



OFFICIAL RECORDS

OF THE

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

GENEVA (1974-1977)

VOLUME XII

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.

*Document circulated in French only.

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OFFICIAL RECORDS

OF THE

DIPLOMATIC CONFERENCE
ON THE REAFFIRMATION AND DEVELOPMENT
OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE
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 (FOURTH 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

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THIRD SESSION

(Geneva, 21 April - 11 June 1976)

COMMITTEE II

SUMMARY RECORDS OF THE FIFTY-SIXTH TO EIGHTY-SECOND MEETINGS

held at the International Conference Centre, Geneva

from 22 April to 9 June 1976

Chairman: Mr. S-E. NAHLIK (Poland)

Rapporteur: Mr. EL HASSEEN EL HASSAN (Sudan)

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SUMMARY RECORD OF THE FIFTY-SIXTH (OPENING) MEETING

held on Thursday, 22 April 1976, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

OPENING STATEMENT BY THE CHAIRMAN

1. The CHAIRMAN welcomed the members of the Committee, the members of the International Committee of the Red Cross and the two new Legal Secretaries. After paying a tribute to all who had contributed to the work of the Committee in the past, he expressed his hopes for the success of the present session.

ORGANIZATION OF WORK

2. The CHAIRMAN noted that the General Committee and the President of the Conference had expressed the wish that the work of the Conference should be concluded at the present session. The Main Committees were accordingly expected to complete their work by 21 May, i.e. in a period of some four and a half weeks. If Committee II was to achieve that aim, it would have to work faster than at the second session.

3. In the past its work had generally proceeded in five phases - first, initial consideration of an article of the draft Protocols by the plenary Committee; secondly, consideration by a working group; thirdly, report of the working group to the Committee; fourthly, consideration by the Drafting Committee; and fifthly, report of the Drafting Committee to the plenary Committee. To save time, the Committee might drop either the working group phase or the Drafting Committee phase, reducing the total number of stages to three.

4. The Committee should not try and do all the work by itself, since there were others on whose services it could call - the language services, and the Drafting Committee of the Conference. Above all, it should not seek to go over old ground, but should start afresh from where it had left off at the second session. It would be remembered that under rule 32 of the rules of procedure, when a proposal had been adopted or rejected it might not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decided. He would naturally be bound to apply that rule should any request be made for the reconsideration of a text which had been adopted.

5. There were five subjects on which the Committee had begun work at the second session but had not yet come to a conclusion: first, the question of medical transport; secondly, the annex to draft Protocol I containing regulations concerning the identification and marking of medical personnel, units and means of transport, and civil defence personnel, equipment and means of transport; thirdly, the question of the missing and the dead; fourthly, civil defence; and, fifthly, the definitions covered by article 8 of draft Protocol I and article 11 of draft Protocol II.

6. As regards the first, he proposed to resume work on the question at the present meeting, with a view to completing it as far as possible by the morning of Monday, 26 April. Nine of the thirteen articles in draft Protocol I concerning the question of medical transport had been adopted, leaving articles 24, 25, 31 and 32 to be considered further. On the second subject, the Technical Sub-Committee would be convened on the afternoon of 26 April and he would be grateful if its report could be submitted to the Committee within a week or ten days. It would meet only in the afternoons, so that the Committee could discuss the third or the fourth subject during the mornings of that week. He suggested that the subject of definitions should be deferred until it was known whether any new definitions would be added to article 8 of draft Protocol I and article 11 of draft Protocol II.

7. Finally, the time-table for the questions that had not yet been tackled might be decided later, in the light of the progress made on the five he had mentioned.

8. Mr. SCHULTZ (Denmark) asked when draft Protocol I, Part IV, Section II - Relief in favour of the civilian population - and the corresponding articles of draft Protocol II would be considered.

9. The CHAIRMAN replied that the articles mentioned by the representative of Denmark would not be considered until all preceding articles had been dealt with.

10. Mr. SADI (Jordan) said that if the Committee wished to complete its work by the time suggested it would be advisable to reduce the number of phases in the consideration of articles from five to three, as suggested by the Chairman.

11. The CHAIRMAN, welcoming the representative of Jordan's comment, said that subsidiary bodies on individual articles should only be set up if they proved absolutely necessary, as in the case of article 18 bis of draft Protocol I. On those articles, a working group would again have to be established, with the same membership as at the second session.

12. Mr. URQUIOLA (Philippines) said that his delegation would submit an amendment in connexion with the question of civil defence.

13. Mr. BOTHE (Federal Republic of Germany) said that consultations were taking place on draft Protocol I, new Section I bis - Information on the victims of a conflict and remains of deceased - so that it would be premature for a decision to be taken on the matter for the time being.

14. Mr. SOLF (United States of America) said that preliminary discussions were now in progress on various items and that it was hoped to be able to report in due course that a consensus had been reached on each item.

15. Mr. MARTIN (Switzerland) asked whether it was intended that there should be a general discussion of Part IV of draft Protocol I on the morning of 26 April and of the annex to that draft Protocol on the afternoon of the same day.

16. The CHAIRMAN said that Part IV would be discussed in the plenary Committee. The Technical Sub-Committee would meet to discuss the annex in the afternoon of 26 April.

17. Mr. MARRIOTT (Canada) asked whether the Committee was supposed to complete discussion of draft Protocol I, articles 24, 25, 31 and 32 by the end of the current week or whether the Committee would interrupt its consideration of them in order to discuss the question of civil defence.

18. The CHAIRMAN, replying, referred to the report of Committee II on its second session (CDDH/221/Rev.1). If the Drafting Committee submitted its report on the question of medical transport the following day, Committee II should be able to dispose of the item in time to take up the question of civil defence during the week beginning 26 April.

The programme of work outlined by the Chairman was adopted.

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 24 - Other medical ships and craft (CDDH/221/Rev.1)

19. Mr. SANDOZ (International Committee of the Red Cross) said that the article needed simplifying. Only a legal expert could understand it in its present form (CDDH/221/Rev.1, p. 131).

20. Further, provision should be made for the protection of lifeboats used for the transport of shipwrecked persons. A new paragraph or article might be added stipulating that a lifeboat of a ship, craft or aircraft should be respected and protected and should have the right to use the distinctive emblem provided it was carrying only shipwrecked persons who refrained from any act of hostility, in accordance with article 8, sub-paragraph (b) of draft Protocol I.

21. Mr. MAKIN (United Kingdom) said he understood that lifeboats were already generally protected under international law. If that was not the general understanding, however, such protection should be stipulated. He would be interested to hear the views of other delegations on the existing law.

22. Mr. SANDOZ (International Committee of the Red Cross) fully agreed that lifeboats were protected under existing international law. The point at issue, however, was that they should be authorized to use the distinctive emblem. Lifeboats had been attacked during the Second World War because they had not been identified as such by the attacker.

23. Mr. DEDDES (Netherlands) asked whether ICRC was in a position to submit a formal proposal for consideration by the Working Group or the Drafting Committee.

24. Mr. SADI (Jordan) said that it would be difficult to enforce application of the ICRC proposal in practice. He would welcome further clarification.

25. Mr. FRUCHTERMAN (United States of America) agreed with the United Kingdom representative's comments. It might be difficult to mark the craft in question permanently, since boats carried on ships were used for various purposes. There could be a provision that when used as lifeboats they could be so marked.

26. Paragraph 3 as drafted might conflict with the terms of the second Geneva Convention of 1949, Article 22 of which required notification of the names and descriptions of hospital ships ten days before those ships were employed. The craft referred to in article 24 of draft Protocol I were medical ships, which unlike hospital ships, were used as such only temporarily. His delegation fully endorsed the idea of providing a means of rapid evacuation of the wounded and sick by sea when the need arose and of protecting ships used for that purpose. When ships of over 2,000 tons gross were used, however, as recommended in Article 26 of the second Geneva Convention of 1949, notification should be required for medical ships as well as for hospital ships. He suggested

that paragraph 3 should be redrafted to read: "With respect to medical ships of over 2,000 tons gross, a party to the conflict shall give twenty-four hours' prior notification to any adverse party of the name ... ". The present provisions of the paragraph should be retained for craft of less than 2,000 tons gross, for which the notification procedure should remain optional.

27. Mr. GOZZE-GUČETIĆ (Yugoslavia) said that lifeboats were protected under the Geneva Conventions only when the shipwrecked persons had indicated their intention to surrender.

28. Mr. SANDOZ (International Committee of the Red Cross) said that the ICRC would be prepared to submit a simplified draft of article 24 if the Committee so desired.

29. As regards lifeboats, he noted that protection would not extend to those whose occupants desired to pursue the combat. Permanent markings would therefore be inappropriate. Those wishing to surrender as shipwrecked persons should, however, be permitted to show a distinctive flag.

30. Mr. SADI (Jordan) said that the words "whenever it could be useful" in paragraph 3 were vague. He suggested that they should be replaced by the words "whenever feasible".

31. Mr. MAKIN (United Kingdom) said that the existing wording had been used in order to allow the person in charge of a vessel to judge whether to notify the enemy or attempt to get away unobserved in the dark. The Drafting Committee might give further thought to the point. The words "as far as possible" between the word "shall" and the words "be marked" in the last sentence of paragraph 1 should be deleted as a drafting error.

32. Uniform terminology should be used in the last phrase of article 24, paragraph 5 and the last sentence of article 23, paragraph 1. He preferred the wording of article 24, paragraph 5. The Drafting Committee might discuss the matter and recommend the adoption of an amendment by a two-thirds majority vote.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the United States representative's suggestion deserved careful consideration.

34. Not enough attention had been paid to the protection of medical ships operating on inland waterways. Such ships would have little time to notify an adverse party of the information required under paragraph 3 and provision should be made for their protection regardless of whether they had complied with that requirement. The Drafting Committee might consider the point.

35. The CHAIRMAN suggested that the Working Group, constituted as at the second session, and in which, in addition, the representatives of Jordan and Yugoslavia could participate, should draft proposals for submission to the Committee at its fifty-seventh meeting.

It was so agreed.

The meeting rose at 11.30 a.m.

SUMMARY RECORD OF THE FIFTY-SEVENTH MEETING

held on Monday, 26 April 1976, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

ORGANIZATION OF WORK

1. The CHAIRMAN drew attention to rule 29 of the rules of procedure, which laid down that no proposal should be discussed unless copies of it had been circulated to all delegations not later than the day preceding the meeting at which it was to be debated. He requested delegations to observe that rule and to submit their amendments as early as possible. He took it that there would be no further amendments on the question of civil defence, since the deadline for submission had already gone by.

2. He requested delegations to submit their amendments to the suggested new Section I bis by Wednesday, 28 April, in order to allow ample time for their consideration before the Committee took up the matter during the following week.

3. There had been a misunderstanding about the composition of the Drafting Committee of Committee II. Rule 47, paragraph 2 of the rules of procedure laid down that any delegation might attend the meetings of the Drafting Committee. That rule, however, applied only to the Drafting Committee of the Conference itself; adopted by a small majority at the first session of the Conference, it was an exception to the rule observed in almost all international conferences, namely, that membership of drafting committees was limited. His predecessor as Chairman of Committee II had ruled that all delegations could take part in the Committee's Drafting Committee and it would have been hard for him to dispute that ruling. However, appointment to membership of any subsidiary bodies of Committee II was governed by rule 48 of the rules of procedure, which stated that such appointment was to be made by the Chairman of the Committee concerned, subject to approval by the Committee. Moreover, rule 50 of the rules of procedure stated that "The rules contained in chapters II, V and VI shall be applicable, mutatis mutandis, to the proceedings of committees, sub-committees and working groups ...". Rule 47 of the rules of procedure was thus excluded, since it appeared in chapter VII. Participation in any of the Committee's subsidiary bodies, including the Drafting Committee, should therefore be limited to persons appointed by the Chairman, in accordance with rule 48.

4. Since, however, he had no desire to prevent any delegation wishing to take part in the Drafting Committee from doing so, he requested the Chairman and Vice-Chairman of the Drafting Committee to submit in writing to one of the next meetings of Committee II the names of members whom they wished to take part in the Drafting Committee's work.

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Reports of the Drafting Committee (CDDH/II/333 and CDDH/II/334)

Article 31 - Landing and inspection

Article 32 - Neutral or other States not parties to the conflict

Article 17 - Role of the civilian population

Article 25 - Notification

Draft Protocol II

Report of the Drafting Committee (CDDH/II/334)

Article 14 - Role of the civilian population

5. The CHAIRMAN announced that the Committee had before it the reports of the Drafting Committee on articles 31 and 32 of draft Protocol I (CDDH/II/333) and on articles 25 and 17 (paragraph 3) of draft Protocol I, and article 14 (paragraph 3) of draft Protocol II (CDDH/II/334). He suggested that the Committee should conclude its work on medical transports, before taking up that of civil defence.

6. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, introduced the Drafting Committee's report on articles 31 and 32 of draft Protocol I (CDDH/II/333).

7. Article 31 dealt with landing and inspection of medical aircraft on territory controlled by an adverse party or in areas over which physical control was not clearly established. The text submitted by the Drafting Committee was based on the amendments in document CDDH/II/82/Rev.1. There were square brackets round the

words "those of its occupants belonging to an adverse party or to a neutral or other State not a party to the conflict" in the proposed text of paragraphs 3 and 4 of article 31. Those words represented an addition to the text in document CDDH/II/82/Rev.1, though not a change of substance. They had been added because the original wording might have suggested that a party to a conflict was not entitled to take persons belonging to his own side from an aircraft landing on its territory or on territory controlled by it. That would have been unreasonable and had clearly not been intended by the original drafters.

8. The Drafting Committee had agreed on the principle of the addition, although its wording had given rise to some discussion. The Drafting Committee now requested Committee II to adopt the text and to remove the square brackets.

9. Article 32 dealt with medical aircraft flying over the territory of a neutral or other State not party to the conflict. The text was essentially based on amendment CDDH/II/290 submitted by some permanently neutral countries and had given rise to no controversy in the Drafting Committee.

10. The CHAIRMAN called for comments on the report of the Drafting Committee.

11. Mr. MAKIN (United Kingdom) proposed the inclusion of the word "a" in the last line of paragraph 6 of article 31.

12. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, agreed to that amendment.

13. Mr. SANCHEZ DEL RIO (Spain) suggested that delegations should be given a little time to compare the various texts. In the past, Spanish texts had not always concorded either in style or in substance with those in other languages.

14. The CHAIRMAN agreed to that suggestion.

15. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, outlining the Drafting Committee's work on the remaining articles relating to medical transport, said that the Working Group on article 24 had reached certain conclusions and had referred them to the Drafting Committee for the preparation of the final text. The Drafting Committee had made substantial progress, but some issues remained undecided. The Drafting Committee had established a Working Group to draw up the final texts.

16. Article 25 - the only article on medical transport which had not yet been disposed of - was referred to in the last two paragraphs of the Drafting Committee's report (CDDH/II/334). The Drafting Committee recommended that Committee II should adopt no general article on notification. That meant that for the time being there would be no article 25, but since an article on notification was included in the ICRC draft, such a decision should be taken formally. The two other articles relating to medical transport - article 17, paragraph 3, and the corresponding provision of article 14, paragraph 3, of draft Protocol II had both procedural and substantive aspects. The Drafting Committee had in fact discussed them. Although the provisions had been included in the reports of the Drafting Committee and Committee II had agreed to reserve article 17, paragraph 3, for consideration after the adoption of the articles on medical transport because some delegations had wished to extend the principle of article 17 to aircraft, the Drafting Committee had concluded that that decision did not mean that the articles had been referred back to the Drafting Committee, which had no authority to take decisions on the matter. Furthermore, the Drafting Committee felt that it would be useful if the remaining issues of substance could be briefly discussed in Committee II in order to give the Drafting Committee some guidance on the prevailing view regarding the extension of article 17 to aircraft.

17. Definitions could be taken up by the Drafting Committee after the other business to which he had referred had been concluded.

18. Mr. SOLF (United States of America), referring to article 17 of draft Protocol I and article 14 of draft Protocol II, pointed out that the only available comment was to be found on page 142 of the report of Committee II on its second session (CDDH/221/Rev.1). Some delegations had wished to include aircraft and vehicles in paragraph 3 of article 14, but the majority of the Drafting Committee had been in favour of confining it to civilian ships and craft.

19. Mr. ICHIOKA (Japan) wondered what was meant by the phrase "physical control" in paragraph 1 of article 31. In similar contexts the word "effective" had been used instead of "physical". He suggested that the word "physical" should either be omitted or be replaced by "effective".

20. Mr. SOLF (United States of America) explained that the idea of physical control had been used in order not to introduce the concept of effective control, which had legal connotations. The circumstances under consideration were fluid combat situations, where territory might be only temporarily controlled by one of the parties. The word "physical" was therefore used in a pragmatic sense.

21. He suggested that in the last sentence of article 31, paragraph 1, the word "any" should be inserted before the word "such" and that the word "an" should be deleted.

22. The CHAIRMAN said that if he heard no objection he would take it that the drafting amendment suggested by the United States representative was adopted.

It was so agreed.

23. The CHAIRMAN, referring to the Japanese representative's comment, pointed out that it would be difficult for the Committee to make the suggested change at the present stage, since it would have to amend all references to the word. The Japanese delegation would be able to raise the matter in the Drafting Committee of the Conference if it so desired.

24. Mr. ICHIOKA (Japan) withdrew his suggestion.

25. Mr. HEREDIA (Cuba) said that the Committee needed to be particularly realistic in regard to paragraph 5 of article 31 dealing with aircraft flying without, or in breach of, a prior agreement where such agreement was required and to ensure that there was no lack of harmony with paragraph 1. The existing text imposed a definite limitation upon the seizing party in that the aircraft in question could be seized only if the seizing party was in a position to provide adequate medical facilities for the wounded and sick aboard. Not all countries possessed the level of technical development required to satisfy the conditions of the proposed text. His delegation was not in favour of restrictions of that kind.

26. Mr. SOLF (United States of America) explained that the aircraft referred to in paragraph 4 was not a medical aircraft, used exclusively as such, and was in violation of the conditions prescribed in article 29. The party ordering it to land could seize it, although it would have to take care of the wounded and sick.

27. Paragraph 5, on the other hand, dealt with an accidental situation in which an aircraft, as a result of a navigational error or force majeure flew over territory controlled by a hostile party. The aircraft was a purely medical aircraft and had not violated article 29. It had been felt that a little more compassion might be exercised in such a case and that if for any reason the seizing party could not provide adequate medical treatment it should allow the aircraft to continue its flight.

28. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the Cuban representative had raised an important question of principle which would affect not only paragraph 5 but other portions of the text. The question was what interpretation should be given to the words "adequate facilities for the necessary medical treatment". His delegation appreciated the comments made by the representatives of some countries which might not have the necessary medical facilities available, but account should also be taken of the humanitarian considerations involved. He suggested that a definition of "adequate facilities for the necessary medical treatment" should be included in article 8 - Definitions, to be interpreted to mean the level of facilities accorded by a given country to its own citizens.

29. The CHAIRMAN said that that was the reason why he had felt it more appropriate to defer adoption of article 8.

30. Mr. SOLF (United States of America) said that the representative of the Union of Soviet Socialist Republics had made a most constructive suggestion. The same issue had had to be faced in connexion with article 11, where the prevailing standard was that used for citizens of the detaining power. It would be appropriate to consider the matter in connexion with that article and with article 8.

31. Mr. SALEEM (Pakistan) said that under paragraph 5 of article 31 the seizure of an aircraft was apparently made conditional upon the availability of medical facilities. He asked whether that meant that, in the absence of such facilities, the aircraft had to be released.

32. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that his own interpretation would give an affirmative answer to that question. He understood that that was also the opinion of the United States representative in his explanation concerning paragraph 5.

33. Mr. HESS (Israel), referring to paragraph 5, said that his delegation thought that seizing an aircraft was a far-reaching sanction, especially as it was not provided for in article 32, which dealt with neutral or other countries. He felt that the majority of the Conference still considered that sanction justified. Moreover, the words "may also be seized" seemed to suggest that something else could happen besides the seizure of an aircraft. In the interests of complete clarity, he suggested that the opening lines of paragraph 5 should be reworded: "The aircraft may also be seized if it has flown over, or in breach of ...".

34. Mr. SANDOZ (International Committee of the Red Cross) and Mr. ALBA (France) drew attention to some minor editorial corrections to be made in the French texts of paragraphs 3 and 5 of article 31.

35. Mr. SANCHEZ DEL RIO (Spain) said that in paragraph 2 of the Spanish text of article 31 the words "Los inspectores" had not the same meaning as the words "The inspecting party" and "La partie qui procède à l'inspection" in the English and French texts, respectively. He suggested that the Spanish text should be brought into line with the other texts.

36. The CHAIRMAN suggested that the matter should be left to the translation services.

37. Mr. MARRIOTT (Canada) said that the words "wounded and sick" in paragraph 5 carried the precise meaning given in article 8, sub-paragraph (a). Presumably, therefore, the words used in other languages should be those that would appear in the definition in article 8.

38. The CHAIRMAN invited the Committee to adopt the paragraphs of article 31 in sequence.

Paragraph 1

Paragraph 1, including the minor drafting amendments accepted during the discussion, was adopted by consensus.

Paragraph 2

Paragraph 2 was adopted by consensus.

Paragraph 3

39. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the wording in square brackets had been added because there had been difficulties over the original wording which he had already explained. There had been no objection to the substance of the additional words. The Drafting Committee recommended that the square brackets should be deleted and the paragraph adopted.

Paragraph 3, including the words in square brackets and with minor editorial amendments, was adopted by consensus.

Paragraph 4

Paragraph 4, including the words in square brackets, was adopted by consensus.

Paragraph 5

40. The CHAIRMAN asked if the Cuban representative would accept the proposal of the representative of the Union of Soviet Socialist Republics that the words "adequate facilities for the necessary medical treatment" should be explained in article 8 on definitions.

41. Mr. HEREDIA (Cuba) agreed.

42. Mr. MAKIN (United Kingdom), referring to the proposal by the representative of Israel, suggested that the difficulty might be met if the word "also" was replaced by the word "still". The Israel representative apparently felt that the word "also" implied that an aircraft could be subject to seizure as well as to other action, whereas the provision meant that it could be seized under the provisions of paragraphs 4 and 5.

43. Mr. HESS (Israel) said that the amendment was acceptable.

44. Mr. SANDOZ (International Committee of the Red Cross) suggested that, as far as the French text was concerned, the word "aussi" could be deleted.

45. Mr. SANCHEZ DEL RIO (Spain) and Mr. HEREDIA (Cuba) said that the Spanish word "también" could be deleted.

46. Mr. MAKIN (United Kingdom) said it would be in order to delete the word "also", which had been included for drafting reasons, to refer back to paragraph 4.

47. Mr. MARRIOTT (Canada) said that it would be logical to delete "also" if the French and Spanish equivalents were deleted.

48. With regard to the words "adequate facilities for the necessary medical treatment", he would be satisfied if the Committee adopted the paragraph on the understanding that those words would have to be defined, but the Committee should be clear on what it was deciding and failure to reach a definition might mean re-opening discussion on the article.

49. Mr. SOLF (United States of America) agreed to the deletion of the word "also".

50. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that it was possible that the Drafting Committee would fail to find a suitable definition and would then have to recommend reconsideration of the text.

51. Mr. MAKIN (United Kingdom) agreed with the representative of Canada, since it was important to draft the articles on medical aircraft as completely as possible so that no explanatory notes would be needed for staff at the airfield. He suggested that the Committee should adopt article 31, with square brackets round the words "adequate facilities", and should then decide whether to re-define the words or leave the definition to article 8.

52. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) supported the proposals of the Rapporteur of the Drafting Committee and the United Kingdom representative.

53. Mr. SOLF (United States of America) supported the proposal to place the words concerned in square brackets. He considered that an effort should be made to define "adequate medical services", as used in article 14. He shared the earlier views of the representative of the Union of Soviet Socialist Republics in that connexion.

54. Mr. HEREDIA (Cuba) stressed that the problem was very complex, involving not only a concept, but also the practical means and possibilities of implementing the provisions in question.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE FIFTY-EIGHTH MEETING

held on Tuesday, 27 April 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Reports of the Drafting Committee (CDDH/II/333 and CDDH/II/334)
(continued)

Article 31 - Landing and inspection (continued)

Article 32 - Neutral or other States not parties to the conflict (continued)

Article 17 - Role of the civilian population (continued)

Article 25 - Notification (continued)

Draft Protocol II

Report of the Drafting Committee (CDDH/II/334) (continued)

Article 14 - Role of the civilian population (continued)

1. The CHAIRMAN suggested that the Committee and its Drafting Committee should not spend any more time discussing terminology, since the Drafting Committee of the Conference was at present discussing that question in connexion with the whole of draft Protocol I.

Draft Protocol I

Article 31 - Landing and inspection (CDDH/II/333) (continued)

2. The CHAIRMAN invited the Committee to continue its consideration of article 31, paragraph 5, as it appeared in the Drafting Committee's report (CDDH/II/333), recalling that at the fifty-seventh meeting (CDDH/II/SR.57), the representative of the Union of Soviet Socialist Republics had proposed that the words "adequate facilities for the necessary medical treatment" should be defined in article 8 - Definitions. The Rapporteur of the Drafting Committee suggested that those words should be placed in square brackets.

3. Mr. MARRIOTT (Canada) said that the point at issue was whether or not the standard of treatment in article 31, paragraph 5, differed from that in paragraph 4. It would probably be impossible to define a sufficiently precise standard of treatment: the only solution was a generality, as in paragraph 4 ("shall be treated in conformity with the provisions of the Conventions and of the present Protocol"). If that was adopted in paragraph 5, it would provide for adequate treatment of the wounded and sick referred to in that paragraph. The question would then arise why there was any need for paragraph 5 and why it could not become sub-paragraph (c) of paragraph 4: "has flown without or in breach of a prior agreement where such agreement is required,". That would overcome the difficulty, but there might be a need to adjust the words in square brackets.

4. He suggested that paragraphs 5 and 4 - despite the latter's adoption - should be referred back to the Drafting Committee, which should be able to settle the matter in a short time.

5. Mr. HEREDIA (Cuba) said that the Canadian representative's proposal seemed good and he was giving it careful consideration. Obviously, there were several points in paragraphs 4 and 5 that would have to be clarified and he hoped that the Drafting Committee would be able to provide satisfactory explanations.

6. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Canadian proposal was excellent. He hoped that the Drafting Committee would be able to produce a draft that took into account all the implications of the problem.

It was agreed by consensus to re-open discussion on paragraph 4, which had already been adopted.

It was agreed that paragraphs 4 and 5 should be submitted to the Drafting Committee in the light of the discussion.

Paragraph 6

7. The CHAIRMAN invited the Committee to consider paragraph 6.

8. Mr. MAKIN (United Kingdom) said that he assumed that the amendment he had proposed at the fifty-seventh meeting (CDDH/II/SR.57), to insert the word "a" before "medical", in paragraph 6 of article 31, had been accepted.

9. With regard to the Canadian proposal, with the present text there were two separate cases of seizing an aircraft; if the Committee and the Drafting Committee decided that the whole question could be dealt with in one paragraph, the substance of paragraph 6 might also be transferred to paragraph 4 of article 31. He suggested that the Drafting Committee should be asked to consider that possibility.

10. Mr. MONROY (Venezuela) said that he had intended to propose an amendment to the Spanish text of paragraph 6, but in view of the Chairman's opening remarks he would await a decision on the possibility of combining paragraphs 4, 5 and 6.

11. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the United Kingdom representative had rightly pointed out that the reason for paragraph 6 was that there were two cases of seizure and it had to be made clear that the rule in paragraph 6 applied to both of them. If the question of seizure was dealt with in one paragraph, the substance of paragraph 6 should obviously be included in that paragraph.

12. The CHAIRMAN suggested that paragraph 6 should be submitted to the Drafting Committee for brief consideration and decision in connexion with paragraphs 4 and 5.

It was so agreed.

Article 32 - Neutral or other States not parties to the conflict (CDDH/II/82/Rev.1, CDDH/II/290, CDDH/II/333)
(concluded)

13. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the text of article 32 was based essentially on an amendment by Austria, Finland, Sweden, Switzerland and Yugoslavia (CDDH/II/290). He drew attention to the main points of the article, pointing out that paragraph 4 was a follow-up of the third paragraph of Article 37 of the first Geneva Convention of 1949 and that paragraph 5 established the principle of equal treatment, a general principle of the law of neutrality dealt with in the second paragraph of Article 37 of the first Geneva Convention.

14. The main changes introduced by the Drafting Committee were an added precision regarding protection of aircraft which was flying without agreement and sanctions to be applied if an aircraft proved not to be a medical aircraft.

15. Mr. AKRAM (Afghanistan) said that his delegation objected to the use of the word "on" in the second sentence of the French text of paragraph 2 of article 32; it should be made clear who should take the measures in question - for example, the neutral State. He also felt that the word "attacking" at the end of the sentence was an encouragement to a neutral State to attack a medical aircraft and was therefore contrary to the principles of humanitarian law. He proposed that the second sentence of paragraph 2 should be redrafted on the following lines: "The neutral or other State not party to the conflict shall give the order referred to in article 31, paragraph 1, of the present Protocol and shall allow the aircraft time for compliance. In the event of non-compliance, the neutral or other State not party to the conflict may take other measures to safeguard its interests."

16. Mr. SANCHEZ DEL RIO (Spain) said that there was a substantive difference between paragraph 2 and the amendments on which it was based (CDDH/II/82/Rev.1 and CDDH/II/290). In the amendments the emphasis was on protection of both the aircraft and the State over which it flew, whereas the present wording protected the interests of the State but ignored the essential concern of the Protocol, namely the aircraft. In both amendments, paragraph 2 of article 32 provided that the neutral or other State not party to the conflict should take the security measures referred to in article 31, paragraph 1, before having recourse to extreme measures, thus placing on those countries a greater obligation than that placed on belligerent countries. He urged that the paragraph should be reconsidered. He would, however, be prepared to support it if an adequate explanation could be given by the authors, namely the past and present Chairmen and the Rapporteur of the Drafting Committee.

17. Mr. SOLF (United States of America), replying to some of the points raised by the representatives of Afghanistan and Spain, said that paragraph 2 was concerned with procedures for aircraft flying over a country, possibly without permission or prior agreement: the same problem as in article 28, paragraph 2. Article 31 provided that everything should be done before extreme measures were taken. The Drafting Committee had decided that the text would be clearer if the euphemism "extreme measures" was avoided and the consequences of a failure to comply with an order to land stated explicitly in article 32, as it was in article 28.

18. Mr. ALBA (France) said that, if the word "attack" had an undesirable connotation for some representatives, there was no reason why it should not be deleted; it would serve precisely the same purpose if the last sentence of paragraph 2 referred to "other measures", which obviously included "attack".

19. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, after listening to the previous speakers, he had come to the conclusion that many of them who had objected to the text of the last sentence of paragraph 2 of article 32 had forgotten that it referred to wartime, when an unidentified aircraft, whether belonging to a neutral State or to a party to a conflict, would be immediately shot down. The fact that a single aircraft could wipe out an entire city should be the first point to consider. In his view, paragraph 2 was an important step forward both for the protection of medical aircraft and for the neutral State, inasmuch as, while it afforded the neutral State the means of protecting itself, it allowed the aircraft time to comply with the orders received before it was attacked.

20. Mr. ICHIOKA (Japan) said that he did not think that the word "they" in the second sentence of paragraph 1 was used correctly; it should perhaps be replaced by "it". The last sentence of paragraph 1 used the expression "to alight on land or water, as appropriate", whereas paragraph 3 used the words "lands or alights on water". In his view, the same wording should be used in the two paragraphs.

21. Mr. MARRIOTT (Canada) said that the word "aircraft" in English was both singular and plural. As the words "medical aircraft" in the first sentence of paragraph 1 were in the plural, the word "they" in the second sentence was correct. With regard to the use of the words "landing" and "alighting", there was nothing incorrect in saying "to alight on land or water" in one paragraph and "lands or alights on water" in the next.

22. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he saw no reason to complicate matters by replacing the word "they" in the second sentence of paragraph 1 by "medical aircraft".

23. Mr. SOLF (United States of America) said that the words "to alight on land or water" in the last sentence of paragraph 1 should be replaced by "to land, or alight on water".

24. Mr. MAKIN (United Kingdom) said that, to be consistent with article 31, there should be a comma after the word "land".

25. Mr. MARRIOTT (Canada) pointed out that the phrase should in fact read "to land, or to alight on water".

26. Mr. ICHIOKA (Japan) said that that wording was acceptable to his delegation.

Paragraph 1, as orally amended, was adopted by consensus.

Paragraph 2

27. Mr. SADI (Jordan) said that he was concerned at the use of the word "attacking" in paragraph 2. He thought that there was a middle course between ordering an aircraft to land and shooting it down. Forcing an aircraft to land was surely such an intermediary measure.

28. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that one of the changes which had been made with respect to amendment CDDH/II/290 was to insert between the order to land and the attack other measures to safeguard the interest of neutral States. Article 32 as now drafted obliged a neutral State to do a great deal before it was free to attack aircraft.

29. Mr. MARRIOTT (Canada), referring to the suggested use of the words "forcing an aircraft to land", said that the only way that could be done was to threaten to collide, which was an extreme and very dangerous measure. The use of the word "attacking" would perhaps draw the attention of the States concerned more successfully to the need for the prior use of as many other measures as possible before attacking.

30. Mr. KHAIRAT (Egypt) said that he had some sympathy with what the representative of Afghanistan had said concerning the reference to "attacking". To attack a medical aircraft was a serious matter and it was better to take all other possible action first. In his view, the problem differed according to whether it was a question of neutral States and States not parties to the conflict or whether it arose between belligerents. While he realized that the article dealt with wartime, he thought there was merit in the suggestion made by the representative of Jordan.

31. Mr. SANDOZ (International Committee of the Red Cross) said that he understood and shared the concern that a number of delegations had expressed at the reference to permission to attack a medical aircraft. The problem was that an aircraft might claim to be a medical aircraft when there was no certainty that it was, and that it might be necessary to force it to land in order to confirm the fact. If that point could be brought out at the beginning of paragraph 2, the ambiguity would disappear, because if measures were taken against an aircraft which claimed to be a "medical aircraft" it was precisely because it was feared that it was not.

32. The wording used at the beginning of the second sentence might be: "With a view to establishing that it is indeed a medical aircraft, every effort shall be made, as soon as this aircraft is recognized ...".

33. Mr. SADI (Jordan) said that it was not necessary to collide with an aircraft in order to force it to land; it was possible to achieve the desired effect in a less dramatic fashion. He formally proposed that the words "including an attempt to force it to land" should be inserted after the word "conflict" in the last sentence of paragraph 2.

34. Mr. ALBA (France) said that the word "attack" did not mean to shoot down.

35. Mr. SOLF (United States of America) said that the present proposal was an advance on Article 37 of the first Geneva Convention of 1949 in that it provided some alternatives to attack. An aircraft, for instance, might not be ordered to land but to change its course.

36. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) endorsed the view of the United States representative that an order to attack implied many things other than shooting down. It was sufficient to refer to "other measures", since it would not be practicable to list all the measures possible. In addition, the aircraft was allowed time for compliance before it was attacked.

37. The CHAIRMAN suggested that the list of speakers should be closed, since the Committee had heard a wide variety of views on the question.

It was so agreed.

38. Mr. MARRIOTT (Canada) said that it was a routine procedure to send an aircraft up to identify another or to convey an order to it if it was not obeying instructions.

39. Mr. HØSTMARK (Norway) pointed out that other methods of threatening an aircraft were available, e.g. artillery and ground-to-air missiles, and those weapons could be used by neutrals.

40. Mr. SALEEM (Pakistan) said that he still felt some sympathy for the views of the representative of Afghanistan. It did not seem right that neutral States should be told what to do; they should decide that for themselves. If the word "attack" was used, he would like to see it tempered by some such expression as "before resorting to an attack".

41. Mr. CZANK (Hungary) said that he had been convinced by the arguments that he had heard with regard to the word "attack" that the existing wording of paragraph 2 was satisfactory. He referred in particular to the point made by the ICRC representative that there might be grave doubt whether or not an aircraft was a medical aircraft. In that case, a final resort to attack could not be excluded.
42. The CHAIRMAN asked whether the representatives of Afghanistan and Jordan were prepared to accept the amendment suggested by the representative of Pakistan.
43. Mr. AKRAM (Afghanistan) replied that he still felt that it should be made clear that neutral States should not proceed immediately to extreme measures.
44. The CHAIRMAN said that it was clear from the existing text of paragraph 2 that an attack was only the last step in a series of measures.
45. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he had no objection to the proposed amendment but that, if adopted, it would not change the meaning of the Russian text.
46. Mr. SCHULTZ (Denmark) pointed out that, if some such expression as "before resorting to an attack" was used, there would be a discrepancy between article 28 and article 32. He would like to keep the wording proposed by the Drafting Committee, which was the same as that in article 28, and failed to see why a different wording was necessary. Any difference in wording would necessarily imply a difference in meaning, a fact that should be taken into account. The question of protection for aircraft had been raised, but there was also that of the protection of a neutral State against overflying by an unidentified aircraft that refused to obey an order to land. That State must be able to protect itself.
47. Mr. MARRIOTT (Canada) said that he endorsed the views of the representative of Denmark.
48. The CHAIRMAN asked representatives to vote on whether any amendment to paragraph 2 was needed.

The proposal to amend paragraph 2 was rejected by 37 votes to 4, with 7 abstentions.

49. The CHAIRMAN put to the vote the text proposed by the Drafting Committee (CDDH/II/333).

The text of paragraph 2 proposed by the Drafting Committee was adopted by 40 votes to 3, with 6 abstentions.

Paragraph 3

50. Mr. HEREDIA (Cuba) drew attention to some discrepancies in the Spanish version of article 32, paragraph 3.

51. The CHAIRMAN said that the Spanish text would be brought into line with the French and English texts.

52. Mr. SALEEM (Pakistan) asked whether the last sentence of paragraph 3 imposed an obligation on the State concerned to seize the aircraft.

53. The CHAIRMAN said that that question was governed by the fourth Geneva Convention of 1949. The State in question was obliged to take action.

Paragraph 3 was adopted by consensus, subject to the necessary corrections in the Spanish text.

Paragraph 4

54. Mr. MAKIN (United Kingdom) pointed out that the word "the" before "sick" in the first sentence should be deleted.

It was so agreed.

Paragraph 4, as amended, was adopted by consensus.

Paragraph 5

Paragraph 5 was adopted by consensus.

Article 32, as a whole, was adopted by consensus.^{1/}

Article 25 - Notification (CDDH/II/334) (continued)

55. The CHAIRMAN said that the Committee had now to decide whether or not article 25 should be deleted.

56. Mr. SANCHEZ DEL RIO (Spain) said that he saw no reason for the deletion of article 25. According to document CDDH/II/334, it was a general article on notification and was made superfluous by the provisions of articles 23, 24 and 30. Paragraph 2 might be superfluous, but that was not the case with paragraph 1, which dealt with medical transports.

^{1/} For the text of article 32 as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I).

57. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee had discussed the question raised by the representative of Spain. It was permissible to notify and make arrangements if the other side agreed, but the Drafting Committee thought that it was unnecessary to have a provision to that effect. If there were important medical transports, the parties were always free to make such arrangements, but there was also an obligation in article 25 of draft Protocol I to acknowledge receipt of notifications. That duty might be too burdensome with respect to land transports.

58. Mr. RUIZ PEREZ (Mexico) said that his delegation reserved its position on article 25, since it had not yet had an opportunity to see the Spanish version of the last amendment which had been submitted in the Drafting Committee on 23 April.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE FIFTY-NINTH MEETING

held on Thursday, 29 April 1976, at 10.15 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1)(continued)

Draft Protocol I

Report of the Drafting Committee and of the Working Group
on Medical Transports (CDDH/II/350)

Article 31 - Landing and inspection (concluded)

Article 24 - Other medical ships and craft (concluded)

1. The CHAIRMAN, after welcoming Mr. El Hasseen El Hassan (Sudan) as the new Rapporteur in place of Mr. Maiga (Mali), who was unable to attend the third session, called on the Rapporteur of the Drafting Committee to introduce the report of that Committee and of the Working Group on Medical Transports (CDDH/II/350).
2. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, explained that paragraphs 4, 5 and 6 of article 31 had been combined, as suggested at the fifty-eighth meeting (CDDH/II/SR.58), to form a single paragraph. In the process, the reference in the previous draft of paragraph 5 to "adequate facilities for the necessary medical treatment of the wounded and sick aboard", about which there had been doubts, had been replaced by "treated in conformity with the provisions of the Conventions and the present Protocol", which already existed in paragraph 4 of the previous draft. That expression had been chosen as the Drafting Committee felt that the treatment provided for in the Geneva Conventions and draft Protocol I had indeed to be adequate, and there should be no doubt about that. Special attention should be drawn, in that connexion, to articles 10 and 11 of draft Protocol I. The former paragraph 6 had become the last sentence of the new combined paragraph.
3. Mr. MONROY (Venezuela) said that at the fifty-eighth meeting he had submitted an amendment to paragraph 6: as that paragraph was now included in paragraph 4, he would submit the amendment again. It related to the Spanish text, the last sentence of which should read: "Las aeronaves que hayan sido destinadas a servir específicamente y permanentemente como aeronaves sanitarias, sólo podrán ser utilizadas ulteriormente con tales fines".

4. The CHAIRMAN pointed out that the first part of the amendment would have repercussions on the English and French texts. He asked for the opinion of the representative of Spain.
5. Mr. SANCHEZ DEL RIO (Spain) said that, in Spanish, a double adverbial phrase was not acceptable: in addition, the change proposed was one of substance. He agreed that the phrase "con tales fines" eliminated repetition in the Spanish text, but otherwise he preferred the original version.
6. Mr. MONROY (Venezuela) said that he was willing to withdraw the word "especificamente".
7. Mr. MARRIOTT (Canada) thought that to replace "a permanent medical aircraft" by "permanently as a medical aircraft" would be to make a substantive change.
8. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that he agreed with the representative of Spain and suggested that the expression "como aeronaves sanitarias permanentes" should be retained. If it was not, the Spanish text would no longer be in harmony with those in the other languages.
9. The CHAIRMAN said that linguistic problems of that kind would be dealt with by the Drafting Committee of the Conference.
10. He suggested that the Committee should adopt the new text.

It was so agreed.^{1/}

11. Mr. SOLF (United States of America) said that his delegation had joined in the adoption by consensus of the new paragraph 4 of article 31 because of the general obligation laid down in article 10, adopted at the second session, for the sick and wounded to be treated humanely and in all circumstances, and that they should receive to the fullest extent practicable and with the least possible delay, the medical care required by their condition. It had felt that to lay down that an aircraft carrying wounded might be seized only if good medical treatment could be provided for its occupants would constitute a diminution of the provisions applicable in other situations. The relevant provisions of the third Geneva Convention of 1949 obliged the capturing Power, in those rare instances on land where adequate facilities for the provision of medical treatment were not available, to make the necessary arrangements, even if that involved transfer to a neutral Power or repatriation.

^{1/} For the text of article 31 as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I).

12. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, explained that the new draft of article 24 was the work both of the Drafting Committee and of the Working Group on Medical Transports (CDDH/II/350). He had been authorized by the Rapporteur of the Working Group to introduce the article also on his behalf, but the latter was available to provide any additional information necessary.
13. The final draft embodied certain changes, as compared with the previous text, on the subject of marking. It had been thought wise to use the same phraseology, in that connexion, as had been used in connexion with the protection of medical aircraft in the contact zone. That explained the slight changes in wording in the last two sentences of paragraph 1.
14. No substantive changes had been made in paragraph 2, but it was thought that the new version more clearly expressed the ideas that it was intended to convey.
15. Paragraph 4 had been amended so as to invite parties to the conflict to notify the adverse party with respect to medical ships and craft, especially those over 2000 tons gross.
16. Paragraph 6 was unchanged, except that the words "of which they are not nationals" after "a party to the conflict" had been replaced by "which is not their own". It had been suggested that it was not appropriate to speak of "nationals" in that context. The expression "adverse party" had been used in article 23, paragraph 1, of draft Protocol I adopted at the second session, but that did not cover the case of neutrals aboard ships or craft. For that reason, the Drafting Committee proposed that the text of article 23, paragraph 1, should be reconsidered. The two texts covered similar situations and should be consistent.
17. Mr. DEDDES (Netherlands) endorsed the Rapporteur's remarks and agreed that article 23, paragraph 1 should be changed.
18. Mr. HØSTMARK (Norway) asked whether the expression "any warship on the surface" in paragraph 2 of article 24 included surfaced submarines.
19. Mr. MAKIN (United Kingdom) said that he had some purely drafting changes to suggest. There was a discrepancy between paragraphs 2 and 3 in that the word "command" was used in the former and "order" in the latter; it would be preferable to use the same word in both cases and, of the two, "order" was clearer. In paragraph 6, "a party to the conflict" should be replaced by "a party to a conflict", since there might be more than one conflict taking place at the same time.

20. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that the question of "a" or "the" in paragraph 6 would be considered by the Drafting Committee of the Conference.
21. Mr. CLARK (Australia) said that, according to an amendment that had been proposed to paragraph 2, the words "make them take a certain course" should be replaced by "order them to take a certain course".
22. Mr. SANDOZ (International Committee of the Red Cross) said that the words "de plus de 2000 tonnes de jauge brute" in the French text of paragraph 4 should be replaced by "jaugeant plus de 2000 tonnes brutes". In paragraph 6, the word "cependant", which might give the false impression that there might be exceptions, should be deleted and the word "néanmoins" should be inserted before "si elles se trouvent".
23. Mr. ALBA (France) said that it was a matter of fine shades of meaning; he found both alternatives acceptable.
24. Mr. MARRIOTT (Canada) said that it was he who had proposed the amendment mentioned by the representative of Australia; since the words "make them take a certain course" used in paragraph 2 were those used in Article 31 of the second Geneva Convention of 1949, he had not pressed his proposal, thinking it preferable to keep to the language of the Conventions for the sake of consistency.
25. He thought that the word "of" should be inserted in paragraph 4 between "ships" and "over 2000 tons". In paragraph 2, the words "command" and "order" had both been used; one or the other should be chosen.
26. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the wording of paragraph 2 had been changed to bring it into line with that of paragraph 3. He had no strong feelings with regard to the use of "cependant" as opposed to "néanmoins"; according to Larousse, the word "tonneaux" should be used.
27. Mr. HØSTMARK (Norway) asked for an explanation of the word "immediately" in the phrase "able immediately to enforce her command" in paragraph 2.
28. Mr. FRUCHTERMAN (United States of America) said that the second sentence of paragraph 2 had been discussed at great length in the Working Group and the Drafting Committee. As he understood it, "any warship on the surface" included a submarine coming up to the

surface. The order, and the requirement to obey it, existed only while the ship was present and able to enforce its command. If the warship went away or the submarine submerged, the ships and craft in question could go their own way.

29. The CHAIRMAN pointed out that, if the word "command" in paragraph 2 was replaced by the word "order", the wording would be repetitious.

30. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, confirmed that the interpretation given by the United States representative had been the general opinion in the Working Group and the Drafting Committee.

31. Mr. MAKIN (United Kingdom) said that the word "command" had exactly the same meaning as "order" and had been introduced in the second sentence for reasons of style. He would agree to the retention of the word "command" in paragraph 2, but in that case the word "command" should be used in paragraph 3 instead of "order" for the sake of consistency.

32. The CHAIRMAN invited the Committee to adopt article 24, paragraph by paragraph.

Paragraph 1

Paragraph 1 was adopted by consensus.

Paragraph 2

Paragraph 2 was adopted by consensus.

Paragraph 3

Paragraph 3, with the words "an order" replaced by the words "a command", was adopted by consensus.

Paragraph 4

33. Mr. ALBA (France) asked whether, in the second line, the more current term "tonnes" or the old-fashioned term "tonneaux" should be used.

34. Mr. SANDOZ (International Committee of the Red Cross) suggested that the sentence should be rephrased: "... jaugeant plus de 2000 ..." leaving the word in question to conform with the second Geneva Convention of 1949.

35. The CHAIRMAN said that the matter would be settled by the Drafting Committee of the Conference.

It was so agreed.

Paragraph 4, thus amended, was adopted by consensus.

Paragraph 5

Paragraph 5 was adopted by consensus.

Paragraph 6

36. The CHAIRMAN recalled that the United Kingdom representative had suggested that the word "the" before "conflict" in the last sentence should be replaced by the word "a". The ICRC representative had suggested that the words "cependant, si elles se trouvent" in the French text, should be replaced by the words "néanmoins, si elles se trouvent".

It was so agreed.

37. Mr. ALBA (France) suggested that the word "trouveraient" in the French text should be put into the present tense and that similar changes of tense should be made in paragraphs 3 and 5.

38. The CHAIRMAN said that the Drafting Committee of the Conference was responsible for the uniformity of the whole Protocol.

39. Mr. MAKIN (United Kingdom) proposed that the word "persons" in the first sentence should be deleted and that the word "the" should be inserted before the word "shipwrecked" in the second sentence.

40. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the first United Kingdom amendment had already been agreed upon: the word had been included by mistake in the present text. He had doubts about the second.

41. Mr. HØSTMARK (Norway) thought that a reference to "a conflict" instead of "the conflict" would be ambiguous.

42. Mr. MAKIN (United Kingdom) said that he would withdraw his second amendment subject to the views of the Canadian representative.

43. Mr. MARRIOTT (Canada) opposed the second United Kingdom amendment: insertion of the word "the" would mean that the shipwrecked could be military or civilian. With regard to the point raised by the Norwegian representative, he thought that there would still be an ambiguity whether "a" or "the" were used.

44. Mr. SOLF (United States of America) suggested that the word "party" should be inserted after the word "which" in the last sentence.
45. Mr. ALBA (France) suggested that the word "and" after "wounded" in the second sentence should be replaced by a comma.
46. Mr. SALEEM (Pakistan) proposed that the words "which is not" in the last sentence should be replaced by the words "other than".
47. Miss MINOGUE (Australia) said that her delegation could accept the Pakistan proposal, since it was a more satisfactory formulation of an idea she had put forward in the Drafting Committee. It should be realized, however, that the phrase was used elsewhere in draft Protocol I and would have corresponding implications in other articles.
48. Mr. SOLF (United States of America) supported the Pakistan proposal.
49. The French representative's point concerning the words "wounded and sick and shipwrecked" would be dealt with by the Drafting Committee in connexion with definitions. In any case, his delegation was preparing an amendment to article 8, sub-paragraph (a).
50. Mr. MAKIN (United Kingdom) suggested that the phrase should be redrafted to read: "wounded, sick and shipwrecked civilians who do not belong ...".
51. Mr. MARRIOTT (Canada) said that he would have supported the French proposal, but would now support the United Kingdom proposal.
52. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the question of using the words "wounded", "sick" and "shipwrecked" in conjunction was a matter of conformity with the terminology of the definitions. It had been brought to the attention of the Drafting Committee of the Conference.
53. As he understood it, there was a consensus in the Committee in favour of the following amendments: the beginning of the second sentence should read: "... wounded, sick and shipwrecked civilians who do not ..."; and the last sentence should read: "... in the hands of a party to a conflict other than their own ...". As to the latter amendment, no problems arose in French or Spanish. The only other changes were the French amendments already agreed upon.

Paragraph 6, as amended, was adopted by consensus. 2/

2/ For the text of article 24 as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I).

Article 23 - Hospital ships and coastal rescue craft

54. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that it would be necessary to reconsider article 23 to ensure that it was consistent with the provisions of paragraph 6 as just adopted.

It was so agreed. Article 23, paragraph 1 was changed accordingly.^{3/}

Report of the Drafting Committee (CDDH/II/334) (continued)

Article 17 - Role of the civilian population (CDDH/II/203) (concluded)

Article 25 - Notification (concluded)

Draft Protocol II

Report of the Drafting Committee (CDDH/II/334) (continued)

Article 14 - Role of the civilian population (continued)

55. The CHAIRMAN called upon the Committee to consider the report of the Drafting Committee (CDDH/II/334), which included the question of the deletion of article 25 as being no longer necessary.

56. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that at the fifty-eighth meeting (CDDH/II/SR.58) an objection had been raised to the deletion of article 25, on the grounds that the final text of article 24 was not yet known. The text of article 24 as now adopted did not add anything relevant to the question and he suggested that the Committee should now adopt the Drafting Committee's proposal that article 25 should be deleted.

It was agreed by consensus to delete article 25.

57. The CHAIRMAN drew attention to paragraph 3 of article 17 of draft Protocol I and to paragraph 3 of article 14 of draft Protocol II. As indicated in paragraph 1 of the Drafting Committee's report (CDDH/II/334), Committee II had reserved the adoption of those provisions for further study.

58. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that no new decision had been taken since the presentation of paragraph 3 of article 17 in square brackets in the Drafting Committee's report to the second session of the Committee (CDDH/II/240/Add.1). The only remaining question of substance was whether paragraph 3 should apply to aircraft and

^{3/} For the text of article 23 as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I).

land vehicles as well as to the ships and crafts referred to in the original draft. The decision had been postponed until the provisions on medical air transport were known.

59. Mr. CLARK (Australia) introduced his delegation's amendment to paragraph 5 of article 17 (CDDH/II/203). The amendment sought to develop existing law by including aircraft. It also included vehicles, but after participating in the Working Group on Medical Transports his delegation would not press that point.

60. It would be reasonable in an article concerned with the role of the civilian population to refer to the role of aircraft under the control of civilians: otherwise it would be assumed that no civilian possessed aircraft. Paragraph 5 was concerned with the role of civilians and the humanitarian assistance they could offer to alleviate the suffering of the wounded and sick. Modern aircraft could obviously speed up transport and treatment of the wounded and sick in medical units.

61. Paragraph 5 provided that parties "may appeal" to commanders of civilian ships and craft. It did not seem unreasonable to extend that appeal to civilian aircraft: no obligation was involved. He understood that a practice had developed in recent conflicts of parties appealing to the commander of civilian aircraft to take on board some wounded or sick with other passengers and fly them out of the danger zone. The commander of such craft would have to decide whether he could take such persons on board.

62. In maintaining its proposed amendment, his delegation had taken the considered view that civilian aircraft answering the appeal envisaged in paragraph 5 could not be considered temporary medical aircraft, since they would not be under the operational control of the party seeking their help, nor would they be exclusively assigned to medical purposes as required by the definition of "temporary" medical aircraft in draft Protocol I, article 21, sub-paragraph (b).

63. If the inclusion of a reference to aircraft in the first sentence of paragraph 5 was acceptable, he would suggest that the second sentence should be redrafted to state clearly that it was the party making the appeal that had the obligation to grant special protection and facilities to such ships, craft and aircraft.

64. He appreciated that an adverse party would have difficulty in recognizing civilian aircraft not marked with the distinctive emblem or light or using distinctive signals, and in affording them special protection - even if it were known what the words "special protection and facilities" meant in that context.

65. Mr. ALBA (France) said that he agreed with the substance of the Australian amendment but did not like the French version. The verbs should be in the present tense and it was better to say "ramasser" rather than "recueillir" in relation to the dead.
66. The CHAIRMAN said that the texts in the various languages would be harmonized if the Australian amendment was adopted.
67. Mr. SOLF (United States of America) said that he was opposed to the Australian amendment, as amended orally. A carefully designed regulation for the protection of medical aircraft and restrictions on their use which would remove the fear of the parties concerned that medical aircraft might abuse their privileges had just been adopted. The amendment introduced, in a rather loose way, provided for the introduction into a situation of conflict of aircraft not subject to the control of a party to the conflict or to the régime which had been adopted in articles 21 and 26 to 32 of draft Protocol I. It would simply create loopholes and not be to the advantage of the persons picked up. He did not see why, if the owner or operator of a civil aircraft wished to respond to an appeal for his services, he could not submit himself to the control of a party to the conflict, so that he would have the legal protection which temporary medical aircraft would have.
68. Article 21, which laid down the general requirements, was intended to provide for aircraft from almost any source; there was no requirement that they should be State aircraft or belonging to a party to the conflict. One of the medical tasks which might conceivably be envisaged for paragraph 3 was search. Searching in the vicinity of the contact zone or where hostilities were taking place was prohibited without advance agreement and if an appeal was being made for assistance in that field it was obvious that advance agreement was essential.
69. Mr. MAKIN (United Kingdom), speaking on a point of order, said that it was his understanding that the Committee had agreed on two paragraphs of article 17, instead of five as originally proposed by the ICRC. There appeared to be three proposals before the Committee at the present time; firstly, to have only two paragraphs; secondly, to adopt as paragraph 3 the text which appeared in square brackets as paragraph 3 in the Drafting Committee's earlier report (CDDH/II/240/Add.1); thirdly, to adopt the Australian amendment, as amended verbally by the Australian representative, as paragraph 3. In his view, the best course would be to consider the Australian amendment, as orally amended, first.

70. The CHAIRMAN said that the Australian amendment should be voted on first and, if it was rejected, the Committee would vote on the text of article 17 suggested by the Drafting Committee (CDDH/II/240/Add.1).

71. Mr. SCHULTZ (Denmark), referring to the words "special protection" in paragraph 3 of the Drafting Committee's text (CDDH/II/240/Add.1) and in paragraph 5 of the Australian amendment (CDDH/II/203), asked whether there was any definition in draft Protocol I of a qualified protection and whether it meant that those concerned would be protected and given the necessary facilities for carrying out their mission of assistance. He thought it would be better to omit the word "special" in relation to protection and to insert the words "the necessary" before the word "facilities". Perhaps the end of the sentence might read "shall be protected and granted the necessary facilities for the discharge of their mission of assistance".

72. Mr. MAKIN (United Kingdom) said that he found it difficult to envisage how either of the two paragraphs would operate. Both were based on article 21 of the second Geneva Convention of 1949, which allowed parties to a conflict to appeal to the charity of commanders of neutral merchant vessels, yachts or other craft to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead. A neutral ship was unlikely to respond to such an appeal unless it had a guarantee from both sides that it would not be attacked while carrying out its task. The words which the representative of Denmark had questioned were taken from article 21. He assumed it simply meant that the neutral craft should not be attacked while picking up the shipwrecked from the sea. That article was part of the existing law and seemed reasonably successful. If, however, the word "neutral" was omitted a curious position arose. A party could order its own ships and craft to undertake such a mission and appeal to the enemy's ships and craft to do so but it was not clear what the response would be or who would give them protection. He was not sure what the proposed texts would achieve. The only change in the law which it was proposed to make was to appeal to enemy ships and craft to pick up the shipwrecked, which they often did. He was therefore not sure that an article on the subject was really needed. The position on land was already covered in earlier paragraphs.

73. The CHAIRMAN said that he regarded the statement which the United Kingdom representative had just made as an oral amendment. After the conclusion of the discussion and in accordance with rule 40 of the rules of procedure, the Committee would vote first on the United Kingdom oral amendment, which was furthest removed from article 17, paragraph 3. If that amendment was rejected, the Committee would then vote on the Australian amendment (CDDH/II/203) and, if that in turn was rejected, lastly on the text submitted by the Drafting Committee.

74. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the principle involved in the Australian amendment was that civilian aircraft should be afforded protection to enable them to collect the wounded, dead and shipwrecked. The United Kingdom representative had expressed serious doubts about the need for such a paragraph. In an armed conflict it was most unlikely that a civilian aircraft would respond to an appeal; its first interest would be self-preservation. Moreover, unauthorized flights over the territory of a party to a conflict would not be permitted. He did not think that the position of civilian aircraft in the event of armed conflict could be covered in the way proposed in the Drafting Committee's text (CDDH/II/240/Add.1) or the Australian amendment (CDDH/II/203). It was tantamount to calling upon a civilian pilot to risk his life. If a party to a conflict agreed to permit overflights of its territory it was of course at liberty to do so, but the matter should not be dealt with in a regulation.

75. Mr. SANDOZ (International Committee of the Red Cross) said that, in the light of the present discussion, he felt that he should explain the ICRC's intention in paragraph 5 of its text, which had now become paragraph 3. It concerned civilian ships. In the case in question, the adverse party would agree to provide certain facilities to the other party. The text was based on article 21 of the second Geneva Convention of 1949. As far as the special protection to be given to those ships was concerned, he referred to the comments made by the ICRC representative when paragraph 5 of its text had been discussed. It depended on the circumstances. Special protection could not always be given.

76. With regard to air transport, the fact that the ICRC had not mentioned aircraft in paragraph 5 was simply an unintentional omission but they should be included.

77. Mr. MARRIOTT (Canada) said that, before listening to the discussion, he had had an open mind on the question. Now, while he had sympathy with the Australian position, he felt that more weight should be given to the remarks made by the United States and Soviet Union representatives. He was in even fuller agreement with the United Kingdom representative. While at first sight it seemed to be an unhumanitarian act to vote against the original proposal, that in fact was not the case, because it did not add anything of practical value.

78. The CHAIRMAN put to the vote the oral amendment by the United Kingdom representative that article 17, paragraph 3, should be deleted.

The amendment was adopted by 22 votes to 11, with 13 abstentions.^{4/}

^{4/} For the text of article 17 as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I).

79. The CHAIRMAN said that it remained for the Committee to consider article 14, paragraph 3, of draft Protocol II.

80. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Committee should decide whether there was to be in Protocol II a paragraph corresponding to the former article 17, paragraph 3, of draft Protocol I. The relevant text submitted by the Drafting Committee to the Committee was set out in square brackets on page 142 of the report of Committee II on its second session (CDDH/221/Rev.1).

81. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) pointed out that the conditions of internal armed conflict were quite different from the conditions obtaining in an international armed conflict. The arguments for and against the inclusion of article 14, paragraph 3, should therefore be weighed very carefully. He proposed that consideration of that amendment should be deferred until the sixtieth meeting.

82. Mr. CLARK (Australia) supported that proposal. The situation to which Protocol II applied was quite different from that to which Protocol I applied.

83. Mr. MAKIN (United Kingdom) endorsed that view. He thought that the second part of the text was somewhat obscure about who was responsible for providing protection. In the case of internal conflict it should be made clear that it was both sides.

The proposal to defer consideration of article 14, paragraph 3, of draft Protocol II until the sixtieth meeting was adopted.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE SIXTIETH MEETING

held on Friday, 30 April 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol II

Article 14 - Role of the civilian population (CDDH/1, CDDH/221/Rev.1, CDDH/226 and Corr.2; CDDH/II/227)(continued)

1. The CHAIRMAN reminded the Committee that at the fifty-ninth meeting (CDDH/II/SR.59) it had been decided to delete paragraph 3 of article 17 of draft Protocol I. It remained to be decided whether that should lead to a similar decision to delete paragraph 3 of article 14 of draft Protocol II as set out in the report of Committee II on its second session (CDDH/221/Rev.1, page 142). He invited the Australian representative to introduce his delegation's amendments to article 14 (CDDH/II/227).
2. Mr. CLARK (Australia) said that his delegation had sought to introduce into article 14 of draft Protocol II a fourth paragraph similar in wording to paragraph 5 of article 17 of draft Protocol I. The new paragraph provided that parties might appeal to commanders of civilian ships, aircraft and vehicles to take aboard and care for the wounded and sick and the shipwrecked and to collect the dead. The text included the word "vehicles", but after participating in the Working Group on article 17 of draft Protocol I his delegation was prepared to confine its amendment to aircraft.
3. There was no direct reference to medical aircraft in draft Protocol II, but it did not seem unreasonable to include aircraft along with other forms of transport in the form of a discretionary provision: "Parties ... may appeal ...". His delegation had decided to include that provision since it understood that a practice had developed in recent conflicts of parties appealing to the commanders of civilian aircraft to take on board some sick and wounded along with other passengers and to fly them out of the danger zone. It was for the commander of such craft to decide whether he could take such persons on board, but an appeal could be made and considered.
4. If his delegation's amendment to the first sentence proved acceptable, he would suggest that the second sentence should be redrafted to clarify the obligation on the party making the appeal, since it would be very difficult, if not impossible, to offer

special protection and facilities to civilian means of transport not marked with the distinctive emblem.

5. Mr. SOLF (United States of America) said that, after reflection on the implications of article 14, paragraph 3, he had come to the conclusion that a specific mention of aircraft used to assist in the rescue of wounded and shipwrecked would be useful in draft Protocol II and he therefore supported the Australian amendment (CDDH/II/227). The deletion of paragraph 3 of article 17 of draft Protocol I should not affect the Committee's decision on the corresponding paragraph of article 14 of draft Protocol II.

6. Mr. SANCHEZ DEL RIO (Spain) said that the difference in the field of application between draft Protocols I and II was not sufficient to justify the retention of paragraph 3 of article 14 of draft Protocol II and the reasons that had led to the deletion of paragraph 3 of article 17 of draft Protocol I should lead to a parallel deletion of the paragraph under consideration. If the civilian population could be called upon to offer help in accordance with paragraph 2 and should be afforded protection for doing so, it was obvious that all the means it used in providing help would have to be protected also. It was inconceivable that help could be provided to the shipwrecked without craft, or that the wounded could be transported without vehicles; consequently, paragraph 2 provided adequate protection for the civilian population and the instruments it would have to use.

7. Mr. MARRIOTT (Canada) agreed with the reasons adduced by the Spanish representative for the deletion of paragraph 3 of article 14. The language of the paragraph was complicated and not in accordance with the rest of draft Protocol II so far adopted. If the question was put to the vote, he would vote for the deletion of paragraph 3.

8. Mr. SKARSTEDT (Sweden) supported the previous speaker. A guarantee of protection and facilities for the discharge of a mission of assistance could only be given after prior agreement of the commander of the craft and both parties to the conflict, and it was difficult to formulate realistic regulations in that respect. It would be dangerous to lead the commander of a ship to believe he could have special protection when that could not be guaranteed. He therefore had serious doubts about the inclusion of the paragraph.

9. Mr. MAKIN (United Kingdom) said that article 13 of draft Protocol II, which had already been considered, dealt with the same problem of providing assistance and in simpler language. He felt that the Australian proposal (CDDH/II/227) to mention the type of vehicle was unnecessary.

10. Mr. SOLF (United States of America) said that there was a difference between articles 13 and 14: article 14 dealt primarily with the role of the civilian population and relief societies and their humanitarian functions.

11. One of the reasons why his delegation had voted for the deletion of article 17, paragraph 3, of draft Protocol I was that Article 21 of the second Geneva Convention of 1949 comprehensively covered the most important aspect of the problem, namely, the protection afforded to neutrals and to the wounded at sea. Draft Protocol II, however, covered the sea to a limited extent only, although internal waters and the territorial sea were obviously included in it. The shape and variety of internal conflicts at the present day comprised so many varieties of situation and affected so many interests that non-participating civilians in some instances came very close by analogy, not in law but in substance, to neutrals: they did not wish to be involved in any way. A specific provision, therefore, dealing with the problem at sea would not be without value. It would not be applicable in all situations, but could be in some. He was also in favour of mentioning civilian aircraft, as the Australian delegation had proposed.

12. Mr. SANDOZ (International Committee of the Red Cross) emphasized the usefulness of paragraph 3 of article 14 especially in connexion with non-international conflicts. As he had stated at the fifty-ninth meeting (CDDH/II/SR.59), the fact that the ICRC had not mentioned aircraft in the original paragraph 5 of article 17 of draft Protocol I, which had served as a model, was due to an oversight: and they should be mentioned.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that it seemed to be generally recognized that there was more reason for including the provision in paragraph 3 of article 14 than there had been for including the parallel provision in article 17 of draft Protocol I. He agreed that it appeared to be complex, but that was no reason for deleting it: all the provisions were complex. Certain types of medical transport were not as well protected in draft Protocol II as in draft Protocol I and they should be included.

14. He proposed that, in order to save the time of Committee II, a small working group should be established to redraft article 14, paragraph 3, endeavouring to see that it harmonized with other articles and to make the wording simpler and clearer.

15. The CHAIRMAN said that he questioned whether it was necessary to establish another working group; it might be sufficient to refer the matter to the Drafting Committee. He asked the Chairman of the Drafting Committee for his opinion.

16. Mr. JAKOVLJEVIĆ (Yugoslavia), Chairman of the Drafting Committee, said that he considered that it was for the Committee as a whole to provide definite guidance and then the Drafting Committee could review the text.

17. Mr. URQUIOLA (Philippines) said that, before referring the matter to a working group of the Drafting Committee, the Committee itself should decide whether or not to delete paragraph 3.

18. Mr. SOLF (United States of America) agreed. A decision should be taken on the Australian amendment (CDDH/II/227); if paragraph 3 was retained it could then be referred to the Drafting Committee.

19. Mr. MAKIN (United Kingdom) said that the most important criticism of the article had been made by the Swedish representative when he had referred to the difficulty of affording protection to people responding to an appeal. It was, moreover, more difficult to afford protection at sea than on land. The Australian representative was not correct in implying that protection would be granted by the country making the appeal, for it would probably be in a desperate position. Some sort of agreement would therefore be necessary. Furthermore, at the meeting of the telecommunications experts on the previous day, representatives of developing countries and national liberation movements had stressed that they found it difficult to establish communication in such situations. Retention of paragraph 3 would therefore raise grave problems of guidance. If it was decided to retain the paragraph, a working group should be established to consider all the relevant points.

20. Mr. SANCHEZ DEL RIO (Spain) said that a decision should first be taken on whether the phrase "and the shipwrecked", which had been placed in square brackets in paragraph 2, should be retained. If those words were not accepted, paragraph 3 would be pointless. He agreed with the Canadian representative that the language should be simplified.

21. Mr. CLARK (Australia) said that the Committee should take a decision on the principle of whether civilian aircraft and ships should come to the aid of the sick and wounded. The question could then be referred to a working group.

22. The CHAIRMAN put to the vote the question whether paragraph 3 of article 14 should be deleted.

The Committee decided, by 21 votes to 13, with 12 abstentions, that paragraph 3 of article 14 should not be deleted.

23. The CHAIRMAN proposed that a small working group should be set up to consider paragraph 3 of article 14. He suggested that the Australian representative should consult delegations with regard to its membership and should endeavour to secure the participation of those who had spoken in the debate.

24. Mr. SOLF (United States of America) proposed that a decision should be taken on the principle of whether to include aircraft in paragraph 3 as proposed in the Australian amendment.

25. The CHAIRMAN said that the matter could be left to the working group, which should be free to discuss all aspects of the question, including the question of whether the phrase "and the shipwrecked", which had been placed in square brackets in the report of Committee II on its second session (CDDH/221/Rev.1), should be retained.

It was so agreed.

26. Mr. CLARK (Australia) said that the composition of the working group would be announced at the sixty-first meeting and the group would start work on the following day.

Draft Protocol I

Article 54 - Definition (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/44, CDDH/II/321, CDDH/II/344)

Article 55 - Zones of military operations (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/234, CDDH/II/236, CDDH/II/322)

Article 56 - Occupied territories (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/323)

Article 57 - Civil defence bodies of States not parties to a conflict and international bodies (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/234, CDDH/II/324)

Article 58 - Cessation of protection (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/326, CDDH/II/347)

Article 59 - Identification (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/327)

27. The CHAIRMAN reminded the Committee that an introductory discussion on civil defence had been held at the fifty-first meeting (CDDH/II/SR.51), on 10 April 1975. He drew attention to

the amendments submitted to articles 54 to 59 of Chapter VI of Section I of Part IV of draft Protocol I, to be found on pages 113 to 119 of document CDDH/226 and on pages 61 to 70 of document CDDH/225. The latter document included, in particular, a series of amendments submitted by Denmark, including two new articles, 57 bis and 59 bis, which almost amounted to a "counter-draft" to the ICRC draft. A certain number of amendments to those articles had also been submitted during the current session.

28. Mr. MALINVERNI (International Committee of the Red Cross) said that, while a general introduction to Chapter VI had been given at the second session, he proposed to give a brief introduction to the various articles to show the ratio legis of the ICRC's proposals. The whole ratio legis of that Chapter was to facilitate the exercise of the humanitarian tasks falling to civil defence.

29. The original draft of the actual article 54 - Definition - submitted by the ICRC to the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts in 1972, defined, not civil defence itself, but civil defence bodies. That had been changed in the present draft, which adopted a functional criterion, defining civil defence in terms of the tasks performed. The reason for the change was the diversity of civil defence organizations in different countries, some of which did not yet possess any specialized civil defence bodies, while in others civil defence tasks were assigned either to civilian organizations or to the armed forces. The ICRC had desired, in particular, to provide for the possibility that in case of need civil defence functions might be performed by any civilian at the request of the authorities, so that civil defence should not become the monopoly of specialized organizations. The definition expressly covered civil defence measures taken against the effects of natural disasters provided that they occurred during a period of armed conflict.

30. Article 54 gave a list of examples of civil defence tasks, but the list was not intended to be exhaustive - it enumerated the principal and traditional tasks of civil defence. The fire-fighting functions referred to in sub-paragraph (a) must have as its aim only the rescue of civilians and civilian objects and hors-de-combat military personnel. Civil defence personnel could not take advantage of the protection granted it under that chapter in order to put out a fire which was raging, for example, at a military airport. Sub-paragraph (b) covered such things as food

supplies, crops, cattle, drinking water, etc. He recognized that sub-paragraph (e) might give rise to problems in cases where, in order to maintain public order, civil defence personnel might carry small arms.

31. Articles 55 and 56 were complementary, the first covering the areas of military operations and combat, while the second covered occupied territories.

32. Paragraph 1 of article 55 had a wide general scope and was merely a special application of the principle relating to the protection of the civilian population. While article 54 made no mention of specific defence bodies, it had been considered justified to grant in article 55 in the first place protection to specialized bodies in civil defence tasks, because in the normal case, civil defence functions would be entrusted to specialized civil defence bodies. To avoid any abuse of tasks it had been expressly provided that only official bodies, that was to say, those which had been set up or officially recognized by their Governments, could be placed under the protection provided in that paragraph. Paragraph 2 was a logical corollary of paragraph 1 and of article 54, extending protection to civilians who were not members of civil defence bodies but who responded to an appeal from the authorities to carry out civil defence tasks. Paragraph 3 was modelled on Article 25 of the first Geneva Convention of 1949.

33. The most delicate point of article 55 was the possible supplementary paragraph which appeared in the foot-note to the ICRC draft. In accordance with the opinion expressed by certain experts who were consulted in 1972, it would in fact be opportune to provide that civil defence might benefit in certain circumstances from the support of military personnel. The reason for that provision was the fact that in certain countries civil defence personnel might be called upon to carry out military duties and vice versa. The military personnel envisaged would probably consist of reservists made available to the civilian authorities. The question was therefore whether such personnel, which despite everything remained military personnel, should be granted the protection given to civil defence personnel.

34. Lastly, he said that that paragraph was based on Articles 25 and 29 of the first Geneva Convention of 1949. In view of the difficulties which such a provision would raise, the ICRC had preferred not to include it in article 55 itself.

35. Article 56 supplemented Article 63 of the fourth Geneva Convention of 1949. The protection of civil defence personnel in occupied territory was necessary in view of the frequency with which military operations occurred there. Paragraph 2 provided protection only for equipment permanently assigned to civil defence bodies. The earlier version of the paragraph forbade the requisitioning of civil defence equipment, but that prohibition had been omitted from the present draft because of the numerous reservations and exceptions which such a prohibition would necessarily entail and which might give rise to abuse by the Occupying Power. The ICRC thought, therefore, that that question should continue to be governed by the general rules of international law on requisitioning.

36. The fundamental idea of article 57 was that contained in Article 27 of the first Geneva Convention of 1949. The assistance of the civil defence bodies of neutral countries might be useful, especially in conflicts taking place in countries which did not possess civil defence services. The expression "States not parties to a conflict" had been preferred to the earlier expression "neutral States" since it was both clearer and more general and was not ambiguous. Paragraph 2, which had not appeared in the 1972 draft, had been included because it seemed useful to provide protection for international civil defence bodies in the event of their intervention in civil defence operations.

37. Article 58 was new, as compared with the 1972 draft. It was based on Article 21 of the first Geneva Convention of 1949 and on article 13 of draft Protocol I. The fundamental idea was that civil defence personnel should maintain, with regard to the adverse party, that attitude of neutrality which entitled them to protection under articles 54 to 57. "Harmful acts" had been defined negatively, by listing typical acts which were not regarded as harmful in order to avoid protection being wrongly withdrawn from civil defence personnel. The list which appeared in article 58 gave rise to the delicate problem of relations between civil defence and military personnel.

38. With regard to article 59, the title - "Identification" - had replaced "Markings" in the 1972 draft, which had seemed too narrow; the term "Identification" corresponded better to the contents of the article which not only contained a provision concerning markings by means of an emblem, but also identification by means of identity documents. Paragraph 1 should be viewed in conjunction with article 18 of draft Protocol I and its terminology should consequently be brought into line with that of that article in the form in which it had been adopted. The reason for the restriction which appeared in paragraph 2 providing that only permanent personnel should have an identity card, was the desire to avoid a

proliferation of cards. The usefulness of such an identity card was above all apparent in occupied territory in view of the obligations imposed by Chapter VI on the Occupying Power. Paragraph 5, which was new, was based on article 18, paragraph 4 of draft Protocol I. Paragraph 7 was based on Article 41 of the first Geneva Convention of 1949, and included the idea of protection based on function. It was designed to avoid abuse of the distinctive sign by temporary personnel.

39. The two signs proposed in paragraph 4 had been selected on the recommendation of civil defence experts. If article 59 was adopted, the sign selected would constitute a new protective sign alongside the Red Cross. Paragraph 9 took up the contents of the provisions of the Geneva Conventions of 1949 concerning the use of the distinctive sign (Articles 38 to 44, 53 and 54 of the first Geneva Convention of 1949).

40. Mr. BODI (Observer for the International Civil Defence Organization), speaking at the invitation of the Chairman, said that the International Civil Defence Organization (ICDO) had made a particular study of draft Protocol I, Part IV, Section I, Chapter VI and of draft Protocol II, Part V, Chapter II, dealing with civil defence. As a result, the General Assembly of ICDO had asked him, as Secretary-General of the Organization, to request the permission of the Diplomatic Conference, under rule 60 of its rules of procedure, to submit a number of proposals designed to improve the legal status of civil defence personnel, institutions, equipment and means of transport. The 1949 Geneva Conventions included no such provisions because most of the institutions concerned had been developed since their adoption.

41. With regard to draft Protocol I, the ICDO General Assembly endorsed the Philippine amendment (CDDH/II/44) to article 54.

42. With regard to the signs proposed in article 59, the Technical Sub-Committee on Signs and Signals, at its first session in 1974, had formulated certain reservations and suggestions in the light of statements made by experts from the specialized agencies (see the report of Committee II on the work of its first session - CDDH/49/Rev.1, pp. 25 and 26). ICDO advocated a sign consisting of two oblique red bands on a yellow ground which was akin to the proposal for "oblique red bands on a white ground" to be placed on hospital and safety zones according to article 6 of annex I to the fourth Geneva Convention of 1949. The change from a white to a yellow background was justified by the fact that yellow was adopted in principle or already used for civil defence buildings and equipment by many State civil defence authorities, as also by the inherent qualities of yellow, which did not turn black in artificial light, as did red, blue and green, and did not discolour so easily as white.

43. With regard to draft Protocol II, in view of the fact that the civil population was often called upon to assist in operations designed for its own protection and safety - in particular in rescue operations and the clearing of rubble to save the lives of those buried underneath - ICDO proposed the addition to article 30 of a paragraph relating to "civilians who, although not members of the civil defence bodies mentioned in paragraph 1, respond to an appeal from the authorities and carry out civil defence tasks under the control of those authorities; these persons should likewise be protected during the performance of their tasks".

44. ICDO endorsed the Philippine amendment to article 31 (CDDH/II/44).

45. ICDO was ready to support any solutions that the additional Protocols might be able to bring to the problem of the legal status of civil defence personnel and the distinctive sign. Such solutions should be designed to ensure the freedom of action and immunity of those entrusted by State civil defence authorities with the difficult task of protecting the civil population and its property in the event of armed conflict.

46. Mr. MAKIN (United Kingdom) said that, to his recollection, the Technical Sub-Committee on Signs and Signals had adopted Proposal I of the two proposals by the ICRC for an international distinctive sign of civil defence (see the report of Committee II on its first session (CDDH/49/Rev.1, para. 26 and appendix I, article 15)). He also thought that Committee III had adopted the ICRC's proposal in article 53, paragraph 5 of draft Protocol I for a marking consisting of two oblique red bands on a white ground for neutralized localities.

47. He asked the representative of ICDO whether any international civil defence bodies, as referred to in article 57, paragraph 2, already existed and could be used to carry out civil defence tasks.

48. Mr. BODI (Observer for the International Civil Defence Organization), speaking at the invitation of the Chairman, said that ICDO operated on a regional basis. Since 1964, it had been seeking to promote the organization by the countries in a given geographical region of civil defence centres capable of intervening in the event of natural disasters in peace-time, as had been done in the Caribbean area. ICDO itself did not possess such civil defence equipment.

49. The CHAIRMAN invited general comments on Chapter VI.

50. Mr. SCHULTZ (Denmark) said that the amendments to Chapter VI submitted by his delegation (CDDH/225 and Corr.1, pp. 61 to 70) were the results of some informal contacts he had had with certain other delegations. The amendments were to be regarded, not as counter-proposals to draft Protocol I prepared by the ICRC, for they were in fact based on the same philosophy, but rather as clarifications of general principles relating to certain essential points. Those points concerned the scope of civil defence, protection of civil defence units, the distinction between the civil and military element in civil defence, weapons and the civil defence emblem.

51. The scope of civil defence was the subject of the Danish amendment to article 54 (CDDH/II/321). The Committee would note that the second sentence of that amendment differed considerably from that of the ICRC draft. In many countries, civil defence covered not only the humanitarian aspects which his delegation and the ICRC sought to protect but many other aspects relating to the economy, defence, supplies and the protection of vital industries. It had been felt that the words "inter alia" in the ICRC text of article 54 did not sufficiently exclude those non-humanitarian aspects from the protection conferred upon civil defence organizations. The concern was not with the term "civil defence" as such, although over the years it had come to denote, in English, the purely humanitarian, as with the content of the organization involved. He therefore proposed to change the phrase "inter alia" into "some or all of the following".

52. Referring to sub-paragraph (d) of the Danish amendment to article 54, he said that it should be replaced by the words: "assistance in the restoration of public order in devastated areas". That further amendment had in fact now been covered by the amendment submitted by Finland, Norway and Sweden (CDDH/II/344, second paragraph). The words "public order", in article 54, sub-paragraph (d) as thus amended, raised the question whether protection of the police should be covered by the provisions of Chapter VI. In his delegation's opinion, and that of others with whom he had had informal contacts, it should not, owing to the problems inherent in any discussion of the matter at the Conference. The Danish amendment therefore referred simply to "assistance", to cover cases where civil defence units assisted the police in keeping public order in disaster areas.

53. Protection of civil defence units was dealt with in the Danish amendments to articles 55 (CDDH/II/236, CDDH/II/322) and 56 (CDDH/II/323). The provisions for protection under Chapter VI, as distinct from protection of civilians generally, which was

provided for under international law, were designed to cover civil defence personnel, firstly, in areas where there was fighting and, secondly, in occupied territories and ensure that they could freely discharge their humanitarian tasks. Despite an essential difference between the ICRC text and the Danish amendments, the latter were based on the same principle as the former.

54. The distinction between the civil and military element in civil defence was highly problematic. It was his delegation's firm view, however, based on Article 63 of the fourth Geneva Convention of 1949, that a civil defence body should be exclusively civilian, if military units were assigned to defence duties, then such units should not receive protection. Hence, if they fell into the hands of the enemy, they were to be treated as prisoners of war under the third Geneva Convention of 1949, while civilians were to be treated as civilians under the fourth Convention. In that connexion, he drew attention to a new article 57 bis, proposed by the Danish delegation, to replace the foot-note to paragraph 2 of article 55 of the ICRC text. A revised version of that amendment had been issued in document CDDH/II/325/Rev.1. Paragraph 2 of the amendment embodied a new principle in that it provided for reserve officers engaged for civil defence duties to be kept within the civil defence organization, on condition that their liability to military service had definitely and finally ceased. That was an express exception to the regulations contained in the third Geneva Convention of 1949, Article 4, paragraph B (1). Paragraph 3 of the amendment, on the other hand, provided that personnel belonging to the armed forces but carrying out civil defence tasks would not be covered by Chapter VI and, if they fell into the power of the enemy, would be prisoners of war.

55. The provision of weapons to civilians, referred to in article 58, raised complex problems and, in principle, civilians bearing arms were governed by other rules of international law. In Denmark, as in many other countries, civil defence personnel went unarmed and he for one would be happy to see a prohibition on the bearing of arms by civilian members of the civil defence. While his delegation did not oppose article 58 of the ICRC text in principle, it considered that it was too dangerous for civilian defence personnel to bear small-arms in areas where there was fighting. The Danish amendment to article 58, paragraph 2 (c) (CDDH/II/326) was accordingly couched in that sense.

56. The civil defence emblem was dealt with in the Danish amendment to article 59 (CDDH/II/327), which had been redrafted to bring it into line with article 18, approved at the second session of the Conference. With regard to the emblem itself, his delegation's proposal was based on that of the Technical Sub-Committee as set forth in article 15 of appendix I to the report of Committee II on its first session (CDDH/49/Rev.1).

57. He urged members to adopt a flexible attitude in the detailed discussions that were to follow, in an endeavour to arrive at a consensus of opinion.

58. Mr. PIERON (Belgium) said that the articles on civil defence prepared by the ICRC reflected in large measure the views of his delegation.

59. There were a number of broad principles to be observed, whatever the nature of the civil defence organization concerned. The first principle related to the definition of civil defence given in article 54. That definition did not extend to civil defence bodies as such, in view of their divergent character, but was rightly confined to their functions, namely, to save human life, to alleviate suffering and to provide for the civilian population in time of war and disaster. Article 54 was in line with his delegation's views, except for sub-paragraph (e) on the maintenance of public order in disaster areas, which it considered to be the responsibility of the police rather than of the civil defence organization.

60. Secondly, civil defence personnel should be members either of an organized civil defence body having civilian status, or of an organization composed of civilians or declared to be such under legal provisions enacted in peace-time. It was essential that civil defence personnel should be able to carry out the functions prescribed under article 54 officially and without let or hindrance. Although paragraphs 1 and 2 of article 55 met that point, it would be preferable if, in the final text, paragraph 2 could be clearly shown to apply to organizations composed of civilian persons or declared to be such under legal provisions enacted in peace-time. He had in mind countries which, though lacking an organized civil defence system, had organized groups of civilians upon which the authorities could call for civilian defence duties in the event of conflict.

61. Thirdly, with regard to legal protection for civil defence personnel, a civil defence organization performing purely humanitarian tasks should have special protection. If it engaged in other tasks, however, it should lose such protection and its members should enjoy only the general protection afforded civilians under the fourth Geneva Convention of 1949. Special protection should apply both in zones of military operations and in occupied territories. Articles 55 and 56 accorded with those principles and therefore had his delegation's support.

62. Another fundamental principle was that civil defence units should on no account be placed under military authority in the event of armed conflict, since the duties of the army and those of civil defence were basically incompatible.

63. There remained a question of paramount importance: namely, the extent to which civil defence personnel should be authorized to co-operate with military forces on active service. In the opinion of his delegation, which had submitted an amendment to article 58 to cover that point (CDDH/II/347), such co-operation was justified only in exceptional cases, and then only to the extent necessary to protect the civilian population. It did not seem advisable to provide for protection for civil defence personnel if they were under the orders of, or co-operating with, military authorities, or if they formed an integral part of military units assigned exclusively to civil defence duties. It was the enemy or the Occupying Power that would be the sole arbiter of the status of the civil defence personnel in the invaded or occupied territory, which might mean that any protection afforded such personnel would in effect be nullified if they were linked with military units, or which might result in the respect due to such personnel being diminished.

64. For the same reasons, his delegation did not favour the text which some experts consulted by the ICRC had recommended for insertion after paragraph 2 of article 55. Military personnel forming part of a civil defence unit should not be made prisoners of war and thus prevented from pursuing their humanitarian mission. The text of the new article 59 ter proposed by Switzerland (CDDH/II/335) appeared to be the most acceptable on that point, since it provided that, subject to certain specified conditions, military personnel assigned exclusively to civil defence duties should not be considered prisoners of war if they fell into the hands of the enemy.

65. Military units should be so organized as to ensure maximum security for themselves and their installations, and only occasionally should civil defence personnel carry out their duties for the benefit of military victims. It should not be forgotten that under paragraph 1 of article 12, adopted by the Committee at its twenty-third meeting (CDDH/II/SR.23), medical units, whether military or civilian, should be respected and protected at all times.

66. The question of the right of civil defence personnel to be armed should be approached with extreme caution. Only individual small-arms for the purpose of self-defence and defence of the civilian population should be authorized. The Belgian delegation

was anxious that the text of article 58, paragraph 2 (c) should be harmonized with that of article 13, paragraph 2 (a) concerning the cessation of protection of civilian medical units adopted by consensus at the twenty-third (CDDH/II/SR.23) meeting of the Committee. Agreement should be reached on the precise scope of the word "small-arms", to preclude any doubt about the type of weapon authorized.

67. With regard to paragraph 3 of article 58, he asked what exactly was meant by "compulsory service" in civil defence bodies, a term which had been deleted in his delegation's amendment to that article. If, however, it was clearly understood that those words applied only to civilian organizations engaged exclusively in civil defence duties, his delegation would be prepared to withdraw that part of its amendment. Furthermore, his delegation understood the words "organization of civil defence bodies along military lines", in the same paragraph, to refer to discipline and a chain of command akin to that of the army without, however, any question of such bodies being placed under military authority. The paragraph was justified by the fact that in many countries civil defence personnel were given ranks similar to those in the army.

68. Lastly, referring to draft Protocol II, he said that civil war implied that two or more groups of persons of the same nation challenged existing authority, with a resultant disruption of the national civil defence system. His delegation wondered whether it was necessary or expedient to provide for civil defence in the case of non-international armed conflict. Such provisions might unduly encumber Protocol II and complicate its application.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE SIXTY-FIRST MEETING

held on Monday, 3 May 1976, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 54 - Definition (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/44, CDDH/II/318, CDDH/II/321, CDDH/II/336, CDDH/II/344) (continued)

Article 55 - Zones of military operations (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/234, CDDH/II/236, CDDH/II/322) (continued)

Article 56 - Occupied territories (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/323, CDDH/II/346) (continued)

Article 57 - Civil defence bodies of States not parties to a conflict and international bodies (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/234, CDDH/II/324, CDDH/II/349) (continued)

Article 58 - Cessation of protection (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/326, CDDH/II/347) (continued)

Article 59 - Identification (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/327, CDDH/II/339) (continued)

1. The CHAIRMAN asked representatives to confine themselves for the time being to general comments and to leave detailed analysis until a later stage, in order to avoid repetition.

2. Mr. IJAS (Indonesia) said that the important and complex chapter under discussion was, in his delegation's view, not intended to govern the structure of working methods of civil defence organizations in a general way, for that was the function of the State concerned. Because of its position in draft Protocol I, the main purpose of Part IV, Section I, Chapter VI was clearly to provide adequate protection to the section of the civilian population in charge of civil defence. Despite the fact that civil defence bodies might be organized along military lines,

that their personnel might carry small-arms, and that they might co-operate closely with military authorities, it should be stressed that civil defence personnel must enjoy the protection accorded to civilians. Nevertheless it must not be forgotten that, as the Danish and ICRC representatives had pointed out at the sixtieth meeting (CDDH/II/SR.60), civil defence personnel in some countries included military elements.

3. The ICRC representative had explained that article 54 was not intended to give a precise description of what a civil defence body was, but merely to list some of the tasks of such a body. Indeed, a description was hardly possible, in view of the wide disparities between civil defence organizations in the various countries. The Indonesian civil defence organization, for instance, carried out tasks that were broader in scope than those enumerated in article 54. However, his delegation would have no difficulty in accepting article 54 as a whole, if it were understood that civil defence organizations might have tasks other than those set out in that article.

4. His delegation had no objections in principle to articles 55 and 56, but would like clarification of some of the terms used, in particular "zones of military operations" (article 55) and "occupied territories" (article 56). Certain countries did not recognize the occupation of part of their territory, and still engaged in regular or irregular military operations even in "occupied territories". In times of emergency, when a State's existence was in danger, no one was exempt from the duty of participating in the country's defence against a military aggressor.

5. With respect to article 57, paragraph 1, his delegation wished to draw attention to the fact that the presence of civil defence personnel and equipment of a third party should be agreed to by all the conflicting parties only after notification to the adverse party, for otherwise an aggressor might invite the civil defence personnel of a third party to operate in a specific area, which might lead to a dangerous situation for such personnel. In order to provide the fullest possible protection for the civil defence personnel of a third party, his delegation had submitted an amendment (CDDH/II/349) which would change the words "with the agreement of" to read "with the agreement of all conflicting parties concerned", and delete the words following "after notification to the adverse party".

6. In connexion with article 58, his delegation wished for clarification as to what protection would be granted after cessation of the protection mentioned in Chapter VI, either to civilian or military civil defence units.

7. His delegation believed that civilian units should always enjoy the treatment accorded to civilians, and the military civil defence personnel should be treated as combatants.

8. Turning to article 59, he said that his delegation believed that since there was no uniform system or organization for civil defence, it would be better to replace the words "international distinctive sign" by "internationally accepted distinctive sign", so as to give the article the best chance of being accepted by all delegations. As to the sign itself, either proposal would be acceptable to his delegation, although it had a slight preference for proposal II.

9. Mr. HARDING (United States of America) complimented the Danish delegation upon its various amendments (CDDH/II/321 to 327), and associated his delegation with many of them.

10. As a general comment, his delegation wished to stress the need to maintain the distinction between civilian and military persons in the performance of civil defence tasks. Such tasks were often performed by military personnel as an assigned mission when they were not on combat duty. United States military forces such as the National Guard could well be used in that manner. Such tasks were part of the duties of soldiers, who should therefore not be protected when carrying them out. If they fell into the enemy's power they should be entitled to be treated as prisoners of war. That matter should, however, be discussed more fully in connection with article 55.

11. He drew attention to his delegation's proposal in amendment CDDH/II/346, which sought to clarify article 56 relating to occupied territory. Such clarification was needed because the ICRC Commentary (CDDH/3, pp.73 and 74) seemed to indicate that article 56 applied in occupied territory even if it was an area in which land fighting was taking place. However, article 55 was specifically designed to deal with land fighting and should govern the situation in question.

12. Chapter VI dealt with certain functions, the personnel performing which were accorded a special status. The general discussion should therefore deal with the criteria used to select those functions.

13. His delegation believed that the number of humanitarian civil defence tasks should be limited to those necessary to correct the damage arising from military operations rather than include those directed towards general welfare. That list should be as specific and comprehensive as possible.

14. Mr. SKARSTEDT (Sweden) recalled that at the second session of the Conference his delegation had already given its general views on the need for rules concerning the special protection of civil defence personnel, and had said that the ICRC draft provided a good basis for that work.

15. His delegation was in general agreement with the Danish amendments (CDDH/II/321 to 327), which improved upon the ICRC draft; but a number of questions remained before articles acceptable to all could be agreed upon. The concept of the task of civil defence and the methods of organizing civil defence personnel differed widely in the various countries, and there was a particular problem with respect to personnel of military units assigned to civil defence. Here it was important to stress that the aim of the regulations concerned was to make it possible for certain civilians to be protected in carrying out their humanitarian tasks. It would be very hard to give such protection to military personnel.

16. His delegation hoped that the ICRC draft, together with the Danish proposals, as amended and clarified, would serve as a sound foundation for the Committee's work, in connection with which it might be necessary to set up working groups to discuss the substance of each article or group of articles on civil defence.

17. Miss MINOGUE (Australia) said that her delegation supported the inclusion of Chapter VI in draft Protocol I, since it provided a means of implementing the articles of the fourth Geneva Convention of 1949 concerning the welfare of the civilian population.

18. In general, her delegation endorsed the approach of the Danish delegation, while differing from it in some areas.

19. Her delegation had submitted four amendments to Part IV of draft Protocol I following the Chairman's intimation that if a new Drafting Committee were appointed, only those delegations submitting amendments would be entitled to attend its meetings.

20. Her delegation was not committed to any particular form of words for the articles in question, but considered that four issues needed clarification.

21. It should be made clear, first, that civil defence was intended to safeguard the civilian population against disasters arising both from the conflict itself and from natural causes during the period of the conflict; secondly, that the responsibilities of civil defence related to civilians only, not to members of the armed forces; thirdly, that civil defence workers were essentially

civilians and that under no circumstances should they be armed in areas where land fighting was taking place; and, lastly the language used in Section I should be as clear and simple as possible. Her delegation could not, for instance, support the inclusion in the English text of French words such as matériel in which there was a real difference in meaning from the English equivalent.

22. She drew attention to the Australian amendment to article 59 (CDDH/II/339) in which paragraphs 6 and 7 had been redrafted to require States parties to the Protocol to take appropriate action to restrict the commercial use of the distinctive emblem of civil defence. That proposal was modelled on Articles 53 and 54 of the first Geneva Convention of 1949. Her delegation felt that a stronger provision than that provided in article 59, paragraph 9 of the ICRC draft was needed. States must achieve a uniform approach in the protection of the civil defence emblem. Her delegation would put forward detailed comments in that respect when the article was considered by the Committee.

23. Mr. MARTIN (Switzerland) thanked the representatives of Denmark and Belgium for their statements at the sixtieth meeting (CDDH/II/SR.60) on the complex problems before the Committee.

24. The need for the present discussion was illustrated by the astonishing ratio between civil and military casualties in recent wars. In the First World War, one civilian had died for every twenty soldiers. In the Second World War, one civilian had died for every one soldier. In the Korean war, five civilians had died for every one soldier, and in the Viet-Nam war the proportion had been thirteen civilians to one soldier. In future wars, perhaps nuclear, the proportion might well be one soldier to 100 civilians.

25. With respect to civil defence measures, he recalled that at Pforzheim, where such measures had been inadequate, there had been 25,000 fatal civilian casualties, representing 31.25 per cent of a civilian population of 80,000. At Stuttgart, on the other hand, where suitable civil defence measures had been instituted, the total civilian casualties out of a population of 500,000 had been 4000, or 0.8 per cent. It was essential to bear such statistics in mind and to ensure that civil defence, whether civilian, para-military or military, was properly organized.

26. The problem of military civil defence units had been brought up, though not solved, at the 1972 Meeting of Experts on an International Distinctive Sign for Civil Defence Services. The Swiss delegation was glad to see that the matter was again being taken up by the ICRC and by various delegations, and believed, with the Danish delegation, that it must be treated flexibly and objectively.

27. Mr. KHAIRAT (Egypt) said that civil defence was usually carried out by civilians, although some countries had police and military civil defence units as well. Since the two Protocols dealt with civil defence in the context of armed conflict, his delegation interpreted "disasters" in article 54 as events occurring during or because of armed conflict, and felt that the provisions of the Protocols could not be applied to natural disasters in time of peace.

28. Military civil defence personnel, few as they might be, had to be governed by rules different from those for civilian personnel, and they must be treated as prisoners of war if they fell into enemy hands.

29. His delegation believed that it would be better not to arm civil defence personnel, but that in any case the weapons of such personnel should be for self-defence only.

30. Activities falling within the province of civil defence should be enumerated, so as to avoid any possibility of misinterpretation.

31. He repeated his delegation's reservation concerning the term "zones of military operations" in article 55 and supported the Danish proposal for the words "In areas where land fighting is taking place" to be used.

32. Mr. JAKOVLJEVIĆ (Yugoslavia), having reserved his delegation's right to speak on particular articles in Chapter VI, noted that the purpose of that Chapter was to grant the civil defence service an internationally protected status. The Committee, he trusted, would reach agreement as to the tasks that civil defence services must perform in order to enjoy protected status; but the question still remained as to who was to decide whether the conditions for benefiting from the special status were met. The answer, of course, was the Government of the State concerned.

