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**ORGANISATION DE L'UNITE
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REPORT OF THE SECRETARY-GENERAL ON THE DIPLOMATIC CONFERENCE FOR THE
REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN
LAW APPLICABLE IN ARMED CONFLICTS



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AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

SECOND SESSION

(From 3 February to 29 March 1975)

The Report on the first Session of the Conference had been submitted at the 24th Ordinary Session in Mogadiscio. The Second Session resumed at Geneva on 3 February 1975 and ended on 29 March. Mr Pierre Graber, President of the Swiss Confederation presided. He informed the opening session that three delegations, the People's Republic of China, South Africa and Albania would not participate at the current session, and reminded delegates that the task before them was difficult, of great importance, and hoped they would live up to expectations. The Conference approved by acclamation the appointment of officers who were put up to fill vacant posts. The question of the participation of South Vietnam at the Conference, submitted as a draft resolution, was dealt with, and withdrawn on a procedural decision that voting on the subject would be by two-thirds majority.

By the third week the Conference resumed in its Committees:

COMMITTEE I

Committee I under the Chairmanship of Mr H. Hambro (Norway) had approved Article 1, relating to the scope of Protocol I, at the first session of the Conference in 1974, and now considered and approved Article 2 to 7, the whole of Part V of Protocol I, i.e., Articles 70 to 73. Article 5 envisages the possibility of the International Committee of the Red Cross (ICRC) or other impartial humanitarian organization assuming the role of a substitute. The other Articles of Part I adopted, relate to the legal status of Parties to the conflict, to the training of qualified personnel to facilitate the application of the Conventions, and the provisions for convening meetings for the study of general problems by the Contracting Parties as a whole.

Article 70 specifies that the High Contracting Parties shall without delay take all necessary measures for the execution of the obligations incumbent upon them under the Geneva Conventions and the Protocol. A new Article 70 bis reaffirms the role devolving on the International Committee of the Red Cross (ICRC) under the Geneva Conventions by providing that the Parties to the conflict shall grant the ICRC "all facilities within their power" to enable it carry out the humanitarian tasks assigned to it by the Conventions and the Protocol on behalf of the victims of conflicts. The ICRC may also carry out, on its own initiative, and with the consent of the Parties to the conflict concerned, other humanitarian activities. The article also provides that facilities may be granted to the National Red Cross Societies (Red Crescent, Red Lion and Sun) of the countries in conflict, and to the League of Red Cross Societies and its members, as also to other humanitarian organizations. Articles 71 and 72 require the High Contracting Parties to make legal advisers available to the armed forces, when necessary, to disseminate humanitarian laws widely in the armed forces, in schools and among the civilian populations, and to report periodically to the depositary of the Conventions (Switzerland) and to the ICRC on the measures taken. Article 73 provide for communication, through the depositary State, of official translations of the Protocol and of the laws which countries may adopt to ensure their application.

Part I of draft Protocol II, which is applicable in non-international armed conflicts, stipulates in Article I that Protocol II develops and supplements Article 3, common to all the 1949 Geneva Conventions, and applies to all armed conflicts not covered by Article I of Protocol I (international armed conflicts). That means armed conflicts "which takes place in the territory of other organized armed groups, which under responsible command exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement the present Protocol". Protocol II does not, however, apply to situations of internal disturbances and tensions, or to isolated and sporadic acts of violence.

Articles, 6 bis and 8 of Part II of draft Protocol II were also adopted. Article 6 ("Fundamental Guarantees") establishes the principle of humane treatment of persons and the moral conduct which must be adopted in dealing with them. The article applies to "all persons who do not take a direct part or who have ceased to take a part in hostilities. Whether or not their liberty has been restricted" and prohibits in all circumstances acts such as murder, torture, physical mutilation, the taking of hostages, acts of terrorism, outrages upon personal dignity (enforced prostitution, indecent assault, etc.), slavery, pilage, and threats to commit any of the foregoing acts. Article 6 bis affords special coverage for women and children by protecting them, in

particular, from rape, enforced prostitution and indecent assault. Article 8 applies to persons whose liberty has been restricted for reasons connected with armed conflict and provides for specific measures to be taken to ensure that they are interned under acceptable conditions. Such measures apply specifically to hygiene, food and the right of each person to practise his religion. Similar protection is proposed for persons whose liberty is restricted in any way whatsoever. In addition, the Parties to the conflict will endeavour to facilitate visits to persons whose liberty has been restricted by representatives of an impartial humanitarian body, and must guarantee their liberty.

