



OFFICIAL RECORDS

OF THE

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

GENEVA (1974 -1977)

VOLUME VII

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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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

VOLUME VII

CONTENTS

SUMMARY RECORDS OF THE PLENARY MEETINGS

	<u>Page</u>
I. Fourth session (CDDH/SR.47-59)*	1

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

FOURTH SESSION
(Geneva, 17 March - 10 June 1977)

PLENARY MEETINGS

SUMMARY RECORDS OF THE FORTY-SEVENTH TO FIFTY-NINTH MEETINGS

held at the International Conference Centre, Geneva,
from 31 May to 10 June, 1977

<u>President:</u>	Mr. Pierre GRABER	Federal Councilor, Head of the Federal Political Department of the Swiss Confederation
<u>Secretary:</u>	Mr. Jean HUMBERT	Ambassador, Secretary- General of the Conference

CONTENTS

	<u>Page</u>
<u>Forty-seventh plenary meeting</u>	15
Adoption of the articles of draft Protocol I (<u>continued</u>)	
Article 85 - Reservations (<u>concluded</u>)	
Article 86 - Amendment	
Article 86 <u>bis</u> - Committee on the prohibition or restriction of the use of certain conventional weapons	
Explanations of vote	
Article 87 - Denunciation	
Article 88 - Notifications	
Article 89 - Registration	
Article 90 - Authentic texts	
<u>Annex</u> - Explanations of vote	
Draft Protocol I	
Australia - Article 86 <u>bis</u>	
Austria - Article 86 <u>bis</u>	
Chile - Articles 85 and 86 <u>bis</u>	
Democratic People's Republic of Korea - Article 86 <u>bis</u>	
Ghana - Article 86 <u>bis</u>	
Holy See - Article 86 <u>bis</u>	
India - Article 86 <u>bis</u>	
Israel - Article 88	
Italy - Article 86 <u>bis</u>	
Lebanon - Article 86 <u>bis</u>	
Mozambique - Article 86 <u>bis</u>	
Portugal - Article 86 <u>bis</u>	
Romania - Article 86 <u>bis</u>	
Spain - Article 86 <u>bis</u>	
Syrian Arab Republic - Article 84	

Contents (continued)

	<u>Page</u>
<u>Forty-eighth plenary meeting</u>	51
Adoption of table of contents for draft Protocol I and Annexes I and II	
Adoption of the title of draft Protocol I	
Adoption of Annex I to draft Protocol I	
Title	
Article 1 - Identity card for permanent civilian medical and religious personnel	
Article 2 - Identity card for temporary civilian medical and religious personnel	
Article 3 - Shape and nature	
Article 4 - Use	
Article 5 - Optional use	
Article 6 - Light signal	
Article 7 - Radio signal	
Article 8 - Electronic identification	
Article 9 - Radiocommunications	
Article 10 - Use of international codes	
Article 11 - Other means of communication	
Article 12 - Flight plans	
Article 13 - Signals and procedures for the interception of medical aircraft	
Article 14 - Identity card	
Article 15 - International distinctive sign	
Article 16 - International protective sign for works and installations containing dangerous forces	
Adoption of the articles of draft Protocol I (<u>concluded</u>)	
Article 18 <u>bis</u> - Revision of Annex I	
<u>Annex</u> - Explanations of vote	
Draft Protocol I, Annex I	
Israel - Articles 1 to 3	
United Kingdom of Great Britain and Northern Ireland - Articles 5 to 8	

Contents (continued)

	<u>Page</u>
<u>Forty-ninth plenary meeting</u>	59
Adoption of the articles of draft Protocol II	
Article 1 - Material field of application	
Explanations of vote	
<u>Annex</u> - Explanations of vote	
Draft Protocol II	
Argentina - Article 1	
Belgium - Article 1	
Brazil - Article 1	
Canada - Article 1	
Colombia - Article 1	
Ecuador - Article 1	
Germany, Federal Republic of - Article 1	
Ghana - Article 1	
India - Article 1	
Kenya - Article 1	
Philippines - Article 1 of the simplified version of draft Protocol II	
United Republic of Cameroon - Article 1	
United Republic of Tanzania - Article 1	
<u>Fiftieth plenary meeting</u>	85
Adoption of the articles of draft Protocol II <u>(continued)</u>	
Article 2 - Personal field of application	
Article 3 - Legal status of the Parties to the conflict	
Article 4 - Non-intervention	
Article 5 - Rights and duties of the Parties to the conflict	

Contents (continued)

Page

Fiftieth plenary meeting (continued)

Adoption of the articles of draft Protocol II
(continued)

Article 6 - Fundamental guarantees

Paragraph 1

Paragraph 2 (b)

Paragraph 2 (a)

Paragraph 2 (e)

New paragraph 3

Article 6 bis - Protection of women and children

Article 8 - Persons whose liberty has been restricted

New Article 8 bis - Search

Article 10 - Penal prosecutions

Explanations of vote

Annex - Explanations of vote

Draft Protocol II

Afghanistan - Article 10

Holy See - Article 10

Indonesia - Article 10

Italy - Article 1

Kenya - Article 10

Netherlands - Article 5

Nigeria - Article 10

Saudi Arabia - Article 10

Spain - Article 10

United Republic of Cameroon - Article 10

Zaire - Articles 3 and 10

Contents (continued)

Page

Fifty-first plenary meeting 107

Organization of work

Adoption of the articles of draft Protocol II
(continued)

Article 10 bis - Unconditional respect

Article 11 - Definitions

Article 12 - Protection and care

Article 12 bis - Protection of persons

Article 13 - Search and evacuation

Article 14 - Role of the civilian population and of
relief societies

Article 15 - Protection of medical and religious
personnel

Article 16 - General protection of medical duties

Article 17 - Protection of medical units and
transports

Article 18 - The distinctive emblem and signals

Article 19 - Prohibition of reprisals

Article 20 - Basic rules

Article 20 bis - Protection of cultural objects

Annex - Explanations of vote

Draft Protocol II

Australia - Article 10 bis

Finland - Article 10 bis

France - Article 10 bis

Holy See - Article 10 bis

Ireland - Article 20

Italy - Article 10 bis

Netherlands - Article 12 bis

Nigeria - Article 10 bis

Portugal - Article 20

Saudi Arabia - Article 20

Socialist People's Libyan Arab Jamahiriya -
Article 12 bis

Contents (continued)

	<u>Page</u>
<u>Fifty-second plenary meeting</u>	125
Adoption of the articles of draft Protocol II (continued)	
Article 20 <u>bis</u> - Protection of cultural objects (continued)	
Article 21 - Prohibition of perfidy	
Article 22 - Quarter	
Article 22 <u>bis</u> - Safeguard of an enemy <u>hors de</u> <u>combat</u>	
Article 23 - Recognized signs	
Article 24 - Basic rules	
Article 26 - Protection of the civilian population	
Article 24 - Basic rules (concluded)	
Article 25 - Definition of civilians and civilian population	
Article 26 <u>bis</u> - General protection of civilian objects	
Article 27 - Protection of objects indispensable to the survival of the civilian population	
Article 28 - Protection of works and installations containing dangerous forces	
<u>Annex</u> - Explanations of vote	
Draft Protocol II	
Belgium - Article 22 <u>bis</u>	
India - Article 24	
Ireland - Article 24	
New Zealand - Article 24	
Spain - Articles 24 and 26	
<u>Fifty-third plenary meeting</u>	141
Adoption of the articles of draft Protocol II (continued)	
Article 20 <u>bis</u> - Protection of cultural objects (continued)	

Contents (continued)

Page

Fifty-third plenary meeting (continued)

Adoption of the articles of draft Protocol II
(concluded)

Article 29 - Prohibition of forced movement of
 civilians

Article 30 - Respect and protection

Article 32 - Privileged treatment of children

Article 33 - Relief societies and relief actions

 Paragraph 2

 Paragraph 1

Article 14 - Role of the civilian population and
 of relief societies

Explanations of vote

Article 34 - Recording and information

Article 36 - Measures for execution

Article 37 - Dissemination

Article 38 - Special agreements

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

Article 40 - Signature

Article 41 - Ratification

Article 42 - Accession

Article 43 - Entry into force

Article 44 - Amendments

Article 44 bis - Denunciation

Article 45 - Notifications

Article 46 - Registration

Article 47 - Authentic texts

Annex

Title

Organization of work

Contents (continued)

Page

Fifty-third plenary meeting (continued)

Annex - Explanations of vote

Draft Protocol II

- Australia - Article 33
- Belgium - Article 33
- Cyprus - Article 29
- Finland - Article 20 bis
- Germany, Federal Republic of - Article 33
- Holy See - Articles 20 bis, 21, 33, 34 and 39
- India - Article 20 bis
- Indonesia - Article 20 bis
- Italy - Articles 38 and 39
- Netherlands - Articles 20 bis, 30 and 39
- United Kingdom of Great Britain and Northern
Ireland - Article 20 bis
- United Republic of Cameroon - Article 33
- Statement by the International Committee of the
Red Cross - Article 39

Fifty-fourth plenary meeting 165

Adoption of the Preambles to draft Protocols I and II

Preamble to draft Protocol I

Preamble to draft Protocol II

Consideration of draft resolutions

Resolution concerning the Use of Certain Electronic
and Visual Means of Identification by Medical
Aircraft protected under the Geneva Conventions
of 1949 and under the Protocol Additional to the
Geneva Conventions of 12 August 1949 and relating
to the Protection of Victims of International
Armed Conflicts (Protocol I)

Contents (continued)

Page

Fifty-fourth plenary meeting (continued)

Consideration of draft resolutions (continued)

Resolution concerning the Use of Visual Signalling for Identification of Medical Transports protected under the Geneva Conventions of 1949 and under the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Resolution concerning the Use of Radiocommunications for Announcing and Identifying Medical Transports protected under the Geneva Conventions of 1949 and under the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Draft resolution CDDH/410

Annex - Explanation of vote

Socialist People's Libyan Arab Jamahiriya - draft resolution CDDH/410

Fifty-fifth plenary meeting 181

Consideration of draft resolutions (continued)

Explanations of vote

Draft resolution CDDH/437 - Convention for the Protection of Cultural Property in the Event of Armed Conflict

Draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2 on the dissemination of knowledge of international humanitarian law applicable in armed conflicts

Explanations of vote

Annex - Explanations of vote

Hungary - draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2 on the dissemination of knowledge of international humanitarian law applicable in armed conflicts

Poland - draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2 on the dissemination of knowledge of international law applicable in armed conflicts

Contents (continued)

	<u>Page</u>
<u>Fifty-sixth plenary meeting</u>	191
Adoption of draft Additional Protocols I and II	
Adoption of draft Additional Protocol I	
Adoption of draft Additional Protocol II	
Statements on Protocols I and II	
<u>Annex - Explanations of vote</u>	
Argentina - Protocols I and II	
Australia - Protocols I and II	
Chile - Protocol II	
Czechoslovakia - Protocols I and II	
Democratic Yemen - Protocols I and II	
Egypt - Protocols I and II	
German Democratic Republic - Protocols I and II	
Germany, Federal Republic of - Protocols I and II	
Guatemala - Protocols I and II	
Hungary - Protocols I and II	
Philippines - Protocols I and II	
Senegal - Protocols I and II	
Socialist People's Libyan Arab Jamahiriya - Protocols I and II	
Syrian Arab Republic - Protocol I	
Tunisia - Protocols I and II	
Turkey - Protocols I and II	
Uganda - Protocols I and II	
<u>Fifty-seventh plenary meeting</u>	253
Adoption of the meeting's agenda	
Adoption of the draft Final Act	
Explanations of vote	
Draft resolution CDDH/441 and Add.1 on weapons	
Report of the Credentials Committee	
Report of the Drafting Committee	

Contents (continued)

Page

Fifty-seventh plenary meeting (continued)

Annex - Statements and explanations of vote

- Australia - Final Act
- Brazil - Protocol II
- Democratic Yemen - Final Act
- Ecuador - Final Act
- Egypt - Resolution CDDH/441 and Add.1
- Germany, Federal Republic of - Final Act and resolution CDDH/441 and Add.1
- France - Final Act and resolution CDDH/441 and Add.1
- Ghana - Final Act
- Guatemala - Final Act
- Jamaica - Final Act
- Mozambique - Final Act
- Philippines - Final Act
- Portugal - Resolution CDDH/441 and Add.1
- Socialist People's Libyan Arab Jamahiriya - report of the Credentials Committee and Final Act
- Spain - Final Act
- United Republic of Cameroon - Final Act

Fifty-eighth plenary meeting 281

- Explanation of vote
- Statements on Protocols I and II
- Statement by the Observer for the Sovereign Order of Malta
- Statement by the Observer for the International Union for Child Welfare
- Draft resolution CDDH/444 expressing gratitude to the host country

Contents (continued)

Page

Fifty-eighth plenary meeting (continued)

Annex - Explanations of vote

Denmark - Protocols I and II

Holy See - Protocols I and II

Mauritania - Protocols I and II

Mozambique - Protocols I and II

New Zealand - Protocols I and II

Fifty-ninth (closing) plenary meeting 329

Closing speeches

Signature of the Final Act

Closure of the Conference

SUMMARY RECORD OF THE FORTY-SEVENTH PLENARY MEETING

held on Tuesday, 31 May 1977, at 3.10 p.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

ADOPTION OF THE ARTICLES OF DRAFT PROTOCOL I (CDDH/401) (continued)

Article 85 - Reservations (CDDH/421) (concluded)

1. Mr. ABADA (Algeria) said that after the vote on Article 85, and having heard certain statements made on the subject, his delegation had become convinced of the soundness of the reasons for which twenty-one countries had submitted the text (CDDH/421) which had been rejected at the forty-sixth plenary meeting.
2. At a time when the survival of draft Protocol II was the subject of keen interest, his delegation had doubts about the viability of Protocol I if that protocol could not be considered as a coherent whole. Before taking a definitive position on the four years' work of the Conference, his delegation would study the subsequent attitudes of other delegations with the greatest attention. The fact that they had worked together for so long in the cause of humanitarian law should, in addition to legal commitments, create a moral contract that they could not see being compromised by diplomatic considerations.
3. Mr. LONGVA (Norway) said that his delegation had voted against the proposed Article 85 because it was unnecessary to state the obvious fact that, in conformity with the 1969 Vienna Convention on the Law of Treaties, no reservation could be made regarding the articles mentioned in the proposed text on which the Conference had voted at the forty-sixth meeting. That understanding was in no way contradicted by the failure of the proposal to receive the number of positive votes necessary for its adoption. A majority of delegations had, in fact, voted in favour of the proposal, several others had indicated that they had no intention of making reservations to the articles cited in document CDDH/421, and no delegation had expressed the view that reservations could be made to those articles.
4. Mr. ROUCOUNAS (Greece) said that the Greek delegation in Committee I had expressed itself in favour of the inclusion in Protocol I of a provision listing the articles to which reservations could not be formulated. Committee I had found it impossible to take a decision on the number or content of articles

that should be included in the list, and reference had been made to the general rule of international law as enshrined in the Vienna Convention on the Law of Treaties.

5. His delegation, which had voted in favour of Articles 1, 41, 42, 42 quater and 84, would have had no difficulty in going further in support of document CDDH/421 but for the fact that the use of the term "in particular" was not a sufficiently explicit reference to basic articles of draft Protocol I such as Articles 5, 10, 20, 33, 46, 47, 47 bis, 65 and 74. His delegation had therefore abstained in the vote on the proposed Article 85.

Article 86 - Amendment

Article 86 was adopted. *

Article 86 bis - Committee on the prohibition or restriction of the use of certain conventional weapons

6. Mr. de ICAZA (Mexico) said that Article 86 bis pursued three objectives. The first was that of establishing the necessary legal connexion between contemporary international humanitarian law and the future prohibition or restriction of the use of certain specific conventional weapons when such use was incompatible with the general principles of that law.

7. The second objective was the establishment of a committee to determine which were those weapons or which uses of them should be subject to prohibition or restriction; and to determine also the appropriate time for the conclusion of international agreements on the subject.

8. The third objective was the establishment of machinery for the convening of special conferences to conclude such agreements within the framework of international humanitarian law.

9. The establishment of the legal connexion through the adoption of an article in Protocol I was in conformity with the practice of considering the Geneva Law and The Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land as coming within humanitarian law.

* Article 97 in the final version of Protocol I.

10. The question of weapons was inseparable from the question of protection of the civilian population, particularly in view of the increasing numbers of civilian victims in recent major armed conflicts. The index of civilian victims during the Second World War had been 50 per cent, while that in the conflicts in Korea and Viet Nam had been of the order of 80 per cent. It was therefore no longer possible to distinguish between the rules of war and humanitarian law. The protection of innocent victims called for the establishment of general principles. The desire of the developing countries to achieve that end was understandable. There had been more than one hundred armed conflicts since 1945, all of them in developing countries. Since there could be no development of international humanitarian law in the absence of progress towards the prohibition or restriction of certain conventional weapons for humanitarian reasons, the legal connexion he had mentioned was essential.

11. Unfortunately, it had not been possible for the Conference to reach any specific agreement on the subject. It was therefore necessary to provide for future machinery for the purpose. His delegation had been prevented from introducing the details of its original proposal and from explaining the reasons for the changes in that proposal in the Working Sub-Group of Committee I, but he wished to do so on the present occasion.

12. Firstly, the proposed committee would consist of representatives of States Parties to the Protocol or the Conventions. Since the committee would not of itself represent any obligation for the Parties, the Working Sub-Group had considered that it could include States Parties to the Conventions even though they might not be Parties to the Protocol which supplemented the Conventions. There were further examples of such reasoning, in particular in Article 86, which stated that the depositary should invite the Parties to the Conventions to the conference to consider amendments to the Protocol, whether or not they were signatories to the Protocol. There would be an advantage in such a procedure in that it would not be necessary to wait for a large number of ratifications or accessions to the Protocol before the committee could be established.

13. Secondly, it had been considered that recommendations could be submitted not only by States Parties to the Protocol but by the committee itself.

14. Thirdly, it was thought that the committee should consist of thirty-one States, made up of six representatives of each of the five regional groups and the representative of the depositary Government. The rules of procedure of the committee might specify that the depositary State should have no vote in the meetings, which should be convened at the request of one third of the members of the committee.

15. Fourthly, the elections should normally take place through diplomatic channels by written communication with the depositary. If, for unforeseen reasons, it was impossible for the elections to take place in that manner, the depositary Government could convene a meeting of States Parties for the purpose.

16. Since the International Committee of the Red Cross had in principle accepted the responsibility referred to in paragraph 3 of the article, no financial burden would fall on the States Parties beyond that into which they wished to enter voluntarily. The article could therefore give rise to no objection on the ground of the proliferation of international bodies.

17. Three conditions would have to be fulfilled for the convening of a special conference: firstly, it would have to be recommended by the committee; secondly, it would have to be convened by the depositary; and, thirdly, one or more countries or the depositary would have to be prepared to host the conference. Those three conditions would ensure that no conference would be convened lightly or without a reasonable possibility of reaching agreement.

18. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that, from its inception, the Soviet Union had worked actively and consistently for peace and security. At the thirty-first session of the United Nations General Assembly, his Government had submitted a memorandum on disarmament containing recommendations for nuclear disarmament negotiations and for the conclusion of agreements on the universal and total prohibition of nuclear weapon tests, of all means of chemical warfare and of the development or manufacture of new means of mass extermination; on the reduction of conventional weapons; and on non-recourse to the use of force.

19. At the last three sessions of the United Nations General Assembly, however, and at all four sessions of the Diplomatic Conference, the Soviet Union delegation had stated that the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law was not the competent body to deal with such problems and that it was inappropriate to consider the question of conventional weapons in isolation from the entire

question of disarmament. It was impossible to approach the matter from a purely humanitarian point of view, leaving aside political and military considerations and matters of State security.

20. The Ad Hoc Committee on Conventional Weapons had been able to reach a measure of agreement only on weapons producing fragments in the human body that were undetectable by X-rays and on the use of such weapons as mines or booby traps. No agreement had been reached on incendiary weapons, delayed action weapons, small calibre weapons or blast and fragmentation weapons. It had been stated in the Ad Hoc Committee that future research would have to be carried out on the various types of conventional weapons. The question of convening a conference of experts to consider the possibility of reaching agreement by consensus on the basis of the information available to the Ad Hoc Committee had also been raised. It would be useful to circulate the Ad Hoc Committee's report (CDDH/408/Rev.1) and its annexes to all Governments and to the United Nations, but his Government would oppose the inclusion in Protocol I of any article on the lines of Article 86 bis. There were already sufficient international bodies dealing with disarmament questions and it would only complicate the search for a solution if a further body on the prohibition or restriction of the use of certain conventional weapons was established. The Conference was not competent to establish such a body. His delegation would not consider itself bound by the article if it was adopted; the powers of the proposed Committee could extend only to the States that recognized it.

21. It was inappropriate for the Conference to propose that the United Nations should convene a conference of plenipotentiaries in 1979 to continue the work of the Ad Hoc Committee. Active preparations were being made for a special session of the United Nations General Assembly devoted to disarmament, to be held in New York in 1978 (see General Assembly resolution 31/189 B). Any attempt to settle isolated questions concerning conventional weapons outside the general question of disarmament would be unrealistic.

22. Mr. BEN REHOUMA (Tunisia), supporting Article 86 bis, said that his delegation had always been prepared to participate actively in all efforts designed to halt the proliferation or inhuman use of weapons. All delegations had recognized the humanitarian aims of the article. The proposal accorded with the fundamental principle of limiting means of combat with a view to alleviating human suffering, and it was particularly welcome in view of the fact that the Ad Hoc Committee had been unable to find the appropriate machinery for pursuing its work in the future. The proposal was designed to maintain the link

between humanitarian law and the use of certain conventional weapons. It was noteworthy that there had always been readiness to discuss the question of weapons from every angle except the humanitarian. His delegation would not be opposed to a resolution on the subject.

23. The success of the proposal would depend on the close and constant co-operation of all countries, including the great Powers. He commended the Mexican representative for his untiring efforts.

24. Mr. MBAYA (United Republic of Cameroon) said that the Conference should do everything possible to limit the unfortunate consequences of armed conflict both for the combatants and for the civilian population. There was nothing to prevent the Conference from considering the question of the prohibition or restriction of the use of certain conventional weapons. The argument that it had no competence to do so was invalid.

25. The use of the future tense in paragraphs 1 and 2 of Article 86 bis was inappropriate, since the article itself formed the constitutive act for the establishment of the committee. The present language might be taken as requiring further specific agreement on such establishment.

26. It was not clear from paragraph 2 whether it was intended that only the thirty-one States elected would be parties to the arrangement or whether all States Parties to the Protocol or to the four Geneva Conventions of 1949 would be included.

27. The shortcomings to which he had referred might make the article difficult to apply. He would welcome an explanation on the practical purposes of the proposed committee beyond its function of considering recommendations.

28. In reply to a question by the PRESIDENT, Mr. MBAYA (United Republic of Cameroon) said that, in his view, the Conference was competent to take a decision on the substance of Article 86 bis.

29. Mr. EL HASSEEN EL HASSAN (Sudan) said that his delegation, which had co-sponsored the text of Article 86 bis, wished to make a final appeal to the Conference to adopt the article in order to establish the necessary link between international humanitarian law applicable in armed conflicts and the prohibition or restriction of use of certain conventional weapons in such conflicts. The question, which was closely linked with Article 33 of draft Protocol I, was within the competence of the Conference.

30. Mr. ALDRICH (United States of America) said that his delegation looked forward to seeing successful work carried out on the issue of conventional weapons during the next two or three years. The Conference had accomplished a great deal in that respect at its four sessions and had laid a good foundation for early agreement. The fact that his delegation was a sponsor of draft resolution CDDH/423 showed that it expected to see agreement within the next six months on a forum for the negotiation of a treaty or treaties to restrict or prohibit the use of certain conventional weapons. The resolution had been submitted not as a firm position on the part of the sponsors but as a proposal for discussion and negotiation. His delegation was confident that it would be possible to agree during the next six months on the convening of an appropriate conference and that such a conference would be able to formulate acceptable treaties on a number of weapons, particularly land-mines, incendiary weapons and weapons producing fragments undetectable by X-rays. Other weapons required further study at the expert level, in which his delegation would be prepared to participate during the coming year.

31. His delegation considered that Article 86 bis, if adopted, would prejudice the prospects of the efforts to reach agreement on the prohibition or restriction of the use of conventional weapons. It was wrong to link the article with Article 33, as was done in paragraph 1. It was difficult for any reasonable Government to place restrictions on weapons on the ground of their illegality: any agreement on prohibition or restriction of use of such weapons had to be based on decisions taken for humanitarian reasons alone.

32. The establishment of the committee proposed in Article 86 bis would not offer the necessary immediate follow-up to the work of the Conference: on the contrary, it merely offered an excuse to postpone negotiation.

33. Moreover, the article was unnecessary. The treaties that would eventually be arrived at would no doubt provide for a review machinery. It was unnecessary to make such provision in the Protocol, which, as far as weapons were concerned, merely re-stated the Hague Regulations on the legality of certain weapons. Article 36 bis could accomplish nothing useful and could endanger the work on conventional weapons so ably begun at the Conference.

34. Mr. FELBER (German Democratic Republic) said that Article 86 bis had been rushed through in Committee I without awaiting the outcome of the work of the Ad Hoc Committee on Conventional Weapons. There had been no substantive discussion

on the practical application of that article. The insertion of Article 86 bis in the Protocol was artificial and not within the competence of the Conference. Paragraph 1 of the article referred to Article 33, but did not conform to the wording of Article 33.

35. A number of delegations had begun informal discussions with a view to finding a compromise solution on a basis of consensus. To that end a number of draft resolutions had been submitted, including that in document CDDH/423, of which his delegation was a sponsor.

36. It had been said that there was no incompatibility between Article 86 bis and the proposals for a special conference in some of the draft resolutions. His delegation had repeatedly opposed such an approach. The work of the Ad Hoc Committee had led to certain preliminary results; his delegation did not wish those results to be brought to nothing by the introduction of immediate and long-term mechanisms. General conferences - such as the two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne and Lugano, respectively, in 1974 and 1976 - could be held without any such mechanism. The existence of several bodies and conferences on the question of conventional weapons might lead to a negative outcome. The German Democratic Republic could not vote in favour of Article 86 bis, whose effectiveness was extremely doubtful.

37. Mr. BINDSCHIEDLER (Switzerland) said that the Swiss delegation was in favour of Article 86 bis because Article 33 was too general. The serious and urgent problem of the banning or restriction of the use of certain conventional weapons called for much more specific provisions. A new mechanism and a new procedure were needed to put that work in hand.

38. He would like the Mexican representative to explain the depositary's right to vote and the meaning of paragraph 4.

39. Mr. ØSTERN (Norway) said that the Norwegian delegation had voted in favour of Article 86 bis in Committee I because it seemed in line with the Conference's consistent efforts to achieve results concerning the possible prohibition or restriction of the use of certain conventional weapons. The creation of a permanent body as described in the article would undoubtedly facilitate future work on those issues and would in no way preclude the need for an immediate follow-up of the work of the Ad Hoc Committee.

40. He paid a tribute to the Mexican representative, Rapporteur of Committee I, for his skilful handling of the question of Article 86 bis, and in particular for his readiness to discuss the matter with delegations holding opposite opinions. He also paid a tribute to those who, though opposed to Article 86 bis, had shown a readiness to compromise. Although a compromise solution could not be found, the spirit in which it had been sought augured well for the future. The wording of Article 86 bis left much to be desired, but imperfect drafting should not prevent delegations from casting a positive vote on an article embodying an important matter of principle.

41. Mr. CHAUNY (Peru) said that his delegation regarded Article 86 bis as indispensable for the effective operation of Protocol I. The efforts of the Conference would have been in vain if it failed to establish the necessary link between the possible prohibition or restriction of the use of weapons causing superfluous injury or unnecessary suffering and the principles of humanitarian law laid down in draft Protocol I. The establishment of such a link called for the creation of a special body to develop, to apply and periodically to review the law in question. The setting up of the committee referred to in the article would facilitate the consideration and adoption of recommendations concerning conventional weapons. It would thus help to expedite any work which might be done in the future in specialized disarmament bodies, which were obliged to give priority to other questions, so that progress on the matter in question might be long delayed. He hoped that the Conference would adopt the article, which would strengthen the humanitarian principles that were the raison d'être of the Conference.

42. Mr. HUSSAIN (Pakistan) said that some speakers had asserted that the Conference was not competent to deal with the matters raised in Article 86 bis. Those matters, however, i.e. the banning or restriction of the use of weapons that caused a certain type of injury, were already dealt with, in a general way, in Article 33. Moreover, for the past four years the Conference had included the Ad Hoc Committee, for which it had provided legal and secretarial assistance. Special conferences of experts on the matters in question had been convened, in conjunction with the Conference, at Lucerne and at Lugano. No one had ever raised any objection to the existence of the Ad Hoc Committee or to the holding of the Lucerne and Lugano Conferences. Indeed, the very delegations which were now disputing the Conference's competence to deal with those matters had played an active part in those discussions. The two attitudes were totally incompatible; either the Conference was competent to deal with the possibility of

prohibiting or restricting the use of certain weapons, or the Ad Hoc Committee and the Lucerne and Lugano Conferences should have been ruled out of order from the start.

43. In fact, the purpose of the committee envisaged in Article 86 bis was among the reasons for which the Conference existed. The purpose of the Conference was to relieve the sufferings caused by war; the relief of suffering by the prohibition or restriction of the use of certain weapons was the object of Article 86 bis.

44. Nor could he understand the argument to the effect that the establishment of the committee envisaged in Article 86 bis would prevent or impede the holding of the conferences of which certain delegations had spoken or the discussion of the banning of certain weapons in disarmament conferences. Disarmament bodies dealt with that question from a political or military point of view; the Diplomatic Conference dealt with it from a humanitarian point of view. It was a necessary part of the activities of the Conference. He hoped that delegations would look coolly at the question and find it possible to vote in favour of Article 86 bis.

45. Replying to a point raised by the representative of the United Republic of Cameroon, he pointed out that the English verb "shall" was used in a large number of the Articles of the Protocol and did not call for the performance of any "constitutive act".

46. Mr. MILLER (Canada) said that his delegation had made known its views on the question in Committee I. It had been surprised that the question of a review mechanism had been raised in that Committee; it seemed rather to be a matter for the Ad Hoc Committee. His delegation agreed with the representative of the German Democratic Republic that the discussion in Committee I had been somewhat rushed, before the results of the discussions in the Ad Hoc Committee had been known. It further agreed with the Norwegian representative that the text of Article 86 bis left much to be desired. Why should the proposed committee have thirty-one members? Why should it be empowered only to make recommendations? Why did paragraph 4 state that the depositary "may" convene a conference on the basis of the Committee's recommendations?

47. He did not think that an article of that nature had a place in Protocol I. It would be more useful to consider the three draft resolutions which were before the Conference in documents CDDH/423, CDDH/411 and CDDH/Inf.240, all of which called for the convening of a special conference on the question as a matter of urgency. That would be a better course than the inclusion in Protocol I of an article which was not well drafted. His delegation could not vote in favour of Article 86 bis.

48. Mr. ABDINE (Syrian Arab Republic) said that Article 86 bis was the logical consequence of the adoption by the Conference of Article 33. If the use of weapons causing unnecessary suffering or having indiscriminate effects was to be prohibited, the conclusion must be the establishment of an appropriate mechanism for providing information concerning the list of such weapons. The provisions currently in force on the matter were out of date and no longer answered to humanity's needs.

49. The argument of lack of competence did not hold water. There would be neither overlapping nor duplication of competences as between the mechanism envisaged in the article and other machinery already in existence or which might exist in the future. The task of the proposed committee would merely be to draw conclusions on the implications of the use of certain weapons from the humanitarian point of view and to the exclusion of all other considerations. That was fully in line with the objectives of the Protocol and of the Conventions. Consequently, his delegation whole-heartedly supported Article 86 bis and wished that it covered non-conventional weapons also.

50. Mr. de ICAZA (Mexico), speaking as Rapporteur of Committee I, said, in reply to the representative of the United Republic of Cameroon, that it had been generally agreed in the Drafting Committee that the English word "shall", which was not, as used in legal texts, a future tense but the expression of an obligation, should be translated by the use of the present tense in French. It seemed that that rule had been forgotten in the case of Articles 79 bis and 86 bis.

51. Replying to the Swiss representative, he said that the depositary would of course have the right to vote in the committee proposed in Article 86 bis. The sole exception, which seemed logical, was in the case of a decision to convene a meeting of the committee, which was, of course, the only decision adopted by one third of the members of the Committee.

52. Mr. PAOLINI (France) said that the French delegation was opposed to the very principle of Article 86 bis, the adoption of which would introduce into the Protocols a new confusion between humanitarian law and the problems of armaments and disarmament. The question of cruel weapons had already been discussed at special conferences in other forums; that question lay on the borderline between humanitarian law and the harmonization of national defence policies. At the beginning of the Conference, the French delegation had agreed to the setting up of an Ad Hoc Committee, on the initiative of Sweden, to study the effects of certain weapons and the possibility of restricting their use.

Although it had participated fully in the work of that Committee, it had always stressed, in particular at the two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons held respectively at Lucerne and Lugano, that the findings of the studies should be regarded as simple facts in regard to which Governments could take whatever action they saw fit.

53. His delegation took the view that the Conference was not the appropriate body to discuss or, possibly, to make recommendations on the banning or restriction of the use of conventional weapons. The discussion of such matters might call into question certain ideas concerning national defence and security; they should therefore be referred to the appropriate political bodies, in particular the United Nations, which was competent to deal with the disarmament problem. It was for the United Nations to decide what would be the most appropriate forum to follow up the work of the Ad Hoc Committee, and that decision should not be prejudged.

54. The French delegation could not accept Article 86 bis, which would lead the Conference away from the field of humanitarian law and involve it in questions of disarmament. If the article was adopted, the French Government would not consider itself bound by its provisions.

55. Miss AL-JOUA'N (Kuwait) said that her delegation had supported Article 86 bis from the beginning and had voted in favour of it in Committee I. Article 86 bis was closely linked with Article 33, already adopted, and other articles which introduced into the Protocol the idea of prohibiting or restricting the use of certain weapons. That in itself proved the fallaciousness of the argument that the Conference was not competent to discuss the question. Moreover, the Conference had set up a special Committee - the Ad Hoc Committee on Conventional Weapons - to discuss those very questions and the ICRC had convened two sessions of the Conference of Government Experts, held, respectively, at Lucerne in 1974 and at Lugano in 1976, at which the effects of the use of certain weapons had been discussed. Failure to adopt the article would lead to a serious imbalance in Protocol I and the effects of such failure would be felt by all mankind, but especially by the small countries which were all too often used as fields of experimentation by the great Powers which had unlimited military power and resources. Article 86 bis was necessary to the security of the small countries.

56. Mr. FREELAND (United Kingdom) said that his delegation had been among those which had contributed most actively to the work of the Ad Hoc Committee. It had attached importance to, inter alia, the question of a review mechanism which would enable discussion to take place from time to time on the subject of prohibitions or restrictions on the use of specific conventional

weapons. It had hoped that by the end of the Diplomatic Conference arrangements would have been made for the work of the Ad Hoc Committee to be carried further, probably in a conference convened for that special purpose, and it had considered that the form of any review mechanism should be settled by the latter conference.

57. His delegation had also hoped that that objective could be achieved through a formula acceptable to all delegations. Unfortunately the proposals in Article 86 bis had made that process far more difficult. They were clearly not acceptable to a substantial number of delegations, and an attempt to proceed by way of majority vote rather than by consensus was only too likely to provide an obstacle to progress. If Article 86 bis were adopted it would greatly complicate future work by establishing a committee which would apparently be additional to any review mechanism established as a result of the weaponry follow-up to the Conference. A proliferation of committees, working on different bases, was much more likely to be harmful than beneficial to progress.

58. His delegation had elsewhere expressed its objections to the substance of the proposed article which, apart from anything else, seemed to provide a review mechanism whose modalities were highly uncertain. Furthermore, the criteria on the basis of which it would have to work failed to take account of factors of obvious importance, such as the considerations of a military and political character to which States must have regard, as well as humanitarian considerations, when examining proposals for prohibitions or restrictions on conventional weapons. In addition, the article provided no assurance that these matters would be examined with the necessary technical expertise.

59. His delegation still wished to proceed by way of consensus. Together with the delegations of Canada, Denmark and the Federal Republic of Germany, it had sponsored the draft resolution in document CDDH/Inf.240 and it had made clear its readiness to negotiate with the co-sponsors of Article 86 bis and with other interested delegations. It had indeed made plain, during informal discussions, its willingness to take as a point of departure for negotiation compromise drafts put forward by another delegation, one which had played a prominent role in this field. Among those drafts was a draft article for inclusion in the Protocol that would have established a link to which his delegation had understood the co-sponsors to attach major importance. Greatly to its regret, however, it had almost at once been informed that the co-sponsors were unwilling to negotiate further.

60. Without consensus it was difficult to see the way ahead; and for the reasons which he had indicated his delegation would vote against Article 86 bis. It hoped that the article would not be adopted and that a situation would result in which negotiations could be resumed with a view to reaching early agreement on the continuation of the valuable work of the Ad Hoc Committee.

61. Mr. KORUTURK (Turkey) said that his country was greatly interested in questions concerning the prohibition or restriction of the use of certain categories of conventional weapons and had recently signed the Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques. Despite its interest, and although in principle it was favourable to the idea behind Article 86 bis, his delegation would be unable to vote in favour of the article.

62. His delegation considered that the work done by the two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons, held respectively at Lucerne and Lugano, and by the Ad Hoc Committee on Conventional Weapons, should be continued in order to reach practical results in an adequate forum. As far as that forum was concerned, his delegation considered, as it had stated in Committee I, that it would be better to convene a special conference than to set up a committee, which in any case might later be set up by the special conference, to become a permanent mechanism to study questions concerning the use of certain conventional weapons and munitions of a nature to cause unnecessary suffering or to have indiscriminate effects.

63. His delegation's objection to Article 86 bis was based on the priority to be given to a conference before the matter had reached committee stage.

64. His delegation's objection to Article 86 bis was also warranted by a certain opposition to the composition of the proposed committee which it had noticed among a number of representatives. That opposition, which was well founded, showed that it would be premature to set up a committee at the present stage of the work on the use of conventional weapons.

65. It was for those reasons, and not without some regret, that his delegation would vote against Article 86 bis, on which it had abstained in the vote in Committee I.

66. Mr. ABOU-ALI (Egypt) said that his delegation, which had co-sponsored Article 86 bis, associated itself with the remarks of the representative of Mexico.

67. A certain amount of confusion had arisen concerning the relationship between the subject the plenary Conference was discussing and the problem of disarmament. A distinction should be drawn between the two subjects, which were totally different. The Conference was discussing an article relating to the prohibition or restriction of the use of certain conventional weapons from the point of view of humanitarian law, while the discussions on disarmament were of a strategic and political nature.

68. The proposed committee was merely an intermediate procedure; it would consider and adopt recommendations and proposals concerning the prohibition or restriction of the use of certain conventional weapons, but it would not examine the basic problem, for which a special conference was needed. The committee presented an adequate long-term solution for the continuation of work in the field of prohibition or restriction of the use of certain conventional weapons.

69. His delegation was a sponsor of draft resolution CDDH/411 advocating the convening by the United Nations General Assembly of a conference for the purpose of carrying on the work initiated by the Diplomatic Conference and its Ad Hoc Committee. That procedure did not exclude the long-term procedure which the proposed committee would represent. His country and other small nations had set their hopes on the establishment of that committee.

70. Mr. AL-FALLOUJI (Iraq), speaking as Chairman of the Drafting Committee, referred to the comments of the representative of the United Republic of the Cameroons concerning the use of the word "shall" in paragraphs 1 and 2 of Article 86 bis and pointed out that it was the general rule for the imperative to be used in documents referring to the future work of a committee.

71. Speaking as the representative of Iraq, he said that his delegation was a sponsor of Article 86 bis. That article would discourage the use of conventional weapons and was thus a step forward in the protection of the civilian population.

72. Mr. DONOSO (Ecuador) said that his delegation was a sponsor of Article 86 bis, which was purely humanitarian and dealt with a subject which did not concern a body dealing with disarmament. Those who supported the article were trying to make war less cruel.

73. It had been said that the Diplomatic Conference should not deal with the subject of the prohibition or restriction of the use of certain conventional weapons since it was being studied by the United Nations. He was aware that a special session of the United Nations General Assembly would shortly be convened to study the whole question of disarmament, but that fact did not make it unnecessary for the Diplomatic Conference to adopt Article 86 bis.

74. Mr. GONZALEZ-GALVEZ (Mexico) said that his delegation had submitted the original proposal which had led to the drafting of Article 86 bis.

75. The Mexican delegation had always been ready to negotiate. He had been informed that negotiations concerning Article 86 bis had been suspended on the previous Saturday because his delegation could not accept certain proposals.

76. It had been stated by certain delegations that they would be unable to accept Protocol I as a whole if Article 86 bis was adopted. That was not a new position.

77. The Mexican delegation had always considered that the prohibition or restriction of the use of certain conventional weapons was an essential factor in the development of humanitarian law.

78. Referring to the arguments adduced by the more powerful delegations, he pointed out that the proposed United Nations Conference on Disarmament had an agenda which would take years to exhaust. It was unrealistic to think that the consideration of the problem of conventional weapons should be postponed until that agenda was exhausted.

79. Referring to the statement by the USSR representative, he pointed out that the fact that the establishment of the Ad Hoc Committee on Conventional Weapons had been accepted showed that some delegations which objected to Article 85 bis were inconsistent in their attitude. Some delegations had protested that the article had been "rushed through" at the committee stage before the Ad Hoc Committee had completed its work. That, however, was untrue. The idea of creating machinery for the revision of conventions had been put forward by the delegation of Mexico ever since the first session of the Diplomatic Conference.

80. He appealed to all delegations that objected to Article 86 bis to reconsider their attitude.

81. Referring to the statement of the United States representative, he recalled recent statements made by President Carter laying down the foreign policy of the United States of America.

82. One of the most effective ways of preventing the dissemination of conventional weapons was to set up adequate machinery for dealing with the problem.

83. Mr. MENCER (Czechoslovakia) said that his delegation was in favour of drawing up new agreements on the prohibition or restriction of the use of certain conventional weapons, but it was impossible to impose such agreements on States by a majority vote by participants in a conference. The establishment of the proposed committee might cause confusion, for it would duplicate the work being done in other forums.

84. According to paragraph 1 of Article 86 bis, the work of the proposed committee would be based on Article 33 of Protocol I, but conventional weapons were not mentioned in that article. Reference was also made in paragraph 1 to "indiscriminate effects" - but those words did not appear in Article 33 or in any other instrument in force concerning international humanitarian law.

85. According to paragraph 2 of Article 86 bis, the proposed committee would "adopt its recommendations by majority". He wondered whether such recommendations would be addressed to States. He did not think that States would consider recommendations adopted by a majority vote of a committee convened by one third of its members.

86. The proposed Article 86 bis raised many difficulties and the delegation of Czechoslovakia would be unable to support it.

87. Mr. EUSTATHIADES (Greece) said that Article 86 bis was a praiseworthy effort to ensure that the work of the Ad Hoc Committee on Conventional Weapons would be continued after the close of the Diplomatic Conference. His delegation feared, however, that delays might occur if the article was adopted. A draft resolution was shortly to be submitted and he felt that it would be wiser for the Conference to make a last effort to adopt a text which would combine the contents of the two documents.

88. Mr. ABADA (Algeria) said that the present debate was useless, and he suggested that consultations should be continued with the sponsors of Article 86 bis. A decision on the article must be taken without delay and the result of the vote would mark a distinction between the powerful States and those who believed in humanitarian law.

89. The delegation of Algeria would vote in favour of Article 86 bis since its adoption would lead to the prohibition or restriction of the use of certain conventional weapons and would affect the lives of the inhabitants of the third world.

90. Mr. MBAYA (United Republic of Cameroon) said that his delegation had raised the question of the use of the imperative in paragraphs 1 and 2 of Article 86 bis, and pointed out that such use depended on context. He still felt that the word "shall" in paragraphs 1 and 2 raised some difficulties.

91. Mr. GLORIA (Philippines), speaking as a sponsor of Article 86 bis, said that he was much concerned about its fate. His delegation disagreed with those which considered that the Diplomatic Conference had no competence in the matter of the prohibition or restriction of the use of certain conventional weapons. Some delegations considered that the United Nations was the correct forum to deal with the proposals in Article 86 bis. He would point out, however, that the Conference of the Committee on Disarmament had been in session for years and had not yet solved any of those problems.

92. During the four years' work of the Diplomatic Conference, when certain articles of the Protocols had been in conflict it had always been suggested that the matter should be referred to the United Nations. He emphasized that participants in the Diplomatic Conference must not lose sight of the fact that the Conference was purely humanitarian.

93. Mr. CLARK (Nigeria) said that there must be a legal link with the future in respect of the text of Article 33, which had been unanimously adopted. The need for a review mechanism since the Treaty on the Non-proliferation of Nuclear Weapons had come into force had become obvious.

94. As far as the question of competence was concerned, he could understand the position of the great Powers who had a special interest in other forums dealing with the question of disarmament. Those Powers were aware, however, that the category of weapons with which the Diplomatic Conference was concerned did not occupy a central place on the agenda of those forums.

95. Disarmament was the concern of all nations. The Diplomatic Conference must not fail to take advantage of that fact and to pronounce on the humanitarian aspects of the problem. The African Group had decided that Article 86 bis was crucial.

96. The Political Declaration of the Fifth Conference of the Heads of State or Government of the Non-Aligned Countries, held at Colombo in 1976, had urged all States to accelerate negotiations with a view to securing as rapidly as possible, and within the context of that Conference, the prohibition of certain conventional weapons of an indiscriminate or cruel nature, particularly the prohibition of the use of napalm and other incendiary weapons.

97. He hoped that all the African countries and the non-aligned countries would support Article 86 bis.

At the request of the representative of Mexico, the vote on Article 86 bis was taken by roll-call.

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

In favour: Oman, Uganda, Pakistan, Panama, Peru, Philippines, Qatar, Syrian Arab Republic, Republic of Korea, United Republic of Tanzania, Romania, Holy See, Senegal, Somalia, Sudan, Sri Lanka, Sweden, Switzerland, Tunisia, Uruguay, Venezuela, Yemen, Democratic Yemen, Yugoslavia, Zaire, Afghanistan, Algeria, Saudi Arabia, Bangladesh, Bolivia, United Republic of Cameroon, Cyprus, Ivory Coast, Egypt, United Arab Emirates, Ecuador, Ghana, Guatemala, Honduras, Iraq, Iran, Ireland, Socialist People's Libyan Arab Jamahiriya, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Madagascar, Mali, Malta, Morocco, Mauritius, Mauritania, Mexico, Mozambique, Nicaragua, Nigeria, Norway.

Against: Netherlands, Poland, Portugal, German Democratic Republic, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, United Kingdom of Great Britain and Northern Ireland, Czechoslovakia, Thailand, Turkey, Union of Soviet Socialist Republics, Germany (Federal Republic of), Australia, Belgium, Bulgaria, Canada, Chile, Cuba, Denmark, United States of America, Finland, France, Greece, Hungary, Iceland, Israel, Italy, Japan, Luxembourg, Monaco, Mongolia, New Zealand.

Abstaining: Democratic People's Republic of Korea, Socialist Republic of Viet Nam, Argentina, Austria, Brazil, Colombia, Spain, India, Indonesia, Liechtenstein.

The result of the vote was 59 in favour, 32 against and 10 abstentions.

Not having obtained the necessary two-thirds majority, Article 86 bis was rejected.

Explanations of vote

98. Mr. MARTIN HERRERO (Spain), speaking in explanation of vote, said that the Conference had just taken a vote which from the point of view of humanitarian law could be described as historical. He regretted all the more that he had been compelled to abstain in the vote on Article 86 bis because his delegation had been a co-sponsor of the original resolution on which that article was based, and his Government had been one of the eight countries which had taken the initiative in establishing the Ad Hoc Committee on Conventional Weapons. Moreover, his delegation had always been profoundly convinced of the need for the gradual reduction and prohibition of certain weapons and had felt that the Conference would be failing in its duty if it did not respond to the views of the United Nations and public opinion in that respect.

99. It was unfortunate that compromise negotiations concerning the review mechanism provided for in Article 86 bis had, in his opinion, failed to assure the necessary degree of practical effectiveness and moral authority which such an article should embody. Nevertheless, he hoped that the last word on that subject had not been spoken and that the Conference would still be able to claim a legal victory for humanitarian law.

100. Mr. NUÑEZ (Cuba), speaking in explanation of vote, said that his delegation, while agreeing with the purposes of Article 86 bis, had voted against it because it believed that one of the fundamental tasks of the present day for the international order was the achievement of an agreement on general and complete disarmament and the cessation of the armaments race. It was for that specific purpose that a special session of the General Assembly of the United Nations was to be convened in 1978, to be followed by an international disarmament conference.

101. His delegation was firmly convinced that the fundamental principles of international law, peaceful co-existence, collective security and the policy of détente were indissolubly linked to the problems of general and complete disarmament; accordingly, it thought that the problem as a whole should be dealt with in some worldwide, United Nations forum.

102. Miss BOA (Ivory Coast), speaking in explanation of vote, said she wished to pay a tribute to the initiative taken by the Mexican delegation in proposing Article 86 bis. Some delegations had rejected that article because in their opinion the matters covered by it were dealt with in other forums. She herself thought, on the contrary, that if the numerous disarmament conferences had achieved any results there would have been no need for the Diplomatic Conference on Humanitarian Law. She hoped,

therefore, that the Conference would be able to continue its work on the limitation of certain kinds of conventional weapons. Her delegation would submit a full explanation of its vote in writing.

103. Miss QUINTERO (Colombia), speaking in explanation of vote, said that her delegation had abstained in the vote on Article 86 bis because it felt that that article would only create an organ duplicating the work of other similar bodies. That did not mean, however, that it failed to sympathize with the purposes behind Article 86 bis.

104. Miss EERIKAINEN (Finland), speaking in explanation of vote, said that her delegation had abstained in the vote on Article 86 bis when it had first been proposed in Committee I because it had hoped at that time that it would still be possible to reach some generally acceptable compromise. It had now been compelled to vote against the article because of its increasing doubts about the effectiveness of the review mechanism proposed. Nevertheless, she hoped that it would be possible to continue the work on the restriction and prohibition of certain kinds of conventional weapons as soon as possible. Serious consideration should be given to the possibility of holding a special conference, so that the work done so far would not have been in vain.

105. Mr. CRUCHO DE ALMEIDA (Portugal), Mr. AGBEKO (Ghana), Mr. NASUTION (Indonesia), Mr. DI BERNARDO (Italy), Mr. MAHONY (Australia) and Mr. MUSANTE (Chile) said that they would submit their explanations of vote in writing.

Article 87 - Denunciation

Article 87 was adopted by consensus.*

106. Mr. ABDINE (Syrian Arab Republic), speaking in explanation of vote, said that, while agreeing with the consensus, his delegation considered that article totally unnecessary, since the idea of a possible denunciation was incompatible with the very nature of humanitarian law.

Article 88 - Notifications

Article 88 was adopted by consensus.**

* Article 99 in the final version of Protocol I.

** Article 100 in the final version of Protocol I.

Article 89 - Registration

Article 89 was adopted by consensus.*

Article 90 - Authentic texts

Article 90 was adopted by consensus.**

The meeting rose at 6.10 p.m.

* Article 101 in the final version of Protocol I.

** Article 102 in the final version of Protocol I.

ANNEX

to the summary record of
the forty-seventh plenary meeting

EXPLANATIONS OF VOTE

AUSTRALIA

Original: ENGLISH

Article 86 bis of draft Protocol I

The Australian delegation in voting against the adoption of draft Article 86 bis had very much in mind its commitment to supporting effective measures of disarmament and the creation of humanitarian controls limiting unnecessary suffering through effective international agreement on certain conventional weapons.

Our objection to the adoption of draft Article 86 bis was based on the following conditions:

(a) We are convinced that the consensus procedures developed in the Ad Hoc Committee offer the best prospects for positive achievements towards our common goal of humanitarian controls limiting unnecessary suffering.

(b) It was clear that a substantial number of responsible delegations had serious reservations about the insertion in Protocol I of such an article and about the procedures set out in draft Article 86 bis; and they could not agree to it. Its carriage would therefore have been a departure from that consensus through which alone, in our view, progress can be made in this field.

(c) We ourselves had serious doubts whether the procedures proposed in draft Article 86 bis could achieve effective international agreement which has been and continues to be our aim.

On the other hand, a number of countries had proposed alternative ways of proceeding in the form of draft Conference resolutions. In our view, an appropriate resolution offers much better prospects of gaining general acceptance and of ensuring progress towards our common aim. We are prepared to play our part in working for a resolution text which will command general support.

AUSTRIA

Original: FRENCH

Article 86 bis of draft Protocol I

The Austrian delegation was in favour of the principle underlying Article 86 bis, which my delegation interpreted as the requirement that a link should be established between international humanitarian law and any instruments that might be adopted in the future on the prohibition or restriction of the use of certain particularly cruel weapons.

Despite that basic position, the Austrian delegation was not able to support the wording of Article 86 bis and for that reason it abstained in the vote.

My delegation could not share the view that the insertion of such a provision in the Protocol was the only way of establishing the link that we too considered desirable. Rather were we of the opinion that there would be a number of different ways of doing so, for example by a resolution adopted by the Conference. The arguments advanced in favour of the content of Article 86 bis were not able to convince us on this point. Moreover, the Austrian delegation itself proposed a review mechanism two years ago in the Ad Hoc Committee. This proposal was explained by the Austrian governmental experts during the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in 1976, and is to be found in the report of that Conference, page 146 of the English text. The proposal was, of course, intended as a clause to be inserted in an instrument to be adopted at a later stage on the prohibition or restriction of the use of such weapons. It was not meant to form part of Protocol I and that is why we did not submit it formally to this Conference, which unfortunately has not managed to adopt any additional protocols on the prohibition or restriction of certain conventional weapons. The construction of a review mechanism on the lines of our proposal, however, seems to us preferable to that laid down in Article 86 bis, because it is more simple, more adequate and more realistic. I should point out, moreover, that, as my delegation was in favour of a review mechanism to be included in specific protocols on weapons, it could not see any imperative need for a duplication of the review mechanism.

Lastly, we consider that we were justified in abstaining, because a confrontation of divergent positions at this stage of the Conference would have been pointless; in any case, it would not have helped towards any solution of the weapons problem, which will remain in abeyance and which in the future will require close and well-disposed co-operation on the part of all countries, including the great Powers.

CHILE

Original: SPANISH

Articles 85 and 86 bis of draft Protocol I

Article 85

My delegation opposed the retention of Article 85 on reservations and voted for its deletion, since it is unsatisfactory as to both content and drafting. The position taken by Chile must not be taken to mean that it intends or seeks to evade the implementation of Protocol I by formulating a number of reservations that would invalidate the Protocol's main aims. On the contrary, it is Chile's unconditional intention to comply in every particular with the requirements of that implementation in terms of all the humanitarian duties and obligations undertaken under this international bond.

Chile cannot fail, however, to respect the legal institution of reservations, as enshrined in many treaties and conventions covering the inter-American region.

A cursory review of the most important regional international conventions shows us that there are various conventions on the right of asylum, and treaties on extradition systems and procedures, and the most important of all is the Convención de Derecho Internacional Privado, or Código de Bustamante (Convention on Private International Law, known as the Bustamante Code), concluded and signed at Havana in 1928 during the Sixth International Conference of the Americas. And with respect to all of these, without exception, many reservations have been entered by nearly all the countries of the American continent. Chile is a signatory to these international agreements, and in accordance with this regional custom has made use of the system of reservations. Consequently Chile cannot shirk its obligation to respect a system which it has accepted and which it has used either unilaterally or in reciprocation with other Contracting Parties. In fact, if Chile were to accept Article 85, with its present content and drafting, it would amount to renouncing and dissociating itself from the system of reservations, thus creating a conflict in the American sphere, by virtue of the treaties and conventions it has signed on a bilateral or multilateral basis with other countries of the region, which might be interpreted as a tacit denunciation of certain international covenants now in force.

The system of reservations is so widespread in the American region that not only is it accepted at the time when the conventions or treaties are signed, but it is also permitted at the time of ratification.

Furthermore, to renounce the institution of reservations implies in some circumstances a renunciation in advance of the exercise of national sovereignty, when the external agreement conflicts with the internal legal system of a country or, more especially, with the political Constitution of a State, which is the foundation upon which rests the whole edifice of national legislation. In that case the reservation serves to safeguard in advance the primacy of national legislation over an external legal requirement.

Article 86 bis

The attempt made by a number of delegations to arrive at a final draft of Article 86 bis is praiseworthy and we are full of admiration for the purely humanitarian motives which prompted its sponsors. They showed flexibility and skill in the negotiations, in order to attract a large majority of countries to a cause to which they were spiritually devoted, and this shows that they were prompted by a great sense of humanitarianism.

At the risk of appearing, at first sight, to be sarcastic, my delegation opposed the establishment of the committee on the prohibition or restriction of the use of certain conventional weapons.

Chile refrained from giving its support to a body of this kind because it is firmly convinced that the setting up of dual international agencies with similar and parallel aims will neither strengthen the prohibition or restriction of conventional weapons nor make those aims any easier to achieve but will, instead, weaken the bodies already in existence and cause those yet to emerge to be still-born. The ideal is to aim at unification and not to disperse agencies and make them feebler and less consistent. The problem boils down to deciding on the strategy that is best among those available for achieving effective anti-armament objectives. We are reminded of the words of the Roman warrior: "divide and conquer". Is it not a fact that the more we divide the agencies responsible for arms control, the easier we make it for the countries in favour of armaments to escape the supervision of insignificant organs which are internationally of little weight or scope?

In other words, instead of proliferation of like-minded agencies our policy should be to provide those already in existence with the tools and instruments they require so that, thus strengthened, they may emphatically and energetically fulfil the aims for which they were established.

It is my country's view that the establishment of the new committee envisaged in Article 86 bis would serve the cause of disintegration. Instead of leading to a more effective and scientific control of armaments it would help to increase them and thus, because of its ineffectiveness, would be a real boomerang resulting in armament on an even greater scale.

If we wish to tackle the armaments problem effectively and to reduce it considerably, we ought to give existing international agencies our full co-operation and require them to discharge the duties for which they were set up.

Chile has accordingly cast a negative vote. It did so because it knows that the proper way to oppose the spread of armaments is to concentrate our efforts, not scatter them among feeble agencies prone to vegetate as bureaucratic entities, bringing international organizations into disrepute in the eyes of the world.

DEMOCRATIC PEOPLE'S
REPUBLIC OF KOREA

Original: ENGLISH

Article 86 bis of draft Protocol I

The delegation of the Democratic People's Republic of Korea would like to express its view on Article 86 bis.

Our delegation recognizes that it is necessary to take measures for strictly prohibiting cruel means of warfare used for massacring human beings and destroying means of life.

The demand for withdrawing nuclear weapons and up-to-date weapons from colonies is a just one.

Not only should the production and use of nuclear weapons be prohibited but all the nuclear weapons already produced should be destroyed.

At the same time, the use of weapons of mass destruction, including germ weapons, should be prohibited, as should the study and production of those weapons.

We think that this is the first and fundamental task for peace.

GHANA

Original: ENGLISH

Article 86 bis of draft Protocol I

The Ghana delegation has held the view, even at the inception of this series of Diplomatic Conferences, interspersed with two Conferences of Government Experts at Lucerne and Lugano, that the need for a review mechanism cannot be over-emphasized. My delegation has been very optimistic about the outcome of these meetings/conferences and our contribution, albeit minimal, has been in the direction of saving the Ad Hoc Committee (i.e. not allowing valuable work to expire with the conclusion of this Conference) either by providing generally or specifically in this Protocol or, as mooted by several delegations, adopting a resolution which would operate outside the scope (or periphery) of the Protocols but making it possible and, indeed, incumbent upon the international community, to meet periodically, explore areas of agreement on specific weapons and accordingly recommend their prohibition or restriction.

My delegation will not be unduly inflexible in insisting upon an article such as 86 bis and in a spirit of co-operation might fall in with the proponents of a resolution, but we must have our guarantees and if such a resolution is so loose as to make such guarantees merely illusory, then we have a duty in the supreme interests of humanitarianism to insist on concrete proposals. In pursuance of this we voted in favour of Article 86 bis.

HOLY SEE

Original: FRENCH

Article 86 bis of draft Protocol I

The delegation of the Holy See is always ready to support any provision calculated to reduce the inhumanity of war. It accordingly has voted in favour of Article 86 bis even if the article is not wholly satisfactory.

It is of the opinion that a provision such as this lies entirely within the competence of a Conference whose purpose it is to reaffirm and develop humanitarian law. Indeed, it is the logical, and even necessary, consequence of Article 33 of Protocol I.

The delegation of the Holy See is convinced that the setting up of the machinery provided for in Article 86 bis will be conducive to the promotion of the cause of the prohibition or restriction of the use of certain conventional weapons that are particularly and unnecessarily cruel.

INDIA

Original: ENGLISH

Article 86 bis of draft Protocol I

As a member of the non-aligned movement, the Indian delegation fully supports and would continue to support all measures in all forums designed to prohibit the use of certain conventional weapons of an indiscriminate or cruel nature, in accordance with the Colombo Declaration of 1976. Thus, in spirit, we support the proposal in document CDDH/401. However, the Indian delegation is not convinced that the establishment of a committee as envisaged in the proposed Article 86 bis is the best means of achieving the objective. The Indian delegation does not look with favour on the proliferation of international committees, particularly when it is clear that a particular committee does not command unanimous support, without which its success cannot be guaranteed. The Indian delegation explained its position in detail in Committee I. However, since it shares the basic objective underlying the proposal, the Indian delegation abstained in the vote.

ISRAEL

Original: ENGLISH

Article 88 of draft Protocol I

The delegation of Israel was a party to the consensus on Article 88 on the understanding that only those declarations referred to in Article 88 (d) which are made and applied bona fide are valid and should be transmitted to the High Contracting Parties and the Parties to the Conventions.

Invalidity due to lack of bona fides or any other defect in a declaration is not remedied by such transmittal.

ITALY

Original: FRENCH

Article 86 bis of draft Protocol I

The Italian delegation voted against Article 86 bis for many reasons. In the first place, the Italian delegation has always been of the opinion that the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law is not the appropriate forum in which to deal with the question of the prohibition or restriction of the use of certain conventional weapons, as this question falls within the competence of other forums better qualified for the purpose and, in particular, those specifically empowered to deal with the various aspects of disarmament, including the technical side.

That being the case, the Italian delegation considers that the establishment of a committee to deal with problems concerning the restriction of the use of certain weapons within the context of humanitarian law would result in an undesirable proliferation of the existing bodies, while at the same time complicating the already highly complex and difficult task of such bodies.

Furthermore, the Italian delegation considers that this question cannot be tackled solely from the point of view of humanitarian law, since it falls within the far broader and more complex context of the national defence and security requirements of each State. That is why the Italian delegation, at the time when Article 33 of Protocol I was adopted by consensus, pointed out that the provisions of the Protocol concerning the use of methods and means of combat constitute general principles requiring definition and development through specific agreements which it is outside the competence of purely humanitarian authorities to prepare.

This by no means implies that the Italian delegation underestimates the value of the work carried out by the Ad Hoc Committee of the Conference, through which considerable results have been achieved in the discussions on the technical aspects of the subject.

It is important that those results should not be wasted. The Italian delegation is convinced that the Governments concerned will find a way to make the best use of them in a more appropriate forum.

LEBANON

Original: FRENCH

Article 86 bis of draft Protocol I

My delegation was one of those at the working meetings that supported Article 86 bis for the humanitarian reasons that have been unanimously recognized, supported and defended. Our position has not changed.

The article in question follows logically on Article 33, which prescribed in general terms the prohibition and limitation of projectiles and of methods of warfare of a nature to cause superfluous injury whether to man or to the natural environment.

For this prohibition, Article 86 bis would establish a permanent mechanism, which would give concrete shape to Article 33 and thus create a specific link between a basic rule and the practical means of giving it effect.

We regret that this practical move and humane endeavour have met with so many objections during the vote on this article.

MOZAMBIQUE

Original: FRENCH

Article 86 bis of draft Protocol I

The delegation of the People's Republic of Mozambique very much regrets the rejection of Article 86 bis.

My delegation voted for the inclusion of this article in draft Protocol I, both in the Committee and here in plenary, because we favour general disarmament, which is in accordance with the basic interests of the peoples still struggling for their liberation.

The work of many agencies set up to limit armaments has proved fruitless.

The Committee proposed in this article, we are convinced, would help to facilitate the restriction or prohibition of certain conventional weapons.

Article 86 bis would be the crystallization of the principle adopted in Article 33. With the examples before us of the terrible destruction suffered by the peoples of Indochina and those who were subjected to fascist colonial domination, we can see the urgent need to put an end to the arms race, and particularly the race in arms whose use is a crime against humanity. Unfortunately, we note that whenever we wish to crystallize a known principle which has already been adopted, there are countries which vigorously object, saying that we are straying outside the confines of humanitarian law.

We already have two examples. First, Article 74 and the new sub-paragraph proposed by the Philippines, and now Article 86 bis.

We take the view that these provisions are not outside the scope of humanitarian law, for these articles which are aimed at avoiding the proliferation of superfluous injuries in armed conflicts constitute one of the basic aspects of humanitarian law, and without them there will be a serious gap in Protocol I which we will do our best to have filled.

PORTUGAL

Original: ENGLISH

Article 86 bis of draft Protocol I

The Portuguese delegation could not give its support to Article 86 bis and would like to present a few brief considerations:

1. The debate on the proposal of this new article and the incidence that the same proposal had on the work of the Ad Hoc Committee constitute evidence of the difficulty of implementing certain principles of extreme importance in the humanitarian field, although these principles were accepted by consensus and confirmed in Article 33.

2. The analysis of the effects and conditions of use of certain violent means of physical destruction was given different interpretations within the Ad Hoc Committee. It was so not only because of the consideration of factors which contend with the security of States but also because of the evaluation of technical data, which proved to be debatable and frequently contradictory.

The analysis made by the Ad Hoc Committee was further complicated by the need to consider the effects - possibly more dangerous - which can be caused by some substitute weapons. War is an extremely complex phenomenon and it is no surprise that the evaluation of the use of certain violent means constitutes so controversial a matter.

In this Conference it is the prohibition or the limitation of the use of certain weapons causing superfluous injury or striking indiscriminately which are under discussion, not the resort to force where this resort is legitimate. Therefore, the fact that the Ad Hoc Committee was not able to achieve significant results reflects the equilibrium of all the factors which are at stake.

Besides the results at which the Ad Hoc Committee arrived, this Committee was a forum for exchange of technical information, and for debate, and mutual knowledge of the different points of view, as well as an occasion to point out, for general attention, the need to safeguard the humanitarian objectives.

3. It seems to the Portuguese delegation that it is not appropriate to establish, as from now, a system as defined in Article 86 bis. This system could only function in the long term and, besides, it did not gain great support from various delegations. There are other hypotheses, less ambitious, but with more immediate effect, which may gain more general acceptance. On the other hand, those hypotheses do not specify the forum where the prohibition or limitation may be discussed.