33. In his delegation's view, the Protocol offered States the possibility of providing civil defence services with special protection but did not create an obligation to do so. Each Government had the right to organize its civil defence service in accordance with the conditions set out in Chapter VI, thus enabling

it to enjoy privileged status; but they were also free to give such services non-humanitarian tasks, in which case the privileged status could not be invoked, especially if the list of humanitarian tasks in the Chapter was exhaustive.

34. How, then, would a party know whether the adversary's civil defence was placed under the special legal régime set out in Protocol I? It seemed to him that what was needed was a legal mechanism to make it clear whether or not the civil defence service in question was governed by the rules of Chapter VI of Part IV of Protocol I, all the more since a Government might well change its mind as to the status of its civil defence in the course of operations.

35. In order to clarify the situation, his country's delegation to the XXIInd International Conference of the Red Cross, held at Teheran in 1973, had proposed an additional article 59 bis under which the application of Chapter VI was not automatic, but would depend upon a notification by the Governments concerned. That proposal, which had also been submitted to the first session of the Diplomatic Conference (CDDH/6, p.36) had not been adopted, and his delegation had not pressed it. However, since the problem had not been solved, his delegation might put forward a further amendment after the present discussion.

36. Mr. SANCHEZ DEL RIO (Spain) congratulated the Danish delegation on its various amendments (CDDH/II/321 to 327), which had helped to dispel many of its doubts on the texts proposed. In principle his delegation would be able to support those amendments, with certain changes.

37. Several important points had been raised in the discussion, including the possibility of the participation in civil defence of police, military units, reserve personnel and soldiers on active service. All those points needed careful consideration, and due account must be taken of the different ways of organizing civil defence throughout the world.

38. The Swiss delegation had put forward a number of proposals in amendment CDDH/II/335 suggesting a new article 59 ter, which should also be taken into account during the discussion.

39. It might be useful if the Committee concentrated on the following salient points: civil defence organizations should be given legal recognition before the outbreak of hostilities, as had been proposed; civil defence organizations should confine themselves to controlling and correcting the results of disaster and war; and they must always refrain from committing acts of violence or hostility - a matter closely connected with the question of carrying small-arms.

40. Mr. ICHIOKA (Japan) pointed out that, owing mainly to the fact that there had thus far been no internationally recognized code in the field of civil defence, and that as a result the matter had been left entirely to the discretion of the countries concerned, different concepts involving different functions, different competences and different structures of civil defence co-existed in different parts of the world. Each concept had its merits, reflecting the historical and social background of the country or region concerned. In such circumstances the Committee would have to adopt a high degree of flexibility if it was to succeed in establishing a code which would be supported by all members. The Japanese delegation would be prepared to examine all relevant proposals in the hope that the Committee would reach a consensus.

41. A basic point to be borne in mind was that the Committee should deal with civil defence on the basis of the functions which it expected civil defence to perform, and not on the basis of the organs or persons carrying it out. Civil defence could be carried out by State or local Government agencies, by volunteer organizations, or even by individuals not belonging to any organization. In his view the official status of the person carrying out civil defence made little difference; as long as he was engaged in civil defence duties he should be entitled to a reasonable degree of protection. His delegation therefore strongly endorsed the approach which the ICRC had adopted in formulating its draft text. It also considered that persons who belonged to a military or police unit but who carried out civil defence functions under a specific and well-defined assignment should also enjoy a proper degree of protection. The welcome amendment proposed by Switzerland (CDDH/II/335) deserved serious consideration, although several points needed clarification.

42. The ICRC text on the definition of civil defence (article 54) was generally sound and had the support, in principle, of his delegation. Any attempt to make it more precise would be useful, but the definition should be broad enough to include many types of humanitarian activity undertaken to safeguard the civilian population from a wide range of dangers arising in war time. The definition should include both activities undertaken to protect the population during hostilities, and relief activities in times of natural disaster. Similarly, the maintenance of public order should be clearly established as a function of civil defence, in addition to the protection of civilian life and property.

43. There already appeared to be a consensus in the Committee that civil defence personnel might bear small arms. His delegation had no objection to that view and hoped that it would be confirmed in the course of discussion.

44. Miss SHEIKH-FADLI (Syrian Arab Republic) said that the Conference had a duty to assist any civil defence organization to perform its duty regardless of whether that organization was purely civilian, whether it was part of a country's national defence system, whether it was a specialized civilian defence organization or whether it was national, international or originating from a country not party to the conflict. The essential point was the function exercised by the organization concerned, not its status. A definition based on functional criteria was more in accord with the situation obtaining in most third world countries; countries which had relatively recently acceded to independence did not, in general, have a developed and specialized civilian defence infrastructure.

45. Her delegation endorsed the other proposals designed to safeguard the functions of civil defence bodies operating in occupied territories. They should continue to perform their humanitarian work; their equipment should not be requisitioned or diverted and their personnel should not be prevented from working or removed from their place of work. By protecting personnel and agencies which engaged in humanitarian activities while refraining from any hostile act against the enemy, the desired neutrality would be facilitated.

46. Mr. KORNEEV (Union of Soviet Socialist Republics) reminded the Committee that in the Second World War 50 per cent of all casualties had been civilian; in Korea and Viet-Nam the figure had been substantially higher. Civil defence therefore had the humanitarian function of ensuring the survival of the civilian population at times of natural disaster or during hostilities.

47. His delegation realized that there were probably no two countries in which civil defence fulfilled identical functions or had the same structure and official status. Accordingly it was advisable for article 54 of draft Protocol I to include a broader range of tasks which civil defence could perform. The ICRC text provided a sound basis for discussion.

48. Different views had been put forward on whether civil defence organizations should be military or civilian. The crucial point, however, was that such organizations should fulfil the function of protecting the civilian population. There could, of course, be no really effective civilian defence without the participation of

civilians. On the other hand, in times of natural disaster and in overcoming the effects of military action, large quantities of powerful technical equipment and large numbers of persons might be required. The easiest solution to the problem was to assign military personnel and equipment to civil defence.

49. Some amendments reflected the idea that civil defence systems were established when emergency situations occurred. His delegation considered that a civil defence system should be established in advance of any emergency; it was a permanent, and not a temporary, organization.

50. Civil defence personnel should be permitted to carry small-arms, since their duties included guarding installations vital for the survival of the civilian population, as well as the maintenance of public order. Civil defence organizations could not, of course, operate independently of government control. In occupied territories in particular, they could operate only with the permission of the occupying forces and in certain circumstances could be disbanded.

51. Some amendments contained a reference to the "military need" to destroy civil defence equipment and buildings. The term "military need" should be elucidated by examples, as had been done in the case of article 54 regarding the definition of civil defence. The draft text submitted by the ICRC provided a sound basis for the current stage of the Committee's work.

52. Mr. HØSTMARK (Norway) drew attention to a number of general principles which his delegation believed to be important in relation to special rules of protection for civil defence. First, civil defence had to be of a humanitarian character. The argument for special protection rested on the fact that certain humanitarian considerations were so strong that they took precedence over any possible military views regarding the desirability of attacking either persons or property. The primary aim was to reduce suffering and to safeguard the fundamental needs of the civilian population in war time. In other words, the criterion for awarding special protection must be the humanitarian consequences of civil defence.

53. Secondly, the mantle of special protection must not be cast over too wide and varied a field; otherwise the rules would not be observed in practice. Civil defence involved three different aspects: its functions, the personnel carrying out those functions, and the equipment and buildings used by the personnel in the fulfilment of those functions. Priority protection should be given to the functions themselves, and the other two categories should receive protection to the extent that was practicable for the proper fulfilment of those functions.

54. Thirdly, the civil defence system should be of a civilian character; otherwise there would be confusion in the eyes of an enemy between civil defence and military defence, with sharply-reduced chances of the protective rules being observed. The Committee should do its utmost to draft rules that would have an effective chance of being complied with in practice. Accordingly, it must aim at the best result possible, not at the best possible result. In other words, the rules should be so clear, so simple and as far as possible so divorced from the military situation, that a soldier in the heat of combat would have no doubt about their interpretation. It was therefore clearly preferable that civil defence personnel should never carry arms.

55. Lastly, the above-mentioned principles could most easily be taken into account in a specially established civil defence organization. Norway had adopted that solution, but his delegation was aware that in other countries it might be more practicable to allow the functions to be carried out by other, already established, civilian organizations. The important point was to avoid arrangements which reduced the possibilities of the rules being observed in time of war.

56. His delegation had carefully studied the draft text provided by the ICRC and the amendments submitted by Denmark in documents CDDH/II/321 to 327. Even though his delegation might disagree on a few points, it considered that those documents provided a sound basis for the further work of the Committee.

57. Mr. MAKIN (United Kingdom) said that in his delegation's view civil defence personnel should not be armed in areas where they were likely to meet the enemy. If they were armed they would lose their effective power of protection; Committee III was extending the rules on irregular fighters and there would be confusion as to who was a legitimate target and who was not. He agreed with the Danish representative (sixtieth meeting - CDDH/II/SR.60) that the police should not be included in the rules protecting civil defence personnel. Almost all countries would wish to continue to arm their police, and if the police were the only non-combatants to be armed, it was still possible to maintain order. The enemy recognized that the police were protected civilians, although not under the draft Protocol being considered. If that solution were adopted, his delegation and other co-sponsors would be able to withdraw several proposals submitted at the second session.

58. Mr. KUCHENBUCH (German Democratic Republic) said that his delegation considered that the ICRC draft of Chapter VI constituted a sound basis for the Committee's work, although the proposed definitions needed to be made rather more explicit. His delegation considered that civil defence personnel should be permitted to

carry small arms and that such an arrangement was not contrary to the nature and aims of civil defence. Police and military personnel should be allowed to discharge their duties within the civil defence system without altering its nature.

59. Mr. URQUIOLA (Philippines) said that his delegation endorsed the Swiss statement regarding the importance of civil defence in time of conflict, since statistics had shown that in recent wars civilian casualties had been much higher where civil defence organizations had not intervened. His delegation also endorsed the statement made by the Secretary-General of the International Civil Defence Organization at the sixtieth meeting (CDDH/II/SR.60), as well as the proposal that an international distinctive sign for civil defence organizations should be introduced.

Article 54 - Definition (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/44, CDDH/II/318, CDDH/II/321, CDDH/II/336, CDDH/II/344) (continued)

60. The CHAIRMAN drew attention to amendments CDDH/II/44, CDDH/II/318, CDDH/II/321, CDDH/II/336 and CDDH/II/344. He informed the Committee that the Danish delegation had withdrawn its sponsorship of amendment CDDH/II/318 in favour of the amendment it had submitted subsequently (CDDH/II/321). In the absence of any objection, he would take it that the other sponsors of amendment CDDH/II/318, namely, the Federal Republic of Germany, Uganda, the United Kingdom of Great Britain and Northern Ireland and the United States of America, agreed to withdraw that amendment in favour of the more recent Danish amendment.

It was so agreed.

61. Mr. URQUIOLA (Philippines), referring to the proposal to broaden the definition of the term "civil defence", drew attention to the great importance which President Marcos had attached to the subject in his preface to the Philippine Civil Defence Manual. The Philippine Government had recently created the Office of Civil Defence, which was given the primary mission of co-ordinating the activities and functions of various agencies of the national Government, private institutions and civic organizations devoted to public welfare, so that the facilities and resources of the entire nation might be utilized to the maximum extent for the protection and preservation of the civilian population and property in time of war and other national emergencies.

62. Under Philippine law the concept of civil defence was broader than in article 54 of draft Protocol I. It included not only the protection and welfare of the civilian population and property in time of war or natural disaster but also the protection of the people and their property in other national emergencies of equally grave character, such as civil strife.

63. At the first session of the Diplomatic Conference his delegation had proposed amendments to the relevant articles of the two draft Protocols concerning the definition of "civil defence". In his delegation's view the definition of the term in article 54 of draft Protocol I should be made wider in order that the greatest measure of civil assistance and welfare measures could be extended to the civilian population in the event of hostilities, civil strife and disaster. The ICRC Commentary (CDDH/3, p. 71) recommended that civil defence should have a wider scope and that its purpose should not be limited and become the monopoly of specialized agencies and bodies but that it should be possible for any civilian to participate in civil defence activities. His delegation endorsed that view.

64. In article 54 of draft Protocol I his delegation had proposed that the words "civil strife" should be inserted between the words "hostilities" and "or" in the first sentence of the article. The aim was that civil defence activities should cover hostilities within the country.

65. In article 54, sub-paragraph (a) his delegation had proposed the insertion of the phrase "interment of the dead" between the words "wounded" and "fire-fighting". There were compelling humanitarian, aesthetic, customary and hygienic reasons for the inclusion of that phrase.

66. In article 54, sub-paragraph (c) his delegation had proposed that the phrase "and welfare services" should be inserted between the words "assistance" and "to". The Philippine Office of Civil Defence, in co-operation with the Bureau of Social Welfare Services, was, in fact, also responsible for providing a wide range of welfare services at the time of hostilities, civil strife and disasters.

67. In article 54, sub-paragraph (f) his delegation had proposed that the phrase "designation of safe centres or settlement sites" should be added. The proposed new text went further than merely warning the civilian population and evacuating them. It should, in fact, be the additional task of civil defence to prepare plans for the location of safe centres and settlement sites for the civilian population during an emergency situation. The task would be made much easier if such plans were prepared before the emergency actually occurred.

68. The comments on the above-mentioned sub-paragraphs of article 54 were equally applicable to the relevant sub-paragraphs of article 31 of draft Protocol II. His delegation had appreciated the endorsement of its proposals by the Secretary-General of the International Civil Defence Organization.

69. Mr. SCHULTZ (Denmark), introducing amendment CDDH/II/321, said he considered that the title proposed by his delegation corresponded more closely to the contents of the article than that proposed by ICRC in draft Protocol I.

70. The changes proposed by his delegation to the first sentence of the article were motivated by the belief that ICRC's text was too far-reaching, exceeding the scope of the purely humanitarian tasks of safeguarding the life and property of the civilian population. He drew attention to the fact that the words "the effect of" were not reflected in the French text of the amendment, and requested that the necessary correction should be made.

71. Turning to the second sentence, he said that his delegation proposed to substitute the words "some or all of the following" for the words "inter alia" in the ICRC's text because it considered that the protection granted under article 54 should be restricted to the humanitarian elements of civil defence. Since the conception of civil defence functions could vary from country to country, it was most important to define very clearly what was meant by the term "civil defence" in the context of draft Protocol I.

72. Some of the changes proposed to sub-paragraphs (a) to (g) related only to drafting. Regarding sub-paragraph (d), the wording should be "assistance in the restoration of public order in devastated areas", in accordance with his delegation's original proposal.

73. If the amendment proposed by his delegation to the beginning of the second sentence was adopted, it might be appropriate to add a provision covering similar humanitarian tasks to which specific reference was not made in sub-paragraphs (a) to (g). He therefore supported the new sub-paragraph (h) proposed by Finland, Norway and Sweden (CDDH/II/344), the inclusion of which would cater for the Philippine proposals relating to interment of the dead and designation of safe centres or settlement sites (CDDH/II/44).

74. With regard to the Philippine proposal to insert a reference to civil strife in the first sentence, his delegation held the view that civil strife did not come within the scope of either draft Protocol I, which related only to international conflicts, or draft Protocol II, which specified in article 1, paragraph 2, that situations of internal disturbances and tensions were excluded from its material field of application.

75. Miss MINOGUE (Australia), introducing amendment CDDH/II/336, said that the effect of her delegation's proposals was essentially to re-arrange the ICRC text. The only exception was sub-paragraph (e), the wording of which was somewhat restrictive in both the ICRC draft and the Danish amendment (CDDH/II/321, sub-paragraph (d)). The wording used in sub-paragraph (e) of the Australian proposal (CDDH/II/336) reflected the very essence of civil defence and expressed the idea which her delegation wished to see embodied in the article. However, she considered that it should not be difficult for either the Drafting Committee or a working group to incorporate most of the Australian proposals in the Danish text, which her delegation could support in general.

76. Mr. SKARSTEDT (Sweden), introducing amendment CDDH/II/344 on behalf of the sponsors, said that article 54 contained the essential definition of civil defence and enumerated its tasks. There were good reasons in favour of making a complete enumeration of those tasks; if that were done, however, careful attention would have to be given to the choice of appropriate wording. The sponsors of amendment CDDH/II/344 could accept the Danish proposals relating to sub-paragraphs (a) to (f), subject to the addition of their proposed new sub-paragraph (h), which would cater for humanitarian tasks of a similar nature that might not be covered by the preceding sub-paragraphs.

77. Regarding the Philippine amendment (CDDH/II/44), his delegation could not support the idea that civil defence should cover tasks intended to safeguard the population against the effects of civil strife and endorsed the views expressed by the Danish representative in that connexion.

78. Mr. MALINVERNI (International Committee of the Red Cross), commenting on the amendments which had just been introduced, said that he shared the views expressed by the Danish representative concerning the untimeliness of a reference to civil strife in the definition of a text applicable to international conflicts.

79. Both the Danish proposal relating to the beginning of the second sentence of article 54 and the proposal by Finland, Norway and Sweden to add a new sub-paragraph (h) to that article (CDDH/II/344) were improvements on the ICRC draft.

80. With regard to the first sentence, he noted that the word "hostilities" in the ICRC text had been replaced by the more restrictive word "attacks" in the Danish amendment (CDDH/II/321), and he would be interested to know whether that had been done deliberately, and the reason for it.

81. Conveyance of the wounded, mention of which had been excluded from sub-paragraph (a) of the Danish amendment, was an important civil defence task and, in his opinion, might usefully be retained in the text. On the other hand, it was perhaps unnecessary to include a reference to medical services in general in that sub-paragraph, since they were already protected under other articles of the draft Protocol.

82. He noted that sub-paragraph (b) of the ICRC draft, concerning the safeguard of objects indispensable to the survival of the civilian population, had been excluded from the Danish amendment and he wondered why.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE SIXTY-SECOND MEETING

held on Tuesday, 4 May 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 54 - Definition (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/44, CDDH/II/321, CDDH/II/336, CDDH/II/344) (continued)

1. The CHAIRMAN invited members of the Committee to continue their consideration of article 54 - Definition.
2. Mr. SUKHDEV (India) asked the Danish representative to clarify amendment CDDH/II/321 which he had introduced at the sixty-first meeting (CDDH/II/SR.61).
3. Mr. SCHULTZ (Denmark) said that the expression "to avoid or recover from the effects of attacks" had been used in his delegation's amendment instead of "effects arising from hostilities or disasters" which appeared in the ICRC text because there might be occasions when the assistance of civil defence bodies was needed but where the situation could not be referred to as "hostilities". For instance, during the first few months of the Second World War, Denmark was neutral but had been bombed two or three times. Such bombing was not intended as an act of hostility against Denmark. The civil defence bodies, however, had had to go to the assistance of the civilian population.
4. Mr. SUKHDEV (India) said that although he could support the Danish amendment, he wished to suggest that it be changed to read "effects of attacks arising out of hostilities or otherwise".
5. Referring to the Philippine amendment (CDDH/II/44), he felt that the definition of what civil defence should cover went beyond the scope of article 1 of draft Protocol I.
6. Mr. MARTIN (Switzerland), supporting the Danish representative, said that Switzerland, although neutral, had also been bombed during the Second World War as a result of hostilities being waged in surrounding territory.

7. He suggested that it would be well for the Committee, before a decision was taken concerning the functions of civil defence bodies, to pronounce on the principle of an exhaustive list of such functions to be included or not included in article 54. If the word "notamment" was retained in the French text of the article, that would imply that the list given was not exhaustive and would leave it open to various interpretations by civil defence bodies. He reserved the right to speak again after a decision had been taken on that matter.

8. Mr. ALBA (France), supporting the Swiss representative, said that the list given in article 54 should be for purposes of information only.

9. Mr. MARRIOTT (Canada), supporting the Danish representative, said that his delegation considered that draft Protocol I, Part IV, Section I, Chapter VI - Civil Defence was meant to provide protection for the essential activities of civil defence bodies when assisting the civilian population in circumstances in which such protection could not be assured in the absence of specific articles in draft Protocol I and its annex.

10. Representatives had stated that article 54 should contain a clearly defined and limited list, in order that such protection should be effective. It was for that reason that many members had spoken against the words "inter alia" in article 54 and had preferred the Danish amendment (CDDH/II/321) which replaced those words by "some or all of the following".

11. There was a curious anomaly in amendment CDDH/II/344, submitted by the delegations of Finland, Norway and Sweden which supported the Danish text but, by adding the words "other humanitarian tasks", seemed to contradict itself directly.

12. His delegation was in favour of a short and clearly defined list of the functions of civil defence bodies.

13. Mr. SCHULTZ (Denmark) pointed out that in the general debate he had stated that one of the basic principles in his delegation's opinion was that the Committee should define the organizations that should receive protection as clearly as humanly possible. A complete, exhaustive list of the components of civil defence could not be made, but the list should be as clear as possible. Article 54 should include the words "some or all of the following". He considered that a sub-paragraph (h) worded as follows: "other humanitarian tasks of a similar nature" might be included, as in amendment CDDH/II/344 submitted by Finland, Norway and Sweden.

Such a phrase would exclude protection of vital industries, economic defence, supplies of oil and so forth, which in many countries came under the civil defence organization but which should not be protected as they were not of a humanitarian nature.

14. The CHAIRMAN said that, having read rule 21 of the rules of procedure, he considered that the Swiss representative's suggestion concerning a decision of principle, namely whether or not an exhaustive list of the functions of civil defence bodies should be included in article 54, was a point of substance and not a point of order.

15. Mr. MARTIN (Switzerland) agreed with the Danish representative and supported amendment CDDH/II/344 submitted by Finland, Norway and Sweden, sub-paragraph (h) of which defined the functions of civil defence bodies, which must be of a humanitarian nature in order to be protected.

16. The French text of article 54 should be amended, the word "notamment" being deleted.

17. Mr. ALBA (France) shared the views of the Danish representative and supported amendment CDDH/II/344. He considered that civil defence bodies should be given the opportunity to perform all humanitarian tasks. The words "civil defence" included all possible forms of such defence. The French text should follow the English version very closely.

18. Mr. CZANK (Hungary) said that his delegation considered that from a purely legal point of view article 54 should include an exhaustive list of civil defence tasks; but in view of the other problems involved, his delegation would accept the wording suggested by the Danish representative. The words "inter alia" in the original ICRC draft of article 54 would leave it open to the opposing parties to decide what activities were covered by the words "civil defence". He supported amendment CDDH/II/344.

19. Mr. JAKOVLJEVIĆ (Yugoslavia) said that in view of the different tasks considered as coming under civil defence in various countries, his delegation was in favour of most of the ICRC text of article 54. If an exhaustive list of civil defence tasks was included in that article there might be difficulties of interpretation. His delegation was not in favour of the words "Civil defence includes, inter alia" and suggested that they should be amended to read "Civil defence may include inter alia ...".

20. The title given by the ICRC to article 54 was "Definition"; in the Danish amendment it was "Scope of civil defence", but the article contained both definition and scope. The word "definition" covered five elements, some of them in article 54 and some in article 55, namely: humanitarian tasks, tasks to be carried out on behalf of the civilian population, tasks connected with situations of disaster and armed conflict, the civilian character of defence bodies, and the fact that civil defence bodies must be established or recognized by their Governments. All those elements should be covered by article 54.

21. It had been suggested that civil strife should be included in the elements covered by article 54. His delegation considered, however, that if civil strife could not be covered by draft Protocol I it might later be examined whether it could be covered by an article in draft Protocol II.

22. The CHAIRMAN, speaking as a jurist, said that the title of the Danish amendment - "Article 54 - Scope of Civil Defence" was broader than that of amendment CDDH/II/344 - "Definition". The ICRC title was "Definition", but the ICRC text was certainly not merely a definition. It would thus be better to use the term "Scope".

23. Mr. JOSEPHI (Federal Republic of Germany) said that his delegation fully agreed with the Danish amendment (CDDH/II/321), which would place greater emphasis on the humanitarian nature of civil defence. He was particularly in favour of the deletion of the words "inter alia", but since it appeared difficult to formulate an exhaustive list he would support the proposal to add the words "other humanitarian tasks of a similar nature", as proposed by Finland, Norway and Sweden (CDDH/II/344).

24. Mr. HARDING (United States of America) said that, while associating itself with the Danish proposal that certain tasks other than those of a strictly humanitarian nature - such as those concerned with economic matters and civilian rationing - should not be listed, his delegation also agreed with the previous speakers that the term "other humanitarian tasks of a similar nature" might present a number of problems of interpretation and give rise to dispute as to whether or not particular tasks were humanitarian. A list, even with some omissions, but as exhaustive as possible, would better serve the over-all end than a formula that could give rise to argument. The aim should be to have a complete list.

25. Mr. KHAIRAT (Egypt) said that both viewpoints had their merits: an exhaustive list could help to avoid misinterpretation, while to leave the list open would offer scope for greater flexibility. His delegation would have preferred to have an exhaustive list. The Committee might first complete its discussion of the proposals before it and then try to reach agreement on the contents of the list.

26. Mr. MAKIN (United Kingdom) said that a consensus appeared to be emerging in favour of the Danish formula "Civil defence includes some or all of the following" and in favour of adding to the proposed list. The words "other humanitarian tasks of a similar nature" proposed by Finland, Norway and Sweden (CDDH/II/344) were somewhat imprecise and conflicted with the idea of an exhaustive list. The Committee should consider what tasks had been omitted, and if possible list them. The subject of civil defence had been studied since 1972 and it appeared from the discussions that many countries had elaborate organizations under the title of civil defence, although his country had virtually none. It was not clear precisely what the word "humanitarian" meant. Relief, which was a humanitarian task, was dealt with under three separate articles. Was it suggested that it should be brought under civil defence because of its humanitarian nature?

27. The word "scope" would be more correct in the heading than the word "definition". Some of the words used in the list might themselves require definition. He could see no distinction between the words "social assistance" and the words "welfare services" proposed by Australia. It might be necessary to add to the list of definitions at the beginning of draft Protocol I. Considerable time had been spent in defining the words "wounded" and "sick", whose meaning had been known since 1864 - date of the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field - yet a number of newly-employed words had so far gone undefined.

28. His delegation assumed that some form of working group would be established to determine the meaning of civil defence for the purposes of draft Protocol I. While there was nothing to prevent any High Contracting Party from including other items in their own civil defence organization, it should be clear that only those specified would be protected under Protocol I. In the absence of a reasonably exhaustive list there would be complete confusion and the chapter in question would be ineffective. The Committee should adopt the Danish proposal (CDDH/II/321), and the meaning of the words "and other humanitarian tasks of a similar nature" should be considered, possibly in a working group.

29. Mr. CZANK (Hungary) said that his delegation agreed generally with the Yugoslav representative's comments but considered that article 54 should be headed "Definitions" and should contain three distinct definitions. First should come the general definition of civil defence given in the existing text. Secondly, the definition of civilian bodies in article 55 should be moved to article 54, thus avoiding the need for repetition in subsequent articles. Thirdly, there should be a definition of civil defence personnel, which was mentioned in a number of articles where reference was made to permanent and temporary civil defence personnel. The terms "civil defence bodies" and "civilian bodies" were used in different parts of the text and sometimes within the same paragraph. It would help in formulating the definitions if the ICRC representative could give the Committee an idea of what he considered to be the difference between those two terms.

30. It might be inadvisable to include the formula "for the purpose of the present Chapter", since the provision was for the purpose not only of Part IV, Section I, Chapter VI of draft Protocol I but also of the corresponding chapter of draft Protocol II.

31. The question of civil strife did not belong to the present article and might not even belong to draft Protocol II.

32. The term "social assistance" might be more comprehensive than the term "welfare services". It would complicate matters to have the two terms used together in an enumeration of civil defence tasks.

33. The Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts had no doubt tried to include all those tasks that could be considered as civil defence tasks in the foreseeable future. The Committee should concentrate on adding any further tasks it considered appropriate.

34. Mr. MALINVERNI (International Committee of the Red Cross) said that to add the words "other humanitarian tasks of a similar nature" as proposed by Finland, Norway and Sweden (CDDH/II/344) would still imply that the list was not exhaustive and would thus have the same effect as the words "inter alia" in the ICRC text. The words "humanitarian tasks" were also used in the ICRC text and it appeared unnecessary to repeat them. He could see no significant difference between the ICRC text and amendment CDDH/II/344 on that point. Replying to a question addressed to him he pointed out that if the ICRC had used the term "civilian bodies" rather than "civil defence bodies" in certain instances (articles 55 and 56) it was to make the text less cumbersome. Moreover, the expression "civilian bodies" referred to the definition in article 54 so that there should be no difficulty over the meaning of the term.

35. The CHAIRMAN said that before considering the various tasks in detail, the Committee should take a decision on three points. The first was whether the word "Definition" or the word "Scope" should be used in the heading of the article. The word "Scope" included the idea of definition but went beyond it. A decision on that point would facilitate the work of the Drafting Committee or Working Group in dealing with the remainder of the article. The second point for decision was whether or not the list of civil defence tasks should be exhaustive. The third was whether or not to include the question of civil strife. The heading proposed by Denmark, being the furthest removed from the ICRC text, should be voted on first.
36. Mr. URQUIOLA (Philippines) said that his delegation must insist that article 54 should include some reference to civil strife, since otherwise civil defence bodies might find themselves deprived of the right to intervene in cases of grave national emergency, as had happened recently, for example, when foreign elements had been introduced into a country which was already engaged in an internal struggle.
37. Mr. MAKIN (United Kingdom) said that according to information received by him, the Drafting Committee of the Conference felt that there should be no titles to any of the articles. In his opinion, therefore, it would be a waste of time to proceed to a vote.
38. The CHAIRMAN said that, as a professor of law, he strongly opposed the idea that articles should not have titles, since titles made it much easier for students to remember the contents of articles. He recalled that the same point had been raised at the United Nations Conference on the Law of Treaties, where the Drafting Committee had decided that the titles should be retained.
39. Mr. CZANK (Hungary) said that his delegation still wished to press its oral amendment concerning the composition and title of article 54.
40. Mr. JAKOVLJEVIĆ (Yugoslavia), speaking on a point of order, said that the question of the title of article 54 should be decided at a later time.
41. Mr. MARTIN (Switzerland) said that the question of definitions had arisen at the Conference of Government Experts in 1972. At that time, it had been decided that the title of article 67 of the ICRC draft should be "Definition" and that that article should define civil defence organizations and enumerate their tasks.

42. The CHAIRMAN said that, following informal consultations, he had decided that it would be better not to take a vote at the present time on the title of article 54 or on the question whether the list of tasks enumerated in that article should be an exhaustive one. In order to expedite the Committee's work, it was his intention to appoint a few additional members to the Drafting Committee and to request it to act at the same time as a working group dealing with questions of substance and of drafting.

43. He suggested that the Committee should now vote on the Philippine proposal to include a reference to civil strife in article 54.

44. Mr. MARTIN (Switzerland) said he hoped that the Philippine representative would not press his proposal, since the question of civil strife would be dealt with in draft Protocol II in connexion with the protection of victims of non-international armed conflicts.

45. Mr. URQUIOLA (Philippines), while agreeing that the question of civil strife should be included in draft Protocol II, insisted that some reference to it should also be made in article 54 of draft Protocol I.

46. The CHAIRMAN put the Philippine proposal to the vote.

The Philippine proposal was rejected by 43 votes to one, with 12 abstentions.

47. Mr. SANCHEZ DEL RIO (Spain) said that his delegation felt that any reference to social welfare services in article 54 would be too broad, since it would be difficult to determine, in an emergency situation, what such services would cover. They might conceivably include, for example, such things as social security, sick leave and leisure facilities. Some decision concerning that point, however, would obviously have to be taken in connexion with sub-paragraph (e).

48. Mr. MARRIOTT (Canada) said that his delegation shared the concern expressed by the Spanish representative. If the word "emergency" was used in the preamble to article 54, care would certainly have to be taken to ensure that social assistance did not cover such things as unemployment benefits.

49. He was also concerned by the frequent use of the word "exhaustive" during that morning's discussion. He hoped that that did not mean that the Committee would come up with a list of tasks running into several pages. If such a list was to be respected when the need arose, it should certainly be kept within manageable proportions.

50. Mr. MARTIN (Switzerland) said that the tasks of civil defence referred to in article 54 were indeed emergency tasks, as had been stressed in the Danish amendment to that article (CDDH/II/321). However, he questioned the meaning of the words "restoration of normal functions in devastated areas" in paragraph (d) of the Danish amendment. Those words were not to be found in the ICRC text and certainly referred to an emergency situation. Concerning both articles 54 and 55, he urged the Committee to consider the definition of civil defence bodies contained in the text of article 67 adopted by the 1972 Conference of Government Experts.

51. Mr. HESS (Israel) said that his delegation wished to join those which had expressed themselves in favour of the more flexible approach to the definition of the scope of civil defence. His country had had, and unfortunately was still having at the present time, much experience in civil defence and was therefore constantly aware of the plight and suffering of civilian populations during armed conflicts. It was of the firm opinion that the civilian population was entitled to the most effective and comprehensive assistance.

52. His delegation saw great merit in some of the broader definitions in the Australian amendment (CDDH/II/336), as, for example, in sub-paragraph (e), which included the element of the restoration and maintenance of public order in stricken areas. His delegation was of the opinion that in such situations, police forces, which were normally geared to peace-time activities, would not be able to cope with the various aspects of public order and safety. Civil defence bodies should therefore be authorized and enabled to maintain public order and should for that purpose be permitted to carry small-arms. His Government preferred the planned training of civil defence units in the use of small-arms to situations of the mass issuing of weapons in times of emergency and all the possible dangers resulting from such a practice. His delegation hoped that that whole subject would be discussed thoroughly in a working group.

53. Mr. MAKIN (United Kingdom) asked the Chairman for further details about the working group which he was proposing to establish. He assumed that the purpose of that working group would be to produce a consolidated draft incorporating the best features of all the different amendments which had so far been submitted.

54. The CHAIRMAN said that in order to expedite the work of the Committee, he intended to ask the authors of the various amendments to agree on a common text which would then be submitted to a working group. He pointed out, however, that that working group could not begin its work until the Technical Sub-Committee had completed its task. At that time, two subsidiary bodies should be set up which would act both as working groups and as drafting committees and in that way help the Committee to fulfil its responsibilities during the current session of the Conference. Those working groups would work concurrently and their composition could be decided upon at a later time.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE SIXTY-THIRD MEETING

held on Wednesday, 5 May 1976, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

TRIBUTE TO THE MEMORY OF MR. LOPEZ-HERRARTE, PERMANENT REPRESENTATIVE OF GUATEMALA TO THE INTERNATIONAL ORGANIZATIONS AT GENEVA AND HEAD OF THE DELEGATION OF GUATEMALA

At the invitation of the Chairman, the Committee observed a minute of silence in memory of Mr. Enrique Lopez-Herrarte

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 54 - Definition (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/321, CDDH/II/344) (continued)

1. Mr. MACKENNEY (Chile) asked that in all Spanish translations the term "defensa civil" should be replaced by the term "protección civil", which covered a wider field.
2. He understood the word "disasters", in the first paragraph of article 54, to refer to disasters occurring in time of war. He wondered why that was not specifically stated.
3. With regard to article 54, sub-paragraph (e) of the ICRC text, he said that, in Chile, the maintenance of public order in disaster areas was the responsibility of the Carabineros and the Servicio de Investigación. His delegation therefore supported the amendment proposed by Finland, Norway and Sweden (CDDH/II/344), which would allow civil defence authorities to co-operate with the police. It also supported the Danish amendment to article 54 (CDDH/II/321).
4. Mr. MARTIN (Switzerland) referring to sub-paragraph (a) of article 54, reiterated his view that medical services should be included in the functions of civil defence and, further, that a paragraph should be added at an appropriate point stipulating that such services should be governed by the provisions on regular civilian medical services.

5. With regard to sub-paragraph (b), he supported the Danish delegation's amendment (CDDH/II/321), which was more precise than the ICRC draft. The tasks in question were essentially of an emergency nature and should not be confused with others that went beyond the scope of civil defence, if that term were understood in the sense of protection of the civilian population.
6. He asked for some further explanation of the Danish amendment to sub-paragraph (d) (CDDH/II/321), which struck him as unduly far-reaching.
7. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) said that article 54 of the ICRC text applied only to the civilian population. In areas of armed conflict, however, civil defence units would presumably provide assistance to the military sick and wounded, in the absence of such assistance from their own forces. He therefore proposed that, after the words "civilian population" in the first paragraph, the following should be added: "and the sick and wounded, including where necessary persons belonging to the armed forces of the adverse party".
8. Mr. SCHULTZ (Denmark), replying to the question raised by the representative of Switzerland, explained that paragraph (d) of his delegation's amendment to article 54 (CDDH/II/321) should have read: "assistance in the restoration of public order in devastated areas", in line with the second paragraph of the amendment submitted by Finland, Norway and Sweden (CDDH/II/344). That wording was in fact the outcome of consultations on the question of civil defence among the Nordic countries represented at the Conference.
9. Mr. MARTIN (Switzerland), thanking the representative of Denmark for his reply, said that he was a little concerned about the word "order" in the Danish amendment, for it gave the impression that police measures would be involved. Admittedly, some civil defence organizations did assist the police in restoring public order in devastated areas, but it might simply be a question of returning the population to normal life. The wording of the proposed amendment lent itself to different shades of meaning and he therefore wished to know the intention behind it.
10. Mr. SCHULTZ (Denmark) said his own delegation's feeling was that protection of the police under international law was a complex matter that should not be broached at the Conference. In several countries, however, civil defence units were required to assist the police, since experience had shown that it was vital to restore public order following an attack, in view of the danger of riots and looting, and that normally the police were unable to handle such situations on their own. In the circumstances his delegation, among others, had deemed it advisable to provide for civil defence units formed for the purpose of assisting the police. Such units,

however, would be unarmed, would be drawn from the civil defence corps rather than the police force, and would perform a purely humanitarian task. They would assist in a variety of ways, for example, by roping off areas where unexploded bombs had fallen. The alternative text, in sub-paragraph (e) of article 54 of the ICRC draft, would, in his opinion, create considerable difficulties.

11. Mr. MARTIN (Switzerland) said that, whatever the intent behind sub-paragraph (d), it should be unambiguously worded, in line with the Committee's agreement to define as clearly as possible the functions of civil defence. Thus, if the intention was to provide for assistance to the police, that should be spelt out and, in the French text of the proposed Danish amendment, the term "ordre public", instead of "ordre" should be used.

12. The point was perhaps more properly one for consideration by the Working Group and he therefore reserved his delegation's position on the matter.

13. Mr. JAKOVLJEVIĆ (Yugoslavia) said that there were certain questions on which he felt the Working Group might be grateful for the Chairman's guidance.

14. The first concerned the Hungarian proposal, made at the sixty-second meeting (CDDH/II/SR.62), to include all elements of the definition of "civil defence" in the first paragraph of article 54. He personally favoured that proposal and considered that any elements in other articles basic to the definition should be taken into account.

15. Secondly, there was the important question whether to refer simply to civilian bodies, or to bodies having defence functions.

16. The third question related to the advisability of having an exhaustive list of the functions of civil defence. That question would, however, be taken care of in the new combined draft to be submitted by the authors of the ICRC text and the Danish amendment.

17. Lastly, with regard to the Ukrainian representative's proposal, it was generally recognized that civil defence units should have the right to assist the military sick and wounded; but the question was whether the place for such a provision was in article 54 or elsewhere.

18. The CHAIRMAN said that in considering the scope of article 54, the Working Group would have to decide whether to combine it with article 55, or to include in it certain matters dealt with in other articles so that article 54 served as a kind of general introduction to the Chapter.

19. He agreed that it was important to decide whether or not to have an exhaustive list of the functions of civil defence, and indeed had originally intended to submit the matter to a vote. He had however abandoned the idea since it had been felt that the working group should discuss the question first.
20. There had been a fairly wide divergence of opinion on whether or not civilian bodies only could be entrusted with civil defence tasks, and there again the Committee might wish to vote on the matter. On the other hand a vote could lead to difficulties, since matters of primary importance were involved. It would possibly be wiser to await the report of the Working Group.
21. Similarly, the Committee might wish to vote on the Ukrainian representative's proposal or to refer it to the Working Group.
22. Mr. MAKIN (United Kingdom) suggested that since the last point was dealt with in article 58, it should be considered by the Committee when that article was taken up.
23. It would be unwise, in his opinion, to take any decision before the Committee had examined the other articles and the working group had studied the matter. Thereafter any differences could, if necessary, be resolved by a vote.
24. Mr. JAKOVLJEVIĆ (Yugoslavia) said that he could agree to that procedure provided that the representative of the Ukrainian Soviet Socialist Republic had no objection.
25. Mr. SOLF (United States of America) said that the point raised by those who advocated special provisions for medical services was, in his delegation's opinion, covered by the provisions on medical units in Part II of the Protocol and should therefore give no further cause for concern. The reference to medical services in the Danish amendment to article 54 (CDDH/II/321), which had his delegation's support, was intended merely as a brief indication of the work already done for the sick and wounded, whether civilian or military.
26. Mr. MARRIOTT (Canada) said that it was too soon to proceed to decisions. The whole subject of civil defence should be referred to a working group, as the articles were complex and closely related.
27. Mr. MARTIN (Switzerland) agreed. As regards providing help for military victims, that question could be adequately covered, as the United Kingdom representative had stated, by article 58 (d). The identification of civil defence personnel should be referred to in article 18, along with civilian medical personnel.

28. Mr. MALINVERNI (International Committee of the Red Cross), referring to the Ukrainian proposal, said that Chapter VI - Civil Defence - formed part of Part IV, entitled "Civilian Population". The tasks mentioned in article 54 of the ICRC text were intended to safeguard the civilian population and only sub-paragraph (a) might concern military personnel provided they were wounded. The Ukrainian proposal could perhaps be incorporated in sub-paragraph (a) by inserting between the words "conveyance of" and "wounded" the words "civilian or military".

It was decided to refer article 54 to the Working Group to consider all aspects of the question.

29. The CHAIRMAN said that, as a result of consultations, it had been agreed that so far as the substantive discussion was concerned, the Working Group on article 54 should consist of the Drafting Committee of Committee II together with such other representatives who were particularly interested in the question of civil defence; when, however, the discussion reached the drafting stage, it would be considered by the Drafting Committee as such, and only members of that Committee would have a vote.

30. It had also been agreed that the Working Group on article 18 bis should be very small and should meet under the chairmanship of Mr. Martins (Nigeria). The list of members would be announced later.

Article 55 - Zones of military operations (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/234, CDDH/II/319, CDDH/II/322, CDDH/II/335, CDDH/II/341, CDDH/II/358) (continued)*

31. The CHAIRMAN invited consideration of article 55 and the relevant amendments.

32. Mr. MALINVERNI (International Committee of the Red Cross) said that the most delicate question affecting article 55 concerned the use of military units in civil defence tasks. In some countries and in certain cases military personnel were assigned to civil defence tasks. The Committee would have to decide whether a paragraph such as the one which had been included in the foot-note to the ICRC text should be incorporated in the article.

* Resumed from the sixty-first meeting.

33. Mr. SANCHEZ DEL RIO (Spain) said that in the light of the discussion on article 54, the Hungarian proposal to define civil defence bodies, and the Swiss proposal (CDDH/II/335) defining the status of military units assigned to civil defence tasks, his delegation's proposal (CDDH/II/234) to delete the word "civilian" in the first line of paragraph 1 of article 55 was no longer necessary. The question could be left in abeyance until the results arising from the discussions in the Working Group on article 54 were known.

34. Mr. SCHULTZ (Denmark) said that amendment CDDH/II/236 had been superseded by amendment CDDH/II/325/Rev.1 and should be withdrawn. As regards amendments CDDH/II/307 and CDDH/II/319, they had been superseded by amendment CDDH/II/322, and Denmark therefore wished to withdraw its sponsorship of those amendments. He would confine his comments to amendment CDDH/II/322, which contained a consolidated text of article 55.

35. The CHAIRMAN asked the other sponsors of amendments CDDH/II/307 and CDDH/II/319 whether they could agree to their being withdrawn.

36. Mr. SKARSTEDT (Sweden) said the motive of the proposal in document CDDH/II/307 to delete the word "intentionally" in paragraphs 1 and 3 of article 55 was to avoid confusion by the application of that article and to harmonize the text with other similar articles in the Protocol. The Danish amendment (CDDH/II/322) fulfilled the purpose of the amendment in document CDDH/II/307.

37. Mr. JOSEPHI (Federal Republic of Germany) said that his delegation might wish to retain amendment CDDH/II/319, but would like to reserve its position until the conclusion of the discussion on article 54 in the Working Group. His delegation was prepared to co-operate with the Working Group.

38. Mr. MAKIN (United Kingdom) agreed with the previous speaker. Until a decision had been reached in connexion with article 54, as to whether police were to be included among civil defence bodies, amendment CDDH/II/319 could not be withdrawn. The Committee would have to decide in what circumstances civil defence personnel could be allowed to carry arms. The Danish delegation was opposed to the their doing so, and so was his own delegation.

39. Mr. SCHULTZ (Denmark), introducing amendment CDDH/II/322, said that it followed the ICRC text in all essentials, but was an attempt at clarification and up-dating based on decisions taken at the second session of the Conference. In the first place, the article had been given a new title derived from the wording of article 18, paragraph 3 ("Areas where fighting is taking place") as adopted and set out in document CDDH/226 and Corr.2, p. 43.

Moreover, stress had been placed on "land" fighting areas because civil defence was essentially land-based. The words "civilian bodies ... shall be respected and protected", in the first sentence of paragraph 1 of the ICRC text, had not been included in sub-paragraph (a) as they were deemed superfluous: all civilians were protected under the fourth Geneva Convention of 1949.

40. The essential question in connexion with article 55, however, was whether civil defence personnel should be armed. The ICRC text of article 58, paragraph 2 (c), allowed the bearing of "small-arms for the purpose of maintaining order in a stricken area or for self-defence", but the Danish delegation considered that civil defence personnel should not be armed in land fighting areas, especially if they had no uniform. Even if they wore uniform, it would be dangerous to condone the bearing of arms by civilians.

41. Sub-paragraph (c) of the Danish amendment contained, after the word "buildings", the addition "or parts of buildings", so as to ensure that shelters, which were usually in the cellars of buildings, should not be the object of attack. Such buildings might not be used exclusively for civil defence purposes. The Danish text used the words "matériel, vehicles and watercraft" rather than the phrase "means of transport", because civil defence was essentially land-based and it had been considered unnecessary to speak of all means of transport. The Danish delegation was, of course, aware that in some countries, helicopters or aircraft were available to civil defence personnel, but if aircraft were to be included in the provision the same difficulties as had been encountered in connexion with medical transport would arise. It might be desirable to mention aircraft, but it did not seem feasible.

42. Mr. DEDDES (Netherlands), introducing amendment CDDH/II/341, said that his delegation had read with interest the foot-note to article 55, paragraph 2 of the ICRC text, and had decided to incorporate it, slightly amended, into article 55. The Netherlands delegation considered that it was very important that it should be clearly provided that military units assigned to civil defence tasks should have a minimum of protection while fulfilling their humanitarian duties. There must, of course, be a safeguard against the possibility of switching over from civil defence duties to combat duties; that was why in the Netherlands amendment the word "permanently" was added to "exclusively assigned" in the ICRC text. The Netherlands text included a provision that if personnel of military units fell into the hands of the enemy they should be considered to be prisoners of war. Another amendment, however, went further and proposed that military civil defence personnel should not be made prisoners of war. He sympathized with those thoughts and reserved the right to comment later on any such proposals.

43. Mr. JAKOVLJEVIĆ (Yugoslavia) said that his delegation's amendment (CDDH/II/358) to add the words "and the means of communication" after the word "transport" in paragraph 3 of article 55, was motivated by a desire for completeness. It was not clear if the word "matériel" included means of communication.

44. Mr. SCHULTZ (Denmark) said that the Danish amendments - CDDH/II/317 and CDDH/II/236 - had been rendered superfluous by the issue of amendment CDDH/II/325/Rev.1, containing a proposal for a new article 57 bis, paragraphs 1 and 3 of which corresponded to the two above-mentioned amendments respectively. Amendment CDDH/II/325 was similarly superseded.

45. Paragraphs 2 and 3 of amendment CDDH/II/325/Rev.1 dealt respectively with the fate of personnel whose liability to military service had finally ceased and with that of personnel belonging to the armed forces but carrying out civil defence tasks. If they fell into the power of the enemy, the former were covered by the protection afforded under draft Protocol I, Part IV, Section I, Chapter VI, whereas the latter would become prisoners of war. The latter point took up the problem raised in the foot-note to article 55 in draft Protocol I.

46. In many countries, former officers or reserve officers were engaged in civil defence functions as commanders, instructors or administrators. However, under Article 4, paragraph B (1) of the third Geneva Convention of 1949, they would become prisoners of war if they fell into enemy hands. There seemed, however, a strong case for making an exception to that principle in the case of personnel whose liability to military service had finally ceased, and who should be regarded as protected civilians unless they took part in hostilities. That did not mean that they could not be interned under the provisions governing internment in the fourth Geneva Convention of 1949.

47. Mr. MUELLER (Switzerland), introducing the Swiss amendment (CDDH/II/335), said that after reconsidering the provision in the foot-note to the ICRC version of article 55, the Danish amendment (CDDH/II/322) and the Netherlands amendment (CDDH/II/341), his delegation had come to the conclusion that the ICRC text and the above amendments might be improved in two ways: in respect of the status of the personnel in question, and in respect of the requisitioning of the buildings, equipment and means of transport of military units assigned exclusively to civil defence functions.

48. In certain countries, civil defence tasks were entrusted to purely military or to mixed military and civilian personnel. It would in no way enhance the protection of the civilian population -

which was the main objective of Protocol I - if such military personnel were prevented, by being taken prisoners of war, from carrying out their functions at the very time when they were most needed. Similarly, such formations, and the assistance they could render to the civilian population, would be rendered ineffective if their buildings, equipment and means of transport could be requisitioned. The Swiss amendment accordingly provided that such military personnel should be assimilated to civilian bodies assigned to civil defence tasks provided that they were assigned exclusively to such tasks, that they displayed the distinctive civil defence sign, that they carried only small-arms and that they refrained from any hostile act.

49. The amendment was designed to enhance the protection of the civilian population by providing that such personnel could continue their activities in areas of military operations, where the dangers were greatest for the civilian population and by avoiding the injustice which would result if the civilian population of a given country had to suffer because its civil defence was organized on a military basis.

50. Concerning the purpose of the Danish amendments, the Danish representative had justified the limitation of special protection to purely civilian bodies exclusively by invoking article 53 of the fourth Geneva Convention of 1949. There was nothing, however, to prevent the Conference from going beyond the Convention where that course was justified in terms of the defence of the civilian population.

51. Mr. SANCHEZ DEL RIO (Spain) said that of the three amendments - Danish (CDDH/II/322), Netherlands (CDDH/II/341) and Swiss (CDDH/II/335) - before the Committee, the Spanish delegation preferred the Swiss amendment. While it generally supported amendment CDDH/II/322, it could not accept paragraph 3 of the proposed new article 57 bis (CDDH/II/325/Rev.1). It could therefore only accept the Danish amendment if that paragraph were replaced by the paragraph 2 bis proposed by the Netherlands (CDDH/II/341). However, the Swiss amendment (CDDH/II/335) was better still, since it provided not only the further condition for protection, that military personnel engaged exclusively in civil defence tasks should abstain from any hostile act - a condition which, he thought, should be acceptable to all - but provided that if they fell into the power of the enemy, such personnel should not be considered to be prisoners of war. In his delegation's view such personnel, which had no bellicose function, should be granted protection at all times.

52. Mr. MALINVERNI (International Committee of the Red Cross), referring to sub-paragraph (c) of the Danish amendment (CDDH/II/322), said that it might be desirable for the word "exclusively" in that sub-paragraph to be changed or deleted, since it would be in contradiction with article 47 of draft Protocol I to imply that such buildings might be attacked or destroyed if they were used for other civilian purposes as well as for civil defence. Protection should only be forfeited if such buildings were used for military purposes, but that was already provided for in article 58 of draft Protocol I on the cessation of protection.

53. A similar remark applied to the final words of the sub-paragraph: "... except where destruction is rendered absolutely necessary by military operations". Article 47 already provided for the exception that civilian objects might be destroyed "if they are used mainly in support of the military effort"; but the exception in the Danish amendment appeared to be too wide and general. He asked the Danish representative to explain the assumptions underlying his wording of the sub-paragraph.

54. Mr. SCHULTZ (Denmark) said that his delegation would be very willing to reconsider its amendment in the light of the observations of the ICRC representative.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE SIXTY-FOURTH MEETING

held on Thursday, 6 May 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 55 - Zones of military operations (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/322, CDDH/II/341, CDDH/II/358) (continued)

1. Mr. SOLF (United States of America), referring to the doubts expressed at an earlier meeting by the ICRC and other representatives concerning the interpretation of sub-paragraph (c) of the Danish amendment (CDDH/II/322), to article 55, said that the provision in question seemed to his delegation quite unambiguous. There were no circumstances whatever in which the objects listed in the sub-paragraph might be the subject of attacks, attacks being defined in draft Protocol I, article 44, paragraph 2 as "acts of violence committed against the adversary, whether in defence or offence". Consequently, the phrase "nor may such objects be destroyed except where destruction is rendered absolutely necessary by military operations" at the end of sub-paragraph (c) must apply to something other than acts of violence against the adversary; his delegation understood it to mean that a party to a conflict, when defending itself against an attack, might have to destroy structures, material or means of transport in order to keep them from falling into enemy hands, clear fields of fire or impede the enemy's movements. If such objects included civil defence objects, the Danish provision would prevent their necessary destruction from constituting a breach of the Protocol.

2. Turning to the revised Danish proposal for the addition of a new article 57 bis (CDDH/II/325/Rev.1), he said that his delegation supported paragraphs 1 and 3 but had some reservations concerning paragraph 2, the purpose of which, as he understood it, was to neutralize the provisions of Article 4, paragraph B (1) of the third Geneva Convention of 1949 and to provide for the internment of former or demobilized members of the armed forces under Article 42 of the fourth Geneva Convention of 1949. Whether such persons should be treated as prisoners of war or as interned civilians was a policy question which required consideration by the Committee, and his delegation intended to propose an amendment on the subject in the Working Group.

3. Mr. HARDING (United States of America) considered that the term "shall be respected and protected" which appeared in the ICRC draft of article 55 was somewhat vague. It would be better to be specific about what civil defence personnel and organizations could do. In that connexion, he had noted the phraseology used in sub-paragraph (a) of the Danish amendment to article 55 (CDDH/II/322).

4. Turning to the question of the possible use of military units for civil defence purposes, he said that the effect of the term "assigned permanently and exclusively to civil defence tasks" which appeared in the Netherlands amendment to article 55 (CDDH/II/341) would be to exclude from the protection granted under the relevant provisions any military civil defence organization which engaged in other tasks, such as extinguishing a fire at an airfield or a war plant, and any military unit which lent occasional assistance in civil defence tasks. The Netherlands amendment therefore resembled Article 24 of the first Geneva Convention of 1949, concerning medical personnel, rather than Article 25, concerning members of the armed forces trained for employment as auxiliary personnel. Unlike civil defence tasks, the tasks of permanent medical personnel were specific and easy to identify; for example, aiding the wounded was always a humanitarian task, whereas extinguishing a fire might or might not be, according to the circumstances. There was a real danger that the enemy might hold the tasks performed by military units to be non-humanitarian, using that argument as a pretext for denying civil defence status to all.

5. Miss SHEIKH-FADLI (Syrian Arab Republic) congratulated the Danish representative on his comprehensive proposals relating to civil defence and on the accurate terminology employed. However, her delegation considered that the use of the phrase "land fighting areas" restricted military operations to land fighting only; the question arose of what would happen in the case of land areas affected by aerial or naval action. Her delegation therefore preferred the ICRC term "military operations", since the word "operations" had a broader meaning than the word "fighting".

6. In sub-paragraph (c) of the Danish amendment to article 55 (CDDH/II/322), the transport facilities covered were limited to vehicles and watercraft; aircraft were excluded. Vehicles and watercraft were all right for plains and coastal areas but not for rugged mountain terrain, where emergency aid could be sent only by air. Again, her delegation considered that the ICRC text was more general and covered all the circumstances.

7. Her delegation supported the Swiss proposal for a new article 59 ter (CDDH/II/335).

8. Mr. JAKOVLJEVIĆ (Yugoslavia) said that both the ICRC draft of article 55 and the Danish amendment (CDDH/II/322) defined civil defence bodies first as civilian and secondly as established or recognized by their Governments. He considered that those two essential elements should be spelt out at the beginning of Chapter VI, in article 54.
9. His delegation maintained the proposal to delete the word "intentionally" from paragraphs 1 and 3 of article 55 (CDDH/II/307) because it did not consider that the verb "attack" should be thus qualified.
10. With regard to paragraph 3 of article 55, he drew attention to his delegation's proposal to insert the phrase "and the means of communication" after the word "transport" (CDDH/II/358).
11. The effect of the Danish amendment (CDDH/II/322) would be to limit the scope of article 55 to land fighting areas. Civil defence activities could also be carried out on water and his delegation considered that the article's scope should be broad enough to cover that eventuality. He supported the Danish proposal to limit the protection granted to means of transport to vehicles and watercraft (CDDH/II/322, sub-paragraph (c)).
12. The Swiss proposal for a new article 59 ter (CDDH/II/335), which raised the important issue of whether civil defence tasks could be undertaken by military bodies, would require very careful consideration. His delegation would not exclude that possibility provided certain conditions were met. It also considered that both civilian and military civil defence personnel, like medical personnel, should be permitted to carry light arms. The protection granted to military civil defence personnel who fell into the hands of the adverse party should be of the same type as that granted to medical personnel under Article 28 of the first Geneva Convention of 1949.
13. During its consideration of Chapter VI, the Committee should be guided by the basic principle that civil defence was essentially a civilian function and should as a rule be performed by civilians. Any mention of military units which it might be decided to introduce should be inserted in a separate article at the end of draft Protocol I, Part IV, Section I, Chapter VI rather than in articles 54 or 55.
14. Mr. THUE (Norway) said that amendments CDDH/II/234, CDDH/II/335, CDDH/II/341 and CDDH/II/353 were all related either directly or indirectly to the question of whether special protection should be granted to military units assigned exclusively to civil defence tasks. While his delegation had no objection to any country

entrusting such tasks to military units, it would be somewhat reluctant to see those units granted special civil defence protection under international law.

15. There were three general questions to be considered, namely, what was meant by military units, what were the arguments against using them for civil defence and what were those in favour.

16. First, military units belonged to the armed forces; with the exception of military medical services, they were lawful targets of attack; they wore military uniforms; they were armed and therefore potentially harmful to the adverse party; as a rule, if they fell into the hands of the adverse party they were prisoners of war.

17. Secondly, the extension of special civil defence protection to military units might make compliance with the protective rules less likely; if military civil defence units had the status of unlawful targets, it would almost certainly be more difficult for the adverse party to comply with those rules, particularly in combat zones. That would probably have detrimental consequences for civilian civil defence personnel. The possibility, foreseen in article 57, of obtaining help from outside would decrease. Such units would probably not be allowed to continue their activity in occupied territories. Moreover, the assignment of military units to civil defence tasks would be in contradiction with Article 63 of the fourth Geneva Convention of 1949.

18. Thirdly, both national tradition and the desire for a high degree of efficiency could be adduced as arguments in favour of military civil defence units. Neither argument was convincing, since the maintenance of tradition was questionable if it jeopardized compliance with the rules on protection, and efficiency was not necessarily dependent on the wearing of military uniforms.

19. His delegation was prepared to consider making various concessions to military considerations, but it was not convinced of the desirability of granting civil defence protection to military units wearing military uniforms and armed with small weapons.

20. Mr. MARRIOTT (Canada) said that the law which the Committee was attempting to draft appeared to be threatened by the wish of some delegations to model it on their own national organizations. The proper course to follow was to draw up a clear body of law affording proper protection, to which national systems should subsequently be adapted.

21. His views concerning paragraph 2 of new article 57 bis proposed by Denmark (CDDH/II/325/Rev.1) were similar to those expressed by the United States representative. The wording was not always clear; for instance, he could see no valid reason for the inclusion of the phrase "definitely and finally".

22. In the amendments proposed by the Netherlands (CDDH/II/341) and Switzerland (CDDH/II/335), reference was made to military units assigned "permanently" or "exclusively" to civil defence tasks. Men serving in such units would find themselves in the odd situation of losing all protection as soon as they were transferred to a unit that was not assigned permanently or exclusively to civil defence, whereas medical services personnel retained their status of protected persons. In addition, such units would presumably not be available for any purpose other than civil defence, even in circumstances of dire necessity and despite the fact that they were composed of men in uniform who were not medical personnel. It was difficult to see how the party concerned would be able to establish the identity of those units to the adverse party and provide the necessary guarantees that they were permanently and exclusively assigned to civil defence. Finally, the fact that all military personnel except medical service personnel were liable, under the third Geneva Convention of 1949, to become prisoners of war was also likely to cause difficulties.

23. Turning to the Yugoslav proposal to protect means of communication against attack or destruction (CDDH/II/358), he said that to make the preservation of civil defence means of communication mandatory would be to invite their use for purposes hostile to the adverse party, for example by resistance movements. Furthermore, no Occupying Power was likely to allow a civil defence unit to maintain any communication equipment that was more sophisticated than a telephone line.

24. Mr. HESS (Israel) said that the main object of articles 54 and 55 was to give the civilian population the most effective and comprehensive assistance possible. Small nations had limited human resources, but if too restrictive a system was established, they might be forced to assign military elements to combatant tasks only, thus depriving the civilian population of assistance. His delegation therefore considered that countries should have the possibility of assigning military units exclusively, but not permanently, to civil defence tasks for the benefit of the civilian population. Military units assigned to civil defence and civil defence organizations should be permitted to carry small-arms but civilians who were not members of such organizations should not be permitted to bear arms at all.

25. The Working Group might be requested to draw up two separate paragraphs on the subject, one dealing with civil defence personnel and the other with civil defence installations and equipment.

26. Mr. SKARSTEDT (Sweden), referring to the Netherlands (CDDH/II/341) and Swiss (CDDH/II/335) proposals, said that his delegation could not agree that the personnel of military units performing civil defence tasks should be given the same special protection as civilians, for the reasons already given by other representatives, including those of Canada and the United States of America.

27. His delegation realized that some countries had civil defence units composed of military personnel or of mixed military and civilian personnel, and there was nothing unusual in military personnel assisting civilians in the humanitarian tasks of civil defence. But such military personnel must remain members of the armed forces and be treated as prisoners of war if they fell into enemy hands.

28. The adversary's army would find it hard to accept that some members of the military personnel of the other side wearing military uniforms, carrying small-arms, and perhaps even using their arms, must not be the object of attack or be treated as prisoners of war, and would still find it hard if they were displaying the distinctive civil defence emblem.

29. In that connexion he referred to the arguments of the United States representative. Moreover, what was the real meaning of "military units assigned ... exclusively to civil defence tasks" (CDDH/II/341)? Would such units have to be assigned for the whole period of the conflict? Difficulties would be created if the Committee decided that military personnel might be temporarily assigned to civil defence work.

30. Mr. GONSALVES (Netherlands), referring to paragraph 2 of the Danish proposal for a new article 57 bis (CDDH/II/325/Rev.1), said that it established a new category of protected civilians (persons whose liability to military service had definitely and finally ceased). But anyone not belonging to the armed forces was necessarily a civilian, so that such a provision was superfluous. Moreover, to state that such persons were protected civilians "unless and for such time as they take a direct part in hostilities" and that "if they carry out civil defence tasks they shall be covered by this Chapter" was also superfluous.

31. The Danish representative had argued the need for an exception, because Article 4, paragraph B (1) of the third Geneva Convention of 1949 laid down that persons belonging or having belonged to the armed forces of the occupied country should be made prisoners of war. However, he believed that argument to be wrong, since Article 4, paragraph B (1) of the third Convention actually stated that "Persons belonging or having belonged to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance ..." should be treated as prisoners of war. Such treatment was thus extended at the discretion of the Occupying Power and was not obligatory. He agreed with other speakers that the persons in question should have the same status as the war correspondents, supply contractors, members of the merchant marine and civil air crews mentioned in Article 4, paragraph A of the third Convention, namely, that of civilians. In fact, former officers and soldiers had seldom or never been interned by an Occupying Power.

32. His delegation was therefore unable to support the approach in paragraphs 2 and 3 of amendment CDDH/II/325/Rev.1.

33. His delegation welcomed the Swiss proposal for a new article 59 ter (CDDH/II/335), although it differed markedly from its own proposal (CDDH/II/341), which it regarded as a minimum.

34. He hoped that the Working Group would discuss the whole matter.

35. Mr. CZANK (Hungary) said that his delegation had not yet come to a decision whether or not aircraft should be covered by the protection accorded to the means of transport used for civil defence, but thought that those who argued for their exclusion were probably right.

36. The question of the status of military civil defence personnel needed further discussion. It was, he believed, very important to distinguish between civilian and military civil defence personnel; if the latter fell into enemy hands they should be entitled to prisoner-of-war status. However, the military elements of civil defence units should also be distinguished from military personnel as such; they might be treated in the same way as military medical staff. The Swiss (CDDH/II/335) and Netherlands (CDDH/II/341) proposals might provide a solution of that problem. The question arose as to whether military personnel on civil defence tasks ran greater risks than military personnel on medical duties. The Canadian representative had pointed out that a military man might be assigned to a military civil defence unit for a short period and then be reassigned to a combat unit. However, a military unit

assigned exclusively to civil defence had to be trained for that purpose; a soldier could be of some help but civil defence required special training.

37. The parallel between medical units and civil defence units was interesting: military civil defence personnel and military units assigned to civil defence had the same basic humanitarian purposes and duties as those of medical units; only the description of their activities differed.

38. With respect to the carrying of small-arms by civil defence personnel, he pointed out that the Committee had accepted article 13 permitting civilian medical personnel to bear light individual weapons, and believed that it would not be more dangerous for civil defence personnel to do so.

39. Mr. SADI (Jordan) considered that the distinction between military units and civil defence units must be maintained. Their training and functions were and should be different, and the treatment accorded them under Protocol I and the Geneva Conventions should therefore be different also. His delegation was not satisfied with the criterion of "exclusivity" used to distinguish military units, since, as other speakers had said, military civil defence units could at any time, without notification to the adverse party, change over to military operations. His delegation would have difficulty in accepting the articles on civil defence as a whole, if the word "exclusively" in those articles were not supplemented at all times by the word "permanently".

40. Mr. MAKIN (United Kingdom) said that there had been many arguments against making special provision for military civil defence units, but none in favour.

41. With respect to the point made by the Jordanian representative about the inclusion of the word "permanently", he said that if military units were permanently assigned to civil defence, they should be regarded as civilians, and the problem would then be solved.

42. Article 55 dealt with circumstances in which land fighting was taking place. In those circumstances, however, it would presuppose vast reserves of manpower for one party to have an unresisting military unit, armed only with small-arms, acting as civil defence workers; the idea was quite unreal. What such units did in peace-time or behind their own lines was beside the point.

43. As to whether buildings, matériel and means of transport used by civil defence should be attacked or not, it must be presumed that the ICRC had placed article 55, paragraph 3, in Part IV, Section I, deliberately; the whole of that Section must thus be read as one. In his view, the protection of such objects was covered by article 47, paragraph 2, of draft Protocol I, which had already been adopted by Committee III. Circumstances could arise, in fact, where civil defence buildings might become a military objective: for instance, if a row of houses reserved for civil defence came to be the dividing line between two armies, then from a military standpoint, such houses would be a military objective. The Committee would have to include, perhaps in article 58, a provision similar to those elsewhere in draft Protocol I and the Geneva Conventions to the effect that the buildings, matériel and means of transport used for civil defence must not be used to protect military objectives.

44. Mr. MARTINS (Nigeria) pointed out that the developing countries, with their large populations, would not find it easy to understand why a detachment of the armed forces should be involved in civil defence operations. In Africa, for instance, a military detachment sent to work on civil defence would be regarded as being on a military mission, even if it was not actually fighting. Soldiers remained soldiers in whatever situation.

45. Confusion was likely to arise if soldiers on civil defence duties were specially protected, for special identity signs were likely to be disregarded and all that the ordinary soldier would notice was someone wearing a uniform and carrying arms. He did not therefore see the need to mention military units involved in civil defence operations, and found it superfluous to state, as in the Danish proposal for a new article 57 bis (CDDH/II/325/Rev.1) that personnel whose liability to military service had ceased were protected civilians.

46. Finally, a law applicable to all nations must be a simple one, especially if the developing countries were to observe it. Most of the ideas in the various proposals were, however, based on the situation in the advanced nations.

47. Mr. KHAIRAT (Egypt) said that the term "zones of military operations" in the ICRC text of article 55 was rather ambiguous. The term "land fighting areas" used in the Danish amendment (CDDH/II/322) was an improvement, but such areas needed to be more clearly defined. The Working Group should study all the possibilities and arrive at a clear term.

48. His delegation could not agree that special protection should be accorded to military units engaged in civil defence activities. Each State was, of course, free to organize its civil defence as it wished, but military units should always be treated as such; to afford them special protection when they were assigned to civil defence functions would complicate the situation unduly.

49. Mr. SCHULTZ (Denmark) said that the Nigerian representative's comments had impressed him greatly and that the emphasis placed by developing countries on the need for simple rules should be noted. It was also true that there was a clear distinction between civilian and military personnel and that the latter should not be given special protection under the provisions of Chapter VI.

50. The Canadian representative had rightly observed that in drafting international law the Committee should not endeavour to model it on existing national systems; on the contrary, international law should be created first, and national systems should be adjusted to it subsequently. A major problem for some countries was the treatment to be accorded to the military units incorporated in their civil defence organizations. His delegation took the view that civil defence organizations should be entirely civilian and that if national civil defence arrangements did not meet the requirements of international law, they should be modified accordingly. Under article 58 of the ICRC text it was in fact permissible to make civil defence duties a compulsory service, to arrange for civil defence bodies to receive instructions from military units, and to organize civil defence bodies along military lines. It would thus be possible for the countries concerned to make new arrangements for those of their military units which were assigned to civil defence: while remaining under the operational authority of the Ministry of Defence, the units involved could be converted into unarmed, purely civilian bodies.

51. The CHAIRMAN, referring to the Canadian representative's statement, agreed that it would be bad law if the Committee were to establish rules modelled on the system in force in any one particular group of countries. The Danish representative was perhaps over-optimistic about the possibilities of adjustment; States whose civil defence systems differed from the proposed model were likely rather to refrain from signing and ratifying Protocol I, which would then have too limited an application. In view of the difficulties involved he felt that it would be premature to refer the matter to the Drafting Committee, which would need to have reasonably clear guidance from the Committee.

52. Mr. MARTIN (Switzerland) said that international law obviously took precedence over national law and that the aim of the Conference should be to secure the signing of Protocols which would permit States to adapt themselves, as far as possible, to the requirements of international law.

53. His delegation firmly believed that military functions and civilian functions should be distinguished. However, in military tradition, there was already a special branch of the military called "medical personnel". It might be assumed that, with the development of international law, a similar tradition would arise in which recognition would be given to special military units established to assist with civil defence duties, in addition to the recognition accorded to civilian units.

54. The Committee ought to recognize the practical aspects of the situation. In his own country, for example, military units were involved in civil defence duties; it was felt that persons who had to cope with the effects of bombing had to have the physical conditioning of a soldier. Many other countries, finding it difficult to recruit and train civilian personnel, had established specific military units for civil defence work. The personnel involved could be exclusively engaged in civil defence functions. It might be admitted in principle that such military units could, mutatis mutandis, enjoy a status similar to that of military medical personnel. His delegation's aim in submitting its amendment (CDDH/II/335) had been to assist those countries which wished to give a minimum of protection to military units engaged in civil defence, whether in land fighting areas or in occupied territories.

55. Mr. KOMISSAROV (Byelorussian Soviet Socialist Republic) noted that the main reason for the submission of the amendments to the ICRC text of article 55 had been the need to clarify that text; however, it was clear that some points in the amendments themselves needed clarification.

56. The title of the Danish amendment (CDDH/II/322) was more specific than that of the ICRC draft. However, while there was no doubt, of course, that civil defence would not be needed in the air, it might be needed in such places as rivers, lakes, islands and coastal and port areas, and it was not clear whether they were covered by the amendment. In the same amendment the term "imperative military necessity" needed clarification, since different countries interpreted it in different ways.

57. The status of military units assigned to civil defence functions should not be determined solely in relation to article 55 and its foot-note; it should be considered in the context of the provisions relating to civil defence as a whole.

58. Paragraph 2 of the Swiss proposal for a new article 59 ter (CDDH/II/335) said that if personnel of such units fell into the hands of the enemy, they might be disarmed but should not be considered prisoners of war. However, the amendment did not indicate what their status should then be. Also, if paragraph 3 of the same amendment was considered in conjunction with article 55, there would be two kinds of buildings, matériel and means of transport - those belonging to military units performing civil defence tasks and those belonging to the civil defence bodies. Such a complication of the problem was not justified.

59. The Netherlands amendment (CDDH/II/341) departed least from the original ICRC text in the foot-note to article 55. However, the principal change - entailing the introduction of the words "permanently and exclusively" - was rather vague. Did it mean that the military units concerned must be engaged in civil defence work before the conflict began?

60. His delegation took the view that the absence of military units in civil defence would weaken the effectiveness of the civil defence system in providing assistance to the civilian population.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE SIXTY-FIFTH MEETING

held on Friday, 7 May 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 56 - Occupied territories (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/70, CDDH/II/234, CDDH/II/307, CDDH/II/323, CDDH/II/340, CDDH/II/346, CDDH/II/352, CDDH/II/358) (continued)*

1. The CHAIRMAN invited the Committee to consider article 56 of draft Protocol I and drew attention to the eight amendments which had been submitted. He asked the sponsors of amendments CDDH/II/70 and CDDH/II/307 whether, in view of the fact that their amendments appeared to be covered by later, more comprehensive amendments, they might be willing to withdraw them.
2. Mr. MALINVERNI (International Committee of the Red Cross) pointed out that article 56 supplemented article 55 entitled "Zones of military occupation". The earlier, 1972, version of the ICRC text had contained a provision prohibiting the requisitioning of civil defence buildings, matériel and means of transport, but it had been abandoned on the advice of Government experts, who had argued that such a prohibition would have to carry with it a number of reservations and exceptions which would open the way to abuses. The ICRC had thought that the matter should continue to be governed by the general rules of international law on requisitioning. He noted, however, that several of the amendments would restore the prohibition.
3. Miss SHEIKH-FADLI (Syrian Arab Republic), introducing amendment CDDH/II/70, said that all the civil defence articles aimed at protecting the civilian population in time of war and ensuring the freedom of action of civil defence bodies, so that they could continue to operate in occupied territory without interference from the Occupying Power. It was for that reason that the sponsors of the amendment considered that a reference to requisitioning should be reinserted in the article; all civil defence operations would be brought to a stop if civil defence buildings, matériel, and means of transport were requisitioned.

* Resumed from the sixty-first meeting.

4. Speaking for her own delegation, she considered that the amendment was adequately covered by paragraph 2 of the Danish amendment (CDDH/II/323).
5. Mr. SADI (Jordan) said that paragraph 2 of the Danish amendment (CDDH/II/323) contained a qualification of the prohibition of requisitioning - namely, "if that diversion or requisition would jeopardize the efficient discharge of their civil defence mission" which constituted an essential difference between the Danish proposal and amendment CDDH/II/70. Occupation was essentially a temporary state of affairs, whereas requisitioning implied a certain permanence. There was therefore a clear contradiction between the two ideas.
6. Mr. SANCHEZ DEL RIO (Spain) said that his delegation's amendment (CDDH/II/234) concerned a point about which further discussions were to be held, namely, the admissibility of militarily-organized civil defence bodies. He would therefore prefer its discussion to be postponed.
7. Mr. SCHULTZ (Denmark) said that his delegation withdrew as a sponsor of amendment CDDH/II/307 since it was covered in all essentials by paragraph 2 of his delegation's own amendment (CDDH/II/323).
8. Mr. WARRAS (Finland) said that the sponsors of amendment CDDH/II/307 had originally intended to follow the text of article 14 of draft Protocol I, but had found that the circumstances referred to in articles 14 and 56 were not entirely parallel. They had accordingly decided to revert to the 1972 text. His own delegation felt very strongly that some provision prohibiting or limiting the requisitioning of civil defence buildings, matériel or means of transport should be included in the article. A total prohibition might not be realistic, however, and the amendment accordingly provided for a limitation of requisitioning.
9. His delegation was not willing to withdraw its sponsorship of amendment CDDH/II/307 because it saw certain differences between it and the Danish amendment (CDDH/II/323).
10. Mr. SKARSTEDT (Sweden) and Mr. THUE (Norway) also wished to maintain their sponsorship of amendment CDDH/II/307, for the reasons stated by the Finnish representative.
11. Mr. JAKOVLJEVIĆ (Yugoslavia) said that his delegation wished to withdraw its sponsorship of amendment CDDH/II/307, which was covered by various later amendments.

12. Mr. KABUAYE (United Republic of Tanzania) said that his delegation wished provisionally to maintain its sponsorship of amendment CDDH/II/307, but that it might change its decision in the light of developments.
13. Mr. SCHULTZ (Denmark), introducing amendment CDDH/II/323, said that, in all essentials, it was based on the ICRC text. There were, however, six points of detail that should be mentioned.
14. First, in the first sentence of paragraph 1, the words "to the extent feasible" had been inserted because the Danish delegation thought it somewhat unrealistic to provide, without qualification, that civil defence bodies in occupied territories should receive every facility from the authorities for the discharge of their mission.
15. Secondly, the end of the second sentence had been changed because the ICRC's phrase "activities unconnected with their functions" went further than was necessary. The proposed text - "make it impossible for them to perform their civil defence functions" - stated all that was required from the civil defence standpoint.
16. Thirdly, the fourth sentence of the Danish amendment contained a provision - that the Occupying Power might disarm civil defence personnel for reasons of security - which was not contained in the ICRC text; it seemed a reasonable provision, provided, of course, that civil defence personnel were permitted under the Protocol to carry arms at all, a matter which had not yet been decided.
17. Fourthly, the last sentence of the Danish amendment, referring to Article 63 of the fourth Geneva Convention of 1949, was also new. Some delegations might find it superfluous since Article 63 remained in force in any case; but his delegation had thought it worth while to draw attention to that Article in the context of a rather complicated new regulation in Protocol I.
18. Fifthly, the last two lines of paragraph 2 of amendment CDDH/II/323, which were identical with those of amendment CDDH/II/307 contained a qualification of the total prohibition of the diversion of requisition of civil defence buildings, etc., contained in amendment CDDH/II/70. That change had been introduced because it was felt to be realistic.
19. Lastly, there were only minor differences between amendment CDDH/II/307 and paragraph 2 of amendment CDDH/II/323. One was the insertion in the latter text of the words "or in use by", so that it read "belonging to or in use by civil defence bodies". It was

perfectly conceivable that civil defence bodies might make use of buildings etc., which did not officially belong to them. Such buildings, etc. should be protected from requisitioning.

20. Mr. JAKOLJEVIĆ (Yugoslavia), referring to the Yugoslav amendment (CDDH/II/340), said that the provisions of draft Protocol I making it possible for civil defence to enjoy an internationally protected status represented a right of which Governments could make use in accordance with the conditions set out in Part IV, Section I, Chapter VI of draft Protocol I, but not an obligation. Governments were free to organize their civil defence on a different basis from the conditions of the Protocol, in which case it would not be governed by Chapter VI.

21. That was of particular importance in connexion with article 56 concerning occupied territories. His Government took the view that a civil defence system should be autonomous and free to decide whether to pursue its activity in a certain region or territory. The grounds for that view lay in the Yugoslav Government's general attitude towards occupation. Under the Yugoslav Constitution, the Law on National Defence and other legal provisions, Yugoslav citizens were forbidden to accept and recognize occupation. The country's whole conception of defence was based on the principle that an aggressor should not be permitted to stabilize or effectively exercise its power on the territory it provisionally held. All Yugoslav bodies were obliged to obey the orders of the competent Yugoslav organs directing the general defence of the people. That obligation also applied to the civil defence system which was not to become a part of the aggressor's machinery. That was the Yugoslav view, but in any event, every Government should be free to decide, in each particular case, whether civil defence should continue or cease its activity in conformity with its own principles of defence against aggression, which might require the cessation of the work of civil defence.

22. Yugoslavia's attitude was dictated by the war-time experiences of many countries, which had suffered occupation that was not of the "traditional" kind, but was criminal in nature, exercised in such a way that war crimes and crimes against humanity were perpetrated systematically and on a large scale, with the aim of extermination the population in breach of all the rules of international law, the laws of humanity and the dictates of the public conscience.

23. His delegation agreed that the civilian population needed civil defence, but an aggressor might abuse his rights by turning the civil defence organization into an instrument serving mainly or exclusively its own aggressive purposes and military actions.

International law should not allow civil defence to become an instrument at the service of an aggressor who was himself misusing the law and committing large-scale violations of it.

24. His delegation had submitted amendment CDDH/II/340 to protect civil defence bodies from any compulsion by an Occupying Power, leaving them free to decide whether or not to continue their work in a given region or area, according to circumstances. As far as the Yugoslav amendment (CDDH/II/358) was concerned, his delegation proposed that the last sentence of article 56, paragraph 1 of the ICRC text should be deleted since it was superfluous and in contradiction with the Geneva Conventions' system.

25. Mr. SOLF (United States of America) said that his delegation's amendment to article 56 (CDDH/II/346) had been prompted solely by the statement in the ICRC Commentary (CDDH/3, p. 72) that article 55 did not apply to occupied territories and that, if such a territory became a battle area, it was to be dealt with under article 56. That statement was totally unrealistic since, as history had shown, occupied territories often did become battle areas. In such cases, article 55, which had been carefully designed to protect civil defence units in a combat situation, should apply.

26. Article 63 of the fourth Geneva Convention of 1949 provided basic recognition for civil defence units in occupied territory "subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power". The expression "urgent reasons of security" obviously covered cases where the battle reverted to, or arose in, an occupied territory. Accordingly, the United States amendment laid down that in such cases alone the Occupying Power might derogate from the immunities and privileges accorded to civil defence organizations under article 56 of draft Protocol I. In no circumstances did it provide for any derogation from the principles of article 55. Failure to allow for such derogation would merely invite disregard of the Protocol.

27. The Danish amendment to article 56 (CDDH/II/323), which his delegation supported, referred in paragraph 1 to Article 63 of the fourth Geneva Convention of 1949, and members might feel that such a reference precluded the need for a new paragraph 3. In that event, his delegation would be prepared to withdraw its amendment, on the understanding that there was a clear rejection by the Committee of the ICRC statement in question.

28. Mr. KORNEEV (Union of Soviet Socialist Republics), introducing amendment CDDH/II/352 to article 56 on behalf of the sponsors, said that his remarks were equally applicable to the same

delegations' amendment to article 58 (CDDH/II/353). Those delegations had in general sought to abide by the ICRC text, which struck a good balance between humanitarian and military needs. However, they were rather concerned about the large number of written and oral amendments submitted, which tended to disturb the balance of the ICRC text, mainly in favour of military needs. Moreover, such a plethora of amendments could only complicate the task of the Chairman and Drafting Committee. It was therefore those delegations' intention to review their amendments and improve them in the light of the other amendments submitted and the comments made.

29. Mr. MALINVERNI (International Committee of the Red Cross) agreed with the United States representative that some clarification was needed regarding articles 55 and 56. He thought that in order to remedy the drawbacks mentioned by the United States representative the Committee might revert to the text of Article 55 as submitted by the ICRC to the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflict. That text (article 68 of the 1972 draft) had been designed for general application and would allow for the protection of civil defence personnel at all times, even when an occupied territory became a combat zone.

30. Mr. SADI (Jordan) said that the Committee should not just accept the idea that requisitioning was an inevitable feature of occupation. The manner in which war was waged should be adapted to humanitarian law, rather than vice versa.

31. With regard to the United States amendment (CDDH/II/346), he found it difficult to accept the last phrase beginning "in such areas" and ending with the words "Occupying Power" which might be used as an excuse not to apply article 55.

32. Mr. AL-FALLOUJI (Iraq) said that his delegation supported the Danish amendment to article 56 (CDDH/II/323). While there were certain differences between that amendment and the amendment submitted by thirteen Arab delegations (CDDH/II/70), they did not present any major problem and could be reconciled, provided that the requisitioning or diversion of buildings, matériel and transports was prohibited.

33. The remaining amendments to article 56 reflected the same spirit as amendment CDDH/II/70, and he understood, moreover, that the United States and Soviet Union delegations did not intend to press theirs. He therefore suggested that the Committee should take the Danish amendment together with the Yugoslav amendment (CDDH/II/340) as the basis for its consideration. The two amendments could then be referred to the Drafting Committee with any comments that had been made.

34. Mr. MARTIN (Switzerland) said that he fully supported the Danish amendment (CDDH/II/323), and in particular the inclusion of the words "or in use by" in paragraph 2. He also supported amendment CDDH/II/307, where he was pleased to see the reference to public shelters. His delegation regarded the provision of shelters, both public and private, as vital for the protection of the civilian population, and it therefore considered that the prohibition on requisitioning by the Occupying Power should be extended to them.

35. He noted that paragraph 2 of the Danish amendment leaned towards the proposal submitted to the Conference of Government Experts in 1972. That proposal had however been more specific, since it laid down that requisitioning or diversion should only be allowed, first, on a temporary basis and, secondly, in cases of extreme need. Those two additional elements should certainly be considered by the Working Group.

36. Mrs. RODRIGUEZ-LARRETA DE PESARESI (Uruguay) said that her delegation supported the Danish amendment to article 56 (CDDH/II/323) as a good basis on which to modify the ICRC text.

37. Mr. MARRIOTT (Canada) said that article 56 provided a further example of the need for care in the way the whole subject of civil defence was treated. It started by referring to "civilian bodies assigned to the discharge of the tasks mentioned in article 54" and therefore no decision could be taken on the article until the text of article 54 had been decided upon. Article 56 contained a list of prohibitions addressed to the Occupying Power, but it should be borne in mind that the Occupying Power had rights as well as duties and the list should not be unduly long.

38. He could support the United States amendment (CDDH/II/346) in principle, although the wording should perhaps be changed. He wondered if there was any need for provisions on requisitioning going beyond Article 52 of the Regulations respecting the Laws and Customs of War on Land, annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, which contained all that was necessary and reasonable under the circumstances.

39. Mr. SKARSTEDT (Sweden), referring to the United States amendment (CDDH/II/346), said that it seemed reasonable to state that the provisions of article 55 should apply without derogation to areas of an occupied territory where land fighting was taking place, but he doubted the need for the second part of the amendment. He also had doubts about amendment CDDH/II/352, as such a provision might make it impossible for civil defence personnel to perform their functions. He could support the Danish proposal for paragraph 1, although he preferred the ICRC draft. While appreciating the aim of the Yugoslav proposal (CDDH/II/340), he wondered whether it was necessary. If it was considered to be so, he thought it

could be improved by the addition at the end of the sentence of the phrase "in the interests of the Occupying Power".

40. Mr. LAZAR (Romania) said that his delegation did not think it appropriate to accord the Occupying Power a legal basis for violating the right of the civilian population to protect itself. The rights of the Occupying Power should not be extended. He therefore supported the Yugoslav amendment, which seemed to be closely related to paragraph 2 of the ICRC draft. Perhaps the two texts could be reconciled in the Working Group.

41. Mr. SCHULTZ (Denmark) said that, as his country had shared with Yugoslavia the experience of occupation by a hostile Power in recent times, he sympathized with the motives for the Yugoslav proposal. He doubted, however, whether it was realistic to be so specific. The last sentence of the Danish proposal for paragraph 1 covered the Yugoslav point, though perhaps not completely. An attempt should be made to strike a balance between the rights of the Occupying Power and of the population of the occupied territory. As regards amendment CDDH/II/352, he agreed that civil defence bodies should discharge their functions "under the supervision of the Occupying Power", but considered that the phrase "with their permission" went too far. The articles in Chapter VI were an attempt to establish new international law and to limit the prerogatives of an Occupying Power.

42. Mr. CZANK (Hungary) said that the reference in the Danish amendment to paragraph 1 to civil defence bodies being "governed by Article 63 of the fourth Convention" should be completed by the word "also", since the Geneva Convention in question did not expressly mention civil defence bodies and they would therefore be governed for the most part by the articles in Part IV, Section I, Chapter VI of draft Protocol I.

43. As regards the requisitioning of buildings, etc., there were three possibilities. The first was to adopt the line of the ICRC text and not mention the subject, the second was to draw up a detailed prohibition of requisitioning and the third was to adopt the Danish line of qualified prohibition. The Danish proposal would harmonize with article 14 on the requisition of civilian medical units, which had already been adopted.

44. Mr. JAKOVLJEVIĆ (Yugoslavia) reminded the Committee that the aim of the Geneva Conventions and draft Protocol I was to increase the protection afforded victims of armed conflicts. The Occupying Power would be strong enough to defend its own rights and its powers should not be extended.

45. The sponsors of amendment CDDH/II/352 intended to revise it, so he would not comment on it in detail at the present stage. But he would be opposed to the inclusion of any such phrase as "to the extent possible" (CDDH/II/323), since that might lead to the work of civil defence bodies being eliminated. No provision should be made allowing the Occupying Power to requisition buildings, matériel, etc., since that could enable the Occupying Power to "divert" by means of requisitioning. He would prefer not to mention requisitioning.

46. Mr. SOLF (United States of America) reminded the Committee that what it was drafting was not an entirely new convention but a supplement which would harmonize with the articles of Part III, Section III, of the fourth Geneva Convention of 1949. The reference to public officials in Article 54 of that Convention might well include officials of civil defence organizations. Article 51 of the Convention authorized the Occupying Power to compel labour for certain purposes, some of which came close to those listed in article 54 of draft Protocol I. Those and similar points should be borne in mind by the Working Group.

47. The CHAIRMAN declared the debate on article 56 closed. As with articles 54 and 55, voting on questions pertaining to article 56 would take place when the discussion on all the articles of Chapter VI had been completed. He was pleased to note that some sponsors of amendments to article 56 had stated they were ready to modify them. He hoped that simpler texts would be submitted to the Working Group.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE SIXTY-SIXTH MEETING

held on Monday, 10 May 1976, at 10.25 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 57 - Civil defence bodies of States not parties to a conflict and international bodies (CDDH/1, CDDH/45, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/234, CDDH/II/324, CDDH/II/337, CDDH/II/345, CDDH/II/349)
(continued)*

1. The CHAIRMAN reminded the Committee of its decision to refer all the draft amendments to the combined Drafting Committee/Working Group, since the articles with which they dealt were inter-related. He invited the sponsors of the amendments to introduce their texts.

2. Mr. MALINVERNI (International Committee of the Red Cross) explained that the basic idea underlying article 57 was embodied in Article 27 of the first Geneva Convention of 1949. Assistance rendered by civil defence bodies of countries not parties to a conflict could prove useful, especially in the case of conflicts in countries which had no civil defence services or where such services were inadequate. In the draft article submitted to the 1972 session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, the ICRC had selected as a title the words "Organizations of neutral States". In the opinion of some experts that title had not made it clear enough that the neutrality in question was not only permanent but also occasional neutrality. That title had also been considered too restrictive inasmuch as it did not authorize a belligerent but allied State to assist the civil defence services of a State party to a conflict. The more comprehensive term "Organizations of States not involved" had finally been selected in 1972 by the ad hoc Sub-Commission. In the text now before the Committee, the ICRC had used the term "Civil defence bodies of States not parties to a conflict", which removed any ambiguity to which the use of the word "neutral" might give rise, but which placed civil defence bodies of belligerent and allied States outside the scope of the article.

* Resumed from the sixty-first meeting.

3. Unlike the 1972 text, the present text also provided that, before carrying out their civil defence activities, civil defence bodies of States not parties to a conflict must notify the adverse party; another difference was that the present text did not make the participation of civil defence bodies of States not parties to a conflict dependent upon the agreement of the adverse party, since the ICRC had considered that such agreement would be too difficult to obtain.

4. Paragraph 2 was entirely new. Although international civil defence bodies did not exist at the moment, they could be established in the future and it was useful to provide for their protection.

5. Mr. MARTIN (Switzerland) said that the sponsors of amendment CDDH/45 to article 57 had wished to make the title explicit as far as civil defence bodies of neutral States were concerned. The same idea was to be found in the title of amendment CDDH/II/324, submitted by Denmark. His delegation considered that, if the Danish title was retained, amendment CDDH/45 would no longer be necessary.

6. Mr. TERSTAD (Sweden) said that the sponsors of amendment CDDH/II/345 had wished to stress the humanitarian nature of the tasks in question and for that reason they preferred the expression "civilian bodies" to the words "civil defence bodies", both in the title and in the body of the text. They supported the Danish proposal (CDDH/II/324).

7. Mr. SANCHEZ DEL RIO (Spain) explained that his delegation's amendment (CDDH/II/234) affected only the Spanish text, which needed to be brought into line with the English. The combined Drafting Committee/Working Group would consider the matter at a later stage.

8. Mr. SCHULTZ (Denmark) said that, in his delegation's amendment (CDDH/II/324), the two paragraphs of the ICRC text had been merged into one, without any change of meaning. His delegation had also wished to make the title clearer by replacing the words "civil defence bodies" by the words "civilian bodies". At the international level there were as yet no specialized civil defence bodies and it was unlikely that there ever would be, but there might well be international civilian bodies with powers to assist in matters of civil defence. The words "neutral or other States not parties to a conflict" had been discussed at the second session of the Diplomatic Conference, where agreement had been reached to use them in other articles.

9. Paragraph 2 was a new proposal designed to ensure that an Occupying Power could exclude or restrict the civil defence activities of civilian bodies from neutral or other States not parties to the conflict or of international civilian bodies only if it could ensure the adequate performance of those activities itself.
10. Mr. CLARK (Australia) said that his delegation's amendment (CDDH/II/337) could best be considered in the combined Drafting Committee/Working Group.
11. Mr. IJAS (Indonesia) said that the purpose of his delegation's amendment (CDDH/II/349) was to secure an agreement whereby a civil defence body of a State not party to a conflict was assured of protection before it was invited by a State party to the conflict.
12. Mr. URQUIOLA (Philippines) suggested that the words "with the agreement of the parties to the conflict" might be a more accurate reflection of what was intended.
13. Mr. IJAS (Indonesia) replied that he would like the matter to be referred to the combined Drafting Committee/Working Group.
14. Mr. PIERON (Belgium) said that his delegation supported the Indonesian amendment, since more than two parties might be involved. In the French text of the ICRC draft, the words "cette dernière" should be amended to read "ces dernières", since they referred to "activités".
15. Mr. MAKIN (United Kingdom) reminded the Committee that all that the ICRC text required was that the adverse party should be notified. If the agreement of the adverse party had to be obtained in advance, it was unlikely to be granted, and even if it was granted it would probably be granted too late.
16. Mr. ALBA (France) agreed with the United Kingdom representative. The Indonesian amendment would be difficult to implement and would confer upon one party powers over territory which did not belong to it.
17. Mr. KHAIRAT (Egypt) said that paragraph 2 of the Danish amendment (CDDH/II/324) would appear to confer excessive powers and rights upon Occupying Powers. It should therefore be deleted.
18. Mr. LAZAR (Romania) said that his delegation would like the protection granted under article 57 to be extended also to the post and to means of telecommunication. He hoped that there would be an opportunity to discuss the possibility in the combined Drafting Committee/Working Group.

19. Mr. JAKOVLJEVIĆ (Yugoslavia), speaking as Chairman of the combined Drafting Committee/Working Group on articles 54 to 59, said that two controversial questions had arisen in respect of article 57, namely, whether notification to the adverse party was sufficient or whether the latter's agreement was necessary, and whether paragraph 2 of the Danish amendment (CDDH/II/324) should be inserted. He asked whether the Drafting Committee/Working Group would be required to take a decision on those two questions.

20. The CHAIRMAN said that he had understood that the Committee would prefer not to take a vote on any controversial question relating to articles 54 to 59 until consideration of draft Protocol I, Part IV, Section I, Chapter VI on civil defence had been completed. A list of all such questions would be drawn up and read out to the Committee once all the articles in the Chapter had been discussed. The Committee would then be able to decide which matters might be put to the vote and which might be referred to the Drafting Committee/Working Group for discussion with a view to reaching a compromise solution.

21. Mr. IJAS (Indonesia) considered that the Committee should not vote on any of the controversial points until they had been discussed by the Drafting Committee/Working Group.

22. Mr. URQUIOLA (Philippines) said that none of those points should be put to the vote until the whole Chapter had been considered.

23. Mr. SCHULTZ (Denmark) said that the Drafting Committee/Working Group should be requested to consider all such questions and submit proposals to the Committee.

24. The CHAIRMAN observed that the Committee might be able to take decisions on some points before they were referred to the Drafting Committee/Working Group. He suggested that the question of the procedure to be followed should be left open until the Committee had completed consideration of Chapter VI and had been provided with a list of all the questions which remained to be settled.

It was so agreed.

New article 57 bis - General protection (CDDH/II/325/Rev.1, CDDH/II/342)

25. The CHAIRMAN invited the Committee to consider the revised Danish proposal to add a new article 57 bis (CDDH/II/325/Rev.1) and the amendment to that proposal submitted by Finland, Norway and Sweden (CDDH/II/342).

26. Mr. SCHULTZ (Denmark) said that he had introduced his delegation's revised proposal (CDDH/II/325/Rev.1) at the Committee's sixty-third (CDDH/II/SR.63) meeting, in connexion with the discussion on article 55. He had nothing to add to the comments he had made on that occasion.

27. Mr. HØSTMARK (Norway), introducing the amendment to the revised Danish proposal on behalf of the sponsors (CDDH/II/342), said that the first sentence of paragraph 2 had been rephrased to avoid the use of the word "liability", one of the effects of which would be to exclude from civilian status persons who, in a system of national military draft service, were on the military rolls and subject to be called up. The word also had a number of other connotations, for example in the economic field. The category of personnel with which the paragraph was concerned should be limited unambiguously to persons currently serving in the armed forces.

28. The word "protected" had been deleted from the first sentence of paragraph 2 because civilians were protected as such. It would not be desirable to imply that there might be two categories of civilian, those who were protected and those who were not.

29. The phrase "unless and for such time as they take a direct part in hostilities" had been deleted because the sponsors considered that no person taking a direct part in hostilities could claim any form of civilian protection. To retain the phrase would be to state the obvious and might confuse the issue.

30. The arguments adduced by some representatives in favour of the deletion of paragraph 2 deserved consideration. The sponsors of amendment CDDH/II/342 were prepared to approach the question with an open mind in the Drafting Committee/Working Group and they would be willing to discuss any suggestions for improvement in the wording of their amendment.

31. The CHAIRMAN invited comments on the revised Danish proposal and the amendment to it.

There were no comments.

Article 58 - Cessation of protection (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/70, CDDH/II/320, CDDH/II/326, CDDH/II/338, CDDH/II/343, CDDH/II/347, CDDH/II/353)**

32. Mr. MALINVERNI (International Committee of the Red Cross) said that article 58 was a new article which had not appeared in the 1972 draft. It was based on article 13 of draft Protocol I and on

** Resumed from the sixty-first meeting.

Article 21 of the first Geneva Convention of 1949. The term "harmful act" was explained in a negative manner in order to avoid abusive withdrawal of the protection granted to civil defence personnel. Article 58, like some of the other articles concerning civil defence, was not unconnected with the thorny problem of the relationship between civilian and military personnel.

33. The CHAIRMAN observed that paragraph 1 was closely related to the question of reprisals, which had been referred to Committee I.

34. Mr. KHAIRAT (Egypt), introducing amendment CDDH/II/70 on behalf of the sponsors, said that the word "harmful" which appeared in the ICRC text was not the most appropriate qualification for the type of act which should cause civil defence personnel to be deprived of their protection. It might also be open to misinterpretation.

