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CLASSIFIED REPORT
of the
UNITED STATES DELEGATION
to the
Diplomatic Conference on the Reaffirmation
and Development of International Humanitarian
Law Applicable in Armed Conflicts
Geneva, Switzerland
February 20-March 29, 1974

Submitted to the SECRETARY OF STATE

George W. Aldrich

George W. Aldrich
Chairman of the Delegation
June 10, 1974

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I. SWITZERLAND AND THE CONFERENCE ARRANGEMENTS

The Swiss Government, which convened the Diplomatic Conference, seemed ill prepared for the politicization of the Conference, which manifested itself from the very outset.

The tone of the Conference was set by the opening address of Mr. Ould Dada, the President of Mauritania, who had sought an invitation to speak, which the Swiss Government reluctantly extended, in view of his presence in Geneva for other reasons. He reproached "the Zionists who wanted to throw the Arabs into the Sea"; praised the Palestine Liberation Organization and those fighting against the colonialist regimes in the Portuguese colonies and in Rhodesia and South Africa; and reproached the United States and the Republic of Vietnam for their activities in Cambodia and in Vietnam.

The Swiss Government had apparently not been aware that the division of the spoils of Conference offices would be dictated by the United Nations pattern, and its preliminary soundings and proposed list came to naught. It is improbable that the Swiss could have done anything to keep a storm from brewing over the question of representation of national liberation movements, Guinea-Bissau, and the Provisional Revolutionary Government in Vietnam, but the President of the Conference, M. Graber, showed a certain maladroitness in promoting and carrying through compromise arrangements through consultations in regional groups, inter-regional contacts, and negotiations outside the conference hall. The rules of procedure that had been drafted by the Swiss Government had to be laboriously gone over and modified. And the President of the Conference and his Bureau were not as energetic or adroit as they might have been in moving the Conference into its substantive work. All of these problems reflect the unfamiliarity of the Swiss Government with the rough and tumble of United Nations politics.

The politicization of the Conference and the hard-fought battles over representation have undoubtedly caused the Swiss Government and the International Committee of the Red Cross -- which for all of their juridical independence are often associated in people's minds -- to think further about their humanitarian role, particularly in less developed countries. Fears were expressed, for example, that the role of the ICRC in Vietnam would be handicapped by the withdrawal of Hanoi from the Conference and the loss of the vote to admit the PRG. The Swiss

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Government and the ICRC seem anxious to preserve what ties they have with the Third World and were concerned lest some of the smoke of the political battling rub off on them.

II. THE REPRESENTATION ISSUE

The issue of representation, particularly that of the PRG, was hard fought. The excuse of wide participation in a conference on international humanitarian law was used as a cover for a campaign to enhance the international standing of the PRG and to provide it with a forum at the Conference.

The U.S. Delegation worked hard to prevent an invitation to the PRG. A political officer, Mr. William H. Marsh, was brought from the Embassy in Paris, demarches were made by the Department in a number of capitals, and the Delegation made every effort to assure the presence of as many delegations as possible that might be expected to vote with the United States on the PRG issue. It did not go unnoticed that the departure of Hanoi from the Conference and the vote of San Marino were sufficient to tilt the balance against an invitation to the PRG. Mr. Marsh was a highly effective lobbyist and deserves particular praise for his activity among the Conference delegations.

A key element in the tactics of the United States Delegation was to separate the PRG issue from Guinea-Bissau and the national liberation movements and to conciliate the African and Arab delegations by accepting the invitation of liberation movements without a vote (merely stating our reservations for the record). This tactic succeeded, as most of these delegations abstained or were absent for the vote on the PRG.

Unexpected setbacks in our efforts to keep the PRG out were the decision by Indonesian Foreign Minister Malik to instruct his delegation to vote in favor of an invitation to the PRG and a last-minute decision by the Italian representative, Ambassador di Bernardo, to abstain, despite instructions from Rome to vote against the PRG. (He apparently did not want to be on the losing side, and he thought the PRG would be invited).

III. WARS OF NATIONAL LIBERATION AND NATIONAL LIBERATION MOVEMENTS.

The first session of the Conference was dominated by the issue of the representative of the national liberation movements and the application of the Protocol on International

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Armed Conflicts and the Geneva Conventions of 1949 to wars of national liberation. The developing countries, with support from the Soviet bloc, voted as a solid block, according to the pattern that has become increasingly common at conferences. They commanded over two-thirds of the votes, which is the requisite majority for the adoption of proposals in the plenary of the Conference. They appeared to have the votes, for example, to force through the text of Article 1, applying Protocol I to wars of national liberation. Our success on the PRG issue and our active lobbying in capitals may have sufficiently weakened their confidence, however, to allow avoidance of the vote.

While Egypt was a co-sponsor and a strong supporter of the proposal concerning wars of national liberation, the Egyptian Delegation showed itself to be conciliatory and conscious of the danger of pushing the matter too far and too fast. The United States Delegation had excellent relations with the Egyptian Delegation, and the latter on more than one occasion was helpful in getting other states in the same camp off their more extreme positions.

In the face of the voting block of the developing countries and the Soviet bloc, the Western European Group and others did not show the unity that it should have. The Delegations of the United Kingdom, the Federal Republic of Germany, Belgium, the Netherlands, and France, with which the United States Delegation had excellent relations, were helpful and held firm. Canada proved to be less firm and more inclined to pursue a conciliatory role than it had in the previous Conferences of Government Experts. Norway was predictably the closest friend of the national liberation movements and had cultivated this field intensively before the Conference. Nordic unity did not show itself strongly. The intensity of Norway's concern with national liberation movements was not shared by Sweden and Finland (two countries that often did work together although Finland voted with Norway while Sweden abstained) or by Denmark, which normally cooperated with its NATO allies.

Australia gave outright support of the application of Protocol I to wars of national liberation. The instructions for this change of position came from Canberra.

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On wars of national liberation, the Soviet Union and other members of the Soviet bloc were with the less developed countries. On other issues, they were relatively open in their views, willing to propose or to accept compromises, and even co-sponsors some proposals with the United States.

It is quite clear that many issues that will arise in the second session of the Conference will, as in the case of the first session, be seen in the light of their bearing on wars of national liberation. This will be true of the definition of prisoners of war, the obligations of a Detaining Power, means and methods of combat, and weapons. If a particular weapon or technique has been used by militarily advanced powers against a "national liberation movement," it will be charged that the weapon causes unnecessary suffering or is indiscriminate in its effects.

IV. OTHER ISSUES

There is widespread ignorance among the participants in the Conference of both war and humanitarianism as an "art of the possible." Delegations would not infrequently call for sweeping prohibitions of activity, such as propaganda or anything that in fact causes terror in the civilian population, on the ground that it is "inhumane." They were insensitive to the compromises that the law must make and to the complexities of a body of international humanitarian law which is the product of more than a century of growth. Many of the less developed countries seemed unable to cope with the distinction between "unavoidable suffering" and "unnecessary suffering" in warfare.

The Swedish initiative on weapons did not seem to build up as much momentum as might have been expected. Ignorance and the lack of any position were probably the causes of the silence of others. Sweden came very well prepared, with detailed statements about the characteristics of various weapons that it would like to see banned, but often after the statement of the Swedish Delegation and words of support from Mexico, there was only desultory discussion or none at all. There will have to be a long period of study and discussion about these issues. Naturally, states will assess these issues in terms of how prohibition or restriction of a particular weapon would affect their security interests. The search for consensus will be long and difficult.