This can help towards a compromise solution, which my delegation thinks is fundamental for the attainment of the humanitarian objectives of this Conference.

ROMANIA

Original: FRENCH

Article 86 bis of draft Protocol I

The Romanian delegation voted for Article 86 bis because it is convinced of the need for a mechanism for considering and adopting in future, recommendations regarding any proposal for the prohibition or restriction, for humanitarian reasons, of the use of certain conventional weapons that may cause superfluous injury or have indiscriminate effects.

During the discussions at our Conference, my delegation consistently supported the inclusion of such a provision in Protocol I. It also expressed the view that the Diplomatic Conference had the necessary competence to consider the question and take the corresponding decision.

Our vote for Article 86 bis is in accordance with my country's position of principle on the problem of disarmament, for disarmament is a major concern of Romanian foreign policy. Moreover, it is generally known that at the thirtieth session of the United Nations General Assembly my country submitted an ample document containing a concrete programme for the achievement of general and complete disarmament and, in the first place, nuclear disarmament.

Unfortunately, however, the negotiations on disarmament have not so far led to any satisfactory result, and the arms race continues to develop at a hectic pace, threatening international peace and security.

Although we give absolute priority to nuclear disarmament, we consider that it is advisable at the same time to take urgent steps to prohibit other types of weapon, including certain conventional weapons.

Consequently we considered praiseworthy and encouraging the proposal to establish a mechanism for continuing the work of our Conference on the problem of the prohibition or restriction of the use of certain conventional weapons that may cause superfluous injury or have indiscriminate effects.

The Romanian delegation fully appreciates the principles that motivated the sponsors of this proposal, whose main aim is to establish a precise legal link between international humanitarian law applicable in armed conflicts and the prohibition or restriction of the use of certain conventional weapons.

In our view the establishment of the proposed Committee could have facilitated the implementation of the provisions of Protocol I.

The Romanian delegation wishes to express its regret that the Conference has not adopted Article 86 bis, which nevertheless gained the votes of the majority in plenary.

SPAIN

Original: SPANISH

Article 86 bis of draft Protocol I

The Spanish delegation, which was one of the sponsors of the resolution that gave rise to draft Article 86 bis, and which voted for the article in Committee I, nevertheless abstained during the recent vote on it in plenary. This calls for an explanation and, even though the other co-sponsors know our position, we feel that it should be generally known.

The Spanish delegation has taken every opportunity of recalling that Spain was among the eight countries which endorsed the draft resolution - subsequently approved - pursuant to which the two Conference of Government Experts on the Use of Certain Conventional Weapons were held at Lucerne and Lugano and the Ad Hoc Committee and other similar groups met. Our attitude reflected the belief that certain types of conventional weapons needed to be gradually and cautiously, but also resolutely and progressively, limited, owing to pressure from the United Nations and public opinion. In other words, our delegation considered that this was a matter which fell strictly within the competence of the Diplomatic Conference on Humanitarian Law and that the latter would be failing in its duty if it did not discharge that task.

Now draft Article 86 bis - the approach and spirit of which still meets with the approval of our delegation since it suggests that through it the principle contained in Article 33 might be capable of implementation and not remain a dead letter - needs the support of all the States participating in the Conference if it is to be effective in practice and have full moral authority. Since the various attempts to reach a compromise have failed, it is clear that those two essential prerequisites are no longer met, and this was confirmed in the vote. Our delegation regrets that the text had to be put to the vote, for it believes that a vote of this sort might, by its very nature, involve the risk of a backward rather than a forward step. We hope, therefore,

that it will prove possible during the remaining days to establish a principle and method of procedure, expressed in writing in either a resolution or an annex, whereby, in the wake of the Conference, a solution to the serious and pressing problem of limiting weapons that may cause superfluous injury or have indiscriminate effects may be urgently pursued.

SYRIAN ARAB REPUBLIC

Original: FRENCH

Article 84 of draft Protocol I

In the view of the delegation of the Syrian Arab Republic, Article 84 seems inadequate in certain respects. Although it repeats the regulations contained in some provisions of The Hague Conventions of 1899 and 1907, and in the Geneva Conventions of 1949, it regulates treaty relations under the Protocol and the Geneva Conventions without dealing with relations, as regards field of application under the Protocol and The Hague Conventions. Furthermore, it passes over in silence the question of cases of conflict arising between the obligations of the Parties under the Geneva Conventions and the Protocol, and their obligations under any other international agreement. The delegation of the Syrian Arab Republic proposed to Committee I an amendment aimed at remedying that omission and highlighting the primacy of the former as imperative rules of the law of nations. It is to be regretted that the Committee did not take the Syrian amendment into consideration. The reason why the Syrian delegation is not pressing its amendment anew in the plenary Conference is that the time allowed the latter for completing its work does not permit it to do so. All things considered, the Syrian delegation feels convinced that, with reference to an explicit text in the Protocol, international law provides useful indications along the lines of the Syrian amendment, and that those indications will be followed should the occasion arise.

SUMMARY RECORD OF THE FORTY-EIGHTH PLENARY MEETING

held on Wednesday, 1 June 1977, at 3.10 p.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

ADOPTION OF TABLE OF CONTENTS FOR DRAFT PROTOCOL I AND
ANNEXES I AND II (CDDH/403)

1. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic), referring to page 3 of the Russian version of document CDDH/403, enquired when the text of the Preamble itself would be discussed.
2. The PRESIDENT replied that the Conference had already decided to adopt the Preambles to Protocols I and II after the adoption of all the articles of both Protocols.
3. Mr. KANE (Mauritania) requested some clarification concerning Article 79.
4. The PRESIDENT replied that "JOURNALISTS" was the title of Section III, Chapter III. The words "Nouvel article à insérer après l'article 79" in the French text should be deleted.
5. Mr. DIXIT (India) enquired whether Article 18 bis in Part II, Section I, was the same as Article 98 in Part VI.
6. The PRESIDENT confirmed that the articles mentioned were the same. Article 18 bis on page 4 of the English version should have been placed in brackets, since it had now become Article 98.
7. Mr. GLORIA (Philippines), referring to Part V, said that he would welcome some clarification concerning the phrase which appeared between brackets under the heading "GENERAL PROVISIONS".
8. The PRESIDENT said that the provisions which had been submitted to the Conference and adopted as a "new Article before Article 70" had now become Article 89.

Document CDDH/403 was adopted by consensus.

ADOPTION OF THE TITLE OF DRAFT PROTOCOL I (CDDH/401)

9. Mr. GLORIA (Philippines) suggested that the word "and" was superfluous and should be deleted.

10. Mr. PILLOUD (International Committee of the Red Cross) said that the point had been discussed in the Drafting Committee and that the English-speaking delegations had insisted on retaining the English text as it stood.

11. Mr. DRAPER (United Kingdom) confirmed that the word "and" in its present position was perfectly good English.

The title of draft Protocol I was adopted by consensus.

ADOPTION OF ANNEX I TO DRAFT PROTOCOL I (CDDH/401, CDDH/422)

Title

The title of the Annex was adopted by consensus.

Article 1 - Identity card for permanent civilian medical and religious personnel

Article 1 was adopted by consensus.

Article 2 - Identity card for temporary civilian medical and religious personnel

Article 2 was adopted by consensus.

Article 3 - Shape and nature

Article 3 was adopted by consensus.

Article 4 - Use

Article 4 was adopted by consensus.

Article 5 - Optional use

Article 5 was adopted by consensus.

Article 6 - Light signal

Article 6 was adopted by consensus.

Article 7 - Radio signal

Article 7 was adopted by consensus.

Article 8 - Electronic identification

Article 8 was adopted by consensus.

Article 9 - Radiocommunications

Article 9 was adopted by consensus.

Article 10 - Use of international codes

Article 10 was adopted by consensus.

Article 11 - Other means of communication

Article 11 was adopted by consensus.

Article 12 - Flight plans

Article 12 was adopted by consensus.

Article 13 - Signals and procedures for the interception of medical aircraft

Article 13 was adopted by consensus.

Article 14 - Identity card (CDDH/422)

Article 15 - International distinctive sign (CDDH/422)

12. Mr. KORNEEV (Union of Soviet Socialist Republics), introducing amendment CDDH/422, said that the present text of Annex I to draft Protocol I contained a figure showing the identity card for medical personnel and instructions on how to convert the card into an identity card for civil defence personnel. The sponsors proposed to include both the identity card for medical personnel and a separate identity card for civil defence personnel, which would have different distinctive signs - a red cross on a white ground and a blue triangle on an orange ground. The identity card for civil defence personnel omitted the reference to temporary or permanent personnel and included a new entry on weapons, in accordance with Article 14, paragraph 3 of the Annex.

13. The introduction of an identity card for civil defence personnel would make it possible to standardize such cards in different countries, although differences in the cards were not excluded. The proposed amendment did not affect the content of any of the articles adopted, except for a few drafting changes indicated in paragraphs 2, 3 and 4 of document CDDH/422. The words "and shall meet the requirements set forth in Article 1 of Annex I" were to be deleted.

Amendment CDDH/422 was adopted by consensus.

Article 14 as amended, was adopted by consensus.

14. Mr. PILLOUD (International Committee of the Red Cross), replying to a question by Mr. ABDINE (Syrian Arab Republic), said that as a result of the adoption of the amendments to Articles 14 and 15 (CDDH/422), a new figure 3 would be added to Article 14 and the figure in Article 15 would be renumbered accordingly.

15. Mr. CLARK (Nigeria) said that the amendment to Article 14 omitted the reference to the Regulations which appeared in the text approved by Committee II and the Drafting Committee. His delegation had no objection to joining the consensus on Article 14, but he would welcome some clarification concerning the new figure 3.

16. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the figure 3 to be added to Article 14 was reproduced in document CDDH/422. The amendment to paragraph 2 of Article 14 was designed merely to shorten the text; as stated in paragraph 1, the regulations governing the use of the identity card for civil defence personnel were to be found in Article 1 of the Annex.

Article 15, as amended, was adopted by consensus.

Article 16 - International protective sign for works and installations containing dangerous forces

17. Mr. PILLOUD (International Committee of the Red Cross) said that the figure at the end of the article should be renumbered "Fig. 5".

Article 16, as amended, was adopted by consensus.*

18. Mr. NAHLIK (Poland), speaking as Chairman of Committee II, thanked the members of the Technical Sub-Committee of Committee II responsible for preparing the Annex which had just been adopted by the Conference.

19. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), speaking as Vice-Chairman of the Technical Sub-Committee of Committee II, expressed his gratitude for the valuable assistance which the Sub-Committee had received from ICRC and the Swiss military forces.

* Article 16 entitled "International special sign" in the final version of Annex I.

ADOPTION OF THE ARTICLES OF DRAFT PROTOCOL I (CDDH/401)
(concluded)

Article 18 bis - Revision of Annex I

Article 18 bis was adopted by consensus.*

The meeting rose at 4.10 p.m.

* Article 98 in the final version of Protocol I.

ANNEX

to the summary record of the
forty-eighth plenary meeting

EXPLANATIONS OF VOTE

ISRAEL

Original: ENGLISH

Articles 1 to 3 of Annex I to draft Protocol I

The delegation of Israel wishes to declare that Israel uses the Red Shield of David as the distinctive emblem of the medical services and the religious personnel of its armed forces and of the National Aid Society, while respecting the inviolability of the distinctive emblems recognized by the 1949 Geneva Conventions.

UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

Original: ENGLISH

Articles 5 to 8 of Annex I to draft Protocol I

My delegation joined in the consensus on Articles 5 to 8 of Annex I to this Protocol on the assumption that the interpretations given in paragraphs 3 and 4 of the report of the Technical Sub-Committee to Committee II in document CDDH/II/371* are, as we understand, accepted.

* See report of Committee II on the third session.
(CDDH/235/Rev.1).

SUMMARY RECORD OF THE FORTY-NINTH PLENARY MEETING

held on Thursday, 2 June 1977, at 4.45 p.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

ADOPTION OF THE ARTICLES OF DRAFT PROTOCOL II (CDDH/402, CDDH/427 and Corr.1)

1. The PRESIDENT said that many contacts and meetings of groups had taken place since the forty-eighth plenary meeting, from which it would appear that there had emerged a general wish to reach agreement on a simplified version of draft Protocol II.

2. Mr. PICTET (International Committee of the Red Cross) said that the Diplomatic Conference had reached a turning point: it would shortly have to decide on the two Protocols as a whole, which would in future determine the fate of numbers of victims if the world was once again ravaged by armed conflicts, and in which such hopes had been placed by so many, including the Red Cross and the General Assembly of the United Nations.

3. The International Committee of the Red Cross, which had been the motivating force behind the Geneva Conventions for more than one hundred years, addressed, through him, an appeal to the Conference to adopt the texts by a large majority, thus ensuring the success of the Conference and contributing to a significant advance in humanitarian law. To abandon the Protocols, or even one of them, would be a serious setback to civilization and, as it were, an abdication of the conscience of mankind: the International Committee could not contemplate such a possibility after so much effort had gone into the preparation of the texts.

4. Despite the misgivings of some delegations, the Protocols did not represent a danger to Governments. They were realistic, took account of military and political necessities and were in conformity with the mutual interests of all peoples. As amended by the Conference, they represented a fair balance between the realities of life in society and the humanitarian idea. Nothing in the texts was prejudicial to national sovereignty, but it should be remembered that the sovereignty of the State was inseparable from the sovereignty of law.

5. Draft Protocol II had been criticized as committing States too far, but its field of application had been so precisely limited that it could be invoked only in clearly defined civil conflicts. A safeguard clause preserved the principle of non-interference in the internal affairs of States. It was therefore difficult to understand why Governments which proclaimed their intention to act humanely in all circumstances, and not to conceal the fate of those they imprisoned, should fear texts which merely expressed fundamental humanitarian guarantees long accepted by the international community.

6. If, however, there were some countries which felt unable to commit themselves straight away, they could always postpone ratification of Protocol II. But he urged them not to stifle that Protocol at its birth and prevent its entry into force for other States by a negative vote at the present stage. The important thing was that it should exist and that it should become positive law.

7. A simplified version of draft Protocol II had just been submitted to the Conference (CDDH/427 and Corr.1). While appreciating the intention of its authors, the International Committee considered that draft to be the minimum acceptable. It begged the Conference not to delete provisions which were essential for the protection of human individuals and not to destroy the very substance of an instrument the need for which had been long recognized.

8. The International Committee of the Red Cross wished to believe that the plenipotentiaries of 1977 would show themselves worthy of their predecessors of 1949. As a jurist who had served the Red Cross for forty years, he appealed to them not to abdicate their responsibility to the peoples they represented and to world public opinion. He hoped that the spirit of conciliation of which they had already given evidence, would triumph, so that the two fundamental charters, which were designed to relieve so much suffering and which represented a great step towards the peace longed for by men of good will, might see the light of day.

9. The PRESIDENT invited the representative of Pakistan to introduce his delegation's proposal for a simplified draft Protocol II (CDDH/427 and Corr.1)

10. Mr. HUSSAIN (Pakistan) said that his delegation had played a significant part in negotiating the various texts submitted by the Committee to the Conference in document CDDH/402, with the aim of producing an instrument which could alleviate the human misery associated with non-international armed conflicts. During contacts with many other delegations of both developed and under-privileged countries, however, it had realized that there was considerable dissatisfaction with the length of the text as well as with the fact that it ventured into domains which they considered sacrosanct and inappropriate for inclusion in an international instrument. A cross-section of opinion firmly held the view that the text entered into unnecessary details, rendering it not only cumbersome but difficult to understand and to apply in the peculiar circumstances of a non-international conflict.

11. Perceiving, therefore, that such views might endanger its adoption or ratification, and after consultation with other delegations, the delegation of Pakistan had prepared a version of Protocol II (CDDH/427 and Corr.1) which, while simplified, adhered to the original language. He paid a tribute to Mrs. Bujard of the ICRC for her help in its drafting and acknowledged that it had been partly inspired by document CDDH/212, submitted on 4 April 1975 by the Canadian delegation. It was based on the following theses: its provisions must be acceptable to all and, therefore, of obvious practical benefit; the provisions must be within the perceived capacity of those involved to apply them and, therefore, precise and simple; they should not appear to affect the sovereignty of any State Party or the responsibility of its Government to maintain law and order and defend national unity, nor be able to be invoked to justify any outside intervention; nothing in the Protocol should suggest that dissidents must be treated legally other than as rebels; and, lastly, there should be no automatic repetition of the more comprehensive provisions, such as those on civil defence, found in Protocol I. To include such provisions would risk changing the material field of application to such an extent that States would either fail to ratify Protocol II or tend to argue for its non-application in situations falling within its scope, thereby leaving the victims of those conflicts without adequate protection.

12. His delegation hoped that cool consideration would be devoted to the simplified draft and that no attempt would be made to stifle it by excessive verbosity and hair-splitting, for which there was no time left.

13. Mr. SULTAN (Egypt) said that his delegation had studied the simplified draft of Protocol II (CDDH/427 and Corr.1) with interest and care. As all were aware, it was anxious to see Protocol I complemented by a protocol designed to provide protection for victims of non-international conflicts, victims who, in the majority of cases, were nationals of the particular State concerned, for it believed that charity should begin at home. That attitude was in keeping with Egypt's age-old civilization and the Islamic legal system, its pity for suffering humanity and its desire to contribute to the development and reaffirmation of international humanitarian law.

14. At the same time, his delegation had always been aware of the legitimate fears and anxieties of other delegations with regard to certain provisions of draft Protocol II. At the Committee stage, therefore, it had voted in favour only of provisions which did not infringe the sovereignty of States and which were in keeping with Article 3 common to the 1949 Geneva Conventions, and had either abstained in the vote on those which did not comply with those criteria or voted against them.

15. During the last weeks of the Conference, the fears of many delegations had increased, so that it had become obvious that the fate of draft Protocol II was in danger. The untiring efforts of the Head of the Pakistan delegation to devise a compromise solution which took into account the concern of certain delegations and the fears of others was deserving of gratitude.

16. The text in document CDDH/427 and Corr.1 was not perfect; it implied concessions from all sides but no sacrifice of principles. Delegations should not, therefore, insist on an "all or nothing" approach, but should cling to what was realistic and possible. In a spirit of compromise, the Egyptian delegation would support the Pakistan draft while, however, reserving its position and its right to vote on any other amendment or proposal concerning draft Protocol II which might be submitted.

17. Mr. MILLER (Canada) said that the eloquent statements just made had underlined the historic moment reached by the Conference. He appreciated the acknowledgement, by the representative of Pakistan, of the efforts of the Canadian delegation to move towards the adoption of a Protocol II which was simple and open to the widest application. Document CDDH/212, produced by his delegation at the second session of the Diplomatic Conference had been ahead of its time, but still represented the Canadian position. The Pakistan delegation had now presented the Conference with a realistic compromise text, which the Canadian delegation would fully support.

18. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the untiring efforts of the International Committee of the Red Cross, of Governments and of participants in four sessions of the Conference had resulted in the production of a well-balanced text of Protocol II, all except two of whose articles had been adopted in the Committees by consensus. Moreover, the proposal by the General Committee (CDDH/253 and Corr.1) that all the articles of Protocol II should be considered from 2 to 7 June had been adopted by the plenary Conference. Yet it appeared that some delegations wished to abandon that decision in favour of taking into consideration only the simplified draft which had just been introduced by the representative of Pakistan. The Conference should abide by the decision it had taken and study the Pakistan text as a series of proposed amendments.

19. The USSR delegation was not opposed to a simplified draft per se and appreciated the hard work which had gone into the preparation of the Pakistan text, but that text was not well-balanced and evaded many issues dealt with in document CDDH/402. Of course there should be no infringement of the sovereignty of States, but the Conference should not depart too far from the spirit of the draft adopted in the Committees.

20. He therefore proposed that the Conference should begin its consideration of all the articles of draft Protocol II, taking into account the proposals made in document CDDH/427 and Corr.1 and any other amendments which might be submitted.

21. Mr. CLARK (Nigeria) paid a tribute to the representative of Pakistan for the role he had played throughout the Conference, and to the representative of Egypt for his leadership of the African Group.

22. Draft Protocol I was an example of what a multilateral instrument governing humanitarian law should be. He wished that the same could be said of draft Protocol II, which purported to codify the international legal concepts that had emerged from the main Committees. The draft submitted in document CDDH/402, however, while a statement of good intention, was not law, for law implied binding force and, in the case of international public order, reciprocal obligations between States Parties: hence the inclusion in both document CDDH/402 and simplified drafts of provisions for ratification, accession, entry into force and denunciation.

23. Draft Protocol II had originally been designed to deal with international and quasi-international situations that were already covered by Article 1 of draft Protocol I and it was therefore not surprising that, contrary to all logic, such notions of international law had been retained in the document before the Conference.

That was the kind of situation which lent credence to the fears of those who felt that Protocol II would justify interference in the internal affairs of a State. It constituted an attempt - which should be strongly resisted - to legislate through an international instrument in respect of matters that properly belonged to the domestic forum. His Government made no apology for those views, since its record was unique in that it was the only Government that had applied the Geneva Conventions in a domestic situation.

24. With regard to the procedure to be followed, he asked whether the intention was to consider the simplified draft (CDDH/427 and Corr.1) as an alternative to document CDDH/402.

25. Mr. MBAYA (United Republic of Cameroon) said that his delegation shared the concern of those who felt that the draft of Protocol II in document CDDH/402, notwithstanding the inclusion of safeguard clauses, might permit of interference in the internal affairs of States. It therefore welcomed the simplified draft, which did much to allay that concern, and it would as far as possible give it firm support.

26. The PRESIDENT, replying to the Nigerian representative, said that he would suggest that the Conference should take document CDDH/402 as the basis for its consideration and examine each article therein in conjunction with the proposals submitted in the simplified draft (CDDH/427 and Corr.1). Where the latter proposed the deletion of an article in document CDDH/402, the matter could, if necessary, be put to the vote.

27. Mr. CLARK (Nigeria) said that he would have difficulty in proceeding on the basis of a comparison between the two drafts, since he had received instructions in respect of document CDDH/402 only. The problem could perhaps be overcome if the Conference addressed itself to document CDDH/402 if, at any point, a corresponding amendment had been proposed in the simplified draft, those delegations which had received instructions on the matter could be invited to speak on it.

28. The PRESIDENT said that, in his view, no complex procedural question was involved. It was clear that there was a wide measure of support for the simplified draft and it mattered little what procedure was followed since the end result would be the same.

29. Mr. HUSSAIN (Pakistan) said that he was ready to abide by whatever procedure the President decided. So far as proposals for the deletion of articles were concerned, however, he considered that the Conference should simply be asked whether or not it wished to adopt the proposal.

30. Mr. SKALA (Sweden) considered that the Conference should follow the normal procedure.

31. While not opposed to the simplified draft, he would like to be assured that certain articles in document CDDH/402, which were of paramount humanitarian importance, would be retained.

32. Mr. BOTHE (Federal Republic of Germany) agreed that no complex question of procedure was involved. He, too, would abide by any procedural decision which the President might take; what mattered most was not procedure, but the result achieved. His delegation was confident that that result would be very close to the simplified draft of Protocol II.

33. Mr. NEMATALLAH (Saudi Arabia) said that his delegation could not agree to a vote on articles affecting national sovereignty which had been omitted in the simplified draft, particularly if that meant that rebels would be placed on the same footing as the armed forces of a State.

34. Mr. de BREUCKER (Belgium) said that his delegation's initial misgivings about an alternative draft of Protocol II had been dispelled on reading the simplified draft, which contained many incisive elements and, although embodying a fresh approach, did not differ essentially in philosophy from document CDDH/402.

35. He agreed that it would be best to proceed on the basis of a comparison between the two drafts, so that there would be an opportunity to reconsider the articles omitted from the simplified draft. At the same time, however, the approach and objectives of the simplified draft, as explained by the representative of Pakistan, should be borne in mind. On that basis, his delegation's position would be very different from that which it would normally have taken on Protocol II. Any negative stand which it might adopt should be interpreted not as a refusal to adopt certain humanitarian rules, but rather as a reasoned assessment, made within the context of the new approach, which found that a given formulation was inadequate. Accordingly, in an endeavour to arrive at an acceptable text his delegation was prepared to consider draft Protocol II in a spirit of co-operation.

36. The PRESIDENT, noting that there were no further speakers, invited the Conference to consider the draft of Protocol II in document CDDH/402, article by article, in conjunction with the simplified draft (CDDH/427 and Corr.1).

Article 1 - Material field of application

37. Mr. CHARRY SAMPER (Colombia) asked what was the precise interpretation to be given to the last part of paragraph 1, relating to dissident armed forces, and who would decide when the conditions laid down in that connexion should be applied.

38. Mr. OBRADOVIĆ (Yugoslavia), Chairman of Working Group B of Committee I, said that Article 1 represented a very fragile consensus reached only after lengthy consideration. In the circumstances, he felt that it would be extremely inadvisable to seek to interpret its provisions.

39. Mr. CHARRY SAMPER (Colombia) said that, in that case, he would propose the addition, at the end of paragraph 1, of the following sentence, which would make the text clearer: "The determination of the conditions referred to above shall be a matter for the State in which the conflict occurs".

40. The PRESIDENT said that it would be helpful if, in future, representatives could submit amendments of substance to the Secretariat in writing in advance, so that all delegations would have time to consider them carefully.

41. Mr. CONDORELLI (Italy) said that the Colombian amendment was identical to an amendment which had been submitted in Committee I and rejected. The question should not be re-opened in the plenary meeting.

42. Mr. MILLER (Canada) said that a great deal of time had been spent on the drafting of Article 1 in order to start additional Protocol II on the right footing. The text was based on a factual situation. He asked the representative of Colombia not to press his amendment; his views had been taken into account when the text of Article 1 had been finalized. He hoped that the Conference would be able to adopt Article 1 by consensus.

43. Mr. CARNAUBA (Brazil) said that the amendment submitted by the representative of Colombia was identical to an amendment submitted by his delegation in a small working group of Committee I which had been set up to draft Article 1. If the representative of Colombia pressed his amendment and the meeting agreed to consider it, his delegation would support it.

44. The PRESIDENT said that it was for the Chair to decide whether the plenary meeting could discuss an oral amendment. He pointed out that there was no difference between the simplified draft and the text adopted in Committee I. He asked the representative of Colombia to heed the appeal made by the representative of Canada and not to press his amendment.

45. Mr. NEMATALLAH (Saudi Arabia) said it was his understanding that the purpose of the Colombian amendment was to ensure that there was no infringement of the sovereignty of the State.

46. Mr. MBAYA (United Republic of Cameroon) said that in his view the words "without modifying its existing conditions of application" in paragraph 1 were unnecessary and could be deleted.

47. Mr. ABDINE (Syrian Arab Republic) said that the fact was that there was no consensus with regard to Article 1. The concept of "armed conflicts" was very restrictive and the requirement that the armed groups should exercise such control over a part of the State's territory as to enable them to carry out sustained and concerted military operations was useless. Moreover, it opened the door to conflicting interpretations which would make it impossible to implement draft Protocol II. In his delegation's opinion, that Protocol should apply to all organized armed groups with the exception of common law bandits, without the requirement that they should exercise control over a part of the territory. That would be more in keeping with the general and universal character of humanitarian law. Such factors as the scale of the conflict did not constitute valid criteria for depriving revolutionaries of protection. Furthermore, Article 1 was retrogressive when compared with the provisions of Article 3 common to the Geneva Conventions of 1949. He would like Article 1 to be put to the vote.

48. Mr. ROMAN (Chile) said that, if he had understood the representative of Colombia correctly, Article 1 was the result of a very weak consensus. In his view, the Colombian amendment would strengthen the consensus, since it brought out clearly the fact that a State was sovereign in its own territory. He would like the Colombian amendment to be put to the vote.

49. Mr. de ICAZA (Mexico), speaking as Rapporteur of Committee I, said that he felt that he should make it clear that in Committee I, although delegations had not opposed the achievement of a consensus on draft Protocol II, quite a number had in fact had serious doubts about it. It would be truer to say that there had been approval by the majority and silence on the part of the others.

50. With regard to the suggestion by the representative of the United Republic of Cameroon that the words "without modifying its existing conditions of application" should be deleted from paragraph 1, he said that Committee I had considered the phrase to be very important, inasmuch as it ensured that the application of Article 3 common to the Geneva Conventions of 1949 should not be jeopardized. He appealed to delegations, irrespective of their attitude towards draft Protocol II, to safeguard Article 3 common to the Geneva Conventions of 1949.

51. Mrs. BUJARD (International Committee of the Red Cross) said that the amendment submitted orally by the representative of Colombia had in fact been put forward some time before in a small working group of Committee I and then in Committee I itself. It had been discussed very thoroughly but had not been endorsed by either.

52. In that connexion, she drew attention to the present state of humanitarian law as embodied in Articles 2 and 3 common to the Geneva Conventions of 1949. The former stated that the Conventions "shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them". Article 3, which concerned conflicts not of an international character, was far more comprehensive in its coverage than Article 1 of draft Protocol II would be if the Colombian amendment were inserted in it. It would be a retrograde step to approve that amendment. She considered that paragraph 1 of Article 1 as it stood laid down very precise conditions.

53. Mr. AL-FALLOUJI (Iraq), speaking on a point of order, said that, as the Conference had discussed the Colombian amendment at considerable length, he moved the closure of the debate under rule 27 of the rules of procedure and asked that the amendment, to which he was sympathetic, should be put to the vote.

54. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that his position differed from that of the representative of Iraq. The Colombian amendment had been submitted under rule 29 of the rules of procedure, but that rule clashed with section IV of document CDDH/253 and Corr.1, which stated that "any amendments proposed to the articles of the draft Protocols for consideration in plenary will be submitted to the Secretariat in writing by 6 p.m. on the second day preceding the day on which the Conference is to consider the article to which the amendment relates". The Colombian amendment was a substantive amendment which was against the very sense of draft Protocol II. He appealed to the President to give a ruling on the question.

55. The PRESIDENT said that in future he would not entertain amendments which had not been submitted in writing in due time.

56. Mr. CHARRY SAMPER (Colombia) said that any sovereign State was entitled to submit proposals and intervene in the plenary meeting to bring up matters which had been considered earlier in other forums. In view of the appeal from the ICRC, however, he would withdraw his amendment, while reiterating that paragraph 1 of Article 1 failed to specify who was to decide whether or not the conditions set out in that paragraph were fulfilled.

57. Mr. AL-FALLOUJI (Iraq) said that if a vote had been taken on the Colombian amendment he would have voted in favour of it.

58. Mr. MBAYA (United Republic of Cameroon) withdrew his suggestion that the words "without modifying its existing conditions of application" in paragraph 1 should be deleted. He pointed out, however, that too strict observance of the rules of procedure might be counterproductive.

59. He was in full agreement with the statement by the representative of the Syrian Arab Republic. The plenary meeting still had to decide whether to retain the last phrase of paragraph 1, which was restrictive.

60. Mr. CLARK (Nigeria) said that his delegation would have concurred in a consensus on Article 1 had there been one. That unfortunately was not the case and since the article had serious implications for the entire Protocol and for countries in which tension and factionalism were endemic because of their recent history and under-development, and because their efforts at nation-building were complicated by subversive forces and pressures originating outside the country, he would request a roll-call vote on it.

61. Mr. BRILLANTES (Philippines) said that, in the light of the statements by the representatives of Yugoslavia and Mexico, he would have supported the Colombian amendment had it been put to the vote.

62. Mr. HUSSAIN (Pakistan) said that he had intended to propose the addition of a third paragraph to Article 1, on the following lines: "This Protocol shall be disseminated as widely as possible". In the circumstances he would propose such a provision later as a separate article.

63. Mr. BRILLANTES (Philippines) proposed that the two paragraphs of Article 1 should be voted on separately.

64. Mr. BINDSCHEDLER (Switzerland) opposed the proposal, on the grounds that the article was an inseparable whole.

65. The PRESIDENT put to the vote the Philippine proposal, in accordance with rule 39 of the rules of procedure

The proposal for separate votes on the two paragraphs of Article 1 was rejected by 62 votes to 6, with 15 abstentions.

At the request of the representative of Nigeria, the vote on Article 1 was taken by roll-call.

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

In favour: Yugoslavia, Afghanistan, Federal Republic of Germany, Saudi Arabia, Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, Cuba, Denmark, Egypt, United Arab Emirates, Ecuador, Spain, United States of America, Finland, France, Ghana, Greece, Guatemala, Honduras, Hungary, Iran, Ireland, Israel, Italy, Socialist People's Libyan Arab Jamahiriya, Japan, Jordan, Kuwait, Liechtenstein, Luxembourg, Monaco, Mongolia, New Zealand, Pakistan, Netherlands, Peru, Poland, Portugal, Qatar, Republic of Korea, German Democratic Republic, Democratic People's Republic of Korea, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Romania, United Kingdom of Great Britain and Northern Ireland, Holy See, Senegal, Sweden, Switzerland, Czechoslovakia, Tunisia, Union of Soviet Socialist Republics, Venezuela.

Against: Argentina, United Republic of Cameroon, Chile, India, Syrian Arab Republic.

Abstaining: Democratic Yemen, Zaire, Algeria, Brazil, Colombia, Ivory Coast, Indonesia, Iraq, Kenya, Lebanon, Madagascar, Morocco, Mauritania, Mexico, Mozambique, Nicaragua, Nigeria, Norway, Oman, Uganda, Panama, Philippines, United Republic of Tanzania, Swaziland, Sudan, Sri Lanka, Thailand, Turkey, Uruguay.

Article 1 was adopted by 58 votes to 5, with 29 abstentions.

Explanations of vote

66. Mr. MBAYA (United Republic of Cameroon) said that he had voted against the article in the light of the very pertinent comment of the representative of the Syrian Arab Republic. The wording in question had restrictive implications which were unacceptable because they represented a retrogressive step in comparison with existing law. Moreover, there was a danger that the movements concerned would enjoy the protection of draft Protocol II only if they exercised effective control over a part of the national territory.

67. Mr. NEMATALLAH (Saudi Arabia) said that his delegation had voted in favour of Article 1, for purely humanitarian reasons. In view of the rejection of the Colombian amendment, he wished to make it clear that any definition of the terms of the article was solely the concern of the State on whose territory the armed conflict was taking place. Decision by any other country would constitute interference in the domestic affairs of the State concerned and an infringement of that State's sovereignty. He reserved his Government's right to enter a reservation on the article.

68. Mr. EIDE (Norway) said that he had not wanted to upset the consensus on Article 1 and might have supported it in the vote as an advance in humanitarian law. He felt, however, that its high threshold would so weaken Protocol II as to make its utility for humanitarian protection doubtful. Much depended on the fate of the Protocol. If many of the articles adopted in Committee were deleted, he would seriously question whether an amputated Protocol provided any benefit at all, particularly in view of the high threshold of Article 1. Since even the normal humanitarian provisions would not be applicable in situations falling below that threshold, the result might in fact be a deterioration of humanitarian law.

69. His delegation had abstained in the vote on Article 1 and would reserve its final assessment of draft Protocol II, including Article 1, until it had seen what happened to the other articles.

70. Mrs. SUDIRDJO (Indonesia) said that ever since the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in 1971 her delegation had stressed the need for caution and realism in considering draft Protocol II, with due regard to the principle of respect for the integrity and sovereignty of States. Her delegation wholeheartedly endorsed the humanitarian principle of protection for the victims of internal armed conflicts and stressed that at all times and in all circumstances the legitimate Government should be the sole sovereign and competent body to deal with its internal affairs, whether in peace or in internal armed conflict, including matters relating to the application of humanitarian law. That implied particular needs and responsibilities for her own country, in view of its geographical situation as an archipelago comprising thousands of islands.

71. It was clear that, despite the humanitarian principles it sought to enshrine, draft Protocol II dealt with matters within the domain of the internal affairs of a sovereign State, and in her delegation's view the conditions in Article 1, paragraph 1 did not provide adequate safeguards. She would like to see the last three lines amplified on the following lines: "... exercise continuous and effective control over a substantial or non-negligible part of its territory for such a prolonged period as to enable them to carry out sustained and concerted military operations of a high intensity and to implement this Protocol."

72. For the reasons indicated, her delegation had abstained in the vote.

73. Mr. EL HASSEEN EL HASSAN (Sudan) said that Protocol II entailed no international obligations, but represented a commitment by States to its citizens for humanitarian purposes, without infringing its sovereignty. His delegation had abstained in the vote because Article 1 was the central article of the Protocol and its rejection would have rendered the Protocol meaningless. His delegation would submit a written statement on the whole of Protocol II.

74. Mr. UHUMUAVBI (Nigeria) said that his delegation would submit a written explanation of vote.

75. Mr. ROMAN (Chile) said that his delegation had voted against Article 1 because its application was determined by criteria whose definition by States other than the State in whose territory the armed conflict was taking place would constitute interference in the internal affairs of that State and consequently an infringement of its sovereignty. Article 1 of draft Protocol I was entirely different in concept. His Government was fully aware of its moral obligation to protect the victims of armed conflicts, whether internal or international.

76. Mr. GHAREKHAN (India) said that if the Conference had adopted Article 1 by consensus, his delegation would not have opposed it. His delegation had voted in accordance with its consistent position and its misgivings regarding the future of the draft Protocol had been fully borne out by the vote. An analysis of the voting showed that thirty-four delegations - more than one-third of those present at the Conference and all from developing countries - had not voted in favour of Article 1 and since that article was the basis of draft Protocol II, it meant that thirty-four delegations had expressed their disapproval of the Protocol. His delegation had always opposed the idea of a second Protocol, although its provisions were already part of his country's national law. The application of an international instrument in an internal situation militated against the sovereignty of the country concerned and constituted an interference in that country's domestic affairs.

77. The newly-independent developing countries were very jealous of their sovereignty and would guard against any action which might constitute any form of interference in their domestic affairs. Article 3 common to the Geneva Conventions of 1949 had been drafted in an entirely different context, when colonial and imperialist Powers had ruled half the world. The adoption of the United Nations Charter had given an impetus to the former colonies to throw off the yoke of foreign rule and wage wars of independence, but the imperialist Powers had cunningly claimed that they were overseas parts of their metropolitan territory and that the national liberation conflicts were therefore internal conflicts.

78. His delegation had voted against Article 1.

79. Mr. MOKHTAR (United Arab Emirates) endorsed the views of the Saudi Arabian representative. He had voted in favour of Article 1 for purely humanitarian reasons, but wished to make it clear that his Government would not adhere to any provision that affected its sovereignty.

80. Mr. de BREUCKER (Belgium), Mr. BRILLANTES (Philippines), Mr. MATHANJUKI (Kenya), Mr. DI BERNARDO (Italy), Mr. CARNAUBA (Brazil) and Mr. VANDERPUYE (Ghana) said that they would submit explanations of vote in writing.

81. Mr. BRECKENRIDGE (Sri Lanka) said that the attempt to define the threshold in Article 1 had been fraught with danger and the fragile definition had failed to hold the consensus. With the adoption of the parallel article in draft Protocol I, the consequences for the future of draft Protocol II might be adverse. The attempt had in some way detracted from the benefits of Article 3 common to the Geneva Conventions of 1949, which in terms of humanitarian law had been adequate provision for States Parties to apply in the present context. His delegation had abstained in the vote on Article 1.

82. Mr. CERDA (Argentina) said that he would submit a written explanation of his vote. He would not have opposed Article 1 had it been adopted by consensus.

83. Mr. CHARRY SAMPER (Colombia) said that he would submit an explanation of his abstention in writing. His reasons for seeking clarification had been confirmed by the voting.

The meeting rose at 7.15 p.m.

ANNEX

to the summary record of the
forty-ninth plenary meeting

EXPLANATIONS OF VOTE

ARGENTINA

Original: SPANISH

Article 1 of draft Protocol II

The delegation of Argentina appreciates at its true worth the tremendous humanitarian advance embodied in Protocol II.

It also wishes to pay a tribute to Justice Hussain, the Pakistani representative, for his useful co-operation reflected in the simplified draft of Protocol II as set out in document CDDH/427 and Corr.1; this was a commendable and constructive effort towards the achievement of an adequate consensus, opening the way to the approval of Protocol II, by the elimination of the provisions that were causing serious difficulties for many countries.

Although it would not have opposed the approval of Article 1 by consensus, my delegation could not support it during the roll-call vote because there are defects in the text which are bound to create serious difficulties in interpreting and applying its basic requirements. These defects were repeatedly pointed out by this delegation at the meetings of the Working Group and the Working Sub-Group of Committee I during the consideration of Article 1 at the second session.

Indeed, its efficacy has been seriously compromised by the fact that it includes no safeguard clause providing for a mechanism or reasonably objective parameters for determining in each case whether the conditions for the application of the Protocol have been met.

In the circumstances, it is important to note the large number of countries which did not vote in favour of Article 1 and, even more important, to realize that almost all of them are developing countries deeply concerned about or experienced in this type of conflict.

BELGIUM

Original: FRENCH

Article 1 of draft Protocol II

This Article 1, concerning the field of application of Protocol II, gives a fairly specific description of a widely prevalent type of non-international armed conflict, without, however, covering all the forms which civil war may take. Indeed, the 1949 negotiators took care in laying down common Article 3 not to define its field of application.

Furthermore, while this Article 1, which develops and supplements common Article 3, does not cover all possible applications of Article 3, neither does it modify the conditions of application. These remain as they stand and are integrated into the Protocol, although the Conference seems to have decided not to try to reaffirm or to develop all the provisions of Article 3 in this instrument. In other words, the entire philosophy of the provisions of common Article 3, whether explicitly reaffirmed or not, is included in the Protocol.

It is implicit that the same applies to the basic sovereign principle that the obligations of the Protocol are equally binding on both Parties to the conflict, and particularly to the provision in Article 3 that an impartial humanitarian body, such as the ICRC, may offer its services to the Parties to the conflict.

The same is true of the obligation on both Parties to endeavour to bring into force, by means of special agreements, all or part of the other provisions of the four Conventions.

BRAZIL

Original: FRENCH

Article 1 of draft Protocol II

When Article 1 was adopted by consensus in Committee I during the second session of the Conference, the Brazilian delegation stated that the conditions laid down in the article to define its material field of application could be recognized only by the Government of the State on whose territory the conflict was allegedly taking place. These were indeed distinctive factors the verification of which could not be a matter either for the dissident armed forces or for third States, in connexion with which Article 4 of the ICRC text, as well as Article 3 of the draft submitted by the delegation of Pakistan, point out clearly the fundamental principle of non-intervention. These motives justified the Brazilian delegation's abstention when the article was voted upon in the plenary Conference.

CANADA

Original: ENGLISH

Article 1 of draft Protocol II

Canada supported the adoption of Article 1, Protocol II, not because we consider the text to be perfect but in the spirit of compromise and common appreciation of the objectives for Protocol II that we are confident this Conference now has. My delegation at the second session of this Conference worked hard on this article. Indeed, we spent some 21 days in working groups, working sub-groups and in Committee before we arrived at this text.

Like any compromise, the text is subject to certain interpretations not always of the same nature. Some delegations argue that because of the number of qualifications contained in it, only conflicts of a very high threshold such as civil wars are covered. Others, like my delegation, underline that these qualifications are a reflection of the factual and practical circumstances that would in fact have to exist if a Party to the conflict could be expected to implement the provisions of the Protocol. Furthermore, we do not agree that this necessarily means that these conditions could exist only in civil war situations. In our view, dissident armed forces or other organized armed groups would need to have a responsible command, to exercise control over some territory, and to have sustained military operations in order, practically speaking, to implement the Protocol. The key to the height of threshold we suggest lies in the expression "to implement this Protocol", for the threshold of the Protocol will now clearly depend upon the contents of the Protocol.

If we make these contents too comprehensive and detailed and the obligations therein too onerous, a Party to the conflict could only satisfy them in an extensive civil war situation. If, however, as Canada and Pakistan and many others now wish, we keep the contents of the Protocol simple and fundamentally humanitarian the threshold will become much lower and indeed the Protocol will become applicable in many more contemporary internal armed conflicts.

COLOMBIA

Original: SPANISH

Article 1 of draft Protocol II

In view of the ambiguity of Article 1 of draft Protocol II applicable in internal conflicts, the delegation of Colombia asked the representative of Pakistan, sponsor of the amendment, through

the President, kindly to explain who would determine when the conditions laid down in that connexion should be applied.

The Rapporteur of Committee I, the ICRC representative and others who had participated in drafting the article had refrained from replying to the question asked by my delegation, arguing that as at present drafted the article had been accepted by a "fragile" majority, and that in the last resort and after much discussion it had been approved through sheer fatigue.

These facts caused the delegation of Colombia to propose an oral amendment setting forth within the context of Article 1 the fact that the State in which the internal conflict occurs shall determine the conditions mentioned.

The text of the amendment reads as follows:

"Insert the following at the end of paragraph 1:

'The determination of the conditions referred to above shall be a matter for the State in which the conflict occurs.'"

After a brief discussion and having received some support from other delegations, Colombia decided to withdraw its amendment in order to meet the wishes of the ICRC representative and of the President who feared to compromise the approval of Protocol II at that stage of the Conference.

The Colombian delegation abstained in the vote on Article 1 for the following reasons:

(1) The field of application of Article 1 remains subject to unilateral interpretation in view of the impossibility of including a norm to determine who would decide the following:

(a) When a dissident group or an organized armed group acts under responsible command,

(b) Who would clearly define that control was exercised over part of the territory?

(c) Who would decide when sustained and concerted military operations were involved?

Within the context of this article the insertion of subjective elements gives rise to difficulties of interpretation and my delegation believes that in the exercise of sovereignty resides the right to determine such situations. The text approved does not contradict that in any way.

On the other hand, the Protocol would bind only the signatory State since there is no practical way of imposing obligations on dissident armed forces or organized armed groups.

(2) The possible result may be that groups carrying out these inhuman practices will disavow their responsibility for such acts and deny that they took part in them. To which should be added the fact that the weakness of certain articles of the Protocol prevents protection being granted to the civilian population - innocent victims of these inhuman acts of which my country disapproves.

The unalterable position of Colombia as regards respect for, and the protection of, human rights is sufficiently well-known and it is proud of its legal institutes and democratic institutions. The humanitarian principles which inspire draft Protocol II are not only applied in Colombia but the laws in force maintain them.

In the light of these considerations the abstention of my country is the result of the Government's desire to make a detailed analysis later of the instrument before the Committee in order to decide on accession at the appropriate time.

ECUADOR

Original: SPANISH

Article 1 of draft Protocol II

The Ecuadorian delegation voted in favour of Article 1 of Protocol II because it in no way infringes the sovereignty of States. It simply brings under humanitarian law the terms laid down by international law for the recognition of insurgency and, in this case, it is for the States not involved in the conflict to qualify such circumstances; whenever such recognition has been given, nobody had ever objected that it was interference in the internal sovereignty of a State, as is well known in the international world.

GERMANY, FEDERAL REPUBLIC OF

Original: ENGLISH

Article 1 of draft Protocol II

The Federal Republic of Germany welcomes the adoption of Article 1 of Protocol II. This article constitutes a compromise solution which was difficult to reach. An essential element of this compromise is the fact that the existing conditions of application of Article 3 common to the Geneva Conventions are

not modified. This is clearly expressed in Article 1, paragraph 1, of Protocol II. It also applies to paragraph 2 of the same article. Consequently, the negative definition of the term "armed conflict" in paragraph 2 applies only to Protocol II, not to Article 3 common to the Geneva Conventions. This is the understanding of the Federal Republic of Germany as to the interpretation of Article 1 of Protocol II. It does not, however, intend to express any view, be it only by implication, on the meaning of the term "armed conflict" as used in Article 3 common to the Geneva Conventions.

GHANA

Original: ENGLISH

Article 1 of draft Protocol II

The Ghana delegation voted in favour of Article 1 of Protocol II on the material field of application because we felt that any document which results from our deliberations on Protocol II should be an organic whole and Article 1 is a crucial overture which must be maintained. Moreover, Article 1 of Protocol II remained unchanged by the Pakistani proposal in document CDDH/427 and Corr.1, which we approve as removing some of the objectionable features of Protocol II.

A general observation on draft Protocol II as a whole would explain our attitude in the voting. We have always felt that it is incongruous for the international community to play on internal dissensions of sovereign States. We perceive that draft Protocol II, if accepted as it stands, could provide an opportunity for mis-interpretations which would accentuate such dissension in new countries which are still endeavouring to consolidate their political and territorial sovereignty.

Ghana as a member of the international community is, however, prepared to play its full part in matters of humanitarian law. In this respect we have sought a compromise which would accept the good features of Protocol II and still safeguard our sovereign and territorial integrity. We found this compromise in the Pakistani text, which we support.

INDIA

Original: ENGLISH

Article 1 of draft Protocol II

If the Conference had decided to adopt this article by consensus, my delegation would have gone along with the consensus and would have explained its position. However, since a vote by roll-call was asked, the Indian delegation cast a negative

vote, consistent with its position on this article, right from the beginning of this Conference. Indeed, our misgivings and fears about this article were borne out by the vote.

Judging by the voting pattern it is seen that as many as 34 delegations - more than one third present in the Conference - did not vote in favour of this article, which is indeed the very basis of this Protocol. Clearly, 34 delegations have expressed their disapproval of this Protocol. Moreover, further analysis of the vote shows that all these delegations which did not vote in favour of Article 1 are from the developing world, with the exception of Norway.

From the very beginning of this Conference, in all the Committees, the Indian delegation has expressed serious doubts about Protocol II. Like the Colombian delegation, the Indian delegation does not need any lessons or lectures in humanitarianism from anyone. In fact, all provisions of Protocol II are in one form or the other embodied in the national laws in my country. My delegation believes that the provisions of Protocol II will only militate against the sovereignty of States and will interfere in their domestic affairs. The internal law and order situations are the sole concern of sovereign States and these problems are to be dealt with according to the domestic laws of the country.

It must be remembered here that the newly independent developing countries which are endeavouring to consolidate their newly earned independence are jealous of their sovereignty and will guard it against any action which might constitute an interference in their internal affairs under whatever form or guise. They are aware of the powerful means of communication and propaganda which the powerful countries of the world possess. The developing countries cannot rule out the possibility of misuse of Protocol II in this ideologically divided world.

It may be further mentioned that Article 3 of the Geneva Convention of 1949 was drafted in an entirely different context when the colonial and imperialist Powers ruled over half the world.

The adoption of the United Nations Charter after the Second World War gave an impetus to the intensification of wars of national liberation in the erstwhile colonial world. The imperial and colonial powers had, however, a clever pretext that the colonies were overseas parts of their metropolitan empires and hence armed liberations struggles were internal armed conflicts. Fortunately, Article 1 of Protocol I would now cover the wars of national liberation. My delegation is therefore of the view that it is out of context to mention Article 3 common to the Geneva Conventions of 1949 in connexion with Protocol II.

KENYA

Original: ENGLISH

Article 1 of draft Protocol II

My delegation would have joined in a consensus if this article had been adopted by consensus. Since a vote was called for, my delegation did not intend to stand in the way of its adoption, even though we had certain reservations about its scope and its clear interpretation.

It is my delegation's view that this article is not intended to support any interpretation that would give rise to a reduced effort on the part of a legitimate Government to deal with a dissident group which may be causing discord and division in a State. The notion in the article of control of a part of a territory is unclear, ambiguous and may act as a means of interference in the internal affairs of a State, to which my delegation cannot accede. These criteria may further import into the Protocol an extraneous subjective interpretation to which my delegation cannot subscribe.

Owing to those reasons my delegation had no option but to abstain in the vote.

PHILIPPINES

Original: ENGLISH

Article 1 of the simplified version of draft Protocol II

The text of Article 1 provides as follows:

"1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

"2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."

The above text is identical with the text adopted in Committee I.

The delegation of Colombia proposed the following text either as an addition to paragraph 1 or as a new paragraph between 1 and 2:

"The determination of the conditions referred to above shall be a matter for the State in which the conflict occurs."

The Philippine Government considers the starting point in the effort to formulate rules for the reaffirmation and development of international humanitarian law applicable in armed conflicts to be full respect for and recognition of the sovereignty and territorial integrity of a State. Unless the State possesses these attributes and they are so respected by the other members of the international community, efforts towards the abovementioned objective or any other similar objective would be useless and futile.

The Philippines is dedicated to the promotion of respect for the dignity of the human person and recognition of the fundamental human freedoms to which he is entitled. The Philippines expressed support for the Colombian amendment because it would have given recognition to the primacy of respect for the sovereignty and territorial integrity which the present text of paragraph 1 of this article omits. The Colombian amendment would in effect have cured the weaknesses of the text which the Chairman of the Working Group openly admitted had been arrived at with difficulty and with much "verbiage" added in order to conceal differences. The approval of the Colombian amendment would have given to this text the support which it could not gather in the Committee.

The text of paragraph 1 of Article 1 is fraught with risks and dangers to the territorial integrity of archipelagic States like the Philippines. Against these risks and dangers the Colombian text would have afforded an umbrella of protection.

Paragraph 2 of the article could have been accepted by the Philippines. It was to this end that the Philippines asked for a vote by division. Such a vote could have accorded delegations an opportunity to vote NO on paragraph 1 and yet vote YES on paragraph 2.

In the light of the above, the Philippines had no other recourse but to abstain in the vote on the whole of Article 1.

UNITED REPUBLIC OF CAMEROON Original: FRENCH

Article 1 of draft Protocol II

The delegation of the United Republic of Cameroon voted against Article 1 for two main reasons:

1. As the representative of the Syrian Arab Republic rightly emphasized, there are elements in paragraph 1, particularly in the last sentence, that are likely to restrict considerably the scope and field of application of Protocol II and, therefore, the protection of victims of non-international armed conflicts.

In this connexion it is no exaggeration to say that draft Protocol II, far from reaffirming and developing international humanitarian law, is a definite step backwards from Article 3 common to the Geneva Conventions of 1949.

2. In our view, the last part of paragraph 1 is even dangerous, since members of dissident armed forces or armed groups organized precisely so as to be able to benefit from the protection afforded by Protocol II, will in all cases endeavour to achieve effective control over a fairly large part of the national territory. Such a determination is likely to heighten the risks and suffering of the population.

Lastly, I should like to take the opportunity to confess that I was rather disappointed and not a little upset that the President should have thought that I would have the impertinence to offer him "paternal advice". All that I did was to use my right as a representative of a sovereign State to criticize any decision, even one by the President. I reassert here and now my belief that the President's decision concerning the form of the amendments and the time for their submission may well be legally correct under the **rules of procedure**, but in purely practical terms it is in some ways unfortunate. It deprives us of a final possibility of making improvements to the texts before us.

UNITED REPUBLIC OF TANZANIA Original: ENGLISH

Article 1 of draft Protocol II

The last sentence of Article 1, paragraph 1, stating "... under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations ..." does not specify who will determine whether the above-quoted conditions are fulfilled. We would have liked this clause to be made very clear and leave no room for a variety of interpretations. Our delegation would specifically not allow this determination to be made by a body that is not a representative of the State in which the conflict takes place. In view of this vagueness our delegation abstained in the vote on the first paragraph of Article 1 of Protocol II and reserves its right to enter a reservation on this paragraph.

SUMMARY RECORD OF THE FIFTIETH PLENARY MEETING

held on Friday, 3 June 1977, at 10.10 a.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department
of the Swiss Confederation

ADOPTION OF THE ARTICLES OF DRAFT PROTOCOL II (CDDH/402, CDDH/427
and Corr.1) (continued)

Article 2 - Personal field of application

Article 2 was adopted by consensus.

1. The PRESIDENT, replying to Mr. DIXIT (India), explained that in considering draft Protocol II the Conference would take the text prepared by the Committees and by the Drafting Committee (CDDH/402) as a basis. Comparison of that text with the text of the simplified version of Protocol II (CDDH/427 and Corr.1), article by article, might possibly give rise to discussions and a vote. The numerical order to be followed in considering the texts was that of document CDDH/402.

Article 3 - Legal status of the Parties to the conflict

2. Mr. ALDRICH (United States of America) suggested to the President that he should first ask whether there was a consensus on the deletion of Article 3.

After a brief discussion, it was decided to proceed in the manner suggested by the representative of the United States of America.

3. Mr. EIDE (Norway) said that, although his delegation wished the greatest possible number of articles in draft Protocol II to be retained, it took the view that the principle underlying Article 3 would be applied in the main, even if that article was not adopted. It could accordingly agree to the deletion of Article 3.

Article 3 was deleted by consensus.

4. Mr. DI BERNARDO (Italy) said that his delegation had found it easy to agree to the deletion of Article 3, which made it possible to render the text of draft Protocol II less cumbersome without entailing any particular risk. The idea expressed in that article was to be found in the fundamental rule set forth in

Article 3 common to the Geneva Conventions of 1949. It was one that applied to all armed conflicts which were not of an international character.

5. Mr. de BREUCKER (Belgium) associated his delegation with the statement made by the representative of Italy.

6. Mr. RABARY-NDRANO (Madagascar) said that if Article 3 had been put to the vote, his delegation would have abstained.

Article 4 - Non-intervention

7. Mr. DI BERNARDO (Italy) said that Article 4 was perfectly acceptable because it laid down a basic principle. There was a danger, however, that it might be interpreted as preventing any action based on a rule of international law concerning the protection of human rights, including action by international organizations competent in that field.

8. Mr. SHERIFIS (Cyprus) said that his delegation attached great importance to Article 4.

Article 4 was adopted by consensus.*

Article 5 - Rights and duties of the Parties to the conflict

9. The PRESIDENT pointed out that the simplified draft of Protocol II (CDDH/427 and Corr.1) proposed the deletion of the article.

Article 5 was deleted by consensus.

Article 6 - Fundamental guarantees

10. Mr. HUSSAIN (Pakistan) introduced the amendments to paragraphs 1 and 3 of Article 6 (Article 4 of the simplified version of draft Protocol II) appearing in document CDDH/430.

11. The PRESIDENT suggested that the article should be considered paragraph by paragraph.

It was so agreed.

* Article 3 in the final version of Protocol II.

Paragraph 1

12. The PRESIDENT said that there was a proposal (CDDH/430) to add at the end of paragraph 1 the following words: "It shall not be ordered that there shall be no survivors."

13. Mr. MILLER (Canada) said that the Canadian delegation had no objection to the adoption of that amendment, but would point out that its sponsor had based the wording on the text of Article 22 of draft Protocol II (CDDH/402). He suggested that the same wording should be used: "It is prohibited to order that there shall be no survivors."

14. The PRESIDENT said that in French the text of the amendment and that of Article 22 were identical.

15. Mr. HUSSAIN (Pakistan) accepted the suggestion of the representative of Canada.

16. Mr. KHALIL (Qatar) requested that the Arabic text should be drafted so as to correspond to the text proposed by Pakistan.

The amendment to Article 6, paragraph 1, proposed by Pakistan, as thus amended in the English version, was adopted by consensus.

Paragraph 2 (b)

17. The PRESIDENT said that the simplified draft of draft Protocol II entailed the deletion of paragraph 2 (b).

18. Replying to a request for clarification from Mr. GOZZE-GUČETIĆ (Yugoslavia) and Mgr. LUONI (Holy See), Mr. HUSSAIN (Pakistan) said that paragraph 2 (b) had been deleted only because the term "collective penalties" (which denoted an administrative action not having anything to do with penal procedure) had been used in the original text (CDDH/1) instead of the words "collective punishments".

19. Mr. AL-FALLOUJI (Iraq) supported the view of the representative of Pakistan.

20. In reply to questions from Mr. MBAYA (United Republic of Cameroon) and Mgr. LUONI (Holy See), Mr. PAOLINI (France) explained that the French term "peines collectives" was consistent with the terminology used in penal law and that the English equivalent was therefore "collective punishments". An accurate translation of the English word "penalties" would require the use in French of the word "punitions", which would strip the action concerned of its penal character. The French delegation would rather have the wording amended than deleted.

21. Mr. MARTIN HERRERO (Spain) said he thought that in the Spanish version the term "los castigos colectivos" should be used instead of "las penas colectivas".

22. Mr. de BREUCKER (Belgium) said that the word "peine" actually implied the passing of a legal sentence. He agreed with the representative of France that, as a rendering of "penalties", the word should be replaced by "punitions". He drew attention to Article 65 of draft Protocol I (CDDH/401) where reference was made to "peines collectives" in French and to "collective punishments" in English.

23. Mr. OBRADOVIĆ (Yugoslavia) quoted paragraph 33 of the report of Working Group B of Committee I (CDDH/349/Rev.1), which said that "After a sustained debate on the notion of 'collective penalties' Working Group B decided, by consensus, that it was in no way related to penal law".

24. Mr. SAARIO (Finland) said that under Finnish law the notions of "penalty" and "punishment" were very similar. He understood that the representative of Pakistan would agree to the replacement of the word "penalties" by "punishments". He supported that solution.

25. Mr. HUSSAIN (Pakistan) said he had no objection to the retention of the text as amended.

26. Mr. MILLER (Canada) supported the Pakistan representative's position.

27. Mr. AL-FALLOUJI (Iraq) said that he would accept an amendment to the text if it was only a question of style.

28. Mr. EL HASSEEN EL HASSAN (Sudan) pointed out that there was no sub-paragraph (b) in the Arabic text of the simplified draft (CDDH/427 and Corr.1).

29. The PRESIDENT said that the Secretariat would rectify the omission. Returning to the question under discussion, he reminded the meeting that a proposal had been made to replace the word "penalties" by the word "punishments".

Paragraph 2 (b), as amended, was adopted by consensus.

Paragraph 2 (a)

30. Mr. SALAS (Chile) said that the amendment to paragraph 2 (b) entailed a consequential amendment to paragraph 2 (a), in which the expression "pena corporal" should be replaced by "castigo corporal" in the Spanish text, since in Spanish the term "pena"

presupposed a sentence by which a penalty was imposed. Moreover, in the same sub-paragraph, the word "asesinato" should be replaced by the word "homicidio", which was the term used in Protocol I.

Following an exchange of views, it was decided not to refer paragraph 2 (a) to the Drafting Committee, because substantive amendments to the text had been proposed.

31. Mr. ABDINE (Syrian Arab Republic) thought that the initial text was preferable, because the notion of corporal punishment covered both judicial and administrative decisions.

32. Mr. AL-FALLOUJI (Iraq) stressed the great importance of the words "murder" and "corporal punishment".

33. Mr. GLORIA (Philippines) said that he considered murder to be more than homicide with violence. In his opinion, therefore, paragraph 2 (a) should not be amended.

34. Mr. de BREUCKER (Belgium) said that the word "meurtre" in French meant voluntary homicide and the word "assassinat", a much more restrictive concept, meant wilful murder. The words used had been carefully weighed by the Working Group.

35. Mr. MBAYA (United Republic of Cameroon) shared the views of the representatives of the Philippines and Belgium about the term "murder", but had reservations regarding the retention of the expression "peines corporelles" in the French text. A "peine" was imposed by a court and could not be prohibited. What the Protocol should prohibit were "punitions corporelles".

Paragraph 2 (a) was adopted by consensus.

Paragraph 2 (e)

36. Mr. RABARY-NDRANO (Madagascar) pointed out that paragraph 2 (e) embodied the same concept as Article 6 bis. He proposed that rape should be mentioned in the sub-paragraph as in that article.

37. Mr. HUSSAIN (Pakistan) supported that proposal and suggested that the word "rape" should be added after "enforced prostitution".

It was so agreed.

New paragraph 3

38. The PRESIDENT stated that on page 3 of the simplified draft of Protocol II there was a new paragraph 3, to which it was proposed to add a sub-paragraph (e) (CDDH/430). The new paragraph 3 was a slightly modified version of Article 32.

39. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) pointed out that reference was made in Article 32 to "children who are orphaned or separated from their families" and that the meaning of the unqualified word "children" in paragraph 3 was much too general.

40. The PRESIDENT suggested that the Conference should consider the new paragraph 3, including sub-paragraph (e), at the same time as Article 32.

41. Mr. HUSSAIN (Pakistan) accepted that proposal.

It was so agreed.

42. Mr. ABDINE (Syrian Arab Republic) drew attention to the fact that in the Arabic version there was a sub-paragraph concerning the prohibition of reprisals which did not appear in the other versions.

Article 6 as a whole (with the exception of the new paragraph 3) was adopted by consensus.*

43. Mr. EIDE (Norway) expressed satisfaction that the Conference had reached a consensus on Article 6 and that paragraph 2 (b) had been retained, but he wished to point out, as had the representative of the Syrian Arab Republic, that that sub-paragraph referred both to penalties for criminal offences and to punishment of an administrative nature.

44. Mr. HUSSAIN (Pakistan) said that it was not for the Conference to examine the substance of the question and that the decision taken did not go beyond the Committee's proposal.

Article 6 bis - Protection of women and children

45. Mr. HUSSAIN (Pakistan) said that he thought that the content of Article 6 bis was the same as that of paragraph 2 (e) of Article 6 and he wondered if it was necessary to retain it.

* Article 4, paras. 1 and 2 in the final version of Protocol II.

46. Mr. MILLER (Canada) recalled that his country had always been profoundly concerned with the question of the protection of women and children. Since, however, the representative of Pakistan had agreed to the addition of the word "rape" to paragraph 2 (e) of Article 6, which had just been adopted, his delegation was satisfied and would not vote for the retention of Article 6 bis if a vote was taken on it.

47. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that he too considered that Article 6 bis was superfluous and he shared the point of view of the representative of Pakistan.

Article 6 bis was deleted by consensus.

Article 8 - Persons whose liberty has been restricted

48. The PRESIDENT said that there were a number of amendments by Pakistan to Article 8 and he proposed that the article should be examined paragraph by paragraph. The first amendment (CDDH/427 and Corr.1) would replace the introductory sentence of paragraph 1 by the following text: "1. In addition to the provisions of Article 4, the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:".

49. Mr. HUSSAIN (Pakistan) explained that in the proposed amendment he had merely deleted the words "Parties to the conflict".

Mr. Di Bernardo (Italy), Vice-President, took the Chair.

50. Mr. NEMATALLAH (Saudi Arabia) supported the proposal by the representative of Pakistan for the deletion of the words "Parties to the conflict".

51. Mr. ALDRICH (United States of America) said that a great deal of time would be saved if Article 8 was examined as a whole rather than paragraph by paragraph which might cause confusion. He pointed out that the amendments by Pakistan would replace the article in its entirety.

52. Mr. AL-FALLOUJI (Iraq) supported the proposal by the United States representative, for that was the only way to reach a consensus on Article 8.

53. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that he had no objection to the proposal.

54. The PRESIDENT invited the Conference to adopt Article 8 by consensus.

Article 8, as modified by the amendments of Pakistan, was adopted by consensus.*

New Article 8 bis - Search

55. The PRESIDENT said that an amendment had been submitted by Pakistan proposing the insertion of a new Article 8 bis. He suggested that the article should be examined jointly with Article 13.

It was so agreed.

Article 10 - Penal prosecutions

56. The PRESIDENT pointed out that the representative of Pakistan had proposed the deletion of paragraphs 5, 6 and 7.

57. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) stated that the proposal by Pakistan reproduced the first four paragraphs of the original Article 10.

58. He had no objection to the deletion of paragraphs 5 and 6.

59. Paragraph 7, however, contained an extremely important provision which should be retained in Protocol II.

60. If, however, the representative of Pakistan did not agree, he would be obliged to request a vote on that paragraph.

61. Mr. HUSSAIN (Pakistan) replied that he had not thought it necessary to retain paragraph 7 since provisions of that nature were included in the legislation of all States, but if the representative of the Ukrainian Soviet Socialist Republic insisted that the paragraph should be retained, he would not object.

62. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) regretted that he felt it necessary to insist on his proposal.

63. Mr. BINDSCHEDLER (Switzerland) approved the retention of paragraphs 1 to 4. He would accept the deletion of paragraphs 5, 6 and 7, save the last sentence of paragraph 5: "In no such case shall the death penalty be carried out before the end of the armed conflict".

* Article 5 in the final version of Protocol II.

64. Mr. NEMATALLAH (Saudi Arabia) supported the Pakistani proposal for the deletion of paragraph 7. That provision appeared in the legislation of all States.
65. Mgr. LUONI (Holy See) supported the Swiss representative's proposal for the retention of the last sentence of paragraph 5.
66. Mr. MORENO (Italy) said that he did not understand why the Pakistani delegation had decided to delete paragraphs 5 and 6. Those provisions laid no obligations on States.
67. In common with the Swiss representative, he would like the last sentence of paragraph 5 to be retained. It was a very precise rule, to which his delegation attached great importance.
68. Mr. ABDUL-MALIK (Nigeria) thanked the Pakistani representative for submitting an amendment for the deletion of certain complicated provisions in draft Protocol II. As a result, some delegations would no doubt change their position.
69. Article 10 was one of those rare provisions, even in the Pakistani version, which still seemed hard put to it to survive. That article had no place in Protocol II. To the best of his delegation's knowledge, all penal codes embodied those principles. Moreover, the Constitutions of most States included provisions similar to those in paragraphs 2 to 5. Consequently, there was no need to retain those paragraphs.
70. His delegation saw no need for the retention of paragraphs 6 and 7, which pertained mainly to administrative matters and were within the competence of Heads of State.
71. He insisted that those provisions had no place in Protocol II, which was concerned solely with internal armed conflicts. His delegation would not ask for a vote, but if the Pakistani proposal, in its present form, was adopted by consensus, the Nigerian delegation would not oppose it.
72. Mr. ABDINE (Syrian Arab Republic) said that he did not quite understand the statement of the representative of the Ukrainian Soviet Socialist Republic.
73. There were two kinds of provisions: obligations and recommendations. Paragraph 5 of Article 10 laid down an obligation, not a recommendation, while there was no clear-cut obligation in paragraph 7, which was really a recommendation. He therefore wondered why the representative of the Ukrainian Soviet Socialist Republic insisted on the retention of that paragraph.

74. Mr. SHERIFIS (Cyprus) said that his delegation, like that of the Holy See, supported the Swiss proposal for the retention of the last sentence of paragraph 5.

75. Although he fully understood the arguments of the representative of the Syrian Arab Republic concerning paragraph 7, he was pleased that the Pakistani representative had approved the Ukrainian proposal.

76. Mr. EIDE (Norway) said that his delegation considered that paragraphs 5, 6 and 7 were very important, in particular the first sentence of paragraph 5.

77. His delegation could not join in a consensus for the deletion of those paragraphs and would therefore ask for a vote.

78. Mr. NEMATALLAH (Saudi Arabia) said that he fully agreed with the Nigerian representative.

Article 10, paragraphs 1 to 4 were adopted by consensus.

79. Mr. MILLER (Canada) said that his delegation could accept the retention of paragraphs 5, 6 and 7. He agreed with the Norwegian representative that the first sentence of paragraph 5 was important, for it encouraged compliance with the provisions, but his delegation would not insist on the matter if others felt differently. Paragraphs 6 and 7 added nothing to Article 10, since analogous provisions were to be found in the codes of all States. Paragraph 7 was merely a recommendation, in which authorities were exhorted to grant the broadest possible amnesty to persons who had participated in the armed conflict.

80. His delegation, however, wished to simplify draft Protocol II and so would vote for the deletion of paragraphs 5, 6 and 7.

81. The PRESIDENT invited the Pakistani representative to reply to the questions put to him.

82. Mr. HUSSAIN (Pakistan) said that he regretted that he was unable to accede to the request by the representatives of Switzerland, the Holy See and Italy, who would like at least the final sentence of paragraph 5 to be retained. The provisions of the paragraph were contrary to the laws of a number of countries. He hoped that those who had spoken in favour of paragraphs 5 and 6 would not insist on their retention, for that would considerably limit the number of accessions to the Protocol.

83. The PRESIDENT asked whether, in the circumstances, the Norwegian representative still wished a vote to be taken on paragraphs 5 and 6.

84. Mr. EIDE (Norway) said that he felt bound to maintain his request. For the information of the Pakistani representative, he pointed out that the Norwegian Constitution had been amended to include new provisions of humanitarian law.

85. Mr. HUSSAIN (Pakistan) welcomed that news, but said that not all States saw things from the same standpoint.

86. The PRESIDENT put paragraph 5 to the vote.

Article 10, paragraph 5 was rejected by 26 votes to 12 with 49 abstentions.

Explanations of vote

87. Mr. de BREUCKER (Belgium) explained that his delegation had abstained in the vote, not because it disagreed with the substance of paragraph 5 but because, in the light of the discussion, it had felt that it had to choose between a Protocol which was more comprehensive but unacceptable to some countries, and one which was less detailed but acceptable to a greater number of countries. It had been prompted by purely humanitarian considerations.

88. Mr. BINDSCHEDLER (Switzerland) said that his delegation had abstained for the same reasons as the Belgian delegation. Its sole concern had been to safeguard, in a moment of peril, a Protocol which was the fruit of a laborious compromise.

89. Mr. BOTHE (Federal Republic of Germany) said that his delegation had abstained for the same reasons, despite the importance it attached to the contents of the paragraph just deleted.

90. Mr. KUSSBACH (Austria) said that he had abstained for the same reasons.

91. Mr. CRUCHO DE ALMEIDA (Portugal) said that he too had abstained in order to ensure the widest possible accession to the Protocol. Moreover, the death penalty was prohibited under Portuguese law.

92. Mr. SAARIO (Finland), Mr. SERUP (Denmark), Mr. KANTAR (Turkey), Mr. GILL (Ireland) and Mr. SHERIFIS (Cyprus) said that they had abstained in the vote on a text of which they fully approved but which might prove incompatible with the Constitutions of some countries.

93. Mr. RABARY-NDRANO (Madagascar) said that he had voted for a provision which he regarded as well calculated to contribute to the development of humanitarian law.

94. Mr. EIDE (Norway) said that his delegation had voted affirmatively and regretted that so few others had shown a desire for the progress of humanitarian law.

95. Mr. SKALA (Sweden) said that he, too, had voted in favour of paragraph 5 and doubted the cogency of the argument advanced by those who had abstained, namely, to ensure broader accession to the Protocol.

96. Mr. PAOLINI (France) said that if the rejection of paragraphs 5, 6 and 7 en bloc had been put to the vote, his delegation would have abstained in order to retain the balance of the Pakistani proposal. Since only paragraph 5 and its humanitarian provisions were concerned, his delegation could not but vote to retain them.

97. Mgr LUONI (Holy See) expressed his delegation's disappointment at the result of the vote. Claims to be defenders of humanitarian law could not be based on fine speeches and abstentions when it came to taking a decision. A stay of a death penalty could in no way infringe national authority. The carrying out of the death penalty was an irrevocable deed and there were many innocent people whose names had had to be rehabilitated at the end of hostilities after having been wrongfully condemned. Indeed, was not the presence of some of the representatives at the Conference due to the fact that there had been a stay of their execution? He expressed his admiration for those who had had the courage to vote in favour of retaining paragraph 5.

98. Mr. ABDINE (Syrian Arab Republic) said that he was surprised that those who were so worried about points of detail had shown no such concern in the vote on Article 1, when the Syrian proposal to broaden the scope of the Protocol had obtained only nine votes. In its present form the Protocol had little chance of being applicable.

99. The PRESIDENT put paragraph 6 to the vote.

Article 10, paragraph 6 was rejected by 17 votes to 16 with 49 abstentions.

100. The PRESIDENT put paragraph 7 to the vote.

Article 10, paragraph 7 was adopted by 37 votes to 15, with 31 abstentions.

101. The PRESIDENT said that there appeared to be a consensus in favour of the adoption of Article 10 as a whole, as amended.

102. Mr. BRECKENRIDGE (Sri Lanka) and Mgr LUONI (Holy See) said that they could not join in the consensus.

Article 10 as a whole, as amended by the previous votes, was adopted by consensus.*

Owing to the lateness of the hour, it was decided to postpone explanations of vote until the fifty-first meeting.

The meeting rose at 1.5 p.m.

* Article 6 in the final version of Protocol II.

ANNEX

to the summary record of
the fiftieth plenary meeting

EXPLANATIONS OF VOTE

AFGHANISTAN

Original: ENGLISH

Article 10 of draft Protocol II

My delegation voted in favour of Article 10 contained in document CDDH/402 because of the high humanitarian motives it represents and owing to our general approval of the humanitarian provisions contained in Protocol II.

My country, being one of the developing ones, foresees no major difficulty in applying the provisions of Article 10 or any serious conflict with our internal legislation.

Therefore, my delegation is glad to have joined in the consensus for its adoption and also to have cast a positive vote for paragraphs 5, 6 and 7.

HOLY SEE

Original: FRENCH

Article 10 of draft Protocol II

The delegation of the Holy See did not participate in the consensus on Article 10.

It is in agreement on the part of the text of Article 10 which was accepted by consensus, but is deeply dissatisfied that paragraph 5 was not adopted by the Conference.

In this way, the Conference has denied a fundamental principle of humanitarian law, namely respect for human life. If, during the latest armed conflicts, the end of the conflict had been awaited before certain capital convictions were carried out, thousands of tragic and irreparable mistakes could have been avoided.

The Conference has missed a unique opportunity of preventing the repetition of such tragic mistakes.

INDONESIA

Original: ENGLISH

Article 10 of draft Protocol II

Apart from the deletion of paragraph 7 of Article 10, which was rejected by the plenary at the current meeting, my delegation would have preferred the addition of the words "subject to national law", after the full stop in paragraph 1 of Article 10.

With this understanding in mind, my delegation joined the consensus on Article 10, but would have abstained if the Article had been put to the vote.

ITALY

Original: FRENCH

Article 1 of draft Protocol II

The Italian delegation voted in favour of Article 1 of Protocol II, not because the text is the best that could be imagined, but simply because it is the most that could be achieved in the circumstances.

The object of Protocol II is to develop and supplement common Article 3 of the Geneva Conventions of 1949. Logic and expedience would therefore have required that the notion of non-international conflict adopted in Article 1 should correspond exactly with that of common Article 3. Such is not the case, and this is a matter for extreme regret. In practice, the definition given in Article 1 is such that in future only a very limited number of internal conflicts will be governed by the Protocol, as the conditions laid down are so numerous and so stringent. The Italian delegation would on the contrary have preferred a broader definition, since clearly the humanitarian exigencies to be protected are exactly the same in every conflict.

However, in order to achieve a useful result, and in a spirit of co-operation and comprehension, the Italian delegation associated itself with the compromise solution contained in the text which was ultimately adopted. This text represents a half-way meeting-point, and bears witness to goodwill on both sides.

There are, moreover, positive sides to Article 1. First, the link between the article and common Article 3 of the Conventions has been clearly and unequivocally stated: Article 1 in no way affects the scope of common Article 3, whose minimal provisions accordingly continue to apply to all non-international conflicts, whether or not covered by Protocol II.

For it should be borne in mind that common Article 3, being wholly general in scope, obviously covers all non-international conflicts, including those dealt with by Protocol II. This is an important point, as it leads naturally to the conclusion that even though Protocol II occasionally omits to reiterate provisions included in common Article 3, there is no doubt that these provisions remain applicable in all cases.

Because of this, the Italian delegation will be able, in subsequent debates, to refrain from pressing for the adoption in plenary of certain articles already approved in committee. In view of the attempt in document CDDH/427 and Corr.1 to simplify Protocol II and thereby render it more acceptable to a large number of States, our delegation would have no difficulty in accepting the idea of deleting Articles 3 (Legal status of the Parties to the conflict) and 5 (Rights and duties of the Parties to the conflict). As it is, the main points of those articles are certainly covered, either explicitly or implicitly, by common Article 3 of the Geneva Conventions.

KENYA

Original: ENGLISH

Article 10 of draft Protocol II

My delegation abstained on the vote in respect of Article 10 because it felt that the matter is adequately provided for in the constitutions and municipal laws of many States. Certainly Kenya provides for the said provision in her domestic law. Hence the article is superfluous, and to a great extent too detailed and redundant in an international instrument.

But, as it is a humanitarian provision my delegation did not intend to stand in the way of its adoption.

NETHERLANDS

Original: ENGLISH

Article 5 of draft Protocol II

The Netherlands delegation has joined in the consensus to delete Article 5. It wishes to put on record, however, its strong conviction that the humanitarian rules contained in this Protocol have to be applied to all persons taking part in the armed conflict, irrespective of the side they are fighting on.

NIGERIA

Original: ENGLISH

Article 10 of draft Protocol II

The Nigerian delegation, while deprecating the intrusion of an international document in the internal affairs of States, nevertheless found it possible to go along with the consensus on paragraphs 1 to 4 of the article contained in document CDDH/402 as reflected in the Pakistani draft contained in documents CDDH/427 and Corr.1. As indicated earlier, the delegation was not against the principles contained therein, as these are not only unexceptionable but are indeed enshrined in our Constitution and are further developed in our codes of criminal procedure. It is only necessary to reiterate and emphasise the view that this kind of provision constitutes interference in the internal systems obtaining in States. For this and other considerations, therefore, the Nigerian delegation had to insist on a vote when a proposal was put forward by one delegation for an additional paragraph to those four adopted by consensus. This additional paragraph seeks to impose obligations in an area specifically conserved by most domestic legal systems to the discretion of the Chief of State. This discretionary power to commute sentences and to grant pardons is, as already stated, purely discretionary and it appears to us unnecessary to make provision for it in an international document such as this Protocol II. Consequently, the Nigerian delegation voted against it.

Article 10 as adopted veers dangerously towards imposing a kind of new criminal procedure for States parties thereto, which to us represents a dangerous trend in international law. Moreover, this sort of trend, if not arrested in time, will escalate and pad this Protocol to such an extent that many States would find it difficult to ratify it. This, in our view, would lead to making this additional Protocol II a dead letter. The Nigerian delegation has therefore found it necessary to sound this note of warning and also to register its reservations concerning this Article as a whole.

SAUDI ARABIA

Original: ARABIC

Article 10 of draft Protocol II

As regards Article 10 of Protocol II (CDDH/402), included in the draft amendment of Pakistan (CDDH/427 and Corr.1) based on Article 6, which proposed the deletion of paragraphs 5, 6 and 7, and which we accepted as being a balanced amendment, we would like to point out that we opposed the preservation of the abovementioned

paragraphs: not because we are against their content - for we find in our Islami law a more favourable treatment - but because we are against their inclusion in mandatory form, which would amount to a limitation of our legislation which is far superior.

SPAIN

Original: SPANISH

Article 10 of draft Protocol II

The Spanish delegation joined the consensus on Article 10 of Protocol II as a whole, but wishes to make a few observations on paragraph 7 of the article, which it voted against. The adoption of measures of clemency in general and of an amnesty in particular is necessarily subject, as regards application, to considerations of expediency which can be neither appreciated nor foreseen by the drafters of a text like the one under consideration; for the same reasons, such measures fall within the exclusive competence of States, which, bearing always in mind the common good of the community they govern, can alone decide whether or not an amnesty is conducive to the restoration of public peace.

Besides its inapplicability in practice, therefore, since as indicated above its application is subject to unforeseeable contingencies which only States can judge, paragraph 7 is out of place in the operative part of a convention.

UNITED REPUBLIC OF CAMEROON

Original: FRENCH

Article 10 of draft Protocol II

The delegation of the United Republic of Cameroon voted against Article 10, paragraph 6, which it considers superfluous, for Cameroonian law stipulates that the death penalty shall not be carried out without an appeal for pardon having been made. Furthermore, such an appeal is instituted automatically by the Ministère public in the absence of a formal application by the person sentenced.

It is therefore clear that whatever some may claim and despite the prospect of possible non-execution of the death sentence likely to result from suspension, the provisions of paragraph 5, and in particular the last sentence, cannot outweigh the formal guarantee to the person sentenced and his right to seek pardon, or if need be to lodge an appeal.

In both cases, moreover, namely suspension and appeal for pardon, a common feature emerges - non-execution of the death penalty, since both cases have legal consequences.

There is, in our opinion, only a rather subjective and haphazard basis on which to calculate the length of the suspension due either to the end of the armed conflict or to the imminence of the decision of the competent authority on the result of the appeal.

For those reasons, the United Republic of Cameroon voted against paragraphs 5 and 6, while it was in favour of paragraph 7, which is not subject to any legal consideration but rests on the humanitarian spirit of political leaders.

ZAIRE

Original: FRENCH

Articles 3 and 10 of draft Protocol II

Article 3

My delegation joined the consensus in favour of the deletion of Article 3 on the legal status of the parties.

The substance of the article is unclear. My delegation does not know what is meant by legal status of the parties and who the parties are.

As far as my delegation is concerned, only a sovereign State can claim to have international legal personality and, as such, it enjoys all the prerogatives of sovereignty, including that of entering into international agreements and conventions, that is to say, of becoming a party to them.

Accordingly, dissident armed forces are primarily a group of rebels with no international legal personality.

Their only legal status is that granted them under the domestic laws of their national State.

To claim otherwise is to place a sovereign State on the same footing as a rebel movement, and that would imply de facto recognition of the movement.

Article 10

The provision in Article 10, paragraph 7, is interpreted by my delegation as a mere recommendation to a High Contracting Party, devoid of any mandatory force, to endeavour to grant the broadest possible amnesty to the persons referred to.

It is in no way a binding obligation, nor even a simple obligation in the technical sense, that is, a legal bond requiring any sovereign State to amnesty, no matter how and under pressure from certain forces involved, persons who have done their country serious harm by serving foreign interests.

Our vote for this provision was based largely both on profound humanitarian considerations, and also and above all on national considerations. For we are convinced that in the interests of a young nation's unity, it is essential to establish a climate of understanding, and to encourage the widest degree of reconciliation in order to bring back into the fold those strayed members of the flock who unwittingly contribute to the destruction of their nation in order to please outsiders.

As the very principle of amnesty is included among the various other constitutional rules of Zaire, my delegation believes that the adoption of paragraph 7 can only strengthen that principle.

SUMMARY RECORD OF THE FIFTY-FIRST PLENARY MEETING

held on Friday, 3 June 1977, at 4 p.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

In the absence of the President, Mr. Di Bernardo (Italy),
Vice-President, took the Chair.

ORGANIZATION OF WORK

1. The SECRETARY-GENERAL said that the General Committee had agreed that the date of 10 June should be respected as the concluding date of the Conference. It had also been agreed that representatives should speak once only in explanation of vote and that any explanations made after the vote should be submitted in writing. As had also been pointed out earlier, no amendments would be accepted during the meeting, except those which had been submitted in writing to the Secretariat the previous day.

2. The plan for the final week of the Conference called for the completion of the consideration of draft Protocol II on 6 June, that of the Preamble and draft resolutions on 7 June, the final vote on both draft Protocols, as well as the report of the Credentials Committee, on 8 and 9 June and the signing of the Protocols on 10 June.

3. The PRESIDENT said that the delegations of Kuwait and Tunisia had announced their intention to submit explanations in writing of their votes on Article 10 of draft Protocol II.

ADOPTION OF THE ARTICLES OF DRAFT PROTOCOL II (CDDH/402, CDDH/427 and Corr.1) (continued)

Article 10 bis - Unconditional respect

4. Mr. HUSSAIN (Pakistan) said that, after consultations between various delegations, groups and inter-regional groups, it had been proposed, as a compromise, that Article 10 bis should be deleted.

5. Mr. EIDE (Norway) said that, if it was not possible to reach a consensus for the maintenance of Article 10 bis, he would have to support the suggestion that it be put to the vote. That article was the result of long and difficult negotiations which had resulted in the present carefully-worded formulation.

6. At the fiftieth meeting, between fifteen and twenty-six States had voted against certain paragraphs which had been adopted in Committee. A large majority of delegations had abstained, and in several cases had explained that they had done so, not out of any opposition to the provisions in question but out of regard for the minority. He realized that some delegations, for reasons based on their economic and post-colonial situation, had problems with the contents of many articles, which in some cases meant that they had to vote against them. He appealed to those delegations, in the interests of the development of humanitarian law, to vote in favour of such articles, and in particular of Article 10 bis, on the understanding that, for fully justified reasons, they might have to enter reservations concerning them.

7. Mr. ALDRICH (United States of America) said he hoped that if put to the vote, Article 10 bis would be rejected, since the whole concept of reprisals had no place in Protocol II.

8. Mr. DIXIT (India) said he supported the view of the United States representative and was also prepared to vote against Article 10 bis. While appreciating the desirability of compromise, he felt compelled to take a stand against certain compromises which tended to jeopardize the national sovereignty of States. He appealed to the representatives of all developing countries to follow his example.

9. Mr. QUENTIN-BAXTER (New Zealand) said that his delegation would base its voting positions, not on New Zealand's own national interest, but on the best judgement it could make about the acceptability of the provision concerned to a broad segment of opinion within the Conference, paying special attention to the views of those with actual experience of situations in which the Protocol might be applicable. Although Article 10 bis referred to other articles which were not yet before the Conference, he personally was satisfied that the article was not generally acceptable and for that reason he would not support it.

10. Mr. AL-FALLOUJI (Iraq) said that some delegations had referred to a "gentleman's agreement" not to press certain articles, including Article 10 bis. His delegation and that of Switzerland had worked jointly and conscientiously in preparing the article. Nevertheless, at the present stage he urged all delegations to respect the "gentleman's agreement" and not to press for the inclusion of the article in draft Protocol II.

11. Mr. de BREUCKER (Belgium) said that his delegation would abstain from voting on Article 10 bis for the reasons he had given in explaining his vote on Article 10, paragraph 5. In relation to Article 6, on fundamental guarantees, however, the question of reprisals could not arise, since under the terms of that article, persons who did not take a direct part or who had ceased to take part in hostilities, were in all circumstances to be treated humanely.

12. Mgr. LUONI (Holy See) said that in his opinion the Conference should wait until Articles 26, 26 bis, 27 and 28 were considered before voting on Article 10 bis.

13. Mr. EIDE (Norway) said he fully supported the views of the representative of the Holy See and was prepared not to insist on a vote being taken on Article 10 bis at present.

14. Mr. HUSSAIN (Pakistan) said that he formally opposed any postponement of a decision on Article 10 bis; such a postponement would be contrary to the procedure which had been established at the beginning of the Conference. If decisions were constantly postponed, there was a risk that the Conference would end up with no Protocol at all.

15. Mr. EIDE (Norway) said that, in view of the reasons given by the representative of Pakistan, he would again move that Article 10 bis be put to the vote.

16. The PRESIDENT put Article 10 bis to the vote.

Article 10 bis was rejected by 41 votes to 20, with 22 abstentions.

Article 11 - Definitions

Article 11 was deleted by consensus.

Article 12 - Protection and care (CDDH/429)

Article 12 was adopted, subject to a minor amendment.*

Article 12 bis - Protection of persons

17. Mr. HUSSAIN (Pakistan) said that, under the "gentleman's agreement" which had been arrived at with a view to securing a Protocol that would be acceptable to the largest number of countries, it had been agreed that the substance of paragraph 1 of Article 12 bis (CDDH/402) should become paragraph 2 (f) of Article 5 in the simplified version of draft Protocol II (CDDH/427 and Corr.1) (formerly Article 8 of the ICRC draft), and that

* Article 7 in the final version of Protocol II.

paragraph 2 of Article 12 bis should be deleted. It remained for the Conference to take a decision on that deletion.

18. Mgr. LUONI (Holy See) said that, since it had no knowledge of the "gentleman's agreement" to which a number of references had been made, his delegation would reserve its position on the amendment.

19. The PRESIDENT observed that, since it had been agreed that paragraph 1 of Article 12 bis should be incorporated in another article, the deletion of paragraph 2 would mean that Article 12 bis would disappear. He invited the Conference to take a decision on the proposal to delete paragraph 2.

Paragraph 2 of Article 12 bis (CDDH/402) was deleted by consensus.

20. Mr. van der KLAUW (Netherlands) said that his delegation would submit a written statement on the consensus which had just been reached.

Article 13 - Search and evacuation (CDDH/431)

21. The PRESIDENT drew attention to the proposal to delete Article 13 and replace it by a new Article 8 bis (CDDH/431).

The proposal was adopted.*

Article 14 - Role of the civilian population and of relief societies

22. Mr. HUSSAIN (Pakistan) said that it was proposed that the article should be replaced by Article 15 of the simplified draft (CDDH/427 and Corr.1).

23. Mr. CLARK (Nigeria) said he had understood that there was a "gentleman's agreement" merely to consider the texts without prejudice. He knew of no such agreement with regard to the final version of the Protocol or of any other formal document.

24. He suggested that the renumbering of the articles should be left to the Drafting Committee.

25. Mr. MARTIN HERRERO (Spain) said that the reference in the Pakistan draft (CDDH/427 and Corr.1) to the traditional functions of the civilian population was inappropriate, since the civilian population had no such functions. The earlier text (CDDH/402) was preferable.

* Article 8 entitled "Search" in the final version of Protocol II.

26. Mr. BOTHE (Federal Republic of Germany) said that as Article 15 of the simplified draft submitted by Pakistan (CDDH/427 and Corr.1) contained some elements of Article 14 of document CDDH/402 and some elements of Article 33 of the same document, it might be advisable to consider them together.
27. Mr. WARRAS (Finland), supporting the comments made by the representative of the Federal Republic of Germany, suggested that Articles 14 and 33 should be considered together.
28. Mr. HUSSAIN (Pakistan) agreed with that course.
29. The PRESIDENT suggested that the two articles should be considered when the Conference came to deal with Article 33.
30. Mr. DIXIT (India) supported the President's suggestion.
31. Mr. CLARK (Nigeria) pointed out that there was a proposal (CDDH/427 and Corr.1) to delete Article 33. There would be no point in deferring consideration of Article 14 only to see Article 33 deleted.
32. Mr. HUSSAIN (Pakistan) explained that he had no particular preference for deferring consideration of Article 14 until Article 33 was reached. He had merely agreed with the suggestion of the representative of Finland. He would be equally in favour of considering the two articles together at the present stage.
33. Mr. AL-FALLOUJI (Iraq) said that the Conference could not take a decision on the fate of Article 33 until it reached that article in sequence. He appealed to the Nigerian representative to agree to the President's suggestion.
34. Mr. PAOLINI (France) said that there was nothing to prevent the Conference from deferring consideration of Article 14. A similar decision had been taken with regard to Article 6. Although there was a proposal to delete Article 33, it had also been proposed that the text should be replaced by the article now under consideration.
35. Mr. CLARK (Nigeria) withdrew his objection to the President's suggestion that consideration of Article 14 should be deferred until Article 33 was reached.

The President's suggestion was adopted.

Article 15 - Protection of medical and religious personnel

36. Mr. HUSSAIN (Pakistan) drew attention to the proposal that paragraph 2 of Article 15 should be reformulated as indicated in document CDDH/427 and Corr.1, Article 9. The word "should" before the word "not" in the amendment should be replaced by the word "may".

37. Mr. PAOLINI (France) said that his delegation could accept the Pakistan proposal subject to a minor drafting change in the French text.

38. Mr. ALDRICH (United States of America) said that he could join in a consensus on the Pakistan amendment, but he hoped that the phrase "except on medical grounds" would appear at the end of the sentence, as shown in the full text of Article 9 (CDDH/427 and Corr.1), rather than in the middle of the sentence as indicated in the reformulation of paragraph 2 later in the same document.

Article 15 as amended by Pakistan (CDDH/427 and Corr.1, Article 9) was adopted.*

Article 16 - General protection of medical duties

39. Mr. HUSSAIN (Pakistan) said that Article 16 appeared in the simplified draft of Protocol II (CDDH/427 and Corr.1) as Article 10. The phrase "by any Party to the conflict" had been deleted.

40. Mr. NEMATALLAH (Saudi Arabia) said that the French text of document CDDH/427 still contained the phrase "par une partie au conflit".

41. Mr. EL HASSEEN EL HASSAN (Sudan) said that there was a similar reference in the Arabic text.

42. Mr. ALDRICH (United States of America) proposed that such references should be deleted wherever they occurred.

It was so agreed.

Article 16 as amended by Pakistan (CDDH/427 and Corr.1, Article 10) was adopted by consensus.**

* Article 9 in the final version of Protocol II.

** Article 10 in the final version of Protocol II.

Article 17 - Protection of medical units and transports

43. Mr. HUSSAIN (Pakistan) said that former Article 17 appeared as Article 11 in the simplified draft of draft Protocol II (CDDH/427 and Corr.1). Paragraph 3 had been deleted. The reference to "the adverse Party" in paragraph 2 had also been deleted, and that had necessitated a slight recasting of the paragraph.

44. Mr. WILHELM (Legal Adviser) pointed out that the required change had not been made in the French version of paragraph 2 in document CDDH/427 and Corr.1. The end of the first sentence of paragraph 2 should read: "... pour commettre des actes étrangers à leur fonction humanitaire."

45. Mr. KRASNOPEEV (Union of Soviet Socialist Republics), speaking as an army doctor with some experience of military operations, thought the deletion of paragraph 3 would enormously complicate matters for medical personnel in actual combat conditions. If, for instance, an army doctor disarmed a wounded soldier and failed to throw away the weapon, would he thereby forfeit his right to protection? He appealed to the representative of Pakistan to restore paragraph 3, although, of course, the reference to the "High Contracting Party" might be deleted.

46. Mr. HUSSAIN (Pakistan) regretted that, in view of the "gentleman's agreement", he was not in a position to restore paragraph 3. He did propose, however, that the word "hostile" should be inserted in paragraph 2 before the word "acts" at the end of the second line in the English version.

The amendment proposed by Pakistan was adopted.

47. Mr. KRASNOPEEV (Union of Soviet Socialist Republics) said that the amendment proposed by Pakistan did not fully assuage his misgivings, but for the sake of the "gentleman's agreement", he would withdraw his proposal.

Article 17 as amended by Pakistan (CDDH/427 and Corr.1, Article 11 as further amended by Pakistan) was adopted by consensus. *

Article 18 - The distinctive emblem and signals

48. Mr. HUSSAIN (Pakistan) said that former Article 18 appeared as Article 12 in the simplified version of draft Protocol II (CDDH/427 and Corr.1). The words "and signals" should be deleted

* Article 11 in the final version of Protocol II.

from the title. References to "a Party to the conflict" had been deleted from paragraph 1, and the words "and not be used improperly" had been added at the end of the paragraph (CDDH/429). Paragraphs 2 and 3 had been deleted.

Article 18 (Article 12 in document CDDH/427 and Corr.1, as amended by document CDDH/429) was adopted by consensus.*

Article 19 - Prohibition of reprisals

49. The PRESIDENT reminded the Conference that Article 19 had been deleted.

Article 20 - Basic Rules

50. Mr. HUSSAIN (Pakistan) said that, in the simplified draft, it was proposed to delete Article 20.

51. Mgr. LUONI (Holy See) asked for a vote on the article.

52. Mr. SAARIO (Finland) proposed that, before a vote, the reference to "Parties to the conflict" should be deleted.

The Finnish proposal was adopted.

53. Mr. GILL (Ireland) supported the proposal for a vote on the article.

54. Mr. AL-FALLOUJI (Iraq) said that to vote on the article would be to go back on the general consensus that had been reached.

55. The PRESIDENT invited the Conference to vote on Article 20.

After being rejected by 25 votes to 19, with 33 abstentions, Article 20 was deleted.

56. The representatives of the GERMAN DEMOCRATIC REPUBLIC, GUATEMALA, IRELAND, PERU, PORTUGAL and SAUDI ARABIA said that they would submit explanations of vote in writing.

Article 20 bis - Protection of cultural objects

57. The PRESIDENT observed that in the simplified draft (CDDH/427 and Corr.1) it was suggested that Article 20 bis should be deleted.

* Article 12 entitled "The distinctive emblem" in the final version of Protocol II.

58. Speaking as representative of Italy, he said that he was much interested in the article and had supported it at the Committee stage.

59. Mrs. MANTZOULINOS (Greece) appealed to the representative of Pakistan not to insist on the deletion of Article 20 bis and pointed out that many of the world's treasures were in danger of being destroyed in the course of internal armed conflicts, among others the temples of Angkor Wat, which the United Nations Educational, Scientific and Cultural Organization had asked all combatants to protect.

60. Mr. DIXIT (India) said his delegation was convinced that draft Protocol II should not contain an article such as Article 20 bis. Reference was made in the article to The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, but that Convention had nothing to do with internal armed conflicts.

61. Mr. GILL (Ireland) associated himself with the appeal addressed to the representative of Pakistan concerning Article 20 bis. If that appeal proved of no avail he would ask that the article be put to the vote.

62. Mgr. LUONI (Holy See) associated himself with the appeal made by the representative of Greece, since Article 20 bis, if adopted, would protect the cultural heritage of all mankind.

63. Mr. PAOLINI (France), supporting the statements of the representatives of Greece and Ireland, said that the provisions of Article 20 bis could not be considered as interference in the internal affairs of a State. He therefore appealed to the representative of Pakistan not to insist on the deletion of that article.

64. Mr. ALDRICH (United States of America) considered that no representative present was prepared to argue that the provisions of Article 20 bis were wrong in principle, but he had doubts whether they were right in the context of draft Protocol II. If adopted, the article would be bound to prevent some States from becoming Parties to Protocol II. His delegation, for one, would be unable to vote for the article.

65. Mr. CONDORELLI (Italy) said that his delegation had consistently supported Article 20 bis in view of its great importance; he therefore supported the appeal addressed to the representative of Pakistan.

66. Mr. KUSSBACH (Austria) associated his delegation with the appeal addressed to the representative of Pakistan.

67. Mr. AL-FALLOUJI (Iraq), speaking as the representative of a country which had many holy places and historic monuments, said that its Government and people did not need an article in draft Protocol II to tell them that such acts as those mentioned in Article 20 bis were prohibited.

68. He emphasized that Protocol II should be simplified and not be complicated by articles containing lists of objects to be protected.

69. Mr. NEMATALLAH (Saudi Arabia) suggested the insertion of the words "and places of worship" in the title of Article 20 bis and in an appropriate place in the text of the article.

70. Mr. MURILLO (Spain) associated his delegation with all who had supported the retention of Article 20 bis.

71. Mr. SHERIFIS (Cyprus), supporting the appeal made by the delegations of Greece, the Holy See and France, said that he also thought that reference to The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was out of place in Article 20 bis. His delegation would vote for the retention of the article, but would prefer it to be adopted by consensus.

72. Mrs. HERRAN (Colombia) said that her delegation supported those who had suggested the retention of Article 20 bis.

73. Speaking on a point of order, she said that since a full discussion had taken place on the article she wished to move the closure of the debate in accordance with rule 25 of the rules of procedure: she asked that the motion be put to the vote forthwith.

74. The PRESIDENT said that only one more speaker was on the list of speakers; he would call on him and then immediately deal with the motion.

75. Mr. ALTUG (Turkey) supported the proposal to retain Article 20 bis.

76. The PRESIDENT said that a motion for closing the debate had been submitted. Under the rules of procedure, two speakers could be allowed to oppose the motion.

77. Mr. BLOEMBERGEN (Netherlands) said that many speakers had requested the retention of Article 20 bis and few had requested its deletion. He did not agree with the representative of Colombia that the debate should be closed since other representatives might still wish to speak.

78. Mr. NEMATALLAH (Saudi Arabia) said that he would like the amendment he had suggested to be put to the vote before a vote was taken on the motion of closure of the debate.

79. The PRESIDENT said he wished to deal first with the procedural motion; the point raised by Saudi Arabia would be considered after the vote on the motion.

80. Mr. BRECKENRIDGE (Sri Lanka) supported the point of view of the Netherlands representative.

81. The PRESIDENT put to the vote the motion for closure of the debate on Article 20 bis.

The motion was carried by 39 votes to 16, with 18 abstentions.

82. The PRESIDENT said that before a vote was taken on Article 20 bis he would invite representatives to consider the oral amendment suggested by the representative of Saudi Arabia.

83. Mr. NEMATALLAH (Saudi Arabia) read out the text of Article 20 bis as modified by his amendment.

84. Mr. ALDRICH (United States of America) pointed out that there was some confusion. In his opinion, the effect of the motion for closure of the debate was to stop the consideration of any amendment, and Article 20 bis should accordingly be put to the vote.

85. Mr. PAOLINI (France), supporting the Saudi Arabian amendment, said he had understood that the President had agreed, before the closure of the debate, to entertain the amendment.

86. The PRESIDENT said that that was indeed the position. He suggested that a vote should be taken immediately on the amendment of the representative of Saudi Arabia.

87. Mr. AL-FALLOUJI (Iraq), while in full sympathy with the representative of Saudi Arabia, wondered whether an earlier ruling by the Chair concerning oral amendments had been changed.

88. The PRESIDENT said that, in the light of the comment by the representative of Iraq, and even though he had earlier agreed to entertain the Saudi Arabian amendment, he considered it indispensable to observe the rule laid down by the President of the Conference (Mr. Graber) which was to the effect that oral amendments would not normally be considered. That rule had been respected in the past and had recently been confirmed by the General Committee. Accordingly, he ruled that the Saudi Arabian amendment could not be considered and that the Conference would be invited to take a decision on Article 20 bis as it stood. The debate should be considered closed.

89. Mr. SHERIFIS (Cyprus), speaking on a point of order, expressed agreement with the representative of France and considered that as the President had agreed to entertain the Saudi Arabian amendment, it would be unfair to enforce the earlier ruling.

90. Mrs. HERRAN (Colombia), speaking on a point of order, likewise considered that the President had consented to entertain the Saudi Arabian amendment before the closure of the debate.

91. Mr. HEREDIA (Cuba), speaking on a point of order, said that after having agreed to consider the amendment in question, the President had ruled, in conformity with the earlier ruling, that the amendment could no longer be considered. What was the final ruling?

92. Mr. HUSSAIN (Pakistan), speaking on a point of order moved the adjournment of the meeting, stressing that his motion had priority under rule 27 of the rules of procedure.

93. Mr. BINDSCHIEDLER (Switzerland) said it was regrettable that he had not been given the floor earlier, as he had requested.

The motion for the adjournment of the meeting was carried by consensus.

The meeting rose at 7 p.m.

ANNEX

to the summary record of the
fifty-first plenary meeting

EXPLANATIONS OF VOTE

AUSTRALIA

Original: ENGLISH

Article 10 bis of draft Protocol II

The Australian delegation abstained in the vote in relation to Article 10 bis (Unconditional respect). Many delegations interpreted the article as a prohibition of reprisals, which they claimed found no place in the law applicable to internal armed conflicts. They also saw the article as an interference with the sovereignty of the State.

The Australian delegation abstained in the vote after considering the views expressed by the delegations which opposed the adoption of this article and supported its deletion, and after reaching the conclusion that many delegations found the article unacceptable.

The Australian delegation took the view that Article 10 bis did no more than prohibit in internal conflicts acts that violate the provisions of the Protocol and that the article was not concerned with reprisals. The Australian delegation was disappointed that Article 10 bis was not acceptable to a majority of States participating in the Conference.

FINLAND

Original: ENGLISH

Article 10 bis of draft Protocol II

The delegation of Finland could have accepted a consensus to delete Article 10 bis on the prohibition of certain counter-measures in the nature of reprisals in draft Protocol II. As the article was put to the vote, however, the Finnish delegation had to cast a favourable vote in view of its consistent support throughout the Conference for the prohibition of reprisals or measures in kind in armed conflicts, whether international or non-international.

FRANCE

Original: FRENCH

Article 10 bis of draft Protocol II

In voting against the retention of the above article, the French delegation supported the compromise achieved by the Pakistani draft (CDDH/427 and Corr.1), without, however, by doing so, expressing any views on the substance of Article 10 bis.

HOLY SEE

Original: FRENCH

Article 10 bis of draft Protocol II

The delegation of the Holy See voted for the retention of the article, because it provided for the prohibition of reprisals.

Moreover, it deploras the deletion of an article which refers to articles on which the Conference has yet to express its views, namely, Articles 26, 26 bis, 27 and 28.

IRELAND

Original: ENGLISH

Article 20 of draft Protocol II

The Irish delegation supported the request for a vote on this article and voted in favour of the article because we believed that the principles enunciated in the article are of a purely humanitarian nature. With the deletion of the words "Parties to the conflict", which caused difficulty for some delegations, we do not understand how any State can now find an objection to the article. The Irish delegation was particularly concerned to retain paragraph 2 because its deletion would seem to indicate that a lower standard of humanitarian behaviour is acceptable in non-international armed conflicts than in international conflicts, and to retain paragraph 3 because of the development of methods of warfare capable of causing widespread long-term and severe damage to the natural environment and the danger that such methods may be used by one side even in a non-international armed conflict.

ITALY

Original: FRENCH

Article 10 bis of draft Protocol II

The Italian delegation abstained in the vote leading to the deletion of Article 10 bis, which provided that certain articles of Protocol II "shall not, in any circumstances or for any reason whatsoever, be violated, even in response to a violation of the provisions of the Protocol".

A majority of delegations decided to delete Article 10 bis because of the widely felt need to simplify Protocol II as far as possible, in order to render it clear, to the point, well-balanced and thus acceptable to a large number of countries. Under the impact of that requirement with which the Italian delegation was in sympathy, many articles (notably 10 bis) devised in the Committees have been eliminated in plenary, and others will follow suit shortly.

The Italian delegation had played a large part in the drafting of Article 10 bis, the wording of which repeated, in essence, a proposal it had made during a previous session of the Conference. For all that, the Italian delegation does not regret the disappearance of Article 10 bis. While the wording was appropriate, the reference to a very restricted number of articles could have cast a false light on the rest of the draft Protocol. The impression would have been given that the other articles of the Protocol were less mandatory, so that the violation of any rule by a Party to the conflict would have legitimized the conduct of another Party in systematically violating those other articles.

The elimination of Article 10 bis obviates these dangers, without entailing any particularly negative consequences, for Protocol II contains many provisions mentioning obligations which must be respected "in all circumstances", or rules which must be followed "as a minimum". The language is very clear, highlighting the need for unconditional respect for those obligations and rules, even if the other Party to the conflict does not respect them. This is to be expected, since what is involved are elementary human rights, to which a basic morality (much older than the legal rule) ascribes absolute value.

The Italian delegation would point out that this type of language is used, for example, in Article 6 (Fundamental guarantees), Article 8 (Persons whose liberty has been restricted), Article 12 (Protection and care) and Article 26 (Protection of the civilian population). Clearly, all those provisions demand unconditional respect, and their legal force is in no wise diminished by the deletion of Article 10 bis.

Moreover, everything in Protocol II which represents a development of the common Article 3 of the 1949 Geneva Conventions, is subject to the conditions and rules set out in that article. And that article specifically mentions rules which must be applied "as a minimum" or "at any time and in any place whatsoever"; this clearly shows that these rules (and thence the rules derived from them in the Protocol) must be understood as requiring unconditional respect.

This is fully in keeping, moreover, with the essential legal significance of draft Protocol II.

In ratifying this instrument, the High Contracting Parties will assume obligations, not towards rebel forces (which are neither subjects of international law nor Parties to Protocol II), but towards the other Contracting Parties, the international community and world opinion. Clearly, therefore, each Contracting Party's obligation to respect Protocol II cannot be conditioned or modified by the conduct of rebel forces.

NETHERLANDS

Original: ENGLISH

Article 12 bis of draft Protocol II

The delegation of the Netherlands joined the consensus on the deletion of Article 12 bis of draft Protocol II — Protection of persons, on the understanding that the prohibition in Article 5, paragraph 2, sub-paragraph (f) (renumbered (e)), as formulated in document CDDH/427 and Corr.1, at any rate includes the prohibition to carry out on the persons referred to in paragraph 1 of Article 5, even with their consent, physical mutilation, medical or scientific experiments and removal of tissue or organs for the purpose of transplantations.

NIGERIA

Original: ENGLISH

Article 10 bis of draft Protocol II

This article is no less and no more than a disguised article on reprisals. Right from the beginning, in the Working Groups and in the Committees, the Nigerian delegation had repeatedly opposed the inclusion of an article on reprisals in this additional Protocol II. We are of the firm conviction that reprisals as a legal notion properly belongs to international legal relations as between sovereign States and should have no place in a Protocol dealing with internal armed conflicts. Also, the inclusion of an article on reprisals in this Protocol could lead Governments and States into embarrassing situations. This is because it is not inconceivable that in the course of an internal conflict, rebels may deliberately commit acts to which the normal reaction would be in the nature of reprisals but because of a prohibitory article such as this, Governments would feel bound to fold their arms while dissident groups go on a rampage killing and maiming innocent civilians and burning dwellings and food crops. No responsible Government can allow such a situation to develop, but if this article had been adopted this is the kind of scenario that would repeat itself time and again.

The Nigerian delegation is therefore highly gratified that this assembly has refused by consensus to adopt this article.

PORTUGAL

Original: FRENCH

Article 20 of draft Protocol II

The Portuguese delegation voted in favour of the inclusion of Article 20 in the text of the Protocol because it regards the article as a fundamental humanitarian provision the adoption of which will not imperil the authority of States.

SAUDI ARABIA

Original: ARABIC

Article 20 of draft Protocol II

Article 20 (Basic rules) was rejected in a vote. I should like to show that our attitude was natural, since the legitimate party to an internal conflict is the de jure State. Obviously it will never try to exterminate its nationals or to damage its environment. We therefore considered that the article was merely a repetition in contradiction with draft Protocol II.

It should be taken into consideration that Islamic legislation is generally opposed to war as such. In Islamic society war is always defensive, merciful and humanitarian. Its sole aim is to repel aggressors without exposing either civilians, cultural objects or the environment to danger. This is a well-known aspect of Islamic history. This text therefore has no place in draft Protocol II.

SOCIALIST PEOPLE'S LIBYAN
ARAB JAMAHIRIYA

Original: ARABIC

Article 12 bis of draft Protocol II

The cases specified in Article 12 bis, paragraph 2, place emphasis on certain practical points indicated in a general way in paragraph 1. We consider that this specific mention is in accordance with the idea of the reaffirmation and development of the humanitarian concepts embodied in draft Protocol II, Article 1, which states that Protocol II develops and supplements Article 3 common to the Geneva Conventions of 1949.

SUMMARY RECORD OF THE FIFTY-SECOND PLENARY MEETING

held on Monday, 6 June 1977, at 10.15 a.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

ADOPTION OF THE ARTICLES OF DRAFT PROTOCOL II (CDDH/402,
CDDH/427 and Corr.1) (continued)

Article 20 bis - Protection of cultural objects (CDDH/436/Rev.1
and Corr.1) (continued)

1. The PRESIDENT reminded the Conference that at the fifty-first meeting an oral amendment to Article 20 bis had been discussed and that a motion for the closure of the debate had been adopted. The amendment could therefore be put to the vote.

2. Mr. de BREUCKER (Belgium) observed that the amendment to Article 20 bis (CDDH/436/Rev.1 and Corr.1) did not correspond exactly to the conclusions reached at the fifty-first meeting. He did not understand why the amendment proposed the deletion of the phrase "Without prejudice to the provisions of The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954". That proposal was likely to have an effect contrary to what its sponsors intended. He thought that it should be revised, since otherwise some delegations which favoured the protection of cultural property would be obliged to oppose it. He would like the meeting to consider whether it would not be possible to model Article 20 bis on Article 47 bis of draft Protocol I.

3. The PRESIDENT pointed out that at the fifty-first meeting, a motion had been submitted requesting the closure of the debate. The only new development was the fact that the amendment made orally had since been circulated with others in writing (CDDH/436/Rev.1 and Corr.1).

4. Mr. LONGVA (Norway) explained that his delegation, which had been in favour of the oral amendment proposed at the fifty-first meeting, would be voting against Article 20 bis as given in amendment CDDH/436/Rev.1 and Corr.1. Some of the most essential guarantees for the protection of basic human rights had been deleted from draft Protocol II. Their conscience as human beings prevented the members of his delegation from supporting the adoption of measures according more favourable

treatment to cultural objects than to human beings. Their attitude did not relate in any way to the aims of Article 20 bis, and his delegation had accordingly voted for the Article in Committee.

5. Replying to a question from the PRESIDENT as to the exact position in which the matter had been left at the fifty-first meeting, Mr. DI BERNARDO (Italy), who had presided, said that Article 20 bis had been debated at length at that meeting. There had been no written amendment, however, and that had given rise to some confusion. He thought that a consensus now appeared to be emerging in favour of amendment CDDH/436/Rev.1 and Corr.1.

6. The PRESIDENT observed that, so far as he could see, there was no such consensus: one delegation was opposed to the first paragraph of amendment CDDH/436/Rev.1 and Corr.1.

7. Mr. de BREUCKER (Belgium) said that the fifty-first meeting had not touched on the deletion proposed in the first paragraph of the amendment. He pressed for the withdrawal of the proposal to delete the reference to The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954. Failing that, his delegation could not vote in favour of the amendment. He urged that the text of Article 20 bis be revised and brought into line with Article 47 bis of draft Protocol I, so that it could be interpreted in accordance with the provisions of The Hague Convention.

8. Mr. HUSSAIN (Pakistan) said that he had no objection to the deletion of the first paragraph of the amendment. He asked what the views of the representative of Saudi Arabia might be on that point.

9. Mr. NEMATALLAH (Saudi Arabia) said that, although his delegation considered that the deletion was necessary, he was prepared to withdraw the proposal since a consensus appeared to be emerging against it.

10. Mr. KUSSBACH (Austria) pointed out an error in the list of co-sponsors of the amendment, in which "Australia" should read "Austria".

11. Mr. AKKERMAN (Netherlands) said that his delegation would not oppose adoption by consensus of Article 20 bis but wished to point out that the article was deficient in one respect: it unconditionally prohibited, in an internal conflict, any acts of hostility directed against historic monuments or works of art which constituted the cultural heritage of peoples. The article

made no provision, however, for any possible derogation from that prohibition. It was to be feared that in those circumstances, the Parties to a conflict might frequently be tempted to violate that provision, perhaps not even applying it in practice at all.

12. His delegation would point out that the well-balanced wording of The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict provided, in its Article 19, in addition to the rules to be applied in internal conflicts, a possibility of derogation where imperative reasons of military necessity so required. A specific reference in Article 20 bis to the possibility of a derogation would no doubt have been desirable. It appeared, however, that a derogation for imperative reasons of military necessity was implicit in the article by virtue of the reference made to The Hague Convention. The cessation of immunity from attack during such time as a cultural object was used by adversary armed forces was obviously one example of such military necessity.

13. In conclusion, the Netherlands delegation regretted that Article 20 bis did not reflect clearly enough a realistic approach to the situations which draft Protocol II was designed to meet and which The Hague Convention had taken the precaution of covering.

14. The PRESIDENT, noting that the Conference was nearing a consensus on the second and third paragraphs of amendment CDDH/436/Rev.1 and Corr.1, asked whether a vote was requested.

15. Mr. BRECKENRIDGE (Sri Lanka) said that, while his delegation was prepared to join the consensus on amendment CDDH/436/Rev.1 and Corr.1, it would not agree to the deletion of the first paragraph. He requested a vote on the amendment.

16. Miss AL-JOUA'N (Kuwait), observing that most delegations appeared to agree on a consensus, appealed to the representative of Sri Lanka not to oppose the consensus; to withdraw his request for a vote, and to submit his comments in writing.

17. Mgr. LUONI (Holy See), speaking as one of the sponsors of amendment CDDH/436/Rev.1 and Corr.1, said that he would agree to the deletion of the first paragraph.

18. Mr. ROMAN (Chile) pointed out that there was no longer any question of a vote as the sponsors had agreed to withdraw the first paragraph of the text.

19. Mr. NEMATALLAH (Saudi Arabia) said that he had agreed to the deletion of the first paragraph of the amendment so as to help bring about a consensus. As one delegation had asked for a vote, however, he considered that the amendment should be kept as it had been submitted.

20. Mr. de BREUCKER (Belgium) made a formal request for the second and third paragraphs of the amendment to be put to the vote in succession.

21. Mr. AL-FALLOUJI (Iraq) pointed out that Article 20 bis, like the whole of Protocol II, applied to non-international conflicts.

22. He asked the representative of Saudi Arabia to withdraw his last statement.

23. The PRESIDENT said that he thought the best thing was to defer the decision on Article 20 bis until the fifty-third meeting, so as to enable contacts to take place which might lead to an agreement.

24. Mr. MOKHTAR (United Arab Emirates) appealed to the representative of Sri Lanka to withdraw his request for a vote.

25. Mr. BRECKENRIDGE (Sri Lanka) reminded the Conference that he had declared himself in favour of withdrawing the reference to The Hague Convention and that in talks with the sponsors of amendment CDDH/436/Rev.1 and Corr.1, an agreement had been reached whereby he would not oppose the consensus on the understanding that the reference to The Hague Convention would be deleted. Noting that some delegations now wished to keep that reference, he felt obliged to reconsider his position on the consensus and to request that the amendment should be put to the vote. However, he was prepared, as suggested by the President, to have further contacts with the delegations concerned with a view to reaching an agreement.

It was decided to defer the decision on Article 20 bis until the fifty-third meeting.

Article 21 - Prohibition of perfidy

Article 21 was deleted by consensus.

Article 22 - Quarter

26. The PRESIDENT pointed out that part of Article 22 had been included in another article.

Article 22 was deleted by consensus.

Article 22 bis - Safeguard of an enemy hors de combat

27. Mr. LONGVA (Norway) requested that Article 22 bis be put to the vote.

Article 22 bis was rejected by 22 votes to 15, with 42 abstentions.

Article 23 - Recognized signs

28. The PRESIDENT said that a proposal had been made to delete Article 23 and asked if the proposal met with any objections.

There being no objection, Article 23 was deleted by consensus.

Article 24 - Basic rules

29. The PRESIDENT said that a proposal had also been made to delete Article 24.

30. Mr. DI BERNARDO (Italy) pointed out that, so far his delegation had not failed to support the efforts to simplify draft Protocol II. Thus, it had agreed to the deletion of a good many rules in the Protocol which it had particularly liked and in the drafting of which it had worked hard. In all good faith, it had shown understanding towards the delegations which had had great difficulty in accepting rules liable to engender delicate political problems by appearing to place legitimate Governments and rebel forces on an equal footing.

31. Realizing those difficulties, the Italian delegation had not raised any special objections when several articles had been deleted, but it had grave objections to the deletion of Article 24. That article laid down basic rules of a strictly humanitarian nature. Those rules were all the more important in that many other articles would probably be deleted later on, especially those concerning civilian objects. His delegation was therefore convinced of the need to retain Article 24.

32. It was obvious, however, that the article, if retained, would need some redrafting. It would simply be a matter of deleting the words "Parties to the conflict". For all those reasons, the Italian delegation asked for a vote on the retention of Article 24.

33. Mgr. LUONI (Holy See) said that he fully endorsed what had been said by the representative of Italy.

34. Mr. HUSSAIN (Pakistan) said that he was in favour of deleting the words "Parties to the conflict", but that did not mean that he wished to retain the rest of the article.

35. Mr. EIDE (Norway) shared the view of the Italian representative, and said that he, too, would like a roll-call vote.

36. Mr. VANDERPUYE (Ghana) announced that his delegation would vote against retaining Article 24, although it could see the justification for the drafting change proposed by the representative of Italy.

37. Mr. BRECKENRIDGE (Sri Lanka) said that he feared that a roll-call vote might exacerbate the conflicting views on the article. He pointed out that there were many pitfalls throughout draft Protocol II, and he was against retaining Article 24.

38. Mr. GREEN (Canada) observed that the current text of the Article 7 submitted by Pakistan (CDDH/427 and Corr.1) already covered Article 24.

39. He proposed that Article 24 should be deleted without a roll-call vote being taken.

40. Mrs. SILVERA (Cuba) said that she fully endorsed what had been said by the representatives of Italy and of Norway, and was in favour of a roll-call vote.

41. Mr. ALDRICH (United States of America) and Mr. ABDINE (Syrian Arab Republic) asked what precisely was the aim of the proposed vote: was it to delete the words "Parties to the conflict" or to delete the whole of Article 24?

42. Mr. DI BERNARDO (Italy) replied that he had submitted an oral amendment to Article 24. In paragraph 1, the words "Parties to the conflict shall at all times distinguish" should be replaced by the words "a distinction shall at all time be made".

43. The PRESIDENT asked if there were any objections to the oral amendment.

44. Mr. FREELAND (United Kingdom) said that he had no objections but he pointed out that the end of paragraph 1 would have to be brought into line accordingly. He proposed the following drafting change for the English version: "... and operations shall be directed only against military objectives". The end of paragraph 1 would then read in French "et les opérations ne devront être dirigées que contre des objectifs militaires".

45. Mr. AL-FALLOUJI (Iraq) asked the President to explain the procedure being followed in respect of oral amendments. He pointed out that it had been decided not to accept any more oral amendments and that some delegations had been prevented from submitting them. There was therefore a fundamental question of principle involved.

46. Moreover, he would like the Pakistan delegation to clarify its position and to state what article of draft Protocol II was supposed to be replaced by Article 7 of the simplified version of draft Protocol II (CDDH/427 and Corr.1). It seemed to him that Article 7 contained in a simplified form the gist of Article 24.

47. Mr. AREBI (Libyan Arab Jamahiriya) proposed that the discussion on Article 24 should be postponed until the fifty-third meeting.

48. Mr. DI BERNARDO (Italy), referring to the rules of procedure, observed that the procedure concerning oral amendments had already been followed for Article 16, paragraph 4, and for Article 17, paragraph 2.

49. Mr. de BREUCKER (Belgium) proposed the following drafting change in the French text of Article 24, paragraph 1. The words "on devra" proposed by the representative of Italy were not customary in a French legal text and should be replaced by "il y a lieu".

50. With regard to Article 7 of the simplified draft of Protocol II submitted by Pakistan, he would like to know in particular whether that article covered both Article 24 and Article 27.

51. Mr. FELBER (German Democratic Republic) said that in his opinion all amendments concerned with the substance of articles should be rejected in the plenary meetings, but he pointed out that the amendments proposed by the Italian and the United Kingdom delegations were drafting changes.

52. Mr. ABADA (Algeria) said that he was not systematically opposed to the idea of compromises and consensus, but he thought that members should cease to make constant references to a "gentleman's agreement" in order to undermine the efforts made in the cause of humanitarian law, which formed an indivisible whole and was not well served by the hasty elimination of certain articles.

53. Mr. HUSSAIN (Pakistan) said that he supported the drafting change proposed by the representative of Italy, but he was not in favour of retaining Article 24 as a whole. Article 7 of the simplified draft submitted by his delegation was intended to replace Article 24.

54. Mr. RABARY-NDRANO (Madagascar) said that he was in full agreement with the statement by the representative of Algeria.

55. The PRESIDENT said that the deletion of the term "the Parties to the conflict" had already been accepted in some of the articles adopted. As far as the procedure was concerned, the general rule was that amendments should be submitted in writing in advance. But that rule should not lead to automatic prohibition of oral amendments where they sprang from the discussion itself and might lead to a consensus.

56. He asked whether there were any objections to the deletion of the controversial phrase "the Parties to the conflict", subject to any later drafting amendments.

There being no objections, the expression "the Parties to the conflict" was deleted by consensus.

57. The PRESIDENT asked the representative of Italy whether he wished to press for a vote on Article 24.

58. Mr. DI BERNARDO (Italy) replied that he did.

59. Mr. ENDEZOU MOU (United Republic of Cameroon) asked what was the position with regard to Article 7 of the simplified version of draft Protocol II, submitted by Pakistan (CDDH/427 and Corr.1), since if it was adopted, Article 24 would be superfluous.

60. The PRESIDENT said that Article 7, which was intended to replace Article 26, would not be taken up until the Conference considered the latter article.

61. Mr. VANDERPUYE (Ghana) said that he agreed with the representative of the United Republic of Cameroon and that a vote should first be taken on Article 7 submitted by Pakistan.

62. Mr. EUSTATHIADES (Greece) asked for clarification of the statement that Article 7 covered the provisions of Article 24. He pointed out that Article 7 applied to civilian persons whereas Article 24 related not only to the civilian population but also to civilian objects. It would therefore be more appropriate to discuss civilian objects under Article 24.

63. Mr. ALDRICH (United States of America) said that Article 24, even in its revised form, implied that rebels were allowed to choose their objectives. He was therefore against the article.

64. Mr. GOZZE-GUČETIĆ (Yugoslavia) said that paragraph 4 of Article 26 also covered civilian objects.

65. Mr. PAOLINI (France) considered that the civilian population and civilian objects were adequately protected, in internal conflicts, by Article 7 of the simplified draft and Article 20 bis.

66. Article 7 of the simplified draft would replace Articles 24, 25 and 26. By voting on Article 7 first, the Conference could probably reach a consensus.

67. Mr. EIDE (Norway) did not consider that Article 7 of the simplified draft constituted an amendment to Articles 24, 25 and 26.

68. Article 24 made a fundamental distinction between the civilian population and combatants and between civilian objects and military objectives. Those distinctions, which were essential for the proper protection of the civilian population and civilian objects, were not made in Article 7. He could not accept, therefore, that the curtailed article was an amendment to Articles 24, 25 and 26.

69. Mr. AMIR-MOKRI (Iran) agreed with the French representative. If Article 24 was put to the vote, he would vote against it for the reasons put forward by the United States representative.

70. Mr. MILLER (Canada) pointed out that Article 7 of the simplified draft literally repeated the first three paragraphs of Article 26; he proposed that the Conference should treat Article 7 as an amendment to Article 26 and take a decision on Article 26 before returning to Article 24.

71. Mr. LONGVA (Norway) recalled that at the fifty-first meeting the representative of the Holy See had, in connexion with Article 10 bis, made a proposal similar to that just made by the Canadian representative. He was opposed to the Canadian proposal for the same reasons which had led to the rejection of the proposal made by the Holy See.

72. Mr. AL-FALLOUJI (Iraq) supported the Canadian proposal. For reasons well known to all, the position with regard to Article 10 bis was quite different from the present situation.

73. The PRESIDENT invited the Conference to take a decision on the Canadian representative's proposal that the Conference should decide first on Article 26 and then, in the light of that decision, on Article 7 of the simplified draft, which was an amendment to Article 26.

The Canadian proposal was adopted by 60 votes to 6, with 21 abstentions.

Article 26 - Protection of the civilian population

74. The PRESIDENT suggested that the word "Chapter" in paragraph 3 of Article 26 (CDDH/402) and in paragraph 2 of Article 7 of the simplified draft (CDDH/427 and Corr.1) should be replaced by the word "article".

75. Mr. LONGVA (Norway) thought that it would be better to leave the matter open pending a decision on Article 24.

It was so agreed.

76. The PRESIDENT invited the Conference to take a decision on the first three paragraphs of Article 26, as reproduced in Article 7 of the simplified draft.

Paragraphs 1, 2 and 3 of Article 26 were adopted by consensus.

77. The PRESIDENT invited the Conference to take a decision on paragraphs 4, 5 and 6 of Article 26.

78. Mr. EIDE (Norway) and Mr. WULFF (Sweden) said that they were in favour of those three paragraphs, which seemed to them to be of fundamental importance to humanitarian law.

The proposal to retain paragraphs 4, 5 and 6 of Article 26 was rejected by 30 votes to 25, with 34 abstentions.

Article 26 (CDDH/402) reformulated by Article 7 of the Pakistan simplified version (CDDH/427 and Corr.1) was adopted by consensus.*

Article 24 - Basic rules (concluded)

At the request of the representative of Norway, the vote was taken by roll-call.

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

* Article 13 in the final version of Protocol II.

In favour: Nicaragua, Norway, Panama, Netherlands, Poland, Portugal, German Democratic Republic, Dominican Republic, Democratic People's Republic of Korea, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Holy See, Sweden, Czechoslovakia, Union of Soviet Socialist Republics, Afghanistan, Algeria, Austria, Bulgaria, Ivory Coast, Cuba, Ecuador, Finland, Guatemala, Honduras, Hungary, Ireland, Italy, Socialist People's Libyan Arab Jamahiriya, Kuwait, Lebanon, Liechtenstein, Luxembourg, Madagascar, Mongolia, Mozambique.

Against: Nigeria, New Zealand, Oman, Uganda, Pakistan, Republic of Korea, United Republic of Tanzania, Sri Lanka, Thailand, Canada, Chile, Colombia, United States of America, Ghana, India, Indonesia, Iraq, Iran, Kenya.

Abstaining: Philippines, Qatar, Syrian Arab Republic, Romania, United Kingdom of Great Britain and Northern Ireland, Senegal, Switzerland, Tunisia, Turkey, Uruguay, Democratic Yemen, Yugoslavia, Zaire, Germany (Federal Republic of), Saudi Arabia, Argentina, Australia, Belgium, Brazil, United Republic of Cameroon, Cyprus, Denmark, Egypt, United Arab Emirates, Spain, France, Greece, Israel, Japan, Jordan, Mali, Malta, Morocco, Mauritania, Mexico, Monaco.

The result of the vote was 36 in favour, 19 against and 36 abstentions.

Having failed to obtain the necessary two-thirds majority, Article 24 was not adopted.

Article 25 - Definition of civilians and civilian population

Article 25 was deleted by consensus.

Article 26 bis - General protection of civilian objects

Article 26 bis was deleted by consensus.

Article 27 - Protection of objects indispensable to the survival of the civilian population

79. Mgr. LUONI (Holy See) said that he was watching with increasing concern the dismantling, article by article, of draft Protocol II, which was the acceptable, if not completely satisfactory, outcome of patient and difficult work. It was all the more serious in that the deleted articles were perhaps among the most significant and valuable from the standpoint of humanitarian law; for instance, paragraph 5 of Article 10, Article 10 bis, Article 20 and various other articles had been

deleted since the meeting had begun. While it had been possible to talk of a "gentleman's agreement", it must be acknowledged that the fifty-first plenary meeting of the Conference was proving that it was really a "gentleman's disagreement" or even a "gentleman's embarrassment".

80. Had it been aware of such an agreement, his delegation would certainly not have endorsed it, since humanitarian law was the victim. That statement was not meant to detract in any way from the qualities and noble endeavours of the representative of Pakistan.

81. When the Conference had decided to delete any reference to "Parties to the conflict" in draft Protocol II, it had, as it were, abandoned attempts to draft a real legal instrument and instead had restricted itself to a statement of good intentions which in terms of humanitarian law came down to a "legal ectoplasm", for the text would be devoid of any real humanitarian substance and of any mandatory character. Yet, its creators were daring to claim that it would serve to control internal conflicts, a euphemism for civil wars which, as everybody was aware, were the most cruel and most pitiless of all conflicts.

82. Now that the Conference was being called on to decide whether or not to delete Article 27, which was essentially concerned with food and water supplies for the civilian population, the delegation of the Holy See, as well as others, had to face a problem of conscience, for protection of the population was one of the aims, possibly even the main aim, of the two additional Protocols. Since, as had often been stated, the civilian population was the main victim in modern conflicts, how could Article 27, which was indispensable to its survival, be lightheartedly deleted?