35. Mr. MAKIN (United Kingdom), introducing amendment CDDH/II/320 on behalf of the sponsors, said that, as was the case for amendment CDDH/II/319 to article 55, the sponsors wished to retain their proposal until both the question of the role of police in civil defence and that of the carrying of arms in zones of military operations had been settled.

36. Mr. JOSEPHI (Federal Republic of Germany) endorsed the statement by the United Kingdom representative. The position of his delegation regarding the amendment would depend on the outcome of the discussions on the scope of civil defence that were taking place in the combined Drafting Committee/Working Group.

37. Mr. SCHULTZ (Denmark), introducing his delegation's amendment to article 58 (CDDH/II/326), said that only paragraph 2 (c) differed in substance from the ICRC text. His delegation considered that permission to bear small-arms should be granted only in areas where fighting was not taking place, since it would be highly dangerous for civil defence personnel to carry such arms in areas where fighting was taking place. The proposed insertion of the phrase "unless previously ordered to be disarmed" was consequential upon the Danish amendment to article 56 (CDDH/II/323), which provided that the Occupying Power might disarm civil defence personnel for reasons of security.

38. The term "small-arms" might require alteration, for he thought that it was used in military terminology to cover not only light individual weapons but also heavier support weapons. Light individual weapons, such as pistols and rifles, were what his

delegation had in mind; the Drafting Committee/Working Group might wish to consider the possibility of adopting that term, which had been adopted at the second session of the Conference for an article relating to the wounded and sick.

39. Mr. CLARK (Australia) said that the first proposal in his delegation's amendments (CDDH/II/338) to article 58 was to change the position of the word "specifying" in paragraph 1. The proposal was consequential upon an amendment to article 54 and its adoption would depend on the decision to be taken by the combined Drafting Committee/Working Group on that amendment.

40. The second proposal was to cover a wider category of personnel by replacing the word "military" in paragraph 2 (d) of article 58 by the words "non-civilian". As that proposal, too, would be discussed by the combined Drafting Committee/Working Group, he suggested that his delegation's amendments should be considered by the Committee at a later stage.

41. Mr. TERSTAD (Sweden) introduced an amendment to article 58, paragraph 3, submitted by Finland, Norway and Sweden (CDDH/II/343), which sought to replace the expression "civil defence bodies" by "civilian bodies". It was consequential upon the amendment submitted by the same three delegations to paragraph 1 of article 57 (CDDH/II/345) and the same arguments applied to it.

42. Mr. PIERON (Belgium) said that his delegation firmly believed that civil defence units should never be dependent upon military authorities in times of armed conflict and that a clear distinction must be made between the army, whose task was to wage war, and civil defence, which was responsible for helping civilians. It was because the two tasks were incompatible that his delegation had submitted its amendment (CDDH/II/347) to paragraphs 2 and 3 of article 58.

43. With regard to paragraphs 2 (a) and (b) of the ICRC text of article 58, his delegation thought that co-operation by civil defence personnel with military personnel could be justified only in exceptional cases, that was to say when it was absolutely essential for the protection of the civilian population. It was undesirable to ensure protection for civil defence personnel taking orders from the military authorities or co-operating regularly with them, or when such personnel formed an integral part of military civil defence units. It would prefer civil defence units to be purely civilian, but thought it best to leave the matter to be discussed by the combined Drafting Committee/Working Group. It should not be forgotten that in times of armed conflict, particularly occupation, it was the enemy or Occupying Power that would take a unilateral decision on the treatment of

the civil defence personnel of the occupied country; any protection granted by the Protocol to civil defence personnel might therefore be illusory if civil defence units were to include military elements. He agreed with the Norwegian representative that special protection should be granted to civil defence personnel only if their work was of a humanitarian nature and that civil defence should be civilian in structure to avoid any possible confusion in the eyes of the enemy. The Committee must try to draw up simple and clear rules that would enable a soldier to distinguish, without risk of error, between civil defence and military personnel. Only then could the special protection which the civil defence personnel might claim be usefully granted.

44. With respect to paragraph 2 (c) of the ICRC text of article 58, his delegation considered that maintaining order in a stricken area was police work and would not normally fall to civil defence.

45. In view of the basic objective of civil defence, namely, to assist the civilian population, special care had to be taken with respect to the bearing of arms by civil defence personnel. His delegation was proposing a form of words that would bring paragraph 2 (c) of article 58 into line with article 13, paragraph 2 (a), which had been adopted by the Committee at its twenty-third meeting on 24 February 1975. If the Belgian text was adopted, civil defence personnel would be authorized to bear light individual arms solely for the purpose of ensuring their own defence or that of the civilian population for which they were responsible.

46. He considered that the Danish amendment to article 58, paragraph 2 (c), (CDDH/II/326) was fraught with danger. In modern warfare, the areas where fighting took place were liable to change rapidly. The Danish text meant that the bearing of arms by civil defence personnel in areas where fighting was taking place would be considered harmful to the enemy and would thus entail the cessation of protection. His delegation could understand the reasons behind the amendment, but would point out that paragraph 1 of the Danish amendment to article 56 (CDDH/II/323) stated that "The Occupying Power may disarm civil defence personnel for reasons of security". Civil defence personnel could therefore bear arms in occupied territory and he wondered why the Danish delegation did not consider the bearing of arms by such personnel in occupied territory a harmful act.

47. With respect to paragraph 2 (d) of the ICRC text, his delegation thought that military units should be organized so as to provide for their own maximum protection. For that reason his delegation felt that the work of civil defence personnel

should benefit military victims only occasionally and it therefore agreed with the Danish proposal for paragraph 2 (d) (CDDH/II/326). The army had in fact its own medical units, and under article 12, paragraph 1, adopted at the Committee's twenty-third meeting, "medical units shall be respected and protected at all times and shall not be the object of attack".

48. The only difference between the ICRC text and the Belgian proposal for paragraph 3 of article 58 was the deletion in the latter of the words "and compulsory service in them". The Belgian delegation feared that those words had military undertones and would tend to blur the distinction between civil defence and the army. It would be prepared to withdraw that part of its amendment; however, if it was understood that the words "and compulsory service in them" applied only to civilian units dealing exclusively with civil defence.

49. His delegation's understanding was that "organization of civil defence bodies along military lines" might evoke military-type discipline and hierarchy, but in no case could that mean that civil defence bodies could be placed under the authority of the military.

50. Despite his delegation's preference for purely civilian civil defence, it realized that account must be taken of the fact that in several countries military units performed civil defence tasks. The principal difficulty as regards civil defence lay in the degree of protection to be granted to personnel belonging to such units in time of armed conflict. His delegation thought, in that connexion, that the text of article 57 bis proposed by Denmark (CDDH/II/325/Rev.1) and the text of article 59 ter proposed by Switzerland (CDDH/II/335) would provide an excellent basis for discussion in the combined Drafting Committee/Working Group. It was particularly important to bear in mind the situation of some developing countries with no civilian civil defence bodies, where civil defence had to be carried out by military units. The personnel of such units must not be made prisoners of war if they fell into enemy hands and thus found it impossible to carry out their humanitarian tasks. In that connexion the Swiss amendment (CDDH/II/335) was particularly useful.

51. Mr. KORNEEV (Union of Soviet Socialist Republics) said that his delegation intended to revise the wording of the amendment to article 58 submitted by his delegation and the delegations of the Byelorussian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic.

52. Mr. MALINVERNI (International Committee of the Red Cross) suggested that the combined Drafting Committee/Working Group should be asked to see that the text of article 58 was brought into line with that of article 13, in which the word "harmful" occurred.

53. Mr. IJAS (Indonesia) recalled his statement on civil defence in the general debate. The Committee must not lose sight of the fact that in some countries military units were included in civil defence bodies. His delegation wished to know what protection would be granted after cessation of the protection mentioned in Chapter VI, for that chapter was silent on the matter. The civilian personnel of civil defence bodies should continue to enjoy the treatment of civilians and military civil defence personnel should be treated as prisoners of war.

54. When article 58 mentioned protection for civil defence units in a certain situation it did not imply that no protection whatsoever should be provided when that situation ended. He stressed once more the wide disparities between civil defence organizations in different countries. In Indonesia, civil defence in time of war came under military authority; nevertheless the protection of civil defence units continued, with civilians being treated as civilians and the military as prisoners of war.

55. Mr. SANCHEZ DEL RIO (Spain) pointed out that a drafting problem would arise if amendment CDDH/II/343 were adopted. That amendment as it stood extended protection to all civilian bodies, whereas the intention was to extend it only to organizations dealing with civil defence. It should be made clear that the bodies in question were performing the tasks set out in article 54.

56. A more important point was raised by the Belgian amendment to article 58, paragraph 2 (a) (CDDH/II/347), whose adoption might disturb the operation of civil defence. Apart from whether or not military units performed civil defence tasks, civil defence was an important part of national defence. Essentially it had to protect the victims of disaster and war, but it also had to protect the whole nation. Military authorities could and did give instructions in time of war. The fact that they did so could not prevent civil defence tasks from being performed. The proposed text implied that civil defence organizations, including purely civilian ones, might lose their protected status merely because in time of war they would have to take instructions from the military authorities.

57. Mr. MARTIN (Switzerland) recalled the discussion in a sub-commission of experts, which had concluded that the possibility for any country to organize its civil defence units as it wished must be left open. The administration of civil defence generally came

under the Ministry of Defence or the Ministry of the Interior even in time of war. That was why the 1972 draft had stated that civil defence might be organized on military lines and might be responsible to military authorities.

58. The ICRC and Danish texts had introduced the idea of instructions received from the army, but that probably went further than the experts had intended. The combined Drafting Committee/ Working Group should therefore look into the matter.

59. His delegation was glad to note that the Soviet Union delegation intended to review amendment CDDH/II/353, which read "the Occupying Power may disarm and disband civil defence bodies.". To adopt that text would be a retrograde step in the light of existing international law as set out in Article 63 (b) of the fourth Geneva Convention of 1949, which stated that the Occupying Power might not require any changes in the personnel or structure of recognized relief societies which would prejudice their activities.

60. Mr. JAKOVLJEVIĆ (Yugoslavia) said that his delegation held that civil defence personnel should be allowed to carry light or small-arms at all times. It was hard to see how such personnel could be allowed to carry arms, then have to abandon them and then be allowed to carry them again. In an area where fighting had been taking place and then ceased, civil defence personnel needed weapons to protect victims against pillage. According to article 13 of draft Protocol I the fact that the personnel of civilian medical units could be armed should not be considered an act harmful to the enemy. His delegation considered that a similar provision should be made for civil defence units and it supported the ICRC text.

61. The Yugoslav delegation did not think that it was realistic to confine assistance to military victims to the exceptional or incidental, as in the Belgian (CDDH/II/347) and Danish (CDDH/II/326) proposals; it preferred the ICRC text.

62. With respect to the position of civil defence under an Occupying Power, he pointed out that the Geneva Conventions were directed to protecting the victims of war, and not to reinforcing the powers of an Occupying Power, which were already quite sufficient. Any proposal to extend those powers would be highly dangerous.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE SIXTY-SEVENTH MEETING

held on Monday, 10 May 1976, at 4.20 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 58 - Cessation of protection (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/70, CDDH/II/326, CDDH/II/338, CDDH/II/347, CDDH/II/353) (continued)

1. Mr. HARDING (United States of America) said that the United States was not in favour of according civil defence status to military units, especially in a battle area, even if they were permanently assigned to civil defence duties. In general, his delegation supported the Danish text (CDDH/II/326), particularly the provision also contained in the ICRC text that civil defence personnel who received instructions from military authorities should not be considered to be harmful to the enemy. It was essential to make it clear that on the battlefield the military commander was in charge. His units would not perform civil defence tasks, but the activities of those who did must be co-ordinated with those of his forces. The United States delegation, therefore, opposed any proposal to delete paragraph 2 (a) from article 58. The Danish wording for paragraph 2 (d) ("incidentally benefit") was preferable to the ICRC draft, which might permit acts hostile to the enemy such as the evacuation of military personnel from the battlefield.

2. Mr. MAKIN (United Kingdom) said that the ICRC text, the Australian amendment (CDDH/II/338) and the Danish amendment (CDDH/II/326) all contained the same error, in that they used the word "persons" in the first line of paragraph 1. To be consistent with other provisions, paragraph 1 should refer only to buildings, matériel, etc., while personnel should be dealt with in paragraph 2. The latter might be reworded to start with a reference to article 46 (which protected them as civilians), then continue with sub-paragraphs (a) to (d) and conclude with the phrase: "shall not deprive them of the protection accorded by the present chapter" instead of the present wording: "shall not be considered to be harmful to the enemy".

3. Mr. SCHULTZ (Denmark) said that, particularly in the light of the statement made by the Belgian representative at the sixty-sixth meeting, it was essential to draw a clear distinction between military and civilian units. Moreover, it would be unrealistic for the Protocol to go too far in the direction of making civil defence units neutral, for if a country was attacked the whole civilian community would oppose the enemy. He could not, therefore, agree to the limitations proposed in the Belgian amendment to paragraph 2 (CDDH/II/347) to the effect that co-operation with military personnel should be "an exceptional measure", or that civil defence personnel could "occasionally" assist military victims. For it had been agreed at the second session of the Conference that Part II of draft Protocol I should apply to all persons affected by an armed conflict, whether military or civilian, and the application of Protocol I, Part IV, Section I, Chapter VI, should be the same. He agreed with the United States and Spanish representatives, however, that civil defence personnel might receive instructions from the military authorities.

4. In paragraph 3 the phrase "compulsory service", which figured in both the ICRC draft and his delegation's amendment, should be kept, as provision for compulsory civilian service in civil defence units existed in many countries and was entirely divorced from compulsory military service.

5. He was pleased to learn that amendment CDDH/II/353 was to be reviewed by its sponsors and his only comment on it therefore would be to express full agreement with the Swiss representative at the sixty-sixth meeting (CDDH/II/SR.66): the Occupying Power must not be allowed to disband civil defence bodies.

6. As he had previously stated, his delegation was not in favour of allowing civil defence personnel to bear arms but, as a compromise, it was prepared to sanction that possibility outside areas where fighting was taking place.

7. Mr. JOSEPHI (Federal Republic of Germany) said that while he agreed with the Belgian representative that the duties of military forces and civil defence units were incompatible, he understood the concern expressed over the Belgian amendment to paragraph 2 (a). There must be co-ordination between the military forces and civil defence bodies, but the fact that the latter received instructions from the military authorities should not exclude them from protection under Chapter VI under consideration.

8. The question of whether civil defence personnel should bear small-arms or not was a vital one. The answer would depend on the decision adopted in article 54 as to whether military personnel exclusively attached to civil defence should be protected by the provisions on civil defence and whether the maintenance of order should be included. The latter was a role usually assigned to the police, who were armed to a certain extent, though usually having civilian status. He doubted whether the armed protection of civilian objects should be assigned to civil defence personnel and shared the view of the Danish delegation that such personnel should not bear arms, so as to be clearly distinguished from combatants. He would keep an open mind on the question until the Working Group had produced its report.

9. Mrs. DARIIMAA (Mongolia) said that her delegation supported the ICRC draft in principle, but favoured the Arab amendment to paragraph 1 of article 58 (CDDH/II/70) as the word "hostile" was more specific than "harmful". It had doubts about the Australian proposal for paragraph 2 (c) (CDDH/II/338): if civil defence personnel were to protect property, the type of property - hospitals, old peoples' homes, etc. - should be indicated, or reference made to article 54 (b), providing for the safeguard of objects indispensable to the survival of the civilian population. It sympathized with the Belgian amendment (CDDH/II/347), but would prefer the phrase "as an exceptional measure" in paragraph 2 (a) to be omitted and considered that the phrase "tasks for the benefit of military victims" in paragraph 2 (c) should be clarified to indicate whether it meant medical assistance or something else.

10. Mr. THUE (Norway) expressed grave doubts about any provision permitting civil defence personnel to carry arms. Taken together with article 55, paragraph 2, which concerned civilians responding to an appeal from the authorities and carrying out civil defence tasks, such a provision would be tantamount to sanctioning the arming of the entire civilian population, with the result that civil defence personnel would lose their special protection and the civilian population their general protection, so that the road to mass slaughter would be wide open.

11. Mr. MALINVERNI (International Committee of the Red Cross) referring to paragraph 2 (a) of amendment CDDH/II/326, said that he could not support the Swiss representative's interpretation at the sixty-sixth meeting of the phrase "responsible to military authorities" as it appeared in the text adopted in 1972 by the Sub-Commission on civil defence organization. It would be better to say, as in the ICRC text, that civil defence personnel could "receive instructions from military authorities", which was more restrictive than saying that civil defence personnel "may be responsible to military authorities". Indeed, the idea of dependence

evoked an element of permanence, which was absent from the idea of receiving instructions.

12. Paragraph 2 (c) of amendment CDDH/II/326 was an acceptable compromise, even if it should be agreed that civil defence personnel could intervene to maintain order in areas where fighting was taking place.

13. In paragraph 2 (d), he found it difficult to accept the word "incidentally" (CDDH/II/326). It would be better to say "in case of need" or "when necessary". Perhaps in the French text "le cas échéant" might be used instead of "occasionnellement".

14. He hesitated to agree to the three-Power amendment (CDDH/II/353) as it should not be possible to disband civil defence bodies even if their personnel committed hostile acts; their existence was, indeed, indispensable. For the same reason he was hesitant as regards the idea of authorization by the Occupying Power in the same delegations' amendment to article 56 (CDDH/II/352).

15. As regards the comments made by the Norwegian representative, it has been the ICRC's intention, when drafting paragraph 2 (c), that only members of civil defence organizations should be allowed to bear small-arms and not all civilians carrying out civil defence tasks. Perhaps the wording could be improved to make that more clear.

16. The CHAIRMAN said that the debate on article 58 was now concluded.

Article 59 - Identification (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/327, CDDH/II/339, CDDH/II/348 and Corr.1) (continued)*

17. Mr. MALINVERNI (International Committee of the Red Cross), introducing the ICRC text of article 59, said that the title of the article in the 1972 text - "Markings" - had become "Identification", which was wider and more in keeping with the content of the article, since it referred not only to the distinctive emblem but also to identity cards.

18. The terminology of paragraph 1 should be brought into line with that of article 18 of draft Protocol I, which had already been adopted.

* Resumed from the sixty-first meeting.

19. The words "permanent" and "permanently" had been inserted in paragraph 2 with a view to avoiding a proliferation of identity cards and documents. Such documents were of particular use in occupied territories in view of the obligations imposed by the Chapter on the Occupying Power.

20. The two proposals for the international distinctive sign given in paragraph 4 had been made at a meeting of experts convened by ICRC in January 1973 and had been selected on grounds of their practical nature and visibility of the designs and colours.

21. Paragraph 5 was new as compared with the 1972 text. It was modelled on article 18, paragraph 4.

22. Paragraph 7 was based on Article 41 of the first Geneva Convention of 1949. The underlying idea was that protection should be based on function and that the bearing of the distinctive sign should be limited in order to avoid abuse.

23. In view of the analogy between the situations covered, paragraph 9 took over the provisions of the first Geneva Convention of 1949 relating to the display of the distinctive emblem (Articles 38 to 44, 53 and 54).

24. The CHAIRMAN said that the question of the distinctive sign (paragraph 4) should be postponed until the Technical Sub-Committee had made its report.

25. Mr. URQUIOLA (Philippines), replying to a question by the Chairman, said that his delegation had been in favour of the adoption of the sign proposed by the International Civil Defence Organization - two diagonal red bars on a yellow ground - but that as an overwhelming majority of the members of the Technical Sub-Committee had been opposed to it, he saw no point in reverting to the question.

26. Mr. SCHULTZ (Denmark) said that amendment CDDH/II/237 had been withdrawn, since it was incorporated in new amendment CDDH/II/327. Introducing that amendment he said that its main purpose was to bring the wording into line with that of article 18 of draft Protocol I, as adopted by the Committee at the second session of the Conference. In paragraph 3, therefore, the word "shall" in the ICRC text had been replaced by the word "should" to indicate that the use of the emblem and identity card certifying civil defence status was not obligatory, a similar decision having been taken in the case of the display of the Red Cross sign.

27. With regard to the two proposals in paragraph 4, the word "light" (in the expressions "light blue" and "light orange") had been deleted in the Danish amendment, in accordance with the Technical Sub-Committee's decision at its session in 1974.

28. Paragraph 7, which was identical with the paragraph 7 bis proposed in amendment CDDH/II/237, permitted the use of the international distinctive emblem in time of peace. The inclusion of such a provision had been recommended by the Technical Sub-Committee at the first session of the Conference. The article differed in many respects from Article 38 of the first Convention on the peace-time use of the Red Cross. The Danish text further added the condition that the peace-time use of the emblem should require the consent of the competent national authorities.

29. Mr. CLARK (Australia), introducing amendment CDDH/II/339, said that it was designed to strengthen the respect and protection that States Parties to the Protocol would accord to the distinctive emblem of civil defence.

30. Paragraph 1 was modelled on article 18, paragraph 2. Paragraph 2 combined paragraphs 2, 3 and 5 of the ICRC text. Paragraphs 3, 4 and 5 of the Australian text were similar to paragraphs 4, 7 and 8 of the ICRC text.

31. Paragraphs 6 and 7 were new. His delegation considered that the obligations on States should be spelt out with some precision in order to ensure that uniform protection for the distinctive civil defence emblem was provided in the domestic law of the different States.

32. If effective protection was to be provided, the sign should be protected against commercial exploitation, especially in peace-time. Such protection was provided for the Red Cross sign in Articles 53 and 54 of the first Geneva Convention of 1949, and his delegation felt that the same protection should be provided for the civil defence emblem. It appreciated that those provisions might appear too onerous for certain States; to avoid reservations to the article, therefore, special attention would have to be given in the Working Group to the details of the protection afforded. What was essential was to ensure that the domestic law of States should implement the obligations of the article in a uniform manner.

33. Mr. IJAS (Indonesia), introducing amendment CDDH/II/348 and Corr.1, said that the amendment was a purely drafting one designed to facilitate acceptance of article 59. As such, he hoped that it would be referred to the Drafting Committee.

34. The CHAIRMAN said that that would be done.

35. Mr. SOLF (United States of America) said that he fully agreed with the Danish amendment (CDDH/II/327).

36. With regard to the Australian amendment (CDDH/II/339), he drew attention to article 36 of draft Protocol I, adopted by Committee III, which protected against abuse the civil defence emblem and all other emblems or signs provided for in the Protocol. It was the protective, and not merely the indicative, use of the emblems which needed to be protected and he felt that that was adequately provided for in article 36.

37. Article 53 of the first Geneva Convention of 1949 forbade the commercial exploitation of the Red Cross sign, which had already long been in use by the International Red Cross and by national Red Cross societies. So far as he knew, the blue triangle sign was not at present in use by any national or international civil defence organization or society - not even by the International Civil Defence Organization. When the provisions subsequently included in Article 53 had first been adopted in the Geneva Convention of July 27, 1929 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, there had been considerable trouble because a number of commercial and social organizations were using the Red Cross sign. About ten countries, including Australia, had accordingly entered reservations to the Article for the purpose of permitting the continuance of such use. When the first Geneva Convention of 1949 had been submitted to the United States Senate for ratification, two organizations which had been using the Red Cross sign for many years had strongly objected to the ratification of Article 53. Ratification of the Convention by the United States of America had been delayed for a considerable period and had only been possible with an express reservation to Article 53.

38. In the present case, if the Australian amendment (CDDH/II/339) was adopted, it would be necessary to find out exactly how many commercial or social organizations were using the blue triangle sign. Such an exercise would be time-consuming and unnecessary because adequate protection for the sign was already provided under article 36.

39. In any case, the third paragraph of Article 53 of the first Geneva Convention of 1949 provided for certain derogations from the prohibitions of that article where the Red Cross sign was not being used as a protective sign.

40. Mr. MUELLER (Switzerland) said that before the Committee took a decision on the various amendments, the Drafting Committee/Working Group should be asked to consider three questions. The first was whether it was necessary to issue temporary civil defence personnel

with an identity card similar to that provided for temporary medical personnel under article 18, paragraph 3, as adopted by Committee II at its thirtieth meeting. The Technical Sub-Committee had left the matter open, placing the word "permanent", in article 14 of the annex to draft Protocol I, between square brackets. The second concerned the advisability of providing expressly for an identity card for civil defence personnel, as had been done in article 18, paragraph 3, for civilian medical and religious personnel, and as the Technical Sub-Committee had also done for medical services. The third question was whether the word "document" should be used solely in reference to equipment and means of transport.

41. Mr. MAKIN (United Kingdom) said that he shared the United States representative's concern regarding the Australian amendment (CDDH/II/339). Although he had not fully considered all the implications, his initial reaction was that most countries would probably have difficulty in enacting the legislation required to adopt such an amendment. Certainly it would seriously delay ratification of Protocol I and a number of countries might feel compelled to enter a reservation on that point. In his opinion, therefore, the matter required close examination. Perhaps the Australian proposal might be revised to take effect in each country only when that country was involved in armed conflict, which might make the proposal easier to accept.

New article 59 bis - Occupied territories (CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/325/Rev.1)

42. Mr. SCHULTZ (Denmark) said that he wished to withdraw his delegation's sponsorship of the four-Power amendment (CDDH/II/317), which had been superseded by paragraph 1 of its own amendment (CDDH/II/325/Rev.1).

43. Mr. JOSEPHI (Federal Republic of Germany), Mr. MAKIN (United Kingdom) and Mr. BUGA (Uganda) said that their delegations also wished to withdraw their sponsorship of amendment CDDH/II/317.

New article 59 ter - Status of military units assigned exclusively to civil defence tasks (CDDH/II/335)

44. Mr. MUELLER (Switzerland), referring to his statement at the sixty-third meeting (CDDH/II/SR.63), introducing the Swiss proposal for a new article 59 ter (CDDH/II/335), said that he fully understood the position of those delegations which felt that civil defence should be a purely civilian matter. In his delegation's view, however, the interests of the civilian population should come first.

45. Other delegations had advocated that military civil defence units should be granted the same protection as medical units. He did not think it was their intention to go so far as the first paragraphs of Articles 28 and 30 of the first Geneva Convention of 1949, and the Committee would note that the Swiss proposal did not in fact do so. Moreover, in his delegation's opinion, paragraph 2 of the Swiss proposal would be easier to apply than the provisions of the first Convention. To allow for the possibility of special protection for military units assigned to civil defence, however, the second sentence of the second paragraph of Articles 28 and 30 of the first Geneva Convention of 1949 could perhaps be added to paragraph 2 of the Swiss proposal.

46. Also, it should not be forgotten that civil defence personnel, whether military or civil, would have to carry an identity card, in the same way as military medical personnel.

Draft Protocol II

Article 30 - Respect and protection (CDDH/1, CDDH/226 and Corr.2)

Article 31 - Definition (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/51)

47. Mr. SANDOZ (International Committee of the Red Cross), introducing the ICRC text of articles 30 and 31 of draft Protocol II, said that that Protocol reflected the broad principles, rather than the detail, of draft Protocol I.

48. Article 30 did not impose any limitation on earlier provisions relating to protection of the civilian population; and its omission would not affect the right of civil defence personnel to be respected and protected since that was already provided for in article 26. The purpose of article 30 was to ensure special protection for certain civilians so that they could perform their humanitarian tasks in circumstances which might cast doubt on their civilian standing. To enjoy special protection, the civilians in question would obviously have to refrain from taking part in hostilities. It had been considered essential to provide that no person would be liable to punishment solely on the ground that he had taken part in civil defence activities.

49. Article 31 had been modelled on article 54 of draft Protocol I, with two small changes. First, the introductory passage down to the words "inter alia" had been omitted. Secondly, the first sentence of article 54 of draft Protocol I had not been repeated,

in order to simplify the text and also because, at the time of drafting, the fate of the earlier articles was still unknown. Since that was no longer the case, the ICRC would have no objection to following article 54 of draft Protocol I exactly, provided that the terms of article 31 were not rendered incompatible with the rest of draft Protocol II.

50. Mr. URQUIOLA (Philippines), introducing his delegation's amendment to article 31 (CDDH/II/51), said that the arguments he had advanced in connexion with his delegation's amendment to article 54 of draft Protocol I (CDDH/II/44) applied equally to amendment CDDH/II/51.

51. If it were decided to incorporate the first sentence of article 54 of draft Protocol I in article 31, he would propose that the words "civil strife" should be added to the latter.

52. Mr. SCHULTZ (Denmark) said that he was very much in favour of including some short regulations in draft Protocol II on civil defence, and considered that the ICRC text would help to provide what had been termed "victim-oriented practical protection." To his mind, the need for such regulations was a matter of simple logic: there would be little point in permitting medical services to carry out their functions in a non-international conflict if civil defence units were not allowed to release trapped victims so that medical care could be given to them.

53. His delegation had submitted two amendments, which would be circulated to the Committee later. The first related to the definition of civil defence in draft Protocol II which, in his opinion, should be the same as that in draft Protocol I. The second concerned a proposal for a new article on identification. There again, it seemed to him only logical that, once it was agreed that civil defence personnel should be respected and protected, provision should be included in draft Protocol II for their identification by means of the same emblem as that agreed in draft Protocol I. Identification was essential not only in international conflicts, but also in civil wars.

54. The CHAIRMAN said that he had asked the Legal Secretary to prepare a list of outstanding questions on civil defence for the Committee's consideration at its sixty-eighth meeting. The Committee could then decide which questions required a vote and which should be referred to the Drafting Committee/Working Group.

55. He appealed to members to submit their amendments to articles still to be discussed as soon as possible, in particular to articles 60 to 62 of draft Protocol I (Relief in favour of the civilian population) as well as to articles 33 to 35 of draft Protocol II (Relief) by Monday, 17 May.

The meeting rose at 6.35 p.m.

SUMMARY RECORD OF THE SIXTY-EIGHTH MEETING

held on Tuesday, 11 May 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol II

Article 30 - Respect and protection (CDDH/1, CDDH/226 and Corr.2)(continued)

Article 31 - Definition (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/51)(continued)

1. The CHAIRMAN recalled that, at the sixty-seventh meeting (CDDH/II/SR.67), the representative of the ICRC had introduced the text of articles 30 and 31, and the representative of the Philippines had introduced the only amendment (CDDH/II/51). The representative of Denmark had then proposed further amendments that, for technical reasons, had not yet been translated and circulated. He (the Chairman) therefore asked for general comments on the articles and on the statements made at the sixty-seventh meeting.
2. Mr. MARRIOTT (Canada) said that, in his view, the two articles should be renumbered so that the definition of civil defence came first. It was not necessarily true that the definition of civil defence adopted in draft Protocol I was applicable to draft Protocol II. It was necessary to decide what functions might be respected or protected in a Protocol II situation; it would therefore be better to await the recommendations of the combined Drafting Committee/Working Group with regard to article 54 of draft Protocol I and see whether those functions were acceptable for draft Protocol II. Until those functions had been specified, he saw little point in any extensive discussion of civil defence in draft Protocol II.
3. The CHAIRMAN agreed that no definite solution of the problem could be adopted before agreement had been reached on the corresponding provisions of draft Protocol I.
4. From a purely drafting point of view, he agreed that the order of the two articles should be reversed. Moreover, in his opinion it was wrong to call article 31 "Definition"; "scope" would be a better word, but that point could be left to the Drafting Committee.

5. Mr. HEER (German Democratic Republic) said that his delegation considered that the discussion of questions of civil defence in draft Protocol II should be held over until agreement had been reached on the corresponding questions in draft Protocol I.
6. Mr. MAKIN (United Kingdom) asked whether it was the Chairman's intention that the articles on civil defence in draft Protocol II should be referred to the Working Group: he thought that would be a good arrangement.
7. The CHAIRMAN agreed.
8. Mr. SANDOZ (International Committee of the Red Cross), referring to the discussion at the sixty-seventh meeting (CDDH/II/SR.67) on the possibility of including an article on identification in draft Protocol II, said that he wished to make it clear that the reason why the ICRC had not included such an article in that Protocol was that it would seem difficult to require the use of an international sign in such a context. The situation was different from that found in international conflicts and covered by draft Protocol I.
9. The CHAIRMAN pointed out that identification was the only point on which the Danish amendment substantially differed from the ICRC text.
10. Mr. JAKOVLJEVIĆ (Yugoslavia) said that, in considering articles 30 and 31, it should be borne in mind that article 1 of draft Protocol II defined the scope of that Protocol and the situations to which it was applicable. As a procedural point, he asked whether it was permissible for the Working Group to discuss written amendments that had not previously been submitted to the Committee itself.
11. The CHAIRMAN replied that, in principle, written amendments should first be submitted to the Committee.
12. Mr. SOLF (United States of America) said that inevitably, in the combined Drafting Committee/Working Group, written papers would be produced that reflected the consensus of opinion in that body. He asked whether the Chairman's ruling on written amendments would apply to such working papers.
13. The CHAIRMAN said that it was normal for working papers to be prepared for the Working Group; amendments submitted as such, however, should be discussed by the Committee. That was the case, for example, with the Danish amendments, which, if accepted, would introduce a new article on identification.

14. Mr. SCHULTZ (Denmark) said that he had noted the explanation of the ICRC representative why an article on identification had not been included in the ICRC text of draft Protocol II. If the reason was the international character of the new civil defence emblem, he would like to ask the representative of the ICRC why, in article 18 of draft Protocol II, reference was made to the emblem of the red cross, etc. on a white ground, which was an international emblem.

15. Mr. MAKIN (United Kingdom) said that he wished to be sure that there was no misunderstanding on the question of written amendments. He himself had, on occasion, submitted written proposals in working groups which had been accepted. That was the normal way in which a working group proceeded.

16. The CHAIRMAN replied that it was largely a question of nomenclature; the written proposals mentioned were working papers and not formal amendments, as was the Danish amendment concerning identification which had been introduced as such and probably should be dealt with by the Committee.

17. Mr. MACKENNEY (Chile) said that his delegation thought that the text of article 31 of draft Protocol II should be similar to that of article 54 of draft Protocol I.

18. Mr. SANDOZ (International Committee of the Red Cross), replying to the representative of Denmark, said that the red cross was already widely used and accepted, while the civil defence emblem was new, so that it would be difficult to require States to use it under the conditions envisaged in draft Protocol II. It was for that reason that the ICRC had not included an article on identification in draft Protocol II, but that did not mean that it had adopted a firm position on that point. It was not the ICRC, but quite the contrary, that would oppose in principle the adoption of an emblem within the framework of draft Protocol II.

19. Mr. MARTINS (Nigeria) said that his delegation felt some sympathy with the amendment proposed by the Philippines. He agreed with the speakers who had said that the question of civil defence should be settled in relation to draft Protocol I before draft Protocol II was tackled; the difficulty with the latter was that State sovereignty was involved. His views were based on the conditions existing in Nigeria, but were equally applicable to all developing countries in Africa. Civil defence was a governmental organization and would therefore be expected to be under Government control. A difficult situation might develop in connexion with civil strife, which in developing countries was the result of strikes, led by a labour movement that was organized and financed

from abroad and had a political programme; that implied that its aim was the overthrow of the Government. A situation could therefore arise where the person in control of civil defence was himself a member of the labour movement and could use his position to harass the civil population. The Committee should bear that possibility in mind when discussing the scope of civil defence.

20. The CHAIRMAN said that the question of civil strife was not necessarily related to the discussion of the articles of draft Protocol II assigned to the Committee; that question belonged to article 1 which had been assigned to Committee I.

21. Mr. MARRIOTT (Canada) thought that the statement made by the representative of Nigeria had helped greatly towards an understanding of the circumstances that might exist and that should be considered before any decision on the inclusion of civil defence in draft Protocol II was taken. The preamble to article 54 of draft Protocol I was very general and did not give any precise definition of civil defence; that term was used to cover a number of functions that might or might not be called civil defence in any particular country. The Nigerian delegation appeared to be moving towards the view expressed by Canada at the second session, namely that it might be better not to mention civil defence in draft Protocol II.

22. Mr. MARTINS (Nigeria) explained that, in Africa, no labour movement existed without an imported ideology; that ideology was propagated by infecting various groups, and especially the working class, a process often carried out by men who had been indoctrinated abroad. One way of overthrowing a Government was by causing inconvenience and harassment. A case might occur in which the official in charge of civil defence might arrange for the water supply to be sabotaged in order to cause hardship to the civil population, and might call on the civil defence personnel not to repair it. The civil defence organization could therefore be a menace to the Government. For that reason, all reference to civil defence in draft Protocol II must be considered very carefully, unless the interests of Governments could be secured by other provisions.

23. Mr. KORNEEV (Union of Soviet Socialist Republics) said that the Nigerian representative had raised a profound philosophical issue which went beyond the scope of the Committee's humanitarian task.

24. Mr. CZANK (Hungary) said that he hoped the Committee would not spend time discussing civil strife. That problem was not connected with civil defence in the context of draft Protocol II.

It belonged to article 1 of draft Protocol II, paragraph 2 of which referred to "... internal disturbances and tensions, inter alia riots, isolated and sporadic acts of violence and other acts of a similar nature", and was therefore a matter for Committee I.

25. Mr. KLEIN (Holy See) said that he appreciated the Nigerian representative's concern. It was true that the army, or the civil defence, health or other services could be used against the Government of a State. That, however, should not compromise the existence of civil defence, whose function was humanitarian.

26. Mr. MARTINS (Nigeria) said that he entirely agreed that the function of civil defence was humanitarian.

27. With regard to civil strife, members of the Committee seemed to think that the term did not include the idea of armed conflict. In his own and other African countries, however, it did not need guns to produce a situation of armed conflict: fighting was carried out with other weapons, such as cudgels and spears.

28. The CHAIRMAN said that the preliminary discussion on articles 30 and 31 was closed. The Committee would return to the articles after it had dealt with the corresponding articles of draft Protocol I.

Draft Protocol I

Provisional list of questions to be settled concerning civil defence (CDDH/II/GT/66)

29. The CHAIRMAN reminded representatives that the Chairman of the Drafting Committee had asked if some of the issues discussed could be voted on, in order to give the Drafting Committee clear guidance and to save it from repeating the discussions that had taken place in the full Committee. Some representatives had felt that certain points should be negotiated in the Working Group. The Legal Secretary had prepared a list of all the questions discussed in the past few meetings to which a clear reply was needed. He proposed to read out each question in turn and ask the Committee to decide whether a vote was necessary and, if so, to vote.

30. The first question was whether the list of civil defence tasks should be exhaustive or merely indicative.

31. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that he did not think it advisable to vote on that question at the present stage of the deliberations.

32. The CHAIRMAN said that the vote would be on a question of principle: whether there should be an exhaustive list of all the tasks or whether only the most important tasks should be listed, with such words as "inter alia" or "and other similar tasks".

33. Mr. JAKOVLJEVIĆ (Yugoslavia) said that he was in favour of a vote. It was impossible to prepare a complete list within a few days; moreover, the problem would arise of whether or not humanitarian tasks not listed would be protected. A flexible list was needed, the wording being left to the Working Group.
34. In reply to a question from the CHAIRMAN, Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that he would prefer to vote on a specific text rather than on an abstract question.
35. Mr. ICHIOKA (Japan) asked if the Chairman could read out all the questions. The members of the Committee would then be in a better position to take a decision.
36. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) agreed with the representative of Japan. It would be unwise to take hasty decisions. He suggested that voting should be postponed until the list had been circulated in all the working languages.
37. Mr. MARRIOTT (Canada) said that he had already discovered four components in the first question, possibly involving even more votes. The function of the Working Group was to examine what had been discussed and submit recommendations or clear alternatives for decision by the Committee. He shared the concern of the Ukrainian representative. There was a risk that the Working Group might be committed by a vote on a motion that was not clearly worded and might not take account of issues discovered in the Working Group's discussions, thus leading to a loss of the flexibility so necessary to the Working Group.
38. Mr. SCHULTZ (Denmark) said that he agreed with the three previous speakers. It would be a mistake to vote on a principle at the present juncture. He urged that the Working Group should discuss the matter and submit proposals, with alternative texts, to the Committee so that members would know what they were voting on. He proposed that the matter should be referred to the Drafting Committee and the Working Group without a vote.
39. Mr. SOLF (United States of America) said that he agreed with what had been said by the representatives of Denmark, Canada, Japan and the Ukrainian Soviet Socialist Republic. The question of an exhaustive or an indicative list should be decided by the Working Group after it had tried to prepare as exhaustive a list as possible.
40. Mr. MAKIN (United Kingdom) said that he agreed with what had been said by the five preceding speakers. He understood that other Committees had formed working groups on various articles without taking any decisions of principle beforehand. He did not recall

that Committee II had adopted the procedure which the Chairman was suggesting at the previous sessions of the Conference and he saw no reason why it should now adopt a different procedure from that of other Committees or its own past procedure. In his view, the Committee should take no decisions before the articles of Chapter VI - Civil Defence - of Part IV, Section I, of draft Protocol I were sent to the Working Group.

41. Mr. MARTIN (Switzerland) said that his delegation had been among those which had suggested that it would be useful for the Committee to discuss whether the list of tasks to be performed by the civil defence authorities should be exhaustive or indicative; he had not suggested that the Committee should vote on the issue at the present juncture because it was bound to be influenced by the discussions in the Working Group. Moreover, Chapter VI on civil defence was a consistent whole and its component parts could not be considered individually.

42. He thought it would be useful for the Committee to have the list before it in written form so that it would know what were the various principles which would have to be dealt with in the Working Group. All delegations were, of course, free to attend the meetings of the Working Group.

43. Mr. HØSTMARK (Norway) said that he concurred in everything which had been said by the last seven speakers.

44. The CHAIRMAN noted that, with the exception of the representative of Yugoslavia, all the representatives who had spoken on the question whether the list should be exhaustive or indicative had been opposed to the Committee taking a vote on the question. That preference, however, applied only to the first question on the list. The Committee might wish to take decisions on some other questions before referring the articles of Chapter VI on civil defence to the Working Group and the Drafting Committee.

45. The first question on the list was perhaps among the most difficult ones and it was possible that there were other questions on which the Committee would be able to take a decision immediately. He would arrange for the list to be translated into all the working languages and circulated early the following morning.

46. He asked whether the Drafting Committee or the Working Group would like to meet the following day to deal with non-controversial questions.

47. Mr. BOTHE (Federal Republic of Germany), Chairman of the Drafting Committee, said that it would be useful to meet the following morning to organize the work of the Working Group.

48. The CHAIRMAN said that the Working Group would deal with questions of substance, after which the Drafting Committee could deal with drafting questions.

49. If the suggestion made by the United Kingdom representative was followed, the Working Group and the Drafting Committee would be two separate bodies. The Drafting Committee would be unable to do any drafting until Committee II itself had taken decisions on the suggestions submitted to it by the Working Group. That would certainly delay the work.

50. If Committee II were to meet the following morning to discuss the list, which was simple and contained nothing new, there could be a joint meeting of the Drafting Committee and the Working Group in the afternoon, by which time the scope of the Working Group's work would have become much clearer.

51. Mr. HEREDIA (Cuba) said that, while it was no doubt true that the Committee could take decisions which could then be elaborated by the Working Group or the Drafting Committee, it was equally true that the use of a list which provided a conspectus of the proposals and suggestions made during the Committee's deliberations would give rise to a number of procedural problems.

52. The rules of procedure laid down the order in which amendments should be voted upon and those rules should be observed in providing guidelines or directives for the Working Group. A great deal of time would inevitably have to be spent in deciding which of the many amendments that had been submitted was furthest removed from or nearest to the ICRC text, but unless that were done the Committee would not be following the correct procedure. He therefore considered that it was better to transmit the questions which had been discussed during the past few days forthwith to the Working Group, which would then submit to the Committee a more substantive document that was less difficult to analyse and on which it could take decisions.

53. Mr. MAKIN (United Kingdom) said that his point of view was similar to that of the representative of Cuba, namely that the best procedure would be for the Working Group to deal with all the points that had been raised. He had not, however, suggested that it was not within the Committee's competence to take a vote before transmitting the articles on civil defence to the Working Group.

54. The CHAIRMAN said that he agreed with the representative of Cuba concerning the proper voting procedure when amendments were submitted in the usual form. That had not been the case, however, in regard to some of the amendments to the articles of Chapter VI on civil defence of draft Protocol I.
55. In the list of questions, there were some which were more detailed than others and related to specific amendments; for instance, the Yugoslav amendment to mention after "transport" also "means of communication", to which the Canadian representative had objected. In that case, he thought that the Committee might want to take a vote before transmitting the question to the Drafting Committee.
56. He would simply ask the Committee whether or not it wished to vote on each question in the list, and if it did not, the question would be transmitted to the Working Group.
57. Mr. MARTIN (Switzerland) said that, if the list was to be available early the following morning, he saw no reason why the Committee should not meet at 11 a.m. to take decisions along the lines suggested by the Chairman, which would enable the Working Group to start its work in the afternoon.
58. Mr. SANCHEZ DEL RIO (Spain) said that he did not agree; the Working Group should meet in the morning and in the afternoon to discuss the list of questions and should make recommendations which the Committee could consider the following day.
59. It would be a cumbersome procedure for the Committee to decide whether or not to vote on each question. If the Working Group met before the Committee to discuss the list, it might eliminate a number of problems.
60. In answer to a question by Mr. MARRIOTT (Canada), the CHAIRMAN said that the agenda for the sixty-ninth meeting of the Committee would be the list of questions which it had discussed, in the hope that some of them could be settled. That would make the work of the Working Group easier. After that, it was not his intention to convene, for the time being, any further meetings of the Committee.
61. Mr. JAKOVLJEVIĆ (Yugoslavia) proposed that there should be a joint meeting of the Drafting Committee and the Working Group the following morning to organize their work. The list of questions should be circulated but not discussed then.
62. Mr. SCHULTZ (Denmark) asked whether it would be possible for a joint meeting to be held in the afternoon also.
63. The CHAIRMAN said that the necessary arrangements would be made. The joint meeting might come to the conclusion that some of the questions should be settled first in Committee II.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE SIXTY-NINTH MEETING

held on Thursday, 13 May 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

ORGANIZATION OF WORK

1. The CHAIRMAN said that the next meeting of the full Committee would be held on 19 May 1976 to consider the report of the Technical Sub-Committee. The Committee would not, therefore, resume consideration of articles 60 to 62 of draft Protocol I and articles 33 to 35 of draft Protocol II until the week beginning 24 May 1976. Any proposed amendments should be submitted by 19 or 20 May 1976.

2. Further, the Committee would have to resume consideration of article 8 of draft Protocol I and article 11 of draft Protocol II, relating to definitions, towards the end of the Conference. He invited the Drafting Committee/Working Group, to which those articles had been referred, to appoint a small group for the purpose of deciding whether to include any additional definitions or to modify those provisionally accepted at the first session of the Conference.

3. With regard to the general progress of work, he said that, at the most recent meeting of the General Committee, the Chairman of Committee III and he, as the Chairman of Committee II, had expressed the opinion that, if all went well, their Committees would finish work by the first week of June 1976. Since the possibility of a fourth session of the Conference, or an extension of the present session, had not been broached, he felt that the Committee should proceed on the assumption that the work of the Conference, or at least of its Committees, should be completed at the present session, in line with the decision taken by the Conference at the beginning of the session. The last week of the session would, of course, be reserved for the adoption of the Committees' reports. If the General Committee took a different view at its next meeting, to be held on 24 May 1976, Committee II could always modify its time-table accordingly. In the meantime, he urged members of the Committee and its subsidiary bodies to do their utmost to expedite the work.

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Provisional list of questions to be settled concerning civil defence (CDDH/II/GT/66) (continued)

4. The CHAIRMAN said that he wished to correct any impression that he considered it preferable to vote at once on questions to be settled which appeared in the provisional list (CDDH/II/GT/66) rather than refer them to the Drafting Committee/Working Group. In fact, he concurred in the general view that a premature vote would be ill-advised. The sole purpose of the provisional list of questions was to assist the Committee in reaching its conclusions; he understood that a similar list had been submitted to the Working Group of Committee III. It was, of course, for the Committee to decide whether to vote on some or all of the questions in the provisional list or to refer them first to the Drafting Committee/Working Group.

5. Turning to specific questions in the provisional list, he reminded the Committee that it had already decided to refer the questions under article 54 (definition) to the Drafting Committee/Working Group. With regard to article 55 (zones of military operations), his own view, as a lawyer and not as Chairman of the Committee, was that question (1) - "Are military formations or units exclusively assigned to civil defence work allowable?", and question (2) - "May military personnel (e.g. officers) be assigned to civil defence work as individuals?" should, in view of their importance, be the subject of negotiation in the Drafting Committee/Working Group or possibly in a small group appointed to reach a compromise. The subsidiary question of whether military personnel would enjoy prisoner-of-war status in the event of capture by the enemy could be dealt with only when the main questions had been resolved. He asked whether the Committee considered that the following questions should also be the subject of negotiation: Question (3) - "Do zones of military occupation include: (a) land, (b) water (fresh water and sea water), (c) air?"; question (4) - "What means of transport should civil defence have (a) overland facilities only, or (b) vehicles and watercraft? (amendment CDDH/II/322 submitted by Denmark at the sixty-fourth meeting (CDDH/II/SR.64)); (c) subparagraph (b) plus aircraft (oral proposal by the Syrian Arab Republic at the sixty-fourth meeting); question (5) - "Should telecommunication facilities also be included? (Yugoslav amendment CDDH/II/358 to article 55, Romanian oral proposal concerning article 57 at the sixty-sixth meeting (CDDH/II/SR.66)).

6. Mr. SCHULTZ (Denmark) said that, in his opinion, the whole of the provisional list of questions should be referred to the Drafting Committee/Working Group, since a vote at that stage on the questions as formulated would only create problems. It was not possible to vote on principles and he trusted that, when the time came, the Committee would vote on the basis of written texts.

7. The CHAIRMAN said that he could not entirely agree, since international conferences often voted on principles, leaving details of drafting to be attended to later. He was, however, ready to refer the questions listed under article 55 to the Drafting Committee/Working Group. He asked whether the Committee wished also to refer the following questions listed under article 56 (occupied territories) to the Drafting Committee/Working Group.

Article 56 - Occupied territories

- Questions:
- (1) Should the requisitioning of civil defence buildings, matériel and transport facilities by the Occupying Power be
 - (a) prohibited (see amendment CDDH/II/70, submitted by thirteen Arab delegations)?
 - (b) permitted in certain cases (amendment CDDH/II/323 submitted by Denmark)?
 - (2) Rights of the Occupying Power over civil defence bodies:
 - (a) mandatorily limited: ICRC text + amendment CDDH/II/323?
 - (b) unlimited: civil defence to be able to operate only with the permission and under the supervision of the Occupying Power (see amendment CDDH/II/352 submitted by the Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics)?
 - (3) Should the Occupying Power be prohibited from compelling the civil defence to perform its activities (see Yugoslav amendment CDDH/II/340)?
 - (4) Should the Occupying Power give civil defence bodies:
 - (a) every facility for performing their activities (ICRC text)?
 - (b) to the extent feasible ... the facilities necessary (Danish amendment CDDH/II/323, para. 1)?
 - (5) Should article 56 include a paragraph 3, in accordance with the United States amendment (CDDH/II/346) to cover fighting in occupied territories?

8. Mr. MARRIOTT (Canada) said that the Drafting Committee/Working Group might well decide to narrow the issues dealt with in the provisional list of questions and would undoubtedly present alternatives as a result of its deliberations and of possible changes in position. The provisional list could therefore be regarded as a useful working paper but the Committee should postpone any decision until the Drafting Committee/Working Group had submitted its report.

9. The CHAIRMAN asked whether the Canadian representative's remarks applied to all the questions in the provisional list. Those under article 59 relating to identification, for example, were relatively simple.

10. Mr. MARRIOTT (Canada) said that while he agreed, it was still not possible to predict the outcome of the discussions in the Drafting Committee/Working Group.

11. The CHAIRMAN suggested, in the light of the discussion, and in the absence of a request for a vote, that the provisional list of questions to be settled (CDDH/II/GT/66) should be referred to the Drafting Committee/Working Group.

It was so agreed.

12. The CHAIRMAN suggested that, when the Drafting Committee/Working Group reached agreement on a given problem or set of related problems, a small group should be appointed to deal with the actual drafting.

It was so agreed.

Report of the Technical Sub-Committee (CDDH/II/371)

13. Mr. MARRIOTT (Canada) asked when the report of the Technical Sub-Committee would be available.

14. The CHAIRMAN said that he would ask the Legal Secretary to ascertain what the position was.

15. He asked if any member of the Technical Sub-Committee could give some indication of the number of meetings required to complete its work.

16. Mr. SOLF (United States of America) said he hoped that the Technical Sub-Committee would be able to complete most of its work at one more meeting. It could, for instance, adopt the chapters relating respectively to documents, the distinctive emblem, distinctive signals and communications (annex to draft Protocol I) and also, provisionally, Chapter VI relating to civil defence. The chapter relating to amendments might, however, give rise to problems of substance which would require detailed examination. If it were decided to appoint a sub-committee for the purpose, the presence of the Chairman would be most helpful, in view of his experience with the United Nations Conference on the Law of Treaties.

17. The CHAIRMAN said that he would be pleased to attend such a sub-committee in a consultative capacity.

18. He asked whether the Technical Sub-Committee could adopt the resolution relating to the International Telecommunication Union (ITU) (CDDH/II/363) before it adopted the annex to draft Protocol I as a whole. He understood that the ITU representative was anxious to submit that resolution to the ITU Administrative Council as soon as possible for inclusion in the agenda of the ITU Plenipotentiary Conference in 1979.

19. Mr. SOLF (United States of America) said that the resolution in question related to articles 8 and 9 of Chapter III (annex to Protocol I). He therefore suggested that the Technical Sub-Committee should take up Chapters III and IV of the annex before Chapters I and II.

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

The meeting rose at 10.55 a.m.

SUMMARY RECORD OF THE SEVENTIETH MEETING

held on Wednesday, 19 May 1976, at 9.55 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of the Technical Sub-Committee (CDDH/II/371)(continued)

1. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, introducing the report of that body (CDDH/II/371), on the annex to draft Protocol I, drew attention to the fact that it covered various important matters which, because they involved relations with certain other international organizations, should be dealt with as quickly as possible.
2. A number of minor corrections should be made to the text of the report: first, in paragraph 3 the word "as" should be inserted at the end of the penultimate line; secondly, in paragraph 8 the three documents referred to should be "documents CDDH/II/363/Rev.1, CDDH/II/364/Rev.1 and CDDH/II/366/Rev.1"; thirdly, in the French text only, in note 3 on page 5/6, all the words after "PERMANENT" should be deleted; lastly, in the English text only, in the first line of article 13, the word "intercept" should read "intercepting".
3. In view of the urgency of Chapters III - "Distinctive signals" - and IV - "Communications" - and since there had been no divergence of views on them in the Sub-Committee, he suggested that they should be dealt with first.
4. The CHAIRMAN agreed, and said that as there had also been no divergence of views on Chapter II of the report, it could also be dealt with very quickly.
5. There appeared to be a minor difference concerning the words in square brackets in Chapter I, article 2. He proposed, therefore, that that chapter should be dealt with after Chapters II, III and IV. Consideration of Chapter V should be postponed until Committee II had completed its consideration of the articles on civil defence in draft Protocol I. A decision could also be deferred on Chapter VI, which, in his view, should not be included in the annex to draft Protocol I, but rather in the Final Provisions, possibly as article 86 bis.

Chapter II

6. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, in the Russian text at least, the wording of article 4, paragraph 1, needed revision. It was clearly impossible for an emblem marked on a flat surface to be "visible from all directions".

7. Mr. HESS (Israel) said that, while his delegation could approve Chapter II of the report, it wished to point out, as it had done at the second session of the Conference (CDDH/II/SR.50, para. 68), that Israel used the Red Shield of David as the distinctive emblem of the medical services of its armed forces and of the National Aid Society, while respecting the inviolability of the distinctive emblems of the 1949 Geneva Conventions. That applied also to Chapter II of the annex to draft Protocol I.

Chapter II was adopted by consensus. 1/

Chapter III

8. Mr. MATTHEY (Observer, International Telecommunication Union), speaking at the invitation of the Chairman, said that the Technical Sub-Committee had asked him to repeat in Committee II some of the essential points of his statement in the Sub-Committee concerning Chapters III and IV of the report and the draft resolutions, in particular draft resolution CDDH/II/363/Rev.1. The Technical Sub-Committee had also asked him to request that his statement should be annexed to the report of Committee II to the plenary Conference, so that the information should be available to all delegations to the Conference.

9. He pointed out that at earlier sessions of the Conference emphasis had been laid on the need for co-ordination between the Government departments concerned with the Conference and national telecommunication administrations on the Conference's radio-communication requirements. The problem had been set out in a memorandum from the International Frequency Registration Board to the second session of the Conference (CDDH/213). Largely in response to that memorandum, there had been unanimous agreement in the Technical Sub-Committee on the draft texts of articles 7, 8 and 9 of the annex to draft Protocol I and on the draft resolution calling for government action in preparation for the general World Administrative Radio Conference to be held in 1979 (CDDH/II/363/Rev.1). Two recommendations, by the ITU Plenipotentiary Conference (Malaga - Torremolinos 1973) and the World Administrative Maritime Radio Conference (Geneva 1974), contained in the annexes to document CDDH/211, submitted by the ITU, also related directly to that subject.

10. The radio frequency spectrum was a natural resource knowing no political frontiers; while it belonged to all mankind, it was the property of no one. In the present state of the art, the part of the spectrum usable for telecommunications was finite and demands for its use by Governments and private operating agencies far exceeded what was available. The use of the spectrum accordingly, was the subject of an intergovernmental treaty - the Radio Regulations. The competent forum for the revision of the Regulations was the ITU World Administrative Radio Conference (WARC), which comprised 148 States. Proposals from Governments involving revision of the Radio Regulations had to be submitted for distribution among members of ITU approximately one year before the next WARC. Proposals involving revision of the use of radio-communication services for safety purposes required a great deal of detailed study and co-ordination within each country and between the telecommunication authorities of the various countries.

11. The WARC did not meet frequently: one had been held in 1959 and another was planned for 1979; after that, there was no reason to suppose that there would be another until the end of the century. The agenda for the 1979 Conference would be fixed by the Administrative Council of ITU at its session opening on 14 June 1976. Before doing so, it would have to consult the 148 members of ITU by telegraph. It was most important, therefore, that the Administrative Council should be informed of draft resolution CDDH/II/363/Rev.1 at the earliest possible moment.

12. He accordingly proposed that if that draft resolution was adopted by Committee II - before being referred to the plenary Conference - it should be sent to the ITU Administrative Council for its information, through the Secretary-General of the ITU.

13. In order to ensure that the telecommunication administrations of all members of ITU would be informed as quickly as possible, the International Frequency Registration Board had agreed to circulate the draft resolution to them upon request from a member of the Union. The Swiss delegation had kindly agreed to make arrangements with the Swiss Government to that end. That procedure was to be adopted in addition to the arrangement referred to in operative paragraph 1 of the draft resolution.

14. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, in article 5, paragraph 2, the two English words "identification and recognition" had been translated in the Russian version by the single word "opoznavanie". He wondered whether the two words in English were really necessary.

15. Mr. SOLF (United States of America) said that, in the present context, the word "identification" meant what the party operating the medical means of transport did by the use of markings, visual signals, etc., while the word "recognition" meant what the other party did in noting that the means of transport in question was medical. The "identification" was designed to secure the "recognition".

16. Mr. MARRIOTT (Canada) and Mr. MAKIN (United Kingdom) agreed that the use of the two words in English was important to the sense of the paragraph.

17. Mr. JAKOVLJEVIĆ (Yugoslavia) asked whether the word "should" in article 6, paragraph 2, implied an obligation for medical aircraft to carry the lights referred to or simply that, if they carried the lights, the signal should be visible in as many directions as possible.

18. Mr. KIEFFER (Switzerland), Chairman of the Technical Subcommittee, said that the use of the word "should", as opposed to the word "shall", implied that there was no obligation, but merely that the procedure was highly recommended. The recommendation, however, applied to both points referred to by the Yugoslav representative.

19. Mr. MARTIN (Switzerland) drew attention to the last sentence of article 5, paragraph 1, which said that "the use of all signals referred to in this chapter is optional."

20. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) noted that neither in the definition of medical means of transport, nor in the provisions governing the flight of medical aircraft over front lines and over areas controlled by the adverse party, nor in the articles on radio communications in the annex to draft Protocol I, was there any reference to the fact that medical means of transport should not use secret codes and ciphers for their wireless communication. In his delegation's view, such a reference would do much to ensure the safety of the parties to a conflict as well as of the means of medical transport. He therefore proposed that a provision along the lines of the second paragraph of Article 34 of the second Geneva Convention should be added to the annex to draft Protocol I.

21. Mr. SOLF (United States of America) considered that the point raised by the Ukrainian representative, though valid, was already covered by article 29, paragraph 2, of draft Protocol I, adopted at the fifty-second meeting of Committee II, the first sentence of which read: "Medical aircraft shall not be used to collect or transmit intelligence data and shall not carry any equipment intended for such purposes".

22. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) thought that the paragraph in question did not altogether meet his point. For instance, an adverse party listening to coded messages sent by medical means of transport would have considerable difficulty in establishing whether intelligence was being transmitted, or simply weather reports.

23. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, said that he had some doubts about the advisability of including such a provision in the annex to draft Protocol I, which related solely to technical means of identification. The Ukrainian proposal, on the other hand, concerned general policy and should therefore be dealt with elsewhere in the Protocol. In his opinion, it was largely, if not entirely, covered by article 29, paragraph 2 of draft Protocol I as adopted.

24. Mr. MARRIOTT (Canada) said that, while he had some sympathy with the Ukrainian representative's point, he agreed that it should not be dealt with in the annex. He suggested that the Ukrainian representative might raise the matter by re-opening the discussion on article 29 of draft Protocol I at an appropriate time.

25. Mrs. DARIIMAA (Mongolia) said it was her understanding that, once an article had been adopted, no further amendments to it could be submitted. If that was so, she did not see how the Ukrainian representative could introduce his proposal in relation to article 29, which had already been adopted.

26. In her opinion, the Ukrainian proposal was of the utmost importance. Countries lacking the necessary skill and equipment might well misinterpret coded signals transmitted by medical aircraft flying over their territories with the result that such aircraft, even if in no way at fault, might be shot down by ground defence units. That applied particularly in the case of national liberation movements.

27. The CHAIRMAN said that he wished to remind the Committee that, under rule 32 of the rules of procedure, discussion could be re-opened on an article that had been adopted if the Conference so decided by a two-thirds majority of members present and voting. Under rule 50, rule 32 applied mutatis mutandis to committees.

28. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, said that the technical methods of identification provided for in the annex ranged from the simple to the complex, the idea being that the appropriate method would be selected according to the circumstances that obtained for a given medical flight. The availability and co-ordination of simple methods of identification ought to preclude the type of accident which the representative of Mongolia had in mind.

29. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) said that the explanation given by the Chairman of the Technical Sub-Committee had persuaded him that the place for the Ukrainian proposal was not in the technical annex but elsewhere in the Protocol. His delegation reserved the right, however, to revert to the matter later.

30. Mr. SOLF (United States of America), referring to paragraph 3 of article 7 (CDDH/II/371), stated that the article numbers appearing between square brackets as at present numbered were the following: articles 23, 24, 26 bis, 27, 28, 29, para. 4, 30 and 31.

31. The CHAIRMAN said that it was not possible to predict the numbering of articles in the final text of draft Protocol I. He therefore considered that the square brackets should remain for the time being.

32. Mr. MATTHEY (Observer, International Telecommunication Union), speaking at the invitation of the Chairman, said that the United States representative's proposal would apply equally to Chapter IV, article 9 (CDDH/II/371).

Chapter III was adopted by consensus.1/

Chapter IV

33. Mr. CLARK (Australia), referring to article 13 (CDDH/II/371, p.12), said that if the reference to "the Convention on International Civil Aviation" was to the Chicago Convention of 7 December 1944, that should be specified in the text.

34. The CHAIRMAN said that the necessary change would be made.

Subject to that drafting change, Chapter IV was adopted by consensus.1/

35. The CHAIRMAN invited the Committee to consider next the draft resolutions (CDDH/II/363/Rev.1, CDDH/II/364/Rev.1 and CDDH/II/366/Rev.1) at the end of the report of the Technical Sub-Committee. They were addressed to the International Telecommunication Union (ITU), the International Civil Aviation Organization (ICAO) and the Inter-Governmental Maritime Consultative Organization (IMCO) respectively; and they were interrelated, although each concerned matters within the competence of the appropriate organization. That addressed to the ITU was the most urgent, in that the ITU representative was anxious that it should be submitted to the ITU Administrative Council as soon as possible and in time for inclusion in the agenda of the ITU World Administrative Radio Conference to be held in 1979.

1/ For the texts of chapters II, III and IV of the annex, see the report of Committee II, (CDDH/235/Rev.1, annex I).

Draft resolution CDDH/II/363/Rev.1

36. Mr. CLARK (Australia) said that he was satisfied with the content of the draft resolution, but wondered why the title referred only to "Medical Transports Protected Under the Geneva Conventions of 1949". He suggested adding, at the end of the title, the words "and the Additional Protocol".

37. Mr. MARRIOTT (Canada) noted that the words "any instruments additional to those Conventions" were mentioned in sub-paragraph (b) under "Having noted". He suggested that the text would be clearer if the word "under" were repeated before the word "any", just as the words "pour" and "por" were repeated in the French and Spanish texts respectively.

38. Mr. MATTHEY (Observer, International Telecommunication Union), speaking at the invitation of the Chairman, said that the wording had been taken from the Recommendation referred to, but considered the Canadian suggestion a useful one.

The Canadian suggestion was adopted.

Draft resolution CDDH/II/363/Rev.1, as amended, was adopted by consensus.

39. Mr. SOLF (United States of America) proposed that, in view of the urgency referred to by the Chairman, the Committee should request the Chairman to take steps to ensure that the President of the Conference transmitted the resolution to the ITU Administrative Council, through the Secretary-General of the Conference and the Secretary-General of ITU, without delay, stressing the importance of placing it on the agenda of the next World Administrative Radio Conference.

It was so agreed.

Draft resolutions CDDH/II/364/Rev.1 and CDDH/II/366/Rev.1

40. The CHAIRMAN, referring to draft resolution CDDH/II/364/Rev.1, drew attention to the square brackets enclosing the words "the President of", after the heading "Requests" and, in the last paragraph, to those enclosing the words "the Governments invited to the present Conference". He also suggested that, in that last paragraph of the resolution, the word "urged" should be replaced by the word "requested".

41. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, thought the word "requested" was an improvement. The reason for the square brackets referred to was that the three draft resolutions had been prepared at different times and by different specialists. He thought the square brackets could now be deleted.
42. Mrs. DARIIMAA (Mongolia), noted that in the first line of the preamble to draft resolution CDDH/II/364/Rev.1 the English and French texts referred only to "combatant forces", whereas the Russian text had "combatant forces of the parties". She asked whether the words "of the parties" were necessary in the Russian text.
43. Mr. MAKIN (United Kingdom) said that it was an error to include the phrase "of the parties", since the draft resolution partly concerned neutral countries.
44. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) agreed.
45. Mr. MARTIN (Switzerland) doubted whether the expression "forces combattantes" could be used of neutrals.
46. Mr. ALBA (France) said that perhaps the expression "formations de combat" could be used instead.
47. Mr. MARRIOTT (Canada) supported by Mr. SOLF (United States of America), proposed that the word "combatant" should be replaced by the word "armed". Armed forces need not be combatants in a conflict.

The proposal was adopted.

48. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, reminded members of the Committee that although the draft resolutions might contain expressions which they did not consider essential, they could be important to the bodies to whom they were addressed. The titles of all three draft resolutions should, however, be brought into line and should be completed by the addition, after "protected under the Geneva Conventions of 1949", of the phrase "and the Additional Protocols".
49. Mr. MATHEY (Observer, International Telecommunication Union), speaking at the invitation of the Chairman, said that he had received a request from the International Civil Aviation Organization (ICAO) to the effect that the phrase in question should be included in the title, since the additional Protocols afforded greater protection and the possible use of modes and codes might have to be extended.

50. Mr. BOTHE (Federal Republic of Germany) said that if draft resolution CDDH/II/363/Rev.1 was to be transmitted to ITU immediately, the word "draft" should be inserted in the title before the words "Additional Protocols". The word "draft" should perhaps be included in all the titles and placed in square brackets until the resolutions had been adopted at a plenary meeting. The other words in square brackets to which the Chairman had referred earlier might also require amendment. Instead of the President of the Conference it might be more appropriate to request the depositary Government to transmit the documents referred to and to request the Governments signing the Protocols to lend their full co-operation. The brackets, therefore, should be left for the time being.

51. The CHAIRMAN agreed that the word "draft" might be included in the titles and should be placed in square brackets. If the draft Protocols were not adopted during the current session the draft resolutions would have no purpose and would be purely informative even though transmitted to the organizations concerned.

52. Mr. MARRIOTT (Canada) doubted the wisdom of using the word "draft" in the titles to the draft resolutions: one could not be protected under a draft Protocol. He proposed adding instead, after the words "medical transport" or "medical aircraft", the phrase "protected under the Geneva Conventions of 1949 and any instruments additional thereto".

That proposal was adopted.

53. Mr. MARTIN (Switzerland) said that in the French version of the titles it would be necessary to say "any instruments additional to the Conventions".

54. Mrs. DARIIMAA (Mongolia), referring to the comments of the representative of the Federal Republic of Germany, said that it would be better to retain the phrase "the Governments invited to the present Conference", since the additional Protocols would probably be signed by countries which were not signatories to the Geneva Conventions and it would be better to reflect the realities of the situation.

55. Mr. MAKIN (United Kingdom) suggested that both the brackets and the words within them should be left for the time being and that the Chairman should be authorized, in co-operation with the Secretariat, to adjust the words to the circumstances when the outcome of the Conference was known.

56. The CHAIRMAN thought that the square brackets could be left round "the President of" in draft resolutions CDDH/II/364/Rev.1 and CDDH/II/366/Rev.1, since when the Protocols were signed it would be

more appropriate to mention the depositary Government, but the brackets round "the Governments invited to the present Conference" should be deleted, for it was important for the request to be addressed to all potential Parties to the Protocols.

57. Mr. MATTHEY (Observer, International Telecommunication Union), speaking at the invitation of the Chairman, said that, as far as he could say, the text as it stood, with the square brackets removed, would be acceptable to ICAO. He was unable to speak for IMCO.

58. Mrs. DARIIMAA (Mongolia) said she would prefer to see the second phrase in square brackets worded: "all Governments represented at the present Conference", as that would give the widest circulation to the proposals contained in the draft resolutions.

It was decided to delete the square brackets round the phrase "the Governments invited to the present Conference".

59. Mr. BOTHE (Federal Republic of Germany) said that, to facilitate a decision, he was prepared to agree to the deletion of the square brackets round the words "the President of", although he was afraid that the discussion on what words to use would be re-opened in the plenary meeting of the Conference.

It was decided to delete the square brackets round the words "the President of".

60. The CHAIRMAN pointed out that the draft resolutions would be submitted to the Drafting Committee of the Conference for review.

Draft resolutions CDDH/II/364/Rev.1 and CDDH/II/366/Rev.1 were adopted, as amended, by consensus.

61. Mr. KIEFFER (Switzerland), Chairman of the Technical Subcommittee, said that while the urgency of the resolution addressed to ITU had been specifically recognized, it was important that there should be no undue delay in transmitting the other two resolutions. He wondered whether there were any dates by which they, too, should be received.

62. The CHAIRMAN said that the draft resolutions would be voted on in the plenary meeting about 10 or 11 June. He had no information about the date when they should be received by the two organizations.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE SEVENTY-FIRST MEETING

held on Thursday, 20 May 1976, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

In the absence of the Chairman, Mr. K. Saleem (Pakistan), Vice-Chairman, took the Chair.

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of the Technical Sub-Committee (CDDH/II/371) (continued)

Chapter I

1. The CHAIRMAN invited the Committee to consider Chapter I of the draft annex to draft Protocol I (CDDH/II/371, pp. 3 to 6).
2. Mr. SOLF (United States of America), speaking on a point of order, referred to the words "and religious" which appeared between square brackets in paragraphs 1 and 2 of article 2 of the draft annex, said that the annex was intended to implement draft Protocol I and should therefore be consistent with it. Article 15, paragraph 5, of draft Protocol I, which had been adopted by Committee II at the second session of the Conference, stated that the provision of the Conventions and of the Protocol concerning the protection and identification of permanent medical personnel should apply equally to religious personnel attached to civilian medical units, but said nothing about temporary religious personnel. It would not be possible to include the words "and religious" in article 2 of the annex unless article 15, paragraph 5, of draft Protocol I was reconsidered. Under rule 21 of the rules of procedure, he asked for a ruling on the matter from the Chairman.
3. Mr. KUSSBACH (Austria) said that the terms used in article 15 of draft Protocol I and article 2 of the draft annex might indeed lead to some confusion. With regard to the remark by the United States representative that temporary religious personnel were not mentioned in article 15, he observed that temporary medical personnel were not mentioned there either. The problem was therefore of a more general nature than had been suggested by the United States representative, since it was relevant also to medical personnel. He considered that the words "and religious" should be kept in article 2 of the draft annex, even if that was inconsistent with the text of the draft Protocol.

4. Mr. KLEIN (Holy See) said that the question of the permanent or temporary status of religious personnel gave rise to both a problem of drafting and, more important, a problem of substance. He could see no reason why religious personnel should not have temporary status. Just as the need might arise for additional medical personnel, so might additional religious personnel be required to replace those who were wounded or missing.

5. Mr. BOTHE (Federal Republic of Germany) considered that the only question on which it would be appropriate to take a decision at the present stage was whether or not the problem of temporary religious personnel could be dealt with in the context of article 2 of the draft annex. He agreed with the United States representative that the question of protection of temporary religious personnel should first be settled in the context of draft Protocol I, which, in article 15, paragraph 5, referred only to permanent personnel. If the text of that paragraph was considered by a number of delegations to be unsatisfactory, the only possible solution would be to decide, by a two-thirds majority, to reconsider it. In the present situation, however, the Committee could not adopt article 2 of the draft annex with the words that appeared between square brackets.

6. Mr. MARRIOTT (Canada) fully endorsed the views expressed by the previous speaker. With regard to the comments by the representative of Austria, he observed that temporary medical personnel were the subject of a tentative definition accepted by Committee II at the second session of the Conference (see the report of Committee II - CDDH/221/Rev.1, p.13).

7. Mr. MAKIN (United Kingdom) said that since nobody seemed to object to the deletion of the word "permanent" from the second sentence of draft Protocol I, article 15, paragraph 5, the simplest solution might be for a delegation to make a formal proposal for the deletion of that word. If such a proposal, which his delegation would be prepared to support, obtained the required two-thirds majority, the Committee could then decide to delete the square brackets from article 2 of the draft annex.

8. Mr. SOLF (United States of America) said that the matter he had raised and the ruling he had requested were totally unrelated to the substance of the provisions in question. The difficulty he encountered arose only from the inconsistency which existed between the words in square brackets and the text of article 15, paragraph 5. His delegation would have no objection to keeping those words in square brackets in article 2 of the annex until the basic problem had been solved.

9. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, said that the Committee could decide to leave the words "and religious" between square brackets until such time as the basic problem had been solved.

It was so agreed.

10. Mr. KUSSBACH (Austria) observed that in the second sentence of draft Protocol I, article 15, paragraph 5, the word "permanent" had been included by mistake. As far as substance was concerned, he agreed with the representative of the Holy See that there was no reason to draw any distinction between medical and religious personnel for the purposes of the provisions under consideration. Consequently, he proposed the deletion of the word "permanent" from draft Protocol I, article 15, paragraph 5, and the deletion of the square brackets from article 2 of the draft annex.

11. Mr. SOLF (United States of America) said that article 15 of draft Protocol I had been the subject of lengthy discussions at the second session of the Conference. He considered, therefore, that the proposal by the representative of Austria should not be put to the vote immediately. It was not on the agenda of the meeting and delegations should, as was customary, be given some time to reflect on it.

12. Mr. MARTIN (Switzerland) supported that view. He drew attention to the fact that the term "permanently attached", which appeared in the original ICRC text of draft Protocol I, article 15, paragraph 6, had been replaced by the single word "attached" in the text of article 15, paragraph 5, adopted by Committee II at the second session of the Conference. Furthermore, article 1 of the draft annex contained a reference to draft Protocol I, article 18, paragraph 3, in which the word "permanent" did not appear, whereas article 2 of the draft annex contained no such reference even though it was clearly based on the same provision. That omission should perhaps be made good. The fact that the Technical Sub-Committee had placed the words "and religious" between square brackets indicated the existence of a problem which required consideration, and his delegation was inclined to favour the proposal by the Austrian representative.

13. The CHAIRMAN said that the Austrian proposal was perhaps a little far-reaching. At the present stage, he would be prepared to entertain a proposal to reconsider article 15, paragraph 5. The Committee would probably be able to take an immediate decision on such a proposal, whereas consideration of any amendments to the paragraph itself would have to be deferred until delegations had had time to study them.

14. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) agreed that an immediate decision should not be taken on such a complex matter. He had some doubt about the desirability of making provision for a special category of temporary religious personnel. He suggested that square brackets should be placed round the words "and religious" in note 3 on page 5/6 of the report of the Technical Sub-Committee (CDDH/II/371) and that consideration of the question should be deferred until a decision had been taken on the status of the personnel concerned.

15. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, supported that suggestion.

16. Mr. KLEIN (Holy See) observed that the word "temporary" did not apply to the religious duties of the individuals concerned but only to their assignment to the victims of armed conflicts.

17. Mr. CLARK (Australia) supported the view that the Committee should not take a decision on article 2 of the draft annex until the question of principle raised in connexion with draft Protocol I, article 15, paragraph 5, had been settled.

18. Mr. KUSSBACH (Austria) proposed that article 15, paragraph 5, should be reconsidered. He agreed, however, that the Committee should wait to discuss any amendments until they were circulated.

19. The CHAIRMAN said that, in the absence of any objections, he took it that the Committee agreed to reopen discussion on article 15, paragraph 5.

It was so agreed.

20. The CHAIRMAN said that any amendments to article 15, paragraph 5, of draft Protocol I, should be submitted in writing. In Chapter I of the draft annex the square brackets would remain round the words "and religious" wherever they occurred in article 2 and would be inserted in note 3, pending reconsideration of article 15, paragraph 5.

21. Mr. MAKIN (United Kingdom) proposed that in the title of the annex, the words "means of" should be deleted where they occurred twice, and that the word "recognition" should be inserted before "and marking" in the first line. The title would then read "Regulations concerning the identification, recognition and marking of medical personnel, units and transport, and civil defence personnel, equipment and transport".

22. Mr. MARRIOTT (Canada) agreed with the first of those proposals on condition that it applied only to the English text. The word "recognition" should, he thought, be introduced in all the language versions. Moreover, "transport" should be amended to read "transports", as in the text adopted for article 21.

23. Mr. BOTHE (Federal Republic of Germany) endorsed those remarks.

24. Mr. ALBA (France) proposed that in the French version of article 2, "doit" should be changed to "devrait".

25. The CHAIRMAN said that since the French representative's point was a mere question of translation, the Committee would not object to it.

26. He took it that there were no objections to the United Kingdom amendment to delete the words "means of" which appeared twice in the title of the English version.

The amendment was adopted.

27. The CHAIRMAN asked whether there were any objections to the United Kingdom amendment to include the word "recognition" after "identification" in the title.

28. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation was satisfied with the Russian version of the title as it stood, since in Russian the idea of recognition was included in that of identification.

29. Mr. ALBA (France) and Mr. SANCHEZ DEL RIO (Spain) said that they were satisfied with the French and Spanish versions of the title respectively.

30. The CHAIRMAN suggested that the word "recognition" should therefore be included in the English text only.

It was so agreed.

31. The CHAIRMAN asked whether there were any objections to the Canadian proposal to amend "transport" to "transports" wherever it occurred in the title of the English version.

32. Mr. MAKIN (United Kingdom) said that he had no objections to the amendment.

The amendment was adopted.

33. Mr. IJAS (Indonesia) proposed that, since in some countries many people did not know their exact date of birth, the words "date of birth" in article 1, paragraph 1 (d) should be amended to read "age".
34. Mr. MARTIN (Switzerland) wondered what the words "if normally used" in article 1, paragraph 1 (d) meant in relation to the surname of the holder of the identity card.
35. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, replied that in some countries surnames were hardly used at all.
36. Mr. MARTIN (Switzerland) said that the word "normally" would imply that the surname might otherwise be used in an abnormal fashion. It would be better to say "habitually" ("habituellement") or "if it is used" ("s'il est utilisé").
37. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, said that the Indonesian proposal to change "date of birth" to "age" had not been discussed in the Technical Sub-Committee. However, mention of age in a document of a lasting nature would create a problem because age increased with time. He therefore suggested that the words "date of birth" should be kept, and that when the date was not known it might be replaced by the most accurate indication available within the intention of the article.
38. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) suggested that a foot-note should be included to the effect that the age at the date of issue of the identity card should be given whenever the date of birth was not available.
39. Mr. ALBA (France) agreed with the representative of the Union of Soviet Socialist Republics with respect to the date of birth. To meet the point raised by the Swiss representative, he suggested that "legally" should be used instead of "normally".
40. Mr. CLARK (Australia) proposed that, after "date of birth", the words "or age at date of issue" could be inserted, and the identity card itself amended by adding the words "or age" after "date of birth", which together with the date of issue on the cover should take care of the point raised by the Indonesian representative.
41. Article 2, paragraph 2, should be revised in the light of the discussion on the legal validity of foot-notes that had taken place in the Technical Sub-Committee.

42. Mr. URQUIOLA (Philippines) agreed with the Indonesian proposal. Furthermore, he suggested that the sex of the card-holder should also be indicated.

43. Mr. EL HASSEEN EL HASSAN (Sudan) said that in his country the problem of persons without a birth certificate had been overcome by causing them to appear before a medical commission which determined their age. Since the proposed identity card would be essentially for medical personnel, there should be no problem in obtaining certificates stating a presumed age.

44. Mr. MAKIN (United Kingdom) thought that a single formula would be simpler. Either "age" or "date of birth" would be acceptable to his delegation.

45. Mr. SOLF (United States of America) pointed out that in many countries, including his own, the date of birth was a most important indication and the easiest way to check identity. The card was intended to permit the authorities of both parties to a conflict to check an individual's identity and his authority to bear the Red Cross emblem, and with the date of birth it would be possible for many countries to check the authenticity of the card. Without that indication, embarrassment and difficulty might be caused to the bearer. His delegation would therefore not wish to delete mention of the date of birth.

46. Mr. MARRIOTT (Canada) pointed out that if the Committee took a decision to include an indication other than date of birth in the annex, that might clash with Article 40 of the first Geneva Convention of 1949. Civilian medical personnel might later become military personnel, in which case their date of birth would have to be given. The Drafting Committee of the Conference might therefore find it necessary to reconcile the annex with the provisions of Article 40 of the first Convention.

47. Mr. BOTHE (Federal Republic of Germany) suggested that a more accurate wording might be "date of birth or, if not available, other information concerning age on date of issue".

48. Mr. CZANK (Hungary) pointed out that if age could be determined by a medical commission, it would be easy to provide the year of birth.

49. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, pointed out that since the identity card had to be small, lengthy explanations must be avoided. Where the date of birth was available, it should be used. If it was not available there must be the possibility of giving another useful indication.

50. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he would prefer the addition of the words "age at date of issue". If the year of birth was given, complications might arise because of the various calendars in use in different countries.

51. The CHAIRMAN said that, if he heard no further objection, he would take it that the words "(or, if not available, age on date of issue)" should be added after the words "date of birth" in article 1, paragraph 1 (d).

It was so agreed.

52. Mr. MARRIOTT (Canada) pointed out that the words "date of birth" were also included in article 2, paragraph 2.

53. The CHAIRMAN said that if he heard no objection, he would take it that the addition would also be made in article 2, paragraph 2.

It was so agreed.

54. Mr. MARRIOTT (Canada) said that for the sake of brevity and simplicity he would like the proposed specimen identity card, which was only a suggested model, to remain unchanged.

55. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) noted that it was impossible to cover all possibilities and proposed that, on the identity card, the word "age" should be inserted in square brackets after the words "date of birth", it being understood that the holder's age was his age on the date of issue.

56. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, supported that proposal.

57. Mr. MARRIOTT (Canada) said that the wording proposed by the representative of the Union of Soviet Socialist Republics had the merit of being brief. He had no objection to it.

58. The CHAIRMAN said that, if he heard no objection, he would take it that the Soviet Union representative's proposal was adopted.

It was so agreed.

59. The CHAIRMAN inquired whether any member had any objection to the Philippine representative's proposal that the holder's sex should be indicated on the identity card.

60. Mr. MARRIOTT (Canada) said that the addition of such information would add nothing to the identification process. The Philippine representative had apparently been concerned over the use of the word "his". In common legal practice, however, the word "his" was taken to include "her" wherever appropriate. Consequently, no amendment was required.
61. Miss MINOGUE (Australia) said that it would make little difference whether the holder's sex was indicated or not, since that would in any case be apparent.
62. Mr. URQUIOLA (Philippines) withdrew his proposal.
63. The CHAIRMAN drew the Committee's attention to the French proposal that the word "normally" should be replaced by the word "legally" in the ninth line of article 2, paragraph 2.
64. Mr. MARTIN (Switzerland) recalled that he had suggested that the word habituellement should be used in the French text. There were, however, many alternative renderings that would be satisfactory.
65. Mr. ALBA (France) said that habituellement would be acceptable to him.
66. Mr. MARRIOTT (Canada) said that the word "habitually" was acceptable in English and was difficult to misinterpret.
67. Mr. SOLF (United States of America) agreed that the word "habitually" was to be preferred.
68. Mr. SANCHEZ DEL RIO (Spain) said that the question raised by the Swiss representative would not be solved by the use of the word "habitually" because the surname was often not commonly employed. The verb "used" gave rise to a number of problems and should therefore be omitted; also, "if" should be amended to "where".
69. Mr. MARTINS (Nigeria) said that the words "if normally used" were unnecessary. A person was normally identified by his surname and could always state it, even if he did not generally use it.
70. Miss MINOGUE (Australia) suggested that the words "family name" should be used instead of "surname".
71. The CHAIRMAN suggested that the words "full name" might be an improvement.
72. Mr. SOLF (United States of America) pointed out that the full names of some persons were extremely long, particularly in the case of royalty.

73. Mr. RUIZ PEREZ (Mexico) confirmed that in Latin America a person's full name was often very long; difficulties might therefore arise in ensuring that the card was of the same size in all countries. He considered that the words "if normally used" should be deleted in article 1, paragraph 1 (d), and in article 2, paragraph 2.

74. Mr. KIEFFER (Switzerland), Chairman of the Technical Subcommittee, pointed out that in article 1 the word "shall" was used, and in article 2 the word "should".

75. Mr. MARTIN (Switzerland) noted that the difference between "shall" and "should" implied a difference in treatment between permanent and temporary personnel.

76. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that it was not essential that the standards applicable to permanent personnel should be identical with those applicable to temporary personnel. In any case, there was no need to change the Russian text.

77. Mr. ALBA (France) said that if the word "shall" was replaced by the word "should", the words "if normally used" could be deleted.

78. Mr. SOLF (United States of America) said that since different countries used names in different ways and since under article 1, paragraph 2, each State could prescribe its own identity card, the simplest solution might be to use the word "name".

79. Mr. MAKIN (United Kingdom) agreed that the use of the word "name" would solve the problem. He also considered that "shall" should be amended to "should" in article 1, paragraph 1.

80. The CHAIRMAN said that, if he heard no objection, he would take it that the word "shall" should be amended to "should" in article 1, paragraph 1, and that the words "surname, if normally used, and first names" should be replaced by the single word "name" in article 1, paragraph 1 (d) and in article 2, paragraph 2.

It was so agreed.

81. Mrs. DARIIMAA (Mongolia) noted that article 1, paragraph 2 and article 2, paragraph 1 referred to "High Contracting Parties", whereas article 7 mentioned in addition "and the parties to a conflict". She pointed to the need for uniformity throughout the annex.

82. She further asked whether the Technical Sub-Committee had taken into account the provisions of draft Protocol I, to the effect that the Protocol should be applicable to national liberation movements. Were national liberation movements authorized to issue identity cards or not?

83. Mr. KHAIRAT (Egypt) proposed that the Committee should adopt the words "each party to the conflict", in conformity with article 18 of draft Protocol I.

84. Mrs. DARIIMAA (Mongolia) said that she had no objection to that proposal.

85. The CHAIRMAN said that, if he heard no objection, he would take it that the Egyptian representative's proposal was adopted.

It was so agreed.

86. Mrs. DARIIMAA (Mongolia) said that the wording adopted on the proposal of the Egyptian representative should be extended to the whole of the report of the Technical Sub-Committee.

87. Mr. KIEFFER (Switzerland), Chairman of the Technical Sub-Committee, announced that unfortunately he would not be available to serve on Committee II any longer, because of official duties elsewhere. He thanked the members of the Committee and the secretariat for their kind co-operation.

The meeting rose at 12.55 p.m.

SUMMARY RECORD OF THE SEVENTY-SECOND MEETING

held on Friday, 21 May 1976, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

In the absence of the Chairman, Mr. K. Saleem (Pakistan), Vice-Chairman, took the Chair.

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of the Technical Sub-Committee (CDDH/II/371) (continued)

Chapter I (concluded)

1. The CHAIRMAN said that the Committee had already taken a number of decisions on Chapter I of the annex to draft Protocol I, though deferring its decisions on words appearing in square brackets.
2. Mr. FROIDEVAUX (Legal Secretary) summarized the decisions taken at the two previous meetings.
3. In the English version of the heading, the words "and means" should be deleted after "units" and after "equipment"; and the word "transport", which occurred twice, should be put in the plural.
4. In article 1, paragraph 1, third line, in the penultimate line of paragraph 2 of the same article, and in the second line of paragraph 2 of article 2, the word "shall" should be replaced by the word "should".
5. In article 1, paragraph 1 (d), the words "if normally used, and first names" should be deleted, together with the following comma, and in the second line, after the words "date of birth" the words "or, if not available, age at the time the card was issued" should be added.
6. The first two sentences of article 1, paragraph 2 would read as follows:

"2. The identity card should be uniform throughout the territory of each High Contracting Party and, as far as possible, of the same type for all the parties to the conflict. The parties to the conflict may be guided by the single-language model shown in Fig.1."

The second sentence of article 2, paragraph 1, should read as follows:

"The parties to the conflict may be guided by the model shown in Fig.1".

7. Mrs. DARIIMAA (Mongolia) reminded the Committee that at the seventy-first meeting (CDDH/II/SR.71), when it had decided to replace the expression "High Contracting Parties" by "parties to the conflict" in some articles, she had pointed out that uniform terminology should be used in the document each time that it was necessary; hence the words "parties to the conflict" should be used particularly in article 7, paragraph 3.

8. Mr. SOLF (United States of America) disagreed with that view. The grounds for the change in articles 1 and 2 were not valid in respect of the other articles. Under article 18, paragraph 7, (CDDH/226 and Corr.2, p. 44), distinctive emblems could not be used in times of peace, while under the terms of Article 44 of the first Geneva Convention of 1949, civilian medical teams that did not come under the authority of the parties to the conflict could not normally use the Red Cross emblem and therefore had no need for identity cards. Article 32 of draft Protocol I, which provided for cases of medical aircraft having to land in the territory of States not parties to the conflict, implied the use of distinctive signals. The reference to the High Contracting Parties and to the parties to the conflict in articles 7 and 8 should therefore remain unaltered.

9. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) agreed with the representative of Mongolia but only in so far as concerned Chapters I and II of the annex. There was no reason to amend the subsequent Chapters, particularly article 16.

10. Mr. ALBA (France) saw no need for mentioning "validity" on the front of the identity card; that term should be omitted. Furthermore, the words "l'adjonction dans la carte de: valable de ... à ..." should be deleted from note 3 in the French text.

11. The CHAIRMAN said that the suggestion seemed acceptable, unless there were any objections.

12. Mr. MARRIOTT (Canada) agreed that, in a sense, no such mention was essential since the card was intended for permanent personnel. It would, however, be useful in the case of temporary personnel. Moreover, it was usual to establish validity limits in respect of identity cards to allow for possible changes in the physical appearance or civil status of the holder.

13. Mr. BOTHE (Federal Republic of Germany) considered that the words "No. or signature of issuing authority" on the front of the model were inaccurate.
14. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Drafting Committee, suggested that the words "of the card" should be inserted after "No."
15. The CHAIRMAN felt that it might be better to mention the number of the card and the issuing authority separately.
16. Mr. MARRIOTT (Canada) proposed that the dotted lines should be deleted from the box on the reverse side of the card reserved for signature or thumb-print.

It was so agreed.

17. Mr. MAKIN (United Kingdom) said that the first two lines on the front of the model seemed superfluous. He agreed that the word "validity" might usefully be replaced by something more explicit. The word "religious" in notes 3 and 4 should be placed between square brackets. In any case, the Drafting Committee should review the wording of those texts.
18. Mr. SODHI (India) reminded those present that certain countries, his in particular, issued bilingual identity cards. He suggested that provision be made for that possibility in articles 1 and 2.
19. The CHAIRMAN did not believe that there was any need to make bilingual identity cards mandatory: each country should select the formula best suited to it.
20. Mr. SANCHEZ DEL RIO (Spain) considered that paragraph 1 (c) of article 1 answered the Indian representative's question: it provided that the identity card would be worded in several languages. The Technical Sub-Committee was drawing up a model for bilingual identity cards, but for simplicity's sake the models had been reproduced in one language only.
21. Moreover, in the Spanish text of paragraph 2 of article 1 the word "ellas" in the third line should be replaced by "las partes al conflicto".
22. Under Spanish law, the identity card must be renewed every five years in the light of intervening changes in the physical appearance, civil status and so on, of the bearer. It would perhaps be better to adopt a similar formula and lay down, for example, a maximum validity for the card related to the exercise of the functions assigned to the bearer.

23. Mr. MARRIOTT (Canada) believed, in common with the United Kingdom representative, that the Committee should let the Drafting Committee edit the various texts.

24. The CHAIRMAN did not oppose that suggestion, but pointed out that the process would take up time, for the Committee would later have to give an opinion on the texts thus elaborated.

25. Mr. MARRIOTT (Canada) believed that the Committee could adopt the substance of the text, and let the Drafting Committee refine the wording.

26. Mr. AL BADRI (Libyan Arab Republic) was of the opinion that the expression "religious personnel" was somewhat ambiguous, because it covered too wide a field. If the intention was to afford civilians the maximum protection, the categories to be covered should be clearly defined. The Drafting Committee would therefore be well advised to indicate, for example, that the "religious personnel" in question formed part of the armed forces.

27. The CHAIRMAN reminded the Committee that it had already decided at its seventy-first meeting to keep the words "and religious" between square brackets until such time as paragraph 5 of article 15 had been studied afresh. The representative of the Libyan Arab Republic would be at liberty to explain his views on the question when the Committee came to make such a study.

28. Mr. BOTHE (Federal Republic of Germany) observed that the problem of defining "religious personnel", whether permanent or temporary, arose equally in connexion with article 8 on definitions of draft Protocol I.

29. The CHAIRMAN said that unless there were any objections, he would take it that the Committee gave general approval to the text of Chapter 1 of the annex to draft Protocol I as modified, the words "and religious" being left provisionally between square brackets; and that it left it to the Drafting Committee to complete the model identity card.

It was so agreed. 1/

30. Mr. HESS (Israel) said that the statement he had made on his country's use of the Red Shield of David as a distinctive emblem in connexion with Chapter 2 of the annex held good for Chapter 1 as well.

1/ For the text of chapter I of the annex as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I).

31. Mr. MARRIOTT (Canada) proposed that the discussion should be re-opened on article 4 of the annex to draft Protocol I (CDDH/II/371, p.7). In the English version the word "all" in paragraph 1 should be replaced by the words "as many" since a flat surface could not be visible from all directions.

32. The CHAIRMAN decided that, since there was no objection, the debate on article 4 should be reopened.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he was in favour of the new wording proposed by the Canadian representative but that in the case of the Russian text the whole grammar of the sentence would then have to be changed.

34. Mr. ALBA (France) considered that the French version was clear enough, for the expression "dans la mesure du possible", repeated in slightly different form in the last line of paragraph 1 ("d'aussi loin que possible"), applied just as much to direction as to distance.

35. The CHAIRMAN proposed that the Committee should adopt the amendment suggested for the English version, and let the language services decide what changes it entailed in the other languages.

It was so agreed.

36. The CHAIRMAN proposed that the Committee should close the debate on article 4 and pass on to articles 14 and 15 of the annex, leaving the decision on the words in square brackets until after the debate on the relevant articles.

37. Since no one wished to comment on article 14 of the annex, he suggested that the Committee should pass on to article 15.

It was so agreed.

38. Mr. MAKIN (United Kingdom) had two comments to make on article 15. First, the word "all" in the English version of paragraph 3 should be replaced by "many", in order to bring the article into line with article 4 of the annex. Secondly, it seemed open to question whether paragraph 2 was really necessary, since the specifications given in the first two lines of paragraph 1 were surely quite sufficient.

39. Mr. ALBA (France) pointed out that in his country, for instance, the background to the civil defence symbol was a circle. The "geometrical shapes" referred to in paragraph 2 could be regular or irregular. The text should be clear on that point.

40. He observed that the triangle shown on page 12 of the Technical Sub-Committee's report (CDDH/II/371) was not equilateral.
41. Mr. EBERLIN (International Committee of the Red Cross) noted the mistake.
42. Mr. SCHULTZ (Denmark) wondered, like the United Kingdom representative, whether paragraph 2 was necessary and proposed that article 15 should be referred to the Drafting Committee.
43. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) suggested deleting the word "geometrical" in paragraph 2 of article 15.
44. Mr. IJAS (Indonesia) suggested that the word "accepted" should be inserted before the words "distinctive emblem" in the first line of article 15.
45. With regard to the actual shape of the distinctive emblem, he considered that parallel vertical light-blue stripes on an orange ground, as in the ICRC's proposal II, would be more clearly visible at a distance.
46. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, referring to the French text of paragraph 2 (a), thought that the word "dossard" should be deleted, since the corresponding terms in Spanish ("capote") and English ("tabard") were unclear. In the Spanish text the word could be replaced by a phrase such as "alguna prenda" ("some article of clothing").
47. Mr. MARRIOTT (Canada) considered that there was a contradiction between the phrase "in accordance with the model" in paragraph 1 of article 15 and the words "different geometrical shapes" in paragraph 2. The sentence in paragraph 1 could end at the words "on an orange ground".
48. The word "geometrical" in paragraph 2 should be deleted. In the English text of paragraph 3, the words "whenever possible" seemed superfluous since they duplicated the term "as far as possible" in the fourth line. Also, the wording of paragraph 3 would have to be brought into line with article 4, paragraph 1, if "all" was replaced by "many" there.
49. Replying to the Indonesian representative, he saw no point in specifying that the distinctive emblem should be internationally accepted, since ratification of the Protocols would imply acceptance of the international distinctive emblem. It might even be asked whether the word "international" in the phrase "the international distinctive emblem" in the first line of paragraph 1, should not be deleted.