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V. THE LONGER TERM PROSPECT AND WHAT NEEDS TO BE DONE.

The first session of the Diplomatic Conference raised the question of how many states are really serious about drawing up new humanitarian law and in becoming parties to the resulting treaties. There is reason to suppose that a number, perhaps even a majority, of the states present at the Conference and participating in its work, may see the Conference primarily in terms of the opportunity it provides to advance certain political causes - such as the end to colonial regimes in sub-Saharan Africa. Once the Conference is over and the points have been made, it may well be that they will show a diminished enthusiasm about becoming parties to the instruments. One cannot be sure whether the flexibility shown, for example, by the Soviet bloc is genuine or indicates disinterest in any new Protocols on the law of war.

It will be necessary for the United States to consider what advantages and disadvantages may lie in participation in the second session of the Conference and whether it would wish to become a party to the Protocols which, according to present indications, are likely to emerge from the Conference. In particular, the following issues must be addressed:

1. Will it be possible for the United States to live with the formula on wars of national liberation adopted for Article 1 of Protocol I? The sponsors have indicated that the wording adopted in Committee may be subject to some adjustment. Consideration must be given to whether there is some way of separating out the issue of wars of national liberation so that individual countries may become parties to Protocol I without necessarily accepting that obligation. It will also be necessary to think what impact the concept of wars of national liberation may have on other articles of Protocol I and of the Geneva Conventions of 1949 in general, and to avoid any formulation which permits unequal application of the Protocols and the Convention to different parties to a conflict.

2. There is a tendency in the Conference to adopt rather generalized prohibitions on certain methods and means of combat and to extend these to warfare at sea and to attacks against aircraft. These may prove to be unacceptable to the United States, and more rational alternatives must be sought.

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3. Coupled with the foregoing problem is the matter of individual criminal responsibility for violations of the Protocols. If various prohibitions are to be absolute, and without reference to intent or fault, and if criminal responsibility is to be retained for violation of the law of war, then there is the possibility of using the law as a means of denying humane treatment to prisoners, as happened to American prisoners of war in Vietnam. Many delegations objected to any reference to "intent" or to the predictability of consequences in the use of a weapon. If prohibitions are to be made absolute, then steps must be taken to assure that a foundation is not laid for the oppression of prisoners. We must give particular attention to these questions of individual responsibility before the second session.

4. In preparation for the Conference of Government experts on Weapons and the second session of the Conference, the United States Government will be conducting a survey of possible legal restraints on the use or possession of weapons pursuant to NSSM 194. That study will provide a solid basis for determining the positions that the United States will take on weapons issues at the second session of the Conference.

There will be a need for further consultations within the Western European Group and others before the second session of the Conference, but it is not to be expected that these will produce unity of position on all or a strong majority of issues. Probably more urgent are bilateral consultations with a number of Latin American and other developing countries as part of a process of educating them. The message must also be brought home, to our allies and to those with whom we disagree, that it would be a tragedy if the divisiveness shown at the Conference should endanger the fragile fabric of the existing humanitarian law and that the pushing of extreme positions, not generally acceptable, would not advance the humanitarian protection of war victims. These points are not easily made. However, if communication fails, the United States must be ready to say that its accession to the Protocols that may be drawn up at Geneva should not be taken for granted.

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TO THE
DIPLOMATIC CONFERENCE ON THE REAFFIRMATION AND DEVELOPMENT
OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN
ARMED CONFLICTS
GENEVA, SWITZERLAND
FEBRUARY 20 - MARCH 29, 1974

Submitted to the Secretary of State

George H. Aldrich
George H. Aldrich
Chairman of the Delegation
June 10, 1974

Prepared by: R. R. Baxter

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I. BACKGROUND OF THE CONFERENCE

The initiative for the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts dates back to Resolution XXVIII of the XXth International Conference of the Red Cross held in Vienna in 1965, which urged "the International Committee of the Red Cross to pursue the development of international humanitarian law." This international humanitarian law consists for the most part of the four Geneva Conventions of 1949 for the Protection of War Victims (the Wounded and Sick; the Wounded, Sick, and Shipwrecked at Sea; Prisoners of War; and Civilians), to which the United States is a party. For purposes of this development effort, the Hague Conventions of 1907 and the customary laws of war are also relevant. In September of 1969, the XXIst International Conference of the Red Cross held in Istanbul urged the I.C.R.C. to pursue its efforts to draft new rules to supplement the existing international humanitarian conventions and to invite government experts to meet for consultations.

Simultaneous to these developments, attention began to focus on this topic in the United Nations. In 1968, the United Nations Conference on Human Rights, held in Teheran, recommended that the General Assembly invite the Secretary-General of the United Nations to study the steps which should be taken to secure better application of the existing international humanitarian conventions and the need for additional humanitarian treaties (Res. 2444 (XXIII), Dec. 19, 1968). The General Assembly received two reports from the Secretary-General (U.N. Docs. A/7720 (1969) and A/8052 (1970) by the time that a decision was taken by the International Committee of the Red Cross to convene a Conference of Government Experts on this subject in 1971.

The first Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was convened by the I.C.R.C. in Geneva for a period of three weeks in May and June of 1971. Experts from 39 countries, including the United States, attended and considered various proposals that had been put to the Conference by the I.C.R.C. Because of the necessity of further consultations and of complaints that there had not been a sufficiently representative group of states, including developing countries, present at the First Conference of Government Experts, a second such Conference was convened in Geneva from May 3 to June 2, 1972. Invitations were extended to all parties to the Geneva Conventions of 1949, and



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over 400 experts designated by 77 governments appeared for the Conference in Geneva. The subject matter for consideration by the Second Conference was two protocols drafted by the staff of the I.C.R.C. -- one on International Armed Conflicts and the other on Non-International Armed Conflicts. The two Protocols were reviewed in considerable detail by the Second Conference of Government Experts.

On the basis of the observations made at the two Conferences of Government Experts, the I.C.R.C. prepared revisions of the two Protocols and a commentary thereon. To consider these proposed texts, the Swiss Government convened a Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which met in Geneva from February 20 to March 29, 1974. Invitations were extended to the states parties to the Geneva Conventions of 1949 and to members of the United Nations.

One hundred and twenty-five States responded to the invitation by appearing at the Conference (see Annex A for a list of participating states).

The United States Delegation was headed by Mr. George H. Aldrich, Deputy Legal Adviser, Department of State, and consisted of twenty-six persons (see Annex B for a list of the Delegation).

II. ORGANIZATION OF THE CONFERENCE

The Swiss Government had proposed and the Conference agreed that there would be three main Committees of the Conference, to which would be added an Ad Hoc Committee on Weapons. Committee I was to deal with the general provisions of Protocol I (International Armed Conflicts) and Protocol II (Non-International Armed Conflicts); Committee II with Wounded, Sick and Shipwrecked Persons, Civil Defense, and Relief; and Committee III with the Civilian Population, Methods and Means of Combat, and a New Category of Prisoners of War.

