosecutions

80. One delegate, while not submitting a formal amendment, nevertheless considered that the detailed provisions relative to the fundamental principles of penal law and to the safeguards of proper trial and defence, in these articles, were inappropriate in Protocol II, thus associating himself with the views expressed by other delegates that the right of States to defend themselves against rebellion and to restore order in their own territory should be left intact.

4. PART III - WOUNDED, SICK AND SHIPWRECKED PERSONS

Article 14.- Role of the civilian population

81. One delegate proposed an amendment 47/ requiring persons who give shelter, care and assistance to wounded and sick persons of either party to the conflict to so inform the authorities in power.

Article 16.- General protection of medical duties

82. See the amendment proposed on this article. 48/

5. PART V - CIVILIAN POPULATION

83. Some delegates considered that rules on the protection of the civilian population should be uniformly applicable in all armed conflicts, whatever their nature. 49/

47/ and 48/ See Annexes, Part I, DH/4/Corr. 16
49/ See also Chapter III above, paragraph 76
Article 25.— Definition

84. One delegate proposed an amendment with a twofold objective: a more precise definition of a civilian, and a definition of civilian objects, the latter to be contained in a new paragraph. 50/

6. PART VI — RELIEF

Article 33.— Relief actions

85. As for Article 62 of Protocol I, a delegate proposed an amendment to Article 33 (2) 51/ calling upon parties to the conflict and all High Contracting Parties to grant relief supplies free passage after having ascertained that the relief actions are carried out in accordance with Article 33 (1).

7. PART VII — EXECUTION OF THE PRESENT PROTOCOL

Article 39.— Co-operation in the observance of the present Protocol

86. One delegate pointed out that in this article, the ICRC had merely restated the second paragraph of common Article 3, which provided for an impartial humanitarian body such as the ICRC to offer its services to parties to a conflict, which offer the parties were under no obligation to accept. This provision was regarded as inadequate, and it was considered that the obligations of parties to a conflict should be emphasized in order to ensure observance of Protocol II during armed conflicts.

50/ and 51/ See Annexes, Part I, DH/4/Corr. 16
87. One delegate expressed the wish that a provision on reservations be inserted in draft Protocol II.
Chapter IV

OTHER MATTERS

1. STRENGTHENING THE ROLE OF NATIONAL SOCIETIES AND THEIR FEDERATION

88. Some delegates considered that the draft Protocols drawn up by the ICRC attached insufficient importance to the role of National Red Cross (Red Crescent, Red Lion-and-Sun) Societies and to their federation, the League of Red Cross Societies, during armed conflicts.

89. A Vice-Chairman of the Board of Governors of the League said that the question had been discussed by the Board, which had adopted a relevant resolution.52/ He submitted a draft resolution, drawn up by the Board, stressing the need to strengthen the role of National Societies during armed conflicts and to facilitate their work on behalf of victims of such conflicts. Those Societies which were recognized by their respective governments and by the ICRC, used the emblems laid down in the Geneva Conventions and were required to observe the principles of the Red Cross at all times. They could not, therefore, be confused with other relief societies. The role of National Societies had expanded considerably, since those Societies now attended to all categories of conflict victims, with the help of voluntary and regular staff and considerable other material means. Government representatives at the Diplomatic Conference in Geneva should bear those

52/ See Annexes, Part I, DH/4/Corr.8
facts in mind. In that connection, the second session of the Conference of Government Experts had drafted a general clause 53/ inviting Parties to the conflict to give National Societies whatever help they required to carry out their activities.

90. One delegation submitted an amendment to the above-mentioned clause, intended to strengthen the humanitarian activities of National Societies only "on the territory of their respective countries".

91. One delegate stressed the need to strengthen the position of National Societies in non-international armed conflicts, and considered that draft Protocol II (Article 35) failed to do this adequately since it did not clearly define the position of National Society workers operating on the rebel side.

92. A group of delegates proposed a series of amendments to Protocol I 54/ inserting a new article summing up in a general way the position of National Societies and international Red Cross bodies, and introducing in existing articles a reference to National Societies, the ICRC and the League.

2. PROHIBITION OR RESTRICTION OF THE USE OF CERTAIN WEAPONS

93. One delegate, in submitting a draft resolution on this subject, said that much work needed to be done to develop international humanitarian law while preserving the universality of its rules. For the sake of universality, he considered that the prohibition and restriction of the use of certain weapons could be contained in a separate - third - Protocol, which the ICRC, as the link between governments should be requested to draft.

54/ See Annexes, Part I, DH/4/Corr. 10
94. Another delegate submitted a draft resolution on the same subject, and said that a great many governments had repeatedly requested that the Diplomatic Conference consider the question of prohibiting or restricting the use of certain weapons. He reviewed the work accomplished in that field since 1957, in particular the Report of the Secretary-General of the United Nations on Napalm and Other Incendiary Weapons and the Report of a group of experts convened by the ICRC on Weapons that may cause Unnecessary Suffering or have Indiscriminate Effects. He regretted that the ICRC had not included in the draft Protocols proposals for the banning or restricting the use of specific weapons, but had merely restated certain principles of the Declaration of St. Petersburg of 1868 and of The Hague Conventions of 1899 and 1907. If those general principles were to be really effective, they should be expanded to include rules on specific weapons and a procedure which could easily permit those rules to be kept up to date in the light of developments in technology. In view of the many studies on the subject in recent years, he believed that it was in no way premature to request the Diplomatic Conference to consider the matter. With regard to the fears expressed by some delegates that this might overburden the Conference and slow down the work on the draft Protocols, he agreed that the question be dealt with by an ad hoc committee of the Conference. Since, furthermore, it appeared increasingly likely that the Diplomatic Conference would require two sessions, a committee of experts might be requested to go further into the matter during 1974 and to submit a report to the Conference at its second session. Several delegates supported that proposal and stressed the importance they attached to a study of the prohibition or restriction of the use of certain weapons, including such weapons as might upset ecology and the environment. One delegate said that his government had officially requested the insertion of the subject on the Conference's agenda.

95. Another delegate commended those delegations which had so indefatigably requested consideration of this subject on humanitarian grounds, but pointed out that it was nevertheless a very complex subject, and one which had not been gone into to as thoroughly as had the two draft Protocols prepared by the ICRC. Tackling the question prematurely might well jeopardize or at least slow down the adoption of the two draft Protocols.

96. Other delegates recognized the importance of the
proposed study of the question, albeit with some reservations. They would be in favour of it only on condition that it should not delay the work of the Diplomatic Conference. They suggested that an ad hoc committee be set up to consider the matter while the Diplomatic Conference was in session. They likewise favoured the ICRC's convening an expert committee between the two sessions of the Diplomatic Conference, and supported the proposal that prohibition or restriction of the use of certain weapons should be dealt with in a third, separate, Protocol. On the other hand, one delegate considered that a decision on a possible third Protocol should not be seen as a prerequisite to the Diplomatic Conference.

97. Some delegates considered that the question would be more properly dealt with by other bodies such as the United Nations Conference of the Committee on Disarmament.

98. One delegate, supported by several others, expressed concern over the means and methods of combat used against liberation movements, and put forward an amendment prohibiting, inter alia, weapons of mass extermination, and electronic, biological, bacteriological and chemical weapons.

99. Other delegates considered that generally speaking, prohibition should not be confined to the use of certain "conventional" weapons, but extended to nuclear, bacteriological and chemical weapons. They stressed the urgent need for a world treaty on total disarmament.

100. Following the adoption by the present Conference of the Resolution entitled "Prohibition or Restriction of Use of Certain Weapons", the representative of the ICRC said that his institution agreed, in principle, to accept the mandate to convene a meeting of government experts. To that end, it would work in close consultation with the Diplomatic Conference convened by the Swiss Federal Council especially to solve the delicate problems of the composition and proceedings of such a meeting. He pointed out that the cost of the meeting could not be covered by the ICRC's regular budget and that assistance from the governments concerned would be required.

55/ See Annexes, Part I, DH/4/Corr. 15
ANNEXES
AMENDMENTS TO DRAFT ADDITIONAL PROTOCOLS
TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949,
SUBMITTED TO THE COMMISSION
ON INTERNATIONAL HUMANITARIAN LAW
Agenda item 4

Reaffirmation and Development of International Humanitarian Law applicable in armed conflicts

DH/4/Corr. 1
Original: English

Amendments to draft Protocol I,
submitted by Yugoslavia (Red Cross)

1. **Article 27.** Contact zone
   Paragraph 2 should start with the word "Exceptionally".

2. **Article 30.** Agreements and notifications
   After the word "altitude" insert "the time and route".

3. **Article 33.** Prohibition of unnecessary injury
   In paragraph 2, the words "in all circumstances" should be followed by "or which have indiscriminate effects".

4. **Article 34.** New weapons
   After the words "unnecessary injury" add "or which have indiscriminate effects".