50. Mr. ALBA (France) shared that view and wondered what the point of the word "international" was. Was the aim to differentiate between "distinctive emblem for civil defence services" and "distinctive emblem" used in the sense of the Geneva Conventions? If the word was to be kept, it would also have to be introduced into article 15, paragraphs 2 and 3.
51. Mrs. DARIIMAA (Mongolia) asked what was meant by the word "tabard".
52. Mr. EBERLIN (International Committee of the Red Cross) said that it was a piece of cloth worn on the back or the chest and marked with a distinctive emblem or number or the like.
53. Mr. IJAS (Indonesia) maintained his proposal that "accepted" should be inserted before the words "distinctive emblem."
54. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, like the Canadian representative, he could not agree to the Indonesian proposal. Article 15 was not the place to deal with the question of international recognition of the distinctive emblem. It was concerned with ensuring observance of the emblem.
55. As regards the shape of the emblem, a similar sign was already used for hospital and safety zones and localities (cf. the fourth Geneva Convention of 1949, annex I, article 6). It would therefore be dangerous to use the same emblem for civil defence.
56. Mr. SCHULTZ (Denmark) wondered if the word "tabard" in the English text of article 15, paragraph 2 (a) was the right one. He considered that orange-coloured clothing, e.g. a poncho, bearing a triangle, would be easier to see than an armband.
57. Mr. CLARK (Australia) thought that the Committee could hardly consider article 15 of the annex to draft Protocol I before it had taken a decision on article 59 of that Protocol and the amendments to it. Article 15 should therefore be referred to the Working Group.
58. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) agreed. It was too early to discuss article 15 and the Committee should first take a decision on article 59 of draft Protocol I. The amendments proposed to article 15 of the annex were merely points of detail and there was no point in spelling everything out in the article, which simply contained recommendations of a non-compulsory nature. The Committee should approve the article as a whole, without deciding for the time being whether to delete the square brackets.

59. Mr. ALBA (France) said that in general he shared the views of the representative of the Union of Soviet Socialist Republics but agreed with the Canadian representative that the words "in accordance with" in the fourth line of article 15, paragraph 1 conflicted with the last sentence of article 2, paragraph 1. Perhaps it might be replaced by an expression such as "similar to". The words "tabard" and "armlet", which had given rise to so much discussion, could not refer to anything but articles of clothing.

60. The CHAIRMAN suggested that further consideration of Chapter V of the technical annex to draft Protocol I should be postponed until article 59 of that Protocol had been adopted.

It was so agreed.

OTHER QUESTIONS

Memorandum submitted by the International Union of Police Trade Unions (CDDH/II/Inf.262; CDDH/II/GT/70)

61. The CHAIRMAN pointed out that the International Union of Police Trade Unions (UISP), a non-governmental organization, had submitted to the Secretary-General a memorandum (CDDH/II/Inf.262) relating to articles 45, 52, 53, 55 and 56 of draft Protocol I. Its suggestions regarding the last two articles on civil defence were noted in working paper CDDH/II/GT/70. But under the terms of rule 61 of the rules of procedure, proposals by non-governmental organizations could not be considered unless the Conference or one of its Main Committees had so decided. He invited members of the Committee to express their opinions on the matter.

62. Mr. SCHULTZ (Denmark) thought that as a general principle the Committee should not consider proposals submitted by non-governmental organizations, whatever their merits, since a diplomatic conference should deal only with questions raised by the Governments taking part.

63. The question of including police forces in draft Protocol I had been raised several times in Committee II; the general opinion had been that it would be inadvisable to make any reference to them in the chapters of draft Protocol I with which the Committee was concerned. Furthermore, the UISP proposal that police forces should be included among civil defence bodies was highly disputable and would take the Committee too far afield. It had never been the intention of the ICRC or the Governments represented at the Conference to go into the highly complex problem of the role of the police in time of war or armed conflict.

64. Consequently, both as a matter of principle and because of the very great complexity of the question, the Committee should not consider document CDDH/II/GT/70.

65. Mr. CARNAUBA (Brazil), Mr. KRASNOPEEV (Union of Soviet Socialist Republics), Mr. JAKOVLJEVIC (Yugoslavia), Mr. QUERNER (Austria) and Mr. HEER (German Democratic Republic) agreed with the Danish representative.

66. Mr. MARTIN (Switzerland) pointed out that document CDDH/II/GT/70 had only been circulated that morning and thought that the Committee should postpone its decision on what was an important question to a later meeting.

67. Mr. MAKIN (United Kingdom) also thought that the Committee should not discuss document CDDH/II/GT/70 but should merely take note of it and of document CDDH/II/Inf.262. If any delegation wished to support any of the proposals in those documents, it could do so by submitting an amendment.

68. Mr. BOTHE (Federal Republic of Germany), Mr. EL HASSEEN EL HASSAN (Sudan) and Mr. KHAIRAT (Egypt) shared that view.

69. Mr. SOLF (United States of America) supported the views of the Danish and United Kingdom representatives.

70. After an exchange of views in which Mr. SCHULTZ (Denmark), Mr. HEREDIA (Cuba), Mr. MARRIOTT (Canada), Mr. KRASNOPEEV (Union of Soviet Socialist Republics) and Mr. URQUIOLA (Philippines) took part, the CHAIRMAN invited the Committee to vote on whether UISP should be allowed to present document CDDH/II/GT/70, under rule 61 of the rules of procedure.

The proposal was rejected by 32 votes to 1, with 13 abstentions.

71. Mr. MARTIN (Switzerland) said that if it was considered to be a matter of courtesy to take note of the UISP report, it seemed illogical not to read it after it was submitted. It had been agreed that account should be taken of UISP's comments at previous international conferences on the subject, since it was often necessary to collaborate with the police in practice. While he did not wish to take a stand on the inclusion of the police in civil defence bodies, he believed that it would again have been an act of courtesy to consider document CDDH/II/GT/70. In any event the granting of some form of protection to the police was a question which would still remain outstanding if it was not settled during the debate on the chapter devoted to civil defence.

72. Mr. MAKIN (United Kingdom) said that he had in fact intended to vote like the Swiss delegation but had inadvertently voted differently.

73. The CHAIRMAN noted that one of the two documents in question was a memorandum submitted by UISP to the Conference for information purposes (CDDH/II/Inf.262). The Committee was not therefore expected to take a position on it. What it had decided not to discuss was a working paper with limited distribution (CDDH/II/GT/70).

74. If the Committee was satisfied with pages 1 and 2 of the Technical Sub-Committee's report (CDDH/II/371), it could also move a vote of thanks to the Sub-Committee.

The Chairman's proposal was adopted by consensus.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE SEVENTY-THIRD MEETING

held on Tuesday, 25 May 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

STATEMENT BY THE CHAIRMAN

1. The CHAIRMAN informed the Committee that at a meeting held the previous day the General Committee had decided that a fourth session of the Conference would be held the following year, starting in April immediately after Easter. The length of the session would be decided at a meeting of the General Committee on Thursday, 10 June.
2. The General Committee had asked the Committees to get as much work done as possible at the present session and to see that their reports were short.

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol II

Proposal by the Working Group on article 14, paragraph 3 (CDDH/II/372) (concluded)

3. Mr. CLARK (Australia), Chairman of the Working Group on paragraph 3 of article 14, introduced the Group's proposal (CDDH/II/372). The Working Group, which comprised representatives of Austria, Belgium, Byelorussian Soviet Socialist Republic, Canada, Federal Republic of Germany, Holy See, Indonesia, Norway, Philippines, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and the United States of America, had decided at its first meeting not to appoint a rapporteur; he was therefore speaking as Chairman/Rapporteur.
4. The text proposed for paragraph 3, which had been approved by consensus in the Working Group, differed considerably from the text previously before the Committee. The Working Group had tried to ensure that, within the confines of draft Protocol II, paragraph 3 of article 14 offered effective protection for persons in charge of civilian means of transport who responded to an appeal from a party to a conflict or who, on their own initiative, took on board and cared for the wounded and sick or the shipwrecked. In that connexion it had been thought important to consider paragraph 3 in the context of article 14, paragraphs 1 and 2 of which covered the role of the civilian population and relief societies concerning the wounded, sick and shipwrecked and, in particular, protection for members of the civilian population who assisted the wounded and

sick or the shipwrecked. The paragraph had also had to be made compatible with the obligations of parties under article 13 of draft Protocol II, which was concerned with search and evacuation on land and at sea of the wounded, sick and shipwrecked.

5. The Working Group had considered seven drafts before agreeing on the present proposal. It had been thought important to state clearly that an appeal could be made only to "persons in charge of civilian means of transport", since only such persons could determine whether to respond to an appeal. It had been agreed to refer to civilian means of transport, since a list might not be complete. It had been pointed out that in non-international armed conflicts bicycles, carts and animals might be used.

6. The Group had also agreed that persons responding to appeals or acting on their own initiative were entitled to assistance only for wounded, sick or shipwrecked or dead taken on board the civilian means of transport. The paragraph would therefore apply only to means of transport about to take or having taken on board wounded, sick, shipwrecked or dead. Assistance to civilian means of transport merely offering care for wounded, sick or shipwrecked but not taking them on board would have to be covered elsewhere in the Protocol.

7. All parties to a conflict were expected to offer reasonable assistance to persons in charge of civilian means of transport who responded to an appeal or acted on their own initiative. There had been some discussion about the obligation on the parties to provide reasonable assistance, not just protection. Protection alone was neither feasible nor realistic, since the party appealing might not be able to provide protection and the adverse party would certainly not be able to do so. It was necessary to qualify assistance as reasonable, for while the task was clearly humanitarian, circumstances might make it necessary for a party to assess the assistance it could offer at any particular time and to decide whether that assistance would be in the form of materials, services or protection. Each case would be determined by the competent authorities of a party, taking into account the particular situation: no precise rule could be provided in draft Protocol II. Persons acting on their own initiative could, of course, expect less assistance than persons acting in response to an appeal from a party to the conflict.

8. The Group had thought it unnecessary to restate the protection accorded in paragraph 1 of article 14; that paragraph applied to all activities undertaken by the civilian population in accordance with article 14.

9. Paragraph 3 in no way authorized or condoned interference in a conflict by third parties. Article 4, particularly paragraph 2, was clear on that point.

10. The words "the wounded and sick, or the shipwrecked" had been placed in square brackets pending examination of the definitions in article 11 of draft Protocol II and revision of similar definitions in article 8 of draft Protocol I. The Drafting Committee of the Conference had decided to defer consideration of those words until the definitions had been revised.

11. He suggested a further drafting amendment to the text: the deletion of the words "means of" and the addition of an "s" to the word "transport". That would not alter the substance of the paragraph, but would bring the description of civilian transports into line with the drafting elsewhere in draft Protocol II.

12. The Working Group had also been asked to consider whether the words "and the shipwrecked" in article 14, paragraph 2, should be deleted or retained. Some members had thought that those words could be deleted if paragraph 3 was accepted, since the shipwrecked would be adequately covered by that paragraph. Others had thought that the words should be retained and he pointed out that they appeared in paragraph 1 and that paragraph 2 was an appeal to the civilian population to care for the wounded, sick and shipwrecked, whereas paragraph 3 was concerned with the wounded, sick and shipwrecked being taken on board and cared for on civilian means of transport. It had been suggested that until the definition of "the shipwrecked" had been settled, a decision on whether to leave those words in paragraph 2 should be deferred. He himself did not favour that course of action, since the definitions would not help to solve the problem. He suggested that the issue should now be decided by the Committee.

13. Mrs. DARIIMAA (Mongolia) supported the Working Group's proposal as an important addition to draft Protocol II. In the case of a non-international armed conflict, someone on the insurgent or Government side might have a civilian aircraft and it was only right under international humanitarian law that it should be possible to appeal to any party to help in caring for their wounded, sick or shipwrecked or collecting their dead. It might also happen that a party to a conflict did not know the whereabouts of sick, wounded and shipwrecked, but the other party had civilian transport and could provide the necessary assistance - and might do so voluntarily. The adoption of such a humanitarian provision in draft Protocol II would be an important contribution to the development of international humanitarian law.

14. Mr. LUKYANOVITCH (Byelorussian Soviet Socialist Republic), speaking as a member of the Working Group, said that the Group's proposal was the result of a compromise reached after long discussion. There were some errors in the Russian text and he reserved the right to bring it into line with the English text.

15. The CHAIRMAN asked how long the words "the wounded and sick, or the shipwrecked" should be kept in square brackets and whether the square brackets should apply to all three categories or only to the shipwrecked.

16. Mr. CLARK (Australia), Chairman of the Working Group, said that the Working Group had decided that the words "the wounded and sick, or the shipwrecked" should be placed in square brackets until the definitions in article 8 of draft Protocol I had been considered and agreed on by the Committee, because the Drafting Committee of the Conference had taken similar action.

17. Mr. SOLF (United States of America) confirmed the statement by the previous speaker. The Drafting Committee of the Conference hoped that Committee II would be able to produce a text which simply used the words "wounded, sick and shipwrecked".

18. In reply to a question from Mr. McGILCHRIST (Jamaica) whether the word "reasonable" had been defined, the CHAIRMAN said that the word appeared in many international conventions and there was apparently no major difficulty in interpreting it.

Paragraph 3 of article 14 as proposed by the Working Group (CDDH/II/372), including the square brackets, and as amended orally, was adopted by consensus.

19. Mr. CLARK (Australia), Chairman of the Working Group, reminded members that the question whether to retain the words "and the shipwrecked" in article 14, paragraph 2, was still outstanding. As Chairman of the Working Group, he considered that the Committee should now decide on the issue, if necessary by vote.

20. Mr. CZANK (Hungary) said that it was not a difficult problem. Since the words had been accepted by consensus in paragraph 3, it would be logical to keep them in paragraph 2. The two paragraphs were closely related because the civilian persons in charge of transport under paragraph 3 were members of the civilian population referred to in paragraph 2. The shipwrecked should be given the same care as the wounded and sick in the same situation. The problem would be solved by deletion of the square brackets in paragraph 2.

21. Mr. SOLF (United States of America) supported the Hungarian proposal for the deletion of the square brackets.

It was agreed by consensus to delete the square brackets in article 14, paragraph 2. 1/

Draft Protocol I

Article 15 - Protection of civilian medical and religious personnel (CDDH/1, CDDH/226 and Corr.2; CDDH/II/373)

Paragraph 5

22. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, informed Committee II that the Drafting Committee was considering a definition of the term "religious personnel". He was therefore of the opinion, which he knew was shared by a number of members of the Drafting Committee, that it would be more profitable to discuss amendment CDDH/II/373, together with the definition of "religious personnel". In fact, as far as procedure was concerned, he suggested that all the outstanding problems relating to religious personnel, namely the definition of "religious personnel", the reconsideration of article 15, paragraph 5, and any amendments thereto, in particular amendment CDDH/II/373, and the square brackets round the words "and religious" in article 2 of the annex to draft Protocol I (CDDH/II/371), should be discussed together.

23. Mr. KUSSBACH (Austria), speaking as one of the sponsors of amendment CDDH/II/373, said that he supported the procedure which the Rapporteur of the Drafting Committee had suggested. He was ready to introduce the amendment when the question of religious personnel was considered in connexion with article 8 of draft Protocol I. In his view, it would be better to consider the amendment at the same time as the definition.

24. The CHAIRMAN said that, if he heard no objection, he would take it that that was the Committee's wish.

It was so agreed.

Report of the Technical Sub-Committee (CDDH/II/371) (continued)

Article 14 - Documents (CDDH/1, CDDH/225 and Corr.1, CDDH/226 and Corr.2; CDDH/II/371)

1/ For the text of article 14 as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I).

25. The CHAIRMAN said that at the seventy-second meeting (CDDH/II/SR.72) there had been a lengthy discussion on article 15 of the annex to draft Protocol I, but none on article 14. He asked whether the Committee was prepared to refer Chapter V - Civil defence - as a whole to the joint Drafting Committee/Working Group so that it could be dealt with concurrently with article 59 of draft Protocol I.

It was so agreed.

Article 16 - Procedure (CDDH/II/371)

26. The CHAIRMAN said that the only article in Chapter VI - article 16 - was concerned with procedure.

27. When the annex had been discussed in general terms, he had expressed the opinion as a lawyer, that article 16 was not correctly placed in the annex. It should constitute part of the Final Provisions of draft Protocol I and should be article 86 bis, since article 86 dealt with amendments.

28. The question, therefore, was how best to deal with article 16 of the annex. It had been suggested to him that it might be referred to Committee I, which was concerned with the Final Provisions, but Committee I had a great deal of work still to do at the present session. Moreover, article 16 of the annex had been carefully drafted by Committee II's Technical Sub-Committee. Another suggestion had been that Committee II could deal with the substance of article 16 and then refer it to the Drafting Committee of the Conference, leaving it to that Committee to decide whether to refer it to another Committee or to insert it in draft Protocol I at the place which it considered most appropriate.

29. Mr. BOTHE (Federal Republic of Germany) said that he strongly favoured the second alternative. The Committee should go into the substance of article 16 thoroughly and then adopt it, adding a footnote to the effect that the Drafting Committee of the Conference should consider the question of the position of the article in draft Protocol I. There was a precedent for the adoption of that procedure in the way in which the Committee had previously dealt with a question which apparently came within the competence of another Committee: namely, the provision on grave breaches, which now appeared in article 11, paragraph 4. In that case, it had been the general feeling that if a question arose which had some implications for provisions with which other Committees were concerned, but which was nevertheless closely related to a subject with which Committee II was dealing, the latter should feel free to discuss the substance of the provisions, including those implications, and adopt a text, leaving it to the Drafting Committee of the Conference and, if necessary, the plenary Conference, to decide where the text should be placed.

30. It was his opinion that the members of Committee I would be embarrassed if they were asked to deal with the substance of article 16 of the annex, since most of them were not acquainted with the technical nature of the questions with which the annex was concerned.

31. From a legal rather than a technical point of view, he felt that the provision should form part of draft Protocol I and not of the annex, since the former embodied the "mother" provisions which constituted the basis for the annex. If it was made part of the annex, it could be interpreted to mean that article 16 itself could be amended by the procedure laid down in that article. That would be unfortunate.

32. He was therefore in favour of adopting article 16, which had his full support, as an article of draft Protocol I. He felt it should become article 18 bis, so that it would be closely linked with other "mother" provisions for the annex. That was feasible since the present article 18 bis would probably become article 20 bis and ter. That proposal was currently before the Working Group dealing with Section I bis.

33. Mr. SOLF (United States of America) said that he fully supported the statement by the representative of the Federal Republic of Germany and wished to stress the importance of having a streamlined system for amending the annex.

34. The procedure for amending draft Protocol I outlined in article 86 of the ICRC text was based on the principle for unanimity: all the parties to the Protocol had to accept the proposed amendment for it to enter into force. That would be difficult to achieve.

35. In the case of the technical annex, it had to be borne in mind that technological changes were constantly taking place and that the texts of Chapters III and IV were purely tentative. The International Telecommunication Union, the International Civil Aviation Organization and the Inter-Governmental Maritime Consultative Organization, had been asked to provide some new practices and procedures for signalling and communications, and presumably they would do so. When that occurred, it would be necessary to change the articles in the annex to reflect those developments.

36. It must be possible for parties which wished to amend the annex in so far as they themselves were concerned to be able to adopt a simple procedure for that purpose at regular intervals - every four or five years, for instance.

37. The Committee might consider that sort of amendment in a debate on the substance of the question. Being aware of the problems, it was better qualified than any other Committee to deal with the article.

38. Mr. JAKOVLJEVIĆ (Yugoslavia) said that he recognized the need for a special procedure to facilitate amendment of the technical annex. He considered it desirable to avoid discussion on the subject in two Committees. Article 16, which was closely connected with the whole subject of the annex, should first be discussed in Committee II, which was familiar with the material, and then sent to the Drafting Committee, which should decide where article 16 of the annex should be placed and co-ordinate it with article 86 of draft Protocol I.

39. Mr. MAKIN (United Kingdom) said that he was in agreement with what the three preceding speakers had said concerning procedure. It should be possible to take a decision at the present meeting to remove article 16 from the annex and place it in draft Protocol I. He did not think, however, that the Committee should consider the text at the present meeting, for the article was complicated and it was not on the agenda. He would like to know when the Chairman suggested that it should be discussed.

40. Mr. MARRIOTT (Canada) said that he wished to raise a further procedural point which was not directly connected with article 16 of the annex but concerned article 86 of draft Protocol I. The Committee should consider whether it wished to recommend the deletion of the words "or its annex" in the first sentence of paragraph 1 of article 86.

41. The CHAIRMAN said it was his understanding that there was general agreement that the Committee was the competent body to discuss the substance of article 16, which should then be referred to the Drafting Committee. He asked whether, in view of the fact that the annex as a whole had been introduced by the Chairman of the Technical Sub-Committee, Committee II really wished to postpone consideration of the substance of article 16 until a later meeting.

42. Mr. SANCHEZ DEL RIO (Spain) said that he supported the proposal made by the United Kingdom representative. Article 16 had not been discussed in detail by the Technical Sub-Committee, which had felt that it was closely linked with article 86 of draft Protocol I and that it was mainly of a legal nature. It would have to be studied carefully by members of the Committee before it could be usefully discussed.

43. The CHAIRMAN said that he personally saw no need to wait for the discussion of article 86 of draft Protocol I before considering

article 16 of the annex. He had hoped that the Committee would be prepared to start its discussion of article 16 forthwith. He would not press the point, however, and would ask the Committee to vote on the proposal by the United Kingdom representative and the representative of Spain that consideration of article 16 of the annex should be deferred.

The proposal was adopted by 26 votes to 3, with 17 abstentions.

OTHER QUESTIONS

Letter addressed to the President of the Conference by Mr. J. Pictet, Vice-President of the International Committee of the Red Cross, and Mr. H. Haug, President of the Swiss Red Cross, concerning articles 9 and 23 of draft Protocol I (CDDH/II/Inf.266)

44. The CHAIRMAN said that a letter dated 30 April 1976 had been received from Mr. Pictet, Vice-President of the ICRC, and Mr. Haug, President of the Swiss Red Cross and Head of the delegation of the League of Red Cross Societies (CDDH/II/Inf.266), commenting on the adoption by the Committee of articles 9 and 23 of draft Protocol I dealing with the provision of medical units and of hospital ships to the parties to the conflict; those articles specified that such units and ships might be lent by neutral or non-belligerent States or by an impartial international humanitarian organization. An amendment had been adopted whereby the words "such as the International Committee of the Red Cross or the League of Red Cross Societies" had been inserted after the words "by an impartial international humanitarian organization". The letter stated that the two organizations concerned had accepted that amendment, although they had felt that it would probably become superfluous if an article could be drafted that defined the part to be played by the various Red Cross societies. Committee I had subsequently adopted article 70 bis, which did exactly that; thus reference to the ICRC or the League of Red Cross Societies in articles 9 and 23 was no longer necessary. The letter concluded by asking that the attention of the Drafting Committee should be drawn to the matter.

45. The Committee had to decide what action to take in connexion with the letter and, in particular, whether a decision could be taken at that meeting or whether the letter should first be translated and circulated. Since articles 9 and 23 had been adopted by the Committee, they could be amended only by a two-thirds majority.

46. Mr. WARRAS (Finland) suggested that the letter should be translated and circulated - that would allow time for a study of the question.

47. Mr. JAKOVLJEVIĆ (Yugoslavia) and Mr. KHAIRAT (Egypt) supported that suggestion.

48. Mr. MARRIOTT (Canada) pointed out that the Drafting Committee of the Conference had already accepted article 9 and the Chairman of that Committee would be unwilling to reopen the topic.

49. Mr. BOTHE (Federal Republic of Germany) said that the letter had already been brought to the attention of the Drafting Committee, which had considered that the matter was one of substance, and therefore outside its competence. If, therefore, it was decided to reconsider article 9, such reconsideration would not be affected by any drafting decisions already taken.

50. The CHAIRMAN asked whether it was agreed that the letter should be translated and circulated.

It was so agreed.

51. The CHAIRMAN said that, if the next meeting was postponed until Friday, 28 May, it would be possible to discuss the letter as well as article 16 of the annex.

52. Mr. JAKOVLJEVIĆ (Yugoslavia) said that he would prefer 28 May to be kept for other matters.

53. The CHAIRMAN said that, in view of that remark, the next meeting would be held on Thursday, 27 May, and would be concerned solely with article 16 of the annex.

The meeting rose at 11.40 a.m.

SUMMARY RECORD OF THE SEVENTY-FOURTH MEETING

held on Thursday, 27 May 1976, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of the Technical Sub-Committee (CDDH/II/371) (continued)

Article 16 - Procedure (CDDH/II/359) (continued)

1. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, explained that article 16 of the annex to draft Protocol I had been submitted in square brackets because it was closely related to other articles of draft Protocol I. The Technical Sub-Committee had felt that, in view of technological developments, a special procedure, more flexible than the normal diplomatic procedure, should be adopted to deal with the purely technical aspects of the distinctive emblems.

2. Article 16 did not stipulate that a conference of the High Contracting Parties should be convened every four years; it merely required that a meeting of technical experts should be convened by the ICRC at four-yearly intervals to decide whether technological developments justified the convening of such a conference. Thus, an important role was assigned to the experts, while responsibility for the adoption of any amendments remained with the High Contracting Parties. Article 16 also made provision for the communication of amendments to the High Contracting Parties, for their possible non-acceptance, and for the communication of declarations of non-acceptance to the other parties. It further provided that the depositary State should inform the High Contracting Parties of the entry into force of any amendment, of the Parties bound thereby, and of the date of entry into force in relation to each Party.

3. The CHAIRMAN invited the Committee to consider article 16 paragraph by paragraph.

Paragraph 1

4. Mr. CARNAUBA (Brazil) noted that paragraph 1 of the Technical Sub-Committee's draft of article 16 stipulated that meetings of technical experts should be convened at four-yearly intervals. His delegation considered that proposal to be too

rigid, since the technological developments to be reviewed at such meetings could occur at a faster or slower pace. The ICRC should therefore be given greater latitude in deciding when to convene the expert meeting.

5. Mr. SOLF (United States of America) explained that the reason for the four-yearly interval was that the meetings of experts, although ultimately depending upon the date when the Protocol came into force, might then coincide with the sessions of the International Conference of the Red Cross. The purpose of the expert meetings was not only to propose amendments, but also to review the annex in the light of developments in technology; if the experts decided that no amendment was required they would file their report with the ICRC and meet again four years later. A degree of flexibility was introduced by the provision that an expert meeting should also be convened whenever one-third of the High Contracting Parties deemed it desirable. Some experts had stated that four-year intervals would be too short. The four-year interval was merely a proposal and his delegation would have no objection to a five-year or six-year interval.

6. Mr. CARNAUBA (Brazil) said that a longer interval would make it possible for a greater number of technological developments to be covered; in any case a four-year interval was too brief.

7. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, said that he understood that the intention of the sponsors was that a meeting should be convened every four years.

8. Mr. SOLF (United States of America) agreed with that interpretation.

9. The CHAIRMAN suggested that a possible solution might be to make the provision less mandatory by using the words "should" or "may" instead of the word "shall". A meeting should, however, be mandatory if one-third of the High Contracting Parties requested it.

10. Mr. MARRIOTT (Canada) said that, although it seemed likely that the annex would need to be reviewed within a few years of the signature of Protocol I, because some action would probably have to be taken by the International Telecommunication Union and the International Civil Aviation Organization in regard to radio frequencies and radar identification, communication technology was no longer advancing at its former spectacular rate. Consequently, a four-year mandatory interval might well be unnecessary. As a compromise solution, he suggested that every four years the depositary State should send out a communication to the High Contracting Parties inquiring whether they considered that an expert meeting was necessary.

11. Mr. MARTIN (Switzerland) expressed some doubt whether the use of a questionnaire would be sufficient to cope with all the difficulties created by developments in technology.
12. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, said that he agreed with the Brazilian representative that paragraph 1 was excessively rigid. Furthermore, it imposed an obligation upon the ICRC, a non-governmental body, and it was difficult to determine to what extent such an obligation was valid. An acceptable solution might be either to adopt the Canadian representative's suggestion, or to stipulate that the ICRC could convene a meeting when its own experts deemed it advisable and would be obliged to do so when one-third of the High Contracting Parties so requested.
13. Mr. SANDOZ (International Committee of the Red Cross) informed the Committee that the ICRC was prepared to assume an obligation to convene meetings.
14. Mr. CARNAUBA (Brazil) said that the Spanish representative's suggestion was acceptable to his delegation. Everyone knew that the ICRC was willing to assume the obligation to convene meetings, but whether an obligation of that kind ought to be imposed was an important matter of principle. In his view, the Committee should impose no such obligation. The Chairman's suggestion that the word "shall" should be replaced by the word "may" might solve the problem.
15. Mr. CZANK (Hungary) said that since there were two possible ways in which a meeting of experts could be convened, the problem might be solved by having two sentences in paragraph 1. The existing sentence would be left as it stood, except that the words "or at the request" would be replaced by the words "with the consent"; that would impose an absolute obligation on the ICRC but would make the convening of a meeting dependent on the approval of one-third of the High Contracting Parties. The second sentence would read: "Such a meeting may at any time be convened at the request of one-third of the High Contracting Parties"; in that case the High Contracting Parties would initiate the convening of a meeting.
16. Mr. MARRIOTT (Canada) welcomed the Hungarian representative's suggestion, which provided for the necessary regular review without the need for a regular meeting if the High Contracting Parties considered it unnecessary. He proposed that the suggestion should be accepted and referred to the Drafting Committee.

17. Mr. CARNAUBA (Brazil) and Mr. SOLF (United States of America) supported that proposal.

18. Mr. MARTIN (Switzerland) said that he understood that the ICRC would be able to circulate a technical report on developments. That being so, his delegation, too, could support the Hungarian representative's proposal.

19. Mr. EATON (United Kingdom) said that his delegation would also be happy to refer the Hungarian representative's suggestion to the Drafting Committee. It would, however, be useful for that Committee to consider whether the convening of the four-yearly meetings should be dependent on the express consent of a specified proportion of the High Contracting Parties or whether it should take place automatically unless the majority objected. Referring to the obligation which would be imposed on the ICRC, he pointed out that there were, in fact, precedents for the imposition of obligations on similar bodies which were not themselves parties to the international instrument in question. The consent of such bodies was, of course, necessary. In that case the ICRC had already given its consent.

20. The CHAIRMAN said that, if he heard no objection, he would take it that the Canadian representative's proposal to refer the Hungarian suggestion to the Drafting Committee was adopted.

It was so agreed.

21. Mr. URQUIOLA (Philippines) observed that the phrase "inviting also observers of appropriate international organizations" did not appear in the amendment proposed by the Canadian, United Kingdom and United States delegations (CDDH/II/359).

22. The CHAIRMAN said that the matter would be considered by the Drafting Committee.

Paragraph 2

23. Mr. KHAIRAT (Egypt) considered that the text of paragraph 2 should be brought into line with that of article 86, paragraph 2 of draft Protocol I, which stated that all the High Contracting Parties as well as the Parties to the Conventions should be invited to conferences convened to consider amendments proposed to Protocol I or its annex. He therefore proposed that the words "and the Parties to the Conventions" should be inserted after the words "High Contracting Parties" in the second line of paragraph 2 in the Technical Sub-Committee's text.

24. Mr. SOLF (United States of America) supported the proposal.

The oral amendment proposed by the Egyptian representative was adopted unanimously.

25. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, observed that the use of the word "and" in the penultimate line of the paragraph as proposed in amendment CDDH/II/359 would confer upon the ICRC what amounted to a right of veto, since it would not be possible to convene a conference without that organization's agreement even if one-third of the High Contracting Parties had so requested.

26. Mr. SANDOZ (International Committee of the Red Cross) said that the ICRC would certainly not refuse to convene a conference which had been requested by one-third of the High Contracting Parties.

27. Mr. SOLF (United States of America) proposed that the word "and" should be replaced by the word "or" in the penultimate line.

28. Mr. MARTIN (Switzerland) said that if that was done the ICRC would be able to ask the depositary State to convene a conference even if one-third of the High Contracting Parties had not so requested.

29. Mr. SOLF (United States of America) said that the intention of the sponsors of amendment CDDH/II/359 had been first and foremost to enable the ICRC to judge, on the basis of the results of the meeting of technical experts, whether a conference was necessary and, if so, to request the depositary State to convene it. That was the situation which would no doubt arise most frequently. However, the sponsors of the amendment had wished to provide also for the possibility of convening such a conference at the request of one-third of the High Contracting Parties.

30. Mr. SANDOZ (International Committee of the Red Cross) assured the Committee that the ICRC would certainly never convene a conference for which no need was felt.

31. Mr. MARTIN (Switzerland) said that in the light of the explanations which had just been given, his delegation was prepared to accept the United States proposal.

The oral amendment proposed by the United States representative was adopted.

32. Following a discussion on the desirability of inserting a phrase such as "supported by one third of the High Contracting Parties" or "with the consent of one third of the High Contracting Parties" after the words "the International Committee of the Red Cross" in the penultimate line of paragraph 2 of the amendment, in which Mr. MARRIOTT (Canada), Mr. KHAIRAT (Egypt), Mr. EATON (United Kingdom), Mr. HEREDIA (Cuba), Mr. CARNAUBA (Brazil) and Mr. MARTIN (Switzerland) took part, the CHAIRMAN said that unless there was any objection he would take it that the Committee did not consider it necessary to insert such a phrase.

It was so agreed.

33. Mr. SOLF (United States of America) proposed that the word "requests" at the end of the paragraph should be replaced by the word "request".

It was so agreed.

Paragraph 2, as amended, was adopted by consensus.

Paragraph 3

34. Mr. SOLF (United States of America) proposed that the word "this" in the first line should be replaced by the word "the".

It was so agreed.

Paragraph 3, as amended, was adopted.

Paragraph 4

35. The CHAIRMAN said that, as a lawyer, he felt the Committee might wish to consider the possibility of replacing the words "the High Contracting Parties" in the first sentence by a phrase such as "the Governments invited to attend the Diplomatic Conference". Since all those Governments were potential Parties to the Protocol, it was only reasonable that they should be kept informed of any amendments to its annex.

36. Mr. SOLF (United States of America) said that he would have no objection to informing any State of amendments. However, the provisions of paragraph 4 related to the actual procedure of amendment, in which States not parties to the Protocol could have no say.

37. Mr. KHAIRAT (Egypt) considered that either paragraph 5 or paragraph 6 would be a more appropriate place than paragraph 4 for a provision relating to the communication to States of information concerning the acceptance or rejection of amendments.

38. Mr. MARTIN (Switzerland) said that a phrase such as "all States" would be preferable to the phrase mentioned by the Chairman.

39. Mr. JAKOVLJEVIĆ (Yugoslavia) considered that the wording chosen should cover all High Contracting Parties irrespective of whether they had attended the Conference, together with Governments that had attended the Conference but were not High Contracting Parties.

40. Mr. JOSEPHI (Federal Republic of Germany) endorsed the view that the question might more appropriately be dealt with in paragraph 5 or paragraph 6. Alternatively, it might be included in a paragraph of more general scope, which would cover amendments both to the annex and to the Protocol itself. Such a paragraph would need to be drafted by Committee I.

41. Mr. EATON (United Kingdom) observed that under article 80 of draft Protocol I only Parties to the Conventions were eligible to become Parties to the Protocol; consequently, they alone were entitled to be kept informed about amendments to the annex. He therefore proposed that the phrase "and to the Parties to the Conventions" should be inserted after the words "High Contracting Parties" in the first sentence of paragraph 4.

The oral amendment proposed by the United Kingdom representative was adopted.

Paragraph 4, as amended, was adopted by consensus.

Paragraphs 5 and 6

42. Mr. EATON (United Kingdom), explaining paragraph 5 on behalf of the sponsors of amendment CDDH/II/359, which was at the origin of that paragraph, said that they had taken as their model some recent international instruments with technical annexes, in particular the IMCO Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil (1973). In order to speed up the entry into force of amendments to such technical annexes, those instruments laid down a procedure which departed from the traditional principle that States were bound only by amendments they had expressly accepted. The procedure was intended to avoid that unsatisfactory and hitherto common situation in which an amendment was adopted but remained pending for a long time, with some States adhering to the old system and others to the new. Once an amendment was adopted in accordance with paragraph 4, it would after that specified period enter into force for all States except those that did not wish to accept it and therefore made a declaration of non-acceptance. The traditional principle was merely reversed, a State being deemed to accept an amendment unless it rejected it.

43. The CHAIRMAN noted that the explanation given by the United Kingdom representative would be used as a supplementary means of interpreting the text should any doubt arise as to its proper meaning. According to Article 32 of the Vienna Convention on the Law of Treaties, the summary records of the Conference might in general be called upon to serve a similar purpose.

44. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, replying to a question from the CHAIRMAN, said that the square brackets round the words "three months" in paragraph 5 had been left in pending the Committee's decision on other articles, notably article 86.

45. Mr. SOLF (United States of America) said that the square brackets had been left round the words "three months" so that the Committee could decide whether a three-month delay should be allowed for States to put an amendment into effect, or whether the amendment should enter into force as soon as it was accepted. He proposed that the square brackets should be removed.

It was so agreed.

Paragraph 5, as amended, was adopted by consensus.

46. The CHAIRMAN suggested that since the Committee had already decided to include a reference to Parties to the Conventions in paragraph 4, a similar reference might be included in the second sentence of paragraph 5, so that potential Parties to the Protocols were kept informed of amendments.

47. Mr. EATON (United Kingdom) concurred, but wondered whether the point would not be better made in paragraph 6. The second sentence of paragraph 5 could then be deleted, and paragraph 6 amended to read: "The depositary State shall inform the High Contracting Parties and Parties to the Conventions of the entry into force of any amendment, the Parties bound thereby, the date of entry into force in relation to each Party, and any declaration of non-acceptance made in accordance with paragraph 5 above."

48. The CHAIRMAN pointed out that the Drafting Committee had decided not to use the word "above" in connexion with paragraphs of an article.

49. Mr. HESS (Israel) said that if the United Kingdom oral amendment was adopted, a provision concerning withdrawals should be added in paragraph 6, as at the end of the present paragraph 5.

50. Mr. EATON (United Kingdom) agreed. Moreover, since a declaration of non-acceptance could be made in accordance with paragraph 4 or paragraph 5, the sentence might be amended to read "... of any declaration of non-acceptance made in accordance with paragraphs 4 or 5 and of any withdrawal of such declaration".

51. Mr. SOLF (United States of America) considered that the point of the sentence which it was proposed to delete from paragraph 5 was that the action of the Parties to the Protocol might be influenced one way or another by their knowing which States had accepted a given amendment and which had not. He hoped that paragraph 6 would not be interpreted as meaning that the notifications should be made only at the end of the acceptance process.

52. The CHAIRMAN suggested that in view of that comment it might be better to refer paragraph 6 to the Drafting Committee.

53. Mr. SOLF (United States of America) agreed to that suggestion and proposed that the Drafting Committee should also be authorized to make any minor changes in paragraph 5 that were consequent upon its decisions concerning paragraph 6.

It was so agreed.

54. The CHAIRMAN paid a tribute to Mr. Jakovljević, Chairman of the Drafting Committee of Committee II, who was obliged to leave the Conference.

The meeting rose at 12.55 p.m.



SUMMARY RECORD OF THE SEVENTY-FIFTH MEETING

held on Monday, 31 May 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of the Drafting Committee (CDDH/II/377)

Article 8 (e) bis

1. The CHAIRMAN invited the Rapporteur of the Drafting Committee to submit the Drafting Committee's report on article 8 (e) bis (CDDH/II/377).
2. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that a definition of religious personnel was needed, since such personnel were referred to in various places in the articles on the wounded and sick. In explanation of the final paragraph in square brackets, he said that article 15, paragraph 5, as adopted by Committee II, might be interpreted as covering only permanent religious personnel, while the new amendment submitted by the Drafting Committee was intended to cover both permanent and temporary religious personnel. If that idea was acceptable, the square brackets would, of course, be removed.
3. Mr. KLEIN (Holy See), referring to the permanent or temporary character of religious personnel, said that their temporary attachment to medical units in no way affected their permanent qualifications as religious personnel. Historians or lawyers, for example, might be temporarily attached to diplomatic missions, while their basic status remained unchanged. Likewise, who could question the permanent status of nurses or doctors who might need temporary protection while serving in medical units of the armed forces? In the same way, it should be possible to ensure the temporary protection of chaplains who were temporarily replacing other religious personnel who might be killed, sick or overworked.
4. Mr. KUSSBACH (Austria) said that his delegation fully supported the views expressed by the representative of the Holy See, as well as the Drafting Committee's proposal (CDDH/II/377), and in particular the last paragraph in square brackets.

5. A few days earlier his delegation, together with other delegations, had submitted an amendment to article 15, paragraph 5. That amendment (CDDH/II/373) should be viewed in its relation to the above-mentioned proposal and to article 2 of the annex prepared by the Technical Sub-Committee (CDDH/II/371). In one of its recent meetings, the latter had decided to defer the debate on amendment CDDH/II/373 until the Drafting Committee had dealt with the question of the definition of religious personnel in the context of article 8. Since the Drafting Committee had now completed its work, the full Committee could revert to its original problem concerning the assimilation of the status of religious personnel to that of medical personnel with respect to the duration of their functions, whether of a permanent or temporary nature.

6. What must not be overlooked was the fact that the purpose of granting special protection to medical and religious personnel was not to give such personnel a privileged position but solely to serve the interests of the victims of an armed conflict. Since such victims were clearly entitled to medical attention, there surely could be no doubt that they were in all cases equally entitled to receive religious consolation.

7. It was immaterial whether such personnel were attached on a permanent or a temporary basis; the only important thing was their permanent religious character. He could not agree that the granting of protection to both permanent and temporary religious personnel would lead to an unjustifiable proliferation of persons who were entitled to wear the Red Cross emblem; in that respect he saw no reason for discriminating against religious personnel as opposed to medical units. Both should be entitled to have either permanent or temporary status.

8. Mrs. DARIIMAA (Mongolia) pointed out certain discrepancies between the English, French and Russian texts of the Drafting Committee's report (CDDH/II/377).

9. The CHAIRMAN assured the representative of Mongolia that such problems would be dealt with by a working team, consisting of members of the Secretariat and the Drafting Committee, which would be set up between the third and fourth sessions.

10. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the Drafting Committee of the Conference would certainly review the text in all four languages in order to ensure conformity and remove any possible discrepancies.

11. Mrs. RODRIGUEZ-LARRETA DE PESARESI (Uruguay) said that her delegation was prepared to support the Drafting Committee's amendment. She also supported the proposal of the Holy See and of Austria to remove the square brackets round the final paragraph.
12. Miss MINOGUE (Australia) said that her delegation fully supported the inclusion of religious personnel in the list of definitions; it was high time for their status to be formally established. The Committee had, in fact, been concerned with civilians from the outset and had always envisaged that religious personnel would have a role to play in civilian medical units.
13. Her Government's concept of civilian personnel had widened to permit a great deal of flexibility, in order to encompass the permanent or temporary attachment of such religious personnel as chaplains. She therefore supported the proposal to remove the square brackets round the last paragraph. Some delegations, she noted, were concerned about the possible proliferation of the use of the distinctive emblem, but in her opinion such fears were outweighed by the very real need for the formal attachment of religious personnel to medical units in situations of armed conflict.
14. Mr. SODHI (India) said that his delegation was in general agreement with the inclusion of the final paragraph of amendment CDDH/II/373. However, since religious personnel throughout the world were known by many different descriptions, he suggested that the words "priests, etc." should be inserted after the word "chaplains" in the first paragraph.
15. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, pointed out that some delegations might prefer to avoid the use of the term "etc.". He therefore asked the representative of India if he would agree to the use of the expression "priests and similar persons".
16. Mr. SODHI (India) said that expression would be acceptable to his delegation.
17. Mr. HEREDIA (Cuba) supported the Rapporteur's suggestion.
18. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that the first paragraph might be amended to read "such as chaplains or priests".
19. Mr. SODHI (India) said he could agree to that suggestion also.

20. Mr. KLEIN (Holy See) said he was somewhat concerned by the suggestion, because of the diversity of religious personnel. The Catholic Church used the term "priests", but that might not be appropriate in the case of other religions. He would prefer to retain the word "chaplains", since that term did not refer to Christian religious personnel exclusively and had also been used on previous occasions in the Geneva Conventions.

21. Mr. KUSSBACH (Austria) said he agreed with the representative of the Holy See. In order to keep the paragraphs as homogeneous as possible, it was desirable to adhere as closely as possible to the Geneva Conventions.

22. Mr. MARRIOTT (Canada) said that in his opinion the Committee should adopt the wording proposed by the Drafting Committee, which had already been agreed upon at the second session.

23. Mr. SODHI (India) said that the term "priests" was very comprehensive, since it could refer not only to Christian religious personnel but also to Hindus, Sikhs, Moslems and the like.

24. Mr. SOLE (United States of America) agreed fully with the views expressed by the representatives of the Holy See, Austria and Canada. The question of terminology had been extensively debated at the previous session and the majority had felt that the word "chaplains" most clearly described the category of religious personnel which could be attached to medical units.

25. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that his suggestions had been merely drafting ones and that he had not intended to endorse any proposal as to the substance. The inclusion of the expression "similar persons", might indeed seem to reopen a question which had already been settled.

26. Mr. SODHI (India) said that he would not press his proposal.

27. The CHAIRMAN invited the Committee to vote on the first paragraph of the text submitted by the Drafting Committee (CDDH/II/377).

The first paragraph was adopted by consensus.

28. The CHAIRMAN invited the Committee to agree to the deletion of the square brackets round the second paragraph.

It was so agreed.

The second paragraph, as amended, was adopted by consensus.

Sub-paragraph (e) (bis) as a whole, as amended, was adopted by consensus.

Article 15 - Protection of civilian medical and religious personnel (concluded)

Paragraph 5 (CDDH/II/373)

29. The CHAIRMAN drew attention to the amendment submitted by Austria, Belgium, France, the Holy See, Nicaragua, Spain, Switzerland and Venezuela (CDDH/II/373) proposing the deletion of the word "permanent" between the words "identification of" and "medical personnel" in the second sentence of paragraph 5 of article 15 of draft Protocol I as adopted by Committee II.

30. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the word "permanent", which appeared in article 15, paragraph 5, as adopted by Committee II, implied that only "permanent" religious personnel existed. Since the Committee had just approved the notion of "temporary religious personnel", it might be advisable to delete the word. In any event it had been decided that paragraph 5 would have to be reconsidered; there was therefore no procedural obstacle to the deletion.

31. Mr. MACKENNEY (Chile) said that the question of amending article 15, paragraph 5, had already arisen in connexion with temporary civilian medical personnel, as referred to in the annex to draft Protocol I, article 2.

Article 15, paragraph 5, as amended (CDDH/II/373), was adopted by consensus.

Report of the Technical Sub-Committee (CDDH/II/371) (continued)

Article 2

32. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, pointed out that the words "and religious" appeared in square brackets in article 2 of the technical annex to draft Protocol I in three places - in the title of the article, in paragraph 1 and in paragraph 2. The reason for those words being retained in brackets was that the decision just taken by the Committee was outstanding at the time the annex had been considered. It had been thought that the use of the words "temporary religious personnel" was not possible since that notion had not been admitted in the articles which were the basis of the annex. As the notion of "temporary religious personnel" had now been approved, a consequential amendment should be made in article 2 of the annex and the square brackets removed.

33. Mr. KUSSBACH (Austria) said that the square brackets around the words "and religious" in the annex had been the reason for the submission by the Austrian delegation and others of an amendment. Since the Committee had taken a decision concerning temporary religious personnel in connexion both with article 15, paragraph 5, and with the definitions in article 8 of draft Protocol I, the decision to remove the brackets in article 2 of the annex to draft Protocol I was merely a consequential amendment.

The square brackets appearing in the title and paragraphs 1 and 2 of article 2 of the annex to draft Protocol I were deleted by consensus.

34. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, replying to a question by Mr. KUSSBACH (Austria), said that a model of the final form of the identity card to be carried by temporary civilian medical and religious personnel and on the relevant foot-notes in the report of the Technical Sub-Committee (CDDH/II/371) would be submitted to Committee II shortly. It would take into account the decision which had just been taken.

Draft Protocol I

Article 13 - Discontinuance of protection of civilian medical units (concluded)

Paragraph 2 (d) (CDDH/II/378)

35. The CHAIRMAN pointed out that the Chairman of the Drafting Committee of the Conference thought that the problem raised in that Committee concerning article 13, paragraph 2 (d) of draft Protocol I, was a matter of substance with which the Drafting Committee was not competent to deal. He asked whether Committee II would agree to reopen consideration of article 13, paragraph 2 (d). Under rule 32 of the rules of procedure, such reopening would require a two-thirds majority vote.

The Committee agreed to reopen consideration of article 13, paragraph 2 (d)

36. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the matter before Committee II with regard to article 13, paragraph 2 (d) was a consequence of the discussions in that Committee with respect to the protection of medical units under draft Protocol II. When dealing with the articles of draft Protocol II corresponding to those of draft Protocol I, the Drafting Committee had found a formula which it considered to be better than that adopted for draft Protocol I. It

had been the general feeling that the text arrived at later should accordingly be introduced into the corresponding provisions of draft Protocol I.

37. The wording now before the Committee in the amendment submitted by the delegations of Canada, the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland and the United States of America (CDDH/II/378) was such a provision. The words "that members of the armed forces or other combatants are receiving medical treatment in the unit" in article 13 of draft Protocol I were not appropriate, since there might be occasions when military forces or other combatants were in a unit for medical reasons but did not receive medical treatment. Such military personnel might be merely awaiting medical treatment. The Drafting Committee had felt that it was inappropriate that the presence of those persons should be considered to be "an act harmful to the enemy". The Drafting Committee had therefore adopted another formula for article 17, paragraph 3 (d) of draft Protocol II, the words "receiving medical treatment" being replaced by "for medical reasons". The Drafting Committee suggested that the same phrase should be adopted for article 13, paragraph 2 (d) of draft Protocol I. However, as there was a feeling that the matter might be one of substance, several delegations had asked that the question be reconsidered and that Committee II adopt the same formula for draft Protocol I as it had already adopted for draft Protocol II.

38. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that it was not only a question of deciding whether an article of draft Protocol I was in conformity with draft Protocol II, since it was not always possible for the texts of articles to correspond perfectly. What was important was that Committee II had adopted the wrong formula for draft Protocol I. He agreed with the formula "medical reasons".

The amendment to article 13, paragraph 2 (d) (CDDH/II/378), was adopted by consensus.

Article 13, paragraph 2 (d), as amended, was adopted by consensus. 1/

1/ For the text of article 13 as adopted, see the report of Committee II (CDDH/235/Rev.1, annex 1)

OTHER QUESTIONS

Letter addressed to the President of the Conference by Mr. J. Pictet, Vice-President of the International Committee of the Red Cross, and Mr. H. Haug, President of the Swiss Red Cross, concerning articles 9 and 23 of draft Protocol I (CDDH/II/Inf.266) (continued)*

39. The CHAIRMAN invited the Committee to consider the third paragraph of the letter (CDDH/II/Inf.266). The references in question were to be found under the relevant articles in the synoptic table (CDDH/226 and Corr.2).
40. Mr. PICTET (International Committee of the Red Cross) said that the references to the ICRC and the League of Red Cross Societies in articles 9 and 23 of draft Protocol I were inappropriate since neither organization provided the services in question, the national Red Cross societies being responsible for doing so in accordance with the relevant articles of the Geneva Conventions. Although the ICRC had raised no objection to similar references discussed at the first and second sessions of the Conference, it had noted that they might become superfluous if a satisfactory article was adopted on the role of the Red Cross organizations. That requirement had been met with the subsequent adoption of article 70 bis. ICRC had taken up the point in the Drafting Committee since it had considered it to be merely a matter of drafting; the Drafting Committee had, however, considered that it should be referred to the Committee.
41. Mr. MAKIN (United Kingdom) said that the reasons given for the proposed deletion of the references to the ICRC and the League of Red Cross Societies did not appear to be valid. Article 70 bis referred in all its paragraphs to the provision of facilities by the various parties. Article 27 of the first Geneva Convention of 1949, referred to in article 9 of draft Protocol I, stipulated the conditions under which the assistance in question could be made available by a recognized society, while article 32 of the same Convention conferred privileges on those involved. There thus appeared to be no connexion between article 70 bis of draft Protocol I and those provisions.
42. The original text proposed by the ICRC had been based on a proposal made at the 1972 session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, by the representative of Monaco, who had suggested that international organizations might be able to assist and had instanced Arab airlines as an international airline that might be able to lend aircraft. There had been no reference in the original article 9, paragraph 3, either to a humanitarian or to an impartial organization. The words had drifted in later and, having been approved for article 9, had then

* Resumed from the seventy-third meeting.

been used again for article 23. In reply to a question he had asked at the time, ICRC had stated that neither it nor the League of Red Cross Societies had any medical units to lend. If the reference to the two organizations was to be deleted this could raise doubts as to the desirability of retaining the words "impartial" and "humanitarian".

43. The Committee should take no hasty decision on the matter. Delegations should consider it carefully during the interval before the fourth session of the Conference, to which it should be deferred.

44. Mr. PICTET (International Committee of the Red Cross) said that he could agree to the United Kingdom representative's suggestion that further consideration of the matter should be deferred until the fourth session of the Conference.

45. Mr. SOLF (United States of America) said that the United Kingdom representative had correctly described the origin of the paragraph in question. A lively debate had taken place at the Conference of Government Experts in 1972 as to where developing countries engaged in armed conflict might be able to obtain medical aircraft. His delegation and other sponsors of the text had intended to make the broadest possible provision in that respect. The important points were that the aircraft should be medical aircraft as so defined and that they should be under the control of the party to the conflict on whose side they operated; the source from which they came was irrelevant. In article 9, paragraph 3, the ICRC had extended the provisions of Article 27 of the first Geneva Convention of 1949 to include all other kinds of medical transport and medical units. The tendency to limit the source of such transport and units to impartial international humanitarian organizations had appeared at the first session of the Conference.

46. He could not agree that the matter should be deferred until the fourth session of the Conference. The Committee should make every effort to dispose of all relatively simple matters at the current session so that it could concentrate on complicated issues such as civil defence and relief at the fourth session. He did not share the view of the United Kingdom representative that the reference to the International Committee of the Red Cross or the League of Red Cross Societies could not be deleted without deleting the preceding words. The majority of the Committee had wished to provide some degree of flexibility, which would be done by keeping the words "by an impartial international humanitarian organization". Others had proposed that a long list of possible organizations should be given, but most had agreed that the most important criterion was that the units and transport in question should be under the control of the party to the conflict concerned, a point that was covered in the relevant articles of the Geneva Conventions.

47. He formally proposed that the words "such as the International Committee of the Red Cross or the League of Red Cross Societies" in article 9, paragraph 2 (c), and article 23, paragraph 2 (f), should be deleted.

48. Mr. GEORGIJEVSKI (Yugoslavia) said that his delegation was opposed to the deletion of the references to ICRC and the League of Red Cross Societies in articles 9 and 23.

49. Mr. KLEIN (Holy See) said that no restriction should be placed on the activities of any humanitarian or charitable organization by listing others by name. The reference to an impartial international humanitarian organization should suffice.

50. Mr. KHAIRAT (Egypt) said that his delegation was satisfied with the text of articles 9 and 23 of draft Protocol I as already approved and had found the argument of ICRC and the League of Red Cross Societies unconvincing. He supported the United Kingdom representative's proposal to defer further consideration of the matter until the fourth session of the Conference.

51. Mr. MARTIN (Switzerland) said that he shared the United States representative's desire that the Committee should make every possible progress. In view of the fact that the matter needed careful consideration, however, he agreed that a decision on it should be deferred until the fourth session of the Conference.

52. The CHAIRMAN put to the vote the United Kingdom proposal that further consideration of the matter should be deferred until the fourth session of the Conference.

The United Kingdom proposal was adopted by 37 votes to none, with 8 abstentions.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE SEVENTY-SIXTH MEETING

held on Tuesday, 1 June 1976, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of the Working Group (CDDH/II/376)

Section I bis - Information on the victims of a conflict and remains of deceased

1. The CHAIRMAN said that Mr. Martins, Chairman of the Working Group on Section I bis of Part II of draft Protocol I, was due to leave shortly, having been recalled to Nigeria. He thanked Mr. Martins for his excellent work and expressed the hope that he would attend the fourth session of the Conference.
2. Mr. MARTINS (Nigeria), Chairman of the Working Group on Section I bis, said that in the deliberations of the Working Group, which represented a cross-section of world interests, humanitarian considerations had been in the forefront. Despite the fact that the titular Rapporteur had also been recalled to his country, it had been possible, with the assistance of a sub-group appointed to expedite the work, to produce the text now before the Committee (CDDH/II/376). He thanked all those who had co-operated in that effort, and was glad to see that the titular Rapporteur had been able to return for the discussion.
3. The CHAIRMAN invited the Acting Rapporteur of the Working Group on Section I bis to introduce the Working Group's report (CDDH/II/376).
4. Mr. BOTHE (Federal Republic of Germany), Acting Rapporteur of the Working Group on Section I bis, said that the new text was based on an amendment which had been submitted at the first session of the Conference but not formally introduced and discussed until the second session. It took account of a number of points dealt with in United Nations General Assembly resolution 3220 (XXIX), adopted in 1974 and submitted to the second session of the Conference by the Director of the United Nations Division of Human Rights.

5. At the second session, after considering a report by the Working Group on the original amendment, the Committee had concluded that, while it could accept the proposed new Section in principle, certain points of detail required further study. There had also been some criticism of the length of the Section. It had therefore been decided to defer any decision until the third session of the Conference. At the beginning of the third session, two new texts had been submitted, by the German Democratic Republic and the United States of America, and those two countries had been represented on the Sub-Group appointed by the reconvened Working Group, together with the Union of Soviet Socialist Republics and the Federal Republic of Germany. The Sub-Group had drafted a text which had been adopted by the Working Group with some minor changes. That text was now before the Committee (CDDH/II/376).

6. Commenting on the proposed new Section paragraph by paragraph, he said that paragraph 1 of article 20 bis, which was based on an amendment submitted by the Holy See and a number of other delegations, contained a broad statement of the main purpose of the Section, namely, the right of families to know what had happened to their relatives.

7. Paragraph 2 set forth the basic provision on missing persons and constituted an important development in the legal structure of the Geneva Conventions.

8. Paragraph 3, relating to the obligation to record information, was designed to cover persons not catered for under the Geneva Conventions. That was the sense of the words "persons who would not receive more favourable consideration under the Conventions and this Protocol", which also appeared in article 20 ter, and were similar to those used in article 65 of draft Protocol I dealing with an analogous problem. The new provision would, for example, cover nationals of neutral or co-belligerent States who were not protected under the fourth Geneva Convention of 1949, so long as the State in whose hands they found themselves entertained normal diplomatic relations with their home State. It would also cover the case of a peaceful civilian who was taken prisoner during fighting but who, pending the normal decision to release him, was shot while attempting to escape. Such a person would be covered neither by Articles 4 and 5 of the third Geneva Convention of 1949 nor by Articles 129 and 136 of the fourth Geneva Convention.

9. Paragraph 4 provided for the procedure relating to transmittal of information and underlined the role of the Central Tracing Agency, while paragraph 5 provided for search and rescue teams to collect and identify the deceased.

10. Turning next to article 20 ter, he said that paragraph 1, relating to the remains of the deceased, was particularly important since the provisions of the fourth Geneva Convention of 1949 on graves applied only to the graves of internees in occupied territories.

11. Paragraph 2 placed an obligation on High Contracting Parties, in whose territories the remains of persons killed during hostilities, occupation or detention were situated, to conclude agreements for the purposes referred to in sub-paragraphs (a), (b) and (c). Paragraph 3 provided for the procedure to be followed in the event that agreement on the matters referred to in paragraphs 2 (b) and (c) was not reached.

12. In paragraph 4, there were two small errors: the brackets around the words "and other locations" should be removed and the first reference in paragraph 4 (a) should be to paragraph 2 (c), instead of 2 (b).

13. Paragraph 4 (b) related to exhumation for reasons of public necessity, "necessity" in that context being intended to cover also the need to protect graves. Thus, where adequate protection and maintenance was not otherwise possible - for instance, in the case of scattered and temporary graves made during a battle - exhumation for the purpose of regrouping graves in one location would be a matter of public necessity. There was, however, no clause on general re-grouping of graves, since that might result in the arbitrary or capricious removal of remains.

14. Paragraph 5 remained within square brackets not because of any controversy as to its content but because it applied to other provisions in draft Protocol I and might equally well be included at some other point. That, however, as indicated in the foot-note to the paragraph, was for the Drafting Committee of the Conference to decide.

15. He thanked the Chairman, Rapporteur and members of the Working Group, and also the representatives of the ICRC, the Central Tracing Agency and the Secretariat, for their co-operation.

16. Mr. FELBER (German Democratic Republic) said that the text before the Committee should meet with general approval. In view of the difference in approach between amendments CDDH/II/354 and Add.1, CDDH/II/355 and CDDH/II/356, it was gratifying to note that agreement had been reached on a text that reflected the interests of the delegations sponsoring those proposals as well as those of many other delegations, while also taking account of the recommendation in paragraph 127 of the report of Committee II on its second session (CDDH/221/Rev.1). It was equally gratifying to note that as a result of negotiations, the brackets which had been a feature of the earlier text had been dropped.

17. On behalf of his delegation, he thanked the Chairman, Rapporteur and members of the Working Group for their efforts, as well as the ICRC representatives and all those who had co-operated in the preparation of the text. He urged the Committee to adopt the text forthwith by consensus.
18. Mrs. DARIIMAA (Mongolia), referring to paragraph 5 of article 20 bis, said she noted that the word "arrangements" in the English text was rendered by "accords" in the French text and by "soglashenie" in the Russian text. Further, in paragraphs 2 and 3 of article 20 ter, the word "agreements" appeared in the English text, and that word was also represented in the French and Russian texts by "accords" and "soglashenie". In her opinion, two distinct legal concepts of the meaning of the English words "agreements" and "arrangements", as used in treaties were involved, and there thus appeared to be a substantial discrepancy, not only as between the different language versions but also within the English text, which needed bringing into line with the Russian and French versions.
19. Mr. BOTHE (Federal Republic of Germany), Acting Rapporteur of the Working Group, observed that there was a certain difference in style between paragraph 5 of article 20 bis and the other paragraphs to which the representative of Mongolia had referred. As far as paragraph 5 of article 20 bis was concerned, however, any difference between the several language versions was perhaps more apparent than real since the element of agreement which the representative felt was lacking was in fact covered by the inclusion, in the English text, of the words "to agree". Any discrepancies would, however, be corrected by the Drafting Committee of the Conference.
20. Mr. SIEVERTS (United States of America), the original Rapporteur of the Working Group, said that as he read the text, it was clear that the words "to agree" applied to the word "arrangements" in paragraph 5 of article 20 bis. Those words implied that agreement would be required before the arrangements in question could be concluded. The exact phraseology used to impart that idea naturally varied from language to language, and in English the aim had been to achieve concise drafting and to avoid repetition of the word "agree".
21. Mr. CLARK (Australia) agreed with the United States representative that the word "agree" covered the point made by the representative of Mongolia. The English sentence should be read as a whole.

22. Mr. IJAS (Indonesia) said that his delegation agreed with the humanitarian aims of article 20 bis, but considered that too heavy a burden should not be imposed on the parties. Account must be taken of the fact that the conditions for search might be difficult and the costs high. He therefore proposed adding, the words "as far as practicable" between the word "shall" and the word "search" in paragraph 2 of article 20 bis.

23. Mr. MARRIOTT (Canada) was of the opinion that the English and French texts of article 20 bis, paragraph 5, were identical. He suggested, however, that in the English text of paragraph 3 (b) of article 20 bis, the word "otherwise" should be replaced by the words "in other circumstances", which would be a better equivalent of the French "dans d'autres conditions".

24. Mr. BOTHE (Federal Republic of Germany), Acting Rapporteur of the Working Group, said that the Canadian suggestion was a good one.

25. Mr. HEREDIA (Cuba) said that in the Spanish text of article 20 bis, paragraph 1, the words "ante todo" appeared to accord excessive priority to the right of families to know what had happened to their relatives. Similarly, while he could accept the phrase "As soon as circumstances permit" at the beginning of paragraph 2, he thought that the phrase "and at the latest from the end of active hostilities" indicated too precise a time limit.

26. Mr. GEORGIJEVSKI (Yugoslavia) proposed that the same wording should be used in article 20 ter, paragraph 2, as in article 20 bis, paragraph 5, namely, that the parties should "endeavour to agree", as the phrase "shall conclude agreements" appeared too mandatory. He also proposed that the square brackets round paragraph 5 of article 20 ter should be deleted, but was prepared to leave it to the Drafting Committee of the Conference to determine where that paragraph should be placed. He questioned the need for paragraph 1 of article 20 bis, since it merely stated the motive behind the article, which could surely be taken for granted.

27. Mr. SIEVERTS (United States of America) said that the Working Group had given consideration to most of the points which had been raised and had decided that they were best dealt with as in the text before the Committee. As regards the Indonesian proposal to include the phrase "as far as practicable" in paragraph 2 of article 20 bis, such a proviso was implicit in the entire Section. Moreover, the phrase "to the fullest extent possible" had been used in paragraph 3 (b). It had been the feeling in the Working Group that paragraph 2 should express in the simplest possible way a general undertaking to search for the missing.

28. As regards the first comment by the Cuban representative, the statement of the right of families to know the fate of their relatives was of primary importance for the understanding of the Section under discussion. Paragraph 1 of article 20 bis did not refer to other sections of the draft Protocol or the Geneva Conventions. If the right of families was not specifically mentioned, the section might be interpreted as referring to the right of Governments, for instance, to know what had happened to certain missing persons. As for the Cuban representative's second point, the Working Group had considered it was important to guard against the possibility of a considerable length of time elapsing before a search was started, since information of the kind to be sought was easily lost. The phrase "and at the latest from the end of active hostilities" was not a precise statement of time and would allow reasonable latitude in the light of practical considerations, while just the phrase "As soon as circumstances permit" by itself might imply a stricter interpretation. The representative of the Central Tracing Agency of the ICRC had in fact suggested adding a provision to the effect that the search should continue without any limit of duration, but the members of the Working Group had considered that such a provision was implicit in the paragraph.

29. As regards the query of the Yugoslav representative whether paragraph 1 of article 20 bis was necessary, he agreed that it was unusual to state the premises on which an article was based. The paragraph had been included in response to a strong feeling of many delegations and institutions that it was important to express in the Protocol the idea that families had a right to know what had happened to their relatives. United Nations General Assembly resolution 3220 (XXIX), which the Working Group had studied when drawing up the present text, stated in the last preambular paragraph that "the desire to know ... is a basic human need", but the text under consideration went even further by referring to the "right". The proposal made by the Yugoslav representative that the wording of article 20 ter, paragraph 2, should be the same as in article 20 bis, paragraph 5 had also been considered by the Working Group. The text of the former represented a careful balance. Taken as a whole, the article indicated that no action would be possible without agreement. The phrase "As soon as circumstances permit", at the beginning of paragraph 2, implied a prior condition for such agreement.

30. Mr. HESS (Israel) said that his delegation fully supported the text proposed by the Working Group, which was very well balanced and marked an advance on the earlier version, especially in respect of paragraphs 3 and 5 of article 20 bis. With regard to the national societies referred to in article 20 bis, paragraph 4, he said that the national society of Israel was the "Red Shield of David Society".

31. Mr. SALEEM (Pakistan) proposed the following minor amendments to tighten up the text of the section and prevent any possible misinterpretation: article 20 bis, paragraph 2 - insert the words "begin a" between the words "shall" and "search"; replace the words "have been" by the word "are"; and replace the words "the name, special characteristics and other" by the words "all relevant". Article 20 bis, paragraph 3 (a) - replace the word "for" by the words "in respect of"; replace the last clause of the sub-paragraph by the words: "... or those who died while in detention". Article 20 bis, paragraph 5: replace the word "agree" by the words "reach an agreement"; replace the last sentence of the paragraph by the words: "Personnel of such teams, while engaged on carrying out these duties, shall be respected and protected."

32. Mr. MALLIK (Poland) said that he wished to support what the representative of Yugoslavia had said about article 20 bis, paragraph 5, and article 20 ter, paragraph 2. It was impossible to compel States to conclude agreements, especially States which had just been engaged in armed conflict with one another and whose mutual relations were likely to be somewhat unfriendly. He accordingly thought that the order of article 20 ter, paragraph 2, might perhaps be changed: sub-paragraphs (a), (b) and (c) should immediately follow the word "shall", by deleting the words: "conclude agreements in order to ...". Nevertheless a sentence should be included at the end of the paragraph to the effect that the High Contracting Parties should endeavour to conclude agreements towards those ends.

33. Mr. KHAIRAT (Egypt) agreed that it could not be made obligatory on States to reach agreement. He therefore agreed with the Yugoslav delegation that the last phrase of paragraph 2 of article 20 ter should read: "... shall endeavour to conclude agreements in order to:".

34. Mr. CARNAUBA (Brazil) said that the wording of article 20 ter should be maintained as it stood. It was thanks to agreements that the activities referred to in paragraphs 2 (a), (b) and (c) were duly performed, as was illustrated by the Agreement concluded between Brazil and Italy after the Second World War. There must be an obligation to conclude such agreements. It should be noted, however, that the obligation contained in paragraph 2 was not absolute, since it was qualified by the words: "As soon as circumstances permit ...".

35. Article 20 bis, paragraph 1, which stated a very important humanitarian principle, should also be maintained; but his delegation would prefer that it should constitute a separate article, as the Chairman had suggested.

36. Mr. SANCHEZ DEL RIO (Spain) said that his delegation agreed that the Working Group's proposal (CDDH/II/376) was far clearer and more systematic than the earlier versions.

37. Paragraph 1 of article 20 bis should be maintained; but to take account of the point raised by the Cuban representative, the words "ante todo" in the Spanish version, which were too categorical, should be replaced by some such word as "principalmente" or "esencialmente", to bring the Spanish into line with the English version. He wondered whether the French version "au premier chef" should not also be changed.

38. With regard to the expression in article 20 bis, paragraph 2 - "and at the latest from the end of active hostilities" - that expression, or others very much akin to it, occurred in the Geneva Conventions of 1949, for example in Article 17 of the first Convention. It was an accepted formula and he did not think it should be changed.

39. He understood the doubts of certain delegations about creating an absolute obligation on Governments to conclude agreements; however, as the representative of Brazil had pointed out, the obligation in article 20 ter, paragraph 2, was not absolute.

40. In the Spanish version, paragraph 2 (c) of article 20 ter, meant exactly the opposite of what was stated in the English and French versions: the word "si" should be replaced by such words as "salvo que" or "a menos que".

41. Mr. FELBER (German Democratic Republic) said that he had no problems with the purely drafting amendments proposed by Pakistan, but the other proposed amendments merely repeated points which had been discussed in the Working Group. To reopen those discussions would take the Committee back to 1975. Amendments covering those points had been withdrawn by their sponsors and the existing text represented a balanced compromise which had been achieved as the result of long and difficult negotiations. That applied particularly to paragraphs 1 and 3 of article 20 bis and to article 20 ter as a whole.

42. He appealed to all delegations which had proposed oral amendments not to insist on them. He particularly hoped that no attempt would be made to change article 20 ter, paragraph 2, which had given rise to very difficult problems in the Working Group. Those problems had been solved by the new proposal, which created an obligation for the conclusion of agreements on access to graves, etc., because without such agreements nothing would be possible. At the same time, as the Brazilian representative had pointed out, the obligation was not absolute.

43. While he agreed that article 20 bis, paragraph 1, might become a separate article, he could not agree to its deletion. That provision had not been in the original text, but had been inserted as a result of amendments submitted by Austria, Cyprus, France, Greece, the Holy See, Nicaragua and Spain. It was also fully in line with United Nations General Assembly resolution 3220 (XXIX). His delegation could see no objection to the paragraph.

44. He appealed once again to delegations to think very carefully before pressing further with amendments to the report of the Working Group (CDDH/II/376).

45. The CHAIRMAN suggested that, to give delegations a chance to think over their positions in the light of what had been said during the meeting, particularly by the representative of the German Democratic Republic, the seventy-seventh meeting should turn to the next question on the agenda and the Committee should not revert to Section I bis until the seventy-eighth meeting.

It was so agreed.

The meeting rose at 12.55 p.m.

SUMMARY RECORD OF THE SEVENTY-SEVENTH MEETING

held on Tuesday, 1 June 1976, at 3.10 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of the Drafting Committee (CDDH/II/379)

Article 8 - Definitions (concluded)

Sub-paragraph (a)

1. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, recalled that most of the definitions had been discussed extensively during the first session of the Conference. The most important change in article 8 (a) was in the position of the inverted commas round the words "wounded" and "sick". The expression had previously been "wounded and sick". The change had been made to enable the expression to be used with different conjunctions.

2. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) asked for the Russian text to be aligned with the English with respect to the words "in need of immediate medical assistance" and to the word "infirm".

3. The CHAIRMAN said that any discrepancies in translation would be taken up by the Drafting Committee, to which they could be directly referred.

Sub-paragraph (a) was adopted by consensus.

Sub-paragraph (b)

4. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that there were two new elements in the definition of "shipwrecked" now proposed. The first was the inclusion of the words "misfortune affecting either them or the vessel or aircraft carrying them". The previous definition ("as a result of the destruction, loss or disablement of the vessel or aircraft in which they were travelling") would have excluded anyone who had fallen overboard, since there would be no loss or disablement of his vessel.

5. The other change was in the second sentence of the definition and extended the notion of "shipwrecked" to persons who had been picked up by a vessel or aircraft and were being rescued. The Committee had defined medical transports as transports carrying exclusively the wounded and sick and shipwrecked and medical personnel. Therefore it had to be made clear that a transport carrying persons who were being rescued was still carrying "shipwrecked" persons in the sense of the definition. Otherwise the transport might not be protected as a medical transport. The point had raised no controversy.

6. Mr. SANDOZ (International Committee of the Red Cross) suggested that in the French text the word "l'expression" should be replaced by "le terme", and the words "par suite du sort malchanceux" by "par suite de la malchance". Moreover, "à s'abstenir" in the last sentence should read "de s'abstenir".

7. Mr. PENNANEAC'H (France) agreed to those amendments.

Sub-paragraph (b) was adopted by consensus.

Sub-paragraph (c)

8. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that a note on sub-paragraph (c) had been inadvertently omitted from the report. The note read: "It was the unanimous understanding of the Drafting Committee that the "medical" purposes referred to in that sub-paragraph included dental treatment, and the term 'hospitals and other similar units' included recovery centres providing medical treatment."

9. Some minor drafting changes had also been made.

Sub-paragraph (c) was adopted by consensus.

Sub-paragraph (d)

10. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, drew attention to the second and third paragraphs of the Drafting Committee's report (CDDH/II/379) concerning interpretation of the words "those persons assigned exclusively to the administration of medical units".

11. With respect to the square brackets round the words "units" and "bodies" in sub-paragraph (d) (i), he said that the Drafting Committee/Working Group on Civil Defence had discussed whether the wording should be "units" or "bodies" but had come to no conclusion. The report of that body (CDDH/II/384/Rev.1) would explain in greater detail why the brackets had been included.

12. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the Russian text should be aligned with the English with respect to the word "administration", which occurred twice.

13. Mr. SANDOZ (International Committee of the Red Cross) suggested that the word "mentionnés" should be added in sub-paragraph (d) (iii) of the French text, after the words "le personnel sanitaire des unités ou moyens de transport sanitaire".

14. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the omission in the French text was due to a typing error.

Sub-paragraph (d) was adopted by consensus.

15. Mr. HESS (Israel), speaking on a point of order, said that he had had an explanation of vote to make concerning sub-paragraph (d) (ii), but since he had a similar explanation to make concerning sub-paragraph (f), he took it that he could make his statement later.

16. The CHAIRMAN concurred.

Sub-paragraph (e)

17. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, drew attention to two notes concerning paragraph (e) on page 3 of the report (CDDH/II/379). The notes had been discussed by the Committee at the second session of the Conference.

Sub-paragraph (e) was adopted by consensus.

Sub-paragraph (f)

18. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the definition of religious personnel adopted by the Committee at the seventy-fifth meeting (CDDH/II/SR.75) should be introduced as a new sub-paragraph (f), and the two following sub-paragraphs renumbered (g) and (h) respectively.

19. With respect to sub-paragraph (f), he drew attention to the note in the sixth paragraph of the report of the Drafting Committee (CDDH/II/379) on the question of civil defence. The provisions concerning that matter had not yet been decided. There were also a few minor drafting changes. Sub-paragraph (f) was essentially based on the provisions considered by the Committee at the first session of the Conference.

20. Mr. HESS (Israel) recalled his delegation's statements in the Committee during the first session of the Conference, as recorded in summary records CDDH/II/SR.7, paragraph 39, and CDDH/II/SR.12,

paragraph 41, in which his delegation had maintained its reservation with regard to article 8 (e), since Israel used the Red Shield of David as the distinctive emblem of the medical services of its armed forces and national society, while respecting the inviolability of the distinctive emblem of the Geneva Conventions of 1949. That position had not changed and it now applied to article 8, sub-paragraph (g). Furthermore, his delegation understood article 8, sub-paragraph (d) (ii) as referring also to the medical personnel of its National Relief Society, the Red Shield of David Society.

Sub-paragraph (f) was adopted by consensus.

Sub-paragraph (g)

21. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that a few minor drafting changes had been made in sub-paragraph (g).

22. Mr. SANDOZ (International Committee of the Red Cross) suggested that the French text of the second line should be amended to read "... signalisation destinée exclusivement à permettre l'identification des unités ...".

23. Mr. PENNANEAC'H (France) concurred.

Sub-paragraph (g), as amended, was adopted by consensus.

24. Mr. MAKIN (United Kingdom) pointed out that the introductory phrase of the article had not been approved by the Committee. Moreover, the word "the" should be inserted between "For" and "purposes".

25. He suggested that the points raised by the Drafting Committee in the introduction to the report concerning the meaning of "administration", "devoted" and "assigned" and the point made orally by the Rapporteur concerning dental personnel and equipment should be included in the report of Committee II to the plenary Conference, since they were important interpretative statements, particularly for those not present at the meetings of the Committee or indeed at the Conference.

26. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, although the Committee had hitherto relied on its summary records and documentation to provide interpretation, the points could be made in the report if the Committee so wished.

It was so agreed.

The introductory phrase of article 8, as amended, was adopted.

Article 8 as a whole, as amended, was adopted. 1/

27. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that all the amendments adopted in connexion with article 8 of draft Protocol I would be incorporated in the document being prepared for article 11 of draft Protocol II.

Report of the Drafting Committee (CDDH/II/380)

/Article 18 bis - Revision of the annex7

Paragraph 1

28. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, recalled that at an earlier meeting Committee II had decided that paragraph 1 of article 18 bis - formerly article 16 of the annex - should be redrafted along the lines suggested by the Hungarian delegation. The result was the text without brackets in the report of the Drafting Committee (CDDH/II/380), which was close to the original text of the article. The only new element was that the ICRC would convene a meeting of technical experts only with the consent of one third of the High Contracting Parties. The second sentence imposed on the ICRC an absolute obligation to convene such a meeting at any time at the request of one third of the High Contracting Parties.

29. During the discussion in the Drafting Committee, however, several new ideas had been put forward and it had been felt that it would be advisable to have a text even more flexible than the Hungarian proposal. As a result of that discussion the text in square brackets had been prepared. It was for the Committee to decide which of the two versions it preferred.

30. Mr. SANDOZ (International Committee of the Red Cross) said that the ICRC was fully satisfied with the text in square brackets, which provided the necessary flexibility regarding the ICRC's responsibility for convening meetings.

31. Mr. MARRIOTT (Canada) agreed that the text in square brackets provided the kind of review mechanism that was required. He felt, however, that the words "on the status of the annex" in the first sentence were ambiguous and suggested that they should be replaced by the words "concerning the annex". He also suggested that the

1/ For the text of article 8 as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I)

words "or for other reasons" should be added at the end of the same sentence, since procedural as well as technological developments might be involved. Finally, he expressed the view that the six-month period mentioned in the third sentence was too long.

32. Mr. MAKIN (United Kingdom) also thought that the text in square brackets was to be preferred: it was better for the ICRC and was more in keeping with the discussion in the Committee. He endorsed the Canadian representative's suggestions and proposed that the Committee should take a decision in principle to adopt the text in square brackets.

33. Mr. CZANK (Hungary) said that he, too, considered the text in square brackets to be an improvement, particularly in view of the satisfaction expressed by the ICRC representative. It should therefore be accepted in principle and referred to the Drafting Committee.

34. Mr. CARNAUBA (Brazil) said that, in principle, his delegation preferred the text in square brackets.

35. Mr. CLARK (Australia) pointed out that in the unbracketed version of paragraph 1 the ICRC had an obligation to convene a meeting with the consent of one third of the High Contracting Parties, whereas in the text in square brackets the onus was on States to reply. If they did not reply, the ICRC could in theory convene a meeting, although in practice it would not do so if the High Contracting Parties did not wish to attend. His delegation would therefore like the text in square brackets to be reconsidered, on the understanding that the words "with the consent of one third of the High Contracting Parties" would be included. Account would thus be taken of a situation in which State sovereignty was involved.

36. The CHAIRMAN observed that Governments received a multitude of questionnaires and that many of them were unlikely to reply; in the text in square brackets it was taken for granted that, if a Government did not reply, that Government had no objections.

37. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, agreed with the Chairman.

38. Mr. SANDOZ (International Committee of the Red Cross) confirmed that it took a long time to obtain replies from Governments. In any case, no question of national sovereignty was involved; that would arise only at the conference stage.

39. Mr. MAKIN (United Kingdom) said that, before the text was referred to the Drafting Committee, a decision ought to be reached on the Canadian representative's suggestion regarding the period of time allowed for objections.
40. The CHAIRMAN inquired whether the Canadian representative had any specific alternative period in mind.
41. Mr. MARRIOTT (Canada) said that a period of three or four months would be reasonable, a six-month period being hardly practical in that it represented only one eighth of the interval between meetings.
42. Mr. SOLF (United States of America) pointed out that intricate questions of telecommunications requiring the co-ordination of various Government departments were involved; the six-month period was, therefore, not too long and a three-month period would definitely be too short.
43. Mr. URQUIOLA (Philippines) agreed that a six-month period was reasonable.
44. Mr. CARNAUBA (Brazil) also agreed that a six-month period would be preferable, since a shorter period might cause difficulties for a number of countries.
45. Mr. MARRIOTT (Canada) said that, in view of those considerations, he would withdraw his suggestion.
46. The CHAIRMAN inquired whether any member wished to comment on the Canadian representative's suggestion that the words "or for other reasons" should be added after the words "the developments of technology".
47. Mr. MAKIN (United Kingdom) pointed out that the annex referred also to distinctive emblems and identity cards, which were not technical matters. He therefore suggested that the word "technical" should be deleted before the word "experts".
48. Mr. MARRIOTT (Canada) supported that suggestion.
49. Mr. SALEEM (Pakistan) suggested that a better solution might be to delete the words "in the light of the development of technology".
50. Mr. JOSEPHI (Federal Republic of Germany) supported that suggestion.

51. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that, since what was being considered was not a review of draft Protocol I but a review of the rules relating to emblems and signals in the annex to draft Protocol I, he did not think that the amendments suggested should be accepted.

52. Mr. MAKIN (United Kingdom) said that some amendment was required. The Pakistan representative's suggestion was to be preferred, but the Committee should agree to amend the sentence and should leave the decision on the actual wording to the Drafting Committee.

53. Mrs. DARIIMAA (Mongolia) said that when the Committee considered a text produced by the Technical Sub-Committee, it should take into account the views of the experts who had participated in the Sub-Committee's work. She therefore endorsed the views expressed by the Soviet Union representative.

54. The CHAIRMAN put to the vote the alternative text proposed by the Drafting Committee for the first part of paragraph 1 which appeared between square brackets in the report of the Drafting Committee (CDDH/II/380).

The text in square brackets was adopted in principle by 37 votes to none, with 6 abstentions.

55. The CHAIRMAN said that if he heard no objection he would take it that the Committee wished the two sentences it had just adopted in principle to be referred to the Drafting Committee for further adjustment, on the understanding that no change would be made in their substance.

It was so agreed.

56. The CHAIRMAN drew the Committee's attention to the text proposed by the Drafting Committee for the last sentence of paragraph 1 (CDDH/II/380, third paragraph).

The sentence was adopted by consensus.

Paragraph 6

57. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that paragraph 6 had been referred to the Drafting Committee for the purpose of rearranging the scattered and somewhat incomplete provisions concerning the communications to be made by the depositary State. In the new text before the Committee those provisions were grouped, in their logical order, in a single paragraph.

Paragraph 6 was adopted by consensus.

58. Mr. CLARK (Australia) observed that there had been some discussion in the Drafting Committee about an ambiguity in paragraph 5 of the former article 16 of the annex to draft Protocol I (CDDH/II/371) which might have some bearing on paragraph 6. The text of paragraph 5 did not make it quite clear whether declarations of non-acceptance of an amendment to the annex could be made only within the one-year period for which provision was made in paragraph 4 or also during the three-month interval between the expiry of the one-year period and the entry into force of the amendment.

59. Mr. SOLF (United States of America) said that under paragraph 5 of the original United Kingdom proposal (CDDH/II/357), which had subsequently been withdrawn in favour of amendment CDDH/II/359 on which the Technical Sub-Committee's text was based, it would have been possible for a State to make a declaration of non-acceptance also during the three-month period following expiry of the one-year period. The Sub-Committee's text (CDDH/II/371, pp. 13/14) reflected the change which had been made in the United Kingdom text at the proposal of one of the sponsors of amendment CDDH/II/359. His delegation interpreted the Sub-Committee's text of paragraph 5 to mean that declarations of non-acceptance could be made only during the initial one-year period, the additional three months being provided for the purpose of any notifications that might be required and any action a State might need to take in order to arrange for implementation of the amendment. Thus, an amendment would, at the end of one year, become binding on the States that had accepted it in accordance with paragraph 4, but it would not actually enter into force until three months later.

60. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the ambiguity mentioned by the Australian representative arose from the fact that the text of paragraph 6 which had been referred to the Drafting Committee after Committee II had considered article 16 of the annex had included a reference to declarations of non-acceptance made in accordance with paragraphs 4 and 5. Since the general feeling in the Drafting Committee had seemed to be that such declarations must be made during the one-year period following communication of the amendment to the High Contracting Parties, the reference to paragraph 5 had been deleted from paragraph 6 in order to make it clear that the only relevant provisions were those of paragraph 4.

61. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the annex, which was concerned with emblems and signals, could not be considered in isolation from the article of draft Protocol I according to which the only compulsory emblem was that of the Red Cross. All the other emblems and signals were optional and refusal to use them could not deprive the persons concerned of protection.

It would be outside the purview of any body which might subsequently be concerned with amendments to the annex to amend the article itself or to render compulsory the use of any emblem other than that of the Red Cross. Consequently, there seemed to be little need to include a provision relating to non-acceptance.

62. Mrs. DARIIMAA (Mongolia) said she had always been given to understand by the Chairman and other members of the Technical Sub-Committee that the provisions of the annex were optional. She therefore endorsed the views expressed by the previous speaker.

63. The CHAIRMAN observed that although any amendments or additions to the annex would obviously be technical in nature, the question at present under discussion, namely, the procedure for convening meetings to consider such amendments, was a purely legal one.

64. Mr. EATON (United Kingdom) said that his delegation was prepared to accept what appeared to be the general view that declarations of non-acceptance should be made only within the year following communication of an amendment to the High Contracting Parties. The ambiguity to which reference had been made during the discussion might perhaps best be removed by inserting the phrase "in accordance with paragraph 4" at the end of the first sentence of paragraph 5.

65. Since the Committee had adopted the Drafting Committee's text of paragraph 6 by consensus, he took it that the second sentence of paragraph 5 of the Technical Sub-Committee's text (CDDH/II/371) would be deleted.

66. The CHAIRMAN suggested that article 18 bis might be referred back to the Drafting Committee with a view to making any drafting changes required to ensure that it formed a logical whole.

It was so agreed.

67. The CHAIRMAN drew attention to the heading "Article 18 bis" which appeared between square brackets in the Drafting Committee's text (CDDH/II/380).

68. Mr. MALLIK (Poland) asked whether the Drafting Committee had given consideration to the relationship which existed between the article under consideration and article 86 of draft Protocol I.

69. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the provisions for revision of the annex had some relation to those for revision of Protocol I itself and might therefore be included in Part VI of draft Protocol I

(Final Provisions). They were also related to the annex, however, and might therefore be placed in or near article 18 of draft Protocol I. The Committee was not competent to take a decision on that question, which would no doubt have to be settled by the Drafting Committee of the Conference.

70. Mr. SOLF (United States of America) said that the Committee had agreed that the provisions in question should be included in the draft Protocol itself rather than in the annex. They might ultimately be incorporated in article 86, but the heading "Article 18 bis" had been chosen provisionally because article 18 was the article that related to the matters dealt with in the annex. He suggested that the heading should be left between square brackets in order to indicate that the final decision would have to be taken by the Drafting Committee of the Conference.

71. The CHAIRMAN said that if he heard no objection he would take it that the Committee agreed to leave the heading between square brackets as it appeared in the Drafting Committee's text (CDDH/II/380), in order to indicate that it was provisional and represented only one of two or more possibilities.

It was so agreed.

The meeting rose at 5.5 p.m.

SUMMARY RECORD OF THE SEVENTY-EIGHTH MEETING

held on Wednesday, 2 June 1976, at 10.10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of the Working Group (CDDH/II/376) (concluded)

Section I bis - Information on the victims of a conflict and remains of deceased (continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of articles 20 bis and 20 ter as they appeared in the report of the Working Group on Section I bis (CDDH/II/376).
2. Mr. AFENDULI (Greece) welcomed the two articles submitted by the Working Group, which took full account of the amendment co-sponsored by his delegation (CDDH/II/354). The present version was a compromise arrived at in a spirit of understanding and co-operation. Careful examination of the text should remove the anxiety expressed by certain delegations.
3. Mr. CLARK (Australia) said that his delegation, having participated in the Working Group, fully supported the substance of articles 20 bis and 20 ter. He had two drafting amendments to propose, however: first, that in article 20 ter, paragraph 1, the words "of persons" after the word "hostilities" should be replaced by the word "and"; and, secondly, that in paragraph 4 (b) of the same article, the words "medical and investigative necessity" should be replaced by the words "medical necessity or investigation".
4. Mrs. DARIIMAA (Mongolia) said that her delegation fully supported the compromise text in document CDDH/II/376. She supposed that the provisions of those articles could be applied in practice bearing in mind concrete situations. Soldiers sent by their country in execution of an agreement to assist another country in defending itself against incursion or invasion by a foreign Power should be protected, and the text now proposed should assist in that respect. Articles 20 bis and 20 ter would in no way restrict the right of a country to take steps on its own initiative to honour the memory of foreign soldiers who had joined in the fight for its freedom and its independence. But, in the case of a country which had suffered from foreign aggression, the

* Resumed from the seventy-sixth meeting.

feelings of the population as regards the provisions of articles 20 bis and 20 ter were understandable. Those provisions could never be pleasing, in particular to the parents and the near relatives of the missing. Despite that fact, the humanitarian aspect must always be borne in mind. She urged the Committee to adopt the articles by consensus.

5. Mr. HØSTMARK (Norway) said that the proposal was fully acceptable to his delegation. The obligations it would place on the Contracting Parties were not unduly onerous and were no more than they could reasonably be expected to undertake on humanitarian grounds.

6. Mr. SKARSTEDT (Sweden) said that the text was well balanced and that his delegation would support it with some of the minor amendments proposed by other delegations.

7. Mr. JOSEPHI (Federal Republic of Germany) said that his delegation, too, supported the compromise text proposed by the Working Group, which took into consideration the suggestions made at the second session of the Conference as well as those put forward at the current session. It should be supported in the interest of the families of missing or deceased persons.

8. Mr. WARRAS (Finland) said that his delegation wholeheartedly supported the text of the two articles, which represented the minimum required by humanitarian values. He urged the Committee to adopt the articles by consensus.

9. Mr. KLEIN (Holy See) said that his delegation, too, hoped that the Committee would adopt the text by consensus, thus demonstrating a world-wide unity of spirit with respect to a great humanitarian problem.

10. Mr. SALEEM (Pakistan) said that the word "shall" before the word "conclude", in article 20 ter, paragraph 2, appeared to imply a contractual obligation, which was at variance with the exception provided for in paragraph 3. He consequently suggested that the word "shall" should be replaced by the word "should".

11. He further suggested that the word "permanently" in paragraph 2 (b) of the same article should be deleted; since any such agreement was subject to negotiation, it would be wrong to lay down conditions that had to be applied to it.

12. Mr. AL-FALLOUJI (Iraq), while welcoming the compromise text, said that certain drafting points should be clarified. It was not clear, for example, what was meant by the words "active hostilities" in article 20 bis, paragraph 2.

13. The words "who would not receive more favourable consideration under the Conventions and this Protocol" in paragraph 3 of the same article might also be made clearer. The Drafting Committee of Committee II might give assistance on those and other points.

14. He entirely agreed with the Pakistan representative's comments on article 20 ter. The contractual undertaking in paragraph 2 made the provision more legal than humanitarian. It might also have some political and military implications. Cases in which no agreement had been concluded should be covered. He supported the proposal to delete the word "permanently" in paragraph 2 (b).

15. Mr. HEREDIA (Cuba) said that his delegation's comments on article 20 bis had been in the nature of an opinion rather than a formal amendment.

16. Mr. KHARMA (Lebanon) said that it would be difficult to apply the provisions of article 20 ter, paragraph 2 (a), in cases in which hostilities were continuing. He therefore suggested that the words "after the normalization of relations between the adverse parties," should be inserted after the word "conclude" in paragraph 2.

17. Mr. GEORGIJEVSKI (Yugoslavia) said that he no longer questioned the need for paragraph 1 of article 20 bis.

18. Mr. RAMSDEN (United Kingdom), referring to article 20 ter, paragraph 3, pointed out that the words "of the remains" which appeared after the words "if the home country" were in the wrong place; they should come after the words "facilitate the return to the home country".

19. Mrs. DARIIMAA (Mongolia) agreed.

20. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, replying to questions put by the CHAIRMAN, said that in his opinion the proposal to make article 20 bis, paragraph 1, a separate article was merely a question of drafting. He was not sure whether the same was true of the question concerning the words "active hostilities" in paragraph 2 of that article, but thought the point could be clarified in the Drafting Committee.

21. The CHAIRMAN said that the amendments proposed by Pakistan at the seventy-sixth meeting (CDDH/II/SR.76) to paragraph 5 of article 20 bis could be considered as being of a drafting character.

22. Referring to article 20 ter, he said that the proposal to change the initial phrase in paragraph 2 was a question of substance, while the proposal made by the United Kingdom representative with reference to paragraph 3, as well as the Australian proposals concerning paragraphs 1 and 4, were questions of drafting.

23. Mr. KHAIRAT (Egypt), supported by Mr. AL-FALLOUJI (Iraq) and Mr. SIEVERTS (United States of America), proposed that the meeting should be suspended in order to enable delegations to hold informal consultations.

The meeting was suspended at 11.10 a.m. and resumed at 12.20 p.m.

24. The CHAIRMAN said that, following informal consultations, it had been agreed to leave questions of drafting to the Drafting Committee and to discuss only those proposals which involved questions of substance.

25. In connexion with article 20 bis, there appeared to be no objection to making paragraph 1 a separate article. Concerning paragraph 2, he asked the Indonesian representative if he wished to press his proposal for the inclusion of the words "as far as practicable".

26. Mr. IJAS (Indonesia) said that his delegation would like to clarify its position. He had noted the comments made by the representatives of the United States of America and the German Democratic Republic at the seventy-sixth meeting. He agreed that the draft was an excellent one and was prepared to accept it almost as a whole.

27. However, looking more closely at article 20 bis, paragraph 2, he noted a certain imbalance, in that most of the burden of carrying out the task of searching for missing persons would be placed on formerly occupied countries where the fighting had taken place, where victims had been killed and where persons were missing. Obviously, that task would be most difficult if the country in question was, like his own, a large archipelago. The former Occupying Power would insist on a search being made by the former occupied country which would, however, be far worse off than itself. In his opinion, therefore, it was not too much to ask that some of that burden on the former occupied country should be relieved by including the words "as far as practicable" after the word "shall" in the second sentence of paragraph 2 of article 20 bis. That did not mean that the country in question would be left without any obligation; the obligation would still remain,

but within the limits of the ability which the country's resources permitted.

28. Mr. STAROSTIN (Union of Soviet Socialist Republics) said that he wished to speak neither for nor against the Indonesian proposal. He pointed out, however, that it would be difficult to translate the expression "as far as practicable" into Russian and suggested that it should be amended to read "as far as possible".

29. The CHAIRMAN said that obviously no one could expect any country to do the impossible.

30. Mr. SIEVERTS (United States of America) said that he saw some merit in the point made by the Indonesian representative, but agreed with the Chairman that no country could be expected to do the impossible or what was more than practicable. Paragraph 2 stated a fundamental principle and, in his opinion, it would be unfortunate if attempts were made at the present stage to insert a phrase such as that proposed by the Indonesian representative. He hoped that the Indonesian representative would be satisfied if his idea was reported in the summary record of the meeting.

31. The CHAIRMAN, speaking as a lawyer, said that the Committee's summary records were documents of legal and historical importance. Such documents were often helpful in interpreting international instruments. He hoped that the Indonesian representative would be satisfied with the inclusion of his statement in the summary record.

32. Mr. IJAS (Indonesia) said that he would be satisfied with the inclusion of his observations in the summary record, in consideration of the importance given to the records by the Chairman.

33. Mr. AL-FALLOUJI (Iraq) said that the phrase "and at the latest from the end of active hostilities" in paragraph 2 was not entirely clear to him. Did it mean that at the end of active hostilities the obligation to search for missing persons no longer applied? The term "active hostilities" would seem to imply the possibility of non-active hostilities. What actually was the situation when active hostilities had been concluded?

34. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the words "active hostilities" were used in the Geneva Conventions, and it had been the feeling of the Working Group that the same expression should be used in Section I bis.

35. The drafting questions to which the representative of Iraq had referred would be settled by the Drafting Committee.

36. The CHAIRMAN suggested that the amendments submitted by the representative of Pakistan to paragraph 2 should be referred to the Drafting Committee.

It was so agreed.

37. Mr. KHARMA (Lebanon) said that after discussing his oral amendment to paragraph 2 of article 20 ter with other representatives, he now wished to revise it to read as follows: "2. As soon as circumstances and relations between the adverse parties permit, the High Contracting Parties on whose territories ..."

38. Mr. SIEVERTS (United States of America) said that his delegation was prepared to agree to the revised amendment suggested by the representative of Lebanon. He hoped that other delegations would accept it by consensus.

39. Mr. GEORGIJEVSKI (Yugoslavia) said that he supported the Lebanese amendment as revised. He considered, however, that the words "shall conclude" in paragraph 2 should be amended to read "should conclude".

40. Mr. SIEVERTS (United States of America), speaking on behalf of the members of the Working Group, said that the Yugoslav amendment would weaken paragraph 2 of article 20 ter to such a degree that it would no longer be acceptable. The Lebanese amendment to the first part of paragraph 2 was a recognition that in certain circumstances High Contracting Parties would be unable to conclude agreements.

41. Mr. CARNAUBA (Brazil) said that his delegation supported the revised Lebanese amendment.

42. Mr. FELBER (German Democratic Republic) said that in the interest of reaching a solution as soon as possible, his delegation would support the revised amendment proposed by the Lebanese representative. He asked the Yugoslav representative not to press his amendment to that paragraph.

43. Mr. GEORGIJEVSKI (Yugoslavia) said that he still believed his amendment to be desirable since the expression "should conclude" was more appropriate from the legal standpoint than "shall conclude". The obligation laid down in paragraph 2 was a moral duty of all High Contracting Parties. In order to enable a consensus to be reached, however, he would not press his amendment.

44. The CHAIRMAN invited the Committee to adopt Section I bis as a whole (CDDH/II/376) by consensus on the understanding that the Drafting Committee would be asked to undertake the final drafting of the Section bearing in mind all the suggestions made during the discussions, the members of the Working Group being asked to work out compromise solutions.

It was so agreed.