83. His delegation therefore urged the representative of Pakistan to withdraw his amendment for the deletion of Article 27 and place it in his simplified draft Protocol II (CDDH/427 and Corr.1). If, despite his indisputable good will, that representative could not accept the proposal to withdraw his amendment, the delegation of the Holy See would regrettably have to remind all delegations of their responsibilities by formally requesting a roll-call vote on Article 27.

84. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that he wholeheartedly supported the Holy See's position on Article 27, for it was one of the most humane provisions in the entire field of humanitarian law.

85. Mr. SKALA (Sweden) deplored that the articles essential to the protection of the civilian population were being deleted one after another. If Article 27 was deleted, civilian populations might run the risk of dying from starvation. The Swedish delegation appealed urgently to all delegations, particularly those of the Western and Others Group, to consider that vital text carefully and to adopt it.

86. Mr. PAOLINI (France) said that all Article 27 contained was a purely humanitarian provision, which no one should oppose. The text did not authorize any interference in the internal affairs of a State and in no way ran counter to the requirements of national defence. His delegation would vote for the article, whose importance was borne out by many examples in history.

87. Mr. DONOSO (Ecuador) welcomed the Holy See's advocacy of the article, which constituted a fundamental safeguard for the civilian population. As the Algerian representative had already said, it was beginning to seem doubtful whether draft Protocol II had anything to do with humanitarian law.

88. Mr. AL-FALLOUJI (Iraq), speaking on a point of order, proposed that the discussion should be adjourned with a view to reaching a consensus on keeping Article 27. As he saw it, the deletion of Article 27 in the simplified draft Protocol II might have been merely an oversight. At all events, the article was of great humanitarian value, and there was certainly a place for it in Protocol II.

89. Mr. MILLER (Canada) supported the Iraqi representative's proposal, and asked whether, in order to avoid unnecessary discussion, it would not be better to consult the Conference in order to ascertain whether there was a consensus in favour of keeping the article.

90. The PRESIDENT said that he was unable to consult the sponsor of the simplified version of draft Protocol II, who was absent. He asked whether any delegations were against keeping Article 27.

Article 27 was adopted by consensus. *

91. Mr. ABADA (Algeria) paid a tribute to the representative of the Holy See, who had found the right words to awaken representatives' consciences and memories, and stated that his delegation endorsed every word he had said.

* Article 14 in the final version of Protocol II.

92. Mgr. LUONI (Holy See) tendered his thanks to all delegations and expressed his pleasure at the consensus reached on an article of such importance.

93. Mr. AREBI (Libyan Arab Jamahiriya) expressed his satisfaction at the consensus, which was due to the speech by the delegation of the Holy See, and appealed to Arab and Moslem countries to be faithful to the principles honoured by their ancestors, principles which would thenceforth be enshrined in Article 27 of Protocol II.

94. Mr. DI BERNARDO (Italy) noted with great satisfaction and relief the Conference's volte-face, prompted by the noble words of the representative of the Holy See.

Article 28 - Protection of works and installations containing dangerous forces

95. The PRESIDENT pointed out that mention of "Parties to the conflict" might be eliminated from the article, and asked the Conference whether it wished to delete paragraphs 2 and 3, as proposed by the delegation of Pakistan (CDDH/427 and Corr.1).

Paragraphs 2 and 3 were deleted by consensus.

Paragraph 1 of Article 28 was adopted by consensus.

Article 28, as amended, was adopted by consensus. *

The meeting rose at 12.35 p.m.

* Article 15 in the final version of Protocol II.

ANNEX

to the summary record of the
fifty-second plenary meeting

EXPLANATIONS OF VOTE

BELGIUM

Original: FRENCH

Article 22 bis of draft Protocol II

The Belgian delegation abstained on this article so as not to impede the process of drawing up a simplified version of draft Protocol II, for the reasons already stated when previous votes were taken.

It considers that the deletion of this article cannot mean that a contrario the principle underlying it cannot be respected.

Article 4, in its latest version, does in fact reiterate the rule concerning "quarter" in paragraph 1. The article which has just been deleted referred only to one of the practical applications of that basic principle, which continues to be applicable.

INDIA

Original: ENGLISH

Article 24 of draft Protocol II

The Indian delegation voted against proposed Article 24 because the principles contained in this article are out of context and have no place in an internal armed conflict. This article also goes against Article 4, which has already been adopted by the Conference.

IRELAND

Original: ENGLISH

Article 24 of draft Protocol II

Ireland voted in favour of Article 24, as amended, on the basis of its humanitarian nature and for the same reasons as those expressed by the representative of Italy.

NEW ZEALAND

Original: ENGLISH

Article 24 of draft Protocol II

The New Zealand delegation voted against Article 24 for the following reasons. In so far as the article made provision for the protection of the civilian population, the delegation regarded the essential elements as having been included in the amended version of Article 26 which the Conference had already adopted. In giving effect to that article, which, among other things, provides that the civilian population as such, as well as individual civilians, shall not be the object of attack, it will clearly be necessary for a proper distinction to be made between combatants and the civilian population. Secondly, in so far as Article 24 had the purpose also of protecting civilian objects, the New Zealand delegation entertained doubts whether such a provision was likely to be realistic in relation to all conflicts of the kind covered by Protocol II. The delegation, on an earlier occasion, had explained its intention of evaluating each provision under discussion in order to determine whether it was likely to play a useful part in an instrument which could command broad international support. Accordingly, the delegation concluded that it would be preferable to omit Article 24 from Protocol II.

SPAIN

Original: SPANISH

Articles 24 and 26 of draft Protocol IIArticle 24

The Spanish delegation would have voted for Article 24 prior to the deletion of the reference to the "Parties to the conflict". However, having felt obliged, for reasons given at the time, to abstain on paragraphs 4 and 6 of Article 26, which were discussed and voted on first, it was again obliged, in the interests of consistency, to abstain in the present instance.

Article 26

The Spanish delegation abstained on paragraphs 4, 5 and 6 of Article 26 of draft Protocol II. If the vote had been taken paragraph by paragraph, the Spanish delegation would, however, have voted for paragraphs 4 and 6 of this article and against paragraph 5.

SUMMARY RECORD OF THE FIFTY-THIRD PLENARY MEETING

held on Monday, 6 June 1977, at 3.15 p.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

ADOPTION OF THE ARTICLES OF DRAFT PROTOCOL II (CDDH/402 and
CDDH/427 and Corr.1) (concluded)

Article 20 bis - Protection of cultural objects (CDDH/436/Rev.1 and
Corr.1) (concluded)

1. The PRESIDENT invited the Conference to resume its consideration of Article 20 bis, and in particular the amendments in document CDDH/436/Rev.1 and Corr.1. As the last of those amendments had not given rise to any objections, it could be disposed of first.

The amendment proposing the insertion in Article 20 bis, after the words "historic monuments or works of art" of the words "or places of worship which constitute the cultural and spiritual heritage of peoples" was adopted by consensus.

2. The PRESIDENT said that as the proposal in document CDDH/436/Rev.1 and Corr.1 to delete the words "Without prejudice to the provisions of The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954" had given rise to sharply divergent opinions, a vote would have to be taken on it.

3. Mr. EUSTATHIADES (Greece) said that his delegation was in favour of deleting the reference to The Hague Convention. It had also been in favour of deleting a similar phrase in Article 47 bis of draft Protocol I, but in order to preserve the consensus on that article, it had not pressed for a vote. If a vote was now to be taken on Article 20 bis, however, he wished to point out that the phrase in question could lead to misunderstanding. If it was supposed to concern all States Parties to draft Protocol II, it would imply that the provisions of The Hague Convention applied to States that had not ratified it. If it concerned only States Parties to the Convention, it would still raise the delicate problem of harmonizing the text of Protocol I with that of the Convention. He also warned against the possibility that some States might be anxious to keep the reference to The Hague Convention in order to be able to use their own cultural property for military purposes in a non-international armed conflict.

4. Mr. BOTHE (Federal Republic of Germany) said that his delegation had serious misgivings about the proposal to remove the reference to The Hague Convention of 1954, to which his country was a Party. Article 20 bis dealt with the question already covered by Articles 4 and 19 of The Hague Convention, although the terms of the two instruments were not identical. On the one hand, the protection provided by that Convention went further than Article 20 bis, prohibiting not only the use of cultural property in support of military effort, but any use of the property and its surroundings which was likely to expose the property to destruction or damage. The Hague Convention also prohibited reprisals. On the other hand, the Convention allowed the obligation to respect and protect cultural property to be waived in the case of imperative military necessity - a provision not to be found in Article 20 bis. The removal of the reference to The Hague Convention could lead to parallel application of two divergent systems for the protection of cultural property, which could only be a source of confusion.

5. Miss AL-JOUA'N (Kuwait) formally moved the closure of the debate and requested that the amendment be put to the vote.

It was so agreed.

6. The PRESIDENT put to the vote the proposal in document CDDH/436/Rev.1 and Corr.1 to delete the reference to The Hague Convention of 1954 in Article 20 bis.

The result of the vote was 32 in favour, 20 against and 33 abstentions.

Not having obtained the necessary two-thirds majority, the proposal for deletion of the reference to The Hague Convention was rejected.

7. Mr. BRECKENRIDGE (Sri Lanka) said that as the proposal to delete the reference to The Hague Convention had not received the required two-thirds majority, even though a simple majority had been in favour of it, his delegation requested a separate vote on the first phase of Article 20 bis.

8. Mr. FREELAND (United Kingdom) said that a separate vote would amount to a reconsideration of the decision which the Conference had just taken. In that case rule 32 of the rules of procedure would apply. The request for a separate vote could therefore not succeed unless a two-thirds majority was obtained.

9. Mr. PAOLINI (France) fully supported the United Kingdom representative.

10. Mr. HUSSAIN (Pakistan) referred to the vote at the forty-third plenary meeting (CDDH/SR.43) on Article 72 of draft Protocol I concerning dissemination. The President had stated in that case that it would be more appropriate to request a separate vote than to submit an amendment for deletion, which implied that a separate vote could always be requested after such an amendment had been rejected. He did not agree with the United Kingdom representative.

11. Mr. BRECKENRIDGE (Sri Lanka) said that a separate vote on the first phrase of Article 20 bis would not amount to a reconsideration of the proposal to delete it; the present request for such a vote merely reflected the fact that a simple majority of delegations did not agree with the phrase in question. To avoid a procedural debate, however, he would withdraw his proposal for a separate vote and simply request that a vote should be taken on the article as a whole.

12. Mr. PAOLINI (France) said that in the French text the words "sans préjudice des" were ambiguous and should be replaced by "sous réserve des".

It was so agreed.

Article 20 bis, as amended, was adopted by 35 votes to 15, with 32 abstentions.*

13. The PRESIDENT stated that the representatives of Belgium, Cyprus, Finland, France, the Holy See, India, Indonesia and the Netherlands had indicated their intention to submit explanations of their votes in writing.

Article 29 - Prohibition of forced movement of civilians

14. The PRESIDENT asked if the Conference wished to delete the words "a Party to the conflict" wherever they appeared, with consequential drafting changes, and to put a full stop in paragraph 2 after the word "conflict" and delete the sentences following, as proposed in the simplified version of draft Protocol II (CDDH/427 and Corr.1).

It was so agreed.

* Article 16 entitled "Protection of cultural objects and places of worship" in the final version of Protocol II.

Article 29, as amended, was adopted by consensus.*

Article 30 - Respect and protection

15. The PRESIDENT asked if there was any objection to the proposal to delete Article 30 (CDDH/427 and Corr.1).

Article 30 was deleted by consensus.

16. Mr. van der KLAUW (Netherlands) said that his delegation would submit a written statement.

Article 32 - Privileged treatment of children

17. The PRESIDENT invited the representative of Pakistan to explain the reformulation (CDDH/427 and Add.1) of the article proposed in document CDDH/402.

18. Mr. HUSSAIN (Pakistan) said that the proposed reformulation was based on Article 4 paragraph 3 - Fundamental guarantees - as it appeared on page 3 of document CDDH/427 and Corr.1. The article would consist of the following paragraphs:

Paragraph 3 (a) of Article 4 (corresponding to sub-paragraph (d) of Article 32 in document CDDH/402);

Paragraph 3 (b) of Article 4 (corresponding to sub-paragraph (e) of Article 32 in document CDDH/402);

Paragraph 3 (c) of Article 4 (corresponding to sub-paragraph (f) of Article 32 in document CDDH/402);

Paragraph 3 (d) of Article 4 (corresponding to sub-paragraph (g) of Article 32 in document CDDH/402);

Paragraph 3 (e) proposed in document CDDH/430 for insertion in Article 4 (corresponding to sub-paragraph (c) of Article 32 in CDDH/402).

19. The only parts of the text of Article 32 in document CDDH/402 not to be reflected were paragraphs (a) and (b). It had been considered that in certain types of conflict it might not be possible to furnish children with any durable means of identification and that the contents of paragraph (b) were already covered by Article 4, paragraph 3 (a) concerning education.

* Article 17 in the final version of Protocol II.

20. Mr. EIDE (Norway) said that he was in favour of the text as reformulated.

21. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that when Article 4 (former Article 6) had been adopted it had been pointed out that paragraph 3 (a) on education covered the situation of children in ordinary life, i.e. not in armed conflict. Provision was made for children to receive education anyway under normal domestic legislation. Paragraph 3 (a) would thus be out of place unless it was specified that the children in question were those who were orphaned or separated from their families as a result of armed conflict.

22. Mr. HUSSAIN (Pakistan) said that Article 1 of draft Protocol II stipulated that the whole Protocol referred only to situations of armed conflict. It would not, therefore, interfere in any way with the domestic legislation of States. However, the reference to orphans and children separated from their families could be included if the Ukrainian representative so wished.

The Conference adopted by consensus the proposals by Pakistan (CDDH/427 and Corr.1 and CDDH/430) for the reformulation of the substance of Article 32.*

Article 33 - Relief societies and relief actions

Paragraph 2

23. The PRESIDENT reminded the Conference that it had been decided to consider Article 33 in conjunction with Article 14. He drew attention to amendments CDDH/435 and CDDH/440 submitted by Finland and to the proposed text of Article 15 in document CDDH/427 and Corr.1.

24. Mr. HUSSAIN (Pakistan) suggested that the two Finnish amendments (CDDH/435 and CDDH/440) should be adopted and that what remained of Article 33, as amended, should replace Article 15 of document CDDH/427 and Corr.1, which in turn was intended to replace Article 14 of document CDDH/402.

25. Mr. WARRAS (Finland) explained that the basic aim of his delegation's amendments was to find a compromise solution for a single general article on relief in draft Protocol II. He supported the Pakistan representative's suggestion.

* See Article 4, paragraph 3 of the final version of Protocol II.

26. Mr. de ICAZA (Mexico) requested a separate vote on the second sentence of Article 33, paragraph 2, since relief actions could be offered by persons, institutions or countries outside the territory, in which the conflict took place. Any foreign participation would constitute unacceptable interference.

27. Mr. JOMARD (Iraq) said that the text would make it possible for any foreign society to carry out activities in his country without his Government's permission. It was therefore unacceptable to his delegation, which would enter a reservation to that effect.

28. Mr. de BREUCKER (Belgium) and Mr. BOTHE (Federal Republic of Germany) drew attention to an error of translation in the French text of amendment CDDH/440 submitted by Finland to paragraph 2 of Article 33.

29. Miss AL-JOUA'N (Kuwait) proposed that the Finnish amendment to delete paragraphs 3, 4 and 5 of Article 33 (CDDH/435) should be put to the vote.

The Finnish amendment (CDDH/435) was adopted by 58 votes to 3, with 22 abstentions.

The Finnish amendment (CDDH/440) was adopted by consensus.

30. The PRESIDENT said that, if he heard no objection, he would take it that, as requested by the Mexican representative, the Conference would vote on the two sentences of Article 33, paragraph 2, separately.

It was so agreed.

The first sentence of paragraph 2 was adopted by consensus.

31. Mr. WARRAS (Finland) said that he did not agree with the Mexican representative that any question of interference was involved in the second sentence of paragraph 2, since the first sentence stated that relief actions were subject to the consent of the High Contracting Party concerned.

32. Mr. de ICAZA (Mexico) replied that the Finnish representative's comment was correct as far as relief actions were concerned. Offers of relief were, however, a different matter and were often used as an instrument of publicity in order to interfere in internal affairs.

33. Mr. BOTHE (Federal Republic of Germany), although expressing sympathy with the views of the Mexican representative, pointed out that Article 33 had to be read in conjunction with Article 3 (formerly Article 4), paragraph 2 of which made it clear that nothing in Protocol II could be invoked for intervening in the internal or external affairs of the High Contracting Party in the territory of which the conflict occurred.

34. Mr. SADI (Jordan) suggested that the problem might be solved by amending the wording to read "relief actions or offers thereof fulfilling the above conditions".

35. Mr. MBAYA (United Republic of Cameroon) said that the text as it stood was not as dangerous as it might seem, since offers of relief could either be accepted or rejected by the High Contracting Party concerned.

36. Mr. BRECKENRIDGE (Sri Lanka) said that an unfortunate situation would arise if the High Contracting Party had to decide whether an offer of relief constituted interference or not. He agreed with the Mexican representative, whose purpose was presumably to prevent any such controversy from arising, and he suggested that the sentence should be deleted.

37. Mr. WARRAS (Finland) suggested that the words "or offers thereof" should be deleted.

38. Mr. KLEIN (Holy See) said that he quite understood the concern felt by the Mexican representative, but pointed out that any excessive restriction of relief possibilities would undermine Article 27, adopted at the fifty-second meeting. The words "or offers thereof" should be kept although they could be restricted by the addition of the words "provided they satisfy the above conditions".

39. Mr. de ICAZA (Mexico) said that the sentence as it stood implied that offers of foreign relief could be made in internal conflicts and were not subject to the consent of the High Contracting Party concerned. In fact, it was difficult to see how an offer, which was a spontaneous act, could be subject to consent. Even if the words "or offers thereof" were deleted, offers would still be made.

40. Mr. SADI (Jordan) said that the essential point was not just to make offers of relief action subject to consent, which admittedly might not be altogether realistic. What mattered most was that they should be humanitarian and impartial. Offers that met those requirements would not constitute interference in internal affairs.

41. Mr. MOKHTAR (United Arab Emirates) moved that a vote should be taken.

42. Mr. AL-FALLOUJI (Iraq) said that in his view, the deletion of the words "or offers thereof" would remove the danger of offers made solely for purposes of publicity. His delegation would be able to join in a consensus provided there was nothing in the text that might infringe national sovereignty.

43. Mr. BINDSCHIEDLER (Switzerland) said that while he could understand the concern of the Mexican representative, he would regret the deletion of the sentence in question, since it contained the only reference in draft Protocol II to offers of relief actions. The difficulty might be removed if a phrase such as "by impartial humanitarian organizations" was added after the words "or offers thereof".

44. Mr. de ICAZA (Mexico) said that the solution suggested by the Swiss representative was acceptable to his delegation.

45. Mr. AL-FALLOUJI (Iraq) still considered that the words "or offers thereof" should be deleted; not only were they superfluous, but they might also lead to abuses of a political nature.

46. Mr. HEREDIA (Cuba), speaking on a point of order, said that the discussion was being prolonged unnecessarily by the untimely introduction of oral amendments.

47. Mrs. SUDIRDJO (Indonesia) said that, for the reasons which her delegation had given in Committee I, she would have difficulty in agreeing to the insertion of the phrase suggested by the Swiss representative.

48. Mr. ABDINE (Syrian Arab Republic) proposed that no oral amendments should be accepted at the present stage and that the second sentence should be put to the vote.

49. The PRESIDENT put to the vote the second sentence of paragraph 2.

The result of the vote was 31 in favour, 20 against, and 25 abstentions.

Not having obtained the necessary two-thirds majority, the second sentence of paragraph 2 was rejected.

Paragraph 2, as amended, was adopted.

Paragraph 1

50. Mr. HUSSAIN (Pakistan) pointed out that it had been agreed at the fifty-second plenary meeting to consider Articles 14 and 33 together because they overlapped. His delegation proposed that paragraph 1 of Article 33 should be replaced by the text which appeared as Article 15 in the simplified version of draft Protocol II (CDDH/427 and Corr.1).

51. Mr. BOTHE (Federal Republic of Germany) said that the text to which the representative of Pakistan referred had caused his delegation some difficulty, since it amalgamated in a single sentence two different notions, that of the civilian population and that of relief societies. He asked whether the representative of Pakistan could agree to refer proposed paragraph 1 to the Drafting Committee to be redrafted as two separate sentences.

52. Mr. PAOLINI (France) endorsed the comments of the previous speaker. His delegation found it hard to understand what were the traditional functions of the civilian population in relation to victims of armed conflict. Paragraph 1 of the text as reviewed by the Drafting Committee (CDDH/402) was more complete than the text of Article 15 in the simplified version (CDDH/427 and Corr.1); furthermore, it was supplemented by a paragraph 2 which had already been adopted. He failed to see the merit of the proposed simplified version, which contained no mention of the fundamental principles of the Red Cross and also omitted to state that no one should be harassed, prosecuted, convicted or punished for relief activities. For those reasons, and subject to further clarification by the representative of Pakistan, his delegation preferred the text proposed by the Drafting Committee (CDDH/402).

53. Mr. HUSSAIN (Pakistan) observed that in Far Eastern countries at least, the civilian population definitely had a traditional role to play in succouring the victims of an armed conflict. He would, however, have no objection to referring the text of paragraph 1 to the Drafting Committee with the request that it should be divided into two sentences.

54. With regard to the comments by the representative of France, he said that, in his view, the harassment clause was unnecessary because nowhere in Protocol II did the question arise of relief societies being harassed on account of their activities. If the Conference wished that clause to be included, however, his delegation would not object.

55. Mr. MARTIN HERRERO (Spain) supported the view that the Drafting Committee should be requested to redraft the simplified text of paragraph 1 as two sentences, in order to separate the notion of succour by the civilian population from that of the tasks of relief societies.

56. Mr. BINDSCHEDLER (Switzerland) supported the views expressed by the representatives of the Federal Republic of Germany and France. The simplified text was drafted in such a way as to deprive the article of all its value, but he had no objection to joining a consensus on what amounted to a purely literary exercise.

57. The PRESIDENT said that if he heard no objection, he would take it that the Conference agreed to replace paragraph 1 by the text of Article 15 in the simplified draft of draft Protocol II (CDDH/427 and Corr.1) subject to its rearrangement in two separate sentences by the Drafting Committee.

It was so agreed.

Article 33, as amended, was adopted by consensus.*

Article 14 - Role of the civilian population and of relief societies

58. The PRESIDENT said that the substance of Article 14 (CDDH/402) appeared to have been incorporated in Article 33, which had just been adopted by the Conference. If he heard no objection, he would take it that the Conference agreed to delete Article 14.

Article 14 was deleted by consensus.

Explanations of vote

59. Mr. BOTHE (Federal Republic of Germany) said that his delegation would submit a written statement on Article 33 to the Secretariat.

60. Mr. MBAYA (United Republic of Cameroon) said that his delegation also intended to submit a written statement on Article 33. He asked whether such statements could be submitted to the Secretariat if the delegations concerned had not publicly announced their intention to do so.

61. The PRESIDENT said that, in accordance with the decision taken by the Conference, written statements or explanations of vote would be accepted on condition that they did not exceed two pages in length and reached the Secretariat within twenty-four hours after the meeting to which they related.

* Article 18 in the final version of Protocol II.

Article 34 - Recording and information

Article 34 was deleted by consensus.

Article 36 - Measures for execution

Article 36 was deleted by consensus.

Article 37 - Dissemination

62. The PRESIDENT drew attention to the proposals by the delegation of Pakistan (CDDH/427 and Corr.1) to delete Article 37, and replace it by the sentence "This Protocol shall be disseminated as widely as possible." (CDDH/434). The numbering and positioning of the new simplified article would be dealt with at a later stage.

The simplified text proposed by the Pakistan delegation (CDDH/434) was adopted by consensus.*

Article 38 - Special agreements

Article 38 was deleted by consensus.

63. Mr. DI BERNARDO (Italy) said that his delegation would submit a written statement on Article 38 to the Secretariat.

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

Article 39 was deleted by consensus.

64. Mr. PICTET (International Committee of the Red Cross) said that the ICRC had not wished to take up any position on Article 39 so as not to jeopardize the consensus. However, it did wish to point out that the conflicts covered by Protocol II were only some of those covered by Article 3 common to the 1949 Geneva Conventions, the application of which remained unchanged. The possibility of the ICRC's offering its services therefore remained, even if it was not explicitly confirmed in Protocol II.

65. Mr. HUSSAIN (Pakistan) said that Article 3 common to the four Conventions was indeed couched in the same language as Article 39 of draft Protocol II. Since Protocol II merely confirmed and developed and did not repeat what was in the Geneva Conventions, it went without saying that the provisions of Article 3 common to the Geneva Conventions of 1949 continued to apply.

* Article 19 in the final version of Protocol II.

66. His respect for the ICRC was such that he had not wished to see an article in Protocol II which might be made the subject-matter of a reservation, thus jeopardizing the position of Article 3 of the Conventions as well.

67. Mr. AL-FALLOUJI (Iraq) said that his country, while prepared to co-operate with the ICRC in its humanitarian work, could not accept any interference in its internal affairs of the kind implied by the offers of help mentioned in Article 39. Such politization of internal conflicts was highly undesirable. Moreover, Article 3 common to the four Geneva Conventions of 1949 was badly drafted and had led to difficulties in the past.

68. Mr. DI BERNARDO (Italy) said that his delegation would submit a written statement on Article 39.

69. Mr. MILLER (Canada), Mrs. MANTZOULINOS (Greece), Mr. SHERIFIS (Cyprus) and Mr. PAOLINI (France) endorsed the views expressed by the representatives of the ICRC and of Pakistan with respect to the application and interpretation of Article 3 common to the four Geneva Conventions of 1949.

70. Mr. de BREUCKER (Belgium) recalled that at the third session of the Conference, his delegation had proposed the inclusion of Article 39 in Protocol II using the same terms as those of Article 3 of the 1949 Geneva Conventions. Since the article had been deleted, his delegation would merely express its gratitude to the ICRC for the work it had undertaken in application of Article 3 common to the 1949 Geneva Conventions, in the conviction that the right of the ICRC to offer its services in accordance with that article was also valid in the case of the Protocol.

Article 40 - Signature

Article 40 was adopted by consensus.*

Article 41 - Ratification

71. The PRESIDENT said that a small drafting change should be made to the French version of Article 41: "dès que" should be changed to "le plus tôt possible".

Article 41, as amended, was adopted by consensus.**

* Article 20 in the final version of Protocol II.

** Article 21 in the final version of Protocol II.

Article 42 - Accession

72. The PRESIDENT said that it had been proposed to add the words "of the Conventions" at the end of the article, after "depository".

Article 42, as amended, was adopted by consensus. *

Article 43 - Entry into force

Article 43 was adopted by consensus. **

73. The PRESIDENT noted that there were certain slight discrepancies between the text of Articles 44, 44 bis and 45 as shown in CDDH/427 and Corr.1 (Simplified version of draft Protocol II), and the text of those articles as reviewed by the Drafting Committee (CDDH/402). He asked whether the Pakistan representative would agree that the latter texts should be adopted.

74. Mr. HUSSAIN (Pakistan) agreed to that course.

Article 44 - Amendment

Article 44 was adopted by consensus. ***

Article 44 bis - Denunciation

Article 44 bis was adopted by consensus. ****

Article 45 - Notifications

Article 45 was adopted by consensus. *****

Article 46 - Registration

Article 46 was adopted by consensus. *****

Article 47 - Authentic texts

75. The PRESIDENT said that Article 47 as reviewed by the Drafting Committee contained only one paragraph, the second having been deleted in line with draft Protocol I. Moreover, the words "of the Conventions" should be added after "depository" in the third line of the remaining paragraph.

* Article 22 in the final version of Protocol II.
** Article 23 in the final version of Protocol II.
*** Article 24 in the final version of Protocol II.
**** Article 25 in the final version of Protocol II.
***** Article 26 in the final version of Protocol II.
***** Article 27 in the final version of Protocol II.

Article 47, as amended, was adopted.*

Annex

76. The PRESIDENT announced that in the opinion of the ICRC the annex dealing with the international special sign for works and installations containing dangerous forces, which would have been useful in a full Protocol II, lost all significance in the simplified version. It would therefore not be considered by the Conference.

Title

The title of draft Protocol II was adopted by consensus.

ORGANIZATION OF WORK

77. The PRESIDENT announced that the Conference had completed consideration of draft Protocol II. At its fifty-fourth meeting it would consider the Preambles to draft Protocols I and II, examine draft resolutions that had been submitted and begin consideration of the draft Final Act, which, for technical reasons, would have to be done in two stages.

78. Mr. SKALA (Sweden) recalled that three draft resolutions (CDDH/411, 423 and 428) concerning the follow-up of the question of weapons discussed in the Ad Hoc Committee had been submitted. As a result of informal consultations, the sponsors of those resolutions had virtually reached agreement on merging them into a single text, which they hoped would receive the support of the Plenary.

79. However, since the delegations participating in the consultations had not yet received final instructions, the text would probably not be circulated until late the next day, and a vote might then be taken late on Wednesday afternoon, 8 June. He hoped that such an arrangement would prove possible.

80. The PRESIDENT said that the General Committee would examine the matter raised by the Swedish representative.

The meeting rose at 6.30 p.m.

* Article 28 in the final version of Protocol II.

ANNEX

to the summary record of the
fifty-third plenary meeting

EXPLANATIONS OF VOTE

AUSTRALIA

Original: ENGLISH

Article 33 of draft Protocol II

The Australian delegation wishes to place on record its interpretation of Article 33 (Relief Societies and Relief Actions) (CDDH/402) as approved by the Conference.

It is a matter of regret to the Australian delegation that the provisions of Article 34 (Recording and Information) as set out in document CDDH/402 have been omitted from Protocol II. Experience in internal conflicts has shown that information concerning the whereabouts of the victims of the conflict and their state of health is a matter of great concern to their relatives and the absence of this information is the cause of great distress to them. The difficult task of eventual reunion of families separated by conflict is also greatly assisted by an adequate system of recording and information.

The establishment of an information bureau for the purpose of recording and transmitting information to the next-of-kin of victims is one of the traditional activities of Red Cross, Red Crescent, Red Lion and Sun organizations. Hence the Australian delegation notes with satisfaction that provision is made under the new paragraph 1 of Article 33 for all the traditional activities of the Red Cross, Red Crescent, Red Lion and Sun to be available to the victims of conflict.

Under this article the same possibility exists for Red Cross, Red Crescent, Red Lion and Sun organizations to perform their traditional activity of collecting and caring for the wounded, sick and shipwrecked.

The Australian delegation places on record its view that in the interests of the victims, Red Cross, Red Crescent, Red Lion and Sun organizations within a State in which an internal conflict is taking place ought to be given every possible assistance to carry out the traditional humanitarian tasks referred to in Article 33 (CDDH/402).

BELGIUM

Original: FRENCH

Article 33 of draft Protocol II

The purpose of Article 33 is to facilitate relief actions on behalf of victims of non-international armed conflicts. That is the ratio legis of this article. It follows from this that the provision in paragraph 2 whereby such actions shall be undertaken "subject to the consent of the party or parties concerned" does not imply any discretionary power vested in such party or parties to grant or withhold permission for carrying out relief actions as defined in this article. It is on the basis of this interpretation that the Belgian delegation joined in the consensus on Article 33.

CYPRUS

Original: ENGLISH

Article 29 of draft Protocol II

The delegation of Cyprus deems it essential to emphasize the significance and humanitarian nature of Article 29, prohibiting the forced movement of populations in connexion with an armed conflict.

Of all the inhumanities of an armed conflict, the Government of Cyprus considers the displacement of civilian populations to be among the most deplorable.

The more so in cases, of which there are well-known examples, when the displacement of populations is used as a means for the promotion of the political objectives of those who have militarily prevailed.

The delegation of Cyprus, therefore, wishes to place on record its satisfaction at the unanimous adoption of Article 29, which specifically prohibits displacement of civilians for reasons connected with an armed conflict.

FINLAND

Original: ENGLISH

Article 20 bis of draft Protocol II

The delegation of Finland has voted against Article 20 bis in draft Protocol II. Our negative vote is not to be taken as an indication of a negative stand as regards the safeguarding of cultural property from the ravages of war in general. It is an indication of our strong feeling that the inclusion of a provision protecting cultural property in Protocol II, which lacks general

rules on the methods and means of combat, such as Articles 20, 22, 22 bis and 24, which have been deleted, unbalances the protective, humanitarian character of the Protocol. In addition to the Finnish delegation's view that the main emphasis of Protocol II should be placed on the protection of the human person from unnecessary suffering and destruction, we find a provision for the protection of cultural property unnecessary in the context of internal conflicts, where any intent to destroy such objects is unlikely.

GERMANY, FEDERAL REPUBLIC OF Original: ENGLISH

Article 33 of draft Protocol II

The Federal Republic of Germany welcomes the adoption of Article 33, paragraph 2, which facilitates relief actions in favour of the civilian population in non-international armed conflicts. Such relief actions "shall be undertaken subject to the consent of the High Contracting Party concerned". Besides the requirement of consent, this phrase contains also an element of obligation. Consequently, the High Contracting Party concerned has no absolute or unlimited freedom to refuse its consent to relief actions. A Party refusing its consent could only do so for valid reasons, not for arbitrary or capricious ones. On the basis of that understanding the Federal Republic of Germany has joined the consensus on Article 33.

HOLY SEE

Original: FRENCH

Articles 20 bis, 21, 33, 34 and 39 of draft Protocol II

Article 20 bis

The delegation of the Holy See, as a sponsor of amendment CDDH/436 introducing the protection of places of worship into Article 20 bis, voted in favour of the compromise text adopted by the Conference.

My delegation believes that although human life is more precious than mere stones, buildings that are the repositories of culture and spiritual life must be protected against the vandalism of civil war.

The recent discovery in a cellar in Paris of statues from Notre Dame Cathedral that had been thrown on the rubbish dump, then salvaged and hidden away by a believer during the French Revolution well illustrates our reasons for wishing to see the nations safeguard their cultural and spiritual heritage against their own passions of the moment.

Article 21

The delegation of the Holy See did not wish to oppose the consensus on the deletion of Article 21 of Protocol II. However, it has already said that it was sorry to see humanitarian law suffer substantial "losses" as the articles of Protocol II were voted upon by the Conference.

The delegation of the Holy See cannot, under any circumstances, even tacitly agree to perfidy. It considers perfidy to be intrinsically evil and therefore to be excluded from human relationships, even in armed conflicts.

Article 33

The delegation of the Holy See fully recognizes the sovereign right of States to defend themselves against foreign incursions, including those which for political ends don the guise of charity.

But the delegation of the Holy See fears that this consideration has led the Conference to adopt an emasculated text, which in omitting a provision concerning the offer of services by impartial humanitarian organizations and concerning the need for unimpeded relief, may one day be turned against populations deprived of food and shelter because of the passions of the parties to the conflict, be they Governments or rebel movements.

Article 34

The delegation of the Holy See greatly regrets the fact that the hasty move towards a negative consensus prevented the Conference from adopting a brief text which would remind the High Contracting Parties of "the right of families to know the fate of their relatives", as stated in Article 20 bis of Protocol I.

The delegation of the Holy See did not join in the consensus and hopes that it will not be long before this right is reaffirmed in a text which might be worded as follows:

"It is the right of families to know the fate of their relatives that will prompt the parties to establish information bureaux in order to gather information and transmit it, if necessary, through the intermediary of ICRC or some other impartial humanitarian organ."

Article 39

The delegation of the Holy See did not consider that at this stage in the discussions it would be appropriate to speak in support of a text that the Conference had rejected by consensus.

However, my delegation finds it regrettable that the Conference, through this consensus, should have seemed to fail to recognize the immense services that the International Committee of the Red Cross has performed in the past and can perform in the future.

The delegation of the Holy See wishes to take this opportunity to reaffirm its confidence in ICRC and its agreement with ICRC's views on humanitarian law and aid to the victims of war whoever they may be.

INDIA

Original: ENGLISH

Article 20 bis of draft Protocol II

The Indian delegation voted against Article 20 bis consistent with its policy on Protocol II. The Indian delegation objects strongly to the reference to any international convention, to which only sovereign States can be Parties, in Protocol II, which will apply to internal armed conflicts. Doubts have already been expressed whether the reference to The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict imports all the principles of the above Convention in Article 20 bis.

INDONESIA

Original: ENGLISH

Article 20 bis of draft Protocol II

My delegation wishes to associate itself with those delegations who are of the opinion that in Protocol II, which deals with internal armed conflicts, there is no place for an article such as Article 20 bis.

The objections of my delegation to the retention of this article, however, should not be interpreted as meaning that my Government is against the principles contained in this article that historic monuments or works of art should be protected.

In the light of these considerations, my delegation opposes the insertion of Article 20 bis in Protocol II.

ITALY

Original: FRENCH

Articles 38 and 39 of draft Protocol II

Article 38

The delegation of Italy did not dissociate itself from the consensus whereby it was decided to delete Article 38 of Protocol II (Special agreements), with the aim of simplifying the structure of that Protocol. Deletion of the article could, however, in no way be interpreted as removing the possibility of bringing the 1949 Geneva Conventions and Protocol I into force in a conflict not of an international character by means of special agreements. The possibility of doing so (and more specifically the duty to endeavour to bring the aforementioned instruments into force) remains unchanged under the terms of Article 3 common to the 1949 Conventions.

As the Italian delegation has already had occasion to point out with regard to Article 1 of Protocol II, this Protocol is not designed to - nor could it - alter the scope of the obligations stemming from the 1949 Conventions, and from Article 3 in particular, in any way whatever. Article 3 common to the 1949 Conventions has the legal significance of being the basic text to which all the rules set forth in the Protocol are related and in the light of which they must be interpreted - all the more so since it is impossible to be a Contracting Party to the Protocol without being a Party to the Geneva Conventions.

It accordingly follows that the rule set forth in Article 3 common to the 1949 Conventions, which imposes the duty, in non-international conflicts, of endeavouring to bring into force the whole system of humanitarian law applicable in international conflicts, retains its full validity and general scope. This rule is, therefore, undoubtedly applicable to the conflicts covered by Article 1 of Protocol II.

Article 39

A consensus was reached on the deletion of Article 39 of Protocol II, from which the delegation of Italy did not dissociate itself. It really served no useful purpose to reiterate in Protocol II what was already clearly stated - and practically in the same words - in Article 3 common to the 1949 Geneva Conventions.

As the Italian delegation has repeatedly stressed, Article 3 common to the 1949 Conventions remains fully applicable in all conflicts of a non-international character, whether or not they come within the field of application of Protocol II. Moreover, this Protocol in no way changes Article 3 common to the 1949 Conventions, as is stated expressis verbis in Article 1. It obviously follows that the provision contained in Article 3 common to the 1949 Conventions, according to which the International Committee of the Red Cross may offer its services in cases of non-international armed conflicts, is without any doubt applicable in the types of conflict provided for in Article 1 of Protocol II.

The Italian delegation wishes to declare publicly that it is happy to observe the universal respect and prestige which ICRC continues to enjoy. Despite appearances to the contrary, what has just happened with regard to Article 39 is in reality only proof of the general esteem in which ICRC is held and which that organization has always deserved, thanks to the innumerable and irreplaceable services which it offers - and will in the future continue to offer - to mankind.

NETHERLANDS

Original: ENGLISH

Articles 20 bis, 30 and 39 of draft Protocol II

Article 20 bis

The Netherlands delegation abstained in the vote on Article 20 bis and sets out the reasons for doing so in the present statement.

Article 20 bis unconditionally prohibits, in an internal conflict, any acts of hostility directed against historic monuments or works of art, which constitute the cultural heritage of peoples. The article does not provide for any possible derogation from the prohibition it contains.

My delegation fears that the absence of any possibility of derogation in the article will cause the article to be violated on a large scale and perhaps even not to be applied in practice at all.

We note that the very well-balanced system of The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, through its Article 19 that provides the rule to be applied in internal conflicts, contains a possibility of derogation where imperative reasons of military necessity so require.

My delegation would have preferred a possibility of derogation to be explicitly contained in Article 20 bis. It is our understanding, however, that a derogation for imperative reasons of military necessity is indeed implied in Article 20 bis by virtue of the clear reference to the aforementioned Hague Convention.

It goes without saying that cessation of immunity from attack during such time as the cultural object is used by adversary armed forces is an example of such military necessity.

In conclusion, my delegation abstained in the vote on Article 20 bis since it does not clearly enough reflect a realistic approach with regard to the situations covered by Protocol II, which are at the same time so prudently taken care of by The Hague Convention on the Protection of Cultural Property.

We did not vote against the article since we interpret the decision of the Conference to retain the reference to The Hague Convention as an expression of broad consent to our understanding of that reference.

Article 30 of draft Protocol II

The delegation of the Netherlands joined the consensus on the deletion of Article 30 of draft Protocol II, concerning civil defence, on the understanding that the provision contained in Article 15, as formulated in document CDDH/427 and Corr.1, enabling relief societies to perform their traditional functions in relation to the victims of the armed conflict, also applies to civil defence organizations, consisting of unarmed civilian personnel and performing those civil defence tasks necessary for the survival of the civilian population.

Article 39 of draft Protocol II

The Netherlands delegation has joined in the consensus to delete Article 39. However, it would like to have on record its understanding that the decision of the Conference to delete this article will in no way impair the application of Article 3, subparagraph 2, of the Geneva Conventions of 1949.

UNITED KINGDOM OF GREAT BRITAIN Original: ENGLISH
AND NORTHERN IRELAND

Article 20 bis of draft Protocol II

The United Kingdom delegation voted against this article. We did so basically because of our wish that there should emerge from the Conference a Protocol II which, in a balanced way, increases

the protection available in internal armed conflicts of a kind covered by the Protocol and which will command wide acceptance among the international community. It is this objective which has led us to support the idea of a simplified draft Protocol on the lines proposed by the delegation of Pakistan and which has influenced our voting throughout the plenary consideration of the Protocol. With it in view, we have abstained in the voting on a number of provisions of a clearly humanitarian character, provisions which on their own merits we would have preferred to have seen included in the Protocol. With reluctance, we had concluded that, desirable though in principle the inclusion of these provisions would be, it would signify little in practice if the result of their presence was to reduce significantly the chances that the Protocol would be adopted by this Conference or would obtain the wide acceptance to which we attach importance.

In the case of Article 20 bis, we considered that to retain a provision on the protection of cultural objects and places of worship which did not appear in the simplified draft, when so many provisions for the protection of human victims of armed conflict had been deleted, would be a distortion of what should be the true aims of the Protocol. My country has its share of cultural objects and places of worship and we are as concerned as any others to ensure that proper protection is accorded to those which form part of the cultural and spiritual heritage of peoples. Our negative vote should not be taken as indicating any lack of sympathy with the aim of the article. It is to be seen as an expression of our conviction that a proper balance should be found in the contents of the Protocol as a whole, a balance which in general seemed to us to have been struck in the simplified draft of Pakistan.

UNITED REPUBLIC OF CAMEROON

Original: FRENCH

Article 33 of draft Protocol II

The delegation of the United Republic of Cameroon voted in favour of keeping the last sentence in paragraph 2 of Article 33 for a very simple reason: it is quite convinced that, contrary to what has been stated, this sentence does not involve any danger of interference in internal affairs. It seems to this delegation that both relief actions and offers of relief entail the consent of the High Contracting Party on whose territory the armed conflict is taking place. This means that it will always be open to the Party to reject, in the exercise of its full sovereign rights, any offer of relief that seems to it interference in its internal affairs.

Finally, it should be noted that relief actions covered by the first sentence in paragraph 2 necessarily imply that an offer of relief has already been made and duly accepted. It is, however, such offers of relief that are the special bugbear in the eyes of some delegations.

STATEMENT BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS Original: FRENCH

Article 39 of draft Protocol II

The ICRC does not intend to take a stand on this provision that could prevent arrival at a consensus. However, it wishes to point out that the conflicts covered by the present Protocol constitute only one of the categories of conflicts covered by Article 3, whose terms of application remain unchanged.

Consequently, the power extended to the ICRC of offering its services in such conflicts remains inviolate; even if it is not confirmed in the present Protocol.

SUMMARY RECORD OF THE FIFTY-FOURTH PLENARY MEETING

held on Tuesday, 7 June 1977, at 10.40 a.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

ADOPTION OF THE PREAMBLES TO DRAFT PROTOCOLS I AND II

Preamble to draft Protocol I (CDDH/401, CDDH/439)

1. The PRESIDENT invited the Conference to consider the Preamble to draft Protocol I (CDDH/401) and the amendment thereto submitted by the delegation of the Philippines (CDDH/439). He asked the representative of the Philippines to introduce his delegation's amendment.
2. Mr. GLORIA (Philippines) said that his delegation's concern had been to establish the identity of the Conference as an independent international body, distinct and different from any other international organization. The intention was to give the objective sought by the Conference over the past four years its true significance by stressing the truly humanitarian aspect of the Conference.
3. With that object in mind, his delegation had considered it necessary to improve the third paragraph of the text in document CDDH/401 by some additions. In the fourth paragraph, reference was made to the Charter of the United Nations, whereas it would be more appropriate to invoke the generally-accepted principles of international law. It must be borne in mind that not all nations in the world community were members of the United Nations. That was true of some countries participating in the Conference. Their presence showed the importance of humanitarian law, which indubitably supplemented the rules of international law. Finally, the last paragraph of the text was somewhat confusing. That was unfortunate, in view of the intentions to disseminate throughout the world an instrument which should therefore be comprehensible to the layman and accordingly be drafted in clear and simple terms. He hoped that the Conference would consider his delegation's amendments in a spirit of justice and understanding.
4. The PRESIDENT suggested that, for the sake of convenience, the Conference should consider the Philippine amendment (CDDH/439) paragraph by paragraph.

5. The first paragraph of the Preamble, beginning with the word "Proclaiming ...", needed no comment.
6. He invited the Conference to give its views on the second paragraph beginning "Recalling that every State ...".
7. Mr. PAOLINI (France) thought it preferable to retain the text adopted by Committee I for the second paragraph (CDDH/401), which referred to the United Nations Charter; that was even more essential since the Conference had adopted a new article to be inserted before or after Article 70 in which both co-operation with the United Nations and the United Nations Charter were mentioned.
8. Mr. FREELAND (United Kingdom) agreed with the representative of France. There had been long and difficult discussions and negotiations before Committee I had reached agreement on the text of document CDDH/401, which should be considered as a whole.
9. Mr. ABDINE (Syrian Arab Republic) said that he greatly preferred the text adopted by Committee I for the second paragraph of the Preamble to draft Protocol I as mention was made of a principle contained in the United Nations Charter, which had become a principle of international law.
10. Mr. BLOEMBERGEN (Netherlands) shared the view of the United Kingdom representative that the text of the Preamble to draft Protocol I constituted a whole. The amendment submitted in document CDDH/439 did not offer any improvement on the original text adopted by consensus by Committee I.
11. Mr. SHERIFIS (Cyprus) considered that the words "in conformity with the Charter of the United Nations ..." and "or in any other manner inconsistent with the purposes of the United Nations ..." should be retained. Therefore he supported the text of the second paragraph as it stood in document CDDH/401.
12. Mr. MBAYA (United Republic of Cameroon) agreed with the French and United Kingdom delegations.
13. Mr. SHELDON (Byelorussian Soviet Socialist Republic) said that the text of the second paragraph as proposed by the Philippine delegation weakened rather than improved the original text of the Preamble, which constituted a whole and was the outcome of long and difficult but constructive negotiations in Committee I. The Committee had adopted the text by consensus and therefore his delegation would support the second paragraph of document CDDH/401.

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

15. The PRESIDENT agreed to his request.

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

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

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

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

19. Mr. ABDINE (Syrian Arab Republic) considered that the third preambular paragraph of the original text was more broadly worded than that in the amendment by the Philippines. If reference were made to the Geneva Conventions of 1949, it would also be necessary to refer to The Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land and to the United Nations resolutions concerning humanitarian law. He was therefore in favour of the text adopted by Committee I.

20. Mr. CONDORELLI (Italy), Mr. MBAYA (United Republic of Cameroon), Mr. GREEN (Canada) and Mr. MOKHTAR (United Arab Emirates) agreed with the comments made by the previous speakers.

21. Mr. GLORIA (Philippines) pointed out, for the information of the representative of Sri Lanka, that he did not consider it necessary to refer to The Hague Convention. On the other hand, it seemed to him important to specify - as the third preambular paragraph of document CDDH/401 did not - that "... the provisions

protecting the victims of armed conflicts ..." were those of the Geneva Conventions of 1949 and of the present Protocol which supplemented those Conventions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Preamble to draft Protocol II (CDDH/402)

The Preamble to draft Protocol II was adopted by consensus.

CONSIDERATION OF DRAFT RESOLUTIONS

44. The PRESIDENT invited the Conference to consider the draft resolutions, beginning with those which had been adopted by Committee II.

Resolution concerning the Use of Certain Electronic and Visual Means of Identification by Medical Aircraft protected under the Geneva Conventions of 1949 and under the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (CDDH/424).

Resolution concerning the Use of Visual Signalling for Identification of Medical Transports protected under the Geneva Conventions of 1949 and under the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (CDDH/425).

Resolution concerning the Use of Radiocommunications for Announcing and Identifying Medical Transports protected under the Geneva Conventions of 1949 and under the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (CDDH/426).

The above mentioned three draft resolutions were adopted by consensus.

45. The PRESIDENT invited the Conference to continue its consideration of the draft resolutions.

Draft resolution CDDH/410

46. Mr. LONGVA (Norway) said that the purpose of draft resolution CDDH/410 submitted by the Norwegian delegation and that of the Socialist People's Libyan Arab Jamahiriya was to reaffirm a certain philosophy upon which the existence, functions and choice of protective emblems were based, and to allow the International Conference of the Red Cross to study the possibility of establishing a single, unified and universally recognized protective emblem. Moreover, the proposal envisaged the convening of a diplomatic Conference if the proposed study produced positive results.

47. The philosophy at the basis of the existence, functions and choice of protective emblems was both simple and complicated. It was simple to the extent that there existed a general agreement that the purpose and functions of the protective emblem should be of an exclusively humanitarian nature. It was complicated in so

far as some countries, rightly or wrongly, had for the past century interpreted the existing protective signs as having religious or national significance. Hence, in the minds of many the existing protective emblems did not properly reflect their purposes and functions. That situation might lead to future claims for the recognition of new protective emblems. The sponsors of the draft resolution were aware of four such potential claims. It was therefore of the utmost importance to prevent the proliferation of emblems, which could not but be detrimental to the protection of war victims.

48. The sponsors of draft resolution CDDH/410 therefore considered it essential to reaffirm the original humanitarian philosophy which lay at the root of the choice of protective emblems. That had been done in the Preamble to the draft resolution. The second preambular paragraph reaffirmed the principle that protection under the Geneva Conventions was granted to protected persons and objects as such, irrespective of the emblem used. The third preambular paragraph reaffirmed the basic principle of universality, which was a condition *sine qua non* for the effective protection of all war victims in armed conflicts. The fourth preambular paragraph explained why the creation of a single, unified and universally recognized protective emblem was desirable. In the last preambular paragraph the sponsors dealt with the principle of universality at the institutional level, for they considered it essential that all national societies should become members of the League of Red Cross Societies. That should not be interpreted as any intention on the part of the sponsors to interfere in the constitutional matters of the League of Red Cross Societies.

49. The two operative paragraphs contained provisions calling for a study of the possibility of establishing a single, unified and universally recognized protective emblem. While realizing the difficulty of the task, the sponsors felt that an attempt should be made. As was stated in the third preambular paragraph, the emblem should be acceptable to all the High Contracting Parties of the Geneva Conventions of 1949, which meant that no new emblem could be adopted without the unanimous consent of the Parties to the Geneva Conventions. The text submitted thus offered States all the necessary safeguards. Moreover, the proposed diplomatic conference would not be convened unless the study produced positive results.

50. Mr. PAOLINI (France) said that draft resolution CDDH/410 reflected a desire to prevent the proliferation of emblems and might therefore appear to be justified. It was nevertheless obvious that no new emblem would enjoy the prestige that the Red Cross had gained for over a century, the more so since it had never had the slightest political or religious connotation. It was equally doubtful whether the States concerned would give up

the other emblems recognized by the Conventions and the Protocol. Moreover, the Conference would be acting at cross purposes if it approved a resolution of the kind submitted when it had adopted articles in draft Protocol I confirming its recognition of the present emblems. The French delegation would therefore abstain if the draft resolution was put to the vote.

51. Mr. AMIR-MOKRI (Iran) felt that draft resolution CDDH/410 suffered from basic defects. It contained proposals aimed at amending Article 38 of the first Geneva Convention of 1949, whereas the Conference was not competent to consider proposals to amend the Geneva Conventions.

52. Another of the draft resolution's shortcomings was that it was prejudicial to the acquired right of some countries to use their internationally recognized emblem. Iran, for its part, had for nearly a century used the emblem of the Red Lion and Sun as the distinctive emblem of its army health services. That emblem had been recognized by the Diplomatic Conferences of 1929 and 1949. The Imperial Government of Iran considered the use of that emblem to be an acquired right beyond challenge and it would not consider itself bound by any decision, taken in any forum, seeking to prevent it from using its emblem and to replace it by another. The Iranian delegation would vote against the draft resolution if it was put to the vote.

53. He hoped that those in favour of a single emblem would not press a proposal which might be harmful to the principle of the universality of conventions.

54. Mr. BUHEDMA (Libyan Arab Jamahiriya) said that his delegation had taken part in the preparation of draft resolution CDDH/410 and supported it mainly on humanitarian grounds. He considered that all the humanitarian objectives on which the Geneva Conventions were based should be strengthened. The draft resolution was not likely to be prejudicial to Article 38 of the first Geneva Convention of 1949 since it referred to that article in the third preambular paragraph. Moreover, the idea of a unified protective emblem was not new and had often been discussed at meetings of the ICRC and at other diplomatic conferences. A number of studies had been carried out on the subject. The advantages of a single, unified emblem acceptable to all States had been emphasized.

55. The question was an important one and would be submitted to the XXIIIrd International Conference of the Red Cross to be held shortly at Bucharest, where the possibility of convening a diplomatic conference might be broached. Colonel Al-Gaddafi had raised that point at the Conference of Ministers for Foreign Affairs of the Islamic States where he had stressed the role of

the Red Cross and had expressed the hope that all States would co-operate on a humanitarian level. The delegation of the Libyan Arab Jamahiriya hoped that all those attending the present Conference would read the draft resolution carefully and endorse it as a means of resolving the problem of a single, unified emblem.

56. Miss EMARA (Egypt) said that her delegation had examined draft resolution CDDH/410 in detail but, while appreciating the praiseworthy efforts that the sponsors had made, was unable to accept the arguments they had adduced. The Egyptian delegation saw no need for such a resolution and was not even convinced that it was within the competence of the Conference. It did not think that it was for the Conference to call on the International Conference of the Red Cross to study the possibility of establishing a single protective emblem.

57. The main aim of the Diplomatic Conference was not to revise the 1949 Geneva Conventions, which should remain in force. The Conference had the task of reaffirming and developing the Geneva Conventions. Thus draft resolution CDDH/410 conflicted with the main aim of the Conference.

58. The sponsors of the draft resolution considered that unification of the protective emblems would ensure maximum, universal protection, but the Egyptian delegation took the view that such protection could only be ensured through the use of the distinctive emblems recognized by the 1949 Geneva Conventions and the draft Protocols. The emblems that had been used for several decades were already universally recognized; no other emblem could replace them before several more decades had passed, during which persons and objects would not be fully protected by the use of a unified emblem that was still unfamiliar. Protection could not be guaranteed merely by the establishment of a unified emblem; above all the emblem must be universally recognized, which would only be possible after several years of use. Experience had demonstrated the value of the distinctive emblems recognized by the Conventions. Consequently there seemed no need to replace them by a new unified emblem whose use would entail some risk.

59. There was no point in seeking a solution for a non-existent problem. The use of the recognized emblems posed no problems, and it was hard to see the need for the solution offered. Her delegation appealed to the representatives of Norway and the Libyan Arab Jamahiriya not to press for their resolution to be put to the vote. Egypt would be obliged to vote against the draft resolution in order to ensure maximum, universal protection for protected persons and objects.

60. Mr. ALTUG (Turkey) said that his delegation had been involved in the emblem issue in every international conference of a humanitarian nature such as the present Diplomatic Conference for more than a century, and the emblem of the Red Crescent, which was neither religious nor a national sign but only a protective emblem, had been in use for a long time and was also very well known, especially by the people of the Near and Middle East, and was officially recognized by the international community and the ICRC. The conditions which had prevailed in the past still existed.

61. The Turkish delegation would have no objection to a study being undertaken for the purpose of establishing a single, unified and universally recognized protective emblem, in addition to the ones already existing if such a study was really needed. But to its way of thinking, the establishment of such an emblem or the ones in use were not an end in themselves but only a means to an end. An emblem to serve humanity in the best possible way must be a very well recognized and deeply rooted one. The emblem in use was of long, historic standing, and had become a traditional one, well-recognized by all circles and, in his delegation's opinion, it served its purpose well. His delegation did not think it was really necessary for the Conference to begin considering the establishment of a new emblem in addition to the present one.

62. Protective emblems were most important, and any change made in them or an effort made to establish new ones might risk endangering human lives, and could lead to very tragic results.

63. If a study were to be made, it should not be on the subject of an effort to establish a new emblem in addition to the existing ones, but of how the improper or illegal use of those emblems and other recognized signs could be prohibited and how they could be implemented in practice. But his delegation expressed its satisfaction with the work done by the Conference, which was the reaffirmation and development of international humanitarian law. The Conference would have its practical effects and would be able to prevent the sufferings of human beings and other damages which humanity had unfortunately witnessed in the very recent past.

64. In response to an invitation to study the possibility of establishing a single, unified and universally protective emblem, since the Turkish emblem had so far raised no difficulties his delegation could only say that if other States would accept that emblem, Turkey would welcome that action with great pleasure.

However, the Conference could not insist on sovereign States accepting the Turkish emblem, nor could any one ask the Turkish delegation to accept any emblem other than the one it had had for a very long time - a traditional emblem, well-recognized by all circles and which had served the very best purpose.

65. Lastly, the Turkish delegation with all the good will in the world could not support draft resolution CDDH/410 and if it was put to the vote would have to vote against it reserving its Government's position on the subject.

66. Mr. BINDSCHEDLER (Switzerland) said that he supported the views expressed by the representatives of Iran and Egypt. His delegation was firmly opposed to the draft resolution, which posed a serious and difficult problem whose study would require considerable time. Moreover, the present Conference was not competent to deal with that problem, since its only task was to develop the 1949 Geneva Conventions. It must also be noted that the emblems now used had proved their worth and were well known and respected by all, whereas there was every prospect that a new emblem - which would necessarily have to be an abstract design - would have no psychological effect on people already conditioned by the existing emblems. If the draft resolution was not withdrawn, the Swiss delegation would have to ask for it to be put to a vote and would vote against its adoption.

67. Mgr. LUONI (Holy See) said that the delegation of the Holy See fully supported the opinions so admirably expressed by the French and Swiss delegations.

68. It also shared the arguments put forward by the Egyptian delegation.

69. Furthermore, the delegation of the Holy See did not think that the Conference was competent to decide on such a subject.

70. There was no need to repeat what was universally known, namely that the emblem of the Red Cross had no religious significance but only humanitarian significance.

71. It was in fact humanitarian ideals which had given rise to the Red Cross.

72. Consequently the Holy See considered that what was more important than the emblem was the spirit of charity, brotherly assistance and protection of humanitarian law which was the very basis of the work of the Red Cross, even if the emblem was different.

73. It went without saying that the delegation of the Holy See preferred to see such a spirit finding expression in the existing emblem of the Red Cross. For that reason the delegation of the Holy See would vote against the adoption of the draft resolution of Norway and the Socialist People's Libyan Arab Jamahiriya if it was put to the vote.

74. Mr. de BREUCKER (Belgium) said that, while he appreciated the praiseworthy aim of the sponsors of draft resolution CDDH/410 who would like there to be a unified protective emblem, he feared that their proposal was pointless, unless the latter reverted to the reversed colours of Switzerland, that was to say the classical historic emblem of the red cross on a white ground. On the one hand, it was impossible to disregard the psychological value of the various emblems, reminiscent of human suffering, that were in use and, on the other hand, the emblem could not be changed without the convening of a Diplomatic Conference, the revision of the 1949 Conventions and the additional Protocols - since these referred to emblems - and the accession to a possible future instrument, with consequent confusion liable to last for a very long time.

75. Mr. ABADA (Algeria) said that in any society it was difficult to change traditional customs, owing to the risk of provoking serious unrest. He thanked the representatives of Norway and the Libyan Arab Jamahiriya for having taken the initiative of embodying in a very high-minded text the desire, in conformity with the universalist ideal of contemporary civilization, to ensure genuinely universal humanitarian protection. The proliferation of protective emblems could be disastrous, and to seek to cling to existing emblems for purely subjective reasons would be baneful chauvinism. Besides, the sponsors of the draft resolution had only wished to put forward, in the name of a humanitarian principle, an idea that was not new: that of studying the possibility of establishing a universal protective symbol. He did not think that it should give rise to any long discussion.

76. Mr. MILLER (Canada) said that he supported draft resolution CDDH/410, so ably defended by the representative of Norway. Canada had always been concerned about the proliferation of protective emblems and had always considered that a single emblem should be adopted. It could not be said that the proposal was outside the competence of the Conference, since it only asked the International Conference of the Red Cross to undertake a study of the question and submit concrete proposals to the depositary of the 1949 Geneva Conventions with a view to the convening of a Diplomatic Conference in accordance with Article 86 of draft Protocol I.

77. The PRESIDENT reminded the meeting that a vote had been requested on draft resolution CDDH/410.

78. Miss EMARA (Egypt) requested that the vote should be taken by roll-call.

79. Mr. AL-FALLOUJI (Iraq) asked the representative of Egypt, through the intermediary of the President, not to press for a vote by roll-call, which would be quite unnecessary.

80. Mr. BUHEDMA (Libyan Arab Jamahiriya) said that he, on the contrary, wanted a roll-call vote so that the position of the various delegations would be made clear.

A vote was taken by roll-call on draft resolution CDDH/410.

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

In favour: United States of America, Guatemala, Iraq, Ireland, Israel, Socialist People's Libyan Arab Jamahiriya, Mali, Norway, Netherlands, Dominican Republic, Sweden, Democratic Yemen, Algeria, Canada, Chile.

Against: Egypt, Spain, Greece, Hungary, Iran, Mongolia, Poland, Portugal, Syrian Arab Republic, German Democratic Republic, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Holy See, Switzerland, Czechoslovakia, Turkey, Union of Soviet Socialist Republics, Yugoslavia, Bulgaria.

Abstaining: Denmark, United Arab Emirates, Ecuador, Finland, France, Ghana, Honduras, India, Indonesia, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Liechtenstein, Luxembourg, Madagascar, Morocco, Mauritius, Mauritania, Mexico, Monaco, Mozambique, Nicaragua, Niger, New Zealand, Oman, Uganda, Pakistan, Panama, Peru, Philippines, Qatar, Republic of Korea, Democratic People's Republic of Korea, Socialist Republic of Viet Nam, United Republic of Tanzania, Romania, United Kingdom of Great Britain and Northern Ireland, Senegal, Sudan, Sri Lanka, Thailand, Tunisia, Uruguay, Venezuela, Zaire, Afghanistan, Germany (Federal Republic of), Saudi Arabia, Argentina, Australia, Austria, Belgium, Brazil, United Republic of Cameroon, Cyprus, Colombia, Ivory Coast, Cuba.

The draft resolution was rejected by 19 votes to 15, with 62 abstentions.

The meeting rose at 12.50 p.m.

ANNEX

to the summary record of the
fifty-fourth plenary meeting

EXPLANATION OF VOTE

SOCIALIST PEOPLE'S
LIBYAN ARAB JAMAHIRIYA

Original: ARABIC

Draft resolution CDDH/410.

Our delegation took part in the preparation of the draft resolution in document CDDH/410, prompted by a number of considerations. I shall mention only the most important of them.

1. First and foremost, we were prompted by the deep humanitarian urge to strengthen and intensify the protection given by the Geneva Conventions of 1949, as also the reaffirmation and development of the humanitarian principles on which the Conventions are based, notably in the case of armed conflicts. The draft resolution refers to Article 38 of the first Geneva Convention of 1949, which mentions recognized distinctive emblems, and it indicates that protection under those Conventions is the main consideration, which has always been taken into account on the practical plane.

2. All the other reasons are of a historical nature. The question of a single distinctive emblem has long been studied at meetings of the International Committee of the Red Cross and of the Diplomatic Conferences on the development of the humanitarian concepts underlying the Conventions. Numerous studies and references are available for consultation. But consideration has always been given to the additional advantages of a single emblem embodying for all persons the elements of neutrality, provided that it is "acceptable to all".

3. The draft resolution brings up a question of substance: namely, that the new distinctive emblem must be acceptable to all and must facilitate the accession of relief societies to the League of Red Cross Societies.

4. The draft resolution calls upon the International Conference of the Red Cross to study the possibility of establishing a single emblem. In our view, this appeal supports all previous efforts to that end.

5. The draft resolution also proposes the convening of a Diplomatic Conference by the depositary of the Geneva Conventions of 1949, if the latter should deem it necessary.

6. For all that, my delegation is aware of the difficulties arising from the different points of view on this question. But this Conference, with its noble title and its concourse of lawyers and experts devoted to these matters, would probably have no difficulty in adopting this resolution, not as a final solution, but as a means generally used by international conferences in order to channel thought and militate on behalf of certain causes. Colonel Muammar Al-Gaddafi also made a positive contribution in his speech at the Conference of Ministers for Foreign Affairs on the Islamic States. I quote: "There is no doubt that the Red Cross is doing noble work in the humanitarian field and we give it our blessing. I wish to pay a personal tribute to this magnificent endeavour, for the Red Cross is always present in natural or other disasters. Why do we not complement this work by ensuring Red Crescent participation in any universal humanitarian operation? We are not referring to the Islamic or the non-Islamic world. We are speaking of a humanitarian task, of a Red Crescent and a Red Cross working at the world level".

Finally, I would ask that all study this resolution in the spirit of brotherhood and co-operation which has prevailed throughout this historic Conference, and with which its atmosphere has been imbued. It is my firm hope that the Conference will pursue its objectives and conclude its work in this spirit.

SUMMARY RECORD OF THE FIFTY-FIFTH PLENARY MEETING

held on Tuesday, 7 June 1977, at 4.25 p.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

CONSIDERATION OF DRAFT RESOLUTIONS

Explanations of vote

1. The PRESIDENT invited delegations wishing to do so to explain their votes on draft resolution CDDH/410 (see summary record of the fifty-fourth meeting (CDDH/SR.54) for the result of the vote).
2. Mr. GEBLAWI (Libyan Arab Jamahiriya) said that the result of the vote on draft resolution CDDH/410 which, he regretted, showed a lack of understanding of the significance of humanitarian action. It was all the more regrettable at a Conference meeting to reaffirm and develop humanitarian law in a host country which was a pioneer in that field. He was sure that, had it been adopted, the resolution would have made a valuable contribution to the cause of humanitarian law.
3. Mr. SABEL (Israel) said that his delegation had voted in favour of draft resolution CDDH/410 because it was a positive proposal. It regretted that the draft resolution had not been adopted. While respecting the inviolability of the emblems of the Red Cross, Red Crescent and Red Lion and Sun, his country would continue to use the Red Shield of David on a white ground as its distinctive emblem.