5. **Part III, Section II.** Prisoner-of-war status
   The present title should be replaced by "STATUS OF MEMBERS OF ORGANIZED RESISTANCE MOVEMENTS".
6. **Article 42.** New category of prisoners of war

The draft article should be replaced by the following:

"Members of organized resistance movements belonging to a Party to the conflict, even if that Party is represented by a Government or an authority not recognized by the adversary, who conduct military operations, are considered members of armed forces of a Party to the conflict. Accordingly, the provisions of the Geneva Conventions and the present Protocol apply to them, and they are bound to observe those provisions."

7. Article 42 (3) should be changed to read thus:

"This Protocol and the Geneva Conventions shall apply to cases of armed struggle where peoples exercise their right to self-determination as guaranteed by the United Nations Charter, the 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations' and the International Covenants on Human Rights."

This would become a new article to be inserted after Article 1 of the draft Protocol.

8. An additional article, inserted as Article 59 bis at the end of Part IV, Section I, Chapter VI (Civil Defence), should read as follows:

"1. The provisions of this Chapter (Art. 54 to 59) shall apply to a Party to a conflict and to a High Contracting Party who submit to the depositary of this Protocol a declaration to the effect that they undertake to apply the provisions of this Chapter to their civil defence.

2. The declaration mentioned in paragraph 1 of this article may be withdrawn at any time. Withdrawal shall take effect one month after the depositary receives the statement on the withdrawal of the declaration."
Amendment to the two draft Protocols, submitted by the Federal Republic of Germany (Government)

To specify that humanitarian law and Human Rights are complementary and not limitative, and particularly to reaffirm that victims of armed conflicts are to be protected in the most effective manner in every case, an article common to both Additional Protocols should be worded as follows:

"No provision of the present Protocol shall be interpreted in such a manner as to modify or abrogate any fundamental human right to which persons referred to above, or any other person, are entitled under the municipal law of one of the Contracting Parties, under an agreement to which the Contracting Parties have subscribed, or under any Conventions or Covenants to implement the Universal Declaration of Human Rights under the auspices of the United Nations or one of its specialized agencies."
Amendment to the two draft Protocols, submitted by the Federal Republic of Germany (Government)

A separate article, in a general section of both Protocols, should reaffirm the so-called Martens clause in order to stress the important role of customary rules and general principles in the wide field of humanitarian law. This article might read:

"Article ... General Principle

In cases not included in applicable conventions, civilians and combatants remain under the protection and the authority of the principles of international law, as they result from the principles of humanity and the dictates of public conscience."
Amendment to draft Protocol I,
submitted by Greece
(Government and Red Cross)

1. After Article 48 (Objects indispensable to the survival of the civilian population), insert a new article entitled "Cultural objects", reading as follows:

"Article 48 bis.- Cultural objects
It is forbidden to attack historic monuments or to destroy or endanger works of art which constitutes a country's cultural heritage."

2. The following articles remain unchanged.
Amendments to draft Protocol I, submitted by Hungary (Government)

**Article 34.** New weapons

Add the following:

"and will be in conformity with the principles and rules of international humanitarian law."

**Article 42.** New category of prisoners of war

The remark following Article 42 should be embodied in that article.

**Article 46.** Protection of the civilian population

Delete paragraph 3 (b).

**Article 50.** Precautions in attack

Delete the words "if possible" in paragraph 1 (b).
Amendment to Article 48 of draft Protocol I,
submitted by Czechoslovakia,
the German Democratic Republic and Hungary (Governments)

Article 48.- Objects indispensable to the survival
of the civilian population

"It is forbidden to attack or destroy objects indis­
pendable to the survival of the civilian population, namely, foodstuffs and food-producing areas, crops, livestock, drinking water supplies and irrigation works, as well as the salubrity and balance of the natural environment, whether to starve out civilians, to cause them to move away or for any other reason. These objects shall not be made the object of reprisals."
Amendments to draft Protocol I,
submitted by the Arab Republic of Egypt (Government)

Article 4.- Legal status of the Parties to the conflict
Delete the words "or that of the territories over
which they exercise authority".

Article 5.- Appointment of Protecting Powers and of their substitute
(1) Replace Proposal I and Proposal II of paragraph 3 by the following text:
"If, despite the foregoing, no Protecting Power is
appointed, the Parties to the conflict shall accept,
in the territories under their control, the activities
of a humanitarian body, such as the International
Committee of the Red Cross, appointed by the adverse
Party and respectively recognized by the other Party
or, in the last instance, appointed by the United
Nations or by the Conference of High Contracting
Parties."

(2) From paragraph 4, delete the words "or that of the
territories over which they exercise authority".

Article 7.- Meetings
Amend the text to read as follows:
"The depositary of the Conventions shall convene a
meeting of all High Contracting Parties, at the
request of one and with the approval of the majority
of them, to study special 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 or of the General Assembly of the United
Nations."
Proposal concerning the strengthening
of the humanitarian role and activities—
of National Societies in time of armed conflict,
adopted by the Board of Governors of the League
of Red Cross Societies in the form of a resolution

The Board of Governors,

Congratulates the ICRC on its outstanding work in the
preparation of two draft Additional Protocols to the Geneva
Conventions, which are to be submitted to the Diplomatic
Conference to be held in Geneva in 1974;

Appreciates the fact that National Societies have had
the opportunity of co-operating in working out the draft
Protocols, particularly through the participation of their
experts in the meetings held at The Hague in 1971 and
Vienna in 1972;

Notes, however, that the draft Protocols in the pre­
sent form make insufficient reference to the part to be
played by National Red Cross, Red Crescent and Red Lion and
Sun Societies and their federation in humanitarian activi­
ties for victims of armed conflict, especially in those
passages which refer to the role of "relief societies" and
"organizations of an international character";

Calls on the XXIInd International Conference of the
Red Cross to examine the relevant passages in the two draft
Additional Protocols with a view to requesting the Diplo­
matic Conference to introduce such provisions as would
serve to strengthen the humanitarian role and activities of
National Societies and their federation, for example:

(1) a general provision requesting the parties to a con­
flict to grant National Societies every facility and
assistance necessary for the discharge of all their
humanitarian activities on behalf of the victims of
armed conflicts;

(2) further specific provisions covering such personnel,
services and programmes as National Societies are
able to contribute in order to ensure that the pur­
poses of the Geneva Conventions and the Protocols
are achieved.
DH/4/Corr. 9
Original: English

India (Red Cross)

Amendment to proposal submitted by the Board of Governors of the League of Red Cross Societies and contained in document DH/4/Corr. 8

Insert "in their respective territories" after "activities of National Societies" and before "and their federation", in paragraph 4.
Amendments to draft Protocol I, submitted by Finland, France, the Federal Republic of Germany, India, Jordan, Norway, Romania, Senegal, Sri Lanka, Tunisia, and Yugoslavia (Red Cross and Red Crescent)

With a view to strengthening the position of National Red Cross Societies and international Red Cross bodies in international humanitarian law, the National Societies mentioned propose the following amendments to the draft Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the protection of victims of international armed conflicts:

(1) General clause on the position of National Societies and of international Red Cross bodies; it might be inserted as a further article after Article 6 or Article 73.

"1. The Parties to a conflict shall grant National Red Cross, Red Crescent and Red Lion and Sun Societies and international Red Cross bodies every facility and assistance necessary for the discharge of all their humanitarian activities in accordance with Red Cross principles as defined by the International Conferences of the Red Cross.

2. Such activities for the benefit of wounded, sick and shipwrecked persons, prisoners of war, internees, refugees, children, elderly and disabled persons, and any other victim of conflicts, consist inter alia, in training medical and social workers, assisting medical and social establishments and units, providing blood transfusion services, social welfare services, relief services, fund-raising, transport and distribution of relief supplies, operating the tracing service (information centre), and reuniting families.

3. Conflict victims may seek assistance from the National Society in the territory in which they live."
(2) Article 6.- Qualified personnel
   Replace paragraph 3 by the following:
   "3. National Red Cross (Red Crescent, Red Lion and Sun) Societies may offer their services to the competent authorities entrusted with recruiting and training such qualified personnel."
   Paragraphs 3 and 4 then become paragraphs 4 and 5.

(3) Article 8 (d) (ii).—Definitions
   After the words "assigned to the search for", insert "the provisions of first-aid to",

(4) Article 9 (3).—Field of application
   After the words "of an international character" insert "such as the International Committee of the Red Cross and the League of Red Cross Societies."

(5) Article 17 (2).—Role of the civilian population
   After the words "Relief societies" insert "such as National Red Cross (Red Crescent and Red Lion and Sun) Societies".

(6) Article 62 (1).—Relief actions
   Add at the end:
   "The Parties to the conflict and any High Contracting Party to the Conventions and the present Protocol shall encourage and facilitate Red Cross relief actions conducted by National Red Cross Societies, the International Committee of the Red Cross and the League of Red Cross Societies".

