



OFFICIAL RECORDS

OF THE

DIPLOMATIC CONFERENCE

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

GENEVA (1974 -1977)

VOLUME XVI

INTRODUCTORY NOTE

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

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

*Document circulated in French only.

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**DIPLOMATIC CONFERENCE
ON THE REAFFIRMATION AND DEVELOPMENT
OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE
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**CONVENED BY THE SWISS FEDERAL COUNCIL
FOR THE PREPARATION OF TWO PROTOCOLS ADDITIONAL
TO THE GENEVA CONVENTIONS OF AUGUST 12, 1949
PROTOCOL I RELATING TO THE PROTECTION OF VICTIMS
OF INTERNATIONAL ARMED CONFLICTS
PROTOCOL II RELATING TO THE PROTECTION OF VICTIMS
OF NON-INTERNATIONAL ARMED CONFLICTS**

HELD AT GENEVA ON THE FOLLOWING DATES:

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

PREPARATION

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

REAFFIRMING AND DEVELOPING THE FOLLOWING FOUR GENEVA CONVENTIONS:

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

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

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

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

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Part One

SUMMARY RECORDS OF THE AD HOC COMMITTEE
ON CONVENTIONAL WEAPONS

FIRST SESSION

(Geneva, 20 February - 29 March 1974)

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

SUMMARY RECORDS OF THE FIRST TO SEVENTH MEETINGS
held at the International Conference Centre, Geneva,
from 13 to 25 March, 1974

Chairman: Mr. D. GARCES (Colombia)

Rapporteur: Mr. F. KALSHOVEN (Netherlands)

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SUMMARY RECORD OF THE ORGANIZATIONAL MEETING

held on Friday, 8 March 1974, at 3 p.m.

Chairman : Mr. D. GARGES (Colombia)

EXAMINATION AND ADOPTION OF THE AGENDA (CDDH/IV/1)

1. The CHAIRMAN made a statement in which he recalled the Committee's terms of reference and the manner in which it would discuss weapons without taking any substantive or drafting decisions.^{1/}

2. The provisional agenda (CDDH/IV/1), submitted to the Committee following the President's opening statement, called for certain comments and as a consequence the following amendments were made in that document:

(a) In order to emphasize the importance attached by the Committee to the Conference of Government Experts on Weapons, it was decided that an item entitled "Consideration of the plan proposed by the ICRC for the Conference of Government Experts on Weapons to be held in 1974" should be a special agenda item following the general debate. A representative pointed out that the proposed agenda item should include the question of financing the Conference of Government Experts.

(b) In order not to appear to prejudge the question whether certain weapons were definitely of a nature to cause unnecessary suffering or to have indiscriminate effects, the English version of item 2 of the provisional agenda should be amended to read "... conventional weapons which may be deemed to cause".

(c) It being understood that the list of five categories of weapons appearing in item 2 of the provisional agenda should not be exhaustive, the words "inter alia" should be inserted after the words "proposals relating".

(d) The category of "delayed action weapons" should also permit the examination of booby-traps and other treacherous or perfidious weapons.

(e) In order not to restrict the discussion concerning the various legal aspects of the prohibition of the use of weapons, which would follow the examination of specific categories of weapons, an agenda item 4 should be inserted and entitled "Other questions."

1/ For the complete text of the statement see document CDDH/IV/2.

3. Several representatives emphasized without, however, raising any objections, that during its current session the Ad Hoc Committee could only make a survey and assist the ICRC in identifying the main questions which the Conference of Government Experts and the second session of the Diplomatic Conference would discuss in depth. The difficulty of going beyond a very general study as long as certain problems concerning definitions, especially that of "unnecessary suffering", had not been resolved, was also emphasized.

The agenda, as amended, was adopted.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE FIRST MEETING

held on Wednesday, 13 March 1974, at 10.25 a.m.

Chairman: Mr. D. GARCES (Colombia)

GENERAL DEBATE (item 1 of the Committee's agenda) (CDDH/IV/1/Rev.1)