45. Mr. SCHREIBER (Director of the United Nations Division of Human Rights), speaking at the invitation of the Chairman, said that at the second session of the Diplomatic Conference he had had the opportunity of addressing the Committee as a member of the United Nations observer delegation and as the Director of the Division of Human Rights, at which time he had communicated to the Committee General Assembly resolution 3220 (XXIX), entitled "Assistance and co-operation in accounting for persons who are missing or dead in armed conflicts", in which the importance of the Geneva Conventions of 1949 and the work of the Diplomatic Conference had been stressed.

46. The text which had just been adopted by consensus was an important step forward in the field of international efforts to protect human rights. The Conference would emphasize the "right" of families to be informed of the fate of their next-of-kin involved in armed conflicts and to have some assurance that the remains of those who died would be treated in accordance with national ethical values and age-old traditional standards.

47. Expressing his appreciation for the way and the spirit of understanding in which the debate had been conducted, he emphasized that the Committee had borne in mind throughout the human aspects of the problems discussed.

48. After referring to the heartbreaking appeals which were received from persons who had lost their relatives in combat or were ignorant of their whereabouts, he said that he expected that the results of the work done by the Diplomatic Conference would be welcomed with great satisfaction by the General Assembly and other United Nations bodies, active in the field of human rights.

49. He was convinced that the Secretary-General of the United Nations and the Division of Human Rights would always be ready to co-operate in the appropriate humanitarian efforts

arising out of the work of the Diplomatic Conference. A constructive co-operation existed between the United Nations Secretariat and the ICRC in many areas of common endeavour.

50. He expressed good wishes to the participants in the Conference and hoped that the successful outcome of the discussions, on the question under consideration, which showed the desire of the delegations to ensure positive results through mutual understanding, would augur well for the early success of the tasks which the Conference had undertaken in the interest of the world community.

51. Mr. AL-FALLOUJI (Iraq) said that his delegation had agreed to the adoption of Section I bis by consensus since it was a purely humanitarian text to which political considerations were alien. The Section covered the rights of the family in connexion with dead or missing members and those rights should be given priority by the High Contracting Parties, who should be guided by humanitarian principles alone.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE SEVENTY-NINTH MEETING

held on Friday, 4 June 1976, at 10.5 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Annex: Model of identity card

1. Mr. EBERLIN (International Committee of the Red Cross) drew attention to the sheets without a symbol bearing the new model of the identity card for permanent and temporary medical and religious personnel, which took into account all the comments made in the Technical Sub-Committee. The model would appear in the annex to draft Protocol I immediately after article 2. The final presentation would be the same as in the report of the Technical Sub-Committee (CDDH/II/371).

2. Mr. SANCHEZ DEL RIO (Spain) said that in the Spanish version the words "y _pellidos" after the word "Nombre" should be deleted.

The new model of the identity card for permanent and temporary medical and religious personnel was adopted. 1/

Report of the Drafting Committee (CDDH/II/381)

/Article 18 bis - Revision of the annex/ (concluded)

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the text in the Drafting Committee's report (CDDH/II/381) contained no changes of substance from what had already been decided in Committee II; the Drafting Committee had merely tidied up the wording.

4. Mr. CARNAUBA (Brazil) said that he was fully in agreement with the new version, but that substantive changes had in fact been made: for instance, the words "not later than" had been added in the first line and the words "not less than" in the second line of paragraph 1.

5. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, while the points referred to by the Brazilian representative represented substantive changes from the previous version in the report of the Technical Sub-Committee

1/ For the new model of the identity card as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I)

(CDDH/II/371), they had been adopted by Committee II at its latest discussion of the article, and not in the Drafting Committee.

6. The CHAIRMAN expressed some doubt whether the word "appropriate" before the words "international organizations" in the English version of paragraph 1 was really equivalent to the word "concernées" used in the French version.

7. After a brief discussion in which Mr. URQUIOLA (Philippines), Mr. MARRIOTT (Canada), Mr. BOTHE (Federal Republic of Germany) and Mr. PENNANEAC'H (France) took part, it was decided to leave the English and French words as they stood.

Article 18 bis (CDDH/II/381) was adopted by consensus.^{2/}

8. Mr. CLARK (Australia) said that while his delegation had not opposed the consensus on article 18 bis, the article did impose restrictions on the sovereignty of independent States and his delegation accordingly reserved its position with regard to that article in general.

9. Mrs. DARIIMAA (Mongolia) said that her delegation, too, while not wishing to oppose the consensus, considered that article 18 bis infringed the sovereign rights of States by empowering the ICRC to convene a meeting of the High Contracting Parties to review the annex to draft Protocol I. Without in any way questioning the ICRC's authority, she took the view that the convening of such a meeting did not form part of its functions as an impartial international body.

10. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) and Mr. CARNAUBA (Brazil) made statements similar in substance to those of the preceding two speakers.

Section I bis - Information on the victims of a conflict and remains of deceased (CDDH/II/385) (concluded)

11. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that in its report (CDDH/II/381 and CDDH/II/385), the Drafting Committee had merely sought to tidy up a text on which all decisions of substance had been taken in Committee II.

^{2/} For the text of article 18 bis as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I)

12. Mr. SANCHEZ DEL RIO (Spain) pointed out that in the Spanish version the words "a lo más tarde" had been omitted from the first line of article 20 ter, paragraph 1.

13. Mr. SANDOZ (International Committee of the Red Cross) pointed out that, in the French version, the word "permanent" in article 20 quater, paragraph 2 (b) should be given an "s" and that in the second line of article 20 quater, paragraph 3, the figure "2" should be inserted between the word "paragraphe" and the letter "(c)". Further, he considered that drafting improvements should be made in the text and he expressed the hope that the Drafting Committee would have free scope in the matter.

14. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) congratulated the Drafting Committee/Working Group on providing an excellent example of what could be done in arriving at a text acceptable to all delegations despite the diametrically opposed views which had been expressed at the outset of the discussion.

15. Since he had not had enough time to consider the Russian version in detail, he asked the Chairman's permission to submit in writing any drafting changes which might seem necessary in the Russian version.

16. Mrs. DARIIMAA (Mongolia) said that there were mistakes in the Russian version but that she would not go into details in view of what the USSR representative had said.

17. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that there was no problem about accepting drafting corrections after the conclusion of the debates. In any event, the final drafting was for the Drafting Committee of the Conference, which was competent to deal with all the language versions.

Section I bis was adopted by consensus.^{3/}

Draft Protocol II

Report of the Drafting Committee (CDDH/II/386)

Article 11 - Definitions

^{3/} For the text of Section I bis as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I)

18. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the text in that Committee's report (CDDH/II/386) was the outcome of years of work and the consideration and reconsideration of dozens of proposals. Apart from the wording of the definitions, there had been prolonged discussion of the more general questions whether such definitions should be included in draft Protocol II and, if they were, where they should be placed. Several delegations had expressed the view that Protocol II should be as simple as possible, and at the last meeting of the Drafting Committee it had been proposed that all the definitions might be placed in a special annex, the idea being that the more simple-minded soldiers need consult Protocol II only, while those seeking a more sophisticated interpretation could go to the annex. The fear had been expressed that the complex set of definitions might make Protocol II difficult to read and understand.

19. A number of the terms defined in draft Protocol II, article 11, were also defined in draft Protocol I, article 8, concerning which he had made a number of interpretative statements; those statements applied equally to the definitions in draft Protocol II, article 11, where the same words were used. The same words had, in fact, been used in the two sets of definitions wherever that was appropriate.

20. He proposed that the Committee should deal first with general questions concerning the article - for example, where it should be placed - and then proceed to deal with it sub-paragraph by sub-paragraph.

21. The CHAIRMAN invited general comments on the text of article 11 (CDDH/II/386).

22. Mr. URQUIOLA (Philippines) said he considered that the definitions - an important part of any treaty - should be included in the Protocol and not placed in an annex. That was the normal practice in diplomatic instruments. For instance, in the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963), the definitions were given in Article 1 and, in the Vienna Convention on the Law of Treaties (1969), in Article 2. Ideally, rather than spreading the definitions throughout draft Protocol II, he would favour putting them in article 2, as suggested by the Drafting Committee.

23. Mr. MARRIOTT (Canada) said that he had welcomed earlier suggestions to put the definitions in an annex to Protocol II, since his delegation had long maintained that that Protocol should be kept as simple as possible. It also held the view that there should be no definitions in Part III of Protocol II. To his mind, the question of an annex was not the essential one at the present

stage; the main point was to avoid obscuring the Protocol with definitions which, of necessity, had to be complicated. He would therefore like to see a recommendation from the Committee to the effect that Part III of Protocol II should not contain any definitions. That would be a better way of approaching the problem than to make specific recommendations regarding the advisability of an annex.

24. The CHAIRMAN said that, as a lawyer, he could not agree that definitions must be complicated. On the contrary, they should be as simple and easy to understand as possible.

25. Mr. KAESER (Switzerland) said that his delegation inclined to the views expressed by the representative of the Philippines.

26. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) reminded the Committee that it was not empowered to alter the structure of any document drawn up by the Conference as a whole. No provision had been made for a special annex and, even had there been, it would have to be decided whether to place it at the end of draft Protocol I or draft Protocol II. Such a complex matter would have to await a solution until the position of the other Committees was known.

27. In addition, there were a number of purely practical problems which the Committee should bear in mind. Ideally, of course, definitions should be simple, but in practice it was no easy matter to define a term concisely and clearly. After ten years, the World Health Organization, for example, had failed to find a universally acceptable definition of "health", and all the efforts of the Working Group set up at the second session of the Conference to define "combat zone" had come to naught. Further, any annex would have to be amplified by additional definitions to make for easy reference. That would be time-consuming and would also result in a cumbersome document. In the circumstances, he would prefer the definitions in Protocol II to be left as they stood.

28. Mr. SOLF (United States of America) said he agreed that the definitions should appear in the Protocol and not in an annex. He considered, however, that it was for the Drafting Committee of the Conference to decide whether to leave those definitions where they stood or to group them in Part I, possibly in article 2. That was a matter of style and convenience, which could best be settled when all the articles and definitions had been dealt with. Committee II, for its part, should ensure that the definitions were relevant to Part III of Protocol II and members should then submit their views to the Drafting Committee of the Conference as to the precise point at which the definitions should appear.

29. Mr. CARNAUBA (Brazil) said that the idea of putting the definitions set out in Part III of draft Protocol II in a separate annex was somewhat unusual from a strictly legal point of view. From the practical point of view, it was totally unacceptable since it could only delay the work of the Conference, at the present session or the next. The Committee should do its utmost to expedite the work of the present session and to ensure that the fourth session was as short as possible.

30. Mr. SCHULTZ (Denmark) proposed that, even if the Committee was unable to agree on a recommendation, its report should contain a brief statement to the effect that several delegations were in favour of putting the definitions in an annex, together with a suggestion that the appropriate body should consider the possibility.

31. In his opinion, since it was generally accepted that Protocol II should be concise, there should be no difficulty in removing articles 11, 25 and 31, relating to definitions, from the Protocol and placing them in an annex. It was a purely practical matter and did not appear to have any legal implications.

32. Mr. MAKIN (United Kingdom) said that, in suggesting to the Drafting Committee that definitions should be included in an annex, he had sought to meet the general desire to shorten the operative part of the Protocol. There was also, however, a psychological consideration: rebel leaders might be discouraged from observing the Protocol if their first glimpse of it was a lengthy list of technical definitions of apparently commonplace terms.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that it would create difficulties and make Protocol II extremely difficult to understand if the definitions were divorced from the body of the text. That was particularly true, for example, of the chapter on civil defence. He was, however, prepared to accept the compromise position taken by the United States representative.

34. Mr. MALLIK (Poland) said that he, too, was opposed to the idea of placing the definitions in a separate annex, which could lead to much confusion. He also agreed that it was necessary to read the definitions in conjunction with the text.

35. In practice, once the Protocols had been ratified, the ordinary soldier or worker would very probably undergo a period of instruction in interpreting them. That would be essential in view of the highly legal concepts involved.

36. Mr. EL HASSEEN EL HASSAN (Sudan) urged the Committee to adopt the text in document CDDH/II/386 by consensus forthwith, and to make such suggestions as it saw fit to the Drafting Committee of the Conference regarding the point at which the definitions should appear. In that way, the Committee could dispose of the item.
37. The CHAIRMAN said that, as a lawyer, he considered it would be unusual to put the definitions in an annex and that he could not remember any treaty in which the definitions had been so placed. In addition, to place the definitions in one Protocol in an annex, while those in the other were in the body of the text, might create difficulties in interpretation: it might make the definitions in Protocol II seem less important than those in Protocol I.
38. As regards procedure, there were three possible courses open to the Committee: to refrain from any decision on the question, leaving it to the main Drafting Committee or plenary meeting of the Conference - which he was sure no one wished to do; to take a vote on the question; or - and he personally thought that would be the best course - to adopt the text, but to place the number of the article and title in square brackets. It would thus be left to the Drafting Committee of the Conference or a plenary meeting of the Conference to take the decision on that matter.
39. Mr. MAKIN (United Kingdom) said he was prepared to withdraw the suggestion he had made to the Drafting Committee to place the definitions in an annex and to support the Chairman's proposal to put the title in square brackets.
40. Mr. MARRIOTT (Canada) also supported the Chairman's proposal.
41. Mr. CZANK (Hungary) said he did not think the question of placing the definitions in an annex need be referred to in the report of Committee II - it would be enough to mention it in the summary record. It was his view that the definitions should be placed in Protocol II itself and he felt that that was the prevailing opinion of the Committee.
42. Mr. SCHULTZ (Denmark) withdrew his proposal to have the question of whether the definitions should be placed in an annex referred to in the Committee's report. He supported the proposal to place the title in square brackets: he would, in fact, be prepared to leave the title as it stood.
43. The CHAIRMAN asked the Canadian representative if he wished for a vote on the question.

44. Mr. MARRIOTT (Canada) said he did not. Until the Drafting Committee of the Conference had dealt with the titles of all the articles, they were all, as it were, in square brackets.

The Chairman's proposal was adopted.

Sub-paragraph (a)

Sub-paragraph (a) was adopted by consensus.

Sub-paragraph (b)

45. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that sub-paragraph (b) was based on the corresponding sub-paragraph of article 8 of draft Protocol I, but that the second sentence was new. In a non-international conflict a person could not acquire a different status in the same way as in an international conflict. The only comparable provision was in Article 3 common to the Geneva Conventions of 1949. A provision on the question was necessary in view of the definition of medical transportation in sub-paragraph (d). It must be made clear that a shipwrecked person who was flown by helicopter, for instance, still had shipwrecked status during the flight: otherwise the flight would not be covered by the definition of medical transportation. Various suggestions had been made in the Drafting Committee, one of them being: "These persons shall also be considered shipwrecked during their rescue". The other status to which reference was made could only be that of civilian.

The first sentence of sub-paragraph (b) was adopted by consensus.

46. Mr. MARRIOTT (Canada) said that, since it was envisaged that Protocol II might apply in situations where legal advice was not available, inclusion of the words "until they acquire another status" in the second sentence might cause difficulties of interpretation. He therefore proposed that these words should be deleted, but that the word "also" should be kept.

47. Mr. SOLF (United States of America) proposed that the words in square brackets should be kept with the addition, after the word "status", of the words "under this Protocol". The two Protocols would be studied together and the corresponding provisions should be as nearly parallel as possible. The only status recognized by draft Protocol I which was not recognized by draft Protocol II was that of prisoner of war.

48. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) supported the United States proposal. Even in a non-international conflict, the officers would have legal advisers.

49. Mr. MARRIOTT (Canada) said that he would not press his point if the general feeling was against it.

It was decided to delete all the square brackets in the second sentence of sub-paragraph (b).

Sub-paragraph (b), as amended, was adopted by consensus.

Sub-paragraph (c)

50. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that sub-paragraph (c) was based on the definition of medical units in article 8 of draft Protocol I, but that the illustrative list of examples had been omitted with the aim of keeping Protocol II as brief as possible.

Sub-paragraph (c) was adopted by consensus.

Sub-paragraph (d)

51. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that sub-paragraph (d) contained the essential elements of article 21, sub-paragraph (a), of Protocol I and that the wording was almost the same.

52. Mr. MARRIOTT (Canada) proposed the addition, in the English text, of the word "and" before the words "medical equipment". That would make the meaning clearer.

53. Mr. SANDOZ (International Committee of the Red Cross) said that, in the French text, the use of the words "fluviale ou lacustre" after the words "voie maritime" was, perhaps, better than to use the words "ou sur d'autres eaux" as had been done in the parallel articles of Protocol I. But in any case it was important for the Drafting Committee to note that Committee II did not intend to give the expression a different meaning.

54. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the alignment of the French texts should be looked into.

55. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he wondered whether the word "supplies" should be replaced by the word "matériel", so as to bring the text into line with similar articles.

56. Mr. SOLF (United States of America) said that the Drafting Committee of the Conference had decided, in connexion with article 14 of draft Protocol I, to use the word "matériel" instead of the word "supplies", but he hoped that the Drafting Committee of the Conference would change its mind as, according to his dictionary, the word "matériel" meant both equipment and supplies. He therefore proposed that the text of sub-paragraph (d) should be left as it stood.

57. Mr. CLARK (Australia) supported that view. He also supported the Canadian proposal to add the word "and" before the words "medical equipment".

58. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he was satisfied by the United States explanation. As far as the Russian translation was concerned, it would not matter whether the word "matériel" or "supplies" was used in English.

The Canadian proposal to add "and" in the English text was adopted.

Sub-paragraph (d) as amended, was adopted by consensus.

Sub-paragraph (e)

59. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that sub-paragraph (e) was based on article 21 (b) of draft Protocol I and should cause no problems.

Sub-paragraph (e) was adopted by consensus.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE EIGHTIETH MEETING

held on Friday, 4 June 1976, at 3.50 p.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol II

Report of the Drafting Committee (CDDH/II/386) (continued)

Article 11 - Definitions (concluded)

Sub-paragraph (f)

1. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that in some cases the wording of article 11, sub-paragraph (f) differed from that used in draft Protocol I because the entity to which medical personnel might belong had had to be described in a somewhat different manner. There was the medical personnel of a party to the conflict, the medical personnel of Red Cross organizations, and that of other aid societies. The square brackets in sub-paragraph (f) (i) had been retained because no decision had yet been taken on civil defence. In sub-paragraph (f) (ii) the words "organizations" and "societies" had been used in order to be consistent with the terminology employed in article 14 of draft Protocol II, adopted by the Committee at the second session. That terminology, however, might have to be amended in the light of the discussion taking place in another Committee in regard to article 35. In sub-paragraph (f) (ii) the words "recognized and authorized" referred to "societies", not to "personnel"; that might not be clear in the English text, but there was no ambiguity in the French or Spanish versions.

2. The CHAIRMAN suggested that the ambiguity in the English text could be removed by replacing the word "who" by the word "which".

3. Mr. MARRIOTT (Canada) suggested that the relevant portion of sub-paragraph (f) (ii) should be re-arranged to read: "other aid societies recognized and authorized by one of the parties to the conflict and which are within the territory ...".

4. Mr. SANCHEZ DEL RIO (Spain) suggested that the words "located within the territory of the High Contracting Party in whose territory an armed conflict is taking place", in sub-paragraph (f) (ii), should be deleted, since it was obvious that the draft Protocol referred exclusively to such territories. Alternatively, if the Committee wished to make specific mention of aid societies already established, it would be sufficient to use the words "and of other aid societies located in the territory of the High Contracting Party who are recognized and authorized by one of the parties to the conflict".

5. Miss MINOGUE (Australia) supported the Spanish representative's suggestion, which would be in keeping with the simplification introduced in other articles of draft Protocol II.

6. Mr. IJAS (Indonesia) supported the Chairman's suggestion that the word "who" should be replaced by the word "which". In his view, the words "located within the territory of the High Contracting Party" should be retained.

7. The CHAIRMAN suggested that the Rapporteur of the Drafting Committee should convene a small group to discuss the various drafting amendments which had been suggested.

It was so agreed.

Sub-paragraph (g)

8. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, explained that for practical purposes the text was the same as that of article 8 of draft Protocol I, except that mention was made of "medical transports."

Sub-paragraph (g) was adopted by consensus.

Sub-paragraph (h)

9. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, explained that the text was identical to that of article 8 of draft Protocol I as far as the introductory and concluding sentences were concerned, but the designation of the entities to which personnel might belong had had to be adjusted to the different legal and practical situation obtaining in internal conflicts.

Sub-paragraph (h) was adopted by consensus.

Sub-paragraph (i)

10. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the same wording had been used as for the corresponding provision of article 8 of draft Protocol I except for one drafting change in the French text, in which the concluding words would be "de son matériel". It had already been agreed that the English words "equipment or supplies" would be employed for the French word "matériel".

11. Mr. SCHULTZ (Denmark) pointed out that it was stated in the Drafting Committee's report on article 8 (CDDH/II/379) that sub-paragraph (f) - now sub-paragraph (g) - should be re-examined after adoption of the provisions on identification of civil defence, in order to avoid confusion. It would be advisable to have a similar note to remind the Committee that if a provision regarding the identification of the civil defence emblem was introduced in draft Protocol II, sub-paragraph (i) should be re-examined accordingly.

12. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that a further note would be unnecessary because at the seventy-ninth meeting (CDDH/II/SR.79) he had made a covering statement suggesting that the notes and explanations relating to article 8 of draft Protocol I should apply also to article 11 of draft Protocol II.

13. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) pointed out that sub-paragraph (i) had been omitted in the Russian text. However, since the text was identical to that of article 8 of draft Protocol I, he would accept it as it stood.

Sub-paragraph (i) was adopted by consensus.

14. The CHAIRMAN invited the Rapporteur of the Drafting Committee to report on the work of the small group which had been requested to discuss article 11, sub-paragraph (f) (ii).

15. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that the group proposed that sub-paragraph (f) (ii) should be replaced by the following two sub-paragraphs.

- "(ii) medical personnel of Red Cross (Red Crescent, Red Lion and Sun) organizations recognized and authorized by a party to the conflict;
- (iii) medical personnel of other aid societies recognized and authorized by a party to the conflict and located within the territory of the High Contracting Party in whose territory an armed conflict is taking place."

16. It had been considered necessary to specify that aid societies other than Red Cross organizations must be located within the territory of the High Contracting Party in whose territory the armed conflict was taking place in order to avoid the situation of an obscure private group from outside the country establishing itself as an aid society within the territory and being recognized by the rebels.

17. In his view, the phrase "recognized or authorized" should be used in both sub-paragraphs in preference to the phrase "recognized and authorized".

18. Miss MINOGUE (Australia) disagreed. The correct phrase, at least in the case of sub-paragraph (f) (ii) was "recognized and authorized".

19. Mr. SOLF (United States of America) said that in the interests of consistency with the first Geneva Convention of 1949, the phrase "recognized and authorized" should be used in both sub-paragraphs.

20. Mr. GEORGIJEVSKI (Yugoslavia) considered that the phrase "recognized or authorized" could be used in sub-paragraph (f) (ii), since it would cover both the single national Red Cross Society belonging to the High Contracting Party and any other Red Cross organizations set up by a party to the conflict and recognized or authorized by that party or by the High Contracting Party. In sub-paragraph (f) (iii), on the other hand, the phrase "recognized and authorized" or, alternatively, the single word "authorized" would appear to be appropriate.

21. Mr. SOLF (United States of America) said that the text which should serve as the model for the provisions under discussion was that of Article 26 of the first Geneva Convention of 1949, which referred to "the staff of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognized and authorized by their Governments". As he understood it, the word "recognized" used in that context meant that the organization in question had been recognized as an aid society by the competent authorities, namely, the Government in the case of an international armed conflict or a party to the conflict in the case of a non-international armed conflict, and the word "authorized" meant that the organization had been specifically authorized by a party to the conflict to form medical units in order to care for the wounded and the sick. Consequently, he considered that the phrase "recognized and authorized" should be used in both sub-paragraphs.

22. Mr. CLARK (Australia) fully supported that view.

23. Mr. MALLIK (Poland) observed that the territory of a country in which a non-international armed conflict was taking place might be divided into two parts, each of which was under the control of a different party to the conflict. Consequently, the reference in the provisions under discussion should not be to national Red Cross Societies, of which there could be only one in each country, but rather to Red Cross organizations, in order to cater for organizations which were in the process of being set up to act as aid societies by one of the parties to the conflict but which might not yet have been recognized. The phrase "located within the territory in which an armed conflict is taking place" might appropriately be substituted for the phrase "located within the territory of the High Contracting Party in whose territory an armed conflict is taking place" in sub-paragraph (f) (ii).

24. From the standpoint of the ICRC rules, the notion of recognition was somewhat vague. Furthermore, he considered that it might be desirable to consider sub-paragraph (f) (ii) together with article 35 of draft Protocol II.

25. Mr. WARRAS (Finland) agreed that sub-paragraph (f) (ii) was related to article 35, which dealt with national Red Cross and other relief societies. Some informal consultations had already been held with a view to proposing amendments to article 35 and it would almost certainly be necessary to amend the definition under discussion once that article had been adopted at the fourth session of the Conference. He therefore suggested that the Committee should not take a final decision on article 11, sub-paragraph (f) (ii), at the present stage.

26. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he would have no objection to deferring further discussion of the sub-paragraph until a later stage. He supported the views expressed by the Polish representative concerning the use of the phrase "Red Cross organizations", since a single Red Cross society might no longer exist in a country in which a non-international armed conflict was taking place.

27. Mr. GEORGIJEVSKI (Yugoslavia) said that his misgivings about the text had been dispelled by the United States representative's explanation concerning the interpretation of the word "recognized".

28. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that the Committee should adopt the text of sub-paragraph (f), as amended by the small group set up to consider sub-paragraph (f) (ii), subject to the replacement of the foot-note to that sub-paragraph in document CDDH/II/386 by a foot-

note stating that the entire definition would have to be re-examined in the light of the decision taken with respect to article 35.

29. Mr. WARRAS (Finland) and Mr. MALLIK (Poland) said that they could accept that suggestion.

Article 11, sub-paragraph (f), as amended, was adopted by consensus, subject to the addition of the foot-note suggested by the Rapporteur of the Drafting Committee.

Article 11 as a whole, as amended, was adopted by consensus.^{1/}

30. Mr. HESS (Israel) said that the statements which his delegation had made, in connexion with article 8 of draft Protocol I, concerning the use by Israel of the Red Shield of David applied also to article 11, sub-paragraphs (f) (i) and (ii), of draft Protocol II.

Draft Protocol I

Interim report of the Drafting Committee/Working Group on Civil Defence (CDDH/II/384)

31. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee/Working Group, introducing the interim report in document CDDH/II/384, said that while civil defence was an almost entirely new subject in the system of Geneva law, it was an area in which considerable developments had taken place at the national level over recent years. Those two facts made it very difficult to find an appropriate international solution to the related problems. Consequently, the Drafting Committee/Working Group had produced only three draft articles for the Committee's consideration, and even those three texts were somewhat fragmentary and riddled with square brackets. Nevertheless, he hoped that they would serve as a basis for reflection during the interval between the current and fourth sessions of the Conference and that the comments in the report, albeit incomplete, would make it easier to understand why certain expressions had been placed between square brackets.

32. The report was really a draft report since, for technical reasons, the Drafting Committee/Working Group had not been able to adopt it. A revised version would be issued incorporating a number of changes. The most substantial of those would be the deletion of annex I because the definitions in it, which had been prepared by a small informal working group at a very early stage in the Drafting Committee/Working Group's discussions, had subsequently been

^{1/} For the text of article 11 as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I)

disowned by two of the three members of that group. The introductory comments in the third paragraph of the report would be altered accordingly.

33. Throughout the revised version of the report,^{2/} the group set up to examine the problems of the protection of military elements of civil defence would be referred to as the "restricted Sub-Group". Furthermore, the second paragraph on page 8 would be replaced by the following paragraph:

"In introducing the report to the Drafting Committee/Working Group, the Chairman of the restricted Sub-Group stated that besides the two alternative versions proposed for article 58 bis, there existed, in addition, the alternative of not having any article 58 bis, i.e., not to have any article on military units of civil defence. The members of the Sub-Group were, however, not unanimously in favour of any of the three solutions."

34. On behalf of the Drafting Committee/Working Group, he suggested that the draft articles prepared by the restricted Sub-Group should be introduced by the Chairman of the Sub-Group, so that the relevant background information could be placed on record as a basis for future consideration of the question.

It was so agreed.

35. Mr. SCHULTZ (Denmark), Chairman of the restricted Sub-Group, introduced the report of that Group, which had been set up on 13 May 1976 to consider the question of the status and protection of military elements in civil defence. The Sub-Group was composed of the delegations of Denmark, Indonesia, Mexico, Netherlands, Nigeria, Switzerland, the Ukrainian Soviet Socialist Republic and the United States of America. A representative of the ICRC had attended all its meetings. The Sub-Group's report, in annex II to document CDDH/II/384, proposed draft texts for articles 55, 57 bis, two alternatives for article 58 bis and a new definition for article 54, paragraph 2. He would limit himself to general comments on the alternative texts for article 58 bis.

36. During the debate on article 55, several delegations had stated that civil defence units and their personnel must have civilian status if they were to be protected under Protocol I, certain countries with military civil defence units, however, had expressed

^{2/} The revised version of the report (CDDH/II/384/Rev.1) was issued on 7 June 1976.

their desire for protection under international law for such units. Two formal proposals (CDDH/II/335 and CDDH/II/341) had been submitted, by Switzerland and the Netherlands respectively. The discussion had revealed that several delegations held very firm views on the issue, and since some of them did not wish to vote on principles before texts were available, the Drafting Committee/Working Group had been requested to produce some texts on which a vote could be taken by Committee II.

37. The Sub-Group had started off with the idea of putting forward two proposals: an article providing protection for military civil defence units, and one providing protection for civilian civil defence units. It had felt, however, that if two proposals only were submitted for decision to Committee II, there would be a risk that countries whose point of view was rejected in the vote might make reservations under article 85 of draft Protocol I, possibly for the whole chapter on civil defence, which would not be satisfactory.

38. The Sub-Group had therefore decided to draft the text of a third, "middle" solution based on the idea of an agreement. In time of peace as well as war, parties to the conflict or High Contracting Parties might agree that military civil defence units and personnel considered as individuals might be protected, but in the absence of such agreement, military personnel would have no protection but would simply be members of the armed forces.

39. If it were decided that only civilian civil defence units should be given protection under Protocol I, there was no need for any text on military units. That point was reflected in the second paragraph of the revised version of annex II to document CDDH/II/384.

40. Although the Group had agreed to draft two alternative texts, it had not agreed on what the final solution should be. He stressed that the Group reserved its position with regard to a possible vote in Committee II; its members were not unanimously in favour of the third solution.

41. Turning to the texts, he said that in paragraph 1 (a) of Alternative 1 for article 58 bis, dealing with the application of the article, two proposals were in square brackets since the Sub-Group had been unable to agree on the matter.

42. Paragraphs 1 (a) and (b) of Alternative 1 gave a detailed description of the protection that military civil defence units should receive. The protection was parallel to that set out in draft article 55. Military civil defence units should not be made the object of attack; they should be allowed to perform their

civil defence duties and in case of occupation should to the extent feasible receive from the Occupying Power the facilities necessary to carry on their civil defence tasks.

43. Paragraph 1 (c) laid down the conditions necessary for the provision of protection. Military civil defence units must be clearly distinguishable from combat units. The Sub-Group had proposed alternative texts for paragraphs 1 (c) (2) and (3); Committee II would have to decide between them.

44. Paragraph 1 (d) contained a new provision, to the effect that military civil defence personnel while assigned and exclusively devoted to civil defence tasks were prohibited from taking a direct part in the hostilities. That prohibition differed from the provision in paragraph 1 (c) (3): it would be a breach of Protocol I if military personnel took a direct part in hostilities while acting as protected civil defence units.

45. With respect to paragraph 2, he said that all members of the Sub-Group felt it essential to avoid any short-term shifting of personnel in wartime and had therefore modelled that paragraph on article 26 bis of draft Protocol I, which had been approved by Committee II at the second session. It recommended that for greater safety a party to the conflict might notify any adverse party on the assignment of military units to civil defence and also the reverse.

46. Paragraph 4 dealt with the difficult problem of military personnel of civil defence who had fallen into the hands of the adverse party and whether such personnel should be treated as prisoners of war. The Group had considered carefully whether, in the interest of the civilian population, prisoner-of-war status should be provided for such personnel in combat zones and occupied areas, and had decided that it could not be provided. To permit military civil defence units to continue their work would run counter to Article 19 of the third Geneva Convention of 1949, which stated that prisoners of war should be evacuated as soon as possible after their capture to camps situated in an area far enough from the combat zone for them to be out of danger. Moreover, Articles 50 to 52 of the third Geneva Convention stated that prisoners of war might be compelled to do only certain types of work, which did not include civil defence, and that unless he was a volunteer no prisoner of war could be employed on labour of an unhealthy or dangerous nature. The Sub-Group had agreed that civil defence work was dangerous and thus that military civil defence units could not be considered prisoners of war if they were required to continue their civil defence work.

47. The solution put forward in paragraph 4 was modelled on Article 28 of the first Geneva Convention of 1949, which laid down that permanent medical personnel who fell into the hands of the adverse party should not be deemed prisoners of war but should continue to carry out their duties on behalf of prisoners of war. The Sub-Group felt, however, that there was a need to state expressly that military civil defence personnel who were retained not as prisoners of war but to be used as civil defence workers should not, if freed, be employed on active military service thereafter. That provision was modelled on Article 117 of the third Geneva Convention of 1949, under which no repatriated person might be employed on active military service.

48. Paragraph 4 (b), based on Article 29 of the first Geneva Convention of 1949, provided that members of the armed forces temporarily engaged in civil defence tasks should not be made the object of attack and if captured should be prisoners of war, but that they should be employed on civil defence in so far as the need arose.

49. Paragraph 5 (a), (b) and (c) were based on Articles 33 and 34 of the first Geneva Convention of 1949. They provided that the equipment, supplies, buildings and transports of military units of civil defence should not be made the object of attack and, if they fell into the hands of the enemy, should not be diverted from their assignment.

50. The introductory paragraph of Alternative 2 for article 58 bis was based on Article 23 of the first Geneva Convention of 1949 and Article 14 of the fourth Geneva Convention. The Sub-Group was suggesting that in time of peace the High Contracting Parties and, after the outbreak of hostilities, the parties to a conflict might agree that military units should be protected while they were assigned and devoted exclusively to civil defence tasks. Sub-paragraphs (1) to (4) set forth the details of such an agreement. Sub-paragraph (4) proposed that the agreement between the parties should define and describe the status and treatment to be accorded to military units of civil defence and their buildings, equipment and supplies, if they should fall into the hands of the adverse party. Such an agreement could be made on the basis of Article 6 of the third Geneva Convention of 1949, which stated that, in addition to the agreements expressly provided for in other Articles of that Convention, the High Contracting Parties might conclude other special agreements for all matters concerning which they might deem it suitable to make separate provision.

51. Alternative 2 was based on the idea that if no agreement was concluded between parties to the conflict or the High Contracting Parties, military civil defence units and personnel should not be protected but should simply be members of the armed forces and therefore treated as prisoners of war, following the general provisions of Article 4, paragraph A (1) of the third Geneva Convention of 1949.

52. Mrs. DARIIMAA (Mongolia) said that the interim report of the Drafting Committee/Working Group on Civil Defence (CDDH/II/384) raised very complex problems which had not been previously discussed by Government experts before the opening of the Conference. Many questions dealt with were completely new. They therefore required thorough consideration both at the Conference itself and in consultations with civil defence experts within each country. No hasty decision should be reached.

53. Her delegation experienced a number of difficulties in regard to the interim report (CDDH/II/384), which it would enlarge upon at the fourth session, after consulting its own civil defence experts. Certain observations, however, could be made immediately. Of the alternative headings of article 55, the words "in zones of military operations" were to be preferred, since they were a more accurate reflection of what actually took place in armed conflicts and therefore constituted a more reliable guarantee that civil defence matériel and personnel would be protected. In paragraph 1 of article 55 the words "carry only light individual weapons" were to be preferred, that wording having already been adopted by the Committee for article 29 concerning medical personnel. By analogy, civil defence personnel could be granted the right to carry "light individual weapons" for self-defence and for the performance of the duties listed in article 54 of draft Protocol I. In paragraph 3 of article 55 the words "and transports" could be retained, since the same term had already been adopted in article 21.

54. Of the two alternatives for article 58 bis, the second gave rise to serious objections. A basic aim of Protocol I was to prepare rules providing a minimum protection for civil defence matériel and personnel. Alternative 2, however, linked the establishment of a civil defence organization with the conclusion of agreements between the High Contracting Parties. If a State bordered on many other States, it would be obliged to conclude several agreements on the same subject. The civil defence system should be the same throughout a given State, but by concluding several agreements on civil defence a State which bordered on many other States would have to introduce disparate elements into its civil defence structure, according to its agreements with individual

neighbouring States. There was, however, another solution: a State could conclude a multilateral agreement with all its neighbours in order to have a uniform civil defence system. Additional Protocol I was in itself a multilateral international agreement in which the establishment and protection of civil defence organizations were regulated. Thus Alternative 2 created a system of multilateral or bilateral agreements within a multilateral international instrument. By proposing such a cumbersome system, Alternative 2 not only complicated the issue: it could, in certain circumstances, create an unhealthy atmosphere between neighbouring States. For example, if State X had tense relations with State Y and suddenly received a proposal that a civil defence agreement should be concluded, how would public opinion in State X view that proposal and what would the reaction of State X be? It could hardly be supposed that such a situation would lead to an improvement in mutual relations. In that respect the draft Protocol as a humanitarian instrument, would have the opposite effect to that intended.

55. Alternative 2 also included the unrealistic provision that a civil defence agreement could be concluded after the outbreak of hostilities. In humanitarian matters any unrealistic provision was fraught with danger. In particular, the adoption of such an article could deprive national liberation movements of the possibility of establishing civil defence organizations, inasmuch as their establishment in that case would be made conditional upon the conclusion of an agreement with the colonial Powers - an impracticable requirement in a conflict of that kind. Her delegation was therefore opposed to Alternative 2.

ORGANIZATION OF WORK

56. The CHAIRMAN inquired whether the Committee wished to continue its discussion on civil defence or to embark on the articles concerning relief at its meeting on the following Tuesday.

57. After a short discussion in which Mr. WARRAS (Finland), Mr. URQUIOLA (Philippines) and Mr. KOMISSAROV (Byelorussian Soviet Socialist Republic) took part, it was decided not to discuss the articles on relief at the present session of the Conference.

The Committee decided, by 18 votes to 9, with 2 abstentions, not to hold a meeting on the following Tuesday for the purpose of continuing the discussion on civil defence.

58. The CHAIRMAN said that the Committee's next meeting would therefore be held on the following Wednesday.

59. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that the Committee should take note of the interim report of the Drafting Committee/Working Group on Civil Defence (CDDH/II/384).

60. Following a discussion in which Mr. HEREDIA (Cuba), Mr. SOLF (United States of America) and Mr. SCHULTZ (Denmark) took part, the CHAIRMAN ruled that the Committee would take note of that report at its meeting to be held on the following Wednesday.

The meeting rose at 6.40 p.m.

SUMMARY RECORD OF THE EIGHTY-FIRST MEETING

held on Wednesday, 9 June 1976, at 10 a.m.

Chairman: Mr. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 15 - Protection of civilian medical and religious personnel (CDDH/II/388) (concluded)

Paragraph 3

Draft Protocol II

Article 15 - Protection of medical and religious personnel (CDDH/II/388) (concluded)

Paragraph 1

1. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, introducing at the invitation of the Chairman, amendment CDDH/II/388, submitted by the Canadian, United Kingdom and United States delegations, said that the general feeling which had emerged from the discussion of article 15 of each of the draft Protocols had been that it would be advisable to use the same wording in both. As the text of article 15 of draft Protocol II had been adopted after more debate than the corresponding article of Protocol I, the Drafting Committee had considered that the latter should be amended to bring it into line with the former. The change, which was not merely a point of drafting, had been proposed by several delegations and would necessitate a re-opening of the debate on article 15.

2. Mr. MARRIOTT (Canada) proposed that the debate on article 15 of both draft Protocols I and II should be re-opened. As far as article 15 of draft Protocol II was concerned, the only change proposed was to replace the word "role" by "mission", which was more consistent with the general aim of the Protocol and of the medical service.

It was decided by consensus to re-open the debate on article 15 of draft Protocols I and II.

The revised texts of article 15, paragraph 3, of draft Protocol I, and of article 15, paragraph 1 of draft Protocol II (CDDH/II/388), were adopted by consensus.1/

Draft Protocol I

Article 16 - General Protection of medical duties (CDDH/II/397)
(concluded)

Paragraph 3

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, introducing document CDDH/II/397 said that the title was incorrect: the proposal was submitted by the Drafting Committee of the Conference. It had been studied by an Ad Hoc Working Group and referred back to the Drafting Committee. The wording of paragraph 3 of article 16, as adopted by the Committee at its twenty-fourth meeting on 25 February 1975 (see CDDH/226, p. 39), had given rise to considerable debate in the Drafting Committee. In particular, the phrase "party adverse to him" had caused difficulties of translation. The new text also added, as had always been implicit in the former wording, that no person engaged in medical activities should be compelled to give, even to his own party, the information in question except if so required by national legislation. Although the Drafting Committee of the Conference considered that there was no change of substance, it had felt that the new text should be submitted to Committee II so that it should be clear that it was in conformity with its previous decision.

4. Speaking as a representative of the Federal Republic of Germany, he proposed, first, that article 16, paragraph 3, should be reconsidered and, secondly, that the text in document CDDH/II/397 should be adopted.

It was decided by consensus to reconsider article 16, paragraph 3.

5. Mr. HØSTMARK (Norway) reserved the position of his delegation on the paragraph, drawing attention to the statement made by the Head of the Norwegian delegation in connexion with article 16 of draft Protocol II at the Committee's forty-sixth meeting (CDDH/II/SR.46).

1/ For the text of article 15, paragraph 3 of draft Protocol I, as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I). For the text of article 15, paragraph 1 of draft Protocol II, as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I).

6. Mr. SCHULTZ (Denmark) pointed out that the changes in the text before the Committee were merely matters of drafting: the substance remained unchanged. The statement made by the Head of the Norwegian delegation at the second session had referred to draft Protocol II only.

The revised text of article 16, paragraph 3, of draft Protocol I was adopted by consensus.^{2/}

7. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he supported the adoption of paragraph 3 by consensus but wished to emphasize that the decision taken placed medical personnel in a difficult position by subjecting their decisions to national legislation rather than to medical ethics.

Interim report of the Drafting Committee/Working Group on Civil Defence (CDDH/II/384/Rev.1) (continued)

8. Mr. JOSEPHI (Federal Republic of Germany) said that, with regard to article 55, his delegation preferred the expression "zones of military operations". It would even suggest that article 55 should contain a general rule covering the whole field of application with the exception of occupied territories, which were dealt with in article 56. The reference to articles 46 and 47 in article 55 seemed to constitute an unnecessary complication, rendering interpretation more difficult. There also seemed to be some inconsistency in the last paragraph of the Sub-Group's draft.

9. On the question of military civil defence units, the Sub-Group's report provided a good basis for further discussions. His delegation was not in favour of a lengthy article 58 bis, as in Alternative 1, which almost constituted an invitation to Governments to organize their civil defence on a military basis. The inclusion of military units in the special protection accorded to civil defence should be merely an exception. His delegation could agree either with Alternative 2 or with the third alternative, i.e. to have no article on military units of civil defence.

^{2/} For the text of article 16, as adopted, see the report of Committee II (CDDH/235/Rev.1, annex I).

10. Mr. MUELLER (Switzerland) noted that the Working Group and Sub-Group had done very useful work. Referring to military units of civil defence, he said that Alternative 1 for article 58 bis essentially embodied the ideas of the Swiss amendment (CDDH/II/335), but did not entirely reflect the Swiss position. His delegation therefore reserved the right to make an appropriate proposal when the substance of article 58 bis was considered. The text of Alternative 1 provided an excellent basis for the discussion because it took into account all the problems involved in the special protection to be given to military units of civil defence, but it was rather too long and complicated. The provisions of document CDDH/II/335 were simpler and more easily understandable by those who would have to apply them on the battlefield.

11. Alternative 2 was superfluous and therefore useless: the High Contracting Parties and the parties to a conflict were always free to conclude agreements and it was in quite different circumstances that such a possibility was referred to in the Geneva Conventions. The Conference would eventually have to decide whether or not it wished to accord protection to military units of civil defence.

12. The third alternative had not been discussed by the Sub-Group and was outside its terms of reference; it provided no basis for a positive solution of the problem and he proposed that all reference to it should be deleted from the report of the Sub-Group.

13. Mr. KOMISSAROV (Byelorussian Soviet Socialist Republic) said that the Working Group had encountered difficulties on account of the large number of alternative drafts submitted. A number of alternatives were still presented in the revised report (CDDH/II/384/Rev.1) but the fact that the Working Group had been able to solve some of the problems arising out of civil defence justified the hope that the remaining difficulties would be overcome. Among the matters of principle which remained to be settled was the question of military civil defence personnel and their protection, illustrated by the presence of two mutually exclusive alternatives for article 58 bis.

14. His delegation took the view that the exclusion of military units would weaken the effectiveness of civil defence organizations in performing their humanitarian mission of assistance to the civilian population. It accordingly felt that Alternative 2 could not provide a basis for further discussion. The very approach of that Alternative - that the question of military units of civil defence should be a matter for bilateral agreements - was unacceptable.

15. Alternative 1, however, provided a basis for further discussion. Careful consideration should be given to its provisions concerning the area of application, the protection of military personnel and their status if they fell into the hands of the adverse party, and the protection of their equipment, supplies and means of transport. It was also necessary to consider the advisability of assimilating the treatment of military civil defence personnel to that of medical units. He hoped that Governments would take advantage of the intersessional period to make a careful study of the report and of the views expressed in Committee II and the Working Group.

16. Mr. HEER (German Democratic Republic) said that the revised interim report of the Drafting Committee/Working Group (CDDH/II/384/Rev.1) was a useful document reflecting the differing views of the delegations which had taken part in the discussions. Though everyone might not be satisfied, more could not have been expected, because the discussion of the subject had constantly been deferred. The report constituted a good basis for future discussions and for consideration by Governments in the intersessional period.

17. Mr. HARSANA (Indonesia) said that his delegation had made a statement during the general debate to the effect that it recognized the civil defence functions referred to in the draft Protocol and considered that it was the prerogative of every country to organize those functions as it saw fit. His delegation's position was, firstly, that to consider civil defence as a purely civilian matter was unrealistic and unacceptable; it accordingly preferred Alternative 1 for article 58 bis and considered Alternative 2 useless. Secondly, the function of civil defence was to protect the people against the effects of natural and man-made disasters. Thirdly, no list of civil defence tasks could ever be exhaustive.

18. Mr. SCHULTZ (Denmark) suggested that the Committee should simply take note of the interim report of the Drafting Committee/Working Group on civil defence (CDDH/II/384/Rev.1) and that that report should be attached, as an annex to the Committee's report since the latter did not reflect all facets of the work done.

19. Referring to the Swiss representative's proposal, he said that the reference to a third alternative to article 58 bis, which appeared on page 7 of the interim report, related to a statement of fact which he had made, as Chairman of the restricted Sub-Group, when introducing the report. In the circumstances, he could not agree to the deletion of the reference.

20. Mr. MARRIOTT (Canada) said that, despite unforeseen complications, the discussion on civil defence had done much to crystallize the issues. That was in part due, in his opinion, to the Committee's decision not to vote on the useful list of questions submitted for its consideration.

21. Having in mind the need to facilitate consideration of the matter at the fourth session, his delegation hoped that Governments would find it possible to reach reasonably firm opinions, on the basis of the interim report, by the end of 1976. It also hoped that any amendments would be submitted in time for Governments to study and form an opinion on them before the fourth session. There would, however, have to be a drastic reduction in the number of amendments if civil defence was ever to find its place in the Protocols.

22. He agreed with the Danish representative's remarks regarding a third alternative to article 58 bis. There was no practical way of arriving at some kind of half measure. The countries of the world, it should be remembered, had managed to adapt the operations of their medical services to the Conventions. The Conference should not now draft a Protocol aligned to Government organizations that should be subject to international law.

23. He urged the Committee to take note of the interim report without further ado.

24. Mr. SOLF (United States of America) said that he, too, was unable to accept the Swiss proposal (CDDH/II/335).

25. The interim report was a well-balanced document that reflected the main issues and his delegation would study it with an open mind in the intersessional period. He trusted that other delegations would do likewise.

26. The most difficult point at issue pertained to the protection of civil defence units and personnel on the "battlefield". He did not agree that "zones of military operations", which had been suggested by several delegations, was preferable since, to his mind, it covered the military area in its broadest sense, from the contact zone to the combat zone and even the communications area. It could extend over whole countries. Moreover, it provided no guidance whatsoever. Some thought should therefore be given to finding a narrower definition. His delegation was prepared to recommend to its Government that it accept provisions on immunity from attack in certain circumstances for military personnel who performed humanitarian functions relating to civil defence tasks outside the battlefield. It was therefore essential that the area

within which article 55 was applicable should be defined with precision and that it should be no broader than necessary.

27. He was confident that, with the good will and co-operation that had marked the Committee's work, it would be possible to agree on a section on civil defence at the fourth session.

28. Mr. KORNEEV (Union of Soviet Socialist Republics) said that the most difficult problem facing the Sub-Group on civil defence had been that of the participation of military units in civil defence tasks, but the different amendments submitted had been clearly circumscribed in the alternative versions of draft article 58 bis. It should be recognized that such military units performed a highly humanitarian task in the protection of the civil population and that, even when performed by military units, civil defence still remained essentially civilian in respect both of its functions and of its intrinsic nature. His delegation accordingly regarded Alternative 1 as a satisfactory basis for future discussions. Alternative 2 was unacceptable, for the reasons already given by previous speakers. The adoption of the third alternative would make it necessary to reopen the whole discussion and to start again from the beginning. Other questions requiring careful consideration were whether civil defence personnel should carry arms, the question of communications and the protection of civil defence units.

29. Civil defence was organized in different ways in different countries. All those differences should be covered as far as possible in article 54 of Protocol I. That was the approach which his delegation intended to adopt during its reconsideration of the question of civil defence in the period between the third and fourth sessions. He hoped that other delegations would approach the matter in the same way, so that at the fourth session it would be possible to adopt the Chapter on civil defence.

30. Mr. GONSALVES (Netherlands), expressing his preference for Alternative 1 to article 58 bis, said that he regretted that the interim report as a whole was rather brief. He therefore suggested that the oral report given by the Chairman of the restricted Sub-Group at the Committee's eightieth meeting should be included as an integral part of the interim report or attached thereto as an annex.

31. Mr. MARRIOTT (Canada) said that it might be easier merely to include a reference in the interim report to the summary record of the oral report in question (CDDH/II/SR.80).

32. Mr. MAKIN (United Kingdom) agreed that the main issue was whether civil defence personnel, both military and civilian, operating within a small area that had been described as the battlefield should be allowed to carry weapons if they were protected. A subsidiary problem also requiring consideration related to the provisions on prisoner-of-war status in Alternative 1 to article 58 bis, which did not seem very logical. Possibly, however, there had been some misunderstanding. There had never been any suggestion that military units should not be allowed to perform civil defence tasks, since that was a matter which each country was free to decide as it saw fit. It was simply a question of whether to protect civil defence personnel when they encountered the enemy on the battlefield, and if so in what circumstances.

33. The CHAIRMAN said that it would be helpful if amendments could be submitted in time for Governments to take due note of them before the fourth session, and if possible by 31 October 1976. He mentioned that date merely as a suggestion; amendments arriving later would, of course, also be taken into consideration.

34. Noting that a number of delegations were opposed to the Swiss proposal, he pointed out that the Committee was not required to approve the interim report, which was merely a working document, but simply to take note of it. He asked whether, in the circumstances, the representatives of Switzerland wished to press his proposal.

35. Mr. MUELLER (Switzerland) said that he withdrew his proposal in order not to prolong the discussion.

36. Following a brief exchange of views in which the CHAIRMAN, Mr. EL HASSEEN EL HASSAN (Sudan), Rapporteur, and Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee/Working Group, took part, the CHAIRMAN suggested that the Committee should take note of the interim report of the Drafting Committee/Working Group on Civil Defence (CDDH/II/384/Rev.1). He further suggested that the interim report should be attached as an annex to the Committee's report, with an introductory sentence to the effect that the Committee had taken note of the interim report as a basis for further consideration.

It was so agreed.

The meeting rose at 11.25 a.m.

SUMMARY RECORD OF THE EIGHTY-SECOND (CLOSING) MEETING

held on Wednesday, 9 June 1976, at 3.15 p.m.

Chairman: Mr. NAHLIK (Poland)

ADOPTION OF THE DRAFT REPORT OF COMMITTEE II

1. Mr. EL HASSEEN EL HASSAN (Sudan), Rapporteur, introduced the draft report of Committee II (CDDH/II/396). He stressed that in view of the difficulty of preparing the report in four languages, corrections might have to be made. He suggested that the report should perhaps be supplemented by a paragraph on the decisions taken at the eighty-first meeting.
2. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that any delegation which had found errors of form or translation in the Committee's draft report should submit a list of them to the Secretariat. They would then be taken into account in the final version which would be prepared before the fourth session. Meanwhile, the members of Committee II might confine their observations to matters of substance. Any such observations would be taken into account in the version of the report to be submitted to the Conference meeting in plenary.
3. The CHAIRMAN agreed that all relevant corrections should be communicated in writing to the Secretariat and urged representatives to confine themselves to matters of substance.
4. Mr. MARRIOTT (Canada), referring to the fourth paragraph on page 5 of the draft report, said that the words "giving a medical task to the personnel", were a little too restrictive. He proposed that the Committee should adopt a broader expression and suggested the words "assigning the personnel to medical duties (including the administrative duties mentioned above)".
5. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that, if adopted, that proposal would result in defining "assigned" by "assigned", a situation which must be avoided.
6. Mrs. DARIIMAA (Mongolia) drew attention to a number of formal and drafting errors in the Russian, French and English texts of the draft report. She would inform the Secretariat of her comments so that they could be taken into account in the final version submitted to the plenary meeting of the Conference.

7. Mr. BÖTTE (Federal Republic of Germany), Rapporteur of the Drafting Committee, admitted that the report did contain errors of that kind, including some in the passages relating to the discussion on article 57; the titles in the draft report had been taken from the original ICRC draft.
8. Mr. SALEEM (Pakistan), referring to the text of the annex to draft Protocol I approved by Committee II (CDDH/II/389), pointed out that the decisions recorded about article 2 at the bottom of page 2 of that document had not been noted quite correctly. The text approved by Committee II at its seventy-second meeting, at which he had been the Chairman, was as follows: "The certificate should include the holder's name, date of birth (or, if not available, age at the time of issue) ...".
9. Mr. CLARK (Australia) said that the draft report made no mention of the fact that the Committee had postponed until the fourth session consideration of the letter sent by the Heads of delegation of the ICRC and the League of Red Cross Societies to the President of the Conference about articles 9 and 23 of draft Protocol I (document CDDH/Inf.266).
10. In the second sentence of the second paragraph on page 18 of the draft report, paragraph 5 of article 16 of the annex should also be mentioned, for the sake of uniformity.
11. On page 20 of the draft report, as the representative of the Byelorussian Soviet Socialist Republic had pointed out to him, the text relating to paragraph 3 of article 14 of draft Protocol II (CDDH/II/372) contained square brackets which did not appear in the Russian text. The various versions of draft article 14 should be concorded.
12. In the annex to draft Protocol I (CDDH/II/389) the dots should be replaced by a dash in article 7, paragraph 3. The same also applied to article 9; that would help to avoid ambiguities.
13. Pages 7, 8 and 20 of the draft report mentioned an Ad Hoc Working Group. The words "Ad Hoc" should be deleted, since they might lead to confusion with the fourth Committee of the Conference, known as the "Ad Hoc Committee on Conventional Weapons".
14. Mr. BÖTTE (Federal Republic of Germany), Rapporteur of the Drafting Committee, replying to the representative of Australia, suggested the addition to the draft report of a brief text stating that at its seventy-fifth meeting the Committee had considered articles 9 and 23 of draft Protocol I in the light of the letter (CDDH/II/Inf.266) sent by the Heads of delegation

of the ICRC and the League of Red Cross Societies to the President of the Conference. It had been decided to postpone any decision on that subject to the fourth session of the Conference.

15. The words "Ad Hoc" could be deleted from the name of the Group if its members did not object.

16. Mr. FRUCHTERMAN (United States of America) considered that the words "Ad Hoc" should not be deleted, for the Ad Hoc Working Group had been set up at the second session and the name appeared in its report.

17. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, recalled that there had been an Ad Hoc Working Group at the second session. The words "Ad Hoc", however, did not appear in the report of Committee II on its second session (CDDH/221/Rev.1), and so they could be deleted, as the Australian representative had requested.

18. Miss SHEIKH-FADLI (Syrian Arab Republic) said that the Arabic version of the draft report did not mention the fact that at an earlier meeting the Syrian Arab Republic had stated that it was no longer a co-sponsor of amendment CDDH/II/70 to article 56 (Occupied territories).

19. Mr. SCHULTZ (Denmark) said that he would like the paragraph on page 17 entitled "Proceedings of Committee II" to be re-worded to take into account the decisions adopted at the eighty-first meeting.

20. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, asked the Committee to adopt the final version of the draft report on the basis of the following oral proposal: "At its eighty-first meeting the Committee continued its discussion of the interim report on civil defence. It took note of that document, which would constitute a valuable working basis for later discussion. The interim report is as follows: ...".

21. Mr. FRUCHTERMAN (United States of America) pointed out that in the last two lines of page 16 the words "Article 16: Periodical revision" were placed in square brackets and followed by a sentence which did not correspond to that in the French text. He wondered whether it was necessary to keep the square brackets, since the Committee had decided that the article would constitute article 18 bis.

22. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, replied that the English translation was

inaccurate, and the French text was the authentic one. The brackets should not be deleted, since the reference was to a previous version.

23. Mr. CLARK (Australia), supported by Mr. KRASNOPEEV (Union of Soviet Socialist Republics), asked that the report of the Technical Sub-Committee and the relevant articles of the technical annex should be distributed separately.

24. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said that for technical reasons the revised report of the Committee could not be distributed before the closing plenary meeting, but that it could be distributed in the period between the third and fourth sessions of the Conference.

25. In reply to a question by Mr. MALLIK (Poland), the CHAIRMAN said that the texts submitted by the ICRC to the Conference should be taken as the basis for all discussions. The results achieved by the Working Groups in which the ICRC representatives took part, however, would also be taken into consideration at the fourth session, so as not to call into question again decisions already taken at the third session.

26. Replying to Mr. MAKIN (United Kingdom) on the subject of the adoption, at the thirty-third plenary meeting of the Conference, of the three draft resolutions in the technical annex, and after a brief discussion in which Mr. SOLF (United States of America) and Mr. URQUIOLA (Philippines) took part, the CHAIRMAN noted that the draft resolution concerning the use of certain electronic and visual means of identification by medical aircraft protected under the Geneva Conventions of 1949, intended for the International Civil Aviation Organization, and the draft resolution concerning the use of visual signalling for identification of medical transport protected by the Geneva Conventions of 1949, destined for the Inter-Governmental Maritime Consultative Organization, were of no great urgency. He reminded the Committee that the draft resolution concerning the identification and marking of medical personnel, units of transports and civil defence personnel, equipment of transports, intended for the International Telecommunication Union (ITU), had already been transmitted to the President of the Conference with a request that it be communicated to the Secretary-General of ITU for submission to the June 1976 meeting of the ITU Administrative Council, which was to prepare the agenda for the World Administrative Radio Conference of 1979.

27. The CHAIRMAN noted that there was general agreement.

The draft report as a whole, as amended, was adopted by consensus.

CLOSURE OF THE SESSION

28. The CHAIRMAN said that the Committee had made substantial progress in its work. It had, in fact, adopted some twenty-five draft articles on medical transport, definitions, the technical annex to draft Protocol I and the question of missing and deceased persons, and had completed its consideration of all those items. It only remained to consider the problem of civil defence, which had already been the subject of an extensive study, and that of relief in favour of the civilian population, which had not yet been taken up. There was, therefore, every reason to hope that the Committee would be able to bring its work to a conclusion at the fourth session. He urged representatives to spare no effort, during the period between the sessions, to prepare for the adoption of compromise solutions to those problems.

29. He thanked the Secretariat for the valuable assistance it had given and expressed his gratitude to his colleagues in the various delegations for their efficiency and friendly collaboration.

30. Mr. MARTIN (Switzerland) and Mr. SOLF (United States of America) thanked the Chairman for his conduct of the Committee's work and expressed their appreciation of the close co-operation that had been a feature of the Committee's deliberations.

31. The CHAIRMAN declared the third session of the Committee closed.

The meeting rose at 4.50 p.m.

FOURTH SESSION

(Geneva, 17 March - 10 June 1977)

COMMITTEE II

SUMMARY RECORDS OF THE EIGHTY-THIRD
TO ONE HUNDRED AND FIRST MEETINGS

held at the International Conference Centre, Geneva
from 14 April to 20 May 1977

Chairman: Mr. S-E. NAHLIK (Poland)

Rapporteur: Mr. EL HASSEEN EL HASSAN (Sudan)

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SUMMARY RECORD OF THE EIGHTY-THIRD (OPENING) MEETING

held on Thursday, 14 April 1977, at 3.15 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

OPENING STATEMENT BY THE CHAIRMAN

1. The CHAIRMAN welcomed the members of the Committee, the representatives of the International Committee of the Red Cross and members of the Secretariat.

2. He emphasized that the General Committee and the President of the Conference had expressed the wish that the current session should be the last, and said that the Conference at its thirty-fifth plenary meeting had taken a formal decision on that subject. A great deal had been done since the third session, first by a Committee of Experts which had reviewed the texts that had been adopted by the Committees and subsequently by the Drafting Committee, which in four weeks had reviewed all those texts except one, which it had referred back to the Committee that had adopted it. There were therefore good reasons for optimism in that connexion.

3. The General Committee had also expressed the wish that each Committee should draw up a very rigid time-table. Proposals for Committee II's time-table would be put forward during the following week. It could already be anticipated that the fourth session would comprise three phases: the first four weeks, from Monday, 18 April, to 13 May, would be dedicated to the study of individual topics; the week beginning 16 May would be set aside for the work of the Drafting Committee, and the last three weeks, from 23 May to 10 June, would be taken up by plenary meetings.

4. After summarizing the work done at the third session, he pointed out that the Committee still had to study questions concerning civil defence (Articles 54 - 59 of draft Protocol I and Articles 30 and 31 of draft Protocol II), and relief in favour of the civilian population (Articles 60 - 62 of draft Protocol I and Articles 33 - 35 of draft Protocol II). He drew the attention of members of the Committee to the synoptic table (CDDH/242) and to the table of amendments (CDDH/241 and Add.1 and Corr.1).

5. With regard to civil defence, the preliminary debate on the original ICRC draft (CDDH/1) had made it possible to arrive at a number of texts by the end of the third session. It would therefore be reasonable, at the current session, to take up the amendments to Articles 54 - 59 of draft Protocol I submitted by a group of Nordic countries for which Denmark acted as spokesman (see CDDH/241, pp. 28/29, 31, 34, 36, 40, 41 and 43).

6. On the other hand, there had as yet been no preliminary discussion of the articles relating to relief in favour of the civilian population. That discussion could be held at the eighty-fourth meeting, after a statement by the ICRC representative. Members of the Committee who had submitted amendments were invited to introduce them at that meeting.

7. The CHAIRMAN recalled that in pursuance of a decision taken by the General Committee of the Conference problems which still remained in suspense and which concerned reprisals would in future be considered by Committee I. Therefore Article 19 of draft Protocol II, which at the second session of the Conference had been considered by Committee II, but on which no final decision had been taken, would no longer appear on the agenda of Committee II.

8. To expedite the Committee's work, he suggested that from the following week, it should divide into two groups, Group A and Group B, one dealing with civil defence and the other with relief in favour of the civilian population. The groups could act as drafting Committees and be chaired by the representative of Yugoslavia and the representative of the United States of America respectively since they were Chairman and Vice-Chairman respectively, of the Drafting Committee of Committee II. Consideration of the question of civil defence would, of course, be resumed at the point where the Committee had ceased work at the third session.

9. Since it was impossible to tell at the present stage how long the debate on the amendments would last or how many new amendments there would be, he suggested that representatives intending to submit amendments should inform the Secretariat on the following day. The last day for the submission of amendments could be Monday, 18 April, in the case of civil defence, and Tuesday, 19 April, for relief in favour of the civilian population.

10. It should be remembered that at the current session Arabic was an official language and that all documents would have to be translated into Arabic before being submitted to the Committee.

11. Mr. MATHEY (Observer for the International Telecommunication Union), speaking at the invitation of the Chairman, informed the Committee first, that the texts of the annex to draft Protocol I concerning radiocommunications, which it had proposed at the third session, did not conflict with the existing international treaty, namely, the International Telecommunication Convention and the Radio Regulations annexed thereto and, secondly, the Committee's resolution seeking the inclusion on the agenda of the ITU Conference, to be held in 1979, of an item covering the consideration of the radiocommunication requirements foreseen by the Diplomatic Conference, had produced a positive result without any opposition.

12. The resolution in its present form (CDDH/II/371) therefore had achieved its first object; should the Committee consider bringing it up to date for adoption by the plenary Conference, he would be ready to assist in the editorial work.

13. The CHAIRMAN thanked Mr. Matthey, who had always maintained liaison between the ITU and the Committee.

In the absence of any objections, the proposals for the organization of work suggested by the Chairman were adopted.

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I, Part IV, Section 1

Chapter VI - Civil defence (Articles 54 - 59)

14. The CHAIRMAN invited the representative of Denmark to explain the differences between the amendments by Denmark, Finland, Iceland, Norway and Sweden (CDDH/241, pp. 28/29, 31, 34, 36, 40, 41 and 43), the original ICRC text (CDDH/1), and the text prepared by the Drafting Committee/Working Group at the third session (see CDDH/235/Rev.1, Annex II).

15. Mr. SCHULTZ (Denmark) pointed out that document CDDH/241/Add.1 was not completely accurate. In actual fact, the amendments to Articles 54 - 59 had been submitted jointly by the five Nordic countries.

16. After the third session, some countries had felt, like the President of the Conference, that it was necessary to do everything possible to speed up the work of Committee II and bring it to a successful conclusion. For that reason, the Nordic countries, being aware that the text submitted by the Working Group was not yet quite final, had established contact with other countries. Meetings had, in particular, taken place at Copenhagen and Bonn, and experts had been consulted. The sponsors of the Nordic amendment felt that they had succeeded in drawing up a reasonable text. They were aware that some points of detail could still be improved, but they hoped that the members of the Committee would not present too many amendments and would accept the main outlines of the text submitted.

17. One of the principal ideas reflected in the Nordic amendment was that only civilians should enjoy the special protection envisaged. As was stated in Article 58 bis, members of the armed forces who were carrying out civil defence tasks would be considered to be prisoners of war at the time they came in contact with and fell into the hands of an adverse Party. Furthermore, it was evident from Article 59 that military units carrying out civil defence tasks were not authorized to use the international distinctive sign of civil defence.

18. The sponsors of the Nordic amendment sincerely hoped that their text might serve as a basis for the work of the Working Group on civil defence.

19. Mr. SANDOZ (International Committee of the Red Cross) said that the ICRC attached great importance to the question of civil defence, but that it had no particular preference about which text should serve as a basis for the Committee's discussions. He merely hoped that the Committee would succeed in drawing up a satisfactory text.

20. The CHAIRMAN said he thought that it would be desirable for the ICRC representative to take part in the work of the Drafting Committee/Working Group. He reiterated his remark that amendments to the articles of draft Protocol I concerned with civil defence should, as far as possible, be submitted before Monday, 18 April.

21. Mr. KLEIN (Holy See) said that his delegation intended to submit some amendments but it would like to know whether those amendments should apply to the original ICRC text (CDDH/1), to that of the Drafting Committee/Working Group (see the report of Committee II at the third session - CDDH/235/Rev.1, Annex II) or to the Nordic one (CDDH/241). He thought that the Committee could not disregard the work it had already done and start again from scratch. One of the texts he had mentioned should be taken as a basis.

22. Mr. SOLF (United States of America) pointed out that the basic text was the one prepared by the ICRC. It was from that starting-point that the Drafting Committee/Working Group had drawn up its own text, which had been discussed and to which amendments had been submitted.

23. Mr. LUKABU-K'HABOUJI (Zaire) observed that the articles had already been considered at the third session and that a text had been prepared by the Drafting Committee/Working Group. The text proposed by the Danish delegation on behalf of the Nordic delegations was, however, a new one. The Committee could not spin out its proceedings indefinitely; it should confine itself to improving the text which had already been drafted. His delegation intended to propose certain changes, but it would endeavour to follow the text prepared by the Working Group as closely as possible.

24. Mr. NORDHAUG (Norway) pointed out that the Committee had already departed widely from the original ICRC text. The Nordic delegations did not consider that the proposals they were putting forward constituted a fresh text, but rather an amendment to the text prepared by the Drafting Committee/Working Group at the third session.

25. The CHAIRMAN suggested that the representatives should give thought to that point, and proposed that the discussions on civil defence should be deferred until the meeting on Monday, 18 April. The meeting on Friday, 15 April, would be devoted to preliminary discussion of the articles concerned with relief in favour of the civilian population. That arrangement would have the advantage of enabling the experts on the question of civil defence, who were due to arrive on Monday, 18 April, to take part in the discussions.

It was so agreed.

The meeting rose at 4.15 p.m.

SUMMARY RECORD OF THE EIGHTY-FOURTH MEETING

held on Friday, 15 April 1977, at 10.5 a.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I, Part IV, Section I

Chapter VI - Civil defence (continued)

1. The CHAIRMAN drew attention to the fact that the International Civil Defence Organization had transmitted to the Diplomatic Conference a document containing its comments on Chapter VI of draft Protocol I. The document contained proposals, which could be treated as amendments if they were endorsed by one or more delegations.
2. The text was available so far in English and French only. If the Committee agreed, it could be translated into the other working languages and circulated as an information document for discussion. A decision could then be reached on the action to be taken concerning the proposed amendments.

It was so agreed.*

Article 60 - Field of application

Article 61 - Supplies

Article 62 - Relief actions

3. The CHAIRMAN said that amendments to Articles 60 to 62 of draft Protocol I should be submitted not later than Tuesday, 19 April 1977.
4. Although the same subject was dealt with in Articles 33 to 35 of draft Protocol II, the deadline for the submission of amendments to those articles would be extended to Thursday, 21 April 1977.

* The document was later circulated in Russian and Spanish under symbol CDDH/II/Inf.275.

5. Mr. WARRAS (Finland), Vice-Chairman of the League of Red Cross Societies, introducing Articles 60 to 62, said that in recent decades the international community had accepted greater responsibility for the alleviation of human suffering in any form, and particularly during armed conflict. He wished to draw attention in that connexion to two resolutions. The first was resolution XXVI, adopted by the XXist International Conference of the Red Cross in 1969, whereby States Parties to the Geneva Conventions and the Red Cross, Red Crescent and Red Lion and Sun Societies had unanimously adopted the "Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations". He read out the text of those six Principles. The second was United Nations General Assembly resolution 2675 (XXV), concerning basic principles for the protection of civilian populations in armed conflict. He quoted the last paragraph, which stated that the Declaration of Principles should apply in situations of armed conflict and that all Parties to the conflict should make every effort to facilitate its application.

6. In the light of the above texts and of experience with relief operations in recent years, it was clear that Articles 23, 55 and 59 to 62 of the fourth Geneva Convention of 1949 had certain shortcomings. Article 23, paragraph 1, for example, was far too limited in scope; all essential supplies needed for the civilian population should be given free passage, and not merely foodstuffs, clothing and tonics for children under fifteen, expectant mothers, etc. Another shortcoming of Article 23 was that it concerned only consignments and did not mention personnel - medical personnel and certain kinds of technicians who would be required when conditions of transport and distribution were particularly difficult. There should also be a reference to the need for international co-ordination of relief action.

7. Articles 55 to 62 of the fourth Geneva Convention of 1949 described the duties of the Occupying Power in providing relief for the civilian population. Article 55, paragraph 1, however, should be extended to cover all Parties to the armed conflict. The list of supplies in that article was also inadequate for the reasons which he had mentioned in connexion with Article 23.

8. With regard to Article 59 of the fourth Geneva Convention dealing with collective relief, the provision in the third paragraph concerning free passage and protection of consignments should also be extended to cover relief personnel.

9. The articles concerning relief were extremely important and should therefore be worded as carefully as possible. A number of delegations, including his own, were of the opinion that ICRC draft Articles 60, 61 and 62 (CDDH/1) could be improved along the lines he had indicated. They had therefore submitted the amendments in document CDDH/II/398 and Add.1.

10. Mr. KLEIN (Holy See) said that the Holy See had always been especially interested in relief operations. He himself was familiar with the subject as a member of the board of the French Catholic Relief Society. Experience showed, firstly, that speed was the most important factor in providing assistance to the victims of war or disaster. He gave a number of examples where such assistance would have been useless if delayed. That was not, however, to decry the need for some supervision of such operations. Secondly, impartiality vis-à-vis the victims was essential. Assistance should not be stopped or hampered by fear of political reprisals, and there should be no discrimination of any kind with regard to the victims.
11. Mr. HÖSTMARK (Norway) said that his Government fully shared the views expressed by the representative of Finland.
12. As far as international relief was concerned, it was not only the point of reception which had to be considered but also the various stages through which it had to pass in order to reach those who needed it as quickly as possible.
13. Mr. SKARSTEDT (Sweden) said that at previous conferences Sweden had stressed the need to have new articles concerning relief for civilian populations in armed conflicts. The subject was an extremely important one, and further work was needed to develop the articles in the ICRC draft into a suitable text. That was the aim of amendment CDDH/II/398 and Add.1, of which his delegation was a sponsor. Sweden had, however, some doubts about the wording proposed for the first sentence of Article 62, paragraph 1. He would comment on that aspect at a later stage.
14. Mr. AL ASBALI (Libyan Arab Jamahiriya) said that he shared the views expressed by the representative of Finland. Libya was very interested in relief for civilian populations wherever they were, and relief operations in armed conflicts were of the utmost importance.
15. Mr. SOLF (United States of America) said that he, too, considered that the articles under consideration were among the most important before the Committee. His Government was very impressed by the humanitarian considerations advanced by the representative of Finland.
16. Mr. HEER (German Democratic Republic) said that his delegation considered the ICRC's proposal a good basis and a better one in general than that of the Red Cross League. It was, however, of the opinion that in Article 62 of the ICRC text a provision should be inserted ensuring the right of control, as provided for in the fourth Geneva Convention of 1949. Such a provision could suitably be annexed to Article 62, paragraph 2.

17. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the importance of the problem under consideration was unquestionable. Relief for civilian populations in an emergency should be provided as quickly as possible. With that in mind, he considered that the amendments which had been proposed, though motivated by humanitarian considerations, were not always very realistic. In an armed conflict, how could the Contracting Parties guarantee that supplies despatched for relief purposes would arrive safely?

18. The CHAIRMAN declared the general discussion on Articles 60 to 62 closed.

Article 60 - Field of application (CDDH/II/398 and Add.1)

19. Mr. SANDOZ (International Committee of the Red Cross), introducing Article 60 of the ICRC draft, said that the civilian population was to an increasing degree affected by armed conflict and must therefore be given protection. That was provided for in Part IV, Section I of draft Protocol I. Protection alone, however, was not enough. Section II therefore reminded the Parties to a conflict of their duty to provide the civilian population with essential supplies, or, if they could not do so themselves, to agree to or facilitate purely humanitarian action in favour of the civilian population. The purpose of Article 60 was to establish the field of application of Section II, specifying in particular that it was complementary to Article 23 of the fourth Geneva Convention of 1949. Thus, it extended the international rules concerning relief to the whole civilian population, and not merely, as in Article 23 of the fourth Geneva Convention of 1949, to children under fifteen, expectant mothers and maternity cases.

20. Mr. WARRAS (Finland), introducing the amendment to Article 60 in document CDDH/II/398 and Add.1 on behalf of the sponsors, said that there was no great difference between it and the ICRC draft. The sponsors merely felt that reference to Article 23 of the fourth Geneva Convention was insufficient and that mention should also be made of Articles 55 and 59 to 62.

21. Mr. SANCHEZ DEL RIO (Spain) pointed out that the question was linked to Article 61, and that amendment CDDH/II/398 and Add.1 would tend to cancel out the general principle laid down in Article 61. He was not opposed to the amendment to Article 60 but wished to maintain Article 61 as drafted in the basic text.

22. Mr. CZANK (Hungary) endorsed those views. It seemed illogical that the amendment did not refer to Articles 108 to 111 of the fourth Geneva Convention of Geneva, 1949, as well, since they also contained provisions that were relevant. He agreed that the question was linked with Article 61 and would return to that aspect at a later stage.

23. Mr. MAKIN (United Kingdom) said that the sponsors of amendment CDDH/II/398 and Add.1 had not referred to Articles 108 to 111 because they considered they were only incidental to the field to be covered. Since the whole of Protocol I was supplementary to the Geneva Conventions, there was really no need to list the relevant articles. The amendment could very well stop at the end of the second line, with the words "as defined in this Protocol".

24. Mr. KOMISSAROV (Byelorussian Soviet Socialist Republic) said that draft Article 60 proposed by the ICRC and amendment CDDH/II/398 and Add.1, submitted by a number of countries, were somewhat vaguely worded: "... are complementary to such international rules concerning relief as may be binding upon the High Contracting Parties ...".

25. In the opinion of the delegation of the Byelorussian SSR, the text of Article 60 should refer only to the corresponding provisions of the fourth Geneva Convention of 1949, so as to exclude the possibility of the text's being interpreted to mean that other international rules were involved, besides those of the fourth Geneva Convention.

26. Mr. SOLF (United States of America) said that the sponsors had not wished to omit any relevant references. The question at issue was the obligation of all Parties to the conflict to ensure without distinction the provision of foodstuffs, clothing, medical and hospital stores and means of shelter for the civilian population. The ICRC draft referred only to Article 23 of the fourth Geneva Convention, which was not enough for that purpose. The duties of an Occupying Power were set out in great detail in Articles 55, 59 to 62 and 108 to 111 and other articles of the fourth Geneva Convention of 1949. Any article in the Protocol on the field of application should therefore either list all the relevant references or be very general, as the United Kingdom representative had suggested.

27. Mr. WARRAS (Finland) said that those sponsors whom he had been able to contact thought that it would be enough to state that the provision supplemented the relevant provisions on relief in the fourth Convention, without mentioning specific articles.

28. The CHAIRMAN thought that a helpful proposal. He suggested that Article 60 and the amendments to it should be referred to Working Group B.

It was so agreed.

Article 61 - Supplies (CDDH/II/70, CDDH/II/398 and Add.1)

29. Mr. SANDOZ (International Committee of the Red Cross), introducing Article 61 of the ICRC draft, said that it was important to remind Parties to a conflict of their responsibility towards the civilian population in a territory under their control. In the ICRC draft, that population was the whole of the civilian population affected by the conflict, and not merely the population in occupied territories, as in Part III of the fourth Geneva Convention. The civilian population would thus have the right to essentials such as foodstuffs, clothing, medical and hospital stores and means of shelter. But the Parties would only have to ensure their provision "to the fullest extent possible". That stipulation was made not to allow States to escape their obligations but to take into account practical difficulties. However, Articles 61 and 62 were complementary, and Parties to a conflict which were themselves unable to provide the essentials mentioned would have a duty to agree to and facilitate the relief activities set out in Article 62, and to do so "without any adverse distinction". Even though it might be considered that the principle of non-discrimination applied anyway, it would be as well to re-state it, as had been done in Article 10, paragraph 2, and Article 15, paragraph 3, to avoid any possibility of abuse.

30. Mr. KHAIRAT (Egypt), introducing the Arab delegations' amendment to Article 61 (CDDH/II/70), said that its intention was to strengthen the article and ensure the provision of essential supplies for the civilian population in time of armed conflict. The sponsors were fully aware of the difficulties mentioned by the ICRC representative but felt that they could be obviated in subsequent articles. They were prepared to discuss their amendment in Working Group B in the light of the other amendments to the article.

31. Mr. SOLF (United States of America), speaking on behalf of the sponsors of amendment CDDH/II/398 and Add.1, said that in the ICRC proposal the words "without adverse distinction" would prevent a Party to the conflict, no matter how desperate its situation, from establishing priorities within its population with respect to the distribution of essential supplies. History had shown, however, that shortages were likely to develop during armed conflict, and a country fighting for survival would of necessity lay down priorities, giving preference in particular to its armed forces and essential labour. It would be unrealistic to require a State not to assign reasonable priorities while on a war footing. The sponsors therefore believed that while it would be appropriate for Article 61 to supplement the already extensive provisions of the fourth Convention by referring to clothing, shelter and bedding, it should not go any further.

32. Mr. PILLOUD (International Committee of the Red Cross) said that amendment CDDH/II/398 and Add.1, which was similar to the ICRC text for Article 61, was generally acceptable to the ICRC, but that it introduced an important restriction by limiting the provision to occupied territories. The restriction was important since the concept of occupied territories had given rise to controversy. Moreover, at its first session the Conference had accepted Article 1, paragraph 2 of draft Protocol I, extending the scope of application to national liberation movements. It was therefore difficult to make a distinction between occupied and non-occupied territory. That was why the ICRC would regret it if the scope of Article 61 were to be restricted. All the essential points were made in Article 62, and Article 61 could if necessary be deleted; but if it were retained it should have as wide an application as possible.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) considered that there should be a clear distinction between the obligations of the Occupying Power and those of the State occupied. Amendment CDDH/II/398 and Add.1 would impose too heavy a burden on the Occupying Power. It would not be realistic to require too much, even of a wealthy and well-equipped Occupying Power and even in peacetime. Moreover, to lay down a requirement that that Power must provide its own population with clothing, bedding and shelter as well as food-stuffs and medical stores in time of conflict would be a restriction of sovereignty on its own territory. He suggested that the proposal should be considered further, with a view to finding a more reasonable text which would be acceptable to all States.

34. Mr. SANCHEZ DEL RIO (Spain) said that he agreed with many of the points made by the USSR and United States representatives but was sure that the difficulties could be solved. His delegation was concerned lest the obligations might be interpreted as applying to the population of the territory occupied by a Power but not to the population of the Power's own territory. While he agreed that there might be a problem of sovereignty, a State must see to the needs of its own population. Amendment CDDH/II/70 was rather too radical to be acceptable, though it did introduce the notion of essential supplies: it imposed an impossible burden and lacked the mitigating words "to the fullest extent possible" which appeared in the ICRC draft. He would be in favour of deleting the phrase "without any adverse distinction", but thought that the whole matter should be discussed in Working Group B.

35. Mr. CZANK (Hungary) said that the essence of Part IV, Section II of draft Protocol I, was contained in Article 61, which imposed new duties and obligations on the Parties to the conflict. While the obligations of the Occupying Power under Article 55 of the fourth Geneva Convention of 1949 could certainly be extended, as proposed in amendment CDDH/II/398 and Add.1, the basic idea contained in Article 61 of the ICRC text should be kept. In his opinion, the content of the article should be discussed thoroughly in Working Group B. It might, for example, be desirable to have separate subparagraphs concerning the Parties to the conflict and the Occupying Power. As far as the title was concerned, the ICRC title was, perhaps, too short; he suggested "General provisions for basic needs of civilian population".

36. The CHAIRMAN suggested that before referring the article to Working Group B, the Committee might decide - by vote if it so wished - on the points involved in the two amendments: the omission of the phrase "to the fullest extent possible" and the limitation of the article to the occupied territory.

37. Mr. KHAIRAT (Egypt) proposed that the two amendments should be submitted to Working Group B. The Committee could not vote on them without knowing the title of the article.

38. Mr. SCHULTZ (Denmark) said that, as a point of general procedure, the working groups should be given the opportunity of discussing fully all problems that arose, without being inhibited by a previous vote in the Committee. In the present case Working Group B should be asked to discuss the two particular problems mentioned by the Chairman, and any others, with a view to seeking a solution. He suggested that the Committee should agree on the principle that, after a general discussion, the ICRC texts, together with amendments, should be submitted to the working group concerned for full discussion, after which the Committee should vote.

39. Mr. SOLF (United States of America) and Mr. AL-FALLOUJI (Iraq) supported the proposal.

It was agreed to refer Article 61 with the two amendments to Working Group B.

Article 62 - Relief actions (CDDH/II/398 and Add.1)

40. Mr. SANDOZ (International Committee of the Red Cross), introducing Article 62 of the ICRC draft, said that it had its origin in Article 23 of the fourth Geneva Convention of 1949, resolution XXVI of the XXIst International Conference of the Red Cross and United Nations General Assembly resolution 2675 (XXV).

41. If the Parties to the conflict could not provide the minimum laid down under Article 61, namely, shelter and foodstuffs for the civilian population under their control, relief action for that population was essential. Article 62 accordingly provided that the Parties to the conflict should agree to and facilitate such relief action. The obligation to authorise and facilitate the passage of such relief applied also to any High Contracting Party, whether or not it was a Party to the conflict. Relief action should not, of course, be the pretext for interference in the conflict and it was therefore stipulated that it should be "exclusively humanitarian and impartial in character and conducted without any adverse distinction." Since it was recognized that certain assurances were necessary for States which permitted the entry or passage of relief, it was provided that the Parties to the conflict or any High Contracting Party could "set as condition that the entry, transport, distribution or passage of relief be executed under the supervision of a Protecting Power or of an impartial humanitarian body."

42. Further provisions were that technical methods should not delay relief and that relief should not be diverted from the purpose for which it was intended.

43. Mr. WARRAS (Finland), supported by Mr. HØSTMARK (Norway), withdrew amendment CDDH/II/78 concerning paragraph 3 of Article 62, because its substance was covered by amendment CDDH/II/398 and Add.1, of which they were now sponsors.

44. Mr. WARRAS (Finland), referring to amendment CDDH/II/398 and Add.1, said that it was extremely important from the practical point of view. It was based on the ICRC draft, the 1969 Declaration of Principles and United Nations General Assembly resolution 2675 (XXV) and was therefore in many respects similar to the original ICRC proposal. But there were two major improvements: the inclusion of relief personnel in paragraphs 2 and 3; and the introduction of international co-ordination of relief actions in paragraph 5.

45. Paragraph 1 conformed basically to the ICRC draft (CDDH/1), but with the insertion of "bedding" in the first sentence, in accordance with Article 61; the inclusion of the words "as an unfriendly act" in the second sentence, taken from Principle No. 4 of the Declaration of Principles; and the addition of a final sentence on priority for certain vulnerable groups which were given privileged treatment in the fourth Geneva Convention of 1949 and elsewhere in draft Protocol I. Paragraph 3 covered essentially the substance of paragraphs 3, 4 and 5 of the ICRC draft, with merely drafting changes. Paragraph 4 expanded the third paragraph of Article 59 of the fourth Geneva Convention.

46. Mr. BOTHE (Federal Republic of Germany) said that while, in many respects, the amendment was a great improvement on the ICRC draft, his delegation felt that relief personnel and equipment should be mentioned in paragraph 4 as well as in paragraphs 2 and 3.

47. Mr. SOLF (United States of America) thanked the previous speaker for pointing out an omission. His delegation in Working Group B would do its best to ensure that people and equipment involved in the distribution of relief consignments were accorded the same respect and protection as medical, religious and civil defence personnel.

48. Mr. SKARSTEDT (Sweden), referring to the first sentence of paragraph 1 of Article 62 (CDDH/II/398 and Add.1), expressed concern at the wording "exclusively for the civilian population". If it were made a condition that relief actions should be exclusively for the benefit of the civilian population, such operations might be stopped by one of the Parties to the conflict on the grounds that they could even benefit members of the armed forces and guerrilla fighters. Nevertheless, given the difficulty of finding an alternative, he thought that the wording in documents CDDH/II/398 and Add.1 was probably the most reasonable one.

49. Mr. STAROSTIN (Union of Soviet Socialist Republics) agreed with the representative of the Federal Republic of Germany on the need to extend protection to relief personnel. Such protection should be regulated by the rules applicable to relief in general, in accordance with Articles 55 to 62 of the fourth Geneva Convention of 1949.

50. Miss MINOGUE (Australia) supported amendment CDDH/II/398 and Add.1 in principle, subject to some serious drafting problems which she would raise in Working Group B. She was concerned at the sweeping nature of some of the responsibilities imposed on Parties, for example in paragraphs 3(c) and 5. In the case of paragraph 3(c), wording on the lines of the second sentence of Article 60 of the fourth Geneva Convention of 1949, which introduced some flexibility, would be more appropriate. In paragraph 5, the arbitrary word "shall" was not realistic.

51. The CHAIRMAN suggested that Article 62, together with the amendments, should be referred to Working Group B.

It was so agreed.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE EIGHTY-FIFTH MEETING

held on Tuesday, 19 April 1977, at 10.5 a.m.

Chairman: Mr. S-E. NAHLIK (Poland)

ORGANIZATION OF WORK

1. The CHAIRMAN observed that some of the new amendments to Part IV, Section I, Chapter VI of draft Protocol I had been received by the Secretariat too late the previous day to be translated into all the official languages of the Conference and reproduced in time for the current meeting. An extra Committee meeting would therefore have to be held on the morning of Thursday, 21 April, when those texts would be formally introduced by their sponsors. He appealed to delegations to respect the deadlines which the Committee itself had agreed to set for the submission of amendments and suggested that any further amendments to the articles of draft Protocol I relating to civil defence should be handed in to the Secretariat not later than that afternoon.

It was so agreed.

2. The CHAIRMAN said that some amendments to the articles of draft Protocol II relating to civil defence had been received by the Secretariat. He enquired whether the Committee wished to discuss them together with the amendments proposed to Part IV, Chapter VI, of draft Protocol I or at some later stage.

3. Mr. SCHULTZ (Denmark) considered that it would be advisable to complete consideration of Part IV, Section I, Chapter VI of draft Protocol I, before taking up the articles of draft Protocol II relating to civil defence. The question of the scope or, for that matter, the very existence of draft Protocol II had not yet been settled and some time should be allowed for informal discussions on the subject.

4. The CHAIRMAN observed that, in the absence of a decision to the contrary by a plenary meeting of the Conference, the Committee must proceed on the assumption that draft Protocol II was to be retained. He requested delegations wishing to submit amendments to Part V, Chapter II, of that draft Protocol to do so as soon as possible, but suggested that consideration of the articles in question might be deferred until the Committee's Working Group on Civil Defence had made further progress in its discussion of Chapter VI of draft Protocol I.

It was so agreed.

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)Draft Protocol IPart IV, Section I, Chapter VI - Civil defence (continued)

Article 54 - Definition (CDDH/II/413, CDDH/II/414, CDDH/II/416, CDDH/II/423, CDDH/II/Inf.275)

Article 55 - Zones of military operations

Article 56 - Occupied territories (CDDH/II/424, CDDH/II/Inf.275)

Article 57 - Civil defence bodies of States not parties to a conflict and international bodies (CDDH/II/Inf.275)

Article 58 - Cessation of protection (CDDH/II/418)

Article 59 - Identification (CDDH/II/Inf.275)

5. Mr. KLEIN (Holy See), introducing his delegation's amendment to Article 54 (CDDH/II/413), which was co-sponsored by the delegations of Austria and Colombia, said that the proposals in it would have been submitted to the third session of the Conference had agreement been reached earlier on the definition of religious personnel. The amendment sought to include religious assistance among the tasks involved in civil defence, for reasons similar to those which warranted the presence of chaplains among soldiers in combat.

6. Recognizing the right of those exposed to mutilation and death on the battlefield to be assisted by a representative of their religion, the Geneva Conventions of 1949 granted to religious personnel the same type of protection as that enjoyed by medical personnel, and the Committee had appropriately extended that protection to civilian religious personnel as well as to civilian medical personnel. The fact that the number of losses occurring among the civilian population during armed combats had increased steadily since the beginning of the century justified the presence, alongside rescue, medical and first-aid personnel, of religious personnel rendering spiritual assistance to the dying and wounded and enjoying proper protection.

7. Article 58 of the fourth Geneva Convention of 1949 required the Occupying Power to permit ministers of religion to give spiritual assistance to the members of their religious communities, and Article 76 of the same Convention stated that protected persons detained in the occupied country had the right to receive any spiritual assistance which they might require. Furthermore, emergency burial services had been included among the tasks involved in civil defence and, under Article 17 of the first Convention of 1949, Article 120 of the third Convention and, in particular, Article 130 of the fourth Convention, the dead must be honourably buried, if possible according to the rites of the religion to which they had belonged. It might also be added that the presence of religious personnel in civil defence services would facilitate the carrying out of certain emergency welfare tasks such as, for example, assistance to refugees.

8. His delegation's intention was not to impose religious civil defence personnel upon States, but merely to ensure that such personnel were respected where they existed. The amendment itself was presented in two versions, in order to take into account the two different forms that Article 54 might take according to which of the proposals before the Committee was retained. He had had some difficulty in introducing the notion of spiritual assistance into the new Danish proposal (CDDH/II/402) and he would not be fully satisfied to see medical and religious services of assistance, including first-aid, covered in Part II of the Protocol. As religious personnel had their place in the ranks of the armed forces, they should be in the front ranks of civil defence rescue operations and it would be dangerous not to make provision for the possibility that doctors and ministers of religion might be covered only by their status as members of civil defence services.

9. Mr. LUKABU-K'HABOUJI (Zaire) introduced amendment CDDH/II/414 to Article 54 which was identical to the recommendation of the "Juridical Affairs" Technical Commission of the International Civil Defence Organization (ICDO) concerning Article 54 (CDDH/II/Inf.275, p.4). The representatives of the national civil defence authorities of member States of ICDO who were responsible for the recommendation had wished to remove all the square brackets from the text of Article 54 as it appeared in the interim report of the Drafting Committee/Working Group on Civil Defence (CDDH/II/384/Rev.1 - CDDH/235/Rev.1, Annex II) and to produce a text which could be taken as the basis for further consideration of the article.

10. The words "help" and "protect" had both been retained in the first sentence of the article because the sponsors considered both tasks to be part of civil defence activities. The words "decontamination and other protective measures" had been deleted from sub-paragraph (g) because such operations were generally carried out after danger areas had been detected and marked and the population evacuated. The square brackets had been removed from sub-paragraph (i) because civil defence bodies could, at least in the initial stages of the process, assist in the restoration and maintenance of order in distressed areas. Sub-paragraph (l) had been reworded because, in the experience of civil defence bodies, the word "objects" adequately covered all that was indispensable for survival. The relatively short wording chosen for sub-paragraph (m) summed up all the trends of thought expressed at the third session of the Conference.

11. The CHAIRMAN asked the representative of Zaire whether he wished to comment at that stage on the recommendations of the International Civil Defence Organization concerning Articles 56, 57 and 59.

12. Mr. LUKABU-K'HABOUJI (Zaire) confirmed that his delegation intended to take responsibility for submitting to the Committee, on behalf of the International Civil Defence Organization, the amendments to Articles 54, 56, 57 and 59 appearing in document CDDH/II/Inf.275. He would prefer, however, to present the amendments to Articles 56, 57 and 59 at the meeting on 21 April.

13. The CHAIRMAN invited the Indonesian representative to introduce his delegation's amendments to Articles 54, 58 and 58 bis of Protocol I.

14. Mr. HARSANA (Indonesia) said that his delegation considered that the amendments that had been submitted to Articles 54 to 59 were the result of efforts to reach a satisfactory compromise. They reflected the recognition of military units in civil defence and provided a welcome basis for discussion.

15. His delegation, however, had submitted three amendments to those amendments. The first concerned Article 54 (CDDH/II/416). There were wide differences in the organization of civil defence bodies from one country to another and in the tasks allotted to those bodies. Each country should decide on those tasks according to the national situation. It was not possible to lay down any rigid rule; flexibility must be maintained, provided that the tasks remained within the principles of humanity and were not unlawful. As far as the wording of the amendment was concerned, the Drafting Committee could make any changes it wished. An alternative might be, for instance, to reintroduce the inter alia clause used in the ICRC text.

16. Introducing his delegation's amendment to Article 58 (CDDH/II/418), he said that countries like Indonesia did not recognize occupation of their territory. In time of war the whole national territory, including the occupied part, was an area of military operations. It was possible that, through patriotism, civil defence personnel might perform acts harmful to the occupying army. In developing humanitarian law, such acts must not be considered unlawful, and civil defence personnel should be protected and, if arrested, treated as prisoners of war.
17. His delegation had submitted an amendment to Article 58 bis (CDDH/II/419) because it considered that the article must reflect recognition of the military elements in civil defence bodies, whether units or individuals.
18. Mr. SCHULTZ (Denmark) asked why no mention had yet been made of the Romanian amendment to Article 56 (CDDH/II/424).
19. Mr. JAKOVLJEVIĆ (Yugoslavia) asked the same question in connexion with the Romanian amendment to Article 54 (CDDH/II/423).
20. The CHAIRMAN replied that, as the amendments were not available in all the working languages, the discussion on them would be postponed until the meeting on 21 April.
21. Mr. SOLF (United States of America), recalling that 18 April had been the deadline set for formal amendments to articles on civil defence in Protocol I, said that he hoped that all other amendments would be introduced informally in the Working Group.
22. The CHAIRMAN pointed out that the formal submission of amendments had a certain value in that the discussion appeared in the summary records, but delegations were of course free to submit any number of informal amendments in the Working Group.
23. Mr. ILIESCU (Romania) read out the text of the Romanian amendment to Article 54 (CDDH/II/423), thereby submitting it formally to the Committee.
24. Mr. LUKABU-K'HABOUJI (Zaire) asked the Chairman to indicate which text was to be regarded as the basic working document.
25. The CHAIRMAN said that, according to rule 28 of the rules of procedure, the only basic text was the ICRC draft. He reminded the meeting that, as the Drafting Committee/Working Group had not completed its work in 1976, its interim report had not been submitted formally to the Committee for adoption.
26. Mr. URQUIOLA (Philippines) said that, as document CDDH/II/384/Rev.1 - CDDH/235/Rev.1, Annex II, had been worked on at length, at the third session, he would have assumed that it should be the basic document for discussion.

27. Mr. JAKOVLJEVIĆ (Yugoslavia) endorsed that view.

28. Mr. MARRIOTT (Canada) said that at the third session the Drafting Committee/Working Group had used the ICRC draft as the basic text, from which it had compiled its interim report (CDDH/II/384/Rev.1). If the Group were now to revert to the ICRC text, the previous year's work would be duplicated.

29. Mr. SCHULTZ (Denmark) suggested that, as the Committee had agreed to refer the matter to Working Group A, it could reasonably be left to the Chairman of the Group to decide upon which document to base the discussion.

30. Mr. MAKIN (United Kingdom) endorsed that view.

31. The CHAIRMAN welcomed the Danish representative's suggestion. He pointed out that the report could be used as a basis for discussion in Working Group A but not in the Committee itself. The Committee's task at present was confined to the discussion of new amendments.

32. He suggested that the new amendments discussed so far should be referred to Working Group A.

It was so agreed.

The meeting rose at 11.30 a.m.

SUMMARY RECORD OF THE EIGHTY-SIXTH MEETING

held on Thursday, 21 April 1977, at 10.10 a.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Part IV, Section I, Chapter VI - Civil defence (CDDH/1;
CDDH/II/384/Rev.1 - CDDH/235/Rev.1) (continued)

Article 54 - Definition (CDDH/II/413, CDDH/II/414, CDDH/II/416,
CDDH/II/423, CDDH/II/Inf.275) (continued)

Article 55 - Zones of military operations (continued)

Article 56 - Occupied territories (CDDH/II/424, CDDH/II/425,
CDDH/II/Inf.275) (continued)

Article 57 - Civil defence bodies of States not parties to a conflict
and international bodies (CDDH/II/426) (continued)

Article 58 - Cessation of protection (CDDH/II/418) (continued)

Article 59 - Identification (CDDH/II/427 and Add.1, CDDH/II/Inf.275)
(continued)

1. The CHAIRMAN announced that the meeting would consider the new amendments to Articles 54 to 59 of draft Protocol I - Civil Defence.