Draft resolution CDDH/437 - Convention for the Protection of Cultural Property in the Event of Armed Conflict (CDDH/443)

4. Mr. BRECKENRIDGE (Sri Lanka), introducing amendment CDDH/443, said that his delegation wished to revise it as follows: the amendment related to the second, not the third preambular paragraph of draft resolution CDDH/437; the paragraph was not to be deleted outright, but the opening words "Acknowledging that" were to be replaced by the word "Recalling"; and everything after "14 May 1954" in the third line was to be deleted.

5. The purpose of the proposal was to eliminate unnecessary wording. There was no need to elaborate on the importance of The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and the adoption of Article 53 (formerly Article 47 bis) of draft Protocol I was sufficient encouragement to States to become Parties to the Convention.

6. Mr. AKKERMAN (Netherlands) introduced draft resolution CDDH/437 on behalf of the sponsors. It was obvious from the debate both in Committee III and in the plenary Conference that a large number of delegations attached the greatest importance to The Hague Convention, which had now been ratified by more than sixty States from all regions of the world. The operative part of the Convention comprised seven chapters dealing respectively with basic rules concerning respect for cultural property, particularly in occupied territory; special protection for objects of particular importance; protection during transport; means of enabling the personnel responsible for protecting cultural property to carry on their task during armed conflict; the protective emblem and its use; the scope of application, including internal situations; and implementation of the Convention, including co-operation with the United Nations Educational, Scientific and Cultural Organization. In its entirety The Hague Convention provided a realistic system of protection. Derogations were permitted, but only within clearly defined limits and in specific circumstances.

7. The sponsors of draft resolution CDDH/437 welcomed the adoption by the Conference of basic rules for the protection of cultural property against acts of violence. The rules contained in The Hague Convention were more elaborate, and the sponsors therefore considered that an appeal to States to accede to it was highly desirable.

8. The Sri Lanka amendment (CDDH/443) would not be an improvement. The second preambular paragraph of the draft resolution was designed to remove a certain imprecision in the provisions on the protection of cultural property adopted by the Conference which were not entirely clear about the status of The Hague Convention.

9. Mr. NAHLIK (Poland), speaking as a co-sponsor of draft resolution CDDH/437, said that the cultural property protected by The Hague Convention of 1954 had a special importance. Historic monuments, such as the Acropolis, Chartres Cathedral and the Taj Mahal, were a cultural heritage of all humanity not only of the countries to which they belonged. Moreover, once destroyed, they could never be replaced. It was therefore right to include the protection of cultural property in the Protocols, and to recommend to the States which were not yet Parties to The Hague Convention of 1954 that they accede to it.

10. His country, whose cultural heritage had suffered grievously in the Second World War, had been one of the first to ratify The Hague Convention. It was therefore only natural that it should be one of the sponsors of the draft resolution.

11. He shared the views of the Netherlands representative on the amendment.

12. Mr. BRECKENRIDGE (Sri Lanka) said that he had deliberately refrained from discussing Article 53. He had hoped, in submitting his amendment, to facilitate the adoption of resolution CDDH/437, since its over-emphasis on The Hague Convention caused difficulties for certain States.

13. Mrs. SUDIRDJO (Indonesia) said that her country, which had already ratified The Hague Convention, supported the draft resolution and hoped that the appeal in the operative paragraph would meet with a wide response.

14. Mr. ABDINE (Syrian Arab Republic) said that although his country had ratified The Hague Convention, he did not see the point of the draft resolution. It had no legal value, and in any case the Conference was not concerned with the ratification of other treaties.

15. Mr. de BREUCKER (Belgium) said he feared the Conference would lose time discussing the protection of cultural property, which was dealt with in another instrument. He had sponsored draft resolution CDDH/437 because he believed it was right to remind Governments of the need to ratify The Hague Convention. He was surprised at the opposition to the proposal.

16. Mr. ABDINE (Syrian Arab Republic), speaking in exercise of his right of reply, said that he was not opposed to the protection of cultural property, but saw no use in encumbering the Protocols with texts that had no legal value.

17. The PRESIDENT said he took it that the sponsors of the draft resolution opposed the amendment and wished it to be put to the vote.

18. Mr. GONSALVES (Netherlands) concurred.

The amendment proposed by Sri Lanka (CDDH/443), as orally revised, was rejected by 27 votes to 7, with 52 abstentions.

19. Mr. BRECKENRIDGE (Sri Lanka) asked for a separate vote on the words "and that the application of this Convention will in no way be prejudiced by the adoption of the article referred to in the preceding paragraph" in the third paragraph of the draft resolution.

20. Mr. GONSALVES (Netherlands) opposed the request for a separate vote.

21. The PRESIDENT put the request to the vote, in accordance with rule 39 of the rules of procedure.

The request for a separate vote was rejected by 40 votes to 3, with 35 abstentions.

Draft resolution CDDH/437 was adopted by 53 votes to none, with 33 abstentions.

22. Mr. KABARITI (Jordan) said that he had asked for the floor before the vote, but had not been seen. He had intended to suggest that the word "Urges", at the beginning of the operative paragraph, should be replaced by the word "Invites". The draft resolution might then have received more support. He had voted in favour of it because of his strong support for the content of the preambular paragraphs.

Draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2 on the dissemination of knowledge of international humanitarian law applicable in armed conflicts (CDDH/442)

23. Mr. BRECKENRIDGE (Sri Lanka), introducing his delegation's amendments (CDDH/442), said that, while fully appreciating the intention of the draft resolution, his delegation felt that, as worded, it was excessively didactic and thus unbecoming to the Conference. The amendments were aimed at removing its more obnoxious features.

24. In operative paragraph 1, it was unseemly to remind the High Contracting Parties to the Geneva Conventions of their obligations under the Conventions and under the Protocols just adopted. It would be more appropriate to delete that paragraph and add another operative paragraph in its place, as in document CDDH/442.

25. The invitation made to the signatory States in operative paragraph 2 seemed to presume that they had hitherto failed to take the measures in question. It would be better not to pass judgement on States' past performance but, as his delegation proposed, to urge them "to further promote" dissemination of humanitarian law. As for the list of methods of dissemination, his delegation felt that it should be left to sovereign Governments themselves to determine what means to employ in implementing their agreements and that the list should therefore be deleted. His delegation proposed adding the word "and" at the end of paragraph 2 because it was closely linked to the following paragraph.

26. Operative paragraph 3 of the draft resolution urged national Red Cross, Red Crescent and Red Lion and Sun Societies to "offer their services" to the authorities in their own countries, but his delegation wondered if they had not already done so and thought it more appropriate to call upon them to "urge and strengthen" their co-operation.

27. His delegation endorsed the invitation to ICRC in operative paragraph 4, but considered that the reference to "specialized institutes" was too restricted and therefore proposed replacing that term by "States and appropriate institutions."

28. The PRESIDENT enquired if the sponsors of draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2 could accept the Sri Lanka amendments.

29. Mr. WARRAS (Finland) said that his delegation could not accept them, as they had been submitted at such a late stage and proposed changes of substance.

30. Mr. PAOLINI (France) drew attention to document CDDH/438/Corr.2: France had never been a sponsor of the draft resolution.

31. Mrs. ANCEL-LENNERS (Luxembourg) said that her country wished to become a sponsor of the draft resolution.

32. Mr. DI BERNARDO (Italy) objected to consideration of the Sri Lanka amendments as they had not been circulated far enough in advance of the meeting.

33. Mr. DIXIT (India) urged the President to be sympathetic to the amendments, as the sponsoring delegation was a small one which had found it difficult to keep up with the heavy timetable of meetings. There was much in the amendments of which his own delegation approved.

34. The PRESIDENT said it was a pity that the representative of Sri Lanka had not been able to submit his amendments sooner to a draft resolution which was, after all, dated 3 June. Document CDDH/442 had only just been circulated, a circumstance that was bound to complicate consideration of the draft resolution and of the amendments relating to it. Nevertheless, having agreed to deal with the Sri Lanka amendments and in response to the appeals addressed to him, he was prepared, as an exception, to continue consideration of the Sri Lanka proposals.

35. The sponsors of the draft resolution had indicated that they were unable to accept the amendments proposed; accordingly, he would put them to the vote, paragraph by paragraph.

The Sri Lanka amendment to operative paragraph 1 of draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2 was rejected by 35 votes to 22, with 31 abstentions.

The Sri Lanka amendment to operative paragraph 2 was rejected by 41 votes to 22, with 28 abstentions.

36. Mr. DIXIT (India) supported the Sri Lanka amendment to operative paragraph 3 of the draft resolution. It was more precise than the original and was in keeping with a number of resolutions adopted at other international conferences. He urged that it should be adopted by consensus.

37. Mr. BINDSCHIEDLER (Switzerland) said that he too supported the amendment. It was an improvement on the original text and would broaden the scope of activity of the Societies in question.

38. Mr. MCGILCHRIST (Jamaica) said that his delegation also supported the amendment, which was couched in stronger and more appropriate terms than the original.

39. Mr. WARRAS (Finland) requested a vote.

40. The PRESIDENT put to the vote the Sri Lanka amendment to operative paragraph 3 of draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2.

The result of the vote was 41 in favour, 23 against and 23 abstentions.

Not having obtained the necessary two-thirds majority, the amendment was rejected.

41. Mr. BINDSCHIEDLER (Switzerland) supported the Sri Lanka amendment to operative paragraph 4 (ii) (CDDH/442).

42. Mr. WARRAS (Finland) said that his delegation could accept that amendment.

The Sri Lanka amendment to operative paragraph 4 (ii) was adopted by consensus.

43. Mr. BRECKENRIDGE (Sri Lanka) said that his delegation's amendments had been submitted not in any spirit of recrimination but with a view to consolidating the achievements of the Conference.

44. With regard to the vote on the draft resolution, he asked that a separate vote should be taken, first, on the words "and that the Protocols adopted by the Conference reaffirm and extend that obligation", in operative paragraph 1, and, secondly, on the words "particularly by", together with operative paragraph 2, (a) to (d).

45. Mr. GHAREKHAN (India) considered that if the Sri Lanka amendments had been submitted in time for delegations to study them, most of them would undoubtedly have been adopted. Although three out of the four had in fact been rejected, they had nevertheless served their purpose. In the circumstances, he would appeal to the representative of Sri Lanka not to insist on a separate vote.

46. Mr. BRECKENRIDGE (Sri Lanka) withdrew his motion for a separate vote and requested that a vote should be taken on the draft resolution as a whole.

47. Mr. GLORIA (Philippines) said that, in general, he was in favour of the draft resolution. He considered, however, that operative paragraphs 2 (a) to (d) should be deleted, since they dealt with matters relating solely to the internal administration of High Contracting Parties and should therefore not be referred to in the draft resolution.

48. The PRESIDENT said that the Conference could not revert to that matter since it had already taken a decision on it by rejecting the Sri Lanka amendment to operative paragraph 2.

The draft resolution as a whole, as amended, was adopted by 63 votes to 2, with 21 abstentions.

Explanations of vote

49. Mr. MORENO (Italy), speaking in explanation of vote, said that his delegation welcomed the adoption by consensus of draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2, which was particularly important since knowledge of international humanitarian law during peacetime was a prerequisite for its effective application in wartime.

50. With regard to operative paragraph 4, he reminded the Conference that the San Remo International Institute of Humanitarian Law had for some years played a valuable role in disseminating and teaching humanitarian law. It also organized round-table conferences, the next of which, to be held in August 1977, would be devoted to an examination of the results achieved at the Diplomatic Conference.

51. Mr. HERCZEGH (Hungary) and Mr. MALLIK (Poland) said that they would submit their explanations of votes to the Secretariat in writing.

52. Mr. de BREUCKER (Belgium) said that his delegation welcomed the fact that the resolution had been adopted, albeit with some hesitation. It agreed with the Italian representative's remarks regarding operative paragraph 4 and trusted that the work of the San Remo International Institute of Humanitarian Law would continue. The activities of other bodies such as the Institut Henry-Dunant, as well as the action taken directly by ICRC, should also be borne in mind.

53. Mr. MARTIN HERRERO (Spain) said that the sponsors of the resolution, and in particular his delegation, were also gratified by the result of the vote, since they had been convinced that their text was the best and deserved the support of the Conference. However, the discussion and voting on the amendments by Sri Lanka had served a useful purpose. He endorsed the remarks of the Italian and Belgian representatives, which should be borne in mind when implementing operative paragraph 4 of the draft resolution.

The meeting rose at 6.10 p.m.

ANNEX

to the summary record of the
fifty-fifth plenary meeting

EXPLANATIONS OF VOTE

HUNGARY

Original: FRENCH

Draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2 on the dissemination of knowledge of international humanitarian law applicable in armed conflicts

The delegation of Hungary, as one of the sponsors of the draft resolution on the dissemination of knowledge of international humanitarian law, is glad that the draft resolution was adopted by a large majority but is disappointed that it was impossible to reach a consensus. The Hungarian delegation helped to draft the resolution in a spirit of compromise and conciliation and deeply regrets that the delegation which had objections to the wording did not submit its amendments earlier, when there was still a chance of reaching complete agreement. Nevertheless, the Hungarian delegation remains convinced that the resolution as adopted will help to spread knowledge of international humanitarian law, and will hence contribute towards the development of peaceful relations among peoples.

POLAND

Original: RUSSIAN

Draft resolution CDDH/438 and Add.1 and 2 and Corr.1 and 2 on the dissemination of knowledge of international law applicable in armed conflicts

Our Conference has now completed a substantial task. New international legal instruments have been brought into being, designed to avoid the suffering which war brings to its victims. On behalf of the Polish delegation, as a sponsor of the draft resolution on the dissemination of knowledge of international humanitarian law, I should like to stress the tremendous importance which our delegation attaches to this resolution. The dissemination of knowledge of humanitarian law is a necessary condition for the application of the Geneva Conventions and the Protocols. Unless their contents and basic principles are generally known, the danger is that these instruments will remain nothing more than a high-sounding expression of humanitarian thought. The authors of the 1949 Geneva Conventions were well aware of this, and we fully realize it too.

No international treaty creates so developed a system for the dissemination of knowledge among the population as that on humanitarian law applicable in armed conflicts. No international treaty, laying down obligations for States, creates such direct obligations and responsibilities for the individual, who is called upon to act in situations requiring him to take the decision to assist or save the lives of other men who are enemies or civilians.

A great deal of work will have to be done in order to educate people in these obligations. What they need to do is not just to memorize the rules of conduct set out in the Geneva Conventions and Protocols, but above all, to recognize the rightness of the basic principles of humanitarianism on which these documents rest. This is why the draft resolution is quite properly addressed not only to States, but at the same time to national Red Cross, Red Crescent and Red Lion and Sun Societies and to the International Committee of the Red Cross, as an organization whose vigorous efforts to disseminate the Geneva Conventions are generally recognized.

Speaking on behalf of the Polish delegation, I should like to comment on the position of the Polish Red Cross. Our Red Cross Society, like the whole of the Red Cross world, is keenly interested in the dissemination of humanitarian law. Last March, in pursuance of resolution XII of the XXIIInd International Conference of the Red Cross in Teheran, and under the auspices of the highest organs of our State, the Polish Red Cross organized in conjunction with ICRC the first European Red Cross seminar on methods of disseminating humanitarian law, with the participation of the Red Cross and Red Crescent Societies of the European countries, the United States of America and Canada. The chief trend which emerged from a number of statements at the seminar was a recognition of the rightness of the principle that the heart of our activity should lie in the education of the general public in a spirit of mutual understanding and rapprochement between peoples, peaceful co-existence and the strengthening of peace. We also agreed that international humanitarian law reflects the irrefutable principles of humanitarianism, which aim to inculcate in people the spirit of helping others in all circumstances and without discrimination of any kind.

The 1949 Diplomatic Conference at which the Geneva Conventions of 1949 were adopted, expressed the hope that the need to apply those Conventions would never arise. That is our hope also. But we combine it with a realistic endeavour to safeguard and consolidate peace. We should consider peace to be the foremost goal even when we are speaking of humanitarianism in armed conflicts, for the essential thing is to avert the evils of war rather than to heal wounds that have already been inflicted.

SUMMARY RECORD OF THE FIFTY-SIXTH PLENARY MEETING

held on Wednesday, 8 June 1977, at 3.15 p.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

In the absence of the President, Mr. J. M. Espino-González (Panama), Vice-President, took the Chair.

ADOPTION OF DRAFT ADDITIONAL PROTOCOLS I AND II

1. The PRESIDENT proposed that the Conference should adopt the two Protocols additional to the Geneva Conventions of 12 August 1949. He hoped that they could be adopted by consensus.

Adoption of draft additional Protocol I

2. Mr. SULTAN (Egypt) made the following statement:

"Mr. President,

"Since the opening of the discussions on the application and implementation of the Istanbul resolution - resolution XIII adopted by the XXIst International Conference of the Red Cross, held at Istanbul in September 1969, Egypt has taken a constant and ever-increasing interest in the development of international humanitarian law and in the reaffirmation of its principles in the realm of armed conflicts. This interest has been demonstrated from the very outset; Egypt took the decision to participate in all conferences that might concern themselves with this task, which is both humanitarian and of vital importance. Already, at the conclusion of the first Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in 1971, I had the honour to submit a full draft Protocol on behalf of the delegations of Sweden, Switzerland and my own country. This draft provided one of the sources on which the experts of the International Committee of the Red Cross drew in preparing and drawing up their second draft, which became draft Protocol I additional to the 1949 Geneva Conventions.

"Yet, we were not alone in this venture, Mr. President. Our own contribution was supported and strengthened by the active and positive contributions of forty delegations of government experts, and then of the seventy-five delegations present at the second Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held in 1972. Draft Additional Protocol I was subsequently submitted to the present Diplomatic Conference by the Swiss Federal Government. At four successive sessions, its provisions have been considered, studied, discussed and negotiated within the main Committees by the representatives of the 155 States which had been invited and by the other participants in the Conference. All members of the international community were generous in their contributions, which were governed by their legal systems and the legitimate aspirations of their peoples. Our own contribution was inspired by our age-old civilization, by our system of Islamic law and by the traditions of Arab chivalry. Draft Protocol I, which is now before us, representing the fruit of prolonged and arduous efforts, marks a milestone in the process of developing humanitarian law. Like all collective undertakings, it does not give full satisfaction to many of the delegations that participated in its drafting.

"Time and time again, Mr. President, we have reviewed our handiwork. The result is neither meagre nor negligible. We now have before us an Additional Protocol which guarantees protection for victims of international armed conflicts and which, so far as possible, limits the baneful effects of war. It constitutes a step along the road of progress, towards the development of international humanitarian law and the reaffirmation of its principles. An affirmative vote by this assembly will incontestably represent a triumph for reason and a victory for peace and civilization.

"Mr. President, it is in the interests of international humanitarian law, in the interests of furthering and strengthening that law, that I address a wholehearted appeal to all the delegations here present to adopt, by consensus, Protocol I Additional to the Geneva Conventions for the protection of victims of international armed conflicts."

3. Mr. PAOLINI (France) made the following statement:

"Now that the fourth session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts is coming to an end, the French delegation wishes to note that Protocol I is not restricted to reaffirming and developing

humanitarian law in armed conflicts; it also reaffirms and develops to a considerable extent the laws and customs of war established earlier in a number of international declarations and conventions adopted more than fifty years ago, particularly The Hague Convention No. IV of 18 October 1907 concerning the Laws and Customs of War on Land. Humanitarian law and the law of war are thus inter-linked, although hitherto these two fields of international law have remained separate. This is particularly clear in Part III, concerning the methods and means of warfare, and Part IV, concerning the general protection of the civilian population against effects of hostilities.

"This consolidation of humanitarian law and the law of war will no doubt enable humanitarian law to make progress in some cases. But it does have its dangers. Once an international instrument of humanitarian law also deals with the conduct of warfare, it is necessary to make sure that it maintains strict respect for the sovereignty of States and their inalienable right to provide for their peoples' self-defence against any aggression by foreign Powers.

"The French delegation therefore wishes to make it quite clear that its Government could not under any circumstances permit the provisions of Protocol I to jeopardize the 'inherent right of ... self-defence', which France intends to exercise fully in accordance with Article 51 of the United Nations Charter, or to prohibit the use of any specific weapon which it considers necessary for its defence. Already in 1973, the French Government noted that the ICRC did not include any regulations on nuclear weapons in its drafts. In participating in the preparation of the additional Protocols, therefore, the French Government has taken into consideration only conflicts using conventional weapons. It accordingly wishes to stress that in its view the rules of the Protocols do not apply to the use of nuclear weapons. On numerous occasions the French Government has indicated its willingness to study the problems of nuclear weapons with the Powers directly concerned, in an attempt to achieve general disarmament with suitable controls.

"With regard to Protocol I itself, the French Government cannot accept that the provisions of paragraph 4 of Article 46 (Article 51 in the final numbering) and paragraph 2 of Article 50 (new Article 57), concerning indiscriminate attacks, could prohibit its own armed forces, in defending the national territory, from carrying out military operations against enemy forces attacking or occupying certain areas or places.

"Nor can it accept that the provisions of Article 47 (new Article 52), concerning the general protection of civilian objects, or those of sub-paragraph (b) of Article 51 (new Article 58), recommending the Parties to avoid locating military objectives within or near densely populated areas, could prohibit or irrevocably prejudice the defence by its own armies of certain parts of the national territory or of towns or villages attacked by enemy forces.

"The French Government considers that those provisions are a serious threat to its right of self-defence and are, furthermore, at variance with the fundamental tenets of humanitarian law in that they favour an invader to the disadvantage of a people defending itself against invasion.

"The French delegation considers it regrettable that, because of their ambiguous nature, Articles 46 (new Article 51), 47 (new Article 52), 50 (new Article 57) and 51 (new Article 58) are of a nature to have serious implications for France's defence policy, and it therefore wishes to express the most categorical reservations with regard to them.

"In the circumstances, the French delegation would abstain if there were a vote on Protocol I as a whole. If there is a consensus on Protocol I as a whole, the French delegation will not oppose the procedure but will maintain all the reservations which it has just expressed and will consequently not consider itself bound by the consensus."

4. The PRESIDENT noted that there were no objections to the adoption of Protocol I by consensus.

Draft additional Protocol I was adopted by consensus.

Adoption of draft additional Protocol II

5. The PRESIDENT invited the Conference to come to a decision on draft Protocol II as a whole.

6. Mr. MILLER (Canada), after recalling that the two draft Protocols had, for the past six or seven years, been the subject of unremitting efforts at the international level, said that the purpose of draft Protocol II was to add significantly and in a practical manner to the fundamental provisions of Article 3 common to all four Geneva Conventions of 1949, first by clarifying what was meant by "non-international armed conflicts", secondly by covering all instances involving the use of armed

force, and thirdly by establishing new, simple and clear basic provisions of the kind that any and every responsible Government would willingly wish to apply in the exercise of its sovereignty. The scope of application of draft Protocol II was largely restricted within the bounds of a single State and was primarily designed to persuade Governments and insurgents alike of the humanitarian benefits to be derived from acting with reasonable restraint in their treatment of civilians and captured combatants. As the draft Protocol was realistic and "victim-oriented", it was well within the capacity of all adversaries in an internal conflict to comply with its terms and for it to be considered, by both sides to a dispute, as advantageous to both of them reciprocally and to the civilian population at large.

7. His Government was confident that with good will and mutual understanding it would prove possible to reaffirm and develop international humanitarian law in such a way as to transcend frontiers and ideologies, thus becoming more broadly accepted and applied, while at the same time remaining true to the humanitarian objectives of protecting the weak and mitigating as far as possible the inhumane effects imposed by armed conflicts on innocent victims. He hoped that the Conference would prove the integrity of its intentions by the adoption of draft Protocol II by consensus.

8. Mr. ABDUL-MALIK (Nigeria) congratulated the International Committee of the Red Cross on its formulation of draft Protocol II and recalled, as his delegation had already observed, that quite a large number of the provisions of that Protocol had had their genesis in the unfortunate civil war which had broken out in his country, and that Nigeria therefore could not be entirely opposed to the good intentions animating the draft Protocol. From the beginning, however, his delegation had continued to warn the Conference of the danger which the text of that Protocol implied for the maintenance of stability in developing countries such as his.

9. He wished, at the present juncture, to pay a tribute to the representative of Pakistan, who had shown wisdom at a critical moment, when it seemed impossible for all the delegations to agree on a definitive text, by proposing a simplified and much more satisfactory version of draft Protocol II.

10. Nevertheless, his delegation could not but entertain considerable fears as to the general acceptability of that text. Situations mentioned therein would, in all probability, occur in young States such as Nigeria and in States likely to emerge as a result of armed struggle against the repressive régimes referred to in Article 1 of draft Protocol I. Unfortunately,

experience had shown that in the course of such armed conflicts, vultures were invariably lurking ready to pounce and sow confusion. How many wars had been unnecessarily prolonged in that way, and how many conflicts which might have been settled at bush-fire level had been deliberately extended by arms dealers and manipulators who as often as not were the tools of those very States who, while preaching humanitarianism, were in their heart of hearts set only on preventing the peoples they were oppressing from achieving political and economic independence! It was therefore to be feared that in due course, certain unscrupulous elements would not hesitate again to exploit the humanitarian principles enshrined in the present Protocol - praiseworthy as they were - in order to attain their ends.

11. For these reasons his delegation was averse to giving draft Protocol II its unqualified support. That did not mean, however, that he did not hope that before long all States would be able to accept it enthusiastically, as there was no doubting the genuineness and nobility of the humanitarian principles contained therein.

12. Having listened to the representative of Canada, his delegation would not press for a vote. Had there been a vote, it would regretfully have had to abstain, owing to the inclusion of some articles which might well turn into Trojan horses justifying interference in the internal affairs of States and undermining stability in developing countries.

13. Mr. NEMATALLAH (Saudi Arabia) wished only to express his delegation's satisfaction with the fact that, after fourteen centuries of Islam as a presence, the current Conference had set its seal on the principles of humanitarian law which Islam had always championed, and thus that towards the end of the twentieth century, mankind was realizing the vital importance of those principles. He reminded the Conference that apart from cases of legitimate defence, war was forbidden in Islamic lands.

14. Mr. BRECKENRIDGE (Sri Lanka) endorsed the plea of the Canadian representative that the Conference should adopt draft Protocol II by consensus. It was worth noting, however, that five delegations had voted against the adoption of Article 1, and that twenty-nine had abstained: that was a fact that no consensus on the Protocol as a whole could obscure. A big question mark remained, and it was very doubtful if, but for the heroic efforts of the representative of Pakistan, any Protocol II could have seen the light of day. As at present constituted, the text was a thing of shreds and patches, and it was clear that it could not be expected to attract unqualified general consent. A vote would have demonstrated that fact clearly, and it was for that reason that his delegation was not asking for one.

15. Mr. GHAREKHAN (India) declared himself most happy that Protocol I had been adopted by consensus. In regard to draft Protocol II, his delegation had maintained its position unchanged since the very beginning of the Conference. With a view to avoiding unnecessary divisions in the Conference, it had suggested at the first session that a Declaration be adopted listing the principles to which all the delegations could subscribe without any reservations. It deeply regretted that the suggestion had not been taken up, while various Committees had gone relentlessly ahead to draft an elaborate Protocol II, based on numerous compromise agreements. While one might not be averse to compromise as such, one should not lose sight of the fact that a Diplomatic Conference was a meeting of plenipotentiaries, all of them bound by the instructions of their Governments - instructions which inevitably diverged.

16. The simplified version proposed by the representative of Pakistan (CDDH/427 and Corr.1) would have been perfectly acceptable to his delegation, but it had unfortunately been modified by the addition of various articles which, although they might appear to be innocuous when taken singly, in totality gave rise to serious reservations on the part of his delegation.

17. It had thus been his delegation's intention to ask for a vote which would have afforded it an opportunity to have its position explicitly recorded. Several delegations had, however, approached his own with the request not to pursue the matter. It had accordingly, in a spirit of co-operation, decided to drop its intended action, and to join in the so-called consensus. However, it reserved its right to explain its position on the substance of Protocol II later.

18. Mgr. LUONI (Holy See) said that if, as his delegation keenly desired, there was a consensus for the adoption of the whole of draft Protocol II, it would follow suit in order not to disturb the atmosphere of unity which prevailed in the discussions. But it had to place on record that it took a serious view of the Protocol's reticence on the protection of the civilian population; and it would be submitting its reservations in writing to the Secretariat.

19. Mrs. SUDIRDJO (Indonesia) said that her delegation would abstain in a vote, but would not oppose a consensus.

20. It was the view of her delegation that the final text of draft Protocol II as it was emerging did indeed constitute an improvement over the original draft. It was simple and concise, and it contained the basic humanitarian principles to which almost all States could accede.

21. However, her delegation considered, as it had already stated in the discussions on Article 1 of draft Protocol II, that the conditions stipulated in that article, the key to that Protocol, were not adequate for safeguarding the principles of sovereignty and integrity of States. Moreover, her delegation felt that the Protocol dealt with matters coming within the domain of the internal affairs of a sovereign State.

22. For those reasons, although her delegation had no difficulty in adhering to the humanitarian principles of draft Protocol II, it was not in a position to support the Protocol as a whole. Nevertheless, her delegation would not oppose acceptance of the Protocol by consensus, it being understood that Indonesian adherence to the consensus must not be regarded as an expression of her Government's attitude on Protocol II as a whole.

23. Mr. AL-FALLOUJI (Iraq) thanked those representatives who would be rallying in favour of adopting draft Protocol II. Thanks to the wisdom and great skill of Mr. Hussain, the representative of Pakistan, the Conference had before it a simplified draft Protocol II; the representative of Iraq hoped that it would be adopted by consensus, for it must not be forgotten that the humanitarian rules it set out should be applied without delay. A policy of all or nothing was ever to be condemned.

24. Mr. de ICAZA (Mexico) said that his country had a peaceful and humanitarian tradition that went deep. It had given unconditional support to the principles of non-recourse to force and the peaceful solution of conflicts. Unfortunately, since 1945, armed conflicts had multiplied. For that reason, his country had decided to play an active part in the present Conference, which marked a milestone in the defence and protection of humanitarian law, desirous as it was of contributing to the adoption of standards of conduct which would reduce the horrors of war and, in particular, the sufferings inflicted on defenceless victims, namely, the civilian population.

25. In the course of four sessions the Conference had striven to reaffirm, develop and codify the principles of international humanitarian law pertaining to the protection, without discrimination, of human beings against the effects of war, as well as those principles of international law applicable in armed conflicts which limited the methods and means of combat and distinguished between military and civilian persons and objects. Protocol I, just adopted, constituted progress: for example, it reaffirmed that the struggle of peoples against colonial domination and foreign occupation, in the exercise of their right of self-determination, was enshrined in the evolution of international law. Nevertheless, Protocol I was far from

meeting the just demands of public opinion. Thus, the principle enshrined in the St. Petersburg Declaration of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime, and in The Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, prohibiting the use of weapons which caused unnecessary suffering, had not been strengthened, despite successive appeals by the General Assembly of the United Nations to the Conference to impart effectiveness to that principle by adopting new provisions prohibiting or limiting the use of certain conventional weapons.

26. Methods of combat and weapons that had indiscriminate effects, prohibited in customary law, were thenceforth forbidden in conventional law through adoption of the Protocol. His delegation could not but deplore that all its efforts to secure a ban on certain weapons and the creation of an international control body had been in vain. That setback could only be attributed to the systematic opposition of the military Powers to the wish of most delegations to the Conference, in particular, those of developing countries on whose territories the destructive genius of man had reigned since 1945.

27. His country hoped that the agreement would assume concrete form in the near future. He did not feel that one could speak of progress in humanitarian law without precise standards limiting the choice of means of combat. His country had joined the consensus for the adoption of Protocol I, it being understood that it abided by certain reservations.

28. As for draft Protocol II, his country had doubts as to its scope and conditions of application. He considered that, in internal armed conflicts, national law held the reins. In his country's case, the national law offered better guarantees and more effective protection to the victims of an eventual but improbable conflict than did the standards set out in draft Protocol II. For that reason, his delegation regarded that Protocol as a superfluous instrument and would abstain in a vote.

29. Mr. ABDINE (Syrian Arab Republic) said that draft Protocol II did not satisfy his delegation because it was restrictive and discriminatory in its statement of the humanitarian principles to be applied in non-international conflicts, and also in regard to the material field of application.

30. First, the territorial and operational clause of Article 1 was worthless. His delegation considered that the protection offered by Protocol II should be extended to all organized armed groups except bandits under the ordinary law, without any

requirement relating to control over a territory or the nature of the military operations being conducted. The extent of the conflict and of military deployment, or of control over a territory, could not constitute valid and acceptable criteria for denying humanitarian protection to anyone. All in all, Article 1 of draft Protocol II was a retreat from the provisions of common Article 2 of the Geneva Conventions of 1949, which contained no similar restriction.

31. Second, his delegation disapproved of the way in which the plenary Conference had mutilated the draft Protocol adopted by the committees and eliminated such fundamental humanitarian provisions as the prohibition of perfidy, the limitation of the choice of methods and means of combat, the prohibition of the threat to give no quarter, the sparing of adversaries hors de combat and other provisions. None of the arguments advanced were in any way convincing. The attitude of the plenary meeting raised the question whether a man engaged in a non-international armed conflict was so different from one engaged in an international armed conflict as to merit diminished protection.

32. Once again, it was regrettable that political expediency should have prevailed over humanitarian considerations. If there was a vote, therefore, his delegation would abstain.

33. Mr. AGBEKO (Ghana), referring to draft Protocol II, said it was wrong to minimise the importance of internal conflicts, which some regarded as of no international significance. Protocol II, he thought, had been misinterpreted and might aggravate such conflicts. At the same time, however, those considerations, and humanitarian law, must be taken into account. It would be better to have a simple, limited document, provided it took account of draft Protocol II as initially submitted. The representative of Pakistan had found the solution by submitting his compromise text (CDDH/427 and Corr.1) to the Conference for adoption.

34. Earlier, however, several delegations had been consulted with a view to reaching agreement on the initial text. His own delegation had been consulted and had made no secret of its intention to vote against draft Protocol II, whether it was put to the vote paragraph by paragraph, article by article or as a whole.

35. It was only after those consultations that the Pakistan representative had submitted his compromise text.

36. That text, however, had not been adopted in the form in which it had been proposed by Pakistan; some articles had been added which were not altogether satisfactory to Ghana. Despite that, his delegation would not insist that draft Protocol II should be put to the vote. It would join the consensus in the hope that the simplified draft Protocol II would be interpreted in all good faith and meet the humanitarian objectives it proclaimed.

37. Mr. EL HASSEEN EL HASSAN (Sudan) recalled that when the Conference had begun to consider Article 1 of draft Protocol II, he had announced his intention to make a statement on the Protocol as a whole. The Protocol did not involve any international agreements but simply a concession on the part of States which agreed to apply it to their own nationals.

38. To that end, States should be quite free to apply their own laws in their own countries. In emergency situations such as house arrest, States should preserve their sovereignty and independence, just as in all cases of internal or external rebellion. If that was the case, his delegation could join the consensus. If draft Protocol II was put to the vote, however, his delegation would abstain.

39. Mr. AL-BADRY (Libyan Arab Jamahiriya) said that his delegation favoured every move to accept draft Protocol II by consensus.

40. It also fully shared the point of view expressed by the representative of Iraq.

41. Mr. CHARRY SAMPER (Colombia) said that to facilitate a solution, his delegation would not oppose the adoption of draft Protocol II by consensus, provided it were understood that his delegation wished to formulate, with regard to Article 1 of the Protocol, written reservations which would serve as a basis for its interpretation.

42. So far as humanitarian law was concerned, his country had the noble tradition of being a peaceful nation par excellence. Over the centuries since its independence, it had never attacked anyone; quite the reverse, both in inter-American and in world affairs, it had contributed to the creation of a system for the peaceful settlement of disputes and to the elimination of war.

43. Internally, Colombia could be proud of its free and democratic institutions. It had legal institutions which protected its citizens in accordance with the conception of a State in which the law reigned supreme. It also had an old Christian tradition which, on account of its roots both in law and in Christian doctrine, Colombians regarded as inseparable from a body of humanitarian law.

44. He considered that the greatest service to be rendered to the development and consolidation of humanitarian law was not confined to the adoption of rules like those submitted, but consisted also in the limitation of the arms race which was darkening the world's future, and in respect for self-determination and non-interference in the internal affairs of countries, even on ideological grounds.

45. Mr. MOKHTAR (United Arab Emirates) said he was encouraged by the success of the Conference, which had been going on for four years. The adoption of Protocol I by consensus represented a considerable advance, which would serve to give mankind better protection against war.

46. As to draft Protocol II, there was no denying that the result had been achieved thanks to the efforts of the Pakistani representative, to whom his delegation wished to address its sincere thanks.

47. As the Saudi Arabian representative had said, Islam was not a warlike religion, although some situations might require it to wage war.

48. Draft Protocol II was clear, and his delegation hoped that it would be adopted by consensus, perhaps with a few reservations. That would augur well for future generations.

49. Mr. GHAREKHAN (India) said that, if draft Protocol II was put to the vote, his delegation would abstain. Right from the first session of the Conference, the Indian delegation had repeatedly expressed its concern about the usefulness and the basic objectives of draft Protocol II. In the present age of political and social awakening all human beings had the right to be treated humanely. That applied to all armed conflicts, whether international or internal. In international armed conflicts it was logical and lawful that each State should bind itself to respect certain principles through a treaty or convention vis-à-vis another State or other States. That was what had been done through the Geneva Conventions of 1949 and additional Protocol I which had just been adopted.

50. The situation was entirely different in internal armed conflict. The situations were basically law and order problems which were within the exclusive domestic jurisdiction of each State. Each State had or should have its own internal laws for dealing humanely with those brought before its courts, including those accused of political offences such as secession or rebellion. Almost every country had penal laws and constitutions which guaranteed certain fundamental rights to

its citizens at all times. Among those rights were those of equality before the law and a fair trial. It was illogical and illegal to ask a State to treat its citizens differently according to whether they were accused of criminal or political offences:

51. Criminals, like other persons, were independent and smart. There had been instances in different parts of the world in which criminals had tried to justify their violent and cruel acts, such as the murder of innocent civilians, on political grounds. Should those people be treated differently from other criminals although they had committed the same crimes? The same was true of misguided and disgruntled politicians who were willing to sacrifice the unity of their countries in order to satisfy their selfish ego. With their appeal to narrow loyalties, they tried to play on the sentiments of innocent people, thus leading to acts of violence. Did such persons deserve any better treatment than ordinary criminals? That was not to say that they should not be treated humanely. It would be dangerous for the Conference to encourage the dissident and secessionist elements and thus weaken national sovereignty and unity.

52. The international community consisted of sovereign States. Since the end of the Second World War many States had obtained independence. Even before India had become an independent State, its leaders had determined to make a great contribution to the movements which had enabled many States to achieve independence. All such countries, including India, were developing countries. They had yet to consolidate their political independence and national unity as other countries had been able to do, for political reasons. Support had to be given to the cause of national independence and sovereignty. It might at the present stage be appropriate to recall the background of Article 3 common to the Geneva Conventions of 1949, since it was the basis for draft Protocol II.

53. Long before the Geneva Conventions of 1949 had been adopted, many national liberation movements had begun the struggle for national independence and sovereignty. The colonialist and imperialist Powers denied any status to the victims of those conflicts, on the fabricated pretext that those territories were an integral part of the metropolitan States. All sorts of devices had been used, including the amendment of laws and constitutions, to strengthen their arguments. Common Article 3 had been designed to take care of such situations. Since then, however, the legal situation had changed. The recognition and status of liberation movements was no longer in doubt. It was the subject of innumerable United Nations resolutions, into whose details he would not go. The Conference had recognized

those liberation movements and had invited their representatives to participate fully in its deliberations. Many national liberation movements were participating in the Conference on a basis of complete equality as the sovereign representatives of their people. Wars of liberation were now treated as international conflicts and the Indian delegation was glad that the Conference had accepted the status of liberation movements in Article 1, paragraph 4 of Protocol I. The Indian delegation therefore believed that common Article 3 reflected the historical situation as it had then existed and was no longer applicable to present circumstances. Consequently, draft Protocol II, which was supposed to be based on common Article 3, was pointless.

54. He did not think it necessary to emphasize that India was committed to the humane treatment of all persons through national laws. India was second to none in enacting and implementing legislation ensuring humane treatment of all its citizens. India did not need any Protocol II to remind it of its obligations to its citizens. The situation might be different in some countries, but India was against the internationalization of any purely internal situation through an international instrument. He associated himself, however, with the delegations which had thanked the representative of Pakistan for his initiative and his sincere efforts to produce a less controversial document. It was for those reasons that the Indian delegation had decided not to oppose draft Protocol II. Unfortunately, the initial simplified version had been distorted by the conclusion of additional articles in the name of humanitarianism. The Indian delegation, however, recognized the efforts made by a number of representatives at the Conference and had decided not to oppose adoption of the Protocol but to abstain if it was put to the vote.

55. Mr. ALKAFF (Democratic Yemen) expressed satisfaction at the positive results achieved by the Conference. Protocol I had been adopted by consensus and would promote the reaffirmation and development of humanitarian law applicable in armed conflicts.

56. The consensus on draft Protocol II would not have been possible without the efforts made by the Pakistan representative, to whom his delegation wished to address its sincere thanks.

57. While his delegation realized the need for respecting those principles, it wished to say that, for humanitarian reasons which it would explain in detail in a written statement to be submitted to the Secretariat, it would abstain if draft Protocol II was put to the vote.

58. Mr. AL-KAWARI (Qatar) said that his delegation welcomed the adoption by consensus of Protocol I, which marked a step forward in the development of humanitarian law.

59. Draft Protocol II, which largely dealt with national liberation movements and peoples struggling for their self-determination and for the territorial integrity of their countries, showed the special importance the world attached to that problem. The peoples of those countries had the right to free themselves from the colonial yoke. That was why his delegation wished to associate itself with speakers from other delegations who had thanked the Pakistan representative for the pains he had taken to submit a simplified version of draft Protocol II to the Conference. The Pakistan representative, whose attitude was inspired by the laws of Islam, which urged nations to respect humanitarian principles, had shown great skill in taking the integrity, rights and laws of countries into account.

60. The delegation of Qatar hoped that draft Protocol II would be adopted by consensus. If it was put to the vote, his delegation would vote in favour of its adoption.

61. Mr. BRILLANTES (Philippines) said that in the vote on draft Protocol II, Article 1, his delegation had abstained because the Conference had not accepted its proposal to vote separately on the two paragraphs of the article. His delegation would submit a statement in writing on the two Protocols. It had not made any objection to the consensus on Protocol I, but there were some parts of that Protocol which it could not support. The same was true of draft Protocol II, and if that Protocol was put to the vote his delegation would abstain.

62. The PRESIDENT noted that there was no objection to the adoption of draft Protocol II by consensus.

Draft additional Protocol II was adopted by consensus.

Statements on Protocols I and II

63. Mr. OFSTAD (Norway) said that his delegation had joined the consensus on both Protocol I and Protocol II. It had done so unhesitatingly in the case of Protocol I, in the belief that it represented a considerable advance in humanitarian law; but if there had been a vote on Protocol II, his delegation might well have abstained. At the outset of the Conference, the Norwegian delegation had hoped that it would be possible to provide the same protection to all victims of warfare, irrespective of the legal or political classifications of the conflict, and it would therefore have preferred one single

Protocol. Nevertheless, it had participated actively and loyally throughout the Committee work in drawing up two separate texts. The original draft of Protocol II, with the exception of Article 1, would have been acceptable to his delegation. The new draft submitted to the Conference, which had just been adopted, was a seriously amputated version of the original. Where humanitarian guarantees for the individual were concerned, it did not go beyond the provisions of the International Covenant on Civil and Political Rights (United Nations General Assembly resolution 2200 (XXI)). Indeed, much of the essence of Protocol II as adopted was already contained in the provisions of that Covenant, from which no derogation could be made even in emergency, including internal armed conflict. Furthermore, as no threshold had been set for the application of the Covenant, some might even claim that, since Protocol II would not apply until the armed conflict had reached the level described in Article 1, it would perhaps have been better, instead of adopting the Protocol, to pass a resolution urging all States to ratify the International Covenant on Civil and Political Rights. It was possible, however, that a great number of States which would not have ratified the Covenant, might ratify Protocol II. In that case, the adoption of Protocol II would not have been without value, since it would mean a wider part of the international community had subjected itself to internationally regulated respect for the human being.

64. The intrinsic value of Protocol II was to be found in the provisions for protection of the civilian population and civilian objects. The rejection of Articles 20, 21, 22 bis, 23, 24, 25 and the most important parts of Articles 26 and 33 were serious blows to the humanitarian cause. The adoption of some parts of Article 26, however, and above all the miraculous resurrection of Article 27, and the maintenance in the amputated Protocol II of parts of Articles 22 and 29, at least represented some very modest progress.

65. His delegation would, nevertheless, have preferred something more comprehensive and ambitious, even on the understanding that some States might not be ready to accept immediately all the obligations arising therefrom. Since sovereignty existed for the benefit of the whole people, he was confident that awareness would grow among States that obligations to respect basic humanitarian law, even in internal armed conflicts, would strengthen such sovereignty, rather than weaken it.

66. In conclusion, he stressed that the minority group of delegations which had sought to maintain Protocol II as it emerged from the Committees consisted of delegations from all geographical groups. Therein lay some hope for the future.

67. Mr. GOZZE-GUČETIĆ (Yugoslavia) said that his delegation had come to Geneva in 1974 with the specific aim of adapting humanitarian law as closely as possible to the new requirements of the present day.

68. Humanitarian law could not develop apart from existing international law in general, which was shaped by the United Nations Charter and the procedures adopted by the international society of the present day in order to ensure that the interests of all States were met and safeguarded. Throughout its work the Conference had been guided by that urgent and objective requirement.

69. In particular The Hague Regulations, annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, which it had not been possible to alter in 1949, but which were hardly applicable to the armed conflicts of the present day, had been reaffirmed and appreciably amended with regard to the conduct of hostilities, as could be seen in Articles 33 to 54, and although the principle of the equality of the belligerents had not been called in question, Protocol I as a whole would make the task of any possible aggressor much more difficult than before. Indirectly the small and medium-sized Powers had been favoured as against the great Powers, and the victim of aggression as against the aggressor. Article 1, which expanded the definition of an international armed conflict, and at the same time widened the scope of application of humanitarian law, was relevant, in that connexion, as were Articles 42 and 42 quater.

70. His delegation believed, contrary to what some representatives had said, that it would be dangerous to make certain methods and means of combat permissible in "exceptional" circumstances. In Protocol I, as also in other texts codifying the laws of armed conflict, and in accordance with the principle confirmed by the Nürnberg Tribunal, there had been due regard for military necessity, but the new rules were also based on humanitarian requirements.

71. Although his delegation supported Protocol I as a whole, it did not regard the Protocol as fully satisfactory in some respects. The mere affirmation, in Article 33 of the already established basic principle that certain methods or means of combat were prohibited was not sufficient. Humanitarian law and its application were closely linked with the methods and means of combat, and that link had been acknowledged from the time when codification of the laws of armed conflict had first begun. If the use of weapons that might cause superfluous injury or have indiscriminate effects was not renounced, or restricted in practice, the rules that the Conference had so carefully drafted would in fact be impossible to apply.

72. His delegation deeply regretted the fact that the oral amendment to Article 79 bis, made at the forty-fifth meeting (CDDH/SR.45) concerning enquiries into grave breaches in an occupied territory, had been rejected. The existence of a rule providing that the Occupying Power could not oppose an enquiry if the Government of the occupied territory demanded one would result in much greater respect by the Occupying Power for all the provisions concerning occupation. In general, international monitoring of the implementation of international obligations had always yielded satisfactory and encouraging results. Consequently Yugoslavia had never invoked the principle of sovereignty when the situation involved fulfilment of its international obligations.

73. The Yugoslav Constitution forbade Yugoslav citizens to accept foreign occupation, imposing on them an obligation to fight the aggressor and the Occupying Power; that prevented the establishment of any kind of "authority" in the national territory, although of course a temporary de facto occupation was always possible. The only rule existing in international relations was respect for the rights and obligations of the Occupying Power in the conduct of its military operations. The amendment in question would have provided for the possibility of compulsory investigation by an enquiry commission in the occupied territory and would thus have ensured respect for the rights of the population of that territory and the obligations of the Occupying Power towards the population. Its rejection was a serious blow to the rights of the civilian population in occupied territories.

74. As to Protocol II, the Conference had worked for four years to draft a text which would give humanitarian protection to the victims of non-international armed conflicts as defined in Article 1 of the Protocol. Those were conflicts with all the outward signs of war, in other words situations where rebel forces, having by political or military means won control over a part of the territory, had a military and political organization which entitled them to the status of a party to the conflict. The Main Committees of the Conference had generally adopted by consensus the various elements of that system of humanitarian protection. Then, at the end of its work, the Conference had been faced with a proposal based on a different principle, being designed to give humanitarian protection to persons involved directly or indirectly in a conflict without going into matters relating to the conduct of hostilities or to the conflict as such. It was that improvised text that the Conference had adopted, in a completely improvised fashion. That was a most unusual method of working.

75. The principles that the Committees had taken as their starting point in drafting the original text of Protocol II had formed a logical and consistent whole. His delegation had not had time to study the simplified draft in enough detail to judge it from that point of view. Nevertheless, the fact remained that as a whole the text adopted was no longer in line with Article 1.

76. When the various decisions on Protocol II had been taken, his delegation had joined in the consensus when there had been one and had abstained when a vote had been taken. It had done so solely for reasons of principle, and not because of the "gentleman's agreement" frequently referred to in the debate, which his delegation had known nothing about. In any case, he wished to point out that an international convention could not be concluded on the basis of a gentleman's agreement. His delegation had acted in accordance with the provision in the rules of procedure stating that representatives who abstained from voting should be considered as not voting, and had abstained because a majority had emerged in support of the simplified draft and because that majority had consisted in the main of the non-aligned countries, with which Yugoslavia maintained bonds of friendship and a common policy. Furthermore, at the beginning of the first session of the Conference Yugoslavia had been in favour of having a Protocol II more or less the same as the revised draft, but had gone along with the other procedure adopted at that time.

77. Protocol II as it stood provided a sufficient legal basis to ensure that protected persons received humanitarian treatment in the event of internal conflict. In point of fact, Article 3 common to the Geneva Conventions of 1949, had been enough by itself; what had been lacking was not legal rules, but the political will to apply them.

78. The adoption of Protocols I and II and their ratification would be only a first step on the path of the reaffirmation and development of humanitarian law. There was still a long way to go before the Protocols were fully accepted, embedded in the conscience of mankind, and regarded as a categorical imperative for individuals and nations in armed conflict of whatever kind.

79. Mr. BIALY (Poland) said that Protocol I was a consistent and well-balanced set of rules which would certainly contribute to the codification and progressive development of the law of armed conflicts.

80. It would, of course, be best if all wars could be eliminated and the international community could enjoy the fruits of peace. His delegation welcomed the reminder in the Preamble to Protocol I that the use of force was prohibited and acts of aggression condemned. Unfortunately, the experience of recent decades had shown that armed conflicts did occur. Great importance therefore attached to the establishment of the second line of defence known as the law of war, a better term for which would be the "law of armed conflict".

81. Protocol I provided a satisfactory solution to many problems. More specifically, it applied not only to "classical" international conflicts, meaning wars between States on an equal footing, but also to wars of national liberation. That was reflected both in Article 1, more particularly in paragraph 4, and in Article 42, in which the notion of "combatant" had been unequivocally extended to all who fought against an aggressor or oppressor.

82. In addition, the protection of the civilian population, civilians and civilian objects had been strengthened considerably. That was all the more important because civilians in modern wars were exposed to ever greater dangers. The authors of some of the earlier codifications of the law of war, such as The Hague Conventions of 1899 and 1907, had considered it superfluous to provide in detail for the protection of civilians. They had been proved wrong by the two world wars of the twentieth century, particularly the Second World War. Poland knew that better than any other country, having lost six million of its people, most of them innocent civilians, between 1939 and 1945.

83. Provisions likely to prove equally important were those concerning the more effective protection of wounded, sick and shipwrecked combatants and of medical personnel, units and transport. Protocol I also had the merit of giving adequate protection to units and persons responsible for civil defence.

84. His delegation was particularly pleased that the barbarous practice of reprisals, which struck mainly at the innocent and defenceless and led to an endless series of counter-reprisals, thus making war ever more cruel, was clearly prohibited under the terms of several articles. The more reprisals were condemned the more should those who were individually responsible for having violated the rules of warfare be prosecuted and adequately punished. The provisions in Protocol I dealing with the repression of "grave breaches" were therefore of paramount importance. He sincerely hoped that they would lead not only to the repression of those breaches, which had rightly been called "war crimes", but also to their prevention.

85. His delegation was thus particularly satisfied at the adoption of paragraph 2 of Article 79 of Protocol I, which dealt with requests for extradition from States in whose territory the offences concerned had been committed.

86. His delegation nevertheless regretted the Conference's failure in some cases to follow existing international law and United Nations resolutions. For instance, Protocol I did not provide anywhere for punishment of those who had either blindly obeyed superior orders or who had assisted or instigated the commission of war crimes.

87. Protocol I provided a valuable set of rules in spite of its few shortcomings. It should do much to make armed conflicts, should they occur again, less cruel and more humane.

88. His delegation also welcomed the adoption of Protocol II as a whole. While the text finally adopted was a highly simplified version of the original draft prepared and submitted by the main Committees, it was clearly a valuable contribution to the progressive development of international law. It was important that the victims of armed conflicts not of an international character, which were often more cruel than international ones, should also enjoy proper protection, motivated by purely humanitarian considerations, under international law.

89. His delegation was particularly pleased that the two Protocols had been adopted by consensus.

90. Mr. SAARIO (Finland) said that during the general debate at the first session of the Conference in 1974, several delegations, including his own, had referred to the fact that armed conflicts continued to break out, regardless of the prohibition of the threat or use of force in modern international law, and that those conflicts caused immense human suffering, death and destruction. While everything should be done to ensure that the prohibition of the threat of use of force was strictly respected, it was not possible to ignore the need to reaffirm and develop international humanitarian law applicable in international armed conflicts. The international community had been particularly mindful of the need to increase the protection of the civilian population against indiscriminate and inhumane forms of modern warfare, to protect the individual, whether civilian or combatant, against inhumane and cruel treatment, and to improve the machinery for implementing legal provisions, which had, unfortunately, been so often violated in the past. At the same time, the need had been strongly felt for applying international humanitarian law to wars of national liberation, involving the struggle of peoples for the right of self-determination and independence.

91. His delegation considered Protocol I to be a remarkable step forward in the development of international law in general and international humanitarian law applicable in armed conflicts in particular.

92. It was especially encouraging to see the numerous provisions protecting the civilian population and individual civilians. His delegation attached the utmost importance to Articles 46 to 50 of Protocol I, containing principles which should be respected by all and in all circumstances, despite the fact they were not completely free from ambiguity and on certain points made rather far-reaching concessions to military necessity. His delegation had given those articles its full support both at the Committee level and in the plenary Conference itself. It had also participated actively in the preparation of Articles 60 to 62 on relief to the civilian population, which it considered completely satisfactory. A new element in international humanitarian law was provided by Articles 54 to 59 bis on civil defence, and his delegation welcomed the fact that those articles had been adopted in spite of the considerable difficulties involved.

93. With regard to Articles 33 to 39 relating to methods and means of warfare, the Finnish delegation was particularly satisfied with Article 33, which reaffirmed traditional principles of a fundamental nature and contained a new and equally fundamental principle concerning the protection of the environment. Reference should also be made to Articles 38, 38 bis and 39, on the protection of persons hors de combat, which reaffirmed and strengthened existing customary and treaty law on the subject.

94. Since the Second World War, there had been an increasing link between the law of armed conflicts and human rights law, a trend which was reflected in Articles 63 to 69, and especially in Article 65, on fundamental guarantees. Finland welcomed the adoption of those articles, which granted persons in the power of a Party to the conflict basic safeguards that were a function of humanitarian necessities rather than of legal niceties. Similarly, Articles 8 to 32 dealing with the protection of the wounded and sick should also be seen as clear improvements of existing law. There again it had been possible to avoid unnecessary restrictions and to extend protection to all wounded and sick, whether combatants or civilians.

95. In view of the violations of the 1949 Geneva Convention which had taken place in contemporary armed conflicts, it was only natural that the question of ensuring compliance with the law had attracted considerable attention at the present Conference. The Finnish delegation was not fully satisfied with Article 5 on

the system of Protecting Powers and their substitutes, Article 74 on grave breaches, and Article 79 bis on an International Fact-Finding Commission, as it would have preferred those provisions to be somewhat more far-reaching and precise. It was, however, able to support those articles as they undoubtedly contained many useful elements. In that connexion, it had warmly welcomed the adoption of new provisions - especially Article 70 bis - which aimed at improving the possibilities of the International Committee of the Red Cross, the League of Red Cross Societies and national Red Cross societies, to carry out their humanitarian activities for the benefit of war victims.

96. Perhaps the most modern feature of Protocol I was the decision to include wars of national liberation within the scope of the Protocol. Although the Finnish delegation would have preferred a consensus on that question, it had nevertheless supported the new paragraph 4 of Article 1 when it had been adopted in Committee I at the first session of the Conference. It noted with satisfaction that the opposition to that provision had decreased since 1974 and that it had almost been adopted by consensus at the plenary meeting. The new paragraph 3 of Article 84, on unilateral declarations issued by liberation movements, was but the logical consequence of the decision taken on Article 1. The Finnish delegation had been one of the sponsors of that provision. For the deliberations on Articles 1 and 84, in particular, the presence of the national liberation movements at the Conference had been of great value.

97. In that context it was impossible to avoid mentioning Article 42, on combatants and prisoners of war, as well as the related Articles 40, 41, 42 bis and 42 quater. They dealt with one of the most difficult issues on the agenda of the Conference. The Finnish delegation was on the whole satisfied with Article 42, which applied not only to wars of national liberation but also to inter-State wars involving resistance activities in occupied territory. The fact that Article 42 and its related articles had been adopted by consensus was indicative of the spirit of compromise and common understanding which had characterized the Conference at all times. The Finnish delegation had given that set of articles its full support both at the committee level and in plenary.

98. The suffering and destruction inflicted during recent armed conflicts had as their immediate cause the use of certain cruel or indiscriminate weapons, which could be regarded as conventional in name only. It was important that Protocol I contained certain general rules on the use of weapons and other means of combat, notably in Articles 33 and 34. Many participants would have liked to see included more far-reaching and precise provisions

relating to the use of specific conventional weapons and to their explicit outlawing. There could be no doubt that those delegations had made a very positive contribution to the work of the Conference. Although the Finnish delegation had not been able to accept the proposal to provide a mechanism for the adoption of new rules on the prohibition of the use of certain conventional weapons, as it had made clear on different occasions, that did not mean it had a reserved attitude to the substantive issues involved, and it felt great satisfaction that a follow-up of the weapons question was within reach.

99. Turning to Protocol II, he said that throughout the Conference attention had been drawn to the fact that the overwhelming majority of armed conflicts that had occurred since the Second World War had been internal conflicts. Consequently, considerable pressure had been brought to bear to secure development of the basic rules laid down in common Article 3 of the Geneva Conventions of 1949.

100. The draft Protocol Additional to the Geneva Conventions and relating to the protection of victims of non-international armed conflicts, submitted by the ICRC in 1973, provided an excellent working basis. Since 1974 the three Main Committees had worked on that text, and they had finally adopted, by consensus, a draft Protocol II containing forty-seven articles, a result with which the delegation of Finland was fully satisfied.

101. The representatives who had participated in that at times arduous work had been mainly concerned to achieve a set of rules fulfilling present-day expectations regarding international humanitarian law, but they had also been influenced by the relatively ambitious wording of Article 1, concerning the material field of application of Protocol II. To many delegations it had thus seemed natural to support the inclusion of more detailed rules on the protection of the wounded and sick, the fundamental guarantees of humanitarian treatment and, especially, the protection of the civilian population and of combatants. It had not been easy for those delegations to reconsider, during the last few days of the Conference, the approach on which they had been basing their positions for the previous four years. Whether it would have been a better solution to have had a more ambitious Protocol, to be signed, with the passage of time, by an increasing number of States, than to decide on the minimum text acceptable immediately to a fair majority of States, was a question that would long remain unanswered.

102. The Finnish delegation was gratified that the principal provisions relating to the fundamental rules (Articles 4, 5 and 6) and other important humanitarian provisions in the form adopted by the Conference had found room in Protocol II. His delegation considered, nevertheless, that the Protocol was lacking in certain essential respects, and did not understand why the Conference had rejected such basic articles as Article 20, prohibiting the causing of unnecessary suffering, and Article 24, laying down the fundamental rules for the protection of the civilian population. That view should not, however, be interpreted as a lack of understanding for the legitimate concern expressed by many delegations regarding the original version of Protocol II. Despite the imbalance in the text that he had pointed out, the delegation and the Government of Finland wished to express great satisfaction that a Protocol II had indeed been adopted, and to thank those delegations which had made it possible to obtain the necessary consensus.

103. The Finnish Government also wished to express its gratitude to the Swiss Government for its remarkable performance as the host of the Conference, and to the ICRC for its unfailing efforts and advice during both the preparation and the proceedings of the Conference. There was still much to be done in the way of implementation and follow-up - in the matter of dissemination, for example - and he was confident that the joint efforts of all Governments and the Red Cross would make the results of the Conference widely known and understood, and ensure their implementation in practice.

104. Mr. HESS (Israel) said that, out of respect for the humanitarian objectives of the Conference, Israel had not asked for a vote on Protocol I as a whole although it regretted that it was unable to be a party to the consensus. If there had been a vote, his delegation would have abstained. On the other hand, Israel was a party to the consensus on Protocol II. As far as Protocol I was concerned, his delegation had approached the task of helping to develop and reaffirm the humanitarian law applicable in armed conflicts, convinced that the task was both essential and timely.

105. The Jewish people and the people of Israel had known all too well the awful ravages of war and the inhumanities that man could inflict on his fellow men. The terrible scars of the Second World War, in which one-third of the Jewish people had been murdered in the holocaust, were still with them and the State of Israel, though young, had tragically been involved in a bitter fight to realize its right to self-determination.

106. The Jewish people had a long and rich tradition of involvement in international law. The Israel legal system had incorporated the norms of customary international law into the laws of the land and they were enforced and applied by the Courts of Israel. One of the earliest standing orders of the General Staff of the Israel Army had been the incorporation of the Geneva Conventions into the standing orders of the army, and any violation of the Conventions constituted a military offence.

107. The Government of Israel saw the major task of the Conference as the satisfaction of the need for better protection of the civilian population and of combatants hors de combat, and re-examination of the question of irregular combatants. It had warmly welcomed the initiative of the International Committee of the Red Cross and the Swiss Federal Council in convening the Conference.

108. The Protocol produced after nearly six years of deliberations was in many respects a positive achievement and a considerable step forward for international law. In other respects, however, the Conference had allowed political terminology and short-sighted transient considerations to overshadow legal and humanitarian principles and for that reason Israel could not be a party to the consensus on the Protocol as a whole.

109. During the deliberations the Israel delegation had stated its position on the various articles of Protocol I and they were on record.

110. The unfortunate use of political terminology was nowhere more apparent than in Article 1 of Protocol I. Instead of tackling the admittedly difficult task of drawing up objective criteria for the definition of applicability, the Conference had chosen the dangerous, short-sighted, self-defeating and unapplicable method of using subjective language. It had revived the spectre of the "just war" theory, with its different rules for different conflicts and different parties, a theory totally opposed to the basic principles and ideas of international humanitarian law.

111. That infiltration of political themes into Geneva-based law could well do pernicious and long-term damage to its universality and impartiality and thus undermine the humanitarian work conducted at the Conference. Israel could not be a party to the introduction of those harmful elements in the Protocol.

112. When examining the status of irregular fighters, the Israel delegation, like many others, had realized the necessity of drawing up rules that would be valid and applicable for present-day irregular combatants. In the new Article 44, however, the Conference had upset the careful balance between the obligation, on the one hand, to protect the civilian population by maintaining the all-important duty of combatants to distinguish themselves, and, on the other hand, the legitimate desire to grant prisoner-of-war status to irregular combatants.

113. The all-important condition that irregular combatants must comply with the laws of war should have been clearly and explicitly stated and not drafted as in its present form. Furthermore, the statement in the new Article 44 that there were situations in armed conflicts where combatants could not distinguish themselves from civilians, however qualified and limited, was a statement which his delegation could not accept and which was totally out of place in the Protocol. International law from the earliest times had always demanded that combatants should distinguish themselves clearly from civilians; such distinction was vital to ensure protection for those civilians who were indeed civilians. His delegation felt that on that basic demand there should have been no compromise.

114. An attempt had been made to bring non-State entities within the ambit of Protocol I, at the same time including in the Protocol provisions concerning elements such as tribunals, appeals, legal systems, neutrality and international responsibility which were by definition and by their very nature applicable only to States. Instead of trying to tackle that difficult problem, the Conference had ignored it and thereby drafted an instrument containing provisions that were patently inconsistent.

115. The Israel delegation regretted that those issues had cast shadows over the many positive elements in the Protocol, in which the Conference had painstakingly drawn up rules for the better protection of civilians, civilian objects, combatants hors de combat, airmen in distress and the sick and wounded.

116. There was one issue, that of the Red Shield of David, on which his delegation could not but feel bitter. Israel, while respecting the inviolability of the emblems recognized by the Geneva Conventions, used as its distinctive emblem the Red Shield of David on a white background (Magen David Adom). That fact was known and had been recognized by the international community for many years. At the second session of the Conference, Israel had submitted a proposal (CDDH/I/286) calling for formal recognition of the emblem. It deeply regretted that the Conference had not been in a position to adopt it.

117. Israel was convinced that a solution to the present unjust discrimination must be found. It was an intolerable position whereby Israel's national aid society, the Red Shield of David Society, was not recognized, solely because the emblem used was the Red Shield of David. Such recognition remained necessary despite the fact that protection was granted to protected persons and objects as such, irrespective of the emblem, and that throughout the hostilities in the Middle East the belligerents had recognized the respect due to each of the emblems in use in the various armed forces, the Red Cross, the Red Crescent, and the Red Shield of David.

118. Israel remained hopeful that an early satisfactory solution would be found to that problem.

119. His delegation would like to take the opportunity to express its appreciation and thanks to the host Government, the International Committee of the Red Cross, the Canton and City of Geneva, and the efficient and ever-friendly staff of the Secretariat, legal advisers, interpreters, translators and technical staff. It thanked the President, the Vice-Presidents and the Secretary-General for their thoughtful and masterly direction of the progress of the Conference.

120. War was a terrible and horrible experience, the burden of which Israel had felt only too much. Any attempt to bring States together with a view to improving the fate of its victims was a task humanity as a whole could not but welcome. The Israel delegation sincerely hoped that no need to apply such rules would ever arise again and it would like to conclude with the words of the Prophet Isaiah: "They shall beat their swords into ploughshares and their spears into pruning forks: nation shall not lift up sword against nation neither shall they learn war any more".