At the first plenary session of the Conference, Mr. Pierre Graber, Vice President of the Swiss Federal Council and Head of the Political Department, was elected President of the Conference.

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On the basis of preliminary consultations that the Swiss Government had conducted with a number of the states that were to participate in the Conference a list of proposals for filling the various offices in the Conference was put forward. However, it quickly became apparent that these proposals were not generally acceptable and that it was expected that offices would be allocated among regional groups according to United Nations practice. It thereupon became necessary to carry out prolonged consultations among and within regional groups in order to work out a suitable allocation of offices, which was finally adopted by consensus on March 1.

In the allocation of offices, Mr. Aldrich was elected to the Credentials Committee, and Mr. Baxter of the United States, Rapporteur of Committee III, a post which carried with it membership on the Drafting Committee. Mr. Aldrich also served as Chairman of the West European and Others Regional Group.

A further question which held up the substantive work of the Conference was that of the issuance of invitations and of representation generally. Guinea-Bissau, which had acceded to the Geneva Conventions of 1949 with extensive reservations shortly before the opening of the Conference but had not been invited by the Swiss Government, was invited to participate by the Conference. The decision was taken without a vote. The United States submitted for the record a statement accepting the decision without a vote but indicating that the United States does not recognize the Government of Guinea-Bissau. The facts that Guinea-Bissau had been recognized by more than sixty governments and had been invited to participate in the Law of the Sea Conference to be held in Caracas during the summer of 1974 made the decision of the Conference on International Humanitarian Law a foregone conclusion.

A more troublesome question was that of the representation of African and Arab national liberation movements, a list of which is appended in Annex C. This issue had been foreshadowed by resolutions at the 1973 International Red Cross Conference held in Tehran, and the United Nations General Assembly at its Twenty-eighth Session (Res. 3102 (XXVIII), Dec. 12, 1973), which called for participation of these national liberation movements in the Diplomatic Conference.

At the Diplomatic Conference, the United States and a number of other countries of the Western European group actively opposed invitations to the national liberation movements. Compromise formulae whereby the national liberation movements would participate as observers or as part of the delegations from regional organizations, such as the Organization of African Unity, proved to be unacceptable to the movements and to the many developing countries that supported their participation in the Conference. Some of their supporters were even demanding full participation, including the right to vote. It was not until March 1 that a resolution of invitation was adopted (CDDH/22), the two significant paragraphs of which stipulated that the Conference:

"1. Decides to invite the National Liberation Movements which are recognized by the regional inter-governmental organization concerned, to participate fully in the deliberations of the Conference and its Main Committees;

"2. Decides further that, notwithstanding anything contained in the Rules of procedure, the statements made or the proposals and amendments submitted by delegations of such National Liberation Movements shall be circulated by the Conference Secretariat as Conference documents to all the participants in the Conference, it being understood that only delegations representing States or governments will be entitled to vote."

As in the case of Guinea-Bissau, this resolution was adopted without a vote. The Chairman of the U. S. Delegation made it clear that participation by these groups was not to be regarded as a precedent for other conferences.

It should be noted that votes were avoided in these two cases because there was a consensus to do so, even though there was no consensus on the issuance of the invitations. The remaining problem of representation was that of the "Provisional Revolutionary Government of the Republic of South Vietnam" which had submitted an instrument of accession to the Geneva Conventions of 1949 only a month or so before the opening of the Conference. It readily became apparent that the Democratic Republic of Vietnam, the PRG, and their supporters were determined to use the question of an invitation to the "third Vietnam" to advance the international status of the PRG and to permit it to carry on a campaign against the United States and the Republic of Vietnam

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in the Conference itself. All this was done under the guise of securing the widest possible attendance at a conference devoted to the cause of humanitarianism.

The Delegation from Hanoi made the mistake of walking out of the Conference as soon as it made its speech on the question, two days before the vote on the representation of the PRG. It did this to express its disapproval of the failure of Switzerland to invite the PRG.

In the most dramatic vote of the Conference, the proposal to invite the PRG to participate was defeated by a vote of 37 to 38, with 33 abstentions (and with a number of delegations out having cups of coffee). The United States Delegation did all that it could to secure the presence and adverse votes of as many delegations as possible.

Provisions relating to the rights of the national liberation movements, and various other matters, were proposed for insertion in the draft rules of procedure that had been submitted to the Conference by the Swiss Government but the adoption of which had been delayed pending resolution of participation issues. The draft rules and proposed amendments were referred to the Drafting Committee for its recommendations, and the problem of the rights of participation of national liberation movements had to be fought out all over again in that Committee. Only on March 7 and 8, half way through the Conference, were the Rules of Procedure finally discussed in plenary and adopted.

The remaining organizational matter was that of credentials. The Credentials Committee submitted its report near the end of the Conference. Reservations were stated to the credentials of the Republic of Vietnam (a state which some delegations said should be represented in whole or in part by the PRG), South Africa (in objection to Apartheid), Portugal (on the ground that it had no right to speak for its overseas territories), the Khmer Republic (which should, it was asserted, be represented by the Sihanouk regime), and Israel (on the ground that it was an aggressor). All of these reservations were noted, but the report was adopted without a vote and no delegation was denied its right to participate in the Conference.

III. THE WORK OF THE CONFERENCE

The record of accomplishment of the Conference was not one of which the participants could be proud. Only two

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weeks of the nearly six-week Conference were available for work in the Committees. No articles were adopted by the Conference itself. One article was adopted in Committee I, but that article, dealing among other things with national liberation movements, presents fundamental problems to a number of governments, including the United States. Four articles and several paragraphs of a fifth were adopted in Committee III. The technical annex on the identification of medical and civil defense personnel, transports and installations was drawn up by the sub-committee but not adopted by Committee II. When one considers that the drafts submitted to the Conference number more than 150 articles, it is readily apparent that the Conference made very little headway toward the adoption of the two proposed Protocols.

It should be noted that during the initial weeks of the Conference, prior to the commencement of the work of the Main Committees, the Western European and Others Regional Group established a series of working groups which reviewed the substantive positions of the members of the group. The United States had begun the process of Western Group consultation at the Conference by inviting the members of the Group to two days of consultations at the head of delegation level on February 18 and 19.

IV. COMMITTEE I

One issue dominated the discussions in Committee I -- the question of the application of Protocol I and the entirety of the Geneva Conventions of 1949 to "wars of national liberation." This proved to be the single most important substantive question taken up at the Conference and one which holds the potential for more controversy at the second session of the Conference.

Committee I was to deal with provisions relating to application (Articles 1-7 of Protocol I and Articles 1-5 of Protocol II), treatment of persons in the power of parties to the conflict (Articles 6-10 of Protocol II), executory provisions (Articles 70-79 of Protocol I and Articles 36-39 of Protocol II), final provisions (Articles 80-90 of Protocol I and Articles 40-47 of Protocol II), and the preambles.

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Three proposals were initially submitted with respect to wars of national liberation -- a Soviet bloc proposal (CDDH/I/5), a proposal by Algeria and fourteen other states (including Australia and Norway) (CDDH/I/11), and a proposal by Romania (CDDH/I/13). Each of these would have the effect of making the law governing international conflicts applicable to wars fought for self-determination against alien occupation, or against colonialist or racist regimes. These three proposals were subsequently withdrawn in favor of a somewhat amplified proposal with a sponsorship of 51 states (CDDH/I/41), which, with the incorporation of another unrelated amendment to Article 1, became Document CDDH/I/71, proposed initially by Argentina, Honduras, Mexico, Panama and Peru.