2. Mr. ILIESCU (Romania) stated that the purpose of the amendment to Article 56 submitted by his country (CDDH/II/424) was to strengthen the role of civil defence bodies and facilitate their work. The amendment consisted in the deletion of the end of the third sentence of paragraph 1 of Article 56, namely, the words "... in any way which might jeopardize the efficient discharge of their mission". By suppressing those words, it was intended not to leave the Occupying Power as sole judge of the desirability of making changes in the structure and personnel of civil defence bodies. The appraisal of such changes was, in fact, subjective, but in the ICRC text it rested exclusively with the Occupying Power. Moreover, during an armed conflict and in an occupied territory, civil defence bodies would find it difficult to protest and to prove that the changes made by the Occupying Power were unjustified.

3. Mr. LUKABU-K'HABOUJI (Zaire) wished to make a statement covering the proposed amendments to Articles 56, 57 and 59. He reminded the Committee that those amendments had been drafted as the outcome of a meeting of the Juridical Affairs Technical Commission of the International Civil Defence Organization (ICDO), of which he was the President. In carrying out their work, the experts had been at pains not to deviate too far from the basic texts appearing in the interim report of the Drafting Committee/Working Group on Civil Defence (CDDH/II/384/Rev.1 - CDDH/235/Rev.1, Annex II). The amendments submitted (CDDH/II/425, CDDH/II/426 and CDDH/II/427) contained no innovations; they were only improvements proposed on the recommendation of the authorities responsible for the civil defence services of several countries.

4. Referring to Article 56 he said that the sponsors of amendment CDDH/II/425 had deemed that in paragraph 1 the terms "bodies" and "units", used to complete the text, would provide some notion of hierarchy. It was clear that a body could comprise several specialized units. It had, therefore, been considered helpful to use the words "civil defence bodies and units".

5. The expression "to the extent feasible" reproduced between square brackets in the revised version of Article 56 (CDDH/235/Rev.1, Annex II, p. 70) had been dropped, because it weakened the text. The sentence "The Occupying Power may disarm civil defence personnel for reasons of security" (*ibid.*) had likewise been deleted, because it was pointless. The wording of the last sentence of paragraph 1, which was unsatisfactory, had been replaced by "Civil defence bodies and units ... shall not be required to give priority to the nationals or interests of that power."

6. The new version of paragraph 2 answered the wish to protect matériel at the disposal of the civil defence services and to place it out of reach of any abuse of power on the part of the occupying authorities.

7. In the sub-paragraph of paragraph 2 (*ibid.*, p. 71), the sponsors of the amendment had deleted the phrase "so long as they are needed by the civilian population", as it opened the way to abuses.

8. Finally, he would prefer to have the title of Article 56 - "Occupied territories", replaced, in accordance with the amendment submitted by the Nordic countries (CDDH/II/404), by "Civil defence in occupied territories", which was closer to the contents of the article.

9. Turning to Article 57 he said that all the square brackets had been deleted in the new version of Article 57 submitted by Zaire and the co-sponsoring countries (CDDH/II/426), with the exception of those enclosing the number "55" and paragraph 2 of the article. The reason for the retention of the square brackets was given in the foot-note to amendment CDDH/II/426.

10. The order of precedence established between bodies and units was maintained in the title of Article 57. The words "and international bodies" had been retained at the end of the title, as the co-sponsors of the amendment were convinced that such bodies could render important services.

11. It would be best to delete the clause "with the consent of any adverse Party concerned" (CDDH/II/426, p. 1, para. 1), which was a useless repetition of the sentence following immediately after, namely, "In this case, notification shall be given to any adverse Party concerned", which was to be preferred. For to require the consent of the adverse Party might raise a number of problems, and humanitarian aid might well be prevented as a result.

12. The square brackets had been deleted in the body of paragraph 2 of Article 57 but had been retained for the paragraph as a whole owing to the fact that the Drafting Committee and the Working Group together had been unable to complete their discussions concerning that provision.

13. He pointed out that the group of Nordic States and the Legal Affairs Committee of the International Civil Defence Organization (ICDO) had each worked on their own account but had reached very similar conclusions, although their objectives were not necessarily the same.

14. Referring to Article 59, he considered that the opinion of the ICDO experts should be taken into account. The proposed sign: "two oblique red bands on a yellow background" (CDDH/II/427) was better from the technical point of view than that proposed by the Nordic countries in paragraph 4 of the text presented in CDDH/II/408. The visual advantages of yellow as compared with orange were undeniable; they had been widely recognized over a period of years by ICDO and the Sub-Committee on Signs. The use of yellow as an emergency colour was proved, that of orange being gradually confined to prevention and road safety purposes.

15. Paragraph 5 of the text drafted by the Nordic countries was hard to understand and did not seem to be justified, as a distinctive signal for civil defence already existed. He was, however, prepared to leave the choice of such a distinctive signal to the judgement of the delegations.

16. Miss SHEIKH FADLI (Syrian Arab Republic), speaking on behalf of the co-sponsors of the amendment to Article 56 (CDDH/II/425), said that the deletion of the clause "to the extent feasible" in document CDDH/235/Rev.1, Annex II, p.71, para.1 should enable civil defence bodies and units to carry out their task untrammelled. The Syrian delegation was deeply convinced that any military occupation was in itself an aggression and created a temporary juridical situation. The civilian population of an occupied territory, by that fact alone, found itself subjected to constraints. The occupying authorities must not be left free to interpret the situation in a sense which went against the interests of the civilian population.

17. The CHAIRMAN announced that Cyprus wished to be included among the co-sponsors of amendment CDDH/II/425.

18. Mr. JOSEPHI (Federal Republic of Germany) considered that the proposed amendments could be transmitted to Working Group A, except perhaps for that concerning the international distinctive sign of civil defence (CDDH/II/427). During the third session, the question had been considered at length by the Technical Sub-Committee, which had submitted proposals to Committee II. But no decision had been taken by the Committee on that question, any more than on any of the other questions relating to civil defence. He thought that the subject should be discussed afresh, but only in Committee II, so as to avoid any waste of time.

19. Mr. EBERLIN (International Committee of the Red Cross) pointed out that at the third session, extensive discussions in which experts had taken part had led the Technical Sub-Committee to decide upon a blue triangle on a light orange background, considered to be the arrangement most readily identifiable visually, even by infra-red lighting. A proposal on those lines had been submitted to Committee II, but none of the articles relating to signals had been adopted by the Committee. Nevertheless, owing to the prolonged discussions to which the problem had given rise, it seemed that confidence might be placed in the experts.

20. The CHAIRMAN suggested that members of the Technical Sub-Committee should be invited to participate in the discussions of Committee II when the Committee took up the study of Article 59.

21. Mr. EBERLIN (International Committee of the Red Cross) thought that some experts might be convened at that point, if the Working Group considered it necessary. He wished, nevertheless, to point out that the question had already been thoroughly studied by the Technical Sub-Committee, whose decisions had been taken unanimously.

22. Mr. SOLF (United States of America) noted that while some members of the Committee were in favour of the solution put forward in the report of the Technical Sub-Committee (see CDDH/235/Rev.1, Annex III), others wished that the proposed amendments should be studied. That seemed to justify the holding of a new discussion with experts participating. From the practical point of view, he thought that the representative of the Federal Republic of Germany was quite right in suggesting that there should be a single discussion before a single authority, namely Committee II. The date of that discussion could, however, not be fixed immediately and a certain delay would be necessary for the convening of experts.

23. The CHAIRMAN proposed that the Chairman of Working Group A should inform the ICRC in due course of what he envisaged in that respect.

It was so agreed.

24. The CHAIRMAN proposed that all the amendments examined during the meeting should be transmitted to Working Group A, except for that bearing on Article 59.

It was so agreed.

25. The CHAIRMAN said that he would have liked the Committee to meet on Friday, 22 April, to study the articles of draft Protocol II concerning relief. However, it seemed that the Chairman of Working Group B preferred that such discussion should only be held after the Working Group had expressed its opinion on the articles of Protocol I bearing on the same subject. Consequently, the next meeting of Committee II would be deferred until later.

The meeting rose at 10.45 a.m.

SUMMARY RECORD OF THE EIGHTY-SEVENTH MEETING

held on Thursday, 28 April 1977, at 10.10 a.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of Working Group B on Articles 60 to 62 bis - Relief in favour of the civilian population (CDDH/II/430)

1. The CHAIRMAN invited the Rapporteur to introduce the report of Working Group B on Articles 60 to 62 bis of draft Protocol I (CDDH/II/430).
2. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of Working Group B, said that the Group had held five meetings under the chairmanship of Mr. D. B. Jakovljević (Yugoslavia). Two sub-groups had been set up to deal with Article 60, paragraph 1 and Article 62 bis, respectively.
3. The Group had decided to retain in Article 60 the reference to Articles 23, 55 and 59 to 62 of the fourth Geneva Convention of 1949, with the addition of the words "and other relevant provisions", but to delete references to other rules of international law. It was the Group's understanding that the reference to the relevant provisions of the fourth Convention applied to all the articles on relief.
4. Article 61 had been adopted in principle and its field of application limited to occupied territories; but it would need to be reconsidered in the light of the Working Group's work on Article 62, paragraph 1.
5. Two major trends had emerged in the Working Group with respect to Article 62. Some delegations wished to place the Parties under a clearly defined obligation with respect to relief. Others held that such an obligation could not be imposed, since a State should itself be responsible for supplying the needs of its civilian population. To reconcile those views a small group had been set up; it had proposed that Article 61 be re-worded so that a reference to it in Article 62 should suffice, that Article 62, paragraph 1 should also be re-worded to state that relief actions should be carried out in accordance with agreements concluded between the Parties, and that the field of application of both articles should be made clearer, Article 61 applying to occupied and Article 62 to unoccupied territories.

6. One delegation had proposed the inclusion of the words "by international bodies such as the United Nations agencies or the International Red Cross" in Article 62, paragraph 5. Since most members of the Group had disagreed with that proposal, it had been withdrawn on the understanding that it might be put to the Committee if the Red Cross representatives so desired.

7. A new Article 62 bis was proposed by the Group to cover the movements of non-medical relief personnel.

8. No consensus had been reached on the words "to the fullest extent of the means available to it" in Article 61, paragraph 1, or on the words "or of an impartial humanitarian body" in Article 62, paragraph 3 (b), and those words therefore figured in square brackets. The Chairman of the Group had consulted the members of the Drafting Committee of Committee II, and it had been decided that the text could be submitted directly to the Committee.

9. Working Group B had based its work on the English text, but the French, Russian, Spanish and Arabic-speaking delegations had taken part in the drafting of the versions in their respective languages.

Article 60 - Field of application

Article 60 was adopted by consensus.

Article 61 - Basic needs in occupied territories

10. The CHAIRMAN called for comments on Article 61, in particular with respect to the inclusion of the words "to the fullest extent of the means available to it", at present in square brackets.

11. Mr. MAKIN (United Kingdom) asked whether the Committee was dealing with points of drafting. If so, he suggested that the second "the" in the first line of Article 61, paragraph 1 be deleted. It was clearly a misprint.

12. The CHAIRMAN said that in view of the short time available to the Committee, it would be better to leave questions of drafting to the Drafting Committee of the Conference.

13. Mr. RUIZ-PEREZ (Mexico) proposed the deletion of the words in square brackets.

14. Mr. SOLF (United States of America) disagreed. To delete those words would create a rather absurd situation, since Article 55 of the fourth Geneva Convention of 1949 stated that "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population: it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate".

15. By deleting the words in square brackets from Article 61, a strict obligation would be imposed on the Occupying Power to bring in clothing, bedding, means of shelter, other supplies and objects necessary for religious worship. Article 55 of the fourth Convention and Article 61 with the words in square brackets imposed upon the Occupying Power the duty to supply the requirements listed to the fullest extent of the means available to it; but if those means were not available, the supplies could not be provided. The two texts together laid an obligation upon the Occupying Power to arrange for other steps to be taken if it could not supply the requirements in question from its own resources or those of the occupied territory. Deletion of the words in square brackets would create problems of interpretation and would probably prove detrimental to the people of the occupied territory.
16. Mr. MARRIOTT (Canada) endorsed those views. If the means were not available, the needs could not be filled. He understood the desire of those delegations which believed that an unqualified obligation should be placed on the Occupying Power, but practical realities had to be taken into account. Moreover, he believed that an Occupying Power would be more likely to take steps in favour of the civilian population if the words "to the fullest extent of the means available" were in the text than if they were not. Those words would provide an extra protection for people in need of relief.
17. Mr. KHAIRAT (Egypt) recalled that the words in question had been placed in square brackets at the request of the Arab delegations in Working Group B, who did not wish an Occupying Power to be able to evade its obligations under Article 61. He endorsed the Mexican proposal that those words should be deleted.
18. The CHAIRMAN noted that in view of the diversity of views it might be necessary to take a vote on the words in question, despite the Committee's usual practice of arriving at decisions by consensus whenever possible.
19. Miss SHEIKH FADLI (Syrian Arab Republic) announced that, having heard the explanations of the United States representative, her delegation could agree to the inclusion of the words in square brackets on the understanding that the intention was that the Occupying Power ought to use all means available to provide the supplies in question.
20. Mr. SOLF (United States of America) confirmed that his interpretation was that the wording laid a positive, complete requirement on the Occupying Power to use all means available to provide the supplies in question. He hoped that that statement would enable the Committee to adopt paragraph 1 by consensus.
21. Mr. RUIZ-PEREZ (Mexico) said that he was convinced by the statement of the United States representative, and withdrew his proposal.

22. Mr. KHAIRAT (Egypt) said that he supported the Syrian position and would not insist on the deletion of the words in square brackets.

23. Mr. ALBA (France) suggested that in the French version of Article 61, paragraph 2, the words "seront menées sans délai" should figure after the word "Protocole".

It was so agreed.

Article 61, as amended, was adopted by consensus.

Article 62 - Relief actions

24. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) suggested that the Committee should consider Article 62 paragraph by paragraph.

25. With respect to paragraph 1, he recalled that the fourth Geneva Convention of 1949 made specific mention of persons who were entitled to special care, including expectant mothers and maternity cases. However, nursing mothers should also be included in the provisions of paragraph 1. Babies needed food, and if mothers were to feed them they too had to be fed.

26. Mr. MÜLLER (Switzerland) said that his delegation would have preferred to delete the words "subject to the agreement of the Parties concerned in such relief actions", in paragraph 1, which it felt conflicted with the philosophy of the fourth Convention. It was not, however, proposing the deletion of those words.

27. Mr. BOTHE (Federal Republic of Germany) said that his delegation shared the misgivings mentioned by the Swiss representative but had accepted the words in question in a spirit of compromise. He stressed, however, that in his delegation's view, those words did not imply that the Parties concerned had absolute and unlimited freedom to refuse their agreement to relief actions. A Party refusing its agreement must do so for valid reasons, not for arbitrary or capricious ones. On that understanding his delegation could accept the provision.

28. Mr. SOLF (United States of America) endorsed those views.

29. Mr. GONSALVES (Netherlands) supported the views expressed by the representatives of Switzerland, the Federal Republic of Germany and the United States of America. His delegation had been a co-sponsor of the original proposal, and in a spirit of compromise, though with some regret, had accepted the present drafting, on the understanding that the obligation was as strong as possible.

30. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) wholeheartedly endorsed the attitude of the representative of the Federal Republic of Germany. He also stressed two points of principle. First, the present draft, without involving any infringement of the sovereignty of the Parties concerned, suggested that the necessary agreement should not be withheld. Secondly - a point of substance - in comparison with Article 10 of the fourth Geneva Convention of 1949, the present wording represented a step forward in the development of humanitarian law. If Article 10 were followed to the letter, provision of assistance to any Party to the conflict would require the agreement of the adverse Party. The present text, however, did not include that specific requirement and represented a good compromise.
31. Mr. MAKIN (United Kingdom) said that his delegation agreed with the views of the representative of the Federal Republic of Germany, as endorsed by the USSR and other representatives.
32. Mr. MARRIOTT (Canada) said that he agreed with the USSR representative's comments on the sentence dealing with maternity cases, in particular his emphasis on the needs of nursing mothers, which seemed appropriate in the context. Since the term was not mentioned in the Russian text, he wondered whether the USSR representative was proposing that the translation should be rectified accordingly.
33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that if the English text, which referred to "expectant mothers" and "maternity cases", also included nursing mothers, he would be glad to see the Russian text amended accordingly. The Russian text referred to pregnant women and women in, or recently past, childbirth, which was rather limited. It was essential that nursing mothers should be included. He suggested that the text should be amended in all languages as necessary.
34. Mr. ALBA (France) and Mr. MÜLLER (Switzerland) agreed with the USSR representative. The French text did not include nursing mothers and would certainly need amending.
35. Mrs. MANTZOULINOS (Greece) supported the USSR representative's suggestion. Committee III had also agreed that nursing mothers should be given priority, in accordance with the United Nations Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV)), Principle 6 of which stated: "a child of tender years shall not ... be separated from his mother".
36. Mr. MARRIOTT (Canada) said that neither "maternity case" nor "expectant mother" - nor apparently the equivalents in the other languages - covered the nursing mother. He suggested that a third category - "nursing mothers" - be added.

37. After a procedural proposal had been made by Mr. SOLF (United States of America) and supported by Mr. RUIZ-PEREZ (Mexico), Mrs. CONTRERAS (Guatemala) and Mr. HIGUERAS (Peru), the CHAIRMAN suggested that a small group composed of representatives of Canada, France, Mexico, the Union of Soviet Socialist Republics and an Arabic-speaking delegation should confer informally during the break with a view to producing an appropriate text.

The meeting was suspended at 11.5 a.m. and resumed at 11.35 a.m.

38. Mr. RUIZ-PEREZ (Mexico), on behalf of the Spanish-speaking delegations, proposed that the words "mujeres lactantes" - the term used by the World Health Organization - should be inserted in the Spanish text, which would then read: "las mujeres encintas, las parturientas o las mujeres lactantes".

39. Mr. MARRIOTT (Canada) proposed that the English text should read: "expectant mothers, maternity cases and nursing mothers".

40. Mr. ASSAMOI (Ivory Coast), on behalf of the French-speaking delegations, proposed that the French text should read: "les femmes enceintes, en couche ou qui allaitent".

41. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) proposed that the words "kormyashchie materi" should be added in the Russian text.

42. Mr. SOLF (United States of America) pointed out that the Spanish text contained the equivalent of the word "or" whereas the other texts had "and". He preferred the latter.

43. Mr. OSORIO (Colombia) said that the Spanish-speaking representatives could agree to "and".

44. Mr. ASSAMOI (Ivory Coast), supported by Mr. ALBA (France), preferred the word "or", which made it clear that there were three quite distinct conditions.

45. Mr. SOLF (United States of America) said that the word "and" was essential, in order to ensure that priority was accorded to all three categories.

It was agreed that the equivalent of the word "and" should be used in all languages.

46. Miss SHEIKH FADLI (Syrian Arab Republic) said that the word used in the Arabic text was the equivalent of "mothers". She suggested that the matter might be left to the group of Arab representatives responsible for reviewing the Arabic texts.

It was so agreed.

Paragraph 1, as amended, was adopted by consensus.

Paragraph 2

47. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the word "equipment" in the third line was open to broad interpretation and could even include military equipment. He suggested that it should be replaced by a more precise word.

48. Mr. MARRIOTT (Canada) said that there was no ambiguity about the English text; "consignments, equipment and personnel" were all governed by the word "relief". He suggested that the Russian text should be modified if necessary.

Paragraph 2 was adopted by consensus.

Paragraph 3

49. Mr. KLEIN (Holy See) proposed that in sub-paragraph (b), "Protecting Power" should be in the plural, in conformity with Article 23 of the fourth Geneva Convention and Article 5 of draft Protocol I. He also proposed that the reference should be to "Protecting Powers and their substitutes, as provided in Article 5".

50. The CHAIRMAN said that the Committee would have to decide whether the words in square brackets in sub-paragraph (b) should or should not be retained.

51. Mr. SCHULTZ (Denmark) said that he was in favour of keeping the words in square brackets. While the Protecting Power ought to be designated at the start of the conflict, the procedure was a slow one, and unless the International Committee of the Red Cross or some other impartial international humanitarian body could volunteer its good offices, relief action would be delayed.

52. Mr. HARSANA (Indonesia) was against keeping the words in square brackets. Without them, the procedure for obtaining the agreement of the Parties to the conflict would be speeded up, so that relief would not be delayed. Their deletion would not exclude action by relief organizations, which was a matter for decision by the Parties concerned. He supported the proposal by the representative of the Holy See.

53. Mr. SOLF (United States of America) agreed with the representative of Indonesia, but not with the representative of Denmark. If the words in square brackets were kept, the Parties to the conflict and the High Contracting Parties through whose territory relief was to pass would have greater opportunities for setting conditions for such passage and even delaying or frustrating relief shipments.

That would be contrary to humanitarian interests. Article 5, paragraph 7, of draft Protocol I already provided that any mention of a Protecting Power included a substitute - which might be another State, or the International Committee of the Red Cross or another impartial international humanitarian body. Any country receiving relief which had accepted the Protecting Power should therefore have no objection to the Protecting Power or its substitute engaging in relief action.

54. He supported the proposal by the Holy See representative that "Protecting Power" should be in the plural.

55. Miss SHEIKH FADLI (Syrian Arab Republic) supported the proposal by the representative of the Holy See.

56. Mr. SANCHEZ DEL RIO (Spain) said that he was against the use of the plural, which would only cause confusion. It was quite clear that the Protecting Power referred to was the Protecting Power in situ. Should the plural be used, the reference might be to any number; there had, for example, been a great many such Powers during the Second World War.

57. He had no strong feelings about the words in square brackets but did not think that they were necessary.

58. Mr. BOTHE (Federal Republic of Germany) said that the reference to the Protecting Power included the substitute, which had to be an impartial humanitarian organization; that was clear from Article 5, paragraph 7 of draft Protocol I.

59. With regard to the statement by the representative of Denmark concerning the words in square brackets, he said that if there was no Protecting Power the reason would be that the Parties to the conflict had not agreed on a Protecting Power or substitute under the procedure laid down in Article 5 of draft Protocol I. While that could certainly happen, keeping the words in square brackets would not facilitate relief action. On the contrary it would make it more complicated, because the door would then be open for the imposition of unilateral conditions, in a situation where the acceptance of any impartial humanitarian organization as a Protecting Power had already proved to be difficult. Even without any reference to an impartial international humanitarian body in Article 62, such a body would still be able to offer relief and its good services under Article 5. Accordingly, his delegation was in favour of deleting the words in square brackets.

60. Mr. HEREDIA (Cuba) said that the words in brackets were somewhat superfluous. His delegation was in favour of deleting any provision which could create difficulties and differences of opinion as to what constituted an impartial international humanitarian body. It would be easier for the Committee to adopt subparagraph (b) by consensus if the words in question were deleted.

61. Mr. MAKIN (United Kingdom) supported the deletion of the words in square brackets for the reasons given by earlier speakers.
62. He agreed with the representative of the Holy See that the words "Protecting Power" should be put in the plural. The text obviously referred to the Protecting Power or Powers protecting the interests of the Power or Powers adverse to the people receiving relief; other Protecting Powers were not involved. He thus did not agree with the interpretation of the plural term by the representative of Spain.
63. Mrs. MANTZOULINOS (Greece) said that she had been in favour of keeping the words in square brackets, but after hearing the discussion and in particular the explanations regarding Article 5, she now thought they should be deleted.
64. Mr. RUIZ-PEREZ (Mexico) said that, like the representative of Spain, he was of the opinion that the word "Power" should be in the singular.
65. He also agreed with those delegations which were in favour of deleting the words in square brackets.
66. Mr. KHAIRAT (Egypt) said that one of the reasons which the representative of Denmark had advanced for keeping the passage in square brackets was that it would enable recourse to be had to an impartial international humanitarian body in the period when a Protecting Power still had to be appointed. He would like to hear the view of the representative of the ICRC on that point.
67. Mr. PILLOUD (International Committee of the Red Cross) said that the ICRC had frequently been called upon to organize and guarantee the distribution of relief consignments for the civilian population; however, that had more often been the case in occupied territory than elsewhere.
68. The term "the Protecting Power" was ambiguous and might be restrictive. It would be better to use the term "a Protecting Power", as in Article 5, paragraph 3 of draft Protocol I.
69. Mr. STAROSTIN (Union of Soviet Socialist Republics) pointed out that the distinction could not be made in Russian because there was no definite or indefinite article.
70. The term "a Protecting Power" was used in the context of Article 5 of draft Protocol I, which should remove any ambiguity about its interpretation; it also covered impartial international humanitarian bodies which could be substituted for the Protecting Power. It might therefore be as well to delete the words in square brackets.
71. Reference to Article 5 also showed that the word "Power" should be in the singular.

72. Mr. SOLF (United States of America) pointed out that there might be two Parties on one side of a conflict through whose territory relief consignments were to pass. Each would want its Protecting Power to take action. The solution to the problem lay in the ICRC representative's suggestion.

73. Miss MINOGUE (Australia) agreed.

74. Mr. KLEIN (Holy See) said that the solution proposed by the representative of the ICRC was acceptable to him.

It was so agreed.

75. Mr. SCHULTZ (Denmark) said that he had not been wholly convinced by the arguments put forward in favour of deleting the words in square brackets. However, bearing in mind the comments of the ICRC, he would not press his point if it was the general wish to delete them.

76. Mr. KLEIN (Holy See) said that he maintained his proposal to use the wording of Article 5 and include a reference to substitutes in the text.

77. The CHAIRMAN asked whether the Committee wished to set up a small working party to try to work out an agreed text or if it preferred to vote on the two texts before it.

78. Mr. BOTHE (Federal Republic of Germany) said that if the text was adopted without the words in brackets, it would still be clear from Article 5, paragraph 7, that a substitute was included. It would be a bad precedent to make express reference to the substitute in the present instance, because it would suggest a lack of confidence in what was stated in Article 5, paragraph 7.

79. Mr. KLEIN (Holy See) said that if the words in brackets were deleted he would like a reference to Article 5, paragraph 7 to appear in the text.

80. The CHAIRMAN said that all the articles of the Protocol had to be considered as a whole.

81. Mr. CZANK (Hungary) observed that it was his understanding that there was no question of voting on the deletion of the words in square brackets. The only question on which a decision had to be taken was the proposal by the representative of the Holy See. If necessary, a vote could be taken on it.

82. The CHAIRMAN said that, in any case, as the Holy See's proposal was the furthest removed from the original text, under the rules of procedure it would have to be voted on first.

83. Answering a question by Miss SHEIKH FADLI, the CHAIRMAN said that the word "international" had been erroneously omitted from the French text; the English text was the correct one.
84. Mrs. MANTZOULINOS (Greece) suggested that a reference to the proposal made by the representative of the Holy See could be made in the report.
85. The CHAIRMAN asked whether the representative of the Holy See was prepared to withdraw his proposal.
86. Mr. KLEIN (Holy See) said that he would withdraw his proposal on the understanding that it would be referred to in the summary record of the meeting.
87. Mr. PILLOUD (International Committee of the Red Cross) said that the word "fouille" in the French text of paragraph 3 (a) was not appropriate; it should be replaced by "vérification" or "vérfications", as the term "vérifier" was used in Article 59 of the fourth Geneva Convention of 1949.
88. Mr. ALBA (France) said that the word "vérification" in the singular was somewhat vague. If it were used in the plural, on the other hand, a qualifying adjective such as "nécessaires" should be added.
89. The CHAIRMAN suggested that the Committee should provisionally adopt the term "vérfications", leaving it to the Language Services to make any change they thought necessary.
90. Mr. SANCHEZ DEL RIO (Spain) pointed out that changes would have to be made in the Spanish text to bring it into line with the English, which was the basic text.
91. Mr. STAROSTIN (Union of Soviet Socialist Republics) said that the Russian translation of the English word "search" was appropriate, being that used in the Geneva Conventions.
92. The CHAIRMAN said that if he heard no objection, he would take it that the Committee wished to delete the words in square brackets and adopt the paragraph, as amended by the ICRC representative, by consensus.
- Paragraph 3, as amended, was adopted by consensus, subject to drafting changes, the words in square brackets in sub-paragraph (b) having been deleted.

Paragraph 4

93. Mr. BOTHE (Federal Republic of Germany) said that his delegation had submitted an amendment to paragraph 4 (CDDH/II/410), but as the point was now covered by the new Article 62 bis, and on the understanding that the new article would be adopted by consensus, he did not wish to press his amendment to Article 62, paragraph 4.

94. The CHAIRMAN said that if he heard no objection he would take it that the Committee wished to adopt paragraph 4 by consensus.

Paragraph 4 was adopted by consensus.

Paragraph 5

95. Mr. WARRAS (Finland) referred to the statement in paragraph 4 of the draft report of Working Group B (CDDH/II/430) that one delegation had expressed the view that the words "by international bodies such as the United Nations agencies or the International Red Cross" should be inserted in paragraph 5. The Red Cross group had since gone into the matter carefully and had decided by consensus that the existing wording was the best possible.

96. The CHAIRMAN said that if he heard no objection he would take it that the Committee wished to adopt paragraph 5 by consensus.

Paragraph 5 was adopted by consensus.

Article 62, as a whole, as amended, was adopted by consensus.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE EIGHTY-EIGHTH MEETING

held on Thursday, 28 April 1977, at 3.10 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of Working Group B on Articles 60 to 62 bis - Relief in favour of the civilian population (CDDH/II/430) (concluded)

New Article 62 bis - Relief personnel

1. The CHAIRMAN invited the Committee to consider the new Article 62 bis concerning relief personnel (CDDH/II/430).
2. Mr. HARSANA (Indonesia) proposed that the words "This personnel" in paragraph 2 should be replaced by "These personnel".
3. Mr. URQUIOLA (Philippines) supported that proposal, especially as the word "they" was used with reference to relief personnel in paragraph 1.
4. Mr. MARRIOTT (Canada) proposed that the phrase "necessities of security" in paragraph 4 should be replaced by the phrase "security requirements" since the word "necessities" usually meant "objects".
5. Mr. WARRAS (Finland) said that the reason for the wording was that the expression "imperative necessities of security" appeared in Article 9 of the fourth Geneva Convention of 1949.
6. Mr. MAKIN (United Kingdom) considered that, although the expression "imperative necessities of security" was passably correct, the phrase was no longer acceptable if the word "imperative" was removed. He therefore supported the Canadian proposal. He also agreed with the representative of Indonesia that the word "These" was more appropriate than "This" in paragraph 2.
7. Mr. SOLF (United States of America) supported the Indonesian and Canadian proposals.
8. Mr. STAROSTIN (Union of Soviet Socialist Republics) supported the Canadian proposal. He pointed out that the word "respected" used in the last sentence of paragraph 4 was not as clear as "observed", which was the equivalent of the Russian text.
9. The CHAIRMAN invited the Committee to adopt the new Article 62 bis paragraph by paragraph.

Paragraph 1

Paragraph 1 was adopted by consensus.

Paragraph 2

Paragraph 2, with the amendment suggested by Indonesia, was adopted by consensus.

Paragraph 3

10. Mr. SOLF (United States of America) requested that the word "paragraph" in the first sentence should be written out in full.

Paragraph 3, as thus amended, was adopted by consensus

Paragraph 4

11. The CHAIRMAN asked the Committee's opinion as to the replacement of the phrase "the necessities" by the words "security requirements", as proposed by the representative of Canada.

The Canadian amendment was approved.

12. Mr. MAKIN (United Kingdom) proposed that the phrase "relief personnel" in the last sentence of paragraph 4 should be replaced by "the individual concerned". It had been the intention of the drafters to indicate that if one or more individuals did not respect the conditions, their mission would be terminated. It must be made clear that the termination would affect the individual and not the whole mission.

13. Mr. MARRIOTT (Canada) fully supported the United Kingdom representative.

14. Mr. BOTHE (Federal Republic of Germany) agreed with the United Kingdom representative but felt that the phrase "the individual concerned" might still be too vague. He proposed the following text: "The mission of those personnel who do not respect these conditions may be terminated".

15. Mr. MARRIOTT (Canada) welcomed that proposal. He suggested that the amendment would be even clearer if the sentence began: "the mission of any of those personnel ...".

16. Miss MINOGUE (Australia) and Mr. MAKIN (United Kingdom) supported the text proposed by the representative of the Federal Republic of Germany, as amended by the representative of Canada.

17. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) welcomed the text proposed by the representative of the Federal Republic of Germany, which could be rendered satisfactorily in Russian.

18. Mr. ALBA (France) suggested a similar wording in French along the lines of "il peut être mis fin à la mission de tout personnel de secours qui ne respecterait pas ces conditions."

19. Mr. SANCHEZ DEL RIO (Spain), stressing that the amendment was in fact one of substance rather than of drafting, said that the Spanish text should be brought into line with the English, by the use of a phrase such as "la misión de cualquiera de las personas ...".

20. Miss SHEIKH FADLI (Syrian Arab Republic) said that the Arabic text should be adapted to correspond with the English text.

21. The CHAIRMAN asked the Committee's opinion on the English text of the last sentence of paragraph 4, as amended by the representatives of the Federal Republic of Germany and Canada, on the understanding that the text in all other languages would be brought into line with the English.

It was so agreed.

Paragraph 4 as a whole, as amended in English, was adopted by consensus.

Article 62 bis, as a whole, as amended, was adopted by consensus.

22. Mr. KLEIN (Holy See) said that his delegation wished to pay a tribute to the efforts of those who had worked to achieve a compromise and a consensus on Part IV, Section II of Protocol I, concerning relief in favour of the civilian population.

23. His delegation had supported those efforts, in a spirit of co-operation. It wished, however, to record its reservations concerning certain aspects of the compromise which limited the effectiveness of the Section by not laying sufficient stress on the imperative nature of relief and by not decreeing that negotiation must be swift in cases where a population was starving. The text seemed to his delegation to run counter to Article 48, which prohibited the use of starvation as a method of war.

Draft Protocol II

Article 33 - Relief actions (CDDH/II/77)

Article 34 - Recording and information (CDDH/II/428)

Article 35 - National Red Cross and other relief societies

24. Mr. SANDOZ (International Committee of the Red Cross) said that Part VI of draft Protocol II dealt not only with relief actions (Article 33) but also with the recording of living and dead victims of the conflict and the transmission of information concerning them (Article 34), and with the activities of national Red Cross and other relief societies (Article 35). The heading "Relief" proposed in the ICRC draft did not reflect the entire contents of Part VI and might appropriately be replaced by a more general term such as "Humanitarian assistance".

25. Article 33 was based on Article 23 of the fourth Geneva Convention of 1949 and restated, in the main, Article 62 of draft Protocol I. It also stemmed largely from resolution XXVI of the XXIst International Conference of the Red Cross and resolution 2675 (XXV) of the United Nations General Assembly. If the civilian population was inadequately supplied with means of shelter, foodstuffs, clothing and medical or hospital stores, it was essential for relief actions to be conducted in order to remedy the situation, and Article 62 of draft Protocol I called upon the Parties to the conflict to agree to and facilitate such actions to the fullest extent possible. Clearly, however, relief actions must not serve as a pretext for interfering in the conflict, and it was therefore stipulated that they must be "exclusively humanitarian and impartial in character and conducted without any adverse distinction". Article 4 of draft Protocol II, which had already been adopted, removed any doubts that might subsist on that point. Furthermore, the Parties to the conflict were free to accept or refuse such actions, since their agreement was required only "to the fullest extent possible". There would be no need for relief from outside if the Parties to the conflict themselves could ensure, as it was their responsibility to do, that the civilian population was supplied with the means necessary for survival. It should be stressed, however, that starvation of the civilian population and the use of famine as a means of bringing the conflict to an end were not permissible (1948 Convention on the Prevention and Punishment of the Crime of Genocide (United Nations resolution 260 (III) Annex, Articles I and II (c)).

26. It was incumbent upon the High Contracting Parties as well as the Parties to the conflict to authorize and facilitate the passage of relief. That provision concerned the neighbouring States of the State in which the conflict might be taking place and was intended to cater for exceptional cases where there was no other means of access to an area encircled by one of the Parties to the conflict. In order to provide the necessary guarantees, it was stated that the Parties to the conflict and any High Contracting Party might set as condition that the entry, transport, distribution, or passage of relief be executed under the supervision of an impartial humanitarian body. The article also stipulated that technical methods should not delay relief and that relief must not be diverted from its purpose.

27. Article 34 was based on Article 16 of the first Geneva Convention of 1949, Article 19 of the second, Article 122 of the third Convention and Articles 136, 137 and 138 of the fourth Convention. Paragraph 1 provided for the organization of information bureaux by a body which each Party to the conflict was free to select and which would be able to benefit from the ICRC's assistance. The information which the Parties to the conflict were obliged to communicate to the bureau should make it possible to identify dead or living victims of the conflict, to indicate the hospital where the sick or wounded had been admitted and to report on their condition, to indicate the place of internment or detention of persons deprived of their freedom, to report their transfer or release, to report deaths, and to register children evacuated from the combat zone in accordance with Article 32 (c). The information bureaux would transmit to each other the information they obtained, if necessary through the ICRC Central Tracing Agency. That information would be transmitted by each bureau to the next of kin concerned and in reply to enquiries from other sources. Steps had been taken to ensure that the transmission of information was not prejudicial to the victims of their next of kin; in particular, the victim would be able to request that information concerning himself should not be transmitted. Those safeguard clauses had been drawn from Article 137 of the fourth Geneva Convention of 1949; it was indeed most important to protect the victims of non-international armed conflicts and their next of kin from the abuse of information.

28. Turning to Article 35, which was based on Article 63 of the fourth Convention, he said that it was more important during a conflict than at any other time for national Red Cross Societies to be able to continue their activities. The purpose of Article 35 was to ensure that the national society of the State on whose territory a non-international armed conflict was taking place could continue its work, even if it was divided and could act only through some of its local branches. In order to provide assistance to victims in all parts of the territory, the local branches must be able to act independantly but, in doing so, they must observe the principles of the Red Cross as stated by the International Conferences of the Red Cross. The article also provided for other relief societies established prior to or even during the conflict to carry out their humanitarian activities in accordance with the same principles. Finally, it was specifically stated - as in Article 14, paragraph 1, of draft Protocol II - that the fact of having taken part in such activities was in no circumstances punishable.

29. Mr. NORDHAUG (Norway), introducing amendment CDDH/II/77, pointed out that it had been submitted at the first session and that since then important consultations had taken place. Those consultations had led to developments which would be explained during the ensuing discussion.

30. Mr. MAKIN (United Kingdom), introducing amendment CDDH/II/428, said that the intention of the sponsors was to improve Article 34, paragraph 1, in three ways. Firstly, in the original text the position of the words "if necessary" at the beginning of the sentence was inappropriate, because a party to a conflict could then claim that no such necessity existed; the words had therefore been transferred to a more suitable position. Secondly, the sponsors had inserted the words "without delay", since no time was stipulated in the ICRC text. Thirdly, the sponsors had considered that greater precision was needed in regard to the information to be communicated; the words "all relevant information on the victims of the conflict" used in the ICRC text were unclear, since in a civil war the whole population might be included in the category of victims. The sponsors of amendment CDDH/II/428 had therefore attempted to specify the essential information to be communicated; at the same time they had sought to avoid imposing too heavy a duty on the Parties, with a view to ensuring that the provision would be observed in practice. If the amendment was accepted, certain consequential amendments would be required in paragraph 2.

31. Mr. WARRAS (Finland) said that the subject-matter of Part VI of draft Protocol II was both important and difficult. The conditions in which relief actions were undertaken in internal conflicts certainly differed from those obtaining in international conflicts, even though United Nations General Assembly resolution 2675 (XXV) did not make any distinction, stating that resolution XXVI of the XXIst International Conference of the Red Cross should apply in all armed conflicts. In his delegation's opinion, the draft articles under consideration represented a sound basis for the Committee's work, but certain aspects would have to be studied very carefully. The comments made regarding similar articles in Protocol I were also applicable to those in Part VI of draft Protocol II.

32. In Article 33, paragraph 1, the list of supplies could be improved by bringing it into line with that contained in Article 62, paragraph 1, of Protocol I. In regard to the formulation of the legal obligation, it would be advisable to consider whether the ICRC draft offered the best solution or whether the Committee could arrive at a consensus on the basis adopted for Article 62, paragraph 1, of draft Protocol I.

33. Relief personnel had been needed in internal conflicts in recent years, and some provision should be made for their protection and for the facilitation of their work, although certain security requirements would have to be taken into account. Consideration should also be given to the question of international relief co-ordination dealt with in amendment CDDH/II/77. As regards Article 34, his delegation considered that the ICRC draft could be improved and was sympathetic towards amendment CDDH/II/428.

34. Article 35 had been a difficult problem for three years. It had been suggested that it should be developed along the lines of Article 70 bis of draft Protocol I. Although such a view might not be realistic, it was necessary to have humanitarian bodies present on the spot in internal conflicts in order to safeguard the interests of the civilian population. Thus it was vital that the Committee should find an acceptable solution which it could adopt by consensus. The ICRC text provided a sound basis, but some improvements could be made. An informal discussion might be fruitful, and he suggested that the article should be referred to Working Group B.

35. The CHAIRMAN endorsed that suggestion and said that Working Group B would be reconstituted.

36. Mr. KUCHENBUCH (German Democratic Republic) said that his delegation fully supported the humanitarian aspect of Article 33 but considered it necessary to insert a provision regarding the right of control, as had been done in the case of Article 62, paragraph 3 (a), of draft Protocol I. It was not at the moment in a position to propose the precise place where such a provision should be inserted; obviously the procedure adopted in Article 62 of draft Protocol I could not be followed exactly, but it should be possible to solve the problem by analogy.

37. The first two paragraphs of the Norwegian amendment as contained in document CDDH/II/77 were acceptable to his delegation, but it had some doubts regarding the wording of paragraph 6 of the amendment which it would be willing to explain in a working group.

38. Mr. HARSANA (Indonesia) said that, when relief was discussed in the context of draft Protocol II, two principal factors had to be borne in mind: firstly, that no Government could agree to be placed on the same footing as the rebellious party; and, secondly, that relief action could be carried out only by a body which was acceptable to both parties. The ICRC draft failed to meet those points. His delegation was of the opinion that a short, concise draft without too many details would have a better chance of being accepted. For example, instead of the five paragraphs of Article 33, it would be sufficient to have one paragraph reading "If the civilian population is inadequately supplied ... the national Red Cross, Red Crescent or Red Lion and Sun Society shall be permitted to carry out relief actions". He firmly believed that in non-international armed conflicts the national Red Cross Society was the only body which could win the confidence of the parties concerned and thus avoid problems regarding violations of sovereignty. Other relief coming from outside, whether from Governments or from humanitarian bodies, could be channelled through the national Red Cross Society concerned. The same considerations could be applied to Articles 34 and 35. Other solutions would almost certainly not be acceptable to the conflicting parties. Of course, such problems would not arise if there were not a separate Protocol II to be applied in non-international armed conflicts.

39. Mr. SOLF (United States of America) generally endorsed the comments made by the representative of Finland. Protocol II could go into effect only if the insurgent party had the capacity to implement it, and the more complicated the Protocol, the more difficult it would be to implement. Article 33, however was probably the most important article which remained to be considered in the context of humanitarian assistance in internal armed conflicts. A solution might be reached on the basis of the ICRC text or some adaptation of Article 62 of draft Protocol I; it must, however, be kept simple. In any case, humanitarian activities should be carried out in accordance with the principles of the Red Cross in so far as Article 35 was concerned.

40. Mr. SKARSTEDT (Sweden) said that his delegation fully agreed with the remarks made by the Finnish representative concerning Article 33 and considered that the relevant parts of Article 62 of draft Protocol I could be taken as a basis for further consideration in Working Group B.

41. Mr. MAKIN (United Kingdom) observed that one of the most important aspects of relief was the loan of medical units and personnel. In Protocol I and in the first Geneva Convention of 1949 they were covered in separate articles; they did not appear in Article 62 of draft Protocol I, on which the ICRC had presumably based the proposed text of Article 33 of draft Protocol II. Medical units and personnel constituted basic relief assistance, particularly in internal conflicts, and the Working Group should insert two or three words to cover them.

42. Mr. SCHULTZ (Denmark) said that draft Protocol II ought to contain a few provisions on relief, which was essential in both international and non-international conflicts. His delegation supported the remarks made by the Finnish representative.

43. Mr. MARRIOTT (Canada) said that his delegation attached the greatest importance to the articles under consideration and hoped that there would be enough time for Working Group B, which might use the ICRC text as a basis, to complete work on them.

44. Mr. BOTHE (Federal Republic of Germany) agreed that the articles under consideration were an essential, if not the most important, part of draft Protocol II. The prohibition of the starvation of civilians, referred to by the representative of the Holy See, was already covered by Article 27, but the means to prevent such starvation were provided by relief actions. The entire question was, of course, extremely delicate, perhaps more delicate than in the case of draft Protocol I, since national sovereignty was involved. That issue was, however, taken care of in Article 4, which made it clear that nothing in the Protocol could be invoked to infringe upon national sovereignty. Working Group B should therefore seek to establish a text which would be very close to the ICRC draft and would obtain wide support.

45. Mr. QUERNER (Austria) supported the view that Article 62 of draft Protocol I should serve as the basis for the Working Group's discussions. International and non-international conflicts might differ, but the needs of the civilian population were the same in both cases.

46. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) agreed that Part VI of draft Protocol II was very important. Indeed, the matters with which it was concerned were perhaps the most delicate of all those covered by the Protocol because of the many different forms which internal conflicts could take. The question of respect for national sovereignty was fairly straightforward when a legally recognized State was in conflict with an opposition party, but it became far more complex when there were two parties involved each of which was recognized by a number of other States. The variety of transitory situations that might arise in non-international armed conflicts made it impossible to draw a complete analogy between the relief action articles in draft Protocol I and those in draft Protocol II. In the circumstances, the most appropriate course might be to avoid making Articles 33 to 35 of draft Protocol II too detailed.

47. Mr. UHUMUAVBI (Nigeria) said that in a non-international armed conflict relief action could make the situation worse; outside interference could magnify what was a small matter to the State concerned. The Committee should give very careful consideration to the issues involved since they were far more important than those which arose in the context of draft Protocol I.

48. The CHAIRMAN said that if he heard no objection he would take it that the Committee wished Articles 33 to 35 of draft Protocol II to be referred to Working Group B together with amendments CDDH/II/77 and CDDH/II/428 and the comments made during the discussion.

It was so agreed.

49. Mr. JAKOVLJEVIĆ (Yugoslavia), speaking as Chairman of Working Group B, considered that the Working Group should not base its discussions on the ICRC draft of Articles 33 to 35 and the two amendments alone. He suggested that a small sub-group should be established to prepare a new text for submission to the Working Group, taking into account the views expressed during the Committee's discussion. The sub-group might be composed of the representatives of Canada, Finland, the German Democratic Republic, Indonesia, Nigeria and the Union of Soviet Socialist Republics, together with a representative of the ICRC and any other interested delegations.

It was so agreed.

50. The CHAIRMAN suggested that the sub-group should be chaired by the representative of Finland.

It was so agreed.

The meeting rose at 5.35 p.m.

SUMMARY RECORD OF THE EIGHTY-NINTH MEETING

held on Friday, 6 May 1977, at 10.5 a.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 59 - Identification (CDDH/235/Rev.1, Annex III; CDDH/II/427 and Add.1, CDDH/II/GT/103) (continued)

1. The CHAIRMAN drew attention to paragraph 6 of the report which the Technical Sub-Committee had submitted to Committee II at the third session of the Conference (CDDH/235/Rev.1, Annex III). It stated, in connexion with the international distinctive sign of civil defence, that the Sub-Committee had been in favour of the sign consisting of a blue triangle on an orange background. The view of the International Civil Defence Organization (ICDO) that an emblem consisting of two red stripes on a yellow background should be adopted had been taken up by the delegation of Zaire and submitted to the current session in the form of an amendment (CDDH/II/427), which had subsequently been co-sponsored by a number of other delegations (CDDH/II/427/Add.1). The time had come for the Committee to decide which of the two signs should be adopted.

2. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), speaking as Vice-Chairman of the Technical Sub-Committee, said that the question of distinctive signs for the protection of medical objects had been considered in 1973 at a meeting of experts convened by the ICRC and that field studies and practical exercises had been conducted subsequently with the co-operation of the military services of the Swiss armed forces. The matter had also been considered by the Technical Sub-Committee at both the second and third sessions of the Conference. During its general discussion of the suggested sign consisting of two red stripes on a yellow background, the Sub-Committee had encountered two difficulties: namely, that the sign was very similar to that provided for in the fourth Geneva Convention of 1949 for the marking of hospital and safety zones and that its proponents had not brought forward any substantiated evidence enabling its objective qualities to be measured against those of the sign consisting of a blue triangle on an orange or yellow background.

3. The purpose of the civil defence sign was not only to enable the object concerned to be identified but also to provide for its protection, and the value of a protective sign lay above all in its ability to be clearly perceived from a great distance. Shapes were easier to distinguish than colours, since colour perceptibility could be impaired by lighting conditions. In certain circumstances

it might be difficult to distinguish between a white and a yellow background, and confusion might well arise if similar emblems were used against those two colours respectively to mark two different categories of objects. Furthermore, the closer two colours were to each other in the spectrum, the more difficult it was to distinguish between them; a red stripe on a yellow background would be less clearly perceptible than a red stripe on a white background.

4. If the sign adopted for civil defence consisted of an emblem similar to the one used to mark hospital and safety zones and set on a background the colour of which was hard to distinguish, the degree of protection enjoyed by the wounded, sick, disabled and aged in such zones would be reduced for the first time in the history of the Geneva Conventions. For those reasons, the proposal to introduce a sign consisting of two red bands on a yellow background appeared to be far less acceptable than the alternative recommended by the Technical Sub-Committee. With regard to the possibility which had been mentioned of adopting more than one distinctive sign for civil defence, he considered that the fewer signs there were, the greater would be their protective value.

5. Mr. LUKABU-K'HABOUJI (Zaire) said that he had already introduced the amendment in document CDDH/II/427 and Add.1 on behalf of the sponsors. He himself was not in a position to enter into any of the technical details involved, but ICDO had conducted studies on a number of different colours and the Secretary-General of that organization, who was present at the meeting, would be able to provide information on the subject. The sponsors of the amendment had no rigid views on the shape of the emblem itself but they thought that the adoption of yellow as the background colour of the sign deserved the Committee's most careful consideration.

6. Mr. BODI (Observer for the International Civil Defence Organization), speaking at the invitation of the Chairman, said that the proposal in document CDDH/II/427 and Add.1 could be divided into two parts: namely, the background colour of the distinctive sign and the colour and shape of the emblem itself.

7. With regard to the background colour, he observed that yellow was commonly used as the colour for emergency and had been adopted by the civil defence organizations of many countries. Colorimetric studies conducted by the fire services of the United States of America and the United Kingdom of Great Britain and Northern Ireland had advocated the use of yellow and had denounced the inconveniences arising from the diversity of colours at present in use. Furthermore, yellow had featured for several years on warning signs for radioactivity, chemicals and even mustard gas. Tests carried out on the colours red, blue, green, white and yellow had shown that in various types of lighting the first three turned to black or lost much of their chromatic value, while white evoked no sense of emergency. Yellow, on the other hand, remained clear, lost none of its chromatic value and was preferable from the psychological point of view because, being unpleasant to the eye, it was more easily noticed.

8. Orange, which was proposed in the original text of draft Protocol I, was being used increasingly in many countries for the personnel and vehicles of road accident prevention and safety, refuse collection and other public thoroughfare services. On the other hand, it had been established by a recent inquiry undertaken by ICDO that no civil defence organizations used orange for signalling purposes. In addition, the studies which had resulted in the choice of orange had been conducted by a restricted group without the participation of executives and experts from the national civil defence authorities since set up or developed in many countries. As had been pointed out at the first session of the Conference by the representative of the International Association of Lighthouse Authorities, contrast was more important than colour in an emblem, and orange and blue were not strikingly conspicuous colours.

9. With regard to the colour and shape of the distinctive sign's emblem, the main concern of ICDO was that the emblem should be visible from a distance and should contrast clearly with the background colour in daylight and in any other type of lighting. The combination of red on yellow offered a better contrast than orange and blue. As had been stated by the representative of the International Association of Lighthouse Authorities at the first session of the Conference, the difficulty of distinguishing blue rendered it useless, nor could there be any certainty of seeing it at a distance (CDDH/49/Rev.1, Annex II, paragraph 30). That opinion, coming from an expert, gave food for thought regarding the use of blue for the international distinctive sign for civil defence. The directors of the national civil defence organizations who had participated in the work of ICDO technical commissions had agreed on the insertion of red in the civil defence emblem because it was a colour which emphasized the idea of emergency and warning, called to mind the colour of fire and blood, produced in human beings a psychological sense of danger and, like yellow but unlike blue, was aggressive.

10. With regard to the actual shape or design of the emblem, two red oblique bands were proposed in the amendment in document CDDH/II/427 and Add.1, essentially because that sign already appeared in the fourth Geneva Convention of 1949 (Annex I, Article 6) in connexion with the hospital and safety zones provided for in Article 14 of that Convention. The proposal therefore met the concern not to increase the number of protective signs. Furthermore, a number of countries had already adopted oblique bands as the emblem of their national civil defence organizations and other countries were about to do so.

11. To sum up, the adoption of the international civil defence distinctive sign proposed in document CDDH/II/427 and Add.1 would satisfy technical considerations, established regulations, current usage and pure common sense.

12. Mr. SCHULTZ (Denmark) said that he fully endorsed the statement by the Vice-Chairman of the Technical Sub-Committee. Of the many arguments which could be put forward in favour of the sign consisting of a blue triangle on an orange background, the most pertinent was that relating to the adverse effects which the adoption of the sign proposed in the amendment under discussion would have on the protection of hospital and safety zones. An entirely new shape and new colours that were not commonly used in any existing international sign must be chosen and, after discussions which had lasted for several years, the technical experts had reached the conclusion that a blue triangle on an orange background would best meet the requirements. In his view, it would be both confusing and a little unfair to introduce, as a new distinctive sign in international humanitarian law, a sign which was almost identical to that used by one civil defence organization. His delegation therefore strongly recommended the adoption of the Technical Sub-Committee's suggestion.

13. Mr. HASAN (Pakistan) pointed out that a number of distinctive signs were already provided for under Article 18, to identify medical units, means of transport, etc. Further distinctive signs had been approved by Committee III in connexion with Article 49 concerning works and installations containing dangerous forces. The Committee was now discussing the use of yet another sign. He wished, therefore, to support the views of the USSR representative concerning the dangers of proliferation of distinctive signs and emblems.

14. He had also noticed some apparent contradictions in the opinions put forward by the experts, who had been in favour of an orange background in the case of signs to designate installations containing dangerous forces, whereas in the case now under discussion, yellow had been recommended.

15. He suggested that, in order to avoid confusion, an attempt should be made to extend the protection afforded by well-recognized signs, such as the red cross, red crescent, etc., to installations which had a humanitarian significance, being essential to civil defence.

16. Mr. KUCHENBUCH (German Democratic Republic) said that his delegation was somewhat surprised that such issues were being brought up again. The discussion was reminiscent of the preparatory period of the Conference and not appropriate in its final stage. The issue had been discussed for five years in various bodies, with the participation of a large number of Government experts, whose views had found expression in the proposed Annex to the draft Protocols.

17. His delegation considered that the Committee's only task now was to approve the results of the experts' discussions, which had been available in the Annex since the third session. The decision on that matter had been deferred for procedural reasons, not for reasons of substance. The matter could and should, therefore, be dealt with in a very short space of time. The Committee should follow the example of Committee III, which on the previous day had approved a proposal for identifying by a new special sign installations containing dangerous forces. That proposal had been the outcome of four meetings of a working group and the decision itself had taken forty-five minutes.

18. He associated himself fully with the statements made by the representatives of the Union of Soviet Socialist Republics and of Denmark. He proposed that the Committee should vote forthwith on amendment CDDH/II/427 and Add.1.

19. Mr. MARRIOTT (Canada) fully supported the statement by the representative of the German Democratic Republic.

20. Miss SHEIKH FADLI (Syrian Arab Republic) said that, as her country was a member of the International Civil Defence Organization, she wished to support the proposal made by the Secretary-General of that organization. On the question of avoiding the adoption of signs already in use, her delegation considered that countries which had already adopted a specific sign had done so in a spirit of international co-operation.

21. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) said that his delegation agreed with those in favour of the sign recommended by the Technical Sub-Committee. He emphasized the fact that the shape of the emblem was one of the most important factors for rapid recognition. It was obvious, therefore, that a triangular emblem was preferable to two stripes.

22. In the specific circumstances of military operations, the use of the sign suggested by the International Civil Defence Organization could have dangerous consequences, not only for civil defence personnel but for the civilian population, whose interests must be protected.

23. The countries which had already adopted a sign consisting of two red stripes on a yellow background had done so as a means of identifying civil defence personnel and matériel, but not as a protective sign. It was essential, however, to adopt an international sign which would serve as a means not only of identification but also of protection.

24. Mr. URQUIOLA (Philippines), speaking on a point of order, said that as two schools of thought had emerged on the subject of the distinctive sign, a possible solution might be to combine the two and use a red triangle on a yellow background.

25. Mr. HEREDIA (Cuba) said that the issue was becoming confused. The representative of the German Democratic Republic had put forward the motion to vote on amendment CDDH/II/427 and Add.1. He formally supported that proposal.

26. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) supported that statement. The suggestion made by the representative of the Philippines was not a point of order but a new proposal.

27. The CHAIRMAN agreed that the proposal was one of substance and should have been submitted earlier, in writing. He regretted that he was therefore unable to accept it.

28. Mr. LUKABU-K'HABOUJI (Zaire) said that the meeting had not heard a report from the Technical Sub-Committee. It had heard a statement by one delegation on behalf of that Committee, but no special attention had been given to his delegation's proposal.

29. The CHAIRMAN replied that the USSR representative had spoken in his capacity as Vice-Chairman of the Technical Sub-Committee. Moreover, the reports of the Technical Sub-Committee and of the ICDO had been available for some considerable time.

30. He put to the vote the motion by the representative of the German Democratic Republic, supported by Cuba, that amendment CDDH/II/427 and Add.1 should be put to the vote.

The motion that amendment CDDH/II/427 and Add.1 should be put to the vote was carried by 43 votes to 4, with 10 abstentions.

31. The CHAIRMAN invited the Committee to vote on the amendment to Article 59 submitted by the delegation of Zaire (CDDH/II/427 and Add.1).

32. Mr. LUKABU-K'HABOUJI (Zaire) requested that a roll-call vote should be taken on the amendment.

33. Mr. KUCHENBUCH (German Democratic Republic) said that normal voting practice was by show of hands and that his delegation was not in favour of a roll-call vote.

34. The CHAIRMAN read out rule 37 of the rules of procedure, which stated: "the Conference shall normally vote by show of hands or by standing, but any representative may request a roll-call".

35. Mr. HEREDIA (Cuba) expressed the opinion that, although rule 37 stated that any representative might request a roll-call, that rule gave no indication that such a request would automatically be granted in cases where other representatives were not in favour of that form of vote. He therefore requested that a vote should be taken first on the request for a roll-call vote.

36. Mr. KHAIRAT (Egypt) stressed that any delegation had the right to request a roll-call vote. He felt that the Committee should proceed with the vote.

37. The CHAIRMAN said that normally if a roll-call vote was requested, it automatically took place. In the present case, however, as some doubts had been expressed as to such procedure, he intended to suspend the meeting and consult the Legal Adviser of the Conference.

The meeting was suspended at 11.20 a.m. and resumed at 11.45 a.m.

38. The CHAIRMAN said that, as well as the Legal Adviser of the United Nations, the Legal Adviser of the Conference had confirmed that it was established United Nations practice (on which also the rules of procedure of the Conference had been based) to grant a roll-call vote if any delegation so requested. No vote was ever taken on that request.

39. In accordance with rule 50 of the rules of procedure, decisions of Committees should be taken by a majority of the representatives present and voting, the term "present and voting" meaning representatives present and casting an affirmative or negative vote. Representatives who abstained from voting should be considered as not voting (rule 36). The number of delegations present was 67 out of a possible total of 107. The Committee could therefore proceed to vote by roll-call on the amendment to Article 59 of Protocol I, submitted by the delegation of Zaire (CDDH/II/427 and Add.1).

The Socialist People's Libyan Arab Jamahiriya, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Socialist People's Libyan Arab Jamahiriya, Jordan, Kuwait, Mauritania, Mexico, Mozambique, Nigeria, Oman, Pakistan, Philippines, Qatar, Syrian Arab Republic, Republic of Korea, United Republic of Tanzania, Senegal, Sudan, Tunisia, People's Democratic Republic of Yemen, Zaire, Saudi Arabia, United Republic of Cameroon, Chile, Cyprus, Ivory Coast, Egypt, United Arab Emirates, Spain, Indonesia.

Against: Japan, Mongolia, Norway, Netherlands, Poland, Portugal, German Democratic Republic, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Romania, United Kingdom of Great Britain and Northern Ireland, Sweden, Switzerland, Union of Soviet Socialist Republics, Federal Republic of Germany, Australia, Austria, Bulgaria, Canada, Colombia, Cuba, Denmark, United States of America, Finland, France, Ghana, Hungary, Iran, Ireland, Israel, Italy.

Abstaining: Panama, Holy See, Thailand, Turkey, Afghanistan, Argentina, Brazil, India.

The amendment to Article 59 of Protocol I, (CDDH/II/427 and Add.1), was rejected by 31 votes to 28, with 8 abstentions.

Annex to draft Protocol IArticle 14 - DocumentsArticle 15 - International distinctive sign for civil defence services

40. Mr. SOLF (United States of America) said that Article 59 of draft Protocol I was basic to any consideration of Articles 14 and 15 of the Annex to the draft Protocol. Working Group A had adopted a text for Article 59 with only a few words left in square brackets, but as the document had not yet been circulated in all languages, it would be premature for the Committee to consider anything other than the emblem at the present time.

It was so agreed.

Draft Protocol IIArticle 30 - Respect and protectionArticle 31 - Definition

41. Mrs. JUNOD (International Committee of the Red Cross) said that the provisions relating to civil defence in Protocol II had been drafted in a simplified form on the basis of the corresponding articles in Protocol I. The ICRC was aware that, in view of the work being done by the Working Group dealing with civil defence in Protocol I, which the Committee would no doubt take into account, the original texts were somewhat out of date. Some amendments calling for the deletion of the provisions had been submitted. The ICRC could not, of course, prejudge the decision which would be taken in that respect. If, however, insurmountable difficulties arose, it would have no basic objection to the deletion of the provisions, since the ICRC had always been in favour of the adoption of texts acceptable to the largest possible number of delegations.

42. The text of Article 30 was based on Article 55 of draft Protocol I. Its purpose was to grant special protection to certain civilians who were distinguished from other civilians by the work they did, with a view to enabling them to carry out their humanitarian activities in circumstances where their civilian status might be doubted. Those concerned included the personnel of civil defence organizations and civilians who, while not belonging to such organizations, carried out civil defence tasks under the control of the competent authorities.

43. Article 31 reproduced, in essence, the text of Article 54 of the original ICRC draft. It defined civil defence on the basis of the functions exercised and took into account the possible participation of any civilian in civil defence work; that meant that civil defence was not necessarily the monopoly of specialized bodies.

44. Mr. SCHULTZ (Denmark), speaking one point of order, said that any substantive discussion of Articles 30 and 31 of draft Protocol II at that juncture was perhaps inappropriate. At the eighty-fifth meeting (CDDH/II/SR.85) on 19 April 1977, he had suggested that work on Chapter VI of Part IV of draft Protocol I should be completed before the related part of draft Protocol II was discussed. The Chairman had agreed that the consideration of Articles 30 and 31 of draft Protocol II should be postponed until progress had been made on Chapter VI of draft Protocol I. The Danish delegation acknowledged that some progress had been made, but not enough to justify a discussion of Articles 30 and 31 of draft Protocol II at the present meeting. Moreover, the amendments submitted by his delegation in 1976 (CDDH/II/368, CDDH/II/369 and CDDH/II/370) were no longer up to date and he withdrew them. He therefore suggested that consideration of Articles 30 and 31 of Protocol II should be deferred until the following week. In any case, his delegation reserved the right not to participate in any discussion of the matter at the present stage.

45. The CHAIRMAN pointed out that the Committee had to complete its work by 14 May and that, if consideration of Articles 30 and 31 of draft Protocol II was postponed, there might not be time to give them adequate attention. Some preliminary discussion should, therefore, be useful.

46. Mr. SCHULTZ (Denmark) replied that his delegation would be satisfied if the Committee could agree by consensus to refer the matter to Working Group A.

47. The CHAIRMAN said that, since some amendments proposed that the provisions on civil defence should be deleted altogether from draft Protocol II, a preliminary discussion in the Committee would not be inappropriate.

48. Mr. URQUIOLA (Philippines) said that, although it would be advisable to postpone any in-depth debate on Articles 30 and 31 until they had been considered by Working Group A, some preliminary discussion was necessary. Referring to Article 59, paragraph 4, of draft Protocol I, he enquired whether the Committee had agreed on a distinctive sign or whether the question had been referred to a Working Group; in any case some formal decision must be taken.

49. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) regretted that he could not agree with the representative of Denmark. Unless members expressed their views and the Committee gave general directives to the Working Group, the latter would have difficulty in performing its work. Moreover, if the Working Group delayed consideration of the related articles of draft Protocol II until after draft Protocol I had been completed, there might not be time to finish Protocol II. It would, of course, be more logical to consider the relevant articles of draft Protocol II afterwards, but the time factor made it necessary to establish a special sub-group to deal with them, even if its work had to be done parallel with the work being done on Protocol I.

50. The CHAIRMAN said that it was his recollection (and, indeed, it so appeared in the report of the Technical Sub-Committee of 1976) that, of the two alternative emblems which had been considered, only one - a blue triangle on an orange background - had been retained in the report of the Technical Sub-Committee.

51. Mr. SOLF (United States of America) confirmed that the Technical Sub-Committee had recommended an equilateral blue triangle on an orange background and pointed out that, when various amendments to Article 59 had been referred to Working Group A, paragraph 4 had not been included. His delegation associated itself with the sponsors of amendment CDDH/II/420 and hoped that the Indonesian delegation would join them.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE NINETIETH MEETING

held on Friday, 6 May 1977, at 2.40 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of Working Group A on Article 59 - Identification
(CDDH/427 and Add.1) (continued)

1. Mr. MAKIN (United Kingdom) asked what the distinctive sign of civil defence was to be, in view of the rejection of the amendment submitted by Zaire (CDDH/II/427 and Add.1). Would it be the one appearing in the report of the Technical Sub-Committee submitted at the third session of the Conference (see CDDH/235/Rev.1, Annex III, para. 4) which consisted of a triangle on an orange background?

2. The CHAIRMAN said that that was how he understood the decision that had been taken, as no third sign had been proposed and it was obvious that civil defence could not be left without a distinctive sign. If there were no objections, he would assume that to be the Committee's decision.

It was so agreed.

Draft Protocol II

Article 30 - Respect and protection (CDDH/II/368, CDDH/II/415, CDDH/II/420, CDDH/II/421) (continued)

Article 31 - Definition (CDDH/II/51, CDDH/II/369, CDDH/II/415, CDDH/II/420, CDDH/II/422) (continued)

3. The CHAIRMAN invited the Committee to continue the debate on Articles 30 and 31 of draft Protocol II, concerning civil defence.

4. Mr. MULLER (Switzerland) agreed with the view expressed at the eighty-ninth meeting by the representative of the ICRC but thought that, instead of deleting any reference to civil defence in draft Protocol II, the Committee should at least reiterate the relevant provisions of Article 63 of the fourth Geneva Convention of 1949. Civil defence was a humanitarian activity as deserving of attention as medical services, if not more so since prevention was better than cure and it was even more important to protect the civilian population than to look after the wounded and give the dead a decent burial.

5. Since the Committee did not have time to bring the provisions of draft Protocol II into line with those of draft Protocol I, he suggested that a provision based on Article 63 of the fourth Geneva Convention of 1949 should be inserted in draft Protocol II. His delegation was prepared to submit a written proposal to that effect to Working Group A.
6. The CHAIRMAN asked the delegations that had submitted amendments to Articles 30 and 31 whether they maintained them.
7. Mr. URQUIOLA (Philippines) said that if the Committee should decide to include provisions on civil defence in draft Protocol II, his delegation would maintain its amendment (CDDH/II/51), which might then have to be considered by Working Group A.
8. Mr. ILIESCU (Romania) stated that his delegation was willing to withdraw its amendment (CDDH/II/422) and support the Swiss proposal.
9. Mr. MARRIOTT (Canada) considered that the Committee should immediately begin discussion of the amendments by Indonesia (CDDH/II/415 and CDDH/II/417) and by Canada, France and the United Kingdom of Great Britain and Northern Ireland (CDDH/II/420 and CDDH/II/421) to delete the articles in question. If the Committee saw fit to keep the articles, it could either refer them to Working Group A or examine them itself. The Swiss proposal was interesting but would need to be spelt out.
10. Mr. MAKIN (United Kingdom) was of the opinion that the discussion on Articles 30 and 31 should be closed. Consideration of the question of civil defence should be deferred until the end of the session, after the Committee had settled all other matters. By then, the Committee would perhaps have before it a written proposal from Switzerland.
11. Mr. SCHULTZ (Denmark) observed that his delegation had already expressed the view that some provision on civil defence ought to be included in Protocol II, even if only a very short and very general one. Denmark had no particular interest in the question, in view of the fact that for more than 400 years there had not been any non-international conflicts in Denmark and probably never would be. None the less it considered that the question of civil defence was worth studying in the light of the conditions which might obtain in other parts of the world, where many non-international conflicts had occurred. On purely humanitarian grounds, there seemed every reason to include a provision on civil defence in Protocol II. It was true that the intention was to keep the Protocol very short and very general, but there was no reason not to include in the draft Protocol which already comprised some forty-five articles, one article on civil defence which, as the Swiss delegation had proposed, could be based on Article 63 of the fourth Geneva Convention of 1949.

12. His delegation had withdrawn its amendments concerning civil defence. It proposed that the Committee should refer the question either to Working Group A or to a small group which might be asked to draw up a draft article on the matter. Switzerland had put forward an interesting proposal, which should be submitted in writing.
13. Mr. HARSANA (Indonesia) was of the opinion that it was too late for the submission of new proposals, the deadline having passed.
14. Mr. KUCHENBUCH (German Democratic Republic) endorsed the views of the representatives of Switzerland and Denmark. Provisions on civil defence should certainly be included in draft Protocol II in the interests of the civilian population.
15. Mr. SOLF (United States of America) reminded the Committee that his delegation had always been in favour of draft Protocol II, wishing to extend humanitarian protection to as many people as possible in as many circumstances as possible. Article 1 of draft Protocol II, however, made it clear that the ability of both Parties to apply the provisions of the Protocol was a prerequisite to putting the Protocol into effect. Thus, the addition of every provision escalated the threshold and made it less likely that the Protocol would ever be put into effect. For that reason, his delegation supported the amendments which would delete Articles 30 and 31.
16. As far as draft Protocol I was concerned, the question of civil defence had been discussed at length and had proved very difficult to settle. When it came to draft Protocol II, however, the task became impossible, since non-international conflicts were governed by the domestic legislation of each country, which was free to decide how civil defence should be carried out and what should be protected. The international community could not dictate to a sovereign State what civil defence measures it should take on its own territory. Any attempt to draft provisions along those lines would take a very long time and get nowhere. In his delegation's view, it was in the best interests of Protocol II itself that it should not include any provision on civil defence. Anything else would make an already very complicated issue still more complicated. The Committee ought therefore to delete Articles 30 and 31, since nothing would be achieved by referring the question to a Working Group.
17. Mr. JAKOVLJEVIC (Yugoslavia) said he had not been convinced by the arguments put forward for the deletion of Articles 30 and 31. He took the view that if the clauses on civil defence were removed from draft Protocol II, while being left in draft Protocol I, civil defence bodies would be placed in an awkward situation in an internal conflict, owing to the fact that it would then become illegal to use the distinctive sign.

18. He did not feel that a reference to Article 63 of the fourth Geneva Convention of 1949 would suffice and therefore thought that Protocol II should include provisions on civil defence. Such provisions might be drafted by Working Group A, as the Danish representative had suggested.

19. Mr. MARRIOTT (Canada), referring to the statement by the United Kingdom representative, explained that all he had proposed was that the representative of Switzerland should develop the idea which he had expressed previously.

20. He noted that while several representatives had declared themselves in favour of including provisions on civil defence in draft Protocol II, no formal proposal to that effect had in fact been put before the Committee. His delegation, on the other hand, considering that Protocol II should be brief and restricted to basic provisions formulated in simple and concise terms, had formally proposed, together with the delegations of France and the United Kingdom, and later the delegation of the United States of America the deletion of Article 30 (CDDH/II/421) and Article 31 (CDDH/II/420). The Committee should now take a decision by voting on those two proposals and the similar ones by Indonesia (CDDH/II/415 and 417). If those proposals were rejected, the Committee might request Working Group A to work out a short text for inclusion in draft Protocol II, to be submitted to it at a forthcoming meeting.

21. Mr. HARSANA (Indonesia) said that the purpose of Part V of draft Protocol II was to ensure protection for the civilian population in internal conflicts. He referred, in particular, to Articles 24 and 26, which contained respectively the basic rules and prohibitions to be observed by the Parties to the conflict with regard to the protection of the civilian population. Consequently, the inclusion in draft Protocol II of an article concerning civil defence seemed to him absolutely pointless.

22. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) said his delegation could not quite understand the arguments of those representatives who were trying to have Articles 30 and 31 of Protocol II deleted. His delegation would like them to consider the fact that the effect of deleting the chapter on civil defence from draft Protocol II could in practice be that the civilian population of countries in which an internal conflict of the civil-war type broke out would be deprived of humanitarian aid, as the civil defence organizations would be paralyzed.

23. As for the idea that the Committee did not have enough time to draft the two articles properly, that argument would hardly justify depriving the civilian population of humanitarian aid. In the opinion of the United States' representative, the articles in question were superfluous, since the personnel of civil defence organizations were already protected by the provisions of

Article 26 of draft Protocol II. Rather than prolong the discussion, his delegation would refer the Committee to the second paragraph of the Commentary on Article 30 (CDDH/3, p.162), which gave the reasons why the ICRC experts had considered it necessary to include provisions on the protection of such personnel in draft Protocol II. As for the supposed difficulty of drawing up such provisions for Protocol II, his delegation considered that the texts of Articles 30 and 31 in the ICRC draft were good enough to provide a basis. If, however, they did not satisfy some delegations, it would be possible to draft new provisions on the basis of the general provisions in paragraph 1 of Article 54 of Protocol I and the general provisions on defence as set out in Article 55. At all events, in his delegation's view, it was essential to include a chapter on civil defence in draft Protocol II. He therefore proposed that Working Group A should be asked to undertake that task, parallel with its work on draft Protocol I.

24. Mr. SCHULTZ (Denmark) wished to know on which text the representative of Canada had proposed voting.

25. The arguments put forward by the representative of Yugoslavia in support of the provisions contained in Articles 30 and 31 seemed to him to be entirely convincing. The absence of any provisions on civil defence in draft Protocol II would indeed be likely to create a confused and awkward situation. It would only be fair, therefore, to give those delegation which were worried about the idea of deleting those provisions the opportunity of introducing a text that would reconcile the various points of view. He suggested that a small working group composed of representatives who wished to see provisions on civil defence included in draft Protocol II should be asked to prepare a text, which Working Group A would subsequently transmit to the Committee.

26. Mr. NORDHAUG (Norway) said that he was prepared to agree to that suggestion if a majority of members of the Committee wished to see articles on civil defence included in draft Protocol II. However, as his delegation was very much concerned about the timetable of Committee II, and especially of Working Group A, it thought that the question should now be referred back to Working Group A so that it might have a chance to work out a proposal for civil defence articles in draft Protocol II as soon as it had completed its work on draft Protocol I.

27. If the Committee was now going to vote on the proposal to delete the articles on civil defence in draft Protocol II, his delegation would support that proposal, for the reason that the Committee had not had time to go into the question properly.

28. Mr. OSORIO (Colombia) pointed out that countries' constitutions already contained adequate provisions on civil defence; he therefore supported the proposal to delete Articles 30 and 31 of draft Protocol II, considering, like the representative of Canada, that the Committee ought to vote immediately on amendments CDDH/II/420 and 421.

29. Mr. SKARSTEDT (Sweden) thought there was much to be said for the arguments put forward by the representative of Yugoslavia in favour of including provisions on civil defence in draft Protocol II. Working Group A should therefore take up the question as soon as possible, provided it had enough time to work out a concise text, or otherwise consider deleting the two articles in question.

30. Mr. MAKIN (United Kingdom), speaking as one of the authors of the two amendments (CDDH/II/420 and CDDH/II/421) seeking to delete Articles 30 and 31 from draft Protocol II, said that having heard the many arguments advanced by those delegations that wished to retain some provisions on civil defence in draft Protocol II, he had noted two suggestions that were highly questionable. One was to replace the relevant definition by a reference to Protocol I: but since the aim of draft Protocol II was to be binding not only on Governments but also on rebels, it seemed pointless to refer the latter to Protocol I, which was of no concern to them.

31. Secondly, a question had been raised as to what was to become of the international distinctive sign of civil defence. Since the problem arose in relation to internal conflicts, he believed that the question did not arise, and that in any case those concerned would be covered by Article 3 common to the four Geneva Conventions of 1949. The correct solution would therefore be to delete the articles in question. If, however, some delegations insisted on retaining them, the task of drafting a text should be left to those delegations, and not to Working Group A which already had much work before it.

32. Mr. SOLF (United States of America) endorsed the statement of the United Kingdom representative. There was a danger that the inclusion in draft Protocol II of provisions on civil defence might in the end constitute a threat to the application of that Protocol.

33. Mr. URQUIOLA (Philippines) noted that the Canadian delegation had formally requested that the Committee should decide by vote on the deletion of Articles 30 and 31. He suggested that the vote might be postponed until the Committee's ninety-first meeting in order to allow time to those who wished to draft a text for the article.

34. Mr. UHUMUAVBI (Nigeria), having listened to the proposals made by Canada, Indonesia and the United States of America to delete the articles in question, asked the Chairman to take specific action.

35. Mr. MÜLLER (Switzerland), in reply to a request for clarification by Mr. MARRIOTT (Canada), said that the aim was not to give a definition of civil defence in draft Protocol II, but merely to state, on the basis of Article 63 of the fourth Geneva Convention of 1949, but without actually referring to it, that civil defence organizations could pursue their civil defence activities.

36. Mr. KHAIRAT (Egypt) said that he was in broad agreement with the provisions of draft Protocol II in so far as they did not encroach upon national sovereignty. With regard to a provision on civil defence, his delegation would accept, in the absence of any written proposal, the proposal made by the representative of Canada and supported by Indonesia, that a vote should be taken on the deletion of Articles 30 and 31.

37. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) said that some representatives had expressed regret that there was no text that could serve as a basis for discussion. Yet there was such a text, even if it was not ideal: the original ICRC text. He supported the proposal made by the Philippine delegation that the Committee should allow a little time before passing on to the vote.

38. Mr. CZANK (Hungary) said that the point made by the representative of the Ukrainian SSR was well taken. The ICRC text did in fact provide a basis for discussion.

39. Mr. JAWAD (Oman) supported the delegations which had requested the deletion of Articles 30 and 31.

40. Mr. HEREDIA (Cuba), contesting the argument that time was short, felt, on the contrary, that the Committee was making good use of its time by discussing at length and at leisure the retention of the articles concerned. Cuba was opposed to their deletion because it took the view that considering the humanitarian aims of draft Protocol II, the broadest possible protection should be afforded.

41. Miss MINOGUE (Australia) noted that lack of time seemed to be the only valid argument in favour of deleting those articles. She had nevertheless heard sound arguments in support of the inclusion in draft Protocol II of provisions on civil defence. Working Group A should be able, within a relatively short space of time, to draft a text for inclusion in draft Protocol II, which would otherwise be incomplete.

42. Mr. KLEIN (Holy See) felt that lack of time made it impossible to deal in a thorough manner with the provisions on civil defence in draft Protocol II. Some reference ought nevertheless to be made to civil defence organizations, since they did in fact exist. His delegation might be in a position to support the Swiss proposal.

43. Following an exchange of views with Mr. SOLF (United States of America) and Mr. SCHULTZ (Denmark), the CHAIRMAN suggested that the Committee instruct a small Working Group, which might be presided by the representative of Hungary and consist of the representatives of Australia, the Holy See, the Philippines, Sweden or Norway, and Switzerland, to draft as quickly as possible a short and simple text to be submitted to the Committee directly without having to pass through Working Group A.

44. Mr. CZANK (Hungary) said that he would find it extremely difficult to take part in the work of the proposed working group since he was already a member of Working Group A. He also felt that the representative of the Ukrainian SSR should be a member of the proposed Working Group.

45. Mr. MARRIOTT (Canada) said that his delegation had no intention of withdrawing its amendments (CDDH/II/420 and 421) which had the support of a good number of representatives. He insisted that a vote be taken forthwith on whether or not provisions relating to civil defence should be included in Draft Protocol II.

46. Mr. URQUIOLA (Philippines) observed that he had presented a sub-amendment to the Canadian amendment and that the correct procedure would be for his proposal to be voted upon first.

47. Following a further exchange of view between the CHAIRMAN, Mr. MÜLLER (Switzerland), Mr. GONZALVES (Netherlands), Mr. SOLF (United States of America), Mr. JAKOVLJEVIC (Yugoslavia) and Mr. HARSANA (Indonesia), the representative of Switzerland formally proposed that a few representatives, who were not members of the Sub-Working Group presided by the representative of the Netherlands and who supported the inclusion of short articles on civil defence in draft Protocol II, should meet as soon as possible for the purpose of quickly drafting a text which, translated and distributed in the various working languages before the following Tuesday evening, could be considered at the Committee's meeting scheduled for Wednesday morning. The Committee would thus have the full facts before it when it came to decide as between that new text and the deletion requested by the representative of Canada and those who supported him.

It was so agreed.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE NINETY-FIRST MEETING

held on Wednesday, 11 May 1977, at 10.5 a.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of Working Group A on Articles 54 to 59 (CDDH/II/439/Rev.1 and Add.1)

1. Miss MINOGUE (Australia), speaking on behalf of all members of the Committee, extended their best wishes to the Chairman on the occasion of his birthday.
2. The CHAIRMAN, after thanking the Committee for that personal expression of good will, invited the Rapporteur of Working Group A to introduce his report (CDDH/II/439/Rev.1 and Add.1), beginning with Article 54.

Article 54 - Definitions and scope (concluded)

3. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, first drew the Committee's attention to the introductory sentence under the heading "Comments" on page 5 of the English text, which read: "Except as otherwise indicated, the respective comments have been requested by various delegations and were not objected to by any delegation in Working Group A. The exact wording, however, is the responsibility of the Rapporteurs." Those comments, or notes, were a part of the preparatory work for the draft articles and should be taken into account when interpreting the texts.
4. Article 54 was a definitions clause, and such clauses always presented difficulties. Paragraph 1 gave a definition of civil defence tasks, which were further explained on page 6 of the English text. Paragraph 2 defined the term "civil defence organizations", which had been chosen, as being the most general and least restrictive, in preference to the terms "units" or "bodies". The definition was largely inspired by a parallel provision in Article 8, namely the definition of "medical units". The definition of "personnel" in paragraph 3 was in line with that of "medical units" in Article 8.
5. Lastly, he pointed out that no part of Article 54 was enclosed in square brackets: it was a clear text, ready for adoption.
6. Mr. MAKIN (United Kingdom), speaking on a point of order, said that the Rapporteurs' comments or notes constituted an integral part of the text; he hoped, therefore, that the Committee would adopt them together with the articles.

7. The CHAIRMAN suggested that it would be simpler not to adopt the Rapporteurs' comments at the present stage, but to incorporate them in and to adopt them together with the Committee's own report.

8. Mr. SOLF (United States of America), Chairman of Working Group A, supported that suggestion.

It was so agreed.

9. Mr. HARSANA (Indonesia) said that in many countries civil defence organizations performed a number of ancillary tasks which were not specified in paragraph 1. It was his delegation's understanding, therefore, that Article 54 would cover any additional tasks not covered in that paragraph, provided that they were not harmful to the adverse party.

10. Mr. JOSEPHI (Federal Republic of Germany) said that his delegation felt that the terms "protection civile" in French and "protección civil" in Spanish were clearer than the English term "civil defence". The German translation would accordingly be based on those terms.

11. Mr. MAKIN (United Kingdom) pointed out that the words "does not refer" in the sixth paragraph of the comments on paragraph 1 (CDDH/II/439/Rev.1, page 6 of English text) should be amended to read "does not refer only".

12. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) drew attention to certain mistakes in the Russian translation of the comments on paragraph 1. He proposed that the second sentence in the seventh paragraph of the comments should be amended along the following lines: "When performing acts harmful to the enemy, those performing them are not protected". That would remove an apparent contradiction with the first sentence.

13. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said that he had hoped to avoid a discussion of individual comments. He thought that representatives who had suggestions or criticisms - unless of a substantive nature - should consult informally with him and with the Rapporteur of the Committee. Any difficulty could then be settled in the final text of the Committee's report.

14. Mr. MAKIN (United Kingdom) said that the Indonesian and Ukrainian representatives had both experienced some difficulties with the seventh paragraph of the comments on paragraph 1. The second sentence in that seventh paragraph would seem to indicate that there was no obligation on an occupying force to facilitate any tasks that were not mentioned there.

15. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, agreed that a minor matter of substance was involved in that paragraph. He would discuss it with the delegations concerned.

16. The CHAIRMAN suggested that the Committee should adopt Article 54 by consensus, subject to certain corrections and reservations arising from the comments of the Rapporteur.

Article 54, subject to those reservations, was adopted by consensus.

Article 55 - General protection (concluded)

17. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said that Article 55 was based largely on what used to be called the "Nordic text". The word "civilian" in paragraphs 1 and 2 was enclosed in square brackets, and those should be allowed to stand until Article 59 bis had been dealt with.

18. Paragraph 4, which now appeared within square brackets, had been reconsidered by Working Group A, which had decided to delete it as redundant. It would accordingly be omitted in the revised text of the Working Group's report.

19. Paragraph 1 represented a new formula, designed to ensure the freedom of civil defence organizations. Paragraph 2 dealt with civilians who responded to an appeal for help, while paragraph 3 concerned buildings and matériel. He drew attention to the comment on Article 55 on page 7 of the Working Group's report (CDDH/II/439/Rev.1).

20. Mr. CZANK (Hungary) objected, as a matter of drafting, to the repetition in paragraph 3 of Article 55 of the words "used for civil defence purposes", which appeared in both sentences. He also thought that the connexion between paragraph 3 and Article 47 should be made more clear. In addition, he questioned the use of the phrase "or diverted from their proper use" in the second sentence of paragraph 3, since the question of diversion and requisition was dealt with in Article 56, paragraph 4.

21. He accordingly proposed that paragraph 3 should be amended to read as follows: "Buildings and matériel used for civil defence purposes and shelters provided for the civilian population are civilian objects covered by Article 47. These objects shall not be destroyed except in case of imperative military necessity".

22. Mr. ALBA (France) pointed out certain discrepancies between the French and English texts of Article 55.

23. Mr. KLEIN (Holy See) said that the phrase "except in the case of imperative military necessity" in paragraph 3 was inconsistent with Article 49 of the first Geneva Convention of 1949 and with the provisions of draft Protocol I concerning the protection of medical units. Since military necessity was normally "imperative" by its very nature, that phrase might be interpreted as an invitation to open fire in almost any situation. He proposed, therefore, that it should be deleted.
24. Mr. MARTIN (Switzerland) said he supported the proposal by the delegation of the Holy See. Provision should be made to protect such objects as shelters for the civilian population.
25. Mr. SOLF (United States of America) considered it regrettable that there was still some misunderstanding about the meaning of paragraph 3 of Article 55 after the prolonged debate that had taken place on the subject in Working Group A. The first sentence obviously meant that the objects referred to were civilian objects and that the enemy was prohibited under the terms of Article 47 from attacking such objects. By the definition in Article 44, an attack was an act of violence against the adversary, whether in defence or offence. The second sentence of Article 55, paragraph 3, related not to acts of violence against the adversary but only to destruction or diversion of the objects in question by friendly forces, which was permitted only in the case of imperative military necessity. To infringe upon the sovereignty of States by requiring their retreating forces to leave civil defence objects for use by the enemy would be contrary to the intentions of the Conference in Article 66, namely, that the restrictions imposed by Article 48 should not apply in such a case of imperative military necessity. Committee III had sanctioned the pursuit of a scorched-earth policy in such circumstances in the text of Article 66 which it had adopted (CDDH/III/373).
26. With regard to the comments by the Hungarian representative, he had understood that there had been a consensus in the Working Group on the reference in the second sentence of paragraph 3 to the diversion of the objects in question. If there had been a misunderstanding or a change of position by delegations, a vote would have to be taken on the matter in the Committee.
27. Mr. KUCHENBUCH (German Democratic Republic) said that the second sentence of paragraph 3 was in obvious contradiction with the first sentence. The paragraph as it stood would conflict with Article 47 as adopted by Committee III. Buildings and matériel used for civil defence purposes were civilian objects, and were therefore protected against attack or reprisal. Such objects by their nature were essential for the protection of the civilian population and were in no case military objects. The words "except in the case of imperative military necessity" should therefore be deleted.

28. Mrs. MANTZOULINOS (Greece) said that the first sentence of paragraph 3 should remain as it stood. With regard to the second sentence, acts of destruction and diversion were two distinct types of act and the reference to both should remain. She supported the proposal that the phrase "except in the case of imperative military necessity" should be deleted, for the reasons given by the representative of the Holy See. If the phrase were nevertheless to be kept, provision should be made to prohibit the destruction of shelters or their diversion to other purposes.

29. Mr. MAKIN (United Kingdom) said that the first sentence of paragraph 3 fully corresponded to the position taken by the Working Group after long discussion and should remain as it stood.

30. The second sentence related only to action by the Government authorities of the country to which the objects belonged. Governments were unlikely to accept the restrictions suggested by the delegations of the Holy See and Switzerland in addition to the rather severe restriction imposed by the existing wording.

31. Mr. LUKABU-K'HABOUJI (Zaire) agreed that the first sentence of paragraph 3 was in line with the consensus reached in Working Group A, and should therefore remain as it stood.

32. He understood the concern of those delegations that had proposed the deletion of the words "except in the case of imperative military necessity" in the second sentence of paragraph 3. Specific provision should be made to prohibit the destruction of shelters or their diversion to other purposes.

33. Mr. NORDHAUG (Norway) said that paragraph 3 should remain as it stood, for the reasons given by the United States representative. If the words "or diverted from their proper use" were deleted, the civilian population in combat areas might be deprived of the shelters provided for them.

34. Mr. URQUIOLA (Philippines) said that his delegation could agree to the first sentence of paragraph 3 with the minor drafting changes suggested by the Hungarian representative, which made the meaning clearer.

35. With regard to the second sentence, the United States representative's explanation had made it clear that the words "except in the case of imperative military necessity" referred solely to action taken by the retreating forces of the party to which the objects belonged, in pursuance of a scorched-earth policy. Governments would undoubtedly be opposed to the deletion of the phrase, since their sovereign right to prevent the objects in question from falling into enemy hands would then be restricted. He therefore agreed with the United States and United Kingdom representatives that the phrase should be retained.

36. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said it was clear from the discussion that some of the objections raised against the second sentence of paragraph 3 had been based on a misunderstanding. There were no contradiction between the first and second sentences. The fact that the buildings, matériel and shelters referred to in the first sentence were covered by Article 47 meant that, as provided in that article, they could not be made the object of attack, which was defined elsewhere as an act of violence against the adverse Party.

37. The acts referred to in the second sentence were not enemy acts, but acts of the Government to which the objects belonged, or of its allies, and it was only to such acts that the phrase "except in the case of imperative military necessity" referred.

38. Mr. KLEIN (Holy See) said that the text should be made clearer to ensure that it could not be misunderstood. Although he recognized the desire to protect national sovereignty, humanitarian considerations called for some concessions in that respect. Article 48 of draft Protocol I stated that it was forbidden to attack or destroy objects indispensable to the survival of the civilian population. A compromise solution should be sought.

39. Mr. MARTIN (Switzerland), supported by Mrs. MANTZOULINOS (Greece), said that he could join in a consensus on paragraph 3 provided that some suitable words were added to make it clear that the destruction or diversion referred to could be carried out only by the Party to which the objects belonged, and then only in the case of imperative military necessity.

40. Mr. AL-FALLOUJI (Iraq) said that he could agree to the Swiss representative's suggestion, although he would have preferred the deletion of the words "except in the case of imperative military necessity", in view of the broad interpretation that might be given to them. He would welcome some clarification of the position with regard to occupied territories.

41. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, pointed out that the question of occupied territories was covered by Article 56.

42. Mr. HEER (German Democratic Republic) said that it was out of place in an international instrument to refer to rights which were vested in any case.

43. Mr. SOLF (United States of America) drew attention to paragraph 2 of Article 66 adopted by Committee III (CDDH/III/373), which read:

"In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 of Article 48 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity."

44. Article 44, paragraph 3 of the ICRC text, stated that the provisions of the Section currently under consideration were "complementary to such other international rules relating to the protection of civilians and civilian objects against effects resulting from hostilities as may be binding upon the High Contracting Parties, in particular to Part II of the fourth Convention. Article 13 of that Convention stated that the provisions of Part II of that Convention covered the whole of the populations of the countries in conflict. The provisions of Article 55 therefore applied to the population of the national territory. Article 56 contained more restrictive rules in respect of occupied territories.

45. He would be glad to receive confirmation of his understanding that the square brackets round the word "civilian" in paragraphs 1 and 2 of Article 55 would be removed automatically, without the need for any further decision, as soon as Article 59 bis had been adopted.

46. The CHAIRMAN confirmed that the United States representative's understanding was correct. He suggested that the Committee should adopt paragraphs 1 and 2 of Article 55 by consensus, and that there should be a short suspension to enable interested delegations to hold informal consultations with the Rapporteur on paragraph 3 with a view to drafting an agreed text.

It was so agreed.

Paragraphs 1 and 2 of Article 55 were adopted by consensus.

The meeting was suspended at 11.25 a.m. and resumed at 11.50 a.m.

47. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said that a new text of Article 55, paragraph 3, had been agreed during the suspension. The first sentence would remain as in document CDDH/II/439/Rev.1, the second sentence would read: "Objects used for civil defence purposes may not be destroyed or diverted from their proper use except by the Party to which they belong and in the case of imperative military necessity."

48. Mr. SOLF (United States of America) suggested that the last phrase of the second sentence should read: "and then only in the case of imperative military necessity".

49. Mr. AL-FALLOUJI (Iraq) suggested that the second sentence should be amended to read: "Objects used for civil defence purposes may not be destroyed or diverted from their proper use by the Party to which they belong except in the case of imperative military necessity."

50. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, felt that the text which he had read out made it clear that only the Party to which the objects used for civil defence belonged might destroy or divert them; He could not agree with the amendment suggested by the representative of Iraq.

51. Mr. MARTIN (Switzerland) said that when the text of the second sentence as amended by the Rapporteur had been discussed during the suspension he had had some doubts about the addition of the word "and". Although not opposing the Rapporteur's text, he wished to suggest that the latter half of the second sentence of paragraph 3 of Article 55 should be amended along the following lines: "except by the Party to which they belong and in the case of its own imperative military necessity".

52. Mr. CZANK (Hungary) supported the Rapporteur's text, which reinforced the idea that only the Party to which the objects used for civil defence purposes belonged might destroy them or divert them from their proper use.

53. Miss MINOGUE (Australia) suggested the following amendment, which she felt would make the second sentence perfectly clear: "Objects used for civil defence purposes may not be destroyed or diverted from their proper use even by the Parties to which they belong except in case of imperative military necessity".

54. Mr. HEREDIA (Cuba) considered that the final phrase of the second sentence of paragraph 3 would be clearer if it were worded along the following lines: "except by the Party to which they belong in the case of imperative military necessity". The only party authorized to destroy objects used for civil defence purposes or divert them from their proper use was the Party to which the objects belonged.

55. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said that the representative of the International Committee of the Red Cross had just suggested to him that since the word "and" seemed to be the difficulty, the second sentence of paragraph 3 should be amended to read: "Objects used for civil defence purposes may not be destroyed or diverted from their proper use except, in the case of imperative military necessity, by the Party to which they belong."

Article 55, paragraph 3, as so amended, was adopted by consensus.

Article 55 as a whole, as amended, was adopted by consensus.

56. Mr. MAKIN (United Kingdom) noted that paragraph 4 of Article 55, shown in square brackets in document CDDH/II/439/Rev.1 would not be adopted and wished to make it clear for the record that he took it to be the understanding of the Committee that that paragraph was in fact covered by paragraphs 1 and 2 of the article. He would agree with the consensus reached on Article 55 if that point was recorded.

Article 56 - Civil defence in occupied territories (concluded)

57. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said that Article 56 concerned civil defence in occupied territories and was largely based on the interim report of the Working Group, which had considered the article at the third session of the Conference. Paragraph 2 as it appeared in document CDDH/II/439/Rev.1 was new and had been drafted by Working Group A. Paragraph 3 had appeared in the interim report. Paragraphs 4 and 5 had been redrafted by a special Working Group which had dealt with the question of requisition. They had taken as a model Article 14 of draft Protocol I, which had already been adopted by Committee II. Paragraph 6 forbade the Occupying Power to divert or requisition shelters provided for the use of the civilian population or needed by that population.

58. Paragraph 1 had been reconsidered by Working Group A the previous day, and the brackets round the word "civilian" in the first and eighth lines of the English text should be removed. The brackets should also be removed from the word "civilian" in paragraph 2. There was a typographical error in the second line of the English version of paragraph 4 - the word "of" between the words "buildings" and "matériel" should be replaced by "or". In paragraph 4 the words "would prejudice the protection ... civilian population" should be replaced by "if such diversion or requisition would be harmful to the civilian population ...". Those words had been adopted by Working Group A the previous day.

59. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, replying to Mr. SHERIFIS (Cyprus), who had asked what was meant by "reasons of security" in paragraph 3 and whose interests that paragraph was meant to protect, said that he thought those words were self-explanatory. It was obvious, however, that the Occupying Power might have some misgivings if it noticed that civil defence personnel were armed. It was for that reason that the paragraph had been suggested at the third session of the Conference. The brackets had originally been placed round the paragraph because it was not known at the time whether it would be agreed that civil defence personnel would be allowed to carry weapons.

60. Mr. JOSEPHI (Federal Republic of Germany) doubted whether the brackets round paragraph 3 should be deleted, since it had not yet been decided whether civil defence personnel should be permitted to carry weapons, and whether the Occupying Power should allow such personnel to do so.