121. Mr. BINTU (Zaire) said that his delegation could appreciate at its true worth the remarkable success achieved by Protocol I in ensuring the protection of mankind. He wished that it could feel the same degree of satisfaction with regard to Protocol II.

122. Of course, his country understood the motives of a humanitarian nature which had inspired the whole series of provisions in the original draft of Protocol II - all the more so, since the people of Zaire were among those who, in subscribing to the Charter of the United Nations, had proclaimed once again their faith in basic human rights, and in the dignity and value of the human person. Furthermore, Zaire was one of the Member States which had undertaken, in co-operation with the United Nations, to ensure universal and effective respect for human rights and fundamental freedoms in accordance with the Universal Declaration of Human Rights of 10 December 1948.

123. Nevertheless, however good the intentions of its authors might have been, the fact remained that several provisions of Protocol II encroached upon the rules of States' domestic law and thereby dangerously compromised the sovereignty and territorial jurisdiction of those States. According to Article 2, paragraph 7, of the Charter of the United Nations, such matters fell within the reserved field.

124. The mistake made in Protocol II, at least in some of its provisions, had been that of treating a sovereign State and a group of insurgent nationals, a legal Government and a group of outlaws, a subject of international law and a subject of domestic law, on an equal footing.

125. Nobody should lose sight of the fact that groups of dissidents or any other armed groups which, coming under what was claimed to be responsible command, were exercising any form of control over part of the national territory, were rebels first and foremost. In other words, they were those who were not prepared to act within the framework of the law and whose aim it was to interfere with public order, State security and the security of ordinary citizens. Representing no sovereign authority, they were devoid of the recognised attributes of sovereign States, namely: the capacity to form an army, to acquire rights and contract obligations in international relations, to set up public services, which might even include relief agencies, and the like.

126. In short, they had not the same rights as the national Government, which was the embodiment of State sovereignty and which held general responsibilities. Indeed, they did not possess any rights at all, but simply had an obligation to deal humanely with all those who did not take part in hostilities or with other prisoners of war who might fall into their hands.

127. For that reason, his delegation's attitude towards Protocol II had always been selective: while it favoured the retention of some provisions, it had advocated the rejection of texts in which a sovereign State and a rebel movement were placed on an equal footing.

128. Accordingly, there had never been any question of his delegation wishing to reject Protocol II, which had been adopted during proceedings at the Committee stage, outright; it was rather its wish to delete some ambiguous provisions and to recast the remainder, so as to give an undisputed advantage to legality and not to the forces of rebellion.

129. His delegation thanked the delegation of Pakistan and, through it, the other delegations which had helped to draw up the simplified draft, whose great virtue it was to have toned down the legal character which Protocol II, as adopted in Committee, had conferred on rebellious elements. It was, moreover, in that sense that his delegation interpreted Article 1 of Protocol II.

130. Mr. MBAYA (United Republic of Cameroon), referring to Protocol I, said that his delegation welcomed the fact that national liberation campaigns had been included in the category of international armed conflicts and that combatant and prisoner-of-war status had been allowed in the case of freedom fighters. The United Republic of Cameroon had repeatedly expressed, through its President, its conviction that no African State could feel entirely independent or perfectly safe so long as a single part of the African continent remained under the control of an apartheid régime or a minority Government.

131. His delegation welcomed the adoption of a provision concerning mercenaries. It had some misgivings, however, about the wording of Article 42 quater, paragraph 2 (c), for it feared that the reference to the exorbitant rate of remuneration of a mercenary might make the whole article ineffective, since it seemed difficult to prove that compensation was substantially in excess of the normal rate. In fact, the different elements of the definition of the mercenary should be united into one whole, otherwise the lack of a single element would be enough to allow the individual to escape the designation of mercenary.

132. Fears had been expressed concerning some provisions of Protocol I, namely Articles 46, 50, 51 and 52. In the view of his delegation, none of the provisions of that Protocol could be interpreted as limiting in any sense the right of any State, and in a very special sense the United Republic of Cameroon, to organize the defence of the national territory. It was convinced, moreover, that those provisions were so carefully worded that no such interpretation was permissible.

133. His delegation had no difficulty in joining the consensus on Protocol II. It reaffirmed its gratitude to the representative of Pakistan for the simplified draft of that Protocol which he had submitted to the Conference, even though its wording did not satisfy all delegations. It was, of course, unfortunate that the original draft, which was the result of years of work, patience and perseverance, had been partially abandoned, but the divergent views expressed in the Conference had shown that the text was doomed to failure. It was therefore clear that the

text adopted was both a lifeline and a lesser evil. In the case of Protocol II also, his delegation wished to affirm that none of its provisions could be interpreted as limiting the right of Governments to maintain order on the national territory or to restore order if it had been disturbed. Similarly, it could not countenance any attack made, under cover of humanitarian law, on national sovereignty or any interference in internal affairs.

134. He noted that a change had taken place in the mentality of the participants of the Conference, where a new readiness to discuss and compromise had appeared which had enabled the work of the Conference to be brought to a successful conclusion. His delegation sincerely thanked the other delegations present for the good will they had shown throughout the work. It now remained, of course, for the provisions adopted to be implemented effectively and in good faith.

135. Mr. DI BERNARDO (Italy) said that his delegation had joined the consensus on Protocol I, aware of the importance of that instrument, which was a significant development of humanitarian law applicable in international armed conflicts. It was certainly worthy of the sustained and patient efforts deployed over the years by so many delegations animated by a hope of achieving the positive results which the international community expected from the Conference. That hope had become reality thanks to difficult but fruitful negotiations, and thanks to hard work into which so much intellectual energy had been channelled.

136. Like all international instruments, Protocol I was the fruit of a compromise, produced by the spirit of negotiation that had prevailed among the delegations. It was therefore quite natural that no delegation would feel that the Protocol fully corresponded to its aspirations. Each had participated in the work of the Conference with definite ideas on how to reconcile opposing requirements: on the one hand humanitarian requirements, on the other the requirements of State security. Unfortunately, the noticeable divergence as to substance between the various concepts had given rise to considerable defects which affected the final text. All too often, agreement could only be reached at the cost of using obscure, woolly and ambiguous language, which would create far more problems than it solved. As one example, there was that important Article 44 - Combatants and prisoners of war - where the definition of persons entitled to the status of prisoner of war was worded in extremely vague fashion, which would lend itself to divergent interpretations, in a field where a high degree of precision was called for.

137. Elsewhere, the texts did not appear to strike a really satisfactory balance between the various requirements that had to be reconciled. That was true of certain rules regarding protection of the civilian population, or the precautions to be taken during or against attacks: those rules, if interpreted tendentiously, could jeopardize the basic right of any State to organize and direct effectively its national defence against an aggressor. That would be a very serious matter; for that reason, the Italian delegation had set out in its written statements the correct interpretation which, in its view, should be given to the rules in question, especially the provisions of Parts III and IV of Protocol I. While reaffirming the need for faithful application of the provisions for protecting the victims of armed conflicts, the Italian delegation would reiterate that none of the provisions of those Parts should be interpreted as preventing a State from organizing effectively the safeguarding of its national security and the defence of its territory.

138. For all that, his delegation considered that Protocol I represented remarkable progress in many fields, as compared with earlier international law. That was true, to cite but a few examples, of Part II as a whole, of the articles on protection of objects indispensable to the survival of the civilian population and on the protection of cultural objects, which his delegation was very pleased to see in Protocol I. The same was true of Article 75 - Fundamental guarantees - clearly a great advance in humanitarian law.

139. While the humanitarian rules for the material field had to a large extent been developed and perfected, such was unfortunately not the case in regard to the rules of application. As far as machinery to ensure respect for humanitarian law was concerned, the Conference would not have made any real progress. In his delegation's view, that was the most disappointing and regrettable aspect: the Conference would have missed its rendezvous with history, forgetting that progress in humanitarian law was bound up less with amplification of rules designed to meet humanitarian requirements, than with the establishment of effective and impartial systems for controlling the compliance of States with those rules. The Conference would have given a decidedly modest reply to that fundamental need, far short of what had rightly been expected of it.

140. The Italian delegation was pleased that it had been able to make a contribution to the success of the common effort. It had done so in full awareness of the fact that true progress resided, not in a reduction of human suffering in war, but rather in the elimination of war itself. The fundamental aim

to be achieved, the aim for which the Italian Government itself strove, was not an improvement of jus in bello; the fundamental aim was peace, and consequently the elimination of jus in bello as such, through the creation of a more just international system in which war would no longer be permitted. It was therefore the profound hope of the Italian Government that the work of the Diplomatic Conference on International Humanitarian Law could soon prove to be unnecessary and out of date in a world where war would be prohibited for all time.

141. His delegation had also joined the consensus on Protocol II, which it firmly believed was an instrument that could render major services to mankind by attenuating the sufferings of people involved in internal conflicts, which were often more tragic and deadly than international ones.

142. His delegation could only regret, however, that during the last phase of the Conference the tendency to establish a much diminished, and therefore inadequate, text had prevailed.

143. The Conference had followed the somewhat strange system of first constructing, during the preceding sessions, a long and well-articulated text which, at the current session, had been finally dismantled and reduced to its simplest expression. It was to be hoped that the Conference would not one day be reproached with having emptied the texts of their substance.

144. His delegation had nevertheless participated in the simplification of Protocol II, even though, owing to somewhat excessive pruning, the final result did not come up to its expectations.

145. It had realized that there was more need of a compromise to save a simplified Protocol II than of all-out efforts to draw up a much broader and more satisfactory instrument which to many States would probably have proved unacceptable.

146. Article 1 of Protocol II effectively confirmed the autonomous validity of the principles set out in common Article 3 of the 1949 Geneva Conventions, which remained applicable to all non-international conflicts, including those covered by Protocol II.

147. His delegation wished to confirm its entire endorsement of those principles, which could certainly not be considered to limit the sovereign right of each State to maintain order and security in its own territory, or the integrity of that territory, by all lawful means.

148. His delegation expressed gratitude to the President of the Conference, to the Swiss Confederation, to the International Committee of the Red Cross and to the Republic and Canton of Geneva: to Mr. Graber because, without his enlightened guidance, four years' work would have come to nothing; to the Swiss Confederation, a small country but a great nation so far as concerned things of the mind; to the ICRC, for taking the initiative and for its exemplary organization of the Conference; and to the Republic and Canton of Geneva - the host city - for all the consideration displayed and the services rendered the Conference. Thanks were also due to Ambassador Humbert, Secretary-General of the Conference, and to all Conference staff members for their efficient work.

149. Mrs. SILVERA (Cuba) said that her delegation had joined the consensus on Protocol II to demonstrate its spirit of co-operation. Her country's position in that respect could in no sense, however, be given a similar interpretation to that placed on the position taken by certain other countries which had also joined the consensus.

150. Since the beginning of the Conference, the Republic of Cuba had given special attention to Protocol II in the belief that it constituted a safeguard for the protection of the civilian population, civilian objects and the new class of persons on whom prisoner-of-war status was to be conferred.

151. So far as concerned the modifications of substance undergone by Protocol II as a result of the amendments submitted by the delegation of Pakistan (CDDH/427 and Corr.1), her delegation regretted that they should have been submitted at what was perhaps not the most opportune moment, bearing in mind that the Conference was meeting in plenary only two days before it was due to close.

152. Moreover, those amendments greatly weakened the provisions adopted by the various Committees, which had striven for years to establish compromise texts objectively reflecting the conditions in which non-international armed conflicts at present took place. It was most regrettable that those articles of Protocol II which had been approved in plenary did not deal in greater detail with the questions of substance raised in the Committees.

153. The simplified version submitted by Pakistan (CDDH/427 and Corr.1) tended to eliminate the notion of "Parties to the conflict", and in the view of her delegation its elimination implicitly placed the Parties to a conflict on an unequal footing.

Basing itself on the principle that the Parties to an armed conflict should have equal rights and duties which should not be restricted in a document such as Protocol II, her delegation considered that the deliberate elimination of that notion would give rise to difficulties of interpretation regarding the legitimacy of one of the Parties to a conflict. It would have been better pleased if the Pakistan proposal had retained all the articles which constituted the very essence of Protocol II, namely, those which dealt with the legal status of the Parties to the conflict, the prohibition of reprisals and unnecessary suffering, the sparing of adversaries hors de combat, the general protection of civilian objects and the protection of the environment.

154. Mr. CUEVA-MEMBREÑO (Honduras) said that his delegation was glad that the Conference had adopted Protocol I. His Government had supported the aims of Protocol I throughout the Conference and would continue to do so, for it represented a considerable development in some respects, such as the scope of Article 65 on fundamental guarantees, protection of the civilian population in armed conflicts and a specific agreement on the restriction of conventional weapons. His delegation hoped that the good will of the States represented at the Conference would make it possible in the near future to establish new instruments giving to the population even better guarantees of the humanitarian spirit of the whole world.

155. With regard to Protocol II relating to non-international armed conflicts, his delegation had joined in the consensus as a token of good will in order to accelerate the development of humanitarian law in the present-day world.

156. His delegation had misgivings, however, about the fate of Protocol II, particularly about the adoption of a text after such scanty consideration and even on the basis of a "gentleman's agreement", a text of which his delegation had been unaware before its submission to the plenary meeting by those advocating its adoption. The Government of Honduras therefore reserved the right to deal with that text in the light of the results of the study it proposed to make of it, something which it had so far been unable to do. Only in that sense could his delegation reaffirm the humanitarian spirit which his country had always shown on many occasions and from which it would not depart.

157. He expressed the gratitude of his country and delegation to the Swiss Government and authorities for their unfailing support of the Conference's work, which had greatly contributed to its successful outcome.

158. Mr. HIGUERAS (Peru) said that his delegation had joined in the consensus on Protocol II in a spirit of compromise and in order to consolidate the development of humanitarian law, with the hope that the text adopted by the Conference could be improved in the not too distant future.

159. From the very beginning of the Conference it had been considered necessary to add a second protocol relating to non-international armed conflicts. Indeed, his delegation was of the view that it was an urgent matter to guarantee, without infringing permanent national sovereignty, increased protection for the victims of conflicts such as those which had occurred during the last twenty-five years.

160. His delegation considered that the text which had been formulated had achieved its objectives in the matter of safeguarding those humanitarian principles which, so far as his delegation was concerned, were the most valuable. The large number of amendments submitted to the plenary meetings, however, and the over-rapid adoption of many of them had resulted in the field of application of Protocol II being narrowed considerably.

161. The Peruvian delegation therefore regretted to state that its interest in the formulation of Protocol II had varied in inverse proportion to the number of amendments approved and to the deletion of the articles and paragraphs it considered to be important, particularly those concerned with protection of the civilian population and the prohibition of perfidy.

162. Those amendments had admittedly been submitted in a spirit of conciliation and in full awareness of the divergent trends confronting such a large-scale Conference.

163. That vital task now had to be brought to a successful conclusion in view of the need to increase still further the protection of the victims of armed conflicts. As the Peruvian delegation had said at the first session of the Conference, the suffering caused by such conflicts was increasing in line with the scientific and technical progress embodied in the new weapons in the service of destruction.

164. Side by side with the implementation of Protocols I and II, the international community could not confine itself to moderating and humanizing conflicts without betraying the reason for the existence of the Protocols, which had come into being because of oppression and injustice.

165. The Peruvian delegation was firmly convinced that the humanitarian duty to protect the victims of a conflict and alleviate suffering must be accompanied by a moral duty to limit the arms race which caused such suffering and by a political duty to devote all endeavours and all available resources to the economic and social development of nations.

166. Mrs. CONTRERAS (Guatemala) said that her delegation's comments on the Protocols had been placed on record. Her delegation had joined in the consensus on Protocol I but had reservations about Article 1 of that Protocol.

167. In a spirit of international co-operation it had not opposed the consensus on Protocol II. It had accepted the amendments of the draft simplified Protocol submitted by Pakistan under what had been called a "gentleman's agreement", although neither her delegation nor any other Central American delegation had been parties to that agreement.

168. If a vote had been taken on Protocol II, the Guatemalan delegation would have abstained. The consensus which it had not opposed did not reflect the attitude of the Guatemalan Government.

The meeting rose at 6.30 p.m.

ANNEX

to the summary record of the
fifty-sixth plenary meeting

EXPLANATIONS OF VOTE

ARGENTINA

Original: SPANISH

Protocols I and II

Our delegation fully appreciates the contribution which the adoption of Protocol I makes to the development of international law applicable in conflicts.

The extension of the notion of international conflicts to include wars waged by peoples in the exercise of their right of self-determination enshrined in the United Nations Charter, the restrictions on the ways and means of fighting, the reaffirmation of the principle of the prohibition of perfidy, the reformulation of the status of combatant, the absolute denial of combatant status to mercenaries, the formulation of the body of fundamental guarantees to be accorded to all persons falling into the hands of a Party to the conflict, and the creation of the International Fact-Finding Commission - these, to name but a few, are so many provisions testifying to the importance to international treaty law of the document we have now adopted by consensus.

On the subject of Protocol II, our delegation refers to its statement on Article 1 of that Protocol, explaining why, had its provisions been put to the vote, we would have abstained on the whole Protocol.

None the less, we wish to repeat our tribute to the inestimable collaboration of the representative of Pakistan, whose simplified version of draft Protocol II represented a praiseworthy and constructive effort to achieve, by means of a version stripped of the provisions which were the source of most difficulty to many countries, a consensus sufficient to ensure the Protocol's approval.

It was thus possible to secure, without a vote, the adoption of Protocol II by consensus, a consensus in which our delegation joined, subject to the reservations it expressed in the statement, referred to above, which it made during the discussion of Article 1 in plenary.

We therefore wish once again to make it clear that, in view of the insuperable difficulties of interpretation and implementation which, in our view, are raised by Article 1, the key provision of the entire Protocol since it determines the applicability of the rest of the provisions, we would have abstained on each of the articles if the draft had been put to the vote.

Lastly, we should like to stress that this decision was taken jointly by a large number of countries deeply concerned about this type of conflict.

AUSTRALIA

Original: ENGLISH

Protocols I and II

Australia participated in the Conferences of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts held in 1971 and 1972, convened for the purpose of studying and producing a draft text for two Protocols to the Geneva Conventions of 1949, namely, Protocol I relating to international armed conflicts and Protocol II relating to internal armed conflicts. Australia has participated actively in each of the sessions of the Diplomatic Conference and in the work of each of the Main Committees.

The Australian delegation notes with satisfaction the adoption by consensus of Protocol I and the consensus for the adoption of Protocol II.

The Australian delegation has already made explanatory statements in respect of a number of provisions in draft Protocol I, especially in regard to certain of the articles relating to the protection of civilian objects and it is not necessary to reproduce those statements here.

The Australian delegation considers that Protocol I extends significantly the humanitarian law applicable in armed conflicts relating to the wounded, sick and shipwrecked. We note that provisions have been included in Protocol I extending the present law relating to protection and care of persons, protection of civilian medical units and protection of those engaged in medical and religious duties.

In addition, Protocol I considerably extends the existing law in relation to medical transportation. Articles, which are now in Protocol I, relating to missing persons and to the remains of the deceased are in our view a proper development of humanitarian law.

We note that measures have been included in Protocol I for the protection of journalists engaged in dangerous professional missions in areas of armed conflict, and we believe that these measures represent a significant improvement in the humanitarian law applicable in armed conflicts.

We think that the new articles providing for legal advisers in armed forces and for dissemination will effectively bring to the attention of members of the armed forces and the civil population the terms of the Geneva Conventions and of Protocol I.

However, we are disappointed that the Conference could find no solution to the question of reprisals other than to adopt a number of specific prohibitions against resort to reprisals which, in the view of the Australian delegation, are unlikely to prove successful.

While not opposing the consensus in respect to the adoption of former Article 74 (Repression of breaches of this Protocol) (now Article 85) we find that that Article lacks the precision that is required for the application of the criminal law of a State and for the proper protection of persons accused of grave breaches. We have stated elsewhere more fully our views about this Article.

The Australian delegation was also disappointed with the text which was finally adopted concerning the establishment of an International Fact-Finding Commission (now Article 90). We would have preferred a commission of a mandatory character and one which would have represented a significant improvement on the system foreshadowed by the Geneva Conventions. Nevertheless the Australian delegation understands fully and appreciates the difficulties that have confronted other delegations in connexion with this matter.

Notwithstanding these reservations, when Protocol I is considered as a whole, we are satisfied it does reaffirm the principles of international humanitarian law applicable in armed conflicts and does considerably develop those principles.

The Australian delegation notes with satisfaction that a Protocol II has been adopted and regards the adoption of a Protocol II as an important step forward by the international community. In view of the history and difficulties associated with draft Protocol II we believe that the solution finally adopted is satisfactory and represents an extension of the principles of humanitarian law.

Finally, the Australian delegation expresses its thanks to all the delegations who worked so effectively at the Conferences of Experts and the sessions of the Diplomatic Conference. We thank especially the International Committee of the Red Cross and the Swiss Federal Council, on whose initiatives the Conferences of Experts and the Diplomatic Conference were undertaken. We thank also the staff who serviced the Conference for their dedication to their work and for their unfailing courtesy.

CHILE

Original: SPANISH

Protocol II

The Chilean delegation joined in the consensus on the adoption of Protocol II; as it explained when Article 1 was voted on, it did so on the understanding that the determination of the conditions for its application lies with no authority other than the State in whose territory the conflict takes place, for reasons of sovereignty and non-intervention in the internal affairs of a State, as it explained at the forty-ninth plenary meeting (CDDH/SR.49) when Article 1 was adopted, with the Chilean delegation voting against.

I therefore request the President to ensure that it may so appear in the records for future reference.

Consequently, if Protocol II had been put to the vote, my delegation would have abstained owing to the lack of precision with respect to the point in question.

CZECHOSLOVAKIA

Original: SPANISH

Protocols I and II

Protocol I is the result of far-reaching discussion and prolonged negotiation among the delegations of over a hundred States. The factor that prevailed was the awareness of delegations of the absolute need to close a number of gaps in current international humanitarian law.

The time has now come when my delegation can welcome the final result and note that the articles of the Protocol truly represent both a reaffirmation and at the same time an important development of humanitarian law. The gulf by which the provisions of the 1949 Geneva Conventions were separated from the existing reality has, in many respects, been filled.

Many of the articles open a new and most welcome page in humanitarian law; there is, for example, Article 1, on armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination; Article 43 (final numbering), which contains a new definition of armed forces; Article 44, on the protection of guerrillas and members of national liberation movements; and Article 47, on mercenaries. My delegation attached special importance to those articles, and still does.

We are pleased that the protection of the natural environment is dealt with in Articles 35 and 55. This is a prime consideration in humanitarian law that deserves recognition.

One of the most important tasks of this Conference was the extension of the protection of the civilian population, of civilian objects and of objects indispensable to the survival of the civilian population. The history of the most recent wars shows that the greatest suffering is among the civilian population, and that it is essential to increase the protection of that population. Now we can note with satisfaction that the Protocol has made a great advance in this area.

The problems and articles to which I have referred, are of the highest importance to the Government of Czechoslovakia; together with other provisions of the Protocol, they represent a sound body of key articles. Most of the articles adopted take adequate account, in legal terms, of the reality of armed conflicts, national liberation movements, guerrillas and situations that actually exist. That is one of our Conference's positive achievements.

While the delegation of Czechoslovakia would have preferred a more strict wording for some of the articles, the common desire to reach a consensus made that impossible. Compromises can never be absolutely ideal, but they nevertheless have had the great advantage of providing adopted texts which were in fact the only ones likely to be accepted by consensus or by most of the delegations.

It is only logical that this method of work also had its negative aspects in some cases. One of these, in our view, is the fact that reprisals have not been prohibited categorically enough in more articles.

I shall be more brief in my comments on Protocol II. From the very beginning our delegation supported the principle of having two Protocols. Today we have already witnessed the birth of Protocol II, and that is an achievement deserving of recognition.

The Protocol we now have marks a great step forward in humanitarian law. For the first time in history we have an international agreement on non-international conflicts.

In spite of its favourable comments, my delegation is not altogether satisfied. Instead of the texts drafted and approved in the three Committees of the Conference, we finally adopted a much simpler and shorter document, which therefore glosses over a number of problems. The result is a compromise. We feel, however, that the Protocol as a whole is a useful document and a good humanitarian instrument. This is why my delegation unhesitatingly joined the consensus.

DEMOCRATIC YEMEN

Original: ARABIC

Protocols I and II

My delegation, which participated in the work of the fourth session of the Conference, expressed its views on the articles of both Protocols on several occasions, through its statements, the co-sponsorship of amendments, its vote and its explanations of vote on those articles.

My delegation would like to affirm the value and appreciation it attaches to the satisfactory outcome of this Conference as evidenced by the adoption by consensus of draft Protocols I and II. It joined in the consensus for humanitarian considerations relating to the development of international humanitarian law applicable in armed conflicts, and from a sincere desire to protect the victims of such conflicts and alleviate their suffering.

With regard to Protocol I, the development of humanitarian law will benefit the combatants of national liberation movements in their legitimate struggle for fundamental freedoms, human rights and their right of self-determination, to which they are fully entitled.

My delegation indicated during its brief statement at the plenary meeting held on 8 June 1977 that it intended to abstain if draft Protocol II was put to the vote. It now wishes to state the following:

(a) Democratic Yemen is proud of having always been in the forefront of nations concerned with great humanitarian principles. That position reflects its own principles and tendencies; hence it supports national liberation movements and any action designed to guarantee and reaffirm the humanitarian protection to which such movements are entitled.

(b) My delegation abstained in the vote on Article 1 of Protocol II because of the ambiguity, vagueness and inadequacy of the wording of paragraph 1 of that article.

(c) My delegation regrets that for reasons beyond its control it was unable to take part in the second and third sessions of the Conference. As a result, we are not altogether aware of the considerations which led to certain articles of this Protocol or of the interpretations they should be given. Consequently, my Government will have to consider the articles of this Protocol thoroughly before it can make a final pronouncement on it.

My delegation reserves the right to express its views and to comment and make reservations on the Protocols at the time of ratification, in accordance with the constitutional procedure in force.

Lastly, my delegation pays a tribute to the efforts that have been made and the results achieved. It hopes that the humanitarian objectives and principles expressed in the Protocols will find expression in concrete and clearly-defined action calculated to alleviate human suffering and to reaffirm human rights.

EGYPT

Original: FRENCH

Protocols I and II

The Egyptian delegation is glad of the adoption by consensus of the two Protocols.

These Protocols are the result of prolonged and arduous efforts and represent an important stage in the task of reaffirmation and development of international humanitarian law. As happens with every collective undertaking, they fail to satisfy completely any of those who participated in their elaboration. Nevertheless, real and substantial progress has been made. In the case of Protocol I, we need only mention Articles 1 to 42, the extension of the protection of civilian populations and of civilian objects, and all the articles relating to medical transport and units.

We cannot hide, however, our disappointment at the Conference's inability to fill some big gaps in the Conventions. We are thinking, in particular, of Articles 5 and 90 of Protocol I, which have failed to go beyond the purely consensual framework of the Conventions and to set up an effective control system for the application of humanitarian law.

We could have wished also that the question of conventional weapons might have been more fully and effectively settled by the Conference.

As to Protocol II, the Egyptian delegation has striven throughout the Conference, both in Committee and in Working Group, to produce an effective instrument for the protection of victims of non-international armed conflicts.

Mindful, however, of the difficulties encountered by some States in this respect - difficulties which seriously jeopardized Protocol II as adopted by the Committees - the Egyptian delegation voted in support of the compromise solution of a simplified Protocol. Like every compromise, this solution is neither perfect nor wholly satisfactory, for it is of the nature of a compromise to require concessions from both sides, and concessions are invariably awkward. We think, nevertheless, that the final result is a success, as the actual principle of a second Protocol is preserved as well as the essential part of the articles relative to the protection of victims.

Protocol II develops some aspects of Article 3 common to the Geneva Conventions of 1949, without completely covering its scope. Consequently, Article 3 still represents the minimum protection for everything that is not covered, and better covered, by this Protocol.

GERMAN DEMOCRATIC REPUBLIC

Original: ENGLISH

Protocols I and II

With pleasure and satisfaction we can state that as a result of long years of work it has been possible for the Conference to elaborate and adopt important documents.

We especially thank the Swiss Government represented by the President of the Conference, Mr. Federal Councillor Graber, for the enormous work done in preparing and organizing the Conference as well as for the hospitality extended to all delegations. I would also like to express our gratitude to the International Committee of the Red Cross for the extensive support given to this Conference which made an essential contribution to the success of the Conference.

The result obtained by the Conference reflects the changes which have taken place in the international balance of forces since the adoption of the four Geneva Conventions of 1949. It is an expression of the strength of the peoples and their

struggle against imperialist war and its barbarous methods of warfare and of the successful struggle of the peoples for liberation against colonial domination, alien occupation and racist régimes in the exercise of the right of self-determination.

Obviously, many provisions of the adopted Protocols are the result of a compromise. In some passages the delegation of the German Democratic Republic would have liked to have more comprehensive regulations and also more precise formulations. Nevertheless, we consider the Conference a significant result in the development of international law.

In participating in this Conference and by constructive co-operation trying to contribute to its success, the delegation of the German Democratic Republic has not aimed at the improvement and development of the rules of war. Its aim was, by means of further developed rules of international humanitarian law, to provide, in case of aggression, a greater protection for the civilian population and to render more difficult, if not even to make impossible, the misuse of the rules of international law by the aggressor for its criminal acts directly against humanity.

The most humane task is not to make war humane but to exclude for ever aggressive war from human life for the benefit of humanity. Therefore, the most important task of the foreign policy of the German Democratic Republic is the strengthening of peace and security in Europe and in the world, the further promotion of the international process of détente. And it was in this spirit that from the very beginning we participated constructively in the work of this Conference.

The Conference has shown that even in such a complicated field as that of the Protocols, useful results may be achieved if all participants adopt a realistic approach towards the task before them and if the will to co-operate and to find generally acceptable solutions prevails.

The recognition of the international character of the liberation struggle of peoples suppressed by colonial and racist régimes is no doubt one of the most important results of the Conference. In addition to the principal decision in Article 1 of Protocol I, we have a comprehensive definition of armed forces in Article 43, including the armed forces of the liberation movements, a special provision concerning their means of combat in Article 44 and the simplified possibility of application of the Conventions and the Protocol opened up by Article 96.

The delegation of the German Democratic Republic attaches the greatest importance to the provisions on the protection of the civilian population. The unambiguous rule prohibiting the civilian population being made the object of attack, the prohibition of indiscriminate attacks, the protection of civilian objects and of the natural environment form for us the core of the Protocol. In view of the terrible experience the civilian population had to endure during the Second World War and afterwards, each rule in this field - even if it only reaffirms existing law - is a real progress.

We welcome the fact that in this very part - although with great restraint, but with the more firmness - prohibitions of reprisals have been formulated. We attach to them the same importance as to the prohibitions of reprisals contained in the Geneva Conventions and we are therefore convinced that reservations on these provisions would be as incompatible with the object and purpose of the Protocol as a reservation on its field of application would be.

We consider it also a proof of the realistic approach of the Conference that wherever the sphere of sovereignty of States is concerned, the principle of consent, of agreement, forms the basis. The provisions of Article 5 concerning the Protecting Power, of Article 90 concerning the International Fact-Finding Commission, but also, for example, the provisions of Articles 26, 27 or 34, are important examples thereof.

We consider Article 85 a genuine development, the more so in that the definition of grave breaches is combined with the obligation of prosecution and punishment of war crimes and crimes against humanity provided for in Article 75. It is not solely the possible punishment of a war criminal which represents the value of Article 85. The very fact of the existence of an international agreement characterizing the violation of certain rules of the Protocol as grave breaches underlines the significance, the moral value, the humanitarian content of the provisions and prohibitions contained in these rules.

It is well known that the delegation of the German Democratic Republic would have welcomed a broader field of application of Protocol II and that it made corresponding proposals. This was not possible, and we welcome the fact that, despite reduction of the Protocol, it has been possible to agree upon certain humanitarian rules for non-international

armed conflicts of the type described in Article 1. Many countries have expressed their fears that Protocol II might lead to an infringement of their sovereignty. Because of that very fact it seems important to us that Article 1 of Protocol II unambiguously states that Protocol II as well as Article 3 common to the Geneva Conventions of 1949 do not apply to "situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature".

In concluding I would like to ask you to transmit to the Swiss Federal Council the congratulations of the Government of the German Democratic Republic on the successful conclusion of the Conference. I would also like to express our gratitude for their active support to everybody who has contributed to the success of the Conference, whether within the assembly hall or outside it, whether as an official representative or as an adviser, as an interpreter or as a member of the technical staff.

The delegation of the German Democratic Republic welcomes the result of the Conference and is particularly happy to see the Protocols adopted by consensus.

We sincerely hope that this will lead to rapid and widespread signature and ratification, and it is our wish that there will never be any need to apply the rules we have agreed upon.

GERMANY, FEDERAL REPUBLIC OF Original: ENGLISH

Protocols I and II

I. My delegation wishes to join those who have spoken before me in expressing its deep satisfaction on the successful conclusion of this Conference. The occasions to celebrate humanitarian achievements have in our days become rare. The greater is the success in having brought this Conference to so impressive an end. It is certainly true that this result is due mainly to the initiative of the ICRC and to the fact that the Swiss Government and particularly you Mr. President, espoused this great humanitarian cause. On behalf of my Government I wish to congratulate the ICRC and, through you, the host Government of this Conference for their contribution to this historical event.

I may add that it was a great pleasure to work in a Conference where all delegations, without exception, have been motivated by a truly co-operative spirit.

II. The humanitarian law applicable in armed conflicts mediates between the demands of humanitarianism and, on the other side, the military necessities which arise in the exercise of the inherent right of self-defence. This intermediate position of humanitarian law had to be taken into consideration by all delegations. This Conference could not do away with war. Its task was rather, in the face of reality, to develop rules which will mitigate as far as possible the sufferings in these conflicts.

III. The two Protocols which emerged from our work, therefore, had to be a compromise. The Federal Republic of Germany has taken part in the consensus on these Protocols in the desire to improve as far as possible the protection of those involved and of the victims of these armed conflicts. My delegation does not, however, conceal the serious doubts, concerns and reservations which it shares with other delegations relating to some parts of the final text of Protocol I, and which refer to the practicability as well as the security implications of the relevant articles.

On the basis of our participation throughout the last four years of active and intensive work, the Federal Republic of Germany has come to the conclusion that within the framework of this Conference a better result than that which has been achieved could not be reached. The remaining doubts, concern and reservations will now continue to be examined by our competent authorities, as will be done in other countries. The position of the Federal Republic of Germany with respect to the articles adopted by this Conference will be determined by the results of this analysis. I may assure you, Mr. President, that in doing so we shall be led by serious humanitarian intentions and a genuine sense of responsibility.

IV. With some concern my Government has observed the development which took place during our discussions and which tended to give some articles such a complicated wording that their applicability in case of conflicts may appear doubtful. Let us not forget that these rules are to be applied by soldiers under combat conditions! The rules of the Protocols, therefore, have to be of a nature which allows their transformation into simple and clear military manuals.

V. As far as Protocol II is concerned, I have to state that in the last phase of this Conference several articles have been eliminated from the original draft which we would have liked to see maintained. Nevertheless, the Federal Republic of Germany has agreed to the present simplified version, for it appeared more important that such a text could be accepted by a large majority

of the delegations than having a more elaborate text which would not be adopted or, if adopted, would be signed and ratified by only a minority of States.

GUATEMALA

Original: SPANISH

Protocols I and II

The delegation of Guatemala has made only very short statements (in the plenary debates), with a view to lightening the work of the President. Acting on the same principle, it wishes to make the following comments, with the request that they may be included in the records.

The delegation of Guatemala joined in the consensus for the adoption of Protocol I. My delegation wishes, however, to record its reservations with respect to Article 1 and Article 42 (Combatants and prisoners of war) of Protocol I.

As regards Protocol II, in a desire to co-operate in the work of the Conference, my delegation agreed that the document submitted by the distinguished representative of Pakistan (CDDH/427 and Corr.1) should be treated as an amendment to Protocol II. We know that this document was the result of a "gentleman's agreement" in which no Central American delegation, including the delegation of Guatemala, participated.

If Protocol II had been put to the vote, the delegation of Guatemala would have abstained, and the consensus in which my delegation joined on Protocol II does not reflect the attitude of the Guatemalan Government.

The delegation of Guatemala wishes to take advantage of this opportunity to express its profound gratitude to the host country, the Swiss Confederation, for all the efforts it has made to ensure that the work of this Conference was accomplished.

HUNGARY

Original: FRENCH

Protocols I and II

The delegation of Hungary welcomes the consensus achieved on the question of the adoption of the two Protocols Additional to the 1949 Geneva Conventions. We are convinced that the Protocols, despite some weak points, are without any question a positive development of international humanitarian law. Although time is too short to enable us to mention all the important provisions of the Protocols, we wish to draw attention to the

fact that, by enlarging the scope of application of the rules of international humanitarian law to all armed conflicts in which peoples are fighting to exercise their right of self-determination (Article 1, paragraph 4), Protocol I substantially strengthens the protection given to the civilian population against the dangers resulting from hostilities (Articles 50 to 56) and the protection due to combatants in armed struggles for national liberation (Article 44). We attach particular importance to the provisions concerning the protection of the natural environment (Article 55). We should certainly have preferred firmer and more precise rules in several of the articles, but in the spirit of compromise and conciliation with which our attitude has been imbued during the work of the Conference, we subscribed to the agreements reached in the organs of the Conference. With regard to Protocol II, we supported the articles prepared by the Main Committees, but in view of the objections made by several delegations we agreed to the shortened version of Protocol II, since even in that abridged form it improves the lot of the victims of non-international armed conflicts.

Finally, our delegation voices the earnest desire of the Government of the Hungarian People's Republic that peace may prevail among the peoples of the world and expresses its sincere thanks to the Government of the Swiss Confederation for the excellent organization of the Diplomatic Conference.

PHILIPPINES

Original: ENGLISH

Protocols I and II

The Philippine delegation, notwithstanding certain fundamental reservations and objections it had in respect of Protocols I and II, did not wish to stand in the way of the adoption by consensus of both Protocols and accepted such an adoption by consensus in a spirit of co-operation. Noting the verbal statements made by a number of other delegations in the course of this afternoon's plenary meeting, the Philippine delegation observes that it was not alone in adopting this attitude.

The Philippine delegation would like to summarize, for the record, its dissatisfaction with certain parts of Protocol I, as follows:

1. In paragraph 3 of Article 44 (formerly Article 42) entitled "Combatants and Prisoners of War", the fundamental obligation of a combatant to distinguish himself from the civilian population in time of hostilities is blurred by the exceptions clause in the second sentence of that paragraph. The Philippine delegation considers that sentence to be applicable only in cases of territory occupied by the adversary and in situations referred to in paragraph 4 of Article 1 of the Protocol, and interprets the term "deployment" as used in paragraph 3 (b) of Article 44 to mean any tactical movement towards a place from which an attack is to be launched.

2. Paragraph 4 of Article 44 is so ambiguously phrased that it defies application in practice. It is difficult to conceive how a person can be said to "forfeit his right to be a prisoner of war" when he is in any event to be "given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol".

3. With reference to Article 85 (formerly Article 74), the Philippine delegation feels strongly that a list of grave breaches of Protocol I suffers from a fundamental lack when it does not include the use of weapons prohibited by The Hague Declaration of 1899 (concerning the prohibition of use of bullets which expand or flatten easily in the human body) and the Geneva Protocol of 1925 (asphyxiating, poisonous or other gases, and bacteriological methods of warfare). It is recalled that this was the subject of a Philippine proposed amendment to the article (CDDH/418) which obtained 41 votes in favour, 25 against, with 25 abstentions, but which was considered to have been rejected by the Conference since the proposal had not received the requisite two-thirds majority of votes cast.

4. The Philippine delegation cast a negative vote on Article 90 (formerly Article 79 bis) entitled "International Fact-Finding Commission" since it was of the view that the establishment of such a fact-finding commission would be of little, if any, pragmatic value.

The Philippine delegation would have abstained as well if a vote had been taken on Protocol II because it adheres strongly to the principle that it is the sovereign right of every State to deal with rebel movements within its territory in any manner it deems fit, and to apply its national law accordingly. The Philippines is aware of its humanitarian obligations in its treatment of dissidents within its territory, and continues to pursue a policy of peaceful persuasion rather than of repression.

SENEGAL

Original: FRENCH

Protocols I and II

The delegation of the Republic of Senegal is very glad to have taken part in the work of the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law. Its feelings of pleasure are all the greater since the two Protocols additional to the 1949 Geneva Conventions have been adopted by consensus by all the delegations here present.

Since its accession to independence, Senegal has chosen to follow a pacifist and humanist policy. Pacifist, because our country has always preferred dialogue - a truly African virtue - to war as a means of reaching an amicable settlement in conflicts between States. For that reason, it has always lent its support to efforts designed to bring about the demilitarization and denuclearization of the African continent. Humanist, because Senegal is humanist by tradition, by conviction and by its respect for the Universal Declaration of Human Rights of 10 December 1948.

Furthermore, the Senegalese Constitution, which draws its strength from ancestral practice, guarantees the basic rules of respect for human dignity. Our economic and social policy places man first and last in the scheme of development.

Taking into account the foregoing considerations, our delegation welcomes the results achieved during the Conference's four sessions, which will make it possible for the two Protocols to be signed. They will henceforth constitute significant legal instruments, whose main purpose it will be, if not to prevent war, at least to render it more humane by guaranteeing assistance, respect and protection to civilian populations.

Nevertheless, although our delegation recognizes the merits of the two Protocols, it considers that there are still inadequacies and shortcomings.

For instance, the wording of Article 42 quater on "Mercenaries" (renumbered 47) does not satisfy us, in that we would have preferred a more strongly worded text, which would have placed an obligation on the Contracting Parties to take draconian decisions to get rid of this scourge, which has caused so much harm to mankind, and more particularly to Africa, once and for all. In the same way, we keenly regret that Article 86 bis, which advocated the establishment of a Committee "on the prohibition or restriction of the use of certain conventional weapons ... that may cause superfluous injury or have indiscriminate effects" was not adopted.

So far as Protocol II is concerned, we were in favour of the consensus. Nonetheless, we reserve the right to take a position later regarding some of its provisions.

We would conclude this declaration by paying a heartfelt tribute to the Swiss Government for the tremendous efforts which it has exerted to ensure the success of this Conference, to the delegation of Pakistan for its simplified draft of Protocol II, which enabled the Conference to extricate itself from the impasse into which it had been driven by the complicated nature of draft Protocol II as presented by the ICRC and, lastly, to all those persons of good will who have striven untiringly for the development of humanitarian law.

SOCIALIST PEOPLE'S LIBYAN
ARAB JAMAHIRIYA

Original: ARABIC

Protocols I and II

At this decisive stage of the development of these historic agreements, my delegation would like to thank all those who have contributed their knowledge and endeavours to this work, and I would refer in particular to the initiative of the International Committee of the Red Cross, which by its unceasing efforts has been able to put this noble idea into practice.

We also wish to thank Mr. Pierre Graber, the President of the Conference, the Secretary-General, the Secretariat personnel and Mr. Pictet. We are also happy to join all delegations in thanking the Swiss Government for its efforts to ensure the success of this Conference and to enable it to achieve its aims.

My delegation, which has contributed to the work of the Conference at all the previous sessions, expresses the hope that these agreements, which in fact represent the development and reaffirmation of the Geneva Conventions of 12 August 1949, will be observed in their application; for they cover all humanitarian questions but do not infringe the principle of national sovereignty or the legitimate rights of States to defend themselves against any aggression.

My delegation considers that the field of application of these agreements is armed conflict - i.e., warfare. It associates itself with all the delegations which have expressed the hope that the peak of humanitarian aspirations, namely, the disappearance of warfare and armed conflicts, will be attained. Nevertheless, we consider that a nation always has the right of self-defence.

My delegation is satisfied with the result of the Conference as regards liberation movements and has unequivocally supported this cause, which is of primary importance and, in our view, is a reaffirmation and development of international humanitarian law.

Lastly, my delegation shares the opinion of all the other delegations which have vigorously displayed a real desire to put an end to the language of war and to replace it by the voice of peace, fraternity and progress.

SYRIAN ARAB REPUBLIC

Original: FRENCH

Protocol I

Protocol I adopted by the Conference is no doubt an advance on the humanitarian law of the 1949 Geneva Conventions. In our view, however, the extent of that advance is very limited.

1. Where other delegations feel that much had been achieved, particularly in Articles 1 and 44 (Article 42 of the draft), the delegation of the Syrian Arab Republic, on the contrary, takes a more cautious view. While the article broadens and clarifies the concept of international armed conflict, it is nevertheless very selective. It does not cover every situation falling within the context of the right of peoples to self-determination. The delegation of the Syrian Arab Republic would have preferred a broader and more flexible wording which would provide a remedy for every possible situation. As for Article 44 on guerrilla warfare, its wording is so confused as to be open to contradictory interpretations, and hence its effectiveness and field of application will be severely limited.

2. There has been little improvement in other specific and no less important fields. Protocol I does not contribute anything to the solution of fundamental problems such as recourse to bodies with binding authority for the settlement of conflicts under the Protocol, effective guarantees of execution, affirmation of the primacy of humanitarian law and restriction of methods and means of warfare likely to cause superfluous injury. It would not be overstating the case to say that in some of its provisions, particularly those on the Fact-Finding Commission, Protocol I falls short of the Geneva law. It is regrettable that in all those matters political opportunism has over-ridden humanitarian considerations.

TUNISIA

Original: FRENCH

Protocols I and II

We would like first of all to associate ourselves with all those who have already expressed their thanks to Switzerland and the ICRC. The long historical tradition of Switzerland in the field of humanitarian law has made it possible to provide the international community with the opportunity of reaffirming and developing provisions whose ultimate aim is to preserve the human person from the sufferings resulting from armed conflicts. That is the context within which Tunisia has taken part in this Conference. We have always entertained the firm hope that mankind could succeed in establishing relations of peace and harmony among the various groups in the international community. Man's advance, still far from completed, towards that ideal must be made in clear awareness, with a view, if not to avoiding armed conflicts, at least to reducing to a minimum the suffering they entail. In that sense Tunisia welcomes the fact that the Conference has succeeded in achieving what may be described as a historic result. By this we mean the realization by the international community of the important part played by national liberation movements in the modern world, a realization embodied in the extension of the scope of humanitarian law to include non-international armed conflicts.

Article 1 of Protocol I, which is intended to be an improvement on common Article 3 of the Geneva Conventions of 1949, should allow of the protection of the human person in the conflicts of our time. The wars of national liberation now constitute the road by which peoples recover their national rights to self-determination and independence, and they cannot be ignored by the instruments of humanitarian law.

The peoples of Africa struggling against colonization and racism will interpret the results of our work as an understanding of their cause.

The heroic Palestinian people, united behind the Palestine Liberation Organization (PLO), its sole and lawful representative, can also continue its struggle with the encouragement of the support provided by this extension of the scope of humanitarian law. In this spirit we welcome the adoption of Article 42 of Protocol I, which, although it is not all we had hoped for, is nevertheless a great advance. As to reprisals, we hope that States will respect the restrictive conditions of international law governing resort to such measures.

I should add that our desire to preserve the main humanitarian provisions contained in the two Protocols led us to seek the prohibition of any reservations to those provisions. As no agreement could be reached on that subject, we venture also to hope that States will be moderate in their use of that procedure, in order not to nullify the results of four years of work.

We could have wished, too, that our Conference might have gone further in protecting the human person by drawing up rules on the prohibition or restriction of certain conventional weapons. As that proved impossible, we sincerely hope that the international community will succeed elsewhere on future occasions in demonstrating its wisdom in this matter.

In conclusion, Tunisia expresses the belief that the exercise of good will, harmony, and good faith will make possible the implementation of the two instruments we have concluded.

I trust we may be allowed to be even more optimistic, and hope that, over and above the implementation of these Protocols, there will result practices reflecting an even more effective development of humanitarian law, through efforts to disseminate and explain the spirit and the letter of these rules of humanitarian law.

TURKEY

Original: FRENCH

Protocols I and II

The delegation of Turkey participated in the consensus reached on Protocols I and II, which were adopted as the outcome of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

We welcome the fact that this result, which has been achieved after a prolonged period of work and four different sessions - thanks to the sustained and efficient efforts exerted by all the delegations in a spirit of mutual co-operation and understanding - reflects the desire to find a solution that, if not ideal, is at least practicable.

Indeed, the fact that the two Protocols were adopted without the Conference having to resort to a vote is calculated to confirm this aspect, to which we have not failed to make our contribution.

The delegation of Turkey expressed its point of view on the interpretation of the different articles included in Protocol I during the discussions which took place in the various Committees.

The deletion of Article 85 - which article had been proposed as part of Protocol I - leads us to hark back to the general principles of international law on reservations - principles which, moreover, find concrete form in Article 19 of the Vienna Convention on the Law of Treaties. In consequence, Turkey, acting in accordance with these principles, might at the time of signature elect to put forward as reservations the statements it made during the discussions on Protocol I.

Nevertheless, it would be desirable to point out that, should these reservations be expressed, they would in no way be designed to restrict the scope of the said Protocol or to limit its application. They would, however, allow of the broadest and most complete application of the provisions of the Protocol, taking into account our domestic regulations and our general policy in the context of respect for the sovereign rights of the State.

So far as Protocol II is concerned, Turkey also participated in the consensus.

We should first like to convey to the distinguished judge, Mr. Hussain, our sincere gratitude for, and congratulations on, his successful work. Thanks to his "magic" formula, he made it possible for us to reach a consensus on this Protocol, which had given rise to so many misgivings on the part of many delegations that its very adoption was placed in jeopardy.

Protocol II, even in its present form, presents aspects which seem to conflict with the sovereign rights of the State. Furthermore, the problems involved in the application of some of the provisions of this Protocol are calculated to cause difficulties from the standpoint of our domestic law. Certain other articles will necessitate some changes of major importance in our legislation, which could call for prolonged and painstaking examination. In this context, Turkey would have preferred to abstain if it had been decided to put the Protocol to a vote.

The main reason which induced us to participate in the consensus was the desire to see the sufferings of human beings in armed conflicts reduced to a minimum, and thereby to ensure that war, in the event that it should occur, might at least be conducted in accordance with rules that are as humanitarian as possible. Since there is no difference between international

conflicts and non-international conflicts from the standpoint of suffering and the human element, Turkey, which never ceases and has never ceased to contribute to the cause of humanitarian law throughout its history, lent its support to the consensus on Protocol II, although it finds itself confronted by serious difficulties in the field of its application.

None the less, we observed that the consensus reached was impaired by the statements made by numerous delegations, to the extent that it might be construed as representing a "consensus through abstention". Our delegation also declares that it does not consider itself bound by the result of this consensus, which will, moreover, enable Turkey to consider the question in all its dimensions in order to arrive at a final decision.

Before concluding, we should like to thank the Government of the host country, which, faithful to its traditional image of democratic thinking, impartiality and its conception of humanitarian law, has, thanks to its generous welcome and its competent organization, made possible the success of this Conference, which constitutes an important stage in the adaptation of the 1949 Geneva Conventions to the new circumstances that prevail today. We would also thank the International Committee of the Red Cross for its invaluable contribution and for its untiring and efficient efforts, as also all the Chairmen, Vice-Chairmen, Rapporteurs, Legal Secretaries and administrative staff of all the Committees and Working Groups which were set up during the four successive sessions of the Conference. Lastly, we thank the members of delegations, who assumed the greatest share of responsibility in ensuring the triumph of our noble cause.

UGANDA

Original: ENGLISH

Protocols I and II

The delegation of the Republic of Uganda joins the consensus on the adoption of Protocol I with great pleasure because, in its view, Protocol I represents development in the field of international humanitarian law applicable in international armed conflicts. However, the Uganda delegation hastens to add that the Republic of Uganda reserves its right to make reservations at an appropriate date in future as and if necessary.

The Uganda delegation has reluctantly joined the consensus on the adoption of Protocol II and, if the text of Protocol II had been put to the vote, our delegation would have abstained because some of its provisions infringe the sovereignty of States. The Uganda delegation feels that Protocol II is quite unnecessary. We joined the consensus on the adoption of the simplified text submitted by the delegation of Pakistan as amended by the Conference only as a compromise formula.

SUMMARY RECORD OF THE FIFTY-SEVENTH PLENARY MEETING

held on Thursday, 9 June 1977, at 9.20 a.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

ADOPTION OF THE MEETING'S AGENDA (CDDH/264)

1. The SECRETARY-GENERAL announced that, as planned, the texts of Protocols I and II together with the two Preambles would be circulated later in the day. To save time, the Preambles would appear as a separate document. The Drafting Committee had met to review Protocol II from the standpoint of its form. A supplementary report by the Drafting Committee to be circulated in the afternoon would indicate a few drafting changes and the new order of articles in Protocol II.

2. The PRESIDENT suggested that for technical reasons, and to save time, item 4 of the agenda (CDDH/264) should be considered immediately after item 1.

The agenda (CDDH/264), as amended, was adopted.

ADOPTION OF THE DRAFT FINAL ACT (CDDH/400 and Corr.1-4)

3. The PRESIDENT pointed out that the draft Final Act (CDDH/400) had been considered at length by the General Committee and reviewed by the Drafting Committee and that three corrigenda had been included in it by the General Committee, namely, documents CDDH/400/Corr.2 and Corr.4, which were purely concerned with drafting, and document CDDH/400/Corr.3, representing the agreement which, after lengthy negotiations, had been reached by the General Committee and the Conference on the subject of the signature of the Final Act by representatives of the national liberation movements participating in the Conference. In addition, there was document CDDH/400/Corr.1, containing an amendment by Mexico calling for the addition to the list of United Nations resolutions of those adopted by the General Assembly on weapons in connexion with the Conference.

4. Mr. BRECKENRIDGE (Sri Lanka) drew attention to a mistake in the English version of the foot-note on page 2 of document CDDH/400/Corr.3, where the word "provisions" should read "positions".

5. Mr. AKRAM (Afghanistan) and Mr. ROBERT (Federal Republic of Germany) also drew attention to mistakes of layout and misprints: in the French text Afghanistan should head the list of countries on page 3 of document CDDH/400, and in the English text a comma was missing between the word "Germany" and the words "Federal Republic of" on page 3 of document CDDH/400/Corr.2.

6. Mr. de ICAZA (Mexico), referring to his amendment to the Final Act (CDDH/400/Corr.1), said that his delegation had now revised it and withdrew the first paragraph. It still maintained the second paragraph.

The amendment by Mexico (CDDH/400/Corr.1), as revised, was adopted by consensus.

7. The PRESIDENT invited the Conference to consider the draft Final Act, including the drafting corrigenda and the amendment by Mexico which had just been adopted. It was generally hoped that the Conference would be able to adopt the Final Act by consensus, those delegations that so wished being free to make any written or oral objections or reservations to which it might give rise.

8. Mr. SABEL (Israel), referring to page 2 of document CDDH/400/Corr.3 (page for signature of the Final Act by the national liberation movements), said that the text was totally unacceptable to his delegation and asked that it should be put to the vote.

9. Mr. SULTAN (Egypt) pointed out that document CDDH/400/Corr.3 formed an integral part of the Final Act, which was the result of painstaking negotiations. In the General Committee as in the regional groups, all delegations, except one, had joined in the consensus. His delegation found the previous speaker's statement regrettable and opposed the motion for a separate vote.

10. Mr. SABEL (Israel), speaking on a point of order, specified, with regard to document CDDH/400/Corr.3, that his delegation was in fact requesting that a decision should be taken on the competence of the Conference, under rule 30 of the rules of procedure.

11. The PRESIDENT read out rule 30 of the rules of procedure and said that the proposal for a decision on the Conference's competence must be put to the vote immediately.

12. Mr. BRECKENRIDGE (Sri Lanka) pointed out that the Conference was a sovereign Conference with the power to take its own decisions and that its competence had never been called in question.

He asked the representative of Israel to state who else would possess competence and in what body the decisions in question would be taken. His delegation had participated in the preparation of the Final Act and the delegations had made every effort to formulate texts which could be made the subject of a consensus. He called upon them now to uphold the spirit of consensus.

13. Mr. ABDINE (Syrian Arab Republic), supported by Mr. ABDUL EL AZIZ (Libyan Arab Jamahiriya), considered that it was incorrect to describe the proposal as a motion on competence. It was really a question of procedure. In point of fact, the Conference had already taken a decision by consensus at its first session, and he failed to see how it could go back on it.

14. Mr. SULTAN (Egypt) observed that, if rule 30 of the rules of procedure was looked at carefully, the proposal by Israel was seen to be nothing but a motion for a separate vote, aimed at jeopardizing the success of the Conference. He called upon all delegations to abide by the consensus.

15. Mr. SABEL (Israel) explained that there had been a substantive decision on full participation by the national liberation movements and read out operative paragraph 2 of resolution 3 (I) of the Conference. There was no reference to signature of the instruments, and those movements could not be given the right to sign the Final Act just by adding a technical annex. Such a decision ought to have been the subject of a resolution in good and due form, which was not the case.

16. Mr. DIXIT (India) said that he had never been in any doubt as to the competence of the Conference, which was a plenipotentiary Conference and had adopted its own rules of procedure. In his view, the operative word in resolution 3(I) was the word "fully". The expression "participate fully" meant, in his opinion, that the national liberation movements enjoyed all rights except the right to vote, and they included the signature of the instruments.

17. The PRESIDENT said that the Conference was sovereign and that he himself was unable to give a ruling on whether the proposal was a motion of competence or a request for a separate vote. The question was a procedural one. He invited the Conference to take a decision on the nature of the motion.

The Conference decided, by 55 votes to one, with 20 abstentions, that the motion by the delegation of Israel was not a motion of competence.

18. The PRESIDENT noted that, in the circumstances, the Conference had a motion for a separate vote before it, which he proceeded to put to the vote.

The motion for a separate vote was rejected by 57 votes to 11, with 21 abstentions.

19. The PRESIDENT announced that the Conference would accordingly vote on the Final Act as a whole as submitted by the General Committee, in other words including the corrections.

20. Mr. BRECKENRIDGE (Sri Lanka) asked for a roll-call vote on the Final Act as a whole.

21. Mr. SABEL (Israel) expressed regret that he had not been consulted on the text of document CDDH/400/Corr.3, which he considered unacceptable. International instruments such as the Final Act of the Conference could be signed only by States or entities having an international personality and capable of bearing international responsibility for their actions. The invitation to national liberation movements to participate in the work of the Conference made no reference to signature of the instruments.

22. Moreover, the groups listed as national liberation movements included the Palestine Liberation Organization (PLO), which had no place in that list, in view of the aims it pursued, the causes it supported and the methods it employed. That movement was not striving to liberate anyone, but expressly declared, in its covenant and its official statements, that its aim was to destroy the Jewish people's right of self-determination. It had admitted publicly, by its methods, that it deliberately attacked civilians without even pretending to be aiming at military targets. The PLO was a terrorist group which was the very antithesis of everything international humanitarian law stood for.

23. The PRESIDENT, noting that the statement of the representative of Israel had given rise to protests and that he had been unable to complete it, urged all delegations to avoid any political polemics; humanitarian law would gain no benefit from such reactions, which were unworthy of the subject of the Conference.

24. Mr. HUSSAIN (Pakistan) said that throughout the proceedings of the Conference a minority of a single vote had been in evidence. In a democracy it was the rule of the majority which applied.

25. Mr. BRECKENRIDGE (Sri Lanka), speaking on a point of order, said that what had been said was a regrettable attack on a delegation and should not be included in the record.

26. The PRESIDENT said it was the rule to include in the record all statements made during the course of a meeting.

27. Mr. JOMARD (Iraq), speaking on a point of order, said that the zionist representative had no place at the Conference and reaffirmed the position of his own delegation, as set forth in paragraph 8 of the report of the Credentials Committee (CDDH/409).

28. Mr. SABEL (Israel), having been invited by the PRESIDENT to finish his statement, said that for the reasons given in his previous statement, Israel would not be a party to the Final Act.

29. Mr. ARMALY (Observer for the Palestine Liberation Organization), speaking at the invitation of the President, said he could not pass over in silence the hysterical rigmarole they had just heard, whose sole aim was clearly to sabotage humanitarian law and the aims of the Conference during the final stages of its work. On the previous day the representative of the zionist entity had referred to the innocent Jewish victims of the Second World War and had said that it was ready to undertake peace moves in order to put an end to useless bloodshed, thus purporting to be the spokesman of suffering mankind. But he was now acting as the spokesman of those who had been the cause of the exile and death of thousands of Palestinians and Arabs, of those who still maintained that they were not occupying territories belonging to others.

30. In reply to the representative of Menahem Begin, who had spoken of the Palestine Liberation Organization and its intention of destroying and killing, he would say that it was necessary for the PLO to sign the Final Act of the Conference not only for the protection of the civilian population of Palestine, but also for the greater good of its adversaries, since the PLO was ready to comply with all the provisions in the Protocols, both those which concerned the Palestinians and those which concerned their adversaries. He was convinced that any such abortive attempt to sabotage the Conference was doomed to failure.

31. Mr. SABEL (Israel) said, in reply to a comment by the PRESIDENT, that he would exercise his right of reply after the vote on the Final Act.

At the request of the representative of Sri Lanka, a vote was taken by roll-call.

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

In favour: Czechoslovakia, Thailand, Tunisia, Turkey, Union of Soviet Socialist Republics, Venezuela, Democratic Yemen, Yugoslavia, Zaire, Afghanistan, Algeria, Saudi Arabia, Argentina, Austria, Brazil, Bulgaria, Cape Verde, Chile, Cyprus, Colombia, Ivory Coast, Cuba, Denmark, Egypt, United Arab Emirates, Central African Empire, Ecuador, Finland, Ghana,

Greece, Honduras, Hungary, India, Indonesia, Iraq, Iran, Ireland, Socialist People's Libyan Arab Jamahiriya, Kenya, Kuwait, Lebanon, Liechtenstein, Madagascar, Mali, Malta, Morocco, Mauritius, Mauritania, Mexico, Mongolia, Mozambique, Nigeria, Norway, Oman, Uganda, Pakistan, Panama, Netherlands, Peru, Poland, Portugal, Qatar, Syrian Arab Republic, Republic of Korea, German Democratic Republic, Democratic People's Republic of Korea, Socialist Republic of Viet Nam, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, United Republic of Tanzania, Romania, San Marino, Holy See, Senegal, Sudan, Sri Lanka, Sweden, Switzerland.

Against: Israel.

Abstentions: Uruguay, Federal Republic of Germany, Australia, Belgium, United Republic of Cameroon, Canada, Spain, United States of America, France, Guatemala, Italy, Japan, Luxembourg, Monaco, Nicaragua, New Zealand, Philippines, United Kingdom of Great Britain and Northern Ireland.

The Final Act was adopted by 78 votes to one, with 18 abstentions.

Explanations of vote

32. Mr. FREELAND (United Kingdom) said that his delegation would have been prepared to join in a consensus on the draft Final Act as a whole, but that when a vote had been taken, it had found it necessary to abstain. It did so because it considered that in principle signatures to the Final Act of a conference should be limited to the representatives of States fully participating in the work of the Conference and having the right to vote. Nevertheless, the United Kingdom recognized the special position that had been accorded to national liberation movements in the Conference, pursuant to resolution 3(I), adopted at the seventh plenary meeting on 1 March 1974 and to rule 58 of the rules of procedure. That special position had been accorded solely because of the humanitarian nature of the Conference. The Conference was indeed unique in that respect. In the special circumstances of the case, his delegation had been prepared not to object to the proposal for signature of the Final Act by representatives of the national liberation movements, provided that those signatures appeared in a way which expressly recognized their special position at the Conference and clearly differentiated them from the representatives of States participating in the Conference. It wished, however, to state for the record its understanding that such a course of action was not to be taken as in any way creating a precedent for any future conference..

33. Mr. ALDRICH (United States of America) said that his delegation would have joined in a consensus on the adoption of the Final Act but had felt obliged to abstain when it was put to the vote, for the same reasons as the United Kingdom delegation. Signature of the Final Act by the United States delegation should not be understood as implying any recognition of other signatories in cases where such recognition had not previously been granted. With respect to signature of the Final Act by several national liberation movements which had been invited in 1974, at the first session, to participate in the Conference, his delegation noted that their signature reflected their unique role in the Conference, a role that had been made possible solely because of the fundamental humanitarian and universal nature of its work. Neither the participation of those movements in the Conference nor their signature of the Final Act constituted a precedent for other conferences. His delegation also noted that liberation movements would not, of course, be eligible to sign the Protocols, as they were open for signature only by Parties to the Geneva Conventions of 1949.

34. Mr. QUENTIN-BAXTER (New Zealand) said that if the request under rule 30 of the rules of procedure for a vote as to the competence of the Conference in relation to page 2 of document CDDH/400/Corr.3 had been allowed - and his delegation believed that that would have been the proper course - it would have voted to uphold the competence of the Conference and in favour of the Final Act as a whole. As that course had not been followed, his delegation had thought it more appropriate to abstain from voting upon the adoption of the Final Act.

35. Mr. de BREUCKER (Belgium) said that his delegation would have been in a position to join in a consensus on the content of the Final Act but considered that under international law States alone were competent to sign such an instrument. While it appreciated the fact that the Conference had granted special status to national liberation movements, that had only been possible because of the special and so to speak specific humanitarian nature of the Conference. Accordingly, his delegation, while abstaining, had not objected to signature of the Final Act by national liberation movements, on condition that their signatures appeared in a different list, separate from the one containing the signatures of States. That procedure in no way constituted a precedent for other international conferences.

36. Mr. HERNANDEZ (Uruguay) fully endorsed the statements made by the United Kingdom and United States representatives. Had a proposal been made to adopt the Final Act by consensus his delegation would not have opposed it. Nevertheless, he wished to emphasize that in his delegation's opinion sovereign States alone were empowered to sign the Final Act, an opinion which it had made clear at all times.

In addition, he wished to point out that the fact of the signing of the Final Act by national liberation movements recognized by regional intergovernmental organizations did not constitute a precedent as far as his delegation was concerned. His delegation would sign the Final Act with the foregoing reservations.

37. Mrs. CONTRERAS (Guatemala) explained that her delegation had abstained for the reasons stated by previous speakers. It, too, was of the view that only States were competent to sign the Final Act of a Conference.

38. Mr. BRECKENRIDGE (Sri Lanka), who had voted in favour of the Final Act, expressed surprise at the attitude of the delegations which had abstained in the vote but said they were prepared to sign the Final Act. He considered that to be meaningless political quibbling which ignored the march of time.

39. Mr. MILLER (Canada) said that he very much regretted the Conference's failure to reach a consensus on the adoption of the Final Act, which his delegation intended to sign. Canada had nevertheless abstained in the vote for the reasons stated by the representative of New Zealand. He endorsed the statements made by the United Kingdom and United States representatives concerning signature of the Final Act by representatives of national liberation movements.

40. Mr. ABADA (Algeria) said that the result of the vote on the Final Act, and the explanations of vote that had followed confirmed the existence of a deep chasm between two conceptions of humanitarian law and showed further that there was a wide gap between the letter and spirit of the new humanitarian law represented by the Final Act.