This amendment of Article 1 received widespread support from the states of the Soviet bloc and the less developed countries. The argument which was made on behalf of the proposal was that under the terms of the United Nations Charter and numerous resolutions of the General Assembly interpreting and implementing the Charter, peoples under colonial rule or otherwise denied their right to self-determination are entitled to independence, that it is proper for them to assert this right through the use of force, and that the ensuing conflict is an international one which would be governed by the Geneva Conventions of 1949 and by Protocol I. The response which was forcefully put by the United States and a number of its European allies was that the adoption of such criteria, turning on the justice of the cause for which a war is fought, would introduce a dangerously subjective element into what had hitherto been a neutral and evenhanded body of law and that it would reawaken the notion of the "just war," which had both diminished respect for the law and had enhanced the barbarism of wars fought in the past. The "just war" concept is likely to lead to unequal treatment of victims on the several sides of a conflict depending upon whether the cause they fought for was recognized as "just."

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Other arguments were raised against the proposal -- that national liberation movements lacked the material means of giving effect to the law of war; that wars of national liberation are a temporally and geographically limited phenomenon and that the entire structure of the law should not be distorted in order to accommodate them; that the adoption of this conception would call for a complete revision of the law of war; that to recognize the right to use force to secure self-determination would call for a revision of the U. N. Charter; that the definition of "peoples" was unclear and might require a state to treat an ethnic minority in revolt as an international entity protected by the international law of war. But it was quite clear that the sponsors of the proposal were not to be put off by such arguments and that a very powerful head of steam had built up behind the proposal concerning wars of national liberation. A working group was set up in Committee I to attempt to work out a single amendment to Article 1, but there was never any chance of reaching a consensus in view of the diametrically opposing views that had been expressed. When the matter came back to the Committee, it was clear that there were enough votes to permit adoption of the proposal. A Canadian and New Zealand proposal that a working group be set up with the mission of attempting to bring about an accommodation of views between the two sessions of the Conference was looked upon by the sponsors of the proposal as a temporizing gesture. Debate was closed, and the vote was taken. By 70 votes to 21 with 13 abstentions, Document CDDH/I/71 was adopted. The text of Article 1, as adopted by the Committee thus reads:

1. The present Protocol, which supplements the Geneva Conventions of August 12, 1949, for the Protection of War Victims, shall apply in the situations referred to in Article 2 common to these Conventions.

2. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial and alien occupation and racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

3. The High Contracting Parties undertake to respect and to ensure respect for the present Protocol in all circumstances.

4. In cases not included in the present Protocol or in other instruments of treaty law, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

It appeared that, with this degree of support, the Article as adopted by the Committee might be submitted to the final plenary sessions of the Conference and finally adopted by the requisite two-thirds vote. However, the matter was not pushed that far, and at the final plenary session, the following draft resolution, submitted by India, was adopted without vote:

The Conference,

Adopting the report of Committee I, containing its recommendation in paragraph 37 [that the text of Article 1 approved by the Committee be adopted by the Conference],

Welcomes the adoption of article 1 of draft Protocol I by Committee I.

Article 1 has therefore not been finally adopted, and one of the tasks that lies ahead is to determine what it is practicable and desirable to do about the article at the second session of the Conference.

The issue of wars of national liberation overshadowed all other issues in Committee I, and many delegations showed an unwillingness to move on to any other articles until the question of the scope of Protocol I had been decided. There was somewhat desultory discussion of Articles 2 through 5 of Protocol I, with a number of issues being postponed for consideration in the context of other articles. This happened, for example, with respect to the proposals made by the United States and other states for amendment of the definitions of "Protecting Power" and "substitute" in Article 2. The United States had also proposed the delegation of the definition of "protected persons" and "protected objects". Further consideration of Article 3, dealing with the beginning and end of application was also deferred until more of substance had been accomplished on the Protocol. There was thus no real consideration of a carefully worked out United States amendment of this article.

Some delegations supporting national liberation movements and wars of national liberation were concerned by the part of draft Article 4 which specified that the application of the Conventions and of the Protocol would "not affect the legal status of the Parties to the conflict or that of the territories over which they exercise authority."

There was some discussion of what the United States considered to be one of the most important provisions of the Protocol -- Article 5 dealing with the selection of a Protecting Power and the assumption of the functions of the Protecting Power by the I.C.R.C. in the event of the failure of the parties to a conflict to agree on a Protecting Power. The discussion centered about the same issues as had been dealt with at the two Conferences of Government Experts -- whether it was feasible to have a procedure for the automatic appointment of a Protecting Power or a substitute, what types of organizations were suitable to serve as substitutes, and so forth.

But there was no voting on these articles, and they were not referred to any working group or drafting committee.

The Plenary Session received and referred to Committee I United Nations General Assembly resolution 3058 (XXVIII), dealing with protection for journalists, but because of lack of available time the Committee did not discuss

this subject. It was returned to the Plenary for reference to the 1975 Session of the Conference.

Although it had been agreed to discuss corresponding articles of Protocol II when discussion of related articles in Protocol I was completed, the majority of the Committee chose to defer action on Protocol II, at least until action on Articles 1 through 7 of Protocol I was completed. Several delegations expressed little enthusiasm for Protocol II in light of the Committee's adoption of CDDH/I/71. The Chinese delegation particularly urged the view that Protocol II was unnecessary and could now be considered an improper intrusion into internal matters.

V. COMMITTEE II

The program of work proposed for Committee II called for it to consider the draft articles on the general protection of wounded, sick, and shipwrecked persons (Articles 8-20 of Protocol I and Articles 11-49 of Protocol II), medical transports (Articles 21-32 of Protocol I and Chapters I-III and V of the Annex to Protocol I), civil defense (Articles 54-59 of Protocol I and Chapter IV of the Annex to Protocol I, and Articles 30 and 31 of Protocol II), and relief (Articles 60-62 of Protocol I and Articles 33-35 of Protocol II).

At the outset the Committee decided to begin considerations of Articles 8-20 of Protocol I (General Protection). After concluding consideration of these Articles, it would decide whether to take up the corresponding provision of Protocol II, or to complete all of Protocol I before undertaking any portion of Protocol II. It was also decided to organize a drafting committee with representation of 3 members from each regional group, and qualification in each working language. The organization of the Drafting Committee was delayed for more than one week by the failure of the Asian group to select its representatives. When organized, Mr. Solf of the U.S. delegation was elected as a Vice President of the Committee.

The articles to be dealt with in this Committee were the least political, the most technical, and ripest for adoption of the I.C.R.C. proposals dealt with by the Conference, and yet the Committee made little progress except

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with respect to the Annex on "Regulations concerning the Identification and Marking of Medical Personnel, Units and Means of Transport and Civil Defence Personnel, Equipment and Means of Transport." Only Articles 8 through 11 of Protocol I, dealing with definitions and general provisions, were discussed in the Committee. Articles 8-10 were referred to a Drafting Committee which reported back to the Committee on Article 8 and Article 9, paragraph 1. The Committee merely noted the report of the Drafting Committee because the drafts were only provisional and the French text submitted to the Committee was unacceptably inaccurate.

