OFFICIAL RECORDS

OF THE

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

GENEVA (1974-1977)

VOLUME XI

INTRODUCTORY NOTE

Volume I contains the Final Act, the resolutions adopted by the Conference, and the draft Additional Protocols prepared by the International Committee of the Red Cross. Volume II contains the rules of procedure, the list of participants, the *Désignation aux différents postes de la Conférence**, the *Liste des documents**, the report of the Drafting Committee and the reports of the Credentials Committee for the four sessions of the Conference. Volumes III and IV contain the table of amendments. Volumes V to VII contain the summary records of the plenary meetings of the Conference. Volumes VIII to X contain the summary records and reports of Committee I. Volumes XI to XIII contain the summary records and reports of Committee II. Volumes XIV and XV contain the summary records and reports of Committee III, and volume XVI contains the summary records and reports of the *Ad Hoc* Committee on Conventional Weapons. Volume XVII contains the table of contents of the sixteen volumes.

The Official Records of the Conference are published in all the official and working languages of the Conference. In the Russian edition, as Russian was an official and working language of the Conference only from the beginning of the second session, the documents of which no official translation was made in Russian are reproduced in English. The Arabic edition of the Official Records contains only the documents originally issued in Arabic and those translated officially into Arabic after Arabic became an official and working language at the end of the third session. The Final Act only has been translated into Chinese.

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Federal Political Department
Bern, 1978

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OF THE

DIPLOMATIC CONFERENCE
ON THE REAFFIRMATION AND DEVELOPMENT
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IN ARMED CONFLICTS

CONVENED BY THE SWISS FEDERAL COUNCIL
FOR THE PREPARATION OF TWO PROTOCOLS ADDITIONAL
TO THE GENEVA CONVENTIONS OF AUGUST 12, 1949
PROTOCOL I RELATING TO THE PROTECTION OF VICTIMS
OF INTERNATIONAL ARMED CONFLICTS
PROTOCOL II RELATING TO THE PROTECTION OF VICTIMS
OF NON - INTERNATIONAL ARMED CONFLICTS

HELD AT GENEVA ON THE FOLLOWING DATES:

20 FEBRUARY – 29 MARCH 1974 (FIRST SESSION)
3 FEBRUARY – 18 APRIL 1975 (SECOND SESSION)
21 APRIL – 11 JUNE 1976 (THIRD SESSION)
17 MARCH – 10 JUNE 1977 (FOUTH SESSION)

PREPARATION

OF THE TWO PROTOCOLS ADDITIONAL
TO THE GENEVA CONVENTIONS OF 1949,
PROTOCOL I RELATING TO THE PROTECTION OF VICTIMS
OF INTERNATIONAL ARMED CONFLICTS
PROTOCOL II RELATING TO THE PROTECTION OF VICTIMS
OF NON–INTERNATIONAL ARMED CONFLICTS

REAFFIRMING AND DEVELOPING THE FOLLOWING FOUR GENEVA CONVENTIONS:

GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITONS OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD OF AUGUST 12, 1949

GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF WOUNDED, SICK AND SHIPWRECKED MEMBERS OF ARMED FORCES AT SEA OF AUGUST 12, 1949

GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF AUGUST 12, 1949

GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR OF AUGUST 12, 1949

VOLUME XI

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SUMMARY RECORDS OF COMMITTEE II

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* This document was issued in mimeographed form as volume I of the summary records of the meetings of Committee II during the second session.

** This document was issued in mimeographed form as volume II of the summary records of the meetings of Committee II during the second session.

FIRST SESSION

(Geneva, 20 February - 29 March 1974)

COMMITTEE II

SUMMARY RECORDS OF THE FIRST TO TWELFTH MEETINGS

held at the International Conference Centre, Geneva,

from 6 to 26 March 1974

Chairman:	Mr. T. MALLIK	(Poland)
Rapporteur:	Mr. D. MAIGA	(Mali)

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SUMMARY RECORD OF THE FIRST MEETING

held on Wednesday, 6 March 1974, at 10.30 a.m.

Chairman: Mr. MALLIK (Poland)

ORGANIZATION OF WORK

1. The CHAIRMAN drew attention to the Committee's provisional agenda, contained in document CDDH/5, page 3. The two draft Protocols to be considered by the Conference were the product of hard work by the International Committee and other bodies of the Red Cross and by groups of government experts. They were concerned with matters which made it necessary to supplement the four Geneva Conventions of 1949, including the reaffirmation and development of measures for the protection of wounded, sick and shipwrecked persons, medical personnel, and methods and means of aiding the victims of armed conflicts and of safeguarding their life and health. The articles of the draft Protocols were the result of ideas expressed at a number of conferences of experts and had been accepted in essence by the XXIInd International Conference of the Red Cross at Teheran in 1973. In considering particular articles it should be borne in mind that the wording was of great humanitarian importance.

2. The Committee had a great responsibility in drawing up a new legal instrument of international humanitarian law. The possibility of alleviating the suffering of victims of armed conflict, saving their lives and protecting their dignity would in a large measure depend on the clarity of each of the relevant legal provisions.

3. He proposed that, as the Conference had not yet adopted its rules of procedure, the Committee should, for the time being, like the plenary meeting, take decisions by consensus or by simple majority vote.

It was so agreed.

4. The CHAIRMAN said that the Committee would have to decide on a number of questions. The first was whether to set up a Technical Sub-Committee to deal with the annex to draft Protocol I entitled "Regulations concerning the identification and marking of medical personnel, units and means of transport, and civil defence personnel, equipment and means of transport", and to be composed of experts appointed by delegations on the Committee. Secondly, if it was decided to set up a Sub-Committee it would be necessary also to decide whether the Chairman and Vice-Chairman should be appointed by the Committee or the Sub-Committee; to fix a date for the Sub-Committee to start work, and to extend an invitation to representatives of international organizations specializing in the relevant subjects.

5. The third question was the establishment of a Drafting Committee on which the regional groups and the official languages of the Conference would by fully represented. All delegations could attend meetings of the Drafting Committee but only those which had submitted amendments or proposals could speak. The question of the appointment of the Chairman and Vice-Chairman of the Drafting Committee would have to be decided in the same way as for the Technical Sub-Committee on marking.

6. He suggested that the Committee should consider the articles of draft Protocols I and II assigned to it in the order in which they appeared in those two documents.

7. He proposed that the discussion on each article should be preceded by an introduction by a representative of the International Committee of the Red Cross (ICRC), after which the amendments and proposals submitted by delegations would be read out, and that after the discussion in the Committee all amendments and proposals which had not been rejected should be sent to the Drafting Committee, whose report, after adoption by the Committee, would be sent to the plenary meeting or direct to the Drafting Committee of the Conference. The texts prepared by the Technical Sub-Committee should be submitted to the Drafting Committee which would then refer them to the Committee for consideration.

8. Mr. DEDDES (Netherlands) said that he fully supported the idea of appointing a Drafting Committee. He suggested that it should be composed of as many members as had been the Drafting Committee of Committee I of the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, held in 1972.

9. Mr. SCHULTZ (Denmark) said that it was essential to speed up the Committee's work, in order to make up for lost time and for the fact that the Committee could apparently not meet every day. For that reason, he had noted with satisfaction that the Chairman had not proposed a general debate. He suggested that the Committee should decide to go through all the three main parts - wounded, sick and shipwrecked persons; civil defence; and relief - and then concentrate on draft Protocol I, only starting on draft Protocol II if there were time.

10. He fully supported the Chairman's proposal to set up a Drafting Committee composed of representatives of all the regional groups represented in the Committee. When discussing each article in turn, the Committee could then concentrate on principles and leave the details of drafting to the Drafting Committee. He felt that the Conference should not be too ambitious and should confine itself to a first reading of all the articles, bearing in mind that there would be a second session in 1975. It would be

better for the time being not to go into such details as the inconsistencies between the two draft Protocols and the four Geneva Conventions of 1949, between the two Protocols themselves and between certain chapters. He also supported the Chairman's proposal to set up a Technical Sub-Committee and thought that it might even be advisable to set up other working groups to work concurrently with the Committee. In any case, the Drafting Committee could work concurrently with the Committee and might usefully meet also in the period between the present session and the second session to be held in 1975.

11. Mr. MARTINEZ (Cuba) said that he supported the Chairman's proposal concerning the procedure to be followed pending adoption of the Conference rules of procedure.

12. He was also in favour of the setting up of a Drafting Committee and a Technical Sub-Committee. He agreed with the Netherlands representative on the membership of the Drafting Committee, which should be widely representative and based on regional groupings. Both Committees should be entirely open, even to observers. It would be better for each Committee to appoint its own Chairman and Vice-Chairman.

13. With regard to the way in which the Committee should deal with the articles assigned to it, he was in favour of not having a general debate and he supported the Danish representative's suggestion, but he was not in favour of concentrating on draft Protocol I. Both draft Protocols were of great importance and neither could be considered separately. It would not be contributing to humanitarian law if draft Protocol II were given lower priority.

14. Lastly, he suggested that it might be useful to set a time limit for sending in amendments to the draft articles.

15. Mr. DUNSHEE de ABRANCHES (Brazil) said that, pending the adoption of the rules of procedure, the Committee had no alternative but to follow the Chairman's suggestion. He supported the proposal to set up a Drafting Committee and a Technical Sub-Committee and considered that each should elect its own Chairman and Vice-Chairman.

16. He also saw no need for a general debate: the technical questions were all well known and it was essential to start on the substantive work without delay.

17. Mr. MBAYA (United Republic of Cameroon) said that he supported the Chairman's proposal concerning the procedure to be followed pending adoption of the rules of procedure but thought that the Committee should also follow the example of the plenary meeting and adopt chapter V of the provisional rules of procedure (CDDH/2).

18. He suggested that the number of working groups or sub-committees to be set up should be kept to a minimum, particularly in view of the difficulties confronting small delegations.

19. With regard to consideration of the two draft Protocols, he agreed with the representative of Cuba that the two were closely linked. He was not in favour of drawing an arbitrary distinction between international and non-international armed conflicts: both merited equal attention. Moreover, such a distinction might well affect the liberation movements, whose status had not yet been decided. That problem was vital to the African countries.

20. Mrs. MANTZOULINOS (Greece) said that her delegation was in favour of small Working Groups rather than formal Sub-Committees. There should be no general debate but a discussion of the draft Protocols article by article, with the assistance of experts from the ICRC. For the time being discussion should be confined to draft Protocol I.

21. Mr. MARTIN (Switzerland) on a point of order, said that although most speakers were opposed to any general debate, the Committee was in fact having just such a debate. He asked that the Committee proceed to the adoption of the agenda.

22. Mr. DOROBANTU (Romania) asked that a time-limit be set for the submission of amendments to the draft Protocols, and that the Committee establish the order in which each article was to be considered. The establishment of a Drafting Committee prior to any substantive discussion did not seem essential.

23. Mr. JAKOVLJEVIĆ (Yugoslavia) agreed with the order of work proposed by the Chairman, and with the plan of work suggested by the host Government, namely that articles in both draft Protocols be taken in groups according to the category of problems referred to. Rather than split up into small Working Groups, the Committee should work as much as possible as a whole, since the conclusions reached by small working groups would not be representative.

24. Mr. LAVINA (Philippines) agreed that the procedure followed by the Conference plenary would have to apply to committees until the rules of procedure were adopted. Membership of the Drafting Committee of Committee II should be limited to a number of experts, with due attention paid to regional representation. Sharing the views expressed by the representative of the United Republic of Cameroon, he felt that the two draft Protocols should be discussed simultaneously, a view supported also by the delegations of Switzerland and Yugoslavia.

25. Mr. MARRIOTT (Canada) agreed that any Drafting Committee should be kept small. His delegation was less pessimistic than that of Denmark which had suggested that articles should be

discussed in general terms during this year's session and in detail in 1975. Such procedure would imply going over the same subject twice, with all the attendant preliminary and procedural matters. That would not only mean a waste of time but might seriously interfere with continuity in terms of delegation membership. Canada attached the greatest possible importance to draft Protocol II. It would be a grave mistake to assume that the wording of certain articles in Protocol I could be transferred to Protocol II. The two Protocols would have to be discussed side by side.

26. Mr. PICTET (International Committee of the Red Cross) suggested that the Committee begin its discussions with the wounded, sick and shipwrecked persons, Protocol I, articles 8 to 20, and subsequently discuss the corresponding articles in Protocol II (11 to 19). The Committee could then discuss section II of part II of draft Protocol I (articles 21 to 32) to which there were no corresponding articles in Protocol II. Subsequently, the Committee could deal with "Relief", covered by draft Protocol I (articles 60 to 62) and draft Protocol II (articles 33 to 35). For the annex dealing with marking, it seemed appropriate to set up a technical working party whose work would proceed simultaneously with that of the Committee.

27. Mr. HAAS (Austria) expressed support for the proposals put forward by the representatives of the ICRC, Yugoslavia and Canada, and suggested that a small Working Group be established on Civil Defence.

28. Mr. CLARK (Australia) said that the Committee should set itself specific goals. It might either discuss articles 8 to 20 of draft Protocol I and subsequently articles 11 to 19 of draft Protocol II or another section of draft Protocol I. His delegation wished to have some articles finalized, and considered articles 8 to 20 of draft Protocol I as essential to both draft Protocols.

29. Mr. EL-SHAFEI (Arab Republic of Egypt) stated that he agreed with the Chairman's interpretation with regard to procedure, since in the absence of definitive rules of procedure any alternative would only cause unnecessary delay. Since the subject of markings was highly technical, and several delegations had experts on the subject among them, the Technical Sub-Committee might be set up and begin discussions immediately. The Drafting Committee might be deferred to a later date, but should have wide representation and be open to any delegation interested. Corresponding articles in the two draft Protocols should be discussed simultaneously and then be passed on to the Drafting Committee.

30. Mr. ABSOLUM (New Zealand) supported the establishment of both a Drafting Committee and a Technical Sub-Committee on marking but considered it preferable to delay any decision on the setting up of other working groups until the work of the Committee was further advanced and its needs more clearly identified.

31. He believed that, until the Conference had taken a decision on the scope or field of application of Protocol II, it would be preferable for the Committee to concentrate on Protocol I and, at least in the first instance, to begin work on articles 8 to 20.

32. Mr. MBAYA (United Republic of Cameroon) supported and asked for a vote on the suggestions put forward by the representative of the ICRC. He was opposed to the Committee's devoting the coming two weeks to articles 8 to 20 of draft Protocol I, since that would imply the postponement of consideration of draft Protocol II indefinitely or, at the earliest, until the Conference's second session in 1975.

33. Mr. MARTIN (Switzerland) said that despite the point of order which he had raised, the Committee still seemed to be engaged in a general debate. He supported the suggestions put forward by the representative of the ICRC and proposed that a Working Group on Civil Defence be set up which would deal with articles 54 to 59 in draft Protocol I. Experts on Civil Defence were, of course, also interested in articles 8 to 20 of draft Protocol I, and the Committee as a whole in articles 54 to 59, but the Working Group on Civil Defence might submit a report to be adopted by the full Committee.

34. Mr. CHUWA (United Republic of Tanzania) pointed out that no definition of international and non-international conflicts had been adopted. The national liberation movements were engaged in conflicts which were not necessarily internal. The suggestion to defer consideration of draft Protocol II implied that a vital element in current struggles was to be ignored. As the representative of the United Republic of Cameroon had pointed out, consideration of draft Protocol I only would mean that many delegations would return home without having attended to the most significant task entrusted to them.

35. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said it was difficult to know how long it would take the Committee to consider certain categories of articles. He felt it would be best to finish work on draft Protocol I before proceeding to consideration of draft Protocol II, since it would be preferable to have one entire Protocol adopted rather than certain parts only of two Protocols. But there were other opinions and it would be better to postpone a decision until the discussion on articles 8 to 20 was finished.

36. Mr. MAKIN (United Kingdom) said that since most of the work of the Drafting Committee would be concerned with language, it should include specialists in the three working languages. He supported the suggestion made by the representative of Denmark that consideration be given to the meeting of the Drafting Committee between the two sessions of the Conference. It would speed up the work and produce a tidier draft for the second session. That was, however, a question which must be decided later.

37. It was important to decide on the articles to be considered at the next meeting and on the deadline for the submission of the relevant amendments.

38. Since the English text of the Protocols contained a number of linguistic errors he asked for a ruling from the Chairman on whether the purely language amendments should be submitted to the Committee itself or directly to the Drafting Committee.

39. Mr. CHUNG Chia-mao (China) supported the other delegations which had recommended concentrating the discussion on draft Protocol I. As the head of his delegation had said in his general statement, the expression "non-international armed conflict" could have different interpretations. Civil war raised the fundamental principle of the sovereignty of States about which several delegations had expressed doubts. He therefore suggested that the Committee should concentrate on draft Protocol I before starting examination of draft Protocol II.

40. Mr. BRUM (Uruguay) said that he supported the establishment of a Drafting Committee and a group of technical experts. The members of each should bear full responsibility for its decisions and the delegations not represented on the group should be able to take part in the discussions but not have the right to vote.

41. Both Protocols were of equal importance and neither should be given preference over the other. He therefore supported the suggestion made by the representative of the ICRC that discussions should be divided into themes rather than protocols.

42. Any time limit for the submission of amendments should be set as work proceeded, since changes which might be made in the text in the course of the discussion would call for revision or even withdrawal of amendments submitted in advance.

43. When arranging for simultaneous meetings of the various groups, it should not be forgotten that some delegations had only a few members.

44. The first stage of the Committee's work should be devoted to matters of substance, questions of detail and drafting being left for subsequent revision.

45. Mr. SHANKAR (India) said that although his delegation attached the greatest importance to both draft Protocols, it felt that progress would be delayed if they were considered at the same time. There were certain disparities between the two Protocols, and some fundamental principles expressed in draft Protocol II had yet to be studied in detail. He therefore agreed with the many delegations which had proposed that they should be considered separately, in the numerical order of the articles.

46. He supported the establishment of a Drafting Committee and a Technical Sub-Committee which would facilitate the progress of the Committee's work.

47. Mr. STARING (United States of America) endorsed the view expressed by the Canadian representative concerning the importance of draft Protocol II and hoped that the Committee would have time to discuss it. However, it should begin with articles 8 to 20 of draft Protocol I.

48. It should be possible to set up the Technical Sub-Committee immediately so that it could proceed with its work parallel with that of the Committee itself.

49. The CHAIRMAN suggested that the Committee should adjourn for a short time in order that definite proposals could be prepared.

The Committee was suspended at 12.5 p.m. and resumed at 12.30 p.m.

50. The CHAIRMAN said that there being no objection, he took it that the Committee wished to establish a Technical Sub-Committee on marking.

It was so agreed.

51. The CHAIRMAN suggested that at its next meeting the Committee should begin consideration of articles 8 to 20 of draft Protocol I. Proposed amendments to those articles should be submitted to the Secretariat by the afternoon of Friday, 8 March 1974. The order of the rest of its work should be decided at a subsequent meeting.

52. He suggested that the Chairman of the Drafting Committee should be elected by the Committee itself which should be composed of at least one representative of each geographical group, language specialists of the working languages of the Conference, and the Rapporteur of Committee II. The names of countries designated to constitute the Drafting Committee should be submitted by the geographical groups to the Committee at its next meeting.

53. Mr. KIEFFER (Switzerland) said that it would be difficult for the Drafting Committee to work efficiently with too large a membership. He therefore suggested that the Committee should decide immediately upon the number of members to be designated by each regional group.

54. Mr. JAKOVLJEVIĆ (Yugoslavia), supported by Mr. BRUM (Uruguay), suggested that each regional group should nominate two representatives.

55. Mr. SANCHEZ DEL RIO Y SIERRA (Spain), supported by Mr. NAHLIK (Poland) and Mr. LAVIÑA (Philippines) said that a total of fifteen members would be more realistic, in order that there should be an equitable representation of the various working languages, the geographical sub-regions and the necessary specialized abilities - for instance, legal and medical.

56. Mr. KIEFFER (Switzerland) pointed out that the Drafting Committee was merely responsible for drafting and not for substance and that any questions of substance could be dealt with by the sponsors of the various amendments, who could attend the Drafting Committee to explain their intentions. The representatives designated by each regional group should, of course, include language experts so that there were two such experts for each official language. It might be useful if a representative of the ICRC were also to participate in the Drafting Committee's work as an adviser.

57. Mr. DOROBANTU (Romania) reminded the Committee that the rules of procedure not having been adopted, no decision had been reached on the official languages of the Conference.

58. Mr. NAHLIK (Poland) expressed the view that in order to ensure adequate representation of all the regional and linguistic groups, the Drafting Committee should be composed of at least 15 members. He proposed, however, that a definite decision on the composition of the Drafting Committee might be postponed until the next meeting, since it could not begin its work until some articles had been discussed.

The meeting rose at 1.5 p.m.

SUMMARY RECORD OF THE SECOND MEETING

held on Monday, 11 March 1974, at 10.50 a.m.

Chairman: Mr. MALLIK (Poland)

ADOPTION OF THE AGENDA

1. The CHAIRMAN read out the four-item agenda which he proposed for consideration by the Committee.

The agenda was adopted by consensus

STATEMENT BY THE CHAIRMAN (agenda item 1)

2. The CHAIRMAN said that the Committee had decided at its first meeting to set up a Technical Sub-Committee. The Sub-Committee had meanwhile elected its officers, as follows: Chairman - Mr. Kieffer (Switzerland), Vice-Chairman - Mr. Stefferud (United States of America) and Rapporteur - Mr. Agudo Lopez (Spain).

The officers of the Technical Sub-Committee were approved by consensus.

3. The CHAIRMAN proposed that the Committee should invite the Vice-President of the International Committee of the Red Cross to come to the rostrum.

It was so agreed.

Mr. Jean Pictet, Vice-President of the International Committee of the Red Cross, took his place on the rostrum.

ESTABLISHMENT OF A DRAFTING COMMITTEE (agenda item 2)

4. The CHAIRMAN said that it seemed to be generally agreed that three official languages would be used and that three representatives from each of the five geographical groups would attend the meetings of the Drafting Committee. The number of members of the Drafting Committee remained to be decided the figure fifteen had been proposed.

The proposal was adopted by consensus

5. The CHAIRMAN, replying to a question by the representative of Yugoslavia, said that the Rapporteur of Committee II and a representative of the ICRC would be co opted to the Drafting Committee, over and above its fifteen members.

ORGANIZATION OF WORK (agenda item 3)

6. The CHAIRMAN pointed out that the Committee would have to decide whether to consider the various articles of the two draft Protocols simultaneously in the order listed in document CDDH/4, or consecutively, beginning with the articles of draft Protocol I.

7. Mr. MARTIN (Switzerland) said that time would be gained by starting with the articles on civil defence (articles 54 to 59 of draft Protocol I), as everything related to articles 8 to 20 of draft Protocol I concerned civil defence also.

8. Mr. URQUIOLA (Philippines) said that he had understood that the Committee had already virtually decided upon the order in which it would consider the various groups of articles.

9. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) pointed out that the USSR delegation had proposed that the Committee begin with articles 8 to 20 of draft Protocol I, and decide later whether to consider the two draft Protocols simultaneously by proceeding to the relevant articles in draft Protocol II.

10. The CHAIRMAN said that Committees I and II had decided to deal with the articles of both draft Protocols simultaneously.

11. Mr. TAMALE MUGERWA (Uganda) said that he was in favour of discussing the draft Protocols together, firstly to line up the results of the work to be presented in plenary; secondly, to facilitate the work, since certain articles were similar, if not identical, in both draft Protocols; and, lastly, because if the Committee took the draft Protocols in turn, it might not be able to devote sufficient time to draft Protocol II.

12. Mr. MARTINEZ (Cuba) said that he too was in favour of considering both draft Protocols simultaneously.

13. Mr. PICTET (International Committee of the Red Cross) said that he shared that view and that, in the interests of co-ordination, it would be preferable for all three Committees to follow the same procedure.

14. In reply to a question by Mr. KRASNOPEEV (Union of Soviet Socialist Republics) he said that what the other Committees had decided to do was in no way incompatible with the proposal made in Committee II to proceed by groups of articles.

15. Mr. MAKIN (United Kingdom) asked whether, once the Committee had finished discussing articles 8 to 20, the Drafting Committee would deal with them before discussing the relevant articles in draft Protocol II, or whether Committee II would deal with both groups of articles before sending them to the Drafting Committee.

16. Mr. PICTET (International Committee of the Red Cross) said that the articles might be sent to the Drafting Committee as soon as they were ready.

17. Mr. ABSOLUM (New Zealand) said that he had no objection to the notion of examining the two Protocols simultaneously. He noted, however, that, if that were done, it might be necessary subsequently to revise any work undertaken on Protocol II in the light of decisions taken by the Conference on the scope of that Protocol.

18. Mr. BRAVO (Mexico) said that it seemed preferable to examine draft Protocol I and leave draft Protocol II for another session, in view of the doubts raised by the latter.

19. Mr. ANDRIANOMANANA (Madagascar) stated that that was a question of principle, not of procedure. His delegation could not therefore join a consensus on that point and would request a vote.

20. Mr. RIFAAT (Lebanon) believed that, if Committee II were to decide differently from the other Committees, there would be a gap between the articles studied by Committee I and those studied by Committee III; that would be detrimental to the work of the Conference.

21. The PRESIDENT, replying to Mr. MARTINEZ (Cuba) and Mr. BRAVO (Mexico), proposed that the Committee pass on to the examination of articles 8 to 20 of draft Protocol I, but express no views until it had been apprised of the procedure adopted by the other Committees.

22. Mr. MARTIN (Switzerland) said that in that case he would withdraw his proposal, but would submit it again when the discussion of articles 8 to 20 had been terminated.

23. The CHAIRMAN proposed that the Committee should decide, by consensus, to pass on to the examination of articles 8 to 20 of draft Protocol I and then subsequently determine whether the two draft Protocols should be examined simultaneously or not.

It was so decided.

24. The CHAIRMAN suggested that any amendment by several delegations should be submitted by one speaker on behalf of all the sponsors. He also proposed that amendments should be discussed in the order in which they had been submitted.

25. Mr. WINTELER (Secretary of the Committee), replying to a suggestion by Mgr. LUONI (Holy See), said that it would not be possible to arrange for amendments to be followed by commentaries, unless the latter were very brief. Moreover, to meet the concern

expressed by several members of the Committee, all amendments already submitted would be circulated very shortly - only one page each. He requested that amendments be submitted, in quadruplicate, separately for draft Protocol I and for draft Protocol II.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/I)

Articles 8 to 20

26. Mr. PICTET (International Committee of the Red Cross), introducing articles 8 to 20 of draft Protocol I, observed that they dealt with a question which from the very outset had been the subject matter of the Geneva Conventions, namely, the protection of the sick and wounded. An essential new point was the protection of civilian medical personnel, for which inadequate provision had been made in the Fourth Geneva Convention of 1949. The articles submitted by the ICRC were the result of work which had been carried out since 1955 by the Red Cross and major medical organizations. Mention was made of wounded, sick and shipwrecked persons on pages 9 to 11 of document CDDH/6.

27. Article 8 pertained to definitions. Previously there had never been an article devoted entirely to definitions, but it had been considered that the insertion of such an article would make for simplification and avoidance of repetition. In his view, the best procedure would be to defer the discussion of each definition until the examination of the corresponding articles. Otherwise, confusion might arise and time be wasted.

28. Mr. SOLF (United States of America) supported the proposal of the ICRC representative.

29. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) stated that he believed it would be preferable to examine first of all the definition of the terms 'wounded', 'sick', and so on. The Committee could not properly discuss the content of the other articles until it had reached agreement on the precise medical, legal and humanitarian significance of those terms.

30. Mr. NAHLIK (Poland) said that, from the point of view of legal procedure, the first step should be to circumscribe the subject to be discussed, and thus to establish the definitions first of all. Such was the general procedure in conferences on the codification of international law.

31. Mr. COIRIER (France) pointed out that the definitions would never be perfect until the Committee had settled the questions of substance. The simplest approach would be to give provisional definitions of the terms contained in article 8 and then return to each definition as the texts on matters of substance were drafted.

32. Mr. PICTET (International Committee of the Red Cross) said that the object of his proposal was to prevent each sub-paragraph of article 8 giving rise to a discussion on substance. The French proposal, however, appeared to be acceptable since the definitions adopted would have a provisional character and would be reviewed after the elaboration of the corresponding articles.

The French proposal was adopted by consensus.

33. Mr. PICTET (International Committee of the Red Cross), speaking on sub-paragraphs (a) and (b) of article 8, explained that the ICRC had continued its work after the texts presented to the Committee had been printed. Consequently, he would at times be led to suggest amendments to the proposals set out in the draft Protocols. Some experts had proposed extending the concept of "shipwrecked persons" to cover aircraft occupants in peril and persons in distress in inhospitable regions as a result of the destruction of their means of transport. That question was partly covered by the second paragraph of article 16 of the Fourth Geneva Convention of 1949, but the provision there was inadequate.

34. Although a majority of experts had not agreed, the ICRC thought that in view of certain specific cases which had occurred recently, it might now be better to consider the idea anew. If so, an amendment to sub-paragraph (b) should be submitted to the Committee. Article 39 of the draft Protocol pertained to a particular case, namely, occupants of aircraft in distress.

The meeting rose at 12.20 p.m.

SUMMARY RECORD OF THE THIRD MEETING

held on Monday, 11 March 1974, at 3.30 p.m.

Chairman: Mr. MALLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1)

Article 8 - Definitions (CDDH/1; CDDH/II/3, CDDH/II/4, CDDH/II/17, CDDH/II/27) (continued)

1. The CHAIRMAN invited the Committee to resume consideration of article 8 of draft Protocol I.

2. Mr. HAAS (Austria) and Mr. MAKIN (United Kingdom) suggested that, since their proposals, set out in documents CDDH/II/4 and CDDH/II/27, respectively, were purely drafting amendments, they should be referred to the Drafting Committee.

It was so agreed.

3. Mr. NAHLIK (Poland) said that the purpose of his delegation's amendment (CDDH/II/17) was to prevent an unduly restrictive interpretation being placed on the provisions of draft Protocol I, which did not exist as an independent instrument, but merely represented a supplement to the Geneva Conventions of 1949 and to international law on armed conflicts as a whole.

4. Having consulted with the representative of Australia, he proposed that the English translation of his amendment should read: "Expressions used in the present part shall have the following meaning".

5. Mr. CLARK (Australia), supported by Mr. MARTINS (Nigeria), Mr. BRAVO (Mexico) and Mr. KRASNOPEEV (Union of Soviet Socialist Republics), proposed that the Committee should consider the draft Protocol article by article and paragraph by paragraph, but that, since not all the amendments had been circulated in all the working languages and some had not yet been circulated at all, the sponsors of amendments to the various paragraphs should read them out, translations into the other languages being provided by the interpreters where necessary.

6. Mr. SOLF (United States of America) said that such a course would be contrary to rule 29 of the rules of procedure. That was particularly pertinent in the case of the Polish amendment (CDDH/II/17), which seemed to entail a change in international law exceeding the scope of part II of draft Protocol I. He imagined that delegations would like to have time to consider the implications of such an amendment and formally proposed that the Committee should

confine its discussions to amendments that had been circulated in all three working languages at least 24 hours previously, as rule 29 prescribed.

7. The CHAIRMAN took note of the United States representative's procedural motion and invited two speakers to speak in favour of it and two against.

8. Mr. JAKOVLJEVIĆ (Yugoslavia) said that the procedure proposed by the United States representative would unduly delay the Committee's work. The Committee could discuss all the amendments submitted, whether in writing or orally, on a given passage or sub-paragraph, without taking a decision on the article as a whole; it would be possible to revert to the amendments later, when they had been duly circulated.

9. Mr. MARTIN (Switzerland), supporting the United States motion, said that the discussion could begin with those amendments which had been submitted in all three languages. He asked the Secretary to inform the Committee which those amendments were.

10. Mr. PICTET (International Committee of the Red Cross), replying to a question by Mr. VOZZI (Italy), said that, while the ICRC was not entitled to submit formal amendments, it would be happy to distribute a document containing its suggestions concerning article 8.

11. The CHAIRMAN suggested that the meeting should be suspended.

It was so agreed.

The meeting was suspended at 4.30 p.m. and resumed at 4.45 p.m.

12. At the request of the CHAIRMAN, Mr. WINTELER (Secretary of the Committee) read out the symbol numbers of Committee documents which had been issued in the three working languages.

13. Mrs. DARIIMAA (Mongolia) pointed out that document CDDH/II/27, which the Committee had decided to refer to the Drafting Committee, had not yet been issued in the three working languages.

14. Mr. SOLF (United States of America), replying to a question by the CHAIRMAN, said that he maintained his proposal. The Committee should not attempt to discuss substantive amendments when representatives had not been able to study them in their own language.

15. The CHAIRMAN put the United States proposal to the vote.

The proposal was adopted by 39 votes to 1, with 23 abstentions.

16. The CHAIRMAN invited the Committee to resume consideration of amendments to article 8 which had been issued in the three working languages.

Sub-paragraph (c)

17. Mr. JAKOVLJEVIĆ (Yugoslavia), introducing his delegation's amendment to sub-paragraph (c) (CDDH/II/3), said that, as a result of the development of modern means and methods of warfare, increasing numbers of temporary first-aid personnel had to be trained to assist in caring for a much larger number of wounded and sick. His delegation considered that such personnel should receive the same protection as medical personnel. He noted that "civilian medical personnel" were covered by sub-paragraph (d) ii, but first-aid teams were not always composed of medical personnel, and the words "first-aid teams" should be added at the end of sub-paragraph (c).

18. Mr. von NOORDEN (Federal Republic of Germany) said he could support the Yugoslav amendment although he thought that first aid was also covered by the term 'treatment' in sub-paragraph (d) ii.

19. Mr. COCKCROFT (South Africa) said that the addition of the words "first-aid teams" to sub-paragraph (c) would restrict the types of personnel to be protected. It would be better to use the term 'paramedical personnel', which would cover all personnel caring for the wounded and sick.

20. Mr. EL-SHAMI (Jordan) suggested the term 'auxiliary' with which Mr. COCKCROFT (South Africa) agreed.

21. Mr. JAKOVLJEVIĆ (Yugoslavia), replying to a question by Mr. KRASNOPEEV (Union of Soviet Socialist Republics), said that the first aid teams to which he was referring were temporary teams training for emergency situations.

22. Mr. MARRIOTT (Canada) considered that such personnel were covered by the phrase 'civilian medical personnel, including members of the crews of means of medical transport, whether permanent or temporary, duly recognized or authorized by the State ...', in sub-paragraph (d) ii.

23. Mr. COIRIER (France) suggested that, since the term 'medical personnel' had a broad meaning, reference should be made to first-aid posts detached from hospitals.

24. Mr. MAKIN (United Kingdom) pointed out that such posts were defined in article 54 as forming part of civil defence and should not be mentioned in two articles.

25. Mr. MARTIN (Switzerland), said that, since first-aid posts were in fact units, they were already covered by the phrase "medical establishments and units" in sub-paragraph (c).

26. Mr. TRAMSEN (Denmark) said he agreed with the preceding speaker, adding that the terms "medical" or "first-aid" might even be superfluous.

27. Mr. BRAVO (Mexico) said that the Yugoslav proposal might lead to confusion, as even individual soldiers had first-aid kits and were in a position to deal with emergencies.

28. Mr. JAKOVLJEVIĆ (Yugoslavia) said he was glad that there was so much agreement in principle on the need to protect first-aid teams, but was afraid that restrictive wording might cover only professional medical staff, to the exclusion of civilians.

29. Mr. MARTIN (Switzerland) suggested that, since other articles, such as article 54 (a), also referred to first aid, the Committee should discuss the other texts before deciding on the Yugoslav and French proposals.

30. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) endorsed that view and stressed the importance of clear definitions in the Protocol.

31. The CHAIRMAN suggested that the first Yugoslav amendment in document CDDH/II/3 and the French proposal on first-aid posts, as well as all other suggestions should be referred to the Drafting Committee, which would decide on them and report back to the Committee.

It was so agreed.

The meeting rose at 5.45 p.m.

SUMMARY RECORD OF THE FOURTH MEETING

held on Tuesday, 12 March 1974, at 10.30 a.m.

Chairman: Mr. MALLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 8 (CDDH/1; CDDH/II/17, CDDH/II/19) (continued)

1. The CHAIRMAN invited the Committee to continue consideration of the amendment by Poland to article 8 (CDDH/II/17).

2. Mr. NAHLIK (Poland) explained that the purpose of his delegation's amendment to the introductory phrase was to avoid an over-restrictive interpretation of the terms used in article 8. He was, however, prepared to agree to the following change in the wording of the proposal: "For the purposes of the present Protocol and of the Geneva Conventions, the terms used shall be interpreted as follows:". He proposed that the text be referred to the Drafting Committee.

3. Mr. ABSOLUM (New Zealand) supported the proposal to refer the amendment to the Drafting Committee.

4. Mr. SOLF (United States of America) said that the Committee was not competent to take a decision to apply to the 1949 Geneva Conventions the terms defined in article 8. The following wording might be used for the introductory phrase: "For the purposes of the present Protocol, the terms used shall be interpreted as follows": the Drafting Committee could then be asked to prepare a definitive text.

5. Mr. ABSOLUM (New Zealand), supported by Mr. HAAS (Austria), said that he, too, was of the opinion that the Committee was not competent to take a decision affecting the 1949 Geneva Conventions.

6. Mr. EL-SHAMI (Jordan) said that it was inadvisable to refer to the Drafting Committee proposals on which the Committee had not reached agreement. It was for the Committee to take a decision; all that the Drafting Committee was required to do was to prepare a definitive text that had already been approved in principle.

7. Mr. NORRIS (United Kingdom) said that the Polish sub-amendment might create difficulties for States which had ratified the 1949 Geneva Conventions but would not ratify the Protocol.

8. Mr. MARTIN (Switzerland) said that if the Polish amendment referred only to part II of the Protocol it did not differ greatly from the ICRC text. The Committee could in that case ask the

Drafting Committee to draft the text. If, however, the amendment was intended to apply to the Geneva Conventions, a question of substance would arise.

9. Mr. NAHLIK (Poland) said that he had no strong feelings about his sub-amendment, but suggested that his amendment, as set out in document CDDH/II/17, should be referred to the Drafting Committee.

10. Mr. BOTHE (Federal Republic of Germany) said he could not agree that the definitions contained in article 8 could apply to the Geneva Conventions, but they should apply to the whole of Protocol I, and not only to part II.

11. The CHAIRMAN suggested that the Polish amendment should be regarded as a drafting change and that it should consequently be referred to the Drafting Committee.

It was so agreed.

Sub-paragraph (a)

12. The CHAIRMAN invited the Committee to examine the amendment to article 8 (a) contained in document CDDH/II/19.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he was glad to see that a definitions article had been included in the Protocol. Nevertheless, there were certain omissions in sub-paragraph (a); for example it said nothing about the infirm or persons suffering from shock. Moreover, the list in the second sentence of the sub-paragraph was incomplete. Furthermore, expectant mothers and new-born babies could not be included with "the wounded and the sick". Women and children were dealt with in articles 67, 68 and 69. Special conditions should apply to each of the various categories.

14. Mr. EL-SHAMI (Jordan) said that he, too, considered that expectant mothers and new-born babies could not be regarded as wounded or sick persons.

15. Mr. DEDDES (Netherlands) said it was understandable that the USSR representative should wish to distinguish between the wounded and the sick, and the other persons entitled to protection. Nevertheless, the list given in the second sentence was of value since it would provide a clear indication to those applying the Protocol of what was in the mind of those who had drafted it and of the categories of persons to be protected.

16. Mr. MAKIN (United Kingdom) said he was glad to see that the ICRC had tried to improve the texts of the substantive articles by giving a definition in article 8 of what was meant by "the wounded and the sick". If amendment CDDH/II/19 were accepted, it would be necessary to specify in each article of the draft Protocol the particular category of persons involved. The second sentence of the ICRC text of article 8 (a) might be slightly amended to read "... the wounded, the sick, including the shipwrecked, the infirm ...".

17. Mr. MARTIN (Switzerland) asked the USSR representative whether it was really his intention to request the deletion of the second sentence, which seemed to be indispensable for defining the categories of persons considered to be on the same footing as the wounded and the sick.

18. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), supported by Mr. COCKCROFT (South Africa), said there seemed to be no need to list all the persons that might be concerned, especially as the list would never be complete.

19. Mr. URQUIOLA (Philippines) pointed out that the persons listed in the second sentence, whether shipwrecked persons, expectant mothers or new-born babies, were fully entitled to the protection provided for in the Protocol, since they met the two conditions stipulated in the first sentence: they were in need of medical assistance and care and they did not engage in any act of hostility.

20. Mr. TRAMSEN (Denmark) said it might be clearer to say "due to physical or mental incapacity".

21. Mrs. DARIIMAA (Mongolia) drew attention to the latent contradiction between the reference to new-born babies and the stipulation "and who refrain from any act of hostility".

22. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) said that if amendment CDDH/II/19 were accepted, there was a risk that children, for instance, might be excluded from the provisions relating to general protection, when article 11, in particular, was fully applicable to them. He therefore believed that the paragraph should be left un-amended, so as to ensure that persons in that category were fully covered by those provisions.

23. Mr. ABSOLUM (New Zealand) said he thought that the general definition of the "wounded and the sick" given in the first sentence of article 8 (a) was both useful and concise and that the non-exhaustive list in the following sentence was equally useful in ensuring that the term was applicable to expectant mothers and new-born babies. He disagreed with the comment that such persons were adequately protected by articles 67 and 68. The only category

in the list that was perhaps out of place was that of the "shipwrecked", in that such persons might not necessarily be in need of medical assistance and might not therefore fall within the general definition.

24. Mr. CLARK (Australia) said that, though he agreed with that view, he was inclined to support the ICRC text, which was broader in scope than the amendment in document CDDH/II/19.

25. Mr. COIRIER (France) said that it was necessary that the Protocols should be specific and readily understandable. It seemed to him that the ICRC text was clearer and more specific than the language of the proposed amendment.

26. Mr. SOLF (United States of America) said that it was not simply a matter of supplementing the first two Geneva Conventions of 1949 but also of reaffirming the fourth Convention, article 16 of which should be borne in mind. The ICRC text seemed to meet those requirements. The most he would be prepared to say was that the inclusion of the shipwrecked might cause some difficulty, as the representatives of New Zealand and Australia had pointed out. In his opinion, however, the inclusion of the shipwrecked as stated in the printed text included shipwrecked persons only while they were in peril at sea.

27. Mr. MAKIN (United Kingdom) said that he too had been about to draw attention to article 16 of the fourth Convention. It might be better to say that the persons concerned were "in serious need of medical assistance". Apart from that, he found the ICRC text perfectly acceptable.

28. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), supported by Mr. DENG (Sudan), said he was not opposed to the protection of expectant mothers, maternity cases or children; but it was difficult to see how persons in those categories could be included in the expression "the wounded and the sick". The provisions of article 67 ought perhaps to be strengthened. He was not satisfied with the wording and would prefer to use that proposed by the Danish representative.

29. Mr. KHALIFA (Saudi Arabia) pointed out that some categories of civilians, such as old people, were not referred to in the text.

30. Mr. TARSIN (Libyan Arab Republic) said that the expression "other disorder of physical or mental health" was sufficiently wide to cover the categories of persons envisaged.

31. Mr. DEDDES (Netherlands) said that, in his view, the protection to be given to expectant mothers, maternity cases and children should be mentioned in the definition, and it appeared in the ICRC

text. Like the United Kingdom representative, he thought it would be useful to specify that the persons concerned were "in serious need of medical assistance".

32. Mr. ABDINE (Syrian Arab Republic) said that the wording of sub-paragraph (a) of the ICRC text was almost faultless: the two sentences were complementary, in that the first provided an objective definition of the conditions to be fulfilled, while the second illustrated the subjective application of that definition without being in any way limitative.

33. Mr. TRAMSEN (Denmark) said he supported the previous speaker.

34. Mr. ABOU-HEIF (Kuwait) suggested that the difficulty might be overcome by replacing the words "The term includes inter alia" in the second sentence by the words "so far as the protection to which they are entitled is concerned, the following shall be regarded as being in the same category as the persons mentioned:". Thereafter the wording would follow the ICRC text.

35. Miss MINOGUE (Australia) said that the Kuwait representative's proposal should enable the Drafting Committee to settle the matter, though it might be better to replace the word "means" by the word "covers".

36. Mr. WATANABE (Japan) said that, since there was a considerable difference in substance between the ICRC text of sub-paragraph (a) and the proposed amendment, the matter should not be referred to the Drafting Committee. His delegation preferred the ICRC text.

37. Mr. MARTIN (Switzerland), speaking on a point of order, said that several delegations had expressed a preference for the ICRC text, subject to certain drafting amendments. The Committee should decide by a vote whether it was in favour of the ICRC text or of the amendment to sub-paragraph (a) (CDDH/II/19). The text which obtained the most votes would then be sent to the Drafting Committee. That would facilitate the work of the Drafting Committee.

38. Mr. LOUKIANOVITCH (Byelorussian Soviet Socialist Republic) said it was impossible to draw up an exhaustive list of the categories of person to be protected; he therefore preferred the text of sub-paragraph (a) in document CDDH/II/19. To avoid influencing the Drafting Committee, however, it would be better to send it the text of the amendment without first proceeding to a vote.

39. Mr. STARING (United States of America), Mr. CALCUS (Belgium) and Mr. VOZZI (Italy) said they wholeheartedly supported the Swiss representative's motion.

40. Mr. ALFONSO MARTINEZ (Cuba) said it would be premature for the Committee to come to a decision on the Soviet Union or any other amendment, since whatever conclusions the Drafting Committee reached would have to be submitted to a plenary meeting of the Committee, which would then have to take a decision.

41. The CHAIRMAN suggested that the Committee should decide by consensus whether to refer the matter to the Drafting Committee.

42. Mr. MARTIN (Switzerland) said that he maintained his motion.

43. Mrs. DARIIMAA (Mongolia) urged the Swiss representative to withdraw his motion; it would be better if the Drafting Committee prepared a text which took account of the ideas expressed by the various representatives.

44. Mr. ALFONSO MARTINEZ (Cuba) said that the Committee should avoid the suggestion that the amendments and the ICRC text were in opposition. He wondered what would happen if several amendments were proposed to a single article or to the same paragraph. Would the Committee have to refer to the Drafting Committee the results of several different votes? His delegation was against the Swiss proposal.

45. Mr. ABSOLUM (New Zealand) and Mr. RIFAAT (Lebanon) said that such questions should be decided by the Committee, not the Drafting Committee.

46. The CHAIRMAN suggested that a Working Party should be set up and asked to submit to the Committee a specific proposal concerning the text of an amendment to article 8 (a), taking into account the Soviet Union amendment and the sub amendments presented orally during the meeting.

47. Mr. MARTIN (Switzerland) said the Committee would have to choose between his motion and the Chairman's suggestion regarding the creation of a Working Party.

The Swiss representative's motion was adopted by 53 votes to 12, with 6 abstentions.

48. The CHAIRMAN invited the Committee to decide which text should serve as a working basis for the Drafting Committee: the ICRC text or the text in the Soviet Union amendment (CDDH/II/19).

49. Mr. ALFONSO MARTINEZ (Cuba) said it was not clear what the Committee would vote on. So far as his delegation was concerned, there could be no doubt that the text which should be used as the basis for the Drafting Committee's work was the ICRC text.

50. Mr. MARRIOTT (Canada) said that the Committee had no choice but to decide by a vote whether it wished to adopt the Soviet Union amendment.

51. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) said that his delegation was in favour of the ICRC text. Nevertheless, he thought the simplest solution would be to transmit the question to the Drafting Committee.

52. Mr. NORRIS (United Kingdom) reminded the Committee that the text of his delegation's amendments to article 8 had not yet been circulated; any decision to refer the matter to the Drafting Committee should take account of that fact.

53. Mr. LOUKIANOVITCH (Byelorussian Soviet Socialist Republic) inquired whether the Committee would vote on each amendment, including the amendments and sub-amendments presented orally, or simply on the ICRC text and the Soviet Union amendment. What would the Drafting Committee be expected to do if the Committee adopted either of those texts?

54. Mr. AL-BARZANCHI (Iraq) said he favoured setting up a Working Party, with a membership representative of all the geographical regions, to prepare an amendment taking into account the ideas of all the delegations.

55. The CHAIRMAN said that, in accordance with rule 40 of the rules of procedure, he would ask the Committee to come to a decision on the Soviet Union amendment.

56. Mrs. MANTZOULINOS (Greece) and Mr. ALFONSO MARTINEZ (Cuba) said they did not see how the Committee could take a vote until all the amendments to article 8 had been circulated and examined.

57. Mr. MAIGA (Mali) said it was too soon for the Committee to reach a final decision on the amendment and sub-amendment to article 8 (a). The best course would be to refer those texts to the Drafting Committee, which would say which amendment it preferred, unless it decided in favour of the ICRC text. It would be pointless to set up a Working Party, since the Drafting Committee itself was in fact the Working Party best placed to deal with the matter.

58. The CHAIRMAN said that the Committee would take a decision on the point at its next meeting.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE FIFTH MEETING

held on Wednesday, 13 March 1974, at 10.35 a.m.

Chairman: Mr. MALLIK (Poland)

ORGANIZATION OF WORK

1. Mr. WINTELER (Secretary of the Committee) read out a letter from the Secretary-General of the Conference, Ambassador Jean Humbert, requesting delegations, in view of the large numbers of amendments with which the Secretariat had had to deal in the past few days, to submit short texts, to group their amendments together by parts and sections where possible and to refrain from including commentaries.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Articles 8 to 20 (continued)

2. Mr. MATHIESEN (Norway) suggested, in connexion with articles 9 to 20 of draft Protocol I that delegations which had submitted amendments to the same article should meet to draft a single text.

3. Mr. NAHLIK (Poland) said that he could support that proposal, but thought that amendments to the same article should first be introduced by the sponsors and studied together in the Committee. If the difference was merely one of drafting the sponsors could then consult together to find an acceptable wording. If they failed to do so, it would be for the Drafting Committee to reach a generally satisfactory solution.

4. Mr. COIRIER (France) said that the Committee was now dealing with technical questions of the mechanics of decision-taking, rather than with serious political or philosophical problems. For example, since the Committee regarded article 8 as provisional it might be possible to take note of any differences of opinion and to continue the discussion without any commitment for the future. When the decision came to be taken, those groups which had not yet done so would have to nominate candidates to the Drafting Committee; that body would study the differences of opinion and would report to the Committee, which would take the final decision if agreement had not been reached. On the other hand, if the Committee considered that the Drafting Committee should only deal with editorial matters, a conciliation body should be established.

5. Mr. MARTIN (Switzerland) said he was glad that certain delegations had submitted a new article 8 (a) (CDDH/II/19). After a preliminary discussion, the sponsors could try to draw up a single text to be submitted to the Committee, where it could be put to the vote, or be adopted by consensus.

6. Mr. MATHIESEN (Norway) said he agreed with the Swiss representative concerning article 8 (a), but pointed out that his suggestion concerned articles 9 to 20.

7. Mr. MARTIN (Switzerland) asked that a deadline be fixed for the submission of amendments.

8. Mr. ALFONSO MARTINEZ (Cuba) said that there seemed to be unanimous agreement on the need for a body to study all the possibilities of drawing up texts acceptable to the majority of delegations, if not to all. The establishment of several working parties could raise practical difficulties for small delegations, and he would therefore prefer a single body - a Working Party or a Drafting Committee - to examine the various ideas put forward.

9. The CHAIRMAN said that the suggestions made were excellent and that there was no need to take a formal decision on them.

10. Mr. MARRIOTT (Canada) and Mr. SOLF (United States of America) supported the Norwegian representative's proposal.

11. Mr. SCHULTZ (Denmark) said that the Norwegian suggestion could be followed in the early stages and that a small group of fifteen countries could then be set up, to meet concurrently with the Committee and ultimately to submit unified texts for all the articles.

12. Mr. MARTIN (Switzerland) said he could see no need for two bodies, since the Drafting Committee's terms of reference could be extended to cover co-ordination. It would, in fact, be a committee for drafting and "sifting" texts.

13. The CHAIRMAN said that the Committee, having decided to establish a Drafting Committee, should decide whether it wished to refer substantive questions to that body or whether it intended to deal with them itself. It seemed obvious to him that if a question was referred to it, the Drafting Committee should discuss it and then submit its conclusions to Committee II.

14. Mr. CALCUS (Belgium) pointed out that a small Working Party would only be effective if the Secretariat could provide simultaneous interpretation.

15. Mr. WINTELER (Secretary of the Committee) said that in principle simultaneous interpretation was not provided for Working Parties, but that the Secretariat would do what it could to provide the necessary interpretation services.

16. Mr. ALFONSO MARTINEZ (Cuba) said that the Committee was confronted with contradictory suggestions. A compromise solution would be to set up a co-ordination committee, which might be the Drafting Committee, to harmonize the different texts. The General Committee could make proposals for the composition of that committee, to which Committee II could delegate some of its functions. All delegations wishing to do so could take part in the work of that body.

17. The CHAIRMAN pointed out that the Committee had already set up a Drafting Committee to which it had entrusted certain tasks: that Committee's terms of reference seemed to cover co-ordination of amendments.

18. Mr. COIRIER (France) pointed out that delegations could hold unofficial meetings whenever they wished. The Drafting Committee should be officially established as soon as possible and its task should be not only to draft texts, but also to request the opinions of delegations and to co-ordinate their points of view. Interested delegations should therefore be asked to designate their representatives to that Committee as soon as possible.

19. Mr. MAKIN (United Kingdom) said that the Committee's first concern should be to ensure that the amendments to articles 8 to 20 were submitted and circulated as soon as possible, to give the delegations time to study them. In his opinion, the establishment of a co-ordinating group would not smooth away the difficulties, because many delegations were too small to be represented at several simultaneous meetings. Many of the problems could be solved at small unofficial meetings of the delegations concerned.

20. Mr. LEGNANI (Uruguay) said that the study of amendments should be entrusted to a Working Party with strictly limited terms of reference, but that that procedure should not prevent the sponsors of individual proposals from submitting them directly to the Committee without reference to the Working Party. The task of the Working Party should be to harmonize proposals and to submit unified texts to the Committee.

21. Mr. TAMALE MUGERWA (Uganda) said that consensus was not a sacrosanct principle. If a consensus were required, delegations should try to reach one before amendments were submitted to the Committee. Under the rules of procedure, the Committee had to vote on the amendments submitted to it. A consensus was

certainly useful sometimes, but since the Conference was pressed for time, votes would have to be taken more frequently.

22. The CHAIRMAN said that the Committee had to apply the rules of procedure and could not give the Drafting Committee the powers that some delegations wished to confer on it. The suggestions of several delegations on unofficial meetings might help considerably to speed up the work. Moreover, under rule 47 of the rules of prodedure, the Drafting Committee was empowered to co-ordinate and review the drafting of all texts adopted by the Committee. It could also ask delegations for explanation of certain articles. The Drafting Committee should be able to start work as soon as possible, He therefore urged the regional geographical groups to inform the Committee Secretariat forthwith of the names of their participants in that Committee.

Article 8 - Definitions (CDDH/1; CDDH/II/19 and Corr.1, CDDH/II/27, CDDH/II/42, CDDH/II/46) (continued)

Sub-paragraph (a)

23. The CHAIRMAN invited the Committee to continue its consideration of article 8 (a).

24. Mr. CLARK (Australia) said that his delegation had submitted its amendment to article 8 (a) (CDDH/II/42) because it seemed pointless to repeat the words "the wounded, the sick" in the second sentence and because the term "shipwrecked" was defined in sub-paragraph (b).

25. Mr. MAKIN (United Kingdom) said that his delegation's amendment to article 8 (CDDH/II/46) was purely formal and might be referred to the Drafting Committee.

26. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) introduced his delegation's new amendment to sub-paragraph (a), reading as follows:

> "'Wounded and sick' means persons, whether military or civilian, who because of trauma, disease or other physical or mental disorder, are in serious need of medical assistance and care and who refrain from any act of hostility. The term shall also be construed to include other persons in serious need of medical assistance who refrain from any act of hostility including the infirm, pregnant women, maternity cases and new-born babies."

27. He considered that it would be better to retain the title proposed by the ICRC for part II of draft Protocol I and urged the United Kingdom representative to withdraw his amendment (CDDH/II/27).

28. Mr. EL-SHAMI (Jordan) said he did not quite understand the reason for the phrase "who are in serious need". A simple cut on the finger might lead to tetanus or might have fatal consequences.

29. Mr. COCKCROFT (South Africa) and Mr. MARTINS (Nigeria) said they agreed with the Jordanian representative's remarks.

30. Mr. MARRIOTT (Canada) said that he could support the new Soviet Union amendment to sub-paragraph (a) but would prefer the word "disorder" to be replaced by "disability". The term would then cover any person who, even if not sick, suffered from a disability.

31. Mr. JAKOVLJEVIC (Yugoslovia) and Mrs. DARIIMAA (Mongolia) said that the new USSR amendment combined the ICRC text with the earlier amendment (CDDH/II/19) in a way that faithfully reflected the opinions expressed during the debate. The USSR text could therefore be referred to the Drafting Committee.

32. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he agreed that the word "disability" was preferable to "disorder", and accepted the change. With regard to the word "serious", his delegation had not been sure that it was necessary, but had kept it in view of the United Kongdom representative's proposal. If that representative would agree to its deletion the USSR delegation would have no objection to doing so.

33. Mr. VANNUGLI (Italy) said he considered the text to be generally acceptable and asked the United Kongdom representative why he wished to retain the word "serious".

34. Mr. MAKIN (United Kingdom) said that, although in 1972 the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts had unanimously decided to include that qualification in their report, the ICRC had not retained it. The term might be important, particularly to protect the military, since a person suffering from a slight disability could not be considered to be wounded. However, he would not oppose the deletion of the word provided the motivation of the proposal was clearly stated in the summary record.

35. He would maintain his amendment to the title of part II of draft Protocol I (CDDH/II/27) unless "shipwrecked persons" were not included in the definition of wounded and sick.

36. Mr. SOLF (United States of America) said he supported the new text proposed by the USSR delegation, with the Canadian representative's suggestion concerning the word "disability" and the deletion of the word "serious". The United States shared the United Kingdom's understanding that the term "need" excluded

trivial ailments such as a headache. The definition of 'wounded and sick' would assume its full importance when it had to be decided who would be entitled to medical transport by air.

37. Mr. COIRIER (France) said that, although he did not have the French text of the new USSR amendment, he believed it to be acceptable. The word 'serious' added nothing of value, and the expression 'in need of medical assistance and care' was strong enough by itself.

38. Mr. SCHULTZ (Denmark) said he agreed that it was difficult to define the terms 'wounded' and 'sick' and pointed out that in article 16 of the Fourth Convention reference was made to 'the infirm'. The main question was whether the persons concerned were capable of fighting or not. He agreed with the Canadian representative that the provisions should be applicable to everyone who was incapable of carrying arms or refrained from doing so.

39. The CHAIRMAN said that there seemed to be a consensus concerning the new text of sub-paragraph (a) submitted by the USSR delegation as amended during the debate. It would replace the texts in documents CDDH/II/19, CDDH/II/42 and CDDH/II/46 and could be referred to the Drafting Committee, which would prepare a final text.

It was so agreed.

40. Mr. NAHLIK (Poland), speaking on a point of order, drew attention to a substantive discrepancy between the French and English texts of the Australian amendment (CDDH/II/42).

41. The CHAIRMAN said that the error would be corrected.

Sub-paragraph (b) (CDDH/II/57)

42. Mr. PICTET (International Committee of the Red Cross) introducing document CDDH/II/57 concerning article 8 (b) said that it had been drafted by the ICRC to meet requests from certain delegations for the ICRC's opinion on the point in question. It was wrongly called an amendment, since the ICRC could only make suggestions which could be considered only if they were taken up by a delegation.

43. Certain experts had proposed that the meaning of the term "shipwrecked persons" should be extended to cover persons in difficulties in the air or even on land, such as persons in distress in deserts or mountains. The provisions of article 16, paragraph 2, of the Fourth Geneva Convention of 1949 were quite inadequate in that respect.

44. Mr. SCHULTZ (Denmark), Mr. MARTIN (Switzerland), Mrs. MANTZOULINOS (Greece), Mr. BRAVO (Mexico) and Mr. HAAS (Austria) said that they supported the suggestion of the ICRC and wished to become sponsors of the proposal which seemed to fill a gap very satisfactorily.

45. Mr. VANNUGLI (Italy), Mr. MARTINS (Nigeria) and Mr. de la PRADELLE (Monaco) also supported the proposal which covered all situations, especially that of persons in distress in the desert.

46. Mr. URQUIOLA (Philippines) said that he welcomed the ICRC proposal, but wished to suggest the addition of the words "on land" after the words "at sea", and the replacement of the words "vessel or aircraft" by the words "means of transport".

47. Mrs. DARIIMAA (Mongolia) said that she greatly appreciated the ICRC proposal, but would like the condition "who refrain from any act of hostility" to be repeated in the second sentence.

48. Mr. PICTET (International Committee of the Red Cross) said he was gratified to see that ICRC suggestion (CDDH/II/57) had met with general approval in the Committee. The points made by the Philippine and Mongolian representatives were judicious and might be referred to the Drafting Committee.

49. Mr. SOLF (United States of America) said that, while he appreciated the underlying idea of the ICRC suggestion, he felt obliged to warn the Committee of the danger of taking final decisions by consensus on definitions at that stage, before taking cognizance of the substance of the articles affected by that definition. That proposal had been made repeatedly at the 1972 Conference of Government Experts and had always been rejected. In particular, the greatest possible caution should be exercised with regard to the provisions concerning medical transport.

50. Mr. MACKENNEY (Chile) said it was not clear whether the term "in peril at sea" also applied to similar situations on lakes.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE SIXTH MEETING

held on Thursday, 14 March 1974, at 10.20 a.m.

Chairman: Mr. HALLIK (Poland)

TRIBUTE TO THE MEMORY OF MRS PIERRE GRABER

1. The CHAIRMAN informed the Committee of the death of the wife of Mr. Graber, President of the Conference, and stated that the Conference would send Mr. Graber a telegram of condolences.

At the proposal of the Chairman, the members of the Committee observed one minute's silence in tribute to the memory of Mrs. Pierre Graber.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Proposed new article 18 bis (CDDH/1; CDDH/II/56)

2. The CHAIRMAN, at the request of Mr. SOLF (United States of America), authorized Mr. Wilson, a member of the United States Congress, who had to leave Geneva at once, to present the new draft article 18 bis (CDDH/II/56), which the delegation wished to have inserted in draft Protocol I, it being understood that the draft would not be examined until a later date.

3. Mr. WILSON (United States of America) explained that the draft which pertained to missing and dead persons and to the maintenance of their graves, was designed to fill a gap since the 1949 Geneva Conventions contained no provisions on that subject.

4. Referring to the anguish of the families of persons of whom there was no word during conflicts, he stressed the need to inform those families of the fate of their missing relatives as soon as possible, and pointed out that the draft followed logically from resolution V adopted on that subject by the XXIInd International Conference of the Red Cross, at Teheran in 1973. He keenly regretted not being able to attend the discussion that was to take place on that question.

Article 8 (CDDH/1; CDDH/II/42, CDDH/II/57/Rev.1) (continued)

Sub-paragraph (b)

5. Mr. MARRIOTT (Canada), referring to the ICRC proposal (CDDH/II/57) which had been taken up by the delegations of Austria, Denmark, Greece, Iran, Mexico and Switzerland (CDDH/II/57/Rev.1), said that he did not believe provision should be made for persons in peril "in the air". Provision was made for that case in

article 39 which pertained to aircraft occupants. He did not therefore see the point of the proposal and reminded those present of the warning by the United States representative, at the fifth meeting, of the danger of reaching decisions without being aware of the content of the articles.

6. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) did not consider that it was possible to approve the notion of shipwrecked persons as described in amendment CDDH/II/57/Rev.1.

7. Mr. EL-SHAFEI (Arab Republic of Egypt) expressed support for the Australian amendment (CDDH/II/42). In addition, he felt that the text proposed in amendment CDDH/II/57/Rev.1 was more complete than the initial text, and that a few editorial changes would answer the remarks made during the discussion on the obligation of those concerned to refrain from any act of hostility.

8. Mr. ABDINE (Arab Republic of Syria) believed that satisfaction could be given to the Canadian representative either by deleting in amendment CDDH/II/57/Rev.1 as a result of the destruction ... or for any other reason", or by inserting in the first sentence after "at sea", the words "on land" and then deleting the second sentence.

9. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he could not agree that one and the same article could apply to peril at sea, on land and in the air.

10. Mr. MAKIN (United Kingdom) said he agreed with the Canadian representative that peril in the air was already covered by article 39 and should not appear in two different places in the Protocol. As for people in peril on land, he thought it quite wrong to deal with a substantive issue in a definitions article. He considered it laughable to suggest that people could be shipwrecked on land, and the problem, if it existed, should be dealt with elsewhere in the Protocol.

11. Mr. JAKOVLJEVIĆ (Yugoslavia) said that he considered that amendment CDDH/II/57/Rev.1 was excellent and could be referred to the Drafting Committee for preparation of the final text.

12. He supported the Syrian proposal to insert the words on land in the first sentence of the amendment and to delete the second sentence.

13. Mr. de la PRADELLE (Monaco) believed that it was only after mature reflection that the ICRC had decided to widen the scope of the term "shipwrecked persons" which applied not merely to the sea but also to the air. The situation was more delicate in the case of assimilation to shipwrecked persons, namely extension to

persons in peril on land. The words "as a result of military operations" could perhaps be added in amendment CDDH/II/57/Rev.1 in order to make it clear that not only ordinary passengers were involved; or the words "or the immobilization of the aircraft", could be inserted after the word "aircraft", in order to cover hijacking. By and large, he believed that, subject to minor editorial changes, the amendment was of great value.

14. Mr. PICTET (International Committee of the Red Cross), replying first of all to a question asked at the fifth meeting by the representative of Chile, said that persons shipwrecked on lakes and inland waters were covered, not by the first part of the amendment but by the second. In drafting its proposal, the intention of the ICRC had been to supplement article 16 of the Fourth Geneva Convention of 1949, and to extend protection to all persons in distress, who would not necessarily be wounded, sick, prisoners of war or civilians. The definitions were purely provisional, and the matters of substance would be examined in due course. It was for the Drafting Committee to devise a better and simpler formula, so that those persons could be included in the definition.

15. Mr. CLARK (Australia) stated that in his opinion the definition given in draft Protocol I was satisfactory, the proposed amendment was superfluous and persons in peril on land were covered by the Geneva and The Hague Conventions.

16. Mr. ROSENBLAD (Sweden) said that he did not think that idea expressed in the amendment should be entirely rejected. Aircraft occupants as defined in article 39 of draft Protocol I, could well be included in the definition of "shipwrecked", which appeared in the original ICRC text.

17. Mr. MATHIESEN (Norway) agreed with the Canadian representative that there was no need to make provision for the case of persons in peril "in the air".

18. Mr. MARTIN (Switzerland) said that what his delegation had had chiefly in mind were the natural disasters which generally struck in peacetime, but which could also strike during hostilities. That would supplement not only the First and Second Conventions of 1949 but also article 16 of the Fourth Geneva Convention of 1949. When all questions of substance had been studied, the Committee could revert to the definitions, which were of a provisional nature.

19. Mr. DEDDES (Netherlands) said that he did not think the amendment was necessary.

20. Mr. COIRIER (France) said that shipwrecked persons should not be included in an article based on the need for medical assistance to the wounded and the sick, who were undoubtedly incapable of inflicting harm, which was not necessarily the case of all shipwrecked persons.

21. Mr. SCHULTZ (Denmark) said that too detailed definitions were dangerous and requested the deletion of sub-paragraph (b) of article 8.

22. Mr. PICTET (International Committee of the Red Cross), in reply to a question from Mrs. DARIIMAA (Mongolia) said that the word "vessel" in article 8 applied to all vessels, whether military or civilian. Shipwrecked persons enjoyed the protection of the Second Geneva Convention of 1949, and it was not necessary that they be wounded or sick.

23. Mrs. MANTZOULINOS (Greece) said that the amendment was important because it defined the category of shipwrecked persons in the air and it extended humanitarian protection to others who were deemed to be shipwrecked persons.

24. Mr. MARTIN (Switzerland) stressed that it was the notion of shipwrecked persons that should be extended. The extension of that notion should be thoroughly studied.

25. Mr. QUACH TONG DUC (Republic of Viet Nam) proposed that the second sentence of amendment CDDH/II/57/Rev.1 should read as follows: "The above-mentioned persons in peril in inland waters ... shall be deemed to be shipwrecked persons."

26. Mr. BOTHE (Federal Republic of Germany) said that the question should be studied further, with a view to finding a provision covering situations which did not come under the Conventions or the Protocol. Far greater precision was needed to ensure full and effective protection in all cases. 'Article 8 - Definitions' was not the proper place to deal with that question.

27. Mr. TAMALF MUGERWA (Uganda) said that he did not think it possible to leave the question in abeyance. It was a question of substance and, at the same time, of form. With respect to the substance, it remained to be decided whether the notion of shipwrecked persons should be extended to those in peril on land or in the air. Once that was settled, the Drafting Committee could provide the form. He thought, moreover, that the amendment applied to persons in hostile or alien surroundings following the destruction, loss or disablement of their means of transport. If the words "or for any other reason" were retained, the notion of shipwrecked persons would be too wide.

28. Mr. MARRIOTT (Canada) agreed with the representative of the Federal Republic of Germany that the situations to be considered should first of all be clearly stated. The Committee could then revert to the definitions to see whether or not they were satisfactory.

29. Mr. SOLF (United States of America) stated that he, too, supported the suggestion made by the representative of the Federal Republic of Germany. The Committee should locate the flaws in protection and, in that context, take article 39 of draft Protocol I, article 12 of the Second Geneva Convention and articles 16 and 17 of the Fourth Geneva Convention into account.

30. Mr. COCKCROFT (South Africa) supported the statements made by the two previous speakers.

31. The CHAIRMAN suggested that the Committee should approve the Swiss proposal for an unofficial Working Group to draw up and submit to the Committee a definitive text, taking into account the various points of view expressed in the course of the discussions.

32. Mr. MARTIN (Switzerland) stated that the representative of the ICRC might be asked to convene that Working Group.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that in his opinion the Working Group would find itself confronted with an impossible task, since the Committee had not sufficiently studied the question. It would be preferable to accept the proposal of the Federal Republic of Germany.

34. Mr. NAHLIK (Poland) said that he thought the setting up of working groups to study each group of amendments involved risks. It would result in the establishment of intermediary bodies between the Committee and the Drafting Committee. He therefore asked whether it would not be simpler to entrust that task to the Drafting Committee, since rule 47 of the rules of procedure authorized the sponsors of amendments to put forward their points of view to that Committee.

35. Mr. MAKIN (United Kingdom) said that he agreed with the remarks of the two previous speakers regarding a Working Group. The representative of the Federal Republic of Germany had proposed that the question be studied with a view to discovering whether there were any omissions in the protection afforded by the Protocol or the Conventions. He himself was not convinced that such omissions existed. In any event, the question was not one to be dealt with in the context of definitions.

36. The CHAIRMAN said that it was difficult to refer the question to the Drafting Committee, since that Committee had not been established. The Asian Group, in particular, had not appointed its representatives.

37. Mr. MARTIN (Switzerland) said that he was not opposed to the question being referred to the Drafting Committee, which could study the question in the way indicated by the representative of the Federal Republic of Germany, but that Committee should meet immediately.

38. Mr. NAHLIK (Poland) and Mr. AL-BARZANCHI (Iraq) made an urgent appeal to the Asian Group to appoint their representatives to the Drafting Committee, in order to avoid further delay in the start of its work.

39. Mr. ABSOLUM (New Zealand) observed that the task before the Committee was to re-examine the Geneva Conventions and the draft Protocols with the aim of identifying any gaps in the protection afforded to persons in peril on land or in the air as a result of the loss of their means of transport and, on the basis of such an examination, to draft a new article which might or might not include a definition. In his view such a task could not be appropriately assigned to the Drafting Committee.

40. Mr. MARTIN (Switzerland) pointed out that he had withdrawn his proposal for a Working Group, on the understanding that the Drafting Committee would be authorized to study the question thoroughly.

41. The CHAIRMAN proposed that the various proposals concerning article 8(b) be referred to the Drafting Committee.

It was so agreed.

Sub-paragraph (c) (CDDH/II/19/Corr.1, CDDH/II/46)

42. Mr. STOLLBERG (German Democratic Republic) introduced amendment CDDH/II/19/Corr.1.

43. Mr. MARRIOTT (Canada) said that he was prepared to agree to that amendment, but would prefer the words "disease control establishments" in the English text in place of "anti-epidemic establishments".

44. Mr. MAKIN (United Kingdom) said that his delegation's amendment (CDDH/II/46) was purely a matter of editing and should be referred to the Drafting Committee.

45. Mr. AL-BARZANCHI (Iraq) expressed the view that the words "anti-epidemic establishments" had too restricted a meaning; stress should be laid on prevention.

46. Mr. VANNUGLI (Italy) said that before referring the question to the Drafting Committee, the Committee should decide whether a new concept should be introduced, namely establishments for the

prevention of infectious diseases. There would then remain the problem of choosing the terms to be applied in the various languages. It would be unwise to give too precise a definition, which might exclude certain categories of establishments.

47. Mr. EL-SHAMI (Jordan) stated that the English expression "health centre" might better describe all the establishments engaged in disease prevention.

48. Mr. COIRIER (France) expressed the opinion that the French expression "installations de caractère sanitaire", covered prevention, since hospitals were more and more concerned with the prevention of diseases.

49. Mr. MARTIN (Switzerland) and Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that establishments for the prevention of diseases should be included in sub-paragraph (c) which should be referred to the Drafting Committee.

50. Mr. COCKCROFT (South Africa) supported that proposal and expressed the hope that persons with medical qualifications would be able to take part in the work of the Committee.

The Committee decided to refer the study of article 8 (c) and amendments CDDH/II/19/Corr.1 and CDDH/II/46 to the Drafting Committee.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE SEVENTH MEETING

held on Friday, 15 March 1974, at 3.25 p.m.

Chairman: Mr. MALLIK (Poland)

ORGANIZATION OF WORK (CDDH/II/Information)

1. The CHAIRMAN after announcing the names of the fifteen representatives appointed to the Drafting Committee (CDDH/II/Information), reminded the meeting that, in accordance with rule 47 of the rules of procedure, all delegations could participate in the discussions of the Drafting Committee, in which a representative of the ICRC and the Rapporteur could also take part. Only the fifteen members of the Drafting Committee, however, would have the right to vote. He proposed that the Committee agree to that procedure.

It was so agreed.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1)

Article 8 - Definitions (CDDH/1; CDDH/II/3, CDDH/II/13, CDDH/II/18, CDDH/II/19, CDDH/II/30, CDDH/II/42, CDDH/II/46, CDDH/II/58) (continued)

Sub-paragraph (d)

2. The CHAIRMAN invited the Committee to examine article 8, sub-paragraph (d) and the relevant proposed amendments.

3. Mr. CALCUS (Belgium), introducing the amendment to article 8 (d) i (CDDH/II/13), pointed out that article 24 of the First Geneva Convention of 1949, on the protection of the administrative personnel of medical units, made no mention of the personnel engaged in the operation of such units. The amendment aimed at ensuring the protection of that category of personnel.

4. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that after consultation with the representatives of Australia and the United Kingdom, his delegation had altered the text of his proposed amendment to sub-paragraph (d) (CDDH/II/19) to read:

> "Medical personnel means personnel, whether permanent or temporary, duly recognized and authorized by the State and engaged exclusively in the operation or administration of medical services, medical units and medical transport, and includes the personnel assigned to the prevention of disease and the search for, removal, treatment or transport of the wounded, the shipwrecked and the sick. The term includes inter alia military medical personnel as defined in the First

and Second Geneva Conventions, the medical personnel of civil defence organizations referred to in article 54 of Porotocol I, civilian medical personnel registered by the State, personnel of the national Red Cross (Red Crescent, Red Lion and Sun) Societies attached to medical services and units, and military or civilian medical transport crews".

5. The ICRC text was satisfactory in general, but it was preferable to mention 'medical services' and not to limit protection to the medical personnel of the Red Cross societies.

6. Mr. KLEIN (Holy See), referring to his delegation's amendment to article 8 (d) (CDDH/II/58), said that religious personnel and medical personnel were mentioned together in a number of articles in the Geneva Conventions of 1949. It was desirable that the former should be defined in order to avoid any misunderstanding. He had no objection to the addition of the proposed definition at the end of article 15 of Protocol I.

7. The reason for proposed amendment CDDH/II/18 was the importance of the services rendered by voluntary relief organizations, which had worked on many occasions at the side of the Red Cross Societies. Mention should therefore be made of them at the end of article 8 (d) iii, since the Protocol should obviously be so worded as to encourage dedication to the alleviation of the suffering caused by war.

8. Mr. DEDDES (Netherlands) said that the Soviet amendment held some dangers. The number of protected personnel should be limited to some extent, for otherwise the special protection of that personnel, wearing the distinctive emblem, would cease to have any meaning, because there would be too many of them.

9. Mr. MARRIOTT (Canada) agreed with the Netherlands representative that authority to carry a 'distinctive sign' should be limited to specific cases. It appeared, however, that the USSR representative had intended to mention personnel exclusively engaged in the operation or administration of medical services in the sense of article 24 of the First Geneva Convention of 1949.

10. Mr. CLARK (Australia), supported by Mr. NAHLIK (Poland), pointed out that the word 'chaplain' appearing in amendment CDDH/II/58 applied only to the ministers of certain religions. It would be preferable to find an expression applicable to the religious and philospohical concepts of all countries, especially those of Africa and the Middle East. The question could be studied by the Drafting Committee.

11. Mr. ROSENBLAD (Sweden), introducing the amendment to sub-paragraph (d) iii, (CDDH/II/30), said that the term "civil defence bodies" was more appropriate than "civil defence organization", in view of conditions in various parts of the world. Moreover, article 54 of Protocol I, to which the ICRC text referred, enumerated the humanitarian tasks included in civil defence, without reference to any particular civil defence organization. Further, it would be preferable to specify that the medical personnel must be "duly recognized or authorized".

12. Mr. SCHULTZ (Denmark) said that it was necessary to add the words "duly recognized or authorized" in order to indicate that the persons concerned were duly qualified by their training. That amendment moreover was in line with that of the USSR regarding personnel "recognized and authorized by the State". During the study of their text, the sponsors had agreed to add at the end of the paragraph the words: "or other voluntary relief organizations", which accorded with the Holy See amendment.

13. Mr. CLARK (Australia) said that after discussions between his and the USSR delegation, part of sub-paragraph (d) ii of the amendment submitted by his delegation (CDDH/II/42) had been incorporated in the USSR amendment.

14. Mr. MAKIN (United Kingdom) said that part of the amendments submitted by his delegation in document CDDH/II/46 were already incorporated in the USSR amendment. He proposed also the insertion of the word "diagnosis" after "removal" in sub-paragraph (d) ii.

15. Mr. JAKOVLJEVIĆ (Yugoslavia) introducing document CDDH/II/3, pointed out the disparity between article 20 of the Fourth Geneva Convention of 1949 and article 8 (d) in draft Protocol I. Article 20 of the Convention made no mention of "medical personnel" but referred to "persons regularly and solely engaged in the operation and administration of civilian hospitals ...". The term "medical personnel" limited the categories of persons to be protected. On the other hand, the third paragraph of article 20 of the Convention referred to "Other personnel who are engaged in the operation and administration of civilian hospitals ...", which meant that temporary personnel should be protected for as long as they were assigned to a specific task, either in a medical unit or in an emergency where, for instance, there were a great many casualties. In order to protect those persons, either the word "exclusively" should be deleted from the third line in article 8 (d) ii of draft Protocol I, or a distinction should be drawn, as had been done in article 20 of the Fourth Geneva Convention of 1949, between regular and part-time personnel. Either of those alternatives would be acceptable to the Yugoslav delegation.

16. Mr. AL-BARZANCHI (Iraq) said that he would prefer the sub-division of sub-paragraph (d) of article 8 to be retained. His delegation had supported the amendment to sub-paragraph (d) i as proposed in document CDDH/II/15. Chaplains appeared to be covered by the words "personnel engaged in the operation or administration of ...".

17. Mr. MARTIN (Switzerland) said that the sponsors of document CDDH/II/19 had tried to merge sub-paragraphs (d) i, ii and iii of article 8 into one, which had led to a certain amount of confusion. He therefore preferred the text of the draft Protocol. With regard to sub-paragraph (d) iii, he supported the wording "... assigned to the discharge of the tasks mentioned in article 54, ..." proposed in document CDDH/II/30, but he was not in favour of retaining the word "bodies" in the English version and preferred the French wording. In addition, he supported the proposal of the representative of Denmark that the words "or other voluntary relief organizations" should be added to the second sentence. However, he saw no need to delete the word "exclusively" from article 8 (d) ii, as had been suggested by the representative of Yugoslavia.

18. Mr. EL-SHAFEI (Arab Republic of Egypt) said that he hoped the Committee would bear in mind the amendment to article 15 (CDDH/II/70), proposing that the words "Chaplains and other persons performing similar functions" should be replaced by "Religious personnel".

19. Mr. DEDDES (Netherlands) repeated that a limit should be placed on the number of medical personnel entitled to wear the distinctive emblem of the Red Cross. He was anxious that the words "... and other persons performing similar functions ..." (CDDH/II/58) should be retained, since they were equally applicable to members of non-religious bodies.

20. Mr. MARRIOTT (Canada) said that the amendment submitted by the delegation of the Holy See (CDDH/II/18) appeared to him to be covered by article 63 (a) of the Fourth Geneva Convention of 1949 and by articles 60 to 62 of draft Protocol I. If the Conference extended the use of the emblem of the Red Cross to too many organizations, it might later have reason to regret it.

21. Mr. MATHIESEN (Norway) said that organizations entitled to use the emblem should be recognized as Red Cross Societies or approved by a national government. He suggested that the Holy See amendment (CDDH/II/18) should be changed to read: "... and other voluntary relief organizations registered with the public authorities".

22. Mr. COIRIER (France) said that he agreed with the representative of the Netherlands in that the more protection was extended, the lesser its effectiveness became.

23. Mr. MAKIN (United Kingdom) said that the Committee appeared to be undecided whether the definition of the word "chaplain" should appear in article 8 or article 15. In his view, the proper place was article 8 and if that were agreed, paragraph 6 of article 15 should be deleted.

24. Mr. HAAS (Austria) said that he did not altogether agree with the United Kingdom representative. Whereas article 8 purported to define "medical personnel", the delegation of the Holy See attached importance to the religious rather than the medical aspect of that category of persons. He shared the opinion of the representative of Switzerland that the sub-divisions within sub-paragraph 8(d) should be retained.

25. Mr. CHUWA (United Republic of Tanzania) said that in view of the large number of ideological and political sects and movements, it should be specified that those to be protected were those which were recognized, either internationally or locally.

26. Mr. JAKOVLJEVIC (Yugoslavia), supported by Mr. BEREKET (Turkey), said that it should be specified in the Holy See amendment (CDDH/II/18) that the organizations referred to had to be specially qualified. He read out article 26 of the First Geneva Convention of 1949, and suggested that the wording of that article be used.

27. Mr. MARRIOTT (Canada) said that before the Drafting Committee reached a decision on amendment CDDH/II/18 they should take into account amendment CDDH/I/39 and Add.1 and 2 for the insertion of a new article after article 70.

28. Mr. NAHLIK (Poland) said that, unlike the representative of the United Kingdom, he considered that it was enough to introduce into article 15 the definition of "chaplain" which appeared in amendment CDDH/II/58 or, if absolutely necessary, to make it the subject of an entirely new article.

29. Mr. MARTINS (Nigeria) said he would prefer that definition to appear in a new sub-division of article 8 (d).

30. Mr. KLEIN (Holy See) said that it was not whether the amendment appeared in article 8 or article 15 which was important, but that the term "chaplain" should appear in the text. It was used in all the four Conventions of 1949. There was no question, however, of obliging medical units to have chaplains. Perhaps the words "if they have them" might be added. Like the representative

of Switzerland, he considered that the proposal of the representative of Denmark for the addition of the words "and other voluntary relief organizations" was acceptable.

31. Mr. SOLF (United States of America) said that he understood that the proposed amendment CDDH/II/58 covered the different religions. With regard to the proposed amendment CDDH/II/19, he agreed with the representatives of the Netherlands and of Canada that it would be appropriate to limit the protection to members of medical units. He asked the representative of the Union of Soviet Socialist Republics what he meant by "registered by the State".

32. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) replied that he meant the civilian medical personnel attached to medical units or to public health services.

33. Mr. PICTET (International Committee of the Red Cross) thanked the representative of the Holy See for mentioning the Red Cross Societies in his proposed amendment. He did not think it was necessary, however, since Red Cross Societies, abiding by the principle of political and religious neutrality, did not have chaplains.

34. Mrs. MANTZOULINOS (Greece) said she was of the same opinion.

35. Mr. MARTOSUHARDJO (Indonesia) said that the reference to chaplains should appear in article 15 and not in article 8.

36. Mr. ABSOLUM (New Zealand) said he agreed with the United Kingdom that there might be advantage in including a definition of army chaplains in article 8(d) but, if so, he would prefer a more precise formulation than that suggested by the Holy See (CDDH/II/58). In particular, the term "Ministers of religion serving the people" was open to very wide interpretation.

The meeting was suspended at 5.05 p.m. and resumed at 5.25 p.m.

37. Mr. ROSENBLAD (Sweden) said he agreed with the representative of Indonesia that chaplains should be mentioned in article 15. He also agreed with the representative of Denmark that medical personnel should be attached to medical units and duly recognized and qualified.

38. Mr. CLARK (Australia) said that the proposed amendment to sub-paragraph (d) ii (CDDH/II/42), put forward by his delegation, concerned matters of form and could be referred to the Drafting Committee.

39. Mr. ROME (Israel) said that his country requested that the distinctive emblem of its armed forces medical services and of its National Relief Society, namely the Red Shield of David, be afforded the same recognition as was given in sub-paragraph (e), to the emblems of the Red Cross, Red Crescent and Red Lion and Sun. Otherwise, Israel would be obliged to make a reservation similar to that which it had made when signing the 1949 Convnetions. For practical reasons, Israel would find it impossible to accept the situation created by the provisions of the draft Protocol. The recognition of the Red Shield of David would represent simply the acceptance of a long-existing fact in no way inconsistent with the humanitarian aims of the Conventions and Protocols.

40. Mr. MAKIN (United Kingdom) said that he would leave it to the Drafting Committee to decide on his delegation's proposed amendment to article 8 (f) (CDDH/II/46), which was similar to that of the Australian delegation on the same subject.

41. The CHAIRMAN suggested that the delegations which had proposed amendments to sub-paragraph (d) in documents CDDH/II/13, CDDH/II/18, CDDH/II/19, CDDH/II/30, CDDH/II/42, CDDH/II/46 and CDDH/II/58 might fall in with the Swiss representative's suggestion and confer among themselves before referring those amendments to the Drafting Committee. He proposed that the Committee should refer to the Drafting Committee all the other proposed amendments that had been discussed so far during the session.

It was so agreed.

Article 9 - Field of application (CDDH/1, CDDH/II/4, CDDH/II/19, CDDH/II/20, CDDH/II/28, CDDH/II/41, CDDH/II/49)

42. Mr. PICTET (International Committee of the Red Cross) said that article 9 was the result of the work of the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts. It was more restrictive than article 11 which covered persons in good health, prisoners of war and civilians. Perhaps it would be advisable to add to it the words "subject to the provisions of article 11" or "without prejudice to the provisions of article 11". That question could be referred to the Drafting Committee. Similarly, the Drafting Committee might consider whether it would not be preferable in article 9 (1) to replace the expression "on the territory of the parties to the conflict" by the words "on land, at sea or in the air".

43. Mr. NAHLIK (Poland), as co-sponsor of the proposed amendment CDDH/II/19 to article 9, paragraph 1, said that he thought that the expression "without distinction on grounds of nationality" might be misinterpreted to imply that distinction other than that

on grounds of nationality, such as distinction of race, religion, etc, might be justified. It was therefore essential to exclude any kind of adverse distinction by using the words "without any discrimination". In article 9, paragraph 3, where mention was made of organizations of an international character, he believed it would be suitable to give as examples the International Committee of the Red Cross and the League of Red Cross Societies, in recognition of the merits of those two organizations.

44. The CHAIRMAN informed the Committee that the sponsors of proposed amendments CDDH/II/63 and CDDH/II/69, which referred to the annex to draft Protocol I, had agreed that their proposals should not be submitted at the present meeting.

45. Mr. BOTHE (Federal Republic of Germany), introducing the amendment proposed in document CDDH/II/20, pointed out that it was identical to that submitted by the Polish representative in connexion with article 9, paragraph 3 (CDDH/II/19).

46. Mr. MAKIN (United Kingdom), said that the amendment proposed in document CDDH/II/28, was intended mainly to improve the wording of article 9, and that the only change of substance was intended to make it clear that paragraphs 2 and 3 of that article were not applicable to hospital ships, which were dealt with under article 25 of the Second Geneva Convention of 1949.

47. Mr. CLARK (Australia) said that the purpose of the proposed amendment in document CDDH/II/41 was to replace the words "territory of the parties to the conflict" in article 9 by "area under the control of the parties to the conflict", as the word "area" could be applied to the high seas or to regions in dispute. He agreed with the Polish representative concerning the expression "without any discrimination". The terms "the wounded, the sick and the shipwrecked" had been widely debated in the Committee and were defined in article 8. Similarly, the terms "military personnel", "military transports" and "civilian population" had already been discussed.

48. His delegation did not propose the deletion of paragraph 1 of article 9, but considered that its field of application should be made clear.

49. Mr. SOLF (United States of America) introduced the draft amendment in document CDDH/II/49, the object of which was to delete paragraph 1 of article 9, and said that the defects of the paragraph had already been pointed out by the ICRC representative. Some articles in part II applied to the high seas, not only to the territory of the parties to the conflict. Furthermore, articles 19 and 32 of draft Protocol I dealt with the measures to be taken by States not parties to the conflict, and that was in contradiction

with paragraph 1 of article 9. The words without distinction on grounds of nationality" were grossly inadequate. The concept of non-discrimination should preferably be placed in article 10. There was therefore no need for paragraph 1 of article 9.

50. Mr. HAAS (Austria), whose delegation had submitted the proposed amendment in document CDDH/II/4, said that if the words "wounded and sick" were used in the title of part II of draft Protocol I they should also appear in article 9. If, however, the words "Wounded, sick and shipwrecked persons" were retained, then they should figure in the body of the article. It was for the Drafting Committee to decide which wording to use and where.

51. Mr. SCHULTZ (Denmark) said that he supported documents CDDH/II/19 and CDDH/II/20 proposing to amend article 9, paragraph 3. They tended to high-light the role of the International Committee of the Red Cross and of the League of Red Cross Societies. He requested that his country be added to the list of sponsors of the proposed amendment in document CDDH/II/20.

52. Mr. NAHLIK (Poland), supported by Mr. VILLARINHO PEDROSO (Brazil), suggested that all the delegations sponsoring draft amendments to the same paragraph or the same article should meet to draw up combined texts, to facilitate the work of the Drafting Committee, which would have very little time. The delegations in question could hold consultations on the following Monday and submit their joint proposals on Tuesday morning. That, of course, would be feasible only in the case of draft amendments which supplemented one another. Article 9 was a different matter, because the draft amendments introduced were mutually exclusive and would have to be put to the vote in Committee II.

53. Mr. MAKIN (United Kingdom) said that he could see no possibility of following up the suggestion made by the Polish representative, because representatives would have to attend a plenary meeting of the Committee on Monday morning. In any event, the sponsors of proposed amendments would be able to attend the meetings of the Drafting Committee.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE EIGHTH MEETING

held on Monday, 18 March 1974, at 10.20 a.m.

Chairman: Mr. MALLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 9 - Field of application (CDDH/1, CDDH/45, CDDH/II/4, CDDH/II/19, CDDH/II/20, CDDH/II/28, CDDH/II/41, CDDH/II/49) (continued)

1. Mr. KUSSBACH (Austria), introducing the paragraphs relating to article 9 of the amendments which his delegation had submitted together with those of Finland, Sweden, Switzerland and the United Kingdom (CDDH/45), said that the purpose of the proposals was to bring the article into line with article 27 of the First Geneva Convention of 1949.

2. Mr. TORRES-BERNARDEZ (United Nations) asked whether the term "organization of an international character" in article 9, paragraph 3, covered non-governmental as well as intergovernmental organizations. Assuming that the term was intended to cover intergovernmental organizations, he drew the Committee's attention to the fact that the provisions of article 27 of the First Geneva Convention of 1949 could not always be appropriate for intergovernmental organizations unless applied in a somewhat flexible manner. For instance, the requirement that medical personnel and units should be placed under the "control" of the party to the conflict receiving assistance might well be incompatible with rules governing assistance from an organization such as the United Nations. Moreover, obligations of Member States under the Charter and the competences and powers of United Nations organs, should in no way be affected by a provision of that kind.

3. Mr. NAHLIK (Poland) said that the proposal in document CDDH/II/49 to delete paragraph 1 of article 9 was the most far-reaching amendment and, if maintained, should be voted on first. On the other hand, rather than deleting paragraph 1, it might be possible to amend it so that protection would apply not only within the territory of States parties to a conflict, but also on the high seas, in outer space, in antarctic regions and, in fact, in any part of the world which was not under national sovereignty. With regard to the amendments introduced by the Austrian representative (CDDH/45), the term "neutral State" was ambiguous, since it might refer either to permanently neutral countries, such as Austria and Switzerland, or to countries which were neutral in a specific conflict. The term "not party to the conflict" appeared to be more pertinent. With regard to the question raised by the representative of the United Nations, the term "organization of an

international character" was indeed ambiguous and should be defined, possibly in part I of the Protocol, under "General Provisions", distinguishing between intergovernmental and non-governmental organizations. The ICRC was not even a non-governmental international organization, since in the legal sense it existed as an entity under Swiss law.

4. Mr. VIGNES (World Health Organization - WHO) said that the proposals in amendments CDDH/II/19 and CDDH/II/20 to insert the words "such as the International Committee of the Red Cross and the League of Red Cross Societies" after the words "of an international character" in paragraph 3, were either dangerous or pointless, since other organizations might well be called upon to render assistance.

5. Mr. MAKIN (United Kingdom), referring to article 9, paragraph 1, said that neither the ICRC text nor the Australian amendment (CDDH/II/41) fully covered the situation since both excluded chaplains and personnel in vital areas. Paragraph 1 should be either deleted or referred to the Drafting Committee; if it was deleted, the title of the article would have to be amended. With regard to paragraph 2, it was doubtful whether strict neutrality would be compatible with lending personnel to one or the other party to an armed conflict, a question which would also arise in connexion with article 57. Moreover, the paragraph was incomplete, since it failed to mention the possibility of capture of personnel lent by a non-party to the conflict. The same problem arose with regard to paragraph 3. There should be a reference in those paragraphs to article 32 of the First Geneva Convention of 1949. The meaning of the term "a society recognized by such a State" in paragraph 2 was not clear and, moreover, reference to the ICRC or the League of Red Cross Societies might infringe upon the neutrality of those bodies. Finally, the term "organization of an international character" might lend itself to an even broader interpretation than a mere reference to intergovernmental and non-governmental organizations, and might cover such bodies as international airlines.

6. Mr. SOLF (United States of America) said that he agreed with most of the views expressed by the United Kingdom representative. In his opinion, however, no medical services lent by an organization of an international character, whether regional, intergovernmental, non-governmental or any other, constituted intervention or a non-neutral act, provided assistance was rendered for humanitarian purposes. He could agree that article 9, paragraph 1, should be referred to the Drafting Committee, although he would still prefer it to be deleted.

7. Mr. CALCUS (Belgium) said he shared the views of the United Nations and WHO representatives concerning the words "organization of an international character" in paragraph 3. He supported the

Polish representative's proposal that those words be defined, but thought that such definition should be given elsewhere in the Protocol. If the Committee agreed to such a course, the amendment in document CDDH/II/20, of which his delegation was a sponsor, would be unnecessary and could be withdrawn.

8. Mr. KLEIN (Holy See) said he agreed that article 9 was more limited in scope than the First Geneva Convention of 1949: chaplains were mentioned in all the relevant articles of the latter instrument, but not in article 9 of draft Protocol I. It might be advisable to draw the Drafting Committee's attention to the explanation that chaplains were referred to in article 15, paragraph 6.

9. Mr. PICTET (International Committee of the Red Cross), referring to questions raised by the United Nations representative, said that the words "organization of an international character" were intended to cover both governmental and non-governmental organizations. If there were any doubts, it would be better to define the expression, as had been proposed.

10. With regard to the applicability of article 27 of the First Geneva Convention of 1949, he agreed that the reference to that article in article 9, paragraph 3, raised a problem, since article 27 had been designed for non-governmental organizations, i.e. mainly for national Red Cross Societies, whereas article 9, paragraph 3, of the Protocol extended the provision to governmental organizations. Article 27 of the First Geneva Convention of 1949 should therefore be considered to be applicable mutatis mutandis, bearing in mind the special nature of governmental organizations and, in the case of the United Nations in particular, the obligations imposed by the Charter. In general, however, the stipulations concerning authorization and notification had to be strictly respected, in the interests of medical units and their security. As far as the extremely useful and direct reference to the international organizations of the Red Cross was concerned, it would undoubtedly be preferable for it to appear in a more general provision, as proposed in several amendments.

11. Mr. BOTHE (Federal Republic of Germany) said that he agreed with the purpose of the amendments in document CDDH/45 and with the views expressed by the Polish representative. Neutrality could play an important part in the settlement of international armed conflicts, and it was essential to avoid any impression that neutrality had become obsolete.

12. He could support the amendments to article 9 in documents CDDH/II/19 and CDDH/II/20 because they would provide useful clarifications; reference to some organizations as examples need

not close the door to others. He had no objection to referring article 9 to the Drafting Committee, which might be able to redraft the text so as to exclude the references to article 27 of the First Geneva Convention of 1949.

13. Mr. HAAS (Austria) said that the amendments in document CDDH/45 were the result of a compromise and had been submitted in a document of the plenary meeting because they went beyond the terms of reference of Committee II. Nevertheless, he hoped that the Drafting Committee would take them into account. He endorsed the United Kingdom representative's comments on article 9, paragraph 1.

14. Mr. EL-SHAFEI (Arab Republic of Egypt), referring to the Austrian amendment in document CDDH/II/4, said that, in the likely event that the definition of the term 'shipwrecked persons' was retained in article 8(b), he would prefer the word 'shipwrecked' to be retained in article 9, in the interests of consistency.

15. He supported the amendments to paragraphs 1 and 3 in document CDDH/II/19; the latter amendment seemed preferable to the corresponding one in document CDDH/II/20. He could also support the United Kingdom amendments (CDDH/II/28) and endorsed the rationale given for those proposals. With regard to the Australian amendment to paragraph 1 (CDDH/II/41) and the proposal by Canada and other countries to delete paragraph 1 (CDDH/II/49), he was strongly in favour of retaining that paragraph as it stood.

16. Mr. ABSOLUM (New Zealand) said that he agreed with the co-sponsors of amendment CDDH/II/49 that nothing would be lost by deleting paragraph 1. Some indication of the field of application for the whole Protocol was already provided by article 1 and there seemed to be no compelling advantage in trying to establish a modified or restricted field of application for part II. He also agreed with the United Kingdom representative that if paragraph 1 were deleted, the title of article 9 would have to be changed.

17. Mr. EL-SHAMI (Jordan) said that he was in favour of maintaining paragraph 1 and supported the Australian amendment (CDDH/II/41).

18. Mr. JAKOVLJEVIĆ (Yugoslavia) said that he supported the amendment to paragraph 1 in document CDDH/II/19, the amendment to paragraph 2 in document CDDH/45 and the amendment to paragraph 3 in document CDDH/II/20.

19. Mr. VIGNES (World Health Organization) said that while he was not in favour of an amendment to paragraph 3 along the lines proposed in documents CDDH/II/19 and CDDH/II/20, he would prefer the words "such as" to be replaced by the word "including".

20. Mr. ALFONSO MARTINEZ (Cuba) said he was opposed to the deletion of paragraph 1. In connexion with the United Kingdom representative's comments, his delegation thought that the paragraph referred to the territories of parties to the conflict under national or international law, as defined in part I of draft Protocol I, and that the provisions of the Protocol could not affect the legal rights of the parties.

21. With regard to article 9, paragraph 2 of draft Protocol I, he wondered why only permanent medical units and means of transport were mentioned, since article 27 of the First Geneva Convention of 1949 made no distinction between permanent and temporary units.

22. He was satisfied with the ICRC text of paragraph 3, which could cover organizations such as the United Nations as well as purely humanitarian ones. It would be better not to refer to specific organizations as examples.

23. Mr. MARTIN (Switzerland) said that his delegation had become a sponsor of document CDDH/II/49 because it considered it paradoxical that the field of application of part II should be different from that of the whole of draft Protocol I as it was defined in article 1. Article 9, paragraph 1, should restate the provision contained in article 1 or should describe possibilities of extending that field of application.

24. Mr. SCHULTZ (Denmark) and Mr. HAAS (Austria), speaking as co-sponsors of the amendment to article 9, paragraph 3 (CDDH/II/20) said they could accept the WHO representative's suggestion that the word "including" should be substituted for "such as".

25. Mr. VILLARINHO PEDROSO (Brazil), supported by Mr. JAKOVLJEVIC (Yugoslavia), said that his delegation understood the ICRC's intention to be to define the scope of the whole Protocol in article 1 and to describe the specific fields of application of certain parts of that instrument. Accordingly, there was no more reason to delete article 9, paragraph 1, than article 44. In view of the difficulties with regard to specific terms used in the paragraph, he suggested that the wording should be considered by the Drafting Committee, on the basis of the Australian amendment (CDDH/II/41).

26. Mr. PICTET (International Committee of the Red Cross) said he could agree to the deletion of the word "permanent" in paragraph 2. The ICRC had certainly not intended to use that word in any restrictive sense.

27. With regard to the Swiss representative's comment, he stated that article 9 did not in effect modify the field of application in relation to that of the Conventions. Its purpose was to make it

clear that the Protocol was applicable to all wounded civilians, including those living in the territory of the parties of the conflict. The articles governing the field of application of the Fourth Convention (articles 4 and 13) were in fact very complicated.

28. Mr. AL-BARZANCHI (Iraq) said that the field of application of part II of draft Protocol I should cover not only areas under the control of the parties to the conflict, but also those outside national sovereignty, as well as nationals of countries Parties to the Protocol but not parties to the conflict, such as those rescuing wounded persons from the sea.

29. He was glad that the ICRC representative had agreed to the deletion of the word "permanent" in article 9, paragraph 2, as he too considered it to be restrictive.

30. He supported the inclusion in paragraph 3 of the reference to the ICRC and the League of Red Cross (Red Crescent and Red Lion and Sun) Societies proposed in document CDDH/II/19, paragraph 2. The restrictions in article 27 of the First Geneva Convention of 1949 should apply to all other intergovernmental and non-governmental organizations.

31. Mr. BOGLIOLO (France) said that he was in favour of maintaining paragraph 1 with a more comprehensive wording. He too welcomed the deletion of the word "permanent" in paragraph 2 and could agree to the WHO representative's suggestion with regard to paragraph 3.

32. The CHAIRMAN said that, in the absence of any objection, he would take it that the Committee wished to ask the Drafting Committee to consider the amendments to article 9 contained in documents CDDH/45, CDDH/II/4, CDDH/II/19, CDDH/II/20, CDDH/II/28, CDDH/II/41 and CDDH/II/49.

It was so agreed.

Article 10 - Protection and care (CDDH/1, CDDH/II/19, CDDH/II/26, CDDH/II/40, CDDH/II/50, CDDH/II/62, CDDH/II/70, CDDH/II/75)

33. Mr. PICTET (International Committee of the Red Cross), submitting the text of article 10, and of the three new paragraphs proposed (CDDH/II/75), said that the reason why it had been thought necessary to refer in paragraph 1 to a provision which already appeared in the Conventions was that it had seemed difficult to omit, at the beginning of a chapter covering the wounded and the sick, the key principle that they must be respected and protected.

34. It had also appeared advisable to supplement that article with three paragraphs concerning the steps to be taken to search for the wounded, the sick and the shipwrecked, since the provisions of the Conventions were vague and of limited scope. The last of those paragraphs was designed to solve the problem of the "air-shipwrecked" and of persons in peril in a hostile environment (desertc, etc.), rather than that point being covered within the framework of article 8 (CDDH/II/57).

35. He therefore suggested that three new paragraphs (CDDH/II/75) should be added to article 10. The search referred to in the new paragraph 3 could be undertaken by naval or merchant vessels belonging to parties to the conflict and to other nations. It had been considered necessary to add the new paragraph 4 because only the First Convention of 1949 contained general provisions on that subject, those of the other Conventions being much too restrictive. It was also essential that such persons as air force personnel who had been shot down and soldiers whose transport had broken down should be covered by the Protocol: that was the reason for the new paragraph 5.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE NINTH MEETING

held on Tuesday, 19 March 1974, at 11.15 a.m.

Chairman: Mr. MALLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 10 - Protection and care (CDDH/1, CDDH/II/19, CDDH/II/26, CDDH/II/40, CDDH/II/50, CDDH/II/70, CDDH/II/75) (continued)

1. The CHAIRMAN invited the representatives whose delegations had submitted amendments to article 10 to introduce them.

2. Mr. DENISOV (Ukrainian Soviet Socialist Republic), introducing the amendment (CDDH/II/19) to article 10, paragraph 1, sponsored by his own and other delegations, said that he wished to make it clear from the outset that his delegation accepted the definition of shipwrecked persons suggested by the ICRC in article 8 (b) of draft Protocol I. The amendment was concerned with the protection, required by international humanitarian law, of military or civilian shipwrecked persons, in other words the persons to whom the definition applied. He did not see why the term "shipwrecked persons" should be extended to cover persons on land: the status of such persons had already been defined in the First, Third and Fourth Geneva Conventions of 1949.

3. Mr. NAHLIK (Poland) said that the amendment (CDDH/II/19) to article 10, paragraph 2, whereby the words "without any adverse distinction" would be replaced by the words "without any discrimination" was a drafting change and was intended simply to bring the text of that article into line with that of article 9, and where the expression "without any discrimination" had been retained in order to exclude any possibility of discrimination for whatever reason: race, language, religion and so forth.

4. Mr. MAKIN (United Kingdom) said that his delegation's amendment (CDDH/II/26) was intended to improve the English text of article 10 by replacing "the wounded and the sick" by "the wounded and sick". He supported the amendment by the Ukrainian SSR and other delegations to article 10, paragraph 1, but considered that reference should be made not merely to the First Convention of 1949 but to all four Geneva Conventions of 1949.

5. Mr. CLARK (Australia), introducing amendment CDDH/II/40, said that in suggesting the expression "without any discrimination" his delegation had wished to avoid any restrictive interpretation of the article in question, such as might occur with the enumeration, as in amendment CDDH/II/50, of a certain number of examples of discrimination.

6. The addition of the words "to the fullest extent possible" was based on realistic considerations: the wounded and the sick referred to in article 10 must be treated humanely and must receive, to the fullest extent possible, the care which their condition rendered necessary.

7. The amendment to article 10, paragraph 1 (CDDH/II/19) with the change suggested by the United Kingdom representative, offered many advantages.

8. Mr. SOLF (United States of America) said that in amendment CDDH/II/50, of which his delegation was a sponsor, the words "without any adverse distinction", which appeared in the ICRC draft, had been retained. As was the case in the four Geneva Conventions of 1949, the amendment listed the criteria which must not be taken into consideration in providing treatment and care to the sick and the wounded. In that respect, the amendment followed the decisions of the Conferences of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held in 1971 and 1972. The sponsors had also proposed the words "or any other similar criteria" in order to show that the list was not exhaustive. If the Committee were to decide not to enumerate the criteria which should not be taken into consideration in that case, it would be necessary to revert to the terms of article 12 of the First Geneva Convention of 1949 and to make it clear that only urgent medical reasons would authorize priority in the order of treatment to be administered.

9. In principle, he supported the amendment to article 10, paragraph 1 in document CDDH/II/19, but agreed with the United Kingdom delegation that reference should be made to all four Geneva Conventions of 1949 and not only to the First.

10. The CHAIRMAN pointed out that at the eighth meeting the representative of the ICRC had submitted an ICRC suggestion to amend article 10 (CDDH/II/75).

11. Mr. AL-BARZANCHI (Iraq), supported by Mr. TARSIN (Libyan Arab Republic), stated that the aim of the sponsors of amendment CDDH/II/70 was to mention in the Protocol the current medical practice of obtaining the consent of the person concerned in cases where surgical intervention was considered necessary. That was an essential precaution in case the sick person, his relatives or his friends should subsequently claim that the operation had not been necessary and that it had been carried out in order to harm the patient.

12. Mr. MARRIOTT (Canada) supported the amendments to article 10 proposed in document CDDH/II/19, on the understanding that it would be advisable to refer to the pertinent articles in the

four Geneva Conventions of 1949. With regard to amendments CDDH/II/40 and CDDH/II/50, the Canadian delegation preferred the latter, which enumerated the different criteria on which discrimination might be based. It was legitimate to wonder whether the provision embodied in the proposed new paragraph 3 (CDDH/II/70) was applicable at the height of the battle, when there were large numbers of wounded. He wondered what form the proposed document would take. It might perhaps be necessary to provide an international document for the purpose. He suggested that at the end of the proposed text a sentence might be added to the effect that, if the person was not fully conscious, written consent would be obtained in accordance with the practice established by the authorities holding the said person.

13. Mr. KLEIN (Holy See) pointed out that, although it was necessary to provide the sick and wounded with the requisite medical care, such patients also needed food, clothing and beds, as well as moral support, entertainment and books. Many of them also required spiritual help. Paragraph 2 of article 10 should not, therefore, be of a strictly medical character. The wording might, for example, be "... medical care and help of every kind that their condition may require".

14. Mr. BOTHE (Federal Republic of Germany), referring to amendments CDDH/II/19, CDDH/II/40 and CDDH/II/50, pointed out that, on the one hand, an unduly general clause might be difficult to apply since it placed too great a responsibility on the person whose duty it was to implement it, and, on the other hand, an enumeration was always in danger of being incomplete. It was true, however, that amendment CDDH/II/50 ended with the words "or any other similar criteria", thus making the enumeration open-ended. The best course might perhaps be to have a general caluse and to speak of "discrimination", adding the words "such as ..." or "including ...". Thus, it would not be possible for discrimination to be based on arbitrary criteria and a text of that kind would, for instance, help soldiers on the field of battle to take an equitable decision.

15. He associated himself with the remarks made by the representative of Canada regarding amendment CDDH/II/70. It would perhaps be preferable to discuss that question in conjunction with article 11, which dealt with problems of medical treatment.

16. He noted with satisfaction that in document CDDH/II/75 the ICRC had reverted to a suggestion made by the delegations of the United Kingdom and the Federal Republic of Germany, in which they proposed that the question of persons in peril on land should not be dealt with in the definitions but in a substantive provision. It would, in principle, be expedient to strengthen the provisions of article 15 of the Second Geneva Convention of 1949 and article 16 of the Fourth Geneva Convention. It was, however, open to

question whether the suggestion by the ICRC was sufficiently precise. It should be made clear that the persons envisaged were not those in danger owing to the weapons of the enemy, but only those in peril by reason of the fact that they found themselves in a hostile environment, such as, for example, the desert or the jungle. Such persons fell into two categories: those who were defenceless and who would perish if nobody came to their assistance, and those who might possibly still be able and willing to carry on the fight. That second category of persons must not have the right to protection. It was therefore necessary to draw a distinction between the two categories: for civilians and medical personnel, the expression "who refrain from any act of hostility" was sufficient, but for military personnel it was necessary to add the words "and who are hors de combat as defined in article 38".

17. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) said that it would be better to retain the text of article 10, paragraph 1 as set out in the ICRC draft and to discard the amendment to article 10 proposed in document CDDH/II/19.

18. With regard to paragraph 2 as proposed in document CDDH/II/50, the Government Experts attending the 1971 and 1972 Conferences had considered that it was necessary to enumerate the criteria for discrimination. It would be better to adhere to the wording that they had advocated.

19. His delegation supported the position of the sponsors of amendment CDDH/II/70. The text should, however, be reworded since it was not clear what would happen if a wounded or sick person was incapable of giving his written consent.

20. He was also in favour of the idea embodied in amendment CDDH/II/75, but felt that the text should be referred to the Drafting Committee.

21. Mr. TAMALE MUGERWA (Uganda), referring to amendments CDDH/II/19 and CDDH/II/40, said that he would prefer to see the words "without any adverse distinction" retained. He could not accept amendment CDDH/II/50 because, in his view, it reduced the potential number of cases of discrimination. Although he approved of the idea in amendment CDDH/II/70, he associated himself with the preceding speakers who had drawn attention to the practical difficulties of applying such a provision. The text would have to be reworded.

22. Mr. DEDDES (Netherlands) said that he could accept the idea put forward in the amendment proposed to article 10, paragraph 1 in document CDDH/II/19, provided reference was made to all four Geneva Conventions of 1949 and not to only one of them. Like the

representative of Uganda, he thought it only natural that there should be some classification of the many wounded on the battle-field; to that extent some "discrimination" was inevitable. He could not, therefore accept the amendment to article 10, paragraph 2 in document CDDH/II/19. While he realized that any enumeration such as that given in document CDDH/II/50 was bound to be incomplete, he considered that the end of the sentence "... or any other similar criteria" might meet the concern expressed by some delegations.

23. With regard to the new paragraph 3 proposed in document CDDH/II/70, he did not think it necessary for written consent to be given for all surgical operations; at any event, such a provision could hardly be applied in practice, owing to lack of time or to language difficulties, for example. Moreover, the arguments advanced by the sponsors of the amendment were unconvincing since the instances they had cited were already covered by article 10, paragraph 2, of draft Protocol I, where it was said that medical care and attention must be "necessitated by the condition of the patient", and by article 11, as amended in document CDDH/II/43, which prohibited "any unjustified act or omission".

24. Mr. NAHLIK (Poland), referring to the amendments proposed to article 10, paragraph 2, spoke of the historical development of methods of codification since the times of Hammurhabi although it had once been customary to include in texts long lists for the benefit of the simple, progress had rightly ordained that modern codes never included enumerations which might subsequently prove incomplete or liable to deliberate misinterpretation. He therefore considered the expression "without any discrimination" much clearer and sufficient in itself. Moreover, that was the terminology used by the United Nations, and it was better to standardize legal terminology. With regard to children, he pointed out that their case was dealt with in article 68 of draft Protocol I and that the words "subject to the provisions of article 68" could perhaps be added. Furthermore, he thought that the phrase "shall receive ... the medical care necessitated by their condition" should suffice to meet the concern of the Netherlands representative.

25. Mrs. DARIIMAA (Mongolia), referring to paragraph 4 of document CDDH/II/75, asked how the "shipwrecked" could in practice be exchanged. She requested the ICRC representative to state at what point of time a "shipwrecked" person ceased to be regarded as such.

26. Mr. PICTET (International Committee of the Red Cross) replied that the general wording used already appeared in the First, Second and Fourth Geneva Conventions of 1949; while he recognized the cogency of that observation so far as the substance was concerned, he thought that any attempt to establish distinctions in respect of each category would give rise to a much longer text. He saw no reason why the present wording should not be retained.

27. With regard to the terms "discrimination" and "adverse distinction", he pointed out that the word "discrimination" had pejorative overtones, although the two expressions were really equivalent.

28. Mr. TRAMSEN (Denmark) said that article 10 should mention the shipwrecked but should restrict the scope of the term, as proposed by the delegation of the Ukrainian SSR and others (CDDH/II/19). On the other hand, he could not accept amendment CDDH/II/70 suggesting a new paragraph 3 concerning written consent in the case of surgical intervention, since the persons in question might, for instance, be illiterate.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE TENTH MEETING

held on Thursday, 21 March 1974, at 3.20 p.m.

Chairman: Mr. MALLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 10 - Protection and care (CDDH/1; CDDH/II/19, CDDH/II/26, CDDH/II/40, CDDH/II/50, CDDH/II/70, CDDH/II/75) (continued)

1. Mr. MARRIOTT (Canada) drew attention to the need for clarity of wording in order that the draft Protocol should be understandable to all. He therefore supported the inclusion of the criteria listed in the amendment in document CDDH/II/50.

2. With regard to the amendment suggested by the ICRC (CDDH/II/75), he suggested that the proposed new paragraph 5 was unnecessary: its intent could be covered by the addition of the phrase "and those in peril on land" at the end of the new paragraph 3.

3. Mr. SOLF (United States of America) supported the inclusion of criteria (CDDH/II/50) in order to give some guidance to medical personnel in the field. The third paragraph of article 12 of the First Geneva Convention of 1949 was also pertinent. He supported the proposal by the representative of the Federal Republic of Germany at the ninth meeting concerning general prohibition of discrimination based on matters irrelevant to medical care, with a list of examples, and the comment by the representative of the Holy See that "health care" was a more comprehensive expression than "medical care".

4. He had no objection in principle to the new paragraphs 3 and 4 suggested by the ICRC (CDDH/II/75), although there were already binding obligations on all the parties to the Geneva Conventions. He noted that those provisions were proposed in article 13 of draft Protocol II where they were used to establish norms for non-international armed conflict. With regard to the proposed new paragraph 5, his delegation shared the concern about the safety of people exposed to great danger in a hostile environment on land, but concurred in the view that military personnel must be hors de combat. He supported the suggestion by the representative of Canada that the paragraph was unnecessary and that the same idea could be expressed in the new paragraph 3, perhaps by the addition of a sentence such as: "They shall also take the practicable measures necessary to search for and assist other persons who are exposed to grave danger on land because of a hostile environment, provided that they refrain from any hostile act if civilians and, if military, are hors de combat.".

5. Mr. MAKIN (United Kingdom) explained that his delegation's amendment (CDDH/II/26) did not mean that the wounded had also to be sick in order to be protected. The expression had been used in articles 14 and 15 of the First Geneva Convention of 1949.

6. He was in favour of some sort of list of criteria (CDDH/II/50) but thought that the actual wording could be left to the Drafting Committee, taking account of the various suggestions made.

7. He agreed with the comments made by the representatives of the Netherlands and Denmark that in some circumstances it might not be practicable to obtain any consent for surgical operations, let alone written consent (CDDH/II/70), and suggested the deletion of the word "written" and the inclusion of the words "wherever practicable".

8. While his delegation could accept the new paragraphs 3 and 4 suggested by the ICRC (CDDH/II/75) in principle, the subject was already covered more fully in article 15 of the First Geneva Convention of 1949, article 18 of the Second Geneva Convention and articles 16 and 17 of the Fourth Geneva Convention. It might therefore be confusing to insert new paragraphs with a more restrictive wording. The subject matter of the proposed new paragraph 5 was already covered by paragraph 2 of article 38 of Protocol I with regard to combatants, and any rewording of the article should therefore be considered by Committee III. With regard to civilians, article 54(a) of draft Protocol I seemed to cover the situation. He agreed with the representatives of the Federal Republic of Germany (ninth meeting) and the United States of America that any new wording should refer to people in a hostile environment" and that they should be hors de combat.

9. Mr. PICTET (International Committee of the Red Cross) said that there were three translation errors in the English text of the ICRC's amendment (CDDH/II/75). The title should be "suggested amendment" because the ICRC could not propose amendments in paragraph 5, the phrase "or any other cause" did not exist in the French original; and the wording "shall be deemed to be shipwrecked persons" did not give the exact sense of sont assimilees aux naufragés.

10. With regard to the suggestion by the representative of the Federal Republic of Germany, he thought it preferable to mention persons in a hostile environment, such as a desert in article 10 rather than in article 8. A simple mention would also be sufficient in paragraph 3. The precise wording could be left to the Drafting Committee.

11. The ICRC had suggested the inclusion of the new paragraphs 3 and 4 because people had died during the Second World War because they had not been rescued after having been shipwrecked. With

regard to paragraph 3, article 18 of the Second Geneva Convention of 1949 expressed the obligation to search for and protect casualties but limited it to the periods "after each engagement" and article 16 of the Fourth Geneva Convention only established the obligation to "facilitate the steps taken" in such a search. The new paragraph 4 was less important but had been suggested because, although the subject matter was partly covered by article 15 of the First Convention of 1949, articles 15 and 18 of the Second Convention and article 17 of the Fourth Convention, only the provisions in the First Convention were sufficiently general.

12. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) agreed with the representatives of the United Kingdom and the United States that the amendment proposed to paragraph 1 of article 10 (CDDH/II/19) must apply to all the Geneva Conventions of 1949. That amendment, which his delegation considered very important, should be combined with the new paragraphs 3 and 4 suggested by the ICRC (CDDH/II/75). The present wording of the proposed new paragraph 5 might be wrongly interpreted: it should state specifically that the protection should apply only to the wounded and sick until they were rehabilitated and to non-combatants but not to healthy combatants. The matter was of special importance to countries whose territories largely consisted of desert, jungle and other hostile environment.

13. With regard to the amendment proposed in document CDDH/II/70, he agreed that abuse of surgical intervention must be prevented but it would often not be possible to obtain even oral consent from the person concerned. In any case, it was often preferable to save the lives of several people rather than to undertake a long and complicated operation.

14. Mr. DENG (Sudan) said that he had no strong objection to the amendment to article 10, paragraph 1, proposed in document CDDH/II/19. With regard to paragraph 2, his delegation supported the amendments in documents CDDH/II/19 and CDDH/II/40, but was not satisfied with the term "with the least possible delay" in the latter amendment and in document CDDH/II/50, since it might lead to difficulties of interpretation.

15. With regard to the enumeration of specific cases of discrimination, he agreed with the representative of the Federal Republic of Germany that some particular cases of discrimination might be listed by way of example, prefaced by some such phrase as "such as". He also agreed with some of the arguments put forward by the representative of the ICRC and the representative of Poland. The amendment in document CDDH/II/50 reflected the criteria listed in article 12 of the First Geneva Convention of 1949, adding three further criteria. Nevertheless, in order to avoid any restrictive

interpretation, he still thought that the paragraph should be phrased in general terms and should read: "In all circumstances they shall be treated humanely and shall receive without delay and without any discrimination the medical care necessitated by their condition".

16. His delegation supported amendment CDDH/II/26. With regard to the amendment to article 10 in document CDDH/II/70, he supported the suggestion by the representative of Canada that the new paragraph 3 should state that the written consent of the person if fully conscious was required.

17. Mr. ABSOLUM (New Zealand) noted that the discussion had revealed that the protection given to the wounded and the sick was not necessarily appropriate for the shipwrecked and that the advantage would seem to lie in giving the shipwrecked a separate status. That was particularly the case in the light of the efforts to extend the term 'the shipwrecked' to persons in peril on land or in the air as a result of the loss of their means of transport.

18. With regard to amendments CDDH/II/40 and CDDH/II/50 it was, of course, necessary to insert a phrase like "to the fullest extent possible" as, given shortages of supplies and facilities, many parties to a conflict would be manifestly incapable of providing all the medical care that the wounded and sick might need.

19. On the question of whether or not it would be preferable to list types of discrimination, he considered that the important thing was that the text, as it was ultimately translated into military manuals, should be clear and comprehensible to the man in the field. In his view, the insertion of examples would be helpful and for that reason he favoured the formulation set out in CDDH/II/50.

20. While he sympathized with the motives of the co-sponsors of the amendment to article 10 contained in CDDH/II/70, he wondered whether there might not be some conflict between it and article 11 which created the obligation not to refrain from providing medical treatment which might be essential to the health of a patient. Moreover, the words "while fully conscious" gave rise to some difficulty, as a patient might well be conscious but in such a state of mind that he was incapable of exercising a rational judgement about whether or not surgery would be in his best interests.

21. Mr. CALCUS (Belgium) said that his delegation favoured the enumeration of criteria, as in amendment CDDH/II/50.

22. With regard to the amendment to article 10 in document CDDH/II/70, he felt that it was almost impossible to demand the written consent of a wounded person before surgical intervention. Military doctors worked on the basis of providing the maximum amount of care to the maximum number of patients. There was also the problem of language. Thirdly, it was unlikely that a patient would give written consent for an amputation. If the Committee wished to adopt that amendment, it should include some such reservation as "whenever written consent can be obtained".

23. With regard to the new paragraph 5 suggested by the ICRC (CDDH/II/75), the concept of persons shipwrecked should be considered separately.

24. There seemed to be general agreement with the representative of the Holy See that "care" was to be interpreted in a broader sense than that of purely "medical care".

25. Mr. WATANABE (Japan) said that in regard to paragraph 1, his delegation supported the amendments in documents CDDH/II/19, CDDH/II/40 and CDDH/II/50. It preferred the proposed text of paragraph 2 in document CDDH/II/50 to that in document CDDH/II/40 since the enumeration of criteria would make the provision more understandable. His delegation would not be opposed to the amendment in document CDDH/II/70 in principle, but would prefer to have that issue dealt with under article 11.

26. Mr. ALFONSO MARTINEZ (Cuba), referring to amendment CDDH/II/50, wished to place on record that his delegation was in favour of a more general statement in paragraph 2 of article 10 concerning the sick and the wounded. Under article 85 of draft Protocol I, article 10 was not subject to reservations and it therefore needed a text which was unequivocal. Recent conflicts had largely taken place in developing countries, where it might prove impossible to give the wounded all "the medical care and attention necessitated by their condition". Without submitting any formal amendment, he wished to draw attention to the urgency of finding a compromise formula. For example, the words "circumstances permitting" might be inserted in paragraph 2 of article 10.

27. He supported the amendment to article 10 in document CDDH/II/19, but felt some concern about the definition of the term "shipwrecked".

28. With regard to the amendments suggested by the ICRC (CDDH/II/75), the same difficulty might arise in connexion with paragraph 3 as that pointed out with regard the proposed amendment to paragraph 2 in document CDDH/II/50. Paragraph 4 seemed to be fully covered by article 15 of the first Geneva Convention of 1949.

29. Mr. AL-BARZANCHI (Iraq), referring to the proposed amendment to article 10 in document CDDH/II/70, said that he recognized the difficulty of obtaining written consent before a surgical intervention but regarded that condition as a safeguard to be applied whenever possible. He did not agree that there would be any language problem, with interpreters easily available. Since every prisoner of war had an index card, he could notify consent or refusal on that card.

30. Shipwrecked persons could be treated as a separate entity, with protection and care to cease after rescue and revival.

31. With regard to amendments CDDH/II/40 and CDDH/II/50, he did not think enumeration of criteria was necessary.

32. As far as the proposal by the representative of the Holy See was concerned, the term 'medical care' rather than 'medical treatment' should cover that point. The suggestions put forward by the ICRC (CDDH/II/75) would seem to be covered by the Geneva Conventions.

33. Mr. MATHIESEN (Norway) asked for some clarification of the term "means of transport" in the new paragraph 5 suggested in document CDDH/II/75. He proposed that that amendment should be sent to the Drafting Committee.

34. Mr. PICTET (International Committee of the Red Cross) suggested that it might be simplest to add the words "and any other persons in danger" after the word 'shipwrecked' in the suggested new paragraph 3.

35. Mr. COIRIER (France) said that he had already stated his delegation's position with regard to shipwrecked persons in connexion with article 8. While he supported the amendments to article 10 in document CDDH/II/19, he thought that shipwrecked persons should be treated as a separate entity.

36. Mr. SKARSTEDT (Sweden) said that the proposed new paragraph 3 in document CDDH/II/70 concerned a very specialized question which he suggested would be more appropriately discussed under article 11. The new version of article 11 proposed in document CDDH/II/43 might well cover the theme of paragraph 3, namely special protection in case of surgical intervention.

37. Mr. SCHULTZ (Denmark) said that he was against the proposed new paragraph 3 suggested in document CDDH/II/70. The idea of obtaining written consent to surgical intervention was contrary to normal medical practice in his own and other European countries. As article 10 was one of those to which no reservations could be made, under article 85 of draft Protocol I, paragraph 3 would

cause difficulties for such countries, since failure to comply with it might constitute an unwilling breach of an international instrument. That was an essential consideration for the Drafting Committee to take into account when discussing where, if at all, a provision on written consent should be placed. In any case, he agreed with the Swedish representative that the subject should not be discussed under article 10.

38. Mr. MARTIN (Switzerland) said that he doubted whether the question of protection of shipwrecked persons and persons in peril was merely a drafting matter. A thorough and systematic study should be made of the question, in order to ascertain, firstly, the essential measures of protection required for the categories of person in question and, secondly, whether such provisions should be included in article 10 or whether the whole question of shipwrecked and associated persons should be dealt with elsewhere, as under the 1949 Geneva Conventions.

39. He supported the suggestion made by the representative of the Federal Republic of Germany at an earlier meeting that a working party should be appointed to go into the whole question.