The Committee also dealt with the request from the Secretary-General of the United Nations in UN resolution 3058 (XXVIII) of 2nd November 1973 on the "protection of journalists engaged in dangerous missions in areas of armed conflict" and agreed on a new article to come after Article 69 of draft Protocol I to run as follows:

"Journalists who are engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of paragraph 1 of Article 45. They shall be protected as such under the Conventions and the present Protocol, provided that they take no action affecting their status as civilians and without prejudice to the right of war correspondents accredited to the armed forces to the status provided under Article 4(A) (4) of the Third Convention. They may obtain an identity card similar to the annexed model. This card, which shall be issued by the Government of the State of which they are nationals or in which they reside or in which the news medium for which they work is located, shall attest to the holder's status as a journalist".

COMMITTEE II

Committee II, under the Chairmanship of Mr S E Nahlik (Poland), considered and approved the provisions concerning the protection of the wounded, the sick and the shipwrecked. It studied the articles relating to the protection granted to civilian medical units, to civilian medical and religious personnel, and to civilian populations in the territory of the Parties to the conflict (Articles 11 - 17 of draft Protocol I), and favoured the limiting of the powers of the occupation administration. It also considered the field of application of professional ethics in periods of international armed conflict and, more particularly, the question of medical secrecy as to whether or not physicians called upon to attend persons who have been wounded are required to report their patients to the authorities. The role which the civilian population and relief societies might be called upon to play

on behalf of the wounded and the sick, even if they belong to the adverse Party, was considered. "Relief Societies" applies, inter alia, to National Societies of the Red Cross, the Red Crescent and the Red Lion and Sun.

The Committee also considered and approved the relevant articles of draft Protocol II, applicable in cases of non-international armed conflict, dealing with the search for the missing and the dead, the location of graves, and the disinterment and return of the remains to families. Article II, on protection of the physical and medical well-being of persons who fall into the hands of the adverse party, was also accepted. It approved the prohibition of carrying out medical experiments, grafts, organ transplants or physical mutilations on such persons; but did not consider it harmful that civilian medical personnel should carry weapons for their own defence, provided such weapons are individual small arms, and agreed that in times of armed conflict persons engaged in medical activities may not be compelled to give to the adverse party information concerning their patients, should such information be likely to prove harmful to the persons concerned or to their families. The notification of communicable diseases is, however, not included.

Article 12 bis was provided for the physical or mental integrity of persons who are interned, detained or deprived of liberty. These as in the provisions covering international conflicts, are inalienable rights.

The Committee accepted an important provision for civil wars - the wounded shall be afforded protection both by military personnel and by the civilian population. The relief societies (the National Red Cross, Red Crescent, and Red Lion and Sun Societies) located in the territory of a High Contracting Party shall be permitted, even on their own initiative, to care for the wounded without running the risk of being prosecuted for such acts, (Article 14). It adopted in substance all the articles in Section II of Part II of draft Protocol I (International armed conflicts), which deal with the protection of medical transport - by land, at sea (or on other waters) and in the air. Provision was made for special protection to be extended to all vehicles - military and civilian - and to hospital ships, medical craft and coastal rescue craft, even if these are transporting civilian wounded, sick or shipwrecked persons who are not protected by article 13 of the Second Convention. A new set of regulations was adopted to cover medical air transport, all of whose activities were, under the 1949 Conventions, subject to prior agreement between belligerents. Henceforth, it would be compulsory to obtain such agreement except in certain clearly specified cases, where the essential aim is to ensure the maximum protection of such transport. It is, moreover, planned to provide them with special internationally recognized signals (radar, radio and light signals) which would afford still greater protection. The

Committee requested its Sub-Committee on sign and signals to meet next year in order to consider the details of the technical Annex to draft Protocol I, taking account of the comments made on the subject. The Governments interested in these questions were requested to appoint telecommunications experts to attend the next session of the Diplomatic Conference.

COMMITTEE III

Committee II, under the Chairmanship of Dr H Sultan (Arab Republic of Egypt), studied the protection of the civilian population against the effects of hostilities. It considered Article 47 of draft Protocol I, on the general protection of civilian objects, as well as articles 48 (Protocol I) and 27 (Protocol II), concerning the protection of objects indispensable to the survival of the civilian population and accepted Article 44, paragraph 1 concerning the legal scope of the provisions governing the protection of the civilian population. Civilians on land must be protected against all attacks, no matter whence they come. It approved Article 47, which prohibits attacks on civilian objects and provides a definition of military objectives, which alone may be attacked. In cases of doubt, objects normally serving civilian purposes shall be presumed to be objects of a civilian nature, in order to ensure maximum protection for the civilian population. A new Article (47 bis), designed to protect historic monuments, places of worship and works of art, without prejudice to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflicts was also approved. A ban on reprisals against protected persons and objects was accepted.