The work that was done on Article 8 (Definitions) was largely by way of refinement of the draft submitted by the I.C.R.C. The U.S. delegation had suggested that consideration of Article 8 be deferred until the Committee discussed the relevant substantive provisions. It expressed the fear that there would be premature debate on substantive issues while particular definitions were considered. The Committee nevertheless decided to formulate definitions provisionally. The debate on provisional definitions, which did indeed involve many substantive issues, took up most of the working time available to the Committee.

Paragraph 1 was revised to satisfy medical delegates who objected to classifying as "wounded and sick" any person who was not affected by trauma or disease. A compromise worked out by the U.S. delegation was adopted by the Drafting Committee. It provides that the term "wounded and sick" shall also be construed to cover other persons in need of medical assistance and care who refrain from acts of hostility, including the infirm, pregnant women and maternity cases, as well as new born babies. The work on the definition of "shipwrecked" was slowed down by an I.C.R.C. suggestion that would have assimilated persons in distress in the air or on land to shipwrecked persons, which was withdrawn after two working sessions of the Committee after many delegations indicated their agreement with the United States that the rules peculiar to rescues at sea could not be applied in the land combat zone.

Article 9, dealing with the field of application of the part on wounded, sick, and shipwrecked persons, gave rise to some controversy about the formulation of the principle of non-discrimination contained in the article. As originally

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drafted, paragraph 1 forbade "distinction on ground of nationality", which caused some concern that, by a negative inference, distinction on other grounds would be lawful. The basic problem with the I.C.R.C. text, recognized by most delegations, was that it purported to limit its territorial application to "the territory of the Parties to the conflict" whereas the articles in Part II include some which apply on the high seas and to neutral countries. Moreover, contradictions appeared in the scope as to personnel application.

The U.S. delegation and a number of co-sponsors proposed to delete the first paragraph as unnecessary, contending that each substantive article defined its own field of application. Most delegations, however, expressed the view that a general but accurate provision should be formulated which would define the field of application without creating contradictions within Part II. This task was entrusted to the Drafting Committee, which proposed the following:

"The present Part shall apply, without any discrimination, to all combatants and non-combatant military personnel of the Parties to a conflict and to the whole of the civilian population of the Parties to a conflict, particularly to the wounded, sick and shipwrecked, as well as to medical units and medical transport under the control of any such Parties."

A question concerning non-discrimination arose in connection with Article 10 dealing with the general care and protection of the wounded and sick. An amendment of which the United States was a co-sponsor would have required that medical care be provided "without any adverse distinction or discrimination founded on race, colour, caste, nationality, religion or faith, political opinion, sex, social status, or any other similar criteria." Other delegations were of the view that there should simply be a prohibition on discrimination extending to any and all forms that it might take.

A proposal was introduced by certain Arab countries that would oblige doctors to obtain the written consent of a patient before performing an operation on him. A

number of delegations, including that of the United States, pointed out that this requirement would be impracticable, having regard to the state of the patient, language problems, and other difficulties of communication and the lack of any standard form for the expression of such consent. The Committee accepted a proposal by Denmark to consider the amendment in connection with Article 11 instead of Article 10, which would be non-reservable under Article 85 of the I.C.R.C. draft.

A proposal by the I.C.R.C. that the Parties to the conflict should collect and care for the wounded and sick and the dead, that they should if possible conclude agreements to facilitate such measures, and that persons who are "in peril on land" by reason of the breakdown of their transport should be deemed to be shipwrecked received mixed reactions. Several delegations thought that most of the proposal was already covered by the Geneva Conventions of 1949. Objections were raised by the United States and others to the idea of people's being "shipwrecked" on land (e.g., because their vehicle had broken down).

As to Article 11, dealing with the protection of persons, the United States was co-sponsor with Australia, Canada, Sweden, Poland, the Soviet Union and a number of other states, of a largely redrafted article, which would, with respect to persons in the hands of an adverse party or otherwise deprived of liberty as a result of hostilities, specifically (1) preclude the employment of any medical procedures not indicated by the mental or dental needs of the individual or inconsistent with accepted medical standards applied to nationals of the state furnishing the medical care, and (2) provide that the protection of the article could not be waived, except by way of the voluntary donation of blood. The Committee did not complete its consideration of this article.

During his stay with the United States Delegation as Congressional adviser, Congressman Wilson introduced a proposed new Article 18 bis on the missing and dead and on graves, which was co-sponsored by the Federal Republic of Germany and the United Kingdom. The article would call for the making and care of graves, the return of remains and personal effects on the termination of hostilities, and the collection and transmittal by belligerents of information about missing persons who are not its nationals.

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It would also permit visits to graves by official graves registration services and by families of deceased. In order to permit discussion of the draft article, which would not have been reached at the first session in the normal course of events, an informal working group was subsequently convened. Attendance at this meeting was relatively light, and there was little representation from less developed countries. The suggestion was made to, and accepted by the United States Delegation that it would be useful to circulate a background paper on this proposal before the next session of the Conference.

The Committee established a Technical Sub-Committee to study problems relating to the identification and marking of medical personnel, units, and means of transport and of civil defense personnel, equipment, and means of transport. Commander D. Stefferud, U. S. Navy, was elected Vice-Chairman of the Technical Sub-Committee.

The Technical Sub-Committee was the only body of the Conference to complete the task assigned to it. It adopted fifteen articles of the technical annex, leaving the sixteenth article, dealing with procedures for the amendment of the technical annex, for discussion by Committee II. It was thought that this final article was in the legal domain and not in the highly technical substantive area with which the Sub-Committee was concerned.

The text adopted by the Technical Sub-Committee was generally along the lines of the United States position on the annex. It was considered that in addition to dealing with identification and marking of medical transports, the Annex should also deal with communication with medical transports, such as aircraft. The articles on this subject in Chapter IV are permissive and not mandatory and were acceptable to the United States on that basis. The radio identification signal "MEDICAL" was given international standing, like that accorded to such signals as "SOS" and "MAYDAY". A flashing blue light was preempted for the identification of medical aircraft. Extension of the light signal to land and sea transport is to be considered at the second session. What had originally been proposed by the I.C.R.C. as mandatory frequencies for radio identification signals became permission for the use of national frequencies. And finally, a distinctive sign was agreed upon for civil defense services.

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These articles have been adopted in the Sub-Committee and have yet to receive the approval of Committee II.

The observer from the International Civil Aviation Organization (ICAO) expressed some reservations as to the limitation of the blue light signal for the exclusive use of medical aircraft. He proposed that the limitation be broadened to encompass "any activities concerned with the safeguarding of life." This proposal will be considered at the Second Session.

The observer of the International Telecommunication Union (ITU) requested Governments to note his statement indicating the necessity for Government action through the ITU World Administrative Radio Conferences to implement the provisions for a radio medical call and for the international designation of frequencies, if such frequencies are to be established:

"As the discussion on the draft report of the Technical Sub-Committee is brought to a close, it is my duty to recall references previously made relating to the adoption of a 'MEDICAL call' and the possible designation of a frequency for international use in this connexion.

The use of the radio spectrum is governed by an existing international treaty entitled 'International Telecommunication convention' and the 'Radio Regulations' annexed thereto which form part of the international treaty.