40. Mr. VILLARINHO PEDROSO (Brazil) supported the Swedish representative's proposal.

41. The CHAIRMAN said that he proposed to refer the amendments to article 10 in documents CDDH/II/19, CDDH/II/26, CDDH/II/40, CDDH/II/50, CDDH/II/70 and CDDH/II/75 to the Drafting Committee, including the question whether or not the amendment in document CDDH/II/70 should be incorporated in article 11 of draft Protocol I.

It was so agreed.

Article 11 - Protection of persons (CDDH/1; CDDH/II/29, CDDH/II/43, CDDH/II/70)

42. The CHAIRMAN drew attention to the amendments to article 11 submitted by Uruguay (CDDH/II/29), Australia and other countries (CDDH/II/43) and the Arab Republic of Egypt and other countries (CDDH/II/70).

43. Mr. PICTET (International Committee of the Red Cross) said that the ICRC draft of article 11 did not embody any new principle. In the interests of precision and uniformity, the Government Experts had asked the ICRC to prepare an article setting forth prohibitions in respect of the protection of persons. Paragraph 1 was general; paragraph 2 was concerned with detail; grafts and transplants were referred to only as examples.

44. Mr. MOURAD (Syrian Arab Republic), introducing the amendment to article 11 in document CDDH/II/70, said that his delegation thought that the word "unjustified" in paragraph 1 should be deleted, since it opened the way to abuses which would be difficult to control. It could also give rise to differences between parties which would be difficult to keep objective. The prohibition should be in general terms, covering all acts or omissions, whether unjustified or not.

45. Miss MINOGUE (Australia) introduced amendment CDDH/II/43, which represented a considerable degree of agreement on a subject that was basic to the whole concept of draft Protocol I, and indeed to the Geneva Conventions of 1949: the protection of the individual against any form of violence to his person. The sponsors of the amendment thought that the ICRC draft did not go quite as far as they would have wished on that very important matter.

46. The English version of the ICRC text of article 11, paragraph 1 referred to the "well-being" of the person. That did not seem to be an accurate interpretation of the French term intégrité, nor did it convey the concept of physical and mental wholeness which the French word implied and which expressed so well the essence of what the sponsors wished to convey. They felt that the word "integrity", though not widely used in English in that sense, conveyed precisely the meaning required.

47. The new draft article contained a prohibition of any medical procedure not indicated by the medical needs of the person and which would not be used in similar circumstances on other nationals of the party concerned. The word "indicated" had been chosen because, when used in conjunction with medical or dental needs, it implied a conscious exercise of professional judgment. The idea of consistency with generally accepted medical standards applied to the party's nationals was designed to avoid any kind of discrimination against individual persons or groups of persons on racial, religious, economic or any other grounds.

48. With regard to the completely new paragraph 3, in the face of the absolute prohibition of any form of medical procedure which was not absolutely essential - a prohibition which even the person concerned could not gainsay - a person whose own medical condition was sound would be unable even to give a life-saving blood donation to a suffering comrade or a sick child. That seemed contrary to the very spirit of humanitarian law. The sponsors had therefore endeavoured to devise a formula which, invoking all known safeguards to both donor and recipient, would permit such a blood donation to be given on a completely voluntary basis.

49. It had been suggested to the sponsors that provision should also be made for donations of other organs or tissues that might be required for transplant. In no other instances, however, were the same safeguards available as in the case of blood. Her delegation had therefore decided, after careful thought, that the risks involved in widening the provision were too great and that blood transfusion was the only exception that should be made at the present time.

50. Mr. MARTOSUHARDJO (Indonesia) said that his delegation adhered to the widely accepted principle of respect for the physical and mental integrity of the human body. In no circumstances should the human body be interfered with, except for medical reasons to maintain or save the life of a person.

51. He supported amendment CDDH/II/43.

52. Mr. COIRIER (France) said that amendment CDDH/II/43 was excellent. He wondered, however, whether part II of Protocol I was the appropriate place for article 11. He would like to hear from the ICRC representative whether there was any reason for the position of article 11. The subject might, perhaps, have more relevance to article 65.

53. Mr. PICTET (International Committee of the Red Cross) said that the ICRC attached no particular importance to the position of article 11. He suggested that the Drafting Committee might be asked to consider the question.

54. Mr. CHUWA (United Republic of Tanzania) drew attention to the case of freedom fighters, which was a matter of great concern to representatives who were involved in battles for liberation. Many freedom fighters who had fallen into the hands of the adversary had been treated as criminals, subjected to mental and physical torture and even hanged. That had happened in the Far East, for example, and was happening in Rhodesia. That was an urgent humanitarian matter.

55. Mr. MAKIN (United Kingdom) said that he shared the concern of the French representative about the position of article 11. He suggested that when the Committee agreed on a text, the article might be referred by representatives to their colleagues on Committee III which was dealing with articles 63 to 66, to ensure that Committee III did not duplicate the work on the subject. In any case, it did not seem to be a matter for the Committee's Drafting Committee.

56. Mr. ROSENNE (Israel) said that his delegation was in favour of the approach and, on the whole, the drafting of the amendment in document CDDH/II/43. He had been impressed by the Australian representative's reasons for introducing - he considered quite correctly - the concept of the integrity of the human person.

57. Mr. KLEIN (Holy See) suggested that, in connexion with physical mutilation and medical and scientific experiments mentioned in paragraph 2 of amendment CDDH/II/43, it would be well to mention the new "science of man" which could alter human personality and enable persons to be manipulated by their masters.

58. Mr. VIGNES (World Health Organization) suggested that the words "including blood" should be deleted from paragraph 2(c) of amendment CDDH/II/43, in order to remove a contradiction between those words and the reference to donating blood in paragraph 3.

The meeting rose at 6.5 p.m.

SUMMARY RECORD OF THE ELEVENTH MEETING

held on Monday, 25 March 1974, at 3.20 p.m.

Chairman: Mr. MALLIK (Poland)

ADOPTION OF THE REPORTS OF THE COMMITTEE, THE TECHNICAL SUB-COMMITTEE AND THE DRAFTING COMMITTEE (CDDH/II/83)

1. The CHAIRMAN invited the Committee to consider its draft report (CDDH/II/83), and announced that in the absence of the Rapporteur, Mr. Maiga (Mali), who had been recalled by his Government, the officers had decided to ask Mr. Winteler, the Secretary and legal adviser to the Committee, to introduce the draft report.

2. Mr. WINTELER (Secretary of the Committee) said that the draft report (CDDH/II/83) consisted of two parts: the actual report of the Committee, and two annexes: the report of the Technical Sub-Committee and the report of the Drafting Committee. The report itself consisted of an introduction, followed by an analysis of each of the articles which the Committee had discussed. It was not a commentary, but rather a summary of the various points of view expressed in the Committee. Not all the arguments advanced during the debate would be found in the document the summary records should be consulted for that purpose.

3. Mr. ALFONSO MARTINEZ (Cuba) suggested that it might be advisable to begin by considering the report, not as a whole, but rather section by section for the introductory part, and then paragraph by paragraph for part III.

4. Mr. MARTIN (Switzerland) supported that suggestion.

It was so agreed.

Section I - Election of the members of the Drafting Committee and officers of the Committee, the Technical Sub-Committee on Signs and Signals and the Drafting Committee.

5. Mr. AGUDO LOPEZ (Spain), Rapporteur of the Technical Sub-Committee, pointed out that on page 1 of the report the name of Mr. Krasnopeev (Union of Soviet Socialist Republics) should be added to the list as Vice-Chairman.

Section I of the draft report (CDDH/II/83) was approved.

Section II - Basic proposal

There were no comments.

Section II of the draft report (CDDH/II/83) was approved.

Section III - Meetings and organization of work

6. Mr. COIRIER (France), supported by Mr. MARTIN (Switzerland), said that he would like it to be mentioned that some delegations, including Switzerland and Denmark, had wished to set up a working group on civil defence. The suggestion had not been followed up, but it was most interesting.

7. Mr. WINTELER (Secretary of the Committee) said that the request would be duly noted.

Article 8 of draft Protocol I (CDDH/1; CDDH/II/30)

8. Mr. SCHULTZ (Denmark) said that Denmark had asked to be included among the sponsors of the French and Swedish amendment to article 8 (d) iii (CDDH/II/30), and that the list of sponsors should be corrected accordingly.

9. The CHAIRMAN said that the correction would be made.

Article 8 - Introductory sentence

There were no comments.

Article 8 (a) (CDDH/1; CDDH/II/19, CDDH/II/42, CDDH/II/46)

10. Mr. MAKIN (United Kingdom) proposed the deletion of the last sentence on page 6 of the draft report which referred to the Geneva Conventions and was inaccurate.

It was so agreed.

11. Mr. OHMANN (Finland) referring to the second paragraph on page 7 of the draft report, pointed out that the word "serious" did not appear in document CDDH/II/19, but was included in the United Kingdom amendment (CDDH/II/46). Nevertheless, since several delegations had spoken against the retention of that adjective during the debate, he thought it should be deleted from the draft report.

12. Miss MINOGUE (Australia), supported by Mr. COCKCROFT (South Africa) said that that was mainly a question of drafting.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he had repeated the word in his oral proposal, but attached no great importance to it.

14. Mr. VILLARINHO PEDROSO (Brazil) and Mr. COIRIER (France) said they agreed that the word "serious" was not needed.

15. Mr. BOTHE (Federal Republic of Germany) said it should be stated in the report that some delegations had proposed the deletion of the word "serious", whereas others had advocated its retention.

16. Mrs. DARIIMAA (Mongolia) said she would like the expression "medical assistance and care", which appeared in the English text of the report and also in article 12 of the Second Geneva Convention of 1949, to be translated into French in the same way as in the Convention, namely by "secours médical ou soins".

17. The CHAIRMAN said that the report would be corrected in accordance with the opinions just expressed.

Article 8 (b) (CDDH/1)

18. Miss MINOGUE (Australia) said that a semicolon, not a full stop, should be used before the sentence on page 7 of the English text of the draft report beginning with the words "The definition was superfluous ...", because it referred to a whole series of reservations on the part of a number of delegations. That did not apply to the French and Spanish texts.

19. Mr. MARTIN (Switzerland) said that the report should contain a reference to his delegation's suggestion to establish three distinct categories - first, the wounded and the sick, secondly, shipwrecked persons and, thirdly, those deemed to be shipwrecked persons -, and to make a systematic study of the protective measures that could be taken.

Article 8 (c) (CDDH/1; CDDH/II/3, CDDH/II/19/Corr.1, CDDH/II/46)

There were no comments.

Article 8 (d) (CDDH/1; CDDH/II/13, CDDH/II/58)

20. Mr. SCHULTZ (Denmark) said it should be stated that two delegations, those of Sweden and Denmark, had requested the insertion of the words "duly recognized or authorized" in article 8 (d).

21. Mr. KLEIN (Holy See) said that the paragraph on personnel responsible for diagnosis would be more appropriate in the first part, which dealt with personnel engaged in the prevention of disease. In connexion with the definition of chaplains and assimilated personnel, he requested that the following sentence be inserted: "One delegation pointed out that the word 'chaplain' was used in the 1949 Conventions".

22. Miss MINOGUE (Australia) said that the paragraph beginning with the words "In addition, one delegation pointed out that ..." on page 8 should be deleted, since it was not clear and added nothing to that part of the report.

23. Mr. NAHLIK (Poland) said that it would be better to amend the phrase at the end of the third paragraph on page 9 to read "... a term that would correspond to all philosophical and religious concepts," and to delete the following paragraph.

24. Mr. COIRIER (France) said there was no need to specify that personnel engaged in the prevention of disease or responsible for diagnosis should also be regarded as medical personnel; certain parts of article 8 should be deleted.

25. Mr. CHUWA (United Republic of Tanzania), supported by Mr. TAMALE MUGERWA (Uganda), said it was fair to state in the report that only the members of internationally or locally recognized societies should enjoy special protection.

26. The CHAIRMAN said that the views expressed on article 8 (d) would be duly taken into account.

Article 8 (e) (CDDH/1)

27. Mr. ROME (Israel) said that the words "used by the national society existing in its country" should be replaced by "used by the medical services of the armed forces and by the national relief society existing in its country".

Article 8 (f) (CDDH/1; CDDH/II/42)

There were no comments.

The meeting was suspended at 4.55 p.m. and resumed at 5.20 p.m.

Article 9 (CDDH/1, CDDH/45; CDDH/II/20)

28. Mr. HAAS (Austria) pointed out that the amendment submitted by his own and four other delegations bore the symbol CDDH/45, not CDDH/II/45. His delegation wished the following sentence to be inserted in the part of the report relating to paragraph 2: "One delegation suggested that the term 'States not Parties to the conflict' in these paragraphs should be replaced by a term more adequate to the law of neutrality and to article 27 of the First Geneva Convention."

29. Mr. SCHULTZ (Denmark) said that the name of his country should be added to those of the sponsors of document CDDH/II/20. Furthermore, he wanted a phrase to be inserted indicating that certain

delegations had agreed to replace the words "such as" by the word "including", in the amendment to paragraph 3 of article 9 (CDDH/II/20).

30. Mr. MAKIN (United Kingdom) said that the words "The majority of delegations," on page 12 of the English text should be replaced by the words "A number of delegations", since no vote had been taken on that point.

31. Mr. SOLF (United States of America) pointed out that in the last line of the third paragraph on page 13 of the English text the words "limited sense" should be amended to read "limiting sense".

32. Mr. BOTHE (Federal Republic of Germany) asked that the following sentence be added at the end of the third paragraph on page 13 of the English text: "Other delegations felt that this fear was unfounded, as the door was not closed to other organizations".

33. Mr. PICTET (International Committee of the Red Cross) said that the last paragraph dealing with paragraph 3 of article 9 was not clear. In fact, it had always been recognized that a neutral State was not placing its neutrality in question if it lent medical assistance to a party to the conflict. In that connexion, article 27 of the First Geneva Convention of 1949 was quite clear. Moreover, the issue of medical personnel who might be taken prisoner was raised in the last line. Yet under the Geneva Conventions medical personnel could never be taken prisoners of war. The passage should therefore read: "falling into the hands of a party to the conflict".

34. The CHAIRMAN said that the comments made on article 9 would be taken into account.

Article 10 (CDDH/1; CDDH/II/70)

35. Mr. ALFONSO MARTINEZ (Cuba) said he hoped that mention would be made in the report of what he had said at the tenth meeting with regard to paragraph 2 of article 10.

36. Mr. AL-BARZANCHI (Iraq) said that the paragraph of the report relating to the amendment in document CDDH/II/70 did not accurately reflect the discussions, since it laid undue emphasis on the arguments advanced against that amendment.

37. Mr. SCHULTZ (Denmark) pointed out that at the tenth meeting his delegation had opposed the amendment as much on medical as on legal grounds.

38. Mr. MARTIN (Switzerland) said that reference should be made in the report to the comments of several delegations, including his own, on the subject of shipwrecked persons and persons in peril. He proposed that the penultimate paragraph on page 17 of the draft report should be amended to read as follows: "Some delegations expressed the view that shipwrecked persons and persons assimilated to them should be covered by special provisions, after a full and systematic study of the question."

39. Mr. EL-SHAFEI (Arab Republic of Egypt) said that, although he was not opposed to including a reference to the opinion expressed by the Danish delegation, it should not be forgotten that the question had been discussed at length and that some delegations had advanced proposals to modify the amendment. The report must reflect everything that had been said during the discussions.

40. Mr. DENG (Sudan) pointed out that the questions raised regarding surgical interventions in the penultimate paragraph on page 16 had received an answer which was not mentioned in the draft report.

41. Mr. SCHULTZ (Denmark) said he could not agree that it should be stated in the report that the amendment in document CDDH/II/70 had been approved in principle. According to the notes that he had taken during the Committee's tenth meeting, four delegations had been in favour of the amendment and four had spoken against it.

42. Mr. DEDDES (Netherlands) said he associated himself with the Danish representative's remarks.

43. Mrs DARIIMAA (Mongolia) said that the report must accurately reflect both the position of the sponsors of the amendment and that of representatives expressing contrary opinions.

44. Mr. HAAS (Austria) said he thought it would be easy to divide the paragraph in question into three parts, dealing respectively with the amendment, the opinions expressed by different delegations and the sub-amendments advanced by certain delegations.

45. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) pointed out that his delegation had not even approved the proposed amendment in principle.

46. Mr. KLEIN (Holy See) said that the report did not mention the idea, expressed during the debate, that the sick needed not only medical care, but sometimes moral and spiritual support as well.

47. Mr. WINTELER (Secretary of the Committee) asked delegations to communicate their proposals to him in writing.

48. The CHAIRMAN said that the Secretariat would take the views expressed by delegations into account.

Article 11 (CDDH/1)

49. Miss MINOGUE (Australia) proposed that the words "the necessary safeguards for both donor and recipient only exist at present in relation to blood transfusion" should replace the words "only blood donating was considered reasonably safe" in the fifth line on page 19 of the draft report.

50. Mr. CHUWA (United Republic of Tanzania) said that the report should refer to a remark made by his delegation at the tenth meeting with regard to freedom fighters who, on falling into the hands of the adversary, were subjected to mental and physical torture.

51. Mr. ALFONSO MARTINEZ (Cuba), supported by Mr. AL-BARZANCHI (Iraq), pointed out that the Committee had not had time to conclude the discussions on article 11 and that, in consequence, some delegations had had no opportunity of expressing their views. That fact should be recorded in the report.

52. The CHAIRMAN said that the Secretariat would make the necessary amendments to the part of the draft report relating to article 11.

The draft report of Committee II (CDDH/II/83) was approved, subject to changes to be incorporated by the Secretariat to take into account the views expressed during the meeting.

Report of the Technical Sub-Committee on Signs and Signals (CDDH/II/83, annex)

53. The CHAIRMAN invited the Committee to consider the draft report of the Technical Sub-Committee on Signs and Signals (CDDH/II/83, annex).

54. Mr. AGUDO LOPEZ (Spain), Rapporteur of the Technical Sub-Committee on Signs and Signals, introducing the Sub-Committee's report, pointed out that that document had had to be drawn up very rapidly and that, in consequence, some mistakes might have crept in. To ensure that the necessary corrections were made, he requested any representatives who might detect such mistakes to be good enough to convey them in writing to the Secretariat of the Committee.

55. He drew the Committee's attention to certain especially important aspects of the report.

56. Owing to shortage of time, it had not been possible to annex the statement by the representative of the International Civil Aviation Organization (ICAO) mentioned in the report, but it would be reproduced in the final report.

57. At its sixth meeting, the Sub-Committee had decided to confine itself to studying aeronautical problems and to defer the consideration of land and sea transport problems to a later date.

58. With regard to frequency registration and the use of the call sign "MEDICAL", the representatives of the International Telecommunication Union (ITU) and ICAO had pointed out that, in accordance with the rules of procedure of their organizations, the request should be made by Governments. Neither the ICRC nor Switzerland could make such requests.

59. The Sub-Committee had been informed of contacts with ICAO to learn details of the interception code proposed by the International Federation of Air Line Pilots' Associations (IFALPA). It was to be hoped that information on that subject would be submitted to the second session of the Conference.

60. With regard to the reservation of codes, mentioned in the last paragraph of page 16, it should be borne in mind that it was for Governments to address the necessary request to ICAO. The Secretariat had therefore invited all those present to inform their Governments accordingly.

61. There had been a long discussion on the question of a flashing blue light. The representative of the International Commission on Illumination (ICI) had submitted a proposal in French, which would be translated into the other languages. That body had advised the use of a flashing blue light. Agreement had not been reached about extending the use of the blue light to sea or land transport. Studies on that subject were continuing their results would be communicated to Governments and new proposals would be submitted during the second session of the Conference.

62. In the last paragraph on page 17, the words "Committee I" should read "Committee II".

63. It should be noted that, owing to lack of time the French proposal to treat land, sea and air transport separately, could not be adopted.

64. New amendments would probably be submitted in writing, and it was to be hoped that they could be examined during the second session of the Conference.

65. With regard to the annex to draft Protocol I, it should be borne in mind that certain articles had been approved by consensus, but that it had been impossible to reach agreement on some others. The Committee would have to take a decision on the subject in 1975. It had a year at its disposal to study the different proposals. The Sub-Committee had reached a decision with regard to the international distinctive emblem for civil defence services: on the advice of the experts, it had decided to adopt a blue triangle on an orange background.

66. The CHAIRMAN announced that at the next meeting of the Committee delegations would be able to make their comments on the report of the Technical Sub-Committee on Signs and Signals and on the report of the Drafting Committee, which would be available by then.

The meeting rose at 6.30 p.m.

SUMMARY RECORD OF THE TWELFTH (CLOSING) MEETING

held on Tuesday, 26 March 1974, at 10.15 a.m.

Chairman: Mr. MALLIK (Poland)

ADOPTION OF THE REPORT OF THE COMMITTEE, THE TECHNICAL SUB-COMMITTEE AND THE DRAFTING COMMITTEE (CDDH/II/83, CDDH/II/Inf/3 and Corr.1) (concluded)

Report of the Technical Sub-Committee on Signs and Signals (concluded)

1. The CHAIRMAN invited the Committee to consider the draft report of the Technical Sub-Committee on Signs and Signals which was annexed to the draft report of Committee II (CDDH/II/83).

2. Mr. AGUDO LOPEZ (Spain), Rapporteur of the Technical Sub-Committee, said that the models referred to in the foot-note on page 19 would be reproduced in the final report.

3. Mr. CHUNG Chia-mao (China) said that the annex to draft Protocol I set forth in pages 19 to 26 of the draft report dealt with a number of extremely complex technical problems, many of which affected national sovereignty, and most delegations did not include experts qualified to comment on them. Moreover, the annex was closely linked with articles which neither the Committee nor the Conference had had time to discuss. In his opinion, the annex could not be considered until the articles relating to it had been discussed. He accordingly proposed that the Committee take no decision on the articles contained in the annex but record in its report that it had taken note of the annex submitted by the Technical Sub-Committee and would discuss it at the appropriate time.

4. His delegation reserved the right to comment on the annex at a later stage.

5. Mr. MARTIN (Switzerland), referring to the last paragraph on page 5 of the annex and the penultimate paragraph on page 6, said he would prefer that the word "sign" was used rather than the word "emblem" since the former was in more general use, for example in the health services. In connexion with the penultimate paragraph on page 11 of the annex, the Chairman of the Technical Sub-Committee had been right in saying that Switzerland could submit applications for registration of frequencies and medical call signs, but he wondered if there was any intention that those applications should be co-ordinated.

6. Bearing in mind the position of States which had been unable to appoint experts to the Technical Sub-Committee, he suggested that, since some definite results had been achieved, it might be useful for the Committee to take an indicative vote (vote indicative) at the present meeting concerning discussion of article 59 at the second session. Such a procedure might help to ensure that all countries sent the necessary experts to that session.

7. Mr. AL-BARZANCHI (Iraq) said that, in view of the length of the report, the lack of clarity of some of the wording, the divergencies of view on a number of questions and the number of alternatives suggested in the annex, he supported the Chinese representative's proposal. The report and the amended articles should be discussed at the second session of the Conference.

8. Mr. EBERLIN (International Committee of the Red Cross), replying to the question by the representative of Switzerland, said that the ICRC did not think there was any need to co-ordinate applications by States.

9. Mr. SCHULTZ (Denmark) said that he entirely agreed with the Chinese representative's reasoning and supported his proposal. Like the representative of Iraq, he saw some inconsistencies in the report, but would refrain from suggesting amendments in order not to prolong the discussion. The Technical Sub-Committee had approved the revised text of the annex to draft Protocol I but had not approved its report. He did not think that anything would be gained by an indicative vote, as suggested by the Swiss representative. He suggested that members of the Technical Sub-Committee wishing to make comments or propose amendments be asked to send them to the Secretary and that the Committee suspend its discussion of the report and take up the proposed annex to draft Protocol I (pages 19 to 26) to see if any useful suggestions could be made to help delegations in studying the problems during the interval between the present and the second session of the Conference.

10. Mr. MARTIN (Switzerland) said that, in the light of the comments of the representative of Denmark, he would withdraw his proposal concerning an indicative vote.

11. Mr. COIRIER (France) said that he supported the views of the representatives of China and Denmark. The report raised a number of political as well as technical problems. It might save time in the future, however, if representatives who had any comments to offer were to do so at the present meeting.

12. Mr. VILLARINHO PEDROSO (Brazil) said that he, too, supported the Chinese proposal. He also supported the views of the representatives of Denmark and Iraq.

13. Mrs. DARIIMAA (Mongolia) said that the report of the Technical Sub-Committee made no mention of the view expressed by her delegation that all decisions by the Sub-Committee should be taken at the second session.

14. Mr. ALFONSO MARTINEZ (Cuba) said that he was grateful to the Swiss representative for withdrawing his proposal. He endorsed the views of the representatives of China and Denmark, particularly in the light of the reference, in the penultimate paragraph on page 18 of the annex, to amendments being discussed at the second session of the Conference.

15. The CHAIRMAN said it was obvious that the draft revised annex to draft Protocol I would have to be studied by Governments. He proposed that the Committee defer its discussion to the second session of the Conference.

It was so agreed.

16. Mr. MATTHEY (Observer, International Telecommunication Union - ITU) said that at the close of the discussion on the draft report of the Technical Sub-Committee, it was his duty to refer to references that had been made to the adoption of a "MEDICAL" call and the possible designation of a frequency for international use in that connexion. He must point out that the use of the radio spectrum was governed by an international treaty, the "International Telecommunication Convention", and the "Radio Regulations" annexed thereto which formed part of the treaty. The appropriate means for adopting provisions such as those contained in the annex to draft Protocol I concerning a "MEDICAL" call and international designation of frequencies was by decision of an ITU World Administrative Radio Conference, competent to deal with the radio services concerned. Governments should accordingly consider initiating co-ordination at the national level and, as the case might be, put proposals before an appropriate ITU Conference for the revision of the Radio Regulations.

17. He asked that his statement be included in the Committee's report.

18. The CHAIRMAN asked all delegations to take particular note of the statement.

Report of the Drafting Committee (CDDH/II/Inf/3 and Corr.1)

19. The CHAIRMAN invited the Committee to consider the report of the Drafting Committee (CDDH/II/Inf/3 and Corr.1).

20. Mr. NAHLIK (Poland), Rapporteur of the Drafting Committee, introducing the Committee's report (CDDH/II/Inf/3 and Corr.1), said that for technical reasons - lack of interpreters and of secretariat - the Committee's work had had to be conducted in one language only; its members had agreed that that language should be English. The English version of the report, including the revised articles in part II, was therefore so far the only official one.

21. The Drafting Committee had referred the various articles to a small Working Group composed of the four officers, assisted by Mr. Pictet, the Vice-President of the ICRC, Mr. Sanchez del Rio y Sierra (Spain) and the sponsors of certain amendments. The Working Group had been able to reach unanimous agreement in most cases, with only a few exceptions.

22. As all amendments had been referred first by Committee II to the Drafting Committee, then by that Committee to its Working Group without any formal vote, the Working Group had done its best to take into consideration practically all the amendments referred to it, with but two exceptions. Those exceptions were: the amendment by the Holy See (CDDH/II/58) since the Working Group had thought that it would be more appropriate to devote a special article to the question concerned - a special article to be placed after the present article 15; and the amendment by Austria and a few other delegations (CDDH/45), since it related to many articles some of which did not come within the competence of Committee II.

23. The title of part II of draft Protocol I had been changed as recommended (CDDH/II/45).

24. In the introductory phrase of the proposed revised working of article 8, "Protocol" had been substituted for "part", as some of the terms explained appeared also in parts of the Protocol other than in part II. Some members of the Drafting Committee had felt that, according to the proper drafting technique, each sub-paragraph should consist of a single sentence; for the time being, however, in sub-paragraphs (a) and (c) it was not possible to express all the ideas concerned in one sentence. He hoped that some way of overcoming that drafting difficulty would be found at the second session of the Conference.

25. In sub-paragraph (b), the words "or on other waters" had been inserted to cover waters other than the sea, while the word "travelling" had been deleted since it could be construed as including passengers only but not crews.

26. According to amendments submitted, the enumeration in sub-paragraph (c) listed so far both the functions and the types of establishments some members of the Drafting Committee had

expressed doubts whether the latter enumeration was not redundant. The reference to the shipwrecked had been included between brackets because some members of the Drafting Committee had thought it superfluous.

27. In sub-paragraph (d) it had been felt necessary to include not only "medical personnel" in the proper sense of the term as well as their transport crews, but also administrative personnel, whose work was essential in order that the medical personnel could perform their duties. Sub-paragraphs (d) i and (d) ii were similar in presentation, but sub-paragraph (d) iii was different because of the reference to civil defence, which was dealt with in another part of the Protocol. It had been considered necessary to mention national voluntary aid societies other than the Red Cross societies. There had been some discussion whether the word "the" should be included at the beginning of the first line of sub-paragraph (d) iii and "or" substituted for "and" in the last line.

28. Sub-paragraphs (e) and (f) had presented no problems.

29. With regard to article 9, after some discussion it had been decided to omit any mention of the territorial application because it would be hard to find a wording which would not be given too restrictive an interpretation. Some members had felt that any enumeration of the categories of persons to whom the part applied might also be liable to such interpretation, while a mention of civilian population would entail a change in the title of the whole part. They had also thought that the kind of people to whom the part applied had been dealt with sufficiently in other articles and they had therefore been in favour of deleting the whole of sub-paragraph 1. That was why that paragraph was presented in brackets. If it were deleted, the title of the article would have to be changed.

30. In the proposed new sub-paragraph 2 - a combination of sub-paragraphs 2 and 3 of the ICRC draft - which the full Drafting Committee had not had time to discuss, the word "aid" should be substituted for the word "relief" in sub-paragraph (b), since that was the word used in the Geneva Conventions. The term "organization of an international character" had been used because the ICRC was a juridical person under Swiss law and therefore international in activities but not in status. That term also covered inter-governmental organizations such as those in the United Nations system. The ICRC and the League of Red Cross Societies had been presented between brackets because only some members of the Committee had considered it essential to mention them specifically. The expression "mutatis mutandis" had been used, although some members found it unusual, since it covered both the other suggested expressions, namely, "by analogy" and "by extension". The phrase in parentheses in the introductory sentence of sub-paragraph 2 had been included at the suggestion of the United Kingdom delegation.

31. Mr. PICTET (International Committee of the Red Cross) said that the French version was not the one he had prepared, which took account of the various points raised in the discussion, but merely a translation of the English text. He undertook to distribute his own text as soon as possible. In all the language versions, the order of the second and third sentences of article 8(c) should be reversed.

32. Mr. COIRIER (France) suggested that the presence of a French-speaking member during discussions in the Working Group would have assisted its work.

33. Mr. ALFONSO MARTINEZ (Cuba), speaking on a point of order, suggested that the meeting be adjourned until the official French and Spanish versions of the report had been circulated.

34. The CHAIRMAN said he regretted that facilities would not be available for another meeting of the Committee.

35. Mr. BRAVO (Mexico) said he believed that the question of persons shipwrecked in a hostile environment was to be dealt with in article 10. In article 9, paragraph 1, the territorial qualification should be re-inserted. In article 9, paragraph 2, his delegation preferred the expression "by analogy" or "by extension" to "mutatis mutandis."

36. Mr. SOLF (United States of America) suggested that in article 8(c), eighth line, the word "such" be substituted for the word "the" before the words "medical units". In article 8(d) i second line, the phrase, "whether permanent or temporary", should be inserted after the word "Conventions".

37. Mr. SCHULTZ (Denmark) proposed that, instead of going into the substance of the matter the Committee should merely take note of the report of the Drafting Committee. With regard to article 8(d) iii, it should be made clear that the medical personnel of national Red Cross societies as well as of "other national voluntary aid societies" should be "duly recognized and authorized by the competent authority". Such recognition and authorization was granted under sub-paragraph (d) i to military medical personnel, and under sub-paragraph (d) ii to civilian medical personnel, but not - under sub-paragraph (d) iii - to medical personnel of national Red Cross Societies. His delegation had already raised that point at the seventh meeting of the Committee. Consequently, in article 8(d) iii the passage in brackets, "as defined in the preceding two sub-paragraphs", in the first line should be repeated in the fourth line, after the words "and medical personnel", so as to be reconsidered at the second session of the Conference.

38. Mr. JAKOVLJEVIC (Yugoslavia), Chairman of the Drafting Committee, on a point of order, proposed that, since the final text was available in English only, the Committee merely take note of the report.

39. The CHAIRMAN requested members of the Committee not to go into drafting details but to confine themselves to points of a general character.

40. Mr. AL-BARZANCHI (Iraq) said that texts which had been discussed only by the Working Group and not by the Drafting Committee as a whole should not have been mentioned in the report. The second sentence of article 8(a) should be deleted.

41. Mr. ROSENNE (Israel) said he wished to have it put on record that his delegation maintained its reservation with regard to article 8(e) and the distinctive emblem as it affected his country's national society. His delegation understood article 8(d) iii as referring also to the medical personnel of Israel's national society, the Red Shield of David Society. That followed his delegation's statements in the plenary meetings and in the course of the Committee's discussions (CDDH/II/SR.7). As for article 9, he felt that, in principle, it was desirable to avoid vague formulas such as mutatis mutandis which had not appeared in the draft suggested by the ICRC.

42. He agreed with the representative of Denmark that the Committee should merely take note of the report of the Drafting Committee.

43. Mr. CLARK (Australia) said that there would have to be a change in the title of part II if the word "persons" was to be deleted after the words "the wounded and sick" and after "shipwrecked". In article 8(c), he could agree to the insertion of the word "the" before the words "medical and pharmaceutical stores" and in the eighth line on page 3, to the substitution of the word "such" for the word "the" before the words "medical units". In paragraph (d) ii, the words "including medical transport crews", which appeared in the third and fourth lines, should be placed after the words "civilian medical personnel" in the first line. In paragraph (d) iii, first line, the word "the" should be deleted as suggested by the Rapporteur of the Drafting Committee. He urged that adoption of the report of the Drafting Committee be deferred until the French and Spanish versions were available.

44. Mr. SANCHEZ DEL RIO Y SIERRA (Spain) said that the Committee had been asked to adopt the Drafting Committee's report rather than go into the substance of the report. Articles 8 and 9 might be discussed once more in substance when the Committee dealt with the Drafting Committee's suggested version at the second session of the Conference. In article 9, paragraph 2, he was under the impression that the term "by analogy" had been agreed to rather than "mutatis mutandis".

45. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation would be unable to discuss article 9, when only one part had been discussed by the Drafting Committee. With regard to article 8(c), rescue units, with very few exceptions, were military rather than medical units. Only the United States of America had medical rescue units attached to airborne troops. Protection might be extended even to military rescue units, but that would not fall within the purview of the present part of the draft Protocol. As for article 8(d) it was merely a list of functions which would be better covered by some more general criterion, thus avoiding the need for sub-paragraphing.

46. Mr. HAAS (Austria) proposed that the last sentence in the penultimate paragraph on page 1 of the Drafting Committee's report (CDDH/II/Inf/3 and Corr.1) be deleted and replaced by the following sentence: "It also deferred any decision on the amendment by Austria and some other delegations, since the question dealt with therein concerned several articles not all of which fell within the competence of Committee II". As for article 9, his delegation did not regard the present version as final.

47. Mr. MAKIN (United Kingdom) asked that the words in brackets in article 8(f), last line, be inserted also in article 8(d) iii, fourth line, after the words "article 54", and be referred to the main Drafting Committee, which would ensure uniformity.

48. Mr. EL-SHAMI (Jordan) said he felt that pregnant women, even if engaged in hostile activities, should enjoy special care, since two lives were at stake and the unborn infant should not have to suffer.

49. Mrs. DARIIMAA (Mongolia) said that the term "on water", in article 8(b), was too vague. While "at sea" denoted the high seas, where rescue operations could be carried out easily since the high seas were not under national sovereignty, the same did not apply to other stretches of water which might be part of the territory of a sovereign State. Rescue operations "on water" might thus infringe national sovereignty.

50. Mr. TAMALE MUGERWA (Uganda) said that in article 8, sub-paragraph (b), the distinction between "at sea" and "on water" made it appear that sea was not water. He therefore suggested the substitution of the words "other waters" for "water". The words "and units" in the first line of sub-paragraph (c) were unnecessary and should be deleted. In sub-paragraph (d) iii, the word "body" should be substituted for "authority" in the last line.

51. According to his recollection of the discussions in the Drafting Committee, the delegations in favour of omitting paragraph 1 of article 9, had supported its deletion because they had failed to agree on an acceptable version. He did not consider that an adequate reason. The present text was too restrictive and should be redrafted in order to express the ideas the Committee wished to include.

52. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to take note of the report of the Drafting Committee (CDDH/II/Inf/3 and Corr.1) together with the comments made by delegations at the present meeting as the basis for discussion at the second session of the Conference.

It was so agreed.

CLOSURE OF THE SESSION

53. After the usual exchange of courtesies, the CHAIRMAN declared the first session of the Committee closed.

The meeting rose at 1 p.m.

SECOND SESSION

(Geneva, 3 February - 18 April 1975)

COMMITTEE II

SUMMARY RECORDS OF THE THIRTEENTH TO THIRTY-FIFTH MEETINGS

held at the International Conference Centre, Geneva,

from 5 February to 13 March 1975

Chairman:	Mr. S-E. NAHLIK	(Poland)
Rapporteur:	Mr. D. MAIGA	(Mali)

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SUMMARY RECORD OF THE THIRTEENTH (OPENING) MEETING

held on Wednesday, 5 February 1975, at 4 p.m.

Chairman: Mr. NAHLIK (Poland)

OPENING STATEMENT BY THE CHAIRMAN

1. The CHAIRMAN said that he appreciated the great honour which the Conference had done him in electing him Chairman of Committee II, but he was also aware of his great responsibilities and wished to assure the Committee that he would do everything in his power to ensure that it carried out the task entrusted to it successfully. He also stressed the importance of the Committee's work for the protection of individual human beings.

2. He had to admit that the results of the Committee's activities at the first session had been limited but he hoped that by exercising self-discipline and profiting from the suggestions made by the Secretariat and the General Committee for the expedition of its work, the Committee would be able to make much more rapid progress at the second session.

3. First, it was essential to follow a strict time-table in discussing and reaching decisions on the articles which the Committee had to consider. The Committee could hold a total of 47 meetings and it had to deal with 47 articles. In view of the fact that articles would be referred to the Drafting Committee and would subsequently have to be approved by Committee II, for which purpose ten meetings should be allocated, it would be necessary to deal with an average of three articles at two meetings.

4. The General Committee had suggested that when one amendment was submitted jointly by a number of delegations it should be introduced by one delegation only on behalf of all the sponsors. The other sponsors should speak subsequently only if they felt that any argument in favour of the proposed text had been omitted.

5. Where several amendments to the same provision were very similar, the delegations which had submitted them should work out a mutually acceptable text, which would be introduced by one delegation only.

6. He himself suggested that the Drafting Committee should start work on 6 February on article 9, paragraphs 2 and 3, and articles 10 and 11, which had already been dealt with in Committee II, and that it should report to Committee II only when it had completed its work on a group of related articles, for instance articles 9 (paragraphs 2 and 3) to 20 of draft Protocol I.

7. There was a clear-cut link between certain provisions of draft Protocol I and those of draft Protocol II. Hence it would be advisable for Committee II to consider a group of articles in draft Protocol II immediately after the corresponding articles in draft Protocol I had been dealt with. Thus, for instance, articles 11 to 19 of draft Protocol II would be considered immediately after articles 9 to 20 of draft Protocol I.

8. He suggested that, as the Technical Sub-Committee had made reasonable progress at the first session, it should hold its first meeting on Monday, 17 February.

9. In order to speed up the Committee's work, he suggested that at least one of the subsidiary bodies - and when possible both should meet on the same days as the Committee, in the afternoon, it being understood that Committee II could hold an extra meeting either on Friday night or on Saturday morning if it had not completed its programme of work for the week in question.

10. He further suggested that the Committee should start its work with article 12 and that article 11, to which only a few amendments had been submitted, should be referred to the Drafting Committee, as had already been done in the case of articles 8, 9 and 10.

11. He trusted that those suggestions would prove acceptable to the Committee and wished it much success in the terms of the old Latin formula of his university: "Quod bonum, felix, faustum, fortunatumque sit."

12. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), supported by Mr. MARTIN (Switzerland), said that the Committee had not completed its discussion of article 11; that was clear from paragraph 61 of its report (CDDH/49/Rev.1). There were matters of substance which needed to be discussed before the article was referred to the Drafting Committee.

13. The CHAIRMAN suggested that the Committee might discuss article 12 forthwith and article 11 at the next meeting.

It was so agreed.

ELECTION TO VACANT POSTS

14. The CHAIRMAN said that he himself had replaced Mr. Mallik as Chairman of the Committee. Mr. Salas (Chile), one of the Vice-Chairmen at the first session, and Mr. Maiga (Mali), Rapporteur, were present again and could continue to hold those offices, but Mr. Khan (Pakistan), the other Vice-Chairman, was not attending the second session and the delegation of Pakistan had asked that he should be replaced by Mr. Saleem.

It was so agreed.

15. The CHAIRMAN said that it was for the Drafting Committee to elect its own officers. As the Chairman of the Drafting Committee at the first session was not present, he would request Mr. Solf, the first Vice-Chairman of the Drafting Committee at the first session, to convene its first meeting on 6 or 7 February.

16. As Mr. Kieffer, the Chairman of the Technical Sub-Committee at the first session, would not be in Geneva until a later date, he would request the first Vice-Chairman to convene its first meeting and act as Chairman. The Technical Sub-Committee would elect its own officers.

17. Mr. KLEIN (Holy See) said that it would help the Drafting Committee in its work if simultaneous interpretation could be provided at its meetings.

18. The CHAIRMAN said that the request had been noted.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1)

Article 12 - Medical units (CDDH/1, CDDH/56; CDDH/II/13, CDDH/II/16, CDDH/II/19, CDDH/II/22, CDDH/II/25, CDDH/II/39)

19. Mr. PICTET (International Committee of the Red Cross) said that the purpose of article 12 was to extend protection to civilian medical units. With regard to paragraph 2 of the article, he pointed out that all extension of protection implied control by the authorities. In paragraph 4, although the expression "in so far as is possible" was imprecise, its inclusion was justified, since medical units had to be operational, i.e., they had to perform their function of ensuring the survival of the wounded. For that reason, they might have to approach military objectives.

20. Mr. CALCUS (Belgium), referring to amendment CDDH/II/13, said that medical units were already defined in article 8. Since article 12 dealt with protection, the title of the article should be amended to include that word.

21. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) agreed that the word "protection" should be included in the title of article 12. That point was covered in the first part of amendment CDDH/II/19, but there was also a link between title and content. The proposal concerning paragraph 1 in the same amendment was essentially a difference in drafting and was similar to amendment CDDH/II/39 submitted by Australia.

22. Mr. MAKIN (United Kingdom) said that the purpose of his delegation's amendment (CDDH/II/22), in so far as it referred to paragraph 1, was, in part, the same as that of amendments CDDH/II/19 and CDDH/II/39. The remarks made by the representative of the Union of Soviet Socialist Republics applied also to the corresponding

part of amendment CDDH/II/22. He preferred the wording of amendment CDDH/II/39, which was shorter and clearer. For reasons of consistency, however, he would propose the replacement of the word "never" by "not", the latter word being used in many places in the draft Protocol. The use of the word "never" might be taken to imply some difference in interpretation.

23. Miss MINOGUE (Australia) said that she accepted the replacement of the word "never" by "not".

24. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) proposed that to save time, discussion of the amendment to paragraph 2 proposed in amendment CDDH/II/19 should be postponed for the time being, since it entailed questions of terminology that would be settled in plenary session. The wording of the paragraph could be adjusted later in the light of the decisions taken.

25. Mr. MAKIN (United Kingdom), referring to the statement by the representative of the ICRC that the aim of article 12 was to extend protection to civilian units, said that the article, as at present worded, made no reference to such units; it was for that reason that the United Kingdom amendment (CDDH/II/22) introduced the word "civilian" into paragraph 3. His delegation also preferred the word "invited" to "urged" in paragraph 3. It might be thought that better protection would be obtained either by not informing the other Party to the conflict of the position of fixed civilian medical units, or by camouflage.

26. Mr. RIVERO ROSARIO (Cuba) said that he was not ready to speak on his delegation's amendment (CDDH/II/25).

27. Mr. MAKIN (United Kingdom) said that the change in paragraph 4 proposed in his delegation's amendment (CDDH/II/22) was merely one of drafting and could be referred to the Drafting Committee.

28. The CHAIRMAN invited representatives to open the general discussion on article 12.

29. Mr. PICTET (International Committee of the Red Cross) said that he had no objection to the amendment proposed to the title of article 12, but a similar amendment would have to be made to the title of article 15. He suggested that the matter should be referred to the Drafting Committee.

30. The CHAIRMAN said that the Drafting Committee would be requested to take the point into account.

31. Mr. MARTIN (Switzerland), referring to the United Kingdom amendment to paragraph 3 of article 12 (CDDH/II/22), said that the definition of "medical unit" in article 8 (c) referred to both civilian and military units and it was possible that the two might

be combined in the future. To refer only to civilian units in the present context might cause confusion: it would be better to leave the text as it stood.

32. The United Kingdom amendment to paragraph 4 seemed to apply only to mobile medical units, whereas according to the definition in article 8 there might be fixed units, which could not be moved. He preferred the existing wording, since it might sometimes be impossible, for technical or financial reasons, to move the units.

33. Mr. MARRIOTT (Canada) suggested that the words "whenever possible" might be better.

34. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that all the amendments to paragraph 1 seemed to be matters of drafting.

35. With regard to paragraphs 3 and 4, the provisions could not be mandatory, since they concerned matters which should be decided by Governments or military headquarters. Regarding the United Kingdom amendment to paragraph 3, he would not oppose the replacement of "urged" by "invited" but could not accept the insertion of the word "civilian", since it was impossible to foresee war conditions.

36. He supported the Cuban amendment to paragraph 3 (CDDH/II/25).

37. In paragraph 4 he would prefer the words "in so far as is possible" to be retained. The paragraph covered both fixed and mobile units and a medical unit might sometimes have to be placed near a military objective.

38. Mr. ROSENBLAD (Sweden) said that he supported the Cuban amendment to paragraph 3 (CDDH/II/25), since it took account of the realities of modern warfare.

39. Mr. SOLF (United States of America) said that he supported the amendment to the title of article 12, the substance of the amendments to paragraph 1 and especially the Australian amendment (CDDH/II/39) as modified by the Australian representative, and the amendment to paragraph 2 in document CDDH/II/19.

40. With regard to paragraph 3, the question whether or not to notify the other party of the location of fixed medical units - whether civilian or military - was a matter of choice for the respective authorities in war. He had no objection to the second sentence proposed by Cuba (CDDH/II/25).

41. Regarding paragraph 4, he agreed with all the previous speakers but strongly objected to the Romanian proposal for the deletion of the words "in so far as is possible" (CDDH/II/16). Whatever the wording, the essence of the phrase should be retained. Deletion

would be disastrous. It would, for example, prohibit warships, which were legitimate targets, from having sick bays, or the use of mobile units in collecting the wounded (Article 15 of the first Geneva Convention of 1949).

42. Mr. TRAMSEN (Denmark) endorsed the views of the previous speaker, especially concerning sea warfare. It would be disastrous to delete the words "in so far as is possible". It might be necessary to have hidden mobile medical units close to military targets. He could not support the Canadian representative's proposal of the words "whenever possible". Paragraph 4 should be drafted so as to enable parties to a conflict to place their medical units in such a way that attacks would not imperil their safety.

43. The CHAIRMAN declared the discussion ended. He would submit article 12, together with the amendments, to the Drafting Committee.

The meeting rose at 5.30 p.m.

SUMMARY RECORD OF THE FOURTEENTH MEETING

held on Thursday, 6 February 1975, at 10.20 a.m.

Chairman: Mr. NAHLIK (Poland)

ORGANIZATION OF WORK

1. Mr. DUMAS (Legal Secretary) said that 72 countries were registered as members of Committee II, which meant that a quorum for discussions would consist of 24 members, and for taking decisions - 37 members. Decisions would be taken by a simple majority of members present and voting. If any additional countries registered as members, the number of the quorum would, of course, change.

2. The CHAIRMAN read out the list of members of the Drafting Committee. He invited the regional groups to submit to him the names of countries belonging to each group to take the places of those which had been members of the Drafting Committee the year before, but which were not represented at the second session of the Conference. As far as his own seat in the Drafting Committee was concerned, he was ceding it to Mr. Krasnopeev, (Union of Soviet Socialist Republics).

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 12 - Medical Units (CDDH/1, CDDH/56; CDDH/II/13, CDDH/II/16, CDDH/II/19, CDDH/II/22, CDDH/II/25, CDDH/II/39) (continued)

Paragraph 1

3. Mr. CZANK (Hungary), supported by Mr. MARTIN (Switzerland), said that there was a lack of symmetry about the two sentences in paragraph 1. The first sentence, as amended by the United Kingdom, said that permanent medical units should not be the object of attack, but there was no corresponding statement about temporary medical units in the second sentence. That omission might conceivably give rise to misunderstandings. He therefore proposed that the second sentence should be amended to read: "This rule is also applicable to temporary medical units, but only during their assignment to medical duties".

4. Mr. ONISHI (Japan) said that there was in fact no need for two sentences, the paragraph could simply refer to "medical units". The distinction between permanent and temporary units was already defined in article 8 (c).

Title

5. Mr. KHAIRAT (Arab Republic of Egypt) said that, according to the ICRC Commentary (CDDH/3), the purpose of article 12 was to extend the protection provided by Article 18 of the first Geneva Convention of 1949 to all civilian medical installations, whether fixed or mobile. He therefore proposed that the title of the article should be "Civilian medical units".

6. Mr. SOLF (United States of America) said he welcomed the Egyptian representative's statement. His delegation had always considered that military medical units were adequately covered by the first and second Geneva Conventions of 1949 and that article 12 should apply to civilian medical units, but it understood that the consensus had been that paragraphs 1, 3 and 4 should apply to military medical units as well.

7. Mr. MAKIN (United Kingdom) endorsed the views expressed by the Egyptian and United States representatives; the same point was made explicitly in the United Kingdom amendment to paragraph 3 (CDDH/II/22).

8. Mr. MARTIN (Switzerland) said that the question was whether military medical units received corresponding protection in the first Geneva Convention of 1949. If they did, then article 12 could apply to civilian units only; but if article 12 provided additional protection, then it should be extended to cover military medical units.

9. Mr. PICTET (International Committee of the Red Cross) said that, whereas article 12 was basically intended to extend protection to civilian units, the protection provided did, in paragraph 3, go slightly beyond what was provided for military medical units in Article 19 of the first Geneva Convention. That was why specific reference to civilian units had been omitted. The ICRC did not think the point was an important one and would be prepared to agree to a reference to civilian military units.

10. Mr. AGUDO (Spain) said that the protection provided by the article should be extended to military medical units - especially search and transport units - which did not form part of the military medical service in the strict sense.

11. Mr. SCHULTZ (Denmark) said that if article 12 applied only to civilian medical units, it would be unnecessary in article 8 (c) to define "medical unit", for the purposes of Part II of draft Protocol I, as covering both military and civilian units; that definition would have to be amended.

12. Mr. SOLF (United States of America) said he disagreed with the Danish representative: many of the provisions of article 18 Identification - did apply to military medical units.

13. He had no strong feelings on whether article 12, with the exception of paragraph 2, should apply to all medical units or to civilian units only. Paragraphs 3 and 4 were not explicitly covered by the first and second Geneva Conventions of 1949, but they would be of little use to military medical units. Combatants would seldom notify the location of fixed military medical units, and military medical units - especially mobile units - would often have to operate in dangerous areas in the performance of their duties.

14. The CHAIRMAN suggested that article 12 and all the amendments thereto should be referred to the Drafting Committee, except for the Romanian amendment (CDDH/II/16), which involved a substantive change in the legal purport of paragraph 4, and would therefore have to be discussed and voted on in the Committee itself when the Romanian representative had the opportunity to introduce it.

It was so agreed.

Article 11 - Protection of persons (CDDH/1, CDDH/56; CDDH/II/29, CDDH/II/43, CDDH/II/70)

15. Mr. SOLF (United States of America) reminded the Committee of the decision that the proposal in document CDDH/II/70 to add a new paragraph requiring the written consent of patients before any surgical intervention was undertaken should be dealt with in connexion with article 11, not article 10.

16. Mr. PICTET (International Committee of the Red Cross) said that draft article 11 contained nothing new in principle. As was pointed out in the ICRC Commentary, the Government Experts had in 1972 instructed the ICRC to select a qualifying term for the acts or omissions prohibited under the article. It had selected the adjective "unjustified". The reference to "grafts and organ transplants" had been added merely as an example, to keep the text abreast with current medical practice.

17. Mr. HERNANDEZ (Uruguay), introducing amendment CDDH/II/29, said that his delegation maintained its amendment which it regarded as containing the most adequate expression of the two fundamental aspects of the problem - the question of the will of the patient concerned and the question whether the operation was medically justified - and one which was fully consonant with the purpose of draft Protocol I.

18. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the proposal in amendment CDDH/II/43 to set out principles governing medical assistance for persons who had fallen into enemy hands was commendable. Moreover, the sponsors had agreed to introduce some drafting changes into paragraphs 2 and 3. Persons in enemy hands must not become guinea-pigs, and it should be provided that blood transfusions and skin grafts should be given only to persons of the same nationality as the donor and his comrades in prison. That would provide an additional guarantee against misuse.

19. The CHAIRMAN requested the representative of the USSR to organize the necessary consultations among the co-sponsors.

20. Mr. KHAIRAT (Arab Republic of Egypt) said that the sponsors of amendment CDDH/II/70 thought that the word "unjustified" should be deleted from article 11, paragraph 1, in order to exclude the possibility of abusive medical intervention.

21. Mrs. MINOGUE (Australia) said that she could support the proposal for meetings between the co-sponsors, but considered that the matter could not be solved in a hurry.

22. Mr. MARRIOTT (Canada) said that the Soviet proposal raised practical difficulties, although he appreciated the spirit in which it had been made. There were often multinational forces on both sides in a conflict, and a blood bank with units to be used only for the nationals of a given country would be difficult to administer; yet it would be contrary to humanitarian principles to deny any person the assistance he needed. He would therefore have difficulty in accepting the USSR proposal.

23. He wondered whether the sponsors of amendment CDDH/II/70 had considered their proposal to delete the word "unjustified" in the light of amendment CDDH/II/43, which seemed to be widely accepted: their objections could be regarded as fully covered by the word "endangered" in that amendment.

24. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that to save time he would not press for an immediate decision on his proposal, but would like delegations to give it some thought.

25. Mr. SOLF (United States of America) reaffirmed his delegation's general support for amendment CDDH/II/43, and thought that any issues still outstanding could be settled by the co-sponsors.

26. However, the word "hostilities" in paragraph 1 of that amendment was not as broad as the expression used in Article 2 common to the four Geneva Conventions of 1949 - "occupation ... even if the said occupation meets with no armed resistance". It would be useful to broaden the safeguard to cover all the situations referred to in that Article of the Conventions.

27. It had been suggested with some logic that the content of article 11 might be more appropriately removed to article 65. However, the representatives now participating in Committee II had been dealing with the problem in detail since 1971, and should continue to do so, in view of their special competence.

28. His delegation could not agree with the sponsors of amendment CDDH/II/70 that the word "unjustified" should be deleted on the grounds that all acts or omissions, whether justified or not, should be prohibited. With regard to the proposal in amendment CDDH/II/70 that written consent should be required before a life-saving operation was performed, he pointed out that the physical integrity of the patient would be endangered if the patient did not consent and the surgeon did not operate. If the amendment were adopted, the omission would be justified, even if the patient's physical integrity were endangered thereby.

29. The first sentence of paragraph 1 of amendment CDDH/II/43 and of the ICRC draft provided for over-all protection of protected persons against any improper act or omission which might endanger their health and integrity. However, some acts that endangered health might be necessary: for instance, if a detained person were to attack a nurse, her use of the force necessary to protect herself would be legally justified.

30. Where medical justification was concerned, a patient with a brain tumour who required a dangerous operation would be in even greater danger if the operation were not performed. Deletion of the word "unjustified" would place the doctor in a dilemma, because he would endanger his patient's health whether he operated or not. Whatever he did would violate the article. Such a dilemma must not be allowed to arise, and an adjective qualifying "act or omission" was essential. The word "unjustified" was legally sound, and his delegation could also accept "wrongful" or "inhumane".

31. With respect to the proposal in amendment CDDH/II/70 that written consent should be required for surgical intervention, while it was true that in United States medical practice the informed consent of the patient, preferably in writing, was generally required before surgery, such a precaution was not required under emergency circumstances, and would be incompatible with battlefield surgery. His delegation could therefore not agree to that proposal.

32. Mr. BOGLIOLO (France) said that his delegation was in general agreement with the proposal in amendment CDDH/II/43. He agreed with the Canadian representative that it would be very dangerous to introduce the idea of nationality in connexion with blood transfers, for that would weaken humanitarian law. He also agreed with the United States representative that the word "unjustified" was necessary.

33. With regard to the proposal that the patient's written consent should be required for surgery, he pointed out that some patients would be unable to give their consent. It was in fact impossible to take into account all the situations that might arise.

34. Mr. ONISHI (Japan) said that his delegation sympathised with the intention behind amendment CDDH/II/70. On the other hand, he agreed with the United States representative that omission of the word "unjustified" would introduce a risk of passive abuse. His delegation therefore had misgivings about that proposal.

35. Mr. AGUDO (Spain) said that the controversy over the word "unjustified" might be merely due to a question of translation. If the three language versions were harmonized, the problem could be solved, and his delegation could then accept amendment CDDH/II/43.

36. Mr. SCHULTZ (Denmark) said he agreed with the United States representative concerning the need for a qualifying adjective. The words "all acts or omissions not consistent with generally accepted medical standards and controls" might, however, be used instead.

37. The CHAIRMAN asked whether the Committee wished to vote on amendment CDDH/II/70.

38. Mr. OULD MINNIH (Mauritania) said that the Committee should avoid taking a vote if possible. It would be less time-consuming to take a decision by consensus.

39. Mr. GOZZE-GUČETIĆ (Yugoslavia) endorsed the Danish proposal, and asked whether the sponsors of amendment CDDH/II/70 could accept it.

40. Mr. KHAIRAT (Arab Republic of Egypt) said he needed time to consult with the other sponsors of amendment CDDH/II/70 on the matter.

41. Mr. SOLF (United States of America) said it was premature to take a vote at that stage, since the sponsors were to meet that day and might be able to reach agreement.

42. Mr. SCHULTZ (Denmark) said that attention had already been drawn to the fact that the proposal in document CDDH/II/70 to add a new paragraph 3 concerning written consent for surgical interventions was in fact an amendment to article 10, but that it had been agreed to transfer it to article 11 because of differences in the medical ethics of various countries. For many countries, written consent would impose a burden on patients and surgeons alike. The question of written consent should therefore be left open. He also considered that the word "unjustified" should be deleted.

43. Mrs. DARIIMAA (Mongolia) said that, while her delegation fully understood the concern which had led the Arab countries to submit their amendment (CDDH/II/70), the problem was too complex to be decided by a vote. She therefore suggested that the sponsors should hold informal discussions with those who objected to the amendment and should try to agree on a mutually acceptable wording.

44. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that amendment CDDH/II/70 referred to the original text submitted by the ICRC, whereas amendment CDDH/II/43 concerned the prohibition of unjustified acts or omissions, of which it then gave details, and to medical procedure not consistent with accepted medical standards, thus covering the point at issue.

45. The question of written consent by the patient was covered by the ethical code of the medical profession published by the World Health Organization.

46. Mr. MAKIN (United Kingdom) pointed out that the first sentence in amendment CDDH/II/43 referred to general, not purely medical, acts and omissions and was very similar to the wording of Article 13 of the third Geneva Convention of 1949. The omission of the word "unjustified" would, for example, prohibit the generally accepted practice of using force to prevent a prisoner of war from escaping. It might be preferable to use the word "unlawful" which was the one used in Article 13 of that Convention. In view of the much wider context, the problem could not be solved by mere reference to medical standards and practices.

47. Mr. DEDDES (Netherlands) said that if the wording of the article was based on amendment CDDH/II/43 it would be unnecessary to omit the word "unjustified", which was also used in that amendment.

48. Under battle conditions, it was often impossible to obtain the written consent of a patient and the matter should be left to the ethical conscience of the medical practitioner, who would always act in the interests of the patient.

49. Article 11 should be left in its present place, since it was a modification of article 10, whereas article 65 expressly listed prohibited acts.

50. Mr. ROSENBLAD (Sweden) said that, while he understood the underlying motives of amendment CDDH/II/70, he also saw the disadvantages of such a provision. The essential objective was to save the life of a wounded or sick person, even if he was unconscious or unable to write. He supported the Mongolian representative's suggestion that the problem might be solved through an informal meeting between the sponsors of amendments CDDH/II/70 and CDDH/II/43.

The Committee decided to refer the study of article 11 and the amendments under discussion to the Drafting Committee, on the understanding that the sponsors of the amendments would submit a compromise text after informal consultations.

51. The CHAIRMAN asked the Committee whether it wished to vote on the question of obtaining the written consent of the patient.

52. Mr. SCHULTZ (Denmark) said that his delegation was prepared to vote on that question, but wished it to be clear that it was being considered as part of article 11, not of article 10, since article 85 provided that no reservations could be formulated to the latter article.

53. The CHAIRMAN reminded the Committee that article 85 had not yet been discussed by Committee I, to which it had been allocated. Nevertheless, he thought that the other Committees could make suggestions concerning that article in the meantime.

54. Mrs. DARIIMAA (Mongolia) suggested that the difficulty of illiterate or unconscious patients could be covered by some such wording as "written consent is not required in the case of force majeure".

55. Mr. MAKIN (United Kingdom) said that before the vote was taken he would like it made clear, always assuming that it was agreed that the amendment would form part of article 11, that it applied to all sick and wounded persons: article 11 in its existing form applied especially to persons who had fallen into the hands of the adverse Party.

56. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the matter had been discussed by the medical profession for many years, but that no solution had been found to cover all circumstances. He thought it should be left to the professional conscience of the doctor concerned, because in many cases any delay would result in the death of the patient.

57. Mr. KHAIRAT (Arab Republic of Egypt) suggested that the vote should be postponed until the sponsors of the amendment had had time to discuss the wording with the sponsors of amendments to article 11.

58. The CHAIRMAN said he understood that the Committee wished that matter also to be referred to the Drafting Committee after informal discussion between the sponsors of the various amendments with a view to agreeing on a mutually acceptable text.

It was so agreed.

Article 13 - Discontinuance of protection of civilian medical units (CDDH/1, CDDH/56; CDDH/II/15, CDDH/II/17, CDDH/II/25, CDDH/II/38, CDDH/II/47)

59. Mr. PICTET (International Committee of the Red Cross), introducing the article, said that it referred to civilian medical units because military units were covered by Articles 21 and 22 of the first Geneva Convention of 1949. Conditions (1) and (4) of Article 22 of that Convention had been omitted in article 13. It had originally been thought that civilian medical personnel should not be armed, but on reflection it might be felt that they should be authorized to carry arms since they were subject to the same dangers as military personnel and had to protect themselves against attacks by bandits and animals and maintain order among convalescent enemy soldiers.

60. Miss ZYS (Poland) said that, after consultation with other delegations at the first session, her delegation had decided to withdraw its amendment (CDDH/II/17), in order not to make too many changes in the original text.

61. Mr. MARRIOTT (Canada) said that his delegation's amendment (CDDH/II/15) followed Article 22 of the first Geneva Convention of 1949 as closely as possible. He agreed with the representative of the ICRC that provision should be made for civilian medical personnel to be armed.

62. Mr. RIVERO ROSARIO (Cuba) explained that the purpose of his delegation's amendment (CDDH/II/25) was to ensure that there should not be an unlimited number of sentries.

63. Mr. CLARK (Australia) said that his delegation's amendment (CDDH/II/38) was a purely drafting change to cover the new definition of the wounded and sick and only applied to the English text. The Drafting Committee might find a more suitable word to describe the services.

64. Mr. MAKIN (United Kingdom) announced that in order to simplify the Committee's work, his delegation was prepared to withdraw its amendment (CDDH/II/47) and would like to become a sponsor of the Canadian amendment (CDDH/II/15).

65. Mr. MARRIOTT (Canada) questioned the need for the Cuban amendment (CDDH/II/25). In his experience, it was almost always difficult for medical units to find enough sentries.

66. Mr. SOLF (United States of America) said that his delegation was prepared to support the Canadian amendment (CDDH/II/15). He agreed that the carrying of arms by civilian medical personnel and pickets and sentries protecting them should not be considered as harmful, but in occupied territory or in areas in which fighting was taking place the right of the party in control of the area to disarm such personnel should be reserved.

67. Mr. CZANK (Hungary) said that the proposal that civilian medical units should be armed was a new one which his delegation was not prepared to endorse fully at that stage, although it did not wish to exclude it completely. He asked the Canadian representative to define the arms which might be carried by such personnel, since sub-paragraph (a) of his amendment (CDDH/II/15) referred to "arms" in general and sub-paragraph (c) to "small arms".

68. Mr. MARRIOTT (Canada) replied that the wording of sub-paragraph (a) was identical to that of sub-paragraph (1) of Article 22 of the first Geneva Convention of 1949. The meaning of the word was that understood by the countries which had ratified that Convention.

69. Mr. MARTIN (Switzerland) pointed out that the question of arming civilian personnel would be dealt with under article 54 on civil defence and would cover light weapons used to maintain order. However, in sub-paragraph (b) of the original text of the article, the small arms taken from the sick and wounded would be used collectively by all personnel, whereas those used by the armed pickets, sentries or escorts referred to in sub-paragraph (c) would presumably belong to them individually.

70. Mr. ONISHI (Japan) said that, on the whole, his delegation could support the Canadian proposal. He asked the representative of the ICRC to explain why it had been considered necessary in the original text of the article to change the wording agreed upon by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, which referred to wounded, sick and shipwrecked members of the armed forces who were in such medical establishments and units for medical treatment, whereas paragraph 2 (a) of the ICRC draft referred only to members of the armed forces receiving medical treatment in such units.

71. Mr. RIVERO ROSARIO (Cuba) explained that his delegation's amendment (CDDH/II/25) was not intended to limit the number of sentries, but to ensure that there were not so many sentries that the implementation of article 13 was endangered.

72. Mr. PICTET (International Committee of the Red Cross) said that he would reply to the Japanese representative's question at the next meeting after consulting the report of the Conference of Government Experts.

73. The CHAIRMAN suggested that the clarification might be given in the Drafting Committee, of which Japan was a member.

The Committee decided to refer the study of article 13, with the relevant amendments to the Drafting Committee.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE FIFTEENTH MEETING

held on Friday, 7 February 1975, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

TRIBUTE TO THE MEMORY OF MME PAUL GRABER, MOTHER OF THE PRESIDENT OF THE CONFERENCE

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mme Paul Graber, mother of the President of the Conference, and authorized the Chairman to send him a message of sympathy.

ORGANIZATION OF WORK

1. The CHAIRMAN said that the Technical Sub-Committee on Signs and Signals would have to complete its work by the middle of March in order to allow time for the study of its report. He therefore suggested that it be convened for Monday, 17 February.

2. Mr. MAKIN (United Kingdom) asked why the Technical Sub-Committee needed to meet before Committee II had had time to examine its report on its meetings at the first session of the Conference.

3. Mr. EBERLIN (International Committee of the Red Cross) said the reason was that that report had been substantially amended since the first session and that the Sub-Committee must therefore approve the revised version (CDDH/49/Rev.1, annex II). There were also several new items on its agenda, namely, consideration of a draft annex sub-divided into land, sea and air, adoption of a final form for that annex, as well as various other technical matters such as identification by infra-red photography, registration of the signal "medical" with the International Civil Aviation Organization and the Inter-Governmental Maritime Consultative Organization, the question of the use of white and blue lights, and the registration of the Red Cross emblem in the International Code of Signals.

4. Mr. SOLF (United States of America) said that meetings of the Technical Sub-Committee would entail bringing in experts, and countries would not be prepared to undertake the expense involved unless they were sure that they could start work immediately.

5. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that some decisions by the technical experts would be necessary before the Committee could examine the question of medical transport. He wondered if the United States representative, as sponsor of the most important amendments in that section, thought that those provisions could be dealt with by the Technical Sub-Committee and then referred to the Committee for discussion.

6. Mr. SOLF (United States of America) said that the annex already prepared had only left open a few questions which could be quickly resolved by the Committee itself, leaving the Technical Sub-Committee to work out the details. If other problems arose during the Committee's discussion of the Technical Sub-Committee's report, then it could inform that Sub-Committee what additional matters required study.

7. The CHAIRMAN suggested that, in view of the programme of work already adopted by the Committee as well as of the views expressed, the Technical Sub-Committee be convened for Monday, 24 February.

8. Mr. MARRIOTT (Canada) said he felt that there should be enough flexibility in the organization of the Committee's work to allow for delays in the Drafting Committee, whose work was inevitably slow.

9. Mr. MAKIN (United Kingdom) suggested that a final decision should be taken after informal consultations between the Chairman and representatives of the delegations of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

It was so agreed.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 14 - Requisitions (CDDH/1, CDDH/56; CDDH/II/3, CDDH/II/16, CDDH/II/19, CDDH/II/21 and Add.1, CDDH/II/37)

10. Mrs. BUJARD (International Committee of the Red Cross), introducing article 14, said that it was an adaptation and extension of Article 57 of the fourth Geneva Convention of 1949. In accordance with Article 57 of the fourth Geneva Convention of 1949, the Occupying Power, which in principle must provide for its own needs, had the right to requisition civilian hospitals. Such hospitals could only be requisitioned temporarily in case of urgent need and requisitioning was subordinate to the condition that every appropriate measure must be taken to ensure that the civilian population received care and treatment. The Occupying Power was not authorized to bring patients from its own territory to be treated in the hospitals of the occupied country.

11. Article 14 of draft Protocol I extended Article 57 in two ways first, it made possible the requisitioning of all medical units such as they were defined in article 8 (c); second, such requisitioning was possible not only in the case of the wounded and sick of the armed forces, but also of civilians belonging to the occupation administration.

12. She wished to make a drafting amendment to the French text of article 14 as it appeared in draft Protocol I and on page 103 of document CDDH/56: the first part of paragraph 2 should read "La Puissance occupante pourvoira au soin et au traitement des civils hospitalisés ...".

13. The CHAIRMAN invited a representative of the relevant sponsors to introduce each of the amendments.

14. Mr. WARRAS (Finland) said that the sponsors of the amendment in document CDDH/II/21 and Add.1 felt strongly that the conditions for requisition should be established as clearly as possible in order to safeguard the treatment of civilians in occupied territories. They had therefore laid down as a first priority the continuation of medical treatment for civilians in those territories. Paragraph 2 of the amendment laid down the conditions to which requisition was subject, bearing in mind the obligations outlined in paragraph 1. The first two conditions were the same as those in paragraph 1 of the original draft and the last two emphasized the consequences of the principle established in paragraph 1. The title of the article had been changed because it suggested a more positive approach to the problem of safeguarding the needs of the civilian population of occupied territories.

15. Mr. CLARK (Australia) said that he wished to withdraw his delegation's amendment (CDDH/II/37) and to support the amendment in document CDDH/II/21 and Add.1. From a drafting point of view however, he would suggest that the word "the" before the term "armed forces" in paragraph 2 (ii), be deleted and that the initial letters in the expression "armed forces" be written in lower case in order to bring the wording into line with that of article 1.

16. Miss ZYS (Poland) said that the purpose of the amendment submitted by several socialist countries of Eastern Europe (CDDH/II/19) was to limit to essential and temporary cases the extent of the requisition of property in occupied territory, which should be confined to the service of essential needs. The Occupying Power must avoid the danger of abusive and permanent requisition becoming the regular practice, as it had done under Nazi and other occupations. It was important to avoid creating a precedent with regard to the legality of the establishment of a special administration by the Occupying Power.

17. Mr. GOZZE-GUCETIC (Yugoslavia) said that his delegation's amendment (CDDH/II/3) was intended to emphasize the Occupying Power's obligation to care not only for the sick but also for all needs of the civilian population, and to clarify and strengthen the original text. The wording was almost the same as that of the original paragraph 2 and should also apply to the text of amendment CDDH/II/21 if that was adopted.

18. The CHAIRMAN suggested that, since the Romanian representative was not present to introduce his amendment (CDDH/II/16), it should be referred to the Drafting Committee as it was mainly a drafting amendment.

It was so agreed.

19. Mr. SCHULTZ (Denmark) said that his delegation fully supported the amendment in document CDDH/II/21 and Add.1 and would like to be added to the list of sponsors.

20. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that most of the amendments proposed to article 14 consisted of improvements to the wording of the article. His delegation supported the amendment in CDDH/II/21, except that it would prefer to see the words "in Occupied Territories" deleted from the proposed new title. According to Article 42 of The Hague Regulations respecting the Laws and Customs of War on Land[1/] "Territory is considered occupied when it is actually placed under the authority of the hostile army". That definition would not cover areas in which hostilities were still in progress, so that to include the words "occupied territories" in the title might restrict the scope of the protection provided to civilian medical units under the article, and that would be contrary to the purpose of the amendment.

21. Mr. BOTHE (Federal Republic of Germany) said that there appeared to be more problems of drafting than of substance in the ICRC draft of article 42. If it were adopted as amended by document CDDH/II/21 and Add.1, it would cover not only article 57 of the fourth Geneva Convention of 1949 but also parts of articles 55 and 56.

22. Care must be taken to ensure that the article remained an extension of the articles of the Convention and did not inadvertently become restrictive. Article 57 of the fourth Geneva Convention of 1949 did not provide for the requisitioning of civilian hospitals for use by the occupation administration, whereas under the proposed article 14, a hospital, being a medical unit, might be requisitioned for such purposes. Such an inconsistency must be removed by the Drafting Committee. The suggestion just made by the representative of the Ukrainian Soviet Socialist Republic to extend the article to the combat zone deserved careful consideration.

1/ Annexed to The Hague Convention No.IV of 1907 concerning the Laws and Customs of War on Land.

23. Mr. SOLF (United States of America) said that his delegation had no serious objection to the original wording of the draft article except that it would be clearer if the words "including prisoners of war" were inserted after the words "sick and wounded members of the armed forces" in paragraph 1. Since the first and third Geneva Conventions of 1949, as well as article 10 of draft Protocol I, said that medical care should be provided without discrimination on the basis of medical need, the drafters' intention must have been to include prisoners of war held by the Occupying Power. Those words were in fact included in amendment CDDH/II/21 and Add.1, paragraph 2 (ii).

24. With regard to that amendment, which had broad support, the change of title was misleading since article 14 dealt with requisitions only and did not purport to touch on other protections, whereas the new title suggested that civilian medical units in occupied territory were protected only against improper requisitioning.

25. His delegation had no objection to reversing the order of the two paragraphs of the original text, as proposed in that amendment, and considered the language of paragraph 1 an improvement on the original draft. The main thrust of paragraph 2 was to establish an inflexible priority for civilian patients without regard to the relative need for medical care of the members of armed forces and of the civilian population. Article 57 of the fourth Geneva Convention of 1949 was, however, more flexible and provided the means for allocating hospital space according to relative medical need. Paragraph 1 of the amendment adequately conveyed the limitation which appeared in Article 56 and therefore the additional inflexible priority for civilian use of medical units, other than hospitals, was inconsistent with the principle set forth in article 10 of draft Protocol I.

26. His delegation had no problem with the four conditions listed in paragraph 2 of that amendment.

27. The Romanian amendment (CDDH/II/16) provided a reasonable compromise between the original draft and that of amendment CDDH/II/21 and Add.1 and should be considered by the Drafting Committee.

28. Amendment CDDH/II/19 was consistent with Article 57 of the fourth Geneva Convention of 1949, but the personnel of the occupation administration were also entitled to have their medical needs considered.

29. Mr. SANCHEZ DEL RIO (Spain) said that the need for simplicity should be one of the Committee's constant concerns. The ICRC text was preferable, not only because it used far fewer words to say the same thing, but also because it maintained the structure of Article 57 of the fourth Geneva Convention of 1949 and thus made it clear what changes had been made. He would not be opposed to the amendments submitted by Romania (CDDH/II/16), Yugoslavia (CDDH/II/3), Bulgaria and others (CDDH/II/19), but amendment CDDH/II/21 and Add.1 was too complicated.

30. Mr. MARTIN (Switzerland) said he had doubts about the title of the article in amendment CDDH/II/21 and Add.1: did the expression "Occupied Territories" cover the zone of military operations? Requisitioning of civilian medical units might also occur in those zones. He also wondered what was the precise meaning of "occupation administration", and why, in the French text, the expression "administration d'occupation" used by the ICRC had been changed to "administration occupante" in the proposed amendment. At first sight it might appear that the ICRC expression was wider in scope, covering administrative units and personnel of the occupied country who had been called into the service of the Occupying Power. The terminology of the articles in the Protocol should maintain an analogy with those of the original Conventions. For that reason, he was more inclined to support the ICRC version.

31. Mr. CALCUS (Belgium) said that he too wondered what was the precise meaning of the expressions "administration d'occupation" and "administration occupante".

32. Mr. MAKIN (United Kingdom) said that he agreed with the United States representative that the first sentence of paragraph 2 of amendment CDDH/II/21 and Add.1 came near to infringing the fundamental Red Cross principle that medical care should be given without discrimination on the basis of medical need. He would have difficulty in accepting that sentence unless it was made clear that the question of what was "necessary for the civilian population's need for adequate medical treatment" was subject to the medical judgement of the medical authorities of the Occupying Power, which, under Article 56 of the fourth Geneva Convention of 1949, had the duty of ensuring and maintaining medical services in the occupied territory. With regard to the amendment in CDDH/II/19, it would be inconsistent with article 10 of draft Protocol I to exclude members of the occupation administration from the provisions of article 14.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, in his view, the expression "occupation administration" meant the administration set up by the Occupying Power, which would normally consist, at first, of members of the armed forces, but might subsequently include members of the local administration who would

have been incorporated into the State apparatus of the Occupying Power. To retain the reference to the occupation administration would open the way for all manner of abuses on the part of the Occupying Power, which could use its position of strength to interpret its medical needs to the detriment of the civilian population of the occupied territory. It was ridiculous to claim that the Occupying Power would not be in a position to provide for the medical care of its own administrative personnel. As it stood, the text constituted an invitation to the Occupying Power to use the resources of the occupied country rather than its own. In accordance with the laws and customs of war, the medical resources of an occupied territory might be reserved for the sole use of the Occupying Power.

34. Mr. ONISHI (Japan) said that if Article 57 of the fourth Geneva Convention meant that Occupying Powers had the right to requisition civilian medical units other than hospitals, article 14 was superfluous. If, on the other hand, they did not have such a right under Article 57, then it was surely undesirable to extend their freedom by including a new article to that effect.

35. Mr. MARRIOTT (Canada) said that the extension was required to take account of the changes that had occurred in medical services since 1949. He himself would have preferred the expression "medical services" to "medical treatment" in paragraph 2 of amendment CDDH/II/21 and Add.1.

36. He did not share the concern of the sponsors of amendment CDDH/II/19. Some of the members of the occupation administration would arrive with the armed forces, and in any case their numbers would be limited. Paragraph 2 (i) of amendment CDDH/II/21 and Add.1 stressed that the requisitioning of civilian medical resources must be temporary and limited to cases of urgent necessity.

37. The word "adequate" which had been inserted in the first sentence implied that not all the civilian population's medical needs had absolute priority over those of the occupying armed forces. Certain forms of medical treatment could be postponed. For example, a patient requiring cosmetic plastic surgery would not have priority over a wounded soldier. The requirement in paragraph 1 that "arrangements should be maintained" meant that there should be no interruption in the provision of medical services to the civilian population.

38. Mrs. BUJARD (International Committee of the Red Cross) said that the addition of the reference to the "occupation administration" was meant to cover the civilian personnel, nationals of the Occupying Power, who followed the armed forces into the occupied territory in order to set up an administration. Only a limited number of persons were involved and such mention should not open the door to abuses.

39. Mr. CZANK (Hungary) said that paragraph 2 of amendment CDDH/II/21 and Add.1 was a marked improvement on paragraph 1 of the ICRC text. The amendment said that "civilian medical ... services ... shall not be requisitioned ...", unless certain conditions were fulfilled; the ICRC text started by saying that they "may" be requisitioned in certain circumstances. The Canadian representative had clearly explained the implications of "adequate medical treatment" in the first sentence of paragraph 2. His delegation would also be in favour of incorporating the Yugoslav amendment to paragraph 2 (CDDH/II/3), to the effect that the arrangements should be made "in due time".

40. Mr. MARTIN (Switzerland) said that, having heard the statements by the representatives of the Union of Soviet Socialist Republics and of the ICRC, he was now in favour of amendment CDDH/II/19, to delete the words "and of the occupation administration".

41. The CHAIRMAN said that the discussion on article 14 was closed. He suggested that the amendments in documents CDDH/II/3 and CDDH/II/16, which were essentially drafting amendments, be referred to the Drafting Committee and that the other amendments be put to the vote.

It was so agreed.

Amendment CDDH/II/19 was adopted by 24 votes to 19, with 5 abstentions.

42. The CHAIRMAN said that, since amendment CDDH/II/21 and Add.1 differed considerably from the ICRC text it might be wise to vote on it, in order to simplify the work of the Drafting Committee.

43. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), Mr. BOSCH (Uruguay) and Mr. MARTIN (Switzerland) supported that view.

Amendment CDDH/II/21 and Add.1 was adopted by 40 votes to 3, with 11 abstentions.

44. Mr. SOLF (United States of America) explained that his delegation had abstained from voting on amendment CDDH/II/21 and Add.1 because, like the United Kingdom delegation, it felt that the words "so long as they are necessary for the civilian population's need for adequate medical protection" had not been fully explained by the co-sponsors.

45. He had noted the partial explanation given by the Canadian representative but could not support his views before being satisfied on the question of relative medical needs.

46. Mr. MAKIN (United Kingdom) said he associated his delegation with the remarks of the last speaker.

47. Mr. GOZZE-GUCETIĆ (Yugoslavia) said that the amendment submitted by his delegation (CDDH/II/3) and the Romanian amendment (CDDH/II/16), which he supported, were both designed to clarify amendment CDDH/II/21 and Add.1 in respect of the needs of the civilian population. They should be taken into account by the Drafting Committee.

48. The CHAIRMAN said that that would be done. The discussion on article 14 had now been concluded.

Article 15 - Civilian medical and religious personnel (CDDH/1, CDDH/56; CDDH/II/16, CDDH/II/23, CDDH/II/24, CDDH/II/70, CDDH/II/72, CDDH/II/201)

49. The CHAIRMAN invited the ICRC representative to introduce the Committee's text for article 15.

50. Mrs. BUJARD (International Committee of the Red Cross) said that article 15 was one of the most important in the section under consideration. Until now, only civilian hospital staff had been protected, but as early as 1949 it had become obvious that all civilian medical personnel needed protection. Investigations by the ICRC had shown that, in the event of armed conflict, most countries would provide for the civilian medical service to work in close co-operation with military medical services or even to merge with them.

51. It might be argued that it was not essential to provide special protection for civilians who were already protected per se, but civilian medical personnel was very different from the civilian population in general, since very often they had to work in dangerous conditions and sometimes even in battle areas. In order to accomplish their mission they must be effectively protected and easily identified.

52. In paragraph 6, the term "chaplains" had been amplified by the addition of "and other persons performing similar functions". The chaplain was a Western, Christian, concept and did not cover all religions and philosophies.

53. The CHAIRMAN said that there were three proposed amendments to paragraph 3 of article 15 - CDDH/II/16, submitted by the Romanian delegation; CDDH/II/23, submitted by the United Kingdom delegation; and CDDH/II/24, submitted by the United States delegation, the last two being identical - and three amendments to paragraph 6 - CDDH/II/59/Rev.1 submitted by the Holy See, now replaced, however, by the recently issued amendment CDDH/II/201; amendment CDDH/II/70, submitted by the Arab Republic of Egypt and twelve other delegations, and CDDH/II/72, submitted by Brazil.

54. Mr. MAKIN (United Kingdom) said that his delegation was proposing in CDDH/II/23 to replace the word "possible" by the word "feasible" because it was felt that "all possible help shall be afforded medical personnel in the combat zone" might mean that medical supplies would have to be diverted to satisfy doctors in the combat zone, which he did not think was the intention.

55. If the Romanian amendment to paragraph 3 (CDDH/II/16) were adopted, the sentence would not make sense in English.

56. Mr. SOLF (United States of America), referring to his delegation's amendment (CDDH/II/24), said that he had nothing to add to the last speaker's remarks.

57. Mr. KHAIRAT (Arab Republic of Egypt) said that amendment CDDH/II/70, which proposed to replace the words "Chaplains and other persons performing similar functions" by "Religious personnel", was designed to take account of all persons carrying out religious functions.

58. Mr. DUNSHEE de ABRANCHES (Brazil) said that the only difference between his own delegation's amendment (CDDH/II/72) and amendment CDDH/II/70 was the inclusion in the latter of the word "effectively".

59. Mr. KUSSBACH (Austria) said that amendment CDDH/II/201, submitted by Austria, France, Holy See and Switzerland, proposed the replacement of the sentence "Chaplains and other persons performing similar functions who are permanently attached to civilian medical units shall be respected and protected" by the sentence "Religious personnel attached to civilian medical units - such as chaplains - shall be respected and protected ...".

60. Chaplains were only one type of servant of religion: there were many others. Nevertheless, since the word was already in the first Geneva Convention of 1949, it should be retained, though given less emphasis. The expression "religious personnel" was, in the co-sponsors' view, clearer than "other persons".

61. The amendment was similar to that in amendment CDDH/II/70, but preferable because it was more balanced. The co-sponsors were, however, prepared to discuss the matter with the co-sponsors of amendment CDDH/II/70 to find a compromise solution.

62. The delegations of Australia, Belgium, Guatemala, Japan and Nigeria had joined the list of co-sponsors of amendment CDDH/II/201.

63. The CHAIRMAN requested the Austrian representative to consult the co-sponsors of amendments CDDH/II/70 and CDDH/II/72 with a view to submitting a further text to the next meeting.

64. Mr. DUNSHEE de ABRANCHES (Brazil) said he was agreeable to the Chairman's request and would join in those consultations.

65. Mr. CHOWDHURY (Bangladesh) said he agreed that, in case of armed conflict, civilian medical personnel should be able to give the necessary help to the civilian population. Article 15 was well drafted and afforded every protection for the provision of medical services.

66. It had been suggested that paragraph 6 should be amplified in order to cover religious personnel of all confessions, and his delegation would support amendment CDDH/II/201.

67. As a general principle, his delegation felt that, wherever possible, the articles drafted by the ICRC should be retained.

68. Although his delegation had no objections to replacing the word "possible", by the word "feasible" in paragraph 3, he must point out that someone would have to decide what was feasible in the event of armed conflict. It would therefore be safer for the civilian population if the word "possible" were used.

69. The CHAIRMAN requested representatives who were not of English mother tongue to consider possible translations of the word "feasible" into other languages.

The meeting rose at 12.35 p.m.

SUMMARY RECORD OF THE SIXTEENTH MEETING

held on Monday, 10 February 1975, at 9.55 a.m.

Chairman: Mr. NAHLIK (Poland)

ORGANIZATION OF WORK

1. The CHAIRMAN announced that, as the Committee had requested, a full team of interpreters would be at the disposal of the Drafting Committee for the afternoon meeting; but unfortunately that would not be possible every day of the week.

2. With regard to the question of the Drafting Committee's working methods, he pointed out that at the first session of the Conference Committee II had made the mistake of referring all the amendments to the Drafting Committee; with the result that the debates in Committee II on the substance of those amendments had started again in the Drafting Committee, a fact which had greatly slowed down Committee II's work. He proposed that in future the Committee should refer to the Drafting Committee only purely drafting amendments and that all decisions on substance should be taken in plenary; any amendment differing in substance from the ICRC text would accordingly be put to the vote in the Committee, and would be sent to the Drafting Committee only after it had been approved by the Committee. That was the only way to speed up the work, especially as simultaneous intepretation would be available for fewer meetings of the Drafting Committee than of the Committee itself.

3. It would therefore be better if the Drafting Committee made greater use of smaller Working Groups, say one group per article, which could meet simultaneously on days when interpretation was not available, each group working in a single language.

4. He proposed that two further members should be appointed to the Drafting Committee - Mr. Czank (Hungary) and Mr. Bothe (Federal Republic of Germany) whose linguistic ability and legal knowledge would make them invaluable.

5. Lastly, he said that rule 32 of the Conference's rules of procedure was applicable both to the Committee and to the Drafting Committee.

6. Mr. MARTIN (Switzerland) said he supported the Chairman's proposals.

7. The CHAIRMAN said that, in the absence of any objection, he would take it that the Committee approved his proposals concerning the Drafting Committee's work.

It was so agreed.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 15 - Civilian medical and religious personnel (CDDH/1, CDDH/56, CDDH/II/23, CDDH/II/24, CDDH/II/36, CDDH/II/53, CDDH/II/70, CDDH/II/72, CDDH/II/201) (continued)

Article 16 - General protection of medical duties (CDDH/1, CDDH/56, CDDH/II/1, CDDH/II/24, CDDH/II/29, CDDH/II/35, CDDH/II/36, CDDH/II/48, CDDH/II/53, CDDH/II/71, CDDH/II/88)

8. Mr. KUSSBACH (Austria) said that the sponsors of amendments CDDH/II/70, CDDH/II/72 and CDDH/II/201 had met before the meeting in an attempt to combine the three amendments to article 15. Unfortunately, some of the sponsors of amendment CDDH/II/70 had been unable to be present. The participants had succeeded in reaching agreement on a text which appeared to be acceptable both to the sponsors of amendments CDDH/II/201 and CDDH/II/72 and to the Egyptian representative, whose delegation was one of the sponsors of amendment CDDH/II/70. The text would read as follows: "Religious personnel attached to civilian medical units - such as chaplains ... shall be respected and protected ...". The Spanish version apparently required the additional words: "...efectivamente destinado a ...".

9. He invited the other sponsors of amendment CDDH/II/70 to state as soon as possible, before the following morning, whether they accepted the new wording and wished to be listed among the sponsors of the revised amendment.

10. Mr. HESS (Israel), referring to article 15, paragraph 6, said that in his country, search for and burial of bodies was carried out by religious burial societies known as "Chevra Kadisha". In the army, burial units were part of the Army Chief Rabbinate Corps which corresponded to the corps of chaplains in many other armed forces. Civilian burial societies were part of the civilian rabbinical authorities.

11. It was his delegation's understanding that the personnel of those societies, both military and civilian, were entitled to the protection provided for in the Conventions and in the Protocol, but he would like the ICRC to confirm that.

12. Also in connexion with paragraph 6, he pointed out that the Red Shield of David was the distinctive emblem of the medical services of Israel's armed forces and also of all his country's civilian medical units. To compel Israel to use the existing emblems for its personnel would create an absurd situation in which rabbis and other Jewish religious personnel in the Israeli armed forces would be required to identify themselves by a Red Cross, Red Crescent or Red Lion and Sun.

13. In principle, his delegation supported the proposal in article 15, paragraph 6, but would not be able to vote for it until that point had been satisfactorily settled. It would send a memorandum on the subject to the President of the Conference.

14. Mr. PICTET (International Committee of the Red Cross), referring to the first point raised by the representative of Israel, said that as in certain armies burial was carried out by religious personnel, and since their performance of that duty was in accordance with the Geneva Conventions, that personnel must be covered and protected by the Conventions and Protocols, in the same way as any other medical and religious personnel.

15. Mr. DEDDES (Netherlands), referring to the new wording of paragraph 6 proposed by the Austrian representative, said that he would suggest inserting the words "and other persons performing similar functions" after the words "such as chaplains", so as to give the same protection to persons ministering to the spiritual needs of others without regarding their duties as being of a religious nature, namely persons who acted from humanitarian considerations.

16. Miss MINOGUE (Australia) said she agreed with the United Kingdom delegation that the word "possible" in the English version of paragraph 3 was too absolute. It could be replaced by the word "feasible" or by "all assistance possible".

17. Her delegation also suggested that the second sentence of paragraph 4 should be worded as follows: "The Occupying Power may not require that in the performance of those functions such personnel give priority to the treatment of any person except on medical grounds only", that would highlight the Red Cross principle that medical requirements should be the only acceptable criterion for determining the priority to be given to medical care.

18. Lastly, she favoured the idea behind the new version of amendment CDDH/II/201.

19. Mr. SANCHEZ DEL RIO (Spain), referring to the amendments to paragraph 3 in documents CDDH/II/23 and CDDH/II/24, said that the word "factible" was not appropriate; it would be better to keep the word "posible", which could be softened by some such term as "en la medida que sea posible" or by other similar wording used in the 1949 Geneva Conventions.

20. He suggested that the words "subject to the provisions of article 14" ("a salvo de lo dispuesto en el articulo 14") should be added at the end of the second sentence of paragraph 4.

21. Lastly, the word "effectively" seemed superfluous in the new version of amendment CDDH/II/201.

22. Mr. ROSENBLAD (Sweden) pointed out that in article 15, paragraph 3, reference was made to the "combat zone", in articles 27 and 52, to the "contact zone", in article 55, to "zones of military operations" and in article 6 of the Annex, to "the battle area". Coordination, with the assistance of military experts, was needed to harmonize the terminology in that respect.

23. A vote on article 15, paragraph 6, and the various amendments thereto, would be premature; the question should first be discussed by a Working Group.

24. Mr. MARTINS (Nigeria) expressed concern about the manner in which his delegation's amendment to article 15 would be dealt with.

25. The CHAIRMAN said that since that amendment had been presented orally, a written text should be submitted to the Committee for consideration, if possible before the next meeting.

26. Mr. PICTET (International Committee of the Red Cross), introducing article 16, said that it was necessary to confirm in writing the need, hitherto implicit, to extend to medical personnel the protection afforded to the wounded. Since the wounded had to be protected and cared for in any event, it was natural that the protection of medical personnel should also be guaranteed. Paragraph 3 raised the delicate question of medical secrecy. The question had been given much attention in medical circles and required a more flexible solution, leaving the decision to the physician and placing in him the confidence he deserved.

27. Mr. CLARK (Australia) proposed that the word "medical" should be replaced by "professional" in the English text of paragraph 2 of his amendment to article 16 (CDDH/II/36). His delegation's amendment to paragraph 3 (CDDH/II/35) was purely formal and could be referred to the Drafting Committee.

28. Mr. MAKIN (United Kingdom) said that his delegation's amendment to paragraph 1 could also be considered by the Drafting Committee. He would also support the amendment to paragraph 2 proposed by the Australian representative.

29. Mr. MARRIOTT (Canada) said that he too supported that proposal.

30. The CHAIRMAN said that, in his view, the amendments to paragraph 2 of article 16 in documents CDDH/II/1, CDDH/II/36 and CDDH/II/53 were very similar. He expressed the hope that their sponsors could arrange to meet with a view to producing a joint proposal.

31. Mr. KLEIN (Holy See), referring to the amendment proposed by the Netherlands delegation, observed that the term "religious personnel" was that used in the heading of article 15. Furthermore, it was specified in the ICRC Commentary (CDDH/3, p.24, para. 6) that the words "other persons performing similar functions" were meant to extend the term "chaplain". The original text had the merit of specifically mentioning the religious aspect, without, of course, implying any disdain for the ideological or philosophical aspects. If it was considered desirable to bring lay persons into hospitals for the benefit of patients with no religious convictions, that should be done, but those persons should not pass for religious personnel. In other words, those lay persons should be the subject of a separate paragraph; but the dangers entailed by such an extension of the scope of the provision must be borne in mind.

32. Mr. SOLF (United States of America) said that he shared the Swedish representative's views on the various terms used to designate the combat zone. In both article 15 and article 55, he understood the term "combat zone" to mean the zone which had not yet come under the entire control of either party and in which military operations were being carried out. He associated himself with the Swedish representative's suggestion concerning the terminology in question.

33. Mr. MAKIN (United Kingdom), referring to the last sentence of article 15, paragraph 6, observed that the provisions of draft Protocol I relating to identification were to be found in the annex to that Protocol, and that the possibility of including a reference to religious personnel in that annex would have to be considered in due course.

34. Mr. MARTIN (Switzerland), referring to the questions of terminology raised by the Swedish and United States representatives proposed that the term "zone of military operations" should be substituted for the term "combat zone" in article 15, paragraph 3, and that the term "occupied territories" should be retained in paragraph 4. Within the general context of the protection of

persons, the Committee was, in his view, entitled to adopt definitions for its own use without seeking the opinion of other committees, which might need to make certain fine distinctions in the terminology they used in connexion with other subjects.

35. Mr. ROSENBLAD (Sweden) said that at the first session of the Conference he had drafted a memorandum on the question, which he was prepared to submit to the Committee should it so desire.

36. Mr. MARRIOTT (Canada) said that the definition of zones was a technical question and that factors such as the geographical advance of armed forces and the variety of situations existing in regions like South-East Asia might make delimitation very difficult. In his view, the question might usefully be referred to a working group composed of ICRC representatives and military personnel, in addition to members of the medical profession.

37. Mr. GOZZE-GUČETIĆ (Yugoslavia) observed that modern law distinguished between the "combat zone" or "contact zone", which had the same meaning and designated the area in which armies were engaged in combat, and the larger "zones of military operations" covered by various operational units. That distinction was in fact made in the Geneva Conventions.

38. Mr. SCHULTZ (Denmark) said that, whatever terms were used, the important point was to reach agreement on their meaning. A number of definitions designed to apply to all the Protocols had been proposed for inclusion in article 2, and the terms under discussion might be dealt with in the same way. His delegation fully supported the Canadian representative's proposal and considered that the Working Group should be a joint body of the three main Committees.

39. Mr. MARTINS (Nigeria), referring to the English text of paragraphs 3 and 4 of article 15, said that he would like the word "possible" in paragraph 3 to be replaced by the word "available"; he would also like the word "available" to be inserted before the word "assistance" in paragraph 4 and in all cases in which the word "assistance" was used.

40. Mr. MARTIN (Switzerland), supporting the Danish representative's proposal, asked that the officers of Committee II should be requested to arrange with the Secretariat for a group composed of members of Committees I, II and III to study the terms under discussion and for provision to be made for article 2 of draft Protocol I to include definitions valid for all the Protocols.

41. The CHAIRMAN noted that the discussion on article 15 was closed. He classified the amendments considered in three groups. Those submitted by the United States (CDDH/II/24) and the United Kingdom (CDDH/II/23) delegations concerning paragraph 3 were limited to

questions of drafting; they would therefore be sent to the Drafting Committee. The amendment submitted by Romania (CDDH/II/16) for the same paragraph would be considered at the meeting on the following day if that country's representative was present. The three amendments concerning paragraph 6 (CDDH/II/59/Rev.1, CDDH/II/70 and CDDH/II/72) would be revised by all the sponsors to form one single amendment, which would be put to the vote at the seventeenth meeting.

42. In addition, three amendments had been proposed orally during the discussion; they would have to be submitted in writing. The amendment proposed by the Netherlands, which differed from the ICRC proposals and the amendments submitted jointly by several delegations, would be voted on at the next day's meeting, before amendment CDDH/II/201. The Australian delegation's amendment would be circulated as soon as possible. The problem of defining the expressions "combat zone" and "zone of military operations" was not within the exclusive competence of the Committee; it concerned the other Committees also. He suggested that two representatives of Committee II should join in a Working Group formed to study that problem jointly with representatives of the other two Committees. It would probably only be possible to reach a final conclusion in plenary meeting.

It was so agreed.

43. Mr. CALCUS (Belgium), introducing the amendment submitted by Belgian experts to article 16, paragraph 2 (CDDH/II/1), said that all too frequently drugs were administered to prisoners to elicit confessions. The case of drugs, however, was but one example; any treatment calculated to change human behaviour should be prohibited. The text proposed by the Belgian experts mentioned only prisoners because they were the most frequent victims of such treatment.

44. The two amendments to paragraph 2 submitted by other delegations covered his proposal (CDDH/II/1) and he would agree to its being combined with one of those amendments.

45. Mr. SOLF (United States of America), introducing the joint amendment to article 16, paragraph 2 (CDDH/II/53), said that the amendment would restore the proposals made by Commission I of the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, which were contained in paragraphs 2 and 3 of article 19 proposed by that Commission.

46. The most important change proposed in the joint amendment was the limitation of the scope of the rules of medical ethics under consideration to those intended for the benefit of the wounded and sick, rather than to those intended for the benefit of the medical profession. Some codes of professional ethics prohibited doctors from co-operating in the performance of medical procedures by unlicensed personnel. Although such policies might be appropriate in many communities, it was necessary to use skilled and highly trained paramedical personnel on board small ships or in isolated units where no licensed physicians were available. The co-sponsors wished to ensure that rules of professional ethics did not prevent the use of doctors in the training of such personnel. He noted, in that connexion, that the English and French texts of the printed report of the second session of the Conference of Government Experts erroneously stated in paragraph 1.53 that a proposal to correct the matter had been rejected. The Spanish version agreed with the actual report of Commission I, prepared by the Rapporteur, which showed that a formula correcting the problem had been agreed to.

47. Mr. PICTET (International Committee of the Red Cross) said that, if a mistake had occurred in the report of the Conference of Government Experts, and if any doubt remained, the report of the Rapporteur of Commission I of that Conference would prevail.

48. Mr. SOLF (United States of America) said that amendment CDDH/II/24 seemed to him to be clearer than the original.

49. Mr. DUNSHEE de ABRANCHES (Brazil) said that his amendment (CDDH/II/71) would delete the last sentence of paragraph 3 and add a new paragraph 4. His proposal would tend to bring the text under discussion into harmony with certain laws covering the compulsory transmission of information.

50. Mr. NGUYEN QUI DON (Republic of Viet-Nam) said that his delegation's amendment in document CDDH/II/56/Add.2 proposed a minor drafting change linking paragraph 3 to paragraph 1 of article 16.

51. The CHAIRMAN requested the sponsors of similar amendments to paragraph 2 to work out a joint text as soon as possible.

52. Mr. MAKIN (United Kingdom) said that the introduction to paragraph 1 differed from the introduction to paragraphs 2 and 3. He wondered why the notions of punishment and constraint had not been combined. The ICRC Commentary was not clear on that point but the Drafting Committee would probably be able to correct the position. Furthermore, the thinking of the experts in 1972 was not clearly expressed in paragraph 3 where the adverse Party should be the party adverse to the doctor and not the one adverse to the patient as suggested in the Commentary.

53. Mr. PICTET (International Committee of the Red Cross) pointed out that, according to the wishes of medical circles, the "adverse Party" mentioned in paragraph 3 meant the country of the adverse nationality of the wounded.

54. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) raised the question which was the better of the two expressions, "medical ethics" and "professional ethics". He hoped the ICRC would circulate among representatives the World Health Organization's definition of medical ethics according to which a physician must not carry out decisions of his authorities, even if in writing, that are contrary to his duty. In the article under consideration that prohibition extended to those who might give certain orders to doctors. Physicians had two aims in time of war: the first was to cure the sick and wounded, who were then sent back to the front (France had been said to have won the First World War by retrieving its wounded); but physicians also had obligations in respect of civilian medical assistance. Their conscience would tell them whether or not they should transmit information without being specifically obliged to do so. He himself proposed the term "professional ethics". The modification submitted by Belgium was designed to prevent physicians from being obliged to act in a manner contrary to their duty. In one of the amendments it was proposed that the use of psychotropic medicines should be prohibited, although those were sometimes indispensable for the treatment of certain psychiatric patients.

55. Mr. BOGLIOLO (France) requested additional explanations regarding the Brazilian amendment (CDDH/II/71). Physicians, who were also citizens, were deeply distressed by the obligation to report wounds caused by firearms in time of war. That did not apply to the obligation to report communicable diseases.

56. Mr. PICTET (International Committee of the Red Cross) said that international law took precedence over national law. Article 16 dealt, of course, with a very difficult subject. To exclude wounds caused by firearms would deprive the provision of its substance, since it was that type of wound which was the most widespread in time of war.

57. Mr. MARRIOTT (Canada) supported amendment CDDH/II/53 for the reasons stated by the United States delegation. His country needed a large body of auxiliary medical personnel. As to the choice between the terms "professional" and "medical" ethics, he hoped that, for reasons of clarity, the second would be adopted. He fully supported the views expressed by the representative of the Union of Soviet Socialist Republics regarding psychiatric treatment, which should be in conformity with medical ethics. As to wounds caused by firearms, he thought that the term "criminally inflicted wounds" could be adopted.

58. Mr. ROSENBLAD (Sweden) suggested that in article 16, paragraph 3, the words "to their families", should be followed by the words "In particular, no person exercising a medical activity shall be compelled to administer medicaments to prisoners of war or to apply other methods to them for obtaining information".

59. Mr. DEDDES (Netherlands), referring to amendment CDDH/II/71, on paragraph 4, said that wounds caused by firearms during wartime raised different problems. Physicians should not be obliged to denounce a member of a resistance movement who had wounded a member of the occupying forces.

60. Mr. ONISHI (Japan) supported the amendment submitted by Australia (CDDH/II/36) to the effect that "ethics" be qualified by the word "medical". He supported the representatives of France and the Netherlands, who considered that the transmission of such information should be compulsory in the case of communicable diseases. That would have to be the subject of a mandatory provision in article 16.

61. Mr. DUNSHEE de ABRANCHES (Brazil) said he hoped that speakers would participate in the drafting of the new paragraph 4.

62. Mr. CALCUS (Belgium) expressed his agreement. He re-read his amendment, CDDH/II/1, so that the English version could be brought into line with the French text.

63. Mr. SCHULTZ (Denmark) supported the representative of the Netherlands. In his country, which had experienced five years of occupation, acts of resistance and sabotage had been considered criminal acts during the Second World War. The provision of information by medical personnel should not be made compulsory to the detriment of underground movements. In the present case, the reference to criminal offences should be deleted.

64. Miss MINOGUE (Australia) expressed her agreement with the representatives of Belgium and Sweden on the subject of behaviour-changing drugs. That subject was actually covered by the new wording of article 11.

65. Mr. RIVERO ROSARIO (Cuba) said that as far as amendment CDDH/II/71 was concerned, and more specifically the amendment relating to paragraph 4, the performer of a medical action was free to decide whether or not he would give information to a third party. He, himself, would prefer that no reference should be made to what were called criminal offences, since such a reference could give rise to abusive interpretations.

66. Mr. DENISOV (Ukrainian Soviet Socialist Republic) supported the representatives of Denmark and Cuba. The question arose, who was competent to define a criminal offence.

67. Mr. MARRIOTT (Canada) approved amendment CDDH/II/1. He hoped, nevertheless, that the wording would be re-examined, because cases amenable to psychiatric treatment became more numerous in time of war. As to wounds caused by firearms, there was a risk of conflict between peace-time and war-time law.

68. Mr. SOLF (United States of America) said that paragraph 3 of article 16 had been studied in 1971 and 1972. Its scope was confined to occupied territories and it concerned medical personnel not authorized to supply information. At the present time, an extension of the field of application to national territories was being considered. There was no question, however, of interfering with the application of national legislation.

69. Mr. DUNSHEE de ABRANCHES (Brazil) said he thought that, once a State had ratified Protocol I, international law would take precedence over national law. In the event of armed conflict, however, that law did not exclude criminal acts. It could not be suspended by rules which freed a physician from the duty of reporting a criminal act.

70. The CHAIRMAN suggested that representatives should study in advance the articles which followed article 16, so as to be in a position to submit their amendments in writing, preferably a few days before the debate on the article in question. He proposed that amendments CDDH/II/36 (para. 1), CDDH/II/53 (para.1), CDDH/II/24 and CDDH/II/35, together with the amendment to article 16 submitted by the Republic of Viet-Nam (CDDH/II/88) should be sent to the Drafting Committee. Voting would take place at the next meeting on amendments CDDH/II/48 and CDDH/II/71, and amendment CDDH/II/29 would be discussed if its sponsor (Uruguay) was present. Finally, an oral report would be made at the seventeenth meeting by the sponsors of amendments CDDH/II/1 (para. 2), CDDH/II/36 (para. 2) and CDDH/II/53 (para. 2).

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE SEVENTEENTH MEETING

held on Tuesday, 11 February 1975 at 9.55 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 15 - Civilian medical and religious personnel (CDDH/1, CDDH/56; CDDH/II/201/Rev.1) (continued)

1. Mr. DEDDES (Netherlands) said that his amendment to the oral amendment suggested by the co-sponsors of amendment CDDH/II/70 (see CDDH/II/SR.16) was as follows: after the words "such as chaplains" add the words "and other persons performing similar functions ...".

2. Mr. BOGLIOLO (France) proposed the deletion of the word "similar" as being ambiguous.

3. The CHAIRMAN said that if the principle of the amendment were accepted, it could be applied to any of the relevant texts.

4. Mr. SOLF (United States of America) pointed out that the word "similar" was already to be found in paragraph 6 of the ICRC text.

5. Mr. MARTIN (Switzerland) said the expression "similar functions" had led to the submission of joint amendment CDDH/II/201/Rev.1, which had avoided the term. If the idea were to be reintroduced, it would mean departing from the idea of religious personnel. Joint amendment CDDH/II/201/Rev.1 would probably provide a means of avoiding difficulties. He would like to see all amendments in writing so that he would know what he was talking about in referring to them. A comparison might be possible between joint amendment CDDH/II/201/Rev.1 and paragraph 6 as drafted by the ICRC. A new paragraph 7 might also be drafted.

6. Mr. KLEIN (Holy See) thought that the title of article 15 would have to be altered if the amendment submitted by the Netherlands delegation was adopted. It must not be forgotten that what was involved was primarily the religious domain.

7. Mr. DEDDES (Netherlands) observed that the important thing was the assistance provided by chaplains and persons performing similar functions. There was no clear distinction between the two categories of persons.

8. Mrs. DARIIMAA (Mongolia) recalled that at the first session the Conference had decided that, to be considered, amendments must be submitted in the official languages. What the Committee had before it was an oral amendment and that was contrary to the rules of procedure.

9. The CHAIRMAN noted that the Netherlands delegation had modified its oral amendment, which merely repeated the ICRC text. The Committee could therefore choose between paragraph 6 of the basic text and combined amendments whose wording had not yet been fixed in writing. He suggested that consideration of the written text be deferred to the next meeting.

It was so agreed.

Article 16 - General protection of medical duties (CDDH/1, CDDH/56; CDDH/II/36, CDDH/II/48, CDDH/II/53, CDDH/II/206)

10. The CHAIRMAN stated that amendment CDDH/II/36 submitted by the Australian delegation and not applicable to the French version had been returned to the Drafting Committee. An amendment submitted by the United Kingdom, in English only and not circulated, proposed a totally different wording for article 16. He said that the Committee should choose between the two texts.

11. Mr. MAKIN (United Kingdom) said he believed his amendment had already been circulated as document CDDH/II/206. It would probably not be possible to discuss it at the present meeting. He was willing to withdraw amendment CDDH/II/48 which pertained only to paragraph 1.

12. The CHAIRMAN said that the decision would be deferred to the eighteenth meeting so that the document could be translated and studied. The same applied to amendments CDDH/II/36 and CDDH/II/53, which also concerned paragraph 2.

13. Mr. BOTHE (Federal Republic of Germany) said he was prepared to submit at the eighteenth meeting a fresh version of paragraph 2 which at present existed only in English and in typescript.

14. The CHAIRMAN said he thought it would be better to wait until the amendment had been circulated in all the languages. He would be prepared to put to the vote an amendment submitted by the Brazilian delegation, which was furthest removed from the ICRC draft and from all other amendments.

15. Mr. DUNSHEE de ABRANCHES (Brazil) said that he had prepared a fresh text, which, however, had not yet been circulated in the various languages. Consideration of the document should therefore be deferred.

16. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) raised an important point of substance in regard to the consideration of amendments: the latter should be available to all representatives to the Conference in all the Conference languages simultaneously. He himself had received document CDDH/II/203 in Russian only a few minutes earlier.

17. The CHAIRMAN requested the Secretariat to have the documents translated into all the Conference languages, and to arrange for their circulation. There would be a vote on article 15 at the eighteenth meeting.

Article 17 - Role of the civilian population (CDDH/1, CDDH/56; CDDH/II/1, CDDH/II/12, CDDH/II/14, CDDH/II/16, CDDH/II/19, CDDH/II/25, CDDH/II/34, CDDH/II/54, CDDH/II/89, CDDH/II/203)

18. Mr. PICTET (International Committee of the Red Cross) introduced article 17, which corresponded to article 18 of the first Geneva Convention of 1949. Paragraph 3 was designed to supplement article 16 in respect of assistance. In paragraph 5 there was something missing: it had been discovered that no mention had been made of aircraft. The Drafting Committee could see to that. The term "aircraft" would be inserted before "ships", while the verb "assist" would precede "care for".

19. The CHAIRMAN said he had arranged the amendments in a certain order which he submitted to the Committee. He would begin with amendment CDDH/II/54 which concerned the title of article 17 only.

20. Mr. URQUIOLA (Philippines) suggested that the title of article 17 should be brought into line with the wording of other amendments.

21. Miss MINOGUE (Australia) said she had retained the words "role of the civilian population" in subsequent amendments, to tally with the initial title.

22. The CHAIRMAN said that, if there were no objections to it, joint amendment CDDH/II/54 would be regarded as having been adopted by consensus.

It was so agreed.

23. Mr. URQUIOLA (Philippines) said he was pleased to see that, thanks to amendment CDDH/II/54, the relief societies were mentioned in the new title of article 17.

24. Mr. HESS (Israel), introducing amendment CDDH/II/14, said that the protection of the wounded and sick was mentioned in articles 10 and 17. The protection of combatants hors de combat, even if not wounded, should be added to article 17.

25. Miss MINOGUE (Australia), introduced amendment CDDH/II/34 concerning paragraphs 1, 3 and 5. She expressed the wish that the shipwrecked should be mentioned in those texts. Referring to paragraph 3, she said she no longer supported amendment CDDH/II/54.

26. Miss BASTL (Austria) withdrew amendment CDDH/II/4 to paragraph 5.

27. Mr. CALCUS (Belgium) said it would be desirable to consider amendments CDDH/II/1 and CDDH/II/11 together as they dealt with the same subject. The term "relief societies" was too general. The words "such as national Red Cross (Red Crescent, Red Lion and Sun) Societies" should be added.

28. Mr. TERNOV (Byelorussian Soviet Socialist Republic) introduced amendment CDDH/II/19, which made the same point. He observed that amendments CDDH/II/12 and CDDH/II/54 were identical.

29. Mr. BOGLIOLO (France) said that the French amendment to paragraph 2 (CDDH/II/12), which would replace the words "shelter, care and assistance" by the words "shelter, aid and care" was closer to the chronological order of events than the original.

30. Mr. MAKIN (United Kingdom) said that in his opinion the French amendment (CDDH/II/12) and the United Kingdom amendment (CDDH/II/54) were not mutually exclusive. In English, the word "assistance" had a wider meaning than "medical assistance" or "medical care". Consequently, either the word should be deleted from the paragraph in question, or it should be made clear that medical assistance was meant.

31. Mr. NGUYEN QUI DON (Republic of Viet-Nam) said that his delegation proposed that paragraph 3 should be amended by inserting the words "on the sole condition that the fact is reported to the local authorities" (CDDH/II/89). That was in the interests of the wounded and sick themselves, because the civilian population might not have the necessary means of caring for the sick.

32. Miss MINOGUE (Australia) said her delegation proposed that what was meant in paragraphs 2, 3 and 4 should be stated to be medical assistance or care (CDDH/II/203), so as to avoid any possibility of conflict with domestic legislation concerning treason or other crimes or unlawful acts. By specifying the medical nature of the assistance, it would be possible to avoid, or at least minimize, the risk of people seeking protection for having given shelter to persons who were neither sick nor wounded.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, in his opinion, the question whether the civilian population should be mentioned before or after the relief societies in paragraph 4 was one of pure form.

34. The Israel amendment to paragraph 1 (CDDH/II/14) was not in order, because the question of combatants hors de combat did not come within the competence of Committee II, which in the context under discussion, should be concerned only with the wounded, sick and shipwrecked.

35. It should be brought out in article 17, paragraph 3 that no one should be molested, prosecuted or convicted for having given shelter, care or assistance to sick or wounded persons "even if they belong to the adverse Party". The Australian amendment to amendment CDDH/II/34 deleting those words (CDDH/II/203, para.3) was therefore not acceptable either. In addition, the inclusion of the words "medical assistance or care" would restrict the scope of the article in a way that was incompatible with its humanitarian aim.

36. Lastly, he was opposed to the amendment submitted by the Republic of Viet-Nam (CDDH/II/89).

37. Mr. MARRIOTT (Canada) said he thought that in paragraph 4 the civilian population should be mentioned before relief societies since the function of the latter, being better known, did not need to be given prominence.

38. The wording suggested in amendments CDDH/II/11 and CDDH/II/16 for paragraph 2 was more logical and should be adopted.

39. The questions raised in connexion with the words "aid", "care" and "assistance" were drafting questions. In his opinion, the terms "medical assistance" and "medical care" did not necessarily mean assistance or care provided by members of the medical profession.

40. The amendment to paragraph 3 proposed by the Republic of Viet-Nam (CDDH/II/89) was unacceptable, since it dangerously restricted the article's scope. One might ask, for example, who the "local authorities" would be in the event of occupation.

41. Mr. MAKIN (United Kingdom) said that amendment CDDH/II/14 proposed by the Israel delegation raised an interesting point, but that he shared the view of the representative of the Union of Soviet Socialist Republics that it was out of place in article 17. It seemed to him that it was more appropriate to articles 38 and 39, which were being dealt with by Committee III.

42. Amendment CDDH/II/25, proposed by the Cuban delegation, was a linguistic one which probably affected only the Spanish text. He considered the word "charity" should remain in the English version. All the other amendments, with the exception of that proposed by the delegation of the Republic of Viet-Nam, seemed to have the same aim and could be referred to the Drafting Committee.

43. Mr. KLEIN (Holy See) said that disinterested aid should not be prevented on technical grounds. Warm clothing or a packet of biscuits could be just as useful as medical care. He was not opposed to the mention of "charitable aid" or "humanitarian feelings", since they corresponded to the ICRC motto "Inter arma caritas".

44. Mr. URQUIOLA (Philippines) said that the provisions of paragraph 1 of article 17 were covered by those of paragraph 5. Moreover, the idea of assistance should not be dropped from paragraphs 3 and 4, for in the broader sense it could include, for instance, intervention by relief societies to enable people to receive letters from their families or their own country. He saw no harm in replacing "assistance" by "aid" since in his view the two words were synonymous.

45. Mr. MARTIN (Switzerland) said that his delegation supported amendment CDDH/II/54. He urged that the use of the word "assistance" be avoided in paragraphs 3 and 4 since, in his opinion, "assistance" could be given either a very narrow or a very broad interpretation. Assistance was the responsibility of the relief societies, and it would be more appropriate to deal with it in article 54 as one of the tasks of those bodies. The same applied to the word "aid", which in a medical context meant "care" and in all other cases meant "assistance".

46. Mr. FRUCHTERMAN (United States of America) said that his delegation shared the views of the Soviet Union and United Kingdom representatives on amendment CDDH/II/14, which was out of place in article 17. On the other hand, his delegation supported the amendments to the effect that the national Red Cross Societies should be mentioned by their various names.

47. His delegation would like to see paragraph 4 clarified by the addition at the end of the words "for as long as they are needed".

48. He agreed with the United Kingdom delegation in preferring the word "charity" to the expression "humanitarian feelings".

49. Mr. HESS (Israel), referring to the observations made on amendment CDDH/II/14, said that his delegation believed that combatants hors de combat should also be protected, and if that notion could not be incorporated in the test of article 17 it should be introduced elsewhere.

50. His delegation was sorry it could not support the proposals that the national Red Cross Societies should be mentioned among relief societies. Israel had pointed out on several occasions that the members of medical services attached to the Israel armed forces used the distinguishing emblem of the "Red Shield of David" but Israel respected all other emblems. The national relief society of Israel, Agudat Magen David Adom (the Red Shield of David Society), which used that emblem, was still excluded from the International Red Cross although it fulfilled all the necessary conditions and enjoyed a high international reputation for its relief work, among the victims of war and calamity. The exclusion was compatible with

the objectives neither of the International Red Cross nor of the Conference. For that reason, his delegation would not vote for amendment CDDH/II/1.

51. Mrs. DARIIMAA (Mongolia) said she thought amendment CDDH/II/14 would introduce a change of substance and extend the scope of the Geneva Conventions by putting on a footing of equality, on the one hand, the sick and the wounded and, on the other hand, combatants hors de combat, who might still be armed. From that point of view, the amendment was not acceptable, because provisions relating to such combatants were included in the Geneva Conventions.

52. Referring to amendment CDDH/II/19, she said she thought it would be better not to mention any relief society in particular, for to do so might introduce discrimination and create problems for the soldiers, who must be able rapidly to understand all the provisions of Protocol I.

53. She did not wish to speak on the linguistic problem raised by draft amendment CDDH/II/25, submitted by the delegation of Cuba, but she thought the term with the broadest meaning should be adopted. The proposal of the Republic of Viet-Nam, being likely to delay administration of the care which the condition of a wounded person might need, was contradictory to the humanitarian feelings by which those concerned should be animated.

54. Mr. KLEIN (Holy See) said he was not very happy about the statements by the Swiss representative, who considered that "assistance" was the affair of the relief societies. That notion was liable to run counter to the spirit of the Geneva Conventions by restricting and discouraging the role of private initiative. Besides, relief organizations were not always at hand when assistance was needed.

55. Mr. AL-FALLOUJI (Iraq) said that his delegation would give its full support to the Committee's work.

56. He did not think that the title of article 17 should be changed as proposed in amendment CDDH/II/54, for any such modification would be liable to restrict the role of the relief societies to the provisions of article 17. Nor did he support amendment CDDH/II/14, as he considered that combatants, even when hors de combat, should not be placed on the same footing as the sick and wounded. On the other hand, he supported amendment CDDH/II/1, which proposed that the various national Red Cross Societies should be mentioned. He supported draft CDDH/II/12, which would replace "assistance" by "aid", while requesting that "aid" should be mentioned before "care". The notion of aid should in his opinion be maintained, since, apart from the sick and wounded, there might be women in labour or new-born infants requiring immediate help.

57. The discussions should be very wide-ranging but relevant. He hoped that the drafting of the various articles would not be allowed to serve the purposes of propaganda.

58. Mr. HESS (Israel) stated that, to facilitate the discussions, his delegation had decided to withdraw amendment CDDH/II/14.

59. Mr. MARTIN (Switzerland) said he was prepared to support the CDDH/II/12 proposal to replace "assistance" by "aid". Thus, article 17 would have to do with immediate material aid such as was recommended by the representative of the Holy See, while article 54, which provided for the organization of assistance as part of civil defence, would retain all its significance.

60. Mr. NGUYEN QUI DON (Republic of Viet-Nam) said that the amendment submitted by his delegation (CDDH/II/89) had been drafted with the idea of protecting the interests of the sick and wounded, so that they would be better looked after, as the care provided by the civilian population was not sufficient.

61. Mr. DENISOV (Ukrainian Soviet Socialist Republic) pointed out with regard to the amendment submitted by the delegation of the Republic of Viet-Nam that it was a matter for every citizen to decide for himself, that it was a question of conscience, and that each person had to decide whether he should or should not make a declaration to the local authorities. Furthermore, draft Protocol I did not relate only to international armed conflicts; its provisions were equally applicable to other movements, such as national liberation or freedom from domination movements. The declaration provided for under the amendment might therefore be contrary to article 1 of draft Protocol I, which had been adopted by Committee I.

62. The CHAIRMAN said that the debate on article 17 was closed. The majority of the amendments would be forwarded to the Drafting Committee. There would, however, be a vote by show of hands on the amendment submitted by the delegation of the Republic of Viet-Nam and on the substance of draft amendments CDDH/II/11, CDDH/II/16 and CDDH/II/19.

63. He put to the vote the substance of draft amendments CDDH/II/11, CDDH/II/16 and CDDH/II/19.

The guiding principle behind the three amendments was adopted by 45 votes to none, with 7 abstentions.

64. The CHAIRMAN put to the vote the amendment submitted by the delegation of the Republic of Viet-Nam (CDDH/II/89).

The amendment was rejected by 23 votes to 2, with 27 abstentions.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE EIGHTEENTH MEETING

held on Wednesday, 12 February 1975, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 16 - General protection of medical duties (CDDH/1, CDDH/56; CDDH/II/1, CDDH/II/29, CDDH/II/211)(continued)

1. Mr. HERNANDEZ (Uruguay), introducing his amendment to paragraph 3 (CDDH/II/29), said that article 16 covered a wide scope and lacked clarity. It would be improved by the deletions proposed in his amendment and in the amendments by Belgium (CDDH/II/1) and by Brazil, the Netherlands and Spain (CDDH/II/211).

2. The CHAIRMAN said that decisions on article 16 should be taken at the nineteenth meeting.

Article 18 - Identification (CDDH/1, CDDH/56; CDDH/II/19, CDDH/II/52, CDDH/II/210)

3. Mr. de MULINEN (International Committee of the Red Cross) said that article 18 developed chapter VII of the first Geneva Convention of 1949, (the distinctive emblem). It contained all the basic principles concerning identification in general and signalizing in particular: it was a key article and formed a link between draft Protocol I and its technical annex. Present-day techniques, despite their wide possibilities, were subordinated to the rules of protection and to elementary military and tactical requirements, which formed the basis of the article.

4. The purpose of paragraph 1 was to urge all countries to endeavour to ensure the identification of medical personnel, units and means of transport. Paragraph 2 contained additional provisions concerning the civilian side, for which protection had been introduced only in 1949, whereas the military medical sector was already widely protected under the Conventions. Paragraph 3 established the principle that the distinctive emblem could not be used without the assent of the competent authority. Paragraph 4 introduced a new provision permitting the use of distinctive signals, in addition to the distinctive emblem, for medical units and means of transport, but not for personnel. Paragraph 5 expressly contained the link between draft Protocol I and the annex. Paragraph 6 provided that the provisions of the Conventions relating to supervision of the use of the distinctive emblem and the prevention of any misuse should be extended to include distinctive signals.

5. The CHAIRMAN invited the sponsors of amendments to introduce their proposals.

6. Mr. CLARK (Australia) said that he wished to withdraw his amendment to article 18, paragraph 4 (CDDH/II/33), and his sponsorship of the amendments to paragraphs 1 and 4 in document CDDH/II/55. He was submitting new amendments (CDDH/II/210).

7. Mr. SOLF (United States of America), introducing the amendment to paragraph 1 in document CDDH/II/55, said that the paragraph dealt with the obligation of the Parties to a conflict to ensure identification of medical personnel, units and means of transport. The sponsors of the amendment considered that the original ICRC draft was in very general terms and did not make it clear whether the paragraph referred to the identification of each party's own personnel, units and transport or whether it referred also to the means for recognizing protected medical units and transport of the other party. Formerly, it had been possible for anyone with good vision to see the visual emblem at short distance, if the light was good; but with the introduction of electronic means of identification, such as radio and secondary surveillance radar, Protocol I should contain a provision on the lines indicated in the amendment; and the most appropriate place was article 18.

8. Mr. MAKIN (United Kingdom), introducing the amendment to paragraph 2 in document CDDH/II/55, said that it was a substantive amendment whose object was to make it clear that the obligation to provide civilian medical personnel, units and permanent means of transport with documents did not apply in peacetime. He doubted whether, even with the amendment, all countries would accept such an obligation and wondered whether countries should not be asked to endeavour to provide documents, instead of the provision being made mandatory.

9. Mr. KUCHENBUCH (German Democratic Republic), introducing the amendment to paragraph 4 in document CDDH/II/19, said that the identical amendment sponsored by his country, which appeared on page 130 of document CDDH/56, should be deleted. The reason for the amendment was that since the first sentence of the paragraph made it clear that the distinctive emblem was the main identification sign for medical units and medical means of transport, distinctive signals could only be an additional means of identification: they could not replace the distinctive emblem or be used as the only emblem.

10. Mr. SOLF (United States of America) introduced the amendment to paragraph 4 in document CDDH/II/55. The first point, the replacement of the word "Besides" by the words "In addition" was a drafting matter. The main purpose of the amendment was to make it clear that the distinctive emblem was the primary means of identification and that only in extreme circumstances - for example where the safety of a medical aircraft was threatened by attack - would it be possible to use distinctive signals without the distinctive emblem.

11. With regard to paragraph 5, the sponsors of the amendment considered that paragraph 1 was governed by chapters I to III of the annex to draft Protocol I as well as paragraphs 2 to 4. Only a few of the signals in the annex were distinctive signals, and the Technical Sub-Committee on Signs and Signals at the first session had reorganized the annex so that distinctive signals appeared in chapter III and common communication matter in chapter IV (see CDDH/49/Rev.1, Annex II, Appendix I). Exceptions had been made in the case of light signals, however, and the Technical Sub-Committee had decided that Parties to a conflict might agree to use light signals in certain emergencies. The sponsors of the amendment therefore considered that certain exceptions should be recognized.