(7) Article 69 (3).—Evacuation of children
   Add a new paragraph 4: "National Red Cross Societies shall assist the competent authorities in the application of paragraph 3 of the present article."
(8) **Article 71.** - Legal advisers in armed forces

Add a new paragraph 2 reading as follows:

"2. National Red Cross Societies may offer their services to the competent civilian and military authorities to assist in the application of the Conventions and of the present Protocol."

(9) **Article 72.** - Dissemination

After paragraph 2, add a new paragraph worded as follows:

"3. The competent authorities of the High Contracting Parties shall facilitate the action of National Red Cross Societies for the dissemination of the Conventions and of the present Protocol amongst the civilian population."

Paragraph 3 becomes paragraph 4.
Greece (Red Cross):
Amendment to the proposal put forward by
Finland, France, the Federal Republic of Germany,
India, Jordan, Norway, Romania, Senegal,
Sri Lanka, Tunisia and Yugoslavia
(Red Cross and Red Crescent), in document DH/4/Corr. 10

Article ... - General clause

In paragraph 3 of the general clause proposed, replace the words "conflict victims" by "persons protected by the Conventions and by this Protocol within the meaning of Article 2(c)....".
Amendment to draft Protocol I,
submitted by Greece (Red Cross and Government)

Article 5.- Appointment of Protecting Powers and of their substitute

"3. If, despite the foregoing, no Protecting Power is appointed, the Parties to the conflict shall accept the ICRC as a substitute within the meaning of Article 2 (e), provided this is compatible with its own activities."
Proposal submitted by the Philippines
(Government)

The XXIInd International Conference of Red Cross,

Realizing the inadequacy of the penal sanctions provided for violations of the four Geneva Conventions of 1949,

Noting with growing concern the difficulty of individual government legislation,

Regretting that the present course of action to repress violations is unrealistic and gravely questionable from the standpoint of international law and sound juridical principles,

Considering that there is no uniformity in the classification of offences, in the imposition of punishments, and in the exercise of jurisdiction over offences and/or persons accused of crimes in violation of the provisions of international law,

Regretting further that in the history of war, notwithstanding the London Agreement of 1945 and the establishing of tribunals at Nuremberg, Tokyo and other places, there still is lingering doubt in the minds of men as to whether the trials of war criminals therein were based on legal justice and not upon moral retribution,

Believing that man's inhumanity to man can be greatly curtailed, if not entirely obliterated, through the adoption of a uniform code of international offences with their corresponding punishments,

Hoping that the proposed code of international crimes will be one of the most effective means of attaining lasting peace for all nations,

Expressing the view that it will be a powerful deterrent to the commission of crimes against humanity, the law of war and, above all, the peace and security of mankind,

Doubting that the trials for war crimes in the last World War were not held as a vindictive measure calculated to apply retroactively to the vanquished enemy the harshness of a newly created rule,
Realizing further that the guarantees of impartiality in any future trial and in the imposition of punishment can only be achieved through existing rules and fundamental principles.

Convinced that only through an international code of offences and punishments therefore can the application of law be observed within the standard measure of equality,

Convinced further that the Red Cross Fundamental Principles of Humanity, Impartiality, Neutrality, and Universality will be in keeping with the codification of international crimes and procedure,

Urges all Member States to place on the agenda of the 1974 Diplomatic Conference in Geneva consideration of a Draft Code of International Crimes and Procedure.
DRAFT CODE OF INTERNATIONAL CRIMES*

AND PROCEDURE

PART I

CRIMES UNDER INTERNATIONAL LAW

Article 1

Crimes against the Peace and Security of Mankind

Crimes against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall suffer death or imprisonment for life, or any other penalty as an international court or tribunal may impose.

Article 2

Classification of Crimes against the Peace and Security of Mankind

The following acts are crimes against the peace and security of mankind, among others:

a. Any act of aggression, including the employment by the authorities of a State of armed forces against another State for any purpose other than national or collective self-defence.

b. Any act planned, prepared, and initiated which eventually results in a war of aggression by the authorities of a State against another State except in pursuance of national or collective self-defence.

* In substantial compliance with the draft code adopted by the International Law Commission (July 27, 1951); UN Doc. A/1858, pp. 11 - 14.
c. The incursion into the territory of a State from the territory of another State by armed forces for a political purpose.

d. The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in the territory of another State.

e. The infiltration by the authorities of a State of organized activities calculated to foment civil strife in the territory of another State.

f. The undertaking or encouragement by the authorities of a State of terrorist activities in the territory of another State.

g. The toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in the territory of another State.

h. Acts by the authorities of a State in violation of its obligations under a treaty which is designed to ensure international peace and security through restrictions or limitations on armaments, or on increasing military forces, or of other restrictions of the same or similar character.

i. Acts by the authorities of a State resulting in the annexation, contrary to international law, of territory belonging to another State.

j. Acts in violation of international treaties, agreements or assurances.

Article 3

Crimes against Humanity

Crimes against humanity, as defined in this Code, are crimes against international law, for which the offenders shall suffer death, imprisonment for life, or any other penalty as an international court or tribunal may impose.

Article 4

Classification of Crimes against Humanity

The following acts are crimes against humanity, among others:

a. Wilful killing or murder which shall include, among others -

(1) starvation resulting in death
(2) beating resulting in death
(3) freezing resulting in death
(4) mass extermination resulting in death
(5) ruthless killing of prisoners of war by -
   (a) shooting
   (b) decapitation
   (c) drowning
   (d) forced march without food or water
   (e) marchers dropping out being shot or bayoneted
(6) killing without trial of recaptured prisoners after escape of or attempt to escape
(7) killing without trial of captured members of the enemy armed forces

b. Attempt upon the lives of the wounded, sick, or shipwrecked members of the armed forces, or violence to their persons.

c. Torture or inhuman treatment or wilfully causing great suffering or serious injury to body or health which shall include, among others -

   (1) forcing an individual against his will to any kind of biological experiment
   (2) maltreatment administered for the purpose of obtaining a confession or information
   (3) torture administered out of sheer sadism
   (4) torture administered to "convert" an individual to the Occupying Power's political ideology
   (5) measures cutting prisoners of war or detainees completely from the outside world and in particular from their families
   (6) mental anguish created by the Detaining Power (e.g. telling the prisoner of war that he will be executed the following day)
   (7) any form of measures causing injury to the human dignity

d. Any deliberate omission of things ordinarily done to preserve human life.

e. Unlawful deportation or transfer of a protected person.

f. Unlawful confinement of a protected person.
g. Compelling a protected person to serve in the armed forces of a hostile Power.

h. Taking of hostages.

i. Attack or destruction of medical ships or aircraft, either civilian or military, which are equipped solely with a view to assisting the wounded, sick and shipwrecked, and to treating or transporting them.

j. Attack or bombardment of hospital zones.

k. Reprisals against the wounded and sick members of the armed forces, civilian personnel and buildings or equipment protected by the Convention.

l. Enslavement.

m. Persecutions on political, racial, religious or cultural grounds, when such acts are committed in execution or in connection with other offenses defined in this Code.

n. Plunder of populations in occupied countries by the occupying power.

o. Any form of aircraft hijacking, bomb threat or bomb explosion caused to the aircraft in time of peace.

Article 5
Genocide

Any authority or individual of a State who commits any of the following acts with intent to destroy, in whole or in part, any national, ethnical, racial or religious group as such, shall be guilty of genocide, and shall suffer life imprisonment or death as an international court or tribunal may impose.

a. Killing members of the group.

b. Causing serious bodily or mental harm to members of the group.

c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

d. Imposing measures intended to prevent births within the group.

e. Forcibly transferring children of the group to another group.
Article 6
Violation of the Laws and Customs of War

Any authority or individual of a State who commits any act in violation of the laws and customs of war or any provision of a treaty or convention related thereto, shall suffer death, imprisonment for life, or any other penalty as an international court or tribunal may impose.

Article 7
Classification of Crimes against the Laws and Customs of War

The following acts are crimes, among others, punishable under the preceding Article:

a. Any act perpetrated against, and causing bodily harm to, women, children, the sick, and the aged.

b. Any act of omission for the protection of diplomatic representatives and staff of neutral powers in belligerent territory.

c. The use of asphyxiating gases.

d. The use of expanding bullets.

e. The discharge of projectiles from balloons.

f. The use of hydrogen bomb.

g. The destruction or seizure of the enemy's property, unless its destruction or seizure be imperatively demanded by the necessities of war.

h. The destruction of edifices devoted to religion, art, science, and charity, historical monuments, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

i. Pillage of any town or place.

j. Confiscation of private property.

k. Forcible requisitions in kind or services from localities or inhabitants except for the needs of the army of occupation.

l. Any violation of the rules of usufruct by the occupying State on the use of public buildings, movable property, forests and agricultural undertakings belonging to the occupied State.
m. Killing or wounding treacherously individuals of the enemy nation or armed forces.

n. Wounding or killing an enemy who, having laid down his arms, or having no longer means of defence, has surrendered voluntarily.

o. Declaring that no quarter will be given.

p. Any criminal or inhuman act perpetrated against the prisoners of war not otherwise mentioned in any of the preceding Articles of this Code.