The appropriate means for adopting provisions such as those foreseen in the annex to draft Protocol I concerning a 'MEDICAL call' and international designation of frequencies, is by decision of an ITU World Administrative Radio Conference competent to deal with the radio services concerned.

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The appropriate means for adopting provisions such as those foreseen in the annex to draft Protocol I concerning a 'MEDICAL call' and international designation of frequencies, is by decision of an ITU World Administrative Radio Conference competent to deal with the radio services concerned.

To this end, governments should consider initiating coordination at the national level and, as the case may be, make proposals to an appropriate ITU Conference for the revision of the Radio Regulations."

During the Conference, the U. S. Delegation coordinated its views with other delegations and along with Belgium, Canada, and the United Kingdom, tabled comprehensive proposals concerning medical transport (CDDH II/79,80, and 82) attached as Annex E to this report.

VI. COMMITTEE III

Committee III was charged with responsibility for consideration of the articles relating to the general protection of the civilian population against the effects of hostilities (Articles 43-59 of Protocol I and Articles 24-29 of Protocol II), methods and means of combat (Articles 33-41 of Protocol I and Articles 20 to 23 of Protocol II), a new category of prisoners of war (Article 42 of Protocol I), and treatment of persons in the power of a party to the conflict (Articles 63-69 of Protocol I and Article 32 of Protocol II).

The proposal of the Chairman that topics be taken up chapter by chapter in Protocol I and that each article of Protocol II be taken up in connection with the corresponding

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article of Protocol I was accepted by the Committee. Several delegations, among which India was the most prominent, expressed the view that there could not be informed consideration of Protocol II unless its scope had first been determined or that there should be no work done on Protocol II until the text of Protocol I had been drawn up. The delegation of China said that there was no need at all for Protocol II. However, there seemed to be general sentiment in favor of moving forward with Protocol II, but with less enthusiasm than was manifested for the Protocol relating to international conflicts.

The Committee was able to devote eight meetings to consideration of Articles 43, 44, 45 and 46 of Protocol I and of Articles 24, paragraph 1, and 25 and 26 of Protocol II, together with the amendments that had been submitted by delegations.

Upon completion of general discussion of each article, Professor Sultan, the Chairman, followed the practice of referring the article and proposed amendments to a working group, chaired by the Rapporteur, Mr. Baxter, and composed of the delegations sponsoring the amendments and such other delegations as might wish to participate. The working group submitted proposed texts or alternative texts for Articles 43, 44 and 45 of Protocol I, and Article 24, paragraph 1, and Article 25 of Protocol II. It was still wrestling with Article 46 of Protocol I and Article 26 of Protocol II when the Conference ended.

The Committee approved the revised Article 43; Article 44, paragraphs 2 and 3; and Article 45 of Protocol I and Article 24, paragraph 1, and Article 25 of Protocol II. Various reservations were expressed by several delegations as to the articles of Protocol II on the ground that the scope of the Protocol had not yet been determined. The Chairman made it clear that certain modifications in the articles adopted might be called for at the second session in order to adjust them to or harmonize them with other articles of the two Protocols subsequently adopted.

The few articles that were adopted by Committee III were, for all of their being a larger work-product than what emerged from other Committees, a slim result to show for a conference of five and a half weeks.

The alterations made in the drafts of Article 43 of Protocol I and Article 24, paragraph 1, of Protocol II were largely of drafting character. As approved by the Committee, the texts of the two provisions are as follows:

In order to ensure respect and protection for the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and accordingly shall direct their operations only against military objectives.

Article 44 of Protocol I, defining the scope of application of the Protocol, caused more and more difficulty as consideration of it proceeded. The principal question involved, which was not resolved by the Committee, was whether the article should specify that the section of the Protocol dealing with the protection of the civilian population should apply to attacks on civilian objects in the air -- that is to say, civilian aircraft -- and to attacks on civilian objects at sea, including merchant ships, which might cause harm either to civilians at sea (such as crew and passengers) or civilians on land. The United States position, which was shared by the United Kingdom and by other NATO countries with navies of some consequence, was that it would be dangerous to tamper with the existing treaty and customary law of naval warfare, including in particular the law relating to blockade, visit and search, unneutral service, attacks on enemy merchant ships, and submarine warfare. The same countries also took the view that, although the law of aerial warfare is "a mess" (as it was frequently characterized in the Committee), one ventures on very difficult areas if attacks on civil aircraft are proscribed. Now, for example, can a civil aircraft be identified as being used exclusively for civilian purposes and not for reconnaissance or the transport of troops? A number of Arab states seemed to be preoccupied with the incident in which a Libyan passenger plane was shot down by an Israeli fighter. These questions were left open, and it would obviously be desirable if more thought were given to these questions by delegations before the second session of the Conference.

A second major issue was resolved by a vote taken on one paragraph of Article 44. This was the question whether the section should protect enemy civilians against acts of violence in the form of attacks or should also protect a belligerent's own civilian population. The vote was in

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favor of the narrower coverage, but it is conceivable that the same question may come up again in connection with the operative articles of this section.

Article 44 as adopted, but with the places where "on land" might be inserted or omitted indicated by blanks, is as follows:

The provisions contained in the present Section apply to any land, air or sea military operations against the adversary _____ which may affect the civilian population, individual civilians or civilian objects _____.

Article 45 dealing with the definition of civilians and the civilian population was the subject of a few drafting changes in the original I.C.R.C. draft. The one point of substance that emerged was how an individual was to be treated if there was doubt about his civilian status. Fears were expressed by several delegations, including the United States, that there might be a conflict between a "presumption" of civilian character and the presumption (called for in Article 5 of the Third Convention) that an individual who has been detained after having committed a belligerent act is to be treated as a prisoner of war until his status is determined by a competent tribunal. The language of presumption was removed from the text, and it was concluded that in connection with attacks, the person of doubtful status is to be considered a civilian, while after he has fallen into the hands of the enemy, the presumption is to be one of prisoner of war status.

Article 45, as adopted, provides:

1. A civilian is anyone who does not belong to one of the categories of persons referred to in article 4(A) (1), (2), (3) and (6) of the Third Convention and in article 42 of the present Protocol.
2. The civilian population comprises all persons who are civilians.
3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.

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4. In case of doubt as to whether a person is a civilian, such person shall be considered to be a civilian.

The language of "such person" was inserted in the last paragraph in place of "he or she" on the initiative of the representative of Kuwait, who stated that it was sometimes difficult to tell whether a person was one or the other.

The corresponding Article 25 of Protocol II has the same text, with the exception that paragraph 1 reads as follows:

A civilian is anyone who is not a member of the armed forces or an organized armed group.

Article 46 of Protocol I, dealing with the protection of the civilian population against attacks, particularly but not exclusively from the air, was discussed in Committee and referred to the working group, but the working group was able to do no more than start work on this very difficult article. A number of themes were touched upon in the debate:

1. Reference has been made in various resolutions of international bodies in recent years to the necessity of prohibiting "terror" attacks. If attacks directed against the civilian population are to be prohibited, it is not clear what is added to the law by a further prohibition on "terror" attacks or attacks intended to cause "terror" among the civilian population. The I.C.R.C. text on this point was apparently not intended to create any obligation over and above the duty not to attack the civilian population as such. However, a number of delegations, principally African and from other less developed countries, desired to see a prohibition on all forms of operations spreading "terror". In the view of one delegation, this could even include propaganda.