12. The amendment to paragraph 6 was proposed in the interests of clarity.

13. After a brief discussion, the CHAIRMAN said that all the amendments now before the Committee contained matters of substance. He accordingly invited representatives to open the general debate on article 18.

14. Mr. MARTIN (Switzerland) said that the amendment to paragraph 1 in document CDDH/II/55 referred, inter alia, to the methods and procedures to be adopted for the recognition and protection of medical units and transports, whether using the distinctive emblem or a distinctive symbol, whereas the ICRC text contained only the general principle set out in the first part of the amendment. In his view, paragraph 1 should confine itself to stating the general principle that "each Party to the conflict shall endeavour to ensure the identification of medical personnel, units and means of transport", since paragraph 4 of the ICRC text dealt with part of the subject matter of the second part of the amendment, namely the use of distinctive emblems or signals, while the methods and procedures for identification were given in the annex to draft Protocol I. He accordingly supported the ICRC text of paragraph 1, read in conjuction with paragraphs 4 and 5 of that text.

15. With regard to the proposal in document CDDH/II/55 relating to paragraph 2, he did not think it practicable to prepare identity cards only after a conflict had broken out; they were generally prepared by health services in peace time. He therefore supported the original ICRC text of paragraph 2.

16. Mr. CALCUS (Belgium) said that he fully supported the amendment to paragraph 1 in document CDDH/II/55. The correct French translation of the term "transports" in that paragraph and elsewhere was "moyens de transport".

17. In his opinion, the amendments to the last sentence of paragraph 4 in documents CDDH/II/19 and CDDH/II/55 related to a matter of substance and should be discussed in the Committee.

18. Mr. AL-FALLOUJI (Iraq) pointed out that article 18 was entitled "Identification" and it had been agreed that paragraph 1 of each article should state the object of the article concerned. That had been done in the ICRC text and his delegation accordingly found it acceptable. Amendment CDDH/II/55 dealt with other matters besides the question of principle. The second sentence of the amendment raised the important question whether a distinctive signal could be used in the place of a distinctive emblem, which was bound to cause controversy. A military aircraft would have no difficulty in transmitting on a given frequency or emitting a blue light. Consequently, it was important that the distinctive emblem should not be used except in a genuine emergency.

19. Mr. BOGLIOLO (France) said that the question of distinctive emblems and distinctive signals had been discussed at length in 1973 in an intergovernmental committee of experts and it had been recognized that, in the case of most countries, evacuation of the wounded would not be carried out by aircraft bearing a distinctive emblem; they would, therefore have to employ luminous signals or radar when engaged on such a mission. The number of small aircraft or helicopters required for use solely in transporting wounded would be very much beyond the capacity of most countries and they would frequently use aircraft which had been engaged in military combat at one time of the day for humanitarian activities at another. That was why it was necessary to make provision for distinctive signals.

20. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he agreed with the Swiss representative that the order in the ICRC text of article 18 was more logical than the order proposed in the amendments. The general principle of identification should obviously be dealt with first.

21. The amendments to paragraphs 1 and 4 related to matters of substance, but the others were mostly of a drafting nature. In paragraph 4, it was not logical to refer to distinctive signals without a prior reference to distinctive emblems, which historically had been used to distinguish medical units and transports from their military counterparts. With regard to the French representative's explanation of the technical problems involved, he suggested that, if the second sentence of paragraph 4 were deleted, the distinctive emblem and distinctive signals referred to in the first part of the paragraph could be dealt with in the annex.

22. Mr. KHAIRAT (Arab Republic of Egypt) said that he shared the views expressed by the representatives of Switzerland and Iraq concerning paragraph 1. The amendment in document CDDH/II/55 gave equal importance to the distinctive emblem and the distinctive signal. Cases where it was impossible to use the distinctive emblem were dealt with in paragraph 4.

23. He supported the amendment to paragraph 2 in document CDDH/II/55, as it made the paragraph more comprehensive.

24. Mr. AL-FALLOUJI (Iraq) said that, in general, he supported the ICRC text of article 18, although he might wish to suggest some modifications later.

25. Mr. RIVERO ROSARIO (Cuba) said that he, too, preferred the ICRC text of paragraph 1 to the text proposed in amendment CDDH/II/55.

26. He agreed with the proposal to delete the last sentence of paragraph 4 (CDDH/II/19). In his view the first sentence of that paragraph was also superfluous.

27. Mr. MARTIN (Switzerland) said that the amendment to paragraph 2 in document CDDH/II/55 raised an important question. He found it hard to accept that a High Contracting Party not a Party to the conflict would not be under an obligation to issue a document attesting to the medical nature of civilian medical personnel, units and permanent means of transport. In his view, the text should refer both to the High Contracting Parties and to each Party to the conflict.

28. In the French text, the word "identifiés" should be applied to emblems in paragraph 3, and the word "signaliser" should be applied to signals in paragraph 4.

29. He would need further information about possible cases of emergency before being able to express an opinion on the desirability of deleting the second sentence of paragraph 4. In might be important to retain it on humanitarian grounds.

30. Mr. HESS (Israel) recalled that, as was well known, medical personnel and units in the Israel armed forces were identified by the Red Shield of David as the distinctive emblem. He referred to the full statement of his country's position at the seventeenth meeting (CDDH/II/SR.17).

31. Mr. SOLF (United States of America) said that many delegations appeared to be in favour of confining paragraph 1 to a statement of the general principle, without entering into technical details. He suggested that the ICRC text of paragraph 1 might be retained and the technical details set out in a separate paragraph. But there were also technical problems. Should the words "distinctive emblem or a distinctive signal" be used? Or should "or" be replaced by "and/or"? Or again, should the text be limited to distinctive signals? There was no difficulty in recognizing distinctive emblems, but more complicated procedures were involved in the recognition of distinctive signals.

32. There appeared to be three points of view about paragraph 4. The French representative had suggested that the distinctive signal might be used instead of the distinctive emblem in the case of medical emergencies. The second point of view was that under no circumstances should the distinctive signal be used unless the transport was also marked with the distinctive emblem. The third was that the distinctive signal should normally be used only when a distinctive emblem was also displayed but that in extreme emergencies it should be possible to use any means available to identify transports in temporary use for medical purposes. He suggested that the Chairman should set up a Working Group consisting of delegations representing the three points of view in order to try to agree upon a mutually acceptable text.

33. Mr. MARRIOTT (Canada) said that he supported the United States proposal with regard to paragraph 1, but most of the speakers who had indicated their preference for the ICRC text of paragraph 1 had not stated whether they wished the second part of the amendment to that paragraph to be included elsewhere in the article.

34. With regard to the use of distinctive emblems or, for instance, flashing blue lights, it was necessary to face the facts. There were very few countries which would have sufficient helicoptors to enable them to set aside a sufficient number for exclusively medical purposes, and he was sure that, when necessary, any helicoptors available would be used to evacuate the wounded, whether or not they were marked with a distinctive emblem. Helicopters entering a contact zone would not have more than about five seconds to identify themselves as medical helicopters; he also doubted whether any emblem painted on the narrow front end of a helicopter would be recognizable. Consequently, it was necessary to have a distinctive signal for the safety of the aircraft.

35. Mr. MARTIN (Switzerland) said that methods and procedures as distinct from the principle of identification could be dealt with either by introducing a new paragraph 4 bis or by an addition to paragraph 4. He supported the United States proposal that a Working Group should be set up to deal with the question; he assumed that a representative of the ICRC would be a member of that group, as that would ensure that the Group would be aware of the conclusions reached at the meeting of Government experts held in 1972.

36. Mr. CALCUS (Belgium) said he agreed with the French representative about the difficulty of ensuring that transport aircraft were marked with the distinctive emblem. He fully supported the amendment to paragraph 4 in document CDDH/II/55, but he thought that the expression "In case of emergency" should be altered, since it might give the impression that only medical emergencies were being considered. Some form of wording more appropriate to the situation of countries like Belgium was needed. Such countries might well use transport aircraft both to take military stores to the battlefield and to bring back wounded from it. He supported the United States representative's suggestion that a Working Group should be set up; his delegation would be willing to participate in it.

37. Mr. MAKIN (United Kingdom) said that the United States representative had clearly set out the three points of view on the question; but, in his view, there were also a number of intermediate possibilities. The exception provided for did not necessarily have to apply to all forms of transport. For example, it could be restricted to aircraft only, or to helicopters only. Different military issues were involved, depending on whether transport on land, air or sea was involved. Perhaps it would be possible to work out a compromise. He, too, supported the suggestion that a Working Group should be set up.

38. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, in order to save time, the sponsors of amendment CDDH/II/19 were withdrawing it.

39. Mr. CLARK (Australia), referring to the United States representative's suggestion with regard to the amendment to paragraph 1 proposed by the Australian delegation (CDDH/II/210), said that, in his view, that amendment could be placed in a new paragraph 2; the statement of principle now contained in the ICRC version would thus be left intact. He supported the proposal to set up a Working Group.

40. Mr. ONISHI (Japan) said that the principle of a distinctive emblem was accepted; but that was not sufficient under the conditions prevailing in modern warfare, so that some other means of identification was necessary. He did not think, therefore, that it was very important to say that the emblem should be considered as the principal means of identification and that any other method of identification should be regarded as being merely supplementary to that emblem.

41. With regard to paragraph 2, he could not agree with the views expressed by the representative of Switzerland. In the case of a country such as Japan, which had decided to refrain from war, no form of identification was needed by the personnel and units concerned in peacetime. If a country such as Switzerland wished to provide such identification, it was at liberty to do so under the Geneva Conventions. It was not necessary to make that procedure compulsory for all countries.

42. As to paragraph 4, his delegation supported the original ICRC draft. It considered the Australian proposal (CDDH/II/210) to be acceptable, but thought that it should refer specifically to temporary medical transport, since permanent units should in any case have been marked with the distinctive emblem. That applied, in particular, to the temporary use of aircraft, which would not carry the distinctive emblem.

43. Mr. de MULINEN (International Committee of the Red Cross) said that the discussion had shown the importance of article 18. Without a real consensus on that article and all its provisions, a workable technical annex would not be possible. The proposal that a Working Group should be set up had the full support of the ICRC.

44. The Group should include representatives of the four working languages. The question of temporary means of medical transport, referred to in the second sentence of paragraph 4, had to be considered in the light of the conditions existing on the battlefield. The relationship between the distinctive emblem and distinctive signals must also be made absolutely clear.

45. So far as the annex to draft Protocol I was concerned, there was a close connexion between article 18 and the arrangements for the revision of article 16 of that annex. If the final version of article 16 of the annex provided for easy and frequent revision of the annex, it would be possible to go into greater detail. If, however, a diplomatic conference was required before the annex could be revised, it would be better not to go into detail. The Working Group should therefore consider article 16 of the annex in relation to article 18.

46. Mr. ROSENBLAD (Sweden) supported the proposal for setting up a Working Group. His delegation would be glad to participate in it.

47. The CHAIRMAN pointed out that, as far as paragraph 1 was concerned, the Committee had to consider only amendment CDDH/II/55. He asked whether or not the Committee wished to vote on that amendment.

48. Mr. SOLF (United States of America) said that the United States delegation and the other sponsors of the amendment in question were prepared to accept paragraph 1 as drafted by the ICRC, provided that the first paragraph of the Australian proposal (CDDH/II/210) was included in article 18 as a new paragraph 2.

49. The CHAIRMAN asked whether representatives were prepared to vote on a new paragraph without seeing it in writing.

50. Mr. MARTIN (Switzerland) suggested that, as the United States delegation had accepted the original paragraph 1, the amendments could be discussed by the Working Group. The Group could decide on the precise form of the new text and its place in article 18.

51. Mr. SOLF (United States of America) accepted that suggestion, on the understanding that the adoption of the original version of paragraph 1 did not imply any rejection of the substance of the additional words appearing in amendment CDDH/II/55.

52. The CHAIRMAN inquired whether the Committee wished to vote on the replacement, in paragraph 2, of the words "High Contracting Parties" by "Parties to the conflict".

53. Mr. MARTIN (Switzerland) thought that a question of principle was involved and that only the ICRC representative could give the Committee guidance. Would such a change in wording apply only to article 18, or to wherever the words "High Contracting Parties" appeared? He had already suggested that the expression "High Contracting Parties and Parties to the conflict" might be used. He did not think that a vote on the question should be taken at that time.

54. Mr. de MULINEN (International Committee of the Red Cross) said that it was usual, in the Geneva Conventions and draft Protocol I, to speak of "High Contracting Parties". In the present case, it might be advisable for the Working Group to study the problem from a practical point of view.

55. The CHAIRMAN said that it was clear that there was a consensus that that question too should be referred to the Working Group.

56. As far as paragraph 4 was concerned, it was precisely the problems relating to that paragraph that had led to the suggestion that a Working Group should be set up. There was therefore no need to take a vote on the amendments relating to it.

57. Document CDDH/II/55 also proposed an amendment to paragraph 5, but it was purely a matter of drafting that could be referred either to the Drafting Committee or to the Working Group.

58. There appeared to be no opposition to the amendment proposed to paragraph 6 in the same document.

The amendment to paragraph 6 was approved by consensus.

59. The CHAIRMAN said that the discussion on article 18 being completed, it remained to set up the Working Group. It had been suggested to him that the delegations of the following countries would be willing to participate: Belgium, Cuba, France, India, Iraq, Nigeria, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America. The International Committee of the Red Cross would also be willing to participate. He would suggest Algeria as another African country.

60. Mr. SCHULTZ (Denmark) and Mr. CLARK (Australia) said that their delegations would like to join the Group.

61. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) felt that the smaller the group, the more likely it was to be successful in its work. As the amendment with which his delegation was associated (CDDH/II/19) had been withdrawn, he was prepared to give up his seat on the Working Group.

62. Mr. MAKIN (United Kingdom) suggested that the problem could be resolved by making membership of the Group open to all who wished to attend its deliberations, rather than attempting to achieve a balanced composition.

63. The CHAIRMAN replied that it was his responsibility to appoint the members of the Group. He proposed that the representative of Iraq should be the Chairman.

64. Mr. AL-FALLOUJI (Iraq) expressed his willingness to become the Chairman of the Working Group. The problem of size could be overcome by setting up smaller groups to deal with particular questions.

The meeting rose at 12.55 p.m.

SUMMARY RECORD OF THE NINETEENTH MEETING

held on Thursday, 13 February 1975 at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 15 - Civilian medical and religious personnel (CDDH/1; CDDH/II/201/Rev.1, CDDH/II/216) (continued)*

1. The CHAIRMAN said that the Netherlands amendment to article 15 (CDDH/II/216) had not yet been distributed in all four languages. He therefore suggested that the Committee continue its consideration of article 16, on the understanding that it would revert to article 15 as soon as all delegations had had the opportunity to study the Netherlands amendment.

2. Mr. KUSSBACH (Austria) said that there was no direct link between the Netherlands amendment (CDDH/II/216) and the amendment of which his delegation was a sponsor (CDDH/II/201/Rev.1). Consequently, there was no reason why the Committee should not vote on the latter amendment immediately.

3. The CHAIRMAN said that unless there was any objection, he would take it that the Committee agreed to vote on amendment CDDH/II/201/Rev.1 before amendment CDDH/II/216 had been circulated in all the working languages.

It was so agreed.

4. The CHAIRMAN put amendment CDDH/II/201/Rev.1 to the vote.

The amendment was adopted by 30 votes to none, with 8 abstentions.

Article 16 - General protection of medical duties (CDDH/1, CDDH/56; CDDH/II/1, CDDH/II/24, CDDH/II/29, CDDH/II/43, CDDH/II/48, CDDH/II/209, CDDH/II/211, CDDH/II/212) (continued)

5. The CHAIRMAN said that article 16 and the related amendments had already been discussed by the Committee, which had agreed to refer to the Drafting Committee those amendments which were not concerned with substance. Among the amendments on which no decision had yet been taken was that submitted by the United Kingdom delegation (CDDH/II/209).

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* Resumed from the seventeenth meeting.

6. Mr. MAKIN (United Kingdom), introducing his delegation's amendment (CDDH/II/209), said that there were three main differences between it and the ICRC draft. First, the opening words of paragraph 1 had been replaced by a longer introductory phrase which related to the entire article, and the three paragraphs of the ICRC draft had been combined into a single paragraph. His delegation would not press for the adoption of the introductory phrase, provided it was the understanding of the Committee that physical or mental torture, unpleasant or disadvantageous treatment and any form of coercion were indeed prohibited.

7. Secondly, the word "irrespective" had been substituted for the word "regardless" in paragraph 1 of the ICRC draft. His delegation therefore withdrew its earlier amendment to that paragraph (CDDH/II/48).

8. Thirdly, the phrase "any authority of the adverse Party" in paragraph 3 of the ICRC draft had been replaced, in sub-paragraph (c) of the amendment, by the phrase "any member of the party adverse to that person" in order to make it clear that the provision referred to the party adverse to the doctor. Furthermore, the phrase "or who have been under his care" had been added, to ensure that the provision would continue to apply once the patient had left the doctor's surgery. The phrase "in his opinion" had also been added to make the meaning clearer.

9. The CHAIRMAN said that, in his view, a distinction should be made between the drafting points and questions of substance involved in the United Kingdom amendment. As he saw it, there were five differences of substance between the ICRC draft and the United Kingdom amendment. It would no doubt be necessary to vote separately on each of those five points, which were, first, the mention of "physical or mental torture, unpleasant or disadvantageous treatment" in the introductory phrase; second, the word "irrespective" in sub-paragraph (a) and the omission of the phrase "in no circumstances" which appeared in the ICRC draft of paragraph 1; third, the phrase "any member of the party adverse to that person" in sub-paragraph (c); fourth, the phrase "in his opinion" in the same sub-paragraph ; and lastly, the phrase "in relation to the armed conflict", also in that sub-paragraph, which somewhat limited the scope of the provision as drafted by the ICRC.

10. Mr. PICTET (International Committee of the Red Cross) said that the text of the United Kingdom amendment was by and large a good one. However, he was a little concerned about the specific mention of torture in the introductory phrase. There was a general prohibition on the use of torture against any person, and to mention torture specifically in article 16 might have the effect of weakening that prohibition.

11. Mr. MARRIOTT (Canada) asked whether the phrase "under his care, or who have been under his care" referred only to the medical personnel caring directly for the patient or whether it could be construed to include other people who had legitimate access to the patient's medical record.

12. He thought that the phrase "in relation to the armed conflict" in sub-paragraph (c) might usefully be deleted, as its meaning was not clear to his delegation.

13. Mr. PICTET (International Committee of the Red Cross) said that, in his view, the first of the two phrases mentioned by the Canadian representative should be interpreted in the broadest sense. In other words, it would also include people with access to the medical records.

14. Mrs. DARIIMAA (Mongolia) said that paragraph 1 of the ICRC draft, which referred to the broad concept of punishment, was more general in scope than the introductory phrase of the United Kingdom amendment, which contained a list of prohibited actions. Lists could help to provide a legal basis for national rules, but they could cause difficulties if they were not exhaustive. For that reason, her delegation preferred the ICRC text.

15. With regard to sub-paragraph (c) of the United Kingdom amendment, she thought that the term "that person" should be put in the plural - "those persons" - at least in the Russian version.

16. Mr. BOTHE (Federal Republic of Germany) said that several of the amendments proposed to paragraph 2 of the ICRC text had been amalgamated and issued as amendment CDDH/II/212. He requested that the vote on sub-paragraph (b) of the United Kingdom amendment be deferred until the Committee had taken cognizance of that text.

17. Mr. MAKIN (United Kingdom) said that, in the light of the comments by the ICRC representative, his delegation was ready to withdraw both the introductory phrase and sub-paragraph (a) of its amendment. It was also willing to withdraw sub-paragraph (b) in favour of amendment CDDH/II/212. The only part it wished to maintain was sub-paragraph (c).

18. The CHAIRMAN said that since the United Kingdom representative had withdrawn part of his amendment, the Committee should now confine itself to the three points of substance arising from sub-paragraph (c), namely, the phrases "any member of the party adverse to that person", "in his opinion" and "in relation to the armed conflict".

19. Mr. CZANK (Hungary) said he found paragraph 1 of the ICRC draft satisfactory as it stood, subject perhaps to the substitution of the word "irrespective" for the word "regardless". With regard to paragraph 2, his delegation was in favour of the amendment in document CDDH/II/212, which had been discussed in detail by a Working Group of the Drafting Committee. Finally, the ICRC text of paragraph 3 was acceptable to his delegation, subject to the replacement of the second sentence by the sentence in amendment CDDH/II/24.

20. Mr. BOTHE (Federal Republic of Germany) asked whether the sponsors of amendment CDDH/II/212 would be given the opportunity of introducing it.

21. The CHAIRMAN said that he would like to dispose of the United Kingdom amendment before taking up any others.

22. Mr. SCHULTZ (Denmark) said he associated himself with the Canadian representative's views on the phrase "in relation to the armed conflict". Before that phrase was put to the vote, it would be useful if the United Kingdom representative could explain both its meaning and its possible relationship to amendment CDDH/II/211.

23. Mr. AL-FALLOUJI (Iraq) said a very important aspect of the article was the introduction of the concept of punishment which, in the legal sense, was the second phase of a crime. Medical activities might be hindered by certain acts which could not be qualified in legal terms as punishable crimes so that if article 16 was to provide effective protection, it would be necessary to think very carefully about the word "punished". His delegation intended to raise that question in the Drafting Committee.

24. Mr. CLARK (Australia) suggested that the words "in his opinion" in the United Kingdom amendment be replaced by the words "in his judgement". There seemed to be no need to include the phrase "in relation to the armed conflict", which seemed to limit the scope of the provision. He shared the Canadian representative's doubts about that phrase, and agreed that some explanation was required from the United Kingdom representative.

25. Mr. MAKIN (United Kingdom) said that the purpose of the phrase "in relation to the armed conflict" was the same as that of amendment CDDH/II/211, namely to allow medical personnel to give information on matters that were unrelated to the armed conflict, for example, traffic accidents. It would be superfluous to adopt both that part of his delegation's amendment and amendment CDDH/II/211, since they were alternative ways of expressing the same idea.

26. He had no objection to the Australian representative's suggestion that the word "judgement" be substituted for the word "opinion". The only purpose of the phrase "or who have been under his care" was to ensure that the provision did not cease to apply as soon as the patient ceased to be under the doctor's care.

27. The CHAIRMAN asked whether the Committee was ready to vote on the first of the three phrases in sub-paragraph (c) of the United Kingdom amendment which he had read out earlier.

28. Mr. KHAIRAT (Arab Republic of Egypt), speaking on a point of order, asked whether amendment CDDH/II/29, submitted by Uruguay, had been withdrawn, since that amendment was related to one in document CDDH/II/209.

29. The CHAIRMAN said that as the representative of Uruguay had not been present during the discussion of article 16 he would suggest that a separate vote be taken on his amendment (CDDH/II/29) later, since the two amendments, though admittedly related, dealt with different aspects of the same problem.

30. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that if a delegation submitted an amendment and was then absent at the time it came before the Committee, discussion of it should not be postponed until later.

31. The CHAIRMAN asked whether the representative of the Union of Soviet Socialist Republics was referring specifically to the Uruguayan amendment or was speaking generally.

32. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he was speaking generally and would expect the rule to apply to his own delegation's amendments as well.

33. Mr. MAKIN (United Kingdom) asked whether the meeting might assume that the rule suggested by the representative of the Union of Soviet Socialist Republics concerning the amendments of absent members could be assumed to be adopted by consensus.

It was so agreed.

34. The CHAIRMAN said he would now put to the vote the phrase "the party adverse to that person" in sub-paragraph (c) of the United Kingdom amendment (CDDH/II/209).

The phrase "the party adverse to that person" was adopted by 26 votes to 1, with 10 abstentions.

35. Mr. GOZZE-GUĆETIĆ (Yugoslavia) pointed out that the French text did not include any wording corresponding to the words "to that person" in the English version.

36. The CHAIRMAN said that the Drafting Committee would bring the French version into line with the English.

37. He then put to the vote the phrase "in his opinion" in paragraph (c) of the same amendment.

The phrase "in his opinion" was adopted by 40 votes to none, with 9 abstentions.

38. The CHAIRMAN asked whether the Committee thought that the phrase "in relation to the armed conflict", which was similar to the amendment submitted by Brazil, Netherlands and Spain (CDDH/II/211), should be left to the Drafting Committee, which would bring it into line with that amendment.

39. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that to the extent that that amendment extended the rule concerning notification of infectious diseases to cases of suspected criminal acts, it became a question of substance and not a mere drafting one.

40. The CHAIRMAN said he agreed with that view and suggested that the Committee might first perhaps consider amendment CDDH/II/211. He invited the representative of Brazil to introduce the amendment.

41. Mr. DUNSHEE de ABRANCHES (Brazil), introducing amendment CDDH/II/211, said that the co-sponsors had taken into consideration some useful remarks by the representatives of Australia, Canada, Cuba, Denmark and France.

42. The first sentence of the proposed new paragraph 4 incorporated the United States drafting amendment to the last sentence of paragraph 3, relating to communicable diseases (CDDH/II/24). The sponsors proposed an addition providing that doctors should also respect regulations which required the reporting of the treatment of an injury that gave grounds for suspicion that a criminal offence had been committed by their patients. Their draft amendment however, established two conditions: first, that the doctor's obligation to report the treatment of an injury should be already imposed by domestic law in force prior to the outbreak of armed conflict; second, that the doctor should be free to decide whether the circumstances of each case gave grounds for suspicion of a criminal offence, according to the normal deontological rules.

43. The sole purpose of the amendment was to prevent the possibility that paragraph 3 of the future Protocol I might be used for the benefit of an ordinary criminal who might be wounded and seek the help of a doctor. Paragraph 1 of the present article 3 provided that "In addition to the provisions applicable in peacetime, the present Protocol shall apply from the beginning of any situation referred to in Article 2 common to the Conventions". Some fear had been expressed that the amendment might be interpreted as applicable against, for example, a wounded guerrilla if he were considered as a political criminal. That was not the case, since Protocol I covered only international armed conflicts. In that Protocol, the situation of "members of independent missions" or "members of organized resistance movements" was clearly provided for in articles 40 and 42.

44. Mr. MARRIOTT (Canada), referring to the point raised by the representative of the Union of Soviet Socialist Republics who felt that communicable diseases and criminal offences should not be linked together in the same paragraph, said that his delegation did not agree with that view. The proposed new paragraph 4 provided for respect for the ordinary law, as opposed to the protection of medical persons from the type of coercion referred to in paragraph 3.

45. With regard to the point raised by the representative of Iraq, he wished to make it clear that the second half of the amendment referred only to injuries and not to any other aspect of crime.

46. Mr. DEDDES (Netherlands) said that he considered the joint amendment (CDDH/II/211) to be much more a drafting amendment than one of substance.

47. Mr. SCHULTZ (Denmark) said he had some doubts about that amendment, because even if the domestic law previously in force was considered, the provision might still be used against underground movements after a military occupation. He would prefer to see at the end of the last sentence, some wording along the lines of the United Kingdom proposal, such as "a criminal offence having no relation to the armed conflict has been committed".

48. Mr. CZANK (Hungary) said he also had some doubts about the amendment, as the reporting of injuries would already be covered by existing law. It was hardly necessary then to add the new provision. With regard to the phrase "injuries which ... give grounds for suspicion", it would be necessary to specify that there were grounds for serious suspicion otherwise the wording would be too general. He was not convinced, however, that it was reasonable to include such a provision.

49. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that Protocol I could hardly be expected to deal with all the numerous cases which could arise in armed conflict; in any event, since the whole Protocol dealt with the situation of armed conflict, there was no need to include specific reference to it. His delegation objected to the idea of obliging doctors to notify authorities when they suspected that a criminal offence had been committed, although doctors would be free to do so if they considered it necessary. Again, was a doctor competent to decide what constituted a criminal offence? If the joint amendment (CDDH/II/211) were accepted, it would have the effect of narrowing the scope of the article..

50. Mr. AL-FALLOUJI (Iraq) said he agreed with the representative of the Union of Soviet Socialist Republics that there was a risk in including the reference to criminal offences. Doctors should not be turned into informers or intelligence agents. The duties of a physician should not include an obligation to give information, although he did of course preserve his right to do so as an ordinary citizen.

51. Mr. DUNSHEE de ABRANCHES (Brazil) said that he could accept the oral sub-amendment suggested by Denmark, which it regarded as an improvement to its text. He did not agree, however, that his delegation's amendment could be construed as obliging a doctor to inform the police, since it proposed that the domestic law in force before the outbreak of armed conflict should be applied. A second addition should perhaps be made stipulating that the domestic law would also be respected.

52. Mr. SANCHEZ DEL RIO (Spain) said that, as one of the co-sponsors of amendment CDDH/II/211, he wished to state his agreement with the representative of Brazil concerning the Danish amendment.

53. Mr. SCHULTZ (Denmark) said that he had suggested his oral amendment as a means of expressing his doubts concerning the paragraph as a whole. Having heard similar doubts expressed by other delegations, he was not convinced that the new paragraph, even with his added words, was the best solution. The ICRC text of paragraph 3 might after all be the best, and he consequently wished to withdraw his oral amendment. He noted, however, that that amendment had been taken over by the co-sponsors of amendment CDDH/II/211.

54. The CHAIRMAN said he would now put to the vote the joint amendment (CDDH/II/211), it being understood that the Danish sub-amendment had been taken over by the co-sponsors of the joint amendment.

The joint amendment, as amended, was rejected by 32 votes to 9, with 14 abstentions.

55. The CHAIRMAN asked if the United Kingdom representative wished to retain the phrase "in relation to the armed conflict".

56. Mr. MAKIN (United Kingdom) said that as he had voted against amendment CDDH/II/211, he wished to withdraw his own amendment.

57. The CHAIRMAN invited the Committee to consider the amendment to article 16 by Australia and seven other countries (CDDH/II/212). He asked whether it was considered to be a drafting amendment or not.

58. Mr. BOTHE (Federal Republic of Germany) said that there were slight differences of substance in the joint amendment in relation to the original ICRC text; the Belgian amendment (CDDH/II/1) had been withdrawn. He felt therefore that the joint amendment was an amendment of substance rather than a drafting matter and the sponsors would like a vote on the new wording.

59. There had been a drafting problem because the prohibition to induce positive action and the prohibition to induce abstention or omission were now expressed in one sentence. The Working Group had used the English version, as further work would be required on the French version. The main improvement was the fact that the rules which medical personnel might not be forced to violate were spelled out in a more complete and detailed manner. The relevant norms were to be found, first in the Geneva Conventions and the Protocols themselves; secondly, in the rules of medical ethics designed for the benefit of the wounded and sick, as opposed to those rules concerning only the interests of the profession; thirdly, in other rules designed for the same purpose and applicable in a specific case. The Belgian amendment had been withdrawn on the understanding that the prohibition of the administration of drugs to induce revelation was clearly stated in article 11 as amended in document CDDH/II/43.

60. The CHAIRMAN put to the vote the joint amendment (CDDH/II/212).

The joint amendment was adopted by 48 votes to none, with 5 abstentions.

61. The CHAIRMAN said that there remained to be settled the question of the Uruguayan amendment. He asked whether the Committee wished to vote on it.

62. Mr. AL-FALLOUJI (Iraq) suggested that, in the light of the discussion, the amendment might be considered to have been withdrawn.

63. Miss MINOGUE (Australia) said that the Committee's view had already been expressed through its support of the United Kingdom amendments to sub-paragraph (c) (CDDH/II/209).

64. The CHAIRMAN said that the Drafting Committee would submit a final version of article 16, as a whole, as amended.

Article 15 - Civilian medical and religious personnel (CDDH/1; CDDH/II/216) (continued)

65. The CHAIRMAN suggested that, since the Netherlands amendment (CDDH/II/216) to article 15 had already been sufficiently discussed at an earlier meeting and had now been circulated in all four languages, he might be permitted to put it to the vote without further delay.

It was so agreed.

The Netherlands amendment (CDDH/II/216) was rejected by 13 votes to 6 with 29 abstentions.

Proposed new article 18 bis - Missing and dead: graves (CDDH/56; CDDH/II/56)

66. The CHAIRMAN welcomed Mr. Marc Schreiber, Director of the United Nations Division of Human Rights, and invited him to address the Committee.

67. Mr. SCHREIBER (Director of the United Nations Division of Human Rights) said that it was a special pleasure for him to address the Committee as an observer for the United Nations, particularly in view of his past association with the preparatory work for the Conference carried out by expert bodies. The Secretary-General of the United Nations had been requested by the General Assembly to draw the attention of the Conference to resolution 3220 (XXIX) adopted by the General Assembly at its twenty-ninth session on "Assistance and co-operation in accounting for persons who are missing or dead in armed conflicts". That resolution was yet another example of the continuing interest of the United Nations in the protection of the human rights of persons involved in armed conflicts. The Committee would remember the resolutions adopted by the General Assembly in previous years on various aspects of the problem. The voting on resolution 3220 (XXIX), now transmitted by the Secretary-General, had been 95 in favour, none against, with 32 abstentions. Once again, the support of the General Assembly for the full application of the 1949 Geneva Conventions by all the Parties and for the work of the ICRC had been emphasized in the strongest terms.

68. In particular, the United Nations resolution was concerned with the missing and dead in all armed conflicts. It stressed, among other points, that "the desire to know the fate of loved ones lost in armed conflicts is a basic human need which should be satisfied to the greatest extent possible, and that provision of information on those who are missing or who have died in armed conflicts should not be delayed merely because other issues remain pending".

69. Resolution 3220 (XXIX) was thus a purely humanitarian one. It did not refer to any particular conflict and only to present and future situations where the gravest anxieties of mothers, children and parents might be alleviated by manifestations of good will by those who would furnish information or permit that, in accordance with the most sacred traditions of all civilizations, the next-of-kin of those who died in armed conflicts might be assured that proper burial had been given to their loved ones.

70. Mr. BOTHE (Federal Republic of Germany), introducing amendment CDDH/II/56 on behalf of the sponsors, said that the new article 18 bis that it proposed, concerning missing and dead persons and graves, might be considered, from the humanitarian point of view, one of the most important additions to the ICRC draft. To mitigate the suffering of the families of those who disappeared in war by removing the uncertainty about their fate and to give them an opportunity to remember their dead in the place where their remains lay was a fundamental humanitarian principle. Such principles were already included in the so-called Oxford Manual of 1880 and in The Hague Regulations of 1899 and 1907[1] and in the Geneva Conventions of 1906, 1929 and 1949.

71. The basic obligations resulting from those instruments could be summed up as the right to an honourable burial; the duty to mark and maintain graves; the duty to secure and exchange information on the missing and the dead as well as their graves; and the duty to allow exhumations.

72. Those principles had been recognized by the United Nations General Assembly in resolution 3220 (XXIX), adopted in 1974. The existing provisions had had a salutary effect in many conflicts, but they left a number of gaps and the purpose of amendment CDDH/II/56 was to remedy those shortcomings. The proposed improvements were concerned with five main issues. First, the existing provisions did not cover all categories of missing and dead persons, in particular those civilians who were not internees protected by the fourth Geneva Convention of 1949. Second, the provisions with regard to the maintenance of graves and the keeping of records thereof needed elucidation. Thirdly, the access to graves was not expressly granted in the provisions; fourthly, the duty to allow exhumation and return of the remains needed to be made clearer; fifthly, the duty to secure and exchange information on the missing and dead needed to be strengthened.

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[1] Annexed to The Hague Convention No. IV concerning the Laws and Customs of War on Land.

73. Reviewing the proposed new article 18 bis paragraph by paragraph, he pointed out that paragraph 3 was an extension of the existing obligations to mark and maintain graves, as set forth in the Geneva Conventions, to cases which were not covered, especially cases of civilians who were not internees. He suggested that the text might be further improved by the insertion of the words "search for, locate and" before "properly mark".

74. Paragraph 4 was a clarification of the duty to maintain graves.

75. Paragraph 5 (a) was a clarification of the procedure and time with respect to the duty to allow the exhumation and return of the remains of a deceased person. It was also an extension as concerned cases not yet covered. He accepted the amendment submitted by the United Kingdom delegation (CDDH/II/56/Rev.1).

76. The right of access to graves guaranteed by paragraph 5 (b) was an obvious and fundamental humanitarian need.

77. Paragraph 5 (c) provided for bilateral agreements between the States concerned for the protection and maintenance of graves. Such bilateral agreements were the best way of regulating the many detailed questions which might arise in that respect.

78. Paragraph 6 provided that the home State of the dead should bear the cost of maintaining graves if the State in which the graves were situated offered to return the remains. In the view of the sponsors that was a necessary corollary to the duty of maintaining such graves. Otherwise, the State responsible for the maintenance of the graves might rightly feel itself overburdened.

79. Paragraph 7 provided that each Party to the conflict should try to obtain information on missing persons in general. That met a fundamental humanitarian need, which was not yet fully and explicitly covered by existing treaty obligations.

80. Paragraph 8 provided that it was the duty of each Party to the conflict to exchange information in cases not yet covered by existing treaty provisions.

81. Paragraph 9 was meant to facilitate the identification of dead or wounded civilians in a way similar to that followed in the case of combatants. There were obvious difficulties in such an undertaking so all that could reasonably be required was an endeavour to make a proper means of identification available but not strict compliance with the provisions in all cases.

82. Paragraph 10 which stated that the article was supplementary to existing provisions, was designed to make it clear beyond all doubt that existing obligations would not be weakened and remained intact with all their stringent and detailed regulations.

83. It might be argued that Part II of draft Protocol I, concerning the wounded and sick, was not the right place for the provision on dead and missing persons and graves. If article 18 bis was to be included in Part II, the title should perhaps be changed. What was important, however, was not its place in the Protocol, but its substance; where it should be placed could be left to the Drafting Committee.

84. Mrs. BUJARD (International Committee of the Red Cross) said that the ICRC had followed with interest the discussion on amendment CDDH/II/56 referring to search for missing and deceased persons during hostilities, and to the communication to the country of origin of information concerning such persons. The question of transmitting information on dead and missing persons was already widely covered by the 1949 Geneva Conventions. In accordance with those Conventions the Parties to a conflict were obliged to take steps to register all information required to identify the wounded, sick and dead of the adverse Party which they had gathered on the battlefield. As regards persons protected by the third Geneva Convention of 1949, the Parties to a conflict had the duty to register all information in order that the families of those who had become prisoners of war in their hands might be informed rapidly. They also had the duty to receive and transmit information on civilians protected by the fourth Geneva Convention of 1949 who were in their power.

85. Such information was to be transmitted without delay to the national information bureaux which were required to transmit it immediately to the Powers concerned through the Protecting Power and the Central Tracing Agency. It included information on soldiers killed in combat or who had died from their wounds in internment camps, and also on civilians who had died after having been taken prisoner, placed in assigned residence or interned. Death certificates or authenticated lists of deceased persons had to be supplied to the competent authorities, as also wills, money and personal effects.

86. The Conventions were silent on one important matter: they did not oblige the Parties to a conflict to search at all times for soldiers of the opposing side whose names did not appear on the lists of captured or deceased persons. Nor were they obliged to carry out such searches in the case of civilians. Although the ICRC had not put forward any proposal on that subject, it felt that draft Protocol I should include a provision calling on the Parties to a conflict to search for missing persons whenever that was possible and at the close of hostilities at the latest. Such a provision would be in line with the request made at the XXIInd International Conference of the Red Cross, held at Teheran in 1973 (resolution V), and with the United Nations General Assembly resolution 3220 (XXIX) entitled "Assistance and co-operation in accounting for persons who are missing or dead in armed conflicts".

87. If Committee II adopted a provision on the lines of amendment CDDH/II/56, the ICRC would be glad to see a reference to the Central Tracing Agency which was responsible for informing families of the fate of victims of armed conflicts, included in the text.

88. The logical place for a provision on missing and dead persons would be Part II of draft Protocol I. It would be a welcome addition to Article 15 of the first Geneva Convention of 1949.

89. Mr. MAIGA (Mali), Rapporteur, requested that the statement by the ICRC representative should be issued as a Committee document.

The meeting rose at 12.55 p.m.

SUMMARY RECORD OF THE TWENTIETH MEETING

held on Friday, 14 February 1975, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Proposed new article 18 bis - Missing and dead; graves (CDDH/56, CDDH/56/Add.2; CDDH/II/56/Rev.1, CDDH/II/90, CDDH/II/204, CDDH/II/220, CDDH/II/221) (continued)

1. The CHAIRMAN said that the various amendments submitted to article 18 bis would be considered in the order of the paragraphs to which they related.

2. Mr. FIRN (New Zealand) explained that his delegation's amendment (CDDH/II/220) was intended to fill a substantial gap in the existing definition of "home State" in proposed article 18 bis. As it stood, that definition failed to take account of the possibility that what had originally been the home State of a deceased person might, as a result of the conflict, become divided or be absorbed into another State. There were a number of situations, in fact, in which there might be no home State to request exhumation, for example. In addition, the amendment introduced certain minor drafting changes that were thought to improve the text.

3. Mr. MODICA (Italy) said that his delegation was in favour of including article 18 bis in draft Protocol I, but suggested that the words "in such a way that, wherever possible, the identity of the deceased person should always be recognizable" (CDDH/II/221), should be added to paragraph 4, after the words "improper disturbance". It was as important for the relatives of the dead that identification should be ensured as that damage should be prevented.

4. Mr. MAKIN (United Kingdom) said that, although his delegation was a sponsor of the proposed article 18 bis, it was submitting an amendment (CDDH/II/56/Rev.1) because there were two points on which the article could be misinterpreted or misunderstood. The reference in paragraph 5 (a) to repatriation of remains could be interpreted as allowing the exhumation of established graves, e.g., from the First World War. That was not the intention and many home States would object to it; the amendment would give the home State the right to object.

5. The question of the repatriation of remains had to be settled in an orderly manner. Families should not be allowed to arrange repatriation after the end of hostilities and before bilateral arrangements between host and home State had been made, unless that was known to and approved by the home State. It was better that any doubts on that point should be removed.

6. The amendment also allowed the repatriation of personal effects without the home State having to ask for it or being able to object to it. That was not clear from the existing wording, which could be read as contravening Article 16 of the first Geneva Convention of 1949 and Article 19 of the second Geneva Convention of 1949, under which it was the duty of the host State to repatriate the personal effects of dead military personnel of the adverse Party. A similar obligation was imposed by Article 139 of the fourth Geneva Convention of 1949 in respect of protected persons covered by Article 136 of that Convention. Since draft Protocol I covered a wider range of persons, it would seem right to extend that arrangement to them.

7. Lastly, the amendment still allowed repatriation even if there was no home State, and consequently no one was allowed to object. That might be the case, for example, if a defeated State broke up into two or more separate States, neither of which was interested in some or all of the dead, although their families might still wish to have the remains repatriated.

8. The points he had made could perhaps be covered in a different way and he would be happy if the Drafting Committee could find a better method of doing so.

9. Mr. FIRN (New Zealand) pointed out that article 18 bis, as it stood, did not state with sufficient clarity the conditions under which exhumation would be permitted. The general principle that graves should be respected was stated in paragraph 4 and a certain limited duty to exhume was laid down in paragraph 5 (a). In the view of his delegation, exhumation should be the subject of closer control, the precise nature of which should be specified in the Protocol. It was for that reason that his delegation, together with that of Canada, had proposed amendments (CDDH/II/204) which would make exhumation permissible only in the three situations listed. They had sought to strike a balance between the general principle of respect for graves and the need to exhume, which would arise from time to time. The home State would either request exhumation, consent to it or, at the very least, be consulted or informed about it.

10. Miss KATZ (International Committee of the Red Cross) briefly described the role of the Central Tracing Agency provided for in Article 123 of the third Geneva Convention and Article 140 of the fourth Convention. The ICRC was responsible for the operation of that Agency, whose activities were not limited to the forwarding of information on prisoners and on the dead to the authorities concerned and the families of the persons in question. The Agency recorded all available information, both official and unofficial, together with all requests for information. It also conducted investigations to find out what had happened to those reported missing and recorded its findings. During hostilities it was responsible for contacts between prisoners and their home countries and afterwards it constituted an invaluable store of information on prisoners, hospital cases and deaths.

11. Because of the scope of its documentation, the Agency was able to make use of incomplete or erroneous information by comparing doubtful information with other data in its possession. It should be borne in mind that, owing to the destruction caused by the conflict, the home state might be unable to make full use of the information provided by the adverse Party through the medium of the Protecting Power. There again, the files of the Agency could be of inestimable value.

12. The CHAIRMAN said that the Republic of Viet-Nam had submitted a new Section III of Part II of draft Protocol I, consisting of articles 32 bis, 32 ter and 32 quater (CDDH/II/90). Since the amendment covered the same subject as article 18 bis, it could be discussed together with that article.

13. Mr. QUACH TONG DUC (Republic of Viet-Nam) said that, as the new Chapter proposed by his delegation would be entitled "The Missing and Dead", the title of Part II should accordingly become "Wounded, sick, shipwrecked and missing persons". An addition should also be made to article 8 (Definitions) to include a definition of "missing", to indicate that a missing person, whether military or civilian, was one who had not returned to his unit after a military operation or mission, or who had not returned to his home because of circumstances associated with the hostilities. That would cover both members of the armed forces and civilian officials who might be kidnapped, captured or taken away to an unknown destination by the armed forces of the other Party to the conflict.

14. The fate of such missing persons was uncertain. They might have been captured or detained by the other Party or have gone over to it, whether of their own free will or under compulsion, or they might have taken refuge somewhere among the population. They might have died from disease, exhaustion or wounds, while outside enemy hands.

15. Various articles of the Geneva Conventions were relevant in that connexion, but his delegation's amendment was concerned with situations not covered by those articles. Article 32 ter dealt with the burial of the dead; it would ensure the identification of the dead by providing for individual graves as opposed to mass graves. Article 32 quater was concerned with the repatriation of the bodies of the dead after the end of hostilities and with facilitating visits to graves by the families of the deceased.

16. The CHAIRMAN suggested that a Working Group might be set up to consider whether the various amendments could be combined to form either an article or articles, and whether a new chapter was needed.

17. Mr. MODICA (Italy) said that the purpose of his delegation's amendment to paragraph 5 (b) (CDDH/II/221) was to ensure that authority to remove the remains of the deceased lay solely with the official Graves Registration Service of the home State and not with the relatives of the deceased.

18. Mr. SIEVERTS (United States of America) said that his delegation, as one of the sponsors of article 18 bis, welcomed the Chairman's suggestion that a Working Group should be set up to endeavour to reconcile the various proposals and produce an improved text. His delegation thought that a reference should be made, in paragraph 8, to the Central Tracing Agency, as also to the information bureaux set up during armed conflicts, and to both the Protecting Power and the substitute. He hoped that the legal advisers or the representative of the ICRC would be able to advise on the position of the article in Protocol I.

19. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam) protested against the manoeuvres of the delegation of the Republic of Viet-Nam, which was making use of its right to submit amendments and was hiding behind the cloak of humanitarian law in order to attack the other Party to the conflict in the absence of the latter. The whole world was aware of the fascist nature of the Saigon régime and of the way in which it had treated both military personnel and civilians belonging to the other party.

20. Mr. HESS (Israel) said that in principle his delegation supported the proposed new article 18 bis. He suggested, however, that in addition to the general reference under paragraph 10, specific reference should be made to two problems referred to in the first Geneva Convention of 1949, namely: the duty to "search for the dead and prevent their being despoiled" (Article 15) and the obligations concerning "burial or cremation of the dead, carried out individually as far as circumstances permit" and other matters (Article 17). Those obligations should be specifically included in the Protocol.

21. The proposed Working Group might try to work out a provision whereby the Parties to the conflict would provide protection for the teams carrying out those tasks and would, by mutual agreement, make arrangements to enable special teams to carry out the tasks of searching for the fallen in the area of combat and transferring the remains to their home State. Such tasks would obviously, with the agreement of the Parties, be carried out often in the territory under the control of the other Party and it was important that draft Protocol I should provide a permanent framework for such arrangements.

22. Mr. MARRIOTT (Canada) supported the suggestion that the whole question should be referred to a Working Group, in which his delegation would like to participate. He would submit some amendments to the Working Group, including an amendment to paragraph 1 on the same lines as that proposed by the New Zealand representative (CDDH/II/220).

23. Mr. MARTIN (Switzerland) suggested that the Drafting Committee should be asked to consider the position of the stateless in connexion with paragraph 5 (a) and the United Kingdom amendment (CDDH/II/56/Rev.1).

24. Mr. CZANK (Hungary) thought that the proposed article 18 bis could be considerably shortened, since the subject was amply covered under the Geneva Conventions of 1949. He also felt that it was not appropriate to deal with the question of war graves in the context of article 18 (Identification) and that it would be more logical for it to follow article 11 (Protection of persons). It was, after all, really concerned with the feelings of relatives of the dead.

25. He supported the proposal to set up a Working Group and hoped it would act on his suggestions.

26. Mr. CLARK (Australia) said that in principle his delegation supported the proposed new humanitarian article, but it would like to see certain improvements, including a better definition of "home State". He would like to participate in the work of the proposed Working Group and would submit some amendments.

27. He also suggested that the proposed article should be placed in a separate section of draft Protocol I.

28. Mr. MARTINS (Nigeria) said that he shared the humanitarian motives that had inspired the proposed new article. He supported the establishment of a Working Group and suggested, in the light of his own country's experience in civil war, certain points which the working party might try to elucidate. There was the question, for example, whether the definition of home State would apply to

mercenaries and whether mercenaries could be provided for under paragraph 2. While he was in full sympathy with the humanitarian motives of paragraph 3, he wondered whether it should cover mercenaries, who usually entered a country illegally in an internal conflict. In his country the dead were respected and given decent burial; but to be required to maintain the graves of mercenaries would add insult to injury. Regarding paragraph 5 (c), every country had its regulations for maintaining cemeteries, but he had doubts about the idea of bilateral agreements which would impose an obligation on a country which might not be concerned about its dead.

29. Mr. QUACH TONG DUC (Republic of Viet-Nam), speaking in exercise of the right of reply, said that the Hanoi representative had abused his right to speak. As all were aware, his own delegation wished only to help the Committee in its work. Its motives were purely humanitarian and it had refrained from alluding to any delegation, both in its amendment and in introducing it.

30. The CHAIRMAN appealed to all delegations to avoid attacking other delegations.

31. Mr. KHAIRAT (Arab Republic of Egypt) supported the principle underlying the proposed new article 18 bis but agreed with the Hungarian representative that it could be shortened. He supported the proposal to set up a Working Group, which he suggested might consider changing the term "High Contracting Parties" to cover all situations of conflict; revising paragraph 5 (c) since the suggested bilateral agreements were not always practicable - perhaps the task should be given to appropriate international organizations; and considering whether the provisions of paragraph 6 were appropriate in a document concerned with humanitarian matters.

32. Mr. BOTHE (Federal Republic of Germany) said that he agreed that the proposed new article 18 bis could be improved and was grateful for the many suggestions made. He fully supported the suggestion that a Working Group should be appointed to overcome the difficulties and deficiencies, which were undoubtedly due to the fact that the article had not had the benefit of discussion by ICRC experts.

33. He agreed that the definition of home State should be improved. While he was in favour of conciseness, he thought it might be difficult to shorten the article: there were many situations and loopholes to be covered. His delegation would, however, co-operate with the Working Group in an effort to make the article clearer and

more concise. He agreed with the Swiss representative's comment regarding stateless persons - a subject which needed careful thought. Consideration should also be given to the suggestion by the representative of the Arab Republic of Egypt concerning international organizations.

34. Mr. URQUIOLA (Philippines) supported the proposal to set up a Working Group. He suggested that the proposed new article should be placed in a separate chapter and broken up into shorter articles to facilitate discussion.

35. The CHAIRMAN suggested that the Working Group should be composed of members of the sponsoring delegations, of delegations submitting amendments and of representatives who had spoken in the discussion, and that the Chairman should be the representative of Nigeria.

It was so agreed.

Article 19 - States not parties to a conflict (CDDH/1, CDDH/45, CDDH/56; CDDH/II/52, CDDH/II/215)

36. Mr. PICTET (International Committee of the Red Cross), introducing article 19, said that it had been considered appropriate to replace the former term "neutral" by "States not Parties to a conflict", since there were now varying degrees of neutrality, such as non-belligerence.

37. Miss BASTL (Austria) said that amendment CDDH/II/4 submitted by her delegation had been withdrawn. Introducing amendment CDDH/45 of behalf of the sponsors, she said that draft Protocol I introduced new terms for neutrality, namely "States not parties to the conflict" and "States not engaged in the conflict", which appeared in articles 2, 9, 19, 32 and 57 and consequently concerned Committees I, II and III. Article 9, paragraph 3 of draft Protocol I linked the behaviour of a State not a party to the conflict with the provisions of Article 27 of the first Geneva Convention of 1949, but since that article used only the term "neutral State" she saw no reason for the change in terminology.

38. If, however, the new term was intended to enlarge the field of application - as suggested in the Commentary to the draft Protocols (CDDH/3) - her delegation could not accept such an idea. The introduction of a term not used in the Conventions would be contrary to the understanding that the rules decided on by the Conference should supplement, not supersede, existing regulations. Moreover, it would be confusing to have regulations directed to neutral States in the Conventions and additional regulations for States not parties to the conflict in the Protocols, and there would inevitably be difficulties of interpretation.

39. Furthermore, the term "States not parties to the conflict" might endanger the very concept of neutrality. Neutral status, where States did not, and did not intend to, enter into armed conflict carried certain well-defined rights and duties. It implied a policy in wartime which was foreseeable and could be relied upon. The use of an ill-defined and vague term, with no legal protection, would weaken the concept of neutrality and upset international legal safety.

40. Mr. MAKIN (United Kingdom), introducing amendment CDDH/II/52, said that the only substantive point was the omission of the word "civilian" before the words "medical and religious personnel". There seemed no reason to exclude military personnel from the benefits of article 19 and thus prohibit neutrals from applying the appropriate provisions of that article. The present amendment should incorporate the amendment in document CDDH/45.

41. Miss MINOGUE (Australia) introduced amendment CDDH/II/215, which superseded amendment CDDH/II/32. It was mainly a matter of drafting, but one proposal was substantive. By using the words "any dead who may be found" instead of "any dead collected", as in the original draft, her delegation sought to make the collection of the dead obligatory. Adoption of article 18 bis would entail an additional obligation to return the deceased's belongings and hence the amendment proposed was doubly pertinent.

42. The CHAIRMAN suggested that the Australian and United Kingdom amendments (CDDH/II/215 and CDDH/II/52) should be referred to the Drafting Committee.

It was so agreed.

43. Miss BASTL (Austria) pointed out that amendment CDDH/45 was a matter which concerned Committees I and III as well as Committee II.

It was agreed to refer amendment CDDH/45 to the Drafting Committee.

Article 20 - Prohibition of reprisals (CDDH/1, CDDH/56; CDDH/II/24, CDDH/II/213, CDDH/II/214)

44. Mr. PICTET (International Committee of the Red Cross), introducing article 20, said that the prohibition of reprisals covered the whole health field and had been extended to civilian personnel in general. The article covered the changes in draft Protocol I.

45. Mr. FRUCHTERMAN (United States of America) withdrew his delegation's amendment (CDDH/II/24) in favour of the Australian amendment (CDDH/II/214).

46. Mr. FIRN (New Zealand) withdrew his delegation's amendment (CDDH/II/213) in favour of the Australian amendment (CDDH/II/214).

47. Mr. CLARK (Australia) said that an endeavour had been made in his delegation's amendment to article 20 (CDDH/II/214) to improve the text by picking up in the phrase "Measures in the nature of reprisals" all acts which might be called by any name but reprisals against the persons or objects protected by Part II of draft Protocol I.

48. Further, looking at the persons protected by Part II, it seemed to the Australian delegation that the ICRC text was inadequate to afford protection particularly to the personnel to which reference was made. An examination of all the articles of Part II of draft Protocol I revealed a need to grant persons protection from reprisals for having, for example, offered medical care or assistance to the wounded and sick and shipwrecked.

49. Mr. MARTINS (Nigeria) asked why the reference to religious personnel, which had appeared in the New Zealand amendment (CDDH/II/213), was now excluded.

50. The CHAIRMAN suggested that the Australian amendment should be voted on, since it involved a broader concept, which might include retortion.

51. Mr. MAKIN (United Kingdom) pointed out that the question of the prohibition of reprisals was dealt with in other parts of draft Protocol I and the wording used should be identical in all of them. He therefore questioned whether Committee II should take any final decision on the text of article 20.

52. Mr. ROSENBLAD (Sweden) said that the expression "measures in the nature of reprisals" in amendment CDDH/II/214 might cause confusion; it was better to use the wording of the Geneva Conventions, which constituted a traditional and accepted concept.

53. Mr. AL-FALLOUJI (Iraq) said that he was in sympathy with the Australian amendment. The extension of the concept of reprisals to include retaliation was important in the case of article 20, which he regarded as supplementing article 16, paragraph 1.

54. Mr. SOLF (United States of America) observed that it was unnecessary to broaden the concept of reprisals in article 20 to include retaliation, since retaliation was prohibited by a substantive part of draft Protocol I. He did not believe that the Australian amendment affected retortion.

55. He was in full agrement with the wording "protected by this Part" in the Australian amendment, because the Protocol itself recognized that there were circumstances in which protected objects were used for acts harmful to the enemy after they ceased to be protected. The purpose of the second part of the United States amendment (CDDH/II/24), which had been withdrawn, had been similar.

56. Mrs. MANTZOULINOS (Greece) said that the expression "the persons and objects protected by this Part" included religious personnel.

57. With regard to the expression "measures in the nature of reprisals", she agreed with the United Kingdom representative that the terminology used in all references to reprisals in the Protocol should be identical. In Committee III, which dealt with reprisals against the civilian population, the traditional term used in the Conventions had been retained.

58. Mr. MARRIOTT (Canada) pointed out that in the French text of the first Geneva Convention of 1949 the words "les mesures de représailles" were used, whereas in the English text the corresponding term was "reprisals".

59. Mr. CLARK (Australia) said that in the expression "measures in the nature of reprisals" the operative word was "reprisals" and it should not be confused with retaliation.

60. He personally did not consider that it was desirable to follow tradition blindly; indeed, it was incumbent on the Conference to develop the law. The measures referred to were prohibited when they related to "the persons and objects protected by this Part". The persons in question included religious personnel.

61. Mr. AL-FALLOUJI (Iraq) said that he was well aware that there were special provisions covering reprisals but they related to the civilian population. Article 20 was concerned with a specific case, namely that of people who were most exposed to special risks; as the risks increased, the guarantees against reprisals had to be increased proportionately.

62. The Australian compromise did not satisfy him fully. There was no necessity to link the provisions of article 20 with the general principles relating to reprisals set out elsewhere in the Conventions and the Protocols. His delegation would like the Conference to adopt a text for article 20 which ensured that the guarantees were on a par with the risks incurred.

63. The CHAIRMAN put to the vote the words "measures in the nature of reprisals" in the Australian amendment (CDDH/II/214).

The words "measures in the nature of reprisals" in the Australian amendment were adopted by 15 votes to 8, with 32 abstentions.

64. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to refer the remainder of the Australian amendment to the Drafting Committee.

It was so agreed.

ORGANIZATION OF WORK

65. Mr. FIRN (New Zealand) said that, while he had no objection to considering the articles in draft Protocol II that corresponded to the articles in draft Protocol I, if that was the wish of the majority, he considered that it should be done on an ad referendum basis, as was being done in Committee III. It was not clear at the present time what the precise scope of Protocol II was going to be. It was therefore desirable to await the decision of Committee I on that subject before embarking on a detailed consideration of articles in draft Protocol II.

66. Mr. BRAVO (Mexico) said that his delegation wished to reaffirm the reservations which it had already made concerning the scope of draft Protocol II.

67. Mr. SOLF (United States of America) said that, in his view, although the question of the scope of Protocol II was important, it was not quite so relevant with respect to the wounded, the sick and the shipwrecked as it was with respect to the articles considered by Committees I and III.

68. He agreed with the New Zealand representative that it was essential to consider draft Protocol II ad referendum. He would recommend a discussion of general principles concerning the purpose of each article, it being left to the Drafting Committee or a Working Group to bring the actual texts into line with those in draft Protocol I. The purpose of document CDDH/II/222 was to assist that work. The reference to article 11 in the penultimate column against article 14 was incorrect; it should read "17".

69. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), supported by Mr. MAKIN (United Kingdom), said that to embark on a detailed consideration of the relevant articles of draft Protocol II at the present juncture would be pointless. It was only after the Drafting Committee had concluded its work and Committee II had taken decisions on the articles in draft Protocol I which it had referred to the Drafting Committee that a detailed study of the relevant articles in draft Protocol II would serve any useful purpose.

70. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to follow that course.

It was so agreed.

The meeting rose at 12.55 p.m.

SUMMARY RECORD OF THE TWENTY-FIRST MEETING

held on Tuesday, 18 February 1975, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

ORGANIZATION OF WORK

1. The CHAIRMAN suggested that as the term "combat zone" in connexion with which the Swedish representative had submitted a memorandum, also fell within the competence of Committee III, the exact term to be used should be discussed by a Working Group consisting of three members of that Committee and three from Committee II. The latter might be representatives of Sweden and the Ukrainian SSR, or the representative of Mali, who was also a member of Committee III.

2. With regard to the suggestion that the session might finish earlier than had been originally intended, he was in favour of maintaining the original termination date, by which time the Committee would probably have completed its work, so that a possible third session might be devoted to plenary meetings only. He would report to the Committee on Friday, 21 February on the decision reached at the forthcoming meeting of the General Committee.

3. Since the Committee had completed the discussion of the corresponding articles of draft Protocol I, it could now proceed to discuss articles 12 to 19 of draft Protocol II (corresponding to articles 9 to 20 of draft Protocol I, already referred to the Drafting Committee), leaving article 11 and the relevant amendments and the corrections to article 8 of draft Protocol I aside until the Committee had finished the rest of its work, since it was advisable to postpone the consideration of definitions until all the other articles had been discussed.

4. He would be grateful to the Drafting Committee if it would kindly accelerate its work in order to be able to submit its report on articles 9 to 20 of draft Protocol I to the Committee as soon as possible. He thought that the Drafting Committee could leave questions of translation to the Conference's translation services and that considerations of style, such as punctuation, for instance, should be left to the Conference's Drafting Committee, which in any case would still have to review the entire text of the Protocols. In order to enable the Drafting Committee to expediate its work, Committee II would not meet again until Friday, 21 February 1975.

5. It was regrettable that the summary record of the Committee's nineteenth meeting (CDDH/II/SR.19) contained no reference to the difference of opinion which had arisen between himself and the Spanish representative or, indeed, to his request that amendments to articles 12 to 19 of draft Protocol II should be submitted by Friday, 14 February, so that they might be circulated in the different official languages for discussion at the current meeting, in accordance with rule 29 of the rules of procedure. He had drawn up the agenda for the current meeting on the basis of the consensus reached at the 19th meeting and on the understanding that all amendments would be submitted in time. Since no objection had been raised when he had outlined the Committee's work for the current week, he wished to know whether the Committee was prepared to discuss those articles and the amendments just submitted - some of which appeared to be purely drafting proposals.

6. Mr. SOLF (United States of America) said that when the Chairman had made his request concerning the submission of amendments, the United States and other delegations had pointed out that if such amendments were submitted before the Drafting Committee's report on articles 8 to 20 of draft Protocol I had been circulated, so many amendments might be submitted that the Committee's work would be seriously complicated. His delegation had therefore proposed that the Committee should discuss those articles as they had been prepared by the Drafting Committee, in order to determine whether they served as a suitable basis for the discussion of draft Protocol II. Any substantive decisions would be referred to the Drafting Committee, in order to coordinate the wording of the two Protocols as closely as possible. The United States delegation had therefore submitted the comparative table in document CDDH/II/222 to assist in that exercise.

7. Mr. SANCHEZ DEL RIO (Spain) said that his delegation had not opposed the discussion of draft Protocol II but merely the procedure proposed by the Chairman, and had withdrawn its point of order when the Chairman had explained that a consensus had been reached. He was therefore surprised that his opposition to that proposal had been mentioned at a subsequent meeting.

8. The CHAIRMAN apologized for any misunderstanding that had arisen.

9. Mr. MARRIOTT (Canada) said he endorsed the United States' approach to draft Protocol II. Although most of the amendments recently submitted appeared to relate to drafting, some of them concerned matters of substance. With regard to the Chairman's proposal to defer consideration of article 11 of draft Protocol II until a decision had been reached on article 8 of draft Protocol I, some of the definitions in the latter article were not necessarily appropriate to draft Protocol II and he could see no reason why the articles in that Protocol should not be taken in order.

10. The CHAIRMAN said he had understood the Committee to have agreed as a general principle that the consideration of all definitions should be postponed until the other articles had been discussed, because further definitions might prove necessary as the work of the Drafting Committee proceeded. The discussion of article 8 at the first session had occupied much time and it had been found impossible to adopt any definite decisions on that subject. He noted the Canadian delegation's reservation and took it that the rest of the Committee was prepared to leave article 11 of draft Protocol II and the relevant amendments and the corrections to article 8 of draft Protocol I aside until it had completed the remainder of its work.

It was so agreed.

11. Mr. MAKIN (United Kingdom) said he had understood that the Committee would deal with articles 12 to 19 of draft Protocol II as soon as it had concluded its work on the corresponding articles of draft Protocol I. So far, it had reached no decisions except to refer those articles to the Drafting Committee. His delegation was, however, prepared for a general debate on articles 12 to 19 of draft Protocol II. It had no comments to make except with regard to the substance of article 16, paragraph 3, of draft Protocol I, which was inappropriate to draft Protocol II because it dealt with a party adverse to medical personnel. In an internal conflict there were three parties, two of which were fighting and the third - the majority - was not fighting and therefore could not be regarded as an adverse party. Except for military doctors, most medical personnel belonged to the third category.

12. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) endorsed the United Kingdom representative's remarks concerning the proposal for dealing with draft Protocol II. If the Committee were to discuss those articles before it had concluded its work on the corresponding articles of draft Protocol I, it would contravene the decision taken at the first session of the Conference.

13. The Australian amendment in document CDDH/II/225 was an entirely new text taking into account the consideration of article 11 of draft Protocol I, which the Committee had not yet adopted. It might save time if the Drafting Committee were to deal with that article, which corresponded to article 12 of draft Protocol II, and were to determine whether the definitions were suitable for application to internal conflicts.

14. Mr. CLARK (Australia) said that his delegation was not aware that the Committee had decided to defer consideration of article 11 of draft Protocol II until it had concluded its work on articles 12 to 19 of that Protocol. However, in the light of the experience of the discussion of article 8 of draft Protocol I at the first session,

such a course might be prudent, although the definitions of "medical unit" and "medical personnel" had a bearing on articles 12 to 19. He apologised for submitting his amendments so late, but had understood that they only had to be submitted by Monday, 16 February, and in any case had been unable to submit the amendment to article 12 of draft Protocol II (CDDH/II/225) until the position concerning article 11 of Protocol I had been clarified.

15. Mr. BOTHE (Federal Republic of Germany) suggested that the Committee could reach an immediate decision on the amendments which proposed the deletion of certain articles. With regard to the rest, it would be premature to take any action until the Committee had seen the Drafting Committee's report on the corresponding articles of draft Protocol I. To speed up its work, the Committee might wish to refer the articles it had decided not to delete, with the relevant amendments, to the Drafting Committee, which could then submit a revised text worded in conformity with the corresponding articles of draft Protocol I.

16. Mr. MARTIN (Switzerland) said it was evident from the useful comparative table submitted by the United States delegation (CDDH/II/222) that article 12 of draft Protocol II could not be discussed until the Drafting Committee had completed its studies of articles 10 and 11 of draft Protocol I, that there was no provision in draft Protocol I comparable to article 13 of draft Protocol II and that article 14 of draft Protocol II was reflected in paragraphs 1 to 3 of article 11 of draft Protocol I. Consequently, if the Drafting Committee could submit definite texts for articles 10 and 11 of draft Protocol I, the Committee could begin to discuss articles 12 to 14 of draft Protocol II without contravening the original decision not to discuss the articles of draft Protocol II until a decision on the corresponding articles of draft Protocol I had been reached.

17. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, said that the Drafting Committee had completed its work on the articles up to and including article 12 and would complete the drafting of articles 13 and 14 at its next meeting. He had understood, however, that the Chairman of Committee II was awaiting the Drafting Committee's report on its work up to article 20.

18. He wished to point out that the article of draft Protocol I which corresponded to article 14 of draft Protocol II was article 17, not article 11 as was stated in document CDDH/II/222.

19. The CHAIRMAN said that the Committee's work would be facilitated if it had the Drafting Committee's report on a set of articles constituting an aggregate. He asked when the Drafting Committee hoped to finish work on articles 9 to 20.

20. Mr. SOLF (United States of America) replied that the Drafting Committee hoped to complete its work by the end of the week, with the exception of articles 18 and 18 bis, for which special Working Groups had been set up.

21. Mr. MARTINS (Nigeria), Chairman of the Working Group on article 18 bis, said Tuesday, 18 February, was the last day for the submission of amendments and that the Working Group would start its work on Thursday, 20 February. It was, however, waiting for the Working Group on article 18 to finish its work.

22. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on article 18, said that the Group hoped to finish its work in one more meeting.

23. The CHAIRMAN asked whether the Working Groups on articles 18 and 18 bis could submit their reports by Thursday, 20 February, so that the Committee could discuss them the following day.

24. Mr. MARTINS (Nigeria), Chairman of the Working Group on article 18 bis, said he thought that that would be almost impossible.

25. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on article 18, replied that his Group could almost certainly submit a report by Thursday. The fact that some delegations were members of both Groups might, however, cause difficulties.

26. Mr. BOTHE (Federal Republic of Germany) explained that the speed at which the Working Groups could go depended on the number of representatives attending meetings, which was often limited, and on the availability of interpretation facilities.

27. Mr. SCHULTZ (Denmark), commenting on the structure of Part III of draft Protocol II, said that there might be some danger in laying down very detailed rules in that Protocol, for they might result in false counter-conclusions in relation to draft Protocol I: people might wonder why a rule set out in detail in draft Protocol I did not appear among the detailed rules in draft Protocol II, and assume that it was not applicable to the latter Protocol - an assumption which could easily lead to acts contrary to humanitarian law. Moreover, there was a lack of balance between the rather detailed rules on wounded, sick and shipwrecked persons in Part III and the very much more concise rules on civil defence in Part V, Chapter II.

28. In principle, he was in favour of a fairly short and very general chapter, like Part V, Chapter II. He would be willing to submit an amendment along those lines, but thought it might be wiser to set up a small Working Group to consider the whole of Part III and to find ways of making it more general.

29. Miss MINOGUE (Australia) said that she had been about to suggest a plan of work similar to the one put forward by the Chairman.

30. Mr. MAKIN (United Kingdom) said he would not have thought that there would be much support for incorporating the substance of articles 18 and 18 bis in draft Protocol II. Since it had been decided to postpone the Committee's next meeting until Friday, 21 February, the Chairmen of the Working Groups on articles 18 and 18 bis and the Drafting Committee might meet on Thursday, 20 February, to enable Committee II to decide what, if anything, could be done on Friday.

31. The Danish representative had made a substantive point concerning the form of the articles in Part III of draft Protocol I. There were arguments on either side: if it was concluded that in the case of one type of armed conflict a detailed article was required to explain what was prohibited and what was protected, it could hardly be said that, for another type of conflict, one sentence could convey the same thing. On the other hand, he agreed with the Danish representative that if the draft Protocol contained too many detailed articles it would never be read or applied. A decision was needed, and perhaps a compromise was possible. In any case, the point should be pondered and perhaps debated.

32. Mr. MARRIOTT (Canada) suggested that the Committee should continue its discussions of articles 8 to 20 but should exclude for the time being article 18 bis, which needed further consideration by the Working Group. Moreover, it was clear from the remarks of the United Kingdom representative that a short discussion on the approach to draft Protocol II should be held before the Committee began to discuss individual articles.

33. The CHAIRMAN suggested that the Drafting Committee should try to report by Monday, 24 February, on all the articles referred to it, except articles 18 and 18 bis. The Working Group on article 18 bis should report by Monday, 24 February, and the Working Group on article 18, by Friday, 21 February.

34. Articles 12 to 19 of draft Protocol II would be discussed later, and all drafting matters would be left aside until the Drafting Committee's report on articles 9 to 20 of draft Protocol I was before the Committee.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1)

General Discussion of Part III

35. The CHAIRMAN invited the Committee to hold a preliminary exchange of views on the substance of Part III of draft Protocol II and the principles which should govern its drafting.

36. Mr. GOZZE-GUČETIĆ (Yugoslavia) said that he wished to outline his Government's general views on draft Protocol II. In principle, Yugoslavia was in favour of providing for the protection of the victims referred to in that Protocol. The main purpose of the Protocol was to mitigate the atrocities of internal conflicts, which often involved circumstances totally inadmissible from the humanitarian standpoint. Since Article 3 common to the Geneva Conventions of 1949 constituted the basis and framework of the Committee's work, it could not widen the scope of that fundamental rule even if it wished to do so. The Yugoslav delegation believed, however, that the Protocol and some of the amendments proposed to it went beyond the limits of common Article 3 and some of the provisions seemed to be designed to internationalize certain aspects of internal conflicts. The Yugoslav delegation therefore had reservations concerning those provisions, having regard to the fact that it was indispensable to respect those rights of States which derived from general principles of international law, such as those relating to State sovereignty, non-interference in internal affairs, non-intervention, territorial integrity and so forth. To be applicable, the rules of Protocol II must be drafted in such a way as to be acceptable to States. Realism dictated that humanitarian considerations should be balanced against the aforementioned rights of States. In his delegation's view, some of the provisions of draft Protocol II could not be drafted in the same way as the corresponding provisions of draft Protocol I. Nevertheless, the draft articles before the Committee constituted a good basis for its work; by eliminating certain deficiencies, a generally acceptable text could be worked out.

37. Mr. BOTHE (Federal Republic of Germany) said that, in dealing with Protocol II, the Committee was faced with two fundamental issues, those of sovereignty and simplicity.

38. He doubted whether the issue of sovereignty really arose with regard to articles dealing with the wounded and sick. As many representatives, particularly the representative of Iraq, had pointed out, the Committee was only fulfilling a basic humanitarian need by providing better protection for the most unfortunate and weakest victims of armed conflicts. He failed to see how the requirements of State sovereignty could be construed to prevent that. The same applied to article 16, which protected the patient by giving freedom to the doctor: without such guarantees, many wounded and sick would not dare to see a doctor, but would rather suffer and die without medical assistance. He could not understand why State sovereignty might require that. He therefore thought that article 16 - at least paragraphs 1 and 2 - must be maintained; if there were objections, the article should be carefully examined, paragraph by paragraph. He also opposed the complete deletion of article 19 as proposed by Australia (CDDH/II/230).

39. The requirement of simplicity meant that the articles should be readable and understandable by anyone, even an unsophisticated combatant. In that sense, simplicity called not so much for brevity as for clarity. A text specifying details might be clearer than a short text using general terms which might give rise to difficult questions of interpretation. His delegation accordingly welcomed the drafting policy of the ICRC: to adapt the language of Part III of draft Protocol II to the corresponding provisions of draft Protocol I, which was sufficiently specific and not too simple. None of the amendments proposed so far challenged that basic approach; but the question arose as to which text of draft Protocol I should be taken as the basis for the Committee's consideration. He agreed with the United States representative that it should be the revised text, and that that should apply to the definitions also. Some of the definitions might possibly be superfluous, but the matter should be viewed from the standpoint of an unsophisticated fighter who needed definitions and specific examples to help him to understand the Protocol. In that connexion, a proviso in article 14 along the lines of article 13 of draft Protocol I, on cessation of protection, seemed to provide a necessary clarification, which should also be included in draft Protocol II. He was therefore in complete agreement with the United States proposal.

40. Mr. MARRIOTT (Canada) said that he reserved the right to reply later to certain detailed statements concerning the Canadian amendments.

41. Canada's view was not only that there should be an additional Protocol II, but that it should deliberately be kept simple in scope; its views regarding the material field of application were very similar to those of the ICRC. In view of the kind of conflict to which Protocol II would presumably apply if the existing draft of article 1 was accepted, its provisions should be limited to those of a basic humanitarian nature well within the capacity of both parties to the conflict and of obvious benefit to them. While the Protocol would not apply in cases of internal tension or sporadic violence, it would come into operation with respect to all minor armed conflicts involving armed forces or organized armed groups. It was therefore essential that the Protocol should interfere as little as possible with national laws and policies and should impose very few obligations and restrictions which did not already exist in national constitutions or legislation. If the document was to be not only signed but applied, it should remain essentially a human rights document. On the other hand, if it was deemed to apply only to civil wars on the scale of the Spanish or American civil wars, then its provisions were inadequate; that type of struggle might be covered simply by extending Protocol I, as was proposed in the amendment to article 1 adopted by Committee I.

42. Mr. CLARK (Australia) said that his delegation sought an orderly and progressive extension of humanitarian law to ensure better protection of the human person in time of non-international as well as international armed conflicts. Currently, the chief source of legal obligation on parties to non-international armed conflicts was Article 3 common to the 1949 Geneva Conventions; but the protection it afforded was minimal. As a development of the law, Protocol II should apply to all armed conflicts of a non-international character taking place between armed forces or other organized groups under a responsible command. It would not apply either to armed conflicts covered by Article 2 common to the Geneva Conventions of 1949 or to those specified in article 1 of draft Protocol I. The type of conflict his delegation would envisage as falling within the ambit of the Protocol would include major civil conflicts at one end of the scale and, at the other, conflicts amounting to a state of insurgency rather than belligerency which went beyond a mere situation of internal disturbance or tension with sporadic riots or acts of violence. Protocol II should therefore apply to conflicts of a certain level of intensity. It might be difficult to decide whether a particular conflict had reached a sufficient level of intensity to bring it within the scope of the Protocol, but that was no reason for not formulating draft Protocol II or for deleting or restricting the draft articles of concern to Committee II. His delegation was, however, proposing amendments to some of those articles and the deletion of one of them. It further took the view that those articles should resemble the corresponding articles of draft Protocol I, so that the persons concerned - in particular, the wounded, sick and shipwrecked - should not depend for protection upon a legal interpretation about the level of the armed conflict. In his delegation's opinion, no distinction should be made between the suffering on the basis of the applicability of draft Protocol I or II.

43. Mr. SOLF (United States of America) said that his delegation endorsed the general views expressed by the representative of the Federal Republic of Germany. With regard to the question of whether or not article 16 should be included, he hoped to hear the views of other delegations and did not wish to express a final opinion for the time being. While he agreed with much that had been said about the relationship of draft Protocol II to the question of sovereignty and about the level of violence and organization, he did not think that those considerations were relevant to the work of Committee II. The Committee's essential task was to make explicit what was implicit in the very simple general statement in Article 3 common to the Geneva Conventions that "The wounded and sick shall be collected and cared for", by formulating a number of derivative rules specifying the protection to be given to medical personnel, units and installations, the standard of care, and so forth. Experience had shown that a general principle without explicit substantiation was apt to be interpreted inconsistently.

The Committee should not concern itself with levels of violence of sovereignties. He endorsed the question asked by Mr. Jean Pictet, Vice-President of the ICRC, in his commentary on the fourth Geneva Convention of 1949: "What Government would dare to claim before the world, in a case of civil disturbances which could justly be described as mere acts of banditry, that, Article 3 not being applicable, it was entitled to leave the wounded uncared for, to torture and mutilate prisoners and take hostages?"1/ He hoped the Committee would be able to proceed with its purely humanitarian task of determining appropriate standards without touching more than necessary on questions of sovereignty.

44. Mr. ROSENBLAD (Sweden) said that draft Protocol II constituted a considerable problem for the Committee. In the modern world, perhaps the majority of armed conflicts were non-international in character. Article 3 common to the Geneva Conventions of 1949 was a first attempt to provide protection for the victims of non-international conflicts, but it had proved insufficient. The Swedish delegation appreciated the importance of State sovereignty, non-interference and so forth, but believed that those considerations should not prevail over the application of humanitarian law, especially in cases involving the protection of the wounded and sick. The Committee would be well advised to maintain articles 11 to 19 and should base its discussion on the ICRC text, bearing in mind the corresponding articles of draft Protocol I.

45. The CHAIRMAN invited delegations to state their views on the Danish proposal for the establishment of a small Working Group.

46. Mr. MARRIOTT (Canada) said that, although such a Working Group might be useful at a later stage, it should not be established until the sponsors of all the amendments to articles 11 to 19 had had the opportunity to introduce and explain their proposals.

47. Mr. SCHULTZ (Denmark) said that he had made his proposal on the assumption that there was a general feeling that Part III of draft Protocol II should not go into too much detail, but should be drafted as shortly and as simply as possible. There appeared, however, to be divergent opinions on that point. Until that question of principle had been decided, it would hardly be useful to set up a Working Group, especially if it was decided to go through the ICRC draft articles paragraph by paragraph.

1/ The Geneva Conventions of 12 August 1949, Commentary, IV Geneva Convention, ICRC, Geneva, 1958.

48. Miss MINOGUE (Australia) said that a general discussion should first be held on articles 11 to 19. There might be a case for a Working Group at some later stage, but it could not hope to produce a generally acceptable text until the differences of opinion revealed by the discussion had been ironed out. She drew attention to what the representative of the Federal Republic of Germany had said about the dangers of "brevity" and "simplicity": legal history in her country, for one, was full of constitutional controversies arising from articles which the drafters had tried to make "simple" by reducing them to a few words. Clarity was essential, even if it meant extending the wording beyond what might at first sight appear desirable.

49. Mr. DENISOV (Ukrainian Soviet Socialist Republic) agreed with earlier speakers that it was premature to close the debate on Part III of draft Protocol II. The discussions had shown that the questions involved were extremely complex. His delegation would also have liked to state its general views on draft Protocol II, but there had not been sufficient time.

50. The CHAIRMAN said that the Committee would hold its next meeting in the afternoon of Friday, 21 February, when it would resume its discussion of article 18. The Working Group dealing with that article should submit its report by Friday morning at the latest. The Drafting Committee, which was to report on articles 9 to 17, 19 and 20 of draft Protocol I should also submit its report by Friday morning, so that all the texts could be distributed in time for discussion at a plenary meeting of the Committee on Monday, 24 February. As soon as individual articles were drafted they should be submitted to the Secretariat for translation and reproduction. Delegations wishing to submit further amendments should do so during the current week. The Working Group on article 18 bis should try to submit its report by the morning of Monday, 24 February, so that it could be translated and circulated on Tuesday, 25 February.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

held on Friday, 21 February 1975, at 3.15 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)*

1. The CHAIRMAN said that before embarking on the agenda for the day he would ask the Chairman of the Drafting Committee to report on the progress of the Committee's work.

2. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, said that the Drafting Committee had completed its work on every article relevant to draft Protocol II. It had not yet completed its work on article 14 - Requisition or on article 17 - Role of the civilian population, but he did not expect that those articles would require lengthy discussion. Some of the matters which had been referred to the Drafting Committee had been points of substance rather than purely drafting questions. In those cases where the Committee had not been in complete agreement, an alternative rendering had been given in brackets. The Committee's report in writing would be available on the morning of 24 February.

3. The CHAIRMAN asked the Chairman of the Working Group on article 18 bis if he could prepare his report by midday 25 February. It could then be translated and circulated in time for article 18 bis to appear on the agenda for the morning meeting on 26 February.

4. Mr. MARTINS (Nigeria), Chairman of the Working Group on article 18 bis, said that that would be a satisfactory arrangement.

Article 18 - Identification (continued)**

Report of the Working Group on article 18 (CDDH/II/GT/16)

5. The CHAIRMAN invited the Committee to consider the report of the Working Group on article 18 (CDDH/II/GT/16). It should not be necessary to discuss item 3 - Method of work and preliminary discussion on Part III of Protocol II - as a preliminary discussion had already been held at the twenty-first meeting (CDDH/II/SR.21) and there had been no more speakers on the list. That item, he suggested, might be postponed until after consideration of the Drafting Committee's report on articles 9 to 20 of draft Protocol I. A proposed time-table of work would then be submitted.

It was so agreed.

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*/ Resumed from the twentieth meeting.

**/ Resumed from the eighteenth meeting.

6. The CHAIRMAN invited the Chairman of the Working Group on article 18 to introduce his report and the Working Group's new version of that article.

7. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on article 18, said that the text itself of article 18, as revised by the Working Group, constituted the Working Group's report. The Group had worked patiently for a week and although it was a large group, that had not proved to be a disadvantage. Sub-groups for each of the working languages had been formed and all tendencies and views were reflected in the present consolidated text. The Swedish representative had repeatedly pointed to the risk that the distinctive emblem and the distinctive signals could be abused. Paragraph 1 stated the basic principle that each party to the conflict should endeavour to ensure the identification of medical personnel, units and transports. The subsequent paragraphs set out reasonable means of applying that principle, including references to distinctive signals and emblems. An effort had been made to cover all possibilities concerning the order of signals and emblems. In paragraph 5, a reference to chapter III of the annex to draft Protocol I, concerning special cases, had been included for the better understanding of the paragraph.

8. The CHAIRMAN said that as there were considerable differences between the Working Group's text and the ICRC text, he hoped the Chairman of the Working Group would be ready to reply, if necessary, to questions on the subject.

9. Mr. SOLF (United States of America) said the Working Group and its Chairman were to be congratulated on their excellent work and on having managed to reach a consensus.

10. Mr. MARTIN (Switzerland) said he agreed entirely with the United States representative on the excellent work done by the Working Group. He wished to raise one point, however: the phrase "High Contracting Parties", which was used in paragraph 2 of the ICRC text, had been altered to "Each Party to the conflict" in the new article 18. In some cases in time of armed conflict, it was indeed each Party to the conflict which was involved, but when it was a question of taking measures in peacetime to be applied in the event of armed conflict, the High Contracting Party was involved. In the part of the annex to draft Protocol I dealing with identification, the term "High Contracting Parties" was used. He would like to ask why there was no reference to the High Contracting Parties in article 18, since there might be High Contracting Parties which were not parties to the conflict and yet suffered the effects of a conflict such as accidental bombing; those parties should also be provided with identification in accordance with article 18.

11. Mr. MARRIOTT (Canada) asked if the next step in the procedure was that the new version of the article would go to the Drafting Committee.

12. The CHAIRMAN said that his reply to that question must wait till the end of the discussion.

13. Mr. SANCHEZ DEL RIO (Spain) said that he had been about to ask the same question. He had his doubts about the second sentence of paragraph 6, which stated that signals described in Chapter III of the annex to draft Protocol I should not be used for any purpose other than to identify the medical units and transports specified in that Chapter. As the first sentence of that paragraph stated that the application of the provisions of paragraphs 1 - 5 of article 18 was governed by Chapters I to III of the annex, it seemed to him that the second sentence was superfluous.

14. Mr. BOGLIOLO (France) said that in paragraph 6 of the French version, the word "ne" had been omitted before the word "pourront".

15. Mr. de MULINEN (International Committee of the Red Cross), replying to the question raised by the representative of Switzerland, said that much attention had been given to the use of the phrases "High Contracting Parties" and "Parties to the conflict" and it had been decided that article 18 should be confined to Parties to the conflict, since it was not possible in all cases to impose on the whole State the obligations mentioned in paragraphs 1 and 2. An effort should also be made to avoid complicated bureaucratic procedures during peacetime. The idea put forward by the Swiss delegation could find a solution in article 70, which encouraged the High Contracting Parties to take all necessary measures in peacetime in preparation for a possible state of armed conflict.

16. Mr. MAKIN (United Kingdom) said he agreed with the remarks made by the United States representative concerning the part played by the Chairman of the Working Group in bringing the Group to a consensus over the consolidated text.

17. In paragraph 6 of the Working Group's version, the word "designated" would be better than the word "described". There were also a number of spelling and punctuation errors, but those could be brought to the attention of the Secretariat directly.

18. Mr. HESS (Israel) said that already during the discussion on article 15, paragraph 6 he had emphasized the absurdity of the situation whereby medical and religious personnel of Jewish faith would have to identify themselves by signs other than that of the Red Shield of David. Those earlier remarks applied also to paragraph 3 of article 18.

19. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on article 18, replying to the question raised by the representative of Switzerland concerning the words "High Contracting Parties", said that the Working Group had had a lengthy debate on the subject, and had reached the conclusion that it was necessary to take a realistic view. If a general and rigid order of identification were imposed on all High Contracting Parties, that would be quite unacceptable to some States. When in armed conflict, however, some identification must be used and it was that consideration which had guided the discussions. With regard to paragraph 6, account had been taken of the wishes of those who desired an open solution to the question of distinctive signals and emblems. The distinctive emblem was the basic principle of identification, but in some specific cases where it could not be used and only the distinctive signals used, the door had been left open by the inclusion of the reference to the annex to draft Protocol I.

20. The CHAIRMAN asked whether the representatives of Switzerland and Spain were satisfied with the replies to their questions.

21. Mr. MARTIN (Switzerland) said that he was satisfied by the replies given by the representative of the ICRC and by the Chairman of the Drafting Committee, it being understood that his delegation's idea would be covered by article 70 of draft Protocol I.

22. Mr. SANCHEZ DEL RIO (Spain) said that he accepted the proposed solution, but still felt that the second sentence of paragraph 6 was superfluous, since it referred to Chapter III of the annex, article 1 of which described the conditions governing the use of distinctive emblems and signals. He did not see the point of repeating those conditions in article 18: He was in agreement with the substance of paragraph 6.

23. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on article 18, said that as the representative of Spain was in agreement on the substance, the question was one with which the Drafting Committee would be able to deal.

24. The CHAIRMAN, replying to the questions raised by the representatives of Canada and Spain concerning the Committee's procedure, said that the procedure was based generally on rule 48 of the rules of procedure which did not contain a very strict ruling on the question. His view was that it was not absolutely necessary to refer the text to the Drafting Committee, since if a Working Group was appointed it was on the same level as the Drafting Committee and dealt with matters of substance as well as of drafting. He felt that, since there was no objection to the substance of article 18, the Working Group might be regarded as an ad hoc drafting committee.

25. Mr. AL-FALLOUJI (Iraq), Chairman of the Working Group on article 18, confirming the Chairman's view, said that from the start the Working Group had regarded its task as one of substance, form and drafting.

26. Mr. BOTHE (Federal Republic of Germany) said that his delegation had a number of drafting points to raise.

27. Mr. MARRIOTT (Canada) said that he wished to suggest some small amendments of style and translation, some of which were essential if a satisfactory text was to be produced.

28. Mr. CALCUS (Belgium) said that there were some mistakes in the French text. If the text was not to go to the Drafting Committee, the corrections must be made in the Committee itself.

29. Mr. CLARK (Australia) said that he, too, had some minor amendments to suggest.

30. The CHAIRMAN suggested that, if there were no objections, the substance of the new version of article 18 should be approved.

It was so agreed.

31. The CHAIRMAN, referring to the question of passing the text on to the Drafting Committee, pointed out that it was not necessary for the Drafting Committee to produce a text in all languages: the translation was normally left to the Secretariat. If the Committee thought it necessary to make amendments, he urged that it limit itself to minor changes only.

32. Mr. SOLF (United States of America), speaking on a point of order, said that the definition of temporary personnel in article 8 of draft Protocol I, as adopted by the Drafting Committee and provisionally adopted by the Working Group, was unsuitable and a new formulation was necessary. He requested the Chairman to rule that the Drafting Committee would undertake a revision of that definition. His delegation had prepared an amendment, which would be circulated shortly.

33. The CHAIRMAN assured the United States representative that all provisions of article 8 had been accepted only provisionally. He had set aside three days for discussion on the revision of articles concerning definitions, when amendments could be considered.

34. He suggested that, if there were no objections, the text of article 18 should be transmitted to the Drafting Committee for minor drafting amendments.

It was so agreed.

ORGANIZATION OF WORK

35. Mr. SUKHDEV (India) said that, a few days earlier, his delegation had expressed doubts in Committee I concerning draft Protocol II and had said that, if national liberation movements were included under article 1, the application of the draft Protocol to internal disturbances and other such situations would be tantamount to interference with the sovereign rights and duties of States. It had added that the definition of non-international armed conflicts was still vague and that no convincing arguments had been put forward to justify the need for draft Protocol II, the provisions of which would not be acceptable to it. He wished to reiterate that position. His delegation's participation in the deliberations concerning articles of draft Protocol II would be without prejudice to its position regarding that Protocol. His delegation would like to request the Committee to reconsider whether, in view of the uncertainty about draft Protocol II, it would not be better to consider first the remaining articles of draft Protocol I.

36. The CHAIRMAN said that the question concerned a decision of principle. A number of articles in draft Protocol II had already been taken up, but that did not affect decisions of principle to be taken in plenary session. All delegations were free to sign or not to sign documents emerging from the work of the Conference. The Committee would take note of the statement by the representative of India.

37. Mr. CLARK (Australia) asked when the articles in the annex to draft Protocol I would be considered either by the Committee itself or by a Working Group.

38. The CHAIRMAN said he wished to make some observations on the general working methods of the Committee and a few preliminary remarks on the future time-table of the Committee's work.

39. The task of the Drafting Committee was merely to draft the necessary texts; it did not include discussions on matters of substance, which were the prerogative of the full Committee. It was the responsibility of the full Committee to vote on substantive amendments, and any questions of substance that arose within the Drafting Committee could only be dealt with by the full Committee.

40. With regard to the time-table of work, he had prepared a preliminary draft which he hoped would be ready for circulation early the following week.

The meeting rose at 4.20 p.m.

SUMMARY RECORD OF THE TWENTY-THIRD MEETING

held on Monday, 24 February 1975, at 3.15 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of the Drafting Committee on articles 9 - 13, 15 - 17, 19, 20 (CDDH/II/240)

1. The CHAIRMAN said the Drafting Committee and, in particular its Chairman and Rapporteur, were to be congratulated on the report (CDDH/II/240) and on having reached agreement on all the articles referred to it, with the exception of articles 14 and 17. He hoped the Drafting Committee would succeed in completing its work at its next meeting.

2. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had greatly appreciated the fact that decisions on most of the questions of substance arising out of Section I of draft Protocol I had already been taken in Committee II, so that the Drafting Committee had had clear guidance on matters of substance and had been able to concentrate on purely drafting considerations.

3. The representative of the Union of Soviet Socialist Republics having waived his right to ask for Russian to be used throughout the discussions, the Drafting Committee had worked in three languages - English, French and Spanish. Those languages must have equal rights. The fact of working in three languages simultaneously had not appreciably retarded progress and had proved valuable in one respect, namely, that it had sometimes enabled the Committee to detect points on which the text was not clear. It would also, he hoped, prove to have had the further advantage of avoiding those cases, all too frequent in international law, where disputes arose because the different versions of the text did not have exactly the same meaning in the various languages.

4. At the time the Committee completed its report it had not yet been asked to deal with articles 18 and 18 bis, while article 8, which had already been adopted at the first session of the Conference, had been included for information purposes only. In dealing with the other articles in Section I, it had decided to concentrate on those which were necessary as a basis for dealing with the corresponding articles of Protocol II; it had therefore felt free to postpone consideration of article 14 and of paragraph 3 of article 17. He was confident that it would be able to complete its work at its next meeting.

5. To come to specific articles, and first article 9, it would be noted that two alternatives were proposed for paragraph 1: the first was that adopted by the Drafting Committee at the first session; the Committee, however, now preferred the second alternative because it wished to make sure that all the persons that the Protocol was intended to cover were in fact covered by the article and it felt that that would be done with greater certainty by using a general formula such as "all those affected by a situation referred to in Article 2 common to the Conventions" rather than by an enumeration of categories as in the original version.

6. In the case of article 11, the Drafting Committee had not taken any decision on paragraph 4 as far as substance was concerned. It had dealt with that paragraph from a drafting point of view only.

7. He wished to draw attention to the various passages in square brackets in the text and to the foot-notes indicating points which remained to be determined.

8. The CHAIRMAN invited the Committee to comment on the report of the Drafting Committee (CDDH/II/240).

9. Mr. CLARK (Australia) said he wished to congratulate the Chairman and Rapporteur of the Drafting Committee on their excellent report, which had the general support of the Australian delegation, and in particular on having taken steps to ensure that the views of all delegations submitting amendments were taken into account and that the precise shade of meaning required for the various provisions was conveyed in all the working languages. That reconciliation of the various versions might be very significant in the implementation of the Protocols.

10. His delegation's comments on article 8 would be left for a later stage; it agreed in principle with the United States and United Kingdom amendment to that article (CDDH/II/239).

11. The revised draft of paragraph 4 of article 11 seemed out of place in that article; but his delegation was willing to listen to arguments concerning the inclusion and placing of a new article dealing with the point.

12. His delegation regretted that the words "by analogy", which made for uncertainty and ambiguity, had been retained in article 19. If a majority agreed that some wording was needed to clarify the point, it would suggest the phrase "with necessary modifications".

13. Article 20 had been the subject of an amendment by the Australian delegation in an attempt to develop the law and afford better protection to all the classes of persons and objects mentioned in Part II. The law concerning reprisals was far from settled and it might be found not to be applicable to peoples fighting wars of

self-determination to which draft Protocol I had now been extended. However, any development of the law by the international community must have wide support if it was to be successfully applied; the Australian amendment to article 20 had been adopted only by a small majority, with a large number of delegations not voting. His delegation had therefore decided to withdraw its amendment. In taking that decision it had been mindful that the question of reprisals would arise in acute form in Committees I and III. Perhaps, therefore, a final decision on article 20 should be delayed until those Committees had concluded their deliberations on the subject. In any case, it was essential to ensure conformity on that important article.

14. The CHAIRMAN invited the Committee to consider the report (CDDH/II/240) article by article. Article 8 - Definitions - would be postponed till the first week after Easter.

Article 9 - Field of application (CDDH/1, CDDH/45, CDDH/56) (concluded)

Paragraph 1

15. The CHAIRMAN invited the Committee to vote on the second alternative for article 9, paragraph 1.

The second alternative for paragraph 1 was adopted by 39 votes to 1, with 14 abstentions.

Paragraph 2

16. The CHAIRMAN said that he did not think that the question of the inclusion or not of the words "neutral or other" in square brackets in paragraph 2 (a), was a matter which could be decided by Committee II. A similar point arose in connexion with some of the articles of draft Protocol I, including those dealt with by other Committees.

17. Mr. KUSSBACH (Austria), speaking on behalf of the co-sponsors of amendment CDDH/45, said that the co-sponsors hoped that the point might be dealt with by consensus. The amendment was entirely non-controversial and was designed merely to bring the text into line with that of the Geneva Conventions. No question of substance was involved. The Conference Secretariat had expressed the view that, according to the rules of procedure, the matter should be decided in Committee.

18. Mr. SOLF (United States of America) said that there had been no disagreement concerning the amendment in the Drafting Committee, which had decided to leave the matter for decision by some other body - Committee II or Committee I.

19. Mr. MARTIN (Switzerland) said he supported the Austrian representative. The point was a very simple one which had already been fully discussed in the Committee at the twentieth meeting (CDDH/II/SR20) in connexion with article 19 and had twice been referred to the Drafting Committee. The latter, however, had felt that it was a matter for the Committee itself to decide. He appealed to the Committee to adopt the amendment by consensus.

20. The CHAIRMAN said that he had been convinced by the arguments of the Austrian and Swiss representatives and would now invite the Committee to adopt by consensus paragraph 2, with the words in square brackets, bearing in mind that the words in question would have consequences for other articles of draft Protocol I and that if another Committee were to adopt a different formulation, the matter would have to be decided by the main Drafting Committee of the Conference.

Paragraph 2, with the words in square brackets, was adopted.

Article 9 as a whole, as amended, was adopted.[1/]

Article 10 - Protection and care (CDDH/1) (concluded)

Article 10 was adopted.[2/]

Article 11 - Protection of persons (CDDH/1, CDDH/56; CDDH/II/43, CDDH/II/70)

Paragraphs 1 and 2

21. Mr. MAKIN (United Kingdom) drew attention to the foot-note on page 5 of the report (CDDH/II/240) which referred to the phrase "as a result of hostilities or occupation". A different formulation had been used in draft articles 65, paragraph 3, 67, paragraph 2 and 68, paragraph 3, as well as in the text just adopted for article 9, but it was important that, throughout draft Protocol I, the same wording should be used to express the same idea. He suggested that the wording in question be referred to the main Drafting Committee.

22. The CHAIRMAN said he agreed with the United Kingdom representative.

It was so agreed.

1/ For the text of article 9 as adopted, see the report of Committee II (CDDH/221/Rev.1,annex II).

2/ For the text of article 10 as adopted, see the report of Committee II (CDDH/221/Rev.1,annex II).

23. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said there was an error in the Russian version of paragraph 1: the words "medical procedure" had been translated as "medical experiment".

Paragraphs 1 and 2 were adopted.

Paragraph 3

24. Mr. CHOWDHURY (Bangladesh), supported by Mr. MAIGA (Mali), said that he had certain reservations about paragraph 3. He knew of recent cases in which persons had been forced to give blood to an extent which had led to their death. It would be difficult to provide adequate safeguards against the abuse of the exceptions in paragraph 3 by the forcible taking of blood or tissue on the pretext of a donation. He would have preferred the provision to be omitted but would not oppose its inclusion.

25. Miss MINOGUE (Australia) said that paragraph 3 had been prompted by the concern that no life should be lost because of the inability of a prisoner or detainee, or a resident of an occupied territory, to make a donation of blood or tissue. It had been drafted so as to provide every possible form of protection for the donor. Its authors had considered that its absence would have far more serious consequences than would the danger of abuse to which its inclusion might give rise. The conditions under which the exceptions could be applied had been specified as clearly as possible and the medical standards and controls referred to were recognized throughout the world. The authors hoped that the paragraph, which they believed to be in conformity with the best standards of humanitarian law, would be endorsed by the Conference.

26. Mr. CHOWDHURY (Bangladesh) said that while he admitted the need for paragraph 3 and had noted the care the sponsors had taken in their choice of language, certain incidents with which he was familiar had prompted him to draw attention to the possibility of abuse. That was no doubt why there had been no such exception in the original text. There were potential dangers both in its inclusion and in its omission. He would have preferred the original text to stand, but if there was a consensus in favour of the exceptions clause he would not oppose it.

27. Mr. SCHULTZ (Denmark) said that the representative of Bangladesh had rightly drawn attention to the danger of abuse but such a consideration should not be allowed to prevent the introduction of any reasonable regulation, since the question of abuse could be raised in relation to almost all the regulations of the draft Protocols and of the Geneva Conventions themselves.

28. Mr. DEDDES (Netherlands) said that he shared the Danish representative's view. It was essential to make provision for blood donations. The paragraph provided adequate safeguards, but there was always some risk of abuse of any regulation.

29. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, while the concern voiced by the representative of Bangladesh was justified, he too considered that the safeguards offered sufficient protection against abuse. If other delegations considered them insufficient, they could perhaps suggest additional measures of protection.

30. Mr. MARTIN (Switzerland) said that, in stipulating the conditions in which donations of blood or tissue could be made, the provision itself would help to prevent abuse. Without it there would be no criteria to determine whether or not such abuse had taken place.

31. Mr. KUSSBACH (Austria) said that the important point raised by the representative of Bangladesh might be met by amending the text of paragraph 2 (c) on the lines of that in amendment CDDH/II/43, to read: "(c) the removal of tissues, including blood, or of organs for transplant".

32. Mr. MODICA (Italy) said that paragraph 2 (c) referred to transplantation and not to transfusion. An exceptions clause relating to donations of blood was therefore inappropriate.

33. Mr. MAIGA (Mali) said that it was contradictory to use the words "provided that they are given voluntarily" in paragraph 3 when paragraph 2 prohibited the acts in question even with the consent of the persons concerned. Paragraph 3 could give rise to many abuses. He suggested that the words "including blood transfusions which are not justified by the medical treatment of the persons concerned and are not in their interest" should be added at the end of paragraph 2 (c).

34. Mr. DEDDES (Netherlands) said that, while he had no objection to the Austrian representative's proposal, the words "including blood" were superfluous, since, anatomically speaking, blood was a tissue.

35. Mr. ROSENBLAD (Sweden) said that, in international humanitarian law it was better to have specific provisions than no provision at all, since silence might invite abuse. Those responsible for applying the provisions needed some guidance such as that given in paragraph 3. The same consideration applied to article 14.

36. The CHAIRMAN said that the Secretary of the Committee had drawn his attention to the fact that, since paragraph 3 had been adopted in principle before being referred to the Drafting Committee, any proposal for its deletion would require a two-thirds majority in accordance with rule 32 of the rules of procedure. He suggested that the Drafting Committee should endeavour to improve the wording of the paragraph when it met to draw up the final text of article 14, at which time the representatives of Bangladesh and Mali might be present.

37. Mr. MAIGA (Mali) said that he would be glad to attend the Drafting Committee's meeting. He could not agree that a two-thirds majority would be required for the deletion of the paragraph. The Committee had just adopted by a simple majority the second alternative text for article 9, paragraph 1, despite the fact that the first alternative had been approved at the first session of the Conference.

38. The CHAIRMAN said that the first alternative text of article 9, paragraph 1, had been approved at the first session of the Conference by a Working Group only and not by the Committee as a whole.

39. Mr. CHOWDHURY (Bangladesh) said that he too would be glad to attend the Drafting Committee's meeting. According to his recollection, only the principle of the prohibitions in article 11, and not the exceptions in paragraph 3, had been accepted at the first session. Deletion of the exceptions clause would not, therefore, require a two-thirds majority.

40. The anxiety he had expressed had been founded not on mere conjecture but on actual cases, known to the League of Red Cross Societies, in which prisoners of war had been forced to give blood against their will.

41. The CHAIRMAN said that paragraph 3 would be referred to the Drafting Committee.

/ Paragraph 4 /

42. Mr. KHAIRAT (Arab Republic of Egypt) said that his delegation had co-sponsored amendment CDDH/II/70 on which paragraph 4 had been based. Its purpose was to endorse existing medical practice by providing protected persons with the right to refuse surgical operations and to require such refusal to be made in writing. The amendment had been considered under article 10 at the first session of the Conference but it had since been thought more appropriate to include it in article 11.

43. Mr. EL MEHDI (Mauritania) said that his delegation supported the provisions of the paragraph.

44. Mr. MAKIN (United Kingdom) said that he could see a number of difficulties in the text of paragraph 4. First, it would be difficult to compel a person to sign a statement of refusal. Second, a statement signed in field conditions might be lost. Third, it would be difficult for the doctor to make a patient from the adverse Party understand what was at stake if neither spoke the other's language. Fourth, the reservation in the original proposal that the terms of the paragraph should apply only if the individual concerned was fully conscious had been removed. Lastly, it was not clear what was meant by the term "surgical operations"; would it cover, for example, the removal from a patient's leg of a bullet which, if not removed, might subsequently make amputation necessary?

45. There should be some room for compromise between those in favour of the provision and those opposed to it, possibly by making it an "endeavour" clause rather than the complete prohibition which the first sentence was intended to be.

46. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, while he fully appreciated the concern of its authors, he had certain doubts about the provision. A refusal to undergo surgery in peacetime was accepted by the surgeon only in certain well-defined conditions which protected him from legal action and absolved him from responsibility if the refusal led to the patient's death. In war conditions there was not always time for the surgeon to consult the patient before carrying out an operation. The statement of refusal was designed to protect the surgeon rather than the patient. It was necessary to know what kind of surgical operation was referred to and to ensure protection for the patient rather than for the surgeon.

47. Mr. BOGLIOLO (France) said that the conditions in which surgical operations were carried out in peacetime were totally different from those in wartime. The purpose of the text was to protect the surgeon carrying out a major operation which might entail danger to life or require the amputation of a limb. There was no question of requiring a signed statement of refusal in the case of a minor operation for the removal of a bullet, for example. Some words might be added to make the text more explicit.

48. The CHAIRMAN suggested that paragraph 4 should be referred back to the Drafting Committee for revision.

It was so agreed.

Article 12 - Medical units (CDDH/1) (concluded)

49. Mr. PICTET (International Committee of the Red Cross) said that the title of the article should read: "Protection of medical units".

It was so agreed.

Article 12, as amended, was adopted. 3/

Article 13 - Discontinuance of protection of civilian medical units (CDDH/1, CDDH/56; CDDH/II/25) (concluded)

50. Mr. BRAVO (Mexico) said that he had expressed the view in the Drafting Committee that there should be a definition of the type of weapons with which the personnel referred to in paragraph 2 (a) would be armed. He had proposed that the expression "personal weapons" (armas individuales) should be used and, to satisfy other delegations, had agreed that the reference should be to light personal weapons. The expression "dotado con armas" used in the Spanish text was dangerous in that it set no limitation to the calibre, power, range or other characteristics of the weapons a medical unit could have at its disposal. His delegation wished its reservation on the subject to be clearly recorded in the summary record, since, with the development of weaponry, the danger to which he had referred might become increasingly serious.

51. Mr. MARTIN (Switzerland) said that he had pointed out on an earlier occasion that the references to weapons for self-defence in articles 13 and 58 should be in similar terms. He accordingly suggested that article 13, paragraph 2 (a), should read: "that the personnel of the unit bear small arms for their own defence or for that of the wounded and sick in their charge".

52. Mr. HERNANDEZ (Uruguay) said that he shared the Mexican representative's anxiety. An ambulance carrying sick or wounded could not, for example, be permitted to have a machine-gun mounted on its roof. A precise definition of the arms which the personnel of the unit were entitled to carry should be given in the correct military terms, for otherwise the provision would be open to the employment of any type of weapon.

53. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, said that the majority of members of the Drafting Committee had considered that the use of qualifying adjectives would create confusion and would be inconsistent with the provisions of Article 22 of the first Geneva Convention of 1949, the corresponding paragraph of which made no reference to small arms or light individual weapons. It had been considered important to follow the same formula for civilian medical units as for military medical units.

3/ For the text of article 12 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

54. Discussion in the Drafting Committee had shown that there was a considerable divergence of views between different countries on the meaning of the term "small arms", which in his country meant any individually served weapon, while personal weapons could be construed as weapons owned by individuals. It had been considered advisable to use the same formula as that employed in the Geneva Conventions, which had given rise to no problems.

55. Mr. SANCHEZ DEL RIO (Spain) said that the expression to which the Mexican representative had objected was a mistake in the Spanish text. The problem might be solved by replacing the words "esté dotado con armas" by the words "esté armado". The general term "arms" could cover any kind of weapon but it would be difficult for an individual to be armed, for example, with a cannon.

56. Mr. BRAVO (Mexico) said that a vote had been taken on the introduction of the term "dotado con armas" and he had opposed it. He was opposed also to the term "esté armado", which could cover almost any type of weapon. He therefore wished his reservation on both terms to be recorded.

57. Mr. MARTIN (Switzerland) said that the Conference had been convened not only to reaffirm but also to develop humanitarian law. Having heard the explanation of the Vice-Chairman of the Drafting Committee with regard to Article 22, sub-paragraph (1), of the first Geneva Convention of 1949, however, he would be prepared to accept article 13, paragraph 2 (a) of draft Protocol I without any definition of the type of arms permitted. If any amendment was to be made, it should apply equally to military medical units and civil defence units.

58. Mr. AL-FALLOUJI (Iraq) said that the arms in question were obviously personal ones since they were arms of defence: there was no reason why that should not be stated.

59. The CHAIRMAN said that a vote could be taken if the Mexican representative so wished.

60. Mr. BRAVO (Mexico) said that his delegation would not be opposed to voting on the proposal or to raising it in a plenary meeting of the Conference if delegations so desired.

Paragraphs 1 and 2

61. The CHAIRMAN suggested that a separate vote should be taken on paragraphs 1 and 2 of article 13.

Paragraph 1 was approved by consensus.

62. The CHAIRMAN recalled the Mexican proposal to include the words "et doté d'armes individuelles légères".

63. Mr. AL-FALLOUJI (Iraq), speaking on a point of order, observed that he had supported the Mexican amendment to include the word "personal", but thought that "individual" was too confusing.

64. Mr. BRAVO (Mexico) said that he could agree to the text mentioned by the Chairman.

65. Mr. MARTIN (Switzerland) thought it would be better to send the text back to the Drafting Committee. An individual weapon was something that was not a collective weapon, whereas "personal" meant "belonging to one person". The difficulty could be overcome, however, by making it clear that Article 22 (1) of the first Geneva Convention of 1949 must be interpreted in the same way as article 13.

66. The CHAIRMAN pointed out that the summary record would suffice to show how the words were interpreted. He did not wish to refer the matter back to the Drafting Committee and would prefer the Committee to vote.

67. Mr. POZZO (Argentina) endorsed that view.

68. Mr. MAKIN (United Kingdom) said that he could not believe that those who were opposed to the existing wording would consider it legitimate to blow up a hospital if there were one armed individual guarding it; nevertheless, that was the gist of their comments. There was nothing to say that individuals who were armed should not be attacked. The question at stake was the protection of the unit.

69. Mr. BRAVO (Mexico) said that he had no objection to the original text, which had been changed by the Drafting Committee. In that connexion he agreed with the United Kingdom representative.

70. Mr. CZANK (Hungary) said that he had voted in the Drafting Committee to accept the text because in the context of the various articles of the Protocol it was fairly sure not to be misused. Civilian units would not be armed with large weapons.

71. Paragraph 1 of article 12 stated that "medical units ... shall never be the object of attack". If that rule was observed, such units did not need weapons for their own defence. Moreover, paragraph 2 (a) of article 13 provided that "the personnel of the unit are armed for their own defence". He wondered what kind of weapons the escort mentioned in paragraph 2 (b) would have.

72. He would suggest the use of the word "individual" rather than "personal", because that would make it clear that individual weapons were carried and could be used by one person, and the possibility of dispute over ownership could thus be excluded. Alternatively, the New Zealand suggestion could be adopted. The words "for their own defence" should not, however, be omitted.

73. Mr. MAIGA (Mali), Rapporteur, speaking on a point of order, thought that some confusion had arisen and that guidance from the ICRC should be sought. The article was entitled "Discontinuance of protection of civilian medical units"; there was no mention of the military in the title.

74. Mr. PICTET (International Committee of the Red Cross) agreed that article 13 dealt with civilian medical units. Members of the armed forces receiving treatment in the unit were mentioned only in paragraph 2 (d).

75. Mr. KHAIRAT (Arab Republic of Egypt) thought that the question of substance must be decided before the paragraph was sent to the Drafting Committee. His delegation would be satisfied with the words "light individual weapons" and agreed that the words "for their own defence" must be retained.

76. Mr. AL-FALLOUJI (Iraq) thought that the important thing was to retain the principle that civilian units should be unarmed except for their own defence.

77. The CHAIRMAN asked whether the Mexican representative could agree to the version "dotés d'armes légères individuelles".

78. Mr. BRAVO (Mexico) agreed to that version.

The amendment was adopted by 35 votes to none, with 17 abstentions.

Paragraph 2 (b)

79. Mr. RIVERO ROSARIO (Cuba) expressed his delegation's dissatisfaction at the Drafting Committee's failure to take into account its proposal (CDDH/II/25) to insert the words "a reasonable number of" between "picket" and "sentries". A large number of sentries could well invalidate the article. He would not, however, press for a vote.

80. Mr. PICTET (International Committee of the Red Cross) suggested that the word "protégée" in the French text should be changed to "gardée" to bring it into line with Article 22 of the first Geneva Convention of 1949.

81. Mr. MAKIN (United Kingdom) proposed that the word "guarded" should be used in the English text also.

It was so agreed.

Paragraph 2 (b) was adopted.

Paragraph 2 (d)

82. The CHAIRMAN drew attention to the words "or other combatants" in square brackets in paragraph 2 (d).

83. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that in addition to members of the armed forces there were a number of categories of persons assimilated thereto. The Drafting Committee was not sure whether such categories were already implied in the expression "members of the armed forces" and would like to have the views of the Committee on that matter.

84. Mr. POZZO (Argentina) thought that the term "armed forces" should be reserved for nationals of a State.

85. The CHAIRMAN put the words "or other combatants" in paragraph 2 (d) of article 13 to the vote.

The words "or other combatants" were approved by 43 votes to one, with 2 abstentions.

Article 13 as a whole, as amended, was adopted.[4/]

Article 15 - Protection of civilian medical and religious personnel

86. The CHAIRMAN said that the only matters in abeyance were whether or not to combine paragraphs 1 and 2 after revision of the definitions of "temporary" and "permanent", and the use of the term "combat zone" in paragraph 3. A Working Group had been set up in conjunction with Committee III to discuss the matter and the words used would depend on the work of that group. With that reservation, article 15 might be adopted by consensus.

87. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the question of combining paragraphs 1 and 2 should be left until a decision had been taken on the question of definitions.

4/ For the text of article 13 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

88. Mr. AL-FALLOUJI (Iraq) said that as paragraph 1 should be interpreted in the light of article 8 of draft Protocol I, which covered both permanent and temporary personnel, paragraph 2, dealing with temporary civilian medical personnel, could be deleted.

89. Mr. EL MEHDI (Mauritania) said that paragraph 4 of article 15 stated that "The Occupying Power may not require that, in the performance of those functions, such personnel shall give priority to the treatment of any person except on medical grounds". He thought that, in the case of a difference of opinion between the Occupying Power and the unit, it would be for the unit to decide whether priority should be given.

90. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, said that, in view of the Iraqi representative's point concerning the apparent redundancy of paragraph 2, the Committee should be asked to agree that the Drafting Committee should reconsider article 8 (d), which was out of line with the definitions with respect to temporary medical units. Once that text was brought into line, the drafting problems with respect to article 15 and many other articles would be solved.

91. Mr. AL-FALLOUJI (Iraq) agreed to that suggestion.

92. Mr. MAIGA (Mali), Rapporteur, thought that the problem could be solved by the addition of the words "for the duration of their medical mission" at the end of paragraph 1.

93. Mr. PICTET (International Committee of the Red Cross) pointed out that the characteristic of permanent medical missions was that they were protected even beyond the duration of their medical mission. The words "for the duration of their medical mission" could apply only to temporary personnel.

94. Mr. SCHULTZ (Denmark) drew attention to amendment CDDH/II/239, putting forward a new proposal concerning article 8. Agreement on a definition on the lines proposed there might solve the problem.

95. Mr. MARTIN (Switzerland) pointed out that article 12 dealt with medical units, which should be protected "at all times", in fact, that meant during the time that they were on duty. It would be better, however, if paragraph 1 of article 15 dealt with permanent units and paragraph 2 with temporary ones. The point would be covered by the addition of the words "at all times" at the end of paragraph 1.

96. The CHAIRMAN asked whether the Drafting Committee could agree to that suggestion pending adoption of the definitions.

97. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, reiterated that the Drafting Committee wished to reserve the question until the definition of "temporary medical personnel" had been decided upon. He did not see any contradiction with respect to article 12, since as the definitions stood at present it was clear that a temporary medical unit was such only while it was devoted exclusively to medical activities.

98. There was, however, no corresponding qualification for temporary medical personnel: so long as there was no such qualification in the definition, it was needed in the paragraph on protection. If and when it was made clear that temporary medical personnel were considered medical personnel only while exclusively devoted to medical duties, paragraph 2 would no longer be needed. The question was whether to settle the matter forthwith or when the definitions were discussed.

The meeting rose at 6.10 p.m.

SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

held on Tuesday, 25 February 1975, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of the Drafting Committee on articles 9-13, 15-17, 19, 20 (CDDH/II/240) (continued)

Articles 15 - 17 (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the report of the Drafting Committee (CDDH/II/240).

Article 15 - Protection of civilian medical and religious personnel (continued)

Paragraphs 1 and 2

2. Mr. SOLF (United States of America) said that the amendment to article 8 submitted by the United States and the United Kingdom delegations (CDDH/II/239), which concerned the definition of permanent and temporary medical personnel, had a bearing on article 15. He proposed that it should be referred to the Drafting Committee.

3. Mr. MAKIN (United Kingdom) supported that proposal.

4. Mr. MARTIN (Switzerland), also supporting the proposal, suggested that the Drafting Committee should consider whether article 8 might not be made clearer by transposing paragraphs (e) and (f) and inserting the proposed new paragraph (g) at the beginning of the article instead of at the end.

It was agreed to refer amendment CDDH/II/239 to article 8 to the Drafting Committee for consideration in connexion with article 15, paragraphs 1 and 2.

Paragraphs 3 - 6

5. The CHAIRMAN suggested that the Committee should approve paragraph 3, subject to the report by the joint Working Group of Committees II and III appointed to deal with the words "combat zone" in square brackets.

6. Mr. OSTERN (Norway) asked why the words "If needed" had been inserted at the beginning of paragraph 3 (CDDH/II/240).

7. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, explained that the words had been introduced to meet an objection raised by certain representatives, namely, that the duty to provide help might be too heavy a burden and that it should not be taken as a matter of course.

8. Mr. OSTERN (Norway) suggested that paragraph 3 should be reworded to read: "All available help shall be afforded on request to civilian medical personnel ...". Otherwise the problem might arise of who should decide whether help was needed.

9. Mr. HESS (Israel) said that his delegation could not imagine any situation such as that implied by the second sentence of paragraph 6, in which religious personnel in the Israel services, of Jewish faith, would be obliged to identify themselves by the Red Cross. The only satisfactory solution would be for them to identify themselves by the Red Shield of David as a fully recognized distinctive emblem.

10. Mr. MARTIN (Switzerland) inquired why the words "except on medical grounds" had been added to the second sentence of paragraph 4.

11. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the words merely stated something that was implicit in the paragraph and were therefore only a drafting addition. They were intended to cover a situation where a decision on priority of treatment was unavoidable and to ensure that the decision was based solely on medical considerations.

12. Mr. MAKIN (United Kingdom) suggested that the Committee should defer its decision on the whole of paragraph 3 until a report had been received from the Working Group. Once it had been determined exactly what zone was meant by the words in square brackets, it might be necessary to redraft the whole sentence; in any case doubts had been expressed about the wording of the paragraph as it stood.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) supported the United Kingdom representative's proposal. It was obviously necessary to define the term "combat zone". For example, in some combat zones, help to civilian personnel would be subject to two conditions: the presence there of civilian medical units or personnel, and the need for such help. The words "If needed" had been inserted for that reason.

14. Mr. MODISI (Botswana) proposed that in paragraph 5 the word "judge" should be replaced by the word "deem".

15. Mr. MAKIN (United Kingdom) supported that proposal.

It was agreed to postpone a decision on paragraph 3 until a report had been received from the Working Group on the term "combat zone".

The Committee approved paragraphs 4, 5 (as amended by Botswana) and 6 by consensus.

Article 16 - General protection of medical duties (concluded)

Article 16 was approved by consensus.[1/]

Article 17 - Role of the civilian population and of relief societies (continued)*

16. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that article 17 presented the Committee with a number of alternatives. Regarding foot-note (1) to paragraph 1, it would be better to wait for the report on "combat zone" by the Working Group. With regard to foot-note (2), some representatives had recommended deletion of the word "spontaneously" on the ground that it might prohibit organized action to care for the wounded and sick and the shipwrecked.

17. Foot-note (3) to paragraph 2 applied only to the English text. Some representatives had preferred the word "charity" which was used in the Geneva Conventions, and the Cuban representative had proposed replacing the words "good will" by "humanitarian feelings".

18. The words in square brackets "and to collect the dead" had been added to paragraph 2 in order to bring the paragraph into line with new paragraph 3 (replacing former paragraph 5) on transport questions. It might be better to defer a decision on that point until proposed article 18 bis had been considered.

19. Mr. SANCHEZ DEL RIO (Spain) pointed out that in the Spanish text, the seventh line of paragraph 1 should read: " ... a recogerlos y prestarles cuidados ...".

20. Mr. GREEN (Canada) proposed that the words "harmed, prosecuted or convicted" at the end of paragraph 1 should be replaced by the words "harmed, convicted or punished".

[1/] For the text of article 16 as adopted see the report of Committee II (CDDH/221/Rev.1 annex II).

* Resumed from the seventeenth meeting.

21. Mr. SCHULTZ (Denmark) said he agreed with the view that in paragraph 1, the word "spontaneously" would restrict aid by relief societies, and proposed its deletion.

22. Mr. MODISI (Botswana) said that the word "spontaneously" should be retained. He did not see how it could deter organizations from giving aid of their own volition.

23. Mr. MAKIN (United Kingdom) said it would be well to be very cautious about adopting any part of article 17 until a decision had been taken about the wording of paragraph 3. The article was in danger of becoming extremely confused.

24. With regard to the use of the word "spontaneously" the situation was likely to be very different in invaded areas, which would probably be immediately behind the battle-field, and occupied areas. In the former, it would not be reasonable for a Party to the conflict to permit anything other than spontaneous help, whereas in the latter he saw no reason why organized help should not be permitted. It was therefore not desirable to refer to invaded or occupied areas together.

25. Concerning paragraph 2, he considered that the expression "to collect the dead" was entirely out of place in it. It was contrary to the obligations of the Parties to the conflict as set out in Article 17 of the first Geneva Convention of 1949; the expression had in fact been taken from the second Convention. Action along the lines envisaged by the expression "to collect the dead" would make it harder to identify the victims, whereas in the case of shipwreck such action was essential. Perhaps the words "to collect the dead" might be replaced by the words "to search for and report the location of the dead".

26. In his view, once the wording of paragraph 3 had been agreed upon, the text of the whole article should be referred back to the Drafting Committee in order to clarify which areas were being referred to in each paragraph.

27. Mr. SOLF (United States of America) said that he, too, thought that the word "spontaneously" in paragraph 1 should be deleted. Spontaneous action by the civilian population, and organized assistance to the wounded, sick and shipwrecked would occur where appropriate, as paragraph 2 made clear, even if paragraph 1 did not contain the word "spontaneously", which was restrictive.

28. He would prefer not to postpone the decision on the expression "in invaded or occupied areas" in paragraph 1 until the work on the text of paragraph 3 had been completed.

29. In paragraph 2, the Committee would have to decide between the terms "good will", "charity" and "humanitarian feelings".

30. He did not himself consider that an appeal to the civilian population to locate the dead and bring them to a single place would in any way endanger the implementation of articles 17 or 18 bis. It was merely a request to assist as appropriate and there was no requirement anywhere that the dead were to be buried where they fell.

31. Mr. BOGLIOLO (France) drew attention to the fact that the expression "to collect the dead" did not appear anywhere in the French text of paragraph 2.

32. He was beginning to be convinced by the arguments which had been advanced for the deletion of the word "spontaneously" in paragraph 1.

33. Mr. AL-FALLOUJI (Iraq) said he considered that the word "spontaneously" could be applied appropriately to action by the civilian population, but he could not see how it could be applied to organized action by a competent relief organization in the twentieth century. It would be better to delete it.

34. He wished to understand exactly what the Chairman meant when he said that a matter should be referred back to the Drafting Committee. Did he, in fact, mean that a new Working Group would be set up to resolve a particular problem?

35. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the representative of Iraq had raised a very important issue concerning the procedure which the Committee should follow in the future. He wondered whether it was a good idea to refer all questions which had not been resolved in Committee II to the Drafting Committee. For instance, a matter of substance was involved in any decision on whether organized assistance and civilians should be placed on the same footing. In his view, an organized society could provide spontaneous assistance in areas where no organized work was being undertaken; but, if it did so, one of the Parties to the conflict might well ask it who had authorized it to intervene. He felt it would be better to leave the reference to specific relief societies, such as the national Red Cross (Red Crescent, Red Lion and Sun) Societies, in paragraph 1 since that would afford them protection. Again, civilians should not be penalized for acting spontaneously to care for the wounded, sick and shipwrecked, and it would therefore be wrong to delete the word "spontaneously" from paragraph 1.

36. He was perfectly satisfied with the wording of paragraph 1, unless the definition of the terms "invaded" or "occupied areas" was altered by action taken in another Committee.

37. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that in the French and Spanish texts the words "/ and to collect the dead /" had inadvertently been omitted from paragraph 2.

38. Mr. CLARK (Australia) said that the word "charity", which had initially been used in paragraph 2, had been considered to have religious connotations, while the words "good will", although more secular, had a strong suggestion of business. He thought that the alternative words could both be deleted without detriment to the aims of paragraph 2.

39. Mr. FRUCHTERMAN (United States of America) said that, in order to cover every situation and to make it clear that spontaneous action, where appropriate, was desirable, the words "or otherwise" should be inserted after the word "spontaneously" in paragraph 1.

40. He agreed with the Australian representative that the words "good will" or "charity" should be deleted from paragraph 2.

41. Mr. HEREDIA (Cuba) said he thought that the most suitable words to replace the other alternatives proposed were "humanitarian feelings".

42. Mr. KLEIN (Holy See) considered that the word "charity" was appropriate to the nineteenth century. The words "humanitarian feelings" had been used by the French philosophers of the eighteenth century. What should be expressed in the article was something deep in the heart of every human being; he therefore suggested the word "generosity".

43. Mr. MARTIN (Switzerland) said that immediate care should be provided for the wounded, sick and shipwrecked and hence it must of necessity be spontaneous. He realized, however, that the word "spontaneously" could be interpreted restrictively and it would probably be best to delete it. That was a matter of substance which the Committee must decide, not the Drafting Committee.