Article 8
Conspiracy

Any authority or individual of a State who conspires with another or others to commit any of the offences defined in this Code shall suffer death, life imprisonment, or any other penalty as an international court or tribunal may impose, taking into account the gravity of the offence.

Article 9
Inciting to Commit War Crimes

Any authority or individual of a State who directly incites another or others to commit any of the offences defined in this Code shall suffer death, life imprisonment or any other penalty as an international court or tribunal may impose, taking into account the gravity of the offence.

Article 10
Accomplice

Any authority or individual of a State who is an accomplice in the commission of any of the offences defined in this Code shall suffer life imprisonment or any lesser included penalty, as an international court or tribunal may impose.

Article 11
Attempt to Commit War Crimes

Any authority or individual of a State who attempts to commit any of the crimes defined in this Code shall suffer imprisonment or any lesser included penalty as an
international court or tribunal may impose, depending upon the gravity of the offence.

Article 12

All other Violations not Mentioned in this Code

Though not mentioned in this Code, all other violations of the laws of war and the international humanitarian law, and omissions amounting to criminal acts, shall be taken cognizance of by an international court according to the nature and degree of the violation or omission, and punished at the discretion of such court.

Article 13

Command Responsibility

The fact that an individual acted as Head of State or as responsible government official, or superior officer of the armed forces, does not relieve him from command responsibility for committing any of the offences defined in this Code.

Article 14

Responsibility of Subordinate

The fact that an individual charged with an offence defined in this Code acted pursuant to a superior's order and that he had alternative but to comply, does not relieve him from responsibility; however, such act with which he is charged may be considered in mitigation of the sentence.
PART II

INTERNATIONAL CRIMINAL COURT OR TRIBUNAL*

Article 15

Purpose of the Court

There is established an International Criminal Court or Tribunal to try persons accused of crimes under international law, or the law of war, as may be provided in conventions or special agreements among States parties to the present Convention.

Article 16

Law to be Applied by the Court

The Court shall apply international law, covering the various crimes defined in Part I of this Code and the various existing treaties, conventions, and assurances on the law of war.

Article 17

Permanent Nature of the Court

The Court shall be a permanent body. Sessions shall be called only when matters before it require consideration, and shall be held in any territory taking into consideration all conveniences and practicalities.

Article 18

Qualification of Judges

The Court shall be composed of a body of independent judges, either civilian or military in the active or inactive status, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment

to the highest judicial offices, and of recognized competence in international law, especially in international criminal law.

Article 19
Number of Judges
The Court shall consist of nine judges.

Article 20
Nomination of Candidates
a. Judges shall be elected from a list of candidates nominated by the States parties to the present Convention.

b. Each State may submit the names of not more than four candidates.

Article 21
Election of Judges
a. The judges shall be elected at meetings of representatives of the States parties to the present Convention by an absolute majority of those present and voting. A Secretary-General shall be appointed by the Parties to this Convention who, after due notice to each of such States, shall convene these meetings. He shall hold office at any place as decided by the Parties.

b. In the event of more than one national of the same State obtaining a sufficient number of votes for election, the one who obtains the greatest number of votes shall be considered as elected and if the votes are equally divided the elder or eldest candidate shall be considered as elected.

Article 22
Term of Office
a. The judges shall be elected for nine years only with no re-election. They shall hold office or hear cases at such place as they see fit.

b. In case of vacancy during the nine-year term due to resignation, death, or any incapacity, the nominee or nominees obtaining the next highest votes at the first election shall take over depending upon the number of existing
Article 23
Rules of Court

a. The Court shall adopt rules for carrying out its functions. In particular, it shall prescribe rules of procedure and such general principles governing the admission of evidence as the Court may deem necessary.

b. These rules and any amendments thereto shall be published without delay and shall not be altered so as to affect pending proceedings.

Article 24
Jurisdiction as to Persons

The Court shall be competent to try natural persons only of Parties to the conflict, including persons who have acted as Head of State or agent of government.

Article 25
Cognizance of Jurisdiction

Jurisdiction over any of the offences or crimes as defined in Part I of this Code shall be taken cognizance of by the Court where the Parties to the conflict are signatories to the present Convention, provided that any State or States not parties to the Convention, may confer upon the Court by special agreement or by unilateral declaration jurisdiction to try cases in violation of any provision of Part I of this Code; provided, however, that where the Parties to the conflict are not signatories to this Convention but members of the United Nations, they may avail of the power of the Court to try their respective cases if they confer jurisdiction upon the Court with the approval of the General Assembly of the United Nations.

Article 26
Access to the Court

Proceedings before the Court may be instituted only by:

a. The International Committee of the Red Cross or
the General Assembly of the United Nations, as the case may be, pursuant to the proviso to Article 25 of this Code.

b. Any organization of States so authorized by the General Assembly of the United Nations, as the case may be, pursuant to the proviso to Article 25 of this Code.

Article 27

Challenge

a. The jurisdiction of the Court may be challenged only by the parties to any proceeding.

b. The grounds for challenge shall be as specified by the Court. Such challenge shall be made prior to the arraignment.

c. Challenge, however, may be made at any stage of the trial and shall be considered by the Court at such time as the Court thinks fit but not after the closing arguments of counsel are made.

Article 28

Assistance of States

a. The Court may request national authorities concerned to assist it in the performance of its duties.

b. A State shall be obliged to render such assistance only in conformity with any convention or other instrument in which the State has accepted such obligation.

Article 29

Penalties

The Court shall impose upon an accused, upon conviction, such penalty as the Court may determine, subject to the limitations prescribed in Part I of this Code.

Article 30

Investigation Panel

a. There shall be established within the framework of the International Court or Tribunal an Investigation Panel composed of as many persons as may be needed, elected in the same manner at the same time, on the same terms, and possessing the same qualifications as the judges.
b. The function of the Panel shall be to examine the evidence offered by the complainant to support the complaint.

c. The complainant shall designate an agent or agents who shall present the evidence before the Panel.

d. If the Panel is satisfied that the evidence is sufficient to support the complaint, the Panel shall so certify to the Court and the complainant.

e. Before issuing any such certificate, the Panel shall give the accused reasonable opportunity to be heard and to adduce such evidence as he may desire.

f. The Panel shall adopt its own rules of procedure.

Article 31

Prosecuting Attorney or Trial Counsel

a. The States parties to the present Convention, at the meetings and in the manner provided for in Article 21, shall elect a panel of as many persons as may be needed whose duty it shall be, whenever a certificate for trial is issued by the Investigation Panel, to elect forthwith a Prosecuting Attorney herein referred to also as Trial Counsel who shall possess the same qualifications as a member of the Court.

b. The Prosecuting Attorney or Trial Counsel shall file with the Court an indictment of the accused based on the findings certified by the Committing Authority and shall be responsible for conducting the prosecution before the Court.

PART III

PROCEDURE*

Article 32

Indictment or Charge

a. The indictment or charge shall contain a concise statement of the facts which constitute each alleged offence and a specific reference to the law and Article of this Code under which the accused is charged.

* In substantial compliance with UN Doc. A/2136, pp. 21-25.
b. The Court may authorize amendment of the indictment or charge.

Article 33
Notice of the Indictment or Charge

a. The Court shall notify the State of which the accused is alleged to be a national, of the indictment or charge, and the State in which the crime is alleged to have been committed.

b. The Court shall not proceed with the trial unless satisfied that the accused has had the indictment or any amendment thereof, as the case may be, served upon him and has sufficient time to prepare his defense.

Article 34
Rights of the Accused

a. The accused shall be presumed innocent until proved guilty.

b. The accused shall have a fair trial and, in particular:

(1) The right to be present at all stages of the proceedings;

(2) The right to conduct his own defense or to be defended by counsel of his own choice, and to have his counsel present at all stages of the proceedings;

(3) The right to have the proceedings of the Court, including documentary evidence, translated into his own language;

(4) The right to interrogate, in person or by his counsel, any witness and to inspect any document or other evidence introduced during the trial;

(5) The right to adduce oral and other evidence in his defense; and

(6) The right to the assistance of the Court in obtaining access to material which the Court believes to be relevant to the issues before the Court.

c. The accused shall have the right to be heard by the Court but shall not be compelled to speak. His refusal to
speak shall not be relevant to the determination of his guilt. Should he elect to speak, he shall be liable to questioning by the Court and by counsel.

Article 35
Publicity of Hearings

1. The Court shall be open to the public unless there are exceptional circumstances in which the Court finds that the presence of the public might prejudice the interest of justice.

2. The deliberations of the Court shall take place in private and shall not be disclosed.

Article 36
Warrants of Arrest

The Court shall have power to issue warrants of arrest related to crimes over which the Court has jurisdiction.

Article 37
Provisional Liberty of Accused

The Court shall decide whether the accused shall remain in custody during the trial or be provisionally set at liberty, and the conditions under which such provisional liberty shall be granted.