2. An issue which arose in connection with "terror" attacks and the other provisions of this article is whether the proscription should be put in terms of attacks which in fact have a certain effect or attacks which are intended to have a particular effect. Should the prohibition, for example, be one against methods intended to spread terror or those methods that do spread terror? The United States position was that, in a provision that sets the standard for criminal responsibility, the element of intent must be included. The objection of other delegations was that it

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is impossible to determine the mental states of personnel of the adversary and that for this reason the obligation should be absolute.

3. The United States and its NATO allies put considerable emphasis on the concept of proportionality -- that incidental losses among the civilian population must not be out of proportion to the military advantage anticipated. East European delegations and those from less developed countries attacked the concept of proportionality on the ground that all incidental losses among the civilian population should be prohibited.

4. As for the prohibition in paragraph 3(a) of target area bombardment, there were again mixed views, the United States seeking greater precision and other countries desiring to have the more general restrictions of the paragraph maintained or even increased.

5. The United States raised no objections to the prohibition on reprisals against the civilian population. A proposal that the prohibition be extended to civilian objects received some support. Other delegations feared that under the stress of war a prohibition on reprisals would not be honored. The view was also expressed that the circumstances and conditions under which reprisals could be employed should be spelled out.

The above questions are all ones of substance and will have to be confronted directly at the next session of the Conference; there can be little hope that there will be a convergence of views on agreed texts.

The corresponding article of Protocol II (Article 25) was not discussed in any depth. The major independent proposals made with respect to this article were for the deletion of certain provisions which, while applicable to international armed conflicts, would not be appropriate in internal armed conflicts, particularly of a low level of intensity.

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VII. AD HOC COMMITTEE ON WEAPONS

On the basis of a resolution adopted at the XXIInd International Conference of the Red Cross urging that the diplomatic conference "begin consideration at its 1974 session of the question of the prohibition or restriction of use of conventional weapons which may cause unnecessary suffering or have indiscriminate effects" (see U. N. Doc A/9123/Add. 2, p. 4 (1973)), the Conference set up an Ad Hoc Committee on Weapons (see CDDH/23). The work on weapons came as the result of the initiative of Sweden, supported by a group of other states, which had emphasized the importance of the Conference's moving into the area of the control of conventional weapons, both for the protection of the civilian population and of military personnel. The I.C.R.C. had agreed to convene a Conference of Government Experts on Weapons in 1974 after the first session of the Diplomatic Conference. The question of the control of weapons had not been taken up at the two Conferences of Government Experts held in 1971 and 1972, and it was thought that a subject as technical and complex as this ought to follow the same route that had been employed with respect to the contents of Protocols I and II. One of the major functions of the Ad Hoc Committee on Weapons was therefore to assist "in identifying questions and possibilities which need to be explored in depth by the Conference of Government Experts on Weapons."

The Ad Hoc Committee on Weapons, which in 1975 will probably become a main committee of the Conference, had a general debate at the beginning of its sittings. This was directed toward weapons which may be or should be prohibited, or the use of which should be restricted, on the ground that they cause "unnecessary suffering", are "indiscriminate" in their effects (particularly as regards the civilian population), or are "treacherous." The United States position was that consideration of weapons of this character must of necessity be a long and delicate process, calling for a thorough examination of the entire range of conventional weapons. The United States Delegation expressed the view that there seemed to be a prejudgment of the issues by certain delegations, which appeared to have made up their minds in advance of the Conference about what weapons should be declared unlawful. The U. S. Delegation emphasized that these questions should be approached with an open mind -- not only the question of the weapons to be dealt with but also the question of whether restrictions should take the form of arms control proposals or of prohibitions or restrictions of the use of certain weapons.

The general debate showed a certain range of views about the entire issue. Developing countries frequently alluded to the inequality in the weapons and means of warfare available to highly technologically developed states and to militarily weak states among the less developed countries. It was even suggested that some restrictions should be put on the modes of warfare employed by developed countries in conflicts with less developed countries in order to go some distance toward equalization of their power to make war. Certain of these states were in favor of a regional approach to the regulation of weapons. The idea of a regional approach was also supported by the Soviet bloc countries. The Soviet bloc countries otherwise showed considerable reluctance to consider weapons questions outside of established arms control forums.

The general debate was followed by a debate on specific weapons, viz.

- Incendiary weapons (with particular regard to napalm)
- Small calibre projectiles
- Blast and fragmentation weapons
- Delayed action and perfidious weapons
- Potential weapons developments

There were very few contributions to this part of the debate. The Swedish Delegation spoke to each issue, and its intervention was followed by several others, but the debate often had to be adjourned because of lack of speakers on particular weapons.

The final question to be taken up in the Ad Hoc Committee on Weapons was the question of the organization of the Conference of Government Experts to be held for four weeks in Lucerne, which has been scheduled for September 24 to October 18, 1974. The International Committee of the Red Cross submitted proposed terms of reference for this meeting, which envisaged an initial discussion of the proposed legal criteria for the prohibition or restriction of use of categories of weapons, followed by a discussion of the type of weapons listed above -- their military value, accuracy, medical effects, the practicability of prohibitions, and the like. The International Committee of the Red Cross specified that the holding of the Conference would depend on whether sufficient funds

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were pledged by participating states to defray the expenses of the Conference.

There were, as this account indicates, no articles or resolutions adopted in the Ad Hoc Committee on Weapons. As the sessions of this Committee had been looked upon as preparatory to the work to be done at the Conference of Government Experts and at the second session of the Diplomatic Conference, no such decisions had been contemplated.

VIII. APPRAISAL OF THE CONFERENCE

The first session of the Diplomatic conference was dominated by the question of national liberation movements and wars of national liberation. Bloc voting by African and Arab states and other less developed countries, supported by the Soviet bloc, could produce a strong majority in support of proposals favored by those states. The Conference became politically charged and did not really devote itself to those issues of international humanitarian law that the United States had come to the Conference prepared to discuss. What happened at the Conference gives rise to the question whether a number of the participating states are interested in the substance of this body of law or whether the Conference is seen as a vehicle for advancing certain political causes and for the generation of propaganda. It is impossible to say at the moment what proportion of the participating states have a serious interest in becoming parties to the two new Protocols.

A relatively low level of sophistication and of understanding of the legal and military problems involved was shown in many of the debates. There was very little mention of human suffering, except as an abstraction, and a widespread unwillingness to build upon the foundation laid by the Geneva Conventions of 1949 and the conventions that had gone before them. However, there was strong sentiment expressed by many participants that "modern" international law, specifically UN General Assembly resolutions, should be recognized and accepted in the Conference. Several proposals (e.g., CCDH/I/41 and 71) made specific reference to the UN Charter and the UN Friendly Relations Declaration.