44. The CHAIRMAN drew the Committee's attention to rules 48, 40 and 50 of the rules of procedure and to the fact that at the beginning of the present session the Committee had decided to take all decisions of substance itself and to refer only drafting matters to the Drafting Committee and its Working Groups.

45. The Committee would shortly have to take a decision concerning the expression "in invaded or occupied areas" in paragraph 1, in view of the fact that a Working Group had been set up to consider the term "combat zone" and other similar expressions. A decision would also have to be taken concerning the inclusion of the word "spontaneously" and the two other alternatives which had been proposed.

46. In paragraph 2, the Committee had to take a decision concerning the expression "the good will" and the various alternatives which had been proposed, and also concerning the expression "and to collect the dead". In the latter case, the Committee could decide to leave the matter in abeyance until the Working Group dealing with article 18 bis had reached a decision.

47. Mr. SCHULTZ (Denmark) said that, as it was incumbent upon the Committee to develop humanitarian law, it should not feel bound by the use of the word "spontaneously" in former article 18. The inclusion of the word "spontaneously", or indeed another similar word in the text, would give the Occupying Power an excuse to say that the assistance given by the Red Cross Society was not spontaneous and should accordingly be prohibited. Every possible opportunity should be given to provide assistance to the wounded, sick or shipwrecked. He was in favour of deleting the word "spontaneously", but, if that suggestion was not generally acceptable, he would support the United States proposal.

48. Mr. WARRAS (Finland) said that the term "spontaneously" should not be interpreted in a restrictive sense in the context of paragraph 1. The intention was that the civilian population and relief societies should be given the widest possible opportunity to help the wounded, sick and shipwrecked, both spontaneously and otherwise. In his view, the question of authorization for relief assistance, such as that given by the Red Cross, should not be dealt with under article 17; it should be covered by a general provision. He accordingly supported the United States proposal.

49. With regard to paragraph 2, he was of the opinion that the word "charity" was out of date; moreover, he did not feel that any of the expressions "good will", "generosity" or "humanitarian feelings" added anything to the text. He supported those who suggested that the text should read: "The Parties to the conflict may appeal to the civilian population ...".

50. Mr. GREEN (Canada) said he agreed with the Finnish representative that none of the words suggested as alternatives to the words "good will", and for that matter "good will" itself, served any purpose. Moreover, relief societies existed for the very purpose of caring for the wounded, sick and shipwrecked. Consequently, there was no need to appeal to them.

51. Further, if under paragraph 1, the civilian population was permitted spontaneously to care for the wounded, sick and ship wrecked, it would be incongruous, under paragraph 2, to permit the Parties to the conflict to appeal to the good will of the civilian population and relief societies to undertake that care. The words "the good will of" could be deleted.

52. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the discussion on the word "spontaneously" had been very useful; it was clear that the term could be misleading. It was unfortunate that Latin could not be used, as the expression sua sponte might have solved the problem. The words "on their own initiative" also covered the meaning of "spontaneously" and avoided the implication that improvised rather than organized help was what was meant. It was essential that the civilian population and relief societies should be able to help without having to be asked to do so. The United States proposal would avoid the difficulties by adding the words "or otherwise" after "spontaneously"; that would be acceptable, but he suggested that the words "even on their own initiative" should also be considered.

53. Mr. MAKIN (United Kingdom) thought that the argument about spontaneity was beside the point, since paragraph 1 clearly dealt with situations in which the civilian population and relief societies acted on their own initiative, and paragraph 2 with those in which they acted on the initiative of somebody else. He would be happy to agree with the United States proposal, even though it covered a confusion of thought. He still had doubts about the wisdom of agreeing on the text of paragraph 2 before the text of paragraph 3 was available. He withdrew his suggestion that paragraph 2 should be referred back to the Drafting Committee, but thought that paragraphs 2 and 3 should be considered together, since there might be an overlap between them.

54. Mr. SANCHEZ DEL RIO (Spain) said that, in Spanish, the word "espontaneamente" was an adverb and must therefore modify a verb. If yet another adverbial form was added, as in the United States proposal, that would amount to saying "in any way whatsoever". For that reason, he thought that, if "spontaneously" was not used, no adverb should be used at all. As a compromise, he would accept the suggestion made by the Rapporteur of the Drafting Committee that "even on their own initiative" should be used instead of "spontaneously".

55. With regard to paragraph 2, the point that he had raised previously was still valid, namely that the omission of any reference to "charity" or "good will" would make the provisions of that paragraph optional for the Occupying Power and mandatory for the civilian population. That would be a radical alteration in meaning. He therefore considered that some expression of that kind was necessary.

56. Mr. FRUCHTERMAN (United States of America) said that his delegation was prepared to withdraw its proposal in favour of that made by the Rapporteur of the Drafting Committee.

57. Mr. PONCE (Ecuador) said he agreed that the deletion of any reference to "good will" would alter the meaning of paragraph 2 and make it mandatory in character. The best way out of the difficulty was to follow the suggestion made by the Cuban representative.

58. Mr. MARTIN (Switzerland) said that, since the United States delegation had withdrawn its proposal, he would withdraw his suggestion that the word "spontaneously" should be deleted. He accepted the suggestion made by the Rapporteur of the Drafting Committee.

59. Mr. CZANK (Hungary) said he supported the insertion of the words "even on their own initiative", since they conveyed the idea of "spontaneously". If "spontaneously" was not replaced, there was the danger that the words "shall be permitted" might be taken to mean that the civilian population would have to obtain some kind of authorization before they could take action. That was restrictive, and must therefore be excluded.

60. The omission of the word "charity" and the other similar terms mentioned would not make any difference to the meaning of paragraph 2. If some form of words had to be used, he would support the Cuban representative's proposal.

61. Mr. MAIGA (Mali) said that "spontanément" meant "de plein gré"; that was equivalent to "even on their own initiative" so that the suggestion made by the Rapporteur of the Drafting Committee was acceptable to him.

62. Mrs. RODRIGUEZ LARRETA DE PESARESI (Uruguay) supported the proposal made by the Rapporteur of the Drafting Committee which very clearly explained the significance of "spontaneously". In paragraph 2, she would prefer the words "may appeal to the generosity and humanitarian feelings of the population".

63. Mr. MODISI (Botswana) also supported the replacement of "spontaneously" by the words "even on their own initiative", although he thought that spontaneity and initiative were not synonymous.

64. Mr. AL-FALLOUJI (Iraq) said that he, too, found the words "even on their own initiative" acceptable. As far as paragraph 2 was concerned, he now thought, after listening to the Spanish representative, that some form of words was necessary to make it clear that that paragraph was not mandatory in character.

65. Mr. TRAMSEN (Denmark) said he accepted the suggestion made by the Rapporteur of the Drafting Committee.

66. The CHAIRMAN said that the Committee must now decide whether article 17, paragraph 1, should be sent back to the Drafting Committee. The question of the use of the word "spontaneously", however, was one of substance, so that a decision was required. As there appeared to be no objection to the proposal by the Rapporteur of the Drafting Committee that that word should be replaced by the words "even on their own initiative", he would take it that those words had been approved by consensus.

67. With regard to paragraph 2, however, the situation was less clear, as at least four suggestions had been made. He asked the Committee whether it was prepared to accept the expression "humanitarian feelings".

68. Mr. MARRIOTT (Canada) proposed that a vote should first be taken on whether all reference to feelings should be deleted.

69. Mr. CZANK (Hungary) thought that the logical procedure would be to vote first on the original word "charity" and then on the Cuban proposal.

70. The CHAIRMAN said that he agreed with the Hungarian representative, but only in part. The proposal that diverged most widely from the others was that all reference to"feelings" should be deleted, and, according to rule 40 of the rules of procedure, that should be voted on first, followed, as the case might be, by the Cuban proposal.

The proposal that all reference to "feelings" should be deleted from paragraph 2 of article 17 was adopted by 27 votes to 8, with 14 abstentions.

71. The CHAIRMAN said that it was still necessary to decide whether paragraph 2 should be sent back to the Drafting Committee, or whether the entire article should be dealt with in that way since paragraph 3 was not ready.

72. Mr. MAKIN (United Kingdom) said he wished to repeat his suggestion that no decision should be taken with regard to paragraph 2 until paragraph 3 was ready. He thought that the whole of article 17 should be returned to the Drafting Committee.

73. The CHAIRMAN said that after the Committee's decision on article 18 bis, which was currently being studied by a special Working Group, it should also decide whether the question of collecting the dead should be dealt with in that article or in article 17.

74. Mr. MAKIN (United Kingdom) moved the adjournment of the meeting.

The motion was adopted.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

held on Wednesday, 26 February 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of the Drafting Committee on articles 9 - 13, 15 - 17, 19, 20 (CDDH/II/240) (continued)

Article 19 - /Neutral or other/ States not parties to a conflict (CDDH/1; CDDH/II/240, CDDH/II/242)

1. The CHAIRMAN drew attention to amendment CDDH/II/242 submitted by Australia, Canada, New Zealand and the United Kingdom of Great Britain and Northern Ireland, which had just been circulated. In view of the fact that it differed on several points, some of which might be of substance, from the text submitted by the Drafting Committee in its report (CDDH/II/240), he suggested that the Committee should defer further discussion of article 19 until its next meeting.

2. Mr. SOLF (United States of America), speaking on a point of order, said that under rule 32 of the rules of procedure the Committee could not take up amendment CDDH/II/242 unless a two-thirds majority was in favour of doing so, because a decision had already been taken on the substance of article 19.

3. The CHAIRMAN said that there were six differences between amendment CDDH/II/242 and the text produced by the Drafting Committee: first, the phrase "to the extent that they are applicable"; second, the verb "comply with"; third, the phrase "of this Part"; fourth, the phrase "such persons protected by it"; fifth, the word "within"; and lastly, the phrase "whom they may find". The second, third and last of those differences seemed to affect the substance of the article; the others - although they might relate only to drafting - could, in view of their late submission, be considered a disavowal of the Drafting Committee's work. Consequently, unless he heard any objection, he would take it that the Committee agreed to defer consideration of the matter until its next meeting.

It was so agreed.

Article 20 - Prohibition of reprisals (CDDH/1; CDDH/II/214, CDDH/II/240) (concluded)

4. The CHAIRMAN drew attention to the text proposed by the Drafting Committee (CDDH/II/240), in which three alternative terms appeared in square brackets. The term "measures in the nature of reprisals" had originally been proposed by the Australian delegation (CDDH/II/214) and had been approved by the Committee, although the Australian representative had stated that his delegation would not insist on that wording. The question of reprisals, however, was also being considered by other Committees in relation to other provisions and it was his understanding that Committee III had agreed to use the single word "reprisals" in the articles with which it was concerned. Furthermore, that word had been retained by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts and appeared in the Geneva Conventions of 1949 and in various other international conventions. For those reasons, he asked whether the Committee would be willing to reintroduce the word "reprisals". A two-thirds majority would be required for that decision.

5. Mr. SKARSTEDT (Sweden) confirmed that Committee III had agreed to use the word "reprisals" where appropriate in the articles referred to it for consideration.

6. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that in proposing the three alternative terms in square brackets, the Drafting Committee's intention had been to leave open the possibility of reverting to the word "reprisals". He agreed that the decision to be taken was one which would require a two-thirds majority, and expressed the view that the Committee should take account of the agreement reached in Committee III.

7. The CHAIRMAN invited the Committee to vote on the reintroduction of the word "reprisals" in article 20.

The word "reprisals" was approved by 32 votes to none, with 9 abstentions.

8. The CHAIRMAN said that, in the absence of any objection, he would take it that the Committee wished to approve by consensus the text of article 20 submitted by the Drafting Committee (CDDH/II/240) which, in the light of the decision just taken, would read: "Reprisals against the persons and objects protected by this Part are prohibited.".

It was so agreed. 1/

1/ For the text of article 20 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

ORGANIZATION OF WORK

9. The CHAIRMAN said that the preliminary time-table of the Committee's work which he had drawn up pursuant to the recommendation of the General Committee of the Conference would probably need to be modified, since consideration and adoption of the Drafting Committee's report (CDDH/II/240) was proceeding more slowly than he had expected. If the Committee continued to work at its present rate, it would probably not be able to complete even the first reading of the articles submitted to it by the end of the current session of the Conference. In the light of the informal consultations which he had held with certain representatives and with the ICRC representatives, the most appropriate course of action would appear to be for the Committee to proceed with its consideration of draft Protocols I and II and, if necessary, to defer consideration of the technical annex to draft Protocol I until the third session of the Conference. It was his hope that the Committee would be able to complete consideration of the two draft Protocols in the allotted time. That, however, would depend on the Drafting Committee, which up to the present had needed to hold almost twice as many meetings as the Committee itself in order to consider only some of the articles referred to it. He hoped that the Drafting Committee would be able to work a little more expeditiously during the coming weeks and that the results it obtained would not be disavowed subsequently in the Committee.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)*

10. The CHAIRMAN said that the Committee had held a preliminary exchange of views on Part III of draft Protocol II at its twenty-first meeting. Unless there was any objection, he would not reopen the general discussion but would invite the Committee to take up Part III, article by article.

11. Mr. IJAS (Indonesia) said that at the twenty-first meeting (CDDH/II/SR.21) some delegations had expressed the view that a lengthy general discussion should be held on Part III. The Chairman had not disagreed with that view. Since his delegation wished to make a general statement on Part III before each article was taken up, he suggested that the general discussion should continue.

12. Mr. PASSALACQUA (Argentina) supported that suggestion.

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* Resumed from the twenty-first meeting.

13. Mr. URQUIOLA (Philippines) said that he too endorsed the comments by the Indonesian representative. At an earlier meeting, one delegation had called in question draft Protocol II as a whole and other delegations should have the opportunity to express their views on the subject.

14. The CHAIRMAN said that, in view of the importance of the question, he would suspend the meeting briefly in order to consult the ICRC representatives and the relevant summary records.

The meeting was suspended at 10.30 a.m. and resumed at 10.50 a.m.

General discussion of Part III*

15. The CHAIRMAN said that, in deference to the wish expressed by some delegations, he would re-open the general discussion on Part III of draft Protocol II. He stressed, however, that the Committee was not competent to discuss the desirability or utility of the Protocol as a whole, but only to consider the articles which had been referred to it.

16. Mr. IJAS (Indonesia) said that his delegation understood the concern of those who objected to draft Protocol II on the grounds that some of its provisions interfered in the internal affairs of States and were contrary to the principle of national sovereignty. It felt strongly, however, that humanitarian concepts should be reaffirmed and developed in non-international as well as international armed conflicts, the more so as most of the conflicts which had taken place over the past decade had been of a non-international character.

17. In the view of his delegation, draft Protocol II should not be discussed until agreement had been reached on the final text of its key article, namely, article 1. Furthermore, the final wording of article 1 of draft Protocol I might also influence the discussion on draft Protocol II. His delegation realized, however, that to follow such a procedure would delay the Committee's work. In view of the difficulties involved in drafting provisions concerning non-international armed conflicts, every effort should be made to reach a consensus, to leave aside controversial points and to strike a proper balance between the principle of sovereignty and humanitarian dictates.

18. The provisions of Part III of draft Protocol II should not reproduce automatically those of the corresponding part of draft Protocol I, since they concerned a different type of armed conflict. For example, article 16, paragraph 3 could give rise to serious problems if it was left as it stood. The articles in Part III should be as few and as concise as possible. His delegation

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* Resumed from the twenty-first meeting.

supported the view expressed by the Canadian representative that Part III should have the character of a human rights declaration. It also supported the Danish proposal for the establishment of a Working Group to consider the whole of Part III. Once the amendments to the related articles had been introduced and discussed briefly by the Committee, they should be referred to a Working Group for redrafting before the Committee took any decision on them.

19. Mr. SCHULTZ (Denmark) said that his delegation was convinced that there was a need for draft Protocol II. It might, however, be a little premature to discuss the Protocol's contents before the question of its material field of application had been settled. He endorsed the comments made by the Indonesian representative in that connexion. The establishment of the Working Group proposed by his delegation might therefore be postponed until a later stage, and the detailed discussion of Part III might be given a lower priority in the Committee's programme of work than was at present the case.

20. Mr. OSTERN (Norway) said that it was his Government's firm conviction that the need for protection of war victims was the same, irrespective of the political or legal classification of the conflict in question. His Government would therefore have preferred the Conference to draw up identical legal rules for the protection of all war victims. The distinction between international conflicts and conflicts that were not of an international character, together with the elaboration of two different protocols providing for two levels of protection of war victims depending on those legal classifications, could not but contribute to the maintenance of a system of discrimination which at the previous session of the Conference, and in a different context, had been characterized as "selective humanitarianism". His Government would therefore have preferred one single protocol for the protection of all war victims, although such a protocol might have to include certain chapters to apply only in international conflicts.

21. On the basis of the existing political realities, however, his Government would for the time being participate in the work of the Conference on the assumption that two separate protocols would be prepared. It would like to see the articles of Part III, as also other parts of draft Protocol II, drafted with as much similarity as possible to the corresponding articles of draft Protocol I. His delegation reserved the right to propose at a later stage the amalgamation of the two Protocols into one single instrument.

22. Mr. ONISHI (Japan) said that his delegation accepted in principle the extension of Part III to non-international conflicts, as also the ICRC text of draft Protocol II, with the exception of certain articles which imposed undue restrictions on internal law.

He would give further details later, but for the moment associated himself with the statement by the representative of Denmark. As the field of application of the Protocol was still unclear, it was inadvisable to study in detail the provisions for the wounded and sick, which could vary from on situation to another. He favoured postponing discussion of specific points until Committee I had decided on the complete field of application. He suggested that the ICRC might, if possible, redraft Protocol II in accordance with the wording of the amendments to draft Protocol I, without changing the substance of Protocol II, thus providing a convenient basis for discussion.

23. Mr. WARRAS (Finland) said that his delegation considered that humanitarian law should be developed to protect the victims of non-international armed conflicts in the same way as those of international armed conflicts. It fully realized the difficulty of dealing with Part III of draft Protocol II before the material field of application had been established, but, with a view to providing similar treatment for victims irrespective of the nature of the armed conflict, the Committee should consider Part III of draft Protocol II in order to find which articles of draft Protocol I could be reproduced in draft Protocol II.

24. Mr. PASSALACQUA (Argentina) said that his delegation would like to stress certain concepts which it had already mentioned in other Committees, especially that of sovereignty of States. It considered that that concept had been developed and extended on the basis of humanitarian ideals that moved away from the restricted concept of sovereignty, which remained the nucleus of the modern State. The act of signing an international treaty was an act of sovereignty which did not in any way imply a restriction. In the present case an international legal instrument should be produced which could be signed freely by all States. In view of the way in which draft Protocol II was conceived, it would be premature to say that it would be signed or approved by the large majority of States. In Committee I, his delegation had made certain reservations concerning articles 1 and 3, which dealt with specific points. His delegation considered that Committee II should work ad referendum, although that should not in any way detract from the great importance of Part III of draft Protocol II, which dealt with the wounded, sick and shipwrecked. It would be more suitable to complete the consideration of draft Protocol I and produce tangible results from the present session of the Conference.

25. Mr. PICTET (International Committee of the Red Cross) said that the ICRC representatives were present as experts on questions of substance. It was not for them to interfere in matters of procedure. But because of the confidence accorded them, they felt

justified in saying that they would regret any measures that might retard the work. It should not be forgotten that there were victims waiting to be helped. The question of the field of application had been raised also in the other Committees. He could not see why in Committee II - which dealt with some of the most basic and immediately practical provisions, the field of application should have become an obstacle. He pointed out that draft Protocol II left national law intact and included two clauses on sovereignty and non-intervention which had already been discussed in Committee I. The field of application had in fact very little incidence on Part III.

26. Replying to the representative of Japan, he said that it had been agreed that the Drafting Committee would be responsible for bringing draft Protocol II into line with draft Protocol I, but the ICRC would naturally give its full co-operation.

27. Mr. HEREDIA (Cuba) said that his delegation felt that equal importance should be given to both Protocols and that there was no reason to postpone consideration of draft Protocol II.

28. Mr. KHAIRAT (Arab Republic of Egypt) said that his delegation was in favour of examining draft Protocol II ad referendum until a decision had been taken on the field of application of draft Protocol I. Part III should be discussed without going into the principle of sovereignty of States, which was of common concern to all States.

29. Mr. BOTHE (Federal Republic of Germany) endorsed the statement by the representative of the ICRC. Theoretically it was true that much of the level of protection depended on the material field of application, but, practically, that was not the case for most of the provisions regarding the wounded and sick, which should be acceptable even if a very low threshold for the application of Protocol II was adopted by Committee I. Certain specific articles might be affected by the field of application, such as article 16, paragraph 3, but that could be examined when Committee II came to those articles.

30. Mr. AL-FALLOUJI (Iraq) said that, in order to develop humanitarian law effectively, it was essential to take the general tendencies of Governments into account. It was also important not to make draft Protocol II depend entirely on draft Protocol I, nor should it paralyse draft Protocol I. The question of the relationship between the two Protocols should not be allowed to slow up the work of the Committee.

31. Mr. ROSENBLAD (Sweden) said that his delegation appreciated the difficulties. He associated himself with the views expressed by the Chairman and by the representatives of the ICRC, the Federal Republic of Germany and other northern countries. The Committee should discuss draft Protocol II ad referendum, as the other Committees were doing. He agreed that victims of non-international conflicts should be given the same treatment as those of international conflicts.

32. Mr. DENISOV (Ukrainian Soviet Socialist Republic) fully endorsed the Chairman's view that the problem of accepting or not accepting draft Protocol II did not come within the field of competence of the Committee; only the plenary Conference could decide that matter. The fact of adopting draft Protocol II was of great importance for the alleviation of the suffering of victims of armed conflicts. The ICRC had done much work on draft Protocol II and the text formed a good basis for discussion on all matters concerning non-international conflicts. At the twenty-second meeting (CDDH/II/SR.22) the representative of India had mentioned the danger of expanding draft Protocol II to cover national liberation movements; that had been dealt with in Committee I, in connexion with article 1 of draft Protocol II. His delegation was not in favour of the suggestion made by the representative of Norway that the two draft Protocols should be amalgamated into one, for that would make the work of the Conference more complicated and, what was more important, the adequate protection of the victims of non-international armed conflicts would not be facilitated.

33. Mr. MAKIN (United Kingdom) said that he had been impressed by the statement by the representative of the ICRC and felt that the Committee should now discuss details, as the Chairman had suggested. Any decisions could be made ad referendum, in case substantial changes were made to article 1 of draft Protocol II. Most of the provisions, however, were not affected greatly by article 1 and could be discussed at once.

34. Mr. AL BAKIR (Qatar) said that his delegation associated itself with the statement made by the representatives of the Arab Republic of Egypt, Sweden and the ICRC. It considered that the Committee should now discuss Part III of draft Protocol II.

35. Mr. IJAS (Indonesia) said that article 1 of draft Protocol I had not yet been adopted by the Conference in plenary. Its wording could therefore be changed and that would in turn affect the wording of draft Protocol II. He therefore endorsed the proposal that Part III of draft Protocol II should be discussed ad referendum.

36. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation was convinced that the Committee must proceed forthwith with the consideration of Part III of draft Protocol II. Many representatives objected to discussing it, preferring to rely on the political and military differentiation between international and internal armed conflicts. It was an important question, but one which came within the competence of other Committees. The task of Committee II consisted of considering and noting the different conditions under which opportunities to extend medical assistance to victims of internal armed conflicts could be found. Proceeding from article 1 of ICRC draft Protocol II, three variants of such conditions could be listed - first, where Government forces were faced by organized armed groups lacking medical services or sufficient medical supplies and resources; second, where a Government found its armed forces, civilian apparatus and military medical services split in opposing camps. In such a situation the most diverse correlation of conditions and means of extending medical assistance to victims might exist. Third, where, in the course of the conflict, separate administrations, armed forces and military and civilian medical services had been set up. That variant was almost analogous to an international armed conflict.

37. He agreed with the statement of the United Kingdom representative that an internal armed conflict might involve more than two warring parties in addition to part of the population not participating in the conflict. It was essential to provide protection for the neutral section of the population. Some articles of draft Protocol II should be broadened in comparison with analogous articles of draft Protocol I with regard to altering or clarifying specific terms.

38. Mr. MARRIOTT (Canada) suggested that the representative of the Union of Soviet Socialist Republics should be asked to produce a short working paper based on his valuable statement, which would serve to guide the discussions.

39. Mr. FIRN (New Zealand) drew attention to the fact that the Committee had agreed at the twentieth meeting (CDDH/II/SR.20) that it should not embark on a detailed consideration of draft Protocol II until the Drafting Committee had concluded its work and Committee II had taken decisions on the articles in draft Protocol I which it had referred to the Drafting Committee.

40. The CHAIRMAN, referring to the suggestion that the two draft Protocols should be amalgamated into one, said that such a decision was outside the competence of the Committee and could be taken only in plenary session.

41. The other Committees had already begun discussing matters which depended on the decisions of Committee I. All decisions made by Committee II must be ad referendum and would be brought into line with those decisions later.

42. He suggested that before its next meeting the Committee should consider whether work would be speeded up if the Drafting Group were divided into two sub-committees.

43. Mr. SOLF (United States of America) said that the work of the Drafting Committee had been delayed because many of the points it had been asked to consider were of a substantive nature. The proposal to have two drafting sub-committees had merit provided they were required to deal only with drafting.

44. He proposed that the Drafting Committee should continue its work of drafting and that the Chairman should appoint small working groups to deal with matters of substance, as would be required, for example, for draft Protocol II.

45. Mr. AL-FALLOUJI (Iraq) observed that there was no reason why the Drafting Committee should not meet as a working group when substantive matters arose. It was essential for the Committee to give the Drafting Committee clear instructions, particularly when substantive issues were involved. He was against the setting up of sub-groups; larger groups could sometimes be more effective, as had been demonstrated in the case of article 18.

46. The CHAIRMAN pointed out that, as its name implied the Drafting Committee was concerned solely with drafting. It had no competence to deal with substantive matters unless specifically requested to do so.

47. Mr. AL-FALLOUJI (Iraq) said that there was nothing in the rules of procedure to prevent a drafting committee from being authorized to function as a working group. In fact, many of the members of the Drafting Committee were also members of Working Groups. He saw no objection to the Committee's entrusting the Drafting Committee with specific tasks concerning substantive questions.

48. The CHAIRMAN said that, if a body was set up to deal with substantive matters, that should be clearly indicated. Unless otherwise indicated, the function of the Drafting Committee was confined to drafting.

Article 12 - Protection and care (CDDH/1; CDDH/II/225, CDDH/II/238)

49. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the discussion was digressing and becoming academic, and he proposed reverting to the discussion of article 12 and later, depending on the concrete outcome of the discussion, deciding on subsequent work procedure.

50. The CHAIRMAN accepted the proposal and called on the sponsors of amendment CDDH/II/238.

51. Mr. TERNOV (Byelorussian Soviet Socialist Republic), introducing amendment CDDH/II/238 to paragraph 2 of article 12 of the ICRC draft Protocol II on behalf of the sponsors, said that that document also referred to the Australian amendment to article 12 (CDDH/II/225). It was of a more universal character since it included the sick and wounded of all parties to a conflict and of neutral populations. That was an important point, for there could be wounded and sick among the population who were the victims of an armed conflict, and they had the right to protection. Such categories of wounded and sick should be covered by article 12. The words "without any discrimination" did not appear in amendment CDDH/II/238, since they might give rise to problems of interpretation.

52. In drafting their amendment, the Union of Soviet Socialist Republics and its co-sponsors had been guided by concern to alleviate the severity and cruelty of internal conflicts. History had shown that such conflicts could be as brutal and cruel as international armed conflicts. The Union of Soviet Socialist Republics and the co-sponsors of amendment CDDH/II/238 supported other delegations in the desire to ensure that draft Protocol II provided the maximum protection to all those involved in any type of armed conflict. It was in that spirit that they had submitted the amendment.

53. Mr. SCHULTZ (Denmark) supported the Canadian representative's suggestion that the representative of the Union of Soviet Socialist Republics might be asked to prepare a working paper.

54. The CHAIRMAN said he supported that suggestion. He felt that article 11 of draft Protocol II could be deferred to a later date for discussion and that the discussions should begin with article 12.

55. Mr. CLARK (Australia), referring to his delegation's amendment (CDDH/II/231), said that the heading to Part III of draft Protocol II would have to correspond to the definitions in article 11. His delegation's amendment could therefore be held over until the Committee had dealt with article 11.

56. Mr. PICTET (International Committee of the Red Cross) said that the articles in draft Protocol II contained the essence of what had been dealt with in draft Protocol I. There were only minor differences between the two Protocols. Article 12 of draft Protocol II corresponded to articles 10 and 11 of draft Protocol I.

57. Mr. MARRIOTT (Canada) said that, since the wording of his delegation's amendment (CDDH/II/218) was the same as that of the Australian amendment (CDDH/II/225), he would withdraw the Canadian amendment to article 12 of draft Protocol II.

58. Mr. CLARK (Australia) stated that his delegation's amendments to paragraphs 1 and 2 of article 12 depended on the definitions accepted for article 11.

59. In paragraphs 3 and 4 his delegation had inserted article 11 of draft Protocol I. In doing so it had changed the class of persons to be afforded protection by those paragraphs to accord with the words used in article 8 of draft Protocol II.

60. Mr. TERNOV (Byelorussian Soviet Socialist Republic) said that the joint amendment (CDDH/II/238) of which his delegation was a sponsor was to be related to the Australian amendment (CDDH/II/225). It was in the spirit of the ICRC text of paragraph 2 of article 12 of draft Protocol II, but was of a more universal and specific nature.

61. With regard to the discussion on the functions of the Drafting Committee, it was clear that the substantive points that remained to be settled would have to be entrusted to a Working Group. Since such a group would have an extremely heavy workload, it might be wiser for the Committee to continue its discussion on article 12. If it made no progress, then a Working Group could be set up.

62. Mr. HEREDIA (Cuba) said that the protection provided in paragraph 4 of article 12 should be extended to the categories of persons listed in article 6.

63. Mr. SOLF (United States of America) said he was impressed with amendment CDDH/II/238. He felt that the text of article 10 of draft Protocol I, which had been adopted by the Committee, covered all the concern that had been expressed, and that the Committee could adopt the first two paragraphs of article 12 with only minor modifications. Paragraphs 3 and 4 of the Australian amendment to article 12 (CDDH/II/225) could usefully replace paragraphs 3 and 4 of the ICRC text of article 12 subject to minor drafting changes.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

held on Wednesday, 27 February 1975, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of the Drafting Committee on articles 9-13, 15-17, 19, 20 (CDDH/II/240) (concluded)

Article 19 - /neutral or other/ States not parties to a conflict (CDDH/1; CDDH/II/240, CDDH/II/242) (concluded)

1. The CHAIRMAN, referring to the amendment to article 19 proposed by four delegations (CDDH/II/242) pointed out that the text of that article had already been considered by the Drafting Committee (CDDH/II/240). He therefore asked the sponsors of the amendment, which involved not merely drafting changes but also changes of substance, why they had found it necessary to submit it at so late a stage in the proceedings. Some representatives might consider the amendment to be a disavowal of the work of the Drafting Committee.

2. Mr. FIRN (New Zealand) explained that each of the sponsors of amendment CDDH/II/242 had had comments to make on article 19 in the form in which it had been drawn up by the Drafting Committee (CDDH/II/240). In the view of their respective delegations, there was nothing in the rules of procedure to preclude any delegation from submitting amendments before a decision of the Committee had been taken. The sponsors had therefore tried to assist the deliberations of the Committee by agreeing on a common text; that text had been submitted to the Secretariat and was available in all the official languages.

3. There were six changes in the version of article 19 submitted in document CDDH/II/242 as compared with that prepared by the Drafting Committee. In his delegation's opinion, those changes were all of a drafting nature. Even if the Committee had already taken a decision on the substance of article 19 - and the summary records were unclear on that point - it could still consider the amendments in document CDDH/II/242.

4. Mr. FRUCHTERMAN (United States of America), speaking on a point of order, said that, as the reconsideration of a matter of substance was involved, a two-thirds majority vote was necessary before that was possible.

5. The CHAIRMAN agreed with the United States representative and asked him whether he would like a vote to be taken on the admissibility of the amendments.

6. Mr. FRUCHTERMAN (United States of America) replied that, in his view, a vote should be taken to determine whether the Committee was prepared to reconsider the substance of article 19.

7. Mr. FIRN (New Zealand) said that the question why the amendment had been submitted at the present stage was linked with the question whether or not a decision had been taken on the substance of article 19. The Committee had not discussed article 19 at its twenty-fifth meeting (CDDH/II/SR.25). The four sponsors had all intended to make comments on that article and had produced the composite amendment submitted in CDDH/II/242. The record of the Committee's earlier discussion of article 19 was somewhat confused and there was no reference to any decision on substance, although it might be argued that that was implicit in the summary record. There was no clear record of a decision, however, as was the case with other articles. Even if a decision on the substance of article 19 had been taken, the New Zealand delegation held that the changes proposed in document CDDH/II/242 were only of a drafting nature; that could be made clear, however, only if he was allowed to go into the substance of the amendment.

8. The CHAIRMAN said that in his opinion, as also in that of the United States representative and the Drafting Committee, at least some of the proposed changes were of a substantive nature. Where doubt existed, it was safer to assume that matters of substance were involved. In the interpretation of legal rules, experience showed that what had been intended only as a drafting change could sometimes be taken as a change in substance. According to rule 32 of the rules of procedure, a motion for the reconsideration of a question that had already been settled required a two-thirds majority. Under the same rule, he was required to allow two speakers to oppose the motion, after which it should be immediately put to the vote. He would, however, request the United States representative not to press the point and would ask the New Zealand representative to continue.

9. Mr. FIRN (New Zealand) said that the first change in the text of article 19 proposed in document CDDH/II/242 was that the words "by analogy" should be replaced by "to the extent that they are applicable". The sponsors of the amendment thought that "by analogy" did not accurately reflect the true position of States not parties to the conflict. Those words might seem to imply that such States were being asked to apply the provisions relating to the wounded, sick and shipwrecked as if they were parties to the conflict. In fact, not all those provisions were capable of being applied by such States. For example, paragraph 5 of article 15, which dealt with

the relationship between an Occupying Power and civilian medical personnel, could clearly not apply to such personnel in the territory of a third State.

10. The second change was the replacement of "apply" by "comply with". That was a drafting change and did not affect the obligations imposed by article 19.

11. The third change was that "present Protocol" should be replaced by "this Part", by which Part II was intended. The reason was that it was only in that Part that the rights of the wounded, sick and shipwrecked and of medical and religious personnel were protected. He did not think that the proposed change would deny the persons protected by Part II any of the rights embodied in the rest of draft Protocol I. Part I laid down the basic obligations imposed on all High Contracting Parties, and Parts III and IV were concerned with the situation on the battlefield and with the relations between the belligerent Power, especially as an Occupying Power, and the population. None of the provisions of those three Parts was applicable to a third State, with the exception of articles 60 to 62, which were concerned with relief; in those articles, however, the obligations of the third State were explicitly regulated. Finally, Part V imposed obligations on all High Contracting Parties, whether Parties to the conflict or not, and accordingly did not come within the scope of article 19. A specific reference to Part II rather than to the Protocol as a whole was not a substantive change; it would help third States to determine what their obligations were. If, however, the Committee thought that the reference to Part II alone was inappropriate, his delegation was prepared to reconsider the matter.

12. The fourth proposed change related to the persons to whom States not parties to the conflict were to apply the provisions of article 19; those persons were enumerated in the text drawn up by the Drafting Committee, but the sponsors thought that it would be more concise, as also consistent with article 20, to refer simply to "such persons protected by it".

13. The fifth change, namely the replacement of "in" by "within" was purely a question of style.

14. In the sixth and last change, "who may be found" would be replaced by "whom they may find"; that change from the passive to the active clarified the obligations of States not parties to the conflict with respect to the dead.

15. He hoped that there would be general agreement that the changes proposed were not controversial and that no further reference to the Drafting Committee was needed.

16. The CHAIRMAN said that there must be a clear distinction between the various bodies and stages of the work. All matters of substance were discussed by the Committee; if an article was sent to the Drafting Committee, that meant that it had been accepted in substance. It should be stated explicitly in the summary records that articles had been accepted in substance and sent to the Drafting Committee for drafting purposes. The point at issue was whether the amendments proposed were of a substantive or a drafting nature. Both he and the acting Chairman of the Drafting Committee thought that some of them were substantive.

17. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he was neither in favour of nor against the motion, but would like the Chairman to rule on what parts of the amendment were substantive.

18. Mr. MARTIN (Switzerland) agreed with the representative of the Union of Soviet Socialist Republics that it was necessary to decide what was substantive in the amendments. In his view, the only substantive change was the replacement of the words "the present Protocol" by "this Part". It appeared, however, that the sponsors were willing to withdraw that particular proposal. The remaining amendments were only of a drafting nature and a vote would not be necessary.

19. The CHAIRMAN pointed out that he was obliged to follow rule 32 of the rules of procedure.

20. Mr. CZANK (Hungary) said that he supported amendment CDDH/II/242 as an improvement on the Drafting Committee's text, except for one point, namely the replacement of the words "the present Protocol" by "this Part". That was a substantive amendment which could affect other parts of the Protocol. He agreed with the views of the representative of Switzerland.

21. Mr. FRUCHTERMAN (United States of America) said that he would withdraw his point of order on the understanding that the sponsors of amendment CDDH/II/242 would agree to re-incorporate the reference to the present Protocol.

22. Mr. FIRN (New Zealand) confirmed that understanding on behalf of himself and the other sponsors.

23. Mr. CLARK (Australia) said that his delegation had been concerned about the words "by analogy" in article 19 as it was an important article defining the rights and obligations of neutrals and other States.

24. The article should therefore be clearly expressed and understood by all parties. His delegation was of the view that the words "by analogy" in English were ambiguous and uncertain and did not assist in the clear interpretation of article 19. His delegation understood that in the French the words "by analogy" were satisfactory. There was a subtle nuance involved.

25. The Australian delegation would prefer the deletion of the words "by analogy" but the words "to the extent that they are applicable" were acceptable in order to achieve clarity in the English text.

26. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, said that, with regard to the title and the opening words of the article, the Drafting Committee had decided to place the words "Neutral or other" in square brackets, in order to leave the decision to the plenary meeting.

27. Regarding the words "by analogy", a number of representatives had agreed with the Australian representative that they were not sufficiently precise and the Drafting Committee would have sought another term had it been starting afresh. Since, however, the term had been used in exactly the same context in Article 4 of the first Geneva Convention of 1949 and Article 5 of the second Geneva Convention, and been included in the 1929 Geneva Convention, the Drafting Committee had decided that it would be better to retain it. It entailed only a modest extension of the classes of persons protected by the first and second Conventions of 1949.

28. Miss BASTL (Austria) pointed out that in paragraph 2 (a) of article 9 the Committee had approved the wording "a neutral or other State".

29. The CHAIRMAN said that it had been understood that those words would appear in all relevant articles.

30. He invited the Committee to vote on each part of amendment CDDH/II/242.

The amendment replacing the words "by analogy", by "to the extent that they are applicable", was approved by 27 votes to 10, with 11 abstentions.

The amendment replacing the word "apply" by "comply with" was approved by 13 votes to 12, with 24 abstentions.

31. Mr. FIRN (New Zealand), speaking on a point of order, said that the agreement of the sponsors of amendment CDDH/II/242 to replace the word "Part" by "Protocol" had been subject to consequential redrafting. It would therefore be necessary to replace the subsequent word "it" by "this Part".

32. Mr. SOLF (United States of America) supported that view.

33. Mr. MARTIN (Switzerland), also supporting the suggestion, said that, although previously he had been against any change in the Drafting Committee's text (CDDH/II/240), he now realized that that text would in fact limit the people to be protected.

34. Miss MINOGUE (Australia) said that, by referring to persons protected by the Part instead of listing them as in the Drafting Committee's text, the amendment was in fact making the article more concise.

35. Mr. AL-FALLOUJI (Iraq) pointed out that the reference to the Part of draft Protocol I was more comprehensive than the original listing, which did not, for example, include pregnant women or newborn children.

It was agreed by consensus that the wording of article 19 should be amended to read: "... the provisions of this Protocol in respect of such persons protected by this Part ...".

It was agreed by consensus that the word "in" before "their territory" should be replaced by "within".

The amendment replacing the words "who may be found" by "whom they may find" was approved by 12 votes to 3 with 31 abstentions.

Article 19, as amended, was approved by consensus.[1/]

36. The CHAIRMAN appealed to members of the Committee to decide on matters of substance in future before referring any articles to the Drafting Committee, in order to avoid a recurrence of the kind of discussion that had just taken place.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 12 - Protection and care (CDDH/1; CDDH/II/225, CDDH/II/238) (continued)

37. The CHAIRMAN reminded the Committee that the Canadian amendment (CDDH/II/218) had been withdrawn since it was covered by the Australian amendment (CDDH/II/225).

38. Mr. SOLF (United States of America) drew attention to document CDDH/II/222 submitted by his delegation, which consisted of a table showing the comparable parts of draft Protocol I for consideration by the Committee in connexion with the articles assigned to it in draft Protocol II.

1/ For the text of article 19 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

39. The CHAIRMAN said that it was important to bear in mind that any differences between the texts of draft Protocol I and draft Protocol II, however slight, could be interpreted as differences of substance. He suggested that, once the Committee had discussed the amendments to the articles in draft Protocol II, it should send them to the Drafting Committee to ensure conformity with the corresponding provisions of draft Protocol I, unless, of course, they referred to something which concerned non-international conflicts only.

40. Mr. SKARSTEDT (Sweden) said that his delegation fully understood the reasoning behind amendment CDDH/II/238 but did not agree with the amendment itself. In the first place, the personal field of application of draft Protocol II should be settled exclusively in article 2, which applied to "all persons, whether military or civilian, combatant or non-combatant, affected by an armed conflict within the meaning of article 1". Special provisions in article 12 might cause confusion. Secondly, the term "neutral" should be used only to denote a neutral State not taking part in an armed conflict. Lastly, an addition of the kind proposed might be misinterpreted as excluding other wounded and sick who might be affected by an armed conflict.

41. Mr. SOLF (United States of America), referring to his proposal at the twenty-fifth meeting (CDDH/II/SR.25), said that in view of the concern expressed by the Soviet Union and the United Kingdom representatives, he would now like to see paragraph 1 amended so as to retain the language adopted by the Committee in the case of article 10, paragraph 1 of draft Protocol I, and to add a reference to "those who had taken no part in the hostilities". That addition should meet the concern which had motivated amendment CDDH/II/238.

42. He agreed with the representative of Sweden on the use of the term "neutral".

43. Mr. IJAS (Indonesia) supported amendment CDDH/II/238, with the exception of the reference to "the neutral part of the population". He drew attention to his delegation's amendment to paragraph 1 of article 1 of draft Protocol II (CDDH/I/32), which provided that Protocol II should apply to all armed conflicts in which organized forces took up arms against the legitimate Government. That concept would exclude neutral populations.

44. Mr. MARRIOTT (Canada) said that his delegation would like to be associated with the United States representative's proposal concerning paragraph 1, but would like an explanation of the use of the past tense: "... those who had taken no part ...".

45. Mr. KLEIN (Holy See) said that he was in favour of the use of the term "neutral", which applied to the part of the population caught between the two sides in conflict.

46. Mr. MAKIN (United Kingdom) said that he was sure that everyone understood what the sponsors wished to convey by the expression "the neutral part of the population", but the same idea had unfortunately been coveyed in a number of different ways. In Article 3 common to the four Geneva Conventions of 1949 the idea had been expressed by the words "persons taking no active part in the hostilities". Article 6 of draft Protocol II used the expression "all persons who do not take a direct part in or have ceased to take part in hostilities", while article 2 of draft Protocol II referred to "persons affected by an armed conflict". The United States delegation preferred the expression "those who had taken no part in the hostilities". What was required was a single expression to describe the people concerned which would be uniform throughout the Protocols and took account of article 2 of Protocol II. In the meantime, it might be necessary to use square brackets and to leave the decision to the plenary Conference in the light of the decisions taken on other articles of the Protocols.

47. With reference to the Australian amendments to paragraphs 3 and 4 (CDDH/II/225), he was quite content that the substance of article 11 of draft Protocol I, with some slight amendment of the wording, should be incorporated in it, but for reasons of presentation and psychology he had serious doubts concerning the desirability of putting together in a single article in draft Protocol II the subject-matter of two articles in draft Protocol I. He accordingly thought it would be well for the Conference to consider the order of articles in draft Protocol II which seemed very haphazard. In his view, articles relating to the general protection of wounded, sick and shipwrecked persons should follow immediately on the introductory articles, as was done in the Conventions and in draft Protocol I. It seemed to him wrong to start with two all-embracing and straightforward paragraphs concerning the wounded and the sick and to follow them with a paragraph dealing with skin-grafts, which was clearly of minor importance. He hoped that either the Drafting Committee or a special Working Group would be able to look into that question.

48. Mr. OSTERN (Norway) said that he shared the concern expressed by the Swedish and United States delegations concerning the use of the term "neutral". On the other hand, the proposal set out in document CDDH/II/238 made a useful point and he felt that the United States proposal for the rewording of paragraph 1 would meet that point; he accordingly supported it.

49. With regard to paragraph 2, he would prefer to retain the text of article 10, paragraph 2, of draft Protocol I, which had been approved. The Australian text (CDDH/II/225) might be taken to imply that the shipwrecked should not be treated humanely, although that clearly was not the intention. The intentions behind

paragraphs 3 and 4 of the Australian amendment were obviously sound and the wording had been taken from articles 10 and 11 of draft Protocol I. Incidentally, he wondered why the word "other" had been omitted before the word "nationals" in paragraph 3. In principle, he could support the Australian amendments to paragraphs 3 and 4.

50. Mr. CLARK (Australia) said that he could support the United States proposal concerning paragraph 1 and the amendment to paragraph 2 proposed in document CDDH/II/238. Both improved the original ICRC text.

51. With regard to the words "neutral part of the population", he considered that the United Kingdom suggestion should be supported; a small group, composed of representatives of the different Committees, should meet to make certain that the same wording was used in the relevant articles of the Protocols.

52. The question of a new article could be taken up in the Drafting Committee.

53. Mr. SOLF (United States of America), replying to the question asked by the Canadian representative, said that he had used the past tense in order to avoid redundancy. Article 3 common to the Geneva Conventions of 1949 described persons who were hors de combat as persons taking no active part in the hostilities. In the definitions in article 11 of draft Protocol II, the category of persons covered by the term "the wounded and the sick" was the category described as "hors de combat" in Article 3 common to the Conventions. As the intention in article 12 was to make it clear that all the wounded and sick were covered, emphasis was placed on the fact that the Party to which they belonged was irrelevant and that equally they might belong to no Party - in other words that they were the neutral part of the population, which had taken no part in hostilities before they became sick.

54. He had no strong feelings about the tense used, which he looked upon as a drafting question, and was sure that the Canadian objection to the past tense, if it was an objection, could be met.

55. Mrs. BUJARD (International Committee of the Red Cross) said that the wording of article 12 of draft Protocol II was causing the Committee some difficulty because the text of that Protocol was being studied by three Committees and that the definition of protected persons was being considered simultaneously by the three bodies within the scope of their competence. If it was wished to expand the circle of protected persons by paragraphs 3 and 4 of article 12, the definition of protected persons which appeared in Part II, article 6, should be borne in mind.

56. The definition of the term "the wounded and the sick" which appeared in article 11 (a) should also be borne in mind. She understood the United States delegation's desire to make the field of application of article 12 precise. Since Parts II and III were intended to ensure that all persons affected by an armed conflict were protected either because they did not take part in hostilities or because they had ceased to participate, the desired definition could be included in sub-paragraph (a) of article 11. Another possibility would be to leave the question in abeyance for the time being and await the results of the examination of article 6 by Committee I.

57. With regard to the structure of draft Protocol II, it was true that the order of the Geneva Conventions had not been followed. The ICRC had chosen to follow the order adopted for Article 3 common to the four Geneva Conventions of 1949 by setting out first in Part II the guarantees of human treatment to be followed by the parties to the conflict and then, secondly, in Part III, rules for the protection of the wounded and the sick. The other Parts of draft Protocol II followed the order of draft Protocol I.

58. Mr. MARRIOTT (Canada) observed that purely drafting considerations had been at the root of much of the discussion. Now that he understood the position, he was sure that there would be no difficulty in redrafting the United States proposal with regard to paragraph 1 in order to bring out its intention clearly.

59. Mr. HEREDIA (Cuba) said that he doubted whether article 12, paragraph 4, would in fact be applicable to the persons specifically mentioned in article 6 of draft Protocol II, namely "all persons who do not take a direct part or who have ceased to take a part in hostilities".

60. In order to prevent any mutilation of the persons referred to in paragraph 3, the provisions of article 12, paragraph 4, could be made applicable to persons who were not sick or wounded and were covered by the provisions of article 6.

61. Mr. MAKIN (United Kingdom) said that he had been thinking along the same lines as the Cuban representative. The Australian amendment referred to physical mutilation of the wounded, the sick, the shipwrecked and persons whose liberty had been restricted by capture or arrest. The question of mutilation was also dealt with in article 6, paragraph 2 (a). He did not consider that the order of the articles had been given sufficient consideration. Perhaps the Australian amendment to paragraph 3 might be placed elsewhere.

62. The CHAIRMAN suggested that article 12 with its two amendments should be sent to the Drafting Committee. The Drafting Committee would be requested to set up a small working group composed of members particularly interested in the question to carry out a word

by word comparison of article 12 with the approved texts of articles 10 and 11 of Draft Protocol I, together with the amendments, to see if there was any justifiable reason for using different wording in different places. The wording used in draft Protocol II should not differ from the text in draft Protocol I unless there was good reason for using different wording in relation to non-international conflicts from that used in relation to international conflicts. If a different wording were approved in relation to draft Protocol II, it might be necessary in some cases to reconsider the texts already adopted in draft Protocol I and perhaps take a fresh decision on them.

63. To avoid such problems arising in the future, it would be desirable to consider the articles of draft Protocol I together with the corresponding articles of draft Protocol II in Committee II and then send them to the Drafting Committee, with the request that the latter should report back to Committee II, drawing a clear distinction between substantive and drafting changes.

64. Mrs. BUJARD (International Committee of the Red Cross), replying to the point raised by the Cuban representative, said that article 12, paragraphs 3 and 4, should have the same scope as article 11 of draft Protocol I.

65. Mr. HEREDIA (Cuba) said that he would like to give further thought to the matter.

Article 13 - Search and evacuation (CDDH/1; CDDH/II/226)

66. Mrs. BUJARD (International Committee of the Red Cross), introducing article 13 on search and evacuation, said that it supplemented the rule in Article 3 common to the Geneva Conventions of 1949 which imposed on the Parties to the conflict the obligation to collect and care for the wounded and the sick. It was based on Article 15 of the first Geneva Convention of 1949, on Article 18 of the second Convention and on Article 17 of the fourth Convention. Since the search for and the evacuation of the wounded and the sick was already covered by the Geneva Conventions in the case of international armed conflicts, draft Protocol I did not include a corresponding provision.

67. Paragraph 1 set out the obligation for the Parties to the conflict to search for and collect the wounded and the sick at all times. That obligation of a general character was not limited to the occupants of the battlefield after each combat. However, in order to take into account conditions prevailing during military operations, the obligation had been attenuated by the inclusion of the words "all possible measures". The ICRC felt that article 13 could be supplemented by a provision relating to the search for the dead and to measures to be taken to prevent the bodies of the dead being despoiled.

68. Mr. CLARK (Australia) said that his amendment (CDDH/II/226) was consequential upon the definitions agreed upon in article 11 and should be referred to the Drafting Committee.

69. Mr. MAKIN (United Kingdom) said that he had two substantive points to raise.

70. The first depended on whether the Protocol applied to warfare at sea, since the words "at all times" were inconsistent with Article 18 of the second Geneva Convention of 1949.

71. Regarding paragraph 2, he did not see why the ICRC had been inhibited by the title of Part III from repeating the whole of Article 17 of the fourth Geneva Convention, which he considered much more humane and comprehensive. Article 17 of the fourth Convention was a simple, accepted article, which could well be repeated with advantage. He proposed that, in place of paragraph 2, Article 17 of the fourth Convention should be repeated.

72. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), supported by Mr. SOLF (United States of America), said that the Committee could not hurriedly dismiss the substantive points which had been raised.

73. Mr. GREEN (Canada) said that the question of the search for the dead and the prevention of their despoliation was undoubtedly a matter of substance and, in his view, even more important in non-international conflicts than in international conflicts.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

held on Friday, 28 February 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

ORGANIZATION OF WORK

1. Mr. MATTHEY (International Telecommunication Union) expressed concern that it had apparently been decided to postpone the work of the Technical Sub-Committee on Signs and Signals until the third session. It was essential, however, that one important point should be dealt with if the necessary co-ordination between government departments and other bodies, including telecommunication organizations, was to be effected: namely, the question of the identification of aircraft and shipping. A useful compromise might be for ITU to circulate a document on the subject which would outline the existing international treaties relating to telecommunications.

2. The CHAIRMAN said that, in view of the somewhat slow progress of the Committee's work, he had prepared a revised time-table which would be available shortly and would serve as a guide. It was now evident that all the outstanding work could not be dealt with at the present session of the Conference and that the technical annex to draft Protocol I would have to be deferred to the third session.

3. Mr. SOLF (United States of America) hoped that the time-table would allow time for discussion of the report of the Technical Sub-Committee (CDDH/49/Rev.1, annex II). At the first session, it had merely been agreed that Governments should have the opportunity to consider the report between the first and second sessions.

4. The CHAIRMAN said that a meeting had been scheduled for that purpose.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 13 - Search and evacuation (CDDH/1; CDDH/II/226) (continued)

5. The CHAIRMAN said that the only amendment to article 13 was that submitted by Australia (CDDH/II/226) proposing the addition of the words "and the shipwrecked" in each paragraph.

6. Mr. SOLF (United States of America) supported the ICRC text of article 13. It was clear that in warfare at sea it was not always possible to search for the shipwrecked during an engagement - a fact that was recognized in the second Geneva Convention of 1949.

7. Mr. DEDDES (Netherlands) agreed that it would not be possible at all times to search for victims at sea. The ICRC text drew upon the second Geneva Convention of 1949 extensively but omitted any reference to the question of the despoliation of remains.

8. Mr. MAKIN (United Kingdom) suggested that a few words should be added to paragraph 2 of article 13, so that the text might include aged persons, children and ministers of religion, as in Article 17 of the fourth Geneva Convention of 1949.

9. Mr. CLARK (Australia) agreed that paragraph 2 of his delegation's amendment should include such categories as those in peril at sea and in other waters. Paragraph 1 of that amendment could also be amended to bring it into line with the second Geneva Convention of 1949. He supported the United Kingdom proposal for the inclusion of the additional classes of persons as listed in Article 17 of the fourth Geneva Convention.

10. Mr. PICTET (International Committee of the Red Cross) said that the omission of a reference to the shipwrecked in article 13 was an oversight and would be rectified. The ICRC had no objection to including a reference to aged persons, women and children in that article.

11. Mr. GREEN (Canada) wondered why the ICRC text omitted any mention of the collection of dead and protection against the despoliation of bodies.

12. Mr. MAKIN (United Kingdom) suggested that the text of Article 15 of the first Geneva Convention of 1949 might be followed; a reference could be added in paragraph 1 of amendment CDDH/II/226 to the collection of the dead, and in paragraph 2 to the aged and children.

13. Mr. PICTET (International Committee of the Red Cross) said that he had no objection to those additions.

14. The CHAIRMAN suggested that amendment CDDH/II/226, together with the changes suggested, might be sent to the Drafting Committee.

15. Mr. URQUIOLA (Philippines) supported the Australian amendment (CDDH/II/226).

16. Mr. MARRIOTT (Canada) felt there were two issues at stake: the Australian amendment, to which some delegations were opposed; and the question of the "shipwrecked", which had evoked a good deal of sympathy. If the Australian amendment was defeated, all reference to the shipwrecked would be removed. If, however, the Drafting Committee inserted the reference to the shipwrecked, it would be dealing with a substantive matter beyond its competence.

17. Miss MINOGUE (Australia) said that the only concern of the Australian delegation was to provide for the shipwrecked. It was prepared to leave the wording to the Drafting Committee.

18. The CHAIRMAN said that, in view of the divergencies of opinion, the matter should be referred to the Drafting Committee, which should be asked to produce a text that took into account the opinions expressed.

It was so agreed.

Article 14 - Role of the civilian population (CDDH/1; CDDH/II/227)

19. Mr. PICTET (International Committee of the Red Cross) said that paragraph 1 of article 14 was identical to paragraph 1 of article 17 of draft Protocol I. In paragraph 2, the words "even in invaded or occupied areas" had been omitted. In paragraph 3, the word "prosecuted" had been deleted because of the special character of non-international armed conflicts. Paragraphs 4 and 5 of article 17 of draft Protocol I had been omitted because they were not applicable to internal conflicts. Reference to the "shipwrecked" should be added, as in article 17 of draft Protocol I.

20. Mr. CLARK (Australia) said that the purpose of the Australian amendment to article 14 (CDDH/II/227) was to reproduce the provisions of article 17 of draft Protocol I and to extend them to include the shipwrecked. In paragraph 2, the Red Cross was mentioned as an example of a relief organization. Paragraph 4 did not appear in the ICRC text but had now been approved for draft Protocol I in the Drafting Committee. It was a useful addition in non-international armed conflicts in that it provided for an appeal to be made to civilian ships and craft to take aboard the wounded and sick and the shipwrecked.

21. Mr. MARTIN (Switzerland) said that the word "spontaneously" used in article 17 of draft Protocol I should be retained in article 14.

22. Mr. IJAS (Indonesia) proposed that the words "relief societies" should be replaced by "national relief organizations" in order to avoid the impression that international relief organizations could interfere in internal armed conflicts. He asked whether the words "shall refrain from committing any acts of violence" in paragraph 1 of the Australian amendment covered only physical and mental violence

23. Mr. JAKOVLJEVIĆ (Yugoslavia) said that his delegation fully supported the Australian amendment (CDDH/II/227). Its wording, particularly that of paragraph 4, would perhaps require consideration by the Drafting Committee, but all the points of substance in it should be included in article 14. If necessary, the word "national" could be inserted in an appropriate place in paragraph 2.

24. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that his delegation supported the Australian amendment, but felt that there should be no reference to legal proceedings in paragraph 3.

25. Mr. MARTIN (Switzerland) observed that much of the terminology in article 14 had been discussed at length by the Committee when it had considered article 17 of draft Protocol I. In order to avoid entering into further discussion of the same points of substance, the best course might be to request the Drafting Committee to bring the text of article 14 of draft Protocol II into line with that of article 17 of draft Protocol I.

26. Mrs. MANTZOULINOS (Greece) said that her delegation supported the Australian amendment, with the addition of the word "national" in paragraph 2, as suggested by the representative of Yugoslavia.

27. Mr. SCHULTZ (Denmark) agreed that the Committee should take the text of article 17 of draft Protocol I as the basis for its discussion, since the question to be settled was whether or not that text should be reproduced as article 14 of draft Protocol II.

28. Mr. CLARK (Australia) said that his delegation shared the view that article 14 should be brought into line with article 17 of draft Protocol I. Indeed, all the amendments proposed by his delegation were based on the principle that the articles of both Protocols should correspond as closely as possible to one another. Once the text proposed by the Drafting Committee for article 17 of draft Protocol I had been approved, the necessary modifications could be made to article 14.

29. Mr. KHAIRAT (Arab Republic of Egypt) said that his delegation would have no objection to the Australian amendment being referred to the Drafting Committee for consideration in relation to article 17 of draft Protocol I.

30. Mr. PICTET (International Committee of the Red Cross), replying to the Indonesian representative's question concerning the meaning of the word "violence" in paragraph 1, said that it was difficult to give a precise definition. In his opinion, the word should not be interpreted restrictively; it had not simply a physical connotation but applied to any act which forcibly submitted an individual to pressure. The word appeared in draft Protocol I and the ICRC had not thought that it would give rise to any difficulties.

31. The CHAIRMAN said there seemed to be general agreement that the ICRC text of article 14 should be submitted to the Drafting Committee together with the Australian amendment (CDDH/II/227), on the understanding that the wording proposed by the Drafting Committee should correspond as far as possible to that of article 17

of draft Protocol I, on which the Committee would take a decision early the following week. If he heard no objection, he would take it that the Committee agreed to follow that procedure.

It was so agreed.

Article 15 - Medical and religious personnel (CDDH/1; CDDH/II/241, CDDH/II/243)

32. Mr. PICTET (International Committee of the Red Cross) said that article 15 was based on several articles of the first and fourth Geneva Conventions of 1949 and restated the principle underlying article 15 of draft Protocol I. It sought to fill one of the largest gaps in the 1949 Geneva Conventions, which made no mention of protection for doctors and medical personnel. In his view, its wording should be as similar as possible to that of the corresponding article of draft Protocol I and the improvements made in the text of the latter by the Drafting Committee should be carried over to the text of article 14. The ICRC text of draft Protocol II should be regarded as the minimum; any additions which served the cause of humanitarianism would be warmly welcomed by the ICRC.

33. The CHAIRMAN drew attention to the Canadian amendment (CDDH/II/241) and to amendment CDDH/II/243, which replaced amendments CDDH/II/228 and CDDH/II/233.

34. Mr. MARRIOTT (Canada) withdrew the first sentence of his delegation's amendment (CDDH/II/241) in favour of the first sentence of amendment CDDH/II/243. He reserved his delegation's right to comment on the second sentence when article 16 was discussed. The reference to article 16 in the foot-note to the Canadian amendment should be deleted.

35. Mr. KLEIN (Holy See) said that the wording of amendment CDDH/II/243 was based directly on that adopted by the Committee for article 15 of draft Protocol I.

36. Mr. MAKIN (United Kingdom) said that medical personnel were defined in a somewhat restricted sense in article 8 of draft Protocol I, while religious personnel were referred to in article 15 of the same draft Protocol but not actually defined. He asked the sponsors of amendment CDDH/II/243 whether the term "medical personnel" in that amendment was to be interpreted restrictively, as in article 8 of draft Protocol I, or whether they intended it to cover a wider field. The meaning of the phrase "ministering to the wounded, the sick and the shipwrecked" was not clear; it did not appear in article 15 of draft Protocol I and it might lend itself to a restrictive interpretation.

37. Mr. MARRIOTT (Canada) said that the United Kingdom representative had raised an issue which required thorough discussion. Although the Committee had agreed to proceed with its work on draft Protocol II before the question of article 1 had been settled, some thought needed to be given to the kind of personnel referred to in articles 15, 16 and 17. At the twenty-fifth meeting (CDDH/II/SR.25), the representative of the Union of Soviet Socialist Republics had referred to different types of conflict and had observed that an armed band under organized leadership would be unlikely to have a recognizable medical organization although it would certainly have people who cared for the sick and wounded and who therefore required protection. The question was one which might create difficulty unless the Drafting Committee received adequate guidance from the Committee.

38. Mr. KLEIN (Holy See) said that the comments by the United Kingdom representative showed the difficulty of classifying religious and medical personnel in situations as fluctuating and unstable as those obtaining in non-international armed conflicts. The sponsors of amendment CDDH/II/243 had tried to give some form to that rather vague category of personnel in order to provide protection for those who were caring for the wounded and sick in a non-international armed conflict. Admittedly the text was not perfect, but it was difficult to see how the Committee could circumscribe in precise legal terms such an imprecise situation.

39. Mr. SOLF (United States of America) observed that the various categories of persons engaged in medical activities had been the object of detailed discussion at both the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, and the first session of the Conference. To the limited class described as medical personnel in the first Geneva Convention of 1949 had now been added transport crews, civil defence medical personnel and national Red Cross personnel. Those categories of personnel were entitled to bear the distinctive emblem of the Red Cross, which enabled them to be distinguished from other persons performing medical duties.

40. Article 16 of draft Protocol I, on the other hand, dealt with all persons engaged in medical or health activities. The Committee should bear those distinctions in mind when discussing articles 15 and 16 of draft Protocol II. He agreed that parties to non-international armed conflicts were, in many cases, unlikely to dispose of medical personnel as defined in draft Protocol I and, as he hoped, would be defined in draft Protocol II. The basic issue, he felt, was that of eligibility to wear the distinctive emblem.

41. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, while the Canadian amendment (CDDH/II/241) was generally acceptable to his delegation, the definition of medical personnel in relation to draft Protocol II gave rise to certain difficulties. For example, it was not clear whether military medical personnel would be covered as well as civilian medical personnel. Article 15 might need to be amended when agreement had been reached on the wording of article 1.

42. Mr. MARTIN (Switzerland) said that the problem would not automatically be solved by a definition of medical personnel. The question was one of substance and should be discussed by the Committee as soon as possible. His delegation, which had sponsored amendment CDDH/II/243, considered that medical and religious personnel should, as far as possible, receive the same treatment in both draft Protocols. The criterion that must be applied when defining medical personnel was that of care for the wounded, the sick and the shipwrecked.

43. If article 15 and the related amendments were referred to the Drafting Committee, the latter would be obliged to discuss that question of substance. To avoid that, the Committee should first discuss the scope of the article. For instance, his delegation considered that military medical personnel should be included. The question of principle should be resolved before definitions as such were discussed.

44. Mr. IJAS (Indonesia) said that his delegation considered the Canadian amendment (CDDH/II/241), as amended orally, to be the most acceptable version.

45. Mr. MAKIN (United Kingdom) said that there were two separate issues: one concerning respect for and protection of military medical and religious personnel, and the second concerning civilians. He pointed out that doctors, midwives etc. would in any case be protected as members of the civilian population, who were encouraged in other articles to give assistance to the wounded, sick and shipwrecked. Hence, it was perhaps unnecessary to make additional provision for them in article 15, but, if such provision were made, there remained a basic problem of definitions.

46. As the representative of Canada had said, the restrictive provisions in draft Protocol I were inadequate for draft Protocol II. Article 15 was also linked with article 18, since some decision would have to be made concerning which personnel were entitled to wear distinctive emblems, such as the Red Cross emblem. He suggested that a Working Group might be set up to discuss article 15 in relation to article 18 and to establish which personnel should be given special protection and entitled to wear the Red Cross emblems.

47. Mr. AL-FALLOUJI (Iraq) said that there seemed to be some confusion between the Canadian amendment and article 14 of the ICRC text. The second sentence of the Canadian amendment to article 15 stated that civilians who cared for the wounded, sick and shipwrecked should not be harmed, convicted or punished for having offered to provide or having provided care to them. Paragraph 3 of article 14 stated that no one should be molested or convicted for having given shelter, care or assistance to the wounded and the sick, even if they belonged to the adverse Party. The basic problem seemed to be where that provision should be placed.

48. The CHAIRMAN said that the last sentence of the Canadian amendment had a direct relationship to article 14 and to article 16. The rest of the Canadian amendment could only be dealt with after the discussion of article 16 in the Committee, since it would replace article 16. At present the discussion should bear only on article 15. A Working Group could be set up if the Committee so wished.

49. Mr. MARRIOTT (Canada) recalled that during the general debate on draft Protocol II the question of setting up a Working Group when necessary had been discussed. He agreed with the United Kingdom representative that the time had come to do so.

50. The CHAIRMAN said that if necessary the Drafting Committee could be transformed into a Working Group for the purpose of discussing matters of substance.

51. Mr. SOLF (United States of America) supported the views of the United Kingdom and Canadian representatives. He felt that the proposed Working Group should have broad representation. He was not sure, as a member of the Drafting Committee, that that would be the most appropriate forum for so broad a subject, but the Chairman of the Drafting Committee could decide. There were amendments to draft Protocol II which could be dealt with by the Drafting Committee without consideration of the present issue; the Working Groups on articles 18 and 18 bis had now completed those articles and could work parallel with the Drafting Committee.

52. Mr. SCHULTZ (Denmark) said that he fully supported the United Kingdom suggestion that a Working Group should be set up. It was essential to define the limits of the categories of medical and religious personnel which should be given special protection. As a member of the medical profession he considered that it was difficult to decide on such limits, since there were also para-medical personnel who played an essential part in medical activities, such as technicians controlling X-ray equipment.

The case of dental officers would have to be discussed, as also that of personnel engaged in prophylactic work such as anti-tuberculosis campaigns, whose work would not be of prime importance in time of armed conflict. He considered that it would be necessary to have at least one or two members of the medical profession in the Working Group.

53. The CHAIRMAN said that there were two possibilities: either to set up a Working Group within the Drafting Committee, or to establish a separate Working Group as had been done for articles 18 and 18 bis. The latter course would avoid overburdening the Drafting Committee. The Working Group might perhaps be formed of those who were not members of the Drafting Committee and could include medical experts. Members might also be selected according to language and regional groups.

54. Mr. KUSSBACH (Austria) said that it would perhaps be advisable for the sponsors of the relevant amendments to be represented in the Working Group.

55. The CHAIRMAN welcomed that suggestion and invited sponsors of amendments to appoint representatives among themselves.

56. Mr. AL-FALLOUJI (Iraq) said that language and regional considerations were secondary matters: the important point was that the Working Group should represent all the different views expressed.

57. Mr. SCHULTZ (Denmark) suggested that the same procedure might be followed as for articles 18 and 18 bis, and an open-ended Working Group set up in which all those with specific interests in the problem might participate. It was necessary, however, to decide exactly which matters would be discussed by the Working Group.

58. The United Kingdom representative had suggested the consideration of article 15 in relation to article 18 but other speakers seemed to favour a more extensive agenda.

59. The CHAIRMAN said that it was always open to delegations to participate in the Working Groups if they so wished. He had felt it desirable that the different regions should be represented. He asked the Chairman or the Vice-Chairman of the Drafting Committee to state whether the Drafting Committee could form a Working Group which would be open to any member interested in a specific point.

60. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, said that he felt it would be appropriate to refer the matter to the Drafting Committee, which would be glad to take responsibility for notifying any other members interested in the matter. That would be in line with the view which the representative of Iraq had expressed several times that there was no legal

reason why practical matters could not be referred to the Drafting Committee, since the Committee represented all regional groups and was broadly based. He considered that, as article 18 was closely linked to article 15, a member of the national Red Cross Societies must be present in the Working Group, since such societies played an essential role in non-international armed conflicts. It would also be useful to provide a provisional definition of medical and religious personnel and possibly others engaged in medical services.

61. Mr. AL-FALLOUJI (Iraq) said that he had always held the view that the Drafting Committee should be able to be transformed into a Working Group with special terms of reference at any specific mement, in order to speed up the work of the Committee and the Conference. He was glad that others shared that view.

62. Mr. MAKIN (United Kingdom) agreed that the matter should be dealt with by the Drafting Committee, which would meet in a different form. It would be helpful if the Drafting Committee could settle the text of article 14 before discussing article 15, since there was a certain amount of overlapping between the articles. Article 16 should be discussed in the Committee as a whole before the Working Group discussed article 15, as it had been proposed that article 16 should be deleted. He suggested that a decision should be taken in principle to refer the matter to the Drafting Committee acting as a Working Group, but that work should not start until agreement had been reached on article 14.

63. Mr. MARTIN (Switzerland) agreed with the representative of Iraq that the Drafting Committee should be given special terms of reference to consider questions of substance. He considered that, although the sponsors of amendments were not necessarily members of the Drafting Committee, they should be able to participate in the debate without the right of vote.

64. Mr. MARRIOTT (Canada) agreed with the Iraqi and United Kingdom representatives that article 15 could not be discussed in isolation. He felt that articles 12 to 18 could well be discussed together, article 16 was the only one to have aroused serious divergencies of opinion with regard to substance.

65. Mr. JAKOVLJEVIĆ (Yugoslavia), Chairman of the Drafting Committee, said that in view of the close connexion between the articles, as for example between articles 15 and 18, he did not see how the Drafting Committee could decide on article 15 before it had been discussed by the Committee as a whole. He suggested that the Committee should discuss the whole of Part III, after which the Drafting Committee could consider the drafting of those articles.

66. The CHAIRMAN said that it might be better to leave the Drafting Committee to decide whether it wished to form a Working Group, which might include, among others, the representatives of the United Kingdom and Denmark and some of the sponsors of amendments. As the representative of Yugoslavia had said, it would be as well, if the Committee as a whole discussed the basic problems of substance in articles 12 to 18. He suggested that a formal decision on the matter should be postponed for the moment, since the agenda for the twenty-eighth meeting included the discussion of the remaining articles of Part III.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

held on Monday, 3 March 1975 at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 15 - Medical and religious personnel (continued)

1. The CHAIRMAN said that, since article 15 was closely connected with several other articles, no decision could be taken before those articles were discussed. He therefore suggested that the Committee continue its discussion of article 15, and then go on to deal with the other articles.

2. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, said that that Committee had discussed articles 15, 16 and 18 and had found nine points on which a decision by Committee II was required before articles 15 and 16 were referred to a Working Group.

3. The Committee must decide whether the term "medical personnel" as used in article 15 and elsewhere in draft Protocol II excluded any of the personnel listed in article 8 (d) of draft Protocol I, as amended by new article 8 (e); whether to add any other category of "medical personnel" within the scope of article 15; whether article 15 should make it clear that the "medical personnel" should either belong to a party to the non-international conflict or be recognized and authorized by one such party; whether any change was necessary with respect to national and other relief societies, in order that the branches of such societies acting independently might be covered, as had apparently been envisaged by the ICRC in article 35 of draft Protocol II; whether the Parties to a conflict should be forbidden to assign tasks unrelated to their medical mission to "medical personnel"; whether the protection of article 15, carrying with it the privilege of the wearing of the emblem of the Red Cross, should be extended to any religious personnel ministering to the sick; whether article 16, paragraph 3, of draft Protocol I should be included in article 10 of draft Protocol II; and finally, which of the persons mentioned in articles 15 and 16 should be entitled to wear the distinctive emblem.

4. Mr. PICTET (International Committee of the Red Cross) said that the articles in question had to be stated in general terms since in a non-international conflict it was not clear which persons were military and which were civilian.

5. Mr. KLEIN (Holy See) said he supported that view.

6. Mr. JAKOVLJEVIĆ (Yugoslavia) said that the text of article 15 as drafted gave everyone considered to be medical or religious personnel the right to special protection and the right to wear the Red Cross emblem. He did not think that in an internal conflict the intention was in fact to go so far. The basic conditions for the wearing of the Red Cross emblem must be fulfilled, and the protection must not be unlimited: the emblem must be worn only by those who were working in organized medical units, hospitals, dispensaries, and so on. In addition, only religious personnel attached to medical units should have the right to wear the Red Cross emblem. Moreover, who was to decide which units were entitled to such special protection? Some reference to a responsible authority was needed, along the lines of draft Protocol I, for without a definition of medical units there could be a risk of abuse. The Drafting Committee could decide later on exactly where that reference should go.

7. Mr. SOLF (United States of America) said that there was one further point to bear in mind: article 14 called on the civilian population to assist the wounded and sick, and stated that it was protected while so doing. That provided the general framework of latitude for the provision of medical services by those who were not called "medical personnel" in the strict sense. The persons mentioned in article 15 were those entitled to wear the emblem, but if they were not defined, everyone was going to wear it.

8. Mr. MAKIN (United Kingdom) said he agreed with the United States representative. Many of the points raised, however, would become clear when the Committee had discussed article 14.

9. He agreed with the remarks made by the Yugoslav representative. Moreover, it was possible that an internal conflict might develop into an international one through the intervention of another State, and there would be difficulties if greater protection were accorded under Protocol II than under Protocol I and the Geneva Conventions.

10. Mr. PICTET (International Committee of the Red Cross) pointed out that at the beginning of Protocol II there would be a definitions article which would solve most of the problems.

11. The CHAIRMAN said that, since the nine points listed by the Vice-Chairman of the Drafting Committee had not yet been circulated in all languages, Committee II would defer its discussion on them until the following day. Meanwhile he invited the Committee to consider the amendments to article 16 (CDDH/II/1, by Belgium, CDDH/II/6, by the Republic of Viet-Nam, CDDH/II/218, by Canada, CDDH/II/222, by the United States of America, and CDDH/II/229 by Australia).

Article 16 - General protection of medical duties (CDDH/1, CDDH/56; CDDH/II/1, CDDH/II/6, CDDH/II/218, CDDH/II/222, CDDH/II/229)

12. Mr. CALCUS (Belgium) said that the rule in article 16 of draft Protocol II was too abstract. The substance of the Belgian amendment (CDDH/II/1) had been supported, but some delegations had asked for it to be reformulated, since as it stood it appeared to prohibit any neuro-psychiatric treatment, which was not his delegation's intention. He therefore proposed to add the following words to paragraph 2: "In particular, such persons shall not be compelled to administer to prisoners treatment calculated to induce them to change their behaviour, unless such treatment is justified for therapeutic reasons". Alternatively he could support the Australian amendment (CDDH/II/229) in which case he would withdraw his delegation's formal amendment to the corresponding provision of draft Protocol I.

13. Mr. NGUYEN QUI DON (Republic of Viet-Nam) said that his delegation's amendment (CDDH/II/6) was merely a drafting amendment and could be sent direct to the Drafting Committee.

14. Mr. MARRIOTT (Canada) said that in amendment CDDH/II/218 his delegation had proposed the deletion of article 16, but it had now given further thought to the matter and wished to withdraw its proposal to delete paragraphs 1 and 2. It did believe, however, that paragraph 3 could be regarded as an infringement of sovereignty and should be deleted.

15. Mr. SOLF (United States of America) said that, to save time, his delegation would withdraw its amendment in document CDDH/II/222 and support the Canadian proposal to delete paragraph 3 only of article 16.

16. Mr. CLARK (Australia) said that his delegation's amendment (CDDH/II/229) sought to bring article 16 into line with the corresponding article in Protocol I.

17. His delegation had no firm views about paragraph 3, and would abide by the Committee's decision if it wished it to be deleted.

18. He shared, however, the concern of the United States representative about the categories of persons to be accorded protection and their entitlement to wear the Red Cross emblem.

19. Mr. IJAS (Indonesia) said that his delegation would have difficulty in accepting paragraph 3 of article 16, whose provisions were contrary to existing law in Indonesia. He supported the proposal to delete it.

20. Mr. SCHULTZ (Denmark) said he understood the Canadian argument but paragraph 3 represented an interference with national sovereignty, but felt that if it were simply deleted, that would invite the non-State party to a non-international armed conflict to compel doctors of medicine to give information concerning the sick and wounded in their care. There should be further discussion in the Drafting Committee before a decision was taken.

21. Mr. DUNSHEE de ABRANCHES (Brazil) said he supported the deletion of paragraph 3, for the reasons given by his delegation for the amendment of article 16 of draft Protocol I.

22. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that he could not agree that paragraph 3 should be deleted. It had nothing to do with sovereignty; it was a question of providing protection to medical personnel in the case of an internal conflict. To delete the paragraph would seriously weaken the impact of the whole Protocol. His delegation accordingly supported the Australian amendment (CDDH/II/229) and proposed that the matter be referred to the Drafting Committee for decision.

23. Mr. KHAIRAT (Arab Republic of Egypt) said that the question raised by the Danish representative - the protection of the medical personnel of an insurgent movement against the Government in power - was a most important one and constituted an argument against the simple deletion of paragraph 3. The Committee should consider the question very carefully. He agreed with the proposal to submit it to the Drafting Committee, which should seek a solution aimed at striking a balance between the claims of sovereignty and the protection of the medical personnel of the adverse Party.

24. Mr. MAKIN (United Kingdom) said that he found it difficult to envisage how article 16 would affect the medical personnel of the adverse Party. That expression presumably referred to military doctors, who could only be compelled to give information after they had been captured, by which time information about the patients they had treated before capture would not be of much value. In the case of an internal conflict, the doctors needing protection might be those who belonged to neither party but who might be consulted by and subjected to pressure from members of either side. He favoured the deletion of paragraph 3 because it did not seem to have any practical application in the case of that kind of conflict.

25. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that paragraph 3 raised a point of crucial importance, which would indicate just how far the Conference was prepared to go in extending the humanitarian law applicable to any type of armed conflict. It had already been agreed that a rule of that type was appropriate in the case of international conflicts; it was impossible to argue that the same provision, in the case of internal conflicts, constituted a violation of national sovereignty. Nor were there

any grounds for saying that the paragraph would be inapplicable in the case of an internal conflict. On the contrary, the provision was necessary precisely because an insurgent party did not have a highly organized administrative structure like that of the Government in power. The paragraph did not forbid the giving of information by medical personnel; it forbade their being compelled to give information.

26. The text of paragraph 3 might with advantage be referred to the Drafting Committee, but Committee II should first take a decision of principle on how far it wished to go in the humanizing of all types of armed conflict.

27. Mr. SKARSTEDT (Sweden) said that he agreed with the representatives of Denmark and the Union of Soviet Socialist Republics. The question at issue was one of humanizing internal conflicts by providing protection for medical personnel. There might be a case for redrafting paragraph 3; there was none at all for deleting it.

28. Mr. AL-FALLOUJI (Iraq) said that, having listened attentively to the arguments, he had sympathy with both sides. It was true that an infringement of sovereignty was involved in that States were being asked to give up some of their rights and to act in a different way with regard to some of their own nationals. But it was equally true to say that internal conflicts must be humanized and medical personnel must be protected. A similar dilemma arose in connexion with many parts of Protocol II. In the case of international conflicts, States were often prepared to undertake commitments because they thought that they would benefit if other States undertook corresponding commitments. That type of reasoning did not apply in the case of internal conflicts.

29. The real question was how far the international community was ready to go in humanizing such conflicts. He thought it was prepared to make some advance, but it should not be pushed too far. The present Conference was useful precisely because it helped to reveal the degree of maturity of international opinion. The matter must be decided without delay, because a similar question arose in connexion with a great many articles and, if it was not settled at the start, it might lead to enormous waste of time. It would be impossible to settle the details so long as there was uncertainty as to the principles.

30. Mr. HEREDIA (Cuba) said that he found paragraph 3 acceptable. He could see no logic in agreeing, under Protocol I, to protect foreign medical personnel from being compelled to act as informers, but refusing to extend the same protection, under Protocol II, to a State's own nationals. Nor could he agree with what had been said, namely that the paragraph provided for a one-sided

concession on the part of a State or Government. Whether the medical personnel requiring protection were military or civilian would depend on the nature and degree of intensity of the conflict. Cases had occurred, and might occur again, in which the medical personnel on both sides had consisted of civilians. The paragraph rightly made no reference to "States", but simply to the "parties". The question at issue was whether the Conference wished or not to convert the protection of medical personnel in respect of information into an obligation.

31. Mr. BOTHE (Federal Republic of Germany) said that, like the representative of Iraq, he saw merit in the arguments on both sides. He agreed with the Cuban representative that whether paragraph 3 could be applied depended on the degree of development of a conflict, it might be meaningless in the case of some conflicts, but applicable to others.

32. He suggested that the Committee should adopt the texts of paragraphs 1 and 2 in the Australian amendment (CDDH/II/229), but that a Working Group should be set up to consider paragraph 3, particularly in connexion with the different "scenarios" for non-international conflicts to which the representative of the Union of Soviet Socialist Republics had referred at the twenty-fifth meeting (CDDH/II/SR.25).

33. The CHAIRMAN said that it would be difficult to take a decision on the matter until an answer had been given to the questions read out by the Vice-Chairman of the Drafting Committee concerning articles 15, 16 and 18. In view of the time required to translate and distribute the relevant document, that would not be possible before Wednesday, 5 March; he therefore proposed that further discussion of article 16 be adjourned till that date.

It was so agreed.

34. The CHAIRMAN invited the representative of Iraq to convene a Working Group on article 16, paragraph 3, proposed by the representative of the Federal Republic of Germany.

35. Mr. AL-FALLOUJI (Iraq) said that, while he was always ready to be of service to the Chairman or to the Conference, he could not accept the responsibility in the present case because his ideas about article 16 were not sufficiently clear.

36. The CHAIRMAN invited the representative of Denmark to set up the Working Group.

37. Mr. SCHULTZ (Denmark) agreed.

Article 17 - Medical units and transports (CDDH/1; CDDH/II/218, CDDH/II/235)

38. The CHAIRMAN invited the representative of Canada to introduce his delegation's amendment (CDDH/II/218).

39. Mr. MARRIOTT (Canada) said that his delegation's original proposal had been to include the general protection of medical personnel, medical units and medical transports in a single article, but it now felt that a proposal on those lines was inappropriate. It accordingly withdrew amendment CDDH/II/218 to article 17.

40. The CHAIRMAN invited the United States representative to introduce his delegation's amendment (CDDH/II/235).

41. Mr. SOLF (United States of America) said that the amendment had been inspired by the ICRC Commentary on article 17 of draft Protocol II (see CDDH/3, pp. 149 and 150) and in particular the last paragraph on page 149 of the Commentary, which pointed out that, while the draft article made no provision for the cessation of the protection of medical units, such protection would cease only under certain circumstances. Unless those circumstances were explicitly stated in article 17, there was a danger of their being forgotten, especially in view of the very categorical language of that article, that "Medical units ... shall in all circumstances be respected and protected". His delegation was not dogmatic about the language of the proposed new paragraphs 2 and 3, but would prefer, for uniformity's sake, that they corresponded to article 13 of draft Protocol I, and it would welcome any suggestion for incorporating the provisions of article 12, paragraph 2 of draft Protocol I - that civilian medical units should belong to one of the Parties to the conflict - in a new paragraph. That point, however, should be postponed until some of the questions he had raised as Vice-Chairman of the Drafting Committee had been answered.

42. Mr. IJAS (Indonesia) said that he could not support the United States amendment. Protocol II should be as short and concise as possible and there was no need to transfer to it the provisions of Protocol I.

43. Mr. MARRIOTT (Canada) said that he supported the United States amendment. At the twenty-first meeting (CDDH/II/SR.21), the representatives of the Federal Republic of Germany and of Australia had warned the Committee of the dangers of brevity when it was at the expense of clarity. Article 17 was a case in point. The United States amendment exemplified the correct approach. Protocol II must, as far as possible, stand on its own feet, so that the

Parties to a conflict were not obliged to refer to any other international law document to which they might not have access and concerning which they might not be able to obtain legal advice.

44. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that his delegation also supported the United States amendment, which provided a good basis for setting forth the legal principles governing the protection of medical units and transports. It also supported the Canadian representative's view that Protocol II must stand on its own, without reference to Protocol I; it should not be limited to a brief statement, but should be drafted in such a way as to be as comprehensible as possible. The only change he would propose was that paragraph 3 (a) should be brought into line with what had already been decided by the Drafting Committee in connexion with draft Protocol I, article 13, concerning the carrying of small arms and individual weapons by medical personnel for their own protection.

45. The CHAIRMAN asked the United States representative whether he could agree to the Committee's voting on the United States amendment to article 17 (CDDH/II/235), or whether he would prefer to wait for the answers to the questions concerning articles 15, 16 and 18.

46. Mr. SOLF (United States of America) said that he had no objection to the Committee's voting at once on the principle involved in the United States amendment. It might be that a further paragraph would be proposed to article 17, but that would not affect the text now before the Committee.

The United States amendment (CDDH/II/235) was adopted by 34 votes to 1, with 15 abstentions.

Article 18 - The distinctive emblem (CDDH/1)

47. Mr. PICTET (International Committee of the Red Cross), introducing article 18, said that the ICRC considered it essential to have some general clause concerning the protection of the distinctive emblem of the Red Cross.

48. Mr. SCHULTZ (Denmark) said he questioned the correctness of paragraph 1 of the article, which stated that the emblem of the Red Cross was the distinctive emblem not only of the medical personnel, medical units and means of medical transport of the Parties to the conflict but also of the Red Cross (Red Crescent, Red Lion and Sun) organizations. Articles 38 and 44 of the first Geneva Convention of 1949 stated that the distinctive emblem of the Red Cross applied only to the medical services. In the case of Red Cross organizations it was an "indicative" emblem only. He suggested, therefore, that the words "and all Red Cross (Red Crescent, Red Lion and Sun) organizations" be deleted.

49. Mr. HESS (Israel) said he wished to reiterate the statement already made by his delegation that the Red Shield of David emblem should be included in all articles referring to the "distinctive emblem".

50. Mr. PICTET (International Committee of the Red Cross) said it was true that the distinctive emblem could only be used, for purposes of protection, by personnel who were assisting either the military or the official civilian medical services. However, in the case of a non-international conflict, in which a non-governmental party might not have any organized medical services, it would seem important, for purely humanitarian reasons, that the distinctive emblem should be respected, at least for purposes of identification. If the present text was in any way ambiguous, it should, of course, be redrafted.

51. Mr. JAKOVLJEVIĆ (Yugoslavia) said he supported the views expressed by the ICRC representative, which he understood as meaning that only personnel assigned to medical tasks would be entitled to use the distinctive emblem.

52. Mr. SCHULTZ (Denmark) said that there might be special circumstances in a non-international conflict in which a broader use of the distinctive emblem would be justified. Since, however, draft Protocol II constituted a new set of rules in international law, he suggested that it might be advisable to word article 18 somewhat differently.

53. Miss MINOGUE (Australia) said she wished to draw the Committee's attention to the regulations on the use of the emblem of the Red Cross, of the Red Crescent and of the Red Lion and Sun by the national societies which had been adopted by the XXth International Conference of the Red Cross in Vienna 1965.[1/] Paragraph 4 of the "Principles" of those regulations stated that "The 'protective' sign shall be in its original form without alteration or additon", while paragraph 5 stated that the "indicatory sign" would "as far as possible be framed by or under-inscribed with the Society's name or initials". If, therefore, delegations were concerned about the possible extension of protection to national organizations, confusion might, perhaps, be avoided by providing for the superscription, on the emblem, of the organizations's name or initials. There was no real confusion among the national organizations about their own personnel, who comprised only persons formally attached to medical services and who were always closely supervised.

1/ International Red Cross Handbook, eleventh edition, Geneva 1971, pp. 353-361.

54. Mr. MAKIN (United Kingdom) said that the Canadian representative had already, on another occasion, drawn attention to the importance of making draft Protocol II a self-contained instrument. For that purpose, he himself thought that some short summary, perhaps in the form of an annex, should be included in draft Protocol II in order to ensure that the distinctive emblem was not abused. He doubted very much whether, in a non-international conflict, the party in revolt would always be able to refer to the lengthy provisions in the International Red Cross Handbook which had just been quoted by the Australian representative.

55. The CHAIRMAN suggested that the Committee refer article 18 to the Drafting Committee, which could also consider whether an annex to that article might be necessary.

56. Mr. JAKOVLJEVIĆ (Yugoslavia) said he could not agree to the Chairman's suggestion. Committee II itself was capable of deciding that question.

57. Mr. BOTHE (Federal Republic of Germany) said he was compelled to disagree with the Yugoslav representative, since, in his opinion, the question of persons who were entitled to wear the distinctive emblem was closely related to the ninth question raised by the United States representative.

58. The CHAIRMAN said he agreed that the ninth question raised by the Vice-Chairman of the Drafting Committee called for a detailed answer. He suggested, therefore, that the Committee defer any further discussion of articles 15, 16 and 18 until its meeting on 5 March, by which time all the questions would have been circulated in writing.

It was so agreed.

Article 19 - Prohibition of reprisals (CDDH/1; CDDH/II/230, CDDH/II/232)

59. The CHAIRMAN invited the Committee to consider article 19.

60. Mr. CLARK (Australia), introducing his delegation's amendment to the article (CDDH/II/230), said that reprisals, at least under international law, involved an act by one State against another State. However, in internal non-international armed conflicts, the concept of reprisals would seem to be inapplicable, since one party was not a State and the other party was fighting within its own territory and against its own people.

61. It was his understanding that the question of reprisals was still being discussed in Committee III in connexion with article 26 of draft Protocol II; he suggested, therefore, that Committee II ask to be kept informed of those discussions before taking any decision on article 19.

62. Mr. FIRN (New Zealand) said that his delegation's amendment (CDDH/II/232) involved a question of drafting rather than of substance, although it was also intended to include religious personnel. He would be interested to hear the views of the ICRC representative.

63. Mr. PICTET (International Committee of the Red Cross) said that in his opinion it was indispensable to include a prohibition of reprisals against the wounded, the sick and the shipwrecked as well as against medical staff, medical units and means of medical transport, since that prohibition was based on a traditional principle which had long been acknowledged in international law. It was true that reprisals were generally carried out by States, while in non-international conflicts they were often resorted to by some non-identified organization, which he might call "authority X", but that only made the need for article 19 all the more apparent.

64. Mr. AL-FALLOUJI (Iraq) said that the statement by the ICRC representative only emphasized the need to give careful consideration to article 19. As the ICRC representative had said, reprisals might be carried out not only by States but also by some "authority X", in which case the question arose whether that "authority X" was national or international, whether it partook of the nature of a State or had only a semi-State character.

65. The CHAIRMAN suggested that article 19 be referred to the meeting of Committee II to be held the following Wednesday, 5 March.

It was so agreed.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE TWENTY-NINTH MEETING

held on Tuesday, 4 March 1975, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)*

Report of the Drafting Committee on articles 8, 11, 14, 15, 17 and 18 (CDDH/II/240/Add.1)

1. The CHAIRMAN invited the Committee to consider the draft texts contained in addendum I to the report of the Drafting Committee (CDDH/II/240/Add.1).

2. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the addendum filled in some of the gaps in the report of the Drafting Committee (CDDH/II/240) and dealt with some of the provisions that had been referred to that Committee.

3. The new sub-paragraph (e) of article 8 was based on the United States and United Kingdom amendment in document CDDH/II/239. It included definitions of permanent and temporary medical units and personnel which had not previously appeared in the articles. Paragraph 4 of article 11, which had been referred back to the Drafting Committee, had been slightly modified. Article 14 covered one of the matters not dealt with in the report of the Drafting Committee (CDDH/II/240). Article 15 had been amended to bring it into line with the new sub-paragraph (e) of article 8. Article 17, paragraph 1, had been slightly redrafted as a result of the Committee's decision at its twenty-eighth meeting. Article 18 had been referred to the Drafting Committee as a result of discussions in the Working Group.

4. In view of decisions taken at the first session of the Conference, no action was required at present on article 8. The new sub-paragraph (e) had been included in the report for information, as it provided a working basis for other provisions: for instance, paragraph 2 of article 15 could now be deleted.

5. The CHAIRMAN suggested that the Committee take note of the new sub-paragraph (e) of article 8.

It was so agreed.

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* Resumed from the twenty-sixth meeting.

Article 11 - Protection of persons

6. Miss MINOGUE (Australia) said that her delegation had always hoped that article 11, as the cornerstone of the section, if not of the whole of draft Protocol I, might be accepted by consensus of the Committee rather than that any part of it should be put to the vote. Following reference of paragraph 3 to the Drafting Committee as a result of questions raised by the representatives of Bangladesh and Mali at the twenty-third meeting (CDDH/II/SR.23), a small Working Group, representing the original sponsors of revised article 11, had met the representative of Bangladesh and endeavoured to find a formula which would strengthen the protection afforded to donors of blood or of skin for grafts among persons deprived of their liberty. The representative of Bangladesh had emphasized the difficulty of obtaining free consent from such persons, a matter which had always been a major concern of the sponsors. After considering various possibilities, the Group had eventually returned to the text now before the Committee. The representative of Bangladesh had authorized her to say that the authors of the article had chosen their words carefully and well and that he could not suggest any improvements. The Group had accepted a suggestion that violation of the article should be treated as constituting a grave breach, the representative of Mali had subsequently accepted that suggestion and withdrawn his opposition to paragraph 3.

7. The Group proposed that the Committee should unanimously request the General Committee to ensure that when article 74 was discussed by Committee I, the latter should be informed of Committee II's wish that whatever formula was finally adopted it should provide for a breach of the requirements of article 11 to be regarded as a grave breach.

8. The revised text of paragraph 4, which had also been referred to the Drafting Committee, was the result of an effort to produce a text which would attract general acceptance.

9. Mr. MARTIN (Switzerland) suggested that since paragraph 3 had not been changed, it should be voted on or accepted by consensus.

10. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, although he was one of the sponsors of paragraph 3, after hearing the representatives of Bangladesh and Mali, he still had some doubts. How was it possible to ensure that the donation of blood or of skin for graft was voluntary in the case of persons deprived of liberty? He was strongly of the opinion that the Committee ought not to take a final decision on the article until Committee I had dealt with article 74, on repression of breaches of the Protocol.

11. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, referring to the suggestion by the representative of Switzerland, said that paragraphs 2 and 3 had not been included in the addendum to the Drafting Committee's report, since it was understood that they had been accepted in the original report (CDDH/II/240).

12. Mr. GREEN (Canada) said that as he understood them, the reservations of the representative of Bangladesh were related to the fear that persons deprived of liberty might be compelled against their wishes to give blood and tissue: that would amount to a grave breach. He also understood some of the fears expressed by the representative of the Union of Soviet Socialist Republics. Deletion of the article, however, might lead to a situation where a person deprived of liberty was denied the right to give blood even to save the life of a comrade likewise without liberty. While the taking of blood against the wishes of a person might amount to a grave breach, to deny to a prisoner the right to give blood to save the life of a comrade, when such denial might in fact result in the death of that comrade, could itself lead to an accusation of grave breach against a medical officer, and to a charge that, by not allowing the first prisoner to give blood, he had allowed or forced the second prisoner to die. The Committee was therefore faced with the question, which was the lesser evil: the right to allow a person to give blood if he wished, in order to save the life of a comrade, or the refusal to allow a doctor to take blood even if a voluntary offer were made, or even to ask for volunteers if that were the case. In his view it was a question of deciding merely to allow someone to volunteer to give blood, should he so desire, for the sake of those who were his own comrades-in-arms.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he was not advocating the deletion of article 11; he was merely suggesting that paragraph 3 should be accepted provisionally. How could a person deprived of liberty be sure that blood donated by him would go to a comrade or compatriot? It might be given to enemy soldiers, in which case he could be accused of collaboration when he returned home. It was essential to provide safeguards that would relieve a person deprived of liberty from any responsibility in the matter.

14. Mr. SOLF (United States of America) said that he was entirely satisfied with the solution produced by the small Working Group. The words "including biological experiments, wilfully causing great suffering or serious injury to body or health" in the Articles of the four Geneva Conventions of 1949 relating to grave breaches (Article 50 of the first Convention, Article 51 of the second Convention, Article 30 of the third Convention and Article 147 of the fourth Convention) should cover any serious violation of

article 11. The Working Group's report had been endorsed by the Drafting Committee and he did not see what further safeguards could be added to paragraph 3 or what other wording could make the standards more rigorous. He was concerned, in common with the representative of the Union of Soviet Socialist Republics, about abuses of those standards. Nevertheless, the establishment of standards and the provision of penal sanctions against those who abused them was all that international law-making could do to deter such abuses. Failure to establish standards would only perpetuate the abuses of the past.

15. In his opinion, there was ample material available to warrant action on paragraph 3: to place it in square brackets would mean no action at the present session.

16. Miss ZYS (Poland) said that, as one of the sponsors of the original revision of article 11, she had long had doubts about paragraph 3. She had read reports of thousands of prisoners in the Second World War, many of them her own compatriots, who had been forced to give blood to help the enemy, sometimes dying as a result. In every case-history she had read there had been abuse by the Detaining Power; in no case had the blood thus extorted been used to save the life of a fellow-prisoner or compatriot. While she recognized that doctors should not be denied the possibility of obtaining blood donations, the Conference was concerned with protecting the victims of armed conflict from abuse, and it was essential to provide greater safeguards. If the choice was between doctor and victim, then the victim was entitled to the greater safeguards. She was therefore in favour of accepting paragraph 3 provided that additional safeguards against abuses might be incorporated and a more satisfactory text ultimately produced.

17. She agreed with the Australian representative that article 11 was the key article of draft Protocol I.

18. Mr. SCHULTZ (Denmark) said that the risk that it might be abused was no argument for not introducing a new and reasonable provision in international law. History showed that there had been considerable abuse of international rules in the past by Occupying Powers, but the introduction of new provisions in the draft Protocols was a move to curb such abuse and thus help to humanize warfare. In the case of paragraph 3, it would be better not to concentrate too much on the possibility of abuse.

19. He was surprised that a representative who had frequently stressed the need for a humanitarian attitude and advocated the treatment of patients without distinction, should warn against the danger of donated blood being used for enemy soldiers. The risk existed, of course, but the principles embodied in article 10

should apply in the present case. Everyone wished to fight the enemy, but only by legal and reasonable means. It would be dangerous, in the context of blood donation, to introduce the principle of distinction between friends and enemies.

20. He agreed with the representative of Canada that the disadvantages of introducing such a distinction outweighed the advantages. He accordingly supported paragraph 3 as it stood.

21. Mrs. DARIIMAA (Mongolia) said that experience in the Second World War and in present-day wars provided ample evidence of the need to ensure the greatest possible protection for prisoners in occupation conditions. As far as "voluntary" donations of blood were concerned, it was difficult to be sure whether a prisoner had really given without coercion or inducement. In her opinion, paragraph 3 needed very careful consideration to ensure that it was drafted so as to prevent a recurrence of the unprofessional action of some doctors in the Second World War. She endorsed the view of the representatives of Bangladesh and Mali that the paragraph should not receive final acceptance at the present stage.

22. Mr. URQUIOLA (Philippines) said he agreed with the Australian representative on the importance of article 11. The representative of the Union of Soviet Socialist Republics had made a valid point in stressing the possible danger of accusations of collaboration against a prisoner who had donated blood or skin for graft: but, on the other hand, the Danish representative had argued persuasively against the principle of distinction. In his opinion, the Committee would have to take a decision of substance before discussing paragraph 3, namely, whether donations of blood or skin for graft should be used only for a friend or compatriot of the donor, or whether they should be used for anyone irrespective of the party to which he belonged.

23. Mr. CZANK (Hungary) said that article 11 was very important; the great problem was how to include additional safeguards in paragraph 3 and how to express explicitly in article 74 that the violation of paragraph 3 would constitute a grave breach of the Protocol.

24. One additional guarantee could be provided by inserting in paragraph 3 a mandatory requirement for a statement of consent on the part of the donor of blood or skin. The Philippine representative had raised the very important question of who could give blood for whom. That point should be considered in conjunction with article 10, and the two articles harmonized so that contradictions were avoided. Such matters could be referred to the Drafting Committee and, as the representative of the Union of Soviet Socialist Republics had suggested, Committee II should accept the text provisionally while awaiting the outcome of the discussion on article 74.

25. Mr. MARRIOTT (Canada) said he agreed with the Danish representative that to surround international law with a web of administrative procedures would not prevent abuses. The maintenance of professional ethics even in peacetime could never be guaranteed: all professions had their black sheep. Those who had expressed disquiet about paragraph 3 of article 11 should consider Article 13 of the third Geneva Convention of 1949, which read: "Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner-of-war in its custody is prohibited and will be regarded as a serious breach of the present Convention." He could not see how the Committee could really do any more to ensure humanitarian treatment than what had already been proposed. It would be a mistake to defer further consideration.

26. Miss MINOGUE (Australia) said that the authors of the proposal had always been aware that the problem was an extremely difficult one, and that there was no absolute safeguard against evil intent on the part of the medical profession. One safeguard that had been examined was the possibility of blood and skin donations for fellow nationals only, even though that concept was anathema to the Group because it drew a distinction between wounded and sick persons, according to their allegiance. However, it had been concluded that such a provision could boomerang against the party of the blood donor himself, since if blood of a special group were needed for a sick enemy and a prisoner of that blood group was unwilling to give it, his refusal might rebound against the prisoners. The possibility had therefore been abandoned on practical as well as ideological grounds.

27. One point to which insufficient attention had been given was that paragraph 3 provided that such donations must be given "voluntarily and without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient" (CDDH/II/240). The conditions in which a donor might give blood were very strictly laid down, and should themselves provide protection against many of the abuses which the representative of Poland had mentioned.

28. She agreed with the Canadian representative that a decision should not be delayed. She did not feel that there was substantial disagreement: there was in fact a consensus in the Committee on the desirability of such a paragraph. Any suitable additional provisions would, she was sure, be accepted, but she hoped that the Committee would not decide to insert a provision limiting donations to fellow-nationals, for that would be quite contrary to article 10 and out of harmony with the whole spirit of draft Protocol I.

29. She could accept a clause stating that a breach of the article would be a grave breach.

30. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said he agreed with the representatives of Poland and the Soviet Union. He did not object to laying down the rule in paragraph 3. The problem was how to establish safeguards against abuse of that paragraph. The question might be referred to Committee I which could make abuse a war crime, and provision to that effect could be included in national laws, in accordance with the first Geneva Convention of 1949. Another possibility was to adopt the Philippine suggestion of the principle of blood donations exclusively for fellow-nationals.

31. Mr. PICTET (International Committee of the Red Cross) said that ever since 1863, the principle had been accepted that the wounded should be treated without distinction of nationality, and that assistance to the wounded should never be considered as participation in a conflict. Nevertheless, he could well understand that the Committee was seeking guarantees, for it would be inadmissible for a Detaining Power to abuse its authority and force prisoners of war to give blood to the enemy. It was therefore legitimate that blood donations should be surrounded by all possible safeguards. Paragraph 3 offered such guarantees, but it was for the Committee to decide whether they were sufficient. In case of doubt the guiding principle, the golden rule, should always be the interest of the victims, and the Committee had to try to reconcile the interests of the various categories of victim concerned, and to ensure that the Detaining Power did not shift its responsibilities on to the adverse Party.

32. Mr. FRUCHTERMAN (United States of America) said his delegation supported the Danish representative's view that no distinction must be made between the wounded and sick, and that any such provision would open the door to discrimination against one party. His delegation found paragraph 3 in its present form acceptable but thought that the Hungarian representative's suggestions might be incorporated.

33. There was an important and appropriate provision in the penultimate paragraph of Article 30 of the third Geneva Convention of 1949, which read "Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency." The addition of one more sentence to paragraph 3 incorporating that provision, even omitting the words "upon request" so as to make it mandatory for the detaining authorities to issue an official certificate, might be enough to enable the Committee to adopt paragraph 3.

34. Mr. ONISHI (Japan) said that from the humanitarian viewpoint it would be ideal if any prisoner who wished to give blood, even to the enemy, should be able to do so. But article 11 stressed the worst side of the enemy, and humanitarian feelings on the detainee's part would thus be rather contradictory. The most important need, however, was to protect the weaker side, namely the detainees, and since blood donations were essential, for the reasons given by the Australian representative, it would be best if such donations could be reserved for fellow nationals.

35. Mr. MARTIN (Switzerland) said that, despite the agreement of the representatives of Bangladesh and Mali, the discussion on paragraph 3 was being reopened. Some of the proposals made, if adopted, would mean that the Committee would have to return to article 10, which had already been adopted by consensus. That could not be done: there were some principles which could not be changed. To reserve blood for the nationals of a given country conflicted with humanitarian ideals. At most the text should be returned to the Drafting Committee for inclusion of the words of the third Geneva Convention of 1949 suggested by the United States representative. In any case, paragraph 3 should not be placed in brackets until the matter of grave breaches of the Convention had been considered. As far as his own delegation was concerned, paragraph 3 could well be adopted as it stood.

36. Mrs. MANTZOULINOS (Greece) said that, like the representatives of Australia, Canada, Denmark, Switzerland and the United States of America, she regarded prisoners and the wounded as human beings needing protection, irrespective of whether they were compatriots or enemy nationals. Greece had had experience in many fields of the practices of Occupying and Detaining Powers: practices such as those referred to by the representatives of Bangladesh and Poland were already covered in that they constituted "grave breaches" of the Geneva Conventions. It was not the task of the Committee to reiterate existing judicial denunciations of certain practices, but rather to reinforce the "golden rule" of Geneva law to which the representative of the ICRC had referred. In the context of blood donation, therefore, her delegation supported the Australian proposal which provided that no distinction whatever should be made in the medical treatment given to the wounded and sick or to prisoners.

37. Mr. MAKIN (United Kingdom) said he agreed with the Greek representative on the question of not confining blood or tissue donations to any particular nationality.

38. Two suggestions for tightening paragraph 3 had been made; one that a breach of the paragraph should be regarded as a grave breach, and the other that consent should be in writing. He proposed that the consent in writing should be witnessed by a person of the same nationality as the donor; that would provide an additional safeguard. He would not, however, insist on that proposal if the medical representatives on the Committee thought it would make the process unworkable.

39. Mr. CHOWDHURY (Bangladesh) said that, after his discussions with the Australian representative, he had agreed that paragraph 3 could stand. He now felt that the United Kingdom proposal would go some way to providing an additional safeguard, although there might be cases of a signature being extorted by coercion. A balance must be struck between fears which were not unfounded and the need not to deprive the sick and wounded of essential blood.

40. Miss ZYS (Poland) suggested that the words "and provided that it in no way benefits the adverse Party" be inserted in paragraph 3. Adoption of the United Kingdom suggestion would also be a step forward, even though such a signature could in fact be extorted by force from a detainee. However, the aim should be to prevent a Detaining Power from shifting its responsibilities on to the adversary.

41. Mr. IJAS (Indonesia) said that he had listened with great interest to the statement by the representative of Bangladesh. There was no completely certain way of avoiding abuses; he therefore thought it unnecessary to redraft paragraph 3, which was sufficiently clear, though it would be desirable to add the requirement, proposed by the Hungarian and United Kingdom representatives that the giving of blood should be made subject to written consent signed in the presence of two co-prisoners. From the medical standpoint, there should be no difficulty about obtaining such written consent since blood donors must be healthy individuals.

42. Mr. MARRIOTT (Canada) said that he did not think that the requirement of written consent provided any additional protection. On the other hand, the United States suggestion that the paragraph might contain a provision on the lines of the third paragraph of Article 30 of the third Geneva Convention of 1949 might give considerable protection in practice, not only to prisoners but to other detained persons. He hesitated to suggest a precise wording: if the principle were adopted, the Drafting Committee would have no difficulty in producing a text.

43. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that some such provision was necessary because the giving of blood was the only type of medical operation for which no regulation had yet been made. He feared, however, that a provision on the lines of Article 30 of the third Convention might result in the Red Cross being inundated with certificates, because blood transfusion was a very frequent operation. He suggested that a small Working Group be set up to consider with the ICRC how such an arrangement might be made.

44. Mr. KHAIRAT (Arab Republic of Egypt) said that he had the impression that most representatives wished to retain paragraph 3, while some desired the insertion of further guarantees against abuse. He thought that the Committee was now in a position to take a decision on the two most important safeguards that had been proposed: the provision that an infringement of the article should constitute a "grave breach", and the requirement of the donor's written consent. Once a decision on those two matters of substance had been taken, the paragraph could be referred to the Drafting Committee or to a Working Group.

45. The CHAIRMAN invited the representative of Australia to convene a small Working Group composed of interested representatives, preferably with a working knowledge of English, to help her draft the new provisions that would be needed.

46. Miss MINOGUE (Australia) said she would gladly do so. It seemed to her that two new provisions would be needed: an additional sentence to paragraph 3 to cover the requirement of written consent or a medical record, as proposed by Canada; and a new "grave breach" paragraph. Her original proposal had been that violation of the paragraph, rather than of the article as a whole, should constitute a "grave breach". She still preferred that solution because she thought that violations of paragraphs 1 and 2 were already covered by the Conventions, but some delegations seemed to think that the provision should refer to violations of the whole article.

Article 14 - Limitations on requisition of civilian medical units. (concluded)

47. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the only problem on which that Committee could not take any action in connexion with article 14 had been that constituted by the words in square brackets in paragraph 2; but that problem had been removed by the withdrawal by the Australian delegation of the amendment concerned. The text of article 14 had given the Drafting Committee a considerable amount of work, but the Committee felt that the wording it now proposed faithfully reflected the decisions taken in Committee II.

48. The CHAIRMAN invited the Committee to adopt by consensus the draft text of article 14 as given in document CDDH/II/240/Add.1, without the passage in square brackets in paragraph 2.

The draft text of article 14 in document CDDH/II/240/Add.1, without the passage in square brackets, was adopted. 1/

Article 15 - Protection of civilian medical and religious personnel

49. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the deletion of paragraph 2 of article 15 was a logical consequence of the new definition of "temporary medical units" and "temporary medical personnel" adopted by the Drafting Committee in article 8 (e). With that new definition, paragraph 1 of article 15 covered both types of personnel so that paragraph 2 was no longer necessary. The Drafting Committee thought that there should be no further problems in connexion with article 15.

50. The CHAIRMAN invited the Committee to decide by consensus on the deletion of paragraph 2 and the renumbering of the subsequent paragraphs.

51. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the definition of the expression "combat zone", which occurred in paragraph 3, had not yet been decided. The definition adopted might affect the whole tenor of the article. Time should be allowed for further consideration.

52. Mr. MARTIN (Switzerland) said that, like the Rapporteur of the Drafting Committee, he saw no reason why the Committee should not decide by consensus to delete paragraph 2 and then adopt the whole article, making a suitable reservation with respect to paragraph 3. Paragraphs 1, 4, 5 and 6 had already been adopted by consensus and the Committee should not go back on what it had once decided.

53. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he still wished for more time. There was no need for such haste.

54. The CHAIRMAN said that, in that case, article 15, along with articles 17 and 18 and the final drafting of article 11, would be included in the agenda for the Committee's thirtieth meeting.

The meeting rose at 12.40 p.m.

1/ For the text of article 14 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

SUMMARY RECORD OF THE THIRTIETH MEETING

held on Wednesday, 5 March 1975, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of the Drafting Committee on articles 11, 14, 15, 17 and 18 (CDDH/II/240/Add.1) (continued)

1. The CHAIRMAN said that the draft calendar of work which had been circulated was a very flexible one and could be supplemented with addenda on the first day of each successive week.

2. He invited the Chairmen of the various Working Groups to report to the Committee on their progress.

Article 11 - Protection of persons (CDDH/II/250) (continued)

3. Miss MINOGUE (Australia), Chairman of the Working Group on article 11, said that her Working Group had already submitted certain proposals in document CDDH/II/250. However, that document was of an indicatory nature only, since the members were not satisfied with the present formulation and intended to submit a revised version in the near future.

4. The Working Group was unanimous in considering that only one addition should be made to article 11, namely, a new sub-paragraph defining acts which would constitute "a grave breach" of the Protocol.

Article 15 - Protection of civilian medical and religious personnel (continued)

5. The CHAIRMAN pointed out that in document CDDH/II/240/Add.1 the Drafting Committee had proposed the deletion of paragraph 2 of that article, which it considered superfluous. That paragraph might be more appropriately included in article 8, the definitions article. He suggested, therefore, that the Committee provisionally adopt the Drafting Committee's proposal by consensus.

It was so agreed.

Article 17 - Role of the civilian population and of relief societies

6. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had redrafted paragraph 1 in the light of the decision taken by Committee II that the word "spontaneously" in paragraph 2 of the original ICRC draft of article 17 should be replaced, in the new paragraph 1, by the words "even on their own initiative".

7. It had adopted paragraph 2, but had enclosed the new paragraph 3 in square brackets, since that paragraph involved questions of substance. The text was essentially along the lines of the original paragraph 5, although the word "charity" had been deleted in accordance with a decision taken by the Committee with respect to paragraph 2 of that same article.

8. Lastly, some delegations had wished to apply the principle laid down in the proposed new paragraph 3 to aircraft as well, but the general feeling in the Drafting Committee had been that a decision on that point should be deferred until Committee II had dealt with the provisions regarding medical transport.

9. The CHAIRMAN suggested that the Committee adopt paragraph 1 of article 17 by consensus.

It was so agreed.

10. The CHAIRMAN further suggested that the Committee, as the Rapporteur of the Drafting Committee had proposed, defer its decision on paragraph 3 until it had dealt with the question of medical transport.

It was so agreed.

11. Mr. MAKIN (United Kingdom) said he wished to state for the record that his delegation considered paragraph 3 of article 17, and particularly the phrase beginning with the words "may appeal", a permissive clause which did not change the existing law on the subject as laid down in the second Geneva Convention of 1949.

12. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had asked him to draw the attention of Committee II to the use of the words "to care for the wounded and sick and the shipwrecked" in paragraph 1 of article 17. That formula should be used in all provisions in which reference was made to those three categories of persons. The same formula should also be used in the French and Spanish versions, viz: "blessés et malades, ainsi que les naufragés" in the French version and "los heridos y los enfermos, así como los náufragos" in the Spanish version. Committee II should be asked to reconsider article 9, paragraph 1, and article 10, paragraph 1, where the same combination of words occurred. Alternatively, the Drafting Committee of the Conference could be asked to make the necessary changes.

13. Mr. AL-FALLOUJI (Iraq) said that in his opinion the Committee should use the definitions given in article 8.

14. Mr. MARRIOTT (Canada) suggested that the Committee authorize the Drafting Committee to correct any errors in drafting with regard to the words"wounded and sick, and the shipwrecked" which might have appeared in articles already approved by the Committee.

It was so agreed.

Article 18 - Identification

15. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, pointed out that foot-note 2 in document CDDH/II/240/Add.1 should be deleted, since the new article 8 had already been approved.

16. The sentence within square brackets in paragraph 3 was the result of suggestions made during the discussion in the Drafting Committee. It had been thought useful to make a distinction between permanent and temporary medical personnel with regard to the obligation to carry an identity card.

17. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he considered the sentence within square brackets in paragraph 3 a very important provision, since in extraordinary combat conditions it might not be possible to provide temporary civilian medical personnel with identity cards. He suggested that the Committee either take a decision on that sentence immediately or else defer it until the Technical Sub-Committee on Signs and Signals had submitted its report.

18. Mr. SCHULTZ (Denmark) said the sentence within square brackets called for the wearing of a distinctive emblem and the carrying of an identity card by permanent civilian medical personnel, but nothing was said about the former requirement in the case of temporary personnel. He suggested, therefore, that the meaning might be clearer if the word "permanent" was deleted.

19. Mr. SANCHEZ DEL RIO (Spain) said that if the sentence within square brackets were adopted, there would, in his opinion, be an element of confusion between two different types of civilian medical personnel, namely, those who were serving for a specific period of time and those whose service might be described as purely fortuitous. He thought, therefore, that the words within square brackets should be deleted.

20. Mr. MAKIN (United Kingdom) said that the difficulties experienced by the Danish representative might be resolved if he gave due consideration to the use of the word "recognizable" in both sentences. It was generally agreed that protection should be given to civilian medical personnel, whether permanent or temporary, but the problem would always be how to recognize the fact that they possessed Red Cross status. It was advisable that such personnel

should wear the Red Cross emblem, for which purpose they would require suitable authorization. That authorization could best be established by an identity card, although there was no obligation for the personnel referred to in the first sentence to have such a card. By creating an obligation to carry such a card, the proposed second sentence within square brackets would only give rise to confusion and doubt.

21. Mr. MARTIN (Switzerland) said that the sentence within square brackets created two categories of medical personnel, one of which, the permanent personnel, was required to carry both the distinctive emblem and an identity card, while the other, the temporary personnel, seemed to be exempt from that obligation. As the representative of the ICRC had pointed out in the Technical Sub-Committee on Signs and Signals, both the emblem and the identity card were intended to serve for the protection of the personnel in question. It was obvious, of course, that in situations of emergency it might be impossible to provide temporary personnel with identity cards, although they should still receive the same protection. Since, therefore, the sentence within square brackets might indeed lead to some confusion, he hoped that the Technical Sub-Committee would give some thought to its possible revision.

22. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that sometimes military medical personnel were unable to wear a distinctive emblem in order to discover the position of their troops. As to civilian medical personnel, it was unlikely that their presence on the battlefield would reveal the position of troops. For that reason every country would seek in all cases to protect their civilian medical personnel by means of a distinctive emblem, so as to facilitate their identification even by their own side. In the circumstances it was necessary for permanent civilian medical personnel to possess an identity card, whereas for temporary civilian medical personnel a distinctive emblem was sufficient. To require the latter category of medical personnel to carry an identity card also was therefore unnecessary.

23. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that some misunderstanding seemed to have arisen from the fact that different kinds of obligations might be involved. For example, some might consider that there was an absolute obligation to carry both the distinctive emblem and the identity card, which would mean that it would be a crime for medical personnel not to be in possession of both of them. Others, on the contrary, might consider that, while both the emblem and the card were a necessary prerequisite for protection, failure to carry the card, while not a crime, might still deprive the personnel in question of the desired protection. As he understood the sentence within square brackets, it meant that the identity card was not a prerequisite for the protection of temporary personnel, but was essential in the case of permanent personnel.

24. Mr. AL-FALLOUJI (Iraq) said that carrying an identity card and wearing a distinctive emblem was a condition for protection in the case of both the permanent and temporary personnel referred to in article 15. However, unanimity on that requirement had not been reached in the Working Group, of which he had been Chairman.

25. Some of the less developed countries had recourse to greater numbers of temporary medical personnel than the developed countries, and the question of the carrying of identity cards by such personnel might be resolved if a small Working Group was set up to discuss the subject.

26. Mr. SCHULTZ (Denmark) said that he agreed with the views expressed by the United Kingdom and Iraqi representatives. He had been a member of the same Working Group as those representatives and wished to support the first sentence of article 18, paragraph 3 (CDDH/II/240/Add.1). The second bracketed sentence seemed to him illogical.

27. Mr. SOLF (United States of America) said that he could not agree that protection of medical personnel depended on the wearing of a distinctive emblem and the carrying of an identity card certifying their status. Protection was provided to medical personnel because of their function; the distinctive emblem was merely evidence of protection.

28. He agreed with the representative of the Union of Soviet Socialist Republics that a distinction should be drawn between military and civilian personnel: military personnel of the enemy could be attacked, but civilian personnel were protected and must not be attacked. He assumed that one of the reasons why it was thought necessary to provide distinctive emblems for civilian medical and religious personnel was that they might be mistaken for enemies in areas of danger.

29. Article 15, paragraph 1 of draft Protocol I specified that "civilian medical personnel shall be respected and protected", and paragraph 5 provided that "Civilian medical personnel shall have access to any place where their services are essential ...". Presumably other civilians might be excluded from such places. It was therefore desirable that civilian medical personnel should be recognizable by the wearing of a distinctive emblem and the carrying of an identity card showing that they were entitled to wear the emblem. While there was no obligation on civilian medical personnel to carry such a card, it was for their own protection to do so when permitted access to a dangerous area from which other civilians were excluded. He therefore agreed with the United Kingdom and Danish representatives that, for their own protection and for the efficient performance of their functions, those who were entitled to wear a distinctive emblem should also carry an identification card to prove the fact.

30. Mr. PICTET (International Committee of the Red Cross) said that the carrying of an identity card was a means of justifying the wearing of a distinctive emblem. However, the absence of such a card would not deprive civilian medical personnel of protection.

31. He failed to see why a distinction had been drawn between permanent and temporary civilian medical personnel in article 18, paragraph 3, suggested by the Drafting Committee (CDDH/II/240/Add.1). The carrying of an identity card proved the qualifications of the holder, whether permanent or temporary. It was therefore in everyone's interest that such cards should be carried.

32. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said he fully agreed with the United States representative and with the ICRC representative. He had tried to find a word to replace "shall" in the third line of article 18, paragraph 3 (CDDH/II/240/Add.1), but had been unable to do so.

33. Mr. MARTIN (Switzerland) said that there was no obligation for the persons covered by paragraph 3 to carry an identity card.

34. He objected to a distinction being drawn between permanent and temporary civilian medical personnel. There was a shortage of medical practitioners and the fourth Geneva Convention of 1949 should be expanded to give temporary civilian medical personnel the same status as permanent military medical personnel.

35. Mrs. DARIIMAA (Mongolia), while she strongly supported the issue of distinctive emblems and identity cards to both permanent and temporary civilian medical personnel, said that the difficulties faced by the developing countries must be appreciated. Such countries suffered from a shortage of medical practitioners and found it both difficult and costly to recruit and train temporary medical personnel. In addition, it was burdensome for the developing countries to find the funds for printing identity cards and manufacturing distinctive emblems.

36. Mr. OSTERN (Norway) said he shared the views of the United States and United Kingdom representatives concerning the question of the protection of medical personnel in time of combat.

37. He suggested, however, that paragraph 3 might be made clearer by repeating the wording of Article 40 of the third Geneva Convention of 1949 and stating in what capacity a person was entitled to protection.

38. Mr. AL-FALLOUJI (Iraq) said that he supported the wording of the first sentence of article 18, paragraph 3.

39. The needs of the developing countries must be borne in mind so far as the provision of identity cards was concerned. He therefore suggested that Committee II approve article 18, paragraph 3 as drafted by the Drafting Committee and at the end of the paragraph provide that identity cards need not be issued by a Party to the conflict if it so decided. He also suggested that the phrase underlined in the bracketed passage of paragraph 3 be redrafted to indicate that temporary personnel of both categories were not compelled to carry identity cards.

40. Mr. CHOWDHURY (Bangladesh) said that article 15 provided that civilian medical personnel should be respected and protected and given all possible help in the combat zone, while those who had prepared draft Protocol I had considered that efforts should be made to ensure that both civilian medical and religious personnel should be protected.

41. He shared the views of the representative of Mongolia and considered that both permanent and temporary civilian medical personnel should carry identification cards. He therefore suggested that the bracketed second sentence of article 18, paragraph 3 be deleted in order to avoid any discrimination.

42. The CHAIRMAN said that it resulted from the discussion that the Committee had as many as six possible courses of action before it: first, it could defer a decision on the paragraph until the Technical Sub-Committee on Signs and Signals had completed its work; second, it could refer the matter back to the Drafting Committee or one of its Working Groups; third, it could add a sentence to paragraph 1, as suggested by the Iraqi representative; fourth, it could adopt the first alternative text as it stood; fifth, it could adopt the second alternative text with the amendment proposed by the Norwegian representative and, lastly, it could adopt the second alternative text as it stood.

43. He further said that both the proposal to defer a decision on the paragraph until the Technical Sub-Committee had completed its work and the proposal to refer the matter back to the Drafting Committee had now been withdrawn.

44. Mr. AL-FALLOUJI (Iraq) said that, after carefully re-reading the paragraph, he realized that it carried no obligation. He therefore withdrew his amendment.

45. Replying to a question by Mr. JAKOVLJEVIĆ (Yugoslavia), the CHAIRMAN said that he interpreted the provision as being optional.

46. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that no objection had been raised to the explanation given by the United States and ICRC representatives. The provision should be read in conjunction with the "endeavour" clauses in paragraphs 1 and 2. While identity cards were useful for obtaining effective protection, there was no strict obligation to carry them.

47. The CHAIRMAN put to the vote the second alternative text of paragraph 3 which appeared in square brackets in the Drafting Committee's report.

The second alternative text of paragraph 3 was rejected by 28 votes to 14, with 16 abstentions.

48. Mr. PONCE (Ecuador) said that the Spanish version carried an apparent obligation and should be brought into line with the English and French versions.

49. The CHAIRMAN suggested that the Spanish-speaking delegations be asked to produce an amended version with the assistance of the translation service.

It was so agreed.

50. The CHAIRMAN said that the Committee should now take a decision on article 18, paragraph by paragraph.

Paragraph 1

51. Mr. CLARK (Australia) said that in the Drafting Committee, his delegation had requested that the word "medical" be made to refer not only to personnel but also to units and transport. He had understood that the suggestion had been accepted.

52. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that he had understood the feeling of the Drafting Committee to be that the qualification "medical" in the existing text clearly referred to each of the three nouns that followed it.

53. Mr. KLEIN (Holy See) said that the reference should be to "medical and religious personnel", which was the term used throughout the Geneva Conventions.

54. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the proposal of the representative of the Holy See would call for the redrafting of the end of the paragraph, to read: "medical and religious personnel and medical units and transports".

55. The CHAIRMAN said that that wording would also meet the point raised by the Australian representative. He put the amendment to the vote.

The Rapporteur's amendment was adopted by 31 votes to 2, with 20 abstentions.

56. Mr. MAKIN (United Kingdom), speaking in explanation of vote, said that he had voted against the amendment because the reference to civilian religious personnel would require definition in article 8, which at present contained no such definition.

Paragraph 1, as amended, was approved by consensus.

Paragraph 2

Paragraph 2 was approved by consensus.

Paragraph 3

57. Mr. MAKIN (United Kingdom) suggested that the word "the" before the words "civilian religious personnel" and the words "mentioned in article 15 of the present Protocol", be deleted consequent on the decision taken on paragraph 1.

58. The CHAIRMAN put the United Kingdom representative's amendment to the vote.

The amendment was adopted by 30 votes to none, with 14 abstentions.

59. Mr. MARRIOTT (Canada) said that the word "shall" before the words "be recognizable" was mandatory. He suggested that it be replaced by the word "should".

60. Mr. MARTIN (Switzerland) said that there was no obligation to carry a distinctive emblem but if one was carried it must be the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun).

61. Miss MINOGUE (Australia) said that she would have liked the words "in the case of temporary personnel of both categories the obligation to carry an identity card may be dispensed with", in the second alternative text, to be retained, or the proposal made by the Iraqi representative, and since withdrawn, to be adopted.

62. In reply to a question by Mrs. DARIIMAA (Mongolia), the CHAIRMAN said that, in his view, the provision was optional: no-one could be compelled to carry an identity card. He put the Canadian amendment to the vote.

The Canadian amendment was adopted by 29 votes to none, with 20 abstentions.

63. Mr. MARTIN (Switzerland) said that the French and Spanish versions would require to be brought into line with the decision just taken on the English text.