Article 38
Powers of the Court

The Court shall have the powers necessary to the proper conduct of the trial, including the power to require the attendance of witnesses, require production of documents and other evidentiary material, rule out irrelevant issues, evidence and statements, and maintain order at the trial.

Article 39
Dismissal of Case

The Court may dismiss at any stage of the proceedings any case in which the Court is satisfied that no fair trial can then be had. In the event of such dismissal, the Court shall discharge the accused and may also acquit him.
Article 40
Withdrawal of Prosecution

A prosecution may be withdrawn only with the approval of the Court. In the event of such approval, the Court shall discharge the accused and may also acquit him.

Article 41
Quorum

The participation of seven judges shall suffice to constitute the Court.

Article 42
Required Votes

a. Death penalty shall require a unanimous vote of the judges participating in the trial; otherwise life imprisonment shall be imposed.

b. All other final judgments and sentences of the Court shall require a majority vote of the judges participating in the trial.

c. The same requirement shall apply to other decisions of the Court, provided that, in the event of an equality of votes, the vote of the presiding judge shall be decisive.

Article 43
Contents and Signature of Judgment

a. The judgment shall state, in relation to each accused, the reasons upon which it is based.

b. The judgment shall contain the names of the judges who have taken part in the decision. It shall be signed by the President and the Registrar of the Court.

Article 44
Separate Opinions

If the judgment of the Court does not represent the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
Article 45
Announcement of Sentence

The sentence shall be read in open Court.

Article 46
No Appeal

The judgment shall be final and without appeal.

Article 47
Subsequent Trial

No person who has been tried and acquitted or convicted before the Court shall be subsequently tried for the same offence in any court within the jurisdiction of any State which has conferred jurisdiction upon the Court with respect to such offence.

Article 48
Execution of Sentence

Sentences shall be executed in accordance with conventions relating to the matter. In the absence of such conventions, arrangements for the execution may be made with the State concerned upon motion of the Court, by the Secretary-General, pursuant to the proviso to Article 25 of this Code.

Article 49
Revision of Judgment

a. An accused who has been found guilty may apply to the Court for revision of judgment.

b. An application for revision shall not be entertained unless the Court is satisfied:

(1) That a fact was discovered of such a nature as to be a decisive factor; and

(2) That that fact was, when the judgment was given, unknown to the Court and the accused.

c. Revision proceedings shall be opened by a judgment of the Court expressly recording the existence of the new fact and recognizing that it has such a character as to lay the case open to revision.
Article 50

Board of Clemency

a. A Board of Clemency consisting of five members shall be established by the States parties to the present Convention.

b. The Board shall have the powers of pardon and parole and of suspension, reduction and other alteration of a sentence of the Court.

c. The Board shall adopt its own rules of procedure.

Article 51

Special Tribunals

Nothing in the present Convention shall be taken to prejudice the right of two or more States parties thereto jointly to set up special tribunals to try the perpetrators of crimes over which each of such States has jurisdiction according to the general rules of international law.

Article 52

Extradition

a. The States parties to this Convention shall pledge themselves to grant extradition in respect to any violation of the Code, particularly of the offences or crimes as defined in Part I.

b. Nothing can prejudice, however, the right of any State not a party to this Convention to avail itself of the jurisdiction of the Court and to grant extradition in respect to the trial of its own nationals outside its own territory.
Proposal by Tanzania (Red Cross)

1. That humanitarian law should cover the liberation movements fighting for their legitimate rights against colonial domination.

2. That liberation movements be given observer status at all International Conferences of the Red Cross.

3. That the terms "armed conflict" and "war", should be taken to mean and include armed struggle against domination of the indigenous people by a foreign power.

4. That the treatment of prisoners of war as propounded by the Geneva Conventions should be extended to the dead and the injured in the struggle against human oppression.
Amendments to draft Protocols I and II, submitted by the Democratic Republic of Vietnam (Government)

First amendment proposed:

It is essential to mention war crimes at the beginning of the International Humanitarian Code, namely the crime of aggression against fundamental national rights and the peoples' right to self-determination; the crime against peace; war crimes including acts committed in violation of provisions on the protection of the civilian population, of war victims, and of civilian objects, in violation of the provisions on the prohibition of means and methods of combat; the crime of genocide; the crime of biocide; the crime of ecocide; crime against humanity; as recognized by international laws and customs since Nürnberg.

It is essential that any person who violates the laws and customs of war be declared a war criminal.

It is essential that positive measures to prevent the committing of war crimes be clearly defined.

Second amendment proposed:

The Geneva Conventions grant protection to all war victims, without making any distinction between international armed conflicts and non-international armed conflicts, or between parties and non-parties to the Conventions.

The Conventions do not grant protection to war criminals, whether they participate in international armed conflicts or in non-international armed conflicts and, whether they belong to a party or to a non-party to the Conventions.

War criminals shall be punished and shall not enjoy the protection of the Convention.
Rejection of "presumption of innocence" with regard to war criminals.

Third amendment proposed:

a. Concerning the means and methods used against the national liberation movement:

Humanity demands:

- the prohibition of weapons of massive extermination, electronic weapons, biological and bacteriological weapons, chemical weapons; the prohibition of methods of combat the effect of which is genocide, biocide and ecocide, the physical, mental and psychological destruction of persons; violent death and slow death; the prolonged destruction of the human being through several generations and the full consequences of which science is as yet unable to foresee;

- the prohibition of methods of war which are intended to subdue a people fighting against aggression: the practice consisting in "burning all, destroying all and massacring all"; "pacification"; concentration in camps named "zone of prosperity", "new-life hamlet"; "refugee camp"; the prohibition of penitentiary systems such as "tiger cages", etc..

The four Conventions are silent on these points. The outdated concept of "unnecessary injury" in the Hague Convention, which no longer answers the requirements of our time, was again used in Articles 33 and 34 of draft Additional Protocol I. This concept would encourage war and imply an attitude of inhuman indifference to the victims of that atrocious war.

It is therefore necessary to amend the four Conventions as follows:

The aforementioned prohibitions should be expressly embodied in regulations in order to avoid the perpetration of these new war crimes.

b. Concerning the civilian population and prisoners of war in national liberation wars:

During war, it is necessary to prohibit the arrest and detention of civilian in various faked forms, by reason of their non-submission and patriotism. Respect must in all circumstances be shown for the person, honour, political convictions, religious beliefs and other democratic
freedoms, and for objects belonging to civilians living in areas under the control of authorities opposed to the national liberation movement.

Civilians arrested in time of war must be released within the shortest possible time, and during the period of detention they must be regarded as prisoners of war.

In the amended Conventions, the expression "prisoner of war" will thus include all persons arrested and detained during the war, whatever military or political acts they may have carried out against the aggressor.
Draft Protocol I

**Article 5.** Appointment of Protecting Powers and of their substitute

Proposal II, in paragraph 3, is to be selected:

"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)."

**Article 35.** Prohibition of perfidy

Paragraph 2 should be amended as follows:

"2. On the other hand, those acts which, without inviting the confidence of the adversary, are intended to mislead him or to induce him to act recklessly, such as camouflage, traps, mock operations and misinformation, are ruses of war and shall not be considered perfidious acts.

**Article 40.** Independent missions

In paragraphs 1 and 2, delete the words "... and other combatants referred to in Article 4 of the Third Convention, as well as those combatants referred to in Article 42 ...".

**Article 42.** New category of prisoners of war

"1. In addition to the persons mentioned in Article 4 of the Third Convention, members of organized resistance movements who have fallen into the hands of the enemy are prisoners of war provided such movements
belong to a Party to the conflict, even if that Party is represented by a government or an authority not recognized by the Detaining Power, and provided that such "Government" or "Authority" fights on behalf of a people against the foreign occupation force, the conditions laid down in Article 4 of the Third Convention being fulfilled."

2. Members of a resistance movement who violate the Conventions and the present Protocol shall, if prosecuted, enjoy the judicial guarantees provided by the Third Convention and, even if sentenced, retain the status of prisoners of war."

**Article 49.- Works and installations containing dangerous forces**

Amend paragraph 2 as follows:

"2. It is forbidden to place any military objectives in the immediate vicinity of the objects mentioned in paragraph 1."

**Article 50.- Precautions in attack**

Proposal I, in paragraph 1 (a), is to be selected:

"(a) Those who plan or decide upon an attack shall ensure that the objectives to be attacked are duly identified as military objectives within the meaning of paragraph 1 of Article 47 and may be attacked without incidental losses in civilian lives and damage to civilian objects in their vicinity being caused or that at all events those losses or damage are not disproportionate to the direct and substantial military advantage anticipated;"

Amend paragraph 1 (b) as follows:

"(b) Those who launch an attack shall endeavour to avoid it if it becomes apparent that the objective is not a military one or that incidental losses in civilian lives and damage to civilian objects would be disproportionate to the direct and substantial advantage anticipated;"

**Article 55.- Zones of military operations**

Delete the note appended to Article 55.
Article 59.— Identification

Proposal I, in paragraph 4, is to be selected:

"4. The international distinctive sign of civil defence is an equilateral light blue triangle on a light orange background."