1. The CHAIRMAN^{1/} invited the Committee to begin the general debate.
2. Mr. OFSTAD (Norway) said that the various resolutions adopted by international organizations over the past six years had all been concerned with the prohibition or limitation of specific weapons which might be considered to cause unnecessary suffering or to have indiscriminate effects. It was the task of the present Committee to lead the way towards the prohibition of specific weapons.
3. Industrial and technological development had led to the invention of weapons which were inherently indiscriminate or cruel in their effects. Inequalities in the technological development of countries had led to technologically more advanced States seizing the opportunity of using the whole range of conventional weapons and resorting to terrorization of the civilian population and prevent them from supporting their own military forces. Superiority in the air had increased the temptation to use unnecessarily cruel or indiscriminate weapons.
4. Any humanitarian provisions adopted must be very precise in order to prevent violations. The legal difficulty was to relate general standards such as "unnecessary suffering" and "indiscriminate" to the concept of "military necessity". Although the Conference was dealing not with jus ad bellum but with jus in bello, the concept of military necessity must be interpreted with great precision in the light of the Geneva Conventions. The claim of "necessity" could only be adduced in connexion with efforts to achieve a legitimate military or strategic goal. Weapons used to terrorize the civilian population or destroy agricultural land could never be justified as a military necessity and should be prohibited.
5. The medical effect of weapons must be measured - degree of pain, probability of death, degree of disability, difficulty of medical treatment - and inherently indiscriminate weapons, such as large fragmentation bombs, must be prohibited. Area weapons were generally more indiscriminate than point weapons. Modern technology

1/ For the Chairman's statement at the Committee's organizational meeting, see document CDDH/IV/2.

should be used to develop more precise weapon systems. His delegation considered that it was meaningless to provide for protection of the civilian population, the sick and the wounded, if the Conference did not face the subject of weapons. Expert information was and would be available to it and its task was simpler than that of the Disarmament Conference, since it was concerned not with the elimination, production or stockpiling of weapons, but only with their use.

6. Mr. MARIN-BOSCH (Mexico) said that the debates in the United Nations General Assembly which culminated in the approval by an overwhelming majority of resolution 3076 (XXVIII) relating to napalm and other incendiary weapons were eloquent proof that humanity was anxious for the prohibition of the use of those weapons as well as other conventional weapons which could be considered as causing unnecessary suffering or having indiscriminate effects. He said that the Memorandum by the Working Group on the Development of Humanitarian Law, signed on 31 December 1973 by some 50 non-governmental organizations suggested that the draft Additional Protocols should include the prohibition of the use of specific weapons. His delegation was convinced that the success of the Conference depended not only on agreement on the texts proposed for the two Protocols but also on the work of the Ad Hoc Committee. With regard to the proposal of the International Committee of the Red Cross (ICRC) to summon a Conference of Government Experts to study the question of the prohibition or restriction of the use of conventional weapons which could cause unnecessary injury or have indiscriminate effects, it was his opinion that the Ad Hoc Committee, though it should endeavour to assist the ICRC, should not be turned into a kind of preparatory committee for the proposed Conference of Experts.

7. The following documents might provide a solid basis for the deliberations of the Committee: in addition to document CDDH/DT/2 and Add. 1 and any other proposals submitted, the report of the ICRC - Weapons that may cause unnecessary suffering or have indiscriminate effects (1973), the United Nations report on Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1) 2/ the replies of Governments to that document (A/9207 and Corr.1 and Add.1), and the United Nations survey on existing rules of international law on the prohibition or restriction of the use of specific weapons (A/9215, volumes I and II). The Committee might have a look at a number of recent studies by the Stockholm International Peace Research Institute. He suggested that the Chairman might prepare a provisional bibliography on the subject.

2/ United Nations publication, Sales No. E.73.I.3.

8. Mr. SAARIO (Finland) said he agreed that those reports would provide a basis for discussion; working paper CDDH/DT/2 and Add.1 could also be an excellent point of departure.

9. In view of the development of modern weaponry and warfare and their consequences on the civilian population, it was of prime importance to reach early agreement on general principles prohibiting or restricting the use of specific categories of weapons. The reports he had mentioned showed clearly that the deployment of extremely cruel weapons, such as napalm and other incendiary weapons, seemed to be most frequent in cases where their strict military value was least, namely, when directed against civilian targets. The suffering they caused was disproportionate to any military advantage gained.

10. Insufficient attention had been paid so far to the humanitarian aspects of the question. In the case of weapons, the draft Additional Protocols did little more than reaffirm existing law and should be supplemented with prohibitions and restrictions of the use of specific categories of conventional weapons. The Ad Hoc Committee should endeavour to define such weapons and prepare a list mentioning, at least, napalm and other incendiary weapons, fragmentation weapons, flêchettes, high velocity small arms and delayed action weapons including mines. Any prohibition or restriction of specific categories of conventional weapons must be supplemented by effective provisions prohibiting such inhuman and indiscriminate forms of modern warfare as terrorism and area bombardment.

11. Mr. FLECK (Federal Republic of Germany) said that the Federal Republic of Germany was a Party to all the international instruments prohibiting the use of specific weapons: the St. Petersburg Declaration to the Effect of Prohibiting the use of certain Projectiles in Wartime (1868), The Hague Declaration concerning the Prohibition of Dum-Dum Bullets (1899), The Hague Convention No.IV of 1907 concerning the Laws and Customs of War on Land, to which were annexed The Hague Regulations, The Hague Convention No.VIII of 1907 concerning the Laying of Automatic Submarine Contact Mines, and the Geneva Protocol of 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous and other Gases and of Bacteriological Methods of Warfare. The military implications of possible restrictions or prohibitions of the use of the weapons under discussion at the present Conference might be of even greater importance than the ban on dum-dum bullets in the past. Governments would certainly want to reflect very carefully on the effects such legislation might have on the balance of deterrence.