64. The CHAIRMAN suggested that the French- and Spanish-speaking representatives be asked to make the necessary adjustments with the assistance of the translation service.

It was so agreed.

Paragraph 3 of the first alternative version submitted by the Drafting Committee, as amended, was approved by 50 votes to none, with 5 abstentions.

65. Mr. SANCHEZ DEL RIO (Spain) said that he had voted erroneously in favour of the text, which had not been given sufficient study. Care should be taken to bring the other language versions closely into line with the English version of the Canadian amendment.

66. The CHAIRMAN said that he did not see why the word "should" could not be translated readily into all the other languages.

67. Mr. AL-FALLOUJI (Iraq) said that he had abstained in the vote because it was not clear what was being voted on. He had withdrawn his amendment on the understanding that the provision was of an optional nature. If it had ceased to be so, his amendment should stand.

68. The CHAIRMAN said that, since there seemed still to be some doubts on the text of paragraph 3, it should be referred back to the Drafting Committee with a request that the various versions be brought into line.

It was so agreed.

Paragraphs 4 to 8

69. The CHAIRMAN said that the second sentence of paragraph 4 could not be adopted until the medical transport question had been settled.

70. He suggested that the Committee meanwhile approve the first sentence of paragraph 4 and the remainder of article 18.

It was so agreed.

PROGRESS MADE BY WORKING GROUPS

71. Replying to a question by the CHAIRMAN, Mr. SCHULTZ (Denmark) said that the Working Group on article 16 of draft Protocol II had so far held two meetings, the first of which had been devoted to a general discussion on article 16, paragraph 3. Some written proposals on that paragraph had been submitted at the second meeting but the complicated nature of the problems discussed had so far prevented agreement.

72. The CHAIRMAN said that he would like to have a further progress report the next afternoon to assist him in drawing up the Committee's agenda.

73. In reply to a question by the CHAIRMAN, Mr. SKARSTEDT (Sweden) said that Mr. Rosenblad of his delegation would be able to inform the Committee at its thirty-first meeting of the progress made by the Working Group on Combat Zones, of which he was Chairman.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE THIRTY-FIRST MEETING

held on Thursday, 6 March 1975, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

ORGANIZATION OF WORK

1. The CHAIRMAN reminded the Committee of the order in which the articles allocated to it were to be considered: articles 12 to 19 of draft Protocol II, article 18 bis, certain aspects of article 11 of draft Protocol I, and articles 22 to 25 of draft Protocol I. A procedural question had arisen in connexion with the last four articles. The delegations of four countries, Belgium, Canada, the United Kingdom of Great Britain and Northern Ireland and the United States of America had submitted amendment CDDH/II/249 replacing CDDH/II/80 by the same sponsors who wished the new document to serve as a basis for discussion. Under rule 28 of the rules of procedure, however, the ICRC text constituted the basic proposal for discussion by the Conference. After having consulted the legal experts of the Conference, he believed that the Committee could decide to make an exception to that rule, but that the question should first be discussed and voted with respect to each of the articles concerned. The voting on article 22 would probably have a decisive influence on the voting on the other three articles. In view of the stage reached in the Committee's work, that debate could only be held towards the middle of the following week.

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1)

Brief reports by the Chairmen of the various Working Groups

2. Mr. SCHULTZ (Denmark), Chairman of the Working Group which had considered the question of the obligation for medical personnel to give information on the wounded and sick, said that his Group had held three meetings and had reached agreement on the wording of article 16, paragraph 3 of draft Protocol II. The Group was to meet once more to discuss the details of that text, which could be submitted to the Committee towards the middle of the following week.

3. Mr. ROSENBLAD (Sweden), Chairman of the Mixed Group of Committees II and III on military terms and their definitions, said that his Group had held four meetings. In addition, the military experts on Committee III had held separate discussions on two occasions. Participants had made every effort to reach a consensus on three or four definitions of military terms. The Group hoped to submit its report within a week.

4. Miss MINOGUE (Australia) said that the text drafted by the Working Group on article 11 of draft Protocol I, of which she was Chairman, had already been circulated.

5. The CHAIRMAN said that that document would be included in the agenda of the Committee's thirty-second meeting.

6. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee and replying to a question by the CHAIRMAN, said that the Drafting Committee had not yet dealt with the question of the translation of the word "should" in article 18 of draft Protocol I, but that it would do so that day.

7. The CHAIRMAN, referring to the summary record of the Committee's twenty-fourth meeting (CDDH/II/SR.24), pointed out that, in connexion with article 17, paragraph 2, of draft Protocol I, the Committee had adopted a proposal for the deletion of all reference to "feelings", humanitarian or otherwise, but had not decided when that text should be considered. He suggested that the Committee postpone consideration of article 17, paragraph 2 of draft Protocol I, until article 18 bis had been drafted in its final form.

It was so agreed.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)*

Article 15 - Medical and religious personnel (continued)*

Article 16 - General protection of medical duties (continued)*

Article 18 - The distinctive emblem (continued)*

8. Mr. SOLF (United States of America), speaking as Vice-Chairman of the Drafting Committee, introduced the questionnaire prepared by that Committee entitled "Issues which should be decided by Committee II relative to articles 15, 16 and 18, which read as follows:

1. Does the term "medical personnel" as used in draft Protocol II exclude any of the personnel listed in paragraph 8 (d) of draft Protocol I amended by new article 8 (e)?

2. Should any other category of "medical personnel" be added within the scope of article 15?

3. Should it be made clear in article 15 that "medical personnel" should either:

(a) Belong to a party to the non-international conflict, or
(b) Be recognized and authorized by one of such parties?

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* Resumed from the twenty-eighth meeting.

4. Is any change necessary with respect to national societies and other relief societies; so that they may be:

Part of a branch of such a society, acting independently of the national society, if necessary (as in article 35 of draft Protocol II)?

5. Should Parties to a conflict be forbidden to assign tasks unrelated to the medical mission to "medical personnel" (CDDH/II/228, 233, 241), as proposed in article 15 of draft Protocol 1?

6. Should the scope of article 15 extend "religious personnel" beyond that provided in article 15 of draft Protocol I which is limited to "religious personnel attached to civilian medical units", and that contemplated by Article 24 of the first Geneva Convention of 1949 and Articles 36 and 37 of the second Convention? (See in this connexion, Article 58, fourth Convention (CDDH/II/243)).

7. Should article 16, paragraph 3 of draft Protocol I be included in article 10 of draft Protocol II?

8. Which of the above-mentioned persons should be entitled to wear the distinctive emblem?

9. The Committee would have to give replies to eight questions in order to enable the Drafting Committee to continue its work. The first two questions concerned medical personnel, and the problem was whether a further category of personnel should be provided for. The third question concerned certain aspects of the definition of medical personnel. The fourth raised the possibility of taking into account parts of national or other relief societies where the territory of one of the parties to the conflict was partially invaded. The fifth concerned the assignment to medical personnel of tasks unrelated to the medical mission and the sixth concerned the interpretation to be given to the words "religious personnel". The report of the Working Group presided over by the Danish representative would have to be drafted before the seventh question could be considered. The reply to the eighth question would depend on the replies given to the preceding questions.

10. The CHAIRMAN declared open the discussion of the issues raised in the questionnaire.

11. Mr. MAKIN (United Kingdom) said that his delegation's answer to questions 1 and 2 was in the negative.

12. Mr. MARRIOTT (Canada) said he thought that questions 1, 2 and 8 should be considered at the same time, since the issue was one of affording wide protection to medical personnel, whether temporary or permanent, and of prohibiting the indiscriminate use of the distinctive emblem.

13. Mr. SOLF (United States of America) pointed out that article 14 of draft Protocol II, which was identical to the first three paragraphs of article 17 of draft Protocol I, ensured the protection of civilian doctors who provided care for the wounded and sick but who were not organized as "medical personnel" within medical units. Similarly, article 16 provided general protection for the entire medical profession. On the other hand, article 15 called upon the Parties to the conflict to grant to "medical personnel" all the aid necessary for the discharge of their functions. For that reason they were entitled to wear the distinctive emblem which was dealt with in article 18. His reply to questions 1 and 2 was therefore in the negative.

14. Mr. MARRIOTT (Canada) said that it might be necessary to elaborate certain parts of the draft Protocol with a view to clarifying them.

15. Mr. CLARK (Australia) said that article 11, when adopted, would give a definition of medical personnel that would apply to articles 15 and 18, and that the Committee's conclusions on the questionnaire should also be extended to article 11.

16. Mr. JAKOVLJEVIĆ (Yugoslavia), speaking as Chairman of the Drafting Committee, said that it was essential for the Committee to provide the Drafting Committee with guidance on such an important point.

17. Speaking as the representative of Yugoslavia, he said that his delegation replied in the negative to questions 1, 2, 4 and 6, and in the affirmative to question 3. With regard to question 8, it considered that the persons entitled to wear the distinctive emblem under Protocol II should be those who were so entitled under Protocol I.

18. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the reply to question 1 must obviously be in the negative and that the reply to question 2 should be in the affirmative. The essential purpose of article 15 was to make the performance of duties possible, yet in certain countries which lacked medical personnel those duties might be assumed by rapidly trained non-specialists. Such para-medical personnel should be protected in the same way as doctors of medicine.

19. The other questions involved matters of substance that were so complex that they should be referred immediately to a Working Group. His delegation proposed that they should be considered, not at a plenary meeting, which would delay the work, but in a Working Group which would be set up for that specific purpose and would report to the Committee.

20. His delegation further suggested that members of Committee II should have a free half-day each week in order to reflect on the difficulties encountered and to consult together.

21. Mr. MAKIN (United Kingdom) said he supported the Soviet Union proposal, which, in his opinion, was moderate and calculated to speed up the Committee's work. He also reiterated his point that certain problems would be easier to solve once the Drafting Committee had considered article 14.

22. It seemed to him impossible to give an affirmative reply to the question 2 without specifying what other categories should be added - something that the Committee was unable to do for the time being. With regard to question 3, the meaning of the words "Belong to a party to the non-international conflict, or be recognized and authorized by one of such parties" was not clear. On the whole, he shared the views expressed by the Yugoslav representative.

23. Mr. AL-FALLOUJI (Iraq) said that he supported the proposal to set up a Working Group to examine the very difficult questions raised in the questionnaire. That Working Group should be as representative as possible of the various trends of opinion, yet small enough to work effectively. He was not opposed to granting the members of the Committee a free half-day.

24. Mr. KLEIN (Holy See) said he was afraid that the result of the negative replies advocated by the Yugoslav delegation would be to confer responsibility for all medical and religious activities on the Government and, in the case of a non-international conflict, to leave the other party entirely without such resources, whereas the intention was to help the victims, whoever they might be.

25. Mr. SOLF (United States of America) said that he unreservedly supported the Soviet Union proposal to set up a Working Group and to give Committee members a free half-day each week.

26. His delegation's reply to questions 1 and 2 was in the negative.

27. With regard to question 2, he agreed with the Soviet Union representative on the subject of para-medical personnel, but thought that that category was covered in the list appearing in article 8 of draft Protocol I.

28. On question 3, he believed that the ICRC text should be amended to include the medical personnel of armed forces.

29. Lastly, question 5 should be referred to a Working Group or to the Drafting Committee, since the Canadian amendment did not specify that medical personnel must not be compelled to carry out tasks unrelated to the medical mission.

30. Mr. MARRIOTT (Canada), speaking on question 4, said that, in order to facilitate comprehension of the Protocol, it would not come amiss to specify in Part III what was already stated in article 33 of Part VI (Relief).

31. He agreed with the United States delegation's views on question 5, which should be studied in depth, but suggested that the Committee should give guidance to the body chosen to carry out that task.

32. Lastly, with regard to question 7, it would be necessary to await the report of the Working Group presided over by Mr. Schultz (Denmark).

33. Mr. ONISHI (Japan) reiterated his delegation's view that such problems could not be dealt with until the concept of "armed conflict" had been defined. In order not to waste time, he suggested that the Committee should proceed without delay to consider another part of draft Protocol II.

34. Mr. BOTHE (Federal Republic of Germany) said he unreservedly supported the Soviet Union's proposals to set up a Working Group and to give members of the Committee a free half-day.

35. For the time being, his delegation could only give tentative replies to some of the questions in the questionnaire.

36. Its reply to question 1 was in the negative. With regard to question 2, it did not believe that the category of medical personnel mentioned by the Soviet Union representative would be excluded from the scope of article 15 if question 1 was answered in the negative. The Working Group could clarify that point. Like the Yugoslav representative, his delegation believed that the reply to question 3 - one of the most difficult - should be in the affirmative. Regarding question 4, it might well be desirable to provide for the protection of part of a branch of a national or other relief society. The reply to question 5 depended on the wording that would be adopted for articles 11, 14 - as the United Kingdom representative had pointed out - and 17. Under a strict interpretation of the definition of the term "medical personnel" given in article 8 of draft Protocol I and in article 11 of draft Protocol II, medical personnel which ceased to be engaged exclusively in the operation or administration of medical units and means of medical transport would from then on be protected only

by article 14, and the Working Group should ponder whether that protection was adequate. On question 6, protection should be afforded to religious personnel, attached to both civilian and military medical units. Finally, question 8 could not be answered until replies had been provided to questions 1, 2 and 6.

37. Mr. MAKIN (United Kingdom) proposed that the half-day without meetings to be devoted to study and consultations should be Wednesday morning.

It was so agreed.

38. Mr. HOKORORO (United Republic of Tanzania) said he agreed with the Soviet Union representative's views on question 2 of the questionnaire. His delegation wished to point out that in the developing countries certain people could exercise the medical profession without possessing a diploma, and that para-medical personnel were often regarded as medical personnel. Although he agreed with some other representatives in recognizing the importance of diplomas, he suggested that para-medical personnel be mentioned in article 15 of draft Protocol II, in order to ensure that all medical and para-medical personnel received protection.

39. With regard to question 8, the persons entitled to wear the distinctive emblem were those referred to in question 2.

40. Mr. SKARSTEDT (Sweden) drew the Committee's attention to the great complexity of the questions raised in the questionnaire which were closely related to material and personal fields of application defined in articles 1 and 2 of draft Protocol II. It would therefore be desirable to establish contact with the Working Group of Committee I dealing with those questions.

41. The answers to questions 1, 2, 4, 6 and 7 of the questionnaire should be in the negative. With regard to questions 3, 5 and 8, he was not yet in a position to give replies.

42. Mr. AMIR-MOKRI (Iran) said he was not yet able to reply to all the questions raised in the questionnaire. In the case of questions 1 and 2, his answer was in the negative, but he needed time to think over his replies to the remaining questions.

43. Mr. IJAS (Indonesia) said he shared the views of the representative of the United Republic of Tanzania with regard to question 2.

44. In the case of question 3, he thought that medical personnel should be recognized and authorized by one of the Parties to the conflict.

45. With regard to question 5, it would be desirable to forbid the Parties to the conflict to assign tasks unrelated to the medical mission to medical personnel.

46. As regards question 8 medical personnel alone should have the right to wear the distinctive emblem. It would be injudicious to authorize religious personnel to wear it, as in some parts of the world religion was a subject that still raised some very awkward problems.

47. The CHAIRMAN said that all delegations seemed to have expressed their views on the issue concerned.

48. He suggested that a Working Group consisting of seven members of Committee II should be set up, with the Hungarian representative as Chairman, to examine matters relating to articles 15 and 16 of draft Protocol II, with special reference to the eight questions raised by the Drafting Committee.

It was so agreed.

49. Mr. JAKOVLJEVIĆ (Yugoslavia) said he thought that article 18 of draft Protocol II could already be considered, since its subject matter was limited to respect for the emblem and its supervision with a view to preventing and punishing its misuse.

50. Mr. MAKIN (United Kingdom) said it was not clear what the expression "Parties to the conflict" meant in legal terms. The Drafting Committee should examine that question, in order to decide whether the expression covered all personnel.

51. Mr. JAKOVLJEVIĆ (Yugoslavia), speaking as Chairman of the Drafting Committee, said he would like to know what the Committee's precise terms of reference were with regard to article 18.

52. The CHAIRMAN explained that the Drafting Committee should deal only with drafting questions properly so-called, and that all substantive decisions fell exclusively within the competence of the Committee.

53. He suggested that article 18 should be referred to the Drafting Committee, since no written amendment had been submitted, only the oral drafting amendment proposed by the United Kingdom representative.

54. Mr. SCHULTZ (Denmark) pointed out that article 18 had already been discussed at the twenty-eighth meeting (CDDH/II/SR.28), at which Mr. Pictet (International Committee of the Red Cross) had explained the reasons why, in the event of a non-international armed conflict in which a non-governmental party might not have organized medical services at its disposal, it would seem important, for purely humanitarian reasons, that the distinctive emblem should be respected, at least for identification purposes.

55. At the same meeting, he had pointed out that the wording of paragraph 1 of article 18 was imprecise and had asked that it should be changed.

56. The United Kingdom representative had suggested that the provisions of the International Red Cross Handbook should be summarized in an annex to draft Protocol II, since it was doubtful whether, in a non-international armed conflict, the party in revolt would always be able to refer to the rather lengthy provisions in that Handbook.

57. The CHAIRMAN, referring to the Danish representative's comments, said that the Committee should decide whether it wished to refer article 18 to the Drafting Committee or whether it preferred to set up a Working Group to study the relevant questions, particularly that of preparing an annex to the article.

58. Mr. AL-FALLOUJI (Iraq) said he thought that, before referring article 18 to the Drafting Committee, the Committee should formally take a substantive decision, which should be reported in the summary record of the meeting.

59. The CHAIRMAN said that, in view of the doubts expressed by the representative of Iraq, it should be formally stated in future summary records whether the Committee had adopted the substance of an article and had referred it to the Drafting Committee for editing.

60. Mr. MAKIN (United Kingdom) said he thought it was essential to take a decision concerning the annex to which he had referred at the twenty-eighth meeting (CDDH/II/SR.28). The exact wording of that annex should also be decided on, and a reference to it should be included in article 18.

61. He suggested that the phrase "of the Parties to the conflict" in paragraph 1 of article 18 should be replaced by some such term as "referred to in the previous articles".

62. The Drafting Committee could not agree on a definitive text until the Committee took a decision on those points.

63. Mr. POZZO (Argentina) said he agreed with the Iraqi representative's view that the Committee should formally adopt articles before referring them to the Drafting Committee.

64. Mr. HEREDIA (Cuba) said that he, too, was concerned about the question raised by the representatives of Iraq and Argentina.

65. For example, at the thirtieth meeting (CDDH/II/SR.30) there had been some confusion concerning the Canadian oral amendment proposing the replacement of the word "shall" by "should" in the English text of paragraph 3 of article 18 as it appeared in the report of the Drafting Committee (CDDH/II/240/Add.1). The Drafting Committee would undoubtedly have had translation problems to solve; but a vote had been taken on that question, and the Canadian amendment had been adopted.

66. The CHAIRMAN said that that had been a question of drafting which, in his opinion, could have raised no problem for the Drafting Committee.

67. He suggested that the Working Group to deal with questions relating to article 18, should be composed of four or five members and, after Mr. POZZO (Argentina) and Mr. NOVAES de OLIVEIRA (Brazil) had declined, he proposed that Mr. Schultz (Denmark) should preside over the group.

It was so agreed.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE THIRTY-SECOND MEETING

held on Friday, 7 March 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)*

Proposals by the Working Group on articles 10 and 11 (CDDH/II/250/Rev.1)

1. The CHAIRMAN invited the Chairman of the Working Group on articles 10 and 11 to submit the Working Group's proposals (CDDH/II/250/Rev.1).

2. Miss MINOGUE (Australia) said that the special Working Group had endeavoured to provide a synthesis of the views expressed in the full Committee. It had reduced its task to drafting a provision making violation of article 11 a grave breach of draft Protocol I and to finding a formula for the recording of voluntary donations of blood or skin by persons described in paragraph 1 of article 11, which would constitute evidence that the requirements of paragraph 3 had been complied with.

3. The original attempt to draft a "grave breach" provision had been complicated by the appearance of a new draft article 74 submitted by the ICRC, and the Working Group had decided to reformulate its proposal so that it would fit into the general framework of that provision, which might well be where the Drafting Committee of the Conference would decide to place it. The Group had also considered whether the "grave breach" provisions should cover the whole article or only paragraph 3. Initially there had been a feeling that breaches of paragraphs 1 and 2 were already covered by existing provisions of the Geneva Conventions; but on reflection it had been considered that the existing cover might not be adequate and that such an offence would be so serious that the provision ought to cover all sections of the article.

4. The Group had learned that the Geneva Conventions at present contained no definite obligation on a Detaining Power to keep medical records of the persons it was detaining. The Working Group had considered that that gap should be closed and that, at the same time, a system should be provided within which records of blood or skin donations could also be kept. It had considered where such a provision - which was, of course, wider than the provisions of any one article - might be kept and had decided that article 10 would be the best place. There might be some procedural problems in adding a new paragraph to that article, which had already been approved, but as the Group's proposal did not in any way affect the provisions already approved, it had been thought that the Chairman should be able to permit further discussion.

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* Resumed from the thirtieth meeting.

5. The Working Group believed its proposals were simple and self-explanatory and that they filled an important gap in the Conventions and the Protocol. It was for the Committee to decide where they should be placed.

6. Mr. MARRIOTT (Canada) suggested that the word "which" in the proposed paragraph 4 of article 11 should be replaced by the words "if they", so as to avoid the suggestion that the procedures in question necessarily endangered health. The question might be only one of drafting but it might also be one of substance.

7. Mr. MAKIN (United Kingdom) said that the addition of a new paragraph to article 10, which had already been adopted by the Committee, would seem to be a matter requiring a two-thirds majority. The proposed new article 11 seemed to be a very long way from the anxieties of the representative of Bangladesh concerning the possible abuse of blood and skin donations from prisoners and detainees, which had originally suggested the need for safeguards. The first sentence, which appeared to cover all the wounded and sick, whether civilian or military and whether involved or not in the conflict, amounted to an unwarranted interference in the internal affairs of States. It would impose a very great burden on countries where paper or other required facilities were scarce. The second sentence referred to all the persons described in article 11, and such persons were not necessarily even wounded or sick. He questioned the need for an article prescribing the maintenance of medical records for healthy persons.

8. Something seemed to have gone wrong with the drafting. Article 10 was a non-reservable article, which should contain nothing that might be open to disagreement by anyone. He accordingly proposed that, if such a paragraph were deemed necessary, it should not be included in article 10; that the first sentence should be deleted; and that the second sentence should be radically redrafted.

9. Although there had been a general consensus that some new provision on the lines of the proposed new article 11, paragraph 4 was necessary, he was not happy about the drafting of the Working Group's text. It should be referred to the Drafting Committee, but no decision should be taken until Committee I had completed its consideration of article 74 concerning grave breaches of the Protocol. It might be that the very concept of "grave breaches" would be omitted. In the meantime, it should be placed in square brackets and treated as ad referendum.

10. Mr. SOLF (United States of America) said that the United Kingdom representative had already said many of the things he had intended to say. The question of medical records belonged rather in article 11 than in article 10. He believed that some provision should be made for the keeping of records of the wounded and sick described in article 11, but an international law provision should not be extended to all wounded and sick persons irrespective of their state of liberty or nationality. With that proviso, the concept of the paragraph should be referred to the Drafting Committee.

11. His delegation endorsed the principle that there should be a provision along the lines of the proposed new paragraph 4 in article 11. Apart from the ambiguity pointed out by the Canadian representative, the new draft failed to take account of the fact that article 11 referred not only to unjustified acts but also to omissions: the new "grave breach" provision should be drafted so as to cover both types of violation of article 11.

12. His delegation endorsed what the Working Group had been trying to do in its draft of paragraph 4, but thought it might with advantage be referred to the Drafting Committee. The Committee would certainly have to look at it again when it knew the final draft adopted for article 74, but he did not think it would be necessary to put the paragraph in square brackets. A simple footnote that it was subject to re-examination would suffice. He was confident that a two-thirds majority could be mustered for the reconsideration of the paragraph at that time.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), referring to the proposed new article 10, paragraph 3, said that any difficulty about a two-thirds majority could be got round by making the paragraph into a new article dealing with the keeping of medical records. The absence of such a provision in the Geneva Conventions was a gap that needed filling. There must be some basic document from which it could be ascertained whether sick and wounded prisoners of war had received correct treatment or whether abuses had been committed. The purpose of the new paragraph was to make good that omission.

14. With regard to the first sentence of the new paragraph 3, there was already provision in most national legislations for the keeping of medical records, so that no additional burden on medical staff would be involved; but he did not know what would be the position in the developing countries. He could not see the point of the first part of the second sentence, since blood or skin donors seemed to be already covered by the first proposal, but the provision that the medical records of treatment given to the persons to which reference was made in article 11 must be available for inspection by the Protecting Power was indispensable. It in no way concerned the treatment of their own sick and wounded by

either side nor did it constitute an unwarranted interference in internal affairs. That provision could constitute an important supplementary guarantee against abuse in the treatment of prisoners of war. If the provision needed redrafting, it could be redrafted without difficulty. There was a Russian saying that a telegraph pole was a redrafted Christmas tree. It was highly important, however, that such a provision should be retained, whether it was placed in article 10, in article 11 or in a separate article 10 bis.

15. Article 11, paragraph 4 could be dealt with later; but whatever decision was finally adopted concerning article 74, Committee II should still inform the Conference of its view that it regarded such abuses as a grave breach of Protocol I and such a provision as an important extension of the protection it afforded to the wounded and sick and as an important development of humanitarian law.

16. Mr. DEDDES (Netherlands) said that it was evident that there was something missing from the Geneva Conventions in respect of the keeping of medical records. He appreciated the point that such a provision should not be included in article 10, which was non-reservable; but he would strongly support it as a separate article or as an additional paragraph to article 11. The latter would seem perhaps the more logical solution since it was a question of the protection of persons. The keeping of records was a normal procedure both in peacetime and in wartime conditions, so that the provision would not constitute an excessive burden. When redrafting the text, the Drafting Committee should ensure that it was made applicable not only to the sick and wounded and to the persons covered by article 11, but also to donors of blood and skin.

17. Mr. CZANK (Hungary) said that the arguments put forward by the United Kingdom representative were in general reasonable and should be taken into consideration. He agreed with the representatives of the Netherlands and the Union of Soviet Socialist Republics that the provision would fit better into article 11 than into article 10. As it stood, the text referred to all persons described in article 11; but the United Kingdom representative had been right in suggesting that there might be some persons covered by that article for whom medical records would not normally be kept. It might be better, therefore, to insert the words "paragraph 3" after the words "article 11", since the question had originally arisen in connexion with that paragraph.

18. The idea contained in the proposed new paragraph 4 of article 11 constituted a valuable safeguard. However, article 74 was now under review and new suggestions concerning it had recently been made by the ICRC in document CDDH/210. The best solution might be for article 74 to be extended to cover the point raised in connexion with article 11. He therefore proposed that the provision be adopted ad referendum.

19. Mr. MARTINS (Nigeria) said that the provision would create a serious problem for developing countries with inadequate medical facilities and a shortage of trained personnel. It might be difficult for some developing countries to keep records at all. The inspection clause implied that the Protecting Power might lay down rules concerning the standards of the medical records, and developing countries might be accused of not complying with the clause. There was further the problem of the storage of the records; many hospitals in developing countries simply did not have the space and, in tropical conditions papers were liable to be destroyed by damp or other causes. He thought, however, that it would not be too difficult to keep records of skin grafts.

20. Mr. MARRIOTT (Canada) said that, as a member of the Working Group and as the author of the original draft of article 10, paragraph 3, he was very glad to see the support it had received. He agreed with the Hungarian and United Kingdom representatives that, if the provision were made to cover all the persons described in article 11 it would be rather too wide, but the amendment proposed by Hungary should deal with that problem. When the United Kingdom representative had referred to interference in internal affairs, he had perhaps been thinking of draft Protocol II; but the present discussion referred to draft Protocol I, and there should therefore be no difficulty in that regard.

21. He shared the Nigerian representative's concern about the difficulties of record-keeping in tropical conditions, but thought there was little danger that the Protecting Power would fail to take those conditions, and in particular the level attained in the training of para-medical personnel, into account when fixing the standards of records it expected to find. He agreed that the articles should be referred to the Drafting Committee, which should have no great difficulty in finding a solution if there was a general consensus on the principles involved.

22. Mr. URQUIOLA (Philippines) said he agreed with the principle of maintaining medical records as proposed in the new paragraph 3 for article 10 (CDDH/II/250/Rev.1) but, before referring the article to the Drafting Committee, Committee II must decide whether such record-keeping should be obligatory or optional.

23. Mr. AL-FALLOUJI (Iraq) said that, in his delegation's view, there should be freedom of choice. More important issues, such as the question of distinctive markings, had been made optional and it would be logical to follow the same procedure in the case of record-keeping.

24. Mr. MAKIN (United Kingdom) said that the issue was not whether record-keeping should be optional or compulsory but whether it should be confined to persons covered by article 11, paragraph 3, or should cover the entire populations of countries at war. His delegation was strongly of the view that it should not be made obligatory for the latter category.

25. Mr. KHAIRAT (Arab Republic of Egypt) said that he shared the United Kingdom representative's view. The representative of Bangladesh had clarified the point on an earlier occasion.

26. As far as the proposed new paragraph 4 of article 11 was concerned, he would be in favour of the provisional adoption of the present text while awaiting the opinion of other interested committees.

27. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that there were three possible fields of application for the proposed new paragraph 3 of article 10. First, it might cover all wounded and sick persons which really meant that it would cover the entire population; second, it might apply only to the persons mentioned in article 11, paragraph 1; third, it might apply only to those mentioned in article 11, paragraph 3, namely, the donors and recipients of blood or skin. The Drafting Committee would welcome the Committee's guidance on the choice to be made among the three alternatives.

28. The CHAIRMAN said that, before deciding what should be done with the proposed new paragraphs, the Committee must take a decision on the original paragraphs 3 and 4 of article 11, which it had decided at its twenty-third meeting (CDDH/II/SR.23) to refer to the Drafting Committee.

29. Mr. CZANK (Hungary) said that he was somewhat confused by the three possibilities mentioned by the Rapporteur of the Drafting Committee. He could see only two. The first was to adopt the text as it stood, with the reference in the second sentence to article 11 as a whole and the second was to refer in the second sentence only to paragraph 3 of that article. He would prefer the latter course.

30. He disagreed with the Rapporteur of the Drafting Committee that in covering all wounded and sick persons the provision would cover the entire population.

31. Miss MINOGUE (Australia) said that the Working Group's discussion had shown that there was at present no obligation to maintain medical records for prisoners of war, who would certainly be among the groups described in article 11, paragraph 1. While

not necessarily wounded or sick, they were people deprived of their liberty. In view of the danger of confusion in that regard, it would be wise to redraft the proposed paragraph 3 of article 10 before taking a decision on it.

32. Mr. ONISHI (Japan) said that the Committee's original discussion on the question of safeguards against the abuse of blood transfusion or skin grafting had now become confused with the question of recording of medical procedures. Both questions were important and should be kept separate. The Committee should concentrate on the first and, if possible, set up a Working Group to deal with the second.

33. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, after listening to the views expressed during the debate, he proposed as a compromise that medical record-keeping should be made optional by an "endeavour" clause for persons specified in article 11, paragraph 1, and compulsory for those referred to in article 11, paragraph 3. In view of the general feeling that the reference to "each of the wounded and sick" contained in the Working Group's proposal (CDDH/II/250/Rev.1) was too broad, he proposed that that reference should be dropped.

34. Mr. AL-FALLOUJI (Iraq) said he agreed with the Rapporteur's proposals, which he suggested should be approved by consensus and referred to the Drafting Committee for final drafting.

35. Mr. MARRIOTT (Canada) said that, while the idea of extending record-keeping to all persons deprived of their liberty went somewhat further than some delegations found acceptable, there should be little difficulty in making it obligatory for the wounded and sick among that group. He agreed that it should also be obligatory for donors of blood or skin, but there was no need to mention the recipients if records were maintained for the wounded and sick.

36. Miss MINOGUE (Australia) said that her delegation found the Rapporteur's proposal satisfactory and had hoped that it would be acceptable to the Working Group. That possibility had, however, been removed by the Canadian representative's observations.

37. Mr. CHOWDHURY (Bangladesh) said that he appreciated the care taken to preserve the prohibition in article 11, paragraphs 1 and 2. An endeavour should be made to produce a text that met with the approval of the entire Committee, and the Rapporteur's proposal should make that possible. His delegation had been concerned to ensure that the exception in paragraph 3 should not be taken advantage of to force a person to donate blood against his will. An "endeavour" clause for the persons specified in article 11, paragraph 1, would probably suffice, since there was likely to be little objection to record-keeping in necessary cases.

38. He had discussed the proposed new paragraph 4 of article 11 with the representatives of Australia and the United States of America and the latter had suggested that the paragraph be redrafted to read:

> "Any wilful act or omission in violation of paragraphs 1 and 2 of this article, including the compulsory removal of blood for transfusion or skin for grafts, or any failure to comply with the standards and procedures described by paragraph 3 of this article which seriously endangers the physical or mental health or integrity of any persons described in paragraph 1 of this article shall be a grave breach of this Protocol".

All delegations agreed that any violation of the prohibitions in paragraphs 1 and 2 would be a grave breach, and that the proviso in paragraph 3 that any donations of blood or skin had to be given voluntarily, without any coercion or inducement, must be rigidly observed. He hoped those considerations would be kept in mind in the final drafting. His delegation would like to see the matter decided by consensus.

39. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that his proposal be submitted to the Drafting Committee together with the Canadian representative's observations, in order to determine whether there were differences of substance or merely of drafting. In the former case, the Drafting Committee might resubmit the proposals to the Committee as clear-cut alternatives.

40. Mr. URQUIOLA (Philippines) said that the proposals of the Rapporteur of the Drafting Committee and the Canadian representative seemed to vary substantially. He could support the Canadian idea if the record-keeping were made optional, not mandatory, so as to take into account the views of the developing countries. However, the Committee must decide which was to be the guiding principle for the Drafting Committee.

41. Mr. MARRIOTT (Canada) said that he did not regard his proposal as being in serious conflict with that of the Rapporteur of the Drafting Committee, and he would do nothing to prevent the Drafting Committee from reaching a consensus.

42. Mr. AL-FALLOUJI (Iraq) said he thought that the Committee could take an immediate decision. The word "endeavour" would be satisfactory to his delegation.

43. The CHAIRMAN suggested that, as there appeared to be a consensus the proposed new paragraph 3 of article 10 (CDDH/II/250/Rev.1) should be referred to the Drafting Committee.

It was so agreed.

44. The CHAIRMAN said that, since the proposals of the Working Group on articles 10 and 11 (CDDH/II/250/Rev.1) contained a new paragraph 4 for article 11, the existing paragraph 4 should be renumbered paragraph 5. He suggested that paragraph 3 of article 11 in document CDDH/II/240 and paragraph 4 of the same article in document CDDH/II/240/Add.1 should be adopted by consensus and referred to the Drafting Committee.

It was so agreed.

Article 18 - Identification (continued)*

Paragraph 3

45. The CHAIRMAN said that the only problem now remaining with respect to draft Protocol I concerned the consequences for texts other than English of the already adopted Canadian proposal to replace the word "shall" by the word "should" in paragraph 3 of article 18.

46. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had decided to replace the word "shall" in the expression "shall be recognizable" by the word "should", which implied something optional and recommended. The Drafting Committee had, after a long discussion, proposed the translations "se feront en general reconnaître" and "se darán a reconocer por regla général".

47. The CHAIRMAN said that he would not put the point to the vote since it was merely a question of drafting.

48. Except for the Drafting Committee's proposals for article 11, which he hoped would be submitted to the Committee at the beginning of the following week, the Committee had now concluded its work on Section I of draft Protocol I.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 19 - Prohibition of reprisals (CDDH/1; CDDH/II/230, CDDH/II/232) (continued)**

49. The CHAIRMAN, referring to his statement at the end of the twenty-eighth meeting (CDDH/II/SR.28), said that no decision had yet been taken on article 19.

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* Resumed from the thirtieth meeting.

** Resumed from the twenty-eighth meeting.

50. Two amendments had been submitted, the first by Australia to delete the article (CDDH/II/230), the second by New Zealand to give it more general scope (CDDH/II/232). The ICRC representative had also made a statement, and there were still several delegations wishing to give their views.

51. Mr. ROSENBLAD (Sweden) said that his delegation supported the statement by the ICRC representative. In its view, it was evident that the wounded and sick ought to be equally protected from reprisals at all times, irrespective of the nature of the armed conflict. The language of article 19 of draft Protocol II, should in principle be identical with that of article 20 of draft Protocol I, which had been adopted by consensus. The Committee should bear in mind the desirability of ensuring consistency in the two Protocols.

52. Mr. AL-FALLOUJI (Iraq) said that draft Protocol II dealt with internal conflicts, in the context of which the idea of reprisals was inconceivable, since a State must protect its own citizens. It must be left to municipal law to organize the relationship between citizen and State. A provision of the kind proposed would be an interference with sovereignty, and would never be applied.

53. Mr. GREEN (Canada) said that although the problem of the treatment by a State of its own nationals was indeed a domestic matter, for the duration of a non-international conflict some of the citizens of a State would be opposed to the ideology and even the legal system of the State, and thus likely to be subjected not to its protection but to the opposite. He quite understood the point made by the Swedish representative, but the Committee was now dealing with a different kind of conflict from the one covered by draft Protocol I. The problem was to find another word for "reprisals", and he suggested that some such wording as "actions similar to those of reprisal" or "acts of extreme retaliation" might meet the objections of the Iraqi representative.

54. Mr. SOLF (United States of America) said he endorsed that view. Other parts of draft Protocol II already recommended norms of conduct for parties to a non-international conflict which would apply to Governments, and provided for some international regulation of their treatment of their own nationals. Moreover, there was little difference between an attack on the wounded and sick, which was already prohibited, and an attack on such persons that was a reprisal.

55. In the discussion on article 20 of draft Protocol I, the Australian representative had unsuccessfully proposed to amend the text to read "Measures in the nature of reprisals against the persons protected by this Protocol are prohibited". A possible compromise might be to adopt that proposal in the present context.

56. Mr. AL-FALLOUJI (Iraq) said that, even after hearing the useful suggestion of the Canadian representative, he still considered the matter to be a domestic one. The Protocol could not make recommendations or give orders to a State. In any case article 19 as it stood might be taken to mean that a State could take reprisals against persons other than the wounded, the sick, the shipwrecked, the medical units, for there was no mention of the civilian population in general. The article should be deleted.

57. Mr. MAKIN (United Kingdom) said that a substantial discussion was obviously needed and he accordingly moved the adjournment of the debate.

58. Mr. KHAIRAT (Arab Republic of Egypt) and Mr. POZZO (Argentina) supported the motion for adjournment.

The motion for adjournment was adopted.

59. The CHAIRMAN said that article 19 and article 19 quinquies of draft Protocol II and article 18 bis of draft Protocol I would be discussed at the thirty-third meeting.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE THIRTY-THIRD MEETING

held on Monday, 10 March 1975, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 19 - Prohibition of reprisals (CDDH/1; CDDH/II/230, CDDH/II/232) (continued)

1. The CHAIRMAN reminded the Committee that it had before it three amendments to article 19: the first, submitted by the Australian delegation and supported by the Iraqi delegation (CDDH/II/230), proposed that article 19 be deleted; the second (CDDH/II/232), submitted by the New Zealand delegation, proposed a new wording for article 19 extending the scope of the article; the third, submitted orally by the Canadian and United States delegations, proposed that the wording of article 19 be aligned with the text which had been proposed by the Australian delegation for article 20 of draft Protocol I.

2. Mr. ROSENBLAD (Sweden) pointed out that there was a certain correlation between article 20 of draft Protocol I and article 19 of draft Protocol II. In the former text, the word "reprisals" had been retained after two consecutive votes. There seemed to be no valid reason for the introduction of a different term in draft Protocol II, and such a course might lead to confusion. Moreover, as a general rule, Committee II should take the discussions in Committees I and III into account.

3. Mr. BOTHE (Federal Republic of Germany) said that, in his delegation's view, it was essential not to lose sight of the actual facts. If one of the Parties to a non-international or national conflict infringed the applicable rules of war, the other Party must be prohibited from reacting against that breach by violating the rules protecting the wounded and the sick. His delegation therefore urged that article 19 should not be completely deleted and that the protection of the wounded and the sick should be ensured, irrespective of the term used to designate such a reaction. The solution proposed by the United States of America and Canada seemed to be acceptable.

4. Mrs. DARIIMAA (Mongolia) said she thought that draft Protocol II should contain an article corresponding to the article in draft Protocol I on the protection of the wounded, the sick, the shipwrecked and medical personnel against possible reprisals. According to the principles of humanitarian law, such non-combatants could not be allowed to become victims of reprisals or sanctions, whatever the nature of the conflict. In a non-international conflict, the two Parties belonged to the same nation or State and there were wounded and sick in both camps; it was therefore difficult to conceive of reprisals being taken against them on either side.

5. The principle embodied in article 19 should therefore be retained, although the wording might be reconsidered, so that the terms which were most appropriate to non-international conflicts and were generally acceptable might be adopted. The eminent jurists attending the Conference would no doubt see that was done in the Working Groups.

6. Mr. FIRN (New Zealand) said that the problem was twofold, first, to decide whether article 19 was necessary and then to consider any changes which might be made in its wording. His delegation thought that the article should be retained and that the prohibition, at all times, of any kind of reprisal against non-combatants should be reiterated. Some delegations had maintained that article 19 would threaten the sovereignty of States and that national laws already contained suitable provisions on that subject. But they should not delude themselves on that point, for experience had shown that national laws were often quite flexible on some issues. Article 5 of draft Protocol II provided that the rights and duties of the Parties to the conflict were equally valid for all of them and Article 3 common to the Geneva Conventions of 1949 specified that persons taking no active part in the hostilities must be treated humanely: it must be stressed that those provisions were also applicable to non-international conflicts.

7. With regard to the terms used in article 19, his delegation had simply adopted the word "reprisals" used by the other Committees; if the wording of the article were to be changed, a problem of uniformity would arise. The best solution would therefore be to refer the question to a Joint Working Group in which representatives of Committees I and III would take part.

8. Mr. IJAS (Indonesia) said that his delegation was in favour of the Australian proposal (CDDH/II/230) to delete article 19. In his view, the concept of reprisals should appear only in Protocol I, dealing with international conflicts. Article 10 of draft Protocol I provided that the wounded and the sick should be respected and protected, and in all circumstances treated humanely, and articles 12 and 14 dealt with the protection of medical units and the treatment of civilian hospital patients: article 19 was therefore superfluous. His delegation was not opposed to the prohibition of reprisals, on the contrary, it disapproved of any act of that kind, but considered that article 19 as it stood represented interference in national affairs; an international protocol should not prescribe how a State should treat its own nationals; it was for the State itself to take the appropriate measures, and it would appear that most States had done so.

9. Nevertheless, if it were decided to retain article 19, his delegation would not oppose the compromise solution of setting up a Working Group to reconsider the wording of the article.

10. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he thought that the difficulties which had arisen during the current debate were due mainly to the fact that the Committee was breaking new ground into which international law had not yet ventured. The participants, in their capacity of governmental representatives, were examining the question from the point of view of their own Governments only. They were perhaps not yet sufficiently aware that the Parties to non-international conflicts were on the one hand "governmental", and on the other, "anti-governmental". They based their thinking on the assumption that the Government would win in all cases, forgetting that, in a conflict of that kind, rules were perhaps necessary, especially for the adversaries of the Government. Further, the representatives of the parties in power might suffer more from the lack of rules than their adversaries. During the discussions the principles which had been adopted had sometimes been overlooked. Thus, when opposing the article on the prohibition of reprisals against the wounded and the sick, it must be remembered that the Committee had included other persons in the definition "the wounded and the sick". For example, pregnant women, children, the aged and even the new-born had been included in the category of persons exposed to reprisals. But it was difficult to imagine reprisals against the new-born. Great caution should therefore be exercised in seeking a solution. If the rule was entirely eliminated, silence could be interpreted as authorizing reprisals; yet it was certain that no member of the Committee approved of them. In his view, it would therefore be advisable first to establish definitions and to decide, for instance, whether women, children and the aged should be mentioned as well as the sick and the wounded, or whether they were covered by the articles dealing with the protection of the civilian population. Then it should be decided whether a provision such as that of article 19 should appear in draft Protocol II and its wording reconsidered if necessary.

11. Mr. Tchoung Kouk DJIN (Democratic People's Republic of Korea) said that his delegation considered article 19 to be very important and hoped that it would be carefully studied. The preamble to the draft Protocol emphasized the need to protect non-combatants. Care for the shipwrecked, for instance, was regarded as a requirement of international law and a humanitarian necessity. In spite of that, while the Conference was meeting, bombs and projectiles were being launched against the shipwrecked and their vessels in violation of all humanitarian principles. Recently a North Korean ship had been attacked and sunk by the South Koreans; the latter had claimed that it was a spy ship on special mission. The vessel had been registered in the Democratic People's Republic of Korea and the crew members had been wearing sailors' uniforms. The ship had been drifting because of bad weather and damage to the boilers. It was obviously not a spy ship. In addition, the crew members wore PDRK identification openly. Consequently, it could not be claimed to have been engaged on a special mission. That attack was a premeditated act of piracy perpetrated by South Korea as part of

its struggle against the democratization of society. The acts of inhuman piracy committed by the South Korean authorities were destined to strengthen the oppression of the North Korean people which were engaged in the struggle for anti-fascist democratization. Furthermore such acts had been premeditated over a long period of time. The situation in the Democratic People's Republic of Korea at present was very tense because of that attack against a drifting fishing boat and the sinking of that boat on the high seas. In view of that example, his delegation considered that special importance should be attached to the problems of protecting ships and the shipwrecked.

12. The CHAIRMAN requested speakers to keep to the subject under discussion.

13. Mr. AL-FALLOUJI (Iraq) said he wished to make it clear that, in supporting the proposal to delete article 19, his delegation did not mean in any way to express an opinion in favour of reprisals.

14. In the unanimous opinion of the Committee, however, the principle of prohibiting reprisals in non-international conflicts was controversial, and no controversial concepts should be introduced into draft Protocol II. Moreover, the protection of the wounded and the sick was already guaranteed under article 12 of that Protocol.

15. Mr. GREEN (Canada) pointed out that any treaty in the area of humanitarian law, as in any other area of the law of war or the law of peace, necessarily entailed a certain encroachment on the sovereignty of States. That was the case, for example, of the agreements concluded within the International Labour Organisation or of the International Covenants on Human Rights. The argument of infringement of State sovereignty was therefore no more valid with respect to article 19 than it was with respect to any other article dealing with the conduct of hostilities in non-international conflicts.

16. Moreover, if reprisals and measures of the nature of reprisals were not expressly forbidden, there was a risk that the absence of prohibition might be interpreted as authorizing such acts.

17. Mr. Bohyung LEE (Republic of Korea) said he regretted that the delegation of the Democratic People's Republic of Korea should have seen fit to introduce political polemics into the Committee's proceedings, and reserved the right to make a detailed reply at a later date.

18. Mr. MARTINS (Nigeria) said that his delegation had no objection to setting out the principle of prohibition of reprisals in draft Protocol I, but did not think that it should appear in Protocol II.

19. To be sure, the protection of the wounded, the sick and the shipwrecked was a fundamental human principle that his Government had always respected, as it had demonstrated during the recent civil war. There was no need for the Geneva Conventions to set out that elementary principle.

20. Yet, punitive measures were justified where a Government punished insurgents: a rebel was a criminal, and there could be no question of protecting criminals. Consequently, his delegation could not subscribe to a principle which encroached on the sovereignty of States and jeopardized their survival.

21. Mr. DENISOV (Ukrainian Soviet Socialist Republic) stressed the need to retain article 19 and to state clearly the principle of the prohibition of reprisals against the wounded, the sick, the shipwrecked and medical personnel in non-international conflicts.

22. Mr. MAKIN (United Kingdom) said that all members of the Committee were agreed in condemning reprisals and that the differences of opinion related only to the need to state the principle and to the wording. The ICRC text also prohibited reprisals in article 8, paragraph 4, and article 26, paragraph 4. He proposed that article 19 be referred to the Drafting Committee, which would devise suitable wording to which the attention of the other Committees could then be drawn.

23. Mr. AMIR-MOKRI (Iran) said that, although the concern of certain delegations for their national sovereignty was perfectly understandable, the Committee's task was to elaborate general provisions for protection of all the wounded, sick and so forth, whatever side they belonged to. He supported the retention of article 19 and believed that the Committee should refer it to the Drafting Committee, which could perhaps devise wording that would give rise to less objection than did the term "reprisals".

24. Mr. CHOWDHURY (Bangladesh), referring to the concern of certain delegations that article 19 might encroach on the sovereignty of States, drew attention to draft Protocol II, article 1, paragraph 2, which stated that "The present Protocol shall not apply to situations of internal disturbances and tensions, inter alia riots, isolated and sporadic acts of violence and other acts of a similar nature", and to article 4 which provided that "Nothing in the present Protocol shall be interpreted as affecting the sovereignty of States or as authorizing third States to intervene in the armed conflict". Those two articles should meet the above preoccupations.

25. Article 19 must be retained, for there was no lack of instances throughout the world of situations where there had been a definite need for prohibition of reprisals. He had no objection to the amendment of article 19, but strongly opposed its deletion.

26. Mr. JAKOVLJEVIĆ (Yugoslavia) pointed out that, while there was unanimity concerning the need to prohibit reprisals against the wounded, the sick, the shipwrecked and medical personnel, there were still differences of opinion on how that principle was to be stated. He suggested that a Working Group, composed of advocates of the main trends of opinion, should be set up to prepare a new text after studying in depth all aspects of the problem.

27. Mr. Bohyung LEE (Republic of Korea) said he regretted that the representative of the Democratic People's Republic of Korea should have deemed it appropriate to introduce, in a Committee dealing with purely humanitarian subjects, controversial issues of a political character that were liable to spoil the friendly atmosphere of the proceedings. Unfortunately, the remarks made on the subject of North Korean ships which had patrolled in the territorial waters of his country could not be left unanswered. In the evening of 26 February, a North Korean ship had, in fact, been sunk after colliding with a ship belonging to the Republic of Korea patrolling off the west coast of the Korean peninsula; the sunken vessel was one of a fleet of ten North Korean ships which had been identified twenty miles south of the northern patrol limit line and which had been ordered to stop for identification purposes. It had subsequently been confirmed that the vessels in questions were North Korean ships which had illegally penetrated into the naval patrol operational zone declared to be a reserved area by the Republic of Korea for the purpose of protecting its fishing boats. The commanders of those ships had obviously been fully aware that they were cruising in protected waters, as they had failed to comply with the challenge to halt and had tried to escape.

28. The Government of the Republic of Korea desired peace and hoped that the representatives of North Korea would concentrate their efforts during the Conference on fulfilling an historic task connected with humanitarian law.

29. The CHAIRMAN requested delegations to confine their remarks to the agenda and to avoid engaging in discussions that were liable to obstruct the smooth running of the Committee's work.

30. He suggested that a vote should be taken on the Australian proposal (CDDH/II/230) to delete article 19 and, if the proposal were rejected, that a Joint Working Group should be set up before the article was referred to the Committee's Drafting Committee. Article 19 did, in fact, raise a question of substance which reappeared in other articles dealt with by the other two Main Committees. It would be judicious therefore to submit that important legal issue to a Joint Working Group consisting of two jurists specializing in international law from each Committee, and

chaired by the representative of Bangladesh, who was also Chairman of the Drafting Committee of the plenary Conference, and seemed therefore best qualified to preside over the Joint Working Group. The Joint Working Group would be a kind of sub-committee of the Drafting Committee of the plenary Conference, and its task would be to find a suitable wording for the provisions of articles 8, 19 and 26 of draft Protocol II referring to "reprisals" or to "measures of reprisals".

31. Mr. CLARK (Australia) said that at the very outset of the discussion on article 19 the objections raised by his delegation had been with reference to the word "reprisals", which it was difficult to employ in the context of non-international armed conflicts.

32. His delegation was not opposed to the principle contained in article 19 concerning acts calculated to wound the persons and destroy the objects referred to in that article, nor was it indifferent to the experts' comments on the subject. The setting up of a Joint Working Group, bringing together experts from the three Main Committees, would in its view facilitate the adoption of a common text. He therefore proposed the withdrawal of amendment CDDH/II/230 submitted by Australia, thus showing once more his delegation's firm desire to strengthen, on a firm legal basis, the humanitarian law applicable in non-international armed conflicts, and to ensure that draft Protocol II gained general acceptance.

33. Mr. AL-FALLOUJI (Iraq) supported the proposal to set up a Joint Working Group to study the whole problem in depth. His country was not opposed to measures of protection, which were laid down, moreover, in other provisions of draft Protocol II, as for example in article 12, paragraph 2.

34. The Working Group should take care, however, not to apply accepted and recognized notions of international law to non-international conflicts, for that might "denature" such conflicts by according them an international character, and give the clauses of Protocol II a political slant.

35. The CHAIRMAN said that the following amendments to article 19 of draft Protocol II, still remained to be discussed: the New Zealand amendment (CDDH/II/232), proposing a new text for the article, and the United States and Canadian oral amendment suggesting the adoption for article 19 of the wording proposed by the Australian delegation for article 20 of draft Protocol I.

36. Mr. CHOWDHURY (Bangladesh) said that he would be glad to place his services at the Committee's disposal and, should the occasion arise, to act as Chairman of the Joint Working Group. He hoped, however, that the Working Group's task would be confined to the submission to Committee II of a text for article 19.

37. The CHAIRMAN replied that since they would be studying the substance of the question and comparing the various articles - with whose consideration different Committees were concerned - dealing with the problem of reprisals, the jurists in the Working Group would be able to draw up a text useful to all the Main Committees.

38. Mr. CHOWDHURY (Bangladesh) said that he would prefer the Working Group's composition to be decided by the Chairmen of the Main Committees; he would be grateful if the Chairman would get in touch with the Chairmen of Committees I and III for that purpose.

39. It would, however, be regrettable if difficulties were to arise over the designation of the experts comprising the Joint Working Group and he wondered whether it would not be preferable to discuss the question of substance in Committee II.

40. The CHAIRMAN pointed out that a precedent already existed for setting up a Joint Working Group.

41. Mr. DUNSHEE de ABRANCHES (Brazil), supporting the proposal to set up a Joint Working Group, said that the question of reprisals was dealt with in a number of places in the two draft Protocols, namely in articles 20, 46 (paragraph 4), 48, 49 and 66 of draft Protocol I, and in articles 8 (paragraph 4), 19 and 26 (paragraph 4) of draft Protocol II. The French delegation had submitted an amendment (CDDH/I/221) on the question to Committee I and the three Committees were considering the important subject of reprisals in relation to the legal, political and humanitarian problems to which it gave rise.

42. In his view, the Working Group's task was not so much to draw up a form of words covering certain ideas, but rather to bring to light questions of substance that were inherent in the problem of reprisals, so that the Committee could take up a definite position on the question.

43. Article 60, paragraph 5 of the Vienna Convention on the Law of Treaties laid down a principle of considerable relevance to the work of the Diplomatic Conference on Humanitarian Law. It stated that the provisions of article 60 by which one party to a treaty was entitled to take certain steps in the event of a breach of the treaty by another party, "do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties".[1/]

1/ See United Nations publication, Sales No. E.70.V.5, p. 297.

44. Mr. SOLF (United States of America) said that in his view the Joint Working Group could not be regarded as a sub-committee of the Drafting Committee of the plenary Conference; it would be a Working Group common to the three Main Committees. The question to be studied by the Working Group was not a purely drafting matter and he hoped that Committee II would not dwell too much on the more controversial aspects of the question of reprisals of interest to Committees I and III, so as to avoid wasting valuable time.

45. Mr. AL-FALLOUJI (Iraq) said he agreed with the representative of Brazil that the Working Group should study matters of substance rather than drafting questions. The problem was of interest not only to jurists but to Member States who were anxious to approach the idea of reprisals in a spirit of political good will. Consequently the Working Group should be representative of all points of view.

46. The CHAIRMAN assured the Committee that all trends of opinion would be taken into account in setting up the Working Group.

47. Mr. Tchoung Kouk DJIN (Democratic People's Republic of Korea) said he deplored the refusal of the representative of South Korea to face facts. He pointed out that, in raising the subject, he had had no intention of reproaching the American imperialists or the bellicose South Korean authorities. His sole aim had been to call attention to the fact that a vessel fishing on the high seas had been shelled and sunk by missiles launched from aircraft and warships, which was a barbarous act. He reserved the right to reply to the South Korean statement, which had distorted the position.

48. The CHAIRMAN, commenting generally, said that discussions in the Committee were not political in character. If the representatives of any country wished to start a political discussion, they should do so in plenary.

49. Mr. FIRN (New Zealand) asked whether Australia's withdrawal of its amendment (CDDH/II/230) for the deletion of article 19 meant that draft Protocol II would include a provision on reprisals after the Working Group had discussed the matter.

50. The CHAIRMAN said that that was so.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

held on Tuesday, 11 March 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Proposed new article 19 quinquies - Foreign States (CDDH/II/248)

1. The CHAIRMAN reminded the meeting that, after the amendment by Australia for the deletion of article 19 of draft Protocol II (CDDH/II/230) had been withdrawn, the Committee had decided to set up a Joint Working Group. Since the matter under consideration concerned reprisals, it had been suggested that the Joint Working Group, composed of representatives from Committees I, II and III, would act as a kind of sub-committee of the Drafting Committee. He would not appoint the representatives of Committee II until the other Committees had selected their representatives, in order to take account of qualifications and of equitable geographical distribution.

2. He invited the representative of Norway to introduce his delegation's amendment proposing to add a new article 19 quinquies to draft Protocol II (CDDH/II/248).

3. Mr. OSTERN (Norway) said that the Committee had approved at the twenty-sixth meeting (CDDH/II/SR.26) the text of article 19 of draft Protocol I concerning States not Parties to a conflict covered by that Protocol. While stating the conditions on which those States would deal, within their territory, with certain groups of persons belonging to the Parties to the conflict, article 19 of draft Protocol I laid down the principle that such treatment was not considered to be an act hostile to the Parties to the conflict. His delegation had submitted amendment CDDH/II/248 in order to seek the application of the same principle in respect of draft Protocol II also. The special conditions prevailing in connexion with armed conflicts covered by Protocol II would, of course, have to be taken into account. The amendment accordingly offered various possibilities for some of the points on which there might be differences of opinion. His delegation would like to see as much as possible of article 19 of draft Protocol I carried over to draft Protocol II, but amendments could be made in the light of the discussion.

4. The meaning of the phrase "foreign States" was: "States other than the one in which the conflict covered by Protocol II was going on". Objections to the phrase "within their territory" might be based on the fact that some frontiers were disputed and, accordingly, that an article that included that expression might cause

a conflict of the type covered by draft Protocol II to develop into an international conflict. An alternative wording might perhaps be found which would express the purely humanitarian content of the proposal.

5. Mr. GREEN (Canada) said that his delegation regretted that it was unable to support the Norwegian amendment (CDDH/II/248). The end result of that proposal would be to internationalize every non-international conflict in which a single member of either of the Parties to the conflict left the national territory and, being sick or wounded, arrived on foreign soil. Not only did the proposal entail positive action by a foreign State, thus detracting from all the provisions in the Protocol directed against foreign intervention, but, despite the maxim of customary international law, pacta tertiis nec nocent nec prosunt or res inter alias acta, it sought, regardless of the attitude of the State concerned, to impose obligations upon such State, whether or not that State was prepared to accept the obligation and even if that State was not a party to the Protocol.

6. The Norwegian amendment sought to impose upon the foreign State in question the same obligations as those of a neutral State in an international conflict. While such a proposal might be in order in Protocol I, it was out of place in Protocol II, for not only did it introduce concepts that had meaning only in an international conflict but by implication it granted to the parties to the conflict full status as belligerents in the technical meaning of that term.

7. While it recognized the humanitarian motives behind the proposal, his delegation considered that such provision was already made in international law. The foreign State concerned was obliged in any case to accord to the sick, wounded and the shipwrecked affected by a non-international conflict what international law described as the minimum standard treatment of aliens, which, added to the obligations due to refugees or to those seeking political asylum, would amount to treatment at least equal to that envisaged in the amendment.

8. What had been said for the wounded, the sick and the shipwrecked was equally relevant for all persons protected by the Protocol and was probably even wider in scope than that proposed in the amendment.

9. Mr. CLARK (Australia) said that, while his delegation shared the concern which had prompted the Norwegian delegation to submit amendment CDDH/II/248, it also shared the misgivings expressed by the Canadian delegation. The amendment would seem to lead to foreign States being obliged to make a determination of the nature of the armed conflict. Secondly, the phrase "received or interned within their territory" involved internment rules and could be an embarrassment to a foreign State not wishing to become implicated in

the internal affairs of another State. Thirdly, since domestic laws would in any case come into play, for example, those concerning aliens and immigration into States not parties to the conflict, of people from foreign States, the Norwegian amendment might not be necessary. His delegation might be prepared to consider a redrafted article more in accordance with the rest of draft Protocol II but it was concerned about the risk of imposing responsibilities on States not parties to the conflict.

10. Mr. AL-FALLOUJI (Iraq) said that his delegation shared the views expressed by the Canadian delegation. The amendment was an attempt to internationalize the whole Protocol. He stressed that draft Protocol I should not be used rigidly as a basis for draft Protocol II, since the two Protocols covered very different types of armed conflict.

11. It was possible that national law might in some cases cover the question, but what would occur where legal assistance and co-operation treaties had been drawn up between the States concerned? For example, were extradition orders to be blocked by the Protocol? In most instances it was a case of indirect intervention by a given State, because internal conflict without external influence could not continue. To call such conflicts internal conflicts when they were in fact being controlled by foreign States not parties to the conflict would be to change the whole nature of the conflict, and he would therefore like that question to be withdrawn.

12. Mr. IJAS (Indonesia) said that his delegation was unable to support the Norwegian amendment for the same reasons as those given by the previous speakers. He would only add that the article might tend to encourage people to rebel against the lawful Government.

13. Mr. OSTERN (Norway) said that his delegation had considered article 19 of draft Protocol I only as a basis for the equivalent article in draft Protocol II, which would have to take into account the special conditions covered by that Protocol. Since his delegation's amendment (CDDH/II/248) had not been received favourably by the Committee, he would withdraw it.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)*

Proposed new Section in draft Protocol I (replacing proposed article 18 bis) (continued)**

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* Resumed from the thirty-second meeting.

** Resumed from the twentieth meeting.

Text submitted by the Working Group (CDDH/II/244 and Corr.1 to 3 CDDH/II/257)

14. The CHAIRMAN invited the Chairman of the Working Group on article 18 bis to introduce document CDDH/II/244 and Corr.1 to 3.

15. Mr. MARTINS (Nigeria), Chairman of the Working Group on article 18 bis, said that the paragraphs of the original text (CDDH/II/56) had been rearranged, paragraphs 1 to 5 dealt with information on the missing and dead, paragraphs 6 to 9 dealt with graves and paragraphs 10 and 11 gave the definitions, which could be amended in the light of the discussion.

16. The CHAIRMAN invited the Rapporteur of the Working Group on article 18 bis to make his report.

17. Mr. SIEVERTS (United States of America), Rapporteur of the Working Group on article 18 bis, said that the proposed new Section (CDDH/II/244 and Corr.1 to 3), replaced the draft article 18 bis submitted at the first session of the Conference (CDDH/II/56). The Working Group had taken note of the resolutions approved by the XXIInd International Conference of the Red Cross at Teheran in 1973 and by the United Nations General Assembly in resolution 3220 (XXIX), as also of statements made in Committee II by the Director of the United Nations Division of Human Rights and by the ICRC expert. Valuable assistance had also been given by an ICRC legal adviser and by Miss Katz of the ICRC Central Tracing Agency.

18. The Working Group had agreed that the fundamental purpose of the new Section was to ensure that all possible measures would be taken to search for and record information on persons who were reported missing or who had died as a result of hostilities or occupation. It had felt that there should be no gaps in the obligation on Parties to a conflict to abide by the relevant provisions. Since the Section appeared in draft Protocol I, that obligation clearly did not apply to a Party's own nationals, a point made explicit in document CDDH/II/244/Corr.3. The article also included provisions for the protection and maintenance of graves and for the return of the remains of deceased persons.

19. Paragraph 1 of the new Section provided that each Party to the conflict should record information on persons who had been captured or otherwise detained as a result of hostilities or occupation, in respect of whom no provision had been made in the Geneva Conventions. That was supplementary to the provisions concerning prisoners of war and detainees in the third and fourth Geneva Conventions of 1949. The purpose of the paragraph was to ensure that information on such persons would be recorded, searched for if necessary and transmitted to the home country.

20. Paragraph 2 called on each Party to facilitate and, if necessary, carry out the search for and the recording of information on persons who had died and on those reported by another Party as missing. The Working Group had agreed to adopt an operational definition: the missing were those reported by another Party as missing. The other parties must therefore provide names and other relevant information (such as the date and place of loss) on such persons to facilitate search.

21. Paragraph 3 listed the ways in which such information would be transmitted to the home country.

22. Paragraph 4, supplementing Article 15 of the first Geneva Convention of 1949, provided for burial teams to search for and recover the dead from battlefield areas. The term "battlefield areas" was subject to review on the use of the alternative expression "combat zones". The reference to international humanitarian organizations in paragraph 4 (b) could appropriately be amended to read "an international humanitarian organization such as the International Committee of the Red Cross or the League of Red Cross Societies".

23. Paragraph 5 urged all parties, including those not involved in a conflict, to endeavour to make means of identification, such as a residence or travel document, driver's permit or student's card, available to their nationals who might be in an area of armed conflict and who had not been issued with an identity card provided for under the Conventions. That provision was not, however, mandatory.

24. Part II, on graves, reflected Article 17 of the first Geneva Convention of 1949.

25. Paragraph 7 provided for access to graves by representatives of official grave registration services and of international humanitarian organizations immediately after the end of hostilities, and by relatives of the deceased as soon as circumstances permitted. Paragraph 7 (c) reflected the concern of some States that military cemeteries in foreign countries should not be disrupted by requests for the return of remains if that was objected to by the home country of the deceased.

26. Paragraph 8 covered cases where there had been no agreement on the arrangement for the care of graves and where proposals for the return of remains had not been accepted.

27. Paragraph 9, in square brackets, concerned the unauthorized exhumation or return of remains. The Working Group felt that sufficient protection was given in paragraph 6, which prohibited "improper disturbance" of graves, and in paragraph 7 (c). It was noted that exhumation, as opposed to return of remains, might be

undertaken for many reasons, such as the grouping of remains by nationality, relocation of cemeteries, threats of flood or rising water, reasons of health and sanitation, identification of the deceased or inquiries on war crimes or mutilations. The Working Group felt that exhumations should not be legally restricted as in that paragraph, but had included the paragraph for consideration by the Committee.

28. Part III made it clear that "graves" included other dispositions of remains, such as cremation, and covered persons lost at sea.

29. The definition of "home country" had led to extended discussion and the formation of a Sub-Working Group. The Working Group as a whole had considered that the question of definition was so complex that it would be better not to attempt a definition which might lead to difficulties in reaching a decision on the responsibility for missing or dead persons. A revised definition was to be found in document CDDH/II/244/Corr.2 which replaced the wording in square brackets in paragraph 10. For a soldier or combatant, that definition would normally mean the country in whose forces he was serving, and for a civilian, the country of citizenship or residence. The definition was not, however, intended to be exclusive.

30. Paragraph 11 recapitulated the basic framework of the Section: namely, that it was applicable to persons not nationals of the parties concerned and was supplementary to the existing obligations in the Conventions. The Drafting Committee of the plenary Conference could decide whether or not the final sentence should be included. The text covered all amendments submitted, with the exception of amendment CDDH/II/257 submitted by the Republic of Viet-Nam providing for the establishment of committees to arrange for the repatriation of persons reported missing who had been found and to whom the provisions could not be applied.

31. Miss KATZ (International Committee of the Red Cross) stressed that it was of the utmost importance to the Central Tracing Agency to have the fullest possible information on prisoners, the dead and the detained, both during and after hostilities.

32. The CHAIRMAN said that there were three ways of dealing with the text submitted by the Working Group: it could be discussed in its entirety; it could be discussed paragraph by paragraph, or the three parts could be discussed one by one. He suggested that the third course should be adopted as a general discussion of the problem had already taken place at the twentieth meeting (CDDH/II/SR.20).

33. Mr. SHERIFIS (Cyprus) said that his delegation attached great importance to the article under consideration.

34. In view of the fact that, nearly six months after the military invasion of Cyprus, there were still more than 2,700 persons reported missing, it was not surprising that his delegation supported any provisions designed to expedite procedures and formalize the obligation of all parties to a conflict to furnish information on the missing and the dead.

35. In the Working Group his delegation had urged that it should not be left to the good faith of the Occupying Power to furnish information when circumstances permitted but that there should be an explicit obligation to do so, at the latest by the end of hostilities. His delegation therefore fully supported the provisions in document CDDH/II/244 and Corr.1 to 3.

36. Mr. SANCHEZ DEL RIO (Spain) said that the provisions in part I of document CDDH/II/244 were fundamental but they needed systematic clarification. The field of application did not seem to be clear. Paragraph 1 seemed to embrace all types of missing or dead persons. That was logical, but a clear distinction had to be made between the missing and the dead since different action was required in each case. For both there were different sets of obligations, and those had not been set out in systematic fashion. Paragraphs 1, 2 (b) and 3, and to some extent paragraph 5, referred to missing persons, while paragraphs 2 (a) and 4 referred to the dead. Information on missing persons implied a threefold obligation: an obligation on both Parties to the conflict to notify the other, as also the ICRC Central Tracing Agency, of persons believed to be missing; an obligation on both Parties to keep a record of such persons; and an obligation by both Parties to report to the other, and to the Central Tracing Agency, that a person had been found, whether alive or dead. It was true that those obligations were scattered throughout the text, but they should be more clearly specified.

37. The mention of other humanitarian organizations in paragraph 3 should be deleted, since division of effort meant loss of efficiency. There should be a reference in paragraph 4 to relief organizations and to civilian populations.

38. The CHAIRMAN said that he understood that all amendments - CDDH/II/221, CDDH/II/256, CDDH/II/204 and CDDH/II/220 - had been taken into consideration by the Working Group. Those amendments concerned parts II and III of the Working Group's report. The amendment by the Republic of Viet-Nam (CDDH/II/257) represented a new paragraph, which should logically find its place in part 1 of the report.

39. Mr. NGUYEN QUI DON (Republic of Viet-Nam) said that, much as his delegation appreciated the progress made in the Working Group on the question of the missing and the dead, it felt that the Working Group had dismissed a little too rapidly the question of the repatriation of persons reported missing and later found.

It was for that reason that his delegation had submitted its amendment (CDDH/II/257). The missing could be prisoners or detainees, or could even have gone over to the other side of their own accord or under duress. Provisions had been made in the third Geneva Convention of 1949 for the repatriation of prisoners of war and in the fourth Convention for the repatriation of civilian internees. His delegation was concerned with the fate of refugees and other categories of persons whose repatriation was not covered by the Conventions.

40. It was to be hoped that there would soon be an end to the tragic situation of some 85,000 civilians who had been reported missing in the Republic of Viet-Nam, concerning whom no information was available and whose return was eagerly awaited by their families.

41. Mr. KLEIN (Holy See) said that he fully supported the substance of the Working Group's text (CDDH/II/244 and Corr.1 to 3) but regretted the absence of the word "family" in part I. He formally proposed the insertion of a phrase along the following lines: "the over-riding concern of the Parties to the conflict and of humanitarian organizations should be to spare families unnecessary moral suffering".

42. Mr. MODICA (Italy) said that he was satisfied with the text submitted by the Working Group, particularly paragraphs 7 (c) and 8, which fully reflected the wishes of the Italian delegation.

43. Mr. PUGH (United Kingdom) felt that paragraph 7 (c) adequately reflected the wishes of his delegation. The text in brackets in paragraph 9 was closely related to paragraph 7 (c) and had the support of his delegation. Paragraph 9 (c) broke new ground in covering situations where the host State required exhumations for its own purposes, and should be retained.

44. Mr. FIRN (New Zealand) said that he did not agree that exhumation was sufficiently regulated by paragraph 6, which laid down the general principle of respect for graves. In submitting amendment CDDH/II/204, the New Zealand delegation had felt that the statement of general principle in paragraph 6 was not enough. It could be interpreted in two ways: on the one hand, it could be regarded as permitting exhumation; on the other, it could be understood to exclude exhumation. His delegation therefore felt that paragraph 9 of the Working Group's text should be retained.

45. Mr. GREEN (Canada) said that the provisions in paragraphs 6 and 7 of the Working Group's text were not sufficiently specific to cover the problem of exhumation. Since paragraph 7 (c) covered one aspect of the problem and made specific reference to the agreement of the home country, his delegation would agree to the deletion of paragraph 9 of the Working Group's text if it was the general

view of the Committee that the words in brackets in article 9 should be omitted. The Canadian delegation would feel that its point of view had been adequately expressed in paragraph 7 (c), but considered it essential to preserve that sub-paragraph and the concluding words of article 9 which could be transferred to follow the first sentence of article 6, especially as that was the only reference to a need to give information concerning the place of reinterment. The Canadian delegation also considered the reference to the return of the dead on request was too wide as there was no indication as to who could make such a request. In the opinion of the Canadian delegation that should be confined to close personal relatives, so long as the home country retained its right of veto.

46. Mr. CLARK (Australia) urged that paragraph 9 should be adopted as a worthy addition to article 18 bis, since it stated the obligations of States more forcefully than did paragraphs 6 and 7 (c).

47. Mr. AL-FALLOUJI (Iraq) said that it was inconceivable that the provisions in paragraphs 6, 7 and 8 could be applied in all circumstances in armed conflicts. If one State had not recognized another, particularly in cases where the second State had been formed on the first State's territory, it could scarcely be expected that the remains of the deceased would be returned.

48. Mr. URQUIOLA (Philippines) said that some delegations of developing countries were worried about the mandatory terms of the text on the provision of information on the missing and the dead in Part I of the Working Group's text. It could sometimes be difficult for such countries to comply with the provisions. He therefore suggested that a compromise might be reached by the insertion of the words "to the fullest extent possible" after the word "information" in the first sentence of paragraph 1.

49. Mr. FIRN (New Zealand) said he wished to withdraw his amendment (CDDH/II/220) in favour of the text proposed by the Working Group, in whose work his delegation had participated.

50. On the question of definitions, some delegations held the view that attempts to define the term "home country" gave rise to so many problems that it would be better to have no definition at all. His delegation believed that those problems were not insurmountable. Moreover, if the draft Protocol was to contain a series of articles which involved the granting of rights to an entity called a "home country", it was important to identify that entity. In the view of his delegation, the only way to do so was to lay down a definition.

51. The definition in document CDDH/II/244/Corr.2 might seem cryptic, and its authors would be the first to admit that it would need to be far longer to cover all conceivable possibilities. All that could be done was to provide an indication of the major factors to be taken into account in the generality of cases.

52. The first major concept was that of dependency. Article 16 of the first Geneva Convention of 1949 and Article 123 of the third Convention constituted precedents for the use of that concept without further amplification. Furthermore, the Rapporteur of the Working Group had spelt out the meaning of the term in his statement to the Committee; that explanation would appear in the summary record of the meeting and could also be written into any appropriate commentary to the Protocol.

53. The second major factor in the definition was the reference to succession of States. Since, in many cases, new States were formed on the territory of States previously involved in an armed conflict, his delegation was compelled to conclude that the definition should cover not only the case of a home country which remained intact after an armed conflict but also that of a home country which was divided into separate States, absorbed by another State or part of whose territory became independent after such a conflict.

54. The provision contained in paragraph 11 of the Working Group's proposal was, in the view of his delegation, unnecessary. Article 1, paragraph 1, of draft Protocol I made it clear that the Protocol supplemented the Convention, and there was no need to repeat that in the part dealing with the missing and the dead, particularly if parallel provisions were not included in other parts of the Protocol. Furthermore, article 11 mentioned only the Conventions, although many States had concluded bilateral agreements on the question of war graves. Also, existing law on the relationship between treaty instruments might well be thought to deal adequately with the matter. His delegation did not intend to press for the deletion of article 11, but would be interested in hearing the views of other delegations and of the ICRC on that point. Perhaps the question was part of a wider one that should be considered at an appropriate time by the Drafting Committee of the Conference.

55. With regard to the proposal in document CDDH/II/244/Corr.3, it was his delegation's understanding that the sentence in question had not in fact been produced by the Working Group as a whole and should therefore have appeared in square brackets. While it was true that some parts of the section could not appropriately be applicable to a State's own nationals, the sentence in its present form gave rise to certain difficulties. It was not correct to say that the Section on the missing, the dead and graves could not apply to a State's own nationals because it was included in draft Protocol I; article 65 of the draft Protocol proved that that was

not the case. His delegation appreciated the concern of those who wished to exclude some provisions of the proposed new Section from application to a State's own nationals, and considered that the most appropriate course would be to draw a distinction between the rights and obligations of States towards their own nationals.

56. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he thought the Committee was not adopting the right approach to the question. A general discussion should be held first on the Working Group's proposal (CDDH/II/244 and Corr.1 to 3) with a view to deciding where the new Section should be included in draft Protocol I. Once that question had been settled, the proposal itself could be considered paragraph by paragraph.

57. Mr. PUGH (United Kingdom) said he was inclined to agree with the representative of the Union of Soviet Socialist Republics that the wrong approach had perhaps been taken. At the present stage of the discussion, however, he felt compelled to continue on the same course.

58. He agreed with the comments of the New Zealand representative, particularly those concerning the need to include the best possible definition of the term "home country". While it would obviously be impossible to cover all cases - for example, stateless persons and persons with dual nationality - the related articles would be formless, shapeless and meaningless unless an adequate definition was included, particularly since it was apparent that the term "home country" had different meanings for different delegations.

59. His delegation had no strong views on paragraph 11, but endorsed the comments of the New Zealand representative concerning the sentence in document CDDH/II/244/Corr.3, the wording of which was inadequate. He therefore proposed that a sentence along the following lines be considered by the Committee as a possible alternative: "This article does not impose obligations on any Party in respect of its own nationals".

60. The CHAIRMAN said there seemed to be some misunderstanding about the scope and purpose of the discussion. No delegation had raised any objection when he had suggested that the Working Group's text be considered part by part. As he had not invited the Committee to consider the document paragraph by paragraph, the present discussion could be considered as general. He certainly did not wish any hasty decision to be taken on the matter, which could be discussed further at the Committee's thirty-fifth meeting.

61. Mrs. DARIIMAA (Mongolia) said that in some places of the text of the new Section proposed by the Working Group the verbs used in the English, French and Russian versions were not in the same mood. As the original language was English, she would be glad if the Rapporteur of the Working Group would explain which of the provisions of the proposed new Section were mandatory.

62. Mr. SIEVERTS (United States of America), Rapporteur of the Working Group, said that paragraphs 1 and 2 were clearly mandatory. Paragraph 3 was also mandatory, although the choice of the means used to transmit the information was left open to the country concerned. Paragraphs 4 and 5 were not mandatory. Paragraph 6 enunciated a mandatory but general principle. The first sentence of paragraph 7 (a) was mandatory, while the second could perhaps best be described as "semi-mandatory". Paragraph 7 (b) was not mandatory. Paragraph 7 (c) was mandatory once the request for return of the remains had been made. The word "mandatory" did not apply to paragraph 8, which set forth a procedure to be followed in a particular situation. Paragraph 9 had a mandatory flavour, but it would of course be for the country in whose territory the graves were situated to decide whether or not exhumation was a matter of over-riding public necessity. The Mongolian representative's question was not relevant to paragraphs 10 and 11.

63. Mr. MARTIN (Switzerland) said the text produced by the Working Group gave rise to some difficulties. For instance, the new Section did not yet have any heading, and its place in, and its relation to draft Protocol I as a whole had not been made clear. His delegation shared the view of the Spanish delegation that the question of obligations towards, respectively, the missing and the dead, and personnel - categories that were covered by the Geneva Conventions and those that were not - needed very careful consideration. It might perhaps be desirable for the Working Group to take up the whole question of the rationale of the proposed new Section.

64. His delegation also had doubts about some of the terminology used. For instance, the terms "another impartial humanitarian organization" in paragraph 3 and "international humanitarian organizations" in paragraphs 4 (b) and 7 (a) required explanation. The phrase "upon request" in paragraph 7 (c) was not very clear and might be interpreted in a wider sense than his delegation would consider desirable.

65. Mr. MARTINS (Nigeria), Chairman of the Working Group, on the subject of the rationale followed by the Working Group when drafting the proposed new Section, said that paragraphs 1 to 5 grouped the provisions concerning persons, while paragraphs 6 to 9 contained those concerning objects.

66. The CHAIRMAN said that further discussion on the proposed new Section would be deferred until the thirty-fifth meeting, when a decision of principle could perhaps be taken that the new Section should be included in draft Protocol I, after which each paragraph

might be discussed separately. The Committee might also wish to consider where the new Section should be inserted in draft Protocol I although that, in his view, was a question which might more appropriately be referred to the Drafting Committee.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

held on Thursday, 13 March 1975, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Proposed new Section in draft Protocol I (replacing proposed article 18 bis) (continued)

Text submitted by the Working Group (CDDH/II/244/Rev.1, CDDH/II/257, CDDH/II/259 and Add.1, CDDH/II/260, CDDH/II/261, CDDH/II/262, CDDH/II/263) (continued)

1. The CHAIRMAN drew attention to the revised report of the Working Group (CDDH/II/244/Rev.1), which incorporated a number of corrigenda. He suggested that the Committee should discuss the amendments which had been submitted in the following order: amendment by Cyprus, France, Greece and the Holy See (CDDH/II/259 and Add.1), amendment by Spain (CDDH/II/262), amendment by the Republic of Viet-Nam (CDDH/II/257), amendment by the United States of America (CDDH/II/263), amendment by Canada and four other countries (CDDH/II/260) and the United Kingdom amendment (CDDH/II/261).

2. Mr. KLEIN (Holy See), introducing amendment CDDH/II/259 and Add.1, said that its purpose was to remedy an omission, namely the absence of any reference to families, and to call the attention of all representatives - legal experts, politicians, doctors and soldiers - and their States to the suffering caused to families as a result of armed conflicts. It was not only separation, but anxiety, uncertainty and lack of news for months, or even years, in the case of both families and prisoners. It was not merely a question of feelings but one of respect for a fundamental right which had never been officially recognized and which was often overlooked. Indeed, in some countries the fate of certain civilians was deliberately kept secret. Unless specific mention was made of families, the bureaucrats dealing with the present provision would recognize only the technical, not the humanitarian, aspects of the problem.

3. Mr. SANCHEZ DEL RIO (Spain), introducing amendment CDDH/II/262, said that it reflected the statement he had made at the thirty-fourth meeting (CDDH/II/SR.34) and should perhaps be considered as a working paper rather than as an amendment. Its main purpose was to make the provisions absolutely clear for the lay reader. It introduced a distinction between the missing and the dead and made it mandatory to report the relevant information to the ICRC Central Tracing Agency. It also strengthened the role of the Central

Tracing Agency, in order that efforts should be less dispersed and thus more efficient. His objection to a reference to other humanitarian organizations in paragraph 3 of the proposed new section had been only on the ground of dispersal of effort.

4. The amendment to paragraph 6 and the deletion of part III were proposed in order to avoid difficult definitions.

5. Mr. BOTHE (Federal Republic of Germany) pointed out that in the English text of the title of part I the word "the" should be inserted before the word "dead".

6. As a number of questions had been raised on the systematic disposition of the articles contained in the proposed new Section, he felt that it might be wise to refer it to the Drafting Committee. He endorsed the comments made by the Nigerian representative at the thirty-fourth meeting with regard to the division into parts I and II.

7. He did not see how the document could be made simple as its purpose was to fill specific loopholes which were not easy to define. Regarding the important question raised by the representative of the Union of Soviet Socialist Republics concerning the appropriate place for the new Section in the draft Protocol, he proposed that it should become provisional new Section I bis of Part II of draft Protocol I. He assumed there would be at least three articles, concerning information, graves and definitions.

8. Mrs. MANTZOULINOS (Greece) said that her delegation, which represented a country that had suffered greatly from the effects of hostilities throughout its history, had a special interest in the initiative taken by the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland and the United States of America with regard to the missing and the dead. It welcomed the revised text submitted by the Working Group (CDDH/II/244/Rev.1) and was ready to accept any amendment that would supplement the substance or improve the wording of the proposed new Section of draft Protocol I.

9. Her delegation attached special importance to paragraph 2 (b) whose object was to make the search for persons reported missing by another Party more effective. She thought, however, that the words "if need be" in the opening sentence of paragraph 2 should be deleted, so that the provision would be mandatory.

10. In joining the sponsors of amendment CDDH/II/259, submitted by Cyprus, France and the Holy See, concerning the natural and fundamental rights of families, her delegation had been prompted by humanitarian motives and by the statements by the representatives of the Holy See and of Cyprus.

11. Mr. STAROSTIN (Union of Soviet Socialist Republics) said that, while he warmly supported the humanitarian views of the representative of the Holy See, he had doubts about the word "relatives". There were varying definitions of "family" and "relatives" throughout the world. Moreover, even if the required information was available, he failed to see how it could be recorded. If adopted in its present form, the new Section would conflict with the provisions of the Geneva Conventions, which required specific information - as in Annex IV D to the third Geneva Convention of 1949.

12. The reference in paragraph 1 of the proposed new Section to persons "in respect of whom no provision in this regard is made in the Conventions" was an attempt to include a new category of person, but what was that new category in legal terms? Paragraph 2 gave no clear definition of the category of persons in respect of whom information should be sought and recorded. The second sentence of paragraph 2 (a) could be understood as referring not only to the dead in accordance with paragraph 1, but to the civilian population as a whole. He also wondered who were "the other Parties" referred to in paragraph 2 (b).

13. In paragraph 3 he would like the word "promptly" to be replaced by the words "as rapidly as possible". It might also be desirable to define the humanitarian organizations referred to in that paragraph and elsewhere as those already mentioned in the Geneva Conventions and draft Protocol I. Regarding the time-limit for implementing the provision, he assumed that such action could not normally be taken until hostilities had ceased. Reference had been made to active hostilities, but it would be difficult to distinguish between active and passive hostilities.

14. He was not satisfied with the drafting of the second sentence of paragraph 4 (a), since it could be interpreted as meaning that teams could carry out the missions in question without the authority or agreement of the adverse Party. He suggested that the words "Unless otherwise agreed" should be replaced by the words "If agreed", to make it clear that no such activity could be carried out on the territory of the other Party without the agreement of the adverse Party. The words "in all circumstances" in the last sentence of paragraph 4 (a) were open to similar interpretation, but it would be impossible for the personnel in question to be protected if they were acting without authority and agreement. The words "by either Party" at the end of the sub-paragraph also raised difficulties.

15. With regard to part II, he noted that the term "hostilities", not "active hostilities", was used in paragraph 6. He agreed with the reference in paragraph 9 (c) to exhumation being "of over-riding public necessity", but pointed out that it could also be a matter of military and medical necessity, for example, when it was necessary to determine the cause of death.

16. Regarding part III, he considered paragraph 11 superfluous. The second sentence, in particular, was pointless, since draft Protocols I and II were supplementary to existing provisions.

17. Lastly, it was necessary to take account of the general provisions in Article 120 of the third Geneva Convention of 1949, concerning collective burial.

18. Mr. KUCHENBUCH (German Democratic Republic) said that, in principle, his delegation took the view that it was necessary and appropriate to make the provisions of the Geneva Conventions with respect to the search for, and collection of the dead, and all related questions more specific and to develop them. It felt, however, that the proposed new Section was not proportionate in scope to the other protective provisions of draft Protocol I. He agreed with the delegations which had pointed out earlier in the session that the draft of proposed article 18 bis which the Committee had considered at its twentieth meeting (CDDH/II/SR.20) should have been formulated even more concisely. The present text, too, could be shortened in such a way as to avoid a repetition of the provisions laid down in the corresponding articles of the four Geneva Conventions of 1949. That observation related in particular to the obligation of the Parties to collect and record information on persons who had fallen into their hands or who had died as a result of hostilities or occupation (paragraphs 1 and 2), as also to the transmission of the information in question to the home country (paragraph 3) and the obligations in connexion with the interment of the dead and respect for and protection of graves (paragraph 6).

19. His delegation considered that an abridgement of the present text would bring out more clearly the problems for which new provisions were required, such as, for instance, the search for and location of the missing.

20. His delegation endorsed the statement of the representative of the Union of Soviet Socialist Republics concerning paragraph 3. It agreed that the word "promptly" in that paragraph should be replaced by the term "as rapidly as possible" which was used in the Geneva Conventions.

21. He proposed that the second sentence of paragraph 4 (a) should be deleted. The essential fact in that sub-paragraph was that the search for and removal of the dead from the battle area should be agreed upon between the Parties to the conflict. The special conditions governing the activities of burial teams would have to be determined by the Parties in accordance with local conditions in the battle area.

22. Paragraph 4 (b) too, could be deleted. The Parties could by mutual agreement decide that personnel of international humanitarian organizations might participate in the activities referred to in paragraph 4 (a).

23. Paragraph 5 was so comprehensive in scope that it appeared to be in the wrong place. If such a provision was considered necessary, thought should be given to the possibility of incorporating it in article 18 (Identification). During the discussion on article 18, paragraph 3, a number of delegations had drawn attention to the fact that the production of means of identification entailed unjustifiably high costs for many countries. The same problem arose in connexion with the provision in article 18 bis, paragraph 5. In spite of the explanations given by the Rapporteur of the Working Group, his delegation was still concerned about the non-obligatory character of paragraph 5 and about the means of identification. It considered that the problem should be reconsidered very carefully.

24. In paragraph 6, the words "at all times" covered the periods before and after the end of hostilities and the phrase "and both before and after the end of hostilities" could accordingly be deleted.

25. With regard to paragraph 7, his delegation took the view that the provision should take the form of a comprehensive agreement. Hence, the words "shall endeavour to agree on arrangements" should be included at the beginning of the paragraph which would read: "As soon as circumstances permit, and at the latest from the end of active hostilities, the High Contracting Parties in whose territories such graves are situated shall endeavour to agree on arrangements ...". Thus, all activities provided for in sub-paragraphs (a), (b) and (c) would only be possible on the basis of corresponding arrangements between the High Contracting Parties.

26. As far as paragraph 8 was concerned, his delegation was of the opinion that, in the absence of agreements and in the event of an offer for the return of the remains of the deceased to the home country being rejected, the Party to the conflict in whose territory such graves were situated should have the right to act in accordance with its domestic legislation without being bound to wait for any given period.

27. In paragraph 10 a more precise definition of the term "graves" was required.

28. With regard to paragraph 11, his delegation endorsed the opinion of the New Zealand and the United Kingdom representatives that it should be deleted, because the provision already appeared in article 1 of draft Protocol I as a basic provision for the Additional Protocol as a whole.

29. He suggested that the Working Group might be requested to review the whole text in the light of the comments made in the Committee.

30. Mr. ARIM (Turkey) said that his delegation attached great importance to the question of the missing and the dead during armed conflicts. Turkey had been one of the sponsors of a draft resolution on the subject submitted to the United Nations General Assembly at its twenty-ninth session.

31. The text prepared by the Working Group covered many elements which were relevant to the subject under discussion. He would comment on it when it was discussed paragraph by paragraph.

32. Referring to the remarks made by the representative of Cyprus at the thirty-fourth meeting (CDDH/II/SR.34) and the representative of Greece at the present meeting, he said that both were trying to use the Committee for propaganda purposes when referring to the situation in Cyprus. The Conference had been called to draw up a treaty - not to engage in propaganda. The question of missing persons in Cyprus was dealt with on the island by a committee formed by Mr. Denktas and Mr. Clerides and the ICRC, which was present on the island and was collaborating in the tracing of missing persons and with which both the Turkish Government and the Turkish Cypriots had the best of relations.

33. Mr. URQUIOLA (Philippines) said that at the thirty-fourth meeting the Rapporteur of the Working Group had indicated which paragraphs of the proposed new Section to replace article 18 bis were mandatory and which were optional. He himself had suggested at the thirty-second meeting (CDDH/II/SR.32) that the provisions of section I of the Working Group's text concerning information on the missing and the dead should not be mandatory; they should be amended in order to take into consideration the concern of the developing countries by the insertion, where appropriate, of the words "to the fullest extent possible" between the word "shall" and the word "record", and in paragraph 2 the same words should be inserted between the word "shall" and the word "facilitate". All developing countries considered the question of the greatest importance since their resources were not sufficient to comply with the mandatory provisions of the article.

34. Part II, entitled "Graves", dealt not only with the protection of graves but also with matters such as interment and cremation. The title of the section was therefore inadequate. It might be amended to read "Graves and decent disposal of the dead through interment or cremation". If that were done, the first sentence of paragraph 10 of section III of the text could be deleted, as had been suggested by a number of delegations.

35. Mr. EXARCHOS (Greece) said that the Turkish representative had accused the Greek delegation of being prompted by considerations of propaganda in mentioning Cyprus. The Conference was an international conference dealing with humanitarian problems and those were Greece's sole concern. Propaganda did not enter into the desire for the return of relatives.

36. Mr. SHERIFIS (Cyprus), replying to the accusation, said that the representative of Turkey had not been present at the thirty-fourth meeting and must have been misinformed. He had spoken only of the humanitarian aspect of the proposed new Section; he had referred to the tragic situation in Cyprus, where a large number of his compatriots were missing. It might be that Turkey had a guilty feeling about that situation.

37. Mr. ARIM (Turkey) said that he had the summary record of the thirty-fourth meeting (CDDH/II/SR.34) and had not been misinformed about what the representative of Cyprus had said on that occasion. Since the delegation of Cyprus was making similar statements in many other Committees, he felt obliged to remind the Committee that the Conference had been convened to draw up a treaty and not to make or listen to propaganda.

38. Mr. KLEIN (Holy See) said that he very much regretted that his proposal, which was based on humanitarian considerations alone, should have given rise to a political debate.

39. Mr. JAKOVLJEVIĆ (Yugoslavia) said that the proposal to add to the Protocol a new Section concerning the dead and the missing was very important. It was clear that there was general agreement that the rules of the Geneva Conventions in connexion with the dead and the missing should be supplemented.

40. He agreed with the representative of the German Democratic Republic that an effort should be made to make the provisions more concise, for as they stood they were too complicated to be comparable to the other parts of draft Protocol I.

41. Secondly, it was necessary to take into account the statements by representatives of developing countries. The fact that resources of States differed greatly could not be overlooked, or the result would be a totally unrealistic Protocol. He therefore supported the Philippine proposal concerning the insertion of the words "to the fullest extent possible" in paragraphs 1 and 2 of part I of the Working Group's text.

42. With regard to part III, paragraph 11, he considered the first sentence essential. It had surely not been the intention to oblige any State to take all the measures referred to in relation to its own nationals. He therefore supported the wording of paragraph 11.

43. Mr. PUGH (United Kingdom) said that his first reaction to the statements which had been made in connexion with article 18 bis and the proposed new Section to replace it (CDDH/II/244/Rev.1) had been one of sympathy with all the speakers. Everyone was groping to reach a common goal, although the approaches differed.

44. He fully agreed with the representative of the Union of Soviet Socialist Republics who had stressed the need for clarity and had drawn attention to a lack of precision in many of the expressions used in article 18 bis. Other representatives had spoken of the need to be concise and to reduce the volume of the provisions in order to make them simple and readily understandable by everyone. Those two requirements should of course be reconciled if that was possible, but the speakers who had stressed the need for clarity had not always indicated how it should be achieved.

45. The United Kingdom amendment (CDDH/II/261) would restrict the obligations on the Parties severely; under it, no party had any obligations under the provisions of the section in respect of its own nationals. The word "Part" had been placed in square brackets, so that the Drafting Committee could decide whether that term or another should be used. He felt that the difficulty referred to by a number of speakers from the developing countries was partially covered by the United Kingdom amendment, inasmuch as the extent and scope of the obligations incurred were reduced.

46. The USSR representative had raised the question of how far the obligation imposed by paragraph 2 extended. Some representatives had questioned the use of the expression "shall facilitate and, if need be". In his view, some such qualification was necessary, since in occupied territory the search for and recording of information concerning the persons referred to in paragraphs 2 (a) and (b) would normally be left to the local municipal authorities and the Occupying Power would not exercise direct and immediate responsibility.

47. He agreed with the suggestion made by the representative of the Federal Republic of Germany that the form of the proposed article should be referred to the Drafting Committee.

48. It was difficult at first glance to assess the merits of the Spanish amendment (CDDH/II/262). He felt that it was a matter which the Drafting Committee could consider, in view of the fact that there were very few points of principle involved.

49. While no one could quarrel with the humanitarian impulse which had given rise to the amendment submitted by Cyprus, France and the Holy See (CDDH/II/259), it involved questions of substance as well as drafting points. The activities of the Parties to the conflict were certainly not mainly prompted by the fundamental right of families to know what had happened to their relatives but by the desire to win the war. In his view, the proposal required a considerable amount of thought. He did not consider, for instance, that it could be said that it was the fundamental right of families to know what had happened to their relatives, although it was a basic need. To go further than that would not be wise.

50. Mr. GREEN (Canada) said that, while the Canadian delegation sympathized with the underlying motives of the sponsors of amendment CDDH/II/259, it wondered whether such a statement had any place in the body of Protocol I; it added little to what was essentially a legal document and there was nothing like it elsewhere in the Protocol or in the Conventions. If it was considered desirable, it could perhaps take the form of a statement of intention in the preamble to the Protocol.

51. With regard to the revised text submitted by the Working Group (CDDH/II/244/Rev.1), it might perhaps be necessary, as suggested by the representative of the Philippines, to make it clear that part II was meant to cover the decent disposal of the dead.

52. Mr. KASER (Switzerland) agreed with the Yugoslav representative's view that the articles of draft Protocol I should be simple and clear. He therefore wished to offer a suggestion concerning the place of article 18 bis in the Protocol.

53. All delegations had been somewhat concerned to notice a fairly marked tendency to complicate the original ICRC version of draft Protocol I. The articles sometimes tended to become over-long. That increased the risk of the Protocol not being applied, as the United Kingdom representative had pointed out a few days previously. Nevertheless, as several representatives had remarked, it was clarity rather than brevity that made for simplicity, and sometimes rather detailed texts were necessary.

54. The new draft of article 18 bis, however, was more than three pages long, and his delegation wondered if it would not be advisable and wise to consider, among other possibilities, a subsequent structural procedure, namely an annex of the standard-agreement type, similar to that which already existed in the first and fourth Geneva Conventions of 1949 on hospital and safety zones.

55. A short, concise article 18 bis, in its present place, for example, would retain only the general principles, while all the desirable and even requisite details would appear in the proposed annex.

56. Mr. IJAS (Indonesia) thought that article 18 bis was a good example of provisions devoted to humanitarian principles; for that reason, he accepted the version proposed by the Working Group. In Indonesia, many of those provisions were being fulfilled; for example, the graves of the dead were kept in good condition, in co-operation with the authorities of the home countries concerned. He doubted, however, whether those provisions could be carried out in developing countries with limited means; that was particularly true of paragraphs 1 and 2. He therefore proposed that, in the redrafting of the article, more consideration should be given to the conditions prevailing in developing countries; in particular, he would like all the paragraphs to be so worded as not to be mandatory, e.g., by the inclusion of the words "to the greatest possible extent".

57. Mr. MARTINS (Nigeria) appreciated the consideration representatives had shown for the developing countries.

58. With regard to paragraph 2 of the proposed new Section (CDDH/II/244/Rev.1), it had been pointed out that no time-limit had been indicated; in his view, however, the reference to the "end of active hostilities" implied an element of time. He felt that paragraph 4 (b) should not stand alone but should be incorporated in paragraph 4 (a); the international humanitarian organizations it mentioned were not known in all the developing countries, so that their intervention could give rise to suspicion. The provision of assistance by such organizations should be a subject of agreement. The provisions with regard to identification, in paragraph 5, related to a situation where the developing countries were in the lead; long before the introduction of driving licences or passports, those countries had had their tribal marks. In connexion with paragraph 7, relating to graves, it had been suggested that the expression "close relatives" should be used. That would not be applicable in Nigeria, because of the existence there of the extended family; for that reason, he would prefer the word "relatives" to remain unchanged. He found paragraph 11 difficult to understand, for it would seem to imply that the Government of a country had greater obligations with respect to nationals of the adverse Party to the conflict than to its own nationals.

59. Mr. SIEVERTS (United States of America), speaking both as United States representative and as Rapporteur of the Working Group, thanked representatives for the constructive suggestions they had made. Many of those suggestions could have been incorporated in the text of the Working Group. He welcomed the suggestion that the Working Group should reconvene; it would then be possible to prepare a revised text that would include the matters on which a consensus could be reached.

60. Miss SACI (Algeria) agreed with the general approach adopted in the proposed new Section but feared that its great length might give the impression that no provisions with regard to the missing and the dead appeared in the Geneva Conventions; that was not true, although some situations might have been overlooked. The proposed text was too detailed and there was some repetition. In addition, many provisions were not applicable to some developing countries, while the question of mercenaries had not been considered. Some paragraphs were too detailed, others too vague. Her delegation supported the amendment proposed by the United Kingdom (CDDH/II/261). It would also favour a more concise text, along the lines of the amendment submitted by Spain (CDDH/II/262).

61. Mr. FIRN (New Zealand) supported the suggestion that the Working Group should reconvene and the proposal of the Federal Republic of Germany that article 18 bis should form a new Section I bis of Part II of Protocol I. With regard to the amendment submitted by Cyprus, France and the Holy See, he agreed with the Canadian and United Kingdom representatives that it needed closer consideration. He agreed with the many useful comments made by the representative of the Union of Soviet Socialist Republics; one of those comments had concerned the meaning of the expression "over-riding public necessity" in paragraph 9, of which New Zealand was the author. The USSR representative had asked whether "public necessity" included both military and medical necessity; in his view, public necessity must, by its nature, include both those concepts.

62. Another problem related to the use of terms such as "Party to a conflict", "High Contracting Party", "other Party" or sometimes just "Party". In amendment CDDH/II/261, for example, "party" should clearly be "High Contracting Party". That was a question of substance that the Working Group should consider.

63. Mr. QUACH TONG DUC (Republic of Viet-Nam) agreed with other representatives that the new Section proposed by the Working Group was too detailed and that details should appear in an annex. The text should be as precise and as simple as possible. He therefore suggested that the amendments proposed by his delegation (CDDH/II/90), which included the essential provisions with regard to the missing, the dead, graves and visits by families and consisted of only three articles (articles 32 bis, 32 ter and 32 quater) should be reconsidered. He proposed that the new Section should become Section III of Part II of draft Protocol I.

64. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the statement made earlier in the discussion by Mr. Starostin should have referred to "forensic medical necessity" in connexion with exhumation and not to "military and medical necessity". In his view, exhumation for the purpose of establishing the cause of

death, the correctness of treatment, or the identity of the person concerned, could not be described as being of "over-riding public necessity" and it was for that reason that his delegation proposed the addition of the words "forensic medical or" before the words "over-riding public necessity" in paragraph 9 (c).

65. The CHAIRMAN said that there being no more speakers on his list, the general discussion was now concluded. He called upon the sponsors of the amendments to introduce them.

66. Mr. SIEVERTS (United States of America) said that his delegation's amendment (CDDH/II/263) reflected the views of a number of representatives with whom he had discussed the matter. The aim of the amendment was to make it clear that the function of the teams concerned was not burial, but the search for, identification and recovery of the dead from combat zones.

67. Mr. GREEN (Canada), introducing amendment CDDH/II/260, recalled that in the discussion of paragraph 7 (c) of the new Section concerning the return of the remains of the deceased, attention had been drawn to the need for a more precise specification of the persons who could request such return. The purpose of the amendment was to establish that the return of the remains could be requested by close relatives. There was, however, an omission in the amendment: the words "or official war grave registration services" should be inserted after the words "close relatives".

68. Mr. PUGH (United Kingdom), referring to the remarks made by the representative of Nigeria, said that it was quite logical, in certain situations, for the obligations of a State to be greater towards those who were not its nationals than towards those who were; thus domestic law might not require the marking of graves, but in some specific circumstances graves might have to be marked and to remain so. That was not accidental, but might be a deliberate matter of policy.

69. Mr. KLEIN (Holy See) said that the changed order of wording in the English translation of amendment CDDH/II/259 and Add.1 made it appear as if the only problem was that of reassuring families. That was a linguistic problem. As far as the position of the amendment was concerned, the sponsors still thought that the correct place was at the head of the article.

70. The CHAIRMAN said that it was clear that the Working Group would have to reconsider the article. He had noticed that some regions were not represented on the Working Group. As far as the Eastern Group was concerned, he suggested that, since the Hungarian representative was unable to attend, that Group should

be represented by the representatives of the Soviet Union and the German Democratic Republic who had spoken that day. There should also be greater representation of the developing countries; he suggested that that could be achieved by the inclusion of the representative of the Philippines. Both the Chairman and the Rapporteur of the Working Group were leaving shortly and would have to be replaced if the work had not been completed by the end of the week.

71. Mr. AL-FALLOUJI (Iraq) agreed that the article should be referred back to the enlarged Working Group, in which the representative of Algeria might perhaps also participate. It would be useful if the Chairman could summarize the conclusions of the discussion for the benefit of the Working Group. There seemed to be general acceptance that the Group should be guided by the need for clarity and simplicity and should take into account the financial burden that might be imposed on developing countries if certain provisions were adopted. Moreover, repetition, for example, of the principles laid down in Article 17 of the first Geneva Convention of 1949 should be avoided.

72. The CHAIRMAN asked the representatives of Algeria and of the Holy See whether they would be willing to participate in the work of the Working Group.

73. Miss SACI (Algeria) and Mr. KLEIN (Holy See) regretted that they were unable to do so.

74. The CHAIRMAN said that, as it was unlikely that the Working Group would be able to produce a new text in time for the thirty-sixth meeting of the Committee, he suggested that the Committee should hold a preliminary discussion of the question of medical transports.

75. Mr. SCHULTZ (Denmark) said that the Working Group concerned with paragraph 3 of article 16 was ready to present its report, which could be discussed before the major question of medical transports.

76. The CHAIRMAN replied that he intended to devote a special meeting during the following week to the work of all the Working Groups concerned with points of detail.

The meeting rose at 12.45 p.m.

SECOND SESSION

(Geneva, 3 February - 18 April 1975)

COMMITTEE II

SUMMARY RECORDS OF THE THIRTY-SIXTH TO FIFTY-FIFTH MEETINGS

held at the International Conference Centre, Geneva,

from 14 March to 16 April 1975

Chairman:	Mr. S-E. NAHLIK	(Poland)
Rapporteur:	Mr. D. MAIGA	(Mali)

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SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

held on Friday, 14 March 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 21 - Definitions

Article 22 - Search for wounded

Article 23 - Application

Article 24 - Protection

Article 25 - Notification

1. The CHAIRMAN reviewed the amendments to articles 21 and following, the most important being that contained in document CDDH/II/249 and Corr.1, since its sponsors wished it to take the place of the ICRC text as a basis for discussion by the Committee. The amendment proposed that Section II, "Medical Transports" should be divided into four chapters. In the new text, only article 21 of the ICRC draft would be retained in its original form.

2. Since a question of procedure was involved, he had asked for the opinion of the Legal Adviser to the Conference, who had considered that the decision should be taken by the Committee itself. Consequently, he had consulted the rules of procedure of the Conference. Rule 30, second paragraph, stated that decisions on the competence of the Conference "shall constitute matters of substance and be treated as such". Rule 35, first paragraph, stated that decisions of the Conference on all matters of substance "shall be taken by a two-thirds majority of the representatives present and voting". Rules 30 and 35 concerned the Conference, but rule 50 stated that the rules contained in Chapters II, V and VI "shall be applicable, mutatis mutandis, to the proceedings of committees ...". A vote would therefore be necessary if a text other than that of the ICRC was to be adopted as a basis for discussion. It was an important question of procedure that was liable to create a precedent, not only for the Committee, but also for the other organs of the Conference.

3. Mr. de MULINEN (International Committee of the Red Cross) said that there were few provisions on medical transports in the Geneva Conventions of 1949: a general article and an article on air transport in the first Convention of 1949 and similar provisions in the fourth, although the second Convention was more explicit, particularly so far as concerned hospital ships.

4. Solutions should be found that would be applicable to all areas of combat, whether on land, or sea or in the air because, in a coastal region or archipelago, for example, various types of medical transport might be needed at the same time. In drawing up their text, the authors of the ICRC draft had borne in mind the discussions on that question at the previous conferences. There had been two possible solutions: first, to propose common provisions containing also details on land and sea transport and a special chapter on medical transport by air; and second, to propose minimum common provisions, followed by separate chapters, one for each of the three modes - land, sea and air. The ICRC had chosen the first solution.

5. So far as concerned translation, he urged the need for taking the previous decisions of the Committees and Working Groups into account; the English word "transportation" should be rendered "transport" in French, and the French term "moyens de transport" should be translated "transport" in English, not "means of transport".

6. Mr. MAKIN (United Kingdom) introducing amendment CDDH/II/249 and Corr.1, said that the sponsors had had some difficulty in understanding the ICRC text, which contained a number of errors. In particular, they had found article 22 superfluous. What happened, in fact, was that each country interpreted the articles in question and applied them to its land, sea and air forces, giving special instructions to the different services. Since there was already a Convention on land and sea warfare, there was no need to establish common provisions for subsequent sub-division by the countries themselves to suit their requirements.

7. In substance, the ICRC text was repeated in amendment CDDH/II/249 and Corr.1, but in a clearer form.

8. Mr. CLARK (Australia) said that both the ICRC text and amendment CDDH/II/80 had merit. Perhaps separate chapters for medical transport by land, sea and air would help to make the text clearer and indicate the special problems associated with each type of transport.

9. That did not mean, however, that all the articles proposed by the ICRC for chapter I were no longer useful; article 22 and article 23, paragraph 3, should be retained.

10. Article 22 was similar to existing articles, for example Article 15 of the first Geneva Convention of 1949 and Article 18 of the second; but it also covered the search and evacuation, by all means of medical transport, of the wounded and sick and shipwrecked. That was an important extension which merited detailed consideration by the Committee.

11. The ICRC text of article 25 should be retained, as the onus it imposed was reasonable and realistic. The words "for which no particular form is specified", in the second sentence of paragraph 1, were important, since the provisions of the annex would not be mandatory, nor would they cover all means of medical transport.

12. His delegation also saw a need to recast articles 22 to 25 mentioned in document CDDH/II/80, as had been attempted in the amendments submitted to articles 24 and 25 by the Federal Republic of Germany (CDDH/II/258). There would appear to be no advantage in a restatement in those articles of existing law, whether in the wording of the Conventions or in other wording. Inconsistency in the wording of similar articles could only promote ambiguity in the Conventions and the Protocols. So far as concerned medical vehicles, hospital ships and medical ships and craft, it was possible that, in the selection of certain articles from the Conventions, important details from other articles might be omitted; for example, Article 31 of the second Geneva Convention of 1949, which was concerned with the right of control and search, and Article 43, concerned with the marking of hospital ships and craft with the distinctive emblem. His delegation's amendment (CDDH/II/252) to paragraph 1 of article 23 sought to extend the application of the second Geneva Convention of 1949 and of Protocol I to all medical transports by sea, including hospital ships, lifeboats of all kinds and small medical service craft whether civilian or military. That would be a useful development of existing law, since article 23, paragraph 4, of the ICRC text made it clear that articles 22, 24 and 25 of the second Geneva Convention of 1949 applied exclusively to hospital ships.

13. In working out a text in the Committee, it would be well to take as a basis the ICRC text, amendments submitted to that text, and also the amendments in document CDDH/II/249 and Corr.1 (replacing CDDH/II/80) and the amendments thereto. The protection of maritime means of medical transports and their crews was of great concern to his delegation. Such protection must be secured for all medical transports, whether alone or in convoy.

14. For article 24, the Australian delegation proposed a revised text (CDDH/II/253), to make it abundantly clear that all medical transports should be respected and protected.

15. His delegation would like the Committee to give preliminary consideration to the definitions before discussing the substantive articles.

16. Mr. FIRN (New Zealand) asked what would become of the ICRC proposals if the Committee decided by a two-thirds majority to adopt document CDDH/II/249 and Corr.1 as a basis for discussion.

17. The CHAIRMAN replied that, in that event, with the exception of article 21, the ICRC text of chapter I would be replaced by document CDDH/II/249 and Corr.1.

18. Mr. FIRN (New Zealand) enquired whether, in that case, the ICRC text would not be considered as a separate proposal.

19. The CHAIRMAN said that, in such a hypothesis the ICRC text should no longer be so considered. It was precisely for that reason that an important precedent was involved.

20. Mr. SOLF (United States of America), referring to the question raised by the New Zealand representative, pointed out that in his delegation's view, the substance of the whole of chapter I was reproduced in document CDDH/II/249 and Corr.1, with the exception of article 22 of the ICRC text which the United Kingdom representative considered superfluous because the search for the wounded, the sick and the shipwrecked formed part of the normal duties of medical personnel. The proposed new text did not, however, mention the restrictions laid down in article 29. Articles 23 to 25 proposed in document CDDH/II/249 and Corr.1 were the recognition by the co-sponsors that different rules applied in the case of land, sea and air transport. They covered the scope of the provisions of articles 23 and 24 of the ICRC text. Article 22 of document CDDH/II/249 was merely an amendment of ICRC article 25. He wished to make clear that the sponsors of document CDDH/II/249 and Corr.1 did not intend to raise objections to consideration of the ICRC proposals.

21. Mr. ONISHI (Japan) said he considered that document CDDH/II/249 and Corr.1 was a better basis for discussion than the ICRC text, which was harder to understand. He accordingly suggested that the Committee should consider the new proposal, although it could still refer to the ICRC text in the course of the discussion.

22. Mr. SCHULTZ (Denmark) said that he concluded from the views expressed by the various speakers, particularly the United States representative, that the procedure to be adopted would probably be simpler than had been foreseen at the outset. He proposed that the Committee should first of all consider article 21 of the ICRC text. It could then proceed to a discussion and if necessary to a vote on article 22. Articles 23 and 24 would be considered together on the basis of the ICRC text together with the amendments in document CDDH/II/249 and Corr.1, and then article 25 on the basis of the ICRC proposals. In that way, it would not be necessary to put the matter to the vote as provided for in the rules of procedure.

23. The CHAIRMAN pointed out that document CDDH/II/249 expressly proposed that articles 22, 23, 24 and 25 of the ICRC text should be deleted, and replaced by a new text. If, therefore, the Committee were to adopt that document as a basis for discussion, it would mean that the ICRC proposals for articles 22 and 24 could only be considered as amendments, and that the equivalent of article 23 of the ICRC draft would be embodied in the text as a new chapter.

24. Mr. CZANK (Hungary) said that, in his view, the difficulties raised in the discussion were mainly due to the somewhat irrational structure of Section II. Chapter II of that Section should be entitled "Protection of medical vehicles and transport", and the provisions should be applicable to all means of medical transport. But document CDDH/II/249 contained no provisions relating expressly to aircraft. Furthermore, Chapter II in that proposal consisted of only one article, which suggested a lack of balance.

25. He proposed that under the title which he had suggested for Chapter II there should be three paragraphs covering medical vehicles, hospital ships and aircraft, respectively. Chapter III would consist of Chapter II of the ICRC text combined with Chapter IV of the draft in document CDDH/II/249 and Corr.1.

26. He was convinced that the recasting of that part of draft Protocol I would make it easy to establish a basis for discussion.

27. Mr. MAKIN (United Kingdom) said he thought that the discussion should be mainly concerned with the substance of the different amendments submitted. He suggested that the Committee should first consider article 21 and then take together article 25 of the ICRC text, and article 22 of document CDDH/II/249, which did not differ significantly from it. The Committee would decide whether article 22 of the ICRC draft should be retained, and pass on to articles 23 and 24, in order to determine whether they should be merged into a single article. The Committee could then revert without difficulty to article 21, and take up articles 22 and 25. It would probably realize that, in the final analysis, there were no major differences between the two drafts so far as substance was concerned.

28. The CHAIRMAN, referring to article 21, reminded the Committee that at the first session the Committee had decided to postpone the decisions on the definitions proposed in article 8 of draft Protocol I and article 11 of draft Protocol II until the discussions had been concluded. He wondered whether it would not be advisable to take a similar decision with regard to article 21, the more so as some of the expressions defined in that article would also be encountered in certain articles of draft Protocol II.

29. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) thought that the Committee should take the ICRC text as a basis for its discussions because, though like all texts it was not without omissions, it was the outcome of lengthy consideration and thorough study.

30. To avoid unnecessary voting and discussion, the Committee should first study the question as a whole in the light of the principles involved before referring it to a Working Group and to the Drafting Committee.

31. There were some omissions on the subject in the Geneva Conventions of 1949: they only envisaged the protection of civilian medical transports on land when they were in convoy, whereas they should also be protected when in single units; furthermore, the protection they accorded to medical air transport, the fastest and most efficient means of assisting the sick and wounded, was too limited.

32. It was therefore the Committee's duty to deal with the substance of that important problem without delay.

33. After a procedural discussion in which Mr. SOLF (United States of America), Mr. MARTIN (Switzerland) and Mr. ROSENBLAD (Sweden) took part, Mr. MAKIN (United Kingdom) said that the sponsors of document CDDH/II/249 and Corr.1, being anxious to facilitate the work of the Committee, would modify their proposal in the following manner: they would no longer request the deletion of articles 23, 24, and 25 of the ICRC text, and would submit their article 22 as an amendment to article 25 of the ICRC text, their article 23 as an amendment to article 24 of the ICRC text, and their article 25 as an amendment to article 23 of that text. They might find it necessary at a later stage to propose the deletion of article 22 of the ICRC text if that article should prove redundant.

34. Mr. ASHMAWI (Arab Republic of Egypt) proposed that further consideration of that important question should be postponed until the thirty-seventh meeting so as to afford members of the Committee time for reflection.

The motion for the adjournment of the discussion was adopted by 26 votes to none, with 21 abstentions.

35. The CHAIRMAN requested the sponsors of the various amendments to article 22 and following articles, who had related their amendments to the articles as they appeared in document CDDH/II/249 and Corr.1, to amend them so that they would relate to the articles in the ICRC text. That would avoid confusion when the Committee resumed its consideration of those articles.

The meeting rose at 11.50 a.m.

SUMMARY RECORD OF THE THIRTY-SEVENTH MEETING

held on Monday, 17 March 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

MESSAGE OF CONDOLENCE ON THE DEATH OF Mme. PAUL GRABER

1. The CHAIRMAN read out a letter he had received from Mr. Pierre Graber, President of the Swiss Confederation and President of the Conference, thanking the Committee for its message of condolence on the death of his mother, Mme. Paul Graber.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 21 - Definitions (CDDH/1, CDDH/56; CDDH/II/3, CDDH/II/4, CDDH/II/79, CDDH/II/251) (continued)

2. The CHAIRMAN invited the Committee to consider article 21 of draft Protocol I.

3. Mr. de MULINEN (International Committee of the Red Cross) said that the ICRC draft of article 21 was self-explanatory. Two corrections should be made to the English version: in sub-paragraph (a), the words "medical transport" should be replaced by the words "medical transportation"; and in sub-paragraph (b), the words "means of medical transport" should be replaced by the words "medical transports".

4. The CHAIRMAN invited the Committee to consider the amendments to article 21 sub-paragraph by sub-paragraph.

Sub-paragraph (a)

5. The CHAIRMAN invited the representative of Austria to introduce the amendment in document CDDH/II/4.

6. Miss BASTL (Austria) said that the Austrian amendment had now been withdrawn in respect of both article 21 and article 22.

7. The CHAIRMAN invited one of the co-sponsors to introduce the amendment in document CDDH/II/79.

8. Mr. MAKIN (United Kingdom) said that amendment CDDH/II/79 incorporated both the corrections referred to by the ICRC representative and the Yugoslav amendment (CDDH/II/3). It also included the word "supplies" after the word "equipment", because the French word "matériel" was wider than the English term "equipment" and covered supplies also. It omitted any reference to the shipwrecked because, according to the present definition, the "shipwrecked" meant those who were in peril at sea or on other waters whereas, if they were taken aboard a medical transport, they would cease to be

in peril. It might be desirable, however, when the Committee reconsidered article 8, to take another look at the definition of "shipwrecked" and to define it in such a way that the shipwrecked could be carried on medical air and sea transports, but not on medical land transports. As things stood, there seemed to be a gap in articles 8 and 21 in that respect.

9. The CHAIRMAN invited the Australian representative to introduce amendment CDDH/II/251.

10. Mr. CLARK (Australia) said that the Australian amendment (CDDH/II/251) differed only in minor details from amendment CDDH/II/79. He wondered whether the question of the shipwrecked might not be covered by article 22 which dealt with the search for and evacuation of the wounded, sick and shipwrecked.

Sub-paragraph (b)

11. Mr. MAKIN (United Kingdom) said that the only significant difference between the text in amendment CDDH/II/79 and the ICRC text was in the re-wording of the last line, which was in fact the same as that proposed in the Australian amendment (CDDH/II/251). While that re-wording was largely a matter of style, the inclusion of the word "exclusively" was a matter to which the co-sponsors attached importance.

12. Mr. CLARK (Australia) said that the Australian amendment to sub-paragraph (b) sought to include sub-paragraphs (c), (d) and (e) as examples of medical transport; it seemed to his delegation clearer and more concise than either the ICRC text or amendment CDDH/II/79.

Sub-paragraph (c)

13. Mr. MAKIN (United Kingdom) said that the only significant change proposed by the co-sponsors of amendment CDDH/II/79 to sub-paragraph (c) was the replacement of the word "sea" by the word "water", which was the same as the Yugoslav amendment (CDDH/II/3). The words "means of" had again been omitted, as in sub-paragraph (b).

Sub-paragraphs (d) and (e)

There were no comments.

14. The CHAIRMAN invited the Committee to consider article 21 as a whole. The Committee could then either refer the article to the Drafting Committee, or set up a Working Group to propose a new draft of the article, or postpone further discussion until the Committee had completed its consideration of the Section on medical transport, as it had done in the case of article 8 of draft Protocol I and article 11 of draft Protocol II, which also dealt with definitions.

15. Mr. CALCUS (Belgium) said that the word "aquatique" which occurred in the French versions of amendments CDDH/II/79 and CDDH/II/251 was not a very happy choice. He suggested that it be replaced by either "par voie d'eau" or by "par voie maritime".

16. Mr. KLEIN (Holy See) proposed that, in sub-paragraph (a), the words "medical personnel and equipment" be replaced by the words "medical and religious personnel and medical equipment".

17. Mr. CZANK (Hungary) said that the ICRC text was an excellent one, but a few minor modifications were required to make it absolutely clear. Some of those changes - the distinction in English between "transportation" and "transports", the addition of the word "supplies" and the replacement of the word "sea" by the word "water"-had already been made in amendments CDDH/II/79 and CDDH/II/251. He would further propose, however, that, at the beginning of sub-paragraph (b) in both amendments, the word "transportation" - which constituted a definitio idem per idem - be replaced by some other word, such as "conveyance". He was opposed to the Australian suggestion (CDDH/II/251) that sub-paragraphs (c), (d) and (e) of the ICRC text should be deleted. They would need to be maintained if the Committee decided to have separate provisions for land, water and air medical transports. Amendments CDDH/II/79 and CDDH/II/251 amounted basically to improvements to the wording of the ICRC text; he therefore thought that there would be no substantive problems concerning article 21 and that the text, with the amendments, could be referred to the Drafting Committee.

18. Mr. SOLF (United States of America) said that he fully endorsed the views of the Hungarian representative; article 21 could be referred to the Drafting Committee.

19. Mr. MARRIOTT (Canada) said he presumed that the Drafting Committee would be invited to handle Section II entitled "Medical Transports" in the same way as it had handled other sections: i.e. to complete its consideration of the whole section before reporting back to Committee II. In particular, since article 21 was concerned with definitions, it might find it better to continue with the drafting of the subsequent articles before tackling article 21.

20. Mr. POZZO (Argentina) said he agreed with those speakers who had advocated the replacement of the word "sea" (vía marítima) in sub-paragraphs (a) and (c); the question of the term by which it should be replaced was a matter which should be decided, on a consensus basis, either in the Drafting Committee or in a Working Group.

21. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, before deciding to refer article 21 to the Drafting Committee, Committee II should bear in mind that the question of the replacement of the word "sea" by the word "water" was not a matter of drafting but a matter of substance. The word "sea" was the one adopted in the second Geneva Convention of 1949, which contained rules which had been tested and proved in practice. To replace that term by "water" or to decide that the word "sea" should be extended to cover territorial waters, inland waterways, rivers or lakes, any of which might become a theatre of military operations in the nature of a naval engagement, might have important consequences for the subsequent articles relating to hospital ships, etc. He personally was in favour of replacing "sea" by "water" but, before sending article 21 to the Drafting Committee, he wished to see in more detail what the substantive consequences of that change in definition would be.

22. To rescue shipwrecked persons by taking them out of the water was to some extent a question of transport and should be dealt with in the Section on transport. The question was purely a drafting one and could be settled in the Drafting Committee. In any event, the definitions referred to the Drafting Committee would be merely provisional; they would not be finally settled until the Committee had taken decisions on all the articles in the Section entitled "Medical Transports".

23. Mr. MARTIN (Switzerland) said that the representative of the Union of Soviet Socialist Republics had said many of the things he himself had intended to say, in particular in connexion with the "sea" and "water" problem. He wondered whether the Drafting Committee could get very far in its consideration of the definitions before Committee II had completed its consideration of the other articles in Section II, which would give rise to plenty of discussion.

24. He did not think that the versions in the different languages should try to follow each other too slavishly.

25. Mr. de MULINEN (International Committee of the Red Cross) said that, while all the other questions that had been raised were merely matters of drafting or of harmonizing the different languages, the question of "sea" or "water" was a matter of substance.

26. The CHAIRMAN said he agreed with the ICRC representative, all the other matters could be referred to the Drafting Committee, but the question of "sea" or "water" was one on which the Committee itself should take a decision. Either it could vote on the matter at once or it could decide to postpone a decision until it had considered the other articles in the section.

27. Mr. MARRIOTT (Canada) said that it was the considered opinion of the Canadian delegation that the replacement of "sea" by "water" was not a substantive problem but merely a drafting one. The term "sea" as used in the Geneva Conventions of 1949 and other international law texts had invariably been extended without any difficulty to cover all inland waterways whenever such waterways were affected by international activities. The purpose of the amendment was simply to bring the terminology into line with current practice; it was therefore not a substantive question, but one of clarification.

28. Mr. SOLF (United States of America) said that the revised definiton of the term "the shipwrecked", adopted by the Committee for article 8 (b) (CDDH/II/240, p. 2) included the phrase: "persons ... who are in peril at sea or on other waters ...". At that time, the same question had been discussed and the Committee had provisionally decided to use the expression "on other waters".

29. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that it would be premature to vote on the subject. The Committee had not yet considered the articles which would be affected by a change in the definition. To put the words "sea" and "water" in square brackets would avoid any problem for the Drafting Committee. It was a waste of time to continue discussing the question in the abstract; it must be considered in connexion with the matters of substance which would arise during the consideration of the subsequent articles.

30. Mr. ROSENBLAD (Sweden) said that the Drafting Committee might need some guidance on the matter. In his view there was already a consensus in favour of replacing the word "sea" by the word "water".

31. Mr. MALLIK (Poland) said he agreed with the USSR representative that it was premature to discuss the problem from the substantive standpoint. In discussing amendments to article 21, the Committee should not forget that the article referred to medical land transport as well as to water transport. The Drafting Committee could only draft articles 21 to 25 if it considered them as a whole. It might, therefore, be preferable to consider setting up a Working Group to deal with the drafting of the entire section.

32. Mr. ONISHI (Japan) said that, as far as he knew, the expression "medical transportation" was used only in the amended English text of article 21, sub-paragraph (a) for defining medical transports. He therefore proposed that it might be desirable to amalgamate sub-paragraphs (a) and (b) to avoid the introduction of an expression which had no practical application in the Protocol.

33. Mr. de MULINEN (International Committee of the Red Cross) said that when the ICRC had said that the question whether to say "sea" or "water" was important, it had meant that it must be clear. It had been seen that "sea" could be interpreted in different ways. The question of whether the Drafting Committee or Committee II took the decision was, however, secondary.

34. Mr. MARTINS (Nigeria) said his delegation preferred the term "water", which was all-embracing and easily comprehensible to the layman. It was, however, inclined to the view that it was merely a matter of drafting.

35. Mr. MAIGA (Mali) said that the Malian delegation thought that the Committee should take account of current events: the third United Nations Conference on the Law of the Sea had just begun and the Sixth Committee of the United Nations General Assembly was studying the Law of the Non-navigational Uses of International Water Courses. Both those activities were relevant to the question before the Committee. Rather than any of the terms that had been suggested, he would propose the use of the expression "international waterway" ("voie d'eau internationale"), which had the merit of taking into account the situation not only of countries with a seaboard but also of the land-locked countries.

36. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said he thought that article 21 could now be referred to the Drafting Committee. As to the choice between "sea" and "water", there seemed to be a consensus that protection should be provided for medical transports on waters that could not be described as sea. He saw no reason for a vote, since no delegation seemed opposed to the idea of such protection.

37. The CHAIRMAN suggested that the matter be referred to the Drafting Committee on the understanding that its report would only be made on the whole of Section II and that, if there were divergent views in the Drafting Committee, two solutions might be suggested, one being placed in square brackets.

It was so agreed.

Article 22 - Search for wounded (CDDH/1; CDDH/II/249, CDDH/II/254) (continued)

38. The CHAIRMAN said that two amendments to article 22 had been submitted: CDDH/II/249, sponsored by seven delegations, which proposed the deletion of the article, and CDDH/II/254, by the delegation of Cuba.

39. Mr. de MULINEN (International Committee of the Red Cross) said that the purpose of article 22 was to emphasize that medical transports were involved in the search for as well as in the evacuation of the wounded, sick and shipwrecked.

40. Mr. SOLF (United States of America) said that his delegation, one of the sponsors of amendment CDDH/II/249, felt that the article was unnecessary and should be deleted. Search for the wounded was a normal medical function, recognized in Article 24 of the first Geneva Convention of 1949. Search for the shipwrecked was the subject of Article 27 of the second Geneva Convention of 1949, and one of the main legitimate uses of medical transportation was to transport medical personnel in the performance of their medical duties, as indicated in article 21 of draft Protocol I. It followed that medical transportation could be used for the search for the wounded, sick and shipwrecked. If it were decided that article 22 was necessary, despite the existence of article 21 (a), all the other things permitted to medical personnel would have to be included. The only thing that Protocol I should provide with respect to the use of medical transport in search operations was to impose restrictions. That was done in article 29 of the ICRC text and also in document CDDH/II/249.

41. Mr. HEREDIA (Cuba), said that the Cuban amendment (CDDH/II/254) was designed to ensure that medical personnel were protected in their search for the wounded by requiring prior consent for the search and evacuation of the wounded, sick and shipwrecked.

42. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he supported the views of the United States representative. Article 22 as it stood provided nothing new, and should therefore be deleted.

43. Mr. CLARK (Australia) said that his delegation would prefer to retain article 22 as it stood. It extended existing law by covering a wider category of wounded, sick and shipwrecked, the definition of which was intended to cover both civilian and military personnel. The relevant articles of the first and second Geneva Conventions of 1949 mainly referred to the military. In addition, the Australian delegation saw the reference to medical transport as covering not only land and sea transports but a class of transport to be defined in article 21. Moreover, article 21 covered not only the search but also the evacuation of the wounded, sick and shipwrecked.

44. Mr. KHAIRAT (Arab Republic of Egypt) said he agreed with the United States representative that article 22, as it stood, added nothing new. If, however, it were retained, reference ought to be made in it to articles 27 and 28 as well as to article 29. Nevertheless, his delegation would prefer to delete the article.

45. Mr. MAKIN (United Kingdom) said that he, too, supported the proposal to delete article 22. Article 18 of the second Geneva Convention of 1949, Article 16 of the fourth Convention and article 17 of draft Protocol I already dealt with search, and those provisions seemed sufficient. Moreover, it was perhaps unnecessary to include reference to search for the sick.

46. Mr. ROSENBLAD (Sweden) said that at first sight article 22 appeared unnecessary but, for the reasons given by the Australian representative, it might be wise to take another look at the problem. He would like to hear the ICRC representative's views on the matter.

47. Mr. SCHULTZ (Denmark) said that in the light of the Australian delegation's arguments, he was not convinced of the wisdom of simply deleting the article; he felt that further consideration should be given to the question.

48. Mr. MARRIOTT (Canada) said he supported the United States delegation's view. He asked how the Chairman proposed to proceed with the vote.

49. The CHAIRMAN said that the Committee would vote first on the amendment furthest removed from the original text of article 22, namely, the proposal to delete the article (CDDH/II/249). If that amendment were rejected, the Committee would then vote on the Cuban amendment.

50. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he wished to carry the reasoning of the representative of the Arab Republic of Egypt a stage further. The right of search could not be the same for land and water transport; moreover, article 29 referred to medical aircraft. If the text of article 22 were left as it stood, confusion might arise with regard to transport by water. If the provision in article 22 were to be retained it should be placed in the section dealing with transport by land, water and air.

51. The CHAIRMAN said that, after voting on article 22, the Committee would then discuss articles 23 et seq. There was a proposal to replace the ICRC text of article 23 by three new ones, one on transport by land, and two others on transport by water. He suggested that a Working Group of Committee II be set up to deal with both the drafting and the substance of two whole groups of provisions. It would then be possible to introduce provisions on land or sea transport or both, as had been suggested.

52. Mr. MARTIN (Switzerland) said that Article 16 of the fourth Geneva Convention of 1949 laid down, inter alia, that each Party to the Convention should facilitate the steps taken to search for the killed and wounded - though not the sick. Medical transport might be interpreted as one of the steps mentioned in that article.

53. The task of the Conference was to reaffirm and develop humanitarian law and article 22 did seem to develop it a little further by referring to the sick as well as to the wounded and shipwrecked; it also dealt with medical transport, not only medical means.

54. The Committee could take a decision on article 22 after it had studied a number of other articles, particularly article 29. Meanwhile, he would like to have some further clarification from the ICRC representative. He wondered whether it would be useful for the Committee to take a vote at that juncture. In view of his doubts, he for one would have to abstain.

55. Mr. URQUIOLA (Philippines) said that in view of the differences of opinion, the Committee should take a decision by consensus rather than the vote. The text could then be referred to the Drafting Committee.

56. Mr. de MULINEN (International Committee of the Red Cross) said that the ICRC had not intended to imply anything in article 22 other than what was specifically expressed in the wording. The article must be considered against the background of the two chapters on joint provisions and special provisions for medical air transport. If the whole of Section II was changed completely along the lines proposed in amendment CDDH/II/249, article 22 could have a completely different meaning and might be combined with other articles. It might, in fact, be preferable to discuss article 22 in connexion with article 23 and the other articles in Chapter I on joint provisions. If the final draft contained only a few provisions of a joint character, additional provisions might be needed in the chapter on land, sea and air transport.

57. Mr. SOLF (United States of America) said that article 22 seemed to limit the functions of medical transport, which had been clearly defined in article 21, paragraph 1, as adopted by the Committee, to search and evacuation, without mentioning treatment of the sick and wounded, which was the primary function of hospital ships, or the transport of medical personnel. Search for civilians was, of course, a medical function and it should be remembered that wounded and sick could also include civilians.

58. Mr. CZANK (Hungary) said that article 22 as it stood in the draft did not fit into the joint provisions and should be deleted. He agreed with the representatives of the Arab Republic of Egypt and the Union of Soviet Socialist Republics that, if it was desired to retain the basic idea, it should be inserted in some other article such as article 24. In any case, it should apply to all medical transport. It would be preferable, however, not to reach any decision on article 22 until articles 23 and 24 had been discussed.

59. Mr. OSTERN (Norway) said that he was in favour of deleting article 22 because, as originally worded, it limited the definition of medical transport already adopted in article 21. If it were thought advisable to mention the search for wounded, it could be included as one use of medical transport.

60. Mr. CLARK (Australia) said that his delegation considered the reference to search and evacuation as an example of the use of medical transport rather than a limitation of that use. His support for the retention of article 22 was to some extent based on the subsequent articles and the amendments submitted to them. It would, however, be preferable to postpone any vote on article 22 or the relevant amendments until articles 23 and 24 had been discussed.

61. The CHAIRMAN suggested that any decision on article 22 and relevant amendments be postponed until after the Committee had discussed articles 23 and 24.

It was so agreed.

62. The CHAIRMAN invited the Committee to consider articles 23 to 25, beginning with article 23.

Article 23 - Application (CDDH/1; CDDH/II/249 and Corr.1, CDDH/II/249/Add. 1 - 3, CDDH/II/252, CDDH/II/258) (continued)

63. Mr. de MULINEN (International Committee of the Red Cross) said that article 23 resulted from the ICRC's decision to devote one chapter to joint provisions and one to medical air transport. Paragraphs 1, 2 and 4 referred only to medical transport on waterways and paragraph 3 to amphibious transport.

64. Mr. CLARK (Australia) said that the purpose of his delegation's amendment (CDDH/II/252) was to extend the second Geneva Convention of 1949 to a wider class of vessels than that covered in the Convention. It should present no particular difficulty because all medical ships and craft ought to be subject to the same laws. It would cover all medical transport at sea - civilian and military hospital ships, lifeboats and small medical surface craft. The amendment to paragraph 4 of the ICRC's draft was a useful development. The wording of paragraph 3 of the amendment was also clearer than that of the original draft.

65. Mr. MAKIN (United Kingdom), introducing amendment CDDH/II/249 and Corr.1, said that it was not clear from the English wording of the original text of article 23 whether it was merely a statement of the ICRC's understanding of existing law or whether it was intended to modify that law. If it was the former, it was inaccurate because civilian medical ships and craft at sea were now covered by the fourth Geneva Convention of 1949 and not the second Geneva Convention, and there seemed to be no relevant provisions in draft Protocol I.

66. It was also not clear what was meant by "sea routes", in paragraph 1. Since it had been generally agreed during the present discussion on definitions in article 21, that the word "water" should be substituted for the word "sea", paragraph 2 was no longer necessary. Paragraph 3 could be included but obviously referred to the protection of amphibious craft. Paragraph 4 was inaccurate because it excluded the craft referred to in Article 27 of the second Convention of 1949. It was not clear whether the ICRC's intention was to change the present rules; the amendment modified them with the purpose of advancing humanitarian law. The reason for the use of the word "application" as the title of article 23 was not clear.

67. The intention of the sponsors of amendment CDDH/II/249 and Corr.1 was to set out clearly the purpose of the article, to cover the coastal rescue craft referred to in Article 27 of the second Geneva Convention of 1949 and the capture or surrender of civilians being transported in hospital ships, as well as all the medical ships and craft which were implicitly covered in the Convention.

Article 24 - Protection (CDDH/1; CDDH/II/249 and Corr.1, CDDH/II/249/Add.2, CDDH/II/258) (continued)

Article 25 - Notification (CDDH/1, CDDH/II/249 and Corr.1, CDDH/II/249/Add.1) (continued)

68. Mr. ROSENBLAD (Sweden), introducing his delegation's amendment (CDDH/II/249/Add.2) to article 24 of the joint amendment (CDDH/II/249 and Corr.1) said that while accepting in principle the text of articles 22 to 25 as proposed in the joint amendment, he considered that the wording of paragraph 4 of article 24 - Medical ships and craft - as it appeared in that amendment, might be improved and clarified.

69. Mr. BOTHE (Federal Republic of Germany) said that in its amendment (CDDH/II/258) his delegation had adopted the renumbering of article 22 and the following articles as proposed in amendment CDDH/II/249 and Corr.1. His delegation's amendment could, however, be treated as an amendment to the original text of article 23. In substance, it did not differ from articles 24 and 25 of amendment CDDH/II/249 and Corr.1, but suggested a clearer and more concise wording. If adopted by the Committee, the two amendments could be discussed together by the Drafting Committee or a Working Group.

70. It was suggested that article 23 be replaced by two articles, the first concerned only with changes in the second Geneva Convention of 1949 and the second with cases not covered by that Convention. The purpose of his delegation's proposed article 24,

paragraph 1, was to modify article 24, paragraphs 1 and 2 in amendment CDDH/II/249 in order to extend the protection given to hospital ships carrying wounded, sick and shipwrecked combatants or assimilated categories mentioned in Article 13 of the second Geneva Convention of 1949 to cover hospital ships carrying civilians. Article 24, paragraph 2, corresponded to article 24, paragraph 4, of amendment CDDH/II/249, the wording used being similar to that of article 9, paragraph 2, which had already been adopted by the Committee. Paragraph 3 of article 24, which corresponded to paragraph 3 of article 24 of amendment CDDH/II/249 and Corr.1, was intended to simplify the complicated notification requirements of the second Geneva Convention as far as small coastal craft were concerned. Article 25, paragraph 1, corresponding to article 25, paragraphs 1 and 2 of amendment CDDH/II/249, provided general protection for medical transport on water not covered by the second Geneva Convention of 1949, such as medical transport at sea other than hospital ships and medical transport in internal waters.

71. Mr. OSTERN (Norway) said that his delegation's amendment (CDDH/II/249/Add.1) to article 25 in the joint amendment was mainly of a drafting nature and should be referred to the Drafting Committee.

72. The CHAIRMAN said that it would probably be necessary to establish a Working Group in order to deal with the questions of substance and drafting connected with articles 23 to 25 and the relevant amendments.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

held on Tuesday, 18 March 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

ORGANIZATION OF WORK

1. The CHAIRMAN said that at an informal meeting of Committee Chairmen held on the preceding day, it had been agreed that the last three days of the present session, namely, 16, 17 and 18 April, 1975, would be reserved for plenary meetings at which the reports of all Committees would be considered. The technical services had therefore asked that 10 April should be set as the deadline for the submission to them of all reports.

2. The Committee would thus be compelled to do as much work as possible during the first week after Easter (on Saturday, 5 April, also) since two or three days preceding 10 April must be devoted to the discussion and adoption of the Committee's report. On the other hand, members would be comparatively free from 10 April onwards. He suggested that at that time a preliminary discussion be held on those parts of the Protocols which could not be included in the Committee's report. That preliminary discussion could also serve as an introduction to the third session of the Conference.

3. Concerning the date of the third session, the majority view seemed to be that it should begin towards the end of April 1976 and extend until the beginning of June of that year, since it would be better if the Easter holiday did not fall in the middle of the session.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 23 - Application (CDDH/1; CDDH/II/249, CDDH/II/252 and Add.1, CDDH/II/265) (continued)

Article 24 - Protection (CDDH/1; CDDH/II/249 and Corr.1, CDDH/II/253, CDDH/II/258, CDDH/II/265) (continued)

Article 25 - Notification (CDDH/1; CDDH/II/249, CDDH/II/258, CDDH/II/265) (continued)

4. The CHAIRMAN pointed out that there had been a proposal to delete article 22 but that the Committee had decided to defer a decision on that proposal until it had discussed articles 23 and 24. A Working Group would be set up to consider articles 23 and 24 and to submit any proposals it considered necessary.

5. Mr. FRUCHTERMAN (United States of America) said that his delegation, as a co-sponsor, strongly supported the proposals contained in document CDDH/II/249 and Corr.1, and especially the proposed new articles 24 and 25.

6. After careful study, his delegation had reached the conclusion that the text of article 23 proposed by the ICRC, and the amendments submitted by Australia in document CDDH/II/252, were inadequate. By way of background, he recalled that in February 1973, the ICRC had convened a Meeting of Experts on Signalling and Identification Systems for Medical Transport by Land and Sea. That group, however, had shown a lack of enthusiasm for any substantial additions to the second Geneva Convention of 1949 and had felt strongly that efforts to achieve a common set of rules for all types of medical transport ought not to eliminate the special, privileged and protected status of hospital ships described in Articles 22, 24, 25 and 27 of the second Geneva Convention, or the status of their medical personnel and crew.

7. Those special privileges might be summarized as follows: first, hospital ships were immune from attack. Second, hospital ships were immune from capture. Third, notification of their characteristics must be given ten days before their first employment. Fourth, hospital ships could leave port even if the port fell into enemy hands. Fifth, hospital ships were not classified as warships with regard to the length of their stay in neutral ports. Sixth, hospital ships could not be used for other purposes during the conflict. Lastly, the medical personnel and crew of hospital ships were immune from capture.

8. Coastal rescue craft had the same status as hospital ships, but the experts who had met in 1973 had favoured two changes. First, coastal rescue craft should be relieved of the requirement of giving ten days' notice in advance, since small craft depended more on marking and signalling than on a wide dissemination of recognizable characteristics. Second, temporary coastal rescue craft and other small craft should be protected in the same way as temporary means of transport. Such craft could be captured, but their medical personnel would have the status of retained personnel, while their crews would be prisoners of war.

9. Both of those recommendations could be implemented, either in the definitions section or through the proposal contained in document CDDH/II/249 and Corr.1.

10. Concerning the position of article 23 in draft Protocol I, he pointed out that it had been included in a chapter entitled "Joint provisions", although, with the possible exception of paragraph 3, that article dealt solely with medical transport by sea. Why then

should it be included among the joint provisions? Since the provisions dealt with a particular type of medical transport - by sea or water - would it not be preferable to place them in a chapter devoted to medical transportation by sea rather than to call them - quite artificially - "joint provisions"?

11. The same was true with respect to the title of article 23 proposed by the Australian delegation in document CDDH/II/252, namely "Application". He was familiar with the term "field of application", but had never seen the word "application" used alone and in the present case considered it misleading.

12. The term "inland water" in paragraph 2 of the Australian proposal was also new and misleading, since it was not used in the Geneva Conventions and was nowhere defined. Yet it was a key term, on the strength of which a hospital ship or craft would be removed from the protection of the second Geneva Convention of 1949 and placed under either the first or fourth Geneva Convention. Nor did he take any comfort from the opening words of that paragraph, namely, "Subject to paragraph 4", since paragraph 4 of the ICRC draft stated merely that "Articles 22, 24 and 25 of the second Geneva Convention apply exclusively to civilian and military hospital ships". There were many ports around the world that were well within the interior of a country, and he would assume therefore that those ports would be considered as being on "inland water". Yet it was proposed to extend Articles 22, 24 and 25 of the second Geneva Convention of 1949, and those articles only, to hospital ships in inland waters. But what of Article 36 of the second Geneva Convention, which granted protection to the personnel and crew of a hospital ship even when ashore? Were they to be stripped of that protection by a mere stroke of the pen? He hoped not, although that seemed to be the meaning of the Australian proposal. And what of the privilege contained in Article 29, which permitted a hospital ship to leave port even if that port had fallen into enemy hands? Was that humanitarian principle to be abolished? In brief, a hospital ship enjoyed its privileged status wherever it might be, and no distinction was drawn whether it happened to be on the high seas or elsewhere.

13. On reading the Australian amendment (CDDH/II/252), he was forced to ask himself what was the status of the coastal rescue craft described in Article 27 of the second Geneva Convention of 1949. If, as paragraph 4 of the Australian proposal suggested, Articles 22, 24 and 25 of the second Geneva Convention of 1949 applied to hospital ships only, it must be concluded that the Committee was being asked to exclude those rescue craft from protected status. But was the Committee actually prepared to take such a backward step?

14. He also wished to stress his uneasiness with regard to paragraph 4 of the Australian text. Did that mean literally that only the three Articles mentioned in that paragraph should apply to hospital ships? After all, there were some seventeen Articles in the second Geneva Convention dealing with hospital ships and transport. He hoped that it was not proposed to reduce that number to three Articles only.

15. Lastly, he believed that the question under discussion was so complicated that it could not be reduced to the four short sentences contained in amendment CDDH/II/252 and in the ICRC text. His delegation, together with several others, had offered an alternative approach in document CDDH/II/249 and Corr.1, which would call for two articles rather than one. Article 24 of that amendment dealt more fully with ships, craft or personnel already covered by the second Geneva Convention of 1949, while article 25 of the amendment dealt with ships and craft not so covered. While the proposal was somewhat more elaborate than either the Australian or the ICRC texts, it offered a degree of precision which was lacking in those drafts and avoided the dangers of which he had just spoken.

16. Mr. POZZO (Argentina) hoped that the representative of the ICRC would explain the difference between the terms "sea routes" and "inland waterways" in paragraphs 1 and 2 respectively of article 23 of the ICRC draft.

17. Mr. de MULINEN (International Committee of the Red Cross) said that the Committee should give careful consideration to the following four main points: first, should the Protocol include a provision such as that contained in article 22 of the ICRC draft concerning "search for wounded", and if so, how far should that provision go? Should it be mentioned in a general or in a detailed way? Secondly, concerning the field of application, the ICRC had added the reference to inland waterways in paragraph 2 of article 23 in order to cover those internal bodies of water, such as important lakes, which were not already covered in paragraph 1. It would seem desirable, therefore, to find one word which would cover all hospital ships and craft, whether amphibious or not. It would also, of course, be necessary in that case to determine to what extent the protection granted to hospital ships would also be granted to other ships and craft. Third, the Committee should consider the desirability of including references to other documents, conventions and the like, since the ICRC, for its part, had been reluctant to include too many. Fourth, the Committee should also consider the question whether the contents of certain provisions, such as those concerning signalling, the use of the emblem and medical air transport, should be made compulsory or optional.

18. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that his delegation wholeheartedly supported the Hungarian proposal for the composition of Section II as contained in document CDDH/II/265. It considered the title proposed for that Section, namely "Medical transports and transportation", especially appropriate, since it was more accurate than the term "Medical transport" used in article 21. The breakdown given in the Hungarian proposal would also furnish an excellent basis for discussion and, by referring to both the ICRC text and the proposal contained in document CDDH/II/249 and Corr.1, would seem to offer a good way out of what was now a rather confused situation.

19. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) fully shared the concern of the ICRC to improve the protection of medical transport on inland waterways, but agreed with the United States representative that the attempt to provide such protection in article 23 was not very happily worded. Certainly, the second Geneva Convention of 1949 did describe and define the protection which should be given to hospital ships and medical transports, but the references to the first and fourth Geneva Conventions of 1949, in paragraph 2 of article 23, were not very helpful for the purpose of providing protection on inland waterways. The first Geneva Convention of 1949, for example, provided no protection at all once the medical personnel were on land.

20. Moreover, in the case of an inland waterway which was under the control of one party to an inland conflict, the transport of the wounded and sick should not require notification ten days in advance, since the territory in question was not connected with international shipping and the military operations in question were not being conducted on the high seas. In such cases, it might be useful to draw a comparison between water and air transport.

21. Furthermore, in connexion with the problem of rescue, it should not be forgotten that time might very well be of the essence on such inland waters as lakes, especially in the cold season of the year, when human beings could not be expected to survive for more than an hour in cold water. He suggested that such situations should be borne in mind by the Working Group which was to be set up to deal with articles 23 and 24.

22. Lastly, he hoped that the Working Group would be given sufficient time to consider all the medical and legal aspects of the question, since, on the basis of his own experience at the 1973 Meeting of Experts, the problems of water transport had hitherto been dealt with only superficially.

23. Mr. DEDDES (Netherlands), supporting amendment CDDH/II/249 and Corr.1 which drew a distinction between hospital ships at sea and other medical craft that usually navigated in coastal and inland waters, said that the ICRC text of article 23 had always worried him since it drew no such distinction.

24. Mr. CLARK (Australia), introducing his delegation's amendment to draft Protocol I, article 23 (CDDH/II/252), said that there were marked deficiencies in the ICRC text and pointed out that the Australian delegation had not been invited to attend the 1973 Meeting of Experts, nor had it received a report on that Meeting. He wished to ask three questions which might be added to the list suggested by the ICRC, as follows: first, in what respects were the provisions of the second Geneva Convention of 1949 deficient? Second, what vessels were to be covered by draft Protocol I? And, third, what protection was to be offered to medical ships and craft under that Protocol? It was the Australian delegation's view that any difficulties that might arise as regards inconsistencies between the second Geneva Convention of 1949 and the draft Protocols would be removed by applying that Convention to a wider category of medical ships and craft, not only at sea but in other waters. Particular problems must be examined; but to develop different laws for some craft at sea and other craft in inland waters would not solve the problem but create more inconsistencies between the Conventions and the Protocols.

25. It was his delegation's view that all medical ships and craft should be subject to the same laws on such matters as the right of control and search, status in neutral ports, the use of the Red Cross emblem, special protection of crews and personnel, discontinuance of protection, prohibition of reprisals, and stipulations to avoid depriving medical ships and craft of protection wherever they might be.

26. He suggested that it might be advisable to set up a Working Group to examine the second Geneva Convention of 1949 as regards the coverage of hospital ships and other medical craft.

27. Mr. BOTHE (Federal Republic of Germany) said that he agreed with the Australian representative's suggestion that a Working Group should be set up. Medical craft other than hospital ships should be protected, but the question of what the rules of that protection were had to be decided. The United States representative had rightly pointed to the distinction which existed between the protection provided under the second Geneva Convention of 1949 for hospital ships and that provided under the first and fourth Geneva Conventions of 1949 for medical units and transport.

28. His delegation considered that the second Convention was a balanced document which, on the one hand, made it more difficult for hospital ships and craft to obtain protection than did the first and fourth Geneva Conventions for medical transport. But, on the other hand, the second Convention provided a more far-reaching protection. His delegation therefore could not support the Australian amendment, which would grant the wider protection of the second Geneva Convention of 1949 to ships and craft which

did not meet the difficult requirements which that Convention set as a condition of such protection. He fully concurred with the substance of amendment CDDH/II/249 and Corr.1 from which his own delegation's amendment (CDDH/II/258) only differed in drafting.

29. Mr. MAKIN (United Kingdom) said that the debate clearly showed that draft Protocol I should contain one or more articles relating to hospital ships and craft - one of the main points in amendment CDDH/II/249 and Corr.1 - rather than the ICRC text of article 23 relating to application. Rules covering medical transport on land should be set out in a separate article as specified in amendment CDDH/II/249 and Corr.1.

30. The CHAIRMAN declared the debate on article 23 of draft Protocol I closed and said that the article would therefore be sent to the Working Group.

31. He invited the representative of the ICRC to introduce article 24.

32. Mr. de MULINEN (International Committee of the Red Cross) said that article 24 was self-explanatory and was subject to the same remarks as those he had made in connexion with article 23. The article was naturally subject to change if, as certain delegations had suggested, the "joint provision" was expanded.

33. Mr. CLARK (Australia), introducing his delegation's amendment (CDDH/II/253), said that the amendment sought to expand the protection of medical transport as set out in the ICRC text of article 24 to cover all medical staff, equipment and transport, in order to make it quite clear that they were to be respected and protected whether or not in convoy.

34. Referring to the proviso in article 23 covering medical aircraft, he suggested that its consideration might be deferred until the Working Group had examined it, taking into account the Hungarian proposal (CDDH/II/265) and the question whether article 23 might be retained, or divided and placed in another part of draft Protocol I.

35. Mr. MAKIN (United Kingdom), referring to amendment CDDH/II/249 and Corr.1, said that the ICRC draft of article 24 was intended to cover land vehicles as well as hospital ships, coastal craft and other medical ships and craft, some of which were already covered by the first and second Geneva Conventions of 1949. Article 24, paragraph 2, of draft Protocol I stated that "Articles 12 and 13 apply, by analogy, to means of medical transport, subject, in the case of medical aircraft, to Articles 27, 28, 29 and 32". Article 12, paragraph 3 of the ICRC text urged Parties to the conflict to

make known to each other the location of fixed medical units, which was nothing more than nonsense. Article 24, paragraph 3, specified certain acts as not being harmful, but it was unnecessary to reproduce them in the article since they were fully set out in the second Geneva Convention of 1949.

36. Turning to the Australian amendment to article 24 (CDDH/II/253), he said that it was incomplete, since it omitted to refer to the important points mentioned in Article 34 of the second Geneva Convention of 1949.

37. His delegation considered that medical land transport and medical sea transport should be covered by separate articles. Article 24 should therefore be redrafted and confined to land vehicles.

38. He noted that there seemed to be general agreement that the restrictions mentioned in the fourth Geneva Convention of 1949 concerning transport not in convoy should be removed.

39. Mr. CZANK (Hungary), introducing his delegation's working paper on draft Protocol I, Section II (CDDH/II/265), said that it contained certain ideas on the rearrangement of the chapters and articles of that Section. The title of the Section should be "Medical Transports and Transportation".

40. He appreciated the comments made by the representative of Japan at the thirty-seventh meeting (CDDH/II/SR.37) concerning the word "transportation", but considered that "transport and transportation" did not refer to the same thing, and it would be better to keep the two definitions.

41. Referring to Section II, Chapter I, he said that his delegation wished to suggest that there should be three articles concerning advance notification and general protection of medical transport.

42. He had listened to statements suggesting that the fourth Geneva Convention of 1949 should be reaffirmed and developed in order to provide for the better protection of different kinds of medical transport, but he felt that it was unnecessary to repeat what was laid down in the Geneva Conventions.

43. He pointed out that article 23 should be divided into three articles dealing with various categories of medical transport and said that that was the purpose of the amendment concerning Chapter II - "Protection of Medical Transports".

44. Rules governing the protection of the three categories of medical transport specified should be included in the three articles, as suggested on page 2 of the working paper. All the types of medical transport mentioned also appeared in the Protocols of 1949.

45. Chapter III - "Special Provisions for Medical Aircraft" (CDDH/II/265, p.2) gave rise to no problems.

46. Turning to amendment CDDH/II/249 and Corr.1, he noted that it was now suggested that the sole article of Chapter II should be entitled "Protection of Medical Vehicles", and considered that, legally speaking, a chapter should contain at least two articles.

47. According to the same document, the title of article 24 should be amended to read "Medical Ships and Craft" and the title of article 25, to "Other Medical Ships and Craft". There seemed to be some discrepancy in the suggested titles, since the ICRC text of article 21 ("Definitions") mentioned only "medical ships and craft" and the definitions given included all the different means of medical transport used at sea. He therefore wondered what was meant by "Other Medical Ships and Craft" in amendment CDDH/II/249 and Corr.1, and said that draft Protocol I should not contain a separate chapter on medical ships and craft. Perhaps articles 24 and 25 mentioned in the amendment could be amalgamated.

48. The CHAIRMAN suggested that Mr. Krasnopeev (Union of Soviet Socialist Republics) should be the Chairman of the proposed Working Group on the articles of draft Protocol I now before the Committee, but as Mr. Krasnopeev had suggested that Mr. Deddes (Netherlands) would be better qualified in that particular respect, the latter was appointed Chairman of the Working Group which included as members Mr. Krasnopeev (Union of Soviet Socialist Republics), Mr. Deddes (Netherlands) (Chairman), Mr. Czank (Hungary), Mr. Mallik (Poland), Mr. Makin (United Kingdom), Mr. Solf or Mr. Fruchterman (United States of America), Mr. Pozzo (Argentina), Mr. Clark (Australia), Mr. Calcus (Belgium), the representatives of Ghana, Japan and either the Arab Republic of Egypt or Algeria.

49. He had avoided suggesting the names of representatives who were already serving on the Working Group on article 18 bis, so that the two Working Groups could work simultaneously.

50. Mr. de MULINEN (International Committee of the Red Cross) said that the ICRC had realized that there might be a danger of dealing with the protection of medical transport under a joint provision, and had at one time considered the idea of separate treatment. The reference to articles 12 and 13 in the present text of article 24 would cover ships as well as other means of medical transport and the words "whether alone or in convoy" in article 24 would cover ships of all sizes. A large hospital ship would need the same protection as a medical unit, however, and the ICRC had therefore considered it best to have a joint provision. It would not insist on the idea, however, if the Committee preferred separate provisions.

51. The CHAIRMAN suggested that articles 23 and 24 should be referred to the Working Group.

It was so agreed.

52. The CHAIRMAN invited the representative of the ICRC to introduce article 25, and said that the Committee should then consider amendment CDDH/II/249 and Corr.1. The proposal to reposition article 25 as article 22 had been supported by Hungary in document CDDH/II/265.

53. Mr. de MULINEN (International Committee of the Red Cross) said that apart from article 21 (Definitions), article 25 was the only one which so far had not been proposed for removal from the Chapter on joint provisions. Its contents were self-explanatory. The ICRC considered the provision - that no particular form of notification should be specified - as essential for clarity and to eliminate any formal step that might prove impracticable in times of emergency. The question of notification of hospital ships in conformity with Article 22 of the second Geneva Convention of 1949, as provided for in paragraph 2 of the ICRC text, would no doubt appear on the Working Group's agenda.

54. Mr. SOLF (United States of America) said that the sponsors of the amendment to article 25 in document CDDH/II/249 and Corr.1 agreed that the article on notification should be a joint provision. They would have had no objection to the ICRC idea that no particular form of notification should be specified if it had been consistent with the rest of draft Protocol I. Article 30, however, called for specific mention of the number of medical aircraft, their flight altitude and means of identification, while article 4 of the annex to draft Protocol I required the identification to relate to the rather formalistic flight plan prescribed by the Convention on International Civil Aviation. There was a strong case for the necessity of an agreement in article 27, while articles 28, 29 and 30 required specific advance notification. His delegation had co-sponsored the amendment in document CDDH/II/249 and Corr.1 with those considerations in mind.

55. Mr. MAKIN (United Kingdom) said that he supported the amendment in document CDDH/II/249 and Corr.1, but hoped that the existence of an article on notification would not be taken to mean that medical transport was not protected until the notification had been made and its receipt acknowledged. There had been recent wars lasting for no more than a week, and it would take longer than that to notify the enemy of identification characteristics and obtain a receipt. It should be clearly understood that the absence of notification or receipt in no way reduced the protection to be given to medical transport. He would welcome confirmation that the ICRC shared that view and looked upon notification merely as an additional aid to identification.

56. Mr. de MULINEN (International Committee of the Red Cross) said that he fully shared the United Kingdom representative's view. The ICRC would have no objection to the use of more precise wording if the Committee so desired.

57. Mr. MALLIK (Poland) said that article 25 was closely related to articles 23 and 24. He therefore suggested that it should be referred to the Working Group which was to deal with those articles.

It was so agreed.

REPORTS OF THE WORKING GROUPS

58. The CHAIRMAN said that it might be necessary for the Working Group to consider article 22.

59. He would place on the agenda for the meeting on Thursday, 20 March, the reports of the Working Groups dealing with articles on general protection in draft Protocol II still pending and also of the Working Group on Combat Zones. Some thought would also have to be given to the problem raised by certain members of the Drafting Committee with regard to article 11 of draft Protocol I.

60. In reply to a question by Mr. MAKIN (United Kingdom), Mr. MARTINS (Nigeria), Chairman of the Working Group on article 18 bis, said that it was hoped to have the Working Group's report available by Friday, 21 March.

61. The CHAIRMAN said that he would be glad to have confirmation the next morning that the report would be available by that time.

62. In reply to a question by Mr. CLARK (Australia), the CHAIRMAN said that he doubted whether the report of the Working Group on Reprisals would be available in time for the Committee's meeting on Thursday, 20 March. There was to be a meeting of the Working Group the next morning under the Chairmanship of the representative of Bangladesh, with the participation of the representatives of Canada, Brazil and Iraq from Committee II and of two representatives from Committee I, but there had been some difficulty in selecting participants from the latter. Committee III did not wish to participate.

The meeting rose at 12.20 p.m.

SUMMARY RECORD OF THE THIRTY-NINTH MEETING

held on Thursday, 20 March 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

ORGANIZATION OF WORK

1. The CHAIRMAN said that the Committee's discussion on medical transport had been interrupted to enable the discussion on the relevant sections of draft Protocols I and II to be concluded so that the Rapporteurs of the Working Groups could draw up their reports. Those reports had to be considered by the Committee in time for its comments to be taken into account by the Rapporteur before the final reports were handed to the technical services on a date to be fixed by the Secretary-General.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 11 - Protection of persons (concluded)

Report of the Drafting Committee (CDDH/II/272)

2. The CHAIRMAN said that certain provisions of article 11 had been left in abeyance, and he invited the Committee to consider the report of the Drafting Committee on that article (CDDH/II/272).

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Committee had asked the Drafting Committee to draft provisions on medical record-keeping and on grave breaches, to propose an appropriate place for those provisions and to consider whether any consequential changes might be required in the light of the new paragraphs, in what were then paragraphs 3 and 4 of article 11.

4. The sequence of paragraphs 1 to 3 remained unchanged. These paragraphs contained the basic prohibition of what might be described as inappropriate medical treatment. Paragraphs 4 to 6 provided additional safeguards: the most important was the provision on grave breaches, which had been placed first, followed by those on the right to refuse surgical operation and on record-keeping. Paragraph 4, on grave breaches, would have to be reconsidered when the question had been dealt with by Committee I, but it had been the unanimous view of Committee II that a provision should be drafted meanwhile to show its ideas on the subject. There were two conditions in the definition of a grave breach: first, there had to be a violation of paragraphs 1, 2 or 3 of the article, and, secondly, such violation had to be such as seriously to endanger the physical or mental health or integrity of any persons described in paragraph 1. Paragraph 5 remained unchanged.

5. With regard to paragraph 6, he reminded the Committee that it had agreed as a compromise to have different degrees of obligation for different categories of persons with regard to medical record-keeping, which would be compulsory for the procedures mentioned in paragraph 3 and strongly recommended in other cases. Since article 11 applied to the relationship between the Occupying or Detaining Power on the one hand, and the population in the occupied territory or the detained persons on the other, it must be made clear that record-keeping was not required, in an occupied territory, for cases in which the Occupying Power was not involved. That was the purpose of the phrase "if that donation is made under the responsibility of that Party". The second sentence of the paragraph took the form of an "endeavour" clause applicable to detained persons in cases other than those covered by paragraph 3.

6. A small drafting change had been made in paragraph 3, the words "for transfusion" having been added after the word "blood". The Drafting Committee had also reconsidered the article as a whole in the light of the new provision on record-keeping and of the need to draft parallel provisions for draft Protocol II. It had considered certain drafting changes appropriate for paragraphs 1 and 2, in particular since several delegations had felt that some clarification of the meaning of those paragraphs was necessary. It had been in unanimous agreement on the wording of the changes but had placed the passages concerned in square brackets since they did not come within its terms of reference. The square brackets had been omitted from the French text, where they had been placed round the words "autrement" and "qui seraient, dans des circonstances analogues, appliquées à des ressortissants de la Partie accomplissant l'acte qui ne sont en rien privés de liberté" in paragraph 1, and round the words "Sous réserve des dispositions de l'alinéa 1" in paragraph 2.

7. The party envisaged as the one conducting the medical procedure in question, was clearly the Detaining or Occupying Power and the standards which it should apply were those which it normally applied to its own nationals. In order that there should be no excuse for applying different standards to free and to detained persons, it should be made clear that the standards to be applied were those applicable to free persons in similar medical circumstances. The Drafting Committee had intended the word "medical" to appear before the word "circumstances" in the second set of square brackets.

8. It had been asked whether paragraph 2 was intended to exclude any life-saving amputation as being a physical mutilation, or the taking of skin for grafting on to another part of the person from which it had been taken, as in the case of burns, for example as being a removal of tissue. Subject to the provisions of

paragraph 5, both those operations would be permitted under paragraph 1, which prohibited only those procedures which were not indicated by the state of health of the person concerned and which were not consistent with accepted medical standards. The examples quoted were procedures both indicated by the state of health of the person concerned and consistent with accepted medical standards. They were also not prohibited by paragraph 2, which must be read in conjunction with paragraph 1. But, to make the point still clearer, it was proposed to replace the words "In particular it is prohibited" by the words "Subject to the provisions of paragraph 1, it is, in particular, ...".

9. Mr. GAYET (France) said that the word "ablation" used in the French text of paragraph 2 (c) could relate only to tissues or organs which were removed and rejected, as in the case of an appendectomy or tonsillectomy. He proposed that it should be replaced by the word "prélèvement".

It was so agreed.

10. Mr. MARRIOTT (Canada) said that the word "provision" in the passage in square brackets in paragraph 2 should read "provisions".

11. The CHAIRMAN suggested that the Committee should adopt the Drafting Committee's text, as amended, by consensus.

12. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that a decision would first have to be taken on whether or not to retain the passages in square brackets.

13. The CHAIRMAN invited the Committee to consider those passages.

The Committee decided to retain the word "otherwise" in the first set of square brackets in paragraph 1.

14. The CHAIRMAN said that the wording in the second set of square brackets in paragraph 1 was far clearer than the original text.

The phrase in the second set of square brackets was approved, the word "medical" having been inserted before the word "circumstances".

15. Mr. FIRN (New Zealand) said that he would be interested to know the purpose of the foot-note to paragraph 1.

16. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had decided to refer to "hostilities or occupation", whereas in other relevant articles the phrase "related to a situation referred to in Article 2 common to the Conventions" was used. The Drafting Committee of the Conference would have to decide which term should be used throughout the relevant articles.

17. Mr. FIRN (New Zealand) said that reference to Article 2 common to the Geneva Conventions might make the scope of the paragraph narrower than would a reference to article 1 of the draft Protocol, paragraph 2 of which covered wars of national liberation.

18. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that he understood that the current interpretation of article 1 of the draft Protocol to be that such situations would also be covered by reference to Article 2 common to the Geneva Conventions of 1949.

Paragraph 1, as amended, was approved by consensus.

19. The CHAIRMAN invited the Committee to take a decision on the phrase in square brackets in paragraph 2.

The phrase in square brackets was approved.

Paragraph 2, as amended, was approved by consensus.

20. The CHAIRMAN said that paragraphs 3 and 4 had been approved before being referred to the Drafting Committee.

Paragraphs 5 and 6 were approved.

Article 11 as amended was adopted by consensus.[1/]

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)*

Article 16 - General protection of medical duties (continued)**

Paragraph 3 - Proposal by the Working Group (CDDH/II/267)

21. Mr. SCHULTZ (Denmark), Chairman of the Working Group, said that, in drafting its proposal (CDDH/II/267), the Working Group had wished to confirm the principle of the non-denunciation of wounded and sick which appeared in the ICRC text. That principle had already been established in 1959 by the World Medical Association, the International Committee of Military Medicine and Pharmacy, and the International Committee of the Red Cross. The Working Group had considered whether it would not be enough to rely on the references to professional ethics in paragraphs 1 and 2 of article 16, but had concluded that it would be better to express the principle exactly in the Protocol.

[1/] For the text of article 11, as adopted see the report of Committee II (CDDH/221/Rev.1, annex II)

* Resumed from the thirty-fourth meeting.

** Resumed from the thirty-first meeting.

22. In the course of its discussion, the Working Group had decided that it ought not to introduce a regulation in draft Protocol II which would violate the principles of the sovereignty of States and of non-interference in their internal affairs, which were laid down in article 4 and had been agreed upon by Committee I in the report of that Committee's Working Group B (CDDH/I/238). That had been the crucial point which had caused it to include the words "except as provided for in the law in force prior to the beginning of the conflict".

23. The last sentence in paragraph 3 of the ICRC text stated "Compulsory medical regulations for the notification of communicable diseases shall however be respected", but the Working Group felt that that point was sufficiently well covered by the phrase "except as provided for in the law in force prior to the beginning of the conflict". The regulations referred to in the ICRC text did not call for a detailed list of names of those suffering from communicable diseases but only for a statistical report.

24. Paragraph 3 of the ICRC text stated that no person engaged in medical activities might be compelled to give to "any authority" information concerning the sick and the wounded. The words "to the adverse Party" were used in article 16 of draft Protocol I. The Working Group had discussed the advisability of including similar words but had concluded that it would be better not to use that wording. The word "authority", in particular, would inevitably give rise to certain difficulties in non-international conflicts, since either side might question whether the other could rightly be considered an "authority". After all, article 16, paragraph 3 was intended to protect not only the wounded and the sick but also medical personnel, who should not be compelled to take sides in a non-international conflict.

25. With regard to the last sentence in the Working Group's text, he explained that, although some principles of penal law were dealt with in article 9 of draft Protocol II, the Working Group had expressly wished to exempt medical personnel from punishment "for lawful refusal to provide such information".

26. The foot-note to the Working Group's proposal was of a purely drafting nature and could be referred to the Drafting Committee of the Conference if the Committee itself was unable to reach agreement on it.

27. In conclusion, he wished to extend to all members of the Working Group his sincere thanks for their positive and fruitful co-operation.

28. Mr. GREEN (Canada) said that, as a lawyer, he found it difficult to accept the words "in his opinion" in paragraph 3, (CDDH/II/267) since that would seem to leave it entirely to the discretion of the doctor in question to impart information, perhaps for political reasons. That was inconsistent with the phrase "lawful refusal to provide such information" in the second sentence and would seem to imply that the doctor had a right to rewrite the law whenever he wished. He was aware that the words "likely, in his opinion", appeared in an amendment to the corresponding article of draft Protocol I, but the last sentence of the Working Group's text did not. He therefore proposed that, if the Committee decided to adopt the proposal of the Working Group, the words "in his opinion" should be deleted.

29. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he had already had occasion to speak about article 16 in connexion with the rights and obligations of doctors and the question of the extent to which doctors could be compelled to act in violation of their medical and humanitarian duties. In the case of international conflicts, there was general agreement that they could be compelled to give information only when it was necessary to report communicable diseases.

30. The Committee had considered that there should be no compulsion for doctors to give information concerning their suspicions in the matter of a common law crime.

31. It should be pointed out that according to the proposal made by the Working Group such an obligation would be valid in an armed internal conflict not only in cases of common law crimes but also in the case of political crimes, since every government considered those who had sided against it as political criminals. Many historic cases could be cited of individuals regarded by the authorities of former days as dangerous political criminals who had afterwards become Heads of State. That had even occurred many times in the case of Napoleon. It was therefore clearly necessary also in the case of an internal conflict to protect medical personnel against abusive external pressure and to allow the doctor himself to decide if he should act as a doctor or as a participant in the armed conflict.

32. He agreed with the Canadian representative that the word "lawful" in the second sentence should be deleted, since that word was obviously inapplicable in the present case from both the legal and the medical point of view.

33. Mr. IJAS (Indonesia) said that his delegation had originally supported the proposal to delete paragraph 3 of article 16 but was willing to accept the compromise text proposed by the Working Group. It considered that text a great improvement on the ICRC

text, particularly since it provided an exception with respect to the "law in force". It feared, however, that the phrase "prior to the beginning of the conflict" might constitute an interference with the right of a Government to enact legislation at any time, even after the outbreak of an internal conflict. He therefore proposed that those words should be deleted. If there was no consensus on the matter, he would only ask that his views should be included in the records.

34. Mr. NOVAES de OLIVEIRA (Brazil) said that his delegation did not feel that the words "prior to the beginning of the conflict" constituted a limitation on the right of a State to enact new laws. Those words only described the span of time during which medical activities were to be protected: if those activities were in accordance with the law in force prior to the beginning of the conflict, they would be protected. He therefore favoured the retention of the phrase in question.

35. Mr. SCHULTZ (Denmark), Chairman of the Working Group, replying to the Canadian representative's comments, said that he failed to see anything illogical in the Working Group's text. The Working Group had carefully considered the possibility of leaving full discretion to medical personnel, but had rejected that possibility and had introduced the phrase "except as provided for in the law in force prior to the beginning of the conflict". If such regulations did exist, they should be followed by doctors and medical personnel, although in most countries there were no rules of that kind and medical personnel would accordingly have full discretion.

36. In a legal instrument, however, it was necessary to take account of the realities of the situation. The Working Group had therefore deliberately introduced the words "lawful refusal".

37. With reference to the USSR representative's remarks, he realized that there were some countries which had regulations concerning the compulsory reporting of information about the wounded and the sick and that it was necessary to take such legislation into account if the principle of national sovereignty was not to be infringed. He agreed, however, that in performing their functions medical personnel should always take their conscience as their supreme guide. In his opinion, there was nothing in the International Code of Medical Ethics, adopted by the General Assembly of the World Medical Association, 1/ that was inconsistent with the text of article 16, paragraph 3, proposed by the Working Group.

1/ Adopted by the Third General Assembly of the World Medical Association, London, October 1949, and amended by the Twenty-second World Medical Assembly, Sydney, August 1968 (see World Medical Association document 17.A/68).

38. The Working Group had discussed the question of deleting the words "prior to the beginning of the conflict", but the majority had felt that those words did not prescribe any limitation with regard to the enactment of new legislation. It was only for the sake of clarity that it had decided to include that phrase.

39. Mr. HEREDIA (Cuba) said that his delegation felt that the inclusion of a conditional obligation in the Working Group's text was inconsistent with the corresponding provisions in draft Protocol I and therefore contrary to the Committee's present task, which was to align the two Protocols as closely as possible. In particular, he could not accept the words "except as provided for in the law in force prior to the beginning of the conflict". Medical personnel, of course, should always act in accordance with purely moral criteria, but paragraph 3, as it stood, seemed to eliminate individual discretion and to establish an obligation for the breach of which the personnel in question might possibly be punished.

40. Mr. MAKIN (United Kingdom) said that he assumed that document CDDH/II/267, although entitled "Proposal of the Working Group", was an amendment to paragraph 3 of article 16 and that paragraphs 1 and 2 of the original ICRC text had been retained.

41. Referring to the substance of the proposal, he said that his delegation had been among those who had suggested the deletion of paragraph 3, but since there was now a proposal before the Committee, his delegation would accept it. He thought, however, that it might be wise to express the last line in a slightly different way. He accordingly suggested that the words "for lawful refusal to provide such information" should be replaced by "for refusal to provide information not required by such law".

42. Mr. SANCHEZ DEL RIO (Spain) said that the text of the Working Group's proposal was well balanced. Nevertheless, certain statements which had been made had raised doubts in his mind. The representative of Indonesia had suggested the deletion of the words "prior to the beginning of the conflict", but that would give Governments a weapon to use against persons engaged in medical activities to force them to give information concerning the wounded or the sick who were or who had been under their care.

43. His delegation supported the Canadian representative's proposal for the deletion of the words "in his opinion". If the Working Group's text was not adopted, paragraph 3 of the ICRC text should be deleted.

44. Mr. MARTINS (Nigeria) said that his delegation would have no difficulty in approving paragraph 3 as drafted by the Working Group and amended by the United Kingdom representative. It considered that the words "except as provided for in the law in force prior to the beginning of the conflict" would safeguard the sovereignty of a State. He pointed out, however, that as States might enact laws contrary to the rules of medical ethics, the text should specify what those words meant.

45. Mr. FRUCHTERMAN (United States of America) said that he supported the United Kingdom representative's proposal, which he regarded, not as an amendment, but as a definition of the word "lawful", as the Working Group had intended.

46. Mr. HEREDIA (Cuba) said that his delegation was not satisfied with the wording proposed for paragraph 3, since it might facilitate the establishment by Governments of standards which would compel persons engaged in medical activities to give information concerning the wounded and the sick.

47. The Spanish text of paragraph 3 used the word "obligará" and thus members of the medical profession might be compelled against their conscience to give information requested by Governments. He would prefer the paragraph to be redrafted in order to make it less rigid, the phrase "except as provided ... of the conflict" in the first sentence and the word "lawful" in the second sentence being deleted.

48. Mr. NOVAES de OLIVEIRA (Brazil) agreed in principle with the representative of Spain. It seemed preferable for the Committee to adopt the text of the Working Group, as amended by the United Kingdom representative.

49. Mr. SCHULTZ (Denmark) supported the United Kingdom amendment to the Working Group's text. If that text as amended was adopted, it would be better than not having a text for paragraph 3. He emphasized that the Working Group had endeavoured to reach a compromise.

50. Mr. GREEN (Canada) said that, while the United Kingdom amendment removed some of his doubts, he was still doubtful about the phrase "likely, in his opinion, to prove harmful". Nevertheless, his delegation was willing to withdraw its proposal for the deletion of the words "in his opinion" and to accept paragraph 3 as amended by the United Kingdom representative.

51. The CHAIRMAN said there seemed to be four possibilities before the Committee with regard to article 16, paragraph 3: to delete the paragraph; to approve it as drafted by the Drafting Committee; to approve it as drafted by the Drafting Committee and amended by various representatives; or to approve the ICRC text. Reservations had been made with regard to the words "prior to the beginning of the conflict", "in his opinion" and "lawful". He therefore suggested that those who had proposed amendments should endeavour to agree upon a joint text.

52. He further suggested that the Committee should hold a meeting that afternoon in order to complete the agenda for the day. The results of its discussions would then be transmitted immediately to the Drafting Committee. He pointed out that it would not be possible for meetings of both Working Groups and the Drafting Committee to be held on the following day, but suggested that a plenary meeting of the Committee should be held the following morning.

53. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation was in favour of accelerating the discussions in the Working Groups and the Drafting Committee and curtailing the meetings of the plenary Committee, which should not meet twice daily.

54. Mr. SCHULTZ (Denmark) supported the proposal that the Committee should meet that afternoon, since the proposals made by two Working Groups (CDDH/II/268 and CDDH/II/269) had yet to be discussed.

55. Mr. MARRIOTT (Canada) supported the Chairman's proposals and pointed out that decisions would have to be taken on the Working Groups' proposals in order to guide the Drafting Committee.

56. The CHAIRMAN suggested, as a compromise, that the plenary Committee should meet that afternoon but possibly not the following morning. The Working Group on Medical Transport would meet the following morning and the Drafting Committee in the afternoon.

It was so agreed.

The meeting rose at 12.35 p.m.

SUMMARY RECORD OF THE FORTIETH MEETING

held on Thursday, 20 March 1975, at 3.10 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 18 - The distinctive emblem (CDDH/1)*

Proposal by the Working Group (CDDH/II/268)

1. The CHAIRMAN suggested that, as the necessary quorum to take a decision on article 16, paragraph 3, was not present, the Committee might begin its discussion of the proposal of the Working Group on article 18 (CDDH/II/268).

It was so agreed.

2. Mr. SCHULTZ (Denmark), Chairman of the Working Group on article 18, said that the Working Group had held two meetings and at the second meeting had reached agreement on the proposal set out in document CDDH/II/268.

3. The members of the Working Group had shown an excellent spirit of co-operation and the broad representation of experienced Red Cross representatives had greatly helped it in its work.

4. The basis for the work of the Working Group had been the discussion which had taken place in Committee II at the twenty-eighth (CDDH/II/SR.28), and thirty-first (CDDH/II/SR.31) meetings.

5. Three points which had come up in that discussion had been further considered by the Working Group. First, the text with respect to the emblem of Red Cross organizations as formulated in the ICRC draft had not been entirely accurate, as had been pointed out by several representatives. Secondly, there was need for an extended use of the distinctive emblem by local branches or even improvised groups of Red Cross personnel acting independently of the national society in a situation where non-international armed conflicts were taking place. Thirdly, the question had been raised whether it might not be wise to set out in an annex to draft Protocol II a short survey of the rules governing the use of the distinctive emblem in various situations.

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* Resumed from the thirty-first meeting.

6. When the question of the need for an extended use of the distinctive emblem had been discussed in the Working Group, the Group had heard of a number of cases in non-international armed conflicts in recent times in which the need for local branches of the Red Cross, or even groups authorized to care for the wounded and the sick in such circumstances, to use the distinctive emblem had been clearly brought out. The Working Group had considered that that need should be covered in a rule in article 18.

7. The wording of paragraph 1 of the Working Group's proposal, other than the phrase in square brackets, was identical to that of the ICRC text. The wording of paragraph 2 was taken from the end of paragraph 1 of the ICRC text. Paragraph 3 was new, the Working Group having decided that it was necessary to state specifically that the use of the distinctive emblem was optional. The same idea was found on page 150 of the ICRC Commentary (CDDH/3). The Working Group hoped that the Committee would adopt that new paragraph. The text of paragraph 4 was taken from paragraph 2 of the ICRC text.

8. The Working Group had discussed the most appropriate place in draft Protocol II for a rule meeting the requirement for an extended use of the distinctive emblem. Either a specific rule could be inserted in article 18 or the problem could be solved by a suitable definition of "medical personnel" in article 11 (f). The Working Group had decided that, from a drafting point of view, the latter alternative would be preferable. That was the explanation of the last part of the Working Group's proposal (CDDH/II/268), which called for a change in the definition of "medical personnel" as submitted by the Working Group on questions relating to articles 15, 16 and 18 (CDDH/II/269) which had not been formulated to take into account the problem which the Working Group on article 18 had been facing. The definition in document CDDH/II/269 was "medical personnel of the national Red Cross (Red Crescent, Red Lion and Sun) Society and of other voluntary aid societies recognized by a Party to the conflict". The wording proposed by the Working Group on article 18 would be "medical personnel of the Red Cross (Red Crescent, Red Lion and Sun) organizations and of other voluntary aid societies, recognized or authorized by a Party to the conflict", in order to meet the need for an extended use of the distinctive emblem in non-international conflicts. In that way, organizations and voluntary aid societies which had no contact with the national Red Cross Society itself could enjoy the protection of the distinctive emblem.

9. The more flexible word "organizations" had been used to cover not only assistance provided on the Government side but also already existing Red Cross groups or branches on the side opposing the Government and even improvised organizations which had come into existence only during the conflict. A number of such cases had

been reported in recent years in non-international conflicts. The provision afforded the possibility of recognizing, or authorizing, such organizations, branches or groups to take up the humanitarian activities involved and of affording them protection in that work.

10. Paragraph 5 was a new paragraph that did not appear in the ICRC text. The Working Group had considered that it might be possible also in non-international conflicts to use medical transports to take the wounded and the sick from behind the front lines to the party to which they belonged, in which circumstances not only distinctive emblems but also distinctive signals might be used. The words "Parties to the conflict may agree" were decisive: if they did, there was no reason why medical units and medical transports using distinctive signals to identify themselves should not be entitled to protection. The paragraph had been placed in square brackets because it might be argued that it was unnecessary, since article 38 of draft Protocol II provided a general rule on special agreements. It was for Committee II to decide whether the square brackets or the paragraph should be deleted.

11. The phrase in paragraph 1 referring to religious personnel had been placed in square brackets to remind the Committee that there was a problem with regard to the use of the distinctive emblem by religious personnel. The Working Group on article 18 had had no intention of solving the problem or even of contributing to its solution, since it had been taken up in a broader context in the Working Group under the chairmanship of the representative of Hungary, so that it might be discussed also in relation to draft Protocol I.

12. In the discussion in Committee II a small number of representatives had advocated the preparation of an annex to draft Protocol II summarizing the rules governing the use of the emblem of the Red Cross Society, and its counterparts in other parts of the world, in non-international conflicts. The Working Group had been of the opinion that it was unnecessary, since the necessary regulations regarding non-international conflicts would be included either in article 18 or in article 11 (f).

13. Mr. KLEIN (Holy See) pointed out that the part of paragraph 1 referring to religious personnel related only to religious personnel attached to medical units, whereas in the first Geneva Convention of 1949 religious personnel attached to the armed forces, and not only those attached to medical units, were protected. He regretted that limitation.

14. Mr. GREEN (Canada) said that there were a number of points in the Working Group's proposal which caused him concern.

15. He wondered why the description of the emblem was set out in one paragraph and a separate paragraph was used to state that it should be respected in all circumstances. The text would be more precise if paragraph 2 were deleted and the words "and shall be respected in all circumstances" were added at the end of paragraph 1. It was, moreover, logical to refer to the emblem and to respect for it in the same paragraph.

16. Paragraph 3 consisted of a wholly unnecessary statement. If either party did not wish to wear the distinctive emblem, obviously it would not do so. If the emblem was not being worn, no one could complain that it was not being respected. He therefore proposed that paragraph 3 should be deleted.

17. He would like to know precisely what was meant by the term "misuse" in paragraph 4. In his view, the wording of article 18, paragraph 2, of the ICRC text was much better.

18. He was concerned about the reference to signals in paragraph 5, regardless of the point whether medical units should be permitted to flash signs. Protocol II related to non-international conflicts and was intended to extend the principles of humanitarian law to them. The paragraph therefore was not really wide enough, despite the existence of article 38 and the reference to the emblem in article 18 of draft Protocol I. As far as draft Protocol II was concerned, it might well happen that one of the parties would reject every principle for which the establishment stood. Would its partisans be permitted to recognize the Red Cross? He suggested that the words "marks or" should be inserted between the word "distinctive" and the word "signals" and that the paragraph should be extended to cover medical personnel in the circumstances which he had described.

19. Mr. SOLF (United States of America) said that he entirely agreed with the representative of the Holy See that the words "attached to medical units" in paragraph 1 were more restrictive than the Geneva Conventions concerning the use of the distinctive emblem by religious personnel. He proposed that the words "attached to medical units" should be deleted from paragraph 1 and that when religious personnel were defined, care should be taken to ensure that the definition included chaplains and others performing similar religious duties attached to the armed forces as well as to medical units.

20. He had no objection to a separate paragraph stating that the distinctive emblem should be respected in all circumstances.

21. He considered that the term "optional" in paragraph 3 was somewhat misleading. He drew attention in that context to the wording of Article 39 of the first Geneva Convention of 1949, which read: "Under the direction of the competent military authority, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service.". Similar wording was used in Article 41 of the second Geneva Convention of 1949. In the present case, some such expression as "under the direction of the competent authority of a Party to the conflict the emblem will be displayed" might be used, and it might perhaps be combined with paragraph 1.

22. He agreed with the Canadian representative that the wording used in article 18, paragraph 2, of the ICRC text was much more precise than that used in paragraph 4 of the proposal by the Working Group, in that it stated that the emblem might not be used to protect persons or objects other than those it was intended to protect.

23. He considered that paragraph 5 was unnecessary in view of article 38. The question would be dealt with in the annex and in article 18 of draft Protocol I.

24. In reply to a question by Mr. SCHULTZ (Denmark), Chairman of the Working Group on article 18, Mr. SOLF (United States of America) said that he had not proposed any precise wording for paragraph 3, but he now suggested: "The use of the distinctive emblem shall be under the direction of a competent authority of a Party to the conflict".

25. Mr. MARRIOTT (Canada), referring to the Canadian suggestion that paragraphs 1 and 2 should be combined, said that the United States representative had also suggested that the question of the display of the emblem might be incorporated in paragraph 1. He thought it would be useful if the Committee were to agree in principle to those suggestions and leave it to the Drafting Committee to work out an appropriate text.

26. Mr. BOTHE (Federal Republic of Germany) asked whether that text would or would not include the words in square brackets in paragraph 1.

27. The CHAIRMAN asked the Committee whether it was prepared to agree by consensus that paragraphs 1 and 2 should be combined.

It was so agreed.

28. Mr. MARRIOTT (Canada) said that, as the Committee had not yet considered the report of the Working Group on questions relating to articles 15, 16 and 18 (CDDH/II/269), which referred, inter alia, to the question of the definition of religious personnel, any decision which it took on the words in square brackets could only be provisional.

29. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he had some doubts about the words in square brackets in paragraph 1. There were no religious personnel in the armed forces of the Soviet Union but medical personnel were protected in all cases. Thus religious personnel would, according to that article, be protected only if they were attached to medical units. In saying that, he was not speaking against religious assistance in any form.

30. Mr. KLEIN (Holy See) said that his delegation had been asked by the Working Group on questions relating to articles 15, 16 and 18 to provide a definition of religious personnel for draft Protocol II. That had been done and it would be discussed shortly. His delegation's definition referred to religious personnel as defined in the Geneva Conventions, for instance in Article 24 of the first Convention of 1949, who were working either in medical units or providing religious services to the combatants and the wounded.

31. Mr. SCHULTZ (Denmark), Chairman of the Working Group on article 18, said that the Group had had no intention of going into the substance of the problem. The reference to religious personnel in square brackets had only been made so that the question should not be overlooked in the formulation of article 18 when the whole problem of the protection of religious personnel had been solved. While it might have been proper to refer also to religious personnel attached to the armed forces, he thought that the most practical course now would be for the Committee to support the United States proposal that the words "attached to medical units" should be deleted. Once the concept of religious personnel had been defined, the Committee could revert to the question. He accordingly proposed that, for the time being, the Committee should either adopt by consensus or take a vote on the words "as well as of religious personnel".

32. Mr. MAKIN (United Kingdom) said that one of the difficulties was that the Committee was dealing with the articles in the wrong order. Had it dealt with the definitions first, it would have known what medical and religious personnel were being discussed. Such definitions were being studied by the Working Group under the chairmanship of the Hungarian representative and a suggested definition of "religious personnel" was given in amendment CDDH/II/270. He did not think, therefore, that a vote should be taken on that article at the present stage.

33. With regard to the United States amendment to paragraph 3 of article 18, he considered that that paragraph should be extended so as to make it clear that the emblem should be as large as possible. The purpose of that proposal was to make Protocol II completely self-contained; it was not safe to assume that the need for as large an emblem as possible would be obvious to rebels.

34. The CHAIRMAN replied that it had been the wish of the Committee that definitions should be considered after articles on substance had been adopted. It would thus be possible to take a decision on the definition of religious personnel at a later stage and then to insert a suitable provision in draft Protocol II. He reminded the Committee that, at the first session of the Conference, it had been suggested that a special article should be devoted to religious personnel, but that suggestion had not been followed up.

35. Mr. CZANK (Hungary) agreed with the United Kingdom representative on the order in which the various items should be discussed. In his view, a decision on the question of including a reference to religious personnel in paragraph 1 of article 18 should be postponed; it was not yet known what religious personnel would be covered by the definition. For that reason, it would be advisable to deal first with the remaining problems arising from article 18. He agreed with the United States proposal that the words "attached to medical units" should be deleted.

36. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) stated that it was premature for the Committee to devote so much time to the problem of religious personnel, as that term had not yet been defined. It was difficult for him to make any comment on that problem, since in his country such personnel were not attached to medical units, whether military or civil. He thought, like the Hungarian representative, that the discussion on that question should be postponed to a later stage.

37. Mr. AL-FALLOUJI (Iraq) said that, according to the proposed paragraph 3 of article 18, the use of the distinctive emblem was optional; the real problem, in his view, was not that of the use of the emblem but the right of religious personnel to be protected. In some countries, tradition might prevent religious personnel from carrying an emblem, but they might wear a special uniform; in that case, it was the uniform that should be respected. He agreed that the remainder of the article could be adopted and that discussion of the question of religious personnel could be postponed.

38. The CHAIRMAN emphasized that the question was not one of the protection of religious personnel as such, but whether such personnel were entitled to wear the emblem of the Red Cross.

39. Mr. HESS (Israel) repeated the statement made in the discussion on paragraph 6 of article 15 of draft Protocol I, namely that it would be absurd and an intolerable situation if Jewish religious personnel were required to use any emblem other than the Red Shield of David.

40. Mr. KLEIN (Holy See) suggested that the Committee might agree that the emblem of the Red Cross, and so forth, was the distinctive emblem of both medical and religious personnel, and of medical units and medical transports. That would not in any way commit those countries that had no such personnel or prejudice any definition of such personnel that might be worked out later. Religious personnel had been mentioned in the discussion of a number of articles of draft Protocol I, on the understanding that the definition of that term would be considered at a later stage.

41. The CHAIRMAN pointed out that the substance of paragraph 1 had already been accepted and that it had been agreed to refer it to the Drafting Committee. He asked whether the Committee agreed to the insertion of a reference to religious personnel by the Drafting Committee or preferred to postpone the decision.

The Committee agreed that the decision should be postponed.

42. Mrs. MEYLAN (Legal Secretary) said that the French version of the United States proposal was "L'usage du signe distinctif doit se faire sous le contrôle de l'autorité compétente d'une des parties au conflit".

43. Mr. MARRIOTT (Canada) said that his delegation would like paragraph 3, in its present form, to be deleted and the United States proposal to be incorporated in paragraph 1.

44. The CHAIRMAN said that the question whether the United States proposal should be a separate paragraph or incorporated in paragraph 1 was a matter for the Drafting Committee.

45. Mr. SOLF (United States of America) agreed that the Committee should concern itself only with matters of substance. In the present case, the matter of substance was that it should be stated that the display or use of the distinctive emblem should be under the direction of a competent authority of a Party to the conflict. The Drafting Committee could decide whether a separate paragraph was needed or whether that statement should be included in paragraph 1.

46. The CHAIRMAN asked whether the substance of the United States amendment was acceptable to the Committee.

47. Mr. CALCUS (Belgium) said that the United States proposal was similar to the statement in paragraph 2 of article 18 of the ICRC text. He thought that paragraph 4 of the Working Group's proposal could be improved by making use of the ICRC text. He wondered whether the Committee could agree to combine paragraph 3, as amended by the United States representative, with paragraph 4 of the Working Group's proposal.

48. Mr. MAKIN (United Kingdom) repeated his proposal that paragraph 3 should state that the emblem should be as large as possible.

49. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) thought that the need to make the emblem as large as possible was a matter of common sense and logic; it was not necessary for it to be mentioned explicitly in article 18.

50. Mr. CZANK (Hungary) agreed with the USSR representative. It was common sense, in the case of the three categories concerned - medical units, medical personnel and medical transports - that they should be as visible as possible. He suggested that the problem should not be discussed in connexion with article 18.

51. Mr. MAKIN (United Kingdom) said that he would not press for a discussion at that stage, but that the matter should be borne in mind in the consideration of the annex to draft Protocol I.

52. Mr. SOLF (United States of America) reminded the United Kingdom representative that the point he had raised had been considered in the Technical Sub-Committee on Signs and Signals at the first session and that that Sub-Committee had adopted the expression "as large as appropriate under the circumstances".

53. Mr. MARTIN (Switzerland), referring to the United States proposal, pointed out that it was important, in an internal conflict, to know which authorities, military or civil, were responsible for supervising the use of the distinctive emblem.

54. The CHAIRMAN asked whether the Committee was prepared to adopt the substance of paragraphs 3 and 4, on the understanding that paragraph 3 would be replaced by the oral amendment proposed by the United States representative.

55. Mr. MARRIOTT (Canada) recalled that his delegation had proposed, in connexion with paragraph 4, that it would be better to revert to paragraph 2 of the ICRC text, in which reference was made to what was a misuse of the emblem. It was essential that something of that kind should be included, especially in draft Protocol II.

56. The CHAIRMAN inquired whether it was agreed that paragraph 4 of the Working Group's proposal should be replaced by paragraph 2 of the ICRC text. The Committee could take a vote on paragraphs 3 and 4; if those paragraphs were rejected, that would provide a basis for the adoption by the Drafting Committee of the ICRC text.

57. Mr. SCHULTZ (Denmark), Chairman of the Working Group, reminded the Committee that, in presenting the Working Group's proposal, he had said that the substance of the ICRC text of paragraph 2 of article 18 had been retained. In his view, it was essential that the same words should be used in Protocol II as had been adopted by consensus for Protocol I; the wording of paragraph 8 of article 18 of draft Protocol I was in fact the same as that proposed by the Working Group for paragraph 4 of article 18 of draft Protocol II. What was meant by the misuse of the distinctive emblem, however, was not defined in either of those texts. If it was used to protect persons or objects other than those specified, that would constitute misuse; there was therefore no reason to change paragraph 4.

58. Speaking as the representative of Denmark, he supported the suggestion that paragraph 3, as amended by the United States representative, should be combined with paragraph 4, as proposed by the Belgian representative.

59. The CHAIRMAN said that the Drafting Committee could be asked whether it would be possible to produce an amalgam of paragraph 3, as amended by the United States representative, and paragraph 2 of the ICRC text.

60. Mr. SOLF (United States of America) thought that it would be feasible to amalgamate the two paragraphs. Draft Protocol II had no other provisions with regard to the misuse of the emblem, whereas there were such provisions in the annex to draft Protocol I and in article 36 of that Protocol. He suggested that the Committee might leave it to the Drafting Committee to reorganize the substance of the matter in a logical fashion; that would be his preference as Vice Chairman of that Committee.

61. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the idea expressed in paragraph 3 was correct, since it was not possible to make the use of the distinctive emblem compulsory in an internal conflict. He was not, however, satisfied with the way in which that had been expressed in the text. The optional use of the emblem should be the exception rather than the rule; its use should be recommended, except in cases where that was not possible or where the party concerned voluntarily gave up the protection conferred by it. That was not a question of principle, but one of drafting.

62. His delegation agreed with the amendment proposed by the United States representative. If a definition of the term "competent authority" was needed, that given in the first Geneva Convention of 1949 could be used. In the non-international conflicts covered by draft Protocol II, where the degree of organization of the parties concerned might differ, some authority would have to control the use of the emblem; the Red Cross emblem could not be used by anyone who chose to do so.

63. He had some doubts about paragraph 4; the purpose of the use of the distinctive emblem should be stated somewhere in the text of the article. That statement could perhaps be placed in square brackets and considered by the Committee.

64. The CHAIRMAN thought that that was a sensible suggestion. Since both the Vice Chairman and the Rapporteur of the Drafting Committee thought that it would be possible to amalgamate paragraph 3, as amended by the United States representative, and paragraph 4 of the Working Group's draft, together with paragraph 2 of the ICRC text, the Committee could perhaps approve the substance of those paragraphs. He asked whether the three paragraphs mentioned could be sent to the Drafting Committee, which should be asked to take into account the various suggestions made during the discussion.

It was so agreed.

65. The CHAIRMAN asked whether the Committee wished to vote on the substance of paragraph 5.

66. Mr. MARRIOTT (Canada) said that, in the view of his delegation, the entire paragraph could be deleted; if not, it should be considered together with the changes in it suggested by the Canadian delegation.

The Committee approved the substance of paragraph 5 by 19 votes to 10, with 13 abstentions.

67. The CHAIRMAN asked the Canadian representative to repeat his suggestions for changes in paragraph 5.

68. Mr. MARRIOTT (Canada) said that his first suggestion was that the words "marks or" should be inserted after "distinctive"; the second was that those marks or emblems should be used to identify medical personnel and religious personnel, in addition to medical units and medical transports.

69. The CHAIRMAN asked whether those suggestions could be accepted by consensus.

70. Mr. MAKIN (United Kingdom) thought that it should be explained that those who did not wish to use the emblem could use some suitable mark.

71. Mr. SCHULTZ (Denmark) said that the first Canadian suggestion caused him some concern. He wondered whether, by introducing the words "marks or", the Canadian delegation was trying to introduce a new distinctive emblem and whether it could be left to the parties to a non-international conflict to decide what that new emblem should be.

72. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) asked the Canadian representative not to press for the inclusion of the words "marks or". He would be satisfied with the original text. The problem had been examined by the Technical Sub-Committee on Signs and Signals at the first session. The words "marks or" could also be interpreted as referring to visual signals and could therefore lead to misinterpretation of the provisions. He accepted, however, the proposal to introduce a reference to medical personnel and religious personnel.

73. Mr. MARRIOTT (Canada) said that he would not insist on the use of any particular words; he did not think, however, that there could be any confusion with visual signals.

74. With regard to the Danish representative's remarks, he thought that it would be unfortunate, in circumstances in which one Party to the conflict did not wish to use the emblem, if a hortatory clause were to be inserted providing for the use by medical personnel, medical units, etc. of some means of recognition other than the emblem. Perhaps a suitable form of words could be found by the Drafting Committee.

75. The CHAIRMAN commented that, in the context of article 18, the only other mark that might be concerned was the Red Shield of David.

76. Mr. MARRIOTT (Canada) said that, on the understanding that the exact wording of paragraph 5 of article 18 was still subject to modification by the Drafting Committee, he would not press for any particular changes at the present stage. He would withdraw his amendment to the first line of paragraph 5 but maintained his proposal that medical and religious personnel should be included in that paragraph.

The Canadian proposal that medical and religious personnel should be included in paragraph 5 was accepted by consensus.

77. The CHAIRMAN said that the Committee had now completed its discussion of article 18.

78. Mr. SCHULTZ (Denmark) said that, while the Committee had completed its discussion of certain details reflected in the Working Group's report, which now had to be discussed in the Drafting Committee, it had not dealt with the most important part of the Working Group's proposal. That body had been set up to deal with the question of the extended use of the emblem of the Red Cross and the Committee had not yet dealt with that part of the proposals. He asked whether the Committee would now accept in principle the Working Group's proposal concerning the definition of "medical personnel" in article 11, sub-paragraph (f), or whether it would wait until the Working Group had submitted its whole report.

79. The CHAIRMAN said that the Committee would deal with that question when the relevant report of the Working Group had been received.

Article 16 - General protection of medical duties (continued)

Paragraph 3 - Proposal by the Working Group (CDDH/II/267)(continued)

80. The CHAIRMAN said that a number of proposals had been made at the thirty-ninth meeting (CDDH/II/SR.39). He asked if there was any support for the proposal that the paragraph should be deleted.

81. Mr. DUNSHEE de ABRANCHES (Brazil) said that he had consulted other delegations and found strong support for the text proposed by the Working Group, as amended by the United Kingdom representative at the thirty-ninth meeting. He suggested that before any vote was taken on the minor points raised at that meeting, the Chairman might consult the Committee to ascertain if it were possible to reach a consensus.

82. Mr. HARSONO (Indonesia) said that, although he had been in favour of deleting paragraph 3, he was ready to agree to a compromise. He wholeheartedly accepted the United Kingdom amendment. In the light of the discussion at the thirty-ninth meeting, however, he was strongly in favour of deleting the words "prior to the beginning of the conflict".

83. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the problem was an important one and a delicate one for representatives of Governments. Perhaps it would be wise to take a look at history. The lesson to be learned from for example, the Napoleonic Wars or the Russian Civil War or the Spanish Civil War was that both parties could adopt their own laws. The text accepted by Committee I for article 1 of draft Protocol II stated that that Protocol should apply to "all armed conflicts which are not covered by article 1 of Protocol I and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement the present Protocol." (CDDH/I/238/Rev.1). As he understood it, the armed conflicts in question were those in which the anti-government forces had their own machinery, authority or administration and could therefore make their own laws. He would therefore support the deletion of the words "prior to the beginning of the conflict".

84. The second sentence of paragraph 3 would raise problems in a situation where both sides had the right to make laws, but the important point was that doctors or other medical personnel should not be punished for refusing to give information.

85. Mr. CZANK (Hungary) said that his delegation fully supported the reasoning of the USSR representative. The words "prior to the beginning of the conflict" raised a number of problems. In the first place, he wondered on what basis the beginning of an internal armed conflict could be determined. In the light of paragraph 2 of article 1 of draft Protocol II as accepted by Committee I, the beginning of an internal armed conflict would be the time when it was no longer possible to speak of "internal disturbances" and "sporadic acts of violence and other acts of a similar nature". The question was important also from the legal point of view, since new laws could come into force immediately after the outbreak of an internal armed conflict; if the date of the actual beginning of the armed conflict was subsequently changed, a situation could arise where the new laws were regarded as the laws in force prior to the outbreak.

86. The second question was who should determine the day or week that should be regarded as the beginning of an internal armed conflict. He assumed that it would not be the United Nations, the International Committee of the Red Cross or a neighbouring State, but the Parties to the conflict. In that case, however, each party would have its own idea of which law was in force prior to the beginning of the conflict.

87. The third question was whether the words "prior to the beginning of the conflict" excluded the making of new laws by the Parties to the conflict after the beginning of the armed conflict. He agreed with the Brazilian representative's view that it would not; but it would exclude the application of any new laws containing regulations for persons engaged in medical activities on when it would be lawful or unlawful to refuse information on the wounded or the sick, and such new laws might be more humanitarian than the previous laws. It must be remembered that internal armed conflicts could continue for months or even years.

88. The fourth question - which had been referred to by the USSR representative - was who would make new laws: the established authority only, or the new party challenging the régime? On the basis of the wording of article 1 of draft Protocol II, in particular the words "under responsible command", the challenging party could also make new laws for the population and territory under its control and such laws might be more in harmony with the demands of the time and more humanitarian than the laws in force prior to the beginning of the conflict.

89. Perhaps the best solution would be to use the wording of article 16, paragraph 3, of draft Protocol I. That paragraph made no reference to the law in force, although such reference would be more appropriate to international armed conflicts. In both internal and international conflicts, there was the same fighting and killing and the same requirement that medical personnel should not be forced to become informers.

90. He suggested that paragraph 3 should be referred back to the Working Group with a request that it should endeavour to produce a new text, taking into account the discussion in the Committee and the relevant wording of article 16, paragraph 3, of draft Protocol I.

91. Mr. MARRIOTT (Canada) reminded the Committee that the subject under discussion was the proposal to delete article 16. His delegation had proposed its deletion when the article had first been introduced, on the grounds that it entailed unreasonable interference in national sovereignty. The Working Group's draft in no way changed that situation and he maintained his proposal.

92. Mr. AL-FALLOUJI (Iraq) said that he appreciated the concern of the Working Group, which presumably wished to avoid the possibility of overthrow of the law by rebels. He also understood the view of the representatives of Hungary and the Union of Soviet Socialist Republics. He agreed with the Canadian representative, however, that the paragraph entailed interference in national sovereignty and he supported the proposal to delete it.

93. Mr. DUNSHEE de ABRANCHES (Brazil) said that, ideally, all the articles in draft Protocol II should be similar to those in draft Protocol I, but they dealt with different types of conflict. With regard to the proposed deletion of paragraph 3, what the Committee was concerned about was to ensure that all the victims of armed conflicts were protected. It was also concerned with respect for legislation during armed conflicts. The sovereign States represented in the Committee accepted the principle that medical personnel had certain rights and obligations, and reference to a country's laws would not prejudice that principle. That was why the Working Group had included the words "as provided for in the law", as the result of a compromise. Some members of the Working Group had desired greater protection for the victims of internal armed conflicts and had had in mind that States could provide new legislation for that purpose. That was the reason for the inclusion of the words "prior to the beginning of the conflict". The problem was the position of the law in a country in which a non-international armed conflict was taking place. It would not be realistic to suggest that a doctor should be above the law of the country of which he was a national. Governments were being asked to adopt a wide field of application in draft Protocol II,

including provisions that were essential for the protection of victims of non-international armed conflicts. It would hardly be reasonable to expect doctors to accept obligations under an international instrument and at the same time to act outside the law in their own countries. He therefore agreed with the representative of Canada and those who had supported him. It was unfortunate that the compromise reached in the Working Group would result in the deletion of paragraph 3, which otherwise would have been a useful provision for protecting the victims of non-international armed conflicts. He was in favour of the deletion of paragraph 3 and possibly the whole of article 16.

94. The CHAIRMAN said that there were three possibilities before the Committee: to delete paragraph 3, to accept the Working Group's text with certain amendments, or to adopt the same wording as in article 16, paragraph 3, of draft Protocol I. He thought it necessary for the discussion to be continued at the forty-first meeting.

95. Mr. MARRIOTT (Canada), speaking on a point of order, said that the Committee was still discussing the proposal to delete article 16. The proposal could be put to the vote without further discussion.

96. Mr. SCHULTZ (Denmark), Chairman of the Working Group on article 16, said that he did not agree with the Canadian representative: the Committee was discussing the whole question of paragraph 3 of article 16 and there were now three possibilities: to delete the paragraph, to use the text of the corresponding paragraph in draft Protocol I, or to find a compromise. Several representatives were opposed to the deletion of the paragraph and there would also be opposition to the adoption of the wording in draft Protocol I. He therefore suggested that the Committee should try to reach a compromise.

97. Speaking as representative of Denmark, he said that he had sensed a general feeling that a compromise might be reached on the basis of the Working Group's text. He supported the United Kingdom amendment and the proposal to delete the words "prior to the beginning of the conflict". Those words had raised considerable doubts in the Working Group, but, as the Brazilian representative had pointed out, the Working Group's intention was to limit the possibility of doctors and other medical personnel being forced to give information on the wounded and the sick. Although, therefore, those words were justified as a step in the humanitarian direction, it was true that they might be misused.

98. He suggested that the Committee should try to reach a compromise on the basis of the Working Group's text, with the United Kingdom amendment and the deletion of the words "prior to the beginning of the conflict". Although those words had been proposed by the representatives of the Byelorussian Soviet Socialist Republic and the Arab Republic of Egypt, he would not oppose their deletion if there was strong feeling against them. He failed, however, to understand the Canadian representative's continued doubts on the question of sovereignty, since it had been agreed that the words "as provided for in the law in force" made it clear that there was no question of interference in national sovereignty. Those words should, in fact, meet the Canadian representative's concern.

The meeting rose at 6.10 p.m.

SUMMARY RECORD OF THE FORTY-FIRST MEETING

held on Friday, 21 March 1975, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 16 - General protection of medical duties (continued)

Paragraph 3 - Proposal by the Working Group (CDDH/II/267)

1. The CHAIRMAN said that the Committee still had to take a very important decision on article 16, paragraph 3. There were three possibilities: to delete the entire article; to align it with the corresponding article of draft Protocol I; or to adopt the text proposed by the Working Group in CDDH/II/267, possibly with some amendments as proposed at the fortieth meeting (CDDH/II/SR.40). One of the amendments suggested the deletion of the words "prior to the beginning of the conflict"; another (suggested by the United Kingdom representative) proposed changing the phrase "for lawful refusal to provide such information" to "for refusal to provide information not required by such law".

2. Mr. POZZO (Argentina) said that his delegation agreed with the substance of the article as put forward by the Working Group in document CDDH/II/267. It considered that the phrase "except as provided for in law in force prior to the beginning of the conflict" ought to be maintained in order to ensure that medical personnel would know which information they were obliged to give and which they could keep back so as not to breach professional secrecy.

3. He proposed that in order to avoid misunderstanding, a comma should be inserted in the fourth line of the Spanish text, after "o haya asistido"; the text would then continue "como consecuencia de ese conflicto". Otherwise it might be concluded that medical personnel were authorized during the conflict to refuse to give information about sick or wounded persons either because of a violation of the law or because of a communicable disease.

4. The United Kingdom oral amendment might provide a satisfactory solution to the problem raised by several delegations concerning the word "lawful".

5. To take account of the objections of some delegations to the expression "prior to the beginning of the conflict", his delegation proposed to delete those words and to add a comma after "law in force". That would ensure that the article retained the universally accepted principle of "nullum crimen sine lege previa".

6. Mr. FRUCHTERMAN (United States of America) reminded the Committee that his delegation had initially recommended, in document CDDH/II/222, that the paragraph be deleted, although he was well aware that such a deletion would expose members of the medical profession to the whims of both Government and rebels without protection. On the other hand, the ICRC text represented a direct challenge to the sovereignty of a State. His delegation had felt that the text went too far and that it would influence States not to accept Protocol II.

7. The Working Group chaired by the representative of Denmark had done its work very thoroughly and had duly taken into account the USSR representative's point that attention must be paid not only to the Government and the rebels in a non-international conflict, but also to the large category of persons who took no part in such a conflict.

8. The proposal of the Working Group (CDDH/II/267) represented a delicate balancing of the need to observe the sovereign rights of States and the need to protect the doctor. In point of fact it was not the doctor but rather the wounded and sick who needed protection, for, as the ICRC Commentary (CDDH/3, p. 25) pointed out, they would otherwise not take the risk of seeking medical attention or calling a doctor. That compromise had been criticized by some delegations, but of course a compromise never fully satisfied everyone. Objections had been raised to the term "the law in force prior to the beginning of the conflict". The Hungarian representative had correctly pointed out that it was most difficult to determine when such a conflict began. However, that observation could not be limited to the paragraph under discussion: the problem existed throughout the Protocol, and indeed the answer to it would dictate the application of Protocol II as a whole.

9. On the other hand, the expression "in force prior to the beginning of the conflict" fixed in time the standard to be applied during the conflict. Moreover, that standard would be known to medical personnel. In a very small way it did, as some had suggested, limit the law-making power of a State and also of the rebels, but only in so far as disclosure by a doctor about the status of his patients was concerned. No other aspects of the vast range of a State's legislative power were affected. On the positive side it established a uniform rule to be used by both sides during a conflict. It protected the doctor unless he failed to give information that he would be required to give in peacetime, such as the reporting of dangerous diseases. The Working Group had omitted any terms such as "adverse Party", because it did not wish to force a doctor, taking no part in the hostilities, to make decisions which would favour one side or the other.

10. He urged that the text of the Working Group, together with the United Kingdom oral amendment, be adopted. The alternative was to destroy the protection it was desired to grant by deleting the paragraph, or, even worse, to destroy the Protocol by invading the sovereign rights of States.

11. Mr. DEDDES (Netherlands) supported the points made by the United States representative.

12. The only argument that he had heard in favour of deleting paragraph 3 was its possible infringement of the sovereignty of States. Every international legal instrument infringed that sovereignty in some small way, but the existence of national laws should be enough to remove the fear of infringement. A choice had to be made between that possible infringement and the much more important question of how to prevent a situation in which a doctor was forced to inform on his patients. When opening the discussion on draft Protocol II, the Chairman had pointed out the dangers which could arise if that Protocol did not follow as closely as possible the comparable provisions of draft Protocol I. Draft Protocol I contained a provision that a doctor could not be forced to inform on his patients. The dangers of such a situation in a non-international conflict would be most acute in the context of paragraph 3 now under discussion. That paragraph must be retained.

13. Although he agreed with the Hungarian representative that article 16 (e) in both Protocols should be roughly the same, that was not entirely possible, since the words "adverse Party" did not apply in the present case, and indeed the Working Group's text was designed to avoid the need for a doctor to choose between parties.

14. He would prefer to retain the words "prior to the beginning of the conflict", for they provided a point of reference on what could be said about an individual before an internal conflict started.

15. He fully supported the Working Group's text in CDDH/II/267, with the oral amendment of the United Kingdom representative which made the text much clearer.

16. Mrs. RODRIGUEZ LARRETA de PESARESI (Uruguay) said that her delegation was in favour of the text of paragraph 3 proposed by the Working Group in CDDH/II/267, as amended orally by the United Kingdom representative.

17. Were a compromise to be necessary, however, her delegation could accept the amendments proposed by the Argentine delegation, although it would prefer to retain the Working Group's text.

18. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that article 16 was an important and necessary one for the development of humanitarian law in non-international conflicts. His delegation endorsed the principles set out in that article.

19. The text proposed by the Working Group in CDDH/II/267, however, seemed to limit the protection afforded by Protocol II, since it restricted the responsibility of the persons involved by including the words "prior to the beginning of the conflict". In many cases that would make it dangerous to provide simple medical care to the victims of internal conflicts, for there was more opportunity in such conflicts than in international conflicts for people to go to extremes. Something had to be done to improve the lot of the victims.

20. Many delegations had expressed concern that article 16 might represent interference in the domestic affairs of a State; but that concern was unjustified, since the solution of a dispute in an internal armed conflict remained exclusively within the authority of the State. No one had the right to interfere in such a conflict without violating the principles of international law.

21. Article 16 did not refer to outside interference at all. It was designed to facilitate the provision of medical or other care exclusively for the citizens of a single State. Moreover, its application was limited in time. It provided equal protection for persons on both sides of a conflict, and it seemed to him that Governments should be interested that both parties were given humanitarian care on an equal footing. There was no unilateral factor present that would violate sovereign rights.

22. The USSR representative had referred at the fortieth meeting (CDDH/II/SR.40) to a text adopted by Committee I for article 1 of draft Protocol II, defining an internal conflict as one in which dissident armed forces exercised control over part of the territory of a contracting party. If, as had happened in history, a rebel side took over the Government and became the only power in a given territory, the side from whose hands the Government had been wrested should be even more interested in the provision of humanitarian care to the victims, because it would then be subject to the government of the rebels. His delegation was therefore in favour of the Danish proposal.

23. In a domestic armed conflict there were numerous categories of people not taking part in the conflict who might well be wounded and sick as a result of it. If an attempt was made to establish allegiance in such a conflict, that might well result in such innocent persons not receiving the medical care they needed.

24. He agreed with the USSR representative that the words "prior to the beginning of the conflict", should be deleted, for that represented a compromise between the various views expressed. His delegation also supported the proposal to delete the word "lawful".

25. He could not, however, support the Canadian proposal to delete paragraph 3 altogether, since the question of its retention had already been decided by the Committee, which was indeed the reason for sending it to the Working Group. If the question of deletion were to arise again, the Committee would have to settle it by a two-thirds majority.

26. Mr. MAKIN (United Kingdom) said that he had given some thought to the practical implications of paragraph 3 for civilians who might render first aid to sick or wounded combatants or help them in any way. The inclusion of the words "engaged in medical activities" appeared to protect medical personnel rather than the wounded and sick on the run, which was the primary object of the paragraph. He therefore suggested their deletion.

27. His delegation could accept either the deletion of the whole paragraph or the wording proposed by the Working Group, with his delegation's amendment to the last line. If the words "prior to the beginning of the conflict" were deleted, either side could promulgate a law in the middle of hostilities compelling medical personnel to give information about the sick and wounded they had treated, which would render the paragraph useless.

28. Mr. AL-FALLOUJI (Iraq) endorsed the realistic statement of the United Kingdom representative. Nevertheless, the reference to legislation in force before the beginning of a conflict was tantamount to requiring a State to undertake not to legislate in a given field and to accept existing law as unchangeable - a matter clearly affecting its sovereignty. The question of the "law in force" was clear in an international conflict, but a State was unlikely to admit that any legislation was in force in a territory held by rebels. His delegation did not consider Committee II qualified to negotiate a question of sovereignty of such importance as the consecration of rebel legislation implied in the word "lawful" in the last line, which was tantamount to capitulating to rebellion.

29. Mr. DIAZ DE AGUILAR (Spain) expressed his delegation's approval of the wording of article 16, which covered the principles both of humanitarian law and of the sovereignty of States. If the words "prior to the beginning of the conflict" were maintained, there should be no difficulty concerning rebel legislation, because it was unlikely that insurgents would have had a constituent assembly enacting legislation before the conflict had begun. The

code of practice of the medical profession called for absolute secrecy concerning patients treated, and members of the profession were only required to give information in the case of crimes. His delegation supported the Working Group's text but if that text, including the words "prior to the beginning of the conflict", was not adopted, his delegation would be in favour of deleting article 16.

30. Mr. OSTERN (Norway) said that the Canadian representative's statement at the thirty-third meeting (CDDH/II/SR.33) that any treaty in the area of humanitarian law necessarily entailed a certain encroachment on the sovereignty of States, should be borne in mind in relation to paragraph 3 under discussion. He was sure that the Committee supported the fundamental ethical principle that medical personnel should not be punished for refusal to give information which could prove harmful to the wounded and sick they had treated, or to their families. The retention of the phrase "prior to the beginning of the conflict" was essential, because its deletion would leave the medical personnel without proper protection. There were therefore only two alternatives before the Committee: to adopt the text proposed by the Working Group, as amended by the United Kingdom representative, which his delegation preferred, or to delete the whole paragraph.

31. Mr. MARTIN (Switzerland) asked for clarification of the meaning of the word "lawful" in the Working Group's text, and for the French text of the United Kingdom amendment. The word "lawful" could be interpreted in two ways, either that the doctor refused information which he thought it was not lawful for him to give, or that he refused such information lawfully in accordance with the legislation in force. The United Kingdom amendment might be interpreted as meaning that a doctor should not be punished for refusing to give other information which was not forbidden by law. He therefore suggested that the French text of that amendment should read: "pour avoir refusé de donner d'autres renseignements que ceux prescrits par cette législation".

32. Mr. MAKIN (United Kingdom) observed that the wording was perfectly clear in English.

33. Mr. SCHULTZ (Denmark) said that from the discussion at the present meeting, there seemed to be little support for the deletion of the words "prior to the beginning of the conflict". He would therefore withdraw his suggestion. Of the other two possibilities, the deletion of the whole paragraph would be a retrograde step in the development of humanitarian law and would mean that there would be no protection for civilians or medical personnel who refused to give information concerning the wounded and sick under their care. The second possibility, the adoption

of the Working Group's proposal (CDDH/II/267), although a compromise and therefore not completely satisfactory, would be a modest step forward in the pursuit of the humanitarian goals of the Conference. His delegation, therefore, hoped that the Committee would choose the latter possibility.

34. Mr. GAYET (France) said that some delegations seemed to question the emphasis laid in paragraph 3 on the protection of medical personnel. Nevertheless, the titles of both articles 15 and 16 concerned the protection of such personnel; if that emphasis was removed, it would be only logical to delete the whole article, which he was sure was not the intention of the Committee. It was essential that real protection should be provided for medical personnel who cared for the wounded and sick under dangerous conditions.

35. His delegation was in favour of deleting the words "prior to the beginning of the conflict", which could only lead to confusion. It also proposed the deletion of the word "lawful" in the last line, which seemed to refer to national law, whereas a doctor's actions were governed more by his conscience than by legislation, as was shown in the words "in his opinion" in the first sentence. His delegation was prepared to accept either the text proposed by the Working Group with those two deletions, or the original text drafted by the ICRC.

36. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the paragraph under discussion had given rise to a veritable battle within the Committee which seemed in danger of becoming a "combat zone", if that was the correct expression. He congratulated the United Kingdom representative on joining the ranks of the revolutionary fighters, if only against the rules of procedure of the Conference; parts of his statement had sounded like a press release by a trade union of hospital workers. He himself wished to speak as a citizen and as a doctor.

37. The main objection which had been made to paragraph 3 by certain speakers was that it infringed the sovereignty of States. Yes, it did so; but the interference was for humanitarian reasons. The Geneva Conventions, which were an attempt to humanize wars between States, constituted humanitarian interference with the behaviour of States in armed conflicts. If the signatories of those Conventions considered it admissible to interfere in the internal affairs of States which were engaged in international armed conflicts, how could they assert that that same humanitarian interference was inadmissible in the case of internal conflicts?

38. One of the lessons of history was how easily everyone forgets the lessons of history. Another objection that had been raised was the assertion that only a State had the right to promulgate laws. That was a strange contention. A considerable number of

those present in the Conference Room represented Governments which had come into being because they had risen against and overthrown the preceding régime. Would those speakers argue that Franco's Government had had no right to promulgate laws during the civil war in Spain? Similar considerations applied to a great many countries, including the Union of Soviet Socialist Republics.

39. The same type of humanitarian interference in the internal affairs of States was as essential in internal armed conflicts as it was in international conflicts. He was accordingly in favour of the ICRC draft, which represented the most humanitarian approach. In any event, even though the details might be debated and some sort of compromise sought, a paragraph on those lines was greatly needed in draft Protocol II.

40. He now wished to speak as a representative of the medical profession. The United Kingdom representative had spoken of his qualms of conscience if the authorities came knocking on his door asking for information. Civil wars were apt to be brutal, more brutal even than international wars; often, the police or military did not knock on the door - they shot it down if they believed that enemies, even sick and wounded enemies, were or had been harboured within. They were apt to shoot the wounded and sick too, even women with new-born babies; and they might also shoot the doctor, however neutral he might be, if he refused to give them the information they were looking for. Draft Protocol II must most certainly include a paragraph prohibiting such actions and giving some protection to doctors and to other medical personnel so that they should not be afraid to treat all those who had need of their services on either side - the wounded and sick, pregnant women, children and the aged. Doctors should not be subjected to compulsion, but should be left free to take decisions as humane persons. Paragraph 3 did not prohibit the giving of information; it prohibited the use of compulsion to obtain it. The paragraph should be retained, and the Committee should seek to arrive at a compromise text which would be acceptable to all, so that it could be adopted by consensus. A vote would be highly undesirable.

41. Mr. BOTHE (Federal Republic of Germany) said that very few speakers had directly advocated the deletion of paragraph 3; what many representatives had said was that, in view of their basic philosophy with regard to draft Protocol II, they would prefer the deletion of the paragraph to the adoption of the ICRC text. They might, however, be prepared to accept a compromise text. His own delegation was in favour of the compromise text proposed by the Working Group. He realized that it might in some cases be difficult to ascertain whether a law had been passed before or after the beginning of an armed conflict, but such difficulties were unavoidable. Without the words "prior to the beginning of the conflict", the text would not mean very much.

42. From the procedural standpoint he thought that, in the present case, the Committee should decide to vote first on the proposal which contained the most far-reaching obligations, i.e., the ICRC text. If that was carried out the Committee could then vote on deletion.

43. He disagreed with the Swiss representative's critique of the last sentence of the United Kingdom proposal: punishment was only admissible for violations of existing disclosure law.

44. Mr. MALLIK (Poland) said that he agreed with those speakers who had proposed the deletion of the words "prior to the beginning of the conflict". Laws varied from country to country and were subject to change; moreover, not all laws were in accordance with international law. A Government taking power in a country, or part of a country, in the course of a conflict might promulgate laws which were more humane than those of the Government previously in power.

45. His delegation also had grave doubts about the usefulness of the word "lawful" in the last line. During the German occupation of Poland, Polish doctors had treated all those who needed their assistance, including escaped prisoners of war, resistance fighters, Jews and others, often at great risk to themselves, and they had never reported them to the authorities in power. They had acted not out of regard for any particular system of law, least of all the laws of the Nazi occupants, but in accordance with their code of medical ethics and as a patriotic duty. The word "lawful" not only confused the issue, which was not one of law but of conscience, but would give rise to endless difficulties in deciding whether a doctor had acted "lawfully" or not. He agreed with the USSR representative that the word "lawful" should be deleted. He also agreed with him that the most humane text was that of the ICRC; that a paragraph on those lines was indispensable in the Protocol; and that the Committee should endeavour to reach a compromise solution acceptable to all.

46. Mrs. DARIIMAA (Mongolia) noted that the compromise text proposed by the Working Group in document CDDH/II/267 had given rise to a lengthy discussion. The wording was open to two different interpretations: either as forbidding a High Contracting Party from promulgating legislation on that subject after the outbreak of the conflict; or as reflecting the fear expressed by certain delegations that the insurgent party might promulgate laws, and therefore excluding such a possibility. The question also arose as to which law was concerned: that of the Government or that of the insurgents?

47. The words "in his opinion" introduced a subjective element into the text; it would be preferable to confine the article to purely objective factors. The word "lawful" had also given rise to discussion and conflicting interpretations.

48. With no intention of introducing any political overtones, but simply of providing protection for doctors and accentuating the humanitarian significance of the paragraph, she wished to propose the following new wording which she hoped would avoid the ambiguities and difficulties of interpretation to which she and many other speakers had referred:

> "A person engaged in medical activities shall not be punished in any way by any Party to the conflict for refusing to give information concerning the wounded and sick who are or who have been under his care if such information could prove harmful to the health of the persons concerned or of their families."

49. The CHAIRMAN reminded the representative of Mongolia that the time for adjourning the meeting was at hand.

50. After a brief procedural discussion in which the CHAIRMAN, Mr. AL-FALLOUJI (Iraq), Mr. DUNSHEE de ABRANCHES (Brazil), Mr. KRASNOPEEV (Union of Soviet Socialist Republics) and Mr. BOTHE (Federal Republic of Germany) took part, it was decided that the meeting of the Working Groups scheduled for the afternoon would be cancelled, that Committee II would meet in plenary, that the first speaker would be the representative of Mongolia and that, in the meantime, the Mongolian proposal would be circulated in written form.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE FORTY-SECOND MEETING

held on Friday, 21 March 1975, at 3.25 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 16 - General protection of medical duties (CDDH/1; CDDH/II/229) (continued)

Paragraph 3 - Proposal by the Working Group (CDDH/II/267) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the Working Group's proposal concerning article 16, paragraph 3, of draft Protocol II (CDDH/II/267) and the Mongolian representative's oral amendment to it.

2. Mrs. DARIIMAA (Mongolia) said that the phrase that she was suggesting - "no person engaged in medical activities shall be punished in any way by any Party to the conflict" - had been taken from the Working Group's proposal concerning paragraph 3 of article 16 (CDDH/II/267). She was also suggesting the deletion of the word "lawful" in the last sentence of that proposal; that would avoid the need to define that word and the difficulties to which the word gave rise for certain delegations.

3. Her delegation also proposed the deletion of the word "such" before the word "information" in the Working Group's proposal. If that word was retained it might be thought to refer to medical information only. There might be cases in which a doctor, by merely giving the address of the sick or the wounded, might endanger their lives.

4. The Working Group's proposal further referred to "the wounded or sick who are, or who have been, under his care". Her delegation's object in deleting the words "or who have been" was to avoid any difficulties which they might cause for some delegations. It wished to emphasize that the text referred to wounded and sick who needed medical care and who by reason of their illness or their wounds could not leave a dangerous area.

5. A new phrase "would be harmful to their health" had been introduced in her amendment in order to emphasize that the actions performed by the doctor had a purely humanitarian aim, being designed to ensure that no harm was done to the health of the wounded and the sick.

6. A doctor must take two points into account when he gave information: such information should not harm the health of the wounded or the sick or be harmful to their families. A doctor must refuse to give information when it was likely to have that result. The sole criteria for a doctor to follow were the dictates of his conscience, humanitarian principles and the humane treatment of the wounded and sick.

7. Her object in submitting the amendment was to avoid a vote on the question under consideration and to find a compromise text which might be approved by consensus.

8. Mr. CZANK (Hungary) said that his delegation appreciated the efforts made by the Working Group to find a compromise text for paragraph 3 but had some doubts about the phrase "prior to the beginning of the conflict". After hearing the statements made at the forty-first meeting of the Committee, his delegation was still not convinced that the phrase should be retained. The Committee must find a way of overcoming the difficulty; that, he thought, was the purpose of the Mongolian representative's amendment.

9. The United States representative had pointed out at the forty-first meeting (CDDH/II/SR.41) that there were several possibilities. The first was to delete paragraph 3; the Hungarian delegation could not support that proposal, for it considered that the paragraph was important, and it suggested that the Committee should vote on it forthwith. The second possible course was the approval or rejection of the ICRC text of article 16, paragraph 3. The Hungarian delegation could agree to the approval of that text, which it found satisfactory.

10. The third course would be to adopt the text of article 16, paragraph 3, of draft Protocol I for insertion in article 16 of draft Protocol II. His delegation could support that proposal too. In that connexion he drew attention to the Australian amendment (CDDH/II/229), which combined an improved version of the ICRC text of article 16, paragraph 3, of both draft Protocol II and draft Protocol I.

11. The fourth course would be to adopt the Working Group's proposal (CDDH/II/267). He considered, however, that it would be difficult for the Committee to reach a consensus on that text as at present drafted. It might therefore be advisable to send the text back to the Working Group with the request that it overcome the difficulties that had arisen, taking into account the Mongolian representative's amendments, and submit a revised text to the Committee. His delegation was convinced that the deletion of the controversial phrase "prior to ..." would not alter the substance of paragraph 3.

12. Mr. CLARK (Australia) said that his delegation would prefer the wording of article 16, paragraph 3, of draft Protocol I to be used for article 16, paragraph 3, of draft Protocol II. It had, however, participated in the Working Group's efforts to produce a compromise text and could accept that text.

13. Commenting on the amendment proposed by the representative of Mongolia, he said that his delegation had been unable to accept it when it had been proposed by an expert in the Working Group.

14. If draft Protocol II did not include a provision such as that in article 16, paragraph 3, a doctor would be protected only when a situation arose which was covered by Protocol I but not in the case of a situation covered by Protocol II, where he would be subject to even greater pressures and dangers. His protection would then depend on the legal interpretation of the application of either Protocol I or Protocol II to the situation.

15. Failing the adoption of its amendment (CDDH/II/229), the Australian delegation would support the Working Group's text (CDDH/II/267).

16. The CHAIRMAN said that, in order to avoid a vote on article 16, paragraph 3, which could lead to a deadlock, it would be better to ask the Working Group to reconvene to reconsider it. Members of the Working Group on Medical Transport would not be asked to participate in the Working Group on article 16, paragraph 3, so that both groups might work concurrently.

17. Mr. SCHULTZ (Denmark), Chairman of the Working Group, said that he would naturally agree to reconvene the Working Group on article 16, paragraph 3, but doubted whether the Group would be successful in adopting a text that would obtain a consensus in the Committee. Almost all the statements on the subject made in the Committee had already been made in the Working Group, whose members represented almost every regional group. Nevertheless, he asked all former members of the Group, including the member of the Eastern Group who was not present in the Committee, to participate again in its work. The Working Group would be open to all members of the Committee.

18. Speaking as the representative of Denmark, he wished to comment on the amendment submitted by the Mongolian delegation.

19. The CHAIRMAN pointed out that the list of speakers had been closed, but asked members whether they wished to reopen a possibly short debate.

20. Mr. NOVAES de OLIVEIRA (Brazil) said that his delegation could not agree with the suggestion that the Working Group should be reconvened, for it did not think that that would result in any progress. If, however, it was decided to reconvene the Working Group, his delegation would suggest that the Committee should first take a decision on the substance of the Working Group's proposal (CDDH/II/267) in order to give the Group some guidance.

21. Mr. MARRIOTT (Canada) said that he fully agreed that no purpose would be served by continuing the debate in the Committee. If any fresh opinions were held - and his delegation had a few comments to make on the Mongolian amendment - they could be more effectively voiced in the Working Group.

22. Mr. SCHULTZ (Denmark), Chairman of the Working Group, said that if the Group was reconvened it would be useless to prolong the debate in the Committee. The comments he wished to make on the Mongolian amendment could be made in the Group.

23. Mr. AL-FALLOUJI (Iraq) agreed with the Chairman that no vote should be taken on paragraph 3.

24. Since his delegation would be unable to participate in the meetings of the Working Group, he wished to ask the Chairman of that Group the following question, which he hoped would be answered during the Group's discussions: in the event of the adverse Party consisting of rebels, how would the words "the laws in force prior to the conflict", "lawful refusal" and "punished" be interpreted?

25. Although his delegation supported the suggestion that paragraph 3 should be deleted, it could agree with the Working Group's compromise text.

26. His delegation was interested in the Mongolian amendment and could accept it provided that some such words as "Without prejudice to national legislation" were inserted at the beginning of the text.

27. Mr. HARSONO (Indonesia) said that his delegation supported the idea of reconvening the Working Group. It shared the concern expressed by the Iraqi representative at the forty-first meeting (CDDH/II/SR.41) that the existing law of the legal Government should be respected in every non-international conflict and it would accordingly be in favour either of the deletion of article 16, paragraph 3, or of the adoption of the Working Group's text, amended as proposed by his delegation.

28. Mr. SOLF (United States of America) said that, while his delegation appreciated the sincerity with which the discussion had been conducted and the interesting proposal submitted by the Mongolian representative, it felt that the Committee had been mesmerized by the question of the law in force and had lost part of the essential balance with which the subject had been considered over the past five years. The Mongolian representative had worked under great pressure to provide the Committee with her proposal for a possible compromise. After the deletion of all reference to law, it might have been useful to return to the formula in the ICRC text of article 16, paragraph 3, to the effect that compulsory regulations for the notification of communicable diseases should be respected. In considering whether or not a person engaged in medical activity should collaborate with the adverse Party, the question of the danger of serious pandemics or epidemics which might result if the public health officials were not informed of a serious communicable disease with which a wounded or sick person was afflicted, had always tilted the balance in favour of public health rather than of the interest of the wounded or the sick or their families. That consideration should continue to be upermost whatever the solution adopted.

29. He hoped that the Working Group would be able to produce a text that could command a consensus. The elimination of some of the proposals by vote would make its task easier, since it would otherwise be faced with proposals which it had already considered and which the Committee had rejected.

30. Mr. BOTHE (Federal Republic of Germany) said that, no doubt by an oversight, the Mongolian proposal lacked one essential point: namely, that a person engaged in medical activities should not be coerced into giving information. It might be useful to take over the formula approved by the Committee for article 17 of draft Protocol I, namely that "No one shall be harmed, prosecuted, convicted or punished ...". Those drafting comments did not imply any position taken by his delegation on the proposal, but merely meant that, if the proposal was to be adopted, it should be in the form he had mentioned.

31. He agreed with previous speakers that if the Working Group was to be reconvened it should be given some guidance. The essential question was whether or not there should be some reference to national legislation, whether legislation on communicable diseases, legislation in general or legislation in force prior to the conflict. It might be advisable for a vote to be taken on that point.

32. Mr. FIRN (New Zealand) said that, while it would not actively oppose the reconvening of the Working Group, his delegation felt that it might be possible for the Committee to settle the question forthwith and had come to the meeting in a position to vote. The Committee had held a long discussion and focused its attention on all the issues involved. He agreed with the representatives of Brazil, the Federal Republic of Germany and the United States of America that the Committee might vote on and eliminate some of the proposals before it, so that the Working Group would have some guidance if the matter was referred back to it. It might then be possible for the Working Group to produce a proposal which the Committee could adopt almost unanimously.

33. The CHAIRMAN said that the representative of the Federal Republic of Germany had clarified the issue: the Committee had to decide whether there should be a reference to legislation and if so, whether it should relate only to information on communicable diseases or to legislation in general. If such a reference was to be included, it should also be decided whether to stipulate that the legislation was to be that in force prior to the beginning of the conflict. The Committee might vote on those points, leaving it to the Working Group to decide on the precise wording of the whole paragraph.

34. Mr. SCHULTZ (Denmark), Chairman of the Working Group, said that, in his view, the Committee should take no vote on questions of detail at the present stage. The problems were clear and, if the Working Group was to make another effort to produce a text that might command a consensus, the Committee should not set any restrictive limits but should leave it free to seek a compromise in the light of the Committee's discussion. As Chairman of the Working Group, he would do everything possible to that end.

35. In reply to a question by the CHAIRMAN Mr. NOVAES de OLIVEIRA (Brazil), Mr. SOLF (United States of America) and Mr. BOTHE (Federal Republic of Germany) said that, in view of the comments of the Chairman of the Working Group, they would withdraw their proposal for a vote.

36. Mr. AL-FALLOUJI (Iraq) said that his delegation agreed that the Working Group's hands should not be tied by any advance action by the Committee. He would be unable to attend the meetings of the Working Group but would like to be assured that the question he had raised would be given consideration.

37. The CHAIRMAN said that the Indonesian representative, who had stated that he shared the Iraqi representative's views, could join the Working Group and would undoubtedly ensure that those views were given consideration.

38. It might be useful for the membership of the Working Group to be increased. He suggested that the representatives of Cuba, Federal Republic of Germany, France, Mongolia, Uruguay and Zaire should join it.

39. Mr. RIVERO ROSARIO (Cuba) said that, much as he appreciated the Chairman's suggestion, he doubted whether it would be possible for a member of his small delegation to join the Working Group.

40. Mr. SCHULTZ (Denmark), Chairman of the Working Group, said that he had noted the Iraqi representative's question, which would be taken up during the Working Group's discussion and reflected in its report.

41. He hoped that the Working Group would again have the benefit of the participation of Mr. Loukyanovitch of the delegation of the Byelorussian Soviet Socialist Republic, who had been an active participant in its earlier discussions but who was not a member of Committee II. As his attempts to contact that representative had been unsuccessful, the Committee might wish to nominate a second representative from the Eastern group of countries.

42. The CHAIRMAN said that he had taken it for granted that the representative of the Byelorussian Soviet Socialist Republic would continue to be a member of the Working Group. The representative of the Ukrainian Soviet Socialist Republic might take his place if he was unable to attend.

43. Mr. FISSENKO (Byelorussian Soviet Socialist Republic) said that he would convey the appreciative comments of the Chairman of the Working Group to the head of his delegation and would ask him to attend the Working Group's meetings.

44. Mr. AL-FALLOUJI (Iraq) thanked the Chairman of the Working Group for his assurance that the question he had asked would be given consideration. He would be interested to know the full membership of the Working Group and would welcome confirmation that it would be an open group so that a member of his delegation could attend occasionally if that proved possible.

45. The CHAIRMAN said that the Working Group was an open group. Members who had attended its earlier meetings were the representatives of the Arab Republic of Egypt, Australia, Brazil, Byelorussian Soviet Socialist Republic, Canada, Indonesia, Japan, Sweden, United Kingdom of Great Britain and Northern Ireland, and United States of America. The representatives of the Federal Republic of Germany, France, Mongolia, Uruguay and Zaire had now been added.

Article 11 - Definitions (CDDH/1; CDDH/II/270)

Article 15 - Medical and religious personnel (CDDH/1) (continued)*

Article 16 - General protection of medical duties (CDDH/1; CDDH/II/229) (continued)

Article 18 - The distinctive emblem (CDDH/1; CDDH/II/268) (continued)**

Report of the Working Group (CDDH/II/269)

46. The CHAIRMAN invited the Committee to consider the report of the Working Group on articles 15, 16 and 18 (CDDH/II/269).

47. Mr. CZANK (Hungary), Chairman of the Working Group, said that the Working Group had held five meetings between 10 and 14 March and had produced a report (CDDH/II/269) on the eight questions referred to it. The report was in three parts, the first part giving the answers to the eight questions, the second part the proposed definition of the term "medical personnel" in article 11 (f), and the third part the text proposed for article 15.

48. Since the questions discussed had seemed to the Working Group to centre on the problem of arriving at a suitable definition of the term "medical personnel" for the purposes of draft Protocol II, it had decided to draft a text for article 11 (f). After answering the eight questions and formulating that definition, it had considered it necessary to draft a text for article 15.

49. He expressed his gratitude to all participants for the concern they had shown in solving the problems before them and for the constructive and co-operative spirit that had prevailed throughout the Group's meetings. He also thanked the ICRC representatives for their help.

50. Mr. MARRIOTT (Canada), Rapporteur of the Working Group, said that the Working Group's view on question 1 of the eight questions referred to it was that the term "medical personnel" should include all the personnel listed in article 8 (d) of draft Protocol I. Although it had considered that reference to a distinction between permanent and temporary medical personnel should appear as infrequently as possible in order not to overcomplicate draft Protocol II, it had felt that there should be such a reference in the present case.

51. With regard to question 2, the Working Group had identified five possible categories of medical personnel: military, civilian, civil defence, medical personnel of relief societies and all other persons carrying out medical duties. In producing its text of

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* Resumed from the thirty-first meeting.

** Resumed from the fortieth meeting.

article 11, the Working Group had found that it might be possible to narrow the categories down essentially to two. In considering the question of medical personnel who had received no formal recognition of training, the Working Group had concluded that medical personnel could be described by their functions rather than by academic attainments. That had been done in article 11, sub-paragraph (f).

52. The Working Group had considered that question 3 (a) raised no problem, since it was already defined in article 11. It had found question 3 (b) more difficult but it had been pointed out that there was a formula for article 11 which seemed to cover the question of recognition and authorization without actually using those words.

53. On question 4, the Working Group had considered that there was no need to make any reference in article 15 to the exception mentioned in article 35.

54. Its view with regard to question 5 was that the ICRC text was unnecessarily restrictive and in its draft article 15 the Working Group had included a provision, which it considered sufficient, to the effect that medical personnel should not be employed on tasks which were not compatible with their humanitarian role.

55. Question 6 was somewhat more complicated. The Working Group had considered that religious personnel should be defined in article 11 of draft Protocol II. The proposal for a definition referred to in the second sentence of the reply to that question had now been submitted in document CDDH/II/270. The ICRC representative had made another proposal to the effect that there should be a new article 17 bis covering the entire question of religious personnel, with regard both to definition and to provisions for their protection. The adoption of the form of wording proposed would greatly simplify the wording of the other articles in the chapter in question. The matter would be one for the Committee's decision when the question of definition of religious personnel came before it.

56. At the time the report had been written, it had been thought that the Working Group on article 16, paragraph 3, had already answered question 7, but it was now necessary to change that view.

57. The Working Group had considered that question 8 should be settled by the Working Group on the Distinctive Emblem. The matter had now been dealt with.

58. The Working Group had submitted a text for article 11, sub-paragraph (f) but he understood that the Chairman of Committee II was to rule on whether the matter should be discussed during consideration of the Working Group's report or left until the Committee considered article 11 as a whole. In the text proposed for the paragraph, the Working Group had first defined medical duties. The corresponding article of draft Protocol I referred merely to the duties described in the first and second Geneva Conventions of 1949. In accordance with the idea that draft Protocol II should as far as possible stand alone, the description from the first Geneva Convention of 1949 had been incorporated into the text proposed for article 11, sub-paragraph (f). There was one significant difference in wording: the wording in the first Geneva Convention referred to "personnel exclusively engaged in". The Working Group had considered that the term "affecté à" in the French version could more appropriately be translated as "assigned to" than as "engaged in", since the former term would automatically solve the problem of authorization or recognition. Those included in the term "medical personnel" had been defined, firstly, as "the medical personnel of Parties to the conflict, whether military or civilian", in which medical personnel of civil defence units would automatically be included; and, secondly, as "medical personnel of the national Red Cross (Red Crescent, Red Lion and Sun) Society and of other voluntary aid societies recognized by a Party to the conflict".

59. In the discussion on article 18 of draft Protocol II, there had been a proposal for the redefinition of Red Cross personnel which was probably more appropriate, but which might be left for the consideration of the Drafting Committee.

60. The description of permanent and temporary medical personnel had been taken direct from draft Protocol I, except that the reference to medical units had been omitted.

61. The text proposed for article 15 had been kept short and differed very little from the original text. The phrase "and religious personnel" had been placed in square brackets because it was subject to the acceptance by the Committee of a definition of religious personnel or of the alternative suggestion for a paragraph 17 bis covering the entire problem of the definition and protection of religious personnel.

62. The CHAIRMAN asked the Vice-Chairman of the Drafting Committee if he considered the answers given to the eight questions by the Working Group satisfactory.

63. Mr. SOLF (United States of America), Vice-Chairman of the Drafting Committee, congratulated the Working Group on its outstanding contribution. On the basis of its report, he felt that the Committee could now answer all the eight questions with the exception of question 7, concerning article 16, paragraph 3.

64. The CHAIRMAN said that he thought that the Committee should engage in some further discussion of questions 1 and 2. Moreover, the definition of medical personnel suggested for article 11, sub-paragraph (f), should be considered provisional, pending a final decision to be taken when the Committee had dealt with all the matters of substance in draft Protocol II.

65. Mr. SCHULTZ (Denmark), speaking as Chairman of the Working Group on article 18, recalled that his Working Group had agreed that the crucial problem was to find some way of stating, in draft Protocol II, that Red Cross organizations, branches and the like which were acting independently should be authorized to use the Red Cross as a distinctive emblem. The Working Group had discussed whether such a formulation should be included in article 18 or might better be inserted in the article on definitions and it had agreed that the best course would be to draw up a definition to cover that particular need.

66. He noted that his Working Group's proposal (CDDH/II/268) anticipated "a change of the text of the definition of 'Medical personnel' in article 11, sub paragraph (f) ii as submitted by the Working Group on questions relating to articles 15, 16 and 18 ...". Since the two Working Groups had been meeting at the same time, they had been unable to contact each other during their discussions but had agreed that Committee II should revert to the problem at a later date. He wished to stress, therefore, that before taking any final decision the Committee should deal with article 11, sub-paragraph (f) ii, as a question of substance.

67. He himself proposed that the Committee should adopt the definition of medical personnel given in the proposal of the Working Group on article 18 (CDDH/II/268). That definition offered the only means of meeting the necessity underlined by the ICRC representative of authorizing some Red Cross group to care for the wounded and the sick in non-international conflicts.

68. Mr. MARRIOTT (Canada) said that he hoped that the Working Group on article 18 had already covered the point made by the Danish representative, since it had adopted the definition included in document CDDH/II/268. He felt that there would be no difficulty in incorporating that wording in the definition which it was proposing for article 11, sub-paragraph (f).

69. Mr. OSTERN (Norway) said that he doubted whether the Working Group's definition in article 11, sub-paragraph (f), included civil defence personnel as referred to in article 8, sub-paragraph (d) iii (CDDH/II/240). If the Committee decided that it did include such personnel, the reference to civil defence in article 8 should be either deleted or included in both articles.

70. Mr. MAKIN (United Kingdom) said that he understood the words "recognized or authorized" in the definition of medical personnel given in document CDDH/II/268 to mean that the personnel in question were competent and that the society was authorized. He wondered, therefore, whether the word "or" had been included in error and whether it should not be replaced by "and".

71. Mr. SOLF (United States of America) associated himself with the question asked by the United Kingdom representative. Concerning the doubts expressed by the Norwegian representative, he said that he had never understood the need to include a separate category for medical defence personnel in the definition in article 8, sub-paragraph (d) iii. The Drafting Committee had considered such a category redundant, but a decision would of course have to be deferred until the Committee discussed the clauses on civil defence.

72. His delegation preferred the formula in document CDDH/II/269, but agreed that if the definition in article 8 was retained it would be necessary to add the words "medical personnel of civil defence organizations".

73. Mr. SCHULTZ (Denmark) agreed with the Norwegian representative that some confusion might be caused if a reference to civil defence services was included in draft Protocol I and not in draft Protocol II.

74. The United States representative had questioned the need for such a reference. In some countries, however, civil defence organizations included medical and ambulance units. Accordingly, if a new civil defence emblem was to be introduced, it would be necessary to decide what emblem would be used by the medical personnel of civil defence organizations - the Red Cross or the civil defence emblem.

75. In connexion with article 11, sub-paragraph (f), he suggested that the Committee should try to find a suitable expression which would make it clear that civil defence personnel were also covered by draft Protocol II. It was not sufficient to refer to "civilians", since there were several categories of civilians (vide draft Protocol I, article 8, sub-paragraph (d) ii and iii) and the two draft Protocols ought to be completely parallel as regards definitions.

76. With regard to the proposal in document CDDH/II/268, his Working Group had decided to refer the text of article 18 to the Drafting Committee but had considered that it involved a question of substance which, in accordance with an earlier decision of the Committee, should be agreed on by consensus in the Committee itself.

77. The CHAIRMAN said that it would perhaps be necessary to set up a Working Group on definitions, but in view of the large number of working groups already in existence that would be impossible for the moment.

78. He suggested that the list of speakers on the present topic should be closed.

It was so agreed.

79. Mr. MARTIN (Switzerland) said that he supported the views expressed by the representatives of Norway and Denmark with respect to the need for ensuring adequate protection for civilian personnel. The corresponding definitions should be the same as those in article 8, sub-paragraph (d) iii.

80. Mr. SKARSTEDT (Sweden) said that he, too, was convinced that, in order to avoid any misunderstanding, it was necessary to include a reference to civilian medical personnel in article 11, sub-paragraph (f), of draft Protocol II.

81. Mr. URQUIOLA (Philippines) said that he fully endorsed the views of the previous speakers concerning the need for including the medical personnel of civil defence organizations in the protection afforded by draft Protocol II. His country had a medical personnel component in its own civil defence organization, the purpose of which was to provide relief and assistance to the victims of both natural and man-made disasters.

82. The CHAIRMAN said that the Committee was in agreement that the replies given in the Working Group's report (CDDH/II/269) were satisfactory and that that report should be referred to the Drafting Committee. It was understood, however, that the definitions in that report were being adopted only provisionally.

It was so agreed.

The meeting rose at 5.55 p.m.

SUMMARY RECORD OF THE FORTY-THIRD MEETING

held on Monday 24 March 1975, at 10.15 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 19 - Prohibition of reprisals (CDDH/1) (continued)*

Joint Working Group on the concept of reprisals

1. The CHAIRMAN said the Committee would remember that, after a lengthy discussion on the question of reprisals in relation to article 19 of draft Protocol II, it had been decided to set up a Joint Working Group, composed of representatives of Committees I, II and III, to study the related problems. Committee III, which had at first adopted a reserved attitude towards that decision, was now of the opinion that it would indeed be desirable to set up a scientific and legal Working Group to consider how the concept of reprisals could best be expressed for the purposes of draft Protocol II. It was willing to appoint Mr. Kalshoven (Netherlands) and Mr. Blishchenko (Union of Soviet Socialist Republics) as its representatives. Committee I would appoint Mr. Castren (Finland) and Mr. Abi-Saab (Arab Republic of Egypt). As far as Committee II was concerned, the representatives of Bangladesh, Brazil and Canada had been suggested, but the first-named had indicated that he would not be able to participate actively in the Working Group's deliberations. With the Committee's agreement, therefore, he would now request Mr. Green (Canada) to act as Chairman of the Joint Working Group, to convene it to meet as appropriate and to report back to the Committee when it had completed its work.

It was so agreed.

Article 11 - Definitions (continued)

Article 15 - Medical and religious personnel (continued)

Article 16 - General protection of medical duties (continued)

Article 18 - The distinctive emblem (continued)

Report of the Working Group (CDDH/II/269) (continued)

2. The CHAIRMAN, summing up the situation with regard to Part III of draft Protocol II, said that the final decision on article 11 has been deferred until after the Easter recess. Articles 12, 13 and 14 had been approved by the Drafting Committee. Articles

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* Resumed from the thirty-third meeting.

15 and 16 would be referred to the Drafting Committee when the Committee had considered the report of the Working Group on articles 15, 16 and 18 (CDDH/II/269), with the exception of article 16, paragraph 3, which was being considered by a Working Group chaired by the Danish representative. Article 17 had been approved by the Drafting Committee and article 18 had been referred to that Committee. Further consideration of article 19 would be deferred until the Joint Working Group on the concept of reprisals had completed its work.

3. With regard to the report of the Working Group on articles 15, 16 and 18 (CDDH/II/269), questions 1 and 2 had already been referred to the Drafting Committee. Questions 7 and 8 had been, or would be, settled by other Working Groups. As to questions 3 to 6, the only important point requiring the Committee's attention was question 6, concerning the definition of religious personnel, for which two alternative solutions were suggested by the Working Group.

4. Mr. SOLF (United States of America), referring to the Committee's previous discussion on whether the medical personnel of civil defence units should be the object of a separate category in the definition of medical personnel in article 11, said that his delegation had been satisfied by the arguments put forward by the representatives of Denmark, Norway, the Philippines and Sweden, and would support the view that medical units of civil defence should be recognized in the definition when article 11 was discussed.

5. Speaking as Acting Chairman of the Drafting Committee, he suggested that the report of the Working Group on articles 15, 16 and 18 (CDDH/II/269) be referred to the Drafting Committee for consideration in conjunction with the report of the Working Group on article 18 (CDDH/II/268), since both those documents contained sufficient guidance to enable the Drafting Committee to perform its work.

6. Mr. MARRIOTT (Canada) said that his delegation's position with regard to draft Protocol II was well-known: the text should be as short and simple as possible and no unnecessary material should be included. The adjectives "civilian" and "military" were precise, not relative, terms. Civil defence was neither purely military nor purely civilian in nature; it was a task. Consequently it would be both illogical and unnecessary to place it in a separate section of the definition of medical personnel. In a spirit of compromise, his delegation would be able to accept the inclusion of a reference to civil defence personnel in article 11, sub-paragraph (f) i.