Article 62.— Relief actions

Amend paragraph 2 as follows:

"2. The Parties to the conflict and any High Contracting Party through whose territory supplies must pass shall grant free passage after having ascertained that relief actions are carried out in accordance with the conditions stated in paragraph 1."

Article 77.— Superior orders

Amend as follows:

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

2. The fact of having acted pursuant to an order of his government or of a superior does not absolve an accused person from penal responsibility if it be established that, in the circumstances at the time, he should have reasonably known that he was committing a grave breach of the Convention or of the present Protocol and that he had the possibility of not executing that order."

Draft Protocol II

Article 1.— Material field of application

Amend paragraph 1 as follows:

"1. The present Protocol shall apply to all armed conflicts not covered by Article 2 common to the
Geneva Conventions of August 12, 1949, taking place between armed forces under responsible command.

Article 8.— Persons whose liberty has been restricted

Amend paragraph 5 as follows:
"5. Subject to temporary and exceptional measures, the parties to the conflict shall endeavour, in accordance with Article 5 of the present Protocol, to supply a list of places of detention and facilitate visits to the persons referred to in paragraph 1 by an impartial humanitarian body such as the International Committee of the Red Cross."

Article 14.— Role of the civilian population

Amend paragraph 3 as follows:
"3. No one shall be molested or convicted for having given shelter, care or assistance to the wounded and the sick, even if they belong to the adverse party, provided that they notify the authorities in power thereof."

Article 16.— General protection of medical duties

Amend paragraph 3 as follows:
"3. No person engaged in medical activities as referred to in paragraph 1 above may be compelled to give to any authority information concerning the sick and the wounded under his care should such information be likely to prove harmful to the person concerned or to their families. Compulsory medical regulations for the notification of communicable diseases shall however be respected."

Article 25.— Definition

Amend paragraph 1 as follows:
"1. Any person who is not a member of armed forces and who, moreover, does not directly or indirectly take part in hostilities is considered to be a civilian."
Add the following paragraph 4:

"4. Objects which, owing to their nature or the use made thereof are meant for the civilian population, shall be considered to be of a civilian nature, except when occupied by armed forces or used for hostile purposes."

Article 55. Relief actions

Amend paragraph 2 as follows:

"2. The parties to the conflict and any High Contracting Party through whose territory supplies must pass shall grant free passage after having ascertained that relief actions are carried out in accordance with the conditions stated in paragraph 1."
II.

REPORT OF THE COMMISSION

ON INTERNATIONAL HUMANITARIAN LAW
Introduction

1. The Commission on International Humanitarian Law held seven meetings between 8 and 12 November 1973. The Commission elected Mr. J.S. Pictet, Vice-President of the ICRC, as its Chairman. At the suggestion of the Chairman, the Commission then elected the following members of its bureau: Mr. D.M. Miller (Canada), Professor G. Herczeg (Hungary), and H.E. A. Aberra Jembere (Ethiopia), with Mr. S. Ijas (Indonesia) as Vice-Chairman and Mr. H.G. Knitel (Austria) as Rapporteur. Mr. H. Piot (France), Justice V. Crabbe (Ghana) and Professor F. Murillo Rubiera (Spain) were called upon to form a drafting committee. Mr. J.L. Cayla (ICRC) and Dr K. Seevaratnam (League) were appointed Secretaries to the Commission.

2. Before opening the discussion, the Chairman reminded the Commission of Article 2 (5) of the Statutes of the International Red Cross stipulating that the Conference might not deal with political matters nor serve as a forum for political debate. It could not therefore pronounce on litigious matters nor make judgments on the behaviour of governments.

3. The Agenda, as provisionally drafted by the ICRC and accepted by the Commission at its first meeting, included the following items:

   1) Election of Chairman, Vice-Chairmen, Rapporteur and Drafting Committee.
   2) Report on the action taken on the resolutions of the XXIst Conference.
   3) Implementation and dissemination of the Geneve Conventions.
   4) Reaffirmation and development of International Humanitarian Law applicable in armed conflicts.

4. It was in addition suggested that the Commission adopt for its own work the second part of the proposal of the Standing Commission on the handling of resolutions.
However, as there were several objections to this suggestion it was withdrawn.

5. As item 1 of the agenda figures in the introduction, and as item 2 of the agenda and the report jointly submitted by the ICRC and the League (Doc. D.H.2) did not give rise to any discussion, this report is divided into two parts in the same order as the said agenda. The main questions raised have been grouped and have in turn been subdivided into chapters. This sub-division will be indicated at the beginning of each of the two parts (see paragraphs 6 and 14).

6. To facilitate the study of the present report, the rapporteur - as indicated by the Chairman - has summarized the discussions to the maximum extent. The report therefore does not follow the debates in chronological order, but endeavours to re-group them in a succinct and systematic way. This method has in general resulted in the omission of the names of speakers. Nevertheless the rapporteur has constantly tried to reproduce as accurately as possible the different trends of opinion expressed during the discussions. Statements contrary to the above-mentioned Article 2 (5) are not included in the report.

Part I

Implementation and dissemination

of the Geneva Conventions

7. After evoking the importance of the dissemination of the Geneva Conventions as prerequisite of their implementation, the Chairman gave the floor to one of the representatives of the ICRC to introduce the report.

8. The ICRC representative first pointed out that the report did not contain all the replies from the Governments and National Societies, some of which had been received too late. He briefly outlined the content of the report concerned: i.e. the 35 replies received from the Governments of the States parties to the Geneva Conventions in answer to the ICRC memorandum of 15 August 1972, the 59 replies from the National Societies and, finally, the action recently undertaken by the ICRC (for example the creation of a
"Dissemination" Division, the preparation of a plan of action, the production of information and training material adapted to various circles and languages, etc.). After thanking Governments and National Societies for their considerable efforts, the ICRC representative urged delegates to continue and intensify them; finally, he expressed the hope that the Governments and all National Societies would submit reports to the next International Conference of the Red Cross.

9. In this connection, a very large number of delegates had reported on the activities of their National Societies or Governments to ensure that the Geneva Conventions were more widely disseminated, either by instruction at all levels (schools, universities, etc.) and in all interested quarters, or by producing and distributing appropriate information material. Furthermore, on a number of occasions emphasis was laid on the importance of close collaboration with the ICRC, which was asked to continue its efforts in adapting this material to the needs of the developing countries.

10. One delegate did, however, draw the attention of the Commission to the fact the Agenda item under discussion did not cover solely the dissemination of the Geneva Conventions but also their implementation. It was pointed out that a wide dissemination was a prerequisite for providing better knowledge of international humanitarian law applicable in armed conflicts, in order to ensure that it was better applied. It was also pointed out that the two draft Protocols contained new provisions designed to improve dissemination and instruction.

11. Several National Societies table a joint draft resolution which, although support for it was virtually unanimous, gave rise to a series of draft amendments, the main purpose of which was to make it more precise or introduce editorial changes. To simplify the work of the Commission it was suggested that the authors of the draft and of the proposed amendments should get together with the drafting committee in order to produce a single text.

12. The Chairman of the working group, introducing a revised version of the draft resolution for discussion, stated that the non-exhaustive list in the first operative paragraph also covered civil defence bodies, which were included under the concept of "armed forces" or under that of "civil administrations". The draft resolution was then put to the vote and adopted unanimously subject to a few amendments.
13. Introducing this item of the Agenda, the Chairman, in his capacity of Vice-President of the ICRC, laid emphasis on the function the ICRC had always assumed as promoter and initiator, in reaffirming and developing international humanitarian law. He also mentioned the work carried by the ICRC and the Red Cross as a whole since the XXIst International Conference at Istanbul in 1969 which, with the support of government experts, had made it possible to draw up two draft Additional Protocols to the 1949 Geneva Conventions; these drafts were to be submitted to the Diplomatic Conference convened by the Swiss Government for February 1974 in Geneva. He suggested that a general discussion should begin on the draft Protocols and draft resolutions before consideration of individual articles of the drafts and, finally, the question of weapons. He underlined the fact that the drafts the draft amendments to the articles would not be put to the vote, but that the ICRC would take due note of all proposals and convey them to the Diplomatic Conference.

14. On the strength of this the Rapporteur divided this Part into a general chapter on the draft Protocols and resolutions and a second chapter dealing with individual articles of the draft Protocols. This Part concludes with a record of the voting on the draft resolutions.

Chapter 1

General Discussion

15. All speakers paid tribute to the ICRC and its legal experts for the considerable work which they had carried out and which very generally struck a fair balance between humanitarian requirements and military needs and was thus in principle a useful basis for fruitful discussion at the
Diplomatic Conference. Several delegates, however, expressed their regret that they had not received the official comments of the ICRC and hoped that Governments would receive these as soon as possible, since they were considered essential for any detailed study of the articles contained in the draft Protocols. In reply, one of the ICRC representatives stated that these comments, comprising primarily a statement of the motives behind the Protocols, had already been drafted and would be sent by the Swiss Government to all members of the Diplomatic Conference, and by the ICRC to all National Societies, in December.