12. His delegation was particularly concerned lest a ban on specific weapons might lead to the use of even more cruel means of combat and thus prove to be a disservice to the interests of humanity. It was for that reason that it supported the idea expressed in article 34 of draft Protocol I. German military manuals contained, indeed, an express provision to the effect that any new weapons must be compatible with the requirements of international law.

13. The Government of the Federal Republic of Germany had always supported the convening of a conference of government experts on specific conventional weapons and hoped that the continued work of international experts on the problem might lead to the framing of a third Additional Protocol or of a special international instrument prohibiting or limiting the use of such weapons. The Committee should adopt three guiding principles for a generally applicable agreement on the use of specific weapons: first, the degree of suffering or injury inflicted by the use of the weapons must be weighed against the military advantages of their use; secondly, it must be clearly stated whether such weapons were by their nature capable or not of being directed with certainty against specific military targets, and thirdly, the problem of how to enforce prohibitions or restrictions must be solved.

14. Those three principles placed a heavy burden on the forthcoming Conference of Government Experts because the questions of military advantage of the weapons considered, their indiscriminateness and the enforcement of prohibition of such weapons had not yet been exhaustively discussed. The Ad Hoc Committee, therefore, should help to prepare the way for the government experts conference by recommending that a clear mandate be given to the military, medical and technical experts who would participate in it.

15. Mr. BLIX (Sweden) said that the present debate was the first intergovernmental discussion of the question of prohibition or restriction of use of specific categories of conventional weapons since the days of the League of Nations. For nearly thirty years governments had concentrated their efforts on questions of nuclear disarmament. The time had now come to supplement those efforts by an endeavour to prohibit or restrict the use of certain categories of conventional weapons.

16. The proposals for general and complete disarmament, including gradual quantitative limitations upon the possession of conventional weapons had never made any progress because of the difficulties of verification. The Committee's efforts were a little less ambitious, and therefore perhaps less difficult, since the prohibition or limitation of the use of such weapons would not require any measures of inspection. Breaches of bans on non-use would be evident in practically any armed conflict, and the risk of such breaches would be reduced by the risk of retaliation. The ban on gas war had been respected throughout the Second World War, partly because it was a precise and clearcut rule which did not leave room for a variety of interpretations, and partly from fear of retaliation. Indeed, while prohibitions or restrictions on the use of some specific categories of conventional weapons would seem to be a plausible proposition, proposals for the non-production, non-stockpiling or non-proliferation of the same weapons would pose almost insuperable difficulties. Napalm, for instance, could be produced by mixing gasoline with aluminium soap, neither of which products was likely to disappear;

it would be impossible, therefore, to ban the production of that horrible weapon; but its use would be immediately reported.

17. In the past, explicit prohibitions or restrictions on the use of specific weapons had been based on three grounds: first, the ground of "causing unnecessary suffering" - enshrined in the St. Petersburg Declaration of 1868 and The Hague Conventions and applied in the ban of the dum-dum bullet; secondly, the ground of "indiscriminate effects" - enshrined in the St. Petersburg Declaration and applied in the ban on use of automatic, unanchored contact mines and of bacteriological and chemical (BC) weapons; and thirdly, the ground of perfidy or treacherousness - enshrined in The Hague Conventions and applied in the specific ban on the use of poison. Those grounds could and should be discussed. They had been analysed in chapter I of the ICRC report. But governments were completely free to ban the use or restrict the use of any specific category of weapons, whether or not it was covered by one or other of the three grounds. An authoritative determination that a specific category of weapons "caused unnecessary suffering" or had "indiscriminate effects" or was "treacherous" would be tantamount to a ban on its use. No agreement to that effect would be needed. That did not mean that joint examination of the degree of suffering which weapons might cause or the degree of indiscriminate or treacherousness they might have was irrelevant, but the final judgment on whether a weapon should be prohibited was political. It was only in a court of law responsible for judging whether a weapon was in fact prohibited that a refined analysis of the contents of existing general bans and the characteristics of the weapon in question was called for.

18. The philosophy which underlay the concept "unnecessary suffering" was that, if two means of weakening the adversary's military forces were roughly equivalent for the purpose of placing an adversary hors de combat, the less injurious must be chosen. Again, the less injurious means must be chosen where the additional suffering inflicted by the more injurious means was out of proportion to the advantage