61. Mr. HARSANA (Indonesia) considered that paragraph 3 was meaningless and should be deleted.

62. Mr. SOLF (United States of America) noted that some delegations still had doubts whether civil defence personnel should be armed. His delegation could not agree that such personnel should be armed unless the Occupying Power had the right to disarm them, and he referred in that connexion to the compromise solution adopted with respect to Article 58, paragraph 3, which his delegation supported.
63. Mr. MAKIN (United Kingdom) suggested that the Committee should adopt the same solution as that it had adopted in the case of Article 55, namely that when Article 58 was adopted, allowing civil defence personnel to carry arms, the brackets around paragraph 3 of Article 56 would automatically disappear without further discussion.
64. Mr. SHERIFIS (Cyprus) said that he noted the argument that an Occupying Power could not accept that civil defence personnel should be armed unless that Power had the right to disarm them. It was his firm belief, however, that the Diplomatic Conference on Humanitarian Law could not be particularly interested in the views and certainly not in the "rights" of an Occupying Power which in the first place should not be occupying a State just because it had the military might to prevail over weaker States. The delegation of Cyprus could accept the compromise text, the major part of which it was a co-sponsor, because it did not wish to stand in the way of a consensus. In that respect he supported the statements of the representative of the Federal Republic of Germany and of the United Kingdom representative to the effect that the brackets round paragraph 3 should be retained for the time being.
65. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) supported the statement of the United States representative and pointed out that the brackets round paragraph 3 of Article 56 had already been removed by Working Group A, as could be seen in the report (CDDH/II/439/Rev.1).
66. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said that the action taken by Working Group A had been based on the understanding that a provision would appear in Article 58 which would allow civil defence personnel to carry arms under certain conditions. He therefore suggested that paragraph 3 might be adopted by the Committee on the basis of that same understanding.
67. Mr. SHERIFIS (Cyprus) agreed with the Rapporteur's suggestion on the understanding that his views would be fully reflected in the summary records and in the Committee's report.

Paragraph 3 as amended was adopted by consensus.

Article 56 as a whole, as amended, was adopted by consensus.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE NINETY-SECOND MEETING

held on Wednesday, 11 May 1977, at 3.10 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of Working Group A on Articles 54 to 59 - Civil defence
(CDDH/II/439, CDDH/II/439/Rev.1) (continued)

Article 57 - /civilian/ civil defence organizations of neutral or other States not Parties to the conflict and of international co-ordinating organizations (CDDH/II/405, CDDH/II/426 and Add.1, CDDH/II/439/Rev.1)

1. The CHAIRMAN invited the Committee to consider Article 57 as set out in the report of Working Group A (CDDH/II/439/Rev.1) and requested the Rapporteur of the Working Group to introduce that document. He pointed out that document CDDH/II/439/Rev.1/Corr.1 concerned the Arabic and French versions only.
2. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, explained that the Group had based its discussions and decisions on two separate texts: an amendment submitted by the delegation of Denmark (CDDH/II/405), the first paragraph of which had been retained almost verbatim; and an amendment (CDDH/II/426) submitted by a group of countries for which Zaire was the spokesman, the purpose of which was to mention international civil defence bodies in conjunction with civil defence bodies of neutral or other States not parties to the conflict. Since that proposal had at the outset met with the main objection that there was not at present any international civil defence body capable of intervening in an armed conflict, the Working Group had decided to stress the important role of co-ordination which such a body could still play, to insert a new paragraph 2 to that effect and to remove the brackets which in two passages of document CDDH/II/439 had been placed round the words "and of international civil defence organizations". The Working Group had reached a consensus on that compromise and it was to be hoped that the Committee would do likewise. He also pointed out that the decision taken by the Committee at the ninety-first meeting (CDDH/II/SR.91) on the removal of the brackets round the word "civilian" should logically apply to Article 57.
3. Mr. HARSANA (Indonesia) feared that the wording of paragraph 3 might be used by the Occupying Power as a pretext to strengthen its manpower in the occupied territory. The report should specify that the Occupying Power must not use the provision for that purpose. Subject to that condition, his delegation was ready to accept a consensus.

4. Mr. MARRIOTT (Canada) asked what would be the position of a neutral State that sent armed forces to carry out civil defence tasks in a State Party to the conflict.

5. Mr. SIDI EL MEHDI (Mauritania) said that the arguments adduced so far against the insertion of the idea of an international civil defence organization in Article 57 lay in the fact that at present no such organization existed capable of supplying at the international level civil defence units able to intervene in case of hostilities. That assertion still had to be proved. For example, in the case of natural disasters certain member States of the International Civil Defence Organization (ICDO) (such as the countries of the Sahel, among them Mali, Senegal and Mauritania) had already provided for regional assistance and mobile units for intervening in case of drought. That was already the beginning of international intervention in the struggle against disasters carried out with the assistance of ICDO. It should not be lost to sight that introductory paragraph 1 of Article 54 on the definition of civil defence spoke of "hostilities" and "disasters".

6. It was obvious that plans for assistance were developing and that an international civil defence organization would in the near future have at its disposal, directly or indirectly, personnel and matériel which could be engaged in case of hostilities for the same reasons as those of neutral States or non-parties to a conflict.

7. The additional Protocols prepared by the Conference were not intended for past or present conflicts but for future conflicts.

8. It was for that reason that it would be regrettable to prevent an existing international organization from contributing to the protection of the civilian population in a future conflict under the pretext that at present that organization did not have means of intervention ready and classified. It was with that in mind that his delegation had become a sponsor of amendment CDDH/II/426, which it sincerely hoped would be adopted by the Committee.

9. Mr. KORNEEV (Union of Soviet Socialist Republics) said that he had no objections to the substance of the proposal but harboured some doubts, which the representative of Mauritania had partly dispelled by pointing out that there was nothing to prevent an organization which was already carrying out co-ordination functions in a natural disaster from extending its activities to an armed conflict. He was still puzzled about the ways and means whereby such a body could ensure international co-ordination: would the States concerned be obliged to accept its intervention, or would they have to give their consent beforehand? The whole question of intervention of international bodies appeared to be very complicated.

10. Mr. ENDEZOU MOU (United Republic of Cameroon) supported the Mauritanian representative's comments. Moreover, it would be a legal paradox to withhold from a recognized international organization the "civilian" status already enjoyed by civilian civil defence organizations of neutral or other States not parties to the conflict, when - were it only to a different extent for there was a difference of degree and not of nature - it was carrying out the functions mentioned in Article 54 on the same basis as those States.

11. His Government was considering setting up a national civil defence body, profiting from the national and multilateral experience acquired by other countries. It was also studying the possibility of becoming a member of ICDO and it was with that in mind that his delegation had supported amendment CDDH/II/426, paragraph 1 of which explicitly mentioned international civilian bodies.

12. Mr. SCHULTZ (Denmark) said that ever since the Working Group had started meeting he had been conducting unofficial consultations with the representative of Zaire and the Secretary-General of ICDO; the result had been the drafting of the new paragraph 2, which, he suggested, should serve as the basis of the Committee's discussions.

13. The first sentence reproduced, with adjustments, the terms of paragraph 5 of Article 62, on relief actions. The second sentence stipulated that the provisions of Chapter VI applied to all international organizations endeavouring to co-ordinate civil defence actions, a solution which settled the problem raised by the members of ICDO.

14. Mr. LUKABU-K'HABOUJI (Zaire) said that, while he had no intention of questioning the compromise wording of the new paragraph 2, he wished to state for the record that in his view it would be nonsense for the Conference to refuse to recognize the right of an organization to which it granted observer status to participate in civil defence actions. Moreover, in paragraph 1 of his amendment (CDDH/II/426 and Add.1) he had been careful to put the word "bodies" in the plural, without explicitly mentioning ICDO.

15. Furthermore, the expression "relevant international organizations" in the new paragraph 2 should be understood to mean civilian bodies, whose intervention should be subject to the consent on the Party to the conflict on whose territory they proposed to operate.

16. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) objected that the last sentence of paragraph 1 seemed to impose the obligation not to regard the activities of civil defence bodies as interference in the conflict. He proposed that it should be replaced by the following: "In no circumstances shall this activity be of such a nature as to constitute interference in the conflict".

17. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, remarked that that proposal raised a question of substance.
18. Mr. SOLF (United States of America), replying to a question by Mr. MARRIOTT (Canada), pointed out that under the terms of Article 59 bis military units assigned to civil defence organizations could perform their tasks only within the national territory of their Party.
19. Mr. UHUMUAVBI (Nigeria) supported the Ukrainian amendment but proposed that it should be modified to read: "In no circumstances shall this activity be deemed to be interference in the conflict" or "shall this activity constitute interference in the conflict".
20. Mr. ALBA (France) considered the Nigerian proposal to be pleonastic and said that the Ukrainian amendment was perfectly adequate.
21. Mr. CZANK (Hungary) recalled the discussion that had taken place in Working Group A and expressed the view that the Ukrainian amendment offered a good compromise solution.
22. Mr. MAKIN (United Kingdom) wondered whether the ICRC could find a suitable phrase in draft Protocol I or the Geneva Conventions, perhaps in the articles on relief. In his opinion, it was desirable to adhere as far as possible to the terms used in the Conventions in order to avoid the risk of misinterpretation. It might be useful to employ the terms used elsewhere to express the same idea.
23. Mr. SANDOZ (International Committee of the Red Cross) said that he would have to see whether there was a similar phrase in the Geneva Conventions. In any event, civil defence activities could be performed only within the framework of Articles 54 et seq. Unless they complied with the provisions of those articles, they were not covered by Article 57.
24. Mrs. MANTZOULINOS (Greece) said that the Committee should reflect carefully before accepting the Ukrainian amendment, for it raised a matter of substance and there was the question of who would decide whether or not an activity was of such a nature as to constitute interference in a conflict.
25. Mr. SOLF (United States of America) agreed with the Greek representative. Perhaps a provision similar to that in the articles of draft Protocol I relating to relief actions might be included. Since the matter was one of substance, a vote would have to be taken if the Ukrainian delegation maintained its amendment.
26. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) confirmed that it was indeed a question of substance. In his view, it would be pointless to seek a formula which already appeared elsewhere, but for a completely different situation. The aim of the Ukrainian amendment was to ensure that the aid envisaged in no way changed the ratio of the forces of the Parties to the conflict.

27. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) emphasized the importance of the Ukrainian proposal. There was in fact hardly any difference between civil defence actions and military medical services. All those actions helped to protect a Party to the conflict and in fact corresponded to military activities, for the wounded who recovered from their injuries could go back to the conflict and the civil defence tasks constituted an aid to the Parties to the conflict. The compromise formula adopted by the Working Group was unclear and the Ukrainian proposal deserved careful study.

28. Civil defence organizations could be of very different kinds. They could be bodies such as the ICRC, but could also be international organizations set up under the auspices of military groups, such as, for example, the North Atlantic Treaty Organization. It was therefore essential to specify which were the actions to be co-ordinated. Relief actions could not be compared with civil defence actions. The latter might constitute interference in the conflict through the intermediary of a civil defence organization of any country. It was therefore advisable to consider what co-ordination consisted of and then to determine the activities derived from such co-ordination.

29. Mr. SCHULTZ (Denmark) said that according to Article 54, paragraph 1, civil defence tasks were exclusively of a humanitarian nature. Some of them, such as the warning service, could of course be linked to some extent with military activities. International aid provided under the warning service, however, could obviously not be used in those of its sectors associated with military activities. Aid given by one country to another would be in the form of relief or fire-fighting teams or the supply and transportation of matériel. Moreover, such aid would be granted only subject to the agreement and under the supervision of the Party to the conflict. There were therefore no grounds for any misgivings about the scope of the aid envisaged. The problems were the same as for the relief matters dealt with in Articles 60 to 62.

30. International co-ordination might not be necessary, but it might be requested in some cases through the intermediary of international organizations. That did not mean, however, that there would be interference in the conflict. Article 57 merely repeated wording which had already been used elsewhere in Protocol I, inter alia in the articles on relief. The Ukrainian proposal was very vague. As the Greek representative had said, it was not known who could decide whether or not the actions in question were of a nature to constitute interference in the conflict. Such a provision might give rise to lengthy discussions, which would not be in the interest of civil defence. He therefore considered that the text prepared by Working Group A should be maintained.

31. Mr. CZANK (Hungary) recalled that Working Group A had decided to amend the text of the draft article on page 4 of its report (CDDH/II/439/Rev.1) by deleting any mention of "international civil defence organizations". Similarly, the Working Group had decided after lengthy discussions to mention only "international co-ordination" in paragraph 5 of Article 62 on relief actions. A compromise solution would be to omit all references to international co-ordinating organizations in Article 57, paragraph 2, second sentence, and simply to speak of encouraging co-ordinating activities of the civil defence organizations. Similarly, all references to international co-ordinating organizations in paragraph 3 could be deleted.

32. Mr. LUKABU-K'HABOUJI (Zaire) said that the Working Group had taken a clear decision concerning the use of the words "international co-ordinating organizations" and that it was preferable to adhere to that text.

33. The CHAIRMAN proposed that the meeting should be suspended to enable the delegations concerned to reach agreement and draft a new text.

34. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, pointed out, in reply to a question by Mr. SCHULTZ (Denmark), that it was the reference to international organizations which seemed to have prompted the proposal by the Ukrainian representative to amend the final sentence of paragraph 1. If that reference were deleted, the final sentence of the paragraph would apparently be accepted by the Ukrainian delegation. He himself considered it preferable to add a sentence to paragraph 2 and to leave paragraph 1 as it stood.

35. Mr. SOLF (United States of America) agreed with the Rapporteur and thought that the question could be discussed informally during the suspension of the meeting.

36. Mr. LUKABU-K'HABOUJI (Zaire) said that it was his understanding that the amendment submitted orally by the Ukrainian representative concerned all the actions undertaken by neutral or other States not parties to the conflict, and not only those of international organizations.

37. The CHAIRMAN expressed the hope that during the suspension of the meeting the members of the Committee who had suggested amendments to the article under consideration would be able to reach agreement and propose a solution acceptable to all.

The meeting was suspended at 4.35 p.m. and resumed at 5.5 p.m.

38. The CHAIRMAN invited the Rapporteur to inform the Committee of the result of the discussions which had taken place during the suspension of the meeting.

39. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said that, in the light of the informal discussions, the problem could apparently be solved in the following way. Paragraph 1 of Article 57 as it appeared in the Working Group's report (CDDH/II/439/Rev.1) would not be amended but would be supplemented by the following sentence: "This activity should, however, be performed with due regard to the security interests of the Parties to the conflict concerned." In paragraph 2, the first sentence would be amended to read: "The Parties to the conflict receiving assistance referred to in paragraph 1 and the High Contracting Parties granting it should facilitate international co-ordination of such civil defence actions, when appropriate."

40. In reply to Mr. FOURKALO (Ukrainian Soviet Socialist Republic), who had asked whether the last sentence of paragraph 1 would be deleted, he emphasized that the sentence he had suggested for insertion at the end of paragraph 1 did not replace the final phrase of the present text but was an addition to that paragraph.

41. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) said that that solution was not altogether what he would wish. In a spirit of compromise, however, he was prepared to accept it.

42. Mr. MAKIN (United Kingdom) stated that the word "should" (in French "devrait") in the additional sentence which the Rapporteur suggested for paragraph 1 implied that it was a recommendation and not a strict obligation. If, on the contrary, it was meant to be a rule, the words "this activity shall ..." (in French, "Cette activité devra ...") should be used. Moreover, he would like to know whether the words "Parties concerned" applied equally to adverse Parties.

43. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, replied in the affirmative to the United Kingdom representative's second question. With respect to the possibility of replacing the word "should" by "shall", it was for the Committee to indicate its preference, but he was in favour of "should".

44. Mr. MAKIN (United Kingdom) said that he was satisfied by the Rapporteur's explanations.

45. Mr. JOSEPHI (Federal Republic of Germany) drew attention to the words "... les tâches de protection civile ...", in paragraph 1 of the French text, and the words "... the civil defence tasks ..." in the English text. He did not think that reference was being made to all civil defence tasks, but only certain activities which came within the framework of the list appearing in Article 54. The word "the" in the English text should therefore be deleted.

46. Mr. MARTIN (Switzerland) said that in that case the French text could read "... des tâches de protection civile ..." instead of "... les tâches de protection civile ...".

47. Mr. SOLF (United States of America) and Mr. CZANK (Hungary) supported the suggestions by the representatives of the Federal Republic of Germany and of Switzerland.

48. The CHAIRMAN said that he assumed that the Committee was in agreement on the amendment to paragraph 1 suggested by the representative of the Federal Republic of Germany for the English text, and by the Swiss representative for the French text.

49. Moreover, it was his impression that the Committee was prepared to adopt by consensus Article 57 as amended by the insertion of the text which the Rapporteur had read out for paragraphs 1 and 2.

Article 57, thus amended, was adopted by consensus.

Article 59 - Identification

50. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, introducing Article 59, said that he did not think it was necessary to mention all the changes that the Working Group had made to the text the previous day, since document CDDH/II/439/Rev.1 had now been circulated. He pointed out, however, that some of the words in brackets had been deleted and that the wording of Article 59 was based on Article 18 of draft Protocol I adopted by the Committee. The text used, for civil defence, was based on the terms used in Article 18 for medical personnel, units and transports. The provisions of paragraph 4 concerning the distinctive sign were based on a decision already taken on the subject.

51. Lastly, he drew the Committee's attention to the three notes on Article 59 appearing in the "Comments" (CDDH/II/439/Rev.1, p. 7).

52. Mr. SANCHEZ DEL RIO (Spain) read out the Spanish version of Article 59, paragraph 4, as it appeared in document CDDH/II/439/Rev.1, which differed somewhat from the version in document CDDH/II/439 and thus did not correspond exactly to the English version. He thought that the Spanish text should be brought into line with the English text, as had been done in the case of Article 18.

53. Mr. ALBA (France) said that the words "qu'il soit utilisé" in the French text should be replaced by the words "quand il est utilisé".

54. Mr. LUKABU-K'HABOUJI (Zaire), referring to Article 59, paragraph 4, read out paragraphs 1 and 2 of the summary record of the ninetieth meeting (CDDH/II/SR.90) which in his view did not adequately cover the discussion, since they made no mention of an oral amendment submitted by the delegation of the Philippines

at the eighty-ninth meeting (CDDH/II/SR.89) on the basis of the statement which the Observer for the International Civil Defence Organization had just made. The amendment had proposed that the emblem of a red triangle on a yellow background should be retained.

55. The CHAIRMAN said that he had been guided by the Technical Sub-Committee's decision recommending the blue triangle on an orange background. Since no delegation had asked to speak at that point, he had concluded that the Committee approved that decision, as was stated in the summary record. He proposed that the Committee should adopt Article 59 by consensus.

Article 59 (CDDH/II/439/Rev.1) was adopted by consensus.

56. The CHAIRMAN said that he had been requested to postpone consideration of Articles 58 and 59 bis until the following day. He therefore accepted the proposal by the United States representative that the rest of the meeting should be devoted to consideration of Articles 14 and 15 of the technical annex (CDDH/II/439/Add.1).

SUPPLEMENT TO THE REPORT OF WORKING GROUP A ON CIVIL DEFENCE
CONCERNING THE TECHNICAL ANNEX TO DRAFT PROTOCOL I (CDDH/II/439/Add.1).

Article 14 - Identity card

Article 15 - International distinctive sign of civil defence

57. Mr. SANCHEZ DEL RIO (Spain), speaking as Rapporteur of the Technical Sub-Committee of Committee II, said that document CDDH/II/439/Add.1 gave the latest results on the work of the technical annex done by Working Group A. He stressed that paragraph 1 of Article 14 had been made much more concise; and he read out paragraph 2, which contained two alternative texts concerning the carrying of weapons. Article 15, on the international distinctive sign of civil defence, was virtually unaltered.

58. Mr. HARDING (United States of America) said he understood that the idea was to delete the word "/permanent/" in square brackets in Article 14, paragraph 1, so as to bring the text into line with Article 59, paragraph 3, which did not make that distinction.

59. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, said that that was so. The Working Group had likewise agreed to delete the words "permanent/temporary" in paragraph 2.

60. In reply to a request for clarification from Mr. MARRIOTT (Canada) concerning Article 2, which was mentioned at the beginning of document CDDH/II/439/Add.1, Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, said that the only reference was to a note to be found in the report of the Technical Sub-Committee at the third session (see CDDH/235/Rev.1, p. 55).

51. Mr. MAKIN (United Kingdom) said he wondered whether it might not make the Committee's intentions clearer if an irregular shape were chosen for the distinctive sign.

62. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, replied that not only would an irregular shape be more difficult to reproduce, but it might also be misinterpreted.

63. Mr. SCHULTZ (Denmark) said that, to facilitate reproduction of the documents, he would suggest adopting the method followed in Committee III, and simply drawing a triangle with the word "blue" written in full on a ground bearing the word "orange", but without reproducing the colours.

64. Mr. SOLF (United States of America) suggested that it should be left to the Secretariat to decide problems of colour printing, and that the discussion should be confined to the legal aspect of the matter.

65. Miss MINOGUE (Australia) asked whether the two sentences in square brackets after Article 14, paragraph 2, were to be regarded as possible insertions or as alternatives.

66. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of the Technical Sub-Committee, said they were alternatives, one proposed by Denmark, the other by the Union of Soviet Socialist Republics. It had seemed a good idea to retain them until the Committee reached a decision on Article 58.

67. The CHAIRMAN suggested that the Committee might be prepared to adopt by consensus Articles 14 and 15 of the technical annex to draft Protocol I (CDDH/II/439/Add.1), with the amendments submitted and the reservations made regarding the words in square brackets.

It was so agreed.

The meeting rose at 6 p.m.

SUMMARY RECORD OF THE NINETY-THIRD MEETING

held on Wednesday, 11 May 1977, at 6.35 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol II

Article 30 - Respect and protection (CDDH/II/368, CDDH/II/415, CDDH/II/420, CDDH/II/421) (continued)

Article 31 - Definition (CDDH/II/51, CDDH/II/369, CDDH/II/415, CDDH/II/420, CDDH/II/422, CDDH/II/441) (continued)

1. The CHAIRMAN reminded the Committee that it had to decide whether it wished to include an article on civil defence in draft Protocol II. At the ninetieth meeting (CDDH/II/SR.90) the members of the Committee had been split into two opposing camps, one of which was against any reference to civil defence in draft Protocol II, and the other in favour of a single simple article to replace Articles 30 and 31. Arguments in support of the first position had been put forward by Indonesia and some Western countries. An ad hoc Working Group of States supporting the second position had submitted the text set out in document CDDH/II/441. He invited the representative of the Holy See to introduce the text.

2. Mr. KLEIN (Holy See) said that a small Working Group, composed of the representatives of Australia, Byelorussian SSR, Switzerland, the Syrian Arab Republic and himself, had felt that, in the light of the adoption by Committee III of Articles 24, 25, 26, 27 and 28, it would be extraordinary to make no reference in draft Protocol II to the civil defence organizations which ensured the protection of the civilian population. The text of the single article (Article 30), which it proposed for inclusion in draft Protocol II, merely referred to the need to permit civil defence organizations to pursue their activities for the purpose of ensuring the conditions necessary for the survival of the civilian population.

3. Mr. SCHULTZ (Denmark) said that he fully supported the text which had just been introduced. It was as simple as the other articles in draft Protocol II. He would have liked it to include a statement to the effect that it was permissible to use the international distinctive sign for civil defence for the buildings, personnel, matériel and shelters of the organizations in question. If the Committee agreed, that could form a second sentence. In any case, he hoped that the Committee would adopt the text proposed by the ad hoc Working Group.

4. Mr. SOLF (United States of America) said that the text proposed by the ad hoc Working Group for Article 30 (CDDH/II/441), raised a number of questions. In the first place, which Party to the conflict might impose security measures? He wondered why the word "Party" was in the singular. As the text referred to a non-international conflict, he was also puzzled by the use of the expression "in the territory of the Party to the conflict". Presumably the reference was to the territory of the High Contracting Party in whose territory the conflict was taking place, or perhaps the sponsors of the text meant the territory controlled by the Party or Parties to the conflict.

5. He would like to know whether the organizations mentioned in the text, like those referred to in Article 63 of the fourth Geneva Convention of 1949, were of a non-military character or were organizations of a military character, and what standards applied to those organizations. The standards prescribed by Article 63 of the fourth Convention were similar to those of recognized national Red Cross, Red Crescent, Red Lion and Sun Societies. In the text before the Committee, there was no reference to impartiality or other such principles. Again, he wondered what tasks the organizations would be permitted to perform. Article 63 of the fourth Convention gave specific examples: the maintenance of essential public utility services, the distribution of relief and the organization of rescues. As no examples were given in the present text, it might well include the maintenance of State schools and the provision of social welfare services, on the one hand, and law enforcement, on the other.

6. His delegation, which was opposed to any ambiguity in draft Protocol II, supported the proposals made for the deletion of Articles 30 and 31. The proposed text for Article 30 would only create confusion; it would be better to let civil defence in a non-international conflict be conducted with no more recognition than the Protocol accorded to public education, the maintenance of a postal service or a law enforcement agency, all of which were essential to a viable society.

7. Mr. MAKIN (United Kingdom) said that members of the Committee had learnt during the present and the preceding sessions that in many countries civil defence personnel were armed and the Committee had agreed that they should be allowed to be armed with light individual weapons. In that context, he drew attention to the definition of "civilian" in Article 25 of draft Protocol II. He could not think of anything more like an armed group than a civil defence organization: it was organized, it was armed and it was a group. Hence the people who were referred to were not civilians. That was not a legal quibble but practical reality. The representative of the Union of Soviet Socialist Republics had said that in his country civil defence was a vital part of its defence and linked closely to military organization. He personally was convinced that any sensible rebel would use the civil defence organization in a country where it was armed as the basis of his revolution. That was why the proposed article seemed to him to be nonsense. The activities of civil defence organizations were defined as military activities in the draft Protocol and would undoubtedly be so in many instances where civil defence personnel were armed.

8. He agreed with the criticism of the proposed article made by the United States representative. He did not think the proposal helpful. In his view, it was better to leave civil defence, as many more important activities in society were left, without mention in draft Protocol II.

9. Mr. KLEIN (Holy See) regretted the violent attack made on the text which he had introduced. He did not think all the points made were justified. In that connexion, he referred the Committee to Article 1 of draft Protocol II, which made it clear that the armed forces of the various Parties to the conflict would be fighting on the same territory. While it might be true that an armed civil defence organization could be the hope of the rebels, so might any other body in the territory. He also thought it was going too far to suggest that civil defence might be expected to concern itself with schools in the absence of any definition of its tasks. The key point was that the civil defence organization was needed to protect the civilian population and that the Government could not carry on its activities in rebel territory.

10. Perhaps the text which the ad hoc Working Group had prepared was somewhat obscure but that was no justification for a failure to refer to civil defence, when five articles had been devoted to the protection of the civilian population.

11. Mr. HARSANA (Indonesia) said that it seemed that the sponsors of the proposed new Article 30 were trying to draw a parallel between civil defence organizations and the Red Cross, but civil defence activities were so closely connected with the conduct of war or armed conflicts, especially on the side of the rebels that it was impossible to draw such a parallel. It would be very difficult for Governments to recognize civil defence organizations set up by rebels and to ensure their protection. His delegation therefore considered that the article was not realistic and should be deleted.

12. Mr. ENDEZOU MOU (United Republic of Cameroon) said that his delegation had serious doubts about the advisability of having an article on civil defence in draft Protocol II. Nor did it think that it was wise to have a Protocol II which was devoted to non-international armed conflicts. Draft Protocol II seemed to put States and de facto organizations such as insurgent groups on a footing of equality from the legal point of view, which confirmed the policy of national unity followed by the young African States. It was essential to maintain the territorial integrity of States; that was made clear in the Charter of the Organization of African Unity. His delegation could not view with favour a civil defence organization which could be regarded as not subject to the authority of the States, that was to say to the authority of legitimate Governments, as would be the case if the civil defence organization in question had to serve on that part of the territory coming under the control of the rebels. If the civil defence organization was under the control of the Government, there was no need for the article affording it protection. Hence, he was of the opinion that Article 30 should be deleted.

13. Mr. KOMISSAROV (Byelorussian Soviet Socialist Republic) said that his delegation had always attached great importance to efforts to develop international humanitarian law. That was why it supported the attempt to formulate a provision on civil defence in draft Protocol II. It considered that the text introduced by the representative of the Holy See was well balanced and had great humanitarian significance. The objections raised to it were somewhat one-sided, inasmuch as they did not take into account the basic humanitarian objective of the text, which was to permit the activities of civil defence organizations that made it possible for the civilian population to survive. It was of the opinion that the text was perfectly valid and should be adopted by the Committee.
14. Mr. MAMONOV (Union of Soviet Socialist Republics) thanked the representative of the Holy See for his able introduction of the proposed new Article 30. While the text seemed to him well balanced, it could perhaps be improved to meet the points made by the United States representative. He would like to see such an article in draft Protocol II.
15. Mr. MARRIOTT (Canada) said that it was well known that his delegation wanted a short Protocol II containing nothing which did not contribute to the purpose which it was designed to serve.
16. The English text set out in document CDDH/II/441 said no more in seventy-eight words than the ICRC text said in twenty-four.
17. Mr. HEER (German Democratic Republic) said that his delegation supported the inclusion in draft Protocol II of a text along the lines proposed by the ad hoc Working Group. In the interest of the survival of the civilian population, such a provision was useful.
18. Mr. GONSALVES (Netherlands) said that he could support the text proposed by the ad hoc Working Group. In his view, it was in the interest of the civilian population to improve their situation, and every activity which tended to alleviate the suffering of the civilian population should be permitted. That was the purpose of the proposed article. It was true, however, that the text could be improved.
19. Miss MINOGUE (Australia), speaking as a member of the ad hoc Working Group, said that without some provision on civil defence there would be a gap in draft Protocol II. The essential object of the proposed provision was to ensure the sheer survival of the civilian population. Nothing in the discussion had changed her view that such a provision was needed.
20. The Working Group had been aware that the main objection voiced to the inclusion of such a provision was lack of time. If the Committee felt that there was no need for the provision, that should be reflected in a vote. She felt sure, however, that the ad hoc Working Group would be willing to try to improve the text it had submitted if the Committee so desired.

21. Mr. HEREDIA (Cuba) pointed out that the fact that civil defence personnel was armed was irrelevant; it would not in any case prevent rebels from taking action. The point at issue was whether the civil defence service should be permitted to continue its work in a non-international conflict. The scope of the proposed article was humanitarian; it had nothing to do with the territory controlled by one Party or another, or whether one of those parties was in rebellion. There was no point in deleting the article; the problem would not then disappear. Moreover, it was precisely because the situation was not governed by international law that a suitable provision was needed in draft Protocol II.

22. Mr. MARTIN (Switzerland) supported the proposed text of Article 30. Interpretations with respect to the various Parties would be an internal problem, and in any case the text stated that civil defence organizations should be permitted to pursue their activities "subject to temporary and exceptional measures imposed for reasons of security ...". If there was any possibility of civil defence organizations being able to carry out their work, they must be protected.

23. If the Committee voted in favour of the principle of including an article on civil defence in draft Protocol II, the ad hoc Working Group would be prepared to revise the text.

24. Mr. JOSEPHI (Federal Republic of Germany) said that while he sympathized with the idea behind the article, he thought that the debate had shown that it would be hard to protect civil defence organizations within the framework of Protocol II. It was not just a question of lack of time; there were difficulties of substance. His delegation would prefer draft Protocol II to include no article on civil defence.

25. Mr. JAKOVLJEVIĆ (Yugoslavia) thought that, although the text in document CDDH/II/441 provided a good basis, it was not entirely satisfactory; however, he would be prepared to vote for it if some of its defects could be overcome.

26. For Article 30 to cover both civilian and military civil defence organizations and to make mention of territory would only complicate matters. He therefore proposed two amendments: to include the word "civilian" before "civil defence organizations" and to delete the words "in the territory of the Party to the conflict" and "in that territory". The text would then read: "Subject to temporary and exceptional measures imposed for reasons of security by the Party to the conflict, civilian civil defence organizations existing or created during the conflict ...".

27. Mr. KLEIN (Holy See) assured those who felt that the proposed article opened the way to a breach of State sovereignty that the aim was purely to safeguard the civilian population. The work of

civil defence organizations might well smooth the path to reconciliation between the Parties to an internal conflict. Those who feared that such an article would provide incidental help to rebels would be denying any hope to the civilian population.

28. Mr. SOLF (United States of America) said that it was in order to limit the damage already done to the humanitarian cause in draft Protocol II that his delegation was in favour of deleting Article 30.

29. Article 1 of draft Protocol II in effect limited its application to highly organized civil wars, thus providing a high threshold of application. Every piece of unnecessary material added to the Protocol raised that threshold. The Protocol already contained ample humanitarian provisions for the protection of the civilian population; to include more would only give a legitimate Government more opportunity for arguing, with some justification, that the opposing side could not implement it.

30. If a provision on civil defence were to be included there was nothing wrong with the ICRC text with the inclusion of the word "civilian" as proposed by the Yugoslav representative. He agreed that Article 31 should be deleted.

31. He stressed that it was in the interests of humanitarian law that his delegation opposed any reference to civil defence in draft Protocol II, and not merely for lack of time.

32. Mr. NORDHAUG (Norway) said that his delegation, although sceptical about the possibility of including a provision on civil defence in draft Protocol II, was willing to support such an article if it was the desire of the majority and if such an article increased the possibility of protecting the civilian population.

33. The text proposed in document CDDH/II/441, however, was unsatisfactory and he preferred the ICRC draft. He proposed, nevertheless, that the draft should be returned to the ad hoc Working Group for improvement in the light of the Committee's discussion.

34. Mr. SCHULTZ (Denmark) said that the arguments of the United States representative had not convinced him. The Committee must indeed beware of including too many complicated provisions in draft Protocol II in order not to affect the threshold set out in Article 1, but he considered it unlikely that that threshold would in fact be altered by the inclusion of Article 30.

35. The proposed article provided that civil defence organizations should be permitted to pursue their activities for the purpose of ensuring the conditions necessary for the survival of the civilian population, and that they should not be the object of attack. That in no way altered the conditions set out with respect to non-international conflicts in Article 1.

36. Since draft Protocol II already numbered some forty-five articles, he did not see how the inclusion of one more would complicate it so greatly. Moreover, it would be a serious mistake not to include an article on civil defence. He therefore proposed that the Committee should reconsider the ICRC text and perhaps take a vote on the principle of including an article on civil defence in draft Protocol II. Moreover, it might be useful to include a provision that civil defence activities should not be punishable. Definitions, however, should not be provided. He still considered that a reference to the use of the distinctive sign should be included but he would not press that point.

37. Mr. MAKIN (United Kingdom) said that he entirely agreed with the points made by the United States representative and wished to associate his delegation with everything that representative had said. A further point was the danger that some countries which might have considered signing draft Protocol II would be deterred by an article on civil defence which seemed to impose too much of a burden, with the result that the Protocol would not be applied and signatures would fail to materialize. The words "shall be permitted to pursue their activities" in the report of the ad hoc Working Group (CDDH/II/441) could be interpreted as preventing diversion or requisition of material. That kind of restriction might be unacceptable to both Government and rebel sides. The rebels, being in a more desperate state at the start of the conflict, would probably ignore it and thus be accused of not respecting the Protocol.

38. In his opinion, the ICRC text was the better one, though it still embodied the problem he had mentioned. If it were decided to revert to the ICRC text, he would suggest the insertion of the word "Unarmed" at the beginning. He could not believe that any State would allow rebels to carry on their task once they had been captured or would regard them as otherwise than hostile.

39. Mr. SKARSTEDT (Sweden) said that, despite some misgivings, his delegation would not oppose the inclusion of a short article on civil defence in draft Protocol II. After listening to all the arguments against the text proposed by the ad hoc Working Group (CDDH/II/441), his delegation supported the idea of reverting to the ICRC text and perhaps improving it.

40. Mr. AL-HASHIM (Kuwait) proposed that Article 30 should be re-drafted on the following lines:

"Civil defence organizations of the official or legal authority on whose territory an armed conflict takes place shall be allowed to carry out their normal duties of assuring the necessary conditions for survival of the civilian population in the territories under the control of the rebel forces. The rebel forces shall respect and guarantee all the necessary means to enable those organizations to carry out their duties."

41. The CHAIRMAN suggested that the Committee should decide whether to vote on the proposals for the deletion of Articles 30 and 31 (CDDH/II/420 and CDDH/II/421) or whether to reconstitute the ad hoc Working Group and request it to prepare a new text possibly based on the ICRC text, excluding the definitions in Article 31, and on the comments made during the discussion. The Working Group would, of course, have to meet at times which would not interfere with the work of the Committee.

42. Miss MINOGUE (Australia) suggested that if the ad hoc Working Group was to be asked to prepare a new draft it should be enlarged to make it more representative. She suggested that a vote should be taken to see if the majority of the Committee wanted an article on civil defence in draft Protocol II.

43. Mr. SOLF (United States of America) supported the Australian representative's proposal for a rapid test vote.

44. Mr. MARRIOTT (Canada) said that at the previous discussion he had suggested voting on Article 30 and obtaining a consensus on Article 31.

45. Mr. HEREDIA (Cuba) said that there seemed no point in voting at the present stage on whether or not to continue working on Article 30. In any case, it was not certain that the vote would be speedy: a roll-call vote might be requested. In his opinion, the Committee should continue discussion of Article 30, whether on the basis of the ad hoc Working Group's text or that of the ICRC, because the majority of speakers had accepted the basic idea. The subject concerned a humanitarian purpose which must be clearly defined. A vote would not help.

46. Mr. UHUMUAVBI (Nigeria) thought it would be unwise to vote at the present juncture. He was in favour of returning Article 30 to the Working Group. The idea underlying the article was a good one, despite the validity of some of the arguments against it; it would be wrong to neglect civilians in internal conflicts.

47. Mr. MARRIOTT (Canada) moved the closure of the debate, in accordance with rule 25 of the rules of procedure (CDDH/2/Rev.3).

48. The CHAIRMAN said that, in the absence of any speakers wishing to oppose the closure, he would put the motion to the vote.

The motion to close the debate was adopted by 27 votes to 2, with 19 abstentions.

49. The CHAIRMAN asked if the Committee wished to vote on the proposals for the deletion of Articles 30 and 31 (CDDH/II/420 and CDDH/II/421). In reply to a question from Mr. MARRIOTT (Canada), he said that he saw no reason why those proposals should not be voted on together. He suggested that it might be wise to postpone the vote until the ninety-fourth meeting, in order to allow a little time for reflection.

50. Mr. MARRIOTT (Canada) thought that there had already been enough time, since both proposals had been circulated on 18 April.

51. Mr. HEREDIA (Cuba) moved the adjournment of the meeting, in accordance with rule 26 of the rules of procedure.

52. The CHAIRMAN pointed out that under rule 26 of the rules of procedure the motion had to be put to the vote without debate.

The motion to adjourn the meeting was adopted by 27 votes to 2, with 18 abstentions.

The meeting rose at 8.10 p.m.

SUMMARY RECORD OF THE NINETY-FOURTH MEETING

held on Thursday, 12 May 1977, at 10.15 a.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol II

Report of Working Group B on Articles 33 and 34 - Relief
(CDDH/II/440 and Add.1)

1. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of Working Group B, said that the report contained only two articles - Articles 33 and 34 - because it had been decided that Article 35 should be incorporated in Article 33 as paragraph 1. He drew attention to Comment 3, which defined "victims of the conflict". In Article 33, paragraph 4 (b) had been left in square brackets because at least two delegations had objected to its inclusion.
2. The CHAIRMAN suggested that the Committee should consider the articles paragraph by paragraph.

It was so agreed.

Article 33 - Relief societies and relief actions

Paragraph 1

3. Mr. WARRAS (Finland) pointed out that, of the two alternative wordings in square brackets - "humanitarian principles" and "the fundamental principles of the Red Cross as formulated by the International Red Cross Conferences" - the latter was more in accord with Article 70 bis of draft Protocol I and with Article 63 of the fourth Geneva Convention of 1949. Although his delegation had supported the first alternative in the Working Group, it now felt that the text was open to misinterpretation and that the second alternative was better. He accordingly proposed that the second alternative should be adopted.
4. Mr. MARRIOTT (Canada) agreed that the first alternative was too vague, especially in regard to the principle of neutrality, which was, on the other hand, closely defined in the fundamental principles of the International Conferences of the Red Cross. Nevertheless, for stylistic reasons, it might be advisable to delete the words "as formulated by the Red Cross Conferences".
5. Miss SHEIKH FADLI (Syrian Arab Republic), Mr. SOLF (United States of America) and Mrs. MANTZOULINOS (Greece) supported the Finnish representative's proposal.

Paragraph 1, with the second alternative wording, was adopted by consensus.

Paragraph 2

Paragraph 2 was adopted by consensus.

Paragraph 3

6. Mr. HARSANA (Indonesia) suggested that the initial capitals of the words "Parties" and "Party" should be replaced by lower-case letters.

7. The CHAIRMAN replied that the matter would be considered by the Drafting Committee of the Conference in the light of the practice already adopted in the case of the other articles of draft Protocol II.

8. Mr. LUKABU-K'HABOUJI (Zaire) inquired whether the obligation to facilitate passage also applied to the adverse Party.

9. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of Working Group B, replied that in his view it was a general obligation, which was defined in greater detail in paragraph 4, although certain restrictions were laid down subsequently.

Paragraph 3 was adopted by consensus.

Paragraph 4

10. Mr. UHUMUAVBI (Nigeria) said that in the Working Group his delegation had been unable to agree to the inclusion of paragraph 4 (b) and had called for its deletion. However, in a spirit of co-operation, it now proposed that the sub-paragraph should be replaced by the following text: "May make such permission conditional on the assurance that such relief consignments will be used for the purpose for which they are intended."

11. Mr. SANDOZ (International Committee of the Red Cross) said that the ICRC attached great importance to the articles on relief in draft Protocol II and hoped that a consensus would be reached. The Nigerian proposal seemed satisfactory. While not granting the party authorizing the relief the right to demand supervision by an impartial humanitarian body, it would provide an assurance that relief would be properly distributed, and would avoid a situation in which a High Contracting Party allowing passage could be accused of committing an unfriendly act against the party adverse to the recipients of the relief. It was important that the provision should be flexible.

12. Mr. DOUMBIA (Mali) said that he could not agree to the text in square brackets and was not satisfied with the Nigerian proposal. He proposed that paragraph 4 (b) should be deleted.

13. Mr. MARRIOTT (Canada) welcomed the Nigerian representative's proposal but considered that greater precision was required. "Consent", the word used in paragraph 2, would be preferable to "permission". He proposed that the Nigerian amendment should be sub-amended to read "May make it a condition of their consent that satisfactory assurances are given by the party or parties concerned that such relief consignments will be used for the purpose for which they are intended."

14. Mr. UHUMUAVBI (Nigeria) said that the Canadian representative's sub-amendment was not acceptable to his delegation. It was inadvisable that the transit State should determine the arrangements to be made, perhaps to the detriment of the sending or recipient parties. Serious difficulties would arise if the transit State was either unfriendly to the dissident group or acting in collaboration with it. It would be better if the party sending the relief could arrange for its distribution directly with the recipients, without involving the transit State, which would merely be responsible for receiving and forwarding consignments, examining them if necessary.

15. Mr. BOTHE (Federal Republic of Germany) said that his delegation had always attached great importance to the articles on relief, especially in draft Protocol II. Although there might be problems in implementing the Nigerian text, it had the advantage of flexibility, and his delegation would like to support it. While sharing the Canadian representative's desire for precision, he had a few misgivings regarding certain aspects of the Canadian sub-amendment. It was true that the word used in paragraph 2 was "consent", but paragraph 4 (b) dealt with transit States, which might or might not be the same as those referred to in paragraph 2. It would be better to keep the Nigerian text as it stood, in order to secure flexibility. The Nigerian representative might be willing to agree to the inclusion of the word "satisfactory" before the word "assurance".

16. Mr. UHUMUAVBI (Nigeria) said that he could agree to the insertion of the word "satisfactory", but that he would prefer to keep the word "permission" rather than "consent".

17. Mr. MARTIN (Switzerland) said that he would welcome further explanation by the ICRC representative on the possibility of providing for supervision by an impartial humanitarian body acting independently from any of the parties concerned. His delegation assumed that such supervision would be essential and did not fully understand why no reference was made to it in the Nigerian proposal.

18. Mr. SANDOZ (International Committee of the Red Cross) observed that some delegations had been unable to accept the somewhat rigid provision concerning supervision by an impartial humanitarian body which appeared in the ICRC draft. That was why the Nigerian representative had proposed a more flexible provision, which the ICRC could support and which would enable the necessary assurances to be obtained in a number of different ways.
19. Mr. LUKABU-K'HABOUJI (Zaire) drew attention to the disadvantages suffered by certain countries, such as landlocked ones, because of their geographical situation and to the problems that might arise if the transit State was unfriendly to the State in which the armed conflict was taking place. Paragraph 4 (a) of Article 33 made sufficient provision for the passage of relief consignments and he therefore supported the view that paragraph 4 (b) should be deleted.
20. Mr. KHAIRAT (Egypt) said that although he had, in principle, been prepared to give favourable consideration to the Nigerian proposal, particularly in the light of the statements by the ICRC representative, he thought that the position of countries in unfavourable geographical situations should be taken into account. Both for that reason and because the passage of relief consignments was adequately provided for in paragraphs 4 (a) and (c), he favoured the deletion of sub-paragraph (b).
21. Miss MINOGUE (Australia) agreed with the comments by the representative of the Federal Republic of Germany. The relief provisions of draft Protocol II were important, but the necessary steps must be taken to ensure that they could not in any way be invoked to justify outside interference in a non-international armed conflict. The provision in paragraph 4 (b) would give the transit country the assurance that the passage of relief consignments through its territory could not possibly be interpreted to mean that it was taking sides in the conflict. Her delegation could therefore support the Nigerian proposal, on condition that the word "satisfactory" was inserted, as suggested by the Canadian representative.
22. Mr. BOTHE (Federal Republic of Germany) said that it was essential for the State allowing transit to have some assurance that the consignment would not provide military assistance to one of the Parties to the conflict, but neither paragraph 4 (a) nor paragraph 4 (c) would enable that requirement to be met.
23. With regard to the changes suggested by the Canadian representative, he observed that the "consent" to which reference was made in paragraph 2 was a general condition for the undertaking of relief actions, whereas paragraph 4 (b) was concerned with the specific case of transit of relief consignments. His

delegation therefore preferred the word "permission". It also had some doubt as to the appropriateness of the word "their" in the context of paragraph 4. Those difficulties would not arise if the text proposed by the Nigerian representative was adopted with the addition of the word "satisfactory".

24. Mr. DEVARE (India) said that the guarantees provided under paragraphs 4 (a) and (c) were adequate and that the deletion of paragraph 4 (b) would meet the wishes of his delegation.

25. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that Article 33 was intended to facilitate the provision of assistance to the civilian population when their survival was threatened. In paragraph 4 (b), his delegation had a strong preference for the text between square brackets in the report of Working Group B (CDDH/II/440 and Add.1), because it would safeguard the rights and sovereignty of the party receiving relief and protect the transit State from unjust accusations of interference in the conflict. Any compromise solution which might expose a disinterested party to such accusations would be bound to have adverse effects on the actual undertaking of relief actions for the benefit of the civilian population. In order to enable consensus to be reached, however, his delegation could accept the alternative text proposed by the Nigerian representative, with the addition of the word "satisfactory".

26. The CHAIRMAN said that if he heard no objection he would take it that the Committee agreed to close the list of speakers on Article 33, paragraph 4.

It was so agreed.

27. Mr. MARRIOTT (Canada) said that since the Nigerian representative had accepted the insertion of the word "satisfactory" before the word "assurance" in his proposed text, he would withdraw the other drafting amendments he had suggested and support that text.

28. Mr. UHUMUAVBI (Nigeria) said that those in favour of the distribution of relief supplies by an impartial humanitarian body were failing to take all the relevant factors into account. It was unreasonable to argue that relief could be distributed by people who were complete strangers in the country and had no knowledge of the priorities and needs of the population. Furthermore, impartiality might not always be maintained, since each party would certainly try to gain the support and sympathy of the body concerned. Should his proposal not be accepted, therefore, he would propose the deletion of paragraph 4 (b) as a whole.

29. Mr. CZANK (Hungary) said that the question of distribution of relief supplies could be of interest to the donor party but presumably not to the transit party with which paragraph 4 (b) was concerned. From that particular point of view, the text between

square brackets in the Working Group's report, although it had its merits, was not fully satisfactory. The compromise solution proposed by the Nigerian representative should enable consensus to be reached on the matter, but might entail some minor consequential amendments to paragraph 4 (c).

30. Mr. MARTIN (Switzerland) observed that the assurance to be obtained related to the distribution of the relief supplies and could therefore best be provided by an impartial humanitarian body. In order to enable a consensus to be reached, he could accept the Nigerian proposal with the addition of the word "satisfactory", but his acceptance was based on the understanding that no assurance could be satisfactory in the absence of some form of supervision.

31. Mr. SOLF (United States of America) said that the main aim must be to ensure that relief supplies reached those members of the civilian population who were in need of them. His delegation shared the view that the text between square brackets in the Working Group's report would best enable that requirement to be met. It was a mistake to assume that the transit party would always be a disinterested State; in some cases, it might be the adverse Party to the conflict, and that Party would never consent to the passage of relief consignments unless it could be absolutely certain that the supplies reached the categories of persons enjoying priority under the provisions of Protocol I.

32. With regard to the comments by the representative of Nigeria, he observed that the donor party would be most unlikely to send people to the country concerned, but would probably request a humanitarian body or diplomatic mission already present there to distribute the relief. He interpreted the Nigerian proposal as reflecting that idea and accordingly, in the interests of reaching a consensus, could support it with the addition of the word "satisfactory".

33. Mr. MAKIN (United Kingdom) considered that the word "such" should be deleted from the Nigerian proposal and that the expression "the satisfactory assurance" should be replaced by the expression "satisfactory assurances". With those minor drafting amendments, he could support the text.

34. Mr. WARRAS (Finland), supported by Mr. HØSTMARK (Norway), considered that the most satisfactory text was that which appeared in the Working Group's report. In order to co-operate, however, he was prepared to agree to the text proposed by the Nigerian representative, with the addition of the word "satisfactory".

35. Mr. ENDEZOU MOU (United Republic of Cameroon) considered, on the strength of the explanations given by the representatives of the United States of America and Hungary, that the Nigerian proposal could be accepted on condition that the French text would be polished by the Drafting Committee. Since the permission to

be granted might in some cases be permission by one Party to the conflict to allow the passage of relief supplies destined to the adverse Party the assurance asked for would then become necessary. But such assurance could not be regarded as a certitude since it could only be verified later. Furthermore, he shared the view that some consequential amendment of paragraph 4 (c) might be required if the Nigerian proposal was adopted.

36. Mrs. CONTRERAS (Guatemala) supported the Nigerian proposal with the addition suggested by the Canadian representative. She would, however, have welcomed the addition, at the end of the sentence, of a phrase such as "and that such distribution will be made under the supervision of an impartial humanitarian body approved by the receiving party".

37. Mr. DOUMBIA (Mali) said that he failed to see why transit countries should have any share in the distribution of relief. The explanations given by certain representatives had not convinced him. However, it had been said that an effort should be made to avoid transit countries being accused of interference in a conflict. If it was a case of avoiding such an accusation, one solution might be to revert to the original ICRC text which referred to control "at the time of passage" by an "impartial humanitarian body".

38. Mr. HARSANA (Indonesia) said that his delegation was prepared to support the Nigerian proposal. If it were not adopted, he would be in favour of the deletion of paragraph 4 (b).

39. The CHAIRMAN reminded the meeting that if the matter were put to the vote, rule 40 of the rules of procedure would apply: namely, that when two or more amendments were moved to a proposal, the Conference should first vote on the amendment furthest removed in substance from the original proposal. In the present case, therefore, the order would be: first, the proposal to delete paragraph 4 (b), secondly, the Nigerian amendment, and thirdly, the text in square brackets.

40. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that he was in favour of a vote on the Nigerian proposal, as sub-amended by the representative of Canada.

41. The CHAIRMAN said that as it was traditional practice in the Committee to avoid votes as far as possible and proceed by consensus, he would like to know first if a consensus existed on the Nigerian amendment.

42. After a show of hands, he noted that six delegations had indicated their opposition to consensus on that amendment.

43. Mr. JOMARD (Iraq) said that in the particular case, his delegation was not in favour of adoption by consensus and requested that the proposal to delete paragraph 4 (b) should be put to the vote.

44. The CHAIRMAN put to the vote the proposal to delete paragraph 4 (b).

The proposal was rejected by 31 votes to 19, with 11 abstentions.

45. The CHAIRMAN said that the Committee should now consider the Nigerian amendment to paragraph 4 (b), with the insertion of the word "satisfactory" before "assurance", as proposed by the representative of Canada. It would be understood that stylistic improvements such as those suggested by the representative of the United Kingdom would be dealt with in the Drafting Committee.

46. Mr. UHUMUAVBI (Nigeria) said that his delegation had originally been in favour of the deletion of paragraph 4 (b). It was only because the Committee had been working on the basis of consensus that his delegation had proposed an alternative version.

47. Mr. SOLF (United States of America) said that as the possibility of deleting the paragraph had been eliminated, it might now be possible to reach a consensus on the Nigerian proposal.

48. The CHAIRMAN asked whether in view of the rejection of the proposal to delete paragraph 4 (b), it would now be possible to adopt the Nigerian proposal by consensus.

49. After a show of hands, he noted that two delegations had indicated their opposition to adoption of the amendment by consensus. He therefore put to the vote the Nigerian amendment to paragraph 4 (b), with the inclusion of the word "satisfactory", as proposed by the representative of Canada.

The amendment to paragraph 4 (b) proposed by the representative of Nigeria, as sub-amended by the representative of Canada, was adopted by 47 votes to 2, with 12 abstentions.

Explanations of vote

50. Mr. JOMARD (Iraq), explaining his vote, said firstly, that one of the problems in the distribution of relief in times of armed conflict was that the nature of the terrain might often make it impossible to ascertain whether relief consignments reached their destination or not. Whatever conditions were laid down in that respect, they could only have relative force, since they would be impossible to fulfil.

51. Secondly, it would be impossible for a legitimate Government to tolerate any form of acceptance or rejection of relief by a rebellious party, since to do so would amount to recognition of the sovereignty of such a group over the areas which it controlled.

52. His delegation had therefore been in favour of deleting paragraph 4 (b).

53. Mr. LUKABU-K'HABOUJI (Zaire) said that from the start his delegation had opposed paragraph 4 (b) in any form, since it would be unthinkable that relief to the civilian population coming from a third country should be subjected to special conditions by a transit country. The provision in fact weakened existing arrangements between landlocked and coastal countries. It would therefore have been correct to delete the sub-paragraph.

54. Mr. KO (Republic of Korea) said that his delegation had voted in favour of the deletion of paragraph 4 (b) as it stood in the Working Group's report (CDDH/II/440 and Add.1) and had abstained in the vote on the Nigerian proposal. Even after having heard the discussion, his delegation still considered that paragraph 4 (b) might introduce an element of outside intervention to the detriment of internal security and order and of the sovereignty of States. His delegation also had certain reservations about the practicability of applying such provisions in time of internal conflict - reservations which applied to the paragraph as a whole.

55. The CHAIRMAN asked whether the Committee would be prepared to adopt paragraph 4 as a whole by consensus.

56. Mr. JOMARD (Iraq) said that as his delegation had voted to delete paragraph 4 (b), it could not agree to the adoption of paragraph 4 as a whole by consensus. It would be preferable to take a vote.

57. Mr. ALBA (France) requested that the wording of paragraph 4 (a) should be brought into line with that of paragraph 3 (a) of Article 62 of draft Protocol I, since paragraph 4 (a) corresponded exactly to that article, which had already been reviewed by the Drafting Committee.

58. The CHAIRMAN said that would be done.

59. The CHAIRMAN asked the representative of Hungary if he wished to put forward the consequential amendments to paragraph 4 (c) which he had mentioned in connexion with paragraph 4 (b).

60. Mr. CZANK (Hungary) said that he did not wish to put forward the amendments as they were matters of drafting, not of substance.

61. The CHAIRMAN asked if the Committee was willing to adopt the introductory phrase of paragraph 4 and sub-paragraphs (a) and (c) by consensus.

The introductory phrase of paragraph 4 was adopted by consensus.

Paragraph 4 (a) was adopted by consensus.

Paragraph 4 (c) was adopted by consensus.

62. Mr. JOMARD (Iraq) said that his delegation had not insisted on a vote on each sub-paragraph, but reserved the right to make reservations later.

Paragraph 4 as a whole, as amended, was adopted.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE NINETY-FIFTH MEETING

held on Thursday, 12 May 1977, at 3.10 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol II

Report of Working Group B on Articles 33 and 34 - Relief
(CDDH/II/440 and Add.1) (concluded)

Article 33 - Relief societies and relief actions

1. The CHAIRMAN invited the Committee to continue its consideration of Article 33 of draft Protocol II.

Paragraph 5

2. Mr. OSORIO (Colombia) proposed that a provision should be added to paragraph 5 to the effect that no Party to the conflict or High Contracting Party should in any way change the destination of relief consignments or impede their transit unless unforeseen interference occurred as a result of combat activities, and, in such cases, only for the duration of those activities.

3. The CHAIRMAN said that as paragraph 5 dealt with medical personnel and units he considered that any such addition, if accepted, would have to form a new paragraph. For the time being he asked members of the Committee to leave aside the Colombian amendment and confine their remarks to the text of paragraph 5 in document CDDH/II/440 and Add.1.

4. Mr. UHUMUAVBI (Nigeria) said that, while welcoming the inclusion of paragraph 5, he hoped that an amendment to it might be acceptable in view of the compromise reached on paragraph 3 (b). He proposed replacing the last sentence by: "The party in whose territory such medical personnel and units are operating shall reserve the right to terminate their mission".

5. Mr. MAKIN (United Kingdom) said that he was pleased to see a provision relating to medical personnel and units in draft Protocol II, as his delegation had in fact suggested it. He was doubtful, however, about the words "If necessary" at the beginning of the paragraph, for it was not clear who was to decide whether such personnel and units were necessary or not. Those two words had at first been used at the beginning of Article 34, but they had now been omitted from that article. He therefore proposed they should be deleted from paragraph 5 of Article 33.

6. Mr. UHUMUAVBI (Nigeria) said that the significance of the words "If necessary" was that they left it open to a Government or Party to a conflict to decide not to receive medical personnel and help.

7. Mr. WARRAS (Finland) said he thought the point might be better covered by deleting the words "If necessary" and starting the paragraph as follows: "Medical personnel and medical units may, when required, take part ...".

8. Mr. MAKIN (United Kingdom) agreed.

The Finnish amendment was adopted.

9. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that paragraph 5 already provided for the possibility of stopping the activities of medical personnel and units, either because they did not observe the terms of their mission or because they endangered the security of the party in whose territory they were acting. The provision was thus a warning to medical staff not to go beyond the terms of the agreement. The Nigerian amendment seemed to provide for the right of a party to stop the activities of medical personnel at any time it wished, but that was implicit in its right to prescribe the conditions governing those activities. His delegation preferred the text in document CDDH/II/440 and Add.1.

10. Mr. BOTHE (Federal Republic of Germany) said he shared the doubts of the previous speaker. Moreover, he feared that the Nigerian amendment might encroach on State sovereignty. The phrase "shall reserve the right to terminate" appeared to place the party under an obligation when entering into the agreement to retain the right to terminate. But a party which gave its agreement to such relief action had complete freedom to lay down conditions, as the phrase "subject to the conditions and technical arrangements prescribed by the Party or Parties" already indicated. If the Nigerian amendment would restrict that freedom, by imposing a specific contractual clause, it was unacceptable to his delegation. If, on the other hand, the purpose of the amendment was not to place an obligation on a Party to make such a reservation, but merely to give it the freedom to do so, such freedom was already stated in the paragraph. The conditions and technical arrangements could include many things, but one case where termination was possible, even if not specifically provided for in the conditions, was if the personnel exceeded its mission or if security requirements were not complied with.

11. Mr. MARRIOTT (Canada) agreed with the comments made by the representatives of the Union of Soviet Socialist Republics and the Federal Republic of Germany. Paragraph 5 of the text before the Committee allowed the party or parties to impose conditions in certain circumstances, but the Nigerian amendment was so worded that it would be possible to terminate the mission capriciously. In addition, it would permit the party receiving the relief to impose greater restrictions than those allowed under Article 62 bis of draft Protocol I.

12. In the Working Group, the Nigerian representative had emphasized the need for medical help, but he personally felt that medical help would be unlikely to be offered if the Nigerian amendment was adopted. It would therefore be detrimental to parties seeking relief.

13. Mr. UHUMUAVBI (Nigeria) appealed to the Committee to bear in mind the need for stability of government in the developing countries. His amendment was designed to strengthen the position of the Government of a developing country faced with an internal conflict. If such a Government did not exercise great care in admitting medical units and personnel, it might find itself in the same situation as Nigeria at the time of its civil war, when combatant officers had been found masquerading as medical personnel. If States, out of pity for the civilian population, welcomed medical units and then discovered that they included combatant personnel, they must have the right to terminate their mission.

14. The CHAIRMAN observed that the example provided by the Nigerian representative would be a case of failure to respect the conditions of the agreement and would amount to perfidy.

15. Mr. MAKIN (United Kingdom), referring to the phrase "party in whose territory such medical personnel and units are operating" in the Nigerian amendment, said that the territory in question would de jure belong to the State. The amendment reserved the State's right to terminate the mission, but if the party was a rebel one, the State might de facto have no power to do so. He suggested that the Nigerian representative's intention might perhaps be better expressed by saying "the party controlling the territory in which ...".

16. Mr. MARRIOTT (Canada) considered that the interests of developing countries such as Nigeria would be best protected by the wording in the text before the Committee, which would also be more likely to produce offers of relief than would the proposed amendment.

17. Miss MINOGUE (Australia) agreed with the Canadian representative. The Nigerian representative had already raised the type of situation he was concerned about in the Working Group, and the Group had drafted a provision which would provide against that eventuality. The text before the Committee took care of the situation without introducing prejudicial elements such as those noted by the representative of the Federal Republic of Germany, which might form a barrier to a possible agreement and thereby militate against the provision of medical relief. The needs of the developing countries would be better protected by the text before the Committee than by the Nigerian amendment.

18. Mr. BOTHE (Federal Republic of Germany), supporting the views expressed by the representatives of Canada and Australia, appealed to the Nigerian representative not to press his amendment.

19. Mr. UHUMUAVBI (Nigeria) said that the developing countries had already agreed to many compromises. The participants in the Conference were endeavouring to draw up a code which was designed inter alia to help developing countries to preserve their stability. Paragraph 5 as it stood would not do so. He therefore wished to maintain his amendment.

20. The CHAIRMAN asked the Nigerian representative if he could agree to the United Kingdom proposal to use the phrase "the party controlling the territory in which ...".

21. Mr. UHUMUAVBI (Nigeria) said that he could not. The party controlling the territory might be a band of rebels. The party concerned would be the official Government of the country, which should be given every support in its endeavours to control rebel activities.

22. Mr. BOTHE (Federal Republic of Germany) asked the Nigerian representative if he could agree to replace the word "reserve" by the word "have".

23. Mr. UHUMUAVBI (Nigeria) replied that he could not.

24. Mr. JOMARD (Iraq), supported by Mr. HEREDIA (Cuba), asked whether the text of the Nigerian proposal could be circulated in writing in all the working languages.

25. The CHAIRMAN said that, in his opinion, it would be preferable, in view of the lack of time, for the Drafting Committee to bring the other language versions into line with either the English or the French version of the Nigerian proposal, if it was adopted.

26. Mr. MAKIN (United Kingdom) said that if a vote were taken on the Nigerian proposal, he would have difficulty in deciding which way to vote, since he agreed with both points of view. On the one hand, the proposal would tend to discourage those who wished to bring relief, while, on the other, every State was clearly entitled to terminate the mission of any person or persons operating in a territory where it had control. Normally, a State would do so only in cases of misbehaviour or inefficiency, or if the persons concerned were no longer required. Both those eventualities were provided for in the Working Group's proposal (CDDH/II/440 and Add.1). Possibly, therefore, the Nigerian representative might be content if his proposal were simply noted in the report.

27. Mr. UHUMUAVBI (Nigeria) said that he felt unable to yield any ground, since his proposed form of wording was designed to further international understanding, co-operation and brotherhood and, in his view, would be most likely to promote the well-being of all peoples.

28. Mr. SCHULTZ (Denmark) said that, while his delegation considered that the Working Group's text also covered the position, it had been convinced by the Nigerian representative's arguments, particularly as they related to the developing countries. In any event, the Nigerian proposal did not differ greatly from the Working Group's text, and he therefore appealed to the Committee to adopt it by consensus.

29. Mr. EL HASSEEN EL HASSAN (Sudan) asked whether the Nigerian representative could agree to amend his proposal by replacing the mandatory word "shall" by "may". The former was unnecessary since every State was entitled to terminate the missions of medical personnel and units as and when it saw fit.

30. The CHAIRMAN suggested that the Committee should suspend its proceedings so that the representatives of Denmark, Nigeria and the United Kingdom could meet with a view to arriving at a compromise.

The meeting was suspended at 4.15 p.m. and resumed at 4.35 p.m.

31. Mr. UHUMUAVBI (Nigeria) said that, in the interests of reaching a consensus, his delegation was prepared to accept the suggestion by the representative of Sudan.

32. The CHAIRMAN, noting that there were no further comments, then put to the vote the Nigerian amendments, as sub-amended by the representative of Sudan.

The Nigerian amendment, as sub-amended, was adopted by 35 votes to none with 20 abstentions.

33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), speaking in explanation of vote, said that his delegation had voted in favour of the Nigerian amendment to give positive expression to its desire to assist the developing countries. In so doing, however, it had voted in favour of a text which it considered to be less satisfactory than the original.

34. The CHAIRMAN invited the Committee to adopt by consensus the remainder of paragraph 5, as earlier amended by Finland.

It was so agreed.

35. The CHAIRMAN reminded the Committee that the Colombian representative had earlier proposed the addition of a new text, which would become paragraph 6 of Article 33. He understood that in the view of the French representative, however, the matter was already covered by paragraph 4 (c).

36. Mr. BOTHE (Federal Republic of Germany), speaking on a point of order, said that a discussion on the Colombian proposal should be ruled out of order under rule 29 of the rules of procedure, which provided that, in general, no proposal should be discussed or put to the vote unless copies of it had been circulated to all delegations not later than the day preceding the meeting.

37. Mr. OSORIO (Colombia) said that his delegation's proposal had in fact been submitted in writing that morning, although in Spanish only. While he agreed that there was a close connexion between the first part of the proposal and paragraph 4 of Article 33, he considered that the second part of the proposal was not covered at any point in the article. For that reason, he wished to submit the proposal for the Committee's consideration.

38. The CHAIRMAN said that, had time permitted, he would have exercised his discretion under rule 29 of the rules of procedure and permitted discussion of the Colombian proposal. In view of the Committee's heavy workload, however, and since all delegations had had an opportunity to submit amendments in good time, he regretted that he would have to disallow any further discussion of the proposal. The Colombian representative could, however, raise the matter at a plenary meeting, if he so wished.

Paragraph 1

39. Miss SHEIKH FADLI (Syrian Arab Republic), referring to paragraph 1 of Article 33 (CDDH/II/440 and Add.1), suggested the deletion of the brackets in the second and third lines and the insertion of a comma after the words "Red Cross" in the second line. The retention of the brackets might imply subordination, whereas the three Societies referred to in fact enjoyed equal status.

40. The CHAIRMAN said that the point would be referred to the Drafting Committee.

41. Mr. KLEIN (Holy See) noted that, under paragraph 1, relief societies were enjoined to abide by the fundamental principles of the Red Cross. Since neither the relief societies concerned nor the Parties to the conflict might be acquainted with those principles, he would propose that a foot-note should be added listing the main principles - namely, humanity, impartiality, neutrality, independence, charitable character and unity - but omitting universality, which, in his opinion, did not apply in the case of a relief society established on national territory.

42. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of Working Group B, suggested that a reference to those principles could perhaps be included in the Rapporteur's report.

43. Mr. MARRIOTT (Canada) said that, in his view, the Committee would be ill-advised to follow such a course. The fundamental principles of the Red Cross as laid down in the International Red Cross Handbook were accompanied by a note regarding the interpretation given them by the Red Cross. Unless that note were also included, which would make the report unduly long, the report might be subject to misinterpretation.

44. Mr. MAKIN (United Kingdom), agreeing with the previous speaker, said that it was not the Committee's task to acquaint others with the fundamental principles of the Red Cross. The organizations concerned would in any event know what those principles were. He therefore saw no need for the inclusion of such a foot-note and considered that paragraph 1 should stand as drafted.

45. Mr. KLEIN (Holy See) pointed out that not just the Red Cross but also other relief societies were concerned, and that those societies might not be familiar with the principles of the Red Cross. In the circumstances, however, he would not press his proposal.

46. Mr. HØSTMARK (Norway) said that, before Article 33 was finally adopted, he wished to withdraw the amendment submitted by his delegation (CDDH/II/77).

Article 33, as amended, was adopted by consensus.

Article 34 - Recording and information (concluded)

47. Mr. SANCHEZ DEL RIO (Spain), Rapporteur of Working Group B, said that the text of Article 34 proposed by Working Group B (CDDH/II/440 and Add.1, p. 2) was based on the original ICRC draft. Paragraph 1 had been slightly amended to provide that the organization of information bureaux by each Party to the conflict should not be compulsory, as under the ICRC draft, but, to a certain extent, optional. Paragraph 2 had been redrafted to make it quite clear what the duties of information bureaux were; they were itemized in sub-paragraphs (a), (b) and (c). The Committee would note that the interpretation to be given to the term "victims of the conflict" was explained in paragraph 3 of the comments by the Rapporteur (CDDH/II/440 and Add.1, p. 3).

48. Mr. MAKIN (United Kingdom), referring to the second line of paragraph 1 of Article 34, proposed the deletion of the second comma, to make the meaning clearer.

It was so agreed.

49. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) pointed out that, as a result of the adoption of the United Kingdom amendment, the wording of the Russian text would have to be rearranged.

Article 34, as amended, was adopted by consensus.

Draft Protocol I

Report of Working Group A on Civil Defence (CDDH/II/439/Rev.1/Add.1)

Article 58 - Cessation of protection (concluded)

50. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, introducing the report of the Working Group (CDDH/II/439/Rev.1/Add.1), said that parts of the text proposed by the Group and particularly paragraph 3 - were based on the Nordic amendments (CDDH/II/343 and CDDH/II/406). It had been decided, however, not to adopt paragraph 4 of amendment CDDH/II/406, as its substance was already covered in other parts of draft Protocol I.

51. The Committee itself had already decided that the square brackets round the word "civilian" (paragraphs 1, 3 and 4) would be removed automatically if and when Article 59 bis was adopted.

52. The square brackets round paragraph 3 as a whole were a typing error and should be deleted. Paragraph 3 had been discussed at length in a special Working Group under the chairmanship of the Danish representative. The commentary on the paragraph (CDDH/II/439/Rev.1/Add.1, p. 2) formed an integral part of the whole compromise; it was indispensable to the interpretation of the article. Since it had been adopted by the Working Group sentence by sentence, it constituted an agreed interpretation and as such was a "document related to the treaty" within the meaning of Article 31, para. 2 (b) of the Vienna Convention on the Law of Treaties (1969).

Paragraph 1

Paragraph 1 was adopted by consensus.

Paragraph 2

53. The CHAIRMAN invited the Committee to consider whether the words "or military units" in square brackets in paragraph 2 (b) should be retained or deleted.

54. Mr. HARSANA (Indonesia), supported by Miss SHEIKH FADLI (Syrian Arab Republic), said that his delegation would prefer the retention of those words.

55. Mr. SOLF (United States of America) said that the retention of the words "or military units" would completely modify the intent of the paragraph. There was a vast difference between attaching some military personnel to a civilian unit and attaching a military unit to a civilian organization. The first would not be harmful to the enemy; the second would be highly dangerous.

56. Mr. BOTHE (Federal Republic of Germany) and Mr. KHAIRAT (Egypt) agreed with the United States representative.

57. Mr. SCHULTZ (Denmark) agreed that the words should be deleted. The question of military units was dealt with in Article 59 bis.

58. Mr. MARRIOTT (Canada) said that the object of Article 58, paragraph 2 (b) was to provide an extra degree of protection for civilian units by permitting the co-operation of a few military specialists. The attachment of military units would make it ridiculous to speak of "civilian" civil defence personnel.

59. Mr. RUIZ-PEREZ (Mexico) said that the inclusion of the words would destroy the spirit of Article 58.

60. The CHAIRMAN invited the Committee to vote on the deletion of the words "or military units".

The deletion of the words "or military units" in paragraph 2 (b) of Article 58, was approved by 40 votes to 3, with 17 abstentions.

61. Mr. HARSANA (Indonesia) said that the deletion of the words would put his Government in a very difficult situation. His delegation would have to reserve its position on paragraph 2 (b).

62. Mrs. MANTZOULINOS (Greece) said that she had voted against the deletion of the words because, under Greek law, civilian civil defence units conducted civil defence operations under the protection and supervision of military units armed with light weapons whose members were recruited from reserve military forces also armed with light weapons.

Paragraph 2 was adopted by consensus, the Indonesian representative reserving his Government's position.

Paragraph 3

63. Mr. MAKIN (United Kingdom) said that Working Group A had considered whether it might be possible to give a definition of "light individual weapons" but had decided not to attempt it. His delegation, however, had thought it might be helpful if some sort of rough explanation of that expression could be given. It had accordingly prepared a "negative" text indicating what "light individual weapons" were not, rather than what they were. He had shown it to a number of military experts from other delegations and since their reaction had not been hostile, he ventured to submit it to the Committee. The text read: "The expression 'light individual weapons' excludes grenades and similar devices, as well as weapons which cannot be fully handled and fired by one man, or which are primarily intended for targets other than personnel".

64. Mr. SOLF (United States of America) said that the exclusion of "grenades" in the United Kingdom text was too general. Fragmentation grenades should certainly be excluded, but there were other types of grenades, such as tear-gas grenades or the various non-lethal riot-control grenades used by the police, which should be included in the category of "light individual weapons". He personally would prefer the use of that type of weapon by civil defence personnel.

65. Mr. MAKIN (United Kingdom) said that the United States representative was perfectly right. The word "fragmentation" should be inserted in his text before the word "grenades".

66. Mr. KHAIRAT (Egypt) said that his delegation shared the views of the United Kingdom delegation concerning light individual weapons.

67. Mr. RUIZ-PEREZ (Mexico) said that the United Kingdom text was fully in line with the criteria used to distinguish individual from collective weapons. It was extremely pertinent not only to Article 58 but to a number of other articles in the Protocols and should be included in the Rapporteur's report as well as in the summary records.

68. Mr. COOMSON (Ghana) said that the United Kingdom text was helpful and pertinent. The definition of "light individual weapons" was a difficult matter because it was important not to put civilian civil defence personnel in a position where they were liable, by reason of the arms they were carrying, to arouse the suspicion of the enemy and thus to incite attack.

69. Mrs. MANTZOULINOS (Greece) said that in accordance with her delegation's position, civil defence should be operated by unarmed civilians; only the personnel of military units co-operating with civil defence units should bear light individual weapons.

70. Mr. GONSALVES (Netherlands) said that, as a soldier and a lawyer, he fully agreed with the United Kingdom formulation.

71. Mr. HEER (German Democratic Republic) said that in order to avoid any misunderstanding, his delegation would prefer not to include the United Kingdom representative's explanation on light individual weapons in the Rapporteur's report.

72. Mr. OHM (Republic of Korea) said that his delegation had no difficulty in accepting Article 58, except for paragraph 3 on the carrying of weapons by civil defence personnel. His delegation took the view that if civil defence personnel carried weapons, even if they were only personal small-arms for maintaining order

or for self-defence, their distinction from combatants would become difficult. For that reason and in view of the domestic legislation of the Republic of Korea, which forbade the carrying of arms by civil defence personnel, his delegation would reserve its position on paragraph 3.

73. Mr. SCHULTZ (Denmark) said that paragraph 3 of Article 58 did not impose any obligation to provide weapons to civilian civil defence units. Every country was left entirely free to decide for itself on the matter; there were many countries, including Denmark, in which civil defence units went unarmed. There was therefore no need for him to enter a formal reservation.

74. Mr. NORDHAUG (Norway) said that Norwegian civil defence units were unarmed.

75. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) said that his delegation supported the draft of Article 58 in document CDDH/II/439/Rev.1/Add.1. It also supported the Danish representative: Article 3 was not mandatory, but stated that the arming of civil defence personnel with light individual weapons should not be considered ipso facto harmful to the enemy.

76. He proposed that the word "as" should be inserted after the word "considered" in the first line of the English text in order to bring it into line with the wording of paragraph 2; and that, in the Russian version, the words "as soon as they have been recognized as such" in the last line should be translated in the same way as in Article 27 of draft Protocol I concerning medical aircraft.

The Ukrainian amendments were adopted.

77. Mr. JORDAN (Ireland) said that his delegation had no objection to the employment of military personnel for civil defence operations. Clearly a situation could arise in which the civil defence services were overwhelmed and the employment of troops for rescue work was the obvious course; but such troops should not be armed. A person carrying a weapon must be presumed to be prepared to use it and was consequently not a non-combatant. Civil defence should be clearly understood to be of a non-combatant character. He could not envisage a situation in which military personnel employed on civil defence would stand in direct danger from the enemy; there was therefore no need for them to be armed. If armed military personnel were used for civil defence purposes in an operational zone, there was a danger of their using such civil defence activities as a cloak to conceal an ultimate military purpose. That would bring all civil defence organizations into disrepute.

78. In connexion with the arming of civil defence personnel, there was clearly a diversity of views as to the nature of a civil defence organization. Ireland regarded it as purely civilian and non-combatant, in the same way as the national Red Cross societies. He appreciated that other countries regarded their civil defence organizations as auxiliaries to the military or to the police and, as such, entitled to be armed. Those countries should give serious thought to finding an alternative title to "Civil Defence". It could be argued that all Governments were entitled to organize civil defence services as they saw fit, but the existence of some armed civil defence organizations would create a temptation to treat all civil defence organizations as being armed, which would lead to a difficult situation for those that were not armed. His delegation felt that all Governments should be endeavouring to disarm civilians rather than to arm them.

79. Mr. SOLF (United States of America) said that he regarded the text in document CDDH/II/439/Rev.1/Add.1 as an admirable compromise, especially in the light of the commentary on paragraph 3. It had been recognized in the Working Group that a person armed even with light individual weapons might be mistaken for an enemy combatant if he appeared in an area in which fighting was taking place. On the other hand, approval had already been given in Article 13 of draft Protocol I to the arming of medical personnel, provided that there was no question as to the purpose for which they were armed, which was not for combat, but for "self-defence against marauders or other criminal individuals or groups". They could only use weapons against the adverse party's armed forces if those forces were acting against the orders of their government.

Paragraph 3 was adopted by consensus, the representative of the Republic of Korea reserving his Government's position.

Paragraph 4

80. Mr. EL HASSEEN EL HASSAN (Sudan), supported by Mr. KHAIRAT (Egypt), said that the wording in the first line of paragraph 4 -- "the organization of civilian civil defence organizations" -- was extremely clumsy; he hoped that a better formulation could be found.

81. Mr. ALBA (France) suggested that the French text might be taken as a model.

82. Mr. MAKIN (United Kingdom) said that he and the other English-speaking delegations agreed with the Sudanese representative, but they had been unable to think of any suitable alternative. It was a matter which might be left to the Drafting Committee.

Paragraph 4 was adopted by consensus.

Article 58 as a whole was adopted by consensus, subject to the reservations noted.

The meeting rose at 6 p.m.

SUMMARY RECORD OF THE NINETY-SIXTH MEETING

held on Thursday, 12 May 1977, at 6.40 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Report of Working Group A on Civil Defence (CDDH/II/439/Rev.1/Add.1)
(concluded)

Article 58 - Cessation of protection (concluded)

Explanations of vote

1. Mr. MAKIN (United Kingdom) said that his delegation had joined in the consensus on Article 58 - Cessation of protection, recognising that it represented a compromise between a number of different points of view arrived at after much hard work. He wished, however, to place on record his delegation's misgivings about the humanitarian effect of the principle embodied in the article of giving protection to armed civil defence personnel, whether civil or military, in areas where land fighting was taking place or was likely to take place.
2. The United Kingdom delegation considered that the maintenance of internal order was a matter for the civil police, who might of course be armed for that purpose. Civil defence should be operated by unarmed civilians, and only if that was so could that protection be reasonably effective. It had always been dangerous for civilians in a battle area to be armed. Now that Article 42 of draft Protocol I allowed combatants to distinguish themselves from the civilian population only by carrying their arms openly, it would clearly become even more dangerous.
3. In battle conditions where rapid decisions often had to be made at low levels of military command, the civil defence sign would not be an effective protection for armed men. Many factors such as rain, poor visibility, damaged or dirty signs, as well as ordinary military prudence, would make it unreasonable to expect that a soldier of the adverse party, aware of the terms of Article 42, could take any action other than to attack armed civil defence personnel, with tragic consequences.
4. While in paragraph 3 of Article 58 a serious effort had been made to meet that situation, the paragraph failed to provide sufficient protection either for civil defence personnel against the likelihood of attack or for the combatant of the adverse Party against an unreasonable accusation of a breach, or even a grave breach, of the Protocol.

5. Mr. JOSEPHI (Federal Republic of Germany) said that his delegation had joined the consensus on Article 58 in a spirit of compromise. It was convinced that the performance of civil defence tasks by specially organized and trained personnel was an important contribution to all efforts aimed at the protection of the civilian population.

6. He felt, however, that there was no need to carry arms when the tasks enumerated in Article 54 were being carried out. Under that article, general police functions of maintaining order were not part of the humanitarian tasks which should be specially protected by the provisions of Chapter VI of draft Protocol I. The arms of civil defence personnel were not rifles or pistols but engines and heavy tools. In the light of Articles 41 and 42 adopted by Committee III, his delegation was of the view that in practice soldiers in combat would often not be able to distinguish between protected and non-protected armed personnel and would treat them all as combatants. To allow the carrying of light individual arms would merely reduce the protection of the civilian population and of the civil defence personnel.

7. Mr. THOMSON (Australia) said that his delegation had supported the consensus on the adoption of Article 58 as a whole but wished to place on record its serious concern about the effectiveness of the article.

8. The essential characteristic of civil defence was that its tasks were performed by civilians for the protection of the civilian population of which they were a part. Civil defence personnel were civilians. It was proper to provide the highest possible degree of protection for those who undertook, for the benefit of their fellow citizens, work which was often very dangerous.

9. The Australian delegation had already expressed the view that protection should be available only for unarmed civilian civil defence units. That was consistent with its view, expressed in connexion with Article 13, paragraph 2 (a), of draft Protocol I, that personnel of civilian medical units should not carry arms. It was to be feared that in the heat of battle the bearing of light individual weapons by civilian civil defence personnel would too often lead to their being mistaken for members of the armed forces. It was stated in the report of Working Group A (CDDH/II/439/Rev.1/Add.1) that if armed civil defence personnel were unlawfully attacked by individual members of the adverse Party's forces, they might use their weapons in self-defence after having made a reasonable effort to identify themselves as civil defence personnel. It was regrettable that such a situation could occur and that civil defence personnel might become casualties in an exchange of fire. The possibility of unlawful attack on civil defence personnel would be greatly lessened if civil defence personnel were unarmed.

10. His delegation sympathized, however, with the considerations which had led a number of delegations to support Article 58. It was that which had persuaded it, in a spirit of compromise, to accept the article.

11. It was nevertheless of the view that strict compliance with paragraph 3 of Article 58 would often be impractical. It expressed the hope that States would not avail themselves of the opportunity, implicit in Article 58, to equip their civil defence personnel with arms of any kind.

12. Mr. QUERNER (Austria) said that his delegation had joined in the consensus on Article 58, but with some hesitation, because it considered that civil defence personnel should be civilians and should not be armed. The claim that they should be armed because of the possible need to protect themselves against rioters, or to maintain order, for example, must come second to the need to give civil defence units the best possible protection in areas where fighting was taking place. That protection should be the over-all aim of Chapter VI, and of Article 58 in particular, and all other considerations should have been subordinated to that. In that respect he shared the views expressed by other representatives, in particular the United Kingdom representative.

13. The Austrian delegation started from the assumption that all the Parties to Protocol I would exercise the utmost restraint when making use of the provisions of Article 58, paragraph 3. The danger of an extensive use and a broad interpretation of that paragraph was reflected in the last sentence of the paragraph itself, which showed the difficulty of recognizing armed civil defence units. He asked that his remarks should be included in the summary record.

14. Mr. MARRIOTT (Canada) endorsed the comments by the representatives of Australia, Austria, the Federal Republic of Germany, and the United Kingdom. It would be better for arms to be confined to the armed forces and the police. Nevertheless, his delegation could understand the views of some other delegations which considered it necessary to arm civil defence personnel. It considered that the present wording of paragraph 3 represented the best possible compromise and it had accordingly associated itself with the consensus on Article 58.

15. Mr. BRING (Sweden) said that the question of whether civil defence personnel should or should not be entitled to carry arms was one of vital importance. The Swedish delegation had stated many times during the Conference that civil defence personnel, whether civilian or military, should not be armed. Only if that were so could civil defence protection be reasonably effective and gain all possible credibility.

16. In the light of those views, his delegation, with some hesitation but in a spirit of compromise, had joined in the consensus on Article 58, paragraph 3. It felt particular concern about the fact that civil defence personnel would have the right to carry light individual weapons even in areas where land fighting was taking place or was likely to take place. In that respect his delegation shared the views already placed on record by the United Kingdom representative.

17. The Swedish delegation was aware that the provisions of Article 58, paragraph 3, represented a serious attempt to provide the best possible protection for civil defence personnel by distinguishing them from combatants. It hoped that those provisions would be applied as reasonably as possible, so as not to imperil the whole system of special protection for civil defence personnel.

18. Lastly, his delegation emphasized that any abuse in the application of the provisions of Articles 58 and 59 bis would give rise to serious problems regarding the respect and protection of civilian civil defence personnel in the performance of their tasks.

19. Mr. HÄGGLUND (Finland) said that the text of Article 58 represented a compromise which did not fully meet the wishes and ideals of any delegation, although as a whole it met the essential requirements of all participants. The fact that Article 58, paragraph 3, allowed civil defence personnel to carry arms while performing their duties was a matter of concern to his delegation. That provision could be difficult to apply in the light of the adoption of Article 42.

20. The Finnish delegation would have preferred civil defence units to be unarmed and thus easily distinguishable from combatants in all circumstances. Since Articles 54 to 59 should not only strengthen the protection of civil defence units, but first and foremost safeguard the civilian population, it was to be hoped that the development of humanitarian law would not be adversely affected by the Committee's decision on that point.

21. His delegation was pleased to note that the Parties to the conflict would undertake appropriate measures to limit the carrying of arms to hand guns in areas where land fighting was taking place or was likely to take place. Furthermore, his delegation stressed that civil defence personnel carrying other light individual weapons in such areas would be respected and protected only against attacks or unnecessary hindrance in performing their tasks.

22. In a spirit of compromise, his delegation had joined the consensus on Article 58 in the belief that Chapter VI, Section I of Part IV of Protocol I, as a whole, was an important achievement in the reaffirmation and development of international humanitarian law.

Article 59 bis - Members of the armed forces and military units assigned to civil defence organizations (CDDH/II/442)

23. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group, pointed out that, owing to lack of time, it had not been possible for Working Group A to consider Article 59 bis and that it was being submitted directly to Committee II. The Working Sub-Group which had drafted the article was composed of sixteen delegations, but there had been much broader participation in its work, so that the article could be adopted by consensus.

24. He pointed out, that the question whether protection should or should not be granted to military personnel serving within the civil defence organizations, had been under discussion in the Committee since the beginning of the third session of the Conference. Since that time it had been a very controversial issue, for which now at last a compromise solution had been found. It was still a difficult and complicated problem, but he would like to request the Committee to accept the proposal of the Working Sub-Group (CDDH/II/442), which he now submitted. Because that very well-balanced text was the result of long political negotiations and consultations, and any change other than a small drafting correction could upset all the results now achieved, he asked that substantial changes or deletions should not be proposed. He therefore once again appealed to the Committee to adopt the proposed text of the new Article 59 bis by consensus. He then introduced proposed Article 59 bis as a whole and each paragraph in turn.

25. The title of Article 59 bis and part of the opening sentence in paragraph 1, both of which still appeared between square brackets, should present no difficulties. With regard to the conditions set forth in that paragraph, he pointed out that the English words "if so assigned" in sub-paragraph (b) were not faithfully reflected by the phrase "lorsqu'il aura reçu cette affectation" in the French text and perhaps not in the Arabic text either. Furthermore, the debates in the Working Sub-Group had made it clear that there existed a general consensus and agreement that the conditions laid down in paragraph 1 (b) had to be interpreted as meaning that once members of the armed forces had been assigned to civil defence organizations it was prohibited to transfer them during the conflict to other military units, namely combat and combat support units. Nothing prevented them from being posted to other official functions or from returning to their civilian jobs. In the course of the discussions in the Special Working Sub-Group it had been specifically stated that the word "other" in "any other military duties" had to be understood in the context of the Protocol, particularly with regard to Article 41, paragraph 2.

In the legal sense of that international instrument the performance of a civil defence task was the fulfilment of a military duty, while it was quite possible that at the same time, according to the internal legislation of some countries, that specific task was not considered to be a military duty.

26. With regard to paragraph 1 (c), the Working Sub-Group had decided that no further specific requirements should be mentioned with regard to the distinguishability of the international distinctive sign. It was, however, made clear, that one must think in dimensions of centimetres and not of millimetres. During the debate a sign measuring 40 by 40 cm or of 30 by 30 cm was thought to be appropriate. The final wording of paragraph 1 (d) was naturally fully determined by the decisions in the Working Sub-Group under the chairmanship of Mr. Schultz (Denmark). The interpretations, notes and remarks included in the final report of that Sub-Group on the light weapons of civil defence personnel applied, of course, also to paragraph 1 (d) of Article 59 bis.

27. With reference to paragraph 1 (e), he pointed out that the Committee had the choice between two versions. The first version imposed an obligation on Governments of the Parties to the conflict, who consequently had to adjust the internal penal legislation of their State to enforce that obligation, while on the other hand the second version was addressed directly to the members of the armed forces of the Parties to the conflict serving in civil defence organizations. The second version had a direct applicability. With regard to the final clause of paragraph 1, he recalled that the formulation implied that every non-observance of the conditions laid down would be a breach of the Protocol. The text between square brackets in paragraph 2 reiterated to a certain degree the wording of Articles 50 and 52 of the third Geneva Convention of 1949, but the repetition was, however, not considered to be superfluous. It contained an explicit stimulation addressed to the Detaining Power to make use of the specific abilities of that exceptional category of prisoner of war.

28. Referring to paragraph 3, he pointed out that there was of course a clear relationship between the marking and the resultant distinguishability of the major items of the equipment mentioned and the conditions laid down in paragraph 1 (c) regarding the distinguishability of the personnel. It was self-evident that it was impossible and impracticable to mark the minor items of equipment also. Lastly, he pointed out that the provision laid down in paragraph 4 contained nothing more than the restatement

that the appropriate laws of war, in particular The Hague Regulations, annexed to The Hague Convention No. IV of 1907 Concerning the Laws and Customs of War on Land, were declared to apply to the matériel and buildings of military units of civil defence organizations. The existing rules concerning war booty applied also to that specific category of Government-owned matériel. The wording was therefore phrased along the lines of Article 33 of the first Geneva Convention of 1949.

Paragraph 1, title and opening sentence

29. The CHAIRMAN said he would like to know why two different terms, namely "imperative military necessity" and "urgent military necessity", had been used in paragraphs 1 and 4.

30. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group, said that the terms were to be found in the Geneva Conventions of 1949 and Protocol I, and that it was for the Drafting Committee to make a choice.

31. Mr. SOLF (United States of America), Chairman of Working Group A, said that the Sub-Group had drafted a well-balanced compromise text. The text had not been considered officially by Working Group A, owing to lack of time, so that in fact document CDDH/II/442 should be entitled "Proposal submitted by the Working Sub-Group".

32. The Drafting Committee would doubtless prefer the Committee to decide on the question raised by the Chairman. He suggested that the term "imperative" should be adopted for both paragraphs.

33. After document CDDH/II/442 had been issued, the members of the Sub-Group had proceeded to hold fresh informal consultations, which had resulted in a proposal that the opening sentence in paragraph 1 might be shortened by deleting a phrase which was considered unnecessary, so that, without in any way changing the substance, the paragraph could be worded to read:

"1. Members of the armed forces and military units assigned to civil defence organizations shall be respected and protected, provided that:".

34. Referring to the restriction in paragraph 1, he stated that a fresh element, arising after the third session, explained that restriction: Committee III had considered that under Article 41, paragraph 2, members of the armed forces of a Party to a conflict (other than medical and religious personnel) were combatants, i.e. they were entitled to take part in hostilities. It necessarily followed that military personnel discharging civil

defence tasks were included in the category of combatants. A large number of civil defence duties were carried out by ordinary members of the armed forces, whose protection was covered by the application of Article 59 while they were working in a civilian environment. That article had also been adopted by Committee III. The restrictions in paragraph 1 were intended to ensure that military personnel to whom they applied gave up the right to participate in hostilities in return for full protection.

35. Mr. SCHULTZ (Denmark) said that he, too, favoured the use of the word "imperative".

36. Mr. FELBER (German Democratic Republic) said that he thought that the text proposed for Article 59 bis by the Sub-Group could be adopted by consensus.

37. With regard to the opening sentence of paragraph 1, he supported the version suggested by the United States representative, which did not in fact affect its substance, since the words "respected and protected" were clearly defined in the commentary on Article 58 (see CDDH/II/439/Rev.1/Add.1, p. 2).

38. The CHAIRMAN asked whether the Committee wished to remove the square brackets round the title.

39. Mr. JORDAN (Ireland) suggested that the words "members of the armed forces and military units" in the English text should be replaced by "military personnel and units".

40. Mr. KORNEEV (Union of Soviet Socialist Republics) said that his delegation found the text proposed by the Sub-Group well-balanced. It considered it perfectly acceptable and hoped that the Committee would adopt it by consensus.

41. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group, said that the Sub-Group had considered it preferable to keep the expression "armed forces" in the title; that term was used in Article 41 and he asked the Committee to agree to it.

42. Mrs. MANTZOULINOS (Greece) said she was in favour of removing the square brackets and agreed to the proposal made by the United States representative regarding the opening sentence of paragraph 1.

It was decided to leave the text of the title unchanged and to remove the square brackets.

43. Mr. KHAIRAT (Egypt) said that he had no objection to the wording proposed by the United States representative for paragraph 1, but that he considered it important that nothing should be deleted.

44. Mr. BOTHE (Federal Republic of Germany) suggested the addition, in the part of the Committee's report relating to Article 59 bis of a note similar to the one in the part of the report relating to Article 58, already adopted, namely:

"The words 'respected and protected' mean that the personnel must not knowingly be attacked or unnecessarily prevented from discharging their proper functions."
(See CDDH/II/439/Rev.1/Add.1, p. 2).

45. Mr. FELBER (German Democratic Republic) supported that proposal and asked the Egyptian representative not to press his point.

46. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group, supported the proposal by the representative of the Federal Republic of Germany. The same terms should be used as in Articles 55 and 58, making it clear that the persons in question were entitled to perform their civil defence functions.

47. Mr. KHAIRAT (Egypt) said that he would be satisfied with the proposed addition.

The opening words of paragraph 1 were adopted by consensus.

Paragraph 1 (a)

48. The CHAIRMAN called for comments on paragraph 1 (a).

49. In the absence of any objections, he declared paragraph 1 (a) adopted by consensus.

Paragraph 1 (b)

50. Mr. JOSEPHI (Federal Republic of Germany) said that he would be glad to have some further light shed on the status of military personnel assigned to civil defence tasks. From the explanations given by the Chairman of the Working Sub-Group, it was not clear to him whether the tasks in question would be performed by combatants or by civil defence personnel.

51. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group, apologized to the representative of the Federal Republic of Germany for not having been clear enough in his introductory explanation, although he himself had the idea that the explanation had been sufficiently clear. Civil defence tasks were, of course, carried out by members of the armed forces who, according to Article 41, paragraph 2, of draft Protocol I, had to be considered as combatants with all the consequent rights. Governments could, however, unilaterally renounce such rights and post soldiers to those non-combatant functions, thus creating a not formally recognized and legally described new category of semi-combatants or quasi-combatants serving within civil defence organizations.

52. Mr. MARRIOTT (Canada) considered that the interpretation of sub-paragraph (b) was of prime importance and that it depended on the words "if so assigned", which had not always been translated accurately. He had understood the Chairman to say that once the personnel had been assigned, they could not be transferred back to combat units during the conflict. He asked for confirmation that that meant that personnel assigned to civil defence in a military service might not be assigned to combat or combat support duties for so long as hostilities lasted, even if they should for any reason cease to serve in a civil defence organization, for example, if they had become sick or wounded, and later recovered, or if they temporarily became civilians, they could not then be assigned to combat duty.

53. Mr. RUIZ-PEREZ (Mexico) called for the deletion of paragraph 1 (b). It had been included in Article 59 bis solely in order to satisfy certain delegations which thought that the article should explicitly state that the personnel in question were not to perform any other military duties during the conflict if they were permanently assigned to civil defence organizations.

54. Mr. SANCHEZ DEL RIO (Spain) said that while he fully understood the Mexican representative's point of view, the drafting of paragraph 1 (b) had taken a great deal of time and had been the essential feature of the compromise solution reached in the Working Sub-Group.

55. The different language versions should be brought into line on the basis of the English text.

56. The CHAIRMAN said that as for the moment the English text only could be considered as the authentic text all translations would have to conform to it.

57. Mr. JOSEPHI (Federal Republic of Germany) proposed that the Canadian representative's comment on the words "if so assigned" should be included in the Committee's report, all the more since those words had not always been translated accurately into the other languages.

58. The CHAIRMAN asked the representative of Mexico if he wished to press his proposal.

59. Mr. RUIZ-PEREZ (Mexico) said that, for the sake of reaching a consensus, he would withdraw his proposal.

60. The CHAIRMAN invited the Committee to adopt paragraph 1 (b).

Paragraph 1 (b) was adopted by consensus.

Paragraph 1 (c)

61. Mr. MAKIN (United Kingdom) thought that all those taking part in the Working Sub-Group had understood that the identity card in question did not replace the military identity card provided for in Annex IV to the third Geneva Convention of 1949. That fact should be mentioned in the Committee's report.

62. Mr. MARRIOTT (Canada) observed that the word "appropriate" seemed to have been mistranslated into French both in paragraph 1 (c) and in paragraph 3.

63. Mr. BOTHE (Federal Republic of Germany) suggested that the translation should be taken from Article 3, paragraph 1, of the Annex to draft Protocol I, where the words "as large as appropriate" appeared.

64. The CHAIRMAN invited the Committee to adopt paragraph 1 (c) with due regard for the comments just made.

It was so agreed.

Paragraph 1 (c) was adopted by consensus.

Paragraph 1 (d)

65. Mr. JOSEPHI (Federal Republic of Germany) thought it odd to describe units as carrying light weapons. The expression "and such units" was presumably a mistake and should be deleted.

66. Mr. SCHULTZ (Denmark) pointed out that the text had been drafted with great care by the Working Sub-Group and that the expression "and such units" had been proposed because, if personnel alone were mentioned, it would be possible for units, lorries and so on to transport heavier weapons. The expression, which also appeared in paragraph 1 (a), had been kept in paragraph 1 (d) in order to avoid any misunderstanding.

67. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group, agreed with the Danish representative.

68. Mr. ALBA (France) proposed that in French the words "dotés de" should be used.

69. Mr. MARRIOTT (Canada) supported that proposal. The phrase "equipped with" could be used in English.

70. Mr. JOSEPHI (Federal Republic of Germany) considered that the words "and such units" could be misinterpreted. He accordingly proposed that they should be deleted.

71. The CHAIRMAN suggested that a decision on paragraph 1 (d) should be postponed until the following day.

It was so agreed.

The meeting rose at 8.15 p.m.