16. Delegates were also reminded of the value of the work of the United Nations on respect for human rights in times of armed conflict.

17. Appreciation was then expressed to Switzerland for convening the Diplomatic Conference. The Commissioner-General of this Conference stated that Switzerland would spare no effort to ensure that the conference would be highly successful. He called on all Governments to co-operate in these efforts and, having in mind the principle of universality in international humanitarian law, he hoped that as many States as possible would take part in the Conference. It was for this reason that the Swiss Government had seen fit to invite both States which were Parties to the 1949 Conventions and Member States of the United Nations, as well as certain non-governmental organisations as observers. This same consideration had led the Swiss Government to seek appropriate participation of liberation movements recognized by inter-governmental regional organisations.

18. One delegate, while supporting the idea that States not Parties to the Geneva Conventions should attend the Diplomatic Conference, expressed the view that those States should not have the right to vote.

19. It was, however, fairly generally agreed that the universal, or virtually universal, acceptance of the two Protocols was essential if real success and progress were to be achieved in protecting human rights in the event of armed conflict.

20. Some delegates expressed the view that the Diplomatic Conference was only an initial stage, and that it was already necessary to give thought to further efforts for the subsequent development of rules of international humanitarian law. Taking up this idea, other delegates stressed the need for a "Martens clause" in the Protocols.
21. In addition, the general debate centred around the following main subjects:

(a) reinforcement of the application of the Geneva Conventions;
(b) a new category of prisoners of war;
(c) the struggle for self-determination;
(d) strengthening the protection of the civilian population;
(e) non-international armed conflicts;
(f) strengthening of the role of National Societies and the League and,
(g) prohibition or restriction of the use of certain weapons.

(a) **Reinforcement of the application of the Geneva Conventions**

22. A great many experts stated that they were in favour of reinforcing the application of the Geneva Conventions. A fairly pronounced divergence of views arose, however, regarding the means of achieving this objective.

23. A number of delegates felt that the system of the Protecting Powers should be improved, through a certain automatic approach to their appointment and acceptance and in particular by reinforcing the position of the ICRC as a substitute. Others pointed out, however, that the application of the system of Protecting Powers and their possible substitute could be based only on the consent of the Parties to the conflict, owing to principles of national sovereignty and non-interference. One delegate even considered such consent as a **sine qua non**. Some delegates favoured setting up an international body of inquiry and conciliation.

24. To ensure better application of the Conventions, a certain number of delegates stressed the need to classify war crimes and serious breaches of the rules of international humanitarian law, to define them as precisely as possible and, to prescribe suitable penalties. Following this line of thought, several delegates pointed out that war criminals should not be granted prisoner of war status, but should nevertheless be treated in a humanitarian manner consistent with the average conditions enjoyed by the inhabitants of the country concerned. This view was
rejected by other delegates and by one of the ICRC repre­sentatives who pointed to the hazards of this attitude, seeing that it enabled any detaining Power to free itself from its obligations under the Conventions on the grounds that the prisoners had failed to observe one or other of the provisions of the law of armed conflict.

25. Emphasis was laid on the advantage of strictly limiting the right to make reservations concerning Protocols I and II. Certain delegates felt that the list of articles on which reservations were not permitted, as provided for in Protocol I, was not sufficient; others state that Protocol II should likewise contain an article on the subject of reservations. Some speakers, stressing the principle of national sovereignty, stated that all provisions relating to reservations should be deleted.

26. To ensure effective application of international humanitarian law, a number of speakers recommended that a simple and easily understood wording be adopted to assist those who were to apply the rules, and that the rules should be formulated in as precise a manner as possible to avoid any divergent interpretations.

(b) New Category of Prisoners of War

27. The insertion of article 42 (1) and (2) of draft Protocol I as Section II of Part III gave rise to very sharp criticism. It was felt by some that the conditions set out in this article had not been clearly defined; others considered that the requirements laid down in this article were too inflexible.

(c) The struggle of peoples for freedom and self-determination

28. A number of delegates stressed the need to qualify such struggles as armed conflicts of an international character to which all four Geneva Conventions - and the additional Protocols once they come into force - would consequently apply. Several speakers agreed, however, that national liberation movements were sometimes not in a position to apply all of the Conventions; there accordingly arose a proposal to the effect that these movements - for reasons of justice - should be required to apply them only insofar as they could. Other delegates spoke in favour
of granting prisoner-of-war treatment to members of liberation movements. This view was opposed by others on the grounds that the reasons which cause conflict could affect neither the characterization of the conflict nor the treatment of captured combatants.

29. Some delegates emphasized the distinction between just and unjust wars, and a few drew the conclusion that only victims of aggression should enjoy the protection of humanitarian law. In this respect, one of the ICRC representatives pointed out that there was necessarily a fundamental distinction between the rules governing the very principle of recourse to war (jus ad bellum) and the rules to be observed during war (jus in bello) — the law of The Hague and the law of Geneva. These latter rules should be applied on an equal footing and in their totality, with no distinction, to victims of both Parties to the conflict irrespective of the cause of conflict.

(d) Strengthening the protection of the civilian population

30. Generally speaking, the provisions relating to the protection of the civilian population were viewed with favour. Some delegates, while welcoming the improvements compared with previous drafts, nonetheless advocated the broadest possible extension of the protection granted to the civilian population. For instance, the hope was expressed that the civilian population would receive the same protection in all armed conflicts.

31. Several delegates dwelt on the need to maintain a distinction — a basic one in their eyes — between the civilian population and the combatants. Moreover, they stressed that a distinction should be drawn between the civilian population and civilians. Some of them also contended that despite the definition of the civilian population given in draft Protocol I, it was not clear what situation the civilian population had to be in to be entitled to the protection of that instrument.

32. Certain delegates stressed the need for a still better definition of military objectives and civilian property, so that a clear distinction was preserved between these two concepts; such a distinction was essential in order to ensure effective protection for civilian property. It was also pointed out that the effectiveness of this protection was closely linked with the precautions in attack and against the effects of attack, and with the banning and restriction of the use of certain weapons.
33. With regard to property essential for the survival of the civilian population, emphasis was laid on the importance of protecting the natural environment.

34. Stress was placed on the urgent need to develop international humanitarian law applicable in non-international armed conflict, and the majority of delegates who expressed their views on this question approved the fact that this had been done by means of a separate Protocol. A protocol concerning the protection of the victims of non-international armed conflict made it possible to preserve the distinction between international and non-international armed conflicts - a distinction which was firmly established in international law. Furthermore, it was possible in such a Protocol, to take into account the special character of such armed conflicts, their political aspects and the material conditions of the conflicts, since the aim of the delegates was to produce a set of rules which could easily be applied by parties to a conflict. In this connection it was felt that draft Protocol II was a step ahead of previous drafts.

35. It was pointed out that draft Protocol II constituted a delicate point of balance between the requirements of humanity and the essential needs of State security; hence the regulations which might be adopted would depend on the scope of the Protocol. In this connection, it was stressed that a choice had to be made between a narrow definition of non-international armed conflict, coupled with fairly comprehensive regulations, and a wide definition of conflict, accompanied by less far-reaching regulations, laying down only general rules of protection. Whereas certain delegates expressed a wish for clarification of Article 1 of draft Protocol II by introducing criteria such as the occupation of part of a territory by insurgent forces, and the constitution of a provisional government capable of administration, others took the opposite view that Article 1 should be simplified to provide in effect that the Protocol provisions must be applied in all non-international armed conflicts in which military governmental forces on the one hand, and regular or irregular military forces on the other, are engaged in combat and to which Article 2 common to the Geneva Conventions is not applicable.

36. Some delegates were anxious to avoid giving too wide a status to the insurgent party and stressed that their reservations on this point were motivated by their fear that
the Protocol might not be ratified or, although in force, might not be applied.

(f) **Strengthening of the role of National Societies and the League**

37. Several delegates and the League representative requested – in accordance with a resolution adopted by the League Board of Governors – that the role of National Societies and their federation should be strengthened, and their humanitarian activities facilitated in times of armed conflict. Taking into account the extension of those activities, draft resolutions suggested, in particular, that the Parties to a conflict should grant them all the facilities and assistance necessary for them to carry out their work for the victims of armed conflicts.

(g) **The prohibition or limitation of the use of certain weapons**

38. Recalling work recently undertaken in this field, in particular the Report of the United Nations Secretary General on "Napalm and other Incendiary Weapons and all aspects of their possible use", and the report on "Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects", prepared by a group of experts under the sponsorship of the ICRC, one delegate expressed the view, shared by others, that the Diplomatic Conference ought to study this matter. Some, however, considered that the question, which still required detailed examination, should be dealt with either within the general framework of disarmament or by a conference of government experts, and only submitted later to a diplomatic conference convened for that purpose.