The interests of the United States in the work of the Conference are primarily in four areas -- the improvement of implementation of the existing Conventions, including improved procedures for the designation of a Protecting Power and for

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the performance of the Protecting Power's tasks by the I.C.R.C.; better procedures for dealing with the missing and dead and their effects at the end of war; better procedures for quick battlefield evacuations of wounded, particularly by aircraft; and respect for basic human rights in internal armed conflicts. Beyond these, the United States has a general interest in improvement in the law of war, but important issues are at stake in connection with the protection of the civilian population, the regulation of methods of warfare, and the prohibition of weapons, and it is necessary to use great caution in developing the law in these areas.

At the first session of the Diplomatic Conference on International Humanitarian Law, the only area of United States primary interest in which progress was made was the identification of medical personnel and transports, which is a necessary foundation for the articles on medical evacuation.

IX. FUTURE WORK

The second session of the Diplomatic Conference will be held in Geneva for a period of ten weeks beginning February 4, 1975. Over 95% of the work of the Conference remains to be done.

In addition, in the fall of 1974 there will be a Conference of Government Experts on Weapons convened by the International Committee of the Red Cross. The purpose of this meeting will be to consider proposed legal criteria for the prohibition or restriction of use of categories of weapons and various types of weapons which may be thought to be indiscriminate or to cause unnecessary suffering. The I.C.R.C. will then send governments a report on the work carried out. Further meetings of experts may be held if they are needed.

Two major issues which will thus be before the second session of the Conference and which will call for particularly close attention by the United States Government are (1) the legal position of wars of national liberation and the impact of this theory upon the law of war and (2) the question of restrictions or prohibitions on the use or possession of certain weapons. The issue of wars of national liberation will in particular call for careful review of our existing position on many articles of the two draft Protocols which have not yet been taken up by the Conference.

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It is to be hoped that in the interim between the two sessions there may be opportunities for the participants in the Conference to reflect upon the desirability of ultimately producing two Protocols that will command very widespread, if not universal, acceptance. The fragile community of roughly 135 states that are now parties to the Geneva Conventions of 1949 could be shattered by the interjection of political considerations that could lead a number of states, including some of the world's major military powers, not to become parties to the two Protocols.

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ANNEX A

LIST OF PARTICIPANTS

Afghanistan	Gabon
Albania	Gambia
Algeria	Germany, Democratic Republic of
Argentina	Germany, Federal Republic of
Australia	Ghana
Austria	Greece
	Guatemala
Bangladesh	Guinea-Bissau
Belgium	
Bolivia	Haiti
Botswana	Holy See
Brazil	Honduras
Bulgaria	Hungary
Burma	
Burundi	India
Byelorussian Soviet Socialist Republic	Indonesia
	Iran
Cameroon	Iraq
Canada	Iceland
Central African Republic	Ireland
Chad	Israel
Chile	Italy
China	Ivory Coast
Colombia	
Congo	Japan
Costa Rica	Jordan
Cuba	
Cyprus	Kenya
Czechoslovakia	Khmer Republic
	Korea, Democratic Republic of
Dahoney	Korea, Republic of
Denmark	Kuwait
Dominican Republic	
	Lebanon
Ecuador	Liberia
Egyptian Arab Republic	Libyan Arab Republic
El Salvador	Liechtenstein
	Luxembourg
Finland	
France	

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Madagascar
 Malaysia
 Mali
 Malta
 Mauritania
 Mauritius
 Mexico
 Monaco
 Mongolia
 Morocco

Netherlands
 New Zealand
 Nicaragua
 Niger
 Nigeria
 Norway

Oman

Pakistan
 Panama
 Paraguay
 Peru
 Philippines
 Poland
 Portugal

Qatar

Romania

San Marino
 Saudi Arabia
 Senegal
 South Africa
 Soviet Union
 Spain
 Sri Lanka
 Sudan
 Sweden
 Switzerland
 Syrian Arab Republic

Tanzania
 Thailand
 Togo
 Trinidad and Tobago
 Tunisia
 Turkey

Uganda
 Ukrainian Soviet Socialist Republic
 United Arab Emirates
 United Kingdom
 United States
 Upper Volta
 Uruguay

Venezuela
 Vietnam, Democratic Republic of
 Vietnam, Republic of

Yemen Arab Republic
 Yemen, Democratic Republic of
 Yugoslavia

Zaire
 Zambia

National Liberation Movements
 African National Congress
 Angola National Liberation Front
 Mozambique Liberation Front
 Palestine Liberation Org.
 Panafricanist Congress
 People's Movement for the
 Liberation of Angola
 Seychelles People's United Party
 South West African People's Org.
 Zimbabwe African National Union
 Zimbabwe African People's Union

Observers
 Council of Europe
 Inter-Governmental Maritime Con-
 sultative Organization
 International Civil Aviation Org.
 International Civil Defense Org.
 International Committee of Military
 Medicine and Pharmacy

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(Observers, cont.)

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International Committee of the Red Cross
International Labor Organization
International Telecommunications Union
League of Arab States
League of Red Cross Societies
Office of the United Nations High Commissioner for Refugees
Organization of African Unity
Organization of American States
Sovereign Order of Malta
United Nations
United Nations Children's Fund
United Nations Educational, Scientific and Cultural Org.
United Nations Environment Programme
Working Group for Humanitarian Law
World Health Organization

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Representative:

Mr. George H. Aldrich
Deputy Legal Adviser
Department of State
Washington, D. C.
Leader of the Delegation

Alternate Representatives:

Mr. Richard R. Baxter
Office of the Legal Adviser
Department of State
Washington, D. C.

Mr. Ronald J. Bettauer
Deputy Assistant Legal Adviser
Department of State
Washington, D. C.

Mr. Warren E. Hewitt
Office of United Nations Political Affairs
Bureau of International Organization Affairs
Department of State
Washington, D. C.

Mr. George S. Prugh
Major General, United States Army
The Judge Advocate General
Department of the Army
Washington, D. C.

Mr. Walter D. Reed
Brigadier General, United States Air Force
The Assistant Judge Advocate General
Department of the Air Force
Washington, D. C.

Mr. William M. Schoning
Major General, United States Air Force
Acting Deputy Assistant Secretary of Defense
Washington, D. C.

Mr. Waldemar A. Solf
Chief, International Affairs Division
Office of the Judge Advocate General
Department of the Army
Washington, D. C.

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Mr. Charles M. Manning
General Counsel
Office of the Director, Defense Civil Preparedness
Agency
Department of Defense
Washington, D. C.

Mr. William Harrison Marsh
Embassy of the United States
Paris

Mrs. Margot Mazeau
Assistant General Counsel
United States Arms Control and Disarmament Agency
Washington, D. C.

Mr. James D. Mazza
Colonel, United States Air Force
Office of the Judge Advocate General
Department of the Air Force
Washington, D. C.

Mr. Dan J. McBride
Lieutenant Colonel, United States Army
Office of the Surgeon General
Department of the Army
Washington, D. C.

Mr. Robert L. McElroy
Colonel, United States Marine Corps
Office of the Joint Chiefs of Staff
Department of Defense
Washington, D. C.

The Honorable George M. O'Brien
United States House of Representatives
Washington, D. C.

Mr. Frank A. Sieverts
Special Assistant to the Deputy Secretary
Department of State
Washington, D. C.

Mr. David R. Stefferud
Commander, United States Navy
Office of the Chief of Naval Operations
Department of the Navy
Washington, D. C.

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The Honorable Charles Wilson
United States House of Representatives
Washington, D. C.

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