Part III of draft Protocol I, dealing with humanitarian limitations of methods and means of combat was adopted. In this part, Articles 33 and 34, provide that the right of Parties to the conflict to adopt methods and means of combat is not unlimited and that it is forbidden to employ weapons which uselessly aggravate the sufferings of adversaries. Article 35, which deals with the prohibition of perfidy as a method of combat, was also accepted. Articles 46 and Articles 48 to 53 of Part IV of draft Protocol I, dealing with the protection of the civilian population against the dangers of hostilities were approved. These Articles give general protection to the civilian population and stipulate in particular that indiscriminate attacks, for instance, area bombing, are prohibited. Article 48, forbids certain methods of warfare against civilian populations, such as causing famine or destroying food resources, except when the objects concerned are used by the adverse party in direct support of military action. Article 49, which gives a measure of protection to works or installations containing dangerous forces (such as dams, dykes, nuclear or electrical generating stations) was also adopted. Articles 50 and 51, dealing with precautions in attack

or against the effects of attacks were adopted. Article 50 states that the Parties to a conflict shall refrain from launching an attack which creates a risk of causing a loss of civilian life, excessive in relation to the military advantage anticipated. Article 52 and 53, lay down the conditions for the protection of non-defended localities and demilitarized zones.

Chapter I of Part 2 of draft Protocol II relating to the general protection of the civilian population against the effects of hostilities in a non-international arm conflict (Article 24 to 29) were also adopted. These provisions, which are modelled on those of the corresponding articles of draft Protocol I applicable in cases of international armed conflict, prohibit, in particular, the launching of indiscriminate attacks against the civilian population and civilian objects, and lay down that care must be taken when conducting military operations to ensure that they are spared. Furthermore civilians enjoy protection unless they take a direct part in hostilities. The forced displacement of population - unless it is for their security or if imperative military reasons so demand - is prohibited, as are transfers of civilian objects across national frontiers. There is a provision for the protection of works and installations containing dangerous forces.

THE AD HOC COMMITTEE (COMMITTEE IV)

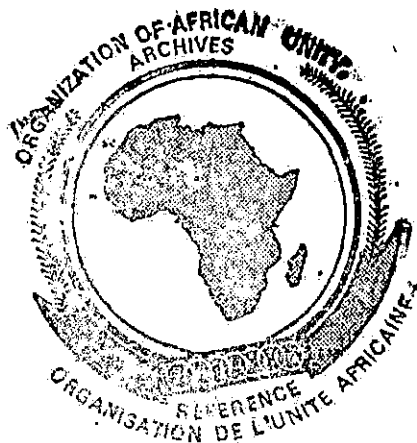
The Ad hoc Committee (Committee IV), which concerned itself with weapons that may cause unnecessary suffering or have indiscriminate effects, resumed its work on the basis of the report by the Conference of Governmental Experts, held at Lucerne under ICRC auspices in the Autumn of 1974.

The Committee discussed the possibility of restricting the use of conventional weapons, particularly small calibre projectiles, blast and fragmentation weapons, delayed-action and treacherous weapons, and considered its future work and the possible convening of a second conference of government experts under the auspices of the ICRC.

The Session in Relation to the Liberation Movements

Articles particularly relevant to the Liberation Movements are - 1, 42, 48, 47, 65 and 84, all of additional Protocol I concerning International Armed Conflicts. Article I scope of application of the conventions as well as the Protocols was disposed off at the first session. The agreement to accommodate the struggles of Liberation Movements in international Armed Conflicts was a decisive gain. Article 47, General Protection of civilian objects, and Article 48 objects indispensable

to the survival of the civilian population were disposed of satisfactorily by Committee III as described elsewhere in this report. But consideration of Article 42 New Category of Prisoners, 65 Fundamental Guarantees and 84 Treaty Relations upon entry into force of the present Protocol have been deferred to the next session scheduled for 8 April to 11 June 1976 at Geneva. As usual the General Secretariat's participation will be necessary for intensive consultation at the session in order that maximum benefit to the cause of the Liberation Movements will be achieved. The Council is therefore requested to give its approval.



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