39. It was maintained that the historical distinction between the law of The Hague and the law of Geneva could no longer be upheld since both draft Protocols contained a number of rules drawn from the law of The Hague. Moreover, it was shown that the prohibition or limitation of certain weapons was particularly urgent if the civilian population and combatants were to be protected. This clearly demonstrated the humanitarian value of the study.

40. Many delegates recognized the importance of the proposed study and offered to support it provided it would not hold up the work of the Diplomatic Conference, that is
to say the adoption of the two Protocols proposed by the ICRC. Some considered that the prohibition or limitation of the use of certain weapons could be more suitably inserted in a separate legal instrument which - if necessary - could take the form of a third Protocol.

41. After some discussion, the delegates agreed on the procedure to be pursued.

Chapter 2

Discussion of the individual articles of the two draft Protocols

42. During the discussions, several delegates submitted draft resolutions or proposals containing amendments to articles of both drafts. In conformity with the procedure suggested by the Chairman and accepted by the Commission, they were not put to the vote.

43. One of the ICRC representatives announced that his organization would establish a full report designed to explain in great detail to the Diplomatic Conference the views expressed and the written and oral amendments submitted to the Commission but not reflected in this report.

Chapter 3

Voting on the draft Resolutions

(a) Draft Resolution entitled "Implementation and dissemination of the Geneva Conventions":
Voting: Adopted unanimously

(b) Draft Resolution entitled "Reaffirmation and development of international humanitarian law applicable in armed conflicts" and amendment:
Amendment: voting: for 24 against 40 abstentions 1
Resolution: voting: for 85
against 1
abstentions nil

(c) Draft Resolution entitled "Prohibition or restriction of use of certain weapons":

Verbal amendment: voting: for 13
rejected by a large majority

Resolution: voting: for 88
against nil
abstentions 11

Explanations concerning the voting:

1. The German Red Cross in the Federal Republic of Germany withdrew its draft resolution and at the same time made the following remarks:
   - it felt a third Protocol should be drafted if the projected diplomatic Conference did not succeed in finding a solution, even in the final stage of the proceedings;
   - if such proved to be the case, a second Diplomatic Conference should be convened as soon as possible.

2. Withdrawing his proposed amendment to delete the word "conventional" from operative paragraphs 4 and 5, the Romanian Government delegate said he still wished to deal with the question of weapons of mass destruction, and first and foremost that of nuclear arms.

3. The French Government representative indicated that in voting for the text he had not wished to affect the remainder of the discussions of the framework in which they took place.

(d) Draft resolution entitled "Reaffirmation and development of international humanitarian law applicable in armed conflicts and amendments:

Amendment 3b: voting: for 50
against 8
abstentions 31

3c: voting: for 30
against nil
abstentions 10
3e: voting: for 88
against 44
abstentions 13

Resolution: voting: for 88
against nil
abstentions 8

1. The Government of Brazil justified its abstention on the grounds of the inclusion of the paragraph relating to the participation of national liberation movements in the Diplomatic Conference.

2. The Cuban Government representative said he had abstained because only the national liberation movements recognized by a regional inter-governmental organization were taken into account.

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In announcing the completion of the Commission's work, the Chairman thanked delegates for their collaboration, congratulated them on the results achieved and expressed the hope that the Tehran Conference would mark a new beginning.
III.

RESOLUTIONS ADOPTED
BY THE FINAL PLENARY SESSIONS
OF THE CONFERENCE
Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts

The XXIInd International Conference of the Red Cross,

   conscious that armed conflicts continue to cause untold human suffering and material devastation,

   convinced that the parties to all such conflicts need humanitarian rules designed to reduce the suffering as much as possible and to increase in the same way the protection of non-combatants and civilian objects,

   aware that many modern means and methods of warfare have added to the need for a reaffirmation and development of the present laws and customs applicable in armed conflicts,

   confirming the dedication to these questions of the International Conferences of the Red Cross,

   recalling, in particular, Resolution XIII of the XXIst International Conference of the Red Cross,

   noting, also, the successive resolutions adopted by the General Assembly of the United Nations on the item "Human Rights in Armed Conflicts", the latest being Resolution 3032 (XXVII), adopted on 18 December 1972,

   welcoming the Draft Additional Protocols to the Geneva Conventions of 1949, prepared by the ICRC after thorough consultations with government experts, particularly during conferences in Geneva in 1971 and 1972,

   welcoming, further, the report presented by the ICRC on "Weapons that may cause Unnecessary Suffering or have Indiscriminate Effects",

   welcoming the decision of the Swiss Federal Council to convocate a diplomatic conference for the purpose of reaffirming and developing international humanitarian law applicable in armed conflicts,
considering that the Draft Additional Protocols offer an excellent basis for discussion at the Diplomatic Conference,

expresses appreciation to the ICRC for the extensive work it has performed,

urges all governments to participate in the Diplomatic Conference,

urges the Diplomatic Conference to consider inviting national liberation movements recognized by regional inter-governmental organizations to participate in its work as observers in accordance with United Nations practice,

appeals to all Governments to recognize their own long-term interests in humanitarian rules, which respond to the urgent needs to alleviate the suffering brought about by modern armed conflicts and the need to protect non-combatants in such conflicts and, for this purpose, to make use of this Diplomatic Conference to achieve substantial humanitarian gains,

appeals to all the participants at the Diplomatic Conference to be held in Geneva to do all in their power by co-operation and fruitful negotiations to secure the widest and swiftest adoption of the two Additional Protocols to the Geneva Conventions of 1949, as instruments of international humanitarian law effective on a universal basis.
Prohibition or Restriction of Use
of Certain Weapons

The XXIInd International Conference of the Red Cross,

recalling that the right of Parties to a conflict to adopt means of injuring the enemy is not unlimited,

recalling, in particular, those rules of international law which prohibit the use of arms, projectiles or material likely to cause unnecessary suffering and those rules of international law which require the protection of civilians,

confirming the views expressed by the International Conferences of the Red Cross in resolution XXVIII (1965) regarding the Protection of Civilian Populations against the Dangers of Indiscriminate Warfare, and resolution XIV (1969) regarding Weapons of Mass Destruction, by the International Conference on Human Rights in Tehran in resolutions XXIII (1968) regarding Human Rights in Armed Conflicts and by the United Nations General Assembly in resolution 2932 (XXVII - 1972) regarding Napalm and other Incendiary Weapons,

endorsing, in particular, the view expressed in 1972 by the United Nations General Assembly in resolution 2932 (XXVII) that the widespread use of many weapons and the emergence of new methods of warfare that cause unnecessary suffering or are indiscriminate call urgently for renewed efforts by Governments to seek, through legal means, the prohibition or restriction of the use of such weapons and of indiscriminate and cruel methods of warfare and, if possible, through measures of disarmament, the elimination of specific, especially cruel or indiscriminate, weapons,

noting that consistent with its work for the reaffirmation and development of humanitarian law the ICRC has continued to devote attention to the question of weapons which may cause unnecessary suffering or have indiscriminate effects,
welcomes the proposals which the ICRC is submitting to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts for rules concerning the prohibition of the use of weapons which are likely to cause unnecessary suffering and methods and means of combat which have indiscriminate effects,

welcomes further, the factual report elaborated by an international group of experts under the auspices of the ICRC on Weapons that May Cause Unnecessary Suffering or Have Indiscriminate Effects, covering, inter alia, high velocity projectiles, blast and fragmentation weapons, time-delay weapons and napalm and other incendiary weapons,

endorses the conclusion of the report that intergovernmental review and action is called for regarding specific types of weapons dealt with in the report,

urges the Diplomatic Conference - without prejudice to its work on the two draft Protocols submitted by the ICRC - to begin consideration at its 1974 session of the question of the prohibition or restriction of the use of conventional weapons which may cause unnecessary suffering or have indiscriminate effects,

invites the ICRC 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 and to transmit a report on the work of the conference to all Governments participating in the Diplomatic Conference with a view to assisting them in their further deliberations.
Reinforcement in the Additional Protocols
of the role of National Societies

The XXIInd International Conference of the Red Cross,

having received the views of the Board of Governors of the League, which held its XXXIInd Session in Teheran in November 1973, to the effect that the two Draft Additional Protocols to the Geneva Conventions do not make sufficient reference to the role which must fall to National Red Cross, Red Crescent and Red Lion and Sun Societies as well as to their Federation in humanitarian activities for armed conflict victims,

having examined the two Draft Additional Protocols and taken note of the comments made during the debates,

requests the Diplomatic Conference to be held in Geneva in 1974, to introduce the appropriate provisions to strengthen the role and facilitate the humanitarian activities of National Societies and of their Federation, for example by adding:

1) a general provision inviting the Parties to a conflict to grant National Societies all the means and help required to enable them to carry out all their humanitarian activities on behalf of the victims of armed conflicts,

2) special provisions covering the personnel, services and programmes National Societies are in a position to provide in order to make sure that the objectives of the Geneva Conventions and of the Protocols are attained.