7. Mr. MARTIN (Switzerland) said that there was a certain parallel between draft Protocol II, which contained two articles on civil defence, and draft Protocol I, which contained several articles on the subject. Draft Protocol II would not be clear unless some specific reference were made to the medical services of civil defence organizations. To omit such a reference would also be to discriminate against civil defence activities in draft Protocol II as compared with draft Protocol I. In the view of his delegation, medical units of civil defence should be given separate mention in article 11, sub-paragraph (f) ii.

8. The CHAIRMAN suggested that the question of civil defence medical personnel be deferred until the Committee took up article 11 as a whole.

It was so agreed.

9. The CHAIRMAN drew attention to question 6 of the Working Group's report. The question was whether religious personnel should be defined in article 11, or whether a new article 17 bis should be included concerning the protection of such personnel. An amendment to article 11 had been submitted by Austria, France, the Holy See, and Nigeria (CDDH/II/270).

10. Miss BASTL (Austria), introducing amendment CDDH/II/270 to article 11 (g), said that it was closely linked to the report of the Working Group on articles 15, 16 and 18 (CDDH/II/269). Just as the Working Group considered it necessary for medical personnel to be defined before articles 15 and 18 could be drafted, so the sponsors of the amendment considered that the term "religious personnel", which was also used in those articles, required definition. In the interests of simplicity and precision, the inclusion of such a definition in article 11 would be preferable to a description of religious personnel in the text of articles 15 and 18. As in the definition of "medical personnel" in sub-paragraph (f) of article 11, the authors of the amendment had defined first the functions and, secondly, the categories of the persons to be included. Those categories were themselves attached to military or civilian medical units, or to armed groups in the sense of article 1 of the draft Protocol II. Thus, the armed forces and other organized groups of the rebel party were taken into account, in conformity with the definition adopted by Committee I. The sponsors had not considered it necessary to make any distinction between permanent and temporary religious personnel.

11. Mr. KLEIN (Holy See) said he wished to make some general comments on the question of religious personnel. First, the question of whether the armed forces of a particular party included religious personnel or not was irrevelant to the Committee's work.

What delegations were being asked to do was to accept the principle of respect and protection for the religious personnel which the adverse Party saw fit, as its duty and its right, to attach to its medical and military units. Secondly, behind the right of the doctor lay the right of the wounded, the sick, and the shipwrecked, the infirm and the interned, to receive care and not to be left to die. That was a fundamental human right. Similarly, behind the right of the chaplain lay the right of the wounded, the sick, the shipwrecked, the infirm and the interned to receive religious assistance. That, too, was a fundamental human right. To violate the right of the doctor was to violate the right of his patients, and to violate the right of the chaplain was to violate the right of persons with religious convictions. Both were grave violations.

12. The Protocols must not be a step backwards in respect of the recognition of the rights of religion which had been written into the 1949 Geneva Conventions for the very reason that that right had so often been violated during the Second World War. Nevertheless, when the text of article 18 of draft Protocol II had been considered at an earlier meeting of the Committee, the term "medical personnel" had been retained even though it was not defined, whereas the term "religious personnel" had been rejected on the grounds that it was not defined. Such action smacked of double standards. If the anomaly was only procedural, the matter was not serious, but if it was substantial, the delegation of the Holy See would protest as publicly as possible.

13. At the first session, his delegation had suggested that religious personnel should be defined in article 8 of draft Protocol I (CDDH/II/18). The United Kingdom delegation had supported that suggestion, but the Polish delegation had considered that it would be sufficient to define the term "chaplain" in article 15. Earlier in the current session, his delegation had stated that it attached no importance to the place of the definition. At an earlier meeting, the Committee had adopted an amendment to article 15 of draft Protocol I concerning a definition of religious personnel, and paragraph 6 of that article had been adopted by consensus a few days later. Later, an oral proposal to substitute the term "medical and religious personnel" for "medical personnel" had been adopted. The Committee was aware of the general meaning of the term "religious personnel" since it was very clearly defined in draft Protocol I. In the case of draft Protocol II, it was only natural to seek a definition that took into account the special context of the Protocol and the fact that it was less closely linked to the Geneva Conventions than draft Protocol I.

14. Mr. MARRIOTT (Canada) said that there was probably general agreement on the need to define and recognize religious personnel, and amendment CDDH/II/270 was to be commended for its simplicity and clarity. However, he could see considerable merit in the idea

of including a separate simple article which defined religious personnel, stated that they should be protected, and listed the conditions under which they might wear the distinctive emblem. There was perhaps no need for the Committee to discuss further the place of the provision; the Drafting Committee might be entrusted with the task of producing a generally acceptable text.

15. Mr. SOLF (United States of America) said that his delegation shared the view that religious personnel should be defined. Following the action taken by the Committee on article 18 of draft Protocol I, it was essential to include a definition of religious personnel in that Protocol. Since it had been agreed that draft Protocols I and II should correspond to one another as closely as possible, his delegation was in favour of including a definition of religious personnel in draft Protocol II as well. The pattern of the Geneva Conventions was well reflected in amendment CDDH/II/270. There was, however, one omission which would be made good if the phrase "to an armed force" were inserted at the beginning of sub-paragraph (b) of the amendment.

16. Mr. SHERIFIS (Cyprus) said that his delegation fully sympathized with the concern expressed by the representative of the Holy See and could accept amendment CDDH/II/270. It had no strong views on the place of the definition in the draft Protocol and would be willing to accept the view of the majority.

17. Mr. GAYET (France) said that his delegation supported both the substance and the form of amendment CDDH/II/270, which was unambiguous and not too sweeping. It considered that the most logical place for the definition was indeed article 11. The oral amendment proposed by the United States representative deserved the Committee's consideration.

18. Miss BASTL (Austria) said she welcomed the drafting amendment proposed by the United States representative to sub-paragraph (b) of amendment CDDH/II/270. The intention of the sponsors had been to cover all the groups mentioned in article 1 of draft Protocol II and they had used the generic term "formations armées" in the original French text with that aim in view.

19. Mr. MAKIN (United Kingdom) said that he welcomed amendment CDDH/II/270 as amended by the representative of the United States of America. He would have been inclined to put sub-paragraph (b) before sub-paragraph (a), but that was a point that could be left to the Drafting Committee. He felt some concern, however, about sub-paragraph (c), and wondered whether there were in fact religious personnel attached to civil defence organizations; if there were, he had no objection to their being protected. The use of the word "groups" seemed a little unusual. In articles 30 and 31 no form of civil defence organization was mentioned;

those articles referred to personnel and activities, not to groups. He also wondered what was the significance of the word "organized"; in the cases of armed conflict covered by Protocol II, civil defence might in fact be very disorganized. He would suggest that, for the time being, the paragraph be placed in square brackets and no specific wording proposed until after the consideration of article 31.

20. Mr. CLARK (Australia) said that his delegation supported amendment CDDH/II/270 and would have co-sponsored it had time permitted. In view of his country's regional interests in Asia, his delegation considered that religious interests in that area were well catered for in the amendment.

21. Mr. SKARSTEDT (Sweden) said that the United Kingdom representative had reflected his own views. His delegation supported the idea that religious personnel should be given respect and protection, but felt that the two Protocols should be brought into line. For the moment there was no reference to religious personnel in draft Protocol I other than that in article 15 entitled "Civilian medical and religious personnel". He also had doubts with regard to sub-paragraph (c) of amendment CDDH/II/270 and would like to know whether there were in fact religious personnel attached to civil defence groups. He agreed that the wording should be reconsidered after article 31 had been drafted and suggested that the same system be followed as in draft Protocol I, and a reference to religious personnel incorporated in an article similar to article 15 of that Protocol.

22. Mrs. RODRIGUEZ LARRETA de PESARESI (Uruguay) said that her delegation supported amendment CDDH/II/270 both with regard to substance and to the placing of the reference to religious personnel in article 11 of draft Protocol II.

23. Mr. MARTIN (Switzerland) said that his delegation supported amendment CDDH/II/270, but had some hesitation in accepting the reference in sub-paragraph (c) to chaplains being attached to organized civil defence groups. In draft Protocol I they were attached to medical units and only mentioned in article 15 of that Protocol. As medical units could in turn be attached to civil defence groups or organizations, chaplains could also be attached to the latter, but when the definitions were discussed, sub-paragraph (c) might be incorporated in sub-paragraph (a) under civilian medical units.

24. Mr. NOVAES de OLIVEIRA (Brazil) said that his delegation supported amendment CDDH/II/270, including the United States amendment to sub-paragraph (c). It would prefer sub-paragraph (c) to be placed in square brackets until the definitions in article 31 had been agreed.

25. The CHAIRMAN asked whether the Committee was in agreement on the principle of including a reference to religious personnel in draft Protocol II.

The principle of including a reference to religious personnel in draft Protocol II was adopted by consensus.

26. Mr. CLARK (Australia) asked why, in the Working Group's report (CDDH/II/269), the definition under article 11, sub-paragraph (f) included a reference to the wounded and sick but not to the shipwrecked, and why, in the same paragraph the word "removal" had been omitted when the original article 11, sub-paragraph (f) i in draft Protocol II spoke of "search for, removal, treatment or transport of the wounded and the sick".

27. Mr. MARRIOTT (Canada), speaking as Rapporteur of the Working Group, said that the shipwrecked, once they had been rescued, were by definition no longer shipwrecked, so that by the time they had passed into the care of the medical personnel they came under the heading of wounded and sick. The Working Group had considered that the idea of "removal" was covered by the word "transportation".

28. The CHAIRMAN suggested that, if there were no objections, the report of the Working Group on questions relating to articles 15, 16 and 18 to be settled by Committee II (CDDH/II/269) be referred to the Drafting Committee.

It was so agreed.

29. The CHAIRMAN said that, in its answer to question 6 (CDDH/II/269), the Working Group had suggested two alternatives: either to include a definition of religious personnel in article 11, with brief references in article 15 and perhaps 18, or to deal with the question of religious personnel in a new article 17 bis. He took it that the Committee's decision by consensus implied that it preferred the definition to be included in article 11, with references in articles 15, 18 or others, rather than to be made the subject of a separate article. The Drafting Committee could decide on the exact wording.

Report of the Joint Working Group on terms to cover various military situations (CDDH/II/266 - CDDH/III/255).

30. The CHAIRMAN invited Mr. Rosenblad (Sweden), Chairman of the Joint Working Group, to introduce the Group's report (CDDH/II/266 - CDDH/III/255).

31. Mr. ROSENBLAD (Sweden) said that at the request of Committees II and III, a Joint Working Group had been set up to study the terms to be used to cover the various military situations envisaged in some of the articles of the draft Protocols and prepare definitions

of the terms recommended. The Group had chosen three terms: zone of military operations - which covered the total combat area; combat area - the area where fighting was taking place; and the contact area - the limited area where the opposing forces were in direct, and at times physical, contact with each other. Those terms were defined in annex A to the Group's report.

32. The CHAIRMAN invited Mr. Kermode (New Zealand), Rapporteur of the Joint Working Group, to comment on the main points of the report.

33. Mr. KERMODE (New Zealand), Rapporteur of the Joint Working Group, said that the terms recommended were for use in draft Protocols I and II only and were not military terms. They had no significance in any army or force. They were compromise terms and as such had the imperfections of a compromise solution. An attempt had been made to use as concise a wording as possible. The Group had avoided the phrase "on land, at sea or in the air", so as not to become confused with the terms used in the law of the sea or the law of the air. Draft Protocols I and II were concerned mostly with war on land and the Group had considered that if the sea or the air were in question, specific reference should be made to the fact. It had avoided complex problems such as that of the control of battlefield air space. It was of great importance that the same terms should be used with the same meaning throughout the draft Protocols.

34. Mr. CALCUS (Belgium) said that despite its respect for the Joint Working Group and its Chairman, his delegation regretted that it must express a number of reservations concerning the report, first over the choice of certain expressions and, secondly, over the definition of "combat area".

35. Although the Working Group stated in paragraph 4 (c) of its introduction to the report that it had tried to avoid special military terms wherever possible, it had recommended the use of the expression "zone de combat", which had been translated into English as "combat area", although in the Belgian military glossary the official translation was "combat zone".

36. His delegation also had reservations concerning the definition of the term "zone de combat" which contained the expression "et où sont situées celles qui les soutiennent directement", in English "and those directly supporting them". He wondered what the word "directly" was intended to mean. In the excellent diagram of a classical ground forces disposition in annex B to the report, the combat area would appear to be limited to the brigade rear area or at the most the division rear area. But the military definition of "combat zone" given in Belgian military glossaries was:

"(i) That area required by combat forces for the conduct of operations; (ii) the territory forward of the army rear area boundary". It seemed inconceivable that the same term should be used in the Working Group's report with a totally different meaning, especially as the articles common to the Geneva Conventions of 1949 stipulated that the High Contracting Parties should distribute the text of the Conventions to their military schools.

37. His delegation was satisfied with the definition of the term "contact area", but considered that of "zone of military operations" to be ambiguous. The use of the expression "taking a direct or an indirect part" did not give a clear indication of the extent of the zone. There again there was a similar military term: "area of operations", defined as follows: "That portion of an area of war necessary for military operations, either offensive or defensive, pursuant to any assigned mission, and for the administration incident to such military operations". That definition was again different from the Working Group's definition of "zone of military operations", and such differences caused confusion. He would like the opinion of the ICRC on that point.

38. His delegation was not asking that the military terms quoted should necessarily be used, but suggested that, as differences of interpretation were bound to arise, in view of the large number of delegations present, and as the Protocols and Conventions were intended to last whereas military terminology was subject to modification, each Committee, along with its Drafting Committee, should be responsible for producing short paraphrases, straightforward in meaning, rather than expressions taken from military terminology which only caused confusion. He was ready to co-operate in the choice of paraphrases for use in the articles dealt with by Committee II.

39. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he agreed with the comments of the Belgian representative on the difficulties that arose because of the lack of a common accepted military terminology. The problem was mainly a linguistic one. Although the report produced by the Joint Working Group (CDDH/II/266 - CDDH/III/255) was an excellent one, the definitions it contained should be regarded as preliminary and subject to change as discussions within Committee II and its working groups proceeded. The definition given for "Contact area" in annex A was entirely satisfactory and represented a definite contribution to the work of the Conference.

40. Annex B was also very good but it allowed only for situations where the defence was stable. In a fluid war of movement, the military situation would determine the need to wear distinctive emblems, not only in combat zones, but also in areas to which the fighting might be transferred. Thus, the real danger for civilian

medical personnel was to be wounded as the result of a nearby combat not more than 100 metres distant or to be taken prisoner by the adverse Party. In article 18, for example, the determining factor for the wearing of the emblems was not the combat zone as such, but its nature, the speed at which troops advanced and the possible result of military operations. The solution to that problem was for the local authorities to decide if a real danger existed which called for the wearing of distinctive emblems. It was better to avoid arbitrary definitions and remain flexible. It was for that reason that it was necessary to avoid as much as possible using military terminology in the Protocols and Conventions. However, the Joint Working Group could hardly have produced a better document in the circumstances.

41. Mr. MARRIOTT (Canada) said that what he had wished to say had already been eloquently expressed by the USSR representative. It was true that the Joint Working Group had kept the number of military terms to a minimum but, in his view, it had adopted the wrong approach to the problem. As the Belgian representative had pointed out, there was a language problem. For example, there was some confusion as to the precise meaning of, and differences between, the words "area" and "zone". In English-speaking countries the expression "combat area" was acceptable and clearly understood, but it was less so for French-speaking countries.

42. Instead of basing itself on the classical disposition of ground forces, the Working Group would have done better to base its text on the requirements for the wearing of distinctive emblems, as set out in the draft Protocols. The report produced by the Working Group had not really done what was required. Perhaps the report was suitable for Committee III, but it hardly met the needs of Committee II in terms of the subjects under discussion in that Committee. For that new definitions were required.

43. Mr. OSTERN (Norway) said he noted that, in paragraph 10 of the report submitted by the Joint Working Group (CDDH/II/266), there was a reference to the fact that the terms "at sea", "on land" and "in the air" had been avoided. In annex A to the report, the word "territory" had been used under the paragraph referring to "zone of military operations" and he wondered if that excluded the sea and the air. It would be better if some term could be found which covered all three elements.

44. Mr. de MULINEN (International Committee of the Red Cross) said that the Joint Working Group had searched for solutions to the problem of military definitions but it had proved a difficult task. It was essential that the wording in both the Protocols and the Conventions should be clear and precise. The terms given in annex C were clear enough, but to provide equally clear definitions

for terms of a more military nature was much more difficult. One of the problems was that the same words could have different meanings. The essential thing was to find words for use in both the Protocols and the Conventions that would be self-explanatory.

45. Article 15 of the fourth Geneva Convention of 1949 was a good example of how a definition could be both simple and self-explanatory. The words "regions where the fighting is taking place" in Article 15 of that Convention covered both classical combat zones and rear areas far from the front line. A wording of that kind would be the simplest one to adopt in most cases. The term "contact zone" could be used where the area was completely military, but should be avoided in connexion with neutralized or non-defended localities, as in draft Protocol I. He suggested that perhaps some such expression as "combat zone", understood to mean the regions where the fighting was taking place, might be added in an appropriate place in draft Protocol I.

46. Mr. ASHMAWI (Arab Republic of Egypt) said that the definitions in annex A were far too broad. Whether it was a question of brigades, divisions or corps, they all had distance and depth in the field of battle. Annex A spoke of the zone of military operations and the location of armed forces taking a direct or indirect part in current military operations. That was confusing. For example, did it mean the depth of all the armies of the two Parties to the conflict as far back as main cities and civilian targets? More clarification of the precise meaning of the zone of military operations was needed.

47. Mr. SOLF (United States of America) said he shared some of the doubts that had been expressed by other delegations relating to definitions, but thought the Working Group had done a remarkable job in pointing out the need for clarity in the terms to be used. The Working Group's report was valuable to both Committees II and III as a point of reference and departure. The suggestions in that report would be useful in analysing and selecting the precise texts to be used for the articles with which Committee II was concerned.

48. The ICRC suggestion for the adoption of the words "in the regions where the fighting is taking place" was suitable in most cases. In article 15 of draft Protocol II, it might be useful to add "in areas where medical support has been seriously disrupted by military operations".

49. Mr. KERMODE (New Zealand), Rapporteur of the Joint Working Group, said that the Committee's discussions had highlighted many of the problems that had arisen during the debates within the Group itself. The terms agreed on in the report were a compromise.

The differences of opinion within the Working Group on some of the terms used had been extremely wide. For example, some members had thought that the term "combat area" was meant to include the firing range of intercontinental ballistic missiles. That was why he had suggested earlier the use of the terms "red, blue and green zones".

50. It was true, as had been mentioned by the USSR representative, that the diagram in annex B to the Joint Working Group's report covered a stable situation on the field of battle, and that the lines shown in that diagram would, of course, vary considerably in cases of mobile warfare. On the question whether the word "territory" in annex A covered land, sea and air, he had explained privately to the Norwegian representative why that term had been deliberately chosen. He agreed with the ICRC representative that "in the regions where the fighting is taking place" was a very apt wording but it had been agreed within the Working Group not to use that expression. The definitions of zones of occupation, or occupied territory, had been decided upon only after consultations with military experts from various countries within the Working Group.

51. The representative of the Arab Republic of Egypt was quite right in saying that distances and depth were important military considerations. It was also a fact that in different types of warfare there were considerable variations in those matters. For example, the distances and depth of the opposing forces in jungle warfare would be quite different from those involved in desert warfare. The answer to the question whether cities were included in the military zone of operations was that they were.

52. Mrs. DARIIMAA (Mongolia) said she wondered why there had been so much discussion on definitions of military areas. Surely the principal concern of Committee II was not military definitions but the protection of civilian non-combatants. What in fact was the situation of non-combatants in zones of military occupation, combat areas and contact areas? That was the key question. Civilians understood nothing about military operations. What mattered was how the provisions of the Protocols would protect them in times of armed conflict. As for military definitions, they were best left to the competent authorities in each country.

53. Mr. KERMODE (New Zealand), Rapporteur of the Joint Working Group, said that articles 43 to 53 of draft Protocol II, which had been discussed in Committee III, were designed to give the maximum protection possible to civilian populations in times of internal armed conflicts.

54. The CHAIRMAN invited the Acting Chairman of the Drafting Committee to clarify his earlier statement that the Working Group's report would serve as a point of reference for Committees II and III.

55. Mr. SOLF (United States of America), speaking as Acting Chairman of the Drafting Committee, said that it was intended that Committee II should take note of the Working Group's report and then refer it back to the Drafting Committee with its comments.

It was so agreed.

The meeting rose at 12.35 p.m.

SUMMARY RECORD OF THE FORTY-FOURTH MEETING

held on Wednesday, 2 April 1975, at 3.25 p.m.

Chairman: Mr. NAHLIK (Poland)

EXPRESSION OF SYMPATHY ON THE DEATH OF KING FAISAL OF SAUDI ARABIA

1. The CHAIRMAN, speaking on behalf of the members of the Committee, said he wished to express their sympathy to the delegation of Saudi Arabia on the recent assassination of King Faisal of Saudi Arabia.

On the proposal of the Chairman, the Committee observed a minute's silence.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)*

Article 15 - Civilian medical and religious personnel (concluded)

Paragraph 2

Article 17 - Role of the civilian population and of relief societies (continued)**

Paragraph 1

Article 18 - Identification (continued)**

Paragraph 3

Report of the Drafting Committee (CDDH/II/286)

2. The CHAIRMAN invited the Rapporteur of the Drafting Committee to introduce the report of that Committee on article 15, paragraph 2, article 17, paragraph 1 and article 18, paragraph 3, of draft Protocol I (CDDH/II/286).

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, in the light of the report by the Joint Working Group and subsequent discussion in the Committee, the Drafting Committee had endeavoured to avoid the use of such military terms as "combat zones" and, instead, to find a more general phrasing for situations to which articles 15, paragraph 2, 17, paragraph 1, and 18, paragraph 3 of draft Protocol I would apply.

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* Resumed from the thirty-ninth meeting.

** Resumed from the thirtieth meeting.

4. The following textual changes should be made to the Drafting Committee's report: the last part of article 15, paragraph 2 should read "where civilian services are disrupted by reason of combat activity", the corresponding French text being: "où les services sanitaires civils sont desorganisés en raison d'une activité de combat".

5. As to article 18, paragraph 3, the last words of the French text should read: "ou semblent probables".

6. Mr. CLARK (Australia) asked when the Working Group's report on article 19 of draft Protocol II concerning reprisals would be received.

7. The CHAIRMAN said he would reply to the Australian representative's question after the points relating to combat zones had been settled.

The Drafting Committee's proposals concerning article 15, paragraph 2, article 17, paragraph 1 and article 18, paragraph 3 were adopted by consensus.

Article 15 as a whole was adopted by consensus.[1/]

Article 17 - Role of the civilian population and of relief societies (continued)

Paragraph 2 (CDDH/II/256)

8. Mr. MAKIN (United Kingdom) said that he would like to raise a point in connexion with paragraph 2 of article 17. His delegation was a co-sponsor of the joint amendment in document CDDH/II/256 which should have been headed "Amendment to article 17 (2)", not 17 (3). It felt that it was not right that civilian populations and relief societies should be expected to collect the dead, with the possible exception of those at sea. The procedure for the collection of the dead was adequately laid down in Article 15 of the first Geneva Convention of 1949.

The joint amendment to article 17, paragraph 2 (CDDH/II/256) was adopted by consensus.

Article 17, paragraph 2 as a whole was adopted by consensus.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Report of the Drafting Committee on articles 12 to 18 (CDDH/II/287)

9. The CHAIRMAN invited the Committee to consider the Drafting Committee's report on articles 12 to 18 of draft Protocol II (CDDH/II/287).

1/ For the text of article 15 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

Article 12 - Protection and care (concluded)

Article 12 bis - Protection of persons (concluded)

10. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that article 12 of draft Protocol II corresponded to article 10 of draft Protocol I, while article 12 bis corresponded to article 11 of draft Protocol I. Only two paragraphs of that article had been transferred to draft Protocol II, it being the unanimous view of the Drafting Committee that paragraphs 3 to 6 of article 11 of Draft Protocol I were inappropriate in the context of a non-international conflict. Reference to detained persons in article 12 bis, paragraph 1, should be made in the present tense: "are interned ...", "sont internées ...", "son internadas ...". In the Spanish version a small "p" should replace the capital "P" in the word "partes" except where mention was made of "High Contracting Parties", a correction which applied to the whole Spanish text of document CDDH/II/287.

Articles 12[2/] and 12 bis[3/] were adopted by consensus.

Article 13 - Search and evacuation (concluded)

11. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that article 13 of draft Protocol II had no corresponding provision in draft Protocol I, as its substance had already been dealt with in Article 15 of the first Geneva Convention of 1949 and Article 18 of the second Geneva Convention. Paragraphs 1 and 2 of article 13 had been drafted on the lines of Article 15, paragraph 1 of the first and of Article 18, paragraph 1 of the second Geneva Convention. There were a few small textual changes to be made in article 13. In the English version the word "to" should be deleted from the last line of paragraph 1 and in the second line of paragraph 2, the word "each" should be changed to "an", corresponding changes being made in the other languages.

12. Replying to a question by Mr. URQUIOLA (Philippines), he said that the Drafting Committee further recommended that a note be added to article 13 to the effect that the expression "aged persons and children" in paragraph 3 should be reconsidered after the discussion of the definitions and article 32 of draft Protocol II.

It was so agreed.

2/ For the text of article 12 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

3/ For the text of article 12 bis as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

Article 13 was adopted by consensus.[4/]

Article 14 - Role of the civilian population and of relief societies (concluded)

13. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the article in draft Protocol I corresponding to article 14 was article 17. The main problem in the discussions on article 14 had been the references to the Red Cross Societies and other similar organizations, and it was in that respect that article 14 of draft Protocol II differed essentially from article 17 of draft Protocol I.

14. The first line of paragraph 1 should read "shall care for the wounded and sick" instead of "shall respect the wounded and sick". A comma should be inserted after "organizations" in the sixth line of paragraph 1 at the corresponding place in the French text. Furthermore, he suggested that the words in square brackets in the fourth line of paragraph 2 "and to collect the dead" should be replaced by the phrase adopted for article 17, paragraph 2 of draft Protocol I, namely, "to search for and report the location of the dead".

15. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that in the Russian version of paragraph 1, in the second line, the word used should be "party" and not "country", and in the sixth line the word "organizations" should be changed to "societies".

16. Mr. MAKIN (United Kingdom) said that a comma was necessary after the word "shipwrecked" in the third line of paragraph 2.

17. Mr. SOLF (United States of America), referring to the comment by the Ukrainian representative, said that following the Working Group's report on article 18 of draft Protocol II, it had been decided to use the word "organizations" as being a more comprehensive term and covering a wider range of situations. He accordingly suggested that the word "organizations" be used in the title of article 14 instead of "societies".

18. Mr. MARRIOTT (Canada) said that the term "relief societies" as used in the second sentence of paragraph 1 of article 14 was in his view the correct one since the word "organizations" was only used as an example of such societies.

4/ For the text of article 13 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

19. Mr. MARTIN (Switzerland) said he supported the view of the Canadian representative. If the word "societies" was replaced by the word "organizations" in the title of article 14, it would be necessary to make the same change in the second sentence of paragraph 1 and the first sentence of paragraph 2.

20. Mr. SOLF (United States of America) said he withdrew his suggestion.

21. Mr. CLARK (Australia) said that, for future reference, the situation with regard to article 14, paragraph 3, should be made more explicit in the report of the Drafting Committee through the addition of a foot-note similar to that inserted in respect of article 17 of draft Protocol I (CDDH/II/240/Add.1). The foot-note might be drafted along the following lines: "Some delegations desire to apply paragraph 5 of the ICRC article 17 of Protocol I. As this involves important questions of substance, the Drafting Committee recommends that consideration of this proposal should be deferred until article 17, paragraph 5 has been resolved".

22. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said he agreed that it might be advisable to include such a foot-note. By reserving article 14, paragraph 3, the Drafting Committee's intention had been to leave open the possibility of including in it a provision similar to that which had been left in square brackets in article 17, paragraph 3, of draft Protocol I (CDDH/II/240/Add.1). Consideration of that proposal had been deferred until the question of medical air transport had been discussed.

23. The CHAIRMAN said that if he heard no objection he would take it that the Committee agreed to the insertion of an appropriate foot-note, which would be drafted by the Rapporteur of the Drafting Committee and might be issued as an addendum or corrigendum to the latter's report (CDDH/II/287).

It was so agreed.

24. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he was not convinced that it would be appropriate to replace the phrase in square brackets in article 14, paragraph 2, by the phrase "to search for and report the location of the dead" which had been adopted for article 17, paragraph 2, of draft Protocol I. The Committee should give the matter careful consideration and should not take a hasty decision.

25. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that if the proposal to adopt the same wording as that adopted for article 17, paragraph 2, of draft Protocol I was not agreeable to the Committee as a whole, it would be necessary to seek another solution.

26. The CHAIRMAN asked whether the representative of the Soviet Union wished a vote to be taken on the question. The possible alternatives were either to leave the term "and to collect the dead" in square brackets for the time being, or to replace it by the term adopted for article 17, paragraph 2, of draft Protocol I.

27. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he considered that the most appropriate solution would be to delete the square brackets, thus retaining the phrase "and to collect the dead". Article 17, paragraph 2, of draft Protocol I concerned the situation on land, whereas article 14, paragraph 2, of draft Protocol II concerned the situation at sea or on other waters as well. It was not always easy to determine by observation alone whether human bodies floating in the water were dead or not. Furthermore, water was a moving element. The phrase "to search for and report the location of the dead" had very little sense in that context, whereas the phrase "to collect the dead" covered all cases. In the view of his delegation, the amendment to article 17, paragraph 2, of draft Protocol I (CDDH/II/256) had been adopted too hastily.

28. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that both article 17, paragraph 2, of draft Protocol I and article 14, paragraph 2, of draft Protocol II applied to land rather than to water, and that the reasons for which the wording of the former had been changed remained valid for the latter. In the case of both paragraphs, a term must be found that would cover appropriately the situation on land.

29. Mr. DEDDES (Netherlands) said he could not envisage that the civilian population and relief societies would have the possibility of looking for the sick, the wounded and the dead at sea or on other waters; in practice, the provision would no doubt apply only on land.

30. Mr. MAKIN (United Kingdom) said that the difficulty no doubt arose from the fact that the wording of article 14, paragraph 3, which would apply at sea, had not yet been worked out. Article 13, paragraph 1, of draft Protocol II placed the Parties to the conflict under the obligation to search for and collect the wounded, the sick and the dead at all times on land, and article 14, paragraph 2, enabled those parties to appeal to the civilian population and to relief societies to undertake that task for them. Instead of adopting for article 14, paragraph 2, the wording that had been adopted for the corresponding article in draft Protocol I, it might perhaps be preferable to use the term which appeared in article 13, paragraph 1, namely "to search for the dead, prevent their being despoiled, and decently dispose of them". Alternatively, the phrase "and to collect the dead" might simply be deleted.

31. The CHAIRMAN said that there were various courses open to the Committee. A vote could be taken on one or other of the oral proposals made, or the phrase in question could be left in square brackets until paragraph 3 had been considered, at which time the Drafting Committee could be requested to work out a final text.

32. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said he did not consider that it would be necessary for the Drafting Committee to meet in order to deal with the question. The alternatives before the Committee were clear: to delete the phrase in square brackets, to delete the square brackets themselves, to adopt the wording adopted for article 17, paragraph 2 of draft Protocol I, or to adopt wording similar to that used in article 13, paragraph 1 of draft Protocol II.

33. The CHAIRMAN invited the USSR, United Kingdom and United States delegations to consult the Rapporteur of the Drafting Committee during the interval with a view to proposing an agreed solution.

The meeting was suspended at 4.35 p.m. and resumed at 5.5 p.m.

34. The CHAIRMAN invited the United Kingdom representative to report on the informal consultations held during the interval.

35. Mr. MAKIN (United Kingdom), speaking on behalf of the representatives who had participated in the consultations, proposed that the Committee should adopt the following solution in respect of article 14, paragraph 2: the square brackets should be deleted and the phrase "and to collect the dead", which was a summary of the last phrase of article 13, paragraph 1, should be retained; the phrase "and the shipwrecked" should be placed in square brackets because paragraph 2 was intended to deal with the situation on land, as would become apparent when the text of paragraph 3 had been worked out.

36. With regard to article 14, paragraph 3, the representatives who had participated in the consultations considered that it would be helpful to replace the word "/ Reserved 7" by the text of article 17, paragraph 3, of draft Protocol I as it appeared in square brackets in document CDDH/II/240/Add.1, and to insert a foot-note along the lines suggested by the Australian representative, so that it would be clear that the decision on article 14, paragraph 3 of draft Protocol II was deferred until a decision had been taken on article 17, paragraph 3, of draft Protocol I. The decision on the term "and the shipwrecked", in paragraph 2 of both those articles, would depend on the wording adopted in both cases for paragraph 3.

37. Mr. MARRIOTT (Canada) said that in order to avoid the possibility of the question being raised at a later date, he would welcome a ruling by the Chairman as to whether the solution proposed by the United Kingdom representative affected the substance of the article or only the drafting. Under rule 29 of the rules of procedure it would be necessary to submit a written amendment for consideration by the Committee if a question of substance was involved.

38. The CHAIRMAN said that under the last sentence of rule 29 of the rules of procedure the Committee could agree to accept the amendment proposed by the United Kingdom representative, even though it had not been submitted in advance. He considered it to be a compromise solution which attempted to reconcile the different views expressed.

39. Mr. CLARK (Australia) said that his delegation had no particular objection to the solution proposed by the United Kingdom representative. However, paragraph 4 of the Australian amendment to article 14 of draft Protocol II (CDDH/II/227), which had not yet been discussed by the Committee, sought to extend the application of the provision to vehicles and aircraft. He accordingly requested the Rapporteur of the Drafting Committee to include a reference to both vehicles and aircraft in the text to be placed in square brackets under article 14, paragraph 3.

40. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said it was his understanding that the Australian delegation had withdrawn its proposal concerning vehicles.

41. Mr. CLARK (Australia) said that that was the case in respect of the corresponding article of draft Protocol I, but the situation was not the same in draft Protocol II; and since paragraph 4 of the Australian amendment to article 14 had not yet been discussed, his delegation wished for the time being to maintain its stand with regard to vehicles.

42. The CHAIRMAN asked whether the Committee agreed to adopt by consensus article 14 with the amendments suggested by the United Kingdom representative, on the understanding that the necessary corrections would be made in the text and the appropriate explanations given in a foot-note.

Article 14 was adopted by consensus on that understanding.[5/]

5/ For the text of article 14 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

Article 15 - Protection of medical and religious personnel (concluded)

43. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the text of article 15 had been based mainly on the text proposed by the Working Group under the Chairmanship of Mr. Czank, representative of Hungary. In the Spanish version of paragraph 2, the phrase "en el desempeño de sus funciones" should follow the phrase "el personal sanitario".

44. Mr. NOVAES de OLIVEIRA (Brazil) said that in the Drafting Committee meeting that morning the wording of paragraph 1 had been amended to read "... performance of their duties, nor shall they be compelled ...".

45. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that by definition medical personnel would lose their status if they engaged in other tasks. The provision was designed only to ensure protection against compulsion and it had therefore been decided to leave the wording as it stood in the Working Group's report.

46. The CHAIRMAN invited the Committee to adopt the text of article 15, with the drafting change to the Spanish version indicated by the Rapporteur.

Article 15 was adopted by consensus.6/

Article 16 - General protection of medical duties (concluded)

47. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the text of paragraphs 1 and 2 was a repetition of the corresponding provisions of Protocol I, without the reference to the Conventions in paragraph 2, as the Conventions did not apply, except for article 3.

48. In the English version of paragraph 2 there should be a comma after the word "from" in the third line. The comma after the word "by" in the third line should be deleted.

49. The CHAIRMAN invited the Committee to adopt paragraphs 1 and 2 of article 16, as thus amended.

Paragraphs 1 and 2 of article 16 were adopted by consensus.

6/ For the text of article 15 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

50. The CHAIRMAN invited the representative of Denmark, Chairman of the Working Group on article 16, paragraphs 3 and 4, to introduce the Working Group's proposed new paragraphs 3 and 4, (CDDH/II/288).

51. Mr. SCHULTZ (Denmark) said that at the forty-first (CDDH/II/SR.41) and forty-second (CDDH/II/SR.42) meetings Committee II had discussed document CDDH/II/267 containing the Working Group's proposed wording of article 16, paragraph 3, but the text had not received much support. A new Working Group had therefore been set up and had held three meetings on 25 and 26 March, in which the representatives of the following countries had taken part: Arab Republic of Egypt, Australia, Byelorussian Soviet Socialist Republic, Brazil, Canada, Denmark, Finland, France, Federal Republic of Germany, Indonesia, Japan, Mongolia, Nigeria, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia and Zaire. A number of other delegations had sent observers. The proposed text had been adopted with the full agreement of the Working Group. He expressed his cordial thanks to the members of the Group for the spirit of good will in which the discussions had been held.

52. The terms of reference of the Working Group had been to produce a draft text with a reasonable chance of achieving a consensus in the Committee as a whole. It had therefore not discussed the deletion of paragraph 3, as that would have been outside its terms of reference. The written proposal of the Working Group (CDDH/II/267) had been withdrawn and the first part of the discussions had been based on a working paper by Mongolia, two proposals by the United States of America, one by Finland and one by the Chairman of the Group. Most of the proposals had, however, been too detailed, and the Working Group had considered that the text should be short and general, as in the rest of Protocol II. The final text contained in document CDDH/II/288 had been based on a revised version of the Mongolian text and proposals by the United Kingdom and Australian representatives.

53. The text contained in document CDDH/II/288 consisted of two new paragraphs. Paragraph 3, based on the United Kingdom proposal, stipulated that the professional obligations of persons engaged in medical activities regarding information which they might acquire concerning the wounded and sick under their care should, subject to national law, be respected. Paragraph 4, based on the revised Mongolian text, stated that, subject to national law, no person engaged in medical activities might be penalized in any way by any Party to the conflict for refusing or failing to give information concerning the wounded and sick who were, or who had been, under his care. The provision had been divided into two paragraphs in the interests of brevity and clarity.

54. The emphasis of the proposal was on protection for the wounded and sick, for individual medical personnel and for the medical profession. The phrase "subject to national law" had been included as a clear statement of the principle of the sovereignty of States, stressed in article 4, now adopted by Committee I. The phrase "national law prior to the beginning of the conflict" had been deleted, so that every State could introduce and enforce new legislation after the beginning of the conflict.

55. The text was, of course, a compromise proposal and consequently had weaknesses, but it was to be hoped that Committee II would find it more acceptable than the text submitted by the first Working Group, and would find the adoption of the text a better solution than the deletion of article 16, paragraph 3.

56. The CHAIRMAN thanked the Chairman and all members of the Working Group for their valuable contribution and invited the Committee to consider the text.

57. Mr. AL-FALLOUJI (Iraq) said that his delegation welcomed the proposed text. His delegation's position with regard to draft Protocol II was well known but, despite reservations, it was willing to collaborate fully in the discussions for which the text provided a most helpful basis. He was in favour of the division into two paragraphs, one dealing with the principle of protection and the other with non-penalization. The text was a compromise solution and therefore could not be entirely satisfactory to all delegations, but it was clear and simple and contained basically humanitarian considerations. The inclusion of the phrase "subject to national law" was of prime importance.

58. Mr. ROSENBLAD (Sweden) said that he wished to support the representative of Iraq. In a non-international armed conflict it might indeed often prove extremely difficult to strike the balance between the principles of sovereignty of States and, on the other hand, a reasoning based on purely humanitarian considerations. Basically, that was also a question of whether Protocol II would be ratified by the majority of States and whether it would be applied in non-international armed conflicts. Much time had been devoted to that very important problem by Committee II and it had assumed the duty of respecting a doctor who did not wish to disclose the identity of the wounded and sick who were, or who had been, under his care.

59. In his view the Working Group, which had been skilfully chaired by the representative of Denmark, had arrived at a good compromise solution. It was balanced and there were good reasons for supporting it. He therefore formally proposed that the Working Group's proposal concerning article 16, paragraphs 3 and 4 (CDDH/II/288) be adopted by consensus by the Committee.

60. Mr. MARRIOTT (Canada) said he also shared the views of the representative of Iraq. He congratulated the Working Group on the clear, simple wording which was an indispensable aspect of Protocol II. He was in favour of the division into two paragraphs, as it introduced an element of philosophy advantageous to Protocol II.

61. Mr. SOLF (United States of America) said that his delegation supported the proposed text. He suggested that in the last line of the English version of paragraph 4, commas might be added after the words "are" and "been".

62. Mr. PASSALACQUA (Argentina) said that his delegation also supported the improved wording of the article, although at one point it had opposed it. He suggested that in paragraph 4 of the Spanish version the word "Partes" should be written "partes", as in the corrected version of article 12 bis in document CDDH/II/287.

63. The CHAIRMAN invited the Committee to adopt the text of the proposed new paragraphs 3 and 4 with the drafting amendments proposed.

Paragraphs 3 and 4 of article 16, as amended, were adopted unanimously.

Article 16 as a whole, as amended, was adopted by consensus.7/

Article 17 - Protection of medical units and transports

64. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that article 17 of draft Protocol II corresponded to articles 12 and 13 of draft Protocol I. The foot-note emphasized that an effort had been made to bring article 17 as close as possible to article 13 of draft Protocol I. The change which had been made in paragraph 3 (d) was self-explanatory.

65. A second foot-note, which appeared in the French version, should also be inserted in the other versions. It concerned the words "humanitarian function", which had been used in preference to "humanitarian duties" which appeared in Article 21 of the first Geneva Convention of 1949. That did not however involve a change of substance.

66. According to a decision taken in Committee I, the words "armed forces" in paragraph 3 (d) should be written "Armed Forces". There should be a comma after the word "reasons" in paragraph 3 (d), and the comma after the word "persons" should be deleted. Paragraph 3 (c) of the French text should start "le fait que se trouvent ..." instead of "le fait qu'il se trouve", to bring it into line with Article 21 of the first Geneva Convention of 1949.

7/ For the text of article 16 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

67. Mr. MARRIOTT (Canada) said the Rapporteur had referred to the phrase "humanitarian function"; perhaps he had forgotten that the Drafting Committee had decided to make the phrase plural - "humanitarian functions". In the last line of paragraph 2 of the French text, the word "demeure" should read "demeurée".

68. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, agreed that that was a correct statement of the decisions taken by the Drafting Committee.

69. Mr. ONISHI (Japan) said that article 17 concerned medical units and transports, but the question of medical transports in draft Protocol I was still being discussed in the Working Group. He considered it would be advisable to wait until after the discussion on medical transports in draft Protocol I before taking a decision on article 17 of draft Protocol II.

70. Mr. MAKIN (United Kingdom) said he thought that the title of the article and paragraphs 1 and 2 should refer to "transport" in the singular, in accordance with the ICRC definition and the wording of paragraph 3.

71. He agreed with the representative of Japan that a decision should be deferred until the discussion of the question of medical transports had been completed, especially as the Committee might then deal with transport other than air transport.

72. Mr. MARTIN (Switzerland), referring to the foot-note on the use of the word "duties" instead of "functions" in paragraph 2, said that so far it had been agreed that medical units consisted not only of personnel but also of transport, buildings, etc. and the word "duties" would be inappropriate in that context. He would therefore prefer the word "function". The question could perhaps be deferred until the discussion on definitions.

73. Mr. SOLF (United States of America), referring to the suggestion by the representative of Japan, said it was true that the Committee might conceivably wish to modify the wording of article 17 after it had considered the provisions of draft Protocol I relating to medical transport. He was confident, however, that a two-thirds majority would be in favour of reconsideration, should it become apparent that a mistake had been made. Consequently, in order to expedite the Committee's work, he proposed that article 17 be approved provisionally, as had been done for some of the definitions.

74. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) supported the proposal by the United States representative. The wording of article 17 might require modification once the definitions had been adopted, but its substance was acceptable.

75. Mr. CLARK (Australia) said that, although he shared the doubts of the United Kingdom and Japanese representatives, he considered that it would be judicious to adopt the proposal by the United States representative.

76. Mr. ROSENBLAD (Sweden) said that he, too, supported that proposal.

77. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to adopt article 17 provisionally, on the understanding that its wording might require modification once the Committee had considered the question of medical transport.

It was so agreed.

Article 18 - The distinctive emblem and signals

78. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the text incorporated amendments which had been made as a result of the Working Group's report. The title should read "The distinctive emblem and signals". The sentence beginning "In addition to ...", in paragraph 1, should be made into a new paragraph 2 and the present paragraph 2 renumbered accordingly. In the Spanish version, the first words of paragraph 1 should read "Bajo la dirección"; the second sentence of that paragraph should begin with the words "Dicho signo deberá respetarse ..." and in paragraph 2 the word "supervisar" should be substituted for the word "controlar".

79. Mr. URQUIOLA (Philippines) said that he had understood that in the Working Group it had been agreed that, in the last sentence of paragraph 2, the word "distinctive" should be inserted also before "signals".

80. Mr. MAKIN (United Kingdom) requested that the word "transport" should appear in the singular, as in article 17.

81. Mr. SCHULTZ (Denmark) said that, as the former Chairman of the Working Group, he found the text acceptable and gave it his support.

82. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, replying to the representative of the Philippines, said that, as he recollected, it had been thought unnecessary, after the rearrangement of the paragraphs, to add the word "distinctive" before "signals" in paragraph 2.

83. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) asked what had been decided concerning the proposal by the United Kingdom representative to use the word "transport" in the singular. The article was an important one and it was not reasonable to hurry through the discussion on key matters.

84. The CHAIRMAN replied that he had thought that the article had already been discussed at length on previous occasions and the amendment appeared to be of a drafting nature and not one of substance.

85. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that it was only a linguistic point and if the "s" in "transports" was omitted, it would surely have no far-reaching effect on the substance.

86. Mr. SOLF (United States of America) said that he was not sure if that change was correct and would like to give it further consideration, unless it was referred back to the Drafting Committee. He wished to find other precedents, as "transports" appeared in the plural in the Conventions.

87. The CHAIRMAN said he would prefer not to refer the matter to the Drafting Committee. He suggested that delegations should confer among themselves and decide on the drafting changes at the Committee's forty-fifth meeting.

It was so agreed.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE FORTY-FIFTH MEETING

held on Thursday, 3 April 1975, at 10.15 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Report of the Drafting Committee on articles 12 to 18 (CDDH/II/287) (concluded)

Article 18 - The distinctive emblem and signals (concluded)

1. The CHAIRMAN recalled that the United Kingdom representative had proposed an oral amendment to article 18 at the forty-fourth meeting (CDDH/II/SR.44).

2. Mr. MAKIN (United Kingdom) said he had proposed that the word "transports" in paragraph 1 of the Drafting Committee's text for article 18 should be replaced by the word "transport" in the singular. That was a purely drafting amendment and, in his opinion, did not affect the substance of the article.

3. After a brief discussion in which Mr. KRASNOPEEV (Union of Soviet Socialist Republics), Mr. SOLF (United States of America), Mr. SCHULTZ (Denmark), Mr. MARTIN (Switzerland), Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, and the CHAIRMAN took part, Mr. MAKIN (United Kingdom) said he would withdraw his oral proposal, since it concerned the English text only.

4. The CHAIRMAN suggested that the Committee should adopt by consensus article 18, as amended.

It was so agreed.[1/]

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Articles 26 to 32 - Medical air transport

Article 26 - Sectors controlled by national and allied forces

Article 27 - Contact zone

[1/] For the text of article 18 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

Article 28 - Sectors controlled by enemy forces

Article 29 - Restrictions

Article 30 - Agreements and notifications

Article 31 - Landing

Article 32 - States not parties to the conflict

5. The CHAIRMAN invited the ICRC representative to introduce in a general way the texts proposed by his organization for articles 26 to 32 of Part II, Section II, Chapter II (Medical air transport).

6. Mr. de MULINEN (International Committee of the Red Cross) said that Chapter II, as drafted by the ICRC, contained seven articles, which could be divided into three parts. Articles 26, 27 and 28 expressed the basic concept of the ICRC concerning the comprehensive rule which should govern medical air transport, depending on the areas and surfaces over which it flew. Articles 29, 30 and 31 contained detailed provisions concerning the practical application of that rule. Article 32 was a special article designed to take account of the needs of neutral States which were not parties to the conflict.

7. There were two factors which the Committee ought to bear in mind. First, a distinction should be drawn between those sectors which were clearly under the control of friendly forces (article 26) and those which were clearly under the control of enemy forces (article 28). In the former situation, no agreement was required, but in the latter prior agreement was absolutely essential where aircraft were to overfly the sector in question. The situation in the intermediate zone (article 27) was more complicated. At the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, in 1972, consideration had been given to using the terms "battle area" and "combat zone", but the ICRC had finally preferred to use the single term "contact zone".

8. Lastly, while the ICRC text for article 26 spoke of "areas of land or sea", he could see the need for greater precision, as proposed in article 26 bis in amendment CDDH/II/82/Rev.1.

9. The CHAIRMAN invited the United States representative to introduce the amendment to draft Protocol I proposed by Belgium, Canada, France, the Netherlands, Norway, United Kingdom of Great Britain and Northern Ireland and the United States of America (CDDH/II/82/Rev.1).

10. Mr. SOLF (United States of America) recalled that 105 years previously, 160 wounded soldiers of France had been successfully evacuated from besieged Paris by balloon, thus for the first time making rapid medical evacuation by air a reality. It was an undisputed medical fact that the sooner a badly wounded person came under a surgeon's care, the better were his chances of recovery and survival. It was also recognized as an undisputed military fact that medical aircraft posed a security threat if they were used for military reconnaissance. Accordingly, throughout the history of the development of medical aircraft, their role in the search of the battlefield for wounded had been restricted.

11. In 1929, on the initiative of France and the United Kingdom of Great Britain and Northern Ireland, and on the basis of the experience of the First World War, the predecessor of the present Conference had developed what it believed to be a reasonable régime, which provided for rapid evacuation by air and also met the requirements of military security. Under the provisions of Article 18 of the Geneva Convention of July 27, 1929, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, medical aircraft had to be painted white and to display the Red Cross clearly and visibly. They were free to fly up to the line of medical clearing or dressing stations. Forward of that line, and within areas controlled by the adverse Party, special agreement was required.

12. Experience with Article 18 during the Second World War had not been fortunate, however, and that for two reasons: First, parties had sought to use the aircraft for logistic purposes when they were not employed on medical evacuation. Secondly, even when dedicated medical aircraft were used, the distinctive emblem could not be recognized at distances within the range of anti-aircraft weapons.

13. Thus, in 1949, the pattern adopted in the first, second and fourth Geneva Conventions had been to provide protection only while medical aircraft were flying in accordance with an agreed flight plan, even when operating deep in friendly territory. Flights over enemy territory were expressly prohibited in the absence of an agreement. Such agreements had not been easy to achieve, since no ready means of communication had been provided. The effect of the 1949 régime, therefore, had been to keep medical aircraft, whether temporary or permanent, grounded unless the side operating the aircraft possessed air superiority. That régime was generally believed to be totally unsatisfactory.

14. Technological developments, however, had made a new régime feasible. For example, the visual range of recognition of the distinctive emblem could be somewhat extended by means of a light signal. A readily available system of radar signals based on SSR (secondary surveillance radar), which could be adapted to any

air traffic control and radar target acquisition system, had extended the means of identification to match the range of anti-aircraft weapons. Moreover, radar offered another means of extending recognition and communications between adversaries in those cases where agreements or notifications were required. The second technological development had been the widespread use of helicopters and other light aircraft capable of operating almost as effectively as ground ambulances in the battle area. Such aircraft could evacuate the seriously wounded of either side to a surgical hospital within a matter of minutes, whereas hours might be required to accomplish the same result by land transport.

15. At the second session of the Conference of Government Experts, in 1972, his delegation had proposed a new régime, after technical experts had agreed that it was feasible to extend the recognition of medical aircraft by means of lights, radar and radio. That proposal had been extensively debated but had not achieved a consensus. Agreement had been reached, however, on a compromise plan proposed by the German Democratic Republic, Sweden and the United Kingdom, which formed the basis of the present ICRC text and of the amendment which he was now submitting. The basic features of that amendment were to be found in the table of regulations for flight over various sectors, on page 35 of the Commentary on the draft Additional Protocols to the Geneva Conventions of August 12, 1949 (CDDH/3).

16. Article 26 was the basic article providing protection. As supplemented by article 26 bis (CDDH/II/82/Rev.1), it was all that was needed to provide protection for medical aircraft operating on or over friendly territory on land. It thus took care of long-range medical evacuation from a combat area or within friendly territory. Article 26 bis made a necessary distinction between land and sea, and that was, in fact, the only real and important difference between the new proposal and the ICRC text. On land there were generally well-defined areas under the physical control of one Party. Thus it was reasonable, on land, to refer to such areas as being free for the use of friendly medical aircraft without requiring agreement with the adversary. At sea, however, the situation was different, since there might be areas which were under the control of the adversary, such as the sea around island bases, or waters adjacent to defended areas of the territorial sea, or areas along some straits. Over all those areas, medical aircraft could not fly without prior agreement. The rest of the sea was free for neutral and humanitarian ships and aircraft. Accordingly, a reasonable régime at sea was to permit flights without agreement except where the adverse Party was in control. The term "physical control" was used in order to avoid the use of terms having legal connotations.

17. Referring to article 27 - Contact zone (CDDH/II/82/Rev.1) - he said that at the 1972 session of the Conference of Government Experts, the most sensitive and most debated issue had been article 25 - Removal of wounded from the battle area - and the text adopted for that article had been a compromise, suggested by the German Democratic Republic, Swedish and the United Kingdom delegations.

18. The 1972 text provided that in the forward part of the battle area under the control of friendly forces, the protection of medical aircraft "can be effective only by agreement between the local military authorities ... . Even if prior agreement has not been obtained, a medical aircraft shall not be the object of attack by any person who has positively recognized it as a medical aircraft".2/

19. Later, in 1973, the term "forward part of the battle area" had been changed to "contact zone". In his article entitled "Signalling and Identification of Medical Personnel and Material" (International Review of the Red Cross, September 1972, p.488), Mr. de Mulinen had aptly described the forward part of the battle area or contact zone as follows:

> "... in the 'forward part' are to be found units in direct contact with the enemy. ... the forces are exposed to direct enemy vision and hence to direct firing. In the 'rear part' of the battle area are the units belonging to the second echelon and the reserve units of the troops in hostile contact. They are less exposed to enemy vision and firing, and there is, therefore, greater freedom and movement."

That was what the co-sponsors of the amendments before the Committee (CDDH/II/82/Rev.1) meant by their definition in article 27, paragraph 2.

20. Article 28 - Areas controlled by enemy forces - provided that protection of medical aircraft over all land or sea areas physically controlled by an adverse Party was conditional upon prior agreement.

21. Should a medical aircraft, through inadvertence or urgent necessity, fly over such areas, it must do whatever was possible to identify itself. The enemy was urged to summon it to land before attacking it. If an intruding aircraft disregarded an order to land, it forfeited its qualified protection.

2/ See Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, second session, Report on the Work of the Conference, vol. I, p.46.

22. Referring to article 29 - Restrictions - he said that apart from the fear that the safety of medical aircraft could not be assured against attack from distances which exceeded the range of recognition of the distinctive emblem, an important factor in limitations on the protection of medical aircraft under present law was the concern felt over the security threat posed by possible abuses of protected status. That same concern had been amply shown during the debate on medical aircraft at the 1972 session of the Conference of Government Experts.

23. He pointed out that the pattern of measures provided in the Geneva Conventions to ensure against abuse of medical protected status were: first, loss of protection when the threat to security was moderate. Thus Articles 21, 22 and 35 of the first Geneva Convention of 1949 and Articles 34 and 35 of the second Convention simply provided for loss of protection if medical units were "used to commit, outside their humanitarian duties, acts harmful to the enemy.". Second, with respect to extremely dangerous threats to security, the Conventions imposed explicit prohibition. Because of the threat to security of warships, Article 34 prohibited the possession of secret codes by hospital ships. Article 36 of the first Geneva Convention of 1949 and Article 39 of the second Convention prohibited overflight of enemy-occupied territory. Those explicit prohibitions implied that their violation was a breach of the Conventions, not merely a condition entailing loss of protection.

24. Agreements on the basic protection of medical aircraft without the inflexible necessity of an agreed flight plan was achieved only by strengthening the conditions intended to ensure that medical aircraft would not be used for acts harmful to the enemy and to minimize their capability to perform such acts. Those conditions, as they appeared in the text of Commission I of the 1972 session of the Conference of Government Experts were, first, prohibiting Parties to the conflict from using their medical aircraft in order to acquire any military advantage (Article 24, paragraph 3). Second, a statement that medical aircraft might not be used to shield military objectives, based on the first paragraph of Article 23 of the third Geneva Convention of 1949, and Article 28 of the fourth Convention (Article 24, paragraph 3). Third, prohibition against carrying intelligence-gathering equipment (Article 24, paragraph 4). Fourth, prohibition against carrying persons, supplies, or equipment not necessary to the performance of the medical mission (Article 24, paragraph 4). Thus, the passengers of medical aircraft were limited to medical personnel and the sick and wounded. Their supplies and equipment were limited to those necessary for the collection, transport and care of the wounded and sick. Fifth, prohibition against carrying arms other than those belonging to the wounded and sick or necessary for

the defence of the medical personnel and the wounded and sick (Article 24, paragraph 5). Lastly, the exclusion of search as a part of the medical air mission on land (Article 23, paragraph 1 (d)) was intended to preclude the flying of a search pattern in the battle area, which would indirectly be considered by the enemy to be a reconnaissance flight.

25. He pointed out that a review of the security provisions of draft Protocol I indicated that most of the measures deemed essential could be spelled out by implication. Inasmuch as they must be observed and enforced by non-lawyers under the stress of combat, the demands of clarity suggested that they be collected in one place in the Protocol.

26. Referring to articles 30, 31 and 32 of the joint amendment (CDDH/II/82/Rev.1), he said that he would introduce them after discussion of articles 26 to 29.

27. The CHAIRMAN declared open the general debate on Part II, Section II, Chapter II of the ICRC draft and amendment CDDH/II/82/Rev.1.

28. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), speaking as an army doctor, emphasized the extraordinary importance of draft Protocol I, chapter II, on medical air transport.

29. Reviewing the history of the subject, he pointed out that the 1949 Geneva Conventions laid down that the Party to the conflict using medical aircraft should notify the adverse Party even if the aircraft flew over a sector under its own control or under that of its allies. The fact that medical air transport might be subject to attack constituting a violation of basic humanitarian principles had not been condemned by the 1949 Geneva Conventions. The problem of the protection of medical air transport had been discussed repeatedly at ICRC conferences, and a Belgian General had described the difficulties faced by such transport.

30. The mortality figures for sick and wounded casualties had been greatly reduced since the introduction of helicopters for their removal to safety.

31. The Committee was faced by a very important problem - one which had been discussed at length by the 1971 and 1972 sessions of the Conference of Government Experts. The Committee should take as a basis for its discussion the ICRC text in draft Protocol I and consider the amendments now before it in document CDDH/II/82/Rev.1, which he suggested should be discussed paragraph by paragraph.

32. Referring to the proposed new article 26 bis, he asked why the co-sponsors had used the word "operate" rather than the words "fly over".

33. The ICRC draft of article 27 referred to "land or sea contact zone", whereas paragraph 2 of article 27 as proposed in the amendment stated that "contact zone means any area on land ...".

34. Article 28 of the proposed amendment stated: "Should a medical aircraft, in the absence of an agreement, fly over such areas through inadvertence or by force of urgent necessity, it shall make every effort to give notice of the flight and to identify itself." That was an unrealistic statement. What was meant by "urgent necessity"? Another statement in the same article went without saying, namely: "The adverse Party shall, so far as possible, respect such medical aircraft."

35. Mrs. DARIIMAA (Mongolia) said that her delegation supported the ICRC text of Part II, Section II, Chapter II, which was an extremely important chapter. The care of the wounded and sick could only be effective if it was provided in good time. The provision of speedy care, which made possible the return of the wounded and sick to active service, was, however, a somewhat delicate issue when the Parties to the conflict possessed unequal medical air transport facilities. There was no problem when both parties were technologically advanced and properly equipped, but a less developed country was at a disadvantage when confronting an industrialized country which had helicopters and other aircraft at its disposal. Consideration should be given to the possibility of providing that the medical air transport of the technologically advanced side, or of a friendly State, should be made available on humanitarian grounds to the less advanced side, thereby ensuring some balance in the care of the wounded and sick. Failing such provision, she feared that the ratio of mortality rates between the two sides might be as wide as 9 : 1 and she would like to see a considerable narrowing of that gap.

36. Mr. KOKAI (Federal Republic of Germany) said that his delegation supported the United States representative's introductory statement. The chapter provided an opportunity for the Conference to show its ability to solve modern humanitarian problems of a technological nature.

37. His delegation was prepared to take part in a detailed discussion of the various articles before the Committee, during which such issues as whether or not to retain the reference in separate articles to different areas or zones, and whether to draft rules governing flights with or without the agreement of the adverse party, might be considered.

38. The CHAIRMAN invited the Committee to consider article by article the articles suggested in the joint amendment (CDDH/II/82/Rev.1). Article 26 in amendment CDDH/II/82/Rev.1 was an introductory article for which there was no corresponding text in the ICRC draft.

Proposed new Article 26 - General protection of medical aircraft (CDDH/II/82/Rev.1)

39. Mr. SANCHEZ DEL RIO (Spain) said that the proposed article 26 was useful in that it made general provision for the protection of medical aircraft. Either of the terms "Subject to" or "In accordance with" at the beginning of the article would be acceptable, but the use of both terms together was superfluous and, at least in the French and Spanish texts, confusing. He suggested that the article should be drafted as follows:

> "Medical aircraft of a Party to the conflict shall be respected and protected in accordance with the provisions of this Chapter."

He appealed to English-speaking representatives to maintain a flexible attitude to minor amendments introduced by French and Spanish-speaking delegations to English original texts, and thus avoid difficulties such as those which had arisen in the case of the word "should".

40. Mr. MARTINS (Nigeria) said that the introductory article had great appeal but failed to go far enough, since it gave the impression that the protection envisaged was limited to the Parties to the conflict. He would have liked the article to read:

> "Subject to and in accordance with the provisions of this Chapter, all medical aircraft shall be respected and protected."

Such wording would make it possible for the weaker side to appeal to a neutral State for help in the evacuation of the wounded and sick and would thus help to meet the point raised by the representative of Mongolia.

41. Mr. SOLF (United States of America) wished to assure the representative of Spain that the English-speaking delegations would be flexible in seeking to avoid difficulties such as that which had arisen over the word "should". It might well be correct that the terms "subject to" and "in accordance with" had the same meaning, but it was desired to make it completely clear that while indicating the situations in which there was loss of protection, Chapter II did provide for such protection.

42. Replying to the point raised by the representatives of Mongolia and Nigeria, he said that Chapter II did not necessarily include everything pertaining to medical aircraft. Article 9, paragraph 2 provided for the lending of transport by a State not a Party to the conflict, by a recognized and authorized aid society or by an impartial international humanitarian organization. That had been a key point in the text prepared by the Conference of Government Experts with a view to providing less-developed countries with medical aircraft facilities.

43. With regard to the Nigerian representative's amendment, he said that the article had to be read in conjunction with the provision in article 21 that medical aircraft must be under the control of a Party to the conflict. It was immaterial where the aircraft came from, but a Party to the conflict had to co-ordinate its movements and ensure that it complied with the requirements of international law and did not misuse its distinctive emblem or signals. It had been the rule since 1864 that the wounded and sick had to be treated without discrimination. That rule would apply to the rapid evacuation of the wounded or sick by medical aircraft of both Parties to the conflict. The sponsors of amendment CDDH/II/82/Rev.1 had gone over the matter in great detail and would be glad to offer any explanations that might be required.

44. Mr. ROSENBLAD (Sweden) said that, in the light of the United States representative's statement, it might be preferable to refer in article 26 to "the provisions of this Part" rather than to "the provisions of this Chapter". It might also be useful to redraft the article slightly in the light of the discussion, and he would be pleased to submit an amendment in the Drafting Committee to make it clear that all medical aircraft should be respected and protected, and to delete the words "and in accordance with".

45. Mr. MALLIK (Poland) said that he agreed with previous speakers that exclusive reference to the protection referred to in Chapter II was a very narrow concept. It might be more appropriate to refer to the whole of Protocol I, since it contained a reference to the distinctive emblem. It should be borne in mind that the Protocol was intended to supplement, and not to amend, the Geneva Conventions. The narrow framework suggested might give the erroneous impression that the Conventions had been superseded.

46. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that he shared the Polish representative's view that the reference should be to the Protocol as a whole rather than to Chapter II only, since article 9, paragraph 2 was also relevant. But it seemed unnecessary to refer to the Geneva Conventions, since article 26 under discussion related to a series of entirely new questions. Further thought should, however, be given to the matter.

47. Mr. de MULINEN (International Committee of the Red Cross) said that if the proposed article was to be adopted, it would probably be useful to refer to amendment CDDH/II/265 submitted by Hungary, which clearly showed the need for a co-ordinated system of protection for medical vehicles, ships and aircraft. The special group appointed to deal with articles 21 to 25 had also prepared a draft text covering the protection of vehicles. It might be useful for the matter to be discussed in a Working Group, taking document CDDH/II/265 as a basis.

48. Mr. SOLF (United States of America) said that the sponsors of amendment CDDH/II/82/Rev.1 would give serious consideration to the comments made by other delegations. The Polish representative had rightly pointed out that other provisions of draft Protocol I were relevant to the issue of protection. The Working Group was at present considering whether there should be a general section on protection, as proposed by the Hungarian delegation in amendment CDDH/II/265, and the decision on that issue would control the whole of the provisions on protection. Draft amendments CDDH/II/79, 80 and 82 had been based on a provision for protection for each element - land, sea and air - because the provisions for loss of protection in the Conventions and in draft Protocol I were entirely different. The proposed article 26 referred only to protection and not to the general provisions of Part II or of draft Protocol I as a whole - which did, of course, impinge on the question of medical air transport as on every other kind of transport. Those matters should be considered in the Working Group.

49. The concept under consideration was quite different from the treatment of medical aircraft in the Geneva Conventions. Although there would be some common ground between Protocol I and the Conventions, it would create confusion for some States which would become parties to the Protocol if a reference was made to the Conventions with respect to medical aircraft.

50. Mr. MALLIK (Poland) said that if there was to be a reference to draft Protocol I as a whole it would hardly be necessary to refer to the Conventions, since the Protocol would supplement the Conventions and would apply to all States which had ratified it.

51. The CHAIRMAN said that the Working Group, which was to meet that afternoon, should take note of all the comments made on article 26 in the Committee. The United States representative, as a co-sponsor of the amendment (CDDH/II/82/Rev.1), should contact the other co-sponsors with a view to taking a stand at the Committee's forty-sixth meeting on observations made by the representatives of Nigeria, Poland and Spain.

ORGANIZATION OF WORK

52. The CHAIRMAN, replying to various questions of procedure raised by Mr. MARRIOTT (Canada), Mr. KRASNOPEEV (Union of Soviet Socialist Republics), Mr. MAKIN (United Kingdom), Mr. ROSENBLAD (Sweden) and Mr. Choo Young LEE (Republic of Korea), said that no vote could be taken on whether the Committee should or should not meet on Saturday, 5 April, as a decision of the General Committee could not be overruled.

53. The report of the Technical Sub-Committee on Signs and Signals on its first session would have to be considered and possibly adopted by Committee II on Thursday, 10 April, on which date two meetings would be held.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE FORTY-SIXTH MEETING

held on Friday, 4 April 1975, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 16 - General protection of medical duties

Paragraphs 3 and 4

Statement by the Head of the Norwegian delegation

1. The CHAIRMAN called on Mr. Hambro, Head of the Norwegian delegation who had asked to make a statement.

2. Mr. HAMBRO (Norway) said that it was not his intention at that stage to request Committee II to reopen a debate on a question that had already been settled. That Committee, however, by adopting the texts of paragraphs 3 and 4 of article 16 of draft Protocol II, had taken a decision of such importance that he felt bound to make a formal declaration as Head of the Norwegian delegation. His Government deeply regretted the inclusion in those paragraphs of the words "subject to national law". It was unacceptable to his Government that an international legal norm of the importance of the Protocol should be made subject to the national law of any country. In its view, such a provision was contrary to the very essence of international law and would be extremely dangerous for the whole body of humanitarian law. When the matter came up in plenary, the Norwegian delegation would propose the deletion of those words. To emphasize the importance that his delegation attached to the matter, he wished to state that it was unlikely that Norway would be able to ratify Protocol II if the words "subject to national law" were maintained.

3. Mr. AL-FALLOUJI (Iraq) said that article 16 was the fruit of patient, meticulous work and the result of a compromise which he had considered ideal, since it had been adopted unanimously and represented a rapprochement between two systems. The decision to include the words "subject to national law" had been taken in full knowledge of the facts. Deletion of those words would imply that States would be ignoring their own national law. His delegation categorically rejected such an attitude. There was an unfortunate tendency to give international humanitarian law too political a character, to place too many conditions in its path, and to forget that the real question was the protection of the victims of war. His delegation could in no circumstances accept the deletion of the words in question. Its attitude applied not only to article 16, but to all the articles of draft Protocol II, to all the other Committees, and to the work of the Conference as a whole.

4. The CHAIRMAN said that he was not going to open the discussion since article 16 of draft Protocol II had already been adopted by consensus and was no longer before the Committee. Such a discussion could be reopened, of course, at a plenary meeting of the Conference.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Proposed new articles 26 to 32 - Medical air transport (CDDH/II/82/Rev.1)

5. The CHAIRMAN invited the Committee to consider the joint amendments to draft Protocol I, Part II, Section II, Chapter II (CDDH/II/82/Rev.1).

Proposed new article 26 - General protection of medical aircraft (CDDH/II/82/Rev.1) (continued)

6. Mr. SOLF (United States of America) said that, after consultation concerning the various comments and suggestions that had been made, the co-sponsors of amendment CDDH/II/82/Rev.1 now proposed that article 26 should read: "Subject to the provisions of this Protocol and particularly of this Part, medical aircraft controlled by a Party to the conflict shall be respected and protected". Some of the co-sponsors wished the words "Protocol and particularly of this" to be placed in square brackets until the chapter had been fully considered.

7. The CHAIRMAN suggested that the Committee approve draft article 26 in principle and then refer it for drafting purposes to the Drafting Committee.

It was so agreed.

Proposed new article 26 bis - land areas controlled by friendly forces, and sea areas not controlled by the adverse Party. (CDDH/II/82/Rev.1)

8. Mr. de MULINEN (International Committee of the Red Cross) said that article 26 in the ICRC draft, which corresponded to article 26 bis in joint amendment CDDH/II/82/Rev.1, stated the principle of freedom of movement for the medical aircraft of a Party to the conflict when flying over areas controlled by itself or its allies. In the ICRC text, land and sea areas were assimilated, but it would probably be desirable to speak of "sea areas not controlled by the adverse Party". In the second place, the draft article stated the desirability, in the interests of medical aircraft, of giving information regarding flights; such information would be one-way information, with no requirement of acknowledgment.

9. Mr. HESS (Israel) said that, subject to a number of minor comments which it would postpone till a later stage, the Israeli delegation could give general support to the proposals in amendment CDDH/II/82/Rev.1. It accordingly withdrew the amendments to articles 26, 27, 29 and 31 contained in document CDDH/II/14.

10. Mr. Choo Young LEE (Republic of Korea) said that his delegation had put forward amendments to articles 26 to 32 (CDDH/II/81) which were designed to allow greater freedom of movement to aircraft engaged in medical service in areas of conflict than that provided in the ICRC articles. Now, however, having considered the joint amendment and having heard the statements of previous speakers, it was prepared to withdraw its amendments in favour of those contained in amendment CDDH/II/82/Rev.1, which seemed to provide the basis for a more general agreement.

11. Mr. MAKIN (United Kingdom) said that the co-sponsors of amendment CDDH/II/82/Rev.1 had not made any substantive changes in the ICRC text; they had merely sought to fill in a few points which the ICRC had omitted and to make one or two stylistic improvements. Thus, in the title, the word "sectors" had been replaced by the word "areas" because that was the word used in the text of the article. The adjectives "national and allied", qualifying the noun "forces", had been replaced by the adjective "friendly" because the new text adopted for article 1 had extended the scope of Protocol I to cover conflicts other than those between sovereign States, so that the term "national" was no longer appropriate. The sea areas referred to in the article had been changed to ensure greater freedom of movement for medical aircraft. The term "to operate" aircraft had been introduced so that medical aircraft should be protected when they were on the ground as well as when they were in the air. It had seemed sensible to specify what form the notification of flights should take; that had been done in article 30, and a reference to that article had been included in article 26 bis. Finally, an explanatory phrase had been added to the last sentence of article 26 bis indicating the areas in which it would be wise to give such notification.

12. Mr. SANCHEZ del RIO (Spain) said that he was doubtful about the expression "friendly forces". Taken strictly, the Spanish phrase "fuerzas amigas" would seem to exclude a Party's own forces and to lead to the paradoxical situation in which the medical aircraft of a State's allies would be protected when flying over its territory, but not the State's own aircraft. He proposed that, in Spanish, the expressions "fuerzas propias y amigas" or "fuerzas propias y aliadas" should be used. He also had doubts about the expression "physically controlled" ("materialmente controladas"),

which seemed to imply too complete a degree of control. He would prefer to say "effectively controlled" ("efectivamente controladas"). He further doubted whether the phrase which had been added at the end of the article was really necessary: first, because it seemed unnecessary to give examples when simply allowing a possibility; and secondly, because if the aircraft were flying "within range of surface-to-air anti-aircraft weapon systems of the adverse Party", it would seem that they were in the zones covered by article 27 rather than those referred to in article 26 bis. Care must be taken in the Drafting Committee to ensure that the versions in the various languages were brought into line with one another. At the present time there seemed to be fairly substantial differences between them.

13. Mr. CZANK (Hungary) said that while the amended text in document CDDH/II/82/Rev.1 made a number of improvements in the ICRC draft, some changes might be desirable in the proposed title. Since article 26 bis was primarily concerned with the operation of medical aircraft, that idea should be expressed in the title. He preferred the ICRC expression "national and allied forces" to the term "friendly forces" used in the amendment. And the words "sea areas not controlled by the adverse Party" seemed to refer to what, in the law of the sea, was called the "high seas" or the "open sea". He accordingly proposed that the title should read: "Operation of medical aircraft on and over land areas controlled by national and allied forces and over the high (or open) seas".

14. Mr. DENISOV (Ukrainian Soviet Socialist Republic) said that the present Russian version of article 26 bis in amendment CDDH/II/82/Rev.1 attempted a word-for-word translation of the original English. The sense of the article, however, would be rendered more accurately if the Russian text were amended to read: "Ne trebuetsya predvaritel'nogo soglasiya protivnoi storony dlya ispol'zovaniya sanitarnykh letatel'nykh apparatov v sukoputnykh rayonakh i nad nimi, gde svoi voiska osushchestvlyayut fizicheskii kontrol', ili v morskikh rayonakh ili nad nimi, gde protivnaya storona ne osushchestvlyaet fizicheskii kontrol'."

15. Mrs. DARIIMAA (Mongolia) said that there was a discrepancy between the words "friendly forces" in the English version and the words "svoi voiska" ("own forces") in the Russian version.

16. Mr. SOLF (United States of America), replying to the points made by the Spanish and Mongolian representatives, said that, in English, the term "friendly forces" covered one's own forces. In the sentry's traditional challenge - "Friend or foe?" - "friend" meant a member of the sentry's own forces.

17. The co-sponsors had selected the expression "physically controlled" instead of "effectively controlled", precisely because the latter had legal connotations, stemming from the Hague Regulations,1/ which they wished at all costs to avoid. In the Hague Regulations, a distinction was made between areas of "effective occupation" or "effective control", in which the situation had become more or less stabilized and the Occupying Power was able to set up an administration as well as operate military forces, and "invaded areas". Thus to use the words "effective control" would completely destroy the sense of article 26 bis, which endeavoured to draw a distinction in purely military terms: an area was "physically controlled" by a Party if that Party's forces were actually there. Possibly some other expression could be found, but "effective control" was unacceptable.

18. Replying to the Spanish representative's third point, he said that it had not been the co-sponsors' intention to say that if a piece of ground was within range of the enemy's anti-aircraft weapons, then that piece of ground was controlled by the adverse Party. On the contrary, the "area controlled" by a Party was defined by the physical presence of its ground forces. The purpose of the article was to state that the Party which controlled the ground might operate its medical aircraft over that ground, subject, of course, to risk, particularly in areas within range of anti-aircraft weapons of the adverse Party.

19. The purpose of the last part of the last sentence was to emphasize that risk, with the implication that medical aircraft should be rendered identifiable by every possible means - distinctive emblems, lights, radar - and, wherever possible, by prior notification so as to ensure that they were respected by the anti-aircraft weapons of the other side. It seemed prudent to include such a warning in the present article.

20. The suggestion by the Hungarian representative that the term "high seas" should be introduced into the title was a substantial departure from the intentions of the co-sponsors. The term "high seas", as used in the law of the sea, contained a reference to sovereignty and jurisdiction, but the co-sponsors had been thinking, in purely military terms, of the area controlled by the naval forces of a Party in a situation of armed conflict. Such an area might include both territorial sea and high seas. The Hungarian proposal amounted to the suggestion that a Party should respect the enemy's territorial sea; but how could it be expected to respect his territorial sea, when it did not respect his territory?

1/ Annexed to the Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land.

21. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, in principle, his delegation was in agreement with the joint amendment. A very interesting and important principle was laid down in draft articles 27 and 28 to the effect that, even in cases where there had been no prior agreement, the Parties to the conflict must respect medical aircraft as soon as they had been recognized as such. It might be desirable to have that principle stated at the beginning of the chapter on Medical Air Transport, in article 26, rather than in the later articles, since it applied equally to aircraft flying over enemy-controlled areas, over the contact zone and over areas controlled by friendly forces but within range of enemy anti-aircraft weapons. The provision, which should apply only to medical aircraft, should state that, in the absence of agreement, such aircraft should make every effort to identify themselves and that, having recognized such an aircraft, the adverse Party should not shoot it down, but should resort to less extreme measures, such as forcing it to land.

22. Mrs. DARIIMAA (Mongolia) said that she took it that the Russian version of article 26 bis would be brought into line with the English original.

23. She was surprised at the expression "sea areas not controlled by the adverse Party" since it seemed to imply that the high seas might be controlled by some major sea Power. The high seas belonged to all nations, and an international instrument must not recognize any jurisdiction, direct or indirect, over them. Her delegation therefore could not accept that provision.

24. Again, the phrase "There is no requirement for prior agreement with the adverse Party in order to operate medical aircraft ..." would tend to favour a technologically better-equipped Party to a conflict. The other Party would not be as well protected. In some cases medical aircraft might in fact be jet aircraft. The idea seemed to be favoured by those States which felt that they might go unpunished, and that their medical aircraft would be masters of the skies. The provision needed careful consideration, and the Committee must adopt a decision in keeping with humanitarian law.

25. Mr. FRUCHTERMAN (United States of America) said it was very far from the co-sponsors' intention that article 26 bis should in any way attempt to support any sort of claim to sovereignty or jurisdiction over the high seas. In an international conflict, it would be unrealistic not to recognize that a fleet did control an area at a given time; but that control was purely military and in no way implied jurisdiction or sovereignty over the area. The protection which the co-sponsors of article 26 bis were trying to

provide for medical aircraft was the broadest protection compatible with the military situation. They were not attempting to give licence to medical aircraft to overfly the high seas or any other body of water at will, and indeed it would be unrealistic to do so.

26. He regretted the previous speaker's remark coupling medical aircraft with the term "masters of the skies". Medical aircraft were humanitarian instruments for treatment of the wounded and sick of both sides on an equal footing, as provided in the Geneva Conventions, and to impute any other motive to such aircraft could only be a retrograde step in the attempt to promote humanitarian law.

27. The CHAIRMAN suggested that the meeting adjourn for a short while in order to allow delegations an opportunity to exchange views on the problem.

The meeting was suspended at 11.5 a.m. and resumed at 11.35 a.m.

28. Mr. SOLF (United States of America) said that, having held discussions with other delegations, he was now inclined to think that the problem was one of drafting.

29. Mr. CZANK (Hungary) suggested that the Committee adopt article 26 bis in principle and refer it to the Drafting Committee with a request it try to find a suitable wording to reflect the idea that in wartime there might be areas of the high seas which were controlled by one of the Parties to an armed conflict, and that protection should be provided for medical aircraft overflying those areas. That idea should be reflected in the title as well as in the text.

30. With respect to the high seas, it should be remembered that the law of the sea was basically applicable only in time of peace.

31. The CHAIRMAN suggested that article 26 bis be approved in principle and referred to the Drafting Committee.

It was so agreed.

Article 27 - Contact zone (CDDH/1, CDDH/56; CDDH/II/82/Rev.1, CDDH/II/85)

32. Mr. de MULINEN (International Committee of the Red Cross) said that the contact zone, which was the subject of article 27, was the area in which opposing ground forces were in direct contact with each other.

33. In the middle the contact zone contained an area where effective control was not clear - effective control being de facto and not de jure, and on both sides of that area there was another area under the effective control of one of the opposing parties. The ICRC draft made a clear distinction between those three areas.

34. The idea was that medical aircraft could overfly the contact zone, but that their security could be guaranteed only by agreement. The ICRC had therefore included, in addition to the recommendation of notification in article 26, a strong indication in article 27 that only an agreement could give protection to a medical aircraft overflying the area controlled by a party's own forces, or forces friendly to it, and the area where control was not clear. No special form was prescribed for such an agreement.

35. Paragraph 2 indicated that, in the absence of an agreement, the parties should respect medical aircraft as soon as they were identified as such.

36. The CHAIRMAN reminded the Committee that amendments had been submitted at the first session to paragraphs 1 and 2 of article 27 by the delegations of Belgium (CDDH/II/1), Israel (CDDH/II/14), the Republic of Korea (CDDH/II/81) and by the German Democratic Republic (CDDH/II/85).

37. Mr. CALCUS (Belgium), Mr. HESS (Israel) and Mr. Choo Young LEE (Republic of Korea) said they wished to withdraw their delegation's amendments.

38. Mr. KUCHENBUCH (German Democratic Republic) said that his delegation's amendment (CDDH/II/85) of 11 September 1974 had at that time naturally referred to the deletion of paragraph 2 of the ICRC draft. However, it also referred to amendment CDDH/II/82/Rev.1, since paragraph 2 of the ICRC draft had been included as the last sentence of paragraph 1 of that amendment. In view of the importance of enabling medical air transport to rescue and remove wounded and sick from the battle area or contact zone, which had been stressed by many delegations, and the reference to the difference in the technical equipment of the Parties to the conflict, made by the representatives of Mongolia and Nigeria at the forty-fifth meeting (CDDH/II/SR.45), his delegation considered that adequate protection for medical aircraft evacuating wounded and sick from the contact zone could only be guaranteed by agreement between the local military authorities. The wording of the last sentence of article 27, paragraph 1 of amendment CDDH/II/82/Rev.1 did not ensure maximum protection for medical aircraft in such zones. On the contrary, it enabled flights of medical aircraft to be made in the absence of an agreement, in which case the adverse Party was responsible for

the possible consequences. Articles 15 and 36 of the first Geneva Convention of 1949 and Articles 18 and 39 of the second Geneva Convention prescribed obligatory agreements between the parties with regard to the rescue and removal of the wounded and sick. The present draft of article 26 bis (CDDH/II/82/Rev.1) also provided for notification by a Party to the conflict using its medical aircraft over areas controlled by friendly forces. If that was considered necessary for greater safety over such areas, it was surely even more necessary when medical aircraft were flying over battle areas or contact zones. His delegation therefore wished to maintain its amendment (CDDH/II/85).

39. Mr. MARRIOTT (Canada) said that the joint amendment to article 27 (CDDH/II/82/Rev.1) largely followed the ICRC text, with a number of drafting changes incorporating expressions such as "physically controlled" and "friendly forces" which had already been discussed in connexion with article 26 bis. The co-sponsors had incorporated paragraph 2 of the ICRC text into their own paragraph 1.

40. Paragraph 2 of the amendment was a description, although not a definition, of the contact zone, which had been lacking in the ICRC text. The contact zone was in fact an undefinable area.

41. The only other significant change from the ICRC text was the deletion of the words "no particular form of such agreement is prescribed". It was felt that those words were unnecessary since they added nothing of substance to the article.

42. Mrs. DARIIMAA (Mongolia) asked whether the definition of "contact zone" prepared by the Joint Working Group of Committees II and III was covered by paragraph 2 of amendment CDDH/II/82/Rev.1 and, if not, whether the definition was to be given in a special section or to be repeated in each of the relevant articles.

43. Mr. HESS (Israel) said that joint amendment CDDH/II/82/Rev.1 specified that protection for medical aircraft could be fully effective only by prior agreement between the local military authorities of the Parties. The explanatory note to his delegation's amendment (CDDH/II/14) explained why his delegation preferred the deletion of the word "local" in that context, as the term "military authorities" included "local military authorities", whereas the latter term was too specific. Although his delegation had withdrawn its amendment (CDDH/II/14) because it had referred to the ICRC draft, it still supported the deletion of the word "local" for the reasons given in the explanatory note to that amendment. The deletion of that word would avoid a situation in which protection for medical aircraft was not fully effective merely because it had been impossible to reach prior agreement between the local military authorities, whereas there might have been means of

communication and agreement between the Parties at a higher level. His delegation therefore proposed the deletion of the word "local" before the words "military authorities" in the joint amendment to paragraph 1 of article 27 (CDDH/II/82/Rev.1).

44. Mr. KOKAI (Federal Republic of Germany) said he felt that there should be no definition of "contact zone" in article 27 but merely a reference to the definitions contained in other parts of the Protocol.

45. Mr. ASHMAWI (Arab Republic of Egypt) said he wished to propose the insertion of the word "competent" before the words "local military authorities" in paragraph 1 of article 27 of the joint amendment (CDDH/II/82/Rev.1), in order to avoid any confusion. Such an agreement should not be left to the local authorities.

46. Mr. MAKIN (United Kingdom) said that when the sponsors had been drafting their amendment they had tried to keep the original wording of the ICRC draft as far as possible. For instance, the expression "local military authorities" had been used in article 27 and "competent authority of the adverse Party concerned" in article 28. He suggested, however, that the Drafting Committee and the sponsors should try to find a suitable term to be used in both articles, as it might prove necessary to reach agreement on medical aircraft overflying both zones, since the line between them was invisible and subject to sudden change.

47. Mr. MALLIK (Poland) said that the wording used by the ICRC in paragraph 1 of article 27 - "the only guarantee of protection for medical aircraft" - was more appropriate than that used in the joint amendment - "can be fully effective only". Only a valid agreement between the military authorities of the Parties could in fact guarantee such protection.

48. Mr. ROSENBLAD (Sweden) said that he was in favour of the word "local" being replaced by the word "competent", a term which was more flexible and better suited to conditions of modern warfare. He assumed that the Drafting Committee would take into account the proposed definition of the contact area agreed upon by the Joint Working Group of Committees II and III.

49. Mr. MARTINS (Nigeria) said he also was in favour of the substitution of the word "competent" for the word "local", partly because of the difficulty of establishing communication between local battalion commanders and partly because it was too great a responsibility to be assumed by men who, at least in developing countries, might lack experience and briefing on humanitarian law.

50. Mrs. DARIIMAA (Mongolia) said she also supported the substitution of the word "competent" for the word "local", it being understood that that definition referred to the military authorities at different levels to whom the right to conclude that type of agreement had been accorded. The last sentence of paragraph 1 of article 27 in the joint amendment (CDDH/II/82/Rev.1) might cause difficulties if the parties were not adequately equipped technologically.

51. Mr. TERNOV (Byelorussian Soviet Socialist Republic) said that his delegation was unable to support the deletion of the word "local" because local authorities were better aware of local conditions and because agreement between them might reduce delays in providing assistance to wounded and sick in the contact zone. The wording "local or other competent military authorities" might perhaps be used. He agreed with the representative of the German Democratic Republic that the last sentence of paragraph 1 of article 27 in the joint amendment (CDDH/II/82/Rev.1) was unrealistic. A possible compromise might be the addition of the words "if it is possible in the existing military situation".

52. Mr. MARRIOTT (Canada), speaking on behalf of the sponsors of the joint amendment, said that most of the problems raised by the various speakers, including the clarification of the term "contact zone" or "contact area" referred to by the representatives of Mongolia and the Federal Republic of Germany, could be solved by the Drafting Committee. The Byelorussian representative's suggestion regarding the proposed deletion of the word "local" seemed to him judicious because the problem was in fact a local one and speed and competence of authority were necessary in dealing with it. No adverse Party would negotiate with an authority which it did not consider competent and capable of complying with an agreement.

53. Deletion of paragraph 2 of the ICRC draft of article 27 or of the last sentence of paragraph 1 of that article in the joint amendment (CDDH/II/82/Rev.1) would conflict with article 26, on the general protection of medical aircraft. The sponsors of joint amendment CDDH/II/82/Rev.1 had replaced the word "identified" used in the ICRC draft by "recognized". Recent experience had clearly shown the great difficulty of identifying or recognizing medical aircraft flying in a forward area in time to avoid shooting them down. Despite the dangers, however, medical or other aircraft would certainly endeavour to rescue wounded and sick. It was therefore reasonable to lay on the Parties to the conflict the responsibility for recognizing them when it was possible to do so in the stress of battle.

54. The preference expressed by the Polish representative for some of the ICRC wording was also a matter that could be dealt with by the Drafting Committee.

55. The CHAIRMAN asked the representative of the German Democratic Republic if he wished for a vote on his proposal to delete the last sentence of paragraph 1 of article 27 in joint amendment CDDH/II/82/Rev.1.

56. Mr. KUCHENBUCH (German Democratic Republic) said that he would not press for a vote but would leave the matter to the Drafting Committee.

57. Mr. MAKIN (United Kingdom) said that his delegation was opposed to the use of the word "guarantee" which appeared in article 27, paragraph 1 of the ICRC draft and had been supported by the Polish representative, for the reasons given by the representative of Canada. Even with formal agreements between the Parties, it was extremely difficult to ensure protection for medical aircraft flying over a contact zone and the word would merely be misleading. The wording used in joint amendment CDDH/II/82/Rev.1 represented a compromise which had been reached by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts in 1972 only after protracted negotiation.

58. Mr. MALLIK (Poland) said that he was prepared to leave the question to the Drafting Committee.

59. The CHAIRMAN said that if there were no objection, he would take it that the Committee wished to approve article 27 in principle and then refer it with the joint amendment (CDDH/II/82/Rev.1) for drafting purposes to the Drafting Committee.

It was so agreed.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE FORTY-SEVENTH MEETING

held on Saturday, 5 April 1975, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (continued)

Proposed new articles 26 to 32 - Medical air transport (CDDH/II/82/Rev.1) (continued)

Proposed new article 28 - Areas controlled by enemy forces (CDDH/II/82/Rev.1, CDDH/II/273)

1. Mr. de MULINEN (International Committee of the Red Cross) said that article 28 was the last of the three articles of the ICRC draft dealing with specific areas, namely, sectors controlled by enemy forces, which in most cases were more extensive than the contact zone.

2. The ICRC text was based on the fact that every medical aircraft was entitled to protection as such. For that purpose, agreement to flights over land or sea areas effectively controlled by an opposing Party or its allies had to be obtained from the competent authority of the adverse Party concerned in advance. No such flight could be safe unless advance agreement had been obtained. Agreement was necessary because of the long distances the aircraft had to cover, which increased the dangers it had to face. For that very reason it was likely to be a larger aircraft than would be used within the contact zone and to carry a larger number of wounded, and also medical personnel, to a destination well behind the combat zone. Large aircraft could also carry elaborate equipment for the treatment of the wounded, if deemed essential in the case of long-range flights.

3. The question arose as to who should enter into the agreement. The ICRC draft of article 28 stipulated "the competent authority of the adverse Party concerned", whereas article 27, which related to the contact zone, specified "the local military authorities". That distinction had been deliberate. In the case of article 27, and in view of the comparatively short distances involved, only the local military commanders would be concerned: whereas in sectors controlled by enemy forces the distances would be much greater, and therefore agreement had to be given by a more broadly competent authority in the rear - either the civilian, political authority, or the military authority. The purpose of the agreement was to stop the shooting down of medical aircraft. In the rear,

there were all kinds of airspace defence weapons, both short and long-range, as well as ground-to-ground weapons such as guns, howitzers and mortars. The ICRC's aim was to ensure that the "authority concerned" had more extensive competence than was necessary in the case of the contact zone.

4. The CHAIRMAN pointed out that the amendment submitted by the Republic of Korea in document CDDH/II/81 had been withdrawn at the forty-sixth meeting (CDDH/II/SR.46).

5. Mr. MARRIOTT (Canada), introducing the amendment to article 28 set out in document CDDH/II/82/Rev.1, said that the first sentence was identical with the ICRC draft, except for two drafting changes. The words "effectively controlled" had been replaced by "physically controlled" and the expression "an opposing Party or its allies", had been replaced by the expression "an adverse Party", which was more consistent with the wording of the draft Protocol and was, moreover, the term used in the last part of article 28 of the ICRC draft; it was logical to use the same term throughout the article.

6. The rest of the article was intended to take account of situations, occuring after the captain of the aircraft had begun his flight, which were beyond his control or could not have been anticipated - for instance, errors of navigation, the possible failure of navigational instruments, or unpredictable vagaries in the weather which might make it necessary for the pilot to follow a different route from that planned. A pilot finding himself in that situation should immediately inform the competent authority of the adverse Party of the fact that he had been forced off course, and identify the aircraft. The ICRC draft proposed that the adverse Party should, so far as possible, respect such medical aircraft, and that the latter, as such, should not be attacked unless and until the provisions of article 31, paragraph 1 had been observed.

7. Mr. SANCHEZ DEL RIO (Spain) said that in the light of the statements made by the representatives of the ICRC and Canada, he would suggest that the word "State" be inserted between the word "competent" and the word "authority" in the first sentence of article 28, to make the distinction between the authorities referred to in articles 27 and 28 clear.

8. He also suggested that the article should be divided into two numbered paragraphs, the first comprising the first sentence and the second the rest of the article, which set out the exceptions.

9. Mr. KOKAI (Federal Republic of Germany) said that he wished to comment on the penultimate sentence of the proposed new article. He questioned whether the words "so far as possible" served any real purpose and suggested that they might be deleted. If the adverse Party was unable to respect the medical aircraft in question it would not afford it protection; if that possibility was mentioned, the protection would be less.

10. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation regarded article 28 of the amendment to draft Protocol I (document CDDH/II/82/Rev.1) as a valuable amplification of earlier provisions relating to the use of medical aircraft in combat areas. The deletion of the phrase "so far as possible" from the penultimate sentence of the article, however, would further reduce the already minimal protection afforded to such aircraft, given the realities of war in areas controlled by enemy forces.

11. His delegation was unable to accept the phrase "by force of urgent necessity", in the second sentence of article 28. It held that there was not and could never be any urgent necessity for a medical aircraft to overfly hostile territory, in view of the risks involved to those on board. The phrase appeared to legitimize such a procedure, permitting it to be used thereafter in any situation. His delegation could agree to article 28 only if the phrase was removed.

12. Mr. MARRIOTT (Canada) expressed appreciation of the constructive comments which had been made.

13. With regard to the first suggestion made by the representative of Spain, he thought that such a modification of the text might strengthen the article, although highly technical considerations relating to communications in international air traffic - a subject which was beyond his competence - were involved.

14. He also thought that the second Spanish suggestion should be taken into account. Article 28 might well be improved if it were divided into two paragraphs.

15. The objection raised by the representative of the Federal Republic of Germany had already been answered by the USSR representative.

16. With regard to the last part of the statement made by the USSR representative, however, concerning the words "by force of urgent necessity", it had to be recognized that urgent necessity did occur in the air. An aircraft was at the mercy of the law of gravity. If something went wrong, the pilot could not stop; he had to go on, possibly in a direction which he had not intended. There was also

the phenomenon of the jet-stream over oceans, which could force a pilot to fly at a speed lower by 200 miles an hour than he had expected, with the resultant effect on fuel consumption and the pilot's ability to reach his planned destination. Sometimes also a pilot was forced to make extensive detours in order to allow for unexpected weather.

17. He hoped that the USSR representative would try to find a phrase which was acceptable to him and which also took account of the kind of emergency which the sponsors of the amendments in document CDDH/II/82/Rev.1 had had in mind.

18. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) objected that the wording of the phrase "by force of urgent necessity" could be interpreted as allowing overflights of enemy territory in any circumstances whatsoever. To avoid giving legality to such a situation he would accept a phrase reworded in some formulation such as "by force of urgent technical or meteorological necessity", which would show clearly what was implied.

19. Mr. SOLF (United States of America) said that he wished to comment on the very constructive suggestions made by the representative of Spain and on the statement made by the ICRC representative.

20. It was possible, as the ICRC representative had indicated, that flight over enemy territory would be over broader areas than were represented by the contact zone, and in the enemy's rear. As a general rule, however, overflight of enemy territory was more likely to take place over combat areas and that was therefore when it was necessary to reach an agreement with the adverse Party. There must, for instance, be provision for the case of an air head or a besieged area from which the wounded had to be evacuated by air over relatively short distances, strictly within the area controlled by the combat commander; in that case it was clearly not the national or political authority which would have to give clearance but the military commander. He therefore urged that the words "the competent authority of the adverse Party concerned" be left as they stood, without identifying the competent authority. That was for each State to determine.

21. When large aircraft were used to evacuate the wounded, they usually operated over their own territory or the sea.

22. Mr. ONISHI (Japan) said that he was prepared to support the amendment in document CDDH/II/82/Rev.1 but would like some clarification concerning the relationship between article 28 and article 36 of the first Geneva Convention of 1949. It was his understanding that flying over enemy-occupied areas was still prohibited under Article 36 of that Convention. Thus, if a flight

over enemy-occupied areas occurred by force of urgent necessity, in the absence of an agreement, that constituted a violation of the Article. According to paragraph 4 of new article 31 of draft Protocol I, the aircraft would in such a case be seized and its occupants treated as prisoners of war.

23. Mr. MAKIN (United Kingdom) said that, in his view, it should be left to the Drafting Committee to decide whether the expression used to designate the competent authority of the adverse Party should or should not be identical in articles 27 and 28.

24. He agreed that the point raised by the USSR representative concerning the expression "by force of urgent necessity" was well taken. He could accept the solution which that representative had subsequently suggested.

25. In answer to the point made by the representative of Japan, he said that the difficulty arose because the Conference was in fact amending the Conventions but could not say so. He was sure that for any State signing Protocol I the articles in it would be deemed to supersede the relevant clauses of the Convention. The latter would only continue to apply in the case of States which did not sign the Protocol.

26. Mr. CHOWDHURY (Bangladesh) said that his delegation was in agreement with the principle set out in document CDDH/II/82/Rev.1, since due care had been taken to give such protection as might be possible to the medical aircraft of a Party to a conflict.

27. He agreed with the suggestion that article 28 should be divided into two paragraphs.

28. With reference to the question of the term "by force of urgent necessity", he submitted that it was necessary to provide for such a situation at the outset in a situation of armed conflict, despite the reference in the article to the security measures to be taken under article 31, paragraph 1. He was inclined to think that it would have been better had the phrase "by force of urgent necessity" been qualified to indicate that it referred to a technical defect or meteorological condition, as the USSR representative had suggested. Otherwise, a medical aircraft might enter enemy territory on the pretext that it was doing so by force of urgent necessity. He hoped the Drafting Committee would bear that point in mind.

29. He had doubts about the expression "so far as possible", since it was essential to take account of the realities of a situation occurring in wartime. Keeping in view the objective to be achieved, he therefore considered that it would be better to delete the expression "so far as possible", which was open to many interpretations. He hoped the sponsors would agree with him. He

pointed out that the prior agreement of the competent authority of the adverse Party had to be obtained and that due notice had to be given, which ensured the security of the adverse Party. If there was agreement it would be inadvisable to allow flexibility, for a Party to the conflict might be tempted to violate the agreement and then take cover under the expression "so far as possible".

30. Subject to those points, he fully supported the text of article 28 as set out in amendment CDDH/II/82/Rev.1.

31. Mr. SOLF (United States of America), referring to the question raised by the representative of Japan and to the reply of the United Kingdom representative, said that he did not really look upon article 28 as an amendment to Article 36 of the first Geneva Convention of 1949. It was more in the nature of an agreement among the Parties to the Convention who became Parties to the Protocol pursuant to the provision of Article 36 of the first Geneva Convention of 1949 which stated that, unless otherwise provided for, flights over enemy territory were prohibited. He did not see any problem in the provision that personnel would be deemed to be prisoners of war. As laid down in article 31 of the amendment, personnel who landed and fell into the hands of an adverse Party would be treated in accordance with the provisions of the Convention and Protocol.

32. He appreciated the constructive suggestions made by the representative of Bangladesh.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), reverting to the remarks of the representative of Japan, referred to Article 36 of the first Geneva Convention of 1949, arguing that the new situation created by the drafts under consideration was fundamentally different from that provided by that Convention.

34. He considered that a general article should be included in draft Protocol I stating that, where there was a general conflict of views between different conventions, or a difference in their interpretation, the most humanitarian version should be deemed to prevail.

35. It would be a mistake to delete the phrase "so far as possible" from the second sentence of article 28 of the proposed amendment to draft Protocol I. It was not always possible to identify approaching aircraft, even at low altitudes and at short range, in the circumstances under which light medical aircraft and helicopters would be operating. In support of his argument he cited his own experiences during the Second World War regarding the confusion that arose in identifying such aircraft, the consequences of mistakes, and the ease and probability with which aircraft would be forced down. Retention of the phrase would afford at least some protection for medical aircraft at all the ranges involved.

36. Mr. ONISHI (Japan) wished it to be made explicit that flight over enemy-occupied territory by necessity should not be considered a violation of the first Geneva Convention of 1949. In other words, it should be made clear in article 28 that that Convention was being amended. He was prepared to accept such an extension of protection, provided the text was made abundantly clear.

37. Mr. MARRIOTT (Canada) endorsed the comments of the USSR representative on the fears expressed by the representative of Bangladesh concerning the phrase "so far as possible". He was confident that adoption of the Spanish representative's proposal that article 28 should be divided into two paragraphs would allay some of those fears, since it would then become quite clear that the phrase referred only to the emergency situations that the article was designed to cover. The words "so far as possible" would appear in paragraph 2, which would refer to emergency situation only and not to regularly planned flights.

38. The CHAIRMAN said that two objections had been raised to draft article 28. With regard to the first, he hoped that the words "so far as possible" could be retained, in the light of the comments of the representatives of Canada and the Union of Soviet Socialist Republics. There was no purpose in asking for the impossible. He wished to draw attention to Article 61 of the Vienna Convention on the Law of Treaties, 1969,[1/] which provided for termination or at the very least, suspension of operation of treaties, the performance of which had become impossible.

39. The second objection, which concerned the words "by force of urgent necessity", was more important. He understood that the sponsors would agree to the wording being made more specific, and accordingly suggested that the Drafting Committee should be requested to take into account the relevant comments that had been made during the discussion.

Article 28 was approved in principle and referred to the Drafting Committee for drafting purposes with a request that it take into account the comments referred to by the Chairman.

Article 29 - Restrictions (CDDH/1; CDDH/II/82/Rev.1)

40. Mr. de MULINEN (International Committee of the Red Cross) said that the ICRC text of article 29 was self-explanatory but inadequate. The original version of article 24, on protection, had included a reference to articles 12 and 13, but since the

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1/ United Nations publication, Sales No. E.70.V.5

Committee and the Drafting Committee had produced a draft without a general article on protection, article 29 would have to be revised or supplemented. That could be done on the basis either of the text in document CDDH/II/82/Rev.1 or of the article 24 produced by Commission I of the second session of the Conference of Government Experts, in 1972.[2/]

41. The CHAIRMAN pointed out that amendments CDDH/II/1, CDDH/II/14 and CDDH/II/81 to article 29 had been withdrawn.

42. Mr. MAKIN (United Kingdom) said that, in the light of the ICRC representative's comments, the sponsors of the text of article 29 in amendment CDDH/II/82/Rev.1 felt that their text was all the more appropriate in that it assembled all the restrictions in one place. The opening sentence of paragraph 1 laid down the general principle and the remainder of the article elaborated the application of that principle. In the second sentence, it was implicit that medical aircraft were protected on the ground. The first sentence of paragraph 2 brought up-to-date the reference to photographic equipment in the ICRC text - the latter obviously had in mind intelligence equipment, but there were many kinds. The second and third sentences of that paragraph made it clear that no persons or cargo could be carried other than those allowed for medical transport generally, but that personal effects and apparatus for communication and identification were permitted. The provisions in paragraph 3 were similar to those applying to transport generally and to medical units. Paragraph 4 took up a point covered in the opening sentence of the ICRC text concerning search. A further difference between the present draft and that of the ICRC was that, whereas the latter placed restrictions on certain types of flight only, as referred to in articles 27 and 28, the sponsors of the present draft had thought it wise to make those restrictions general, so that the rules would always have to be observed, even when a party was flying over its own territory. It had been brought out in the discussion of article 28 that a party might be intending to fly over its own territory but might accidentally fly over enemy territory, through inadvertence or stress of weather, and thus be in breach of those rules. The aim was to make it clear that medical aircraft should comply with article 29 at all times, even when flying over their own territory.

43. Mr. SANCHEZ DEL RIO (Spain) proposed that the second and third sentences of paragraph 2 should be deleted. They merely stated the obvious and only complicated the paragraph.

[2/] Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, second session, 3 May - 3 June 1972, Report on the Work of the Conference, vol. I, p.45.

44. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the reference to navigational equipment in the last sentence of paragraph 2 was by no means superfluous, since for a soldier on the ground or for a layman it was not always obvious that such apparatus formed part of the essential equipment of an aircraft.

45. The text proposed for article 29 introduced little that was new; the article was, rather, a worth-while synthesis of pre-existing rules on restrictions in the use of medical aircraft for non-medical purposes. He had few substantive objections to it but some of the wording lacked clarity. For example, the reference to the "arms and ammunition that might be necessary to enable the medical personnel on board to defend themselves and the wounded and sick persons in their care" in paragraph 3 of the proposed article could give rise to difficulties. Heavy arms and ammunition would be difficult to justify under the Geneva Conventions, while personal weapons such as pistols or revolvers could not be described as being for the defence of the aircraft. It would be best to limit the article to a mention of weapons belonging to medical personnel and to the sick and the wounded.

46. Mr. MARRIOTT (Canada) said that paragraph 3 should be viewed in terms of forward helicopter evacuation rather than long-range aircraft evacuation. The forward helicopter was in much the same position as the wheeled ambulance and such a provision was therefore necessary. In the case of long-range aircraft, the captain would not allow small arms and ammunition to be carried, for they would come under the heading of dangerous cargo.

47. Mr. SOLF (United States of America) said that he agreed with the representative of Spain in theory, but since Protocol I would not be interpreted by lawyers or airmen or by lawyers in Air Ministries, the sponsors had thought it useful to include the second and third sentences of paragraph 2. They might be the very points that would be checked in aircraft landing on foreign territory. Moreover, the second sentence contained a substantive provision making it a violation of the Protocol for medical aircraft to carry anything other than authorized equipment and personnel. The third sentence provided that certain items in the personal effects of patients, crew or medical personnel should be permitted. It could, of course, be argued that some navigation or communication equipment was similar to that used for intelligence purposes; the third sentence was important since it was designed to ensure that the prohibition was applied reasonably.

48. Regarding the point raised by the USSR representative, he agreed with the Canadian representative that the provision was probably concerned more with battlefield evacuation than with long-range cargo aircraft evacuation. The text had been drafted before the adoption of article 13 and the Drafting Committee might consider the advisability of using the same wording: "light individual weapons" (CDDH/II/278, paragraph 2 (a)).

49. The CHAIRMAN suggested that, since the sponsors were willing to take the USSR representative's comments into consideration, the article should be referred to the Drafting Committee on that understanding.

50. Mr. URQUIOLA (Philippines) suggested that the Committee should first vote on the Spanish representative's proposal that the second and third sentences of paragraph 2 should be deleted.

51. Mr. SANCHEZ DEL RIO (Spain) said that, after listening to the United States representative, he would withdraw his objection to the two sentences.

Article 29 was approved in principle and referred to the Drafting Committee, with a request that it take into account the comments of the USSR representative.

Article 30 - Agreements and notifications (CDDH/1; CDDH/II/82/Rev.1, CDDH/II/273)

52. Mr. de MULINEN (International Committee of the Red Cross) said that the ICRC text of article 30 had been based on the idea of including a joint article on notification, but as the joint article had in the meantime been abandoned the article would have to be amplified. One possible broader version could be the text appearing in amendment CDDH/II/82/Rev.1.

53. The CHAIRMAN said that the amendments submitted by the Republic of Korea (CDDH/II/81) and the German Democratic Republic (CDDH/II/86), had been withdrawn. He invited the representative of Sweden to introduce his delegation's amendment (CDDH/II/273).

54. Mr. ROSENBLAD (Sweden) said that it was generally felt that there should be prior agreement in respect of all medical flights in and over (a) the parts of the contact area physically controlled by friendly forces; (b) areas the physical control of which was not clearly established; and (c) land or sea areas physically controlled by an adverse Party. Such prior agreement should provide that the flights and means of identification should follow a specific procedure. In addition, a flight-plan was required in order to avoid incidents.

55. His delegation had some doubts about the phrase "and upon the prohibition or restriction of non-medical flights in the area concerned" in paragraph 1 of the text of article 30 proposed in amendment CDDH/II/82/Rev.1. That would mean that a party receiving a notification of medical flights of the adverse Party could make those flights conditional upon the prohibition or restriction of all non-medical flights of the adverse Party in the area concerned.

Such a condition could be drawn up in such a way that the humanitarian aim of the medical flight might be endangered, or even that the flight could not be made. In his delegation's view, the necessary distinction between medical and non-medical aircraft could be maintained by the normal air-traffic control and air-combat control bodies.

56. His delegation therefore proposed that that additional condition should be deleted from paragraph 1 of the proposed article 30, which was otherwise quite satisfactory.

57. Mr. MAKIN (United Kingdom) pointed out that, if an adversary were prepared to permit flights in security-sensitive areas, it would be only reasonable, in order to prevent abuses of the facility, to require the party requesting permission for a flight to cease all non-medical operational flights while its own automatic defence equipment was switched off to permit the medical flight. No commander would dare to give permission for a medical flight unless all other military flights were prohibited.

58. If the Swedish amendment (CDDH/II/273) was adopted, there might be a technical difficulty in that the kind of apparatus required for technical control was so sophisticated, even if it existed, that there would not be many countries who would be in a position to use it. Moreover, such equipment would be fragile and could easily break down in battlefield conditions.

59. With regard to notification, article 26 bis proposed in amendment CDDH/II/82/Rev.1 related to medical aircraft flying over friendly territory, where it would be unrealistic to expect the party controlling such territory to halt other non-medical flights.

60. Mr. AL-FALLOUJI (Iraq) said that while article 30 would have the effect of regularizing agreements, his delegation had some doubts about its wording. He asked the sponsors of the amendment to explain the difference between "notification" and "request". The use of the term "requests" would constitute a return to a system of "authorization" and would be quite different from the informal situation arising from a "notification". He thought that there should be room for informal two-way agreements but such agreements were not permitted under the wording of article 30 as proposed in amendment CDDH/II/82/Rev.1.

61. Mr. MAKIN (United Kingdom) pointed out that the word "notification" had been employed with regard to medical flights in article 26 bis of the amendments but that elsewhere a "request" was implied or stated. One of the main purposes of article 30 was to set out the items to be included in a request. The article also required acknowledgement of receipt of the request by the adverse

Party. He would have no objection to the word "clearance", a technical aviation term, being replaced by "agreement" in respect of a reasonable number of aircraft and the prohibition of other non-medical flights. The party initiating a request could deal with the adverse Party's reply as it felt best, either by accepting the enemy's terms and adhering to them, or by flying its medical aircraft at its own risk.

62. Mr. AL-FALLOUJI (Iraq) said that, although he was almost convinced by the United Kingdom representative's explanation, he felt that it was not sufficient to provide only for circumstances affecting one Party to the conflict. There might be cases where both Parties required protection for their aircraft and he wondered if provision could be made for two-way arrangements.

63. Mr. MAKIN (United Kingdom) said that he assumed that the representative of Iraq had in mind the kind of armistice on a front where both sides collected their wounded - in the present context by air instead of by land. There had been many cases in past wars where short armistices - for example, to celebrate Christmas - had been agreed without provisions in Conventions. He did not think it was necessary to make provision in the present article, since it was always possible for two sides to agree between themselves.

64. Mr. SOLF (United States of America) agreed with the United Kingdom representative. The situation was, in fact, covered by the second paragraph of article 15 of the first Geneva Convention of 1949. That provision had not been incorporated in draft Protocol I, since it seemed unnecessary, but a similar provision appeared in draft Protocol II.

65. Mr. SANCHEZ DEL RIO (Spain) said that there was some ambiguity in the Spanish text of the sentence to which the Swedish amendment referred. It could be interpreted as applying to flights by either Party and it would be pointless to impose a restriction on flights by the permitting authority.

66. The CHAIRMAN suggested that the matter should be referred to the Drafting Committee.

67. Mr. AL-FALLOUJI (Iraq) said that the case he had had in mind was not an armistice in accordance with the Geneva Conventions but a situation somewhere between an armistice and action by one party as provided in article 30. It often happened that both parties wanted to rescue their sick and could reach agreement without an armistice.

68. Mr. SOLF (United States of America) speaking as Acting Chairman of the Drafting Committee, said that the Drafting Committee could take into account the point raised by the representative of Iraq. Both parties would certainly be free to enter into any kind of arrangement, such as armistice, suspension of arms or permission for aircraft to fly over the other party's territory.

69. Mr. ROSENBLAD (Sweden) said that the matter was somewhat complicated, since it could be viewed from two angles: that of his delegation's amendment and that of the United Kingdom. He felt that the debate should be continued in the Drafting Committee where it might be possible to elucidate a number of points, including that raised by the representative of Spain.

70. The CHAIRMAN suggested that article 30 should be approved in principle and referred to the Drafting Committee for drafting purposes with a request that it should take note of all that had been said during the discussion.

It was so agreed.

The meeting rose at 12.35 p.m.

SUMMARY RECORD OF THE FORTY-EIGHTH MEETING

held on Monday, 7 April 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (continued)

Article 31 - Landing (CDDH/1)

1. The CHAIRMAN invited the representative of the International Committee of the Red Cross to introduce the ICRC text of article 31 (CDDH/1).

2. Mr. de MULINEN (International Committee of the Red Cross) said that the aim of article 31 was to allow the inspection of medical aircraft flying over land and water under the control of an adverse Party, in order to ensure that the competent authorities of the overflown territory could ascertain that such aircraft were indeed medical and did not constitute a danger to the troops on that territory.

3. The CHAIRMAN asked if he was correct in thinking that the amendment to article 31 submitted by the delegation of Israel (CDDH/II/14) had been withdrawn.

4. Mr. HESS (Israel) confirmed that amendment CDDH/II/14 had been withdrawn.

Proposed new articles 26 to 32 - Medical air transport (CDDH/II/82/Rev.1) (concluded)

Proposed new article 31 - Landing and inspection (CDDH/II/82/Rev.1)

5. Mr. MARRIOTT (Canada), introducing the proposed new text of article 31 (CDDH/II/82/Rev.1) on behalf of the sponsors, said that it was identical to the ICRC text in substance, but the provisions had been rearranged and certain additional safeguards had been included. In paragraph 1, the first change was the use of the words "physical control" of an adverse Party, in line with changes made in other articles. The words "areas the physical control of which is not clearly established" had been added to take into account the fluidity and uncertainties of warfare. The word "verification" had been eliminated because it was felt that its sense was covered by the word "inspection", especially as the phrase "in accordance with the following paragraphs of this article" had been included to show the purpose of the inspection.

6. Paragraph 2 stated that, if such an aircraft landed or alighted on water, it might be subjected to inspection solely to determine the matters referred to in paragraphs 3 and 4 of the same article. The second half of paragraph 2 reflected the substance of paragraph 4 of the ICRC text but stated in greater detail the requirements for maintaining the health of the wounded and the sick aboard the aircraft.

7. Paragraphs 3 and 4 were a rearrangement of paragraph 2 of the ICRC text, which dealt with several different subjects.

8. Paragraph 5 was an additional provision stating that, if the aircraft had flown without or in breach of a prior agreement where such agreement was required, it might also be seized provided that the Party seizing it could provide adequate facilities for necessary medical treatment of the wounded and sick aboard.

9. Mr. de MULINEN (International Committee of the Red Cross) asked whether there should not be a reference to medical personnel and crew in paragraph 5.

10. Mr. SOLF (United States of America) said that the intention had been to include all personnel. The sponsors had considered that the phrase "it may also be seized" in paragraph 5 indicated that that paragraph was incorporated in the provisions of paragraph 4. Further details could be added if necessary.

11. Miss GUEVARA ACHAVAL (Argentina) said that her delegation was concerned over the phrase in paragraph 1 "medical aircraft flying over land or water under the physical control of an adverse Party" and wondered whether the sponsors could agree to replace the phrase "sector marítimo o terrestre" by "cualquier sector", which would have the advantage of including the notion of inland waterways and lakes. Her delegation had no objection to the phrase "to land or to alight on water" in that paragraph.

12. Mr. MARRIOTT (Canada) said that the amendment was acceptable.

13. Mr. KUCHENBUCH (German Democratic Republic) said that his delegation was in agreement with the articles as formulated in amendment CDDH/II/32/Rev.1, which were a reaffirmation of the Conventions and were a considerable improvement on the ICRC text. Referring to the phrase "whether ordered or otherwise" in paragraph 2, he asked whether that provision was intended to make any change in the Conventions, since Article 30 of the first Geneva Convention of 1949 stated that in the event of an involuntary landing in enemy or enemy-occupied territory, the wounded and sick, as well as the crew of the aircraft, should be prisoners of war. He also asked whether it should not be made clear in paragraph 4 that the word "occupants" should cover not only the wounded and the sick but the medical personnel and the crew.

14. Mrs. DARIIMAA (Mongolia), referring to paragraph 2 of article 31, asked what was the meaning of the word "essential" in the third sentence. She would like an example to illustrate its use.

15. With regard to paragraph 4, which referred to seized aircraft being used thereafter only as medical aircraft, she asked who would use the aircraft after seizure - the Party which had seized them or the original owners.

16. Paragraph 5 laid down the proviso that, if an aircraft had flown without or in breach of a prior agreement, it might also be seized provided that the Party seizing it could provide adequate facilities for necessary medical treatment of the wounded and sick aboard. She asked what would happen if the Party in question was unable to provide such facilities.

17. Mr. ONISHI (Japan) said that his delegation was prepared to accept the new article as a whole. In connexion with security measures, he pointed out that in areas where physical control was not clearly established it might not be possible to make an inspection of aircraft. He asked whether it would be possible to change the flight route instead of landing. Article 28 stated that security measures would be taken in accordance with article 31, paragraph 1; that was acceptable where physical control was clearly established, but where it was not established it might be difficult to order a landing.

18. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), referring to the drafting changes made in paragraph 2, said that the last sentence stated that the inspecting party should in any event ensure that the condition of the wounded and sick was not prejudiced by the inspection or by such removal. It must be borne in mind that some of the wounded and sick might not be fit for removal. The paragraph made no reference to special care in those circumstances. His delegation would therefore prefer a wording similar to that of paragraph 3 of the text proposed for article 32 in amendment CDDH/II/290, which stated that the inspecting Party should ensure that the health condition of those persons was not prejudiced by such removal. His delegation considered that paragraph 5 of article 31 (CDDH/II/82/Rev.1) was a repetition of the first sentence of paragraph 4.

19. Mr. MAKIN (United Kingdom) suggested that the word "shipwrecked" should be added in the appropriate place in article 31, since when the amendment had first been drafted the shipwrecked had been included in the definition of wounded and sick.

20. Mr. HEREDIA (Cuba) said that his delegation did not consider that the provisions of article 31 and other articles in amendment CDDH/II/82/Rev.1, which established restrictions on the powers of the authorities of the Parties to the conflict relating to aircraft flying over territories under their control, were appropriate.

21. Mr. MARRIOTT (Canada), replying on behalf of the sponsors, said that the question asked by the representative of the German Democratic Republic concerning the word "occupants" in paragraph 4 of article 31 could be dealt with in the Drafting Committee.

22. Replying to the representative of Mongolia, who had asked for an example of the use of the word "essential" in paragraph 2, he said that if, for instance, it was suspected that intelligence equipment was concealed in a medical aircraft, it would be necessary to remove the wounded and the sick, who might otherwise be used for the express purpose of concealing such equipment. In reply to her question concerning seized aircraft, he said that the seized aircraft would be in the power of the Party who had seized it. That provision was the same as that in the ICRC text. He stressed that medical aircraft could only be used as such and not to increase the administration transport fleet. He welcomed her comments concerning paragraph 5, which would be discussed in the Drafting Committee.

23. Replying to the representative of Japan, he said that physical control was often not established and the provision was intended to take into account the fact that it was impossible to make a clear line of demarcation between the Parties to the conflict and to cover the undefined areas between the two Parties. An aircraft might be ordered to land but might decide in fact not to obey that order.

24. In replying to the USSR representative's concern that the condition of the wounded and sick should not be prejudiced by inspection or removal, he said that if the wounded and sick were to be flown even by prior arrangement over enemy territory, it was far from likely that they would be put aboard the aircraft if their condition was too serious for them to travel. On the other hand, supposing the aircraft had to land, for example, in hot, tropical country, their condition might be prejudiced if they were left inside the aircraft. He did not agree with the USSR representative that paragraph 5 of article 31 was merely a repetition of paragraph 4; it covered a different set of circumstances, in which the aircraft had flown without or in breach of a prior agreement, and was therefore an additional provision.

25. He agreed with the United Kingdom representative that the shipwrecked should be referred to specifically. That point would be passed on to the Drafting Committee.

26. He had not quite understood the point made by the representative of Cuba concerning restrictions in overflight. Perhaps the representative could raise the matter in the Drafting Committee.

27. Mr. SOLF (United States of America), replying to the question raised by the representative of the German Democratic Republic concerning paragraph 2 of article 31, said that the intention had been to cover two situations: first, that of aircraft flying with permission over the territory of the adverse Party and being forced to land owing to mechanical trouble or adverse weather conditions, in which case they would be ordered to land, would be inspected and would be allowed to take off again; secondly, that of aircraft which, owing to inadvertence or adverse weather conditions, were forced to make an emergency landing without prior agreement. In that case the provisions of paragraphs 4 and 5 would be applicable and, if the aircraft was in violation of the conditions, it might be seized. It could also be seized if it was a medical aircraft flying without permission. There must be an assurance, as in the removal of wounded and sick from hospital ships at sea, that the seizing party had facilities for medical care. It had not been intended to change the provisions of Article 36 of the first Geneva Convention of 1949 concerning the occupants of aircraft.

28. He agreed with the representative of the German Democratic Republic that paragraph 4 should be so drafted as to make it quite clear that it referred to all occupants, including medical staff and aircraft crew, but believed that the word "occupants" included all of them.

29. Mr. HEREDIA (Cuba) said that he did not consider it appropriate that article 31 and other articles in amendment CDDH/II/82/Rev.1 should establish restrictions on the powers of the authorities of the Parties to the conflict relating to the flights of aircraft over territory under their control. In his view provisions that restricted the power of authorities in the event of unauthorized flights over their territory were entirely unjustifiable.

30. Mr. MARRIOTT (Canada) said that article 31 dealt only with landing and inspection. The question of medical aircraft being ordered to land in order to determine if they were genuinely medical aircraft was dealt with in other articles. The provisions of paragraph 2 were purely for the humanitarian protection of the wounded and sick aboard aircraft; that was why the inspecting party was required to carry out its inspection with the maximum regard for the health of the wounded and sick aboard the aircraft - a not unreasonable request.

Article 31 was approved in substance and referred for drafting purposes to the Drafting Committee with the relevant comments and amendments.

Proposed new article 32 - Neutral or other States not parties to the conflict (CDDH/II/82/Rev.1, CDDH/II/290)

31. Mr. de MULINEN (International Committee of the Red Cross) said that article 32 (CDDH/1) was designed to improve and develop Article 37 of the first Geneva Convention of 1949.

32. Miss BASTL (Austria) said that, in view of the text proposed in document CDDH/II/290, a previous amendment (CDDH/45) could be withdrawn.

33. Mr. MAKIN (United Kingdom) considered that the text of article 32 proposed in amendment CDDH/II/290 provided the best basis for discussion, although it differed only slightly from the ICRC text and amendment CDDH/II/82/Rev.1.

34. Miss BASTL (Austria), introducing amendment CDDH/II/290 on behalf of the sponsors, said that the text of paragraph 1 was the same as that of the ICRC draft and of document CDDH/II/82/Rev.1, with a slight drafting change. The words "a State" in the ICRC text had been replaced by the words "a neutral or other State" in the first sentence of paragraph 1. In paragraph 2 the sponsors wished to emphasize that the neutral State should take security measures before having recourse to extreme measures such as force of arms, in the event of a medical aircraft being forced to fly over the territory of a neutral or other State not party to the conflict. To cover situations where medical aircraft of the adverse Party alighted on land or water in the territory of a neutral or other State, whether through an emergency or in response to a summons, the words "whether ordered or otherwise" had been added to the first sentence of paragraph 3.

35. The ICRC text of paragraph 3 did not include any special directions concerning the inspection of medical aircraft obliged to land on the territory of a neutral or other State. Such directions were provided in amendments CDDH/II/82/Rev.1 and CDDH/II/290. Her delegation endorsed the wording of paragraph 3 in document CDDH/II/82/Rev.1, since it strengthened the provisions regarding the wounded and the sick aboard medical aircraft, but it would prefer the phrase "health condition" to be used in the last sentence of paragraph 3 in order to avoid any misunderstanding.

36. Paragraphs 4 and 5 of article 32 in amendment CDDH/II/290 were identical with the ICRC text and needed no comment.

37. Mr. MAKIN (United Kingdom) said that he considered the text of article 32 in document CDDH/II/290 better than that in amendment CDDH/II/82/Rev.1, subject to a few drafting changes. He suggested that the word "shipwrecked" should be added wherever the phrase "the wounded and the sick" occurred. The phrase "shall take security measures" in the last sentence of paragraph 2 of article 32 was not clear; some redrafting was needed in order to specify what measures were envisaged. He pointed out that the word "may" was used in connexion with the resumption of flight in paragraph 3 of the ICRC text and of the text in amendment CDDH/II/82/Rev.1, whereas the word "shall" was used in document CDDH/II/290. Did the sponsors intend there to be an obligation on neutral and other States to allow medical aircraft to resume flight? There should be no doubt on that point.

38. Mr. KASER (Switzerland) suggested that in the French version of article 32 in amendment CDDH/II/290 the words "avec diligence" should be substituted for the phrase "d'une manière expéditive" in the second part of paragraph 3.

39. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation was satisfied in general with the substance of article 32 in amendment CDDH/II/82/Rev.1 and with the ICRC text, subject to drafting changes. Such words as "give notice" and "urgent necessity" which occurred in the three texts of article 32 (CDDH/1, CDDH/II/82/Rev.1 and CDDH/II/290) were difficult to translate into Russian. Those difficulties were particularly evident in the section of article 32 relating to violation of neutral airspace by medical aircraft. It was essential to specify what kind of "urgent necessity" was meant. The meaning of the words "flight safety" also required elucidation.

40. Mrs. DARIIMAA (Mongolia) said that she found some of the phrases in document CDDH/II/82/Rev.1 difficult to understand. For example, the expression "par inadvertance" in the French version of paragraph 2 could be interpreted in several ways in Russian. The expression "urgent necessity" in paragraph 2 of the English text relating to flights of medical aircraft over neutral territory was also confusing. She wondered whether it meant through force majeure and whether it was reasonable to speak of "urgent necessity" when the airspace of neutral States not party to the conflict was violated. Paragraph 2 also referred to questions of notification and identification when medical aircraft flew over neutral territory: when exactly was that notification to be given, during the flight or when the aircraft landed on neutral territory? Paragraph 3 spoke of aircraft landing "whether ordered or otherwise" and the French text read "sur sommation ou non". What was to be understood by the words in the Russian text which translated meant "in any other manner" and by "ou non" in the French? With regard to the reference in paragraph 4 to the wounded and sick and their removal from

medical aircraft, with the consent of the local authorities, she asked whether that applied to aircraft that had complied with the Geneva Conventions, had violated them, or to both. If it applied to medical aircraft in violation of those Conventions, were the local authorities to consent to the wounded and sick being disembarked? If the medical aircraft had not violated the Geneva Conventions would the landing of the wounded and sick by it be made only with the consent of the local authority without taking into account the consent of the competent authority to which the aircraft belonged? Paragraph 4 was lacking in precision and lent itself to a number of different interpretations.