SUMMARY RECORD OF THE NINETY-SEVENTH MEETING

held on Friday, 13 May 1977, at 10.10 a.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol I

Article 59 bis - Members of the armed forces and military units assigned to civil defence organizations (CDDH/II/442) (concluded)

Paragraph 1 (d)

1. The CHAIRMAN invited the Committee to continue consideration of the proposals made by Working Group A concerning Article 59 bis, paragraph 1 (d).
2. Mr. JOSEPHI (Federal Republic of Germany) said that his delegation withdrew its proposal to delete the words "and such units" and supported the amendment suggested by the representatives of France and Canada at an earlier meeting.
3. The CHAIRMAN suggested that paragraph 1 (d) as amended should be adopted by consensus. It now read as follows:

"(d) such personnel and such units shall be equipped only with light individual weapons for the purpose of maintaining order or for self-defence. The provisions of Article 58, paragraph 3 shall also apply in this case."

Paragraph 1 (d), as amended, was adopted by consensus.

Paragraph 1 (e)

4. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group for Article 59 bis, referring to the discussion which had taken place at the ninety-sixth meeting (CDDH/II/SR.96), said that the Sub-Working Group had been unable to agree upon which of the two alternatives offered in paragraph 1 (e) was the better.
5. Mr. HEER (German Democratic Republic) supported the words in the second set of square brackets. The words in the first set were unnecessary, as the point was covered by the last sentence of paragraph 1.

6. Mr. SOLF (United States of America) said that his delegation had proposed the first alternative, and pointed out that under Article 41, paragraph 2, all members of the armed forces, with the exception of medical personnel and chaplains had the right to participate directly in hostilities. The object of paragraph 1 of Article 59 bis was to neutralise that right, or to provide that it could not be exercised. His delegation had been persuaded that the first formula was unnecessary and that the obligation of States was fully expressed in the closing sentence of paragraph 1. In a spirit of compromise, his delegation would therefore withdraw its insistence on the first formula in paragraph 1 (e).

7. Mr. MAMONOV (Union of Soviet Socialist Republics) supported the second formula in paragraph 1 (e).

8. Mr. EL HASSEEN EL HASSAN (Sudan), Rapporteur, agreed with those who supported the second phrase in brackets and referred to the Charter of the Nürnberg Military Tribunal, which referred to the fact that war crimes were committed by individuals and not by States.

9. The CHAIRMAN suggested that paragraph 1 (e), as amended, be adopted by consensus, the first phrase in brackets being deleted.

It was so agreed.

Paragraph 1 (f)

10. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) said that his delegation had some doubts about the meaning of the last words in the sentence following paragraph 1 (f), namely "is prohibited". They seemed to imply that the personnel concerned no longer enjoyed the protection provided at the opening of the article. His delegation therefore wished to suggest that the words in question should be replaced by "leads to the loss by such personnel of respect and protection in the sense of Article 59 bis, paragraph 1." If, however, the United Kingdom delegation maintained the words "is prohibited", which it had suggested at an earlier meeting, the Ukrainian SSR would not insist on its amendment. At the same time it wished to suggest that its understanding of the term "is prohibited" should be reflected in the record.

11. Mr. MARRIOTT (Canada) thought that the question involved was one of drafting only, and suggested that paragraph 1 (f) should be amended along the following lines: "such personnel and such units perform their civil defence duties only within the national territory of their Party."

12. Mr. GONSALVES (Netherlands), Chairman of the Sub-Group for Article 59 bis, accepted the amendment suggested by the representative of Canada.

13. Mr. SOLF (United States of America) said that several delegations who had participated in the Sub-Group, including his own, had felt that the prohibition mentioned in paragraph 1 (f) was necessary, since participation by civil defence personnel in hostilities was a breach of draft Protocol I. His delegation supported paragraph 1 (f) as drafted.

14. Mr. SANCHEZ DEL RIO (Spain) pointed out that the Spanish and French texts of the sentence following paragraph 1 (f) referred to "paragraph 1 (c)", whereas the English version referred to "paragraph 1 (e)". He suggested that all languages should be aligned with the English version.

15. Mr. KORNEEV (Union of Soviet Socialist Republics) noted that several delegations preferred the words "is prohibited" at the end of paragraph 1, and in a spirit of compromise he would not object to their retention. He felt, however, that the words were too rigid and pointed out that they did not appear in Article 46. However, he would not press the point.

16. Mr. ALBA (France) approved the text of paragraph 1 (f) as amended, but pointed out that some drafting changes should be made in the French text.

17. Mr. GONSALVES (Netherlands), Chairman of the Sub-Group for Article 59 bis, said that the last phrase of paragraph 1 was the result of lengthy discussions, but that it was not impossible that owing to the many changes negotiated during the debates some drafting errors had crept into the text.

18. The CHAIRMAN, speaking neither as Chairman nor as the representative of Poland but as a jurist, said that he was not satisfied with the wording of the last sentence following paragraph 1 (f). However, he did not insist upon his opinion.

Paragraph 1 (f) was adopted by consensus.

Paragraph 1, as a whole, as amended, was adopted by consensus.

Paragraph 2

19. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group for Article 59 bis, said that as he had stated at an earlier meeting, paragraph 2 was somewhat superfluous. He recalled in that connexion the heated discussions which had taken place at the third session of the Conference on the status of prisoners of war. According to the provisions of the third Geneva Convention of 1949, namely Articles 50 and 52, prisoners of war could be allowed to continue their civil defence duties. In order to stimulate the Detaining Power as far as possible, he was in favour of the acceptance of the second sentence of paragraph 2.

20. Mr. HEER (German Democratic Republic) proposed that paragraph 2 should be retained as drafted, the brackets round the second sentence being deleted.

21. Mr. MÜLLER (Switzerland) said that he would have preferred Article 59 bis to contain a provision stating that the personnel of military civil defence units should not be considered members of the armed forces in the sense of Protocol I, Article 41, paragraph 2. That would have allowed them to be treated in the same way as permanent military medical personnel, that was to say not to be considered as prisoners of war. However, in a spirit of compromise he would support paragraph 2 of Article 59 bis provided the second sentence of that paragraph was retained.

22. Mr. SOLF (United States of America) said that his delegation supported the retention of paragraph 2 and the removal of the brackets round the second sentence.

23. Mr. JAKOVLJEVIĆ (Yugoslavia) said that he had some difficulty with the second sentence of paragraph 2 and could not envisage military civil defence personnel being included in the civil defence organization of the Occupying Power. He was in favour of the deletion of the second sentence, and suggested that the question of military civil defence personnel should be covered by general conditions affecting prisoners of war.

24. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group for Article 59 bis, said that in his view paragraph 2 was not controversial. The second sentence meant that military defence personnel who became prisoners of war would not be attached to the army of the Occupying Power but would be allowed to continue their work within the structure of their own national civil defence organization.

25. Mr. HARSANA (Indonesia) said that his delegation considered the second sentence of paragraph 2 superfluous and likely to open the door to abuse by the Occupying Power. Military personnel who became prisoners of war should be covered by the third Geneva Convention of 1949.

26. Mr. MAKIN (United Kingdom) said that when the second sentence was drafted it was thought by some delegations that the problem was already covered by Article 50 of the third Geneva Convention of 1949. Others doubted that it was so covered, and the second sentence was included to meet that doubt. It was a matter of legal interpretation whether the provisions of the second sentence were already part of international law. If the contrary interpretation of Article 50 was adopted, the last sentence of paragraph 4 of Article 59 bis would be meaningless. He suggested that both the second sentence of paragraph 2 and the last sentence of paragraph 4 should be retained.

27. Mr. MARRIOTT (Canada) said that his delegation considered the retention of the second sentence of paragraph 2 as very important. The list of tasks which prisoners of war might perform under Article 50 contained many elements of civil defence listed in Article 54. Article 50 must be developed in order to protect the civilian population of the occupied territory.

28. Mr. MAMONOV (Union of Soviet Socialist Republics) said that his delegation considered that the second sentence of paragraph 2 should be retained. His delegation understood that a prisoner of war might work in the civil defence organization of his country's occupied territory in order to protect the civilian population of that territory.

29. Mr. JAKOVLJEVIĆ (Yugoslavia) said that it was difficult for him to accept the second sentence of paragraph 2, which he regarded as unnecessary and dangerous. The sentence gave the Occupying Power the right to employ military civil defence units. He therefore proposed that the second sentence be deleted.

30. Mr. KHAIRAT (Egypt) associated his delegation with the statements of the Indonesian and Yugoslav representatives. Prisoners of war were covered by the third Geneva Convention of 1949. He therefore proposed the deletion of the second sentence of paragraph 2.

31. Mr. URQUIOLA (Philippines) asked whether the problem of bomb disposal was covered by the second sentence of paragraph 2.

32. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group for Article 59 bis, said that although bomb disposal was not among the tasks listed in Article 54, he could understand that if bomb disposal experts were available only among military personnel, there would be a special need to let them carry out their work, provided it was on a voluntary basis. In that case, they would be fully covered by the second sentence.

33. Mr. SOLF (United States of America) pointed out that Article 52 of the third Geneva Convention stated: "Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature. ... The removal of mines or similar devices shall be considered as dangerous labour". Military personnel possessing special skills in bomb disposal, might, therefore, engage in such work on a voluntary basis.

34. The CHAIRMAN noted that the representatives of Yugoslavia, Indonesia and Egypt were opposed to the retention of the second sentence. Accordingly, under rule 40 of the rules of procedure, he put to the vote the oral proposal to delete that sentence.

The proposal to delete the second sentence in paragraph 2 was rejected by 28 votes to 11, with 17 abstentions.

35. Mr. COOMSON (Ghana), speaking in explanation of his vote, said that he was not opposed to the adoption of paragraph 2 but thought that the second sentence might be slightly amended to meet the objections of some delegations. He proposed that it should be revised to read: "In occupied territory, they may, but only in the interest of their own civilian population, be employed on civil defence tasks ... etc."

36. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group for Article 59 bis, said that that proposal seemed to call for further discussion.

37. The CHAIRMAN said that the decision on paragraph 2 would be taken later in the meeting. Meanwhile, he suggested that the Committee should adopt paragraph 3 by consensus.

It was so agreed.

38. The CHAIRMAN pointed out that paragraph 4 should consist of a single paragraph and not of two sub-paragraphs, as in the English text. Moreover, it had been agreed by the English-speaking delegations that the words "urgent military necessity" in the second sentence should be replaced by the words "imperative military necessity".

39. Mr. MAKIN (United Kingdom) pointed out that the word "provisions" in the penultimate line should be replaced by "provision".

40. Mr. MARRIOTT (Canada), referring to another drafting point, said that the word "provision" in paragraph 1 (d) should be replaced by "provisions".

41. Mr. JOSEPHI (Federal Republic of Germany) wondered whether the words "remain subject to the laws of war" in the first sentence in paragraph 4 were sufficiently clear.

42. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said that that question had given rise to some debate in the Drafting Committee, but that the words "the laws of war" had been retained as a standard formula and term of art, which was also to be found in Article 35 of the first Geneva Convention of 1949.

43. The CHAIRMAN said that the term "the laws of war" had still been current in 1949 but had since undergone essential changes, the very term "war" having been generally replaced by the term "armed conflict".

44. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group for Article 59 bis, agreed with the Rapporteur that the term "the laws of war" was a standard formula which was to be found in all legal handbooks on the subject and appeared also in paragraph 33 of the first Geneva Convention of 1949.

45. Mr. SOLF (United States of America) said that that term had been discussed in connexion with Article 24, when it had been pointed out that Article 33 of the first Geneva Convention of 1949 stated: "The buildings, material and stores of fixed medical establishments shall remain subject to the laws of war ...". The term "the laws of war" had therefore been adopted in order to avoid the necessity of drafting a rule on war booty.

46. The CHAIRMAN suggested that the Committee should adopt paragraph 4 by consensus.

It was so agreed.

47. The CHAIRMAN suggested that the Committee should adjourn for a short recess in order to permit informal discussions on the second sentence in paragraph 2.

It was so agreed.

The meeting was suspended at 11.20 a.m. and resumed at 11.40 a.m.

48. Mr. GONSALVES (Netherlands), Chairman of the Working Sub-Group for Article 59 bis, said it had been agreed to amend the text proposed by Ghana to read as follows: "In occupied territory, they may, but only in the interests of the civilian population of that territory, be employed on civil defence tasks ... etc.". That avoided the use of the imprecise words: "their own civilian population".

49. Mr. JAKOVLJEVIĆ (Jugoslavia) said he could not agree to that amendment, which was not basically different from the original sentence.

50. The CHAIRMAN said that the proposal to delete the second sentence in paragraph 2 had already been defeated and that the question was now only one of drafting. He suggested that the Committee should adopt paragraph 2 by consensus, subject to the reservation of the Yugoslav representative.

It was so agreed.

Explanations of vote

51. Mr. KOMISSAROV (Byelorussian Soviet Socialist Republic), speaking in explanation of vote, said that his own country, which had lost one out of every four of its inhabitants during the Second World War, believed that the protection of the civilian population from the ravages of war was one of the most important objectives of the draft Protocols. For various reasons, the organization of civil defence had taken different forms in different countries, although the aim in every case was to carry out the tasks mentioned in Article 54. The Committee had therefore wisely refrained from attempting to define any particular civil defence system and had merely tried to ensure the effective protection of the personnel engaged in that humanitarian work.

52. His own delegation's position was that such tasks should be mainly carried out by civilian personnel, but that in certain circumstances military personnel might be employed to advantage. He believed, therefore, that the text of Article 59 bis constituted a carefully balanced whole which, if it did not fully meet the wishes of all countries, did not run counter to the interests of any, whether their civil defence systems included military units or not. The text also gave the requisite balance to the whole Chapter of draft Protocol I on civil defence.

53. Mr. KHAIRAT (Egypt), speaking in explanation of vote, said that the inclusion of military units in civil defence activities was an idea which might cause difficulties for civil defence organizations in general. In a spirit of compromise, however, his delegation had voted for Article 59 bis as a whole, although it still had some doubts about paragraphs 1 and 2. In particular, it would have preferred the deletion of the second sentence in paragraph 2.

54. Mr. NORDHAUG (Norway), speaking in explanation of vote, said that the main objective of his delegation had been that Committee II should draw up a text which would give the best protection possible to the civilian population in armed conflicts. To that end, the Protocol should contain articles that offered civil defence organizations feasible opportunities to operate in areas where fighting was taking place, or might shortly take place, and in occupied territories. If the civilian population were stranded in such areas without even the assistance of civil defence, their situation would indeed be precarious.

55. The two main problems which had confronted the Committee in working out a satisfactory protection for civil defence organizations had been the question of weapons and the status of those members of the armed forces who were carrying out civil defence tasks. On the first, his delegation felt that the rules drafted

by the Committee should be so simple and clear that a soldier in the heat of combat would have no doubt about their interpretation. For that reason, it preferred that civil defence personnel should not carry arms, not even small, individual weapons.

56. On the second, it considered that the mantle of protection should not be cast too wide; otherwise, the rules would not be observed in practice. The credibility of the protection given under Protocol I would depend upon one main condition: that the situation to which the protection applied was clearly distinguishable. That meant that the protection must not be extended to cover additional instances in which the members of the armed forces of the adverse Party might be in doubt as to how they should interpret the situation confronting them. That might lead to miscalculations and unfortunate incidents, which could seriously reduce the value of the protection. His delegation was sceptical about the possibilities of distinguishing at a distance, and when visibility was poor, between military combat units and soldiers on one side, and the units and soldiers carrying out civil defence tasks on the other. Accordingly, military combat units which were diverted for a limited period to civil defence tasks should be regarded as members of the armed forces within the meaning of Article 41, paragraph 2, of Protocol I.

57. The discussions had shown that views differed and that there would be no agreement if delegations holding different views were unwilling to find acceptable compromises. His delegation, while not happy about the compromises necessary in connexion with the weapons question and the protection of military units performing civil defence tasks, was prepared to accept those compromises in order to reach a consensus on the chapter as a whole.

58. Mr. THOMSON (Australia), speaking in explanation of vote, said that his delegation would have abstained if Article 59 bis had come to a vote, since, for reasons similar to those it had already mentioned in relation to Article 58, it had serious doubts about the effectiveness of Article 59 bis.

59. The essential characteristic of civil defence was that its tasks were performed by civilians for the protection of the civilian population of which they were a part. Australian civil defence personnel were civilians. He believed that it was proper to provide the highest possible degree of protection for the people who undertook that very often dangerous work for the benefit of their fellow citizens.

60. At an earlier meeting of Working Group A, he had expressed the view that civil defence protection should only be available, and civil defence marking only allowed, for unarmed civil defence units. That view had not changed. His country would do its

best to conform with the humanitarian purposes of Article 59 bis, but believed there would be many circumstances in which strict compliance with the terms of Article 59 bis would be impractical.

61. Mr. QUERNER (Austria) said that, solely with a view to ensuring the protection of the civilian population against the effects of hostilities, his delegation had hoped that only civilian civil defence organizations would enjoy the protection accorded by Article 55. It was in a spirit of compromise, though not without some scepticism, that his delegation had agreed to the provisions of Article 59 bis, as amended.

62. Mr. SATO (Japan) said that despite its misgivings his delegation had joined in the consensus on Article 59 bis so as not to hinder progress. It was, however, of the opinion that civil defence activities should, as a matter of principle, be carried out by civilians, and it saw no necessity to include in the Protocol an article permitting members of the armed forces who carried weapons to enjoy protection in their civil defence activities. His delegation was therefore unable to support fully the idea of creating any additional category within the armed forces other than medical personnel and chaplains. The application of such an idea might have inappropriate or even dangerous effects for the protection of civil defence personnel as a whole, taking into consideration in particular Article 42, which required combatants to distinguish themselves from the civilian population by carrying their arms openly as a minimum requirement.

63. Mr. SANCHEZ DEL RIO (Spain) said that, from the outset of the Conference, his delegation had wished to extend some degree of protection to military units assigned exclusively to civil defence tasks, although it had maintained a flexible position and remained open to proposals. In the light of the difficulties encountered at earlier sessions, it had made a short oral proposal to the effect that military units should not be the object of attack when employed exclusively on civil defence tasks but should be accorded a minimum degree of protection, which should be limited as to its nature and duration. The Committee had, however, ignored that proposal and returned to its original point of departure, which had been a mistaken one.

64. With a view to bringing the Working Sub-Group out of the impasse in which it had found itself, his delegation had proposed that a clear distinction should be made between military units and military personnel, bearing in mind that, while it was possible to assign military units to civil defence duties for the entire duration of the conflict, it was difficult to make such a requirement in respect of personnel. That proposal had, however, failed to command general support.

65. While it had not wished to dissociate itself from the consensus, his delegation had serious reservations on the text adopted, which was unsystematic, confused and difficult to apply: unsystematic because it referred to military units and personnel together, confused because it would require interpretation which could only be given by experts, and difficult to apply for a variety of reasons.

66. Mr. MAKIN (United Kingdom) said that paragraphs 1 (a) and (b) of Article 59 bis imposed a clear obligation on the individual concerned, and also, under Article 76 bis, on military commanders, to prevent, and where necessary suppress, any breach of the provisions. At the same time, however, the sub-paragraphs assumed a highly efficient system of control which military organizations did not always possess, and a degree of trust between the Parties and of restraint among the military authorities of any Party using the military personnel in question which it would be unnatural to expect in an armed conflict. That was the main reason for his delegation's misgivings about the article.

67. Mr. MARRIOTT (Canada) said that although, in order not to be obstructive, his delegation had refrained from opposing the adoption of the article by consensus, it was, for the reasons given by the United Kingdom representative, not entirely convinced that the safeguards provided in paragraphs 1 (a) and (b) were workable, and it felt that they might tend to cloud the distinction between civilians and the military, with tragic consequences for the civilian population. His delegation therefore reserved its right to reconsider its position during discussion of the article by the Conference in plenary.

68. Mr. JOSEPHI (Federal Republic of Germany) said that his delegation had not objected to the consensus on Article 59 bis, but reserved its position with respect to the debates and decisions on the subject by the Conference in plenary. It would have preferred to have no such article in the Protocol, since the provisions in question did not come within the context of humanitarian protection provided for civil defence. It was aware that in some countries there were special units and personnel of a military character permanently assigned and exclusively devoted to civil defence tasks during armed conflicts, as well as to disaster relief in peacetime, and it was his delegation's understanding that it was for the protection of such personnel in particular that Article 59 bis was intended. In its view, however, the article contained an exceptional and not a general rule. According to a common rule of interpretation, exceptional provisions were to be construed in a restrictive manner. Article 59 bis was a kind of annex to the other articles, which were based on the idea that civil defence tasks were performed by organizations and personnel of a non-military character, as stated in Article 63, paragraph 2, of the fourth Geneva Convention of 1949. For the purposes of protection

by the Protocol, the functions of civil defence, and of its personnel, were clearly defined in Article 54 of draft Protocol I. Generally speaking, those functions were by no means complementary to the functions of military defence but were similar to the tasks of civilian medical units and civilian medical personnel. Any other interpretation to which the somewhat ambiguous expression "civil defence" might give rise would lead to confusion, in theory as well as in practical application during an armed conflict.

69. Despite the hard work carried out by the Working Sub-Group on Article 59 bis, the article was, in his delegation's view, not clear enough to exclude all misunderstandings on the meaning of the provisions, because of the complexity of the problems involved. The Committee's discussion had at least helped to clarify paragraph 1 (b). His delegation shared the view that, according to that sub-paragraph, military personnel once assigned to the civil defence tasks mentioned in Article 54 could in no circumstances be reassigned to combat or military support functions during the remainder of the conflict. That point was decisive if any protection was to be given to military personnel and military units when they were assigned to civil defence tasks. Nevertheless, the status of such quasi-combatants remained nebulous, since there was a legal inconsistency between Article 59 bis and Article 41 as adopted by Committee III, which might lead to serious difficulties in practical application during an armed conflict. It was his delegation's understanding that members of the armed forces assigned to civil defence organizations remained the only combatants in the sense of Article 41 who benefited from special protection. Article 59 bis might thus prove a poor contribution to the development of humanitarian law applicable in armed conflicts. It was to help to avoid such harmful effects that his delegation had wished to express its concern.

70. Mr. JAKOVLJEVIC (Yugoslavia) said that, in his delegation's view, the second sentence of paragraph 2 of Article 59 bis should have been deleted. Since the Committee had decided to keep it, he wished to state that his delegation interpreted the sentence in the context of other provisions of international law and of Protocol I, particularly Article 56, which meant that civil defence personnel were protected against the danger of becoming an instrument of the policy of the Occupying Power if such policy ran counter in any way to the interests of the civilian population.

71. Mr. SCHULTZ (Denmark) said that, in his delegation's view, all civil defence organizations should be civilian organizations. That had been the basis of the Danish proposal submitted at the third session of the Conference and of the Nordic proposal submitted at the current session. His delegation realized, however, that international humanitarian law could not be based on the

views of a single country or of a small group of countries and that there were many countries with military or partly military civil defence organizations. In the interests of the civilian population, therefore, his delegation had concluded that such organizations should not be denied protection, although his country would continue to have only a civilian and unarmed civil defence organization and would not need to have recourse to Article 59 bis or to Article 58, paragraph 3.

72. Article 59 bis contained the necessary safeguards to guarantee the distinction between the civilian personnel and combatants and to ensure that military civil defence units would not be used to protect military combatant units or be converted into fighting units. The provisions of paragraph 1 (a) and (b) of Article 59 bis as now formulated were excellent, and Article 59 bis as a whole and Article 58, paragraph 3, were well balanced. He welcomed the fact that the Committee had reached a consensus on all the articles on civil defence, and he sincerely hoped that all those texts would be adopted by the Conference in plenary, since any changes would result in a lack of balance. He appealed to all representatives to try to ensure that that was achieved.

73. Mr. SOLF (United States of America) said that the text of Article 59 bis was a good compromise as no delegation, his own included, was entirely happy with it. At the Conference of Government Experts in 1972, his Government had been sceptical not only about the article on military personnel but about the entire chapter on civil defence, in view of the impossibility of separating the humanitarian purpose of protecting the civilian population from the purpose of maintaining and ensuring the viability of the war effort. His Government believed that civil defence organizations, whether civilian or military, would perform their task of maintaining the viability of the entire national economy, including the war effort, to the same extent as they performed the purely humanitarian task of serving the civilian population. At the outset of the Conference, his Government had nevertheless decided, in a spirit of compromise, to work for a good and effective civil defence article.

74. It was his delegation's understanding that there was nothing in Article 59 bis or elsewhere that imposed any limitation on the use of military personnel for any civil defence task, but that unless such personnel were permanently assigned and exclusively devoted to the performance of such tasks during the entire period of conflict, they would receive no special protection. His Government intended to use military personnel for civil defence purposes in case of necessity, but it also intended to use them for combat purposes when the occasion arose, and it would claim no special protection for them except that provided by Article 50. If it invoked Article 59 bis at all, it would be only to cover a small number of specialized professionals. His delegation was somewhat disappointed that the clarification given in paragraph 4

of document CDDH/II/406 had not been adopted, although it agreed that it was not absolutely essential for that paragraph to be included in the chapter, since the matter was covered in Article 58, paragraph 1, in Articles 35 and 36, and in Article 46, paragraph 3, and in Article 47, paragraph 2.

75. He reminded the Rapporteur of the decision to remove the square brackets round the word "civilian" in Article 55, paragraphs 1 and 2, Article 57, paragraphs 1 and 3, Article 58, paragraphs 1, 3 and 4, and Article 59, paragraph 3, once Article 59 bis had been adopted. The square brackets should also be removed from Article 56, paragraph 3.

76. The CHAIRMAN confirmed that all the sets of brackets in question would be removed.

Article 59 bis as a whole, as amended, was adopted by consensus.

Technical Annex to draft Protocol I (CDDH/II/439/Add.1)

Article 14 - Identity cards

77. Mr. BOTHE (Federal Republic of Germany), Rapporteur of Working Group A, said that the text in document CDDH/II/439/Add.1 had been adopted by Working Group A with the exception of the last sentence of paragraph 2 of Article 14 of the Annex, for which two alternatives were provided. The decision on the matter had been deferred because it depended on the decision concerning Article 58, paragraph 3. The main difference between the two alternatives was that the second was somewhat stricter than the first.

78. Mr. MAMONOV (Union of Soviet Socialist Republics), supporting the second alternative, said that his delegation continued to believe that there should be an entry in the identity card with regard to the carrying of weapons. That would be in line with the spirit of the Conference and the requirements of international humanitarian law, since it would prevent the use of unregistered weapons.

79. Mr. MARRIOTT (Canada) said that the first alternative was unnecessary since it was self-evident that further information could be added. His delegation could not accept the mandatory requirement in the second alternative that registration numbers should be mentioned, since it would place an unnecessary restriction on what was essentially a domestic administrative matter.

80. Mr. SCHULTZ (Denmark), supporting the Canadian representative's comments, proposed that the words "including the registration number" should be deleted and that the second alternative as thus amended should be adopted.

81. Mr. MÜLLER (Switzerland) supported that proposal.

82. Mr. MAMONOV (Union of Soviet Socialist Republics) said that, although he would have preferred to keep the words "including the registration number", he could, in a spirit of compromise, agree to their deletion.

83. Mr. MAKIN (United Kingdom) said there was a problem in that the identity card was obligatory only for military units. The word "shall" before the words "be mentioned" should therefore be replaced by the word "should".

84. Mr. MARRIOTT (Canada) said that the deletion of the reference to the registration number raised an entirely new issue. He could, however, accept the wording as amended by the United Kingdom representative.

85. Mr. MAMONOV (Union of Soviet Socialist Republics), referring to the United Kingdom representative's comment, said he understood that the identity card was issued to civil defence personnel as well as to military personnel. He could, however, agree to the replacement of the word "shall" by the word "should".

The United Kingdom amendment was adopted.

The second alternative for the last sentence of Article 14 of the Annex, as amended, was adopted.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE NINETY-EIGHTH MEETING

held on Friday, 13 May 1977, at 3.5 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (continued)

Draft Protocol II

Article 33 - Relief societies and relief actions

1. Mr. KLEIN (Holy See) said that his delegation had reservations to make on paragraph 1 of Article 33. The wording appeared clumsy, since it seemed to impose the Red Cross rules on all relief organizations, national or otherwise, without specifically stating the content of such rules in the notes. His delegation, while paying tribute to the humanitarian principles which inspired the Red Cross and its leaders, to the action of the national Red Cross Societies and to the International Committee of the Red Cross, to the devotion of their members in the field and to the spirit of co-operation which these had invariably shown towards the personnel of other relief organizations, did not wish to see the way opened to a sort of spiritual imperialism with regard to those organizations and others which for centuries had carried out their task jointly in the love of God and mankind.

Article 30 - Respect and protection (CDDH/II/415, CDDH/II/421, CDDH/II/443) (concluded)

Article 31 - Definition (CDDH/II/417, CDDH/II/420) (concluded)

2. The CHAIRMAN called attention to the fact that very varied views had been expressed by members of the Committee on those two articles. Amendments with the object of deleting them had been submitted by Indonesia (CDDH/II/415 and CDDH/II/417) and jointly by Canada, France and the United Kingdom (CDDH/II/421 and CDDH/II/420). However, as a large number of representatives had considered that Article 30 at any rate could be retained, a small Working Group had submitted an initial report (CDDH/II/441) that had not been considered satisfactory, and then a second one (CDDH/II/443) which was now before the Committee.

3. Mr. GONSALVES (Netherlands), in introducing document CDDH/II/443, said that the Working Group on Chapter II had considered, as had several representatives, that it was also necessary to mention the civil defence tasks to be carried out by the civilian population in a situation of non-international armed conflict. The Working Group had, therefore, drawn up a new, very simple text specifying the limits within which civilian civil defence personnel could act.

4. In order to meet the objections raised by those who favoured the deletion of Article 30, the Working Group had deliberately restricted its scope to "unarmed" civilian personnel, thus establishing a clear distinction between the situation provided for in draft Protocol II and that envisaged in draft Protocol I. Still in the same conciliatory spirit, the Group had decided to restrict the civil defence tasks envisaged to the essential humanitarian tasks necessary for the survival of the civilian population.

5. Turning to those representatives who were opposed to any reference to a civil defence task of any kind in draft Protocol II, because in their view draft Protocol II was already overburdened, he pointed out that Committee III had nevertheless already adopted Articles 20 bis and 28. Those were fairly long texts and were concerned, in the first case with the protection of cultural objects and of places of worship, and in the second with the protection of works and installations containing dangerous forces. And now that draft Protocol II already contained rather extensive provisions with regard to the protection of civilian objects it was by no means excessive to insert in draft Protocol II a small article providing for the protection of civil defence duties carried out on behalf of living human beings. By adopting Article 30, the Committee would only be adding a few lines to draft Protocol II in recognition of the civil defence tasks that were so necessary in order to lessen human suffering.

6. Mr. MÜLLER (Switzerland), Mr. FOURKALO (Ukrainian Soviet Socialist Republic) and Mr. JAKOVLJEVIĆ (Yugoslavia) declared themselves in favour of adopting the new Article 30. As it was both short and restrained, it ought to obtain a consensus.

7. Mr. HEER (German Democratic Republic) and Mr. SCHULTZ (Denmark) said that they would have preferred a text of wider scope but, in a conciliatory spirit, they would support the proposal of the Working Group.

8. Mr. HARSANA (Indonesia) asked that Article 30 should be deleted, for whereas draft Protocol I referred to international armed conflicts, including the struggles carried out by populations against foreign occupation and oppression in accordance with the right to self-determination, draft Protocol II referred to conflicts brought about by dissidents seeking to take power by force. No government was prepared to recognize civil defence bodies drawn from rebellious groups.

9. Mr. ENDEZOU MOU (United Republic of Cameroon) said that his delegation had already expressed its opposition to the adoption of Article 30. On that occasion it had tried to call in question the whole of draft Protocol II. It maintained its attitude. However, if the Committee were to reach a consensus in support of the new text, he would merely abstain in the vote.

10. Mr. LUKABU-K'HABOUJI (Zaire) said that he supported the representative of the United Republic of Cameroon unreservedly, but that in a spirit of conciliation, he would agree to the retention of Article 30 in the form proposed by the Working Group.

11. Mr. GONSALVES (Netherlands), replying to the representative of Indonesia, explained that the new text covered the tasks to be discharged not by a civil defence body, but by civilian civil defence personnel of whatever character.

12. Mr. JOMARD (Iraq), Mr. SHERIF (Oman) and Mr. OSORIO (Colombia) said that they shared the views of the Indonesian representative.

13. Mr. UHUMUAVBI (Nigeria) said that his delegation considered the insertion of such an article premature, but would support it in a spirit of co-operation and compromise.

14. Mr. MARRIOTT (Canada) observed that his delegation had already explained its position as regards Article 30. Nevertheless, since the text was concise and contained nothing that might appear objectionable and since, moreover, it enjoyed very wide support, his delegation was prepared to withdraw its amendment.

A vote was then taken on the amendment submitted by Indonesia (CDDH/II/415).

The amendment was rejected by 23 votes to 14, with 17 abstentions.

15. Mr. ALBA (France) proposed that the words "Unarmed civilian civil defence personnel" in the new Article 30 should be replaced by the phrase "Civilian civil defence personnel, when unarmed ...".

A vote was taken on the new Article 30 (CDDH/II/443), as amended.

The new text of Article 30, as amended, was adopted by 24 votes to none, with 32 abstentions.

16. Mr. GONSALVES (Netherlands) recalled that the small Working Group itself had not been opposed to the deletion of Article 31.

Article 31 was deleted by consensus.

17. Mr. URQUIOLA (Philippines) said that his delegation would have abstained if the proposal had been put to the vote.

18. Mr. SOLF (United States of America) explained why his delegation had abstained in the vote on the new text of Article 30, and participated in the consensus on Article 31. Despite its brevity, the new text of Article 30 added practically nothing to humanitarian protection. On the contrary it made the Protocol more cumbersome and gave rise to a certain degree of ambiguity. Indeed, so as to finish its work on time, the Committee had not sought to specify that the personnel protected by that article would be the civilian personnel of both Parties to the conflict. It had merely authorized civilian civil defence personnel, when unarmed, to carry out civil defence tasks, whereas Protocol II also provided for the protection of civilian civil defence personnel when armed. It followed that nobody knew whether, in case of a non-international conflict, the article would or would not apply to civil defence bodies operating in the country concerned, such bodies probably being armed.

19. Mr. ALBA (France) said that when the vote was taken on the deletion of Article 30, his delegation had abstained in a spirit of compromise. He associated himself unreservedly with what the United States representative had just said about Protocol II.

20. Mr. MARRIOTT (Canada) said that although Article 30 had been drafted in all good faith, the representatives had not been given enough time to study it. That was the reason which had prompted his delegation to abstain when that article was put to the vote.

21. Mr. HARSANA (Indonesia) said that although the new Article 30 in its present form was concise and simple, it was still unacceptable to his delegation because it implied that the legitimate Government had to recognize the civil defence of the rebellious party. His delegation had reservations regarding that article. He also emphasized that it was his delegation which had asked for the deletion of Article 31.

22. Mr. FRATESCHI (Italy) explained why his delegation had abstained when Article 30 was put to the vote. It was natural that some thought should be given before a vote was taken, especially when it involved approving provisions in draft Protocols I and II, whose aim was to develop international humanitarian law. It was in the interests of all concerned that no obstacle should impede the implementation of the standard under consideration.

23. The provisions of draft Protocol I accorded paramount importance to the protection of the civilian population in armed conflict; to that end, Part V of draft Protocol I defined the measures to be taken to safeguard that protection. Emphasis had been placed on all measures which might contribute to eliminating, or at least to reducing, the harmful effect of armed conflicts on the civilian population.

24. That was the aspect about which the Italian delegation felt concern. And there might accordingly be grounds for wondering whether all the Parties were ready to accept a balance between paramount humanitarian demands and concrete military necessities, so long as the phenomenon of war - and in particular civil war - continued to exist.

25. Mr. MAKIN (United Kingdom) said he wished to associate his delegation with the remarks made by the United States representative.

26. Mr. OSORIO (Colombia) said that his delegation had abstained in the vote on Article 30 so as not to hold up the Committee's work, but it reserved the right to take the floor again when that article was considered at a plenary meeting of the Conference.

27. Mr. LUKABU-K'HABOUJI (Zaire) said that his delegation had not wished to hamper the progress of the Committee's work and had abstained in the voting on Article 30, but it reserved the right to take the floor again at a plenary meeting of the Conference. It considered that it was not for the Conference to dictate the rules governing internal conflicts.

28. Mr. PASSALACQUA (Argentina) wished to reserve his delegation's position with regard to Article 30.

29. Mr. UHUMJAVBI (Nigeria) said that his delegation associated itself unreservedly with the remarks made by the representative of the United States of America.

Draft Protocol I

Article 59 ter - Members of the armed forces temporarily performing civil defence tasks (CDDH/II/GT/111)

30. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Committee's Drafting Committee, replying to a question by Mr. MAMONOV (Union of Soviet Socialist Republics), said that Working Group A had not submitted any proposal on Article 59 ter. The debate on that matter in Working Group A had so far not led to any conclusion.

31. Mr. SCHULTZ (Denmark) observed that two proposals had been made with regard to Article 59 ter. The first appeared in document CDDH/II/GT/111, and the second was an informal proposal made by the Union of Soviet Socialist Republics; the proposals diverged widely from each other and, for the time being, it seemed to be difficult to arrive at a solution. Rule 29 of the rules of procedure stipulated that "... no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting." He accordingly thought it impossible to take a position there and then on such a complicated issue.

32. The CHAIRMAN suggested to the Chairman of Working Group A that he might take advantage of the coffee break to meet once again with the representative of the Union of Soviet Socialist Republics. The Committee's work had to be completed that same day so that the articles adopted could be translated during the weekend and referred to the Drafting Committee on the Monday. It was planned to hold only one meeting during the following week, for the adoption of the Committee's report. With regard to the remainder of the Committee's work, he would have preferred the words "Revision of articles" in the agenda to be replaced by the words "Amendment of certain articles".

33. Mr. SOLF (United States of America) pointed out that a decision would have to be taken on certain words and phrases left in square brackets in draft Protocol I, Part II.

34. Mr. BOTHE (Federal Republic of Germany) said that it would be difficult to draw up an exhaustive list of all the words and phrases between square brackets but that all those questions would be taken up again and all necessary amendments made to the texts of the various articles.

The meeting was suspended at 4.15 p.m. and resumed at 4.55 p.m.

Amendment to Article 8 - Definitions

Sub-paragraph (d) (i)

35. Mr. BOTHE (Federal Republic of Germany) said that after the adoption of the terminology concerning civil defence, the question of the words in brackets could be settled by adopting the same terminology as in Article 8. In English it was neither "units" nor "bodies" but "organizations"; in French it was "organisme".

36. Mr. MAMONOV (Union of Soviet Socialist Republics) agreed to the proposal of the representative of the Federal Republic of Germany.

Sub-paragraph (f)

37. Mr. BOTHE (Federal Republic of Germany) explained that since it was proposed to reconsider an article already adopted, a two-thirds majority was required.

38. The CHAIRMAN asked members of the Committee if they agreed to re-open the discussion on sub-paragraph (f), in order to consider a proposal by Australia, Austria, France and the Holy See (CDDH/II/436).

It was so agreed.

39. Mr. KLEIN (Holy See) reminded the Committee that it had agreed by consensus in Article 54 and in Article 59, paragraph 9, to the principle of religious personnel being present in civil defence bodies. It was therefore proposed, in document CDDH/II/436, that the words "or civil defence bodies" should be added in sub-paragraph (f) (i).

40. Mr. SANCHEZ DEL RIO (Spain) said that, although he was not opposed to the principle of inserting those words, logically they should come in a new sub-paragraph (f) (iv).

41. Mr. BOTHE (Federal Republic of Germany) supported that proposal.

42. Miss MINOGUE (Australia) and Mr. SCHULTZ (Denmark) also supported it.

43. Mr. SOLF (United States of America) had no objections but wished the words "Civil defence bodies" to be replaced by the words "Civil defence organizations" in the English text.

44. Mr. BOTHE (Federal Republic of Germany) suggested that the full stop at the end of sub-paragraph (f) (iii) should be replaced by a comma and that the word "or" should be added.

It was so agreed.

The amendments to Article 8 were adopted by consensus.

Amendment to Articles 9 and 23 (CDDH/II/Inf.266)

45. The CHAIRMAN reminded the Committee that at its seventy-fifth meeting on 31 May 1976, it had decided to refer to the fourth session of the Conference the question of deleting the words "such as the International Committee of the Red Cross, or the League of Red Cross Societies" after "by an impartial international humanitarian organization" in Articles 9 and 23. A two-thirds majority was therefore not necessary to re-open the discussion.

46. Mr. PICTET (International Committee of the Red Cross) said that, at the second session of the Conference, Committee II had adopted Articles 9 and 23 of draft Protocol I, which provided that medical units and hospital ships could be lent to Parties to the conflict by a neutral State or an impartial international humanitarian organization. As the result of an amendment, the words "such as the International Committee of the Red Cross or the League of Red Cross Societies" had been added at the end as an example.

47. In their letter of 30 April 1976 to the President of the Diplomatic Conference, Professor Haug, head of the delegation of the League of Red Cross Societies, and Mr. Pictet as head of the ICRC delegation, had said that the mention of the Red Cross as an example was unnecessary and even harmful, and asked for it to be deleted. The letter had been distributed to members of the Conference and submitted to the Drafting Committee. Taking the view that the question was beyond its competence, the Drafting Committee had referred it at the third session to Committee II, which had not considered itself sufficiently well-informed and had postponed the matter to the current session.

48. Why was it that the international Red Cross organizations wished their names to be deleted from Articles 9 and 23? When the amendments referring to them had first been submitted, they had not opposed them, as they were waiting to see if it would be possible to arrive at a whole general article which would give an adequate basis for the role of the Red Cross in the application of the Protocol. That article had since been adopted by Committee I as Article 70 bis, which was completely satisfactory to the international Red Cross institutions. Mention of them in Articles 9 and 23 was therefore superfluous.

49. In point of fact, neither ICRC nor the League owned medical units or hospital ships and probably never would. Even if they should come to have them, they would never lend them to a Government but would operate them under their own responsibility and their own flag.

50. Finally, using the ICRC and the League as examples gave the impression that the term "impartial humanitarian organization" applied only to non-governmental organizations and excluded governmental ones. It was quite possible, however, that a specialized United Nations body such as the World Health Organization or the Office of the High Commissioner for Refugees would have adequate facilities to provide medical units or hospital ships. He therefore requested, on behalf of the two international Red Cross delegations, that the text should end with the words "an impartial humanitarian organization", without anything more.

51. Miss MINOGUE (Australia), Mr. WARRAS (Finland) and Mr. QUERNER (Austria) supported the ICRC representative.

52. Mr. JOSEPHI (Federal Republic of Germany) asked whether it would not be advisable to delete the whole of sub-paragraphs (c) in Article 9 and 2 (b) in Article 23, since they would no longer have the same meaning. Asked by the CHAIRMAN if he wished to propose a formal amendment to that effect, he said he would be satisfied if the examples given in those sub-paragraphs could simply be deleted.

53. Mr. JOMARD (Iraq), supported by Mr. HARSANA (Indonesia) and by Mr. KHAIIRAT (Egypt), drew attention to the fact that if the reference to the International Committee of the Red Cross and the League of Red Cross Societies was deleted, the meaning of those sub-paragraphs would be changed. He would therefore support a proposal that the sub-paragraphs should be deleted.

54. Miss MINOGUE (Australia) was of the opinion that it was not possible to delete those sub-paragraphs, which were part of a list of different categories of bodies that could lend permanent medical units and transport. On the other hand, it would perhaps be possible to envisage a cross reference to paragraph 4 of Article 70 bis of draft Protocol I.

55. After an exchange of views between the CHAIRMAN, Miss MINOGUE (Australia), Mr. SCHULTZ (Denmark), Mr. JOMARD (Iraq), Mr. MAKIN (United Kingdom), Mr. MARRIOTT (Canada), Mr. PICTET (International Committee of the Red Cross) and Mr. KRASNOPEEV (Union of Soviet Socialist Republics), Mr. BOTHE (Federal Republic of Germany), Rapporteur, proposed that the words "mentioned in Article 70 bis" should be inserted in the sub-paragraphs in question.

56. The CHAIRMAN, noting that the representative of Iraq did not wish to press for the discussion to be reopened, put to the vote the ICRC proposal that the reference to the ICRC and the League of Red Cross Societies should be deleted from the sub-paragraphs in question.

The amendment proposed by the ICRC was adopted by 38 votes to 4, with 8 abstentions.

Amendment to Article 9

Paragraph 1 (CDDH/II/435 and Corr.1)

57. Mr. SOLF (United States of America) said that, in view of the decisions taken by Committee III on Article 65 of Protocol I and by Committee I on Article 2 of Protocol II, the Australian and United States delegations had reconsidered the opinion they had expressed earlier and were now in favour of keeping the list that followed the words "without any discrimination".

After the Committee had agreed to reopen consideration of the provision, the amendment to paragraph 1 of Article 9 submitted by Australia and the United States of America was adopted by consensus.

Amendment to Article 11

Paragraph 4 (CDDH/II/438)

58. Mr. PENNANEAC'H (France) proposed that in the light of the provisions of Article 74 and the interests of national sovereignty, it was desirable to amend the original text of paragraph 4 of

Article 11. He also expressed concern about the provisions of paragraph 3, but in a spirit of compromise did not propose to seek to re-open the discussion at that paragraph.

59. Miss MINOGUE (Australia) reminded the Committee that her delegation had been one of those most active in drafting Article 11 at the second session of the Conference, regarding it as one of the most important of all those prepared by Committee II, since it extended the scope of international humanitarian law in a number of areas in order to improve the care available to the wounded and sick in time of conflict.

60. The article was of particular interest to her delegation in that it would make it possible for people who had fallen into the hands of the adverse Party to save the lives of their fellow men through the free gift of their blood and skin, which were two of the most powerful tools of modern medicine.

61. After two years of reflection, some delegations seemed to think that the Committee had gone too far at the second session; they would like to restrict the provisions of Article 11 to donations that would be used for the treatment of persons of their own Party. Although disappointed, her delegation would not oppose a consensus on Article 11. The revised paragraph should specify, however, that the availability of the precious items in question extended to all the categories of persons mentioned in paragraph 1 of Article 11. However, the Australian delegation hoped that the Committee would be willing to extend the proposed amendment to cover all the categories of persons mentioned in paragraph 1 of the article by using the same formulation "or who is interned, detained or otherwise deprived of liberty by a Party other than the Party on which he depends".

The meeting rose at 6 p.m.

SUMMARY RECORD OF THE NINETY-NINTH MEETING

held on Friday, 13 May 1977, at 6.30 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

CONSIDERATION OF DRAFT PROTOCOLS I AND II (CDDH/1) (concluded)

Draft Protocol I

Amendment to Article 11, paragraph 4 (concluded)

1. The CHAIRMAN invited the Committee to complete its consideration of Article 11, paragraph 4 and pointed out that a compromise solution had been reached since the ninety-eighth meeting.
2. Mr. BOTHE (Federal Republic of Germany) explained that the solution consisted in replacing in the new proposal the word "power" by "hands" and the words "his own" by "that on which he depends", in conformity with the text of paragraph 1.
3. Mr. GONSALVES (Netherlands) stressed the fact that Article 74, paragraph 5, referred solely to war crimes, i.e. grave breaches which presupposed a victim (or "infringement of a legal right") belonging to a State in conflict with the State to which the perpetrator belonged. What was important here was not the perpetrator's nationality but the State for which he had acted.
4. When the victims of the breach were not enemies (e.g. stateless persons, nationals of neutral States or of countries allied to the State on which the person committing the breach depended, or nationals of that State), the circumstances were completely different, as the case then became one of "crimes against humanity". So far this latter notion had only been dealt with - always excepting the charter of the Nürnberg International Military Tribunal - in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (United Nations General Assembly resolution 260 (III), Annex). But his delegation wished to call attention to the fact that crimes against humanity could in no case be covered by the provisions of Protocol I; which was why it had endorsed the proposal of the French delegation.
5. Mr. SOLF (United States of America) expressed his approval of the proposed amendment.

Paragraph 4 of Article 11, as amended, was adopted by consensus.

Article 12 - Protection of medical unitsParagraph 2 (b) (CDDH/II/412)

6. Mr. SOLF (United States of America) pointed out that other articles in Protocol I already specified that civilian medical units must be "recognized and authorized by the competent authority". With regard to that point, it had already been observed that two different problems were involved: recognition and authorization. The question had been considered when sub-paragraphs (c) and (f) of Article 11 of draft Protocol II were discussed, and there the words used were "recognized and authorized". Consequently, there was no reason to adopt a different wording in the case of paragraph 2(b) of Article 12.

7. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) considered that the explanations given by the representative of the United States of America were very clear and hoped that the Committee would adopt the paragraph by consensus.

Article 12, paragraph 2(b) thus amended, was adopted by consensus.

Article 15 - Protection of civilian medical and religious personnelParagraph 5 (CDDH/II/411)

8. Mr. SOLF (United States of America) noted that the wording of paragraph 5 had been adopted before that of the definition of religious personnel included in paragraph 8. Notwithstanding the comments that had been made in the Drafting Committee, the amendment did not involve any question of substance, and its adoption should not create any difficulty.

Article 15, paragraph 5, as amended, was adopted by consensus.

Article 17 - Role of the civilian population and of relief societies (CDDH/236/Rev.1, para. 25)

9. The CHAIRMAN reminded the Committee that the question had been referred to it by Committee III, as appeared from the report of that Committee on its third session (CDDH/236/Rev.1, para. 25).

10. Mr. BOTHE (Federal Republic of Germany) thought that the Committee was being asked to reconsider a decision it had already taken. If the Committee approved the recommendations of Committee III, there was no technical difficulty in incorporating that recommendation into the text of Article 17. The first question to be decided was, however, whether the Committee wished to reconsider an earlier decision.

11. Mr. SOLF (United States of America) thought that there was no reason to reconsider the question, because it had already been examined in detail at the previous sessions. Indeed, it was quite clear from paragraph 1 and paragraphs 2(a), (b) and (c) of Article 38 bis; paragraph 1 of Article 17 and the definition of "attacks" given in paragraph 2 of Article 44 that Article 17, which prohibited acts of violence against the wounded, sick and shipwrecked, covered the persons hors de combat listed in paragraph 2(c) of Article 38 bis.

12. It would be recalled, in that connexion, that the Committee had had occasion, at its second session, to consider a proposal by a delegation to insert the words "and combatants hors de combat" after the words "the sick" (CDDH/II/14) in Article 17. Some delegations had objected to that proposal because combatants were not within the competence of Committee II, and others because persons hors de combat could not be put on the same footing as persons protected under the first Geneva Convention of 1949. After a discussion the sponsor delegation had withdrawn its proposed amendment (CDDH/II/SR.17), and that withdrawal was wholly justified. In reality, persons hors de combat who were wounded, sick or shipwrecked were covered by Article 17; persons who were in the power of an adverse Party were protected by the third Geneva Convention of 1949 if they were prisoners of war, and by the fourth Convention if they were civilians; persons hors de combat because they had expressed an intention to surrender were protected by Article 38 bis against the enemy, but not against the military or civilian police of their own country.

13. In short, the wounded, sick and shipwrecked, whether friend or foe, were protected by Article 17, so that it was not necessary to repeat in Article 17 the protection implicitly provided by paragraph 1 of Article 38 bis.

14. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation unreservedly approved the explanations and position of the United States delegation.

15. Mr. GONSALVES (Netherlands) observed that his delegation had had no knowledge of the proposal, which had not been submitted in the regular and prescribed form. He considered that Committee III should take the necessary steps, possibly by redrafting Article 38 bis.

16. The CHAIRMAN said he agreed with the suggestion of the representative of the Netherlands that the question should be referred back to Committee III.

It was so agreed.

Article 20 quater - Remains of deceasedParagraph 5 (CDDH/242)

17. Mr. BOTHE (Federal Republic of Germany) stated that the question of the application of Protocol I in the relations between a High Contracting Party or a Party to a conflict and its own nationals had not become the subject of any general provision. Therefore, the Committee had to decide whether the text in square brackets was indispensable. In the opinion of his delegation that was not the case and he wondered whether the paragraph could not be simply deleted.

18. Mr. HEER (German Democratic Republic) supported the proposal.

The text of paragraph 5 of Article 20 quater placed in square brackets was deleted by consensus.

Technical Annex to draft Protocol I (concluded)Article 4 - Use (CDDH/II/437)

19. The CHAIRMAN invited the Committee to consider the proposed amendment to Article 4, paragraph 2 of the Technical Annex, submitted by France and the Holy See (CDDH/II/437).

20. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), speaking as Vice-Chairman of the Technical Sub-Committee, apologized to the representative of the Holy See for the omission of the words "and religious" after "medical", and assured him that the omission was completely unintentional.

21. Mr. KLEIN (Holy See) thanked the representative of the Union of Soviet Socialist Republics; he had no doubt that the omission was only an oversight which could very easily be remedied, so as to ensure conformity with Articles 15 and 18 of draft Protocol I and Articles 1, 2 and 3 of the Technical Annex.

22. Mr. SANCHEZ DEL RIO (Spain) pointed out to the Committee that religious personnel were not normally responsible for removing casualties from the battle area. He suggested the wording: "medical and religious personnel and personnel removing casualties ...".

23. Mr. SOLF (United States of America) said that while his delegation saw nothing against that suggestion, the point at issue in the proposed amendment was simply the wearing of the distinctive emblem by religious personnel, to which no one could have any objection. The proposal put forward by the representative of Spain raised a completely fresh issue: that of personnel specially responsible for removing casualties from the battle area.

24. Mr. KLEIN (Holy See) observed how difficult it was to foresee all the vicissitudes of a combat situation and added that, in any event, religious personnel were constantly called upon to go to an front in the battle area in order to minister to the wounded and the dying. He considered that it would be preferable not to separate medical personnel and religious personnel.
25. Mr. HUSSAIN (Pakistan) said he could testify that he had often seen chaplains transporting the wounded and the dead.
26. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) proposed that, to avoid misunderstanding, religious personnel should be mentioned before medical personnel.
27. Mr. MARRIOTT (Canada), supporting what had been said by the representative of Pakistan, stressed the important role which religious personnel were often called upon to play in the battle area. He thought that the scope of the text under consideration should not be restricted.
28. Mr. SOLF (United States of America) said that he fully associated himself with the position taken by the representative of Canada.
29. Mr. MAKIN (United Kingdom) observed that the role of medical and religious personnel was not confined to the removal of casualties. Amended as proposed by France and the Holy See, Article 4, paragraph 2 should lend itself to the broadest possible interpretation.
30. Mr. UHUMUAVBI (Nigeria) said he supported what had just been said by the United Kingdom representative: the scope of the text should be as broad as possible.
31. Mr. FRATESCHI (Italy) said that in his country the task of removing the wounded was given to army chaplains.
32. Mr. KLEIN (Holy See) said he wondered whether the simplest solution would not be to refer simply to "presence in the battle area", without specifying all the duties which that presence involved.
33. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said he considered that the United Kingdom representative's comments should allay all fears.
34. Mr. MAKIN (United Kingdom) proposed that the text should be worded as follows: "Subject to the instructions of the competent authority, medical and religious personnel carrying out their duties in the battle area shall, as far as possible, wear headgear and clothing bearing the distinctive emblem".

Article 4, paragraph 2, as thus amended, was adopted by consensus.

Draft Protocol IIArticle 14 - Role of the civilian population and of relief societies (CDDH/242)

35. The CHAIRMAN said that the Drafting Committee had added to the second sentence of paragraph 1 and to the first sentence of paragraph 2 of the English text of Article 14 the words "collect and" before the words "care for", in order to bring the text in line with the French and Spanish versions of the article.

36. Mr. BOTHE (Federal Republic of Germany) pointed out that the Drafting Committee had already made the correction but that it had been thought appropriate to inform the Committee of it.

37. The CHAIRMAN said that, if there were no objections, he would consider that the Committee adopted the amendment made by the Drafting Committee.

It was so agreed.

Amendment to Resolution CDDH/II/391/Rev.1

38. The CHAIRMAN read out the following statement relating to the resolution, which had been communicated to him by the Observer for the International Telecommunication Union:

"This draft resolution does not amend or condition the Technical Annex to draft Protocol I in any way whatsoever.

The purpose of the resolution is to bring to the attention of each Government represented at this Conference, in a simple manner, the need for co-ordination in each country at the national level with the Telecommunication Administration of the country so as to ensure that the radiocommunication requirements, to which reference is made in the Technical Annex to Protocol I may be duly considered at the ITU World Radio Conference in 1979.

The only changes to the resolution, adopted by Committee II last year, are of a minor editorial character. This is one additional paragraph beginning "Takes note". This addition takes into account the inclusion of the specific item on the agenda of the Radio Conference.

The text thus would appear to be self-explanatory."

39. Mr. EBERLIN (International Committee of the Red Cross) said that the date of the session of the Diplomatic Conference on Humanitarian Law appearing on page 1 of document CDDH/II/391/Rev.1 should be altered from 1976 to 1977.

40. The CHAIRMAN pointed out that the resolution could not be finally adopted until the final plenary meeting of the Conference, since it assumed the prior adoption of the Additional Protocols.

41. If there was no objection, he would take it that the Committee adopted the text of the resolution, with the amendment proposed by the ICRC representative, by consensus.

It was so agreed.

Draft Protocol II

Article 11 - Definitions (CDDH/242)

42. Mr. BOTHE (Federal Republic of Germany) referred to footnote 1/ on page 263 of the synoptic table (CDDH/242), indicating that sub-paragraph (f) of Article 11, would have to be re-examined in the light of decisions taken with respect to Article 35. The matter concerned, in particular, medical personnel of the Red Cross and of other authorized aid societies mentioned in sub-paragraphs (f) (ii) and (iii). He did not consider that there was any need to amend the wording of those provisions as a result of the adoption of Article 33, paragraph 1, which replaced Article 35. There was no inconsistency between the wording there and that used in Article 8 of Protocol I.

43. He proposed, however, that the square brackets round the phrase "including those assigned to medical tasks of civil defence" in sub-paragraph (f) (i) should be removed. Once provisions on civil defence were included in Protocol II, that phrase would have to be retained.

44. Mr. WARRAS (Finland) took the view that there was no need to amend sub-paragraph (f) of Article 11 as a result of the adoption of Article 33, paragraph 1, which used the same wording.

45. The CHAIRMAN said that, if there was no objection, he would consider that the Committee accepted the proposals by the Rapporteur on sub-paragraph (f) of Article 11.

It was so agreed.

46. Mr. KLEIN (Holy See) proposed that there should be added at the end of sub-paragraph (h) a further item (iv), reading: "or to the civil defence organizations", in order to take into account the provisions on civil defence adopted in Protocol II.

47. Mr. BOTHE (Federal Republic of Germany) supported the proposal by the representative of the Holy See.

48. The CHAIRMAN said that, if there was no objection, he would take it that the Committee accepted the proposal.

It was so agreed.

Article 13 - Search and evacuationParagraph 3 (CDDH/242)

49. Mr. BOTHE (Federal Republic of Germany) drew the Committee's attention to footnote 1/ on page 269 of the synoptic table (CDDH/242), which stated that the expression "aged persons and children" was to be reconsidered after the adoption of the definitions article and when a decision had been reached on Article 32 of draft Protocol II. The question no longer arose since there was no definition of aged persons and children. Moreover, the wording of Article 32 regarding children was not inconsistent with that of Article 13. Hence there was no need to amend paragraph 3 of Article 13.

50. The CHAIRMAN said that, if there was no objection, he would take it that Article 13, paragraph 3, was adopted.

It was so agreed.

Article 14 - Role of the civilian population and of relief societies (CDDH/242)

51. Mr. HARSANA (Indonesia) pointed out that there were still some square brackets in paragraph 3 as reproduced on page 271 of the synoptic table (CDDH/242).

52. Mr. BOTHE (Federal Republic of Germany), Rapporteur, said that that was a mistake and the square brackets should be removed.

It was so agreed.

The meeting rose at 7.50 p.m.

SUMMARY RECORD OF THE ONE HUNDREDTH MEETING

held on Friday, 20 May 1977, at 9.45 a.m.

Chairman: Mr. S-E. NAHLIK (Poland)

ADOPTION OF THE DRAFT REPORT OF COMMITTEE II (CDDH/II/467)

1. Mr. EL HASSEEN EL HASSAN (Sudan), Rapporteur, introduced the draft report of Committee II (CDDH/II/467). He had not taken part in the proceedings of the first two sessions of the Conference. At the third session, having been chosen by the African Group to replace Mr. Maiga (Mali) as Rapporteur of Committee II, he had found that the Committee had achieved considerable progress. The Working Groups, the Working Sub-Groups and the Committee's Drafting Committee had already virtually completed a large proportion of their work.
2. At the current session, Committee II had dealt in particular with relief and civil defence. In view of the difficulties involved in preparing the report, corrections might prove to be necessary.
3. Any delegations which might have noted mistakes in drafting or translation in the draft report could send a list of them to the Secretariat, which would take them into account when the final version was produced.
4. For the time being, members of the Committee might confine themselves to making observations on the substance, which would be taken into account in the text of the report to be submitted to the Conference.
5. In conclusion, he congratulated the members of the Committee on the work which they had performed during the four sessions, and expressed the hope that the current and final session would see all their work brought to a successful conclusion.
6. He proposed that the Committee's draft report should be considered section by section, and asked the Legal Secretary to read out such errors as might have been noted.

Paragraphs 1 to 18 (Introduction)

7. Mr. FROIDEVAUX (Legal Secretary) said that the symbol shown in brackets in paragraph 11 of the English text should be brought into line with that in the French text, namely, "(CDDH/II/SR.83-101)". In paragraph 18 of the English text, page 7, twentieth line, the word "session" should be in the plural.

8. Mr. BOTHE (Federal Republic of Germany) said that in paragraph 9 there should also be a reference to the setting up of an ad hoc group; in paragraph 16, the words "working sub-group" should be replaced by "working group", and in paragraph 18 the title of Article 62 bis - namely, "Relief personnel" - should be shown.

9. Mr. MARRIOTT (Canada) pointed out that where there was a reference on page 7 to Article 30 of Protocol II, the symbol CDDH/II/441 should be added.

10. Mr. SANCHEZ DEL RIO (Spain) asked that in paragraph 17 mention should also be made of two sub-groups - one on Article 62 bis, chaired by Mr. Krasnopeev (Union of Soviet Socialist Republics), and one on some paragraphs of Article 33, chaired by Mr. Marriott (Canada).

11. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) observed that in paragraph 18, after the reference to Article 34 of draft Protocol II, the English word "amendments" was in fact used to describe drafting changes, and should be replaced by an equivalent of the French word "modifications".

12. Mr. SOLF (United States of America) pointed out that some of the changes involved had been changes of substance.

13. The CHAIRMAN proposed that the word "amendments" in the English text should be replaced by "modifications", which covered questions of both drafting and substance and from the point of view of semantics had a much more moderate meaning.

It was so agreed.

14. Mr. AL ASBALI (Libyan Arab Jamahiriya) said that he would like the full name of his country to be shown above each amendment submitted.

15. The CHAIRMAN assured the representative of the Socialist People's Libyan Arab Jamahiriya that his wishes would be respected.

16. Mr. GONSALVES (Netherlands) said he would like to know why the work of the Committee's Drafting Committee had not been mentioned in paragraphs 5 and 6. It would make matters clearer if the appropriate mention was made.

17. With reference to paragraph 13, he pointed out that the Sub-Group had met nine times and not six.

18. Mr. SANCHEZ DEL RIO (Spain), replying to a question put by the representative of the Netherlands, said that in paragraph 115 of the draft report it was stated that the Drafting Committee had met once. In fact, it had met several times informally, so that if paragraph 6 was going to be amended, it would also be necessary to change paragraph 115.

19. The CHAIRMAN observed that, at the current session, it had been agreed that the Working Groups would at the same time act as Drafting Committee.

20. Mr. EL HASSEEN EL HASSAN (Sudan), Rapporteur, confirmed that that was so and said that the point was clearly made in the last sentence of paragraph 9.

21. The CHAIRMAN asked the members of the Committee whether they were prepared to adopt paragraphs 1 to 18 of the draft report by consensus subject to the drafting changes to be introduced later.

It was so agreed.

Paragraphs 1 to 18, as amended, were adopted by consensus.

Paragraphs 19 to 29

22. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that his delegation had no comment to make on the articles in Part II, Section I, of draft Protocol I, except that the words "hors de combat" had been mistranslated into Russian. He would submit drafting changes in writing to the Secretariat.

23. Miss MINOGUE (Australia) pointed out that Article 11 had been adopted at the second session with a note requesting that it should be referred to the Drafting Committee (see CDDH/221/Rev.1). Paragraph 25 should therefore refer to that note.

24. The CHAIRMAN asked the Rapporteur of the Committee's Drafting Committee to explain the amendments relating to paragraphs 19 to 29.

25. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested that paragraph 21 should refer to "religious personnel attached to civil defence bodies".

26. In paragraph 22, the words "for the purpose of aligning the text with the non-discrimination provisions adopted by other Main Committees" should be inserted after "United States of America".

27. In paragraph 25, the words "decided by consensus to re-open the discussion on" should be replaced by "reconsidered". There should be a full-stop after the words "second session". After that the following sentence should be inserted: "The possibility of reconsideration had been reserved when Article 11 was adopted.

The words "in order to" should be deleted, and the next sentence should begin with "The Committee considered ...". The words "in order to align the grave breaches provisions with Article 74 adopted by Committee I" should be inserted after "Netherlands".

28. In paragraph 26, the words "in order to align the provisions with Article 26 of the first Convention" should be inserted after "United States of America".

29. In paragraph 27, the words "in order to align the text with the definition of 'religious personnel'" should be inserted after "United States of America".

30. Those clarifications would be very useful to the reader of the report, who would thus know to what the various amendments related.

31. Mr. SOLF (United States of America) accepted the suggestions made by the Rapporteur of the Drafting Committee.

32. The CHAIRMAN asked the members of the Committee whether they were prepared to adopt, by consensus, the comments contained in paragraph 19 to 29, as amended above.

It was so agreed.

Paragraphs 19 to 29, as amended, were adopted by consensus.

Paragraph 30

33. Mr. MAKIN (United Kingdom) suggested that the words "because it was evident that the article did not apply to a Party's own nationals:" should be added at the end of the paragraph.

Paragraph 30, as amended, was adopted.

Paragraph 31

34. Mr. AL ASBALI (Libyan Arab Jamahiriya) pointed out that the paragraph numbers in brackets had been omitted in the Arabic text.

Paragraph 31 was adopted by consensus.

Paragraphs 32 to 36

35. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, replying to Mr. URQUIOLA (Philippines), said that an amendment had indeed been submitted to Article 59 ter.

As to its content, that related to what was now Article 59 bis. He added that the term "Working Sub-Group" in paragraph 35 should be replaced by "Working Group".

36. Mr. SOLF (United States of America) said that the long list constituting the heading of paragraphs 32 to 36 should be changed since some of the articles concerned belonged to draft Protocol I and its annex and others to draft Protocol II.

37. Mr. MARRIOTT (Canada) said that in paragraph 36 the words "Working Sub-Group" should be replaced by "Working Group", as in paragraph 35.

38. After an exchange of views on the term "took note" in the last sentence of paragraph 36, in which Miss MINOGUE (Australia), Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, and Mr. MARRIOTT (Canada) took part, the CHAIRMAN suggested that a note should be added reading: "For action taken, see the following paragraphs."

It was so agreed.

Paragraphs 32 to 36, as thus amended, were adopted by consensus.

Paragraphs 37 to 50 (Article 54)

39. Mr. MARRIOTT (Canada) proposed that dots should be inserted in the first line of paragraph 48 immediately after the quotation marks. In addition he suggested that in paragraph 50 the words "this personnel" should be replaced by "these persons".

40. Mr. KUCHENBUCH (German Democratic Republic) said that the wording of paragraph 47 was contradictory and not very clear. The word "additional" was out of place. It was quite clear that civil defence organizations might also perform tasks other than those enumerated in Article 54, paragraph 1, but it was equally clear that they would not enjoy the protection granted by that Chapter during the performance of such other tasks.

41. He therefore proposed that the paragraph should be amended to read:

"Civil defence organizations may, on the order of their authorities, perform other tasks not included in Article 54, provided that these tasks do not constitute acts harmful to the enemy under Article 58. During the performance of such tasks, however, the protection granted by this Chapter does not apply to them."

42. Mr. SATO (Japan) wished to refer to practical difficulties of implementation in those countries where there was no institutional system of civil defence. In Japan the regional authority, the civil police and the maritime security agency were responsible for some of the tasks listed in Article 54, paragraph 1, but by reason of the use of the expression "assigned and devoted exclusively" the provisions concerning civil defence did not apply to those bodies, whereas they did apply to some members of the armed forces who were assigned and devoted exclusively to civil defence tasks. That would lead to the dilemma that, while members of the armed forces were to be accorded protection under Article 54, the members of civilian bodies who were carrying out the same tasks would not be accorded the same protection. The Japanese delegation, however, would not stand in the way of a consensus.

43. Mr. SOLF (United States of America), Mr. MAKIN (United Kingdom), Mr. MARRIOTT (Canada), Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, and Mr. FOURKALO (Ukrainian Soviet Socialist Republic) supported the proposal of the representative of the German Democratic Republic.

44. Mr. HARSANA (Indonesia) objected to the second sentence in the new text.

45. Mr. MARRIOTT (Canada), bowing to the views expressed by the representatives of the United States and the Federal Republic of Germany, said that he would not press a proposal to delete the reference to Article 58.

46. Mr. MAKIN (United Kingdom), responding to the objections raised by Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, Mr. JOSEPHI (Federal Republic of Germany) and Mr. MAMONOV (Union of Soviet Socialist Republics), did not press his proposal to insert in paragraph 43, after the second sentence, the phrase:

"The police functions should not be interfered with except in the case of imperative military necessity."

47. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said, in reply to a question from Mr. HARSANA (Indonesia), that the text proposed by the representative of the German Democratic Republic referred to the protection granted by "this Chapter" and not by "this Part".

A vote was taken on the new text proposed for paragraph 47.

The new text was adopted by 33 votes to 1, with 14 abstentions.

48. Mr. MAKIN (United Kingdom), supported by Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested adding at the end of paragraph 48 the words "during that period".

49. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, said he thought that the word "agricultural" should be inserted before "silo" in the last line of paragraph 45.

50. In response to a comment by Mr. FOURKALO (Ukrainian Soviet Socialist Republic) drawing the Secretariat's attention to two translation errors in the Russian text, the CHAIRMAN asked him if he would provide the necessary corrections in writing.

The paragraphs dealing with Article 54 (paragraphs 37 to 50), as thus amended, were adopted.

Paragraphs 51 to 58 (Article 55)

51. Mr. MAMONOV (Union of Soviet Socialist Republics) noted that the first sentence of paragraph 58 might be understood to be a definition of civil defence, while in fact the definition was to be found in paragraph 1 of Article 54. He accordingly proposed to substitute for that first sentence words to the effect that since civil defence conformed to humanitarian needs, the defence of the civilian population was an essential part of the life of the civilian population when circumstances were exceptional.

52. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, commented that the first sentence of paragraph 58 was not a definition but an explanation which provided a basis for the comments which followed.

53. Mr. MAKIN (United Kingdom), seconded by Mr. MAMONOV (Union of Soviet Socialist Republics) and Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, suggested the deletion of the first sentence of paragraph 58 of the draft report.

It was so agreed.

54. Mr. FROIDEVAUX (Legal Secretary) said that in paragraph 53, sixth line of the English text, the word "as" should be amended to read "in so far as", which would entail an amendment to the French text. In addition paragraph 56 should be placed in quotation marks and indented.

55. Replying to Miss MINOGUE (Australia) who considered the expression "in so far as" to be too restrictive, Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, explained that the correction was intended to rectify an omission.

56. Mr. FOURKALO (Ukrainian Soviet Socialist Republic) drew attention to the need to replace the words "the Rapporteur explained" by "the Rapporteur also confirmed" in paragraph 53, fifth and sixth lines.

The section of the report dealing with Article 55 was adopted by consensus.

The meeting was suspended at 11.35 a.m. and resumed at 11.55 a.m.

Paragraphs 59 to 63 (Article 56)

57. Mr. DESPOT (Yugoslavia) observed that under the Yugoslav Constitution, the Law on National Defence and other relevant instruments of domestic legislation, Yugoslav citizens were forbidden to accept or recognize foreign occupation. The country's concept was based on the principle that an aggressor should not be allowed any opportunity to exercise his power on the territory which he temporarily held. That attitude derived from the country's experiences in wartime under a foreign occupation which had not been of a classical type: instead, war crimes and crimes against humanity aiming at the extermination of the population were systematically perpetrated on a large scale, in breach of all the rules of international law, of humanitarian law and of the dictates of public conscience. His Government admitted that there was a need for the civilian population to be defended, but argued that an aggressor might abuse the rules, turning civil defence bodies into instruments of its own aggressive purposes. International law should not be permitted to become an instrument serving the interests of an aggressor. It was for that reason that his delegation had introduced an amendment designed to protect civil defence bodies from any coercion on the part of an Occupying Power and to leave such bodies free to decide whether to continue their work in a given area, according to circumstances.

58. Article 56, paragraph 2, had been adopted by consensus on the basis of a proposal made by his delegation. That delegation considered that the wording adopted would make it possible for civil defence bodies to avoid becoming an instrument of the Occupying Power and leave them free to discontinue their activities. If they considered that those activities might be in any way detrimental to the interests of the civilian population, they could not be compelled to continue with them. That principle was in conformity with the general principle that the rules of international law should be so phrased as to afford the civilian population wider possibilities of self-defence and protection against compulsion or other acts on the part of an occupying power.

59. Mr. SOLF (United States of America) and Mr. FROIDEVAUX (Legal Secretary) pointed out that the article referred to in paragraph 63 was Article 55 and not 56.

The section of the report dealing with Article 56 was adopted by consensus.

Paragraphs 64 to 69 (Article 57)

60. Mr. FROIDEVAUX (Legal Secretary) drew attention to the fact that in some language versions of paragraph 64, but not in English, the symbols of the documents submitted by Spain (CDDH/II/234) and Denmark (CDDH/II/324) should be corrected.

The section of the report relating to Article 57 was adopted by consensus.

Paragraphs 70 to 83 (Article 58)

61. Mr. NAOROZ (Afghanistan) said that his delegation had joined in the consensus on Articles 58 and 59 of draft Protocol I. It was concerned, nevertheless, by the fact that the personnel of civil defence organizations could be armed with individual light weapons. It fully appreciated the humanitarian motives that had led to the adoption of those provisions but thought that their application would give rise to considerable difficulties. In some countries, where for the most part light weapons were all that was available, it would be next to impossible to differentiate in combat situations between civil defence personnel armed with individual weapons and military personnel. What guarantee was there that persons would not change from one category to the other as they found it convenient? Although Article 56 provided for the possible disarming of such personnel for security reasons, his delegation did not find that provision adequate. It wished to have its reservation appear in the summary record of the meeting.

62. The CHAIRMAN, referring to the statements of the representatives of Yugoslavia and Afghanistan, said that the sole aim of the current meeting was the adoption of the report. He therefore asked all members of the Committee kindly to refrain from entering into the substance of the articles of the Protocol.

63. Mr. MARRIOTT (Canada) proposed that the last sentence of paragraph 73 should be amended to read "The following delegations made statements agreeing with this explanation." Referring to paragraph 79, he proposed that the words "The words" preceding the words "respected and protected" should be replaced by the words "The expression". He also proposed that in paragraph 80 of the English text, the first and last commas should be deleted.

64. Mr. SANDOZ (International Committee of the Red Cross) remarked that the terms "respected and protected" were often used in the Geneva Conventions and in other places in the Protocol with a very precise meaning. It should be quite clear that the interpretation of those words in paragraph 79 was only valid in the context of civil defence.
65. Mr. MAKIN (United Kingdom) proposed the following text for paragraph 77: "The words 'individual light arms' mentioned in Article 13 should be interpreted in the same way in this report."
66. Mr. MARRIOTT (Canada) proposed that the word "as" in the second line of paragraph 77 should be deleted.
67. Mr. MAMONOV (Union of Soviet Socialist Republics), supported by Mr. KUCHENBUCH (German Democratic Republic) considered that the wording of the draft paragraph was satisfactory as it stood.
68. After Mr. BOTHE (Federal Republic of Germany), supported by Mr. SOLF (United States of America), had pointed out that paragraphs 76 to 80 of the report had been the subject of long negotiations in Working Group A so that it would be preferable not to alter the results of the compromise that had been reached, Mr. MAKIN (United Kingdom) withdrew his proposal.
69. Mr. KUCHENBUCH (German Democratic Republic), referring to paragraph 74, drew attention to the fact that it was not "the rest" but the essence of the article that had been adopted by consensus. He proposed therefore that the third sentence of the article should be amended to read "The article was then adopted by consensus at the ninety-fifth meeting."
70. Miss MINOGUE (Australia) pointed out that in paragraph 74, the reference to reservations made by explanations of votes were followed by a list of delegations and reference to the summary record of the meeting, but that corresponding information was lacking in other places in the report. The report should be uniform throughout.
71. Mr. FOURKALO (Ukrainian Soviet Socialist Republic), also referring to paragraph 74, remarked that it was incongruous to speak of reservations formulated by explanations of votes in the case of an article adopted by consensus.
72. Mr. BOTHE (Federal Republic of Germany), Rapporteur of the Drafting Committee, proposed that in all cases of adoption by consensus, the following formula could be used: "Several delegations made statements explaining their attitudes with respect to Article ...".

The section of the draft report relating to Article 58 was adopted by consensus.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FIRST (CLOSING) MEETING
held on Friday, 20 May 1977, at 2.15 p.m.

Chairman: Mr. S-E. NAHLIK (Poland)

ADOPTION OF THE DRAFT REPORT OF COMMITTEE II (CDDH/II/467)
(concluded)

1. The CHAIRMAN read out the first paragraph of rule 19 of the rules of procedure and reminded representatives that the object of the meeting was to adopt the report. Any delegation wishing to make a statement of substance could thenceforth do so only in plenary. He then invited the Committee to turn to paragraphs 84 to 91 of the draft report.

Draft Protocol I (concluded)

Paragraphs 84 to 91 (Article 59)

2. Mr. FROIDEVAUX (Legal Secretary) pointed out that, in paragraph 84, which referred to Article 59, the words "(Replaced later by amendment CDDH/II/408 and Add.1)" should be inserted, in the English text, after "(Referred to the Drafting Committee/Working Group)" concerning the second Danish amendment (CDDH/II/408 and Add.1). In the English text of paragraph 85, the words "and Add.1" should be inserted after "CDDH/II/427". Finally, in paragraph 85 again, the plural "roll-call votes" should be replaced by the singular.

3. Mr. BOTHE (Federal Republic of Germany), Deputy Rapporteur, said that in the second sentence of paragraph 91, English text, "This personnel" should be replaced by "Such personnel", the relevant verbs being put into the plural.

4. Mr. MARRIOTT (Canada) called for another editorial change in that sentence: replace, in the English text, "which" by "who", and "mainly" by "primarily". In addition, he proposed that the third sentence of paragraph 91 be replaced by the following: "The reference to Part II of the Protocol in the first sentence does not, however, carry any implications with regard to organizational or command structure".

The proposal by the Canadian delegation was adopted by consensus.

5. Mr. HEER (German Democratic Republic) proposed that, in the fourth line of the English text of paragraph 86, "background" be replaced by "ground", already in use elsewhere.

It was so agreed.

Paragraphs 84 to 91, as amended, were adopted by consensus.

Paragraphs 92 to 102 (Article 59 bis)

6. Mr. CZANK (Hungary) felt that in the second sentence of paragraph 96, the words "A large number of States" should be replaced by "Several States", since only about ten delegations had given explanations of vote. Moreover, those had in fact been mere explanations of vote, for reservations could only be expressed on the occasion of the signature of the Protocol, although the delegations concerned might return to Article 59 bis in plenary. He therefore proposed that the second sentence of paragraph 96 be replaced by the following: "Several delegations reserved their right to revert to Article 59 bis in a plenary meeting of the Conference", while retaining the reference to summary record CDDH/II/SR.97.

7. Mr. MAMONOV (Union of Soviet Socialist Republics) drew the attention of the Committee to the words "minimum size" in the first sentence of paragraph 101, which did not tally with Article 59 bis which specified that the distinctive sign should be as large as possible. He therefore proposed the deletion of the first sentence of the paragraph. He would, in any case, prefer that the second sentence read "Military personnel will have to carry, in addition to the military identity card provided for in the third Convention, the identity card referred to in sub-paragraph (c)".

8. Mr. GONSALVES (Netherlands), speaking in his capacity as Chairman of the Working Sub-Group, said that, in paragraph 94, "spent six meetings" should be replaced by "spent nine meetings". In reply to the Soviet representative's comments on paragraph 101, he explained that the first sentence did indeed summarize the discussions of the Working Sub-Group. A previous proposal had been withdrawn on condition that mention was made of it in the report. Regarding the second sentence of paragraph 101, he preferred the present version, which he felt was clear.

9. Mr. RUIZ-PEREZ (Mexico) called for mention in paragraph 96 of an oral proposal by his delegation for the deletion of paragraph 1 (b) of Article 59 bis. Accordingly, paragraph 96 might begin with the following sentence: "A delegation proposed the deletion of sub-paragraph (b) of paragraph 1".

10. Mr. MAKIN (United Kingdom) believed that the text of the second sentence of paragraph 96 should be harmonized with paragraph 74. Moreover, paragraph 102 was unclear. It should be deleted, or at any rate, reworded.

11. Mr. MARRIOTT (Canada) agreed with the previous speakers concerning the wording of paragraph 96. In paragraph 100 he proposed that the following text should be added to the first sentence: "but does not exclude the performance of purely

administrative duties". In the second sentence he would prefer the English expression "combat support", which was more precise than "combat services". As to paragraph 101, the English text would read better if the words "on a tabard" were placed as follows: "a sign of a minimum size on a tabard of about 30 cm x 30 cm".

12. Mr. HEER (German Democratic Republic) said that he was also in favour of deleting the first sentence of paragraph 101. Again, the distinctive sign referred to in sub-paragraph (c) of Article 59 bis should obviously be as large as possible, so that there was no need to indicate the fact in paragraph 101 of the report.

13. The CHAIRMAN, replying to Mr. LUKABU-K'HABOUJI (Zaire) concerning the lists of countries mentioned in brackets in paragraph 95, recalled that the Committee had decided to recommend to the Rapporteur the deletion of lists of countries, so as to avoid encumbering the text.

14. Mr. BOTHE (Federal Republic of Germany), Deputy Rapporteur, referred to the various suggestions made by representatives.

15. The lists of countries in paragraph 95 would be deleted in accordance with the Committee's wish. Paragraph 96 could begin with the sentence proposed by the Mexican delegation.

16. In paragraph 100, it was for the Committee to decide whether the reference to administrative duties should be inserted as proposed. The English expression "combat duties" proposed by the Canadian representative was acceptable.

17. Lastly, he suggested that the first three words of paragraph 102 should be deleted to make the sentence begin: "The note relating to Article 58 ...". Mention of the note still seemed useful.

18. After an exchange of views in which Mr. MAKIN (United Kingdom), Mr. SOLF (United States of America) and Mr. MARRIOTT (Canada) took part, concerning the proposed insertion in paragraph 100 of a reference to administrative duties, Mr. BOTHE (Federal Republic of Germany), Deputy Rapporteur, suggested that a sentence should be inserted after the second sentence of paragraph 100, reading "The sub-paragraph does not, however, exclude the performance of administrative duties".

It was so agreed.

19. Mr. MAMONOV (Union of Soviet Socialist Republics) said that after listening to the Netherlands representative's explanations concerning paragraph 101, he realized that there was an inaccuracy in the Russian text. He accepted the English version.

20. Replying to a request for clarification by Mr. MAKIN (United Kingdom) concerning the note mentioned in paragraph 102, Mr. BOTHE (Federal Republic of Germany), Deputy Rapporteur, said that sub-paragraph (d) of Article 59 bis referred to "light individual weapons" and that the comments were to be found in paragraphs 77 and 78 of the draft report, which related to Article 58.

21. The CHAIRMAN suggested that for greater clarity, the words "note relating to Article 58, paragraph 3" should be replaced by a reference to paragraphs 77 and 78 of the draft report.

It was so agreed.

22. Mr. MÜLLER (Switzerland) pointed out that owing to an oversight, the square brackets had not been removed from sub-paragraph (e) in document CDDH/II/464 containing Article 59 bis (French only).

Paragraphs 92 to 102, as amended, were adopted by consensus.

Paragraphs 103 to 115 (Articles 60 to 62 bis)

23. Mr. BOTHE (Federal Republic of Germany), Deputy Rapporteur, referred to paragraph 114 which did not reflect the Committee's discussions and decisions. It had been decided to make the deletion proposed in sub-paragraph (b) of that paragraph, and it had been agreed that paragraph 114 of the report as a whole should read as follows: "The words 'of the means available to it' were adopted with the understanding, explained by one delegation and confirmed by others, that they implied the highest possible degree of obligation."

24. Mr. WARRAS (Finland) fully approved that new wording for paragraph 114.

25. Mr. MAKIN (United Kingdom) proposed that in the second and third lines of paragraph 110, the phrase "applies to all the articles of the Part on relief" should be replaced by "applies to all the articles dealing with relief".

It was so agreed.

Paragraphs 103 to 115, with the amendments made to paragraphs 110 and 114, were adopted by consensus.

Annex to draft Protocol I

Paragraphs 116 to 119

Paragraphs 116 to 119 were adopted by consensus.

Paragraph 120 - Resolutions

26. Mr. MATTHEY (International Telecommunication Union) reminded the Committee that at its third session it had adopted three resolutions which were communicated to the three intergovernmental organizations concerned. Two of those resolutions, which concerned the Inter-Governmental Maritime Consultative Organization and the International Civil Aviation Organization, respectively, should be submitted for adoption at a plenary meeting of the Conference, with only slight drafting amendments.

27. The resolution concerning the International Telecommunication Union (ITU) (resolution 14 (III)) needed bringing up to date in view of the decision to include in the agenda of the World Administrative Radio Conference, to be held at Geneva in 1979, the study of the technical aspects of the use of radiocommunications for marking, identifying, locating and communicating with the means of medical transport protected under the Geneva Conventions of 1949 and under any instrument additional to those Conventions. The resolution, amended on the proposal of Canada, Switzerland and the United States of America (CDDH/II/391/Rev.1), had been adopted by consensus at the Committee's ninety-ninth meeting, as indicated in paragraph 120 of the draft report.

28. He would like that paragraph to be amended slightly by replacing, in the second line, the words "At the request of Mr. Matthey, the ITU observer" by the words "On the basis of information given by Mr. Matthey, the ITU observer ...".

29. The CHAIRMAN found the proposal reasonable and asked the Rapporteur to amend paragraph 120 accordingly. He added that the text was simply a draft resolution and would become a resolution only when it had been adopted by the Conference meeting in plenary, and after the adoption of the Protocols.

30. He then read out a communication from the Inter-Governmental Maritime Consultative Organization (IMCO) informing Committee II that the resolution on the use of visual signalling for identification of medical transport protected by the Geneva Conventions of 1949 and any additional instrument, had been informally submitted for information to the Sub-Committee on Safety of Navigation of the Maritime Safety Committee of the organization. The Sub-Committee had no comment to make on the resolution and the Secretary-General of IMCO looked forward to formally receiving the resolution upon its final adoption by the Conference: IMCO would thereupon invite its member Governments to take appropriate action.

31. Mr. SOLF (United States of America) enquired who was to introduce the draft resolutions adopted by the Committee in 1976 to the plenary Conference.

32. The CHAIRMAN replied that the Legal Secretaries of the various Committees would have to ensure that the necessary action was taken at the appropriate time.

33. If there were no further comments, he proposed that the Committee should adopt by consensus the paragraph it had just considered.

Paragraph 120 was adopted by consensus.

Draft Protocol II

Paragraphs 121 to 123 (Articles 11 and 13)

Paragraphs 121 to 123 were adopted by consensus.

Paragraphs 124 to 129 (Articles 30 and 31)

34. Mr. MARRIOTT (Canada) said that, according to paragraph 129, the two amendments proposing the deletion of Article 30 had been rejected. In fact, a decision had had to be taken only on the Indonesian amendment (CDDH/II/415), since amendment CDDH/II/421 had been withdrawn, as indicated in paragraph 125 of the draft report.

35. The CHAIRMAN said that the paragraph would be suitably amended.

36. Mr. MÜLLER (Switzerland) said that as it stood paragraph 129 did not reflect the course of the discussions accurately. He therefore suggested a number of amendments to the text. In the first place, the words "Numerous delegations" at the beginning of the second sentence should be amended to "Some delegations".

37. The word "Nevertheless" at the beginning of the third sentence should be deleted and in the seventh line the words "met once" should be amended to "met twice". In the tenth to twelfth lines the phrase "After a long discussion, during which many delegations persisted in calling for the deletion of the two articles" should be amended to read: "After a long discussion between those who wished to delete Articles 30 and 31 and those who felt that it was necessary to mention civil defence ...". In the tenth line from the end, the word "however" should be deleted so that the sentence would read "The Ad Hoc Working Group met again and proposed a fresh text for Article 30".

38. He thanked the members of the Working Group for their effective collaboration, in particular the representative of Australia who had been good enough to chair the Group in his absence.

39. The CHAIRMAN thought that the Committee could adopt paragraph 129, as amended, by consensus.

Paragraphs 124 to 129, as amended, were adopted by consensus.

Paragraphs 130 to 139 (Articles 33 to 35)

Paragraphs 130 to 139 were adopted by consensus.

The draft report of Committee II (CDDH/II/467), as amended, was adopted by consensus.

40. Miss SHEIKH FADLI (Syrian Arab Republic) reminded the Committee that, in Article 33, paragraph 1, she had suggested deleting the brackets in the second line and placing a comma after the words "Red Cross" in the same line.

41. The CHAIRMAN said that her suggestion would be transmitted to the Drafting Committee, which would certainly bear it in mind.

42. Mr. SOLF (United States of America) said, with regard to the articles adopted by the Committee which appeared in the Annex, that the Committee had made some minor amendments to Articles 8, 9, 11, 12, 15, 20 quater and 23, adopted at the third session of the Conference. When articles had been published for the Committee's information, the amendments had been introduced into the original texts adopted by the Committee. In the meantime the Drafting Committee had made further changes. To facilitate the work of the plenary meeting and to avoid any confusion, either the amendments made by the Committee should be indicated or they should be introduced into the texts proposed by the Drafting Committee of the Conference.

43. Mr. BOTHE (Federal Republic of Germany), Deputy Rapporteur, explained at the Chairman's request that he had already tried to follow the first method, which he had thought was the simplest one, but that it had not found favour with the technical services. It did, in fact, seem easier to keep to the text prepared by the Drafting Committee. That was the procedure followed by Committee III. On the other hand, the discussion in Committee II had taken place on the basis of the text as previously adopted by that Committee. It was clear, however, that in doing so the Committee had not intended to overrule, if that were possible, any decision taken by the Drafting Committee. It was clear that the text to be adopted by the plenary Conference would be the text as modified by the Drafting Committee, and that the last amendments adopted by Committee II had to be adapted to that text.

44. Mr. FROIDEVAUX (Legal Secretary) thought that it would be simplest to keep to the Drafting Committee's text and insert the Committee's amendments.

45. Mr. GONSALVES (Netherlands) thought that the texts to be submitted to the plenary Conference should be the Drafting Committee's texts published on blue paper.

46. The CHAIRMAN said that the normal practice in international conferences was always that the texts considered in plenary meetings were those prepared by the Drafting Committee of the respective Conference.

47. Mr. SOLF (United States of America) thought that the simplest way of solving the problem of the differences between the texts adopted by Committee II on 14 May and the Drafting Committee's texts would be to ask the Secretariat of Committee II to come to an agreement with the Secretariat of the Drafting Committee to annex the text prepared by the Drafting Committee to the report under consideration.

48. Mr. EL HASSEEN EL HASSAN, Rapporteur, agreed with the Netherlands representative. There was nothing to prevent the inclusion in the report of a note to the effect that the texts it contained were those adopted by the Committee, with a reference to the Drafting Committee's texts.

49. The CHAIRMAN asked the Rapporteur, the Deputy Rapporteur and the Legal Secretary to follow the procedure adopted by the other Main Committees. He took it that the Committee was prepared to adopt by consensus the articles annexed to the report.

The articles adopted by the Committee and annexed to the report (CDDH/II/467) were adopted by consensus.

CONCLUSION OF THE COMMITTEE'S WORK

50. The CHAIRMAN said that the members of the Committee had spent a long time working together and preparing the two Additional Protocols to the four Geneva Conventions of 1949. Altogether the exercise had taken up a large part of their lives, and it seemed to him they had reason to feel satisfied with the results achieved. The desire to improve the lot of the victims of armed conflicts was not new, and had always constituted a most important factor in the development of international law. Each one of the Geneva Conventions had marked a great advance, and the Protocols likewise represented a step forward. Probably the Conference's most important achievement was Protocol II, extending protection to the victims of non-international conflicts, which were often more tragic than international ones.

51. The Protocols were called "Additional" in order to stress their derivative and subsidiary nature vis-à-vis the 1949 Conventions, which they were in no way intended to replace, but merely to supplement, clarify and augment. In international law, however,

it did not matter what such documents were called, since under Article 2, paragraph 1(a), of the 1969 Vienna Convention on the Law of Treaties, "'treaty' means an international agreement concluded between States in written form and governed by international law, ... whatever its particular designation".

52. The Protocols would accordingly be treaties and as such each State would in principle have to sign and then ratify them individually, or to accede to them, in order to become a full "Contracting Party". It was not known how many States would declare themselves to be formally bound by the Protocols, but from current international practice it appeared that an instrument which often reflected the conscience of the international community possessed great value that did not depend on whether it officially entered into force for one State or another.

53. Thus, it was possible to speak of the "authority of the written text", in that a text which had been drawn up and all of whose provisions had been adopted by an international conference had a life of its own. It would be read, quoted, taught and publicized. It constituted the expression of a common intention on the part of the competent representatives of a large number of countries, their "consensus" as to what the law was or should be. Such a consensus had in fact been reached in the Committee on a great majority of the articles. In other words what had been accomplished represented the joint effort of all the groups of countries making up the international community.

54. All the members of the Committee had contributed to the completion of their task in a spirit of mutual understanding which was all the more remarkable in view of all the political, economic, ideological and other divergencies separating the various States. The Committee had succeeded in achieving the ideal of "unity in diversity", and could be proud of it. He personally was very glad to have had the honour of chairing the Committee, and to have contributed in a modest way to the preparation of a historic document of great moral, legal and political significance.

55. He was most grateful to all the able and willing people who had helped him in his task. He accordingly wished to thank most sincerely the members of the Committee, its Vice-Chairmen and Rapporteurs, the Chairmen and Rapporteurs of the Working Groups, the ICRC representatives, the interpreters, the précis-writers, the Legal Secretaries and all the members of the Secretariat, seen and unseen, each of whom had in one way or another helped to make the Committee's work go smoothly.

56. He wondered, with some sadness, whether he would ever see again all those with whom he had been working. He very much hoped that he would and accordingly wished to renew the invitation he had extended to them two years previously. Should any member of the Committee visit Poland, he would look forward to meeting him. Both as Professor of International Public Law at Jagellon University and in private life, his door would always be open.

57. He considered all those with whom he had worked throughout the four sessions to be his friends, and friendship forged ties between men which were stronger than any others. That was a fact generally recognized for centuries past, and it had been particularly well expressed by Cicero in his dialogue on friendship, which included the passage:

"I do not know whether, apart from wisdom, anything better has been bestowed on man by the immortal gods."

"Friendship comprises many excellencies. Whichever way one turns, it is there. It is not excluded from any place; it is never inopportune; never importunate; hence, as the saying goes, we do not use water and fire more often than we do friendship."

"For in her is harmony; in her stability; in her is trust. When friendship has appeared, when it has made its light to shine, when it has recognized the same flame in another, it comes closer and in its turn receives the glow that is in the other."

58. That was how he regarded the links which, after the Conference was over, would continue to unite all those whose collaboration had meant so much to him.

59. Miss MINOGUE (Australia) expressed, on behalf of many delegations present, her gratitude to the Chairman, who had led the Committee's discussions with dignity, wisdom and patience, and had thereby ensured the success of the work carried out with a view to the development of humanitarian law.

60. The Chairman had assisted all the delegations in their work, and had encouraged them to work to the limit of their capacity. Committee II had been notable for its capacity for work and the friendly and co-operative atmosphere in which it had conducted its business. That was attributable to the manner in which the Chairman had carried out his role. It might have seemed at times as if the difficulties ahead and the limited time available to overcome them would make it difficult to reach a consensus, but the Chairman had displayed discerning ability in selecting those representatives who were most likely to lead the working groups successfully.

61. It was her belief that the articles formulated by Committee II would prove to be the most lasting and significant of the Conference. In the Committee, humanitarian principles had triumphed over the many, and often deep, differences in the policies of States.

62. On behalf of all members of the Committee, she thanked the Chairman for his most efficient and kindly chairmanship, and for the atmosphere of goodwill he had created. The mutual respect and genuine comradeship among the members of the Committee would certainly remain long after the Final Act of the Conference had been signed.

63. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) expressed his gratitude not only to those present but also to those who during the past four years had helped to ensure the success of the Committee's work. The results achieved marked an important step forward in the development of humanitarian law.

64. The delegations of the socialist countries were conscious of the important part played by the Chairman, whose competence and goodwill were well known to everyone. They would remember for many years the pleasure of working under his leadership and thanked him most sincerely. He had in fact ensured the success of the Committee's work by creating an atmosphere of mutual understanding and by considering all proposals impartially in an effort to reach a compromise.

65. The Committee could be proud of the results achieved. It had succeeded in making good the deficiencies of the Geneva Conventions of 1949, which did not provide enough protection for medical services and the civilian population. The new provisions would prove their usefulness in armed conflicts, which unfortunately still continued. It must be hoped, however, that the time was not far distant when there would be no more such tragedies and it would thus no longer be necessary to apply the provisions that the Committee had just formulated.

66. The members of the Committee would disperse with regret, but with the rewarding thought that they had done useful work. His delegation wished all other delegations good fortune and success.

67. Mr. SOLF (United States of America) said that in the last four years the Committee had had reason to appreciate the attitude of the Chairman, who by his wise and courteous conduct of the discussions had enabled the Committee to make a substantial contribution to the development of humanitarian law applicable in armed conflicts. Thanks to the Chairman's personality there had been a welcome feeling of trust and friendship between members of the Committee representing countries with differing systems and political ideals.

68. He associated himself with the remarks of previous speakers in conveying to the Chairman sincere thanks for the manner in which he had directed the work of the Committee.

69. Mr. XAVIER (Brazil), speaking on behalf of the Latin American delegations, expressed his sincere thanks to the Chairman and his colleagues.

70. Mr. SANDOZ (International Committee of the Red Cross) said that his organization, not being a State, had not the right to vote, but was happy at present to be able to join in the consensus and to thank the Chairman for the expert and benevolent way in which he had directed the Committee's work. He (Mr. Sandoz) welcomed the work accomplished by the Committee in favour of humanitarian law. Mr. Pictet, Director, International Committee of the Red Cross, who had been unable to attend the meeting, had asked him to convey his most sincere thanks to the Chairman and the Committee.

71. Mrs. MANTZOULINOS (Greece) said that she wished to express her warmest congratulations to the Chairman for the great skill and courtesy with which he had presided over the discussions. She also thanked all the men of good will who by their efforts had tried to improve the lot of victims of armed conflicts, and then quoted a Greek saying from the age of classic antiquity: which translated read "what a graceful human being is man when he is humane."

72. The CHAIRMAN declared the work of Committee II concluded.

The meeting rose at 4.50 p.m.