41. Mr. KORUTURK (Turkey) wished to make it clear that his delegation, which had voted for the Final Act, understood the term "liberation movements" to mean those movements which had already been recognized as such by the regional intergovernmental organizations concerned. Signature of the Final Act by those movements did not, in his Government's view, constitute a precedent for other conferences.

42. Mr. AL-ATTIYA (Qatar) said that his delegation, which had voted in favour of the Final Act, felt that its signature by national liberation movements was the logical outcome of the work of the Conference. The fact that only one dissenting voice had been heard showed that the international community was on the right road and that only one delegation had failed to understand that to be the road of the future.

43. Mr. SABEL (Israel) wished it to be known, with reference to Mr. Menahem Begin, whose name had been mentioned by one representative, that Mr. Begin had been a leader of an underground guerrilla movement fighting for the self-determination and independence of Israel. Its operations had been strictly limited to military targets.

44. Mr. ABDINE (Syrian Arab Republic) said that the Conference had adopted provisions governing relations between States, international organizations and other entities under international law. In addition to the participation of States, the Conference had agreed to the participation of resistance and national liberation movements, which were also considered to be entities under international law. International practice had, moreover, created precedents: the Evian Agreements had been signed by the Algerian liberation movements before the establishment of the Algerian State. The arguments put forward by the delegations that had abstained were thus unsound.

45. Mr. AL-FALLOUJI (Iraq) said that the vote just taken was a solemn tribute by humanitarian law to the national liberation movements which had taken part in the Conference. Signature of the Final Act was more important than the abstentions, which, while regrettable, were not negative in themselves.

46. The PRESIDENT announced that the representatives of Australia, Democratic Yemen, Federal Republic of Germany, France, Ghana, Italy, Socialist People's Libyan Arab Jamahiriya, Mozambique, Spain and the United Republic of Cameroon had indicated that they would submit their explanations of vote to the Secretariat in writing.

DRAFT RESOLUTION (CDDH/441 and Add.1) ON WEAPONS

47. The PRESIDENT pointed out that draft resolution CDDH/441 and Add.1 replaced the drafts circulated under the symbols CDDH/411, CDDH/423 and CDDH/428.

48. Mr. BLIX (Sweden), introducing draft resolution CDDH/441 and Add.1, reminded the Conference that it was he who had had the honour, at the first session (ninth plenary meeting - CDDH/SR.9), of submitting a proposal for an Ad Hoc Committee on Weapons (CDDH/23 and Add.1). The sponsors of that draft had then hoped that the Committee would be able to reach agreement on prohibiting the use of specific conventional weapons which might be deemed excessively cruel or indiscriminate in their effects. Because the ground for such agreement had been less well-prepared than was the case with the issues dealt with in Protocols I and II, two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons had met at Lucerne and Lugano to consider the available factual data on which the proceedings of the Ad Hoc Committee would be based. The sponsors had, moreover, submitted an important working paper (CDDH/IV/201 and Add.1-9 and Corr.2).

49. His delegation and many others had hoped that the Ad Hoc Committee might arrive at positive results, but that hope had not been realized. The voting on Article 86 bis should have shown that practically all States, except those bound by military alliances, were dissatisfied with the Conference's performance on the weapons issue. That feeling of disappointment, which was shared by a very large majority of States, should now move the other countries to seek an agreement that would yield important humanitarian gains.

50. Despite that situation, there was ground for satisfaction in the fact that it had at least proved possible to work out an agreement on the manner in which efforts in that field might be continued. For when the Conference had concluded its work, there would no longer be a forum in which there could be serious negotiations on the issue. But talks held during the previous week had made it possible to envisage the possibility of convening, by 1979 at the latest, a Governmental Conference to be preceded by a consultative meeting of all the Governments concerned which would be held in September/October 1977.

51. The purpose of draft resolution CDDH/441 and Add.1 was to ensure a sequel to the work undertaken by the Ad Hoc Committee at the current Conference. It was the result of painstaking efforts made by a number of delegations to work out a text that would be generally acceptable. Its sponsors considered that limited success had been achieved in some fields, and that it was desirable and necessary to continue.

52. The preambular paragraphs contained a brief sketch of the historical background of the issue, while the last two paragraphs showed how important it was that the work should be pursued with the urgency called for by evident humanitarian considerations, while seeking further areas of agreement. To that end, the operative clauses recommended that the documents produced by the Ad Hoc Committee should be transmitted to the Governments of States represented at the Conference and to the Secretary-General of the United Nations. It further recommended that a Governmental Conference should be convened not later than 1979, with a view to reaching agreements on the prohibition or restriction of the use of specific conventional weapons, together with acceptance of a mechanism for the review of such agreements and for the consideration of further proposals of the same nature.

53. Some delegations had felt that consultations between interested Governments should take place prior to discussion of the matter at the Thirty-Second Session of the General Assembly, in order to prepare the planned 1979 Conference; and that a consultative meeting might be convened for that purpose in September/October 1977.

Such a meeting would make it possible to clarify procedural matters relating to the 1979 Conference and to submit a resolution on the subject to the General Assembly.

54. In informal discussions, it had been stressed that it would be essential to prepare the 1979 Conference carefully. For that reason, operative paragraph 6 proposed the establishment of a Preparatory Committee, which would endeavour to lay down the best possible basis for achievement of the desired weapons agreement at that Conference. It was evident from the final operative paragraph that it would still be open to the General Assembly to take whatever action might prove necessary to ensure that the Conference was held.

55. A way had thus been charted for following up the work on specific conventional weapons undertaken by the Diplomatic Conference. Undoubtedly, there would still be numerous hurdles to surmount before final agreement was reached; but discussions held in the past few days had demonstrated that the issue aroused positive interest. Draft resolution CDDH/441 and Add.1 was aimed at ensuring that the opportunity was not lost. It was to be hoped that it would receive a broad consensus of assent.

56. Mr. BRECKENRIDGE (Sri Lanka) said that his delegation and several others had followed the negotiations resulting in draft resolution CDDH/441 and Add.1 with interest. He drew attention to the statements made at the Conference of Heads of State or Government of Non-Aligned Countries, held at Colombo in 1976. The draft resolution represented the best formula for reaching a consensus. Operative paragraph 3 referred to considerations of both a humanitarian and a military character: that was perfectly in line with the realities of the day. It must not, however, be forgotten that the Heads of State or Government had expressed their deep anxiety about the dangers threatening the civilian population owing to the development of particularly injurious weapons. The consultative meeting of all the Governments concerned, scheduled for September/October 1977, might be held in New York, where the Member States of the United Nations were all fully represented.

57. After consultations with a number of delegations, he wished to submit an amendment which would, in his view, enable a larger number of countries to approve the draft resolution.

58. The PRESIDENT asked the representative of Sri Lanka to convey the amendment to him in writing.

59. Mr. de GABORY (France) said that his country had agreed that the question of the effects and the limitation of specific conventional weapons should be studied by the Ad Hoc Committee. His delegation had taken part in the proceedings of that Committee as well as in the work of the Conferences of Government Experts at Lucerne and Lugano. Nevertheless, the results of that work must be considered as no more than simple factual data on which the States Members of the United Nations would take such further action as might seem to them desirable. In recommending that a Governmental Conference should be convened in order to reach an agreement on the prohibition or limitation of the use of specific conventional weapons, draft resolution CDDH/441 and Add.1 was prejudging the decision which might be taken by the Governments and by the United Nations regarding the choice of the most appropriate forum to carry on the work of the Ad Hoc Committee. In those circumstances, his delegation would not oppose the consensus, but it would have abstained if the resolution had been put to the vote.

60. Mr. DI BERNARDO (Italy) observed that his delegation had always stated its view that the Diplomatic Conference was not the appropriate forum in which to deal with the problem of prohibiting and limiting the use of specific conventional weapons. In a spirit of co-operation and responsibility, it had none the less taken an active part in the proceedings of the Ad Hoc Committee and of the sessions of the Conference of Government Experts, held respectively, at Lucerne and Lugano, which had in the event not succeeded in identifying solutions that were satisfactory and broadly acceptable. His delegation was convinced of the need to study the different aspects of the problem in depth in a highly qualified forum. It would associate itself with the consensus on draft resolution CDDH/441 and Add.1, in the hope that the procedure envisaged might contribute to reducing the divergences that continued to exist regarding the possibility of prohibiting or limiting the use of certain weapons. The need should be emphasized here and now for holding close consultations in order to study the bases for future work in a very searching manner, even from the technical standpoint. The holding of the planned Conference, and its chances of success, were strictly dependent upon the performance of scrupulously careful preparatory work and upon the effective participation of all States concerned.

61. Mr. MARTIN HERRERO (Spain) said that his delegation had been disappointed at the outcome of the work of the Ad Hoc Committee. The United Nations had instructed the Conference to achieve something practical in that field. Such progress as had been made,

however, was too late and too little, for the Conference was now referring the question back to the General Assembly. It would have been better if the Conference could have achieved tangible results itself. Nevertheless, the compromise contained in draft resolution CDDH/441 and Add.1 could be regarded as satisfactory and as making it possible to continue exploring the matter. Every effort should be made to see that the discussions did not lead into a blind alley. His delegation would join in the consensus.

62. Mr. MAHONY (Australia) congratulated the co-sponsors of draft resolution CDDH/441 and Add.1. His delegation, which had participated in the meetings of experts in Lucerne and Lugano as well as in the work of the Ad Hoc Committee, was ready to participate in the consultative meeting and the Conference which it was proposed to convene.

63. Mr. CARNAUBA (Brazil) said that his delegation would join in the consensus, but would have abstained if the draft resolution had been put to the vote. The provisions of operative paragraph 3 in fact prejudged the conclusions and decisions to which Governments might arrive regarding the work already carried out in the Conference, or that which might be undertaken in other forums.

64. Mr. GOULÃO DE MELO (Portugal) said that his delegation would join in the consensus and would be submitting comments in writing.

65. Mr. de ICAZA (Mexico) stressed that the matter was one which required urgent solution in view of the fighting which was going on in different parts of the world. It was incorrect to say that draft resolution CDDH/441 and Add.1 prejudged the decisions of States. All that it did was to recommend agreements to prohibit or restrict the use of various conventional weapons, and an agreement on revisionary procedures, together with consideration of proposed new agreements of the same kind. Its object was to vitalize a question of interest to the whole world in order to find a solution. Some delegations had mentioned that they had participated in the Lucerne and Lugano meetings: possibly, if their participation had been more active, the results might have been more satisfactory.

66. Mr. EL HASSEEN EL HASSAN (Sudan) congratulated the delegations taking part in the Conference on having succeeded in elaborating a draft resolution which could play its part in relieving human suffering. He supported the draft, while at the same time regretting that the Conference had been unable to reach agreement on the prohibition of certain conventional weapons. He was glad to note that some delegations which had opposed Article 86 bis would none the less join in the consensus. What was at stake was a final effort to relate humanitarian considerations to the question of weapons.

67. The PRESIDENT said that he had received the text of the amendment proposed by the delegation of Sri Lanka. The effect of that amendment would be to delete the words at the end of the third preambular paragraph "and has also been considered by the General Assembly of the United Nations", and to add a further paragraph reading as follows: "Recalling, in this connexion, discussions and relevant resolutions of the General Assembly of the United Nations and appeals made by several Heads of States and Government,".

68. Mr. BLIX (Sweden) accepted those amendments.

The amendment of Sri Lanka was adopted by consensus.

69. Mr. OSORIO (Colombia) welcomed draft resolution CDDH/441 and Add.1. He was sorry to note that the results of the Ad Hoc Committee's work had been less satisfactory than that of the other Committees. His delegation had taken part in drafting, or had been one of the sponsors, of various documents submitted on the question of prohibiting or restricting certain conventional weapons and he regretted that his country's name had not been given alongside those of other co-sponsors.

Draft resolution CDDH/441 and Add.1, as amended, was adopted by consensus.

70. Mr. VAN LUU (Socialist Republic of Viet Nam) welcomed the fact that there had been a consensus, but wished to draw attention to certain points of his Government's position. First, it was pointless in the case of humanitarian law to contemplate prohibiting or restricting the use of certain conventional weapons. In practice, the technical criteria of prohibition or restriction were not such as could be verified on the battlefield, and as emerged clearly from the reports of the sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne and Lugano, respectively, the experts themselves had failed to agree either in the laboratory or round the Conference table. On the other hand, standard criteria such as superfluous injury and the absence of discrimination were both more readily accessible to the public at large, and therefore more effective. The world-wide outburst of indignation which had stigmatized the use of criminal weapons in Viet Nam had had those criteria as a basis. The main part of the work in that connexion had been done through the mobilization of public opinion in order to stay the hand of the aggressor.

71. Secondly, the prohibition and restriction of the use of certain weapons had several drawbacks. First, an aggressor who unleashed a neo-colonial war - and such conflicts were the most likely to occur in the future - would not have to fear reprisals by peoples who were weak and ill-armed and fighting on their own national territory, so that it would be illusory to believe that he would respect any such prohibition or restriction, the more so since no check was possible on the battlefield. On the contrary, such controls would tie the hands of the Party which was on the defensive - always the weaker, the less well-armed and essentially the most inclined to obey the law, and human conscience would be revolted even more. Lastly, the prohibition or restriction of certain types of weapons would give the impression that only the weapons listed were dangerous, whereas authorized means of combat or industrial equipment (such as bulldozers, as had been the case in Viet Nam) used in large quantities by the aggressor, were capable of producing effects no less dangerous and no less cruel.

72. The Vietnamese people had always supported efforts towards disarmament; but that was a long-term enterprise. His Government had always emphasized the need for peoples to be ever-vigilant where the aggressive forces of imperialism were concerned, since those were the only possible sources of war at the present time. In conclusion, his delegation wished to pay a tribute to all the good will shown during the Conference on the matter of prohibition and restriction of certain conventional weapons, and hoped that the stand it had taken would play a positive part in the further consideration and settlement of that question.

73. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that his delegation's position was well-known and had been stated several times during the Conference as well as to the General Assembly of the United Nations. At the same time, although his delegation had not wished to oppose the consensus, it did wish it to be known that if resolution CDDH/441 and Add.1 had been put to the vote, it would have voted against operative paragraphs 3 and 7. Moreover - and there was nothing new in what he was saying - the question of cruel weapons could only be dealt with in the context of disarmament and in an appropriate forum.

74. Mr. ABOU-ALI (Egypt) expressed pleasure at the consensus and said that he would transmit his comments to the Secretariat in writing.

75. Mr. DEVARE (India) felt that the resolution submitted by Sweden reflected the work of the Ad Hoc Committee at the fourth session of the Conference and that of the Government Experts at Lucerne and Lugano. It was also in accordance with the appeal which the Heads of State or Government of the Non-Aligned Countries had made at the 1976 Colombo Conference, urging all States to accelerate negotiations, especially within the context of the Diplomatic Conference, with a view to prohibiting the use of certain conventional weapons, in particular napalm and other incendiary weapons. His delegation would have considered co-sponsoring the resolution if it had included a clear reference to the Colombo appeal.

76. Regarding the setting up of a preparatory committee, his delegation warned the Conference of the possibility of duplication between work carried out by that body and the negotiations on disarmament already under way in other forums. It must also be borne in mind that the resolution did not relate to disarmament in terms of conventional weapons, but only to the prohibition or restriction of the use of specific conventional weapons, including those of an indiscriminate or cruel nature.

REPORT OF THE CREDENTIALS COMMITTEE (CDDH/409 and Add.1 and Corr.1)

77. The PRESIDENT said that the credentials of the delegations of Turkey and the Dominican Republic had been examined and found in good and due form. The credentials of the Cape Verde delegation had that morning reached the Secretariat, which would take the necessary action.

78. Mr. CAJINA MEJICANO (Nicaragua), Chairman of the Credentials Committee, pointed out that the number of credentials examined and found to be in good and due form, given as thirty-four in paragraph 6 of the Committee's report, was thereby raised to thirty-five.

79. Mr. SABEL (Israel) said that his delegation could not approve those parts of the report which contained unacceptable political statements. He deplored the fact that a reference had been made to an abusive political resolution with which over seventy of the States represented at the Conference had refused to be associated.

80. Mr. AL-FALLOUJI (Iraq) pointed out that the resolutions of the United Nations had to be taken as a whole and could not be split up to suit the occasion. The reservations made by the delegation of Iraq were essentially legal. The credentials of delegations had no more value than those of the "authority" that issued them. In the case in question, the Iraqi delegation considered that "authority" illegitimate and, under those conditions, could not but reject the credentials of the delegation representing it. The delegation of Israel had reaffirmed its isolation and had shown how it intended to deal in future with documents and instruments of a humanitarian nature. That attitude fully justified the position adopted by the delegation of Iraq.

The report of the Credentials Committee was approved by consensus, subject to the reservations expressed above.

REPORT OF THE DRAFTING COMMITTEE (CDDH/404 and Add.1)

The Conference took note of the report of the Drafting Committee.

81. Mr. de ICAZA (Mexico), Mr. BINDSCHIEDLER (Switzerland), Mr. CARNAUBA (Brazil), Mr. AMIR-MOKRI (Iran), Mr. PAOLINI (France), Mr. HUSSAIN (Pakistan), Mr. MORENO (Italy), Mr. FELBER (German Democratic Republic), Mrs. SUDIRDJO (Indonesia), Mr. SOKIRKIN (Union of Soviet Socialist Republics), Mr. ABOU-ALI (Egypt), Mr. BOSCH (Uruguay), Mr. MODARES (Saudi Arabia), Mr. ALDRICH (United States of America), Mr. FREELAND (United Kingdom), Mr. DONOSO (Ecuador), Mr. MOKHTAR (United Arab Emirates), Mr. GHAREKHAN (India), and Mr. BEN FADHEL (Tunisia) paid wholehearted and glowing tributes to Mr. Al-Fallouji (Iraq), Chairman of the Drafting Committee, to all the members of the Drafting Committee and to those, including members of the Secretariat, who had also taken part in the work of that Committee. Representatives of the Arabic-speaking countries expressed their thanks and congratulations to the Arabic Drafting Committee.

82. Mr. AL-FALLOUJI (Iraq), Chairman of the Drafting Committee, explained that his Committee had performed its modest task in the service of the delegations, who had done the main work of the Conference in the various Committees. The expressions of gratitude he had just heard should be addressed, in his opinion, not so much to the Chairman of the Drafting Committee as to all the members of that Committee, whether they were official members or, more simply, the "unknown soldiers" whose names did not appear in the documents. In reality, the successful outcome of the work of the Drafting Committee was due to the spirit of co-operation that had animated a dynamic and efficient team, of which the members of the Secretariat who had shared in its work naturally formed a part. In conclusion, he hoped that the decisions taken by the Conference would be successfully applied and said that he was and would remain the servant of the Conference.

83. The PRESIDENT thanked Mr. Al-Fallouji and associated himself with the tributes that had been paid to him.

The meeting rose at 12.25 p.m.

ANNEX

to the summary record of the
fifty-seventh plenary meeting

STATEMENTS AND EXPLANATIONS OF VOTE

AUSTRALIA

Original: ENGLISH

Final Act

The Australian delegation would have joined in the consensus for the adoption of the text of the Final Act of this Conference but when the matter came to a vote the Australian delegation abstained.

We note that at this Conference national liberation movements were accorded a special place and this is reflected in rule 58 of the rules of procedure. The national liberation movements have participated fully in the deliberations of the Conference and in its Main Committees but have not had the right to vote. Moreover, national liberation movements may be involved in armed conflicts to which Protocols I and II are applicable. In view of these special considerations and because national liberation movements will be signing in a special capacity the Australian delegation has not opposed the signing of the Final Act by these movements.

We wish to make it clear, however, that in our view only participating States which have a right to vote should sign the Final Act and that it is wrong in principle for organizations which do not have a right to vote, and do not enjoy international legal personality, to sign the Final Act of a multilateral Conference. We consider that the signing of the Final Act by national liberation movements on this occasion should not constitute a precedent for the future.

BRAZIL

Original: FRENCH

Protocol II

The delegation of Brazil participated in the consensus on Protocol II but wishes to state, as it did when Article 1 of this Protocol was adopted (see CDDH/SR.49, annex) that according to the Brazilian Government's interpretation the conditions of application laid down in Article 1 of this instrument can be recognized only by the Government of the State on whose territory the conflict is alleged to be taking place.

DEMOCRATIC YEMEN

Original: ARABIC

Final Act

My delegation is delighted at the adoption of the draft Final Act (CDDH/400) and its four corrigenda by an overwhelming majority, testifying to the international unanimity inspired by the spirit of understanding and consensus that has prevailed in nearly all our work. The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law will thus achieve satisfactory results acceptable to all.

The ballot showed the isolation of the racist zionist entity, which was so insistent on a vote being taken, an attitude which that delegation has adopted on several occasions at the meetings of the Conference, thereby going against international unanimity and the overwhelming majority.

The Conference decided to invite national liberation movements recognized by intergovernmental organizations to attend its meetings. Since the first session they have played a positive part in the work of the Conference. They therefore have the right, now that our work is nearing its end after providing for an effective development of international humanitarian law, to sign this Final Act of the Conference, thus affirming their effective participation and the role they have played in bringing about this development.

The national liberation movements represent peoples who have suffered and are still suffering under colonialist oppression, racist régimes and foreign occupation. They have been careful to ensure that their struggles are conducted under the rules of international humanitarian law. The outcry from the colonialists, racists and occupiers will not stifle the voices of the liberation movements and will not prevent them from exercising their right to self-determination.

My delegation expresses its esteem for and gratitude to the delegations which have approved the Final Act and thus put into concrete form the humanitarian principles which are the main aims of our Conference.

ECUADOR

Original: SPANISH

Final Act

Ecuador did not oppose the consensus on the adoption of the Final Act on the understanding that liberation movements will not sign it on the same list as States and that no kind of precedent will be established, since only States can do so, and Ecuador objects to such movements being placed on an equal footing with States and to their signing the Final Act.

EGYPT

Original: FRENCH

Resolution CDDH/441 and Add.1

The Egyptian delegation welcomes the adoption by consensus of draft resolution CDDH/441 and Add.1, concerning the follow-up to be given to the question of the prohibition or restriction for humanitarian reasons of the use of specific conventional weapons likely to be excessively injurious or to have indiscriminate effects.

At the forty-first meeting of the Ad Hoc Committee on Conventional Weapons, the Egyptian delegation had occasion to point out that ever since the start of the Ad Hoc Committee's work it had done its utmost to see that the Conference achieved the humanitarian objective of prohibiting or restricting the use of specific conventional weapons likely to be excessively injurious or to have indiscriminate effects. That is why it co-sponsored document CDDH/IV/201 and Add.1-9 and Corr.2 providing for as general and broad a prohibition as possible of the use of such weapons. Unfortunately, the Conference has come to an end without having achieved any tangible result in this respect. Furthermore, the Egyptian delegation deeply regrets the tendency of some delegations to try to whittle down the objectives sought to just a few partial and fragmentary restrictions of the use of specific categories of weapons.

It was therefore with the aim of continuing the work already carried out in the Ad Hoc Committee and of achieving the humanitarian objectives sought that the Egyptian delegation joined in sponsoring draft resolution CDDH/441 and Add.1. It is glad that the draft resolution was adopted by consensus.

The Egyptian delegation wishes to confirm that, when the Conference envisaged in document CDDH/441 and Add.1 takes place, it will certainly continue to do everything possible for the attainment of the objectives set in this field.

GERMANY, FEDERAL REPUBLIC OF Original: ENGLISH

Final Act

The delegation of the Federal Republic of Germany regrets that a consensus on the Final Act could not be accomplished. This delegation would have joined a consensus, for it took an active part in drafting the Final Act. Since a vote was requested, however, we had to abstain.

It is our view that the national liberation movements which were invited to participate in our work had a specific position in this Conference which was based on rule 58 of the rules of procedure. Their signing the Final Act cannot be taken as a precedent for other conferences, for it is a generally recognized practice that only States are permitted to sign such documents. On the understanding that, as a general rule, the signature of final acts is and will continue to be reserved to States, we shall be able to sign the Final Act of this Conference.

On behalf of my Government I have to state clearly that in signing the Final Act, which will be signed also by national liberation movements, the Federal Republic of Germany does not recognize these movements.

Resolution CDDH/441 and Add.1

The Federal Republic of Germany joined the consensus on resolution CDDH/441 and Add.1 in supporting the efforts undertaken by this Conference to protect the civilian population and to diminish unnecessary suffering in times of armed conflict.

The results of the work done by the Ad Hoc Committee on Conventional Weapons as well as by the Conferences of Government Experts on the Use of Certain Conventional Weapons require further negotiations. It is, however, the understanding of the Federal Republic of Germany that the Conference of Governments, envisaged by resolution CDDH/441 and Add.1 can reach agreements on substantial prohibitions or restrictions on the use of specific conventional weapons which would affect the defence capability of a State or the military balance between States or groups of States only if considerations on arms control and disarmament are taken into account. Therefore, my delegation is convinced that as a disarmament body the Conference of the Committee on Disarmament or, if that cannot be realized, another disarmament institution, possibly of the United Nations, appears to be the most appropriate forum.

FRANCE

Original: FRENCH

Final Act

The French delegation could have joined in a consensus on the Final Act, but was obliged to abstain in the vote for reasons of principle.

The signing of this Act by national liberation movements, which are not States, even on a separate page from Government delegations, obliges it to enter reservations on strictly legal grounds.

While it was admissible for the Conference to give these movements a special hearing, in view of the subject-matter of the Protocols and the fact that they had been invited to attend, their signature of the Final Act should not open the way to a repetition of the practice in other international instruments on different subjects.

The French delegation considers that this Conference can on no account set a precedent.

Resolution CDDH/441 and Add.1

The French delegation agreed from the start of the Conference that the effects of certain weapons and possible restrictions on their use should be considered by an Ad Hoc Committee. Having taken an active part in the work of the Committee, as well as in the conferences of experts at Lucerne in 1974 and at Lugano in 1976, my delegation has always maintained that the end result should simply be a body of factual material, to which Governments and the United Nations could, if they saw fit, give whatever following seemed to them appropriate.

Draft resolution CDDH/441 and Add.1, by recommending in paragraphs 3, 4, 5 and 6 that a Conference of Governments should be convened with a view to reaching agreements on prohibitions or restrictions on the use of specific conventional weapons, prejudices the decision which Governments and the United Nations might take as to the choice of the most suitable forum for continuing the work of the Ad Hoc Committee.

In the circumstances, the French delegation did not oppose the consensus, but would have abstained if the draft resolution had been put to the vote.

GHANA

Original: ENGLISH

Final Act

The Ghana delegation had very much hoped that there would be a consensus in adopting the Final Act but unfortunately that hope did not materialise.

My delegation therefore voted for the adoption of the Final Act on the reasoning that legal technicalities should not be allowed to obliterate the humanitarian motives and purposes of this Conference. Whatever the status of liberation movements, they engage in armed conflict and are capable of indulging in some of the excesses of war which we are here trying to restrict.

My delegation also considers that signature of the Final Act is a mere certification of the records and we have it on record that the liberation movements were invited to participate fully in the deliberations of the Conference though not on voting terms.

We trust, of course, that the vote my delegation cast will not give the status of a State to any liberation movement.

GUATEMALA

Original: SPANISH

Final Act

The delegation of Guatemala abstained in the vote on the draft Final Act for the reasons already given by the delegations which preceded it, particularly those of the United Kingdom, the United States of America and Turkey.

Although Guatemala will sign the Final Act, this does not mean that it agrees that national liberation movements should be entitled to sign it; signature of the Final Act should be the right solely of the States Parties.

My delegation hopes that this step will not constitute a precedent for future meetings.

JAMAICA

Original: ENGLISH

Final Act

The Jamaican delegation was not present during the vote on the Final Act but wishes it to be recorded that had it been present it would have voted in favour.

MOZAMBIQUE

Original: FRENCH

Final Act

The delegation of my country deeply regrets that at the very last moment, when this Conference is coming to an end, some delegations are still trying to deny national liberation movements the rights generally accorded them by the international community.

By what right can national liberation movements welcomed to this Conference by acclamation at its first session be prohibited from signing the Final Act?

The national liberation movements have made a valuable contribution to the development of the 1949 Geneva Conventions. They have co-sponsored proposals which are a landmark in the history of humanitarian law.

As the representative of the Syrian Arab Republic said, the liberation movements have been admitted to full participation in this Conference, enjoying all rights except the right to vote.

We should like to ask the delegations which have abstained how they are going to apply Protocol I, adopted by the Conference by consensus; in particular, how they will apply the provisions of draft Article 84, paragraph 3, which has now become paragraph 3 of Article 96?

We have already said in this Conference that the national liberation movements, despite the fact that they are not signatories of the 1949 Geneva Conventions, have strictly observed the rules established by those Conventions in their armed struggle for national liberation.

The Mozambique Liberation Front (FRELIMO), the People's Movement for the Liberation of Angola (MPLA) and the African Party for the Independence of Guinea and Cape Verde (PAIGC), have given a salutary lesson to all those who were fierce defenders of the Portuguese fascist-colonial régime. But they have done so by the fundamentally humane way they conducted their armed struggle against the conqueror and the invader.

No one can be unaware of the massacres committed by some of the signatories of the 1949 Conventions.

We should like to remind those who persist in refusing to open their eyes that the day of colonialism and alien occupation is over. It is no longer possible to withstand the power of peoples who fight for their independence.

Yesterday, we were freedom fighters; today, we are the representatives of a sovereign State.

We are sure that the national liberation movements of today will in a very short time also represent their States.

PHILIPPINES

Original: ENGLISH

Final Act

The Philippine delegation does not stand in the way of building a consensus on the question of signature by national liberation movements. In its view, the issue is fraught with implications.

The delegation wishes, however, to put on record that had this particular issue been put to the vote, the Philippines would have abstained.

PORTUGAL

Original: ENGLISH

Resolution CDDH/441 and Add.1

The Portuguese delegation knows that draft resolution CDDH/441 and Add.1 on the follow-up to the work of the Ad Hoc Committee is a compromise solution to accommodate different opinions. But it fears that this solution may not lead to specific results within a medium period, because it may become a repetition of the debates which took place at this Conference.

The Portuguese delegation considers it essential that meetings of experts should take place before any diplomatic conference. It is the only way to obtain an agreement of a technical character which may constitute the basis of any future prohibition or limitation of some conventional weapons.

In these conditions the Portuguese delegation agrees with the reasons expressed by the delegation of France.

SPAIN

Original: SPANISH

Final Act

In connexion with the adoption and signature of the Final Act of the Diplomatic Conference, the Spanish delegation wishes to reaffirm the view repeatedly expressed that only States participate by right in a Diplomatic Conference and only States can sign the official authentic texts emanating from it.

So far as Spain is concerned, any decision or act contrary to this condition is devoid of any value as a precedent.

SOCIALIST PEOPLE'S LIBYAN
ARAB JAMAHIRIYA

Original: ARABIC

Report of the Credentials Committee

My delegation has noted with great interest the report of the Credentials Committee in document CDDH/409. We support the position of Iraq as set out in paragraph 8 of that report and agree that the Zionist régime is not worthy to be admitted to a Conference devoted to international humanitarian law. Indeed, its admission is contrary to resolution 3379 (XXX), adopted by the United Nations General Assembly at its thirtieth session.

Final Act

The Jamahiriya voted in favour of the invitation to liberation movements to sign the Final Act, for the following legal and objective reasons:

1. The invitation to liberation movements to sign the Final Act is calculated to foster the reaffirmation and development of international humanitarian law because it guarantees that the provisions of the Geneva Conventions of 1949 and of the two Protocols additional to them will be respected by those movements and constitute for them an obligation which they are bound to honour on the same footing as States. The international community has made and is still making considerable efforts towards that objective.

2. The liberation movements which have been recognized by this Conference by virtue of the texts adopted, and which have participated in accordance with the relevant provisions have thus, by signing the Final Act, been granted a status which makes them essential from the point of view of international humanitarian law.

The fact of signing the Final Act gives a really genuine dimension to the concept of the reaffirmation and development of the Geneva Conventions of 1949, particularly common Article 3 which was adopted unanimously by this Conference and constitutes the actual basis for any application of Protocol II.

3. The invitation to liberation movements to sign the Final Act is also in keeping with every concern for lawfulness, since those movements alone have a legitimate right over their territories, unlike the adverse colonialist Party.

4. We do not think there is anyone here who wishes to create difficulties by refusing to allow those movements the possibility of participating in our work, which has cost so much time and effort.

Delegations which have admitted the presence and participation of the liberation movements on terms they all understand, and after so much effort towards the reaffirmation and genuine development of international humanitarian law applicable in armed conflicts, could scarcely permit any action designed to prevent those movements from signing the Final Act.

5. Our delegation considers that failure by the liberation movements to sign the Final Act would be contrary to the facts of present-day life and to any real will to reaffirm and develop international humanitarian law applicable in armed conflicts.

UNITED REPUBLIC OF CAMEROON Original: FRENCH

Final Act

The delegation of the United Republic of Cameroon could have joined in a consensus if the Final Act had not been put to the vote. It abstained in the vote for obvious reasons.

Without going into legal considerations - the most important being the fact that signature of an international instrument in itself binds the signatories only to a very limited extent - the delegation of Cameroon feels that the importance attached to the problem could only be attributable to political rivalry and manoeuvring.

The delegation of Cameroon considers, therefore, that the essential thing, for the liberation movements which it has always staunchly supported, is the protection afforded them under international humanitarian law and their effective participation in the Additional Protocols and the Geneva Conventions of 1949 through their acceptance of these instruments.

This stance on the part of the Cameroonian delegation should not, however, be regarded as a rejection of the Final Act, which in any case is a document intended exclusively for the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law; there is no reason why it should be cited as a precedent in future conferences.

SUMMARY RECORD OF THE FIFTY-EIGHTH PLENARY MEETING

held on Thursday, 9 June 1977, at 3.15 p.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

In the absence of the President, Mr. H.J. Brillantes
(Philippines), Vice-President, took the Chair.

EXPLANATION OF VOTE

1. Mr. KABARITI (Jordan), referring to the vote on the Final Act taken at the fifty-seventh meeting (CDDH/SR.57), apologized for his delegation's absence for reasons beyond its control, and said that had it been present it would have cast an affirmative vote.
2. The PRESIDENT observed that the results of the vote at the morning meeting would not be affected by the statement of the representative of Jordan.

STATEMENTS ON PROTOCOLS I AND II

3. Mr. AKRAM (Afghanistan) said that his delegation was very happy to have had the opportunity of participating in the Diplomatic Conference and in the work of revising the two draft Protocols to the 1949 Geneva Conventions. Afghanistan had been one of the first countries to sign the Conventions and had always supported the principles they enshrined, which had now been reaffirmed and developed. His delegation was happy to find that the arduous work carried out over a period of four years had proved successful.
4. A further impetus had been given to humanitarian principles. If States could not prevent war, at least they could ensure that the Parties to a conflict would attempt to avoid or mitigate the sufferings of the victims of war. That fact would make a great difference to the conditions under which combatants at present operated. The adoption of the two Protocols was a proof of the goodwill and spirit of co-operation shown by all participants in the Conference. There had been some divergent views, but the goal set had been reached, namely, the improvement of the protection of the human being in time of armed conflict. Every delegation had done its utmost to ensure the achievement of that result.

5. Referring to Protocol II, he said that his delegation would have preferred it to contain a greater number of humanitarian measures.

6. Turning to the question of the prohibition or restriction of the use of conventional weapons, he said that his delegation had supported the work of the Ad Hoc Committee on Conventional Weapons and, although the results achieved by that Committee had been meagre, they had been constructive. His delegation had been a co-sponsor of documents CDDH/IV/201 and Add.1-9 and Corr.2 and CDDH/IV/220 and was convinced that the results obtained by the Ad Hoc Committee would serve as a useful basis for a further study of the prohibition or restriction of the use of certain conventional weapons - a problem of which the solution was of the utmost importance for the international community.

7. The delegation of Afghanistan was happy to note that resolution CDDH/441 and Add.1, adopted at the fifty-seventh meeting, would be submitted to the United Nations General Assembly, where it would surely meet with the approval of the Heads of State or Government of the non-aligned countries.

8. His country had always been wedded to peace, security and justice for all mankind and hoped that in any armed conflict both Protocols would serve the humanitarian purposes, for which they had been drawn up.

9. He paid a tribute to the President of the Conference, to the International Committee of the Red Cross and to the host country for the admirable way in which the Conference had been organized.

10. Mr. VAN LUU (Socialist Republic of Viet Nam) said that the adoption of Protocol I marked a new and historical landmark in the reaffirmation and development of international humanitarian law, thirty years after the adoption of the four Geneva Conventions of 1949. The main results achieved reflected the type of war which had raged during the last three decades - namely the struggle of peoples for their right to self-determination and against colonialism, neo-colonialism and racism. Those results would protect both combatants and civilians in wars of the people, and, as had been shown, the different types of wars were interdependent in any given period of history, and the protection of the civilian population in wars of a classic type had as a result been strengthened and the rules governing the means and methods of combat applicable in the two types of wars had been brought up to date. Protocol I also reaffirmed certain ancillary principles of The Hague Conventions such as that of responsibility for indemnisation. But certain principles placed

in the context of the reality of wars of the present epoch threw fresh light on one of the aspects of the problem of the establishment of a new international economic order for developing countries, victims of aggressive wars and foreign occupation. Moreover for the first time in the history of international law, the principle of ius ad bellum of the present era, which was the condemnation of illegal recourse to force and aggression, was attached to ius in bello which had always detached itself in an artificial manner but which, in the new equilibrium, left intact the principle of the equality of belligerents.

11. From such results only it would be seen that, Protocol I already marked much progress which no one would have believed possible at the opening of the Diplomatic Conference. How could such a remarkable development in many respects be explained?

12. The delegation of the Socialist Republic of Viet Nam had had many opportunities to pay a tribute to the spirit of consensus, based on a realistic view of history and on the will to develop international humanitarian law, shown by the majority of delegations attending the Diplomatic Conference. Those delegations could be justly proud of the work they had accomplished.

13. But what was the factor which had determined that new spirit of consensus in the Conference?

14. It was a fact that the first two sessions of the Diplomatic Conference had taken place before, and the last two sessions after the conclusion of the Viet Nam war, one of the most horrible conflicts that mankind had ever known and one which had aroused the human conscience on an international scale.

15. Had that war touched most deeply the forces which determined the evolution of peoples in order that many of the concepts still in confrontation at the first two sessions - justice and humanity, political and humanitarian law, might find their compromise solutions in the last two sessions of the Conference - compromise solutions between the two categories of concept which were reflected in the concrete rules of Protocol I for the new realities of wars of the type of that which had taken place in Viet Nam?

16. It was in full awareness of that evolution of the deep currents of forces which determined the course of the world that the delegation of the Socialist Republic of Viet Nam expressed the firm hope that the spirit of consensus which had so happily presided throughout the formulation of the new international humanitarian law, would assert itself in the application of that law.

17. Looking further into the future, the delegation of the Socialist Republic of Viet Nam was firmly convinced that the same evolution of deep currents of forces would efface little by little the present limitations of Protocol I which were the necessary result of all compromise consensus.

18. Mr. ERDEMBILEG (Mongolia) said that, with the adoption of Protocols I and II by consensus, the work of the Diplomatic Conference had been crowned with success. His delegation had supported the adoption of the two Protocols - a result which had been achieved after lengthy debates and much effort.

19. The Conference had made an outstanding contribution to the reaffirmation and development of international humanitarian law. His delegation saw in the Preamble, and in Article 1 of Protocol I, a reflection of the spirit of modern international life - a step towards détente and the achievement of peace and friendly co-operation among peoples.

20. Referring to the difficulties encountered in the debates, he said that some participants had undoubtedly at times suffered disappointment, but solutions had been reached in a spirit of compromise and had proved acceptable to all.

21. Turning to Protocol II, he said that his delegation had been happy at its adoption, since it marked a step forward in the affirmation and development of international humanitarian law.

22. Despite the negative attitude of one delegation, the adoption of the Final Act had been marked by the full participation in the Diplomatic Conference of representatives of national liberation movements - a positive factor that had contributed to the success of the Conference.

23. The delegation of Mongolia wished to express its gratitude to the USSR delegation and to the other socialist countries who had made constructive efforts as regards many of the Conference issues. He also wished to express the gratitude of his delegation to the representatives of the Swiss Confederation for the organization of the Conference, and to the representatives of the International Committee of the Red Cross for the great efforts they had made to ensure a successful outcome.

24. Lastly, he expressed the hope that the two Protocols would serve the noble cause of the further development of international humanitarian law, peace and good neighbourly relations between States.

25. Mr. MILLER (Canada) said that it was difficult to summarize in a short time the accomplishments and shortcomings of a Conference of four years' duration. Bearing in mind the two sessions of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held in 1971 and 1972, it would be seen that the subject had been under international discussion for six or seven years.

26. His delegation was extremely satisfied to note that the Diplomatic Conference had adopted by consensus some 130 articles on the progressive development of international humanitarian law. That was a great accomplishment and his delegation hoped that it would serve as an example to other Conferences, bearing in mind the humanitarian spirit and the goodwill and co-operation which had prevailed throughout the discussions.

27. Referring to the two Protocols, some might say that the Diplomatic Conference could have accomplished more. Such criticism was hardly fair. The Conference had accomplished what it had set out to do in a manner satisfactory in the light of current events. Article 1 of Protocol I was proof of that fact. That article was an extremely important reflection of current international preoccupation with the struggle for self-determination that was raging wherever there survived cases of colonialism, racist régimes and foreign occupation. His delegation had been somewhat slow in accepting the need for the internationalization of that type of conflict and wished to apologize for the fact that it had not appreciated that need at the first session of the Diplomatic Conference.

28. With the adoption of Protocol I, the national liberation movements represented at the Conference would conduct their armed conflicts in accordance with that Protocol. One of the most important articles - Article 5 - dealt with the appointment of Protecting Powers and of a substitute. His delegation hoped that now that that particular article had been brought up to date it would be fully applied in the future. The Canadian delegation was glad to note the role to be played by the International Committee of the Red Cross in that connexion, and the time-limits laid down.

29. His delegation was satisfied with the contents of Article 79 of Protocol I on measures of protection for journalists, and also noted from Article 82 that legal advisers would be attached to the armed forces. Such advisers would have to be readily available on the battlefield. His delegation was also gratified to note in Article 85 the provisions concerning the repression of grave breaches of Protocol I.

30. In the opinion of his delegation, Articles 86 and 87 were a clear reaffirmation of customary law requiring superiors to be held responsible if they failed to prevent grave breaches.

31. Article 90 concerned the establishment of an International Fact-Finding Commission, which his delegation considered a worthwhile provision within Protocol I, though it would have preferred stronger wording.

32. He wished to pay a tribute to Mr. de Icaza (Mexico), the Rapporteur of Committee I, who throughout the last three sessions of the Conference had been responsible for leading the Committee to a successful outcome.

33. Committee II, under the chairmanship of Mr. Nahlik (Poland), had produced some excellent texts on the protection of the wounded, sick and shipwrecked, of civilian medical personnel and of their units. The articles on medical transport, including the use of aircraft as ambulances, had removed many of the restrictions imposed by the first and second Geneva Conventions of 1949. Annex I to Protocol I was welcomed by his delegation, as was Section III of Part II concerning missing and dead persons.

34. Protocol I recognized civil defence as a humanitarian task worthy of respect and protection. It also recognized the role of civil defence in combating the effects of enemy attacks and in taking care of the civilian population in the event of natural disasters.

35. The proposals made by the ICRC with regard to relief had emerged without serious dilution. His delegation would have been very disappointed if reservations had been made to Articles 68 to 71.

36. Committee III, under the chairmanship of Mr. Sultan (Egypt) with the assistance of Mr. Aldrich (United States of America) as Rapporteur, had had to deal with some of the most fundamentally important and difficult articles. Those articles attempted to reconcile military necessity with humanitarian aims: Article 36 on new weapons, for example, represented a definite step forward in humanitarian law, since it requested States to ensure that any new weapons they might develop were compatible with the requirements of international law.

37. Care would have to be taken in the interpretation of Article 44 on combatants and prisoners of war, for a wrong interpretation could work to the grave disadvantage of civilians.

38. The adoption of Article 52 on the general protection of civilian objects had finally ended the debate on what constituted a military objective. The article was therefore an important step forward in the protection of the civilian population.

39. Articles 50 to 56 contained provisions referring to the prohibition of reprisals. The Canadian delegation was unhappy to note that the Conference had not seized the opportunity to regulate more strictly the conditions under which reprisals might be taken.

40. He emphasized the importance of Article 75 on fundamental guarantees concerning the protection of victims of international armed conflicts.

41. Turning to Protocol II, he said that the Canadian delegation was glad to note that such a sensible, practical and basic humanitarian document had been adopted, and hoped that it would prove welcome to a large number of States. His delegation had felt in the past that Protocol II was a duplication of Protocol I, but that fear had now been dispelled.

42. Referring to Article 1 of Protocol II, his delegation noted that it contained an objective set of criteria which could be easily identified. Protocol II had been simplified and his delegation was of the opinion that its threshold had been somewhat reduced, and that isolated incidents of violence and riot remained outside the Protocol.

43. Article 2 of Protocol II was a sincere attempt to preserve basic human rights even for rebels, without any discrimination.

44. Article 3 guaranteed the sovereignty of every State and could never be used to condone any form of intervention.

45. Article 4 was as important, in its way, as Article 75 of Protocol I. It limited and reduced the horrors of civil war.

46. The Canadian delegation was particularly gratified at the adoption of Article 5, which granted rights to persons whose liberty had been restricted, and at the preservation of the rule of law in Article 6.

47. Article 19 was curious, since it consisted of one line only. Canada had supported a Conference resolution which set out in greater detail the responsibility of each Government to disseminate the Protocols in a manner which would make them known not only to those who had to apply them in armed conflict, but to the civilian population.

48. The ICRC and other similar organizations, such as the International Institute of Humanitarian Law at San Remo, had a distinct role to play in making humanitarian law better known to the international community.

49. His delegation wished to express its gratitude to Mr. Justice Hussain of the Pakistan delegation for the brilliant way in which he had simplified Protocol II, the text of which had now been adopted virtually unchanged.

50. The Canadian delegation was disappointed that the work of the Ad Hoc Committee on Conventional Weapons had not been more forthcoming. However, the resolution that had been adopted (CDDH/441 and Add.1) would ensure that the work done by the Ad Hoc Committee would not be lost and would be the subject of further consideration by the United Nations.

51. He wished to pay a sincere tribute to Mr. Pierre Graber, the President of the Conference, and to express gratitude to the Swiss Confederation for having played host to the Conference. He also thanked Ambassador Jean Humbert, Secretary-General of the Conference, and his staff for their hard work. He paid a tribute to the ICRC for its lasting faith in humanitarian law and for its achievement in producing the bulk of the basic documents and invaluable expert advice. The role of the ICRC had not been recognized adequately in Protocol I and was not mentioned at all in Protocol II. Yet, and despite its great prestige, the ICRC should strive to improve its acceptance in vast areas of the world - he referred more to its political image than to its humanitarian tasks which were acknowledged in all quarters.

52. The unopposed adoption of the two Protocols was one of the most significant developments of humanitarian law in several decades. He hoped the Protocols would be applied universally and would impose some restraint on man's inhumanity to man.

53. Since the Canadian delegation had been unable to comment on any of the statements made in explanation of vote, especially as so many had been submitted in writing, it wished to point out that it could not be assumed that the delegation agreed with any particular interpretation of any phrase or article in the Protocols. In cases where the delegation had not made an express statement it must reserve the right, whenever it might be necessary, to formulate its interpretation of the particular phrase or article in question.

54. Mr. ALEXIE (Romania) expressed his delegation's satisfaction at the adoption by consensus of the two Protocols to the Geneva Convention of 1949, and at the successful outcome of the work of the Conference. His delegation considered that the adoption of such legal documents, especially Protocol I, after so many years of hard work, was an important step in the development of international humanitarian law.

55. The Romanian delegation wished to congratulate the Government of the Swiss Confederation, the ICRC, the President of the Conference, all delegations and the Secretariat on the success of the Diplomatic Conference.

56. The Diplomatic Conference had achieved its target: the codification and enforcement of the rules of international humanitarian law applicable in armed conflicts, bearing in mind the great changes that had occurred in the world, especially after the Second World War.

57. During the last three decades important changes had occurred in the international sphere. A new policy of equality as regards a State's independence, its sovereignty and freedom from interference in its internal affairs, and the creation of good relations between States, had evolved on the basis of the right of peoples to self-determination and to participation in full equality in the solution of the complex problems of international life. International humanitarian law could not and should not remain aloof from such realities.

58. The essential aim of the international community, including the Diplomatic Conference, was the complete elimination of wars of aggression.

59. His delegation had always held that objective in view, and was gratified that efforts had been made at the Diplomatic Conference to ensure the supremacy of humanitarian law, in order that justice might prevail in armed conflicts which inflicted such terrible sufferings on mankind.

60. The delegation of Romania was convinced that humanitarian law must develop within the framework of modern international law, which prohibited aggression and interference in the internal affairs of States and supported the right of peoples to self-determination and to self-defence by every possible means against aggression.

61. In present conditions humanitarian law must make a clear distinction between the victim of aggression and the aggressor, unreservedly protecting the former. Humanitarian law must also prohibit the use of weapons of massive destruction and methods

of warfare which struck indiscriminately at combatants and civilians alike. The latter must be protected against the dangers of military operations. Many of those aims were covered by the provisions of Protocol I, including the case of peoples struggling for their independence, the status of prisoners of war, and the prohibition or restriction of the use of certain conventional weapons and weapons of massive destruction.

62. The Protocol also contained provisions limiting the attributes of the Occupying Power, reinforcing the protection of the civilian population and civilian objects, and that of the sick, wounded and shipwrecked.

63. Although the provisions of the two Protocols were often limited, his delegation considered that they marked a positive step forward and an effective reaffirmation and development of international humanitarian law in the case of international armed conflicts.

64. It would be for Governments to draw their own conclusions, evaluating in a realistic and rational manner the results of the Diplomatic Conference, conscious of the importance and complexity of the problems dealt with in the two Protocols.

65. Mr. de BREUCKER (Belgium), welcoming the adoption of the two Protocols by consensus, saw in Protocol I three main principles: first, a reaffirmation of the system of control of the implementation of humanitarian law; secondly, the development of the law of war, especially of The Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land; thirdly, the clearer evaluation of the rights of the human person. Turning to the first point, that of the control envisaged in Article 5, he noted that representatives had merely facilitated the designation of a Protecting Power or substitute, the rest of the conventional system (Article 10 of the first, second and third Geneva Conventions of 1949, and Article 11 of the fourth) not having been reaffirmed or developed. He noted that the same thing occurred in the case of the International Fact-Finding Commission, in connexion with which a permanent mandatory commission had met with rejection. Faced with that refusal of principle, a provision of a mandatory nature concerning occupied territory could only end in illusion and impracticability.

66. Second main point: the development of the law of war, the last formulation of which dated from 1907. If the editorial complexity of the articles referring to the conduct of hostilities was to be overcome, the approach was in truth more simple than it

appeared. Military commanders were warned to consider carefully in making their plans the effect of any action they contemplated on the civilian population. That warning to be careful did not exclude errors in view of the fact that in all the articles intention was at the heart of the constitutive elements of any possible breach. The rule was eased many times by the possible, practicable, feasible generator of mandatory means rather than by the result. It would be seen further how factual circumstances mattered in so far as they had been known at the time of the important decision taken in the determination of the legality of an action. From which it would be seen that no method of combat was illegal a priori in the light of those articles, and that it was the adequation of the method to the known circumstances which would play the essential part in evaluating the action undertaken as regards the law. Those articles were studded with prohibitions of reprisals. He wondered, however, what would happen to a Party to the conflict which, despite those prohibitions of attack against civilians and civilian objects, deliberately and continually committed such acts in order to gain a decisive military advantage in the conduct of war. He recalled that that question had been asked of the Conference, but that the latter had never clearly faced the problem even though it touched an extreme point of the credibility of the rules adopted.

67. He then turned to the third aspect of the Protocol - the consecration within the scope of the Universal Declaration of Human Rights of an ever-clearer dimension of the human person, subject to international law even in the very midst of armed conflict. Articles 11 (Protection of persons) and 44 (Combatants and prisoners of war) were witnesses. A further witness was Article 45 which established for all the right to judicial appeal in order to claim status which would protect the person concerned from the firing squad, and Article 75 which gave mankind a basic charter of human rights applicable to all.

68. Protocol II, with which the Belgian delegation had been very closely associated since the sessions of the Conference of Government Experts, also happily complemented existing law in that it reaffirmed and developed Article 3 common to the Geneva Conventions of 1949, without changing its present conditions of application. He recalled the shock caused by the proposal of Mr. Hussain (Pakistan) and the confusion which followed where turn by turn the new type of "realpolitik", "Pontius Pilatism" and humanitarianism of every description seemed to dominate. He noted, however, that the essential survived, through the loophole of consensus, sometimes by adoption and sometimes by elimination, in order to arrive at a viable instrument which

would, he hoped, meet with more ratifications than a text which might have been more complete and less universal. That instrument remained within the philosophy of Article 3 and despite its silence left the ICRC the right to offer its services to the Parties to the conflict; services so far as the application of the rules were concerned - material services in the form of assistance to suffering people.

69. In conclusion he expressed the wish that the two Protocols would help to mitigate the sufferings caused by conflicts with which they were called upon to deal.

70. Mr. BOSCH (Uruguay) said that his delegation had participated in all four sessions in the peaceful and humanist tradition of its country, as legally expressed in its basic law and confirmed by the positive contributions made by its succeeding administrations in such international forums as The Hague and Geneva. The purposes of the present Conference had been to relieve the sufferings of victims of armed conflicts, especially those of the civilian population, to protect defeated combatants, to prevent the unnecessary destruction of material goods, both those needed for human survival and those which symbolized the loftiest expression of the human spirit - in other words, to safeguard, in so far as possible, human life and its values from the horrors and sufferings inherent in any military conflagration.

71. In view of the historical conditioning to which all human enterprises were subject, the work of the Conference had inevitably been limited by the circumstances existing at the time. While his delegation was largely satisfied with the results achieved with respect to the instrument concerning armed conflicts of an international character, it was not in agreement with some of its provisions, which, in its opinion, not only jeopardized certain fundamental objectives of the instrument itself - such as those connected with the protection of the civilian population - but also failed to give clear and adequate recognition to the legitimate protection of the national existence of States.

72. With regard to Protocol II, in spite of praiseworthy efforts to simplify it and facilitate its application, the exclusion of certain provisions of the original draft - of undeniable humanitarian value - and in particular the retention of a certain highly controversial provision which could give rise to ambiguous interpretations affecting the sovereignty of States, made it impossible to accede unconditionally to that instrument.

73. In spite of the number of reservations which his delegation had with respect to both Protocols, especially Protocol II, it had not, for the humanitarian reasons to which reference had been made by many delegations, opposed the consensus. Nevertheless, it wished to state for the record that if the Protocols had been put to the vote, his delegation would have abstained from voting; its agreement with the consensus, therefore, should not be interpreted as compromising the final attitude to be adopted by its Government.

74. Lastly, his delegation wished to express its appreciation of the invaluable collaboration offered by the ICRC and the host country.

75. Mr. MUDARRIS (Saudi Arabia) said that his delegation had entertained some doubts about Protocol II, but had resolved them after studying the simplified version submitted by the delegation of Pakistan (CDDH/427 and Corr.1). It was extremely pleased with that version and was prepared to support the simplified Protocol II, which could do much to serve the purposes of humanitarian law. It must maintain, however, certain reservations concerning respect for national sovereignty, since his Government considered itself free to apply its own internal rules in accordance with the principles of Islam.

76. Mr. ALDRICH (United States of America) said that his Government welcomed the adoption of Protocol I, which represented a major advance in international humanitarian law of which the Conference could be proud. He hoped it would be signed and ratified by all the States represented at the Conference.

77. His delegation was particularly happy to welcome the inclusion in the Protocol of provisions on the protection of medical aircraft, which would for the first time give such aircraft significant immunity from attack. It also welcomed the articles designed to ensure the keeping of records for those missing in action and the protection of the remains of the dead.

78. Although the provisions on Protecting Powers fell short of his delegation's wishes, they did represent an improvement over the Geneva Conventions and would at least make it more difficult and embarrassing, in future, for a State to refuse to permit outside supervision of the manner in which it treated its prisoners. In that connexion, he welcomed the clear statement in the Preamble that no person protected by the Conventions or the Protocol could be denied those protections on the basis of charges of aggression. He also welcomed the statement in Article 44 that a soldier could not be deprived of his status as a prisoner of war by allegations of war crimes. History had shown, unfortunately, that such protections were necessary.

79. His delegation was also satisfied with a number of other important advances in the law made by that Protocol. In particular it noted the prohibition of indiscriminate attacks, including target area bombardment in cities, the clear and helpful definition of military objectives, the prohibition of the starvation of civilians as a method of warfare and of the destruction of crops and food supplies, and the special protection, with reasonable exceptions, accorded to dams, dikes and nuclear power stations. His delegation believed that the Conference would draw satisfaction from having achieved the first codification of the customary law rule of proportionality, from having worked out a good definition of mercenaries that should not be open to abuse, and from having set minimum humanitarian standards that must be accorded to anyone not entitled to better treatment.

80. His delegation had already during the plenary sessions commented on a number of articles which, because of compromise or vague language, required clarification. For example the problem of assuring compliance with the Conventions and the Protocol, not only by individuals but also by Governments, was extraordinarily difficult. In addition to the provision on Protecting Powers, he welcomed the emphasis placed on dissemination, on the provision for legal advisers to the military forces and on the responsibility of commanders and others in authority to take steps to prevent violations. Those provisions would promote increased training for both civilians and the armed forces, and such training was necessary to improve compliance with the law. The structure of provisions regarding "grave breaches" established in the Conventions had been taken over and developed in the Protocol. He welcomed those provisions, but in order to avoid possible misunderstanding, he must emphasize that to constitute a "grave breach", an act must violate one or more substantive rules of the Protocol or the Conventions.

81. The provisions on the responsibility and co-operation of Governments were important in terms of the reaffirmation of existing law. As between adversaries, however, reciprocity and mutuality of interest remained perhaps the most powerful pressures for compliance with the Protocol. The Protocol had gone far to remove the deterrent of reprisals, for understandable and commendable reasons and in view of past abuses. In the event of massive and continuing violations of the Conventions and the Protocol, however, the series of prohibitions on reprisals might prove unworkable. Massive and continuing attacks directed against a nation's civilian population could not be absorbed without a response in kind. By denying the possibility of such response and not offering any workable substitute, the Protocol was unrealistic and, in that respect, could not be expected to withstand the test of future armed conflicts.

82. His Government understood that the Protocol was designed to afford the greatest possible protection to civilians and other victims of war during international armed conflicts. To that end it imposed a number of significant restraints on the use of means and methods of warfare. From the outset of the Conference it had been his understanding that the rules to be developed had been designed with a view to conventional weapons. During the course of the Conference, there had been no discussion of the use of nuclear weapons in warfare. He recognized that nuclear weapons were the subject of separate negotiations and agreements and, further, that their use in warfare was governed by the present principles of international law. It was his Government's understanding that the rules established by the Protocol were not intended to have any effect on, and did not regulate or prohibit the use of, nuclear weapons. It further believed that the problem of the regulation of nuclear weapons remained an urgent challenge to all nations which would have to be dealt with in other forums and by other agreements.

83. Mr. MOHIUDDIN (Oman) said that his delegation welcomed the adoption of Protocol I, which represented a landmark in the history of international law. All delegations deserved commendation for the spirit of co-operation and goodwill which they had shown in spite of differences in their political views. His own delegation had participated in all four sessions and was particularly proud of its modest contribution to the drafting and adoption of Articles 1, 35, 36, 44, 85 and 96.

84. Mr. KUSSBACH (Austria) said that after more than six years of serious and detailed studies, and occasionally difficult negotiations, the Conference had finally arrived at the conclusion of its work. From the beginning, his delegation had been convinced of the urgent necessity of reaffirming and developing international humanitarian law and had tried to make its own modest contribution to that end.

85. Article 1, paragraph 4, Article 44 and Article 96, paragraph 3 were of special importance because they formed the cornerstone of Protocol I. His delegation regretted that various interpretations and reservations had been voiced on those provisions, since in its opinion the success of the whole Protocol depended on the acceptance and implementation of the provisions without any reservations. Any reservation contrary to the spirit of those provisions would not be acceptable to his Government.

86. His delegation was disappointed at the rejection of certain provisions of fundamental importance, such as the article on reservations, the mandatory jurisdiction of the International Fact-Finding Commission for occupied territories and Article 86 bis on

the prohibition of certain conventional weapons. Had there been a will, a true humanitarian will, free from political motives, the Conference would have done really valuable service to humanity by accepting those provisions.

87. Besides the Protocols additional to the four Geneva Conventions of 1949, he would emphasize the importance of the prohibition or restrictive use of certain particularly cruel conventional weapons. As for Protocols I and II themselves, they constituted an important step forward in the protection of human beings, who were the principal victims of armed conflicts. While realizing the imperfections of the provisions which had been adopted, he pointed out that they represented compromises which had proved acceptable to a large majority of delegations: in the last analysis, the fundamental requirement was that those rules, once adopted, should be observed and applied to the greatest possible extent. Even the very best regulations would have no meaning or utility if they were not observed.

88. His delegation was particularly pleased by the adoption by consensus of Protocol II, to which it had always attached great importance. It only regretted that some of the articles which had been adopted by the Committees had not received the same support in plenary. His delegation wished to extend particular thanks to the representatives of Canada and Pakistan, who had contributed to the passage of Protocol II, as well as to those delegations who, in spite of serious difficulties with the text, had helped to arrive at the final consensus.

89. With regard to the prohibition or restriction of the use of certain conventional weapons, his delegation regretted that it had not been possible to reach agreement. Since the beginning of the Conference, however, it had been obvious that that question was a very difficult one, which also had important implications affecting the national security of States. Nevertheless, his delegation had never lost hope that something could be achieved in that respect and hoped that in due course the efforts made in that direction over many years would be confirmed by international agreements which would be acceptable to all States, in particular the major Powers. As a co-sponsor of resolution CDDH/441 and Add.1, his delegation was pleased to note that that resolution had been adopted by consensus.

90. Lastly, he wished to express his delegation's gratitude to the ICRC and all its collaborators, who had served the Conference in recent years with extraordinary ability and had contributed their valuable experience to the success of its work.

91. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the adoption of Protocols I and II, after sessions extending over more than four years, represented a tremendous step forward in the steady development of humanitarian law. He was confident that all delegations represented at the Conference would like to see the complete abolition of all wars, and his own Government's permanent policy, as confirmed by the new draft of the Constitution of the Union of the Soviet Socialist Republics, was aimed at bringing about an end to the present arms race. After more than sixty years of permanent struggle for peace, his Government was only too keenly aware of the disastrous results of armed conflicts.

92. He emphasized the tremendous and historic significance of the adoption of Protocol I, and stressed in particular the importance of the Preamble and of Articles 5, 41, 42 and 74, which would help to reinforce the protection of the civilian population, and especially that of women, children and medical units. It was also of great importance that for the first time in history, the status of combatants and of prisoners of war had been extended to cover national liberation movements, while international condemnation had been directed against the shameful institution of mercenaries.

93. He was pleased to note the adoption of Protocol II, although he regretted that it had not been possible to retain the original language adopted by the three Main Committees, particularly that of Committee II, which, in his opinion, had provided more detailed protection for civilian populations. Nevertheless, Protocol II contained a number of articles of great weight, while at the same time avoiding language which could be interpreted as attempting to interfere in the internal affairs of States. He congratulated all those delegations who, in a spirit of constructive co-operation, had made possible the adoption of Protocol II.

94. Mr. BINDSCHIEDLER (Switzerland) said that the Conference had accomplished an important task by adapting humanitarian law to the nature of modern conflicts. Article 1 and Protocol II represented the response of the international community to a political reality which had changed greatly since 1949 and which, in the very interests of humanitarian law, could not be ignored. For that reason, his delegation had participated in the quest for consensus, even if, for example, Article 42 quater (new Article 47) failed to satisfy it, and even if certain texts contained lacunae (Protecting Power, competence of the International Fact-Finding Commission, etc.) and failed to reach truly humanitarian objectives, especially with regard to weapons.

95. Although the consensus method had the merit of limiting confrontations, it had the disadvantage of leading to ambiguities in interpretation.

96. His delegation had been inspired by the following principles. First, the application of humanitarian law should be universal, regardless of the origin of the conflict and its political or ideological motivations. Secondly, combatants and the civilian population should be guaranteed the widest possible juridical and material protection. Thirdly, military operations should be limited to combatants only. The latter should be militarily organized and obliged to observe the laws and customs of war. Fourthly, in cases which were not governed by international or customary law, the civilian population and combatants should be protected by the principles of humanity and the dictates of the public conscience. Fifthly, the Geneva Conventions of 1949 continued to be the cornerstone of humanitarian law, since Protocols I and II were designed to supplement and develop but not to replace them. For that reason, his delegation had considered it unnecessary to reaffirm principles which were solidly embedded in the Conventions. Sixthly, his delegation had approved the inclusion of The Hague rules of law in the Protocols.

97. In comparing those principles with the provisions which had been accepted by the Conference, his delegation noted the following: first, considerable progress had been made with regard to the protection and material welfare of victims of war and with regard to fundamental guarantees. Article 65 (new Article 75) provided that such guarantees should be given to all persons who did not benefit by more favourable treatment in the Conventions or the Protocol. In that respect, however, it was regrettable that Article 42 quater (new Article 47) on mercenaries did not contain an express reference to Article 65 (new Article 75). Any individual, whoever he might be and regardless of his crime, had the right to the protection of the law. The problem of mercenaries was primarily a political problem; it could only be solved if Governments would undertake to prohibit and suppress the recruitment of their own nationals as mercenaries.

98. Secondly, Section II of Part V was open to criticism because the Conventions had been too ambitious in trying to draw up an international penal code. In the 1949 Geneva Conventions, grave breaches were war crimes coming within the responsibility of the individual. Article 74 (new Article 85) of Protocol I, on the other hand, contained a list of grave breaches and practices which were often imprecise or imperfectly defined, and the primary responsibility for which in some cases devolved on Governments rather than on individuals.

99. Thirdly, concerning the distinction between the civilian population and combatants, his Government was not opposed to the protection of guerrillas, but in its opinion a clear distinction should be made in all cases between the civilian population and combatants.

100. Article 42 (new Article 44) would be difficult to apply: it was so imprecise as to make it possible for combatants - whoever they might be - to mingle with the civilian population according to circumstances, and to make civilians accomplices in their acts. That state of complicity would bring upon the civilian population the weight of military operations and the result would be a state of total warfare. Lastly, the article might have a contagious effect in weakening the discipline of regular armies.

101. Fourthly, the Protocol represented an innovation by introducing provisions falling under the law governing the conduct of hostilities. The complicated rules governing military operations would be more effective if a logical procedure had been adopted, i.e. by coupling them with the prohibition or restriction of the use of weapons causing indiscriminate or superfluous injuries. Article 33 (new Article 35) - a very general and abstract rule - should be developed and given more concrete form. For that reason, his Government had very strongly supported the efforts of Sweden, the Philippines, Mexico and all the other countries which had tried to persuade the Conference to adopt a truly humanitarian attitude. It regretted that the Mexican proposal for the creation of permanent machinery for reviewing a problem which had become increasingly complex as the result of modern technical progress had been rejected by only a few votes.