41. Mr. MARRIOTT (Canada) said that he was not entirely satisfied with some of the wording used in amendment CDDH/II/82/Rev.1. In particular, he considered that the comments by the USSR and Mongolian representatives on the verb "to give notice" were pertinent. Perhaps the phrase "it shall make every effort to give notice of the flight" in article 32, paragraph 2 (CDDH/II/82/Rev.1) should be replaced by some such wording as: "it shall advise the appropriate party immediately of the need for a change in the flight plan". The USSR representative had also commented on the words "urgent necessity" in the same paragraph, and had mentioned "flight safety", which was a technical concept with a very precise connotation. It might be better to replace the words "urgent necessity" by a phrase such as "in an emergency threatening the safety of flight" which the pilot of an aircraft would have no difficulty in understanding.

42. Mr. URQUIOLA (Philippines), referring to paragraph 3 of amendment CDDH/II/290, asked which occupants of a medical aircraft might have to be detained in accordance with international law.

43. Mr. MALLIK (Poland) said that the expression "to alight on land or water" appeared in several places in article 32 as well as in article 31. In his delegation's view, it should be made quite clear in the text that the order to alight on water must not be given unless it was clearly established that the aircraft in question was equipped to do so. Moreover, such an order should be given only in very exceptional cases, in view of the danger involved in alighting on water. His delegation, like others, had some difficulty with the expression "to give notice" which, in that context, would be extremely difficult to translate satisfactorily into Polish.

44. Mr. MARTINS (Nigeria) said that the placing of the words "if any" in paragraph 3 of article 32 in amendment CDDH/II/290 caused his delegation some concern, since it would surely be impossible to determine whether any of the occupants of the aircraft must be detained in accordance with international law unless an inspection was carried out. It would be preferable to move those words to another place in the paragraph so that they applied to the occupants who might have to be detained.

45. Miss BASTL (Austria), replying to the questions raised by the United Kingdom representative concerning amendment CDDH/II/290, said that the sponsors would have no objection to the inclusion of a reference to the shipwrecked after the phrase "the wounded and the sick" wherever appropriate in the text. The phrase "through inadvertence" which appeared in article 32, paragraph 2 (CDDH/II/82/Rev.1) had been omitted deliberately from paragraph 2 of amendment CDDH/II/290, because the sponsors considered that it was too broad in scope and, as the representative of Mongolia had observed, it was liable to give rise to problems of interpretation. That was a question which the Drafting Committee might wish to consider. The last sentence of article 32, paragraph 2, which the United Kingdom representative did not consider to be sufficiently clear, might also be considered by the Drafting Committee. With regard to that representative's comments concerning the second part of paragraph 3, the sponsors considered their text satisfactory. It should be borne in mind that under article 32 the inspecting party would be a neutral State, not a State Party to the conflict as was the case in article 31. In the first part of paragraph 3, the imperative word "shall" had been used deliberately because medical aircraft were involved; the sponsors would, however, be prepared to agree to the replacement of the phrase "shall be authorized by that State to resume its flight" by the more flexible wording used in the ICRC text, namely, "may resume its flight".

46. With regard to the question put by the Philippine representative, she said that the content of paragraph 4 of the ICRC draft had been fully incorporated in paragraph 4 of article 32 in amendment CDDH/II/290, which stated that neutral or other States not parties to the conflict were under an obligation, under the rules of international law, to detain special categories of occupants of medical aircraft disembarked or its territory, namely, persons coming within the scope of Article 14 of the Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land. The reason was that such States were required to prevent those persons from again taking part in the hostilities. Even when persons in that category remained on board the aircraft, the State on whose territory it had landed was bound by that obligation; that situation was covered by article 32, paragraph 3 of the amendment. If the neutral or other State not party to the conflict did not fulfil the obligation placed upon it by Article 14 of The Hague Regulations, it would be giving preferential treatment to one of the States Parties to the conflict and would thus be disregarding its obligations under The Hague Conventions.

47. Mr. MAKIN (United Kingdom) said that most of the points raised in connexion with amendment CDDH/II/82/Rev.1 had been dealt with by the Austrian representative in the context of document CDDH/II/290. With regard to the meaning of the words "urgent necessity" in article 32, paragraph 2, he said that a medical aircraft might fly over the territory of a neutral State without prior agreement for one of the following reasons: flight safety, a technical failure, meteorological conditions, or inadvertence. Or, it might have no excuse at all, though that was very unlikely to be the case. The pilot should give notice as soon as he knew that he was going to fly over the territory in question; that would presumably be when the aircraft was already in the air. In that respect, paragraph 2 was better worded in amendment CDDH/II/290 than in amendment CDDH/II/82/Rev.1, since notice could hardly be expected to be given if the overflight was the result of inadvertence. He agreed with the representative of Mongolia that the meaning of the phrase "disembarked ... with the consent of the local authorities" in paragraph 4 was not clear and might well give rise to problems of interpretation. The final decision on article 32, which contained important provisions and required careful consideration, should not be taken hastily at the current session.

48. Mr. SOLF (United States of America) said he wished to refer to the comments by the Polish representative on the problem of ordering aircraft to alight on water. The sponsors of the amendments in document CDDH/II/82/Rev.1 had included the words "as appropriate" in article 32, paragraph 1, in order to make it clear that an aircraft which was not equipped to alight on water could not be ordered to do so. If that wording was not sufficiently clear, the Polish delegation might wish to help the Drafting Committee to evolve a more satisfactory text.

49. The phrase "disembarked ... with the consent of the local authorities", which was taken from Article 37 of the first Geneva Convention of 1949, meant voluntary disembarkation. The condition of a wounded or sick person in the aircraft might be so serious that emergency treatment was required; indeed, that might be the reason why the aircraft had landed on the territory of the neutral or other State not party to the conflict. The person in need of emergency treatment would be disembarked and the aircraft would continue its journey. The neutral State would provide the necessary medical treatment. Upon his recovery, the person in question would either be interned, if he was capable of taking part in the hostilities again, or be repatriated.

50. Mr. MARRIOTT (Canada), referring to the comments by the Nigerian representative, said he understood the words "if any" at the end of article 32, paragraph 3 (CDDH/II/290) to refer to the noun "inspection".

51. Miss BASTL (Austria) said that the Canadian representative's understanding was correct. The words "if any" had been included because inspection was not compulsory.

52. The CHAIRMAN said that a number of solutions had been suggested in respect of the phrase "urgent necessity". When it took up the matter, the Drafting Committee might wish to consider the legal concept of force majeure as a possible alternative.

53. Mr. MARTINS (Nigeria) said that he was not entirely satisfied with the Austrian representative's explanation concerning the words "if any". If they referred to the noun "inspection", it was difficult to grasp the meaning of the phrase "those who must be detained in accordance with international law".

54. The CHAIRMAN said that, in the absence of any objection, he would take it that the Committee agreed to refer article 32 to the Drafting Committee together with the relevant proposals and comments.

It was so agreed.

ORGANIZATION OF WORK

55. The CHAIRMAN said that he had placed article 8 of draft Protocol I and article 11 of draft Protocol II on the agenda for that meeting as reserve items. In view of the large number of amendments submitted to those articles, however, it was unlikely that the Drafting Committee would have time to deal with definitions before the end of the current session. In the interval before the Committee's forty-ninth meeting, the sponsors of the various amendments to those two articles might wish, however, to consider the possibility of withdrawing some of them in the light of the progress made on related questions during the session.

The meeting rose at 12.35 p.m.

SUMMARY RECORD OF THE FORTY-NINTH MEETING

held on Tuesday, 8 April 1975, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONDOLENCES ON THE DEATH OF COLONEL KJELL MODAHL OF THE NORWEGIAN DELEGATION

1. The CHAIRMAN informed the Committee of the death on Monday, 7 April 1975, of Colonel Kjell Modahl of the Norwegian delegation, member of Committee III. He expressed his condolences to the Norwegian delegation and called on representatives to observe a minute's silence in tribute to the memory of the deceased.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of the Working Group on articles 21 to 25 of draft Protocol I and of the Drafting Committee (CDDH/II/296)

2. Mr. DEDDES (Netherlands), Chairman of the Working Group, introduced the report (CDDH/II/296). He paid a tribute to the spirit of co-operation which had enabled the Group's members to keep the discussions concise and to the point. The ICRC draft and amendment CDDH/II/249 had also helped the Working Group in its discussions. It had become clear that the question of medical transports other than air transport had not been very extensively discussed during the two sessions of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, and that was why article 24, entitled "Other medical ships and craft" had been placed in brackets.

3. A very wide range of nationalities and languages had been represented in the Group. The fact that many members were also members of the Drafting Committee had made drafting easier.

4. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group and the Drafting Committee, said that those two bodies did not recommend the adoption, by Committee II, at the current session, of article 24 of draft Protocol I or the revised definition of the ship-wrecked annexed to the report (CDDH/II/296). That was why both texts were placed in brackets.

5. The wording adopted for articles 21 to 23 was based on various amendments submitted to the ICRC draft. The definition of medical transport was dealt with in article 21. The only thing which needed to be said about medical vehicles (article 22) was that they should be protected and respected in the same way as mobile medical units under Article 35 of the first Geneva Convention of 1949.

6. Paragraph 2 of article 23 was modelled on article 9 of draft Protocol I already adopted by the Committee. Paragraph 3 did away with the ten days' notification previously required for such craft. A second sentence had been added to the paragraph, which had not been in the relevant amendment.

7. Article 24 expanded on that part of Article 21 of the fourth Geneva Convention which concerned medical craft at sea. The Working Group had reached the conclusion that no rules had been formulated on that matter and they did not feel competent to make a final proposal. In their opinion the matter needed further study, and it had therefore decided to recommend that the text in question had better be left to the third session of the Diplomatic Conference. By that time, every representative would have had the time to consult his Government.

8. Referring to the annex to the report, he said that the Working Group considered that there were problems about the transport of the shipwrecked in medical vehicles on land, although shipwrecked persons might need to be transported to a hospital to check if they were sick or not. Furthermore, the fate of persons who fell overboard was not dealt with. Such matters should therefore be looked at again at the third session.

General discussion

9. Mr. CALCUS (Belgium) said he was not satisfied with the present wording in French of article 21, sub-paragraphs (a) and (c), which did not correspond to what had been adopted by the Drafting Committee. Sub-paragraph (a) should read: "L'expression 'transport sanitaire' s'entend du transport par voie terrestre, par voie maritime ou sur autres eaux ou par voie aérienne des blessés, des malades, des naufragés, ainsi que du personnel sanitaire et religieux et du matériel sanitaire protégé ...". Sub-paragraph (c) should read: "L'expression 'navire et embarcation sanitaire' s'entend de tout moyen de transport sanitaire par voie maritime ou sur autres eaux".

10. Mr. SANCHEZ DEL RIO (Spain) observed that in the Spanish version the adjective "acuática" had been used. That might raise a smile, since the word in question applied to certain birds and not to means of transport. The words "vía marítima" and not "vía acuática" should be used.

11. Mr. de MULINEN (International Committee of the Red Cross) said that the French wording "voie maritime et autres eaux" did not accurately render the English, which had been the Drafting Committee's main working language. He asked whether the words "par voie d'eau" might not be used.

12. Mr. MARCHAISSEAU (France) did not agree with that proposal, for the expression in question meant that the vessel had sprung a leak and was going to sink. "Voie maritime et autres eaux" was the best wording.

13. Mr. MARRIOTT (Canada) asked for the insertion of the preposition "of" before the words "the shipwrecked" in the second line of article 21, sub-paragraph (a).

14. Mr. SOLF (United States of America) requested that the colon after the words "capture at sea" in article 23, paragraph 1, should be replaced by a full stop.

15. Mr. ONISHI (Japan) said that collection and transportation of the dead was not a medical duty. Cases might, however, arise where medical transports would have to do such work. That eventuality should therefore be provided for, to obviate certain difficulties.

16. Mr. SOLF (United States of America) said that the question of the transportation of the dead might be dealt with in article 29 of draft Protocol I, on restrictions on the cargo of medical aircraft.

Article 21 - Definitions (concluded)

17. Mr. BOTHE (Federal Republic of Germany) suggested that the words "ainsi que" be inserted before "des naufragés" in the French text of sub-paragraph (a).

18. Mr. CALCUS (Belgium) said he doubted whether such an unwieldy addition would help to improve the style of the article.

19. Mr. MARCHAISSEAU (France) proposed the following wording: ".... ainsi que des naufragés et du personnel sanitaire et réligieux, ainsi que du matériel ...". That wording was perhaps rather awkward, but it came slightly nearer the meaning of the English text.

20. Mrs. DARIIMAA (Mongolia) said that she had compared the English, French and Russian versions of the text under discussion. The new wording of the French text read "par voie maritime et autres eaux", while the English said simply "water" and the Russian "voda". Could "water" be considered equivalent to "maritime"? Were inland waterways included in that expression? Moreover, the French text spoke of "matériel et fournitures sanitaires", while the Russian used a word which had a wider meaning and was closer to the English "equipment". She wondered what would be the effect on the other language versions of the corrections made in the French text.

21. The CHAIRMAN pointed out that in international conferences it was enough to agree on one text, which constituted the original authentic text and for which the language services found the necessary equivalents in the other languages. At the International

Court of Justice, for instance, it was always stated which of the texts, French or English, was authentic. In the present instance the Committee must rely upon the technical services of the Conference, which naturally could call on representatives for help.

22. Mr. SANCHEZ DEL RIO (Spain) said that he was ready to confer with the other Spanish-speaking delegations during the suspension of the meeting in order to improve the wording of the Spanish text of the article.

23. Mr. ONISHI (Japan) proposed that the order of sub-paragraphs (c) and (d) should be transposed and that in sub-paragraph (b) the words "medical vehicles" should be placed before "medical ships and craft".

24. Mr. MAKIN (United Kingdom) said that, in the text of the annex to the report (CDDH/II/296), only the word "shipwrecked" should be placed in quotation marks. It might also be useful to place an asterisk after sub-paragraph (a) of article 21, with a note to the effect that, in what followed, reference should be made to all the other articles dealing with the shipwrecked, so as to make the wording uniform, particularly with regard to the Canadian proposal for the insertion of the word "of".

25. Speaking as Rapporteur of the Working Group, he agreed with the Japanese proposal. Regarding the transport of the wounded and the sick who died during transport, it should be pointed out that no difficulties had arisen in that connexion since 1864. As to transport for the purpose of interment, that kind of operation should not be confused with medical transport.

26. The CHAIRMAN suggested that the different language groups, with the exception of the English group, should meet during the suspension of the meeting in order to come to an agreement on all stylistic questions. He invited the Committee to adopt the English text of article 21.

Article 21 was adopted by consensus.[1/]

Article 22 - Medical vehicles (concluded)

27. Mr. MARRIOTT (Canada) suggested that it would be an improvement to reword the text as follows: "Medical vehicles shall enjoy the same respect and protection as mobile units ...".

1/ For the text of article 21 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

28. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group, said that he saw no need for that change. The original text had the advantage of reproducing the wording of Article 35 of the first Geneva Convention of 1949. Nevertheless, he would accept the opinion of the majority.

29. The CHAIRMAN, speaking as a jurist, pointed out that it was preferable to retain a wording in conformity with that of the texts that had already been adopted, in order to avoid any improper interpretation.

30. Mr. KASER (Switzerland) proposed that the title of the article should be changed to read "Protection of medical vehicles".

31. Mr. SOLF (United States of America) said that in his opinion, both as a jurist and as a representative of his country, the Committee should not adopt the Canadian proposal. With regard to the Swiss proposal, it would be better not to alter the titles of the articles.

32. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group, said that he would prefer no change to be made in the titles of the articles, which should be kept as short as possible. In any case, that question came within the competence of the Drafting Committee of the Conference.

33. The CHAIRMAN agreed. The Drafting Committee of the Conference was responsible for unifying the texts of the different Committees and, in particular, deciding on the definitive titles. He therefore suggested that the Committee should adopt the text of article 22.

Article 22 was adopted by consensus.[2/]

Article 23 - Hospital ships and coastal rescue craft (concluded)

34. Mr. MARRIOTT (Canada) said that he feared that the first sentence of paragraph 1 of article 23 was too long and too obscure. The verb "shall apply" was placed too far from the subject "The provisions". The text could be amended in the following way: "The protection mentioned in Articles 22, 24, 25 and 27 of the second Convention shall also apply to the vessels concerned, to their lifeboats and their small craft, to their personnel and crew, and to the wounded and sick and the shipwrecked on board,

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2/ For the text of article 22 as adopted, see the report of Committee II, (CDDH/221/Rev.1, annex II).

even though these vessels carry civilian wounded and sick and shipwrecked who (instead of which) do not belong ...". The second sentence of that paragraph should be worded: "If they should fall into the hands of a Party to the conflict of which they are not nationals, they shall be deemed to be covered ...".

35. In paragraph 2, the word "for" should be replaced by "to" and, at the end of the sentence, the phrase "for humanitarian purposes" should come after the phrase "to a Party to a conflict".

36. In paragraph 3, the word "notification" should be followed by the following phrase: "in accordance with Article 22 of that Convention has not been made". In the following sentence the words "the craft" should be replaced by "such craft" and the word "their" should be added after "will facilitate".

37. Mr. SANCHEZ DEL RIO (Spain) said that he wondered what the expression "pequeñas embarcaciones" could mean. He feared that the whole of the first sentence was incomprehensible. Perhaps the sentence could be re-worded as follows: "Las disposiciones de los artículos 22, 24, 25 y 27 del II Convenio se aplicarán también en los casos en que los buques y embarcaciones sanitarios a que ellos se refieren transporten heridos, enfermos y náufragos civiles que no pertenezcan a ninguna de las categorías mencionadas en el artículo 13 del II Convenio y en el artículo 42 del presente Protocolo."

38. Mr. FIRN (New Zealand) said that, while he agreed with the Canadian proposal, he considered that the text could be simplified if the end of the first sentence of paragraph 1 was amended to read: "... civilian wounded and sick and shipwrecked as defined in article 45 of the present Protocol". That article had already been adopted by the Committee.

39. Regarding the last sentence of paragraph 1, his delegation feared that the word "nationals" could lead to confusion, for it might suggest the national liberation movements which were mentioned in the new article 1. That being so, it would be better to delete the phrase "of which they are not nationals".

40. Mr. BOTHE (Federal Republic of Germany) said that the Spanish proposal and the Canadian proposal might result in a fundamental change in the meaning of the first sentence. If it was necessary to improve the original text, it was nevertheless clear that the Committee was unable to do so.

41. Mr. SOLF (United States of America) said that he agreed with the point of view of the delegation of the Federal Republic of Germany. He pointed out that the representative of Canada should have begun his sentence with the words "The provisions" and not "The protection".

42. With regard to the New Zealand proposal, he pointed out that article 13 of the second Geneva Convention of 1949 made it clear that the persons protected by that Convention were not all combatants. The Drafting Committee had not wished to alter the provisions of that Convention. Moreover, the civilians mentioned in Article 13 of the second Geneva Convention of 1949 were included in article 13 of the Protocol as persons who might become prisoners of war and could be removed from hospital ships by warships. It was necessary to distinguish them from other civilians who should not be prisoners of war and consequently were immune from capture at sea.

43. Mrs. MANTZOULINOS (Greece) asked that the phrase "and in article 42 of the present protocol" which appeared in paragraph 1 of article 23 should be placed in square brackets as the final wording was not yet known.

44. Mr. FIRN (New Zealand) pointed out to the United States representative that the persons listed in Article 13 of the second Geneva Convention of 1949 were the same as those mentioned in Article 4 of the third Geneva Convention. Moreover, article 45 of draft Protocol I stated that civilians were persons who did not belong to one of the categories of armed forces referred to in Article 4 of the third Geneva Convention.

45. Mr. MARRIOTT (Canada) said that the French proposal and the Canadian proposal were close enough to be referred to the Drafting Committee with a view to obtaining a final text which did not modify the actual substance of the article.

46. The CHAIRMAN urged the Committee to entrust the final drafting of article 23 to the Drafting Committee. The French- and Spanish-speaking representatives could profitably use the interval to improve the text in those two languages. The English-speaking representatives who had expressed their views, and the USSR representative could endeavour to agree on the English text in the light of the comments which had just been made.

47. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group, doubted whether some delegations would be able to amend the first sentence during the suspension of the meeting, because they were not sufficiently familiar with the provisions of the second Geneva Convention of 1949. It would, however, be useful if those delegations that had voiced criticisms could reach agreement and submit a single text for adoption by the Committee.

48. The proposal to replace the word "which" by "who" in the sixth line of article 23 was a sound one, as well as the proposal of the Greek delegation concerning square brackets to be added in the phrase relating to article 42.

49. With regard to the sentence beginning with the words "if they find themselves in the hands of a Party ...", he reminded the New Zealand delegation that those words already appeared in Article 4 of the fourth Geneva Convention of 1949. He thought, moreover, that the words "deemed to" would introduce an unrealistic note, since the civilians in question were protected by the fourth Geneva Convention of 1949.

50. In paragraph 2, the reversal of phrases proposed by Canada was only a matter of style, but it would have the disadvantage of deviating from the text of article 9 of draft Protocol I.

51. With regard to paragraph 3, he hoped that the Canadian representative would be kind enough to explain his intention more fully during the suspension of the meeting.

52. The CHAIRMAN proposed that the Committee should suspend the meeting to enable representatives to seek agreement on the substance and wording of article 23. He requested the Canadian delegation to put its proposals in writing, particularly with regard to paragraph 1. When the meeting resumed the Committee could take a decision on the Canadian amendment and, if it were not adopted, on the text submitted by the Working Group.

The meeting was suspended at 11.35 a.m. and resumed at 12.5 p.m.

53. The CHAIRMAN asked the Rapporteur whether an agreement had been reached on article 23.

54. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group, proposed that paragraph 1 should read as follows:

> "The provisions of the Conventions with respect to (a) vessels described in Articles 22, 24, 25 and 27 of the second Convention, (b) to their lifeboats and their small craft, (c) to their personnel and crews, and (d) to the wounded and sick and the shipwrecked on board, shall also apply where these vessels carry civilian wounded and sick and shipwrecked who do not belong to any of the categories mentioned in Article 13 of the second Convention /and in article 42 of the present Protocol/. Such civilians are, however, not subject to surrender to any Party which is not their own, or to capture at sea. If they find themselves in the hands of an adverse Party, they shall be covered by the fourth Geneva Convention and the present Protocol."

55. The text of paragraph 2 remained unchanged. The end of paragraph 3 should be amended as follows: "of any details of the craft which will facilitate identification and recognition".

56. The CHAIRMAN invited the Committee to adopt the text of article 23 with the changes indicated by the Rapporteur.

Article 23 was adopted by consensus.[3/]

Article 24 - Other medical ships and craft

57. The CHAIRMAN said that the Working Group and the Drafting Committee proposed that article 24 should be left in brackets and the final consideration deferred until the third session. It might however assist Governments in their work if there could be an exchange of views forthwith on the substance of that article.

58. Mr. SOLF (United States of America) pointed out that the purpose of article 24 was to include in the Protocol provisions in respect of temporary medical ships and craft. The medical ships and craft referred to in article 23 were permanent and could not change their status during the conflict. They could not be seized by the enemy. The medical ships and craft covered by article 24, however, enjoyed less protection and could be seized if they fell into enemy hands. The ships mentioned in Article 21 of the fourth Geneva Convention were also considered as temporary. Hence it could be said that article 24 was re-stating in more detail the provisions of the fourth Geneva Convention of 1949.

59. Mrs. RODRIGUEZ LARRETA de PESARESI (Uruguay) inquired whether the provisions of article 24 envisaged the inspection of medical ships, as in the case of airships.

60. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group, said that he shared the view of the United States representative that article 24 re-affirmed the provisions of the fourth Geneva Convention of 1949.

61. With regard to inspection, article 24 contained no provision on the subject. Amphibious vehicles were covered by article 24 when they were on water, since they could be captured and the persons aboard could be treated as the enemy chose provided they were respected and protected. That question could be discussed at the third session of the Conference.

62. The CHAIRMAN proposed that note should be taken of article 24 and that it should be submitted to Governments for their consideration between sessions.

3/ For the text of article 23 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

63. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group, added that it would be advisable to place article 24 in brackets in the report, with a note explaining why it had not been adopted. The annex to the report of the Working Group, on the definition of "shipwrecked persons" in article 8 (b), would also be reproduced.

64. The CHAIRMAN asked whether the Committee accepted those suggestions.

It was so agreed.

65 The CHAIRMAN asked the Rapporteur of the Drafting Committee, who was acting as joint Rapporteur of Committee II, to inform the Legal Secretary of the results of the work of the present meeting so that they could be included in the Committee's report.

Article 18 - Identification (CDDH/II/296) (concluded)

Paragraph 4

66. The CHAIRMAN referring to paragraph 5 of the report of the Working Group (CDDH/II/296), pointed out that Committee II had still to adopt the wording of the second sentence of draft Protocol I, article 18, paragraph 4, recommended by the Working Group, which read as follows:

> "The ships and craft referred to in article 23 of the present Protocol shall be marked in accordance with the provisions of the second Convention".

67. Mr. MAKIN (United Kingdom), Rapporteur of the Working Group, pointed out that the Canadian delegation had proposed that the wording at the end of that sentence be changed to: "... shall be marked in accordance with the second Convention".

The second sentence of article 18, paragraph 4, with the above change, was adopted by consensus.

Article 18 as a whole, as amended, was adopted by consensus.[4/]

Article 8 - Definitions

Sub-paragraph (b)

68. The CHAIRMAN suggested that the Committee take note of the annex to the report of the Working Group (CDDH/II/296) concerning the definition of "shipwrecked persons" in article 8, sub-paragraph (b), which would be studied at the third session of the Conference.

4/ For the text of article 18 as adopted, see the report of Committee II (CDDH/221/Rev.1), annex II).

It was so agreed.

CONSIDERATION BY THE WORKING GROUPS OF:

Section I bis (replacing proposed article 18 bis) (draft Protocol I) (continued)*

Article 19 - Prohibition of reprisals (draft Protocol II) (continued)**

69. Mr. CLARK (Australia) asked whether the Committee would draw up a report on article 18 bis of draft Protocol I and article 19 of draft Protocol II.

70. The CHAIRMAN said that he thought it preferable no longer to refer to article 18 bis but to Section I bis, as ten or twelve articles were concerned. In principle, the Committee had deferred the study of those articles until the third session of the Conference, but it might hear the opinion of the Working Group entrusted with the preparation of that Section.

71. With regard to article 19, the Canadian representative had kindly agreed to act as liaison officer between Committee II and Committees I and III which were to be represented in the Joint Working Group on the question of reprisals mentioned in draft Protocol II.

72. Mr. GREEN (Canada) pointed out that the Chairman, at the time he had proposed that a Joint Working Group be set up to study the question of reprisals, hoped that all three Committees would be represented on it. Unfortunately, Committee I and Committee III were not yet in a position to deal with the matter, and neither of them had sent a representative. The Working Group was thus composed solely of members of Committee II, and he had therefore preferred to restrict its work to article 19.

73. The Working Group was aware that all persons involved in a non-international conflict were dependent on a single Government and that it was essential for the sovereignty and legislation of that Government to be respected. The fact remained that it was necessary to ensure that humanitarian law was respected by all Parties to the conflict, even though it might be assumed that Government authorities would comply with the principles of law of their own accord. On that point it should be noted that the prohibitions contained in article 19 only applied to illegal measures contrary to the principles of law.

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* Resumed from the thirty-fifth meeting and decision deferred until the third session.

** Resumed from the forty-third meeting and decision deferred until the third session.

74. The Working Group's decision to restrict its work to article 19 should not be construed as meaning that reprisal measures were forbidden solely when used against the wounded and sick, the shipwrecked and military personnel, and that other persons involved remained an easy prey. That Section of draft Protocol II applied to all defenceless persons who might fall victims to reprisal measures by the adverse Party. The principles of humanitarian law required that such persons be protected.

75. The Working Group considered that the word "reprisals" was a technical term of international law and should only be employed in a descriptive fashion. It also thought that the wording of that article, dealing with non-international conflicts, should be as simple and non-technical as possible, so as to be readily understood by all concerned. It was desirable that a set of words be found which could be used in all cases where reprisals were mentioned in draft Protocol II. That was why the Working Group proposed that the term "reprisals" in the ICRC draft be replaced by the words "acts of retaliation comparable to reprisals" and that the remainder of the text be left unchanged. The words "comparable to reprisals" clearly indicated that retaliatory measures which were illegal per se were involved, measures which, if employed in international conflicts would properly be described as reprisals.

76. In that connexion, he said that a Working Group of Committee I, of which he was a member, had hit upon a definition which seemed to him preferable to that contained in draft article 10 bis. Committee III was waiting to know the opinion of Committees I and II. As it would be useful to have a proposal on the concept of reprisals for the purposes of draft Protocol II as a whole, the following text might perhaps be kept in mind, especially as a final text would not be adopted at the current session and that a Working Group would no doubt be set up at the third session: "Measures constituting a violation of the provisions of this Protocol may not be taken against persons protected by this Protocol, even if such measures are designed to induce the adverse Party to comply with the Protocol."

77. The CHAIRMAN thanked the representative of Canada for having kindly agreed to act as liaison officer and requested him to undertake the same functions at the beginning of the third session.

78. He invited the Committee to take note of the statement of the Canadian representative and proposed that further consideration of the matter be deferred until the third session of the Conference.

It was so agreed.

79. Mr. CLARK (Australia) asked that the statement of the Canadian representative be circulated to all members of the Conference.

It was so agreed.

80. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, reported that consultations on Section I bis were taking place but that it would be technically impossible for the Committee to complete its work during the current session.

81. Referring to the language problem, he said that the definitive texts of the Protocol would in any event be drawn up in French and English, and possibly in other languages. The delegations present were responsible for all texts regarded as authentic. Consequently, the Committee and its subsidiary organs should take an active part in the drafting of the Protocols in the various languages and should not leave the responsibility for harmonizing the texts to the technical services alone.

82. The CHAIRMAN explained that it was customary, in all international conferences, for the definitive text to be adopted in one language, leaving the technical services to deal with the translation of that text into the other languages. Naturally, the translations were distributed to representatives, who could, if necessary, send any corrections they wished to make. As they were approaching the end of the session, he did not think it desirable to start a debate on that question, which would perhaps be taken up by the General Committee of the Conference.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE FIFTIETH MEETING

held on Wednesday, 9 April 1975, at 3.15 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)*

Article 19 - Prohibition of reprisals (continued)

1. The CHAIRMAN said that in accordance with a wish that Committee II had expressed some time previously concerning article 19 of draft Protocol II, the Chairmen of Committees I and III had been in touch with him regarding the establishment at the beginning of the third session of a Joint Working Group to consider the problem of reprisals. Since the current session was approaching its closing date, that Group could start its work only at the beginning of the third session. Mr. Green (Canada) had said that he was ready to provide the liaison between Committee II and the other Committees.

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of the Technical Sub-Committee on Signs and Signals (CDDH/49/Rev.1, annex II, CDDH/211, CDDH/213)

2. The CHAIRMAN said that the report of the Technical Sub-Committee on Signs and Signals appeared in document CDDH/49/Rev.1, annex II, together with all the amendments to the annex to draft Protocol I, except the amendment submitted by Bangladesh and the United States of America.

3. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee on Signs and Signals, said that at the twelfth meeting of Committee II (CDDH/II/SR.12), held on 26 March 1974, on the proposal of the representative of China, consideration of the report had been deferred until the second session in view of the very complex technical problems raised in the draft annex to Protocol I. Even at the current session, however, the substance of the problem had not yet been broached so as to allow the articles of the draft Protocols to be studied. Now that it had been decided to hold a third session, it was for the Committee to

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* Resumed from the forty-sixth meeting.

bring out certain aspects of the report, to reply to the questions which would be asked, and to consider, if need be, what steps should be taken between the current and the third session to ensure a successful outcome to the work to be undertaken there. That was the plan that had been suggested. He would leave it to the Rapporteur of the Sub-Committee to present the report of the Technical Sub-Committee in detail.

4. Mr. AGUDO (Spain), Rapporteur of the Technical Sub-Committee, said he would summarise the Sub-Committee's report (CDDH/49/Rev.1, annex II), for the benefit of those representatives who had not taken part in the twelfth meeting of Committee II.

5. The report dealt with the organization of the work of the Sub-Committee and with the consideration of the annex to draft Protocol I, to which eight meetings had been devoted. It also included three appendices.

6. Appendix I to the report consisted of the text of the draft annex entitled "Regulations concerning the identification and marking of medical personnel, units and means of transport, and civil defence personnel, equipment and means of transport". Agreement had been reached on several chapters of appendix I, at least with regard to fundamentals, particularly in the case of the following chapters - Chapter I (Documents), with the exception of article 3; Chapter II (Distinctive emblem), and Chapter V (Civil defence). Some other chapters, however, would require more detailed consideration or involve the adoption of measures by the Governments concerned before the third session.

7. Appendix II was a statement by the International Civil Aviation Organization.

8. Appendix III consisted of a statement by Mr. Matthey, Observer for the International Telecommunication Union (ITU), made at the twelfth meeting of Committee II.

9. All the draft amendments submitted when the report was presented at the first session were reflected in document CDDH/49/Rev.1, annex II.

10. Mr. MATTHEY (International Telecommunication Union), referring to the statement he had made at the twelfth meeting of Committee II (CDDH/II/SR.12), reproduced in document CDDH/49/Rev.1, appendix III, stressed the importance of establishing co-ordination between the delegations participating in the Conference and the responsible telecommunication authorities in their respective countries.

11. With regard to the information documents which the ITU had been requested to submit, his organization had drawn up two papers in collaboration with the ICRC.

12. One appeared as document CDDH/211 and included, as annexes, two recommendations made, respectively, by the Plenipotentiary Conference of the ITU, held in Malaga - Torremolinos, Spain, in 1973, and by the World Maritime Administrative Radio Conference, held in Geneva in 1974.

13. The other was contained in document CDDH/213. It included, as an annex, the text of a letter in which the Chairman of the International Frequency Registration Board called the attention of the President of the Diplomatic Conference to the international regulations at present governing radiocommunications, with which the draft annex to draft Protocol I was not in conformity - a fact which entailed a risk of confusion. Extracts from the Radio Regulations produced as an annex to the International Telecommunication Convention had been included with that letter. The main headings of the document were: "Related documentation"; "Existing international treaty"; and "Need for co-ordination at the national level".

14. The document's conclusions underlined the ratification problems which might arise from the incompatibility existing between the draft annex to draft Protocol I and the regulations in force. Delegations were most earnestly urged to plan as rapidly as possible for co-ordination with the Government authorities responsible in their respective countries for telecommunications, in order: (a) to prevent the annex from containing texts which might be regarded as incompatible with the international treaty governing the use of the radio frequency spectrum; and (b) to put forward, if necessary, proposals for the next ITU World Administrative Radio Conference, which was competent in the field, with a view to revising radio regulations so that the radiocommunication requirements formulated by the Diplomatic Conference could be met.

15. If the annex were to be adopted in principle during the current session, the Diplomatic Conference could profit from the interval until the third session by taking action along the lines indicated by the ITU. A meeting of telecommunications experts could be held just before the third session, or soon after its start. Steps could consequently be taken and proposals drawn up for the 1979 Plenipotentiary Conference of the ITU, which was already being prepared and to which proposals had to be submitted one year in advance. The Diplomatic Conference might adopt a resolution on the subject, and he was ready to collaborate with the Committee to that end. The International Frequency Registration Board had decided to

send a circular letter to the 144 member States of the ITU informing them of the situation outlined in document CDDH/213 and including the relevant articles from the draft annex to draft Protocol I. If the Conference adopted a resolution, such as he had suggested, its text could be added to that circular letter.

16. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee on Signs and Signals, said that the Sub-Committee had reached the limits of its competence because its work touched on technical fields regulated not only by the ITU but by other organizations such as the International Civil Aviation Organization (ICAO), the Inter-Governmental Maritime Consultative Organization (IMCO) and so forth. The Committee accordingly had to decide on the principles on which it would henceforth base its action if it wished to respect the legal provisions in force and at the same time avoid loss of time.

17. Mr. MAKIN (United Kingdom) asked whether there was the same incompatibility between the draft annex to draft Protocol I and the ICAO and IMCO regulations, on the one hand, and between the draft annex and the ITU regulations on the other, or whether there were three distinct incompatibilities.

18. Mr. EKLING (International Civil Aviation Organization), referring to the statement made by the representative of ITU, pointed out that it was the duty of his Organization to draw up detailed regulations designed to increase the safety of international air travel. Those regulations were of course based on the ITU regulations, which ICAO accepted as the supreme authority. Consequently, in view of the statement by the representative of ITU, the discussions which had taken place with the representatives of the Swiss Federal Air Board no longer seemed to be relevant.

19. He assured the Committee that his Organization was willing to make a detailed study, before the opening of the third session of the Conference, of all the proposals made by the ITU representative.

20. Mr. MASSON (Inter-Governmental Maritime Consultative Organization) associated himself with the statement made by the representative of ICAO.

21. He had no comments to make on the text under consideration, save for some minor changes of form which he would propose later.

22. Mr. CLARK (Australia) said that his delegation had taken a great interest in the articles of the annex ever since the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, in 1972, during which the first Technical

Sub-Committee had been set up. The time had come for the Committee to consider the report of the Technical Sub-Committee which had met at the first session of the Diplomatic Conference in 1974 and for members to offer comments to guide the Committee in its further deliberations.

23. In the interval between the first and the current session of the Conference, his delegation had had an opportunity to consult his country's Federal and State agencies.

24. His delegation could endorse the work done by the Technical Sub-Committee, although it would like to see some changes in the order of certain articles and in the content of others. It could accept the blue light for medical aircraft, but not the blue flashing light for sea and land transport; nor could it suggest an alternative colour for such transport.

25. His delegation proposed the insertion of a new article to permit Parties to use electronic beacons as a means of identification of medical units and transport.

26. His delegation, mindful of resolutions 6 and 7 of the Diplomatic Conference of 1949,1/ was giving consideration to the possible application of sonar to the identification of hospital and other ships by submarines. Hospital ships should be afforded the greatest possible protection and the use of sonar would be a major step in that direction. He acknowledged that his delegation's suggestions would require further detailed examination and consultation with other interested parties.

27. It would seem that the annex to draft Protocol I could be better organized, so that Chapter III would deal with distinctive signals in the strict sense of the term, including light signals, radio identification signals, secondary surveillance radar and perhaps also his delegation's proposed new article on beacons. Chapter IV would then be entitled "Communications" and would deal with radio-communications, the use of international codes, and other means of communication; his delegation would also seek to have a new article inserted in the Chapter, dealing with "Advance warning" periods.

28. The experts of ICRC and the International Frequency Registration Board of ITU had also made available for the Committee's consideration valuable documents which had shown that the Technical Sub-Committee would need to determine, with the aid of experts, the

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1/ See International Red Cross Handbook, eleventh edition, Geneva 1971, pp. 227 and 228.

priority to be given to the call sign "MEDICAL", in accordance with the International Telecommunication Convention and the Radio Regulations. His delegation would make a careful study of those documents. It agreed with the view expressed by the ITU representative that a draft resolution should be considered by the Committee and then submitted to the Conference. It would be a complicated task and any assistance offered by international specialized agencies would be welcome.

29. He suggested that it would be useful if the Technical Sub-Committee could meet some time before the third session of the Conference. Experts from ICRC, ITU, IMCO and ICAO and other experts could participate in the work of the Technical Sub-Committee so that the annex and the report could be considered by Committee II at the third session.

30. Mr. SOLF (United States of America) said that, like the Australian representative, he could accept the annex appearing on pages 37 to 48 of the Technical Sub-Committee's report (CDDH/49/Rev.1, annex II, appendix I), subject to a few changes.

31. He thanked the representatives of ICAO, IMCO and ITU for their practical suggestions and asked the ITU representative whether it would be possible for him to submit in writing all the suggestions that he had just made.

32. There seemed to be some incompatibility between the ITU documents and the annex to draft Protocol I, in particular with regard to paragraph 2 of article 8. If it should prove impossible to adopt a "MEDICAL" call before the next World Maritime Administrative Radio Conference of the International Telecommunication Union, to be held in 1979, it would be useful to draw up a more general provision which could subsequently be amended, such as "a call shall be used".

33. He also wondered whether paragraph 3 of article 8 might give rise to difficulties. It was his understanding that the Technical Sub-Committee had recognized that there were no agreed international frequencies and that it would be some time before such frequencies would be designated for medical aircraft in time of armed conflict. It was for that reason that the Technical Sub-Committee had proposed a general scheme of having each Party designate the frequencies it would use and publicly so state.

34. That problem showed the importance of the amendment submitted by Canada and the United States of America (CDDH/II/68), which appeared on page 48 of the report (CDDH/49/Rev.1, appendix I).

35. The Technical Sub-Committee should study that proposal, which offered a simple method of amending the annex without having to amend the Protocols; it should be borne in mind that the value of the annex depended on the possibility of keeping abreast of technical developments. Consequently, there was justification for the convening of a meeting of technical experts at regular intervals to review the annex.

36. Mr. MATTHEY (International Telecommunication Union) said that, in respect of paragraph 3 of article 8, it would be inappropriate to give specific frequencies in the annex. He therefore confirmed the United States representative's conclusions.

37. With regard to paragraph 2 of article 8, it was not the call in itself which caused him concern but the fact that it was worded in the same way as the distress signal, which implied an identical status for two different call signs.

38. The method proposed by the United States representative was the best: namely, the use of general terms and machinery so that the annex could be brought up to date when the World Maritime Administrative Radio Conference of ITU had adopted the provisions in the annex to draft Protocol I for the definition of a "MEDICAL call sign" and for the allocation of an international frequency. It was for the Conference to take a decision on the subject.

39. Mr. SCHULTZ (Denmark) said that his delegation accepted the principles set forth in the annex, but would not go into details at the present stage of the work.

40. Chapters I and II did not appear to present any problems, save in respect of articles 3 and 7, where a choice had to be made between two proposals.

41. Regarding article 3, he preferred proposal 2, for the article did not increase protection for the persons concerned.

42. For article 7, he favoured proposal 1, for the light signal consisting of a flashing blue light should be used only by medical aircraft. The use of the same signal for medical vehicles or ships seemed dangerous because it was already used by several countries not only for medical vehicles but also for police cars and fire engines.

43. With regard to article 16, he could accept the procedure proposed by the representatives of Canada and the United States of America.

44. The CHAIRMAN said that, in his opinion, the Committee should take three decisions. First, it should adopt the report of the Technical Sub-Committee on Signs and Signals and take note of appendix I, since amendments would be made to the latter before the third session.

45. Secondly, it should set a date for the next meeting of the Technical Sub-Committee. It might be desirable for the meeting to be held shortly before the third session of the Conference or at the very beginning of that session.

46. Thirdly, the Committee should approve a draft resolution to be submitted for adoption by the Conference. A text had already been handed to him unofficially.

47. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee on Signs and Signals, suggested that the meeting should be suspended, to allow the last of the Chairman's proposals to be considered.

The meeting was suspended at 4.35 p.m. and resumed at 5 p.m.

48. The CHAIRMAN suggested that the Committee should adopt the report of the Technical Sub-Committee and take note of its appendix I (draft annex to draft Protocol I). The Chairman of the Sub-Committee had requested that Committee II should in particular adopt the principles laid down in article 16 of the draft annex (CDDH/49/Rev.1, p. 48) and also the principle in paragraph 1 relating to regular meetings of experts.

49. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee on Signs and Signals, urged that the Committee should take note of the draft annex, in order that the Technical Sub-Committee might be able to continue its work. He suggested that no particulars regarding radiocommunications should be included in the draft annex.

50. Mr. MAKIN (United Kingdom) said that it was important for the Technical Sub-Committee to be sure that it was working along the lines desired by the Committee. He thought that the Committee could take note of the report and approve the draft annex to draft Protocol I, in particular article 16.

51. Mr. CLARK (Australia) supported that proposal, he thought that the draft annex should be reconsidered in the light of the observations made.

52. Mr. SOLF (United States of America) supported the United Kingdom proposal, with the reservation that all delegations should retain the right to submit amendments.

53. Mr. MARRIOTT (Canada) supported the United Kingdom proposal, adding that, in the case of article 16 of the draft annex, the text to be considered was the text resulting from the amendments submitted in document CDDH/II/68.

54. Mr. MALLIK (Poland) said that he thought that Committee II could adopt the report of the Technical Sub-Committee, but not the draft annex. It had not yet finished its consideration of the latter and he therefore opposed its adoption.

55. Mr. URQUIOLA (Philippines) agreed with the Polish representative and proposed that the report of the Technical Sub-Committee should be accepted but that the approval in principle of the annex should be postponed until the third session.

56. Mr. ASHMAWI (Arab Republic of Egypt) supported the Polish representative.

57. Mr. NOVAES de OLIVEIRA (Brazil) shared the opinion of the Polish representative but said that his delegation would have no objection to a possible consensus.

58. The CHAIRMAN suggested that the Committee should decide, by consensus, to approve the principles embodied in the report of the Technical Sub-Committee on Signs and Signals (CDDH/49/Rev.1, annex II) and in appendix I, it being understood that the details of the latter would be discussed and adopted at the third session of the Conference.

59. Mr. BOTHE (Federal Republic of Germany) supported the suggestion of the Chairman. With respect to article 16 of the draft annex, he supported the proposal of the Canadian representative.

60. Mr. MATTHEY (International Telecommunication Union) said that, in such cases, ITU would approve the annex to the report and request that the discussions, as recorded in the summary records, should be taken into account.

61. Mr. MAKIN (United Kingdom) said that the telecommunications authorities in his country would not take the work of a mere Sub-Committee into consideration, unless it already had the approval of a higher body.

62. Mr. SOLF (United States of America), referring to the proposal that article 16, as amended in document CDDH/II/68, should be specifically approved, drew attention to the note at the top of page 48 of the report of the Technical Sub-Committee.

63. The CHAIRMAN said that that detail would be taken into consideration when the annex was considered article by article.

64. Mr. MAKIN (United Kingdom) agreed that the Committee should reach agreement on a text and suggested the following wording:

> "The Committee approves the report of the Technical Sub-Committee and the principles contained in the annex to document CDDH/49/Rev.1, and requests the Technical Sub-Committee to meet again to take into account the points made in the discussion at the present session and to submit a new report at the next session of the Conference.".

65. After an exchange of views in which Mr. MALLIK (Poland), Mr. URQUIOLA (Philippines), Mr. ONISHI (Japan), Mr. MARRIOTT (Canada) and Mr. MAKIN (United Kingdom) took part, the CHAIRMAN put the proposal of the United Kingdom representative to the vote.

The proposal of the United Kingdom representative was adopted by 32 votes to none, with 8 abstentions.

66. The CHAIRMAN asked the Committee to set a date for the next meeting of the Technical Sub-Committee, either at the beginning of the third session of the Conference or at some time before that session.

67. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee on Signs and Signals, said that it would be difficult to hold a meeting before the third session of the Conference; the Sub-Committee would be able to carry out its work if it met at the very beginning of the Conference.

68. Mr. HESS (Israel), explaining his delegation's vote, said that it supported the principles in the draft annex, but that his country used as the distinctive emblem of the medical services of its armed forces and of the National Aid Society - the Red Shield of David - while respecting the inviolability of the distinctive emblems of the 1949 Geneva Conventions.

69. Mr. MATTHEY (International Telecommunication Union) asked the Swiss delegation whether it would agree to include in the information regarding the third session of the Conference a notice to the effect that representatives of the telecommunications authorities could be attached to the delegations concerned for the meeting of the Technical Sub-Committee.

70. Mr. URQUIOLA (Philippines) asked that the date and duration of the meeting of the Technical Sub-Committee should be specified, since the developing countries were unable to do without their telecommunications experts for any length of time.

71. The CHAIRMAN said that the General Committee of the Conference would fix those dates the following week. The Conference should open on 20 or 21 April 1976.

72. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee on Signs and Signals, said that he shared the concern expressed by the Philippine representative.

73. Speaking as the representative of Switzerland, he supported the suggestion made by the ITU representative, of which he heartily approved.

74. Mr. SOLF (United States of America) said that, while he agreed with the statements made by the Philippine and Swiss representatives, he thought that the Technical Sub-Committee could begin its work, not at the very start of the third session but at the beginning of the second week.

75. In reply to the CHAIRMAN, who asked whether two weeks would be sufficient for the Technical Sub-Committee, Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee on Signs and Signals, replied that that would be long enough.

76. The CHAIRMAN noted that there was a consensus in the Committee that the Technical Sub-Committee should meet during the second and third weeks of the third session of the Conference.

It was so agreed.

77. Mr. HARSONO (Indonesia) asked that the Technical Sub-Committee should consider the texts of draft amendments, even in the absence of their sponsor.

78. Mr. MAKIN (United Kingdom) pointed out that in any case the Technical Sub-Committee would probably not be composed of more than a dozen experts.

The decision to request Governments specially interested in questions dealt with in the annex to include telecommunications experts in their delegations was adopted by consensus.

79. Mr. MATTHEY (International Telecommunication Union) said that the International Frequency Registration Board of ITU would certainly refer, in the circular letter he had mentioned, to the decision that had just been taken.

80. The CHAIRMAN reminded the Committee that a draft resolution had been submitted unofficially to the Chair. He asked whether any delegation wished to sponsor it.

81. Mr. KIEFFER (Switzerland) proposed that Committee II should submit a resolution to the Conference, urgently requesting the Contracting Parties to undertake co-ordination at the national level with the authorities responsible for telecommunications. He also proposed that that draft resolution should be submitted to the Conference in plenary session.

82. Mr. FRUCHTERMAN (United States of America) supported the Swiss representative and said that his delegation was prepared to sponsor the draft resolution.

83. The CHAIRMAN pointed out that the draft resolution had not yet been circulated in all the working languages of the Conference. He suggested that the vote should be deferred until Monday, 14 April, but that the idea which would be expressed in the resolution should be provisionally approved.

It was so agreed.

The meeting rose at 6 p.m.

SUMMARY RECORD OF THE FIFTY-FIRST MEETING

held on Thursday, 10 April 1975, at 10.25 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Article 54 - Definition (CDDH/1, CDDH/56; CDDH/II/44)

Article 55 - Zones of military operations (CDDH/1; CDDH/II/234)

Article 56 - Occupied territories (CDDH/1; CDDH/II/234)

Article 57 - Civil defence bodies of States not parties to a conflict and international bodies (CDDH/1; CDDH/II/234)

Article 58 - Cessation of protection (CDDH/1)

Article 59 - Identification (CDDH/1)

General discussion

1. The CHAIRMAN suggested that the Committee should hold a preliminary general discussion on the different articles dealing with civil defence in draft Protocol I (articles 54 to 59). Decisions in respect of the amendments on substantive matters and drafting questions would have to be deferred until the third session. Statements should therefore be general in nature, although some of the delegations which had submitted amendments touching on substantive issues might like to explain their proposals.

2. He invited the representative of the International Committee of the Red Cross to introduce the ICRC text of articles 54 to 59 of draft Protocol I.

3. Mr. de MULINEN (International Committee of the Red Cross) pointed out that the definition of civil defence as presented in the ICRC text of both Protocols was a new departure. The Geneva Conventions had been designed to provide protection for all military sick and wounded. The fourth Geneva Convention of 1949 had provided all that had been considered necessary for the protection of civilians involved in armed conflicts, on the basis of the experiences of the Second World War. In the intervening years, however, experience had been acquired in the field of civil defence and many countries had introduced civil defence organizations of different kinds. He hoped that, since it was a completely new field, the Committee would feel completely free in its discussion

on the matter. He referred to the introductory commentary on the definition of "civil defence" given in article 54 of draft Protocol I. Article 31 of draft Protocol II was limited to an enumeration of the same sub-headings as those in article 54 of draft Protocol I.

4. In view of the disparate nature of the civil defence bodies in different countries, article 54 did not describe civil defence bodies but their functions. In some countries civilian bodies were civilian, in others they came under the police and in yet others under the armed forces. The functions of civil defence were largely those given in sub-paragraphs (a), (b), (c), (d) and (g). The drafting of the remaining articles in Chapter VI of the ICRC text had been largely based on provisions elsewhere in the Geneva Conventions affording protection to medical personnel.

5. Article 55 concerned civilian bodies active in civil defence in zones of military operations, whether they were in areas where both Parties were in contact, in areas controlled by their own authorities or in areas occupied by the adverse Party. In zones under the control of a friendly party, no special provisions were required, but in the other two categories, some protection was needed. Paragraph 2 of article 55 was similar in spirit to the Geneva Convention of August 22, 1864 for the Amelioration of the Condition of the wounded in Armies in the Field.1/

6. The provisions of article 56, dealing with the interests of civil defence bodies in occupied territories, and article 57, on civil defence bodies of States not parties to a conflict and international bodies, were self-explanatory. It had been felt necessary to include an article on the cessation of protection (article 58), since it was important, in the interests of the personnel involved, to state to what degree they might be permitted to be involved with a military authority. Article 59, referring to identification, was similar in purpose to article 18 of draft Protocol I and would therefore have to be brought into line with the final version of that article.

7. The reference in article 54 to disasters had been made because in many countries personnel from the same organizations were used for both natural disasters and civil defence.

8. In reply to a point of order raised by Mr. URQUIOLA (Philippines) concerning his delegation's amendments to article 54 of draft Protocol I (CDDH/II/44) and to article 31 of draft Protocol II (CDDH/II/51), the CHAIRMAN suggested that general discussion of the

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1/ See International Red Cross Handbook, eleventh edition, Geneva 1971, pp.7 and 8.

equivalent provisions of draft Protocol II should be left until later in the meeting and that specific discussion of the separate articles of both Protocols should be deferred to the third session of the Conference.

9. Mr. CLARK (Australia) said that the peacetime use of the Australian civil defence organizations was to combat natural disasters and their effects. Civil defence in Australia was considered an important function of both State and Federal Governments. There was an important difference between the roles of civil defence organizations and of the Australian armed forces, the latter being used only in a supporting role in emergencies requiring the use of aircraft, equipment and supplies. Civil defence workers were not permitted to carry weapons, since the maintenance of order in such situations was considered to fall within the jurisdiction of the police. The role of the Australian civil defence bodies was to co-ordinate the specialized functions of the different civil authorities during emergencies, to assess the situation in disaster areas and to determine how to meet the needs of each such situation.

10. His delegation supported the recognition in the ICRC text of the role of civil defence organizations in times of armed conflicts and the protection offered to such bodies in the articles of the Protocol. It urged that, in drafting the two Protocols, especially in the light of article 1 of draft Protocol I, account should be taken of the needs of civil defence organizations. Lastly, his delegation asked that the concept of "emergency services", the name by which civil defence bodies were known in Australia, should be reflected in article 54.

11. Mr. SCHULTZ (Denmark) said that, over the past century, the original endeavour of the Red Cross to provide care and protection for wounded and sick had developed step by step. Modern warfare, in particular the Second World War, had illustrated the need for taking new steps to save human lives and limit human suffering: the need to rescue people from damaged areas and destroyed buildings; to combat fire and thereby prevent trapped persons from being burnt; to protect the homeless and to provide shelter and care for them and for evacuees. Those functions were usually covered by the term "Civil defence" and in some countries by "Civil protection", "Emergency preparedness", "National disaster preparedness", or the like.

12. He agreed that the ICRC text on civil defence represented a novel departure, with the minor exception of Article 63 of the fourth Geneva Convention of 1949, which specified that recognized special national organizations of a non-military character should be permitted to continue their humanitarian activities in occupied territories "for the purpose of ensuring the living conditions of

the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues". The general protection given to humanitarian organizations under Article 63 of the fourth Geneva Convention had proved insufficient and it was for that reason that the ICRC, after studies and consultations carried out over a period of fifteen years, had proposed the present text of Chapter VI.

13. In Chapter VI of draft Protocol I, the ICRC had found it essential to provide for the protection of civil defence functions as well as of civil defence personnel. A new identification symbol or emblem was therefore required, so that military forces of both Parties to a conflict and occupation authorities would be able to distinguish civil defence bodies from other bodies.

14. Denmark supported the ICRC text of Chapter VI, but had submitted certain amendments to strengthen that text and was working on further proposals. His delegation hoped that by the following year an agreement would be reached on the protection of civil defence functions. Such an agreement presented greater difficulties than that concerning military forces, in view of the widely differing types of civil defence organizations in different countries, ranging from the purely civilian through mixed and ad hoc groups to the purely military type of civil protection agency. The fact that civil defence organizations in some countries were military bodies made for major difficulties. If civil defence was purely a civilian body, the protection given to it could be of the type normally provided for civilian organizations. Paragraph 2 (c) of article 58, relating to the bearing of arms by civil defence workers for the purpose of maintaining order in a stricken area or for self-defence, would also present some difficulties. In both cases a principle was involved that was in some degree of conflict with Article 63 of the fourth Geneva Convention, under which protection could be given only to civil defence organizations of a "non-military character". However, the ICRC text of article 58 clearly stated that co-operation by the civil defence personnel in the discharge of their tasks with military personnel should not cause the former to lose their right to protection. His delegation considered that protection should be limited to civilian organizations, but should also cover such bodies in countries where they were ultimately subordinate to the Ministry of Defence.

15. Mr. SKARSTEDT (Sweden) said that for many years Sweden had been actively supporting the strengthening of the guarantees afforded by international humanitarian law to non-military civil defence organizations. The results achieved by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts convened by the International Committee of the Red Cross in 1971 and 1972 were undoubtedly progressive and constituted a sound basis on which to

prepare agreed rules for the special protection of civil defence bodies, their personnel, buildings, equipment and means of transport. It was for the Diplomatic Conference to draw up adequate rules for that purpose.

16. His delegation fully supported the aim of the rules which the ICRC had submitted, as also, in general, their content. It was particularly glad that those rules constituted an integral part of draft Protocol I to the four Geneva Conventions of 1949.

17. Since the Committee was for the time being discussing principles rather than details, he would say only a few words about one of the problems which arose in connexion with the protection of civil defence in the context of draft Protocol I, which was concerned only with international conflicts. It related to the prohibition or limitation of requisitioning of civil defence equipment in occupied territories. Rules for the prohibition or limitation of requisitioning appeared in the 1972 ICRC draft but not in the 1973 draft. According to the ICRC Commentary (CDDH/3), it was considered preferable not to touch on that problem rather than to introduce a prohibition which carried numerous reservations and exceptions that might be abused by the occupying Power. The ICRC was of the opinion that the question would be dealt with under existing rules of international law relating to requisition as laid down in article 52 of The Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land.

18. It was not realistic to try to prohibit requisition, but it was necessary, as well as realistic to limit the extent of the requisition of civil defence equipment in occupied territories by mentioning the conditions governing such requisition. His delegation had at first felt that in drafting such conditions the wording of article 14 of draft Protocol I should be followed, in so far as it was applicable. It had found, however, that the conditions described in article 14 were so special that they were not applicable in the field of civil defence. It considered that the wording should be based on the text which had been suggested by the Conference of Government Experts at its second session in 1972, according to which buildings, including public shelters, material and means of transport belonging to civil defence bodies should not be requisitioned if that action might jeopardize the protection of the civilian population.

19. His delegation had reservations with respect to the ICRC view that requsition should be dealt with under The Hague Regulations of 1907. Such a course would imply the postponement of the preparation of a treaty for a long time or indeed the abandonment of the idea of a treaty on the subject. Accordingly, his delegation,

together with the delegations of Denmark, Finland, Norway, the United Republic of Tanzania and Yugoslavia, proposed to submit an amendment to article 56 of draft Protocol I.

20. His delegation considered that the text of other articles, for instance, articles 55 and 59, needed improvement.

21. He trusted that there would be opportunities for further comment on civil defence at the third session of the Conference.

22. Mr. KOKAI (Federal Republic of Germany) said that his delegation considered civil defence a matter of great importance. It was nearly twenty years since civil defence organizations had been set up in the Federal Republic of Germany and constructive and valuable experience had been obtained. His delegation was convinced that a sufficient number of objective facts were available for a correct assessment of the importance of civil defence.

23. Civil defence was not simply a relief organization without a combatant status, nor was it only a means of providing assistance to humanitarian organizations. Civil defence was a humanitarian instrument in its own right which met the modern needs of mankind. Because of technological developments, humanitarian needs could only be met by protection and care of the wounded and the sick. Day-to-day life was now dependent on technical and technological consistency. Minor disturbances might have serious consequences for large groups among the civilian population, affecting their vital living needs. Increased protection was therefore necessary. A protective organization capable of coping with all the technical requirements and equipped to carry out its task at any time was required. That was what was meant by civil defence.

24. He was glad that the Chairman had given the Committee an opportunity for a general exchange of views on the subject, which would undoubtedly be one of the most important questions to be dealt with at the third session of the Conference. The procedural course which the Chairman had chosen was both logical and sound.

25. His delegation wholeheartedly supported the ICRC text, the provisions of which were extremely well balanced and appropriate to the duties which civil defence had to carry out. There were no proposals in the ICRC text which could pose organizational problems for countries facing special situations.

26. It could not agree with the objections which had been raised, based on the fictitious argument that since the entire population always took part in armed conflicts no special protection of the civil protection services was required.

27. His delegation was also in general agreement with the detailed provisions of the ICRC text but had a few preliminary comments to make on the various articles.

28. With regard to article 55, it was his delegation's understanding that the special protection for the civil defence services and their staff did not apply only to occupied territory but also to combat zones.

29. As far as article 58 was concerned, it would follow with great interest any arguments which might be advanced for or against permitting civil defence personnel to carry small arms.

30. Concerning article 59, it considered that a special marking should be provided for the personnel, buildings, equipment and means of transport. For the civil defence health services, the emblem of the Red Cross would be the determining factor.

31. He would comment on articles 60 and 61 on another occasion.

32. Mr. MARTIN (Switzerland) said that his delegation, which considered civil defence to be of great importance, was glad that the Committee had been given an opportunity to hold a preliminary discussion on it and its position within the framework of the new Protocol.

33. Switzerland had been concerned with the problem since 1934, and was well aware how much the civilian population suffered as a result of chemical warfare and the use of incendiary bombs. Indeed, the casualties among the civilian population were now proportionately higher than among the armed forces.

34. He thought it would be well to take advantage of the general discussion to dispel the misgivings which had been voiced as a result of the Conferences of Government Experts. Some of their proposals had caused his delegation some concern, for it would have preferred a simpler arrangement, in which certain provisions would be dealt with in an annex to draft Protocol I. Other experts had pointed out that the regulations relating to medical personnel were compulsory and that the same should be the case for civil defence personnel. There had, in fact, been one school of thought in favour of very simple provisions in order to avoid any difficulties in cases where differences existed between Red Cross personnel and civil defence personnel, while a second school of thought had wanted the duties of civil defence personnel to be specified. The latter school of thought had prevailed. He was glad that the ICRC had adopted the same approach. His delegation felt that detailed regulations would lead to greater homogeneity in the civil defence forces of different countries. It was accordingly in favour of a distinctive emblem for the civil defence services and

the Red Cross. In that way the humanitarian principles set forth in the second paragraph of Article 63 of the fourth Geneva Convention of 1949 could be implemented. The Swiss army manual recognized the principle that civil defence organizations of a non-military character responsible for relief activities should be treated in accordance with that paragraph.

35. In the development of the humanitarian law applicable to civil defence organizations the Conference would be developing the principles embodied in draft Protocol I.

36. While his delegation wholeheartedly supported the ICRC text, it might wish to refer to points of detail later. It was obvious, for example, that it would be essential to have a further discussion concerning civil defence organizations which were at one and the same time military and civil. Civil defence organizations differed in different countries with regard to both their objectives and their structure. In Switzerland the civil defence services could be used in wartime and in peacetime emergencies. In the developing countries special services had been set up primarily to deal with peacetime emergencies but they would be taken over to deal with civil defence in wartime. Thus civil defence could be part of military defence.

37. It might be necessary at the third session of the Diplomatic Conference to set up a sub-group to consider the substance of the text submitted by the ICRC and the amendments to it, bearing in mind the close relationship between the articles in draft Protocol I and the articles on civil defence in draft Protocol II.

38. Mr. SANCHEZ DEL RIO (Spain), referring to his delegation's amendments to articles 55, 56 and 57 (CDDH/II/234), said that the ICRC representative had pointed out that in some cases civil defence forces were exclusively civilian, that in others they came under the police and in yet others under the armed forces. That classification, however, was not necessarily comprehensive; there might be hybrid bodies whose functions were purely civil but some of whose personnel were drawn from the armed forces. In such circumstances it would be wrong for the text to afford protection only to civilians engaged in civil defence. In the developing countries, it was necessary to call on whatever bodies were available to deal with emergencies and to provide civil defence. They might be the police force, the armed forces or other bodies which were not strictly civil defence services. The Spanish amendment, which could not be regarded as a substantive amendment, was designed to cover such situations.

39. His delegation was in favour of the inclusion of article 55 in chapter VI.

40.- Mr. HØSTMARK (Norway) stressed the importance of providing protection for civil defence organizations.

41. On the whole, his Government took a positive attitude towards the principles outlined in the ICRC text. He would not discuss the details at the present time but wished to make two points concerning the principles. First, his delegation was of the opinion that protection should be provided only for civilian bodies. Secondly, paragraph 2 of article 55 gave rise to certain problems because it dealt with the question of which persons should be protected; he felt that it deserved closer attention.

42. Mr. ONISHI (Japan) said that his delegation accepted the principle of extending draft Protocol I to cover activities of the kind referred to in article 54. There was, however, a matter which he would like to ask other delegations to consider at the third session. As the representative of Denmark had pointed out, the situation varied from country to country. In Japan, for example, there was no organization responsible for the whole of those activities, although there were bodies which were responsible for parts of them. In that connexion he welcomed the comments of the representatives of Denmark and Spain. It might be counter-productive, however, to go too far in providing for the differing situations in different countries, since too much detail might result in meaningless provisions which would lead to a country being flooded by distinctive civil defence signs. It was essential to ensure that the distinctive sign was used only for civil defence organizations as distinct from normal civilian bodies.

43. Mr. MAKIN (United Kingdom) said that, on the basis of his own practical experience in the Second World War, he wondered whether the present texts on civil defence were entirely satisfactory and whether they fully covered the temporary personnel that were needed to operate the civil defence in wartime.

44. The definitions clearly needed careful study. In particular, the words "inter alia" at the end of the opening paragraph of article 54 were inappropriate and he would be submitting an amendment proposing their deletion.

45. He also intended to submit amendments on the following points. First, he considered that, for their own protection and that of the military personnel opposing them, civil defence personnel should not be armed in the situations covered by article 55. Secondly, for countries like his own which had not and did not intend to have organizations of the kind referred to in article 55, ordinary civilians who performed civil defence duties under Government authority or on their own initiative should not lose their protection by so doing.

46. Another question which was likely to give rise to problems and which would have to be faced at the third session was the role of the police. The duty referred to in article 54 (e) was surely a duty of the police, who would be civil defence personnel under that definition. The police, however, had a different status in different countries, sometimes civilian, sometimes military and sometimes a mixture of the two.

47. Mr. HARSONO (Indonesia) said that civil defence functions as defined in article 54 were carried out in every country, but the way they were organized might differ from country to country. In the newer countries particularly, many of those functions were performed by military bodies since they were usually the best organized and the most experienced. In some countries civil defence was carried out by military personnel because it was part of national defence. It was essential, therefore, that all civil defence personnel should have equal protection. It was not realistic to regard civil defence as a purely civilian exercise.

The Committee agreed to postpone further discussion of draft Protocol I, Part IV, Section I, Chapter VI until the third session

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)

Article 30 - Respect and protection

Article 31 - Definition

48. The CHAIRMAN invited the Committee to hold a preliminary discussion of articles 30 and 31 of draft Protocol II, corresponding to the articles on civil defence in draft Protocol I.

49. Mr. de MULINEN (International Committee of the Red Cross) said that, although there were some general indications concerning civil defence in the Geneva Conventions, there was nothing in common Article 3. Part V, Chapter II on civil defence in draft Protocol II was breaking new ground. The provisions in draft Protocol II were shorter than those in draft Protocol I and had to concentrate on essentials. Article 30, which dealt with respect and protection, was concerned solely with civil defence personnel. Its provisions were general and were not concerned with whether the tasks were carried out at the request of the authorities or on the personnel's own initiative. Article 31 - Definition, listed the tasks that were thought to come under civil defence, using similar wording to that of draft Protocol I. A number of new ideas had been introduced since the ICRC text of the draft Additional Protocols had been drawn up.

50. Mr. SCHULTZ (Denmark) said that he had read with interest the Canadian delegation's comments to its amendment to draft Protocol II, (CDDH/212), in particular the last sentence of the third paragraph of the letter dated 24 March 1975, which referred to Canada's objective of a "relatively more simple protocol stressing victim-oriented practical protection". That would mean that a few simple rules would be needed on the aspect of civil defence which was as victim-oriented as the provisions concerning the sick and wounded. Since it would not be appropriate to repeat all the provisions of draft Protocol I, the proposed short paragraphs in draft Protocol II were a sensible idea. His delegation, however, had some reservations. In the first place, there was no mention of the need for a distinctive emblem in non-international conflicts, in order to make civil defence personnel and units recognizable. The distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) had been introduced in draft Protocol II and it was a logical necessity that a short article on the civil defence emblem, based on article 18, should also be included. Secondly, there was no provision to the effect that civil defence personnel, material buildings and transport should not be attacked or destroyed, comparable to article 55, paragraph 3 of draft Protocol I. The absence of such a provision might lead to false counter conclusions between the two Protocols.

51. He did not agree with certain delegations that seemed to be in favour of deleting the provisions on civil defence: civil defence was a local function and should be protected in both non-international and international conflicts. Civil defence might well exist on the rebel side. Local civil defence functions were performed on both sides and deletion of the provisions on civil defence would be a retrograde step in the Conference's humanitarian work.

52. His delegation wished to emphasize the need for a few short, concise, victim-oriented provisions on civil defence in draft Protocol II.

53. Mr. MARTIN (Switzerland) fully endorsed the Danish representative's views concerning draft Protocol II.

54. Mr. GREEN (Canada) said that it was precisely on the basis of the comment quoted by the representative of Denmark that his delegation considered that the provisions on non-international armed conflicts should be as simple as possible. In such conflicts, the people on both sides normally belonged to the same nation. There was a risk that even the simple provisions proposed in articles 30 and 31 of draft Protocol II might introduce unnecessary complications which would make it harder for humanitarian law to be respected in such conflicts. The introduction of provisions that were unlikely to be complied with might destroy the whole Protocol. In his opinion, there was no need for special provisions on civil defence in draft Protocol II.

55. Mr. CHOWDHURY (Bangladesh) said that his delegation fully supported the principles embodied in the ICRC text. It was essential in both international and non-international conflicts for civilian personnel to be given the respect and protection necessary to enable them to perform their duties efficiently for the benefit of the persons involved in conflicts. He accordingly supported the adoption of the provisions on civil defence in both draft Protocols.

56. Mr. HØSTMARK (Norway) said that he fully supported the principles expressed by the representative of Denmark concerning draft Protocol II.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE FIFTY-SECOND MEETING

held on Thursday, 10 April 1975, at 3.20 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Report of the Drafting Committee on articles 26, 26 bis, 27 to 29 (CDDH/II/306)

1. The CHAIRMAN called on the Chairman of the Drafting Committee to submit the report of that Committee on articles 26, 26 bis, 27 to 29 (CDDH/II/306).

2. Mr. SOLF (United States of America), Chairman of the Drafting Committee, said that the Committee had established the text of articles 26, 26 bis, 27, 28 and 29 of draft Protocol I, with the help of the Rapporteur, and regretted that it had not had enough time to complete the drafting of the three other articles. Once those articles had been approved by the Drafting Committee, they would be reproduced as an addendum to that Committee's report (CDDH/II/306).

Proposed new article 26 - Protection of medical aircraft (concluded)

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Committee had drafted the five articles (articles 26, 26 bis, 27 to 29), whose text appeared in the report, on the basis of the ICRC text; the text of amendment CDDH/II/82/Rev.1 and the comments made during the discussions.

4. During the consideration of the report he would point out some drafting corrections to be made to the text of the various articles. So far as the Russian version was concerned, the Russian-speaking delegations reserved the right to inform the Language Services, where necessary, of any drafting corrections that should be made.

5. He pointed out that, as article 21 had been adopted, there was no further need for foot-note 1 in the report; it should therefore be deleted.

6. Replying to a question by the representative of the Philippines, he said that, with reference to foot-note 2, the protection granted medical aircraft was subject to the provisions of Part II, including the definitions which contained important limitations with respect to that protection. If those definitions at a later stage of the drafting process were removed to another Part of the Protocol it would be necessary to refer, not to the "present Part" but to the "present Protocol".

7. The CHAIRMAN, noting that there were no other comments with regard to article 26, said that the Committee appeared to be prepared to adopt it by consensus.

Article 26 was adopted by consensus.[1/]

Proposed new article 26 bis - Medical aircraft in areas not controlled by an adverse Party (concluded)

8. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that in the Spanish version the words "de los sistemas" in the last sentence of the article should be deleted. In the French version, the words "du présent Protocole" should be inserted after the words "à l'article 30".

9. The expression "on and over", in the English version, had been translated into French by the word "dans" and into Spanish by the word "en". The Drafting Committee had chosen those terms on the understanding that medical aircraft would be protected as provided in article 30 of draft Protocol I, while flying, while on the ground and while afloat on water.

10. The CHAIRMAN said that, in the absence of any comment on the article, he would consider that the Committee was prepared to adopt it by consensus.

Article 26 bis was adopted by consensus.[2/]

Proposed new article 27 - Medical aircraft in contact and similar zones (concluded)

11. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, pointed out that the word "and" in the English version of the title of the article should be replaced by the word "or" and that in the French version the word "zones" should be added after the words "zone de contact ou". In the Spanish version, the word "operarán" in the last sentence of paragraph 1 should be replaced by the word "operen" and the words "a fuego directo desde el propio terreno" in paragraph 2 should be replaced by the words "a tiro de puntería directa".

1/ For the text of article 26 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

2/ For the text of article 26 bis as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

12. With regard to paragraph 2, the definition adopted by the Drafting Committee for the expression "contact zone" corresponded grosso modo to the definition proposed by the Joint Working Group in document CDDH/II/266 - CDDH/III/255. The Drafting Committee had, however, decided to add as a clarifying example, some reference to a military scenario: "especially where they are exposed to direct fire from the ground". That phrase would be clear to any military persons who were asked to apply it. For non-military people, it might be explained that direct fire was any shooting where the person shooting had his target in sight, as distinguished from indirect fire, where the gunner did not see the target but directed the shooting on the basis of data other than his own vision. The term "area on land" had been chosen to exclude naval engagements where there was, strictly speaking, no "contact zone". It was understood, however, that the term included rivers, shallow waters and beaches where fighting could take place in the same way as anywhere on other land areas.

13. Mrs. DARIIMAA (Mongolia) said that in the English version of article 27, paragraph 1, the term "medical aircraft" was in the singular. She asked if it should be construed collectively.

14. She also asked whether the definition of "contact zone" in paragraph 2 was valid only for the paragraph in question, or whether it had a wider significance.

15. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, replied that the term "medical aircraft" in English was collective. The definition of "contact zone" applied to article 27 only.

16. Mr. CLARK (Australia) said that, in view of the questions asked by the representative of Mongolia and the Rapporteur's explanations, he would suggest that a phrase should be added to paragraph 2 explaining that the contact zone in question was that described in paragraph 1 of the same article.

17. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that, in order to satisfy the representative of Australia without unnecessarily overloading paragraph 2, the Committee should bring the problem to the attention of the Drafting Committee of the Conference by way of a note. He thought it quite likely that article 27 would be the only article in which those terms were used, in which case any further explanation in paragraph 2 was superfluous.

18. The CHAIRMAN proposed that a foot-note along the lines of foot-note 2 to article 26 should be provided for article 27.

It was so agreed.

19. The CHAIRMAN said that, if there were no further comments on article 27, he would consider that the Committee was prepared to adopt it by consensus.

Article 27 was adopted by consensus.[3/]

Proposed new article 28 - Medical aircraft in areas controlled by an adverse Party (concluded)

20. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the following corrections should be made in article 28: first, the word "soit" in the first sentence of paragraph 2 of the French version should be deleted. Secondly, the word "to" should be inserted before the word "inform" in the first sentence of paragraph 2 of the English version. Thirdly, a comma should be added after the words "del mismo" in the first sentence of paragraph 2 of the Spanish version.

21. Mr. MALLIK (Poland) said that he feared that the last sentence of paragraph 2 might give rise to some confusion. He would prefer the words "to safeguard the interests of the adverse Party" to be replaced by "to safeguard the interests of the said Party".

22. The Drafting Committee had contemplated some such formula as "taking its own safety into account", but that seemed to him to be unnecessary, since a Party to a conflict never acted otherwise than in its own interests.

23. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that he saw no reason why the Polish representative's proposal for the replacement of the words "adverse Party" by "said Party" should not be accepted, in order to avoid repetition.

24. In the case of a medical aircraft violating the airspace controlled by an adverse Party, it was possible to think of various measures that would be difficult to describe: for instance, sending another aircraft to order the medical aircraft to follow it. All such measures had one sole purpose - to safeguard the interests of the Party concerned. That was the only wording that the Drafting Committee had found to describe the situation.

25. Mr. MARTIN (Switzerland) thought that it would be advisable to accept the Polish representative's suggestion in order to avoid repetition of the words "adverse Party", although he saw no reason why some such phrase as "other measures for safeguarding its own interests" or "its own safety" should not be used.

3/ For the text of article 27 as adopted, see the report of Committee, II, (CDDH/221/Rev.1, annex II).

26. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, pointed out that the Drafting Committee had considered the possibility of employing the term "its own interests" but that some delegations had thought that term imprecise since it might be construed as referring to the interests of the aircraft itself. It had consequently been thought better to repeat the expression "adverse Party". The only way of avoiding repetition would be, as the Polish representative had suggested, to replace the words "the adverse Party" by "the said Party".

27. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he had taken part in the work of the Drafting Committee and that in the Russian version it was equally impossible to know whether the interests of the aircraft or of the territory over which it was flying were to be safeguarded. He agreed that the term "the said Party" was clearer.

28. Mr. SOLF (United States of America) said that he could accept the Polish representative's suggestion, which had been supported by the Rapporteur of the Drafting Committee, to replace the words "of the adverse Party" by "of the said Party".

It was so agreed.

29. Mr. CLARK (Australia) wondered whether it might not be advisable to make the last phrase of paragraph 2 more specific by adding the words "a reasonable" before "time".

30. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, pointed out that earlier in the sentence it was provided that "every reasonable effort shall be made". It could therefore be assumed that the time allowed would also be reasonable. It accordingly seemed not only undesirable but superfluous to repeat the word "reasonable".

31. Mr. CLARK (Australia) said that he was satisfied with that explanation and would not press his point.

32. The CHAIRMAN inquired whether the Committee was prepared to accept article 28, as orally amended, by consensus.

Article 28 was adopted by consensus.[4/]

[4/] For the text of article 28 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

Proposed new article 29 - Restrictions on operations of medical aircraft (concluded)

33. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that there were a number of corrections to be made to the text of the report (CDDH/II/306). In the English version, the word "operations" in the title should not appear with an initial capital. In the French version of the title, the words "des operations" should be replaced by "d'emploi". In order to harmonize the text of paragraph 1 with that of paragraph 4 of article 12 of Protocol I, the words "in an attempt" should be inserted after the words "shall not be used", the corresponding insertions in French and Spanish being "tenter de" and "trater de". In the first sentence of the French version the word "essayer" should be replaced by "tenter". Paragraph 4 of the English version should start with the words "While carrying out the flights".

34. Paragraph 2 of the article should be interpreted in the following way: medical aircraft might not carry persons or cargo not included in the definition of "medical transportation". That definition did not include the transportation of the dead. It was understood, however, that the protection of medical aircraft did not cease if they were carrying the bodies of persons who had died during the flight.

35. Mr. MAKIN (United Kingdom) said that the Rapporteur's observations concerning paragraph 2 applied to other forms of medical transport and to hospitals.

36. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, since there was a special section of the Protocol relating to deceased persons, there was no need to raise the matter in connexion with article 29.

Article 29 was adopted by consensus.[5/]

5/ For the text of article 29 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

Proposed new Section I bis (replacing proposed article 18 bis) (continued)*

Report of the Working Group (CDDH/II/271 and Add.1 and 2)

37. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee and Acting Rapporteur of the Working Group, read out document CDDH/II/271/Add.2, in which the Working Group recommended that Committee II should postpone a decision on the final text of the proposed new Section I bis until the third session.

38. The CHAIRMAN said that the Working Group's recommendation was in line with what had been agreed verbally. The Section could be thoroughly studied by delegations before the third session, at the beginning of which the Working Group would be set up again; it was therefore only logical to defer any decision on the matter until then. He suggested that the Committee should take note of the Working Group's report.

39. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee and Acting Rapporteur of the Working Group, said that on the preceding day the Working Group had considered how the Committee could take note of its report and had suggested the following text:

> "Committee II takes note of the report of the Working Group contained in document CDDH/II/271 and accepts the proposal contained in paragraph 3 of the Working Group's report (CDDH/II/271/Add.2), for the reasons stated in that report.".

40. The CHAIRMAN suggested that the Committee should adopt that text.

It was so agreed.

The meeting rose at 4.40 p.m.

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* Resumed from the forty-ninth meeting. The decision on the final text will be taken at the third session.

SUMMARY RECORD OF THE FIFTY-THIRD MEETING

held on Monday, 14 April 1975, at 10.30 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOL I (CDDH/1) (continued)

Proposed new article 30 - Agreements and notifications concerning medical aircraft (concluded)

Report of the Drafting Committee (CDDH/II/314)

1. Mr. SOLF (United States of America), speaking as Acting Chairman of the Drafting Committee, stressed the importance of article 30, which concerned notifications and agreements essential for guaranteeing the safety of medical aircraft operating in contact zones, particularly when such aircraft flew over enemy territory. The article was all the more important in that the Committee had decided not to deal with notifications in one article but to insert separate articles covering medical transport by sea and by air.

2. When considering paragraph 5, the members of the Drafting Committee had discussed the question of the level at which notification should be made. The Working Group of the Drafting Committee which had dealt with that question had felt that the level at which such notifications and agreements were made was not of great importance but that what mattered above all was that such notifications and agreements should be made as rapidly as possible. That was the reason for the present drafting of paragraph 5.

3. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Drafting Committee, drew attention to some corrections to be made to article 30. In the English and French texts of the title the words "Agreements and Notifications" should be transposed. In paragraph 1 of the French text the word "modifications" should be replaced by the word "notifications" and the words "sera effectué" should be replaced by the words "s'effectue". The Spanish text should read "los articulos 27, 28, o 32".

4. In paragraph 2 of the French text, the words "accusera réception d'une telle notification" should be replaced by the words "en accusera réception". A similar change should be made in the Spanish text in order to avoid repetition of the use of the word "notificación".

5. Paragraph 3 (c) of the French text should read: "une proposition raisonnable des modifications de la demande ...". The English and Spanish texts should be amended along the same lines. The words "ou le temps en question" in paragraph 3 (c) should be replaced by the words "pendant la période considérée".

6. Paragraph 4 would become paragraph 5. In the French text, the word "aussi" should be inserted after the words "Les Parties prendront" and the word "rapidement" after the words "soit diffusé", the English and Spanish texts being amended accordingly. In addition, there were some purely drafting changes to be made to the English, French, and Spanish texts of that paragraph.

7. The CHAIRMAN proposed that the Committee should adopt article 30, as amended, by consensus.

It was so agreed.[1/]

CONSIDERATION OF DRAFT RESOLUTION ON THE NEED FOR NATIONAL CO-ORDINATION ON RADIOCOMMUNICATION MATTERS RAISED IN THE TECHNICAL ANNEX TO DRAFT PROTOCOL I (CDDH/II/308 and Add.1)

8. Mr. KASER (Switzerland) announced that, in addition to the sponsors mentioned in document CDDH/II/308/Add.1, the delegations of Algeria, Indonesia, Iraq and Saudi Arabia had asked to join the sponsors of draft resolution CDDH/II/308.

9. In sub-paragraph (c) of the preamble to the draft resolution, the word "Maritime" should be inserted after the word "World". It would also be preferable to replace the words "Resolves to invite" by the word "Invites".

10. The CHAIRMAN said that, from the legal point of view, it would be necessary to replace the words "each High Contracting Party" by the phrase "the Governments represented at the present session".

11. Mr. SOLF (United States of America) associated his delegation with the statement made by the Chairman and suggested that the words "the Governments represented at the present Conference" should be used. He was also in favour of replacing the words "Resolves to invite" by the word "Invites".

1/ For the text of article 30 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

12. Mr. MATTHEY (International Telecommunications Union) said that the proposed changes met with his approval.

13. Referring to the sponsors of the draft resolution, he pointed out that the Indonesian delegation had indeed expressed the wish to be considered a sponsor, but that the delegations of Algeria, Iraq and Saudi Arabia had not yet announced their final decision, although they had stated that they endorsed the text.

14. When the draft resolution had been approved, he would like to make a statement on the procedure to be adopted with regard to the resolution.

15. Mr. MAKIN (United Kingdom) said that his delegation would prefer the words "Resolves to request each Government invited to the Conference". In fact, it was of particular importance to call upon the Governments which had been invited to the Conference but had not attended, since those which had taken part in the Conference were already conversant with the subject.

16. Since it was the Committee's intention to submit the draft resolution to the plenary Conference for adoption, he felt that it would be regrettable if the only resolution adopted by the plenary Conference, after two sessions, were to be a resolution on telecommunications. He wondered whether it would not be preferable to submit the resolution as coming from the Committee, or in other words to replace the words "The Diplomatic Conference" by "Committee II of the Diplomatic Conference".

17. The CHAIRMAN said that he would ask the General Committee, which was due to meet that afternoon, for its views, but it seemed to him that it was the Conference, and not the Committee, which could address itself to Governments. He pointed out that the full title of the Conference should appear at the beginning of the draft resolution. The suggestion made by the United Kingdom representative seemed to be very much to the point. It was, in fact, more accurate to speak of the Governments "invited" to the Conference than of the Governments "represented" at the Conference.

18. Mr. ONISHI (Japan) said that, at its fiftieth meeting (CDDH/II/SR.50), the Committee had decided to request Governments to make the necessary arrangements for sending telecommunication experts to the third session of the Conference.

19. Mr. MATTHEY (International Telecommunication Union) said that such a decision had indeed been taken and the fact should be mentioned in the Committee's report; the resolution under consideration dealt only with the steps to be taken by Governments, between the present session of the Conference and the next, to organize consultations and co-ordination at the national level.

20. Mr. MARTIN (Switzerland) pointed out that if the resolution was addressed to Governments, it should not "Invite" but "Request" them, and so forth. He agreed that even if it was the only resolution referred to the plenary Conference, its importance required that it should be submitted with a view to its adoption.

21. The CHAIRMAN pointed out that the resolution could be addressed to "High Contracting Parties" only in cases where a treaty already existed. In the present instance, the resolution was addressed to the Governments invited to the present Conference. He therefore suggested that the wording advocated by the Swiss representative, namely, "Requests all the Governments invited ..." should be used.

It was so agreed.

Draft resolution CDDH/II/308 and Add.1, as amended, was adopted by consensus.

22. Mr. MATTHEY (International Telecommunication Union), referring to questions of procedure, said that the Committee had decided at its fiftieth meeting (CDDH/II/SR.50), first, that the Technical Sub-Committee on Signs and Signals should meet during the second and third weeks of the third session of the Conference, and, secondly, that Governments especially interested in the matters dealt with in the report of the Technical Sub-Committee (CDDH/49/Rev.1, annex II), should consider including telecommunications experts in their delegations to the third session of the Conference. He hoped that the Chairman, when submitting the report of Committee II to the plenary Conference, would draw the attention of all delegations to the action required between the second and third sessions of the Conference, as well as to the two decisions just mentioned. He also hoped that the Chairman would ask the plenary Conference to instruct the Secretary-General of the Conference to communicate resolution CDDH/II/308 and Add.1 and the two decisions in question to all Governments, and to make specific reference to the two decisions of Committee II, in his letter of invitation to the third session, addressed to all Governments and to the three inter-governmental organizations concerned, namely, the International Civil Aviation Organization (ICAO), the Inter-Governmental Maritime Consultative Organization (IMCO) and the International Telecommunication Union (ITU).

23. The CHAIRMAN said that such was his intention. In accordance with the usual practice, the Secretary-General should be requested to bring the text of the resolution just adopted by the

Committee to the attention of all Governments, and he accordingly suggested that a sentence to that effect should be added to the resolution just adopted.

It was so agreed.

24. Mr. MAKIN (United Kingdom) requested that the words "Governments specially interested", contained in the decision taken by the Committee at its fiftieth meeting, should be stressed, since it was important that the Technical Sub-Committee should not include an unduly large number of experts, as that would tend to slow down its work.

25. Mr. MATTHEY (International Telecommunication Union) replying to a comment by Mr. URQUIOLA (Philippines), said that his organization had decided to send a circular within the next two weeks to all member States of the ITU, transmitting the IFRB memorandum relating to the need for national co-ordination in radiocommunication matters (CDDH/213), together with the text of the Committee's resolution and of the decisions relating to it.

MEMORANDUM OF THE INTERNATIONAL FREQUENCY REGISTRATION BOARD RELATING TO THE NEED FOR NATIONAL CO-ORDINATION ON RADIO-COMMUNICATION MATTERS (CDDH/213)

26. Mr. MATTHEY (International Telecommunication Union) said that the memorandum appeared on the Committee's agenda because it was mentioned in resolution CDDH/II/308 and Add.1.

27. The memorandum was the information document which had been requested when he had drawn attention to the difficulties encountered as a result of the incompatibility between the proposed wording of the annex to draft Protocol I and certain provisions of the existing International Telecommunication Convention, namely the Radio Regulations.

28. The annex to document CDDH/213 was not a final text because the ITU secretariat had not yet published the revised version. Its purpose was simply to enable telecommunication experts to compare the existing Regulations with the provisions which the Conference proposed to include in the annex to draft Protocol I. It was therefore an information document, and the Committee need only take note of it.

The Committee took note of the memorandum (CDDH/213).

REPORT OF THE TECHNICAL SUB-COMMITTEE ON SIGNS AND SIGNALS (CDDH/49/Rev.1, annex II) (continued)*

29. The CHAIRMAN invited the ICRC representative, who wished to give some technical details concerning the report of the Technical Sub-Committee on Signs and Signals (CDDH/49/Rev.1, annex II), to address the Committee.

30. Mr. EBERLIN (International Committee of the Red Cross), referring to what had been said on the subject of the identification by sonar of hospital ships and other medical craft, said that the ICRC had done some research and made a few tests in that field which had shown that acoustic frequencies of 3, 6 and 12 kHz could be used. Indeed, rather extensive ranges could be covered with relatively weak transmitters. For example, with 100 watts, Morse acoustic signals had been transmitted in water over a distance of roughly ten kilometres. As to sound-propagation in water, it was recognized that the identifying acoustic signal was not necessarily detected by passive under-water sonar devices if the sound of the medical craft was not so detected.

31. Mathematical models had provided a means of carrying out tests in fresh water (in Lake Geneva). Those tests could be repeated in salt water on the frequencies he had mentioned.

32. That type of signal could be discussed again in the course of the work of the Technical Sub-Committee on Signs and Signals at the third session of the Conference. The ICRC would then be able to report on the results of the tests.

33. Some delegations had suggested that further tests should be made during the third session concerning the visibility of the distinctive emblem and the blue light, as had been done at Versoix, Switzerland, during the first session. The ICRC would therefore endeavour to arrange for the new tests, which were important, especially through observation and infra-red photography.

CONSIDERATION OF DRAFT PROTOCOL II (CDDH/1) (continued)**

Article 17 - Protection of medical units and transports (CDDH/II/298) (concluded)

34. The CHAIRMAN called upon the United States representative to speak on the subject of article 17 of draft Protocol II.

35. Mr. SOLF (United States of America) reminded the Committee that article 17 of draft Protocol II (CDDH/II/298) had been approved provisionally at the forty-fourth meeting (CDDH/II/SR.44) because at that time the Committee had not yet considered the

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* Resumed from the fiftieth meeting.

** Resumed from the fifty-first meeting.

articles of draft Protocol I relating to medical transport by air. Since the Committee had now considered and adopted all but two articles on the subject, he wondered if it could not finally adopt the text of article 17 as a whole.

36. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the text of article 17, provisionally approved, which was reproduced in document CDDH/II/298, should be incorporated in annex II to the report.

37. As the Committee had now adopted the corresponding provisions of draft Protocol I, namely articles 22, 24 and 29, he saw no reason why the text of article 17 should not be finally adopted, since the discussions on the corresponding articles of draft Protocol I had shown that there was no need to amend article 17.

Article 17 as a whole was adopted by consensus.[2/]

Article 19 - Prohibition of reprisals (continued)*

38. The CHAIRMAN called upon the representative of Brazil, who wished to make a statement on article 19 of draft Protocol II.

39. Mr. DUNSHEE de ABRANCHES (Brazil) said that, as a member of the Working Group on Reprisals, he could not accept the statement made by the Canadian representative at the forty-ninth meeting (CDDH/II/SR.49) which he had been unable to attend. According to the summary record of that meeting, the Canadian representative had informed the Committee that the Working Group had recommended that, in the text of article 19 of the ICRC text of draft Protocol II, the word "reprisals" should be replaced by the words "acts of retaliation comparable to reprisals". When the terms of reference of the Working Group had been drawn up, the Brazilian delegation had proposed the following: "5. Possibility of the reaffirmation of the principle of prohibition of reprisals, envisaged in articles 4, 19 and 26 (paragraph 4) of Protocol II, without using the legal term 'reprisals'".

CONSIDERATION OF THE DRAFT REPORT OF COMMITTEE II (CDDH/II/300 and Add.1)

40. The CHAIRMAN called upon the Rapporteur of the Drafting Committee, who wished to make a few comments on the Committee's draft report (CDDH/II/300 and Add.1).

2/ For the text of article 17 as adopted, see the report of Committee II (CDDH/221/Rev.1, annex II).

* Resumed from the forty-ninth meeting.

41. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the two decisions which had been taken at the current meeting would appear in the report. He pointed out that owing to the urgency of the work there had been some difficulty in drawing up the draft report and there were a few errors in the text. The officers of the Committee had already noticed some and a corrigendum to the draft report would be issued the following day, so that the Committee could have a correct text before it.

The meeting rose at 11.55 a.m.

SUMMARY RECORD OF THE FIFTY-FOURTH MEETING

held on Tuesday, 15 April 1975, at 3.25 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF THE DRAFT REPORT OF COMMITTEE II (CDDH/II/300 and Corr.1, 3 and 4, and Add.1 to 3) (continued)

1. The CHAIRMAN invited the Rapporteur to introduce the draft report of the Committee (CDDH/II/300 and Corr. 1, 3 and 4 and Add.1 to 3).

2. Mr. MAIGA (Mali), Rapporteur, said it was a long document because the General Committee had instructed the Committee rapporteurs to base their reports on the report of the United Nations Conference on the Law of Treaties, held in Vienna in 1968/69.1/ The report was thus a comprehensive guide to the Committee's discussions and action on all the articles and amendments that had been submitted to it, and was invaluable to small delegations like his own.

3. Part One of the report contained an introduction, setting forth the organization of the Committee and its work; paragraphs 8 and 9 described the method of work adopted by the Committee. Part Two described in detail the process of consideration of each article. Annexes I and II contained respectively a list of documents submitted to the Committee and the texts of the articles adopted by the Committee.

4. The CHAIRMAN said that the French text was the authentic version. He invited comments on the draft report as a whole.

5. Mr. MAKIN (United Kingdom) proposed that the words "In view of" at the beginning of paragraph 34 be replaced by the words "Subject to": as indicated in paragraph 33, the article had been adopted subject to review of paragraph 4 in the light of any decisions taken by Committee I concerning articles 74 et seq.

6. In paragraph 202, he proposed that the words "did not propose" in the last sentence be replaced by the words "proposed no new article", and that the following sentence be added at the end of the paragraph: "No delegation objected". As at present drafted, the sentence seemed to suggest that articles 22 and 25 of the ICRC draft might have to be considered at the third session.

1/ United Nations publication, Sales No. E.70.V.5

7. With regard to article 13 of draft Protocol I, he had the impression that the text of paragraph 2 (d) as adopted by the Committee was not the same as the text in annex II. He would welcome the comments of the Rapporteur on the point.

8. With regard to article 18 of draft Protocol I, he proposed that in foot-note 2 the words "indicative only" be inserted in brackets after the heading "Special cases", since the wording that followed was not the wording adopted by the Committee (see CDDH/II/283/Rev.1/Corr.1).

9. With regard to the resolution in document CDDH/II/300/Add.1, he pointed out that the annex which appeared on the back of the original draft (CDDH/II/308) had been omitted from the draft report.

10. Lastly, in the addition to paragraph 252 given in document CDDH/II/300/Corr.1, the last line should read: "to include experts from their national telecommunication administrations".

11. The CHAIRMAN said that the Rapporteur would reply to representatives when they had all concluded their comments.

12. Mr. MATTHEY (International Telecommunication Union) said he endorsed the comments of the United Kingdom representative concerning paragraph 252.

13. Mr. GAYET (France) said that he had no objections to the draft report as a whole, but he had a number of drafting changes to propose to the French version, which he would hand to the Rapporteur. In addition, there were three places where some redrafting was needed to make the meaning clearer: they were article 11, paragraph 1 of draft Protocol I, and article 12 bis, paragraph 1, and article 16, paragraph 3 of draft Protocol II.

14. The CHAIRMAN suggested that the representatives of France, Belgium and Switzerland discuss the matter with the Rapporteur or the Legal Secretary.

15. Mr. FIRN (New Zealand) said that paragraph 173 failed to reflect the fact that at its thirty-third meeting (CDDH/II/SR.33, para.49), the Committee had also decided that Protocol II would include a provision on reprisals. He accordingly proposed that the following words be added to paragraph 173: "and that the Protocol would include a provision on reprisals".

16. The CHAIRMAN said he could confirm the point raised by the New Zealand representative but he recalled that one of the difficulties which had arisen during the discussion had been how to avoid using the word "reprisals" in Protocol II. He suggested that the Rapporteur of Committee II and the Rapporteur of the Drafting

Committee be asked if they could find a suitable wording to be inserted in the report, such as "measures comparable to reprisals". The issue was one of the most important that had been discussed.

17. Mr. DUNSHEE de ABRANCHES (Brazil) proposed that, since the Committee had not completed its discussion of the question (CDDH/II/SR.49, paragraph 78), the following sentence be added at the end of the paragraph: "At its forty-ninth meeting the Committee decided that further consideration of the matter be deferred until the next session of the Conference".

18. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation had received the full Russian version of the draft report, with its accompanying addenda and corrigenda, only that morning and had therefore not had sufficient time to study it carefully, let alone to compile a list of errors.

19. However, so as not to slow down the work of the Committee by lodging formal objections, his delegation was willing to discuss the draft report immediately but reserved the right to submit corrections to the final text. It was an extremely wide-ranging report, and the complexity of the work involved in drafting it was fully understood by his delegation, who attributed the large number of errors in the Russian version to the difficulties of translation. For the moment, he would only mention four corrections which he would like to have made.

20. First, in the last line of the Russian version of paragraph 1, the impression was given that Mr. Mallik (Poland) had been unable to attend any of the meetings of the second session; secondly, in paragraph 10, in all versions, where the word "only" should be inserted before the word "articles", since not all the articles in the different sections had in fact been adopted; thirdly, he would propose the inclusion, in paragraph 253, of the Committee's recommendation to the countries primarily interested in radio-communications to include experts in such matters in their delegations to the third session to attend the Technical Sub-Committee on Signs and Signals; fourthly, and most importantly, he felt that a general evaluation of the work achieved thus far should be included in the report, in a paragraph 15 bis, and he would suggest that it be worded as follows:

"(e) General evaluation of the work

15 bis

The Committee's meetings, as well as those of the Drafting Committee and the Working Groups, were characterized by an atmosphere of business-like collaboration, mutual understanding and - on controversial issues - searches for compromises

acceptable to all parties. Especial account was taken of the interests and possibilities of the developing countries in respect of compliance with the requirements of the Additional Protocols.

Many articles in these Protocols, especially those pertaining to medical aircraft, constitute a development of, and a considerable improvement on, the Geneva Conventions.

In its examination of the articles of Protocol II, the Committee strove for full extension, in as consistent a manner as possible, of the humanitarian principles of the Geneva Conventions and Protocol I to the articles of Protocol II. However, in view of the great differences in conditions and opportunities for rendering assistance to victims of international and non-international armed conflicts, and also the likelihood that a Party to a non-international armed conflict might not have the power or resources for practical implementation of these humanitarian standards, the Committee adopted for certain articles of Protocol II texts differing considerably from those of the corresponding articles of Protocol I."

21. If technical problems prevented that addition from being included in the report, at least it should be included in the summary record in full, with an indication of how representatives had reacted to it, and whether they were in agreement with the principle of evaluating the Committee's work in such a way.

22. Mrs. DARIIMAA (Mongolia) suggested that, to avoid renumbering the paragraphs, the USSR proposal might be included in paragraph 10 of the draft report after the words "During the second session of the Conference ...", so as to read: "... in an atmosphere of businesslike collaboration, mutual understanding at all plenary meetings and at the meetings of the Drafting Committee and the Working Group, and - on controversial issues - searches for compromises acceptable to all parties." At the end of the paragraph, the remainder of the USSR proposal could be adopted, introducing it with the following wording: "In adopting these articles, especial account was taken of the interests and real possibilities of the developing countries ... Geneva Conventions."

23. The CHAIRMAN suggested that the representative of Mongolia should try to reach agreement with the USSR representative on the point raised.

24. Mr. MARTIN (Switzerland), referring to paragraph 103 of the draft report, pointed out that the title of article 19 of draft Protocol I should be "Neutral or other States not parties to a conflict", as mentioned in amendment CDDH/45 (paragraph 98 of the report).

25. Mr. SCHULTZ (Denmark), referring to paragraph 48 of the report and to paragraph 19 of the summary record of the fifteenth meeting (CDDH/II/SR.15), asked that Denmark be added to the list of sponsors of article 14, both in the paragraph and in the foot-note.

26. With regard to the second amendment to page 94 of the report (CDDH/II/300/Corr.1), the reference should be to paragraph 254, not 255, and the amended heading should replace the heading of paragraph 254.

27. Mr. CLARK (Australia) suggested that, in the interests of speedier and more orderly proceedings, the Committee deal with the report by groups of paragraphs. He would also like to know whether the amendments proposed during the discussion were to be taken as having been adopted. He supported the USSR representative's proposal to add a new paragraph 15 bis.

28. The CHAIRMAN said that the procedure proposed by the Australian representative would be satisfactory if there was more time available. On the question of amendments, he said that drafting amendments could be addressed to the Secretariat, but amendments of substance, such as the one proposed by the USSR representative, would have to be adopted by the Committee. Once all the comments had been heard, the Rapporteur of Committee II and the Rapporteur of the Drafting Committee would be consulted to see which proposed amendments needed to be so adopted.

29. Miss MINOGUE (Australia) said she was not satisifed that paragraphs 6 and 7 of the report accurately reflected the situation. In fact, at its thirteenth meeting (CDDH/II/SR.13) the Committee had been told that the decision referred to in paragraph 6 had already been made; and at the twenty-fifth meeting (CDDH/II/SR.25) it had decided to proceed, despite the fact that no decision had been made by Committee I. She had been unable to find any reference in the summary record of the twenty-fifth meeting to the decision referred to in paragraph 7.

30. In paragraph 107 she proposed that the following new sub-paragraph (c) be added: "At the twenty-third meeting, the sponsor of the expression 'measures in the nature of reprisals' withdrew his amendment".

31. She supported the USSR representative's proposal for an additional paragraph 15 bis, since her delegation wished to see a reference in the report to the Committee's decision to endeavour as far as possible to harmonize the articles of the two draft Protocols.

32. She also considered that reference should be made in the report to the Committee's decision that it could not consider amendments that were not introduced by their sponsors in person.

33. Mr. MAIGA (Mali), Rapporteur, replying to the United Kingdom representative, said that the Drafting Committee would have no difficulty in rewording the addition to paragraph 252 as suggested. The Rapporteur of the Drafting Committee would reply to the representative's comments on article 13.

34. In reply to the representative of France, he suggested that the Chairman's proposal be followed, since no matters of substance were involved.

35. The points raised by the representatives of New Zealand and Brazil concerning paragraph 173 were matters for the Committee to decide. He welcomed the proposal by the USSR representative for a new paragraph 15 bis, which was also a matter for the Committee to decide. It might be better if the point were mentioned in the summary record rather than in a new paragraph.

36. With regard to the USSR representative's point concerning paragraph 1, there was no problem with the French version, but the Russian could be amended if necessary. He also saw no objection to his proposed addition to paragraph 253.

37. With regard to the point raised by the representative of Switzerland, the title of article 19 would be corrected accordingly.

38. In reply to the representative of Denmark, there would be no difficulty in including his delegation's name. The Rapporteur of the Drafting Committee would reply to his comment concerning paragraph 254.

39. The Rapporteur of the Drafting Committee would also reply to the points raised by the representative of Australia.

40. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, replying to the proposal of the United Kingdom representative regarding paragraph 34, said that the formula used in the draft report was the formulation normally employed to introduce final sentences and that it took into account all the explanations that had gone before. It was clearly understood that reservations mentioned in the preceding paragraph formed part of the decision taken. There was therefore no need to change the wording.

41. With regard to article 13, a correction had been inserted in the English version of the corrigendum (CDDH/II/300/Corr.1), replacing document CDDH/II/246 by document CDDH/II/278, which gave the correct text.

42. The note to article 18 had also been corrected in the corrigendum, but there could be no objection to clarifying the matter by incorporating in the text the phrase "indicative only".

43. The annex to the resolution adopted at the fifty-third meeting (CDDH/II/SR.53) had been accidentally omitted, but would appear in the final text of the report.

44. Most of the points raised by the representative of France related to minor grammatical changes and the Secretariat would deal with them. The questions on articles 11, paragraph 1 of draft Protocol I, 12 bis, paragraph 1, and 16, paragraph 3 of draft Protocol II raised by the French representative should be referred to the Drafting Committee. A majority of two-thirds would, however, be required before the texts could be altered, since they had been adopted by the Committee following their adoption by the Drafting Committee.

45. In view of the remarks by the Chairman on the question of "reprisals" which had been raised by the representative of New Zealand, in relation to article 19, he proposed that the word "reprisals" be replaced by the phrase "measures comparable to those which in an international conflict would be called reprisals".

46. He had no comment on the USSR proposal to introduce paragraph 15 bis.

47. He thought that the representative of Switzerland was correct in his remarks on article 19, but that a further examination of the basic documents could be useful.

48. The statement by the representative of Denmark relating to the position of the title: "General debate on civil defence" concerned a small error in the corrigendum of the English text. The words should be placed above paragraph 254, and the figure 255 in the second line of paragraph 2 should be altered to 254.

49. He agreed with the proposal by the representative of Brazil, but would like to confirm his own recollections by consulting the summary record of the forty-ninth meeting (CDDH/II/SR.49) in question.

50. He suggested that with regard to her observations on paragraphs 6 and 7, the representative of Australia should submit a new text after consulting the summary records as corrected by the Chairman. As regards the omission of a proposed sub-paragraph (c) to paragraph 107, he asked the Australian delegation to submit a written text for inclusion in the report.

51. With regard to the inquiry by the representative of Australia, the representative of Indonesia had indeed requested that amendments to the technical annex not submitted in person should be considered by the Technical Sub-Committee on Signs and Signals on an equal footing with other amendments. A text would be issued the following day to clarify the matter.

52. Mr. URQUIOLA (Philippines) said that in view of the statement in paragraph 202 of the report that "The Working Group did not propose any new article on searching for the wounded ... or on notification ...", he would be glad to know what was the present status of article 25.

53. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the same question had been raised by the representative of the United Kingdom; paragraph 202 had now been altered in the corrigendum (CDDH/II/300/Corr.1). Although nothing to that effect had been inserted in the addendum a mention that there were no objections could be included in the final report.

54. With regard to the difficulties of the representative of the Philippines, he said that no article 25 existed at the present stage. In the final drafting the article would have to be renumbered.

55. Mr. AL-FALLOUJI (Iraq), referring to the second sentence of paragraph 155 of the draft report which stated: "Paragraphs 3 and 4 were adopted by consensus", asked what was the difference in meaning between "consensus" and "unanimity". At his own express wish and with the approval of the Chairman, it should have been reported that paragraphs 3 and 4 had been adopted unanimously. The change was a substantive one and he wanted to know what had happened. There was a further error in the last part of the last sentence in the same paragraph where it said, "Some delegations made further statements on the text adopted". There had in fact been two statements and one correction to a previous summary record.

56. Mr. FRUCHTERMAN (United States of America) said that, to the best of his recollection, following the adoption of paragraphs 3 and 4, at the forty-fourth meeting (CDDH/II/SR.44), additional statements had been made by the representatives of Iraq and Norway, while the representative of Sweden speaking at the forty-seventh meeting (CDDH/II/SR.47) had made corrections to the provisional summary record of the forty-fourth meeting.

57. Mr. SOLF (United States of America) said his delegation would like to make a few comments on the text of the draft report. He was worried about the history of draft Protocol I, article 11, paragraph 5. It had first appeared in document CDDH/II/70 introduced at the first session as an amendment (new paragraph 3) to article 10. During discussions towards the end of the first session of the Conference, several delegations had requested its inclusion under article 11, as article 10 might not be reservable. The summary records of the first session showed that article 10 and all amendments thereto had been referred to the Drafting Committee (see CDDH/II/SR.10, para. 41). During the current session the amendment had been discussed under article 11. But the report of

the Drafting Committee's consideration of article 11, on pages 9 and 10 of the draft report, did not reflect the fact that the Drafting Committee had considered the amendment dealing with written consent to surgery. He therefore proposed that, under the amendments considered under document CDDH/II/70, by the Drafting Committee, reference be also made to the amendment dealing with written consent to surgery which after considerable discussion now appeared in paragraph 5 of article 11.

58. The CHAIRMAN suggested that a foot-note to that effect under the text of paragraph 5, article 11, would perhaps give the proper stress, since it appeared to be of importance to the United States delegation and to many others.

59. Mr. AL-FALLOUJI (Iraq) said he must again point out that, in paragraph 155, the true facts had been misrepresented. Interventions had been made by the representative of Norway and by himself, while Sweden had merely announced a correction to the summary record of a previous meeting. Also it was not true to say that there was no difference between the legal meaning of "consensus" and "unanimity". The report should reflect what had actually occurred during discussions. Where the summary record had shown items being adopted, the terms used therein, whether "unanimously", "by consensus", or "without objection" should be retained.

60. Mr. HØSTMARK (Norway) said that, as he understood it, the word "consensus" was used when there was no express objection, while the word "unanimously" implied that a vote had been taken with everyone in favour or that all delegations had made it clear that they were in favour in some other way. He considered that the use of the word "consensus" in the second sentence of paragraph 155 was correct. If the representative of Iraq had asked for the word "unanimously" to be used, the Committee had taken no decision on his request.

61. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said it was doubtful whether there was any great distinction between the two words; "consensus" had been used throughout the report for the sake of consistency. With regard to the difficulty of the wording of the last sentence of paragraph 155, at the forty-seventh meeting (CDDH/II/SR.47) the adoption of paragraphs 3 and 4 had been followed by two statements followed by one oral correction to a previous meeting's summary record. In general, he considered that a report should serve as a guide to the summary records, and the draft report before the Committee did just that.

62. The CHAIRMAN said he would ask the Rapporteur to redraft the paragraph on "reprisals", in the light of the suggestions by Australia, Brazil and New Zealand. Appropriate additions should be made to paragraphs 173 and 107.

63. With regard to the representative of Iraq's questioning of the draft report, only those statements made at the forty-sixth meeting (CDDH/II/SR.46) by Iraq and Norway should indeed be mentioned in the report; the statement by Sweden at the forty-seventh meeting (CDDH/II/SR.47) had merely been a correction to be introduced into the summary record. The difference between "consensus" and "unanimity" was too complicated a matter to discuss at the present meeting, but the Drafting Committee should take the views of the Iraq representative into consideration, as that had been his express request to which no one had objected when it was made at the meeting.

64. He now wished to propose the adoption in principle of two additional paragraphs to the report: the USSR proposal to add a new paragraph 15 bis (CDDH/II/300/Add.2), and a proposal of his own, made ex praesidio, that an appreciation of the ICRC's assistance be incorporated in a new paragraph 2 bis. If there were no objection, he would take it that the Committee agreed to adopt the two proposals in principle.

It was so agreed.

65. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, in reply to a question by Mr. HEREDIA (Cuba), said that in the Spanish version of article 17 set out in annex II, the words "la buena voluntad de" in the first line of the second paragraph should have been deleted.

66. The CHAIRMAN said that a corrigendum relating to paragraph 4 of the report would have to be issued, showing the correct number of meetings held by Committee II.

67. Mr. MATTHEY (International Telecommunication Union) said that paragraph 252 of the report should contain two decisions which were related to each other.

68. The CHAIRMAN said that that statement would be noted.

RESOLUTION ON THE NEED FOR NATIONAL CO-ORDINATION ON THE RADIO-COMMUNICATION MATTERS RAISED IN THE TECHNICAL ANNEX TO DRAFT ADDITIONAL PROTOCOL I (CDDH/II/308 and Add.1) (concluded)

69. The CHAIRMAN said that at the meeting of the General Committee which had been held the previous day, four members had opposed draft resolution CDDH/II/308 and Add.1 which the Committee had adopted by consensus at its fifty-third meeting (CDDH/II/SR.53), on the

grounds that the question was too technical to be taken up at a plenary meeting. They had said that it would suffice if the resolution were set out in the Committee's report.

70. He had pointed out that the Committee had proposed that the Conference adopt the draft resolution in plenary because it had considered that the Committee as such was not authorized to address itself to Governments.

71. As a lawyer, he had pointed out at the meeting of the General Committee that nothing in the text of the resolution could be altered, as it had already been adopted by the Committee. He could only resubmit the problem to the Committee.

72. In his opinion, there were two possible courses open to the Committee. It could decide to retain the resolution as it stood and run the risk of its being rejected by the Conference in plenary, or it could change by a two-thirds majority, not the substance, but the first line of the resolution, and replace the words "The Diplomatic Conference, Geneva, 1975" by the words "Committee II of the Diplomatic Conference on Humanitarian Law." The invitation to Governments would be replaced by a request to the President of the Conference to bring the text of the resolution to the notice of Governments. Should the Committee decide in favour of the second solution, the Rapporteur of the Drafting Committee had a possible text already prepared which he would read out.

73. Mr. URQUIOLA (Philippines) said that, before the Rapporteur of the Drafting Committee read out the text, the Committee should decide which course of action to take.

74. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he agreed in principle with the representative of the Philippines but would prefer to take a decision on the procedural aspect after dealing with the substance.

75. Mr. MAKIN (United Kingdom) said that, while it was true that the draft resolution had been adopted by consensus, everyone was aware that he had been opposed to it; in fact, it had been adopted by consensus but not unanimously. He had not asked for a vote to be taken on it because he had considered that there was no purpose in doing so. He was glad that some of the officers of the Committee agreed with him that it was too small a matter for the Conference to deal with in plenary. There was no need for Governments to be invited by the International Telecommunication Union to do something which they should do automatically. He would like to know the present opinion of those who represented the officers of the Committee who had opposed the draft resolution.

76. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that at the Meeting of Experts on Signalling and Identification Systems for Medical Transports by Land and Sea and at the session of the Technical Sub-Committee on Signs and Signals in 1974, as a result of mutual misunderstanding and narrow views, the international organizations responsible for telecommunications had adopted a very negative approach. Their attitude at the present session had been quite different and it would be a grave mistake if the resolution on the need for national co-ordination on the radio-communication matters raised in the technical annex to draft Additional Protocol I were rejected. No substantive changes in the text were required. It could be addressed to the Government members of Committee II requesting them to consult the competent authorities in their country. There could be no objection then to the principle involved. A mistake had been made and it had to be corrected.

77. Mr. SOLF (United States of America) said that his attitude to the draft resolution had been the same as that of the United Kingdom representative. Although the resolution had been adopted by consensus, he had understood the Chairman to mean, when he had said that he would discuss it with the officers of the Committee, that it had been adopted provisionally pending the latter's reactions. He, therefore, thought that the text could be reconsidered and that it was unnecessary to have a two-thirds majority in favour of a revised text.

78. Mr. AL-FALLOUJI (Iraq) said that the issue was not simply technical, since co-ordination was vitally important. He was concerned with the legal aspect. The Committee had adopted a resolution and the officers of the Committee had then intervened; in what legal capacity, he did not know. It was true that there was a risk that the draft resolution might be rejected by the Conference in plenary, but that was the way Conferences worked. He could see no legal justification for reverting to the matter.

79. Mr. SOLF (United States of America) said that his view was that it was desirable for the Committee to reconsider the wording of the draft resolution. He would like the Rapporteur of the Drafting Committee to read out the proposed wording so that the Committee could discuss it.

80. Mr. MARTIN (Switzerland) said that he was fully in agreement with what the USSR representative had said. He also agreed with the representative of Iraq that co-ordination was very important. Like the United States representative, he had understood that the Committee would endorse what had been decided by the Chairman and the officers concerning the substance of the text. A decision

could not be postponed, because the forthcoming Regional Administrative LF/MF Broadcasting Conference established a deadline before which action had to be taken; if action were not taken at the current session it would be prejudicial to further co-operation.

81. It was quite simple to amend the text of the resolution so that it became a resolution adopted by Committee II instead of by the Conference in plenary. He would like to hear the proposed text.

82. Mr. MAIGA (Mali), Rapporteur, said that, since there was support for the view that the consensus reached at the fifty-third meeting (CDDH/II/SR.53) was subject to agreement with the views of the General Committee, the Committee had to take a decision. Since the General Committee was against a decision being taken in plenary, one possible solution was to include the resolution in the Committee's report, which would be submitted to the States members of Committee II.

83. The CHAIRMAN said that another possibility was that the text be sent to the President of the Conference with a specific request that it be referred to all the Governments invited to attend the Conference. In his personal opinion that course would be more desirable.

84. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the introductory phrase of the resolution might read: "Committee II of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts". The operative paragraph would read: "Requests the President of the Conference to bring to the knowledge of the Governments invited to the present Conference the wish of Committee II that they consider initiating ...", while the preambular paragraphs would remain as they were.

85. The CHAIRMAN said that, if the Committee agreed in principle with that proposal, a text could be prepared in all the working languages before the fifty-fifth meeting.

It was so agreed.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE FIFTY-FIFTH (CLOSING) MEETING

held on Wednesday, 16 April 1975, at 10.15 a.m.

Chairman: Mr. NAHLIK (Poland)

REVISED RESOLUTION ON THE NEED FOR NATIONAL CO-ORDINATION ON THE RADIOCOMMUNICATION MATTERS RAISED IN THE TECHNICAL ANNEX TO DRAFT PROTOCOL I (CDDH/II/308/Add.2)

1. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the resolution relating to the need for national co-ordination on radiocommunication matters had been revised in the following way: it was no longer a resolution of the Conference, but of Committee II, and as the latter could not approach Governments directly, it had to do so through an authority which was competent to do so, namely the President of the Diplomatic Conference.

2. As no action had been taken on the International Telecommunication Union representative's suggestion that the two other decisions taken by the Committee should be included in the draft resolution, those decisions had been placed in square brackets.

3. The CHAIRMAN suggested that, to improve the appearance of the draft resolution, a semi-colon should be placed after the words "the Geneva Conventions of 12 August 1949 and" in the operative paragraph and that the remainder of the operative part should be made a new paragraph beginning with the words "Expresses the wish".

4. Mr. MARTIN (Switzerland) said that his delegation was prepared to support the draft resolution but proposed that, as a decision had been taken on the subject, the words "Expresses the wish" should be replaced by the words "has decided".

5. The CHAIRMAN, supported by Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that the words "and that the Technical Sub-Committee meet during the second and third weeks of the third session of the Conference", should be deleted, so that the second operative paragraph would begin with the words "Expresses the wish that Governments ...".

6. Mr. MALLIK (Poland) proposed the following wording: "Expresses the wish that Governments specially interested in radiocommunication questions include experts from their national telecommunication administrations in their delegations so that they may be able to participate in the work of the Technical Sub-Committee during the second and third weeks of the third session of the Conference.".

7. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, replying to questions by Mr. URQUIOLA (Philippines) and Mr. MATTHEY (International Telecommunication Union), explained that the President of the Conference would transmit the complete text of the resolution, which would naturally include the second operative part, to the participating Governments.

8. Mr. SCHULTZ (Denmark) proposed that the operative part should be divided into two, with a common introduction, to read: "Requests the President of the Conference to be so kind ... the wish of Committee II that ... and that Governments specially interested ...".

The resolution, as amended, was adopted by consensus.

9. In reply to Mr. MARTIN (Switzerland), who had expressed the view that if no consensus could be reached a simple majority would suffice, since it concerned a new decision, the CHAIRMAN said that, in his opinion, a two-thirds majority would have been needed had the matter been put to the vote, because a decision had already been taken on the subject.

10. Mr. AL-FALLOUJI (Iraq), speaking on a point of order, said that the procedure envisaged in the resolution just adopted ran counter to the rules of international law.

11. The reason given for preventing the Conference from exercising the functions that normally fell to it was irrelevant, since the issue was a technical one on which the Committee was no more competent to decide than was the Conference. It was also somewhat unusual for a Committee, which was a subsidiary body, to address Governments through the President of the Conference. Such a procedure might establish a precedent. Moreover, references to the Committee by its number should be reserved for internal use.

12. The CHAIRMAN said that he thought that it was permissible for the Committee to address a higher authority.

CONSIDERATION AND ADOPTION OF THE DRAFT REPORT OF COMMITTEE II (CDDH/221, CDDH/II/300 and Corr.1, 3 and 4 and Add.1 to 3)

13. The CHAIRMAN invited members to continue the examination of the draft report (CDDH/221, CDDH/II/300 and Corr.1, 3 and 4, and CDDH/II/300/Add.1 to 3).

Paragraph 2 bis (CDDH/II/300/Add.3)

14. The CHAIRMAN suggested that the name of Mr. J. Pictet should be followed by his title, namely, "Vice-President of the International Committee of the Red Cross".

Paragraph 2 bis, as amended, was adopted by consensus.

New paragraph 7 (CDDH/II/300/Add.3)

The new paragraph 7 was adopted by consensus.

Paragraph 8 (CDDH/II/300/Add.3)

The addition to paragraph 8 was adopted by consensus.

Paragraph 10 (CDDH/II/300)

15. Mr. URQUIOLA (Philippines) pointed out that the words "Part II of draft Protocol II" in the English version of the draft report (CDDH/II/300) should be replaced by "Part III of ...".

16. Mr. MAIGA (Mali), Rapporteur, said that the change did not apply to the other language versions.

Paragraph 10, as amended, was adopted by consensus.

Paragraph 15 bis (CDDH/II/300/Add.2)

Paragraph 15 bis was adopted by consensus.

Paragraph 31 (CDDH/II/300/Add.3)

17. Mr. SOLF (United States of America) pointed out that the relevant amendment was CDDH/II/70 and not CDDH/II/71.

Paragraph 31, as amended, was adopted by consensus.

Paragraph 48 (CDDH/II/300/Add.3)

Paragraph 48, as amended, was adopted by consensus.

Paragraph 107 (CDDH/II/300/Add.3)

Paragraph 107, as amended, was adopted by consensus.

Paragraph 155 (CDDH/II/300/Add.3)

18. Mr. MAIGA (Mali), Rapporteur, said that document CDDH/II/300/Add.3 referred to the last sentence of paragraph 155 of the draft report, but that paragraphs 3 and 4 of article 16 had been adopted unanimously, and not by consensus, as stated in the second sentence of paragraph 155 (CDDH/II/300). That sentence of paragraph 155 should be amended accordingly.

19. Mr. HØSTMARK (Norway) pointed out that the words "by consensus" described the form of the decision taken by the Committee more correctly, since they conveyed the fact that no objections had been actively raised, whereas the word "unanimously" implied the stated support of all delegations present, either by vote or by a statement - which had not been the case.

20. The fact that one delegation preferred the word "unanimously" should not change the correct reporting of the Committee's decisions, in a manner consistent with the way similar decisions had been set forth in the Committee's report.

21. Mr. MAIGA (Mali), Rapporteur, pointed out that, according to the summary record of the forty-fourth meeting (CDDH/II/SR.44), "paragraphs 3 and 4 of article 16, as amended, were adopted unanimously".

Paragraph 155, as amended, was adopted by consensus.

Paragraph 173 (CDDH/II/300/Add.3)

22. Mr. SOLF (United States of America) proposed that the opening words of the English text of the passage to be added to paragraph 173 should be amended to read: "There was no objection to including in the text of draft Protocol II a provision ...". His amendment did not affect the other language versions.

23. Mr. FIRN (New Zealand) said that he thought that the proposed text in document CDDH/II/300/Add.3 did not accurately describe the position taken by the Committee, and he proposed that it should be replaced by the following wording:

> "Also at the thirty-third meeting, the Committee decided that the text of the draft Protocol should include a provision concerning measures comparable to those which in an international conflict would be considered as reprisals, but that the question of the terminology to be used should be referred to a Working Group. The Committee decided to refer article 19 and the amendments to it to this Working Group. At its forty-ninth meeting the Committee decided to postpone consideration of the terminological question until the third session of the Conference.".

24. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Australian delegation had withdrawn its amendment (CDDH/II/230) proposing the deletion of article 19. The New Zealand representative had then asked whether the withdrawal of the amendment meant that Protocol II would include a provision on reprisals and the Chairman had replied in the affirmative. The Committee had then adjourned without having reached a decision.

25. The CHAIRMAN emphasized that the Joint Working Group should deal only with questions of drafting of interest to all three Committees and that the substance of the New Zealand amendment, which proposed to widen the scope of article 19 should be dealt with by Committee II only. He suggested that the word "final" should be inserted before the word "consideration"

26. Mr. DUNSHEE de ABRANCHES (Brazil) said he agreed with the Chairman and the Rapporteur.

27. Mr. FIRN (New Zealand) said that, according to his interpretation of the discussion at the thirty-third meeting (CDDH/II/SR.33), the substance of his delegation's amendment had already been adopted by the Committee.

The proposed addition to paragraph 173, as amended, was adopted.

Paragraph 252 (CDDH/II/300/Add.3)

28. Mr. SOLF (United States of America) suggested that the sentence it was proposed to add at the end of paragraph 252 should be amended to begin: "The Committee decided that written amendments ...".

29. Mr. MAIGA (Mali), Rapporteur, said that no objection had been raised to the consideration of written amendments submitted by delegations which were unable to participate in the work of the Technical Sub-Committee on Signs and Signals. He therefore proposed that the words "No objection was raised" should be added to the end of the paragraph.

30. Mrs. DARIIMAA (Mongolia) said that paragraph 8 of the draft report (CDDH/II/300) stated that "At its nineteenth meeting (CDDH/II/SR.19) ... the Committee decided to treat as void any amendment whose sponsor was not present during the discussion on the article in question". But in the additional sentence to paragraph 252 of the draft report appearing in document CDDH/II/300/Add.3, it was specified that written amendments submitted by delegations which were unable to participate in the work of the Technical Sub-Committee should be considered in the same way as other amendments. She asked what effect the decision taken at the nineteenth meeting (CDDH/II/SR.19) would have on those amendments at the next meeting of the Technical Sub-Committee, to be held at the beginning of the Conference's third session.

31. The CHAIRMAN said that the amendments in question constituted an exception applying only to the Technical Sub-Committee.

The sentence added to paragraph 252, as amended, was adopted by consensus.

Addendum 3 as a whole, as amended, was adopted by consensus.

32. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, in reply to Mr. MAKIN (United Kingdom), said that the corrections mentioned either appeared in documents CDDH/II/300/Corr.1 and 4, or would be incorporated in the final version of the Committee's report.

33. The CHAIRMAN, in reply to Mr. SOLF (United States of America), said that, for technical reasons, it would not be possible to distribute the final version of the report before the closing plenary meeting, but that all the documents relating to the draft report would be transmitted to the Conference.

The draft report, as amended, was adopted by consensus.

CLOSURE OF THE SESSION

34. After the usual exchange of courtesies, in which the CHAIRMAN, Mr. MARTIN (Switzerland), Mr. CHOWDHURY (Bangladesh), Mr. PICTET (International Committee of the Red Cross), Mr. MAKIN (United Kingdom), Mr. AL-FALLOUJI (Iraq), Mr. CALERO-RODRIGUES (Brazil), Mr. SOLF (United States of America) and Miss BASTL (Austria), took part, the CHAIRMAN declared closed the second session of Committee II.

The meeting rose at 12.45 p.m.