102. Fifthly, it was regrettable that the Conference had not provided for better machinery to enforce respect for the obligations arising under the Conventions and Protocols; and in particular that the International Fact-Finding Commission created by Article 79 bis (new Article 90) did not have compulsory jurisdiction. Part V, and especially Article 74 (new Article 85) concerning grave breaches, might give rise to difficulties of interpretation. It would have been desirable, therefore, for an impartial international body to come into existence to investigate grave breaches. The existence of an impartial fact-finding commission with compulsory jurisdiction, particularly in occupied territories, might in itself have acted as a deterrent to States under temptation to violate the provisions of the Conventions and Protocols.

103. Protocol II represented considerable progress over the summary provisions of the Conventions. His country hoped, therefore, that it would constitute a minimum body of rules applicable in the internal conflicts which were becoming increasingly numerous.

104. The text which had just been adopted, however, fell far short of everyone's hopes, since its scope was too narrow and it covered only cases of conventional civil war, which had become rare. His delegation therefore deeply regretted that the simplified text which had been adopted had dropped a number of provisions which had been negotiated over a period of four years, and which in its opinion incorporated the essential principles of humanitarian law. If, like many other States, his delegation had unwillingly agreed to those deletions, it was because it appeared preferable to draw up an imperfect text acceptable to the majority of States, rather than an instrument of a highly humanitarian character which would be unlikely to be adopted by a two-thirds majority or which might remain a dead letter.

105. The rejection on political grounds of Protocol II would have dealt a very grievous blow to humanitarian law and would undoubtedly have altered the conditions under which that law was applied, to the detriment of the victims.

106. His delegation, therefore, had chosen the least of two evils, but would not have done so unless it had been convinced that common Article 3 of the Geneva Conventions of 1949 required all the Contracting Parties to respect the rules which had not in all cases been repeated in Protocol II.

107. Lastly, his delegation, while not uncritical of the texts just adopted by the Conference, considered that the over-all balance sheet was a favourable one. The fact alone that a conference reflecting all the conditions of international life had been able to arouse so much goodwill was a step forward.

108. The problems of modern warfare were now better known, and solutions for them had either been defined or sketched out. It only remained to apply them, so that a great effort would not have been made in vain.

109. Mr. JIN (Democratic People's Republic of Korea) said that many articles of Protocol I had been drafted with the aim of developing the Geneva Conventions of 1949 in conformity with present-day conditions and requirements. A new and independent era had dawned, in which peoples who had been suppressed and maltreated had become the masters of history - a history in the development of which the national liberation movements, fighting under their banner of independence, were a powerful driving force.

110. The definition of the legal position of the just struggle of peoples who desired to achieve self-determination in the face of colonial oppression, foreign occupation and racist systems represented a successful development of international law and a victory of the forces for justice, truth and humanitarianism. Another victory gained by the adoption of the Protocols was the fact that they contained provisions on the respect of persons, humanitarian treatment and the prohibition of inhumane acts. Article 75 of Protocol I and certain other articles were positive in context, recalling the fundamental ideas of Articles 3, 27, 31, 32 and 147 of the fourth Geneva Convention of 1949.

111. It was right to draft new laws, but it was more important to implement them correctly. The progressive peoples of the world, including the people of his country, desired a genuine peace. The provision in the Preamble to Protocol I to the effect that every country should respect the sovereignty, territorial integrity and political independence of other countries and should not use force or threats against them accorded with the general principles of international law and international agreements. No nation wished to be subjugated by others or to allow its national dignity to be affronted. Independence was the right of individuals and of nations and the foundation of relations between them.

112. His delegation understood the Preamble and articles of Protocol I as being closely linked with each other and with international law and international agreements. The United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)) described the domination over other countries as a denial of human rights and a violation of the Charter of the United Nations. At its Twenty-Ninth Session, the United Nations General Assembly, in its definition of aggression (resolution 3314 (XXIX) Annex), had declared that the territory of a country was inviolable and could not be subject to military occupation. The trend of history clearly proved that no problem could be solved by coercion or oppression. No force could check the rightful demand of peoples for their freedom and independence.

113. All those facts showed that the correct implementation of the general principles of modern international law and of the main rules of Protocol I depended on respect for sovereignty and for the dignity and value of human beings. The basic means of achieving the main purposes of the Conventions and of the Protocol were to prohibit aggression, to oppose racist systems or régimes and to prohibit any action to help or defend such systems or régimes.

114. Mr. FREELAND (United Kingdom) said that his delegation had been pleased to be able to join in the adoption by consensus of each of the two Protocols as a whole. It had been its aim during the four sessions of the Conference to ensure the maintenance and development of sensible, enforceable and, perhaps most important, widely acceptable standards of humanitarian law in armed conflict. It had done what it could, in co-operation with others, in the pursuit of that aim, and considered that it had in general been achieved. While there were still certain difficulties in the interpretation or application, or indeed both, of some of the articles adopted, his delegation had no doubt that, taken as a whole, the Protocols represented a significant advance in international humanitarian law applicable in armed conflicts. In particular, his delegation noted with satisfaction the humanitarian advances made in such fields as medical aircraft, the extension of protection to a wider group of medical units and transports and the improved provisions on relief. It was pleased to note the improved residuary protection given, in the case of captured persons, by Article 45 of Protocol I and, in the case of all categories of persons not entitled to more favourable treatment, by the fundamental guarantees of Article 75. It also welcomed some useful advances in the protection to be given to the civilian population.

115. There were nevertheless some difficulties that had not been resolved entirely satisfactorily. His delegation had always attached particular importance to the effective implementation and enforcement of international humanitarian law applicable in armed conflicts. It was therefore somewhat disappointed that it had not proved possible to go further in Article 5 or in Article 90. Attempts to make the monitoring system for the Conventions and Protocol more effective had been resisted in both cases on the basis of what appeared to be rather exaggerated sensitivities about State sovereignty. His delegation nevertheless hoped that States would, in practice, seek to render the system of implementation as effective as the terms of those articles would allow.

116. It was particularly with those considerations of implementation and enforcement particularly in mind that he turned to the difficult question of reprisals. While not, of course, wishing to advocate recourse to reprisals, or to the threat of them, against the civilian population or civilian objects, his delegation considered that reprisals under proper legal constraints, reprisals had been and could continue to be a valuable method of enforcing the international law of armed conflict. If unlawful attacks such as direct attacks on the civilian population occurred in any future conflict, the Party that was a victim of such attacks was likely to take some form of retaliatory action. It would be far better, in his delegation's view, for such action to be under the stringent legal régime of reprisals

rather than in the form of retaliation uncontrolled by any legal rules. His delegation was therefore still somewhat concerned about the treatment of the question in the Protocol and would have preferred to see an article specifying in detail the conditions under which that method of law enforcement could be used.

117. His delegation did not agree with those who considered that the work of the Conference in the consideration of possible prohibitions or restrictions of specific conventional weapons had been disappointing. When the Conference had first met in 1974, the subject had not been at anything like the same stage of preparation as the Protocols themselves. It was also one which raised important security issues, in which progress could be made only by careful and patient consideration. In his delegation's view, the Ad Hoc Committee and the associated Conferences of Experts at Lucerne and Lugano had done useful work in laying the foundations for further agreements which it was hoped would satisfy the criteria on which his Government had always laid stress, namely, those of a sound technical base, genuine humanitarian benefit and wide acceptability. His delegation had done its best to play a useful and positive role in that work and was particularly pleased that one of the proposals on which the widest measure of agreement had been attained - that for the control of the use of mines and booby traps - was based on an initiative taken by itself, together with others.

118. It was also a source of satisfaction that the Conference had adopted by consensus a compromise resolution which would ensure that the work in the field of weapons was carried on elsewhere in the near future on a basis acceptable to most, if not all, participants in the Conference. His delegation would continue to participate actively and constructively in that work.

119. The Ad Hoc Committee's work on weapons had been entirely concerned with conventional weapons. It was clear to his delegation that that was also true of the work of the rest of the Conference. At the first session of the Diplomatic Conference, his delegation had expressed in plenary its concurrence in the view that the draft Protocols were not intended to broach problems concerned with atomic, bacteriological or chemical warfare. Nothing in the four years' work of the Conference or in the texts themselves had caused it to depart from that view. It therefore continued to be his Government's understanding that the new rules introduced by the Protocols were not intended to have any effect on and did not regulate or prohibit the use of nuclear or other non-conventional weapons. Such questions were rightly the subject of agreements and negotiations elsewhere.

120. In relation to Protocol II, his delegation's main aims had been that a Protocol should emerge which, first, made a significant increase in the protection available in internal armed conflicts and, secondly, commanded wide acceptance. In its view, Protocol II as adopted responded to those aims.

121. As to its scope of application, Article 1, which had remained unchanged since its adoption in committee in 1975, appeared to be carefully and sensibly balanced to meet the concern of those who had quite reasonably considered that international law should not seek to regulate such internal conflicts unless or until they reached a significant intensity. As to the content of the Protocol, his delegation had observed with concern during the last three sessions the insertion of more and more detailed provisions, often barely distinguishable from those in Protocol I. Although the aims of those promoting such insertions were no doubt humanitarian, they were, in his delegation's view, misguided. Desirable though many of those provisions might be in principle, they would matter little in practice if their presence were to reduce significantly the Protocol's chances of being adopted by the Conference or of attracting many adherents. His delegation had therefore been grateful for the initiative that had in the final plenary stages resulted in a simplified Protocol, which it hoped would have a real chance of wide acceptance and faithful application.

122. He expressed his delegation's warm thanks to the Swiss authorities and to the International Committee of the Red Cross for their tireless efforts during the past four years, without which it would have been impossible to bring the Conference to its successful conclusion. He also thanked all others who had contributed so ably to the smooth running of the final session.

123. Mr. CAJINA MEJICANO (Nicaragua) said that the adoption by consensus of the two Protocols, and in particular Protocol II, would undoubtedly be a source of great satisfaction to many. If the Protocols had been put to the vote, his delegation would have voted in favour of draft Protocol I, but would have abstained on draft Protocol II, which had been adopted by consensus at the cost of mutilations and deletions in a text everyone recognized to be highly humanitarian. That had considerably weakened the value of the instrument; although it had been designed to further the reaffirmation and development of international humanitarian law applicable in armed conflicts little remained in it either in reaffirmation or development of such law. His delegation had nevertheless joined in the consensus, since the alternative to adoption of the final text would have been to have no Protocol II at all. It had sufficient faith in mankind to hope that the present step would be one among many that would be taken with a view to achieving a greater measure of co-existence in the world.

124. He expressed his delegation's gratitude to the Government of Switzerland, the International Committee of the Red Cross and all others who had spared no effort to bring the Conference to a successful conclusion.

125. Mr. DONOSO (Ecuador) said that in international law, when a section of the population rebelled with a political aim - whether to free themselves from colonial rule or occupation, to found a new State or to overthrow a tyranny - there was an accepted legal procedure by which the new State or Government, once established, was given recognition. During the intervening stage, before the rebels achieved their goal, they were also entitled to a certain recognition as insurgents or belligerents in order that the combatants, and a fortiori those hors de combat and civilians, might be protected from unnecessary suffering. That was the aim that ICRC had set itself through the four long sessions of the Conference. In the Protocols that had resulted, however, there was an unacceptable form of discrimination. Whereas, under Protocol I, many of those taking part in rebellions were granted combatant status as participants in international conflicts, with all the guarantees such status entailed, others - and in particular the civilian population - had been denied such rights. The essential purpose of humanitarian law was to protect all human beings, in both peace and war, in both international and domestic conflicts. That aim had been achieved in large part in Protocol I, but Protocol II safeguarded the rights of Governments rather than providing fundamental guarantees for people. It had been argued that to do so would infringe the sovereignty of States, but State sovereignty could scarcely be infringed by the protection of human beings.

126. Recognition of insurgents or belligerents by third States not involved in the conflict had never been regarded as a violation of State sovereignty, despite the fact that by taking a neutral position as between the rebels and the authorities, the recognizing State was putting them on an equal footing. Sometimes, indeed, the State rebelled against such recognition itself, for special reasons, thus freeing itself of responsibility for the rebels and making all States neutral in the conflict. The sovereignty argument was further invalidated by the fact that the conditions stated in Article 1 of Protocol II clearly distinguished genuine rebels from mere bandits or mercenaries, who, if Protocol II had been kept to its original purpose, would have been the only ones outside the scope of humanitarian law. Finally, if international law was not to lose its force, as a law achieved by co-ordination, not imposed by authority, it was essential that States should stop being so individualistic and surrender a part of their absolute sovereignty in favour of the international community and mankind as a whole.

127. Nevertheless, his delegation could not have opposed the consensus on the two Protocols.

128. In conclusion, he expressed his delegation's deep appreciation to the International Committee of the Red Cross, the Swiss Government, the President of the Conference and all others who had contributed to its successful conclusion.

129. Mr. BLIX (Sweden) observed that it had taken six years' arduous work to arrive at the adoption of the two Protocols. One reason was the consensus method of adoption, which was inevitably time-consuming. It should, however, make the Protocols more acceptable to Governments and more likely to be respected in practice. Though being adopted in that manner, the Protocols could achieve a degree of authority as rules governing conduct of Governments, combatants and non-governmental movements.

130. He was not convinced of the validity of the complaint that many of the rules adopted were too humanitarian and that they paid too little regard to harsh military needs. Such criticism was largely the result of considering the rules from the viewpoint of one's own side's freedom of action. Governments should take a broader view and recognize the value of the reciprocal restraint imposed on the Parties to the conflict and the degree of protection offered by the rules to their own forces and civilian population.

131. There had been no lack of advice about military requirements from participants in the negotiations that had preceded the adoption of the Protocols. The rules that had emerged appeared to represent a compromise between the desire to grant protection to persons and objects and the need to permit destruction, injury and killing. Such a compromise appeared absurd to some people, and it could readily be admitted that the humanitarian gains were marginal. Armed conflicts would continue to bring terrible suffering even if the new rules were respected. There was no disagreement about the fact that armed conflicts should be eradicated, making the Protocols redundant; but neither was there any inconsistency between efforts to eradicate armed conflicts and efforts to impose some rules to be observed in such conflicts. Only long-term and persistent work could create a strong enough structure of international solidarity to rule out armed conflicts between States. During the six years' work on the Protocols, steady progress had been made in such efforts to build an international community, helped by the process of détente. No one could doubt, however, that there would be new armed conflicts in the future, and that restrictions were desirable on the conduct of such hostilities. While some felt that the two Protocols went too far in that respect, others would have wished some of the rules to go further. Both sides had had to make concessions.

132. His delegation was deeply disappointed that the Conference had failed to adopt restrictions on specific weapons. The general rules adopted by consensus were good, but should have been supplemented by specific rules. But it had been necessary to be content with a resolution making the commitment that the work undertaken on incendiary weapons, mines, small-calibre projectiles, etc., would be continued.

133. His delegation was particularly satisfied that a large number of important rules had been adopted on the protection of the civilian population and on the means and methods of warfare. The Hague law had been in great need of modernization. There were now for the first time explicit rules against indiscriminate warfare and rules on guerrilla warfare, environmental warfare and starvation as a method of warfare. While some felt that those rules went too far, his delegation was concerned that they were sometimes too elastic. Once again, it had been necessary for all to make concessions to achieve consensus on broad agreement.

134. Although one long and difficult phase of the work had now been concluded and important rules of humanitarian law and the laws of war had been brought up to date, another important phase - that of dissemination - was now beginning. Unless the armed forces were taught the rules properly, those rules could save neither persons nor objects.

135. Mr. ROBERT (Federal Republic of Germany) said that his delegation wished to join previous speakers in expressing deep satisfaction at the successful conclusion of the Conference. That result was due mainly to the initiative of the International Committee of the Red Cross and to the fact that the Swiss Government had espoused the humanitarian cause of the Conference. He wished to convey his Government's congratulations to them. It had been a pleasure to work in a Conference in which all delegations had been motivated by a truly co-operative spirit.

136. The intermediate position of humanitarian law between the demands of humanitarianism and the military necessities which arose in the exercise of the inherent right of self-defence had to be taken into consideration by all delegations. The Conference could not do away with war. Its task was rather, in the face of reality, to develop rules which would mitigate the sufferings in such conflicts as far as possible.

137. The two Protocols had therefore had to be a compromise. His delegation had taken part in the consensus on the Protocols in the desire to improve as far as possible the protection of those involved in armed conflicts and of the victims of such conflicts. His delegation nevertheless shared the serious doubts and reservations of other delegations about the practicability of parts of the final text of Protocol I and about their security implications.

138. On the basis of its participation in the past four years' intensive work, his Government had concluded that in the framework of the Conference it would have been impossible to reach a better result than that which had been reached. The points on which there were still doubts would continue to be examined by the competent authorities of his country. Their position on the articles adopted by the Conference would be determined by the results of that analysis, which would be governed by serious humanitarian intentions and a genuine sense of responsibility.

139. His Government had observed with some concern that the wording adopted for some articles was so complicated that their applicability in armed conflict might appear doubtful. The rules of the Protocols were to be applied by soldiers under combat conditions and ought therefore to be such that they could be set out in simple and clear military manuals.

140. As far as Protocol II was concerned, several articles had been removed from the original draft which his delegation would have liked to keep. His Government had nevertheless agreed to the simplified version, since it had appeared more important to have a text that was acceptable to a large majority of delegations than a more elaborate one that would not be adopted or would be signed and ratified only by a minority of States.

141. Mr. KO (Republic of Korea) said that his delegation welcomed the adoption by consensus of Protocols I and II as a whole, which it considered to be an important step forward in the development of humanitarian law. It firmly believed that what the Conference had achieved would help to alleviate the sufferings of the victims of war and to make armed conflicts more humane. It earnestly hoped that the success of the Conference would help to eliminate the scourge of war and aggression.

142. Although it had had reservations on a number of provisions, particularly in Protocol II, his delegation had joined in the consensus on the two Protocols so as not to stand in the way of the strong humanitarian trend that had marked the discussions of the Conference. Nevertheless, its misgivings with regard to Protocol II had not been entirely dispelled, in view of the possible adverse impact it could have on State sovereignty. If the Protocol had been put to the vote, his delegation would have abstained.

143. He expressed his delegation's sincere appreciation and congratulations to the President of the Conference for his able guidance and congratulated all others, particularly the International Committee of the Red Cross, who had helped to ensure the success of the Conference. He also thanked the Government of Switzerland and the authorities and people of the Republic and Canton of Geneva and of the City of Geneva for their hospitality.

144. Mr. AMIR-MOKRI (Iran) said that his delegation welcomed the adoption of the Protocols. During the four sessions of the Conference, in working groups, committees and plenary meetings, his delegation had taken an active part in the drafting of a number of important provisions. Its support had, however, not always been without some reservation, since the lack of clarity in some provisions of the Protocols could give rise to contradictory interpretations. Such lack of clarity might have been the result of difficulty in reconciling humanitarian concern with national defence requirements. The compromise reached had only been made possible by lengthy negotiation and at the cost of mutual concessions.

145. His delegation had expressed its position on certain provisions during the discussions that had taken place in committee and in plenary meetings. In its view, the protection given by Article 44 to combatants who did not form part of the regular forces applied only to resistance movements fighting against an Occupying Power and to liberation movements struggling against racist régimes.

146. With regard to former Article 74 bis, his delegation had opposed the establishment of a list of grave breaches in view of the difficulties that such an enumeration would entail. Subsequent discussions had shown that its apprehension on that score was justified; the list established could not be considered as exhaustive. Nevertheless, as a country which had always followed a policy of tolerance and racial equality, his country welcomed the fact that apartheid was included as a grave breach.

147. Despite its reservations on some provisions, his delegation considered that Protocol I would make an important contribution to the development of international humanitarian law and welcomed its adoption by consensus.

148. The text of draft Protocol II that had resulted from the work of the Main Committees of the Conference had been unacceptable to his delegation, since a number of its provisions had been incompatible with the principle of State sovereignty and would have represented an unacceptable interference in domestic legislation. By removing the most controversial provisions of that text, the Pakistan draft had made it possible for his delegation to join in the consensus on the Protocol. The simplified text nevertheless contained some provisions that were lacking in clarity and that might be interpreted as a threat to State sovereignty. If a vote had been taken on the Protocol, his delegation would have been unable to support it without reservation.

149. Mr. GLORIA (Philippines) said that the success of the Conference in adopting rules of international humanitarian law had been due in large part to the energy and brilliance of its participants. His delegation fervently hoped that the two Protocols and the Conventions they supplemented would prove durable and that at the same time the need for them would become less as instances of armed conflict diminished in intensity and frequency with the years.

150. He expressed his delegation's deep appreciation to the Government of Switzerland for having sponsored the Conference. That in itself was a great contribution on the part of the Swiss people to the cause of humanitarian law, and it would always be remembered with affection by his delegation. He also expressed his delegation's deep gratitude to the International Committee of the Red Cross, with which it had collaborated ever since the XXth International Conference of the Red Cross in Vienna in 1965. To the historic City of Geneva and its people, and to the Swiss delegation, he extended the famous Filipino greeting for long life: "Mabuhay".

151. Mr. HUSSAIN (Pakistan) congratulated the host Government on the manner in which it had received the Conference. Switzerland had acted in accordance with its traditions as the seat of the greatest organization concerned with the implementation of the principles of international humanitarian law, namely, the International Committee of the Red Cross.

152. Pakistan was a State that conformed to the principles and dictates of the great religion of Islam. The principles of humanitarian law had been enunciated some 1400 years ago and had consistently been practised as part of the divine law of the Koran. Those who followed that law needed no humanitarian principles established by man in order to alleviate the sufferings of those affected by international or internal armed conflict, but as the votaries of those principles for fourteen centuries they had been happy to associate themselves with the efforts that had culminated in the adoption of the two Protocols.

153. He paid a tribute to the International Committee of the Red Cross for having provided the draft of the Protocols on which the Conference had worked for four years. His delegation welcomed the success of the Conference in producing legislation for enforcing the principles of humanitarian law in present-day conditions. It was particularly gratified at the adoption of Article 1, paragraph 4, of Protocol I. There had been a long-standing need to include liberation movements in the field of international armed conflicts.

154. His delegation was not satisfied, however, with the text adopted for Article 5 of Protocol I. It had consistently supported the first alternative proposed by the International Committee of the Red Cross, under which the appointment of Protecting Powers and substitutes would have been automatic. The article as adopted was nevertheless an advance upon and development of the Geneva Conventions.

155. It was a matter of grave concern to his delegation that, whenever the question of implementation arose, the issue of national sovereignty was allowed to stand in the way. Two years earlier his delegation had supported a text providing for the establishment of a commission to investigate violations of the Protocols on the initiative of one of the Parties to a conflict, the other Party being bound to co-operate with the commission and provide it with the necessary facilities for the performance of its task. Some delegations had, however, considered that such a provision would interfere with national sovereignty - an issue that had dogged the Conference throughout its sessions. Such political overtones should have no place in the discussions of the Conference. His delegation had supported the proposal for an Article 79 bis considering it an improvement on the provisions of the Geneva Conventions, but that did not mean that it was satisfied with the text. He hoped that a commission with mandatory authority would soon come into being in order to reduce the possibility of violations or breaches of the Protocol.

156. He welcomed the adoption of Article 74 on grave breaches. His delegation had played an important part in that respect, having chaired the Sub-Group which had drafted the text of the article.

157. He greatly regretted the fact that Article 86 bis had failed to command the necessary two-thirds majority, but its near adoption had been a great moral victory for the sponsors.

158. His delegation fully associated itself with the comments of the Canadian representative on Protocol I.

159. With regard to Protocol II, his delegation had always supported the various provisions adopted by the Committees during the past four years. If that text had been approved instead of the simplified one, Pakistan would have accepted it as it stood. Unfortunately, it had become clear that, even if the fuller text of Protocol II had been adopted - a remote possibility - a large majority of Parties to the Conference would have refused to sign or to ratify it. It was for that reason that his delegation had agreed to prepare the so-called "simplified draft" of Protocol II. That text had been provisionally agreed at a series of meetings between heads of

regional groups and heads of delegations, thus giving rise to the "gentleman's agreement" to which reference had repeatedly been made. Although his delegation had had grave doubts about the text thus produced, its subsequent adoption by consensus by the Conference showed that, in preparing it, his delegation had taken the right step at the right time.

160. He appealed to delegations to convey to their Governments the need to sign and ratify the Protocols, thus fulfilling the hopes of the millions whom those Governments represented. The period of six months between the signing of the Final Act and the opening of the Protocols for signature should give Governments ample time for reflection and enable them to appreciate the need for signing.

161. He wished to draw attention to the important part played by the International Institute for Humanitarian Law, which, by organizing three "round tables" at San Remo, had enabled representatives to discuss difficult problems of humanitarian law and had produced positive results by narrowing down the areas of disagreement. In the future, the Institute would doubtless play an increasingly important role in the development of humanitarian law, and he appealed to delegations to support the work of the Institute financially and in other ways.

162. He paid a tribute to the President of the Conference and to the many others who had played an important role at various stages, but were no longer present. A special tribute was due to the late Mr. Edvard Hambro of Norway, who had been Chairman of Committee I during the first two sessions of the Conference.

163. In conclusion, he drew attention to a report which had appeared in Le Monde of 9 June 1977 under the heading "The victims of internal armed conflicts will not benefit from humanitarian law". The implication of the article was false, since it suggested that Protocol II did not exist. Particularly false was the suggestion that the Pakistan delegation had proposed the simplified draft because of a state of rebellion in Pakistan. There was no state of rebellion in Pakistan.

164. Mr. ARMALI (Observer for the Palestine Liberation Organization), speaking at the invitation of the President, expressed his satisfaction at the results achieved by the Conference. The adoption of the two Protocols by consensus crowned the efforts of the past four years, during which the Conference had worked to promote humanitarian law and to give it the widest possible scope by extending its application to all types of conflicts, notably those in which peoples were fighting for self-determination and independence.

His delegation particularly welcomed Article 1, paragraph 4, of Protocol I, which for the first time recognized the fight of peoples against colonial domination, foreign occupation and racist régimes as international conflicts. His delegation also welcomed the adoption of Article 44, which granted combatant and prisoner-of-war status to guerrilla forces conducting a legitimate fight against their oppressors, and of Article 84, authorizing the representatives of peoples fighting for self-determination to undertake, by unilateral declaration, to respect and adhere to the provisions of the 1949 Geneva Conventions and the additional Protocols. All those provisions constituted a great victory for the peoples fighting for self-determination.

165. While the Protocols, as adopted, doubtless included many compromises, they nevertheless constituted a valuable basis for future improvement. The principles had been laid down for the future development of humanitarian law, which would, he hoped, fill in all the existing gaps.

166. The adoption of the Protocols came at a time when the Arab people of Palestine were suffering the atrocities of an occupation which had been condemned by the international community. The failure of the zionist régime to pay heed to that condemnation rendered derisory the statements by the Israeli representative concerning Israel's desire for peace. Such statements could not be taken seriously, as was proved by Israel's persistent refusal to apply the provisions of the fourth Geneva Convention.

167. At the fifty-seventh meeting (CDDH/SR.57), the zionist representative had repeated the statement by his newly-elected chief, Mr. Begin, to the effect that Israeli forces had attacked only military objectives. Had the Arab population of the village of Deir Yassin been a military objective? Mr. Begin had referred to the Arab territories occupied by Israel as "liberated territory", but peace would only be ensured when the occupied territories were freed from Israeli occupation.

168. Mr. SABEL (Israel), exercising his right of reply, drew attention to a report in the International Herald Tribune of 31 May 1977, datelined Beirut, according to which an organization called the Palestinian Democratic Freedom Front claimed credit for two guerrilla actions, in one of which they said that they had blown up an oil storage depot and killed some of the workers there, and, in the other, that they had dynamited a vegetable store in Jerusalem and killed and wounded a large number of Zionists. Such were the military objectives attacked by the Palestinian rebels; they not only attacked them, but boasted of having done so.

169. Mr. AL-FALLOUJI (Iraq) said that, without wishing to elaborate on the complex question of the right of reply, he would make the following comment: the only final reply would be that given by history in answer to the cry of the blood of the people of Deir Yassin, for whose massacre Mr. Begin openly claimed responsibility.

170. Mr. KATJAVIVI (Observer for the South-West Africa People's Organization (SWAPO)), speaking at the invitation of the President, said that, on behalf of SWAPO and the people of Namibia, he welcomed in particular Article 44 (formerly Article 42) of Protocol I, under which freedom fighters were given prisoner-of-war status. While there was no guarantee that the white minority régimes in southern Africa would respect the Conventions and the Protocols, it was nevertheless important that the international community should live up to the expectations of the embattled peoples of Namibia, Zimbabwe and South Africa. The adoption of the proposal should serve as a warning to the racist régimes of the determination of the international community to support the just and inevitable decision of the oppressed peoples of southern Africa to take up arms as the only avenue left for them to achieve freedom and independence.

171. A number of Namibian freedom fighters had been captured by the South African army of occupation in Namibia. Many of them were being held under the most inhuman conditions. Many had died or had been maimed by the deliberate withdrawal of proper medical attention. His delegation strongly urged the Red Cross to investigate the whereabouts of the captured freedom fighters and to insist that they should receive the treatment to which they were entitled under the Geneva Conventions.

172. He thanked all those nations which had worked so hard to ensure the adoption of the additional Protocols as amended. Their adoption introduced a new element in international relations and gave greater protection to freedom fighters by recognizing the justice of their struggle.

173. In the near future, the SWAPO would send the depositary the declaration to which reference was made in Article 84 of Protocol I governing treaty relations. The SWAPO was not merely seeking the protection provided by the Conventions and the Protocols for itself; it was equally determined to offer similar protection to its adversary. The SWAPO would do everything in its power, now and in the future, to abide by the Conventions and Protocols. It thanked the Swiss Government for its efforts in making the Conference a success and for the hospitality it had provided.

174. Mr. ABADA (Algeria) said that his delegation welcomed the adoption of the two Protocols and in particular the provisions concerning national liberation movements. From the outset, his delegation had had certain reservations concerning the effectiveness of international humanitarian law. His own generation had been marked by the struggle of Algeria for independence, a struggle which had lasted seven and one-half years and had cost the lives of one-tenth of the population. During that struggle, the Algerian people had not felt the protection of the four Geneva Conventions of 1949. Nor had the protection of the Conventions been much in evidence in a subsequent struggle in Asia between a small people and a large Western Power. The Algerian Government had decided, however, to put its doubts aside and to play its part in trying to build up humanitarian law. A number of things had been done, but the results were not perfect; like all human achievements, they had their weaknesses and defects, which reflected the weaknesses and defects of those responsible for them.

175. Certain delegations had sought to evaluate the results, enumerating their points of satisfaction and dissatisfaction. Doubtless each delegation would do so for its own account and in order to convince its Government that its instructions had been, as far as possible, fulfilled. But it was not their assessment that counted; the real judgement would be that passed by posterity. The work of the Conference would finally be judged on the battlefields where men and women were still dying daily. The question was whether the protection which delegations believed they were providing would be realized in practice as effective humanitarian law. Representing a country which had contributed its blood to the cause of decolonization, his delegation felt the full weight of its responsibility to the victims of all armed conflicts. Their sufferings were due to the defects and weaknesses of those who had drafted and of those who were responsible for applying the Conventions and Protocols on humanitarian law. No academic commentaries on the Protocols should make delegations forget the realities with which they were dealing, nor their own responsibilities and limitations.

176. In thanking the Swiss Government, the President of the Conference and the whole Secretariat for their initiative and efforts, he wished to stress that one of the merits of the Conference had been that it had enabled delegations to meet and get to know one another and to increase their mutual esteem and respect.

177. Mr. AGBEKO (Ghana) said that his country was proud to have taken an active part in the series of Diplomatic Conferences which had led to the adoption of the two additional Protocols. The fact that the Conference's work had largely been characterized by consensus and that voting had been kept to a minimum was a good sign, showing that modern society was capable of being realistic and playing down political passion.

178. Ghana's move towards independence had begun with revulsion over the attitude of the metropolitan Power in refusing the just claims of Ghanaian soldiers returning from the Second World War. Its guiding philosophy, as expressed by the late President Nkrumah, was that Ghana "preferred self-government with danger to servitude in tranquillity". President Nkrumah had also declared that the independence of Ghana would be meaningless until linked with the total liberation of the African continent. Since that declaration, Ghana had followed a consistent policy of aiding and supporting liberation movements in Africa. It was fitting that liberation movements had been given international recognition by their inclusion within the scope of Protocol I.

179. While granting combatant and prisoner-of-war status to the fighters of liberation movements, the Conference had made it abundantly clear that it would not tolerate any interpretation which would extend that right to mercenaries. Mercenary activities, which had defiled the political and territorial sovereignty of some African States, were a curse to humanity. The mercenary, who had the single aim of destroying humanity for money, was not the type of person who should receive protection from a humanitarian conference. It was appropriate that he had been expressly excluded from the provisions of the Protocols.

180. The fact that certain breaches of the Protocols had been singled out as "grave breaches" did not mean that the other provisions were not important. It was only a matter of emphasis. Contracting States must give the utmost respect to the Protocols as a whole.

181. At the committee level, there had been an African move to make some articles of the Protocols not subject to reservations, in the hope that the many years of work at the Conference would not be stultified by reservations. While regretting the failure of that initiative, his delegation had reluctantly been prepared to support the majority view that questions of reservation should be left to international customary law, in particular as formulated in the 1969 Vienna Convention on the Law of Treaties.

182. His delegation had always held the view that a fact-finding commission was necessary to bridge the gap between the role of the Protecting Power or substitute and that of the International Court of Justice; but it also held the view that such a fact-finding commission should not be given compulsory jurisdiction. It had therefore voted for the non-mandatory terms of the relevant article (Article 90).

183. His delegation felt that the good work done by the Conference should not be circumvented by new conventional weapons designed to inflict even more serious injuries than those dealt with by the Ad Hoc Committee. It had accordingly supported the proposal for a review mechanism. Since that proposal had unfortunately not been adopted in the final Protocol, his delegation, in a spirit of compromise, had supported the consensus on draft resolution CDDH/441 and Add.1.

184. He congratulated the ICRC on the vast amount of work it had done for the Conference and thanked the Swiss Government, as convener of the Conference, for the hospitality it had shown.

STATEMENT BY THE OBSERVER FOR THE SOVEREIGN ORDER OF MALTA

185. Count de NOUE (Observer for the Sovereign Order of Malta), speaking at the invitation of the President, thanked the latter for having kindly informed him that the General Committee of the Conference, at the request of the delegation of the Sovereign Order of Malta, had unanimously agreed that the delegation might make a statement on the position of the Order as regards the additional Protocols, and that the Depositary State would, at the appropriate time, transmit it to the Powers which had participated in the present Conference.

186. Replying to that communication, the delegation wished to state that the Sovereign Order of Malta undertook to observe the Geneva Conventions of 1949 and the additional Protocols once they had come into force.

187. The delegation took the opportunity to state that it had followed with the greatest interest the immense work accomplished by the Conference and that it considered the additional Protocols as an important advance in international humanitarian law.

STATEMENT BY THE OBSERVER FOR THE INTERNATIONAL UNION FOR CHILD WELFARE

188. Miss UNDERHILL (Observer for the International Union for Child Welfare), speaking at the invitation of the President, said that IUCW wished to make an appeal to all Governments to ratify Protocol II. The text of the appeal would be submitted in writing.

DRAFT RESOLUTION CDDH/444 EXPRESSING GRATITUDE TO THE HOST COUNTRY

189. The PRESIDENT noted that there had been abundant expressions of gratitude and appreciation to the Swiss Government, the International Committee of the Red Cross, the Secretary-General and the Secretariat of the Conference during the last few plenary meetings. He therefore proposed that draft resolution CDDH/444 should be adopted by acclamation.

Draft resolution CDDH/444 on expression of gratitude to the host country was adopted by acclamation.

The meeting rose at 7.10 p.m.

ANNEX

to the summary record of the
fifty-eighth plenary meeting

EXPLANATIONS OF VOTE

DENMARK

Original: ENGLISH

Protocols I and II

The adoption by consensus of Protocol I and of Protocol II has brought to a successful conclusion more than six years of patient and persistent work to reaffirm and develop international humanitarian law in armed conflicts. My delegation feels that we have passed a milestone in this field and is happy and proud to have been able to play its part in the accomplishments of the Diplomatic Conference.

We would like, on this occasion, to express our sincere gratitude to the Swiss Government for having actively supported the work of this Conference and put its facilities at our disposal. We would like also to pay a special tribute to the International Committee of the Red Cross, whose devotion to the principles of humanitarian law has been a constant inspiration and guiding star to the Conference.

In Protocol I a number of traditional rules of humanitarian law have been reaffirmed, developed and brought up-to-date so as to correspond to the realities of the world of today. It has also been possible to incorporate certain new principles called for by developments over the past decades. Against the background of the alarming rise in the toll among civilians in modern armed conflicts, important provisions have been adopted for the protection of the civilian population. Agreement has been reached on a better status for members of resistance movements when captured. New rules have been drawn up regarding missing and dead persons and civil defence. The Danish delegation has actively participated in the framing of a series of articles on civil defence. Based on experience from armed conflicts in recent time, a still greater number of nations are organizing a civil defence system for the purpose of protecting the civilian population during hostilities and disasters. With deep appreciation we note the fact that the new regulations ensure the respect and protection of the civil defence organizations, thereby enlarging the protection of the civilian population.

My delegation has also taken an active interest in the elaboration of the new Article 90 regarding an International Fact-Finding Commission. Although the final result of our efforts in this field did not reach the expectation and hope of my delegation, which had submitted the first and original draft of this article, we still believe that the new article, seen in a historical perspective, does represent a modest step forward on a very long and difficult road.

In Protocol II, dealing with armed conflicts not of an international character, efforts have been made to develop further Article 3 common to the Geneva Conventions of 1949, and to obtain better protection and more ample respect for the human person in such conflicts. From the very beginning my delegation has felt that the correct approach would be to aim at a workable, practicable and realistic text which could command maximum acceptance from members of this Conference. As this was the clearly stated objective of the proposal of the delegation of Pakistan we firmly believed in the procedure that each and every one of the articles submitted to the Plenary had to be examined in this spirit, but also on its own merits. We had been prepared to accept the Committee's text for the various articles in its entirety, but our voting on these articles must be seen in the light of our strong wish to fashion an instrument which would be acceptable to as many States as possible. This position of my delegation has been justified by the adoption by consensus of the simplified Protocol II.

Finally, it is with particular satisfaction that the Danish delegation has witnessed the adoption by consensus of resolution CDDH/441 and Add.1 on the arms issue, of which it was a co-sponsor. We fully subscribe to the importance of the efforts towards reaching agreement on prohibitions or restrictions on the use of specific conventional weapons, including any which may be deemed to be excessively injurious or to have indiscriminate effects. We have participated actively in these efforts and feel that the momentum gained so far should not be lost. We welcome, therefore, the decision of this Conference to take steps towards the holding of a Conference of Governments not later than 1979, for the purpose of continuing our work in this field.

HOLY SEE

Original: FRENCH

Protocols I and II

The delegation of the Holy See is greatly pleased that the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts has closed with the adoption by consensus of two Additional Protocols to the Geneva Conventions of 12 August 1949.

This remarkable result was achieved after long years of preparatory study and four diplomatic sessions often beset with difficulties.

But in the face of those difficulties, which reflect political conflicts and differing attitudes, situations and conceptions of mankind, a greater degree of mutual understanding would appear gradually to have manifested itself, a certain community of views based on respect, international collaboration, even friendship.

The delegation of the Holy See grasps the full measure of this result for it believes that this spirit can endure, bearing as much fruit as the legal texts and even more.

The legal texts represent an indisputable advance by humanitarian law in international armed conflicts and a tentative breakthrough in non-international armed conflicts.

The delegation of the Holy See would emphasize the very positive nature of the texts on the protection of the civilian population, especially children, in Protocol I. It is deeply gratified by this result having always shown itself anxious, in past conflicts, to see the civilian population spared. The Holy See also welcomes the fact that protection is now afforded to places of worship, which bear witness to the spiritual heritage of peoples.

However, some of the texts adopted cause a degree of concern to the delegation of the Holy See. To be sure, it understands the need for a balance between the various schools of thought, and hence for negotiations, which inevitably result in compromise texts. But it feels that those texts reflect too much the fears and passions of the present-day world and do not pay enough heed to the world that must be built speedily if mankind is to avoid fresh catastrophes, even more destructive than previous ones.

The keynote of the discussions was the fear of conceding any degree of national sovereignty, even on minor points. This led to the adoption of a Protocol II that is truncated both in text and in spirit.

The delegation of the Holy See, while pleased at the final adoption of Protocol II by consensus only adhered to that consensus with deep and serious reservations stemming from the fact that much of its humanitarian marrow had been removed in plenary. How, indeed, could the delegation of the Holy See not deplore the disappearance of purely humanitarian provisions - adopted, after all, in Committee - such as safeguard of an enemy hors de combat, definition of civilians and the civilian population,

prohibition of reprisals, prohibition of unnecessary injury, prohibition of perfidy and protection of the environment, and, last but not least, a certain reticence on prohibition of total war.

Of course, the delegation of the Holy See is glad that it succeeded in persuading the Conference in its statement to adopt by consensus and by acclamation Article 15 guaranteeing protection of objects indispensable to the survival of the civilian population, which was to have been deleted in the simplified draft submitted to the Conference by the Pakistan delegation.

It also welcomes the fact that in Article 14, as adopted, the protection afforded to cultural objects is extended to the spiritual heritage of peoples, that is, to places of worship.

It is also pleased that Article 10 affirms the respect and the protection due to medical and religious personnel in non-international armed conflicts.

Nevertheless, it cannot conceal its regret and concern at the voluntary abandonment by the Conference of the humanitarian provisions mentioned above, which could render the remaining guarantees illusory in many cases.

If certain delegations, instead of letting themselves be swayed in their consideration of Protocol II by particular historical or political considerations, had devoted all their efforts without reserve to the great legal task that faced them, the Diplomatic Conference could certainly have achieved more substantial progress for humanitarian law in the field of non-international armed conflicts.

Finally, the delegation of the Holy See agreed to Protocol II, for, although unsatisfactory, it still opens the door for humanitarian law to the future in a crucial, painful and hitherto all too neglected field.

Thus, Protocol II should be judged by its future promise rather than by its present reality.

It is the earnest wish of the delegation of the Holy See - which believes it also to be the wish of the universal conscience of mankind - that the human community may continue on the path of hope until it reaches its logical and longed-for goal: the abolition of war of any kind.

MAURITANIA

Original: FRENCH

Protocols I and II

The delegation of the Islamic Republic of Mauritania joins in the consensus on the vote as a whole on the Protocols additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts (Protocol I) and to the protection of victims of non-international armed conflicts (Protocol II). Mauritania, and in particular its Head of State, His Excellency Moktar Ould Daddah, have always cherished deep and sincere hopes for real peace and progress for the whole of mankind, inter alia within the framework of the United Nations Charter, the Universal Declaration of Human Rights and, even more specifically, the 1949 Geneva Conventions on international humanitarian law.

As an expression of its hopes, Mauritania has always exhorted other States to settle disputes peacefully and endeavours to do so itself, thus promoting co-operation between all peoples; this is a constant factor in its foreign policy.

And so the honour paid to our Head of State at the opening of this historic Conference is proof, if proof were needed, of our country's and our leader's sincerity and of their enthusiasm for the noble ideals of peace, justice and respect for national sovereignty.

On that occasion President Moktar Ould Daddah, with the profound humanity for which he is well-known, gave expression in his speech (CDDH/15) of 21 February 1974, at the first plenary meeting (CDDH/SR.1), to his constant preoccupation with that solidarity which will make all of us co-workers in a vital common task - the restoration of human dignity.

The provisions adopted by the Conference and constituting additional Protocol I, although imperfect, are nevertheless a step towards establishing the rights of the combatants of countries struggling against colonial domination, foreign occupation and racist régimes, and towards the humanization of international armed conflicts.

Like all the delegations which attended all the sessions of the Conference, the Mauritanian delegation on several occasions expressed its views on various points during the formulation of the various articles of Protocol I and the corresponding voting.

Now that both the Protocols additional to the Geneva Conventions of 1949 have been adopted by consensus, the delegation of the Islamic Republic of Mauritania would like to repeat its views on some of the provisions, while reserving the right to make any subsequent reservations it sees fit.

Among the fundamental provisions of Protocol I, Article 1 extends humanitarian protection to the combatants of genuine liberation movements.

For Mauritania, whose position accords with a traditional policy of support for genuine liberation movements pursued since it acquired international recognition, Article 1 represents a historic event and an important element in the development of international humanitarian law.

However, it earnestly draws the Conference's attention to the construction to be given to Article 1 which, in Mauritania's view, only covers liberation movements recognized by the regional inter-governmental organizations specified in rule 58 of the rules of procedure of the Conference.

Similar considerations apply to the construction to be placed on some of the provisions of Articles 42 and 84, on which the Mauritanian delegation had commented in the Committee (CDDH/I/SR.67) and in the plenary meeting (CDDH/SR.41).

In the case of Article 42 quater of Protocol I, it reaffirms its position as already explained in discussion in Committee III (see CDDH/III/SR.57) and in the plenary vote on the article.

With regard to additional Protocol II, the Mauritanian delegation considers that its provisions are essentially a matter of national sovereignty. Mauritania therefore reserves the right to make subsequent reservations regarding any such provisions that might be interpreted as infringing its sovereignty.

Lastly, the delegation of the Islamic Republic of Mauritania expresses its deepest thanks to the Swiss Government, to the ICRC, to the President of the Conference and to all those who, near and far, have contributed to the progress and success of this Conference.

MOZAMBIQUE

Original: FRENCH

Protocols I and II

The delegation of Mozambique thanks the Swiss Government and people for their kind hospitality and is also grateful to them for having created the proper conditions for holding this Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

It wishes to congratulate the President of the Conference on the masterly way in which he has conducted the meetings and thus kept us to our timetable.

Our delegation pays a tribute to all the distinguished representatives who have engaged in the worthy and noble task of developing humanitarian law in such a way as to bring to the victims of armed conflicts light in this kingdom of blind despair, in which the perfidious interests of capitalism are increasingly bent on the development of terrible means for crushing the peoples of the world.

Now that we have reached the end of our work, the delegation of Mozambique would like to offer a few brief reflexions on this Conference.

With regard to Protocol I, we consider that by providing in paragraph 4 of Article 1 that the Protocol covers "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination", we have achieved one of the major objectives of this Conference. The reaffirmation that struggles waged by national liberation movements are international conflicts confirms numerous United Nations resolutions.

At this time, we cannot forget those combatants who have generously given their lives in the bitter struggle against imperialism, colonialism and racism, which are the causes of war.

The adoption of Articles 41 and 42, Article 1, paragraph 4, and Article 84, paragraph 3, of Protocol I, is a just tribute to those combatants and offers great support to peoples who are still struggling for their independence and freedom.

The fact that those articles were adopted by an overwhelming majority of delegations means that most of the countries of the world are truly in favour of the right of peoples to self-determination. A consensus on those articles would have stripped them of all their significance and value.

The destructive power of present-day weapons strikes mainly at the civilian population, so we congratulate the Conference on its adoption of the articles relating to the protection of the unarmed population. Our delegation considers that the principle established in Article 33, concerning the prohibition of the use of methods of warfare of a nature to cause superfluous injury or unnecessary suffering, is a basic rule, any breach of which should be regarded as a grave one and condemned as such under Article 74.

The refusal by some delegations to agree to the proposal to set up a Committee of States in accordance with Article 86 bis is a considerable setback for humanitarian law.

We feel sure that the peace-loving delegations which are engaged in the struggle to eliminate human suffering will continue to plead in all international forums for a limitation on such weapons. We believe in spite of everything that Protocol I marks a step forward in the field of humanitarian law.

With regard to Protocol II, my delegation regrets that the Conference should have been muzzled by the celebrated "gentleman's agreement".

The provisions adopted by consensus in the Committees were rejected as a result of that agreement.

There is little point in commenting on the matter; we agree with what was said yesterday by our friend the representative of Algeria and the representative of the Holy See.

In taking a position on Protocol II, Mozambique will bear in mind the manipulation to which the Conference has been subjected.

NEW ZEALAND

Original: ENGLISH

Protocols I and II

The New Zealand delegation believes that the two Protocols, which have been adopted by consensus, justify and reward the initiative of the host Government in convening the Diplomatic Conference, the long and arduous preparations directed by the International Committee of the Red Cross, and the work of the Conference itself, in which so many delegations have taken part over a period of four years.

It is a measure of the achievement represented by Protocol I that it draws its inspiration and its content from three distinct but complementary sources - the law and practice of The Hague, of Geneva, and of the United Nations Charter. In doing so, it gives greater precision and contemporary relevance to proven principles of the laws of war; it takes careful account of recent technological advances - especially those that can reduce the suffering of the sick and wounded, and of other non-combatants; and it confirms the attachment of the present world community to the four Geneva Conventions of 1949.

It must be recognized that, in general, the materials drawn from sources other than the law of Geneva do not lend themselves to such exact statement as the rules codified in the four Geneva Conventions of 1949. For example, the provisions of Protocol I concerning military objectives re-emphasize and re-define a central element in the law of The Hague. In so doing, they aim to give greater prominence to the duty of confining attacks to legitimate military targets, while preserving the right of armed forces to maintain their guard and the momentum of their military operations.

There is also a margin for appreciation in the new provision that allows combatant status to fighters who, because of the nature of the hostilities in which they are engaged, do not wear uniform. This meets a modern need, by stating the conditions under which such fighters may qualify for treatment as prisoners of war after capture. It would, however, undermine the very basis of humanitarian law, if this provision were regarded as authorizing combatants to conceal themselves among the civilian population.

It is a long step from formulations such as these to the clear and simple statements of relevant law required by soldiers in the field. It is therefore to be hoped and expected that the adoption of the Protocols, and the examination by Governments which must precede their signatures and ratifications, will stimulate a continuing study of the texts and surrounding materials within and across national frontiers. From that may be distilled, with the help of the organization maintained by the International Committee of the Red Cross, a common perception of the essence of the rules, stated in terms that can be understood and remembered by all who are involved in armed conflict, whether in a combatant or other capacity.

Finally, it must be borne in mind that an instrument such as Protocol I, operates under conditions of greater stress than that to which any other class of treaty is subjected. The provisions which forbid reprisals do not allow an unscrupulous belligerent to flout the laws of war without penalty. Rather they stand as a warning that the law itself can offer no protection to belligerents who vie with each other in demonstrating their disregard for legal constraints.

The legal tradition associated with The Hague Conventions has also inspired the efforts of the Diplomatic Conference to promote agreements prohibiting or restricting the use of needlessly cruel conventional weapons. The New Zealand delegation warmly supports resolution CDDH/428, which the Conference adopted by consensus, providing for the continuation of these efforts, both to conclude the limited agreements which are already in view, and to extend

the scale of the enquiry. The initiative taken during the Diplomatic Conference will not achieve its final goals until it brings humanitarian considerations to bear upon national policies relating to the design and procurement of future generations of conventional weapons.

In the New Zealand delegation's view, Protocol II is not less significant than Protocol I. It is, of course, true that it provides for civil conflicts a code of conduct much less elaborate and comprehensive than that which is applicable in international conflict. It is also true that the decisions taken, under pressure of time, in the last weeks of the Diplomatic Conference gave little opportunity to achieve perfection of form or content. Nevertheless, they led to a result that broadly corresponded with the expectations of the early drafts and the collective will of the States participating in the Conference.

Protocol II marks a giant step forward from the first formulation of principles applicable to non-international conflicts, in Article 3 common to the four Geneva Conventions of 1949. The Protocol builds upon, but does not supplant, common Article 3, which remains the seminal statement, accepted by all the States Parties to any of the 1949 Conventions, of legitimate international concern to alleviate the suffering of the victims of civil warfare.

The views of Governments which may still have apprehensions about accepting the obligations contained in Protocol II are as much entitled to respect as are the views of those who favoured the relatively high threshold of application now embodied in its Article 1. The New Zealand delegation has, however, no doubt that in the longer run this instrument will take an honoured place among the great treaties by which States have, in the era of the United Nations, bound themselves internationally to uphold the human rights of their own citizens.

SUMMARY RECORD OF THE FIFTY-NINTH (CLOSING) MEETING

held on Friday, 10 June 1977, at 10.15 a.m.

President: Mr. Pierre GRABER Federal Councillor,
Head of the Federal
Political Department of
the Swiss Confederation

CLOSING SPEECHES

1. The PRESIDENT announced that the current meeting would be devoted to the signature of the Final Act.
2. Mr. HAY (President of the International Committee of the Red Cross) made the following speech:

"Today is a great day, one which will mark a milestone in the history of humanitarian law and, indeed, in history itself, since the fully accredited representatives of all the countries of our planet - or almost all of them - have adopted by unanimous consensus the texts of two Protocols which reaffirm and develop the law governing armed conflicts and to some extent adapt it to the needs of the hour.

"In a world that is at present so divided that it is becoming difficult for Governments to agree about political and economic problems, it has been proved that, where the survival of mankind is at stake, representatives of all countries and of all persuasions can meet together and, despite many divergences, speak the same language and sometimes stretch out the hand of friendship to one another. You have, however, needed four years of unremitting work - ten years, so far as the International Committee of the Red Cross is concerned - to succeed in working out these fundamental charters for mankind.

"This Conference has been unlike others: the discussions were not concerned with oil or money, but with the human person, which must be defended and protected in the face of the growing dangers that threaten it.

"As spokesman of the institution which has, for more than a hundred years past, worked to bring about the Geneva Conventions, I should like to pay a tribute to the spirit of conciliation, patience and perseverance which representatives have shown, despite all the antagonisms whose very real nature has hitherto made itself felt.

"The measure of success achieved by your Conference is considerable, even if not all its objectives have been attained. We may record virtually complete satisfaction with Protocol I, and more limited satisfaction - although real progress was nonetheless made - with Protocol II. So far as their substance is concerned, the results achieved today mark an event which is doubtless just as important as that of the Diplomatic Conference of 1949, which brought into being the four Geneva Conventions at present in force.

"Suffice it for me to mention the provisions protecting the civilian population against the effects of war - the need for which has made itself felt so acutely since 1907 (it should be recalled that hitherto civilian populations have enjoyed no legal protection against aerial bombardment, to quote but that one example) - and a new definition of prisoners of war in line with present-day needs, together with the rules with which they have to comply, and the granting of minimum basic safeguards to all persons who are not expressly protected by the Protocols.

"In the highly sensitive context of non-international conflicts, common Article 3 of the Geneva Conventions of 1949 represented, in 1949, a first step forward. This article, despite its shortcomings, has rendered yeoman service. Protocol II, which has been given a more reduced form than had been envisaged, represents nevertheless a second step of equal importance. In this case, you have not considered that you could go as far as in Protocol I, but it seems to us that the essential part has been preserved. What remains is realistic and takes military and political facts fully into account. It may, therefore, be inferred that States will set their hearts on observing scrupulously these elementary principles of humanity.

"There is no doubt that, in the twin Protocols, the Red Cross as a whole and the International Committee of the Red Cross in particular will find new bases upon which to develop their activities. You have, during your sessions, confirmed your confidence in us. It is indispensable to us and I thank you for your support.

"You have also adopted a resolution (CDDH/438 and Add.1 and 2 and Corr.1 and 2) which calls for increased effort in the dissemination of international humanitarian law. How, indeed, could the provisions to which you have devoted so much care be respected if those who ought to apply them were to remain ignorant of them? In this case, too, the Red Cross is ready to provide the co-operation expected of it.

"In general, the new Protocols will impose additional tasks on the ICRC, in addition to the already heavy ones it carries out under the 1949 Geneva Conventions and through its traditional role. I should like to remind you, in this connexion, that the Diplomatic Conference of 1949 adopted resolution 11 emphasizing the need for Governments to guarantee regular financial support for ICRC. At the moment when this Conference is coming to an end, may I be permitted to draw attention to the existence of that resolution, to which the adoption of the new Protocols lends an added importance.

"Ladies and Gentlemen, the Geneva Conventions have already saved countless lives. There is absolutely no doubt that, as now supplemented and brought up to date, they can save still more. It is our fervent hope that they may be effectively applied in conflicts of all kinds if any such should by mischance, unfortunately, arise. However, what we hope for above all is that such texts will not have to be applied, because mankind will finally have banished war from the face of the earth."

3. Mr. SULTAN (Egypt) made the following speech:

"At its meeting on 8 June, the General Committee was kind enough to appoint me, for the fourth time, to be the spokesman for all delegations and all participants and to voice their feelings, at the final plenary meeting of our Conference. This is an unprecedented honour for me, for I regard that decision by the General Committee as a token of its confidence. And, since confidence is earned rather than demanded, I can only be worthy of this token, which fills me with honour, by wholeheartedly thanking all those who in this august assembly have shown me their indulgence, their courtesy and their friendship.

"This final session of our Diplomatic Conference has admittedly been a hard test for all. It has been a session of serious and major decisions. It has demanded the combined efforts of all participants, the practical demonstration of all their good will, their tolerance, their mutual understanding, their patience and, above all, their confidence and faith in the cause of international humanitarian law. All the participants who will shortly be signing the Final Act have made a praiseworthy and concerted effort to avoid the danger of a breakdown and the threat of failure. But, Mr. President, an easy victory is but an inglorious triumph. Despite all the misapprehensions and disappointments, our final session has set the seal upon the hope and triumph of a noble cause.

"In the struggle for the triumph of reason and common-sense, the participants have had the great privilege of finding in you, Mr. President, the person most qualified to ensure the success of the Conference. To all of us you have been and will always remain a particularly far-sighted President. By your wise and moderate approach, your courtesy, your patience, your political intuition, your devotion to the cause and your sense of compromise, you have succeeded in settling differences, bringing together what seemed far apart, reconciling the apparently irreconcilable and solving what seemed insoluble. Your loyalty, integrity, wisdom and spirit of understanding have to a large extent helped to create within this Conference that spirit of co-operation and harmony and that climate of tolerance on which the success of our Conference necessarily rested. We owe you a lot, Mr. President, and we feel we can only repay this debt of gratitude to you by signing here before you the Final Act and, in six months' time, signing the two Protocols additional to the Geneva Conventions of 1949.

"On behalf of all the participants, I cannot fail to speak of the felicitous initiative, the active and constructive share and the positive and creative role of the International Committee of the Red Cross and the consistent work of its experts. Since resolution XXVI adopted by the XXIst International Conference of the Red Cross, held at Istanbul in 1969, the various authorities of the ICRC have devoted their hearts and minds to the cause of humanitarian law. They have never given up, they have never drawn back, they have never weakened. On the contrary, they have maintained their values, they have proclaimed their convictions far and wide and they have persevered in the struggle for the cause of international law. We consider it our duty to express our most heartfelt thanks to all the authorities of the ICRC, and in particular to their permanent representatives, Jean Pictet, Denise Bindschedler-Robert, Claude Pilloud, René Jean Wilhelm, Danièle Bujard and Michel Veuthey, to mention but a few, for their steadfastness, their assistance, their hard work and their constructive contribution.

"Allow me also, Mr. President, in my capacity as spokesman for all the participants in this Conference, to express our sincerest thanks and gratitude to all the personnel of the Conference for their unfailing and effective assistance during the four sessions of this Conference.

The members of the various Conference Services - Protocol, Information, Language Services, Typing, Reproduction, huissiers etc. - have all collaborated with the greatest devotion in performing the work which was essential for the smooth conduct of our deliberations.

"For Ambassador Jean Humbert, who took on the heavy responsibility of the practical organization of this Conference, we can but express our great admiration and esteem. His task has not always been an easy one, but he has performed it with such remarkable skill as to arouse the admiration and gratitude of all participants.

"May I also, Mr. President, on behalf of all participants in the Conference, express our warmest and most sincere thanks to the Swiss Federal Council and to the competent authorities of the Republic and Canton of Geneva for their generous hospitality and for their unfailing courtesy to the Conference and its participants. The resolution which appears in document CDDH/444, and which was adopted by acclamation, is truly an expression of our gratitude.

"In a few moments we shall begin to sign the Final Act of our Conference. This is an historic moment in the annals of international humanitarian law. We realize that we have achieved something constructive. We have successfully accomplished our mission. Our success is all the more important in that it sets a striking and remarkable example to participants in all other Conferences. We are proud of our success, but we hope with all our hearts that we can share it with all future international conferences, whatever their purposes may be.

"We are now taking leave of one another, Mr. President, with a feeling of having accomplished our mission. We are taking leave of you and of ICRC. We shall be saying 'goodbye' or 'au revoir' to one another. We are leaving the lovely city of Geneva and, with a final glance at beautiful Lake Lemman, we shall repeat: 'Happy the man who can linger on these banks ... Happy he who revisits them if he has had to leave them ...'."

4. The PRESIDENT made the following speech:

"We have now come to the end of the long road which we have travelled together. To say, even in the full flush of justifiable pride in the task achieved, that the journey was a difficult one would be an understatement.

"In truth the path we trod was often arid, often strewn with obstacles and pitfalls, and dotted with crossroads where there were no signposts where only a steadfast will to succeed pointed the way.

"And yet we have, all of us together, pushed this rock of Sisyphus to the summit of the hill. We have transformed into reality an ambition that some augurs viewed as Utopian.

"True, we have sometimes had to descend from the heights where prevails the pure wind of idealism, under the compulsion of what is reasonable and feasible, what is compatible with a world in quest of new levels of equilibrium. Yet, at least you are ready to sign a Final Act which proclaims the adoption of two Protocols additional to the Geneva Conventions of 1949.

"Those who might say that the mountain has brought forth a mouse would be profoundly mistaken. They would ignore the enormous fund of energy that has been expended here, not just during the four sessions of our Conference - 1974, 1975, 1976 and 1977 - but throughout the whole period. They would greatly underestimate the force of our constant will to succeed, which was present even at times when there were ample reasons for doubt.

"We have, I say again, completed two Additional Protocols which, in harmony with our objectives, reaffirm and develop international humanitarian law by adapting it to the conditions of the world in which we live.

"It is not a stretch of fancy to view our Conference as a mirror reflecting the entire international community in its many-faceted and living reality. But it is no surprise that the image we receive back is full of strong contrasts. On the one hand there is the long chain of upheavals and disruptions which accompany new political, economic and social adjustments, with humanity at the constant mercy of obscure forces; and on the other, there is hope! The hope that lies in the heart of every man of good will, the hope of seeing the advent of greater peace, concord and justice.

"The satisfaction that we feel is today fully justified. Of the two faces of the human soul, the light and the dark, it is light that has prevailed. Beyond our circle, ladies and gentlemen, that light brings hope to civilian populations and to the millions of victims of armed conflicts who are mere pawns in a larger game.

"Undoubtedly, those who will study the texts resulting from our work will detect the limitations imposed on us by the sovereignty of States and by the difficulties which will arise in applying some of the provisions adopted.

"Be that as it may, they cannot contest the success of our Conference, nor the attempt to bridge the gulf that has yawned in the course of these past decades between humanitarian law and the evolution of armed conflicts, nor above all the spirit of concertation and of mutual concession, the closer human fellowship which this International Conference Centre in Geneva has witnessed.

"For all these efforts, for this unfailing tenacity, for these full debates, so beneficial to understanding between the peoples, I wish to express to you, ladies and gentlemen, my feelings of deep gratitude. Thank you for having responded magnificently to the spirit of confidence - a rash spirit, according to some - in which my Government sent out its invitations.

"Switzerland and Geneva are happy to have been the scene of an adventure crowned with success which we have just lived through together.

"Everyone here knows that this adventure could have neither begun nor continued without the International Committee of the Red Cross, to which I offer my deep thanks.

"From consultations and reflections based on ICRC experience there emerged the draft additional Protocols which you have tailored to meet the problems of your respective States. Then, and at every step along the path we followed, the ICRC never ceased to help us with its competent advice.

"Similarly, this great enterprise could not have reached port without the ceaseless devotion of all those who have carried specific responsibilities within our Conference structure. My thought goes in the first place to the Chairmen, Vice-Chairmen and Rapporteurs of the Committees and other organs of the Conference: I express my deep gratitude to them. I think also of the Vice-Presidents who, at the twenty-three meetings of the General Committee, gave me the constant benefit of their understanding, of their experience: to them also goes my gratitude.

And, finally, I believe I speak for a unanimous Conference in conveying our thanks to all those in the linguistic and technical departments, and at every level, who have toiled ceaselessly to interpret our statements, to put our decisions into shape and to give them the necessary distribution. I feel convinced that they, too, having been associated with the moulding of the two Protocols, will be conscious of having lived a rich and unique experience.

"This hour of signing the Final Act coincides, for many of you, with the hour of departure. On behalf of the Federal Council, I ask you to convey its wishes for happiness and prosperity to the authorities and people of your countries.

"I rejoice at the idea that you are going home as bearers of a message of hope, rather than as messengers of a failure which it would long have proved impossible to remedy.

"In conclusion, allow me to hope that you, like myself, will bear away a lively memory of the hours we have lived together in the service of a common humanitarian ideal."

SIGNATURE OF THE FINAL ACT

5. The SECRETARY-GENERAL drew the attention of the Conference to the fact that, in the foot-note on page 1 of the document accompanying the Final Act and relating to the signature of the national liberation movements, the word "position" should be read in the plural in all five languages.

The representatives of the States participating in the Conference were called, in the French alphabetical order, to come to the official table to sign the Final Act.

The representatives of the following States signed the Final Act:

Afghanistan, Algeria, Federal Republic of Germany, Saudi Arabia, Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia, Brazil, Bulgaria, Canada, Cape Verde, Chile, Cyprus, Colombia, Ivory Coast, Denmark, Egypt, United Arab Emirates, Central African Empire, Ecuador, Spain, United States of America, Finland, France, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iraq, Iran, Ireland, Italy, Socialist People's Libyan Arab Jamahiriya, Japan, Jordan, Kenya, Kuwait, Lebanon,

Liechtenstein, Luxembourg, Madagascar, Mali, Malta, Morocco, Mauritius, Mauritania, Mexico, Monaco, Mongolia, Mozambique, Nicaragua, Nigeria, Norway, New Zealand, Oman, Uganda, Pakistan, Panama, Netherlands, Peru, Philippines, Poland, Portugal, Qatar, Syrian Arab Republic, Republic of Korea, German Democratic Republic, Dominican Republic, Democratic People's Republic of Korea, Socialist Republic of Viet Nam, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, United Republic of Tanzania, United Republic of Cameroon, Romania, United Kingdom of Great Britain and Northern Ireland, San Marino, Holy See, Sudan, Sri Lanka, Sweden, Switzerland, Czechoslovakia, Thailand, Turkey, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yemen, Democratic Yemen, Yugoslavia, Zaire.*

The national liberation movements which had taken part in the work of the Conference were called to the official table to sign the Final Act.

The representatives of the following national liberation movements signed the Final Act:

Palestine Liberation Organization (PLO)
Panafricanst Congress (South Africa) (PAC)
South West Africa People's Organization (SWAPO)

CLOSURE OF THE CONFERENCE

6. The PRESIDENT declared closed the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

The meeting rose at 11.30 a.m.

* Later, the representatives of the following States affixed their signatures to the Final Act in the office of the Secretary-General of the Conference: Upper Volta, Senegal, Tunisia (13 June 1977), Jamaica (14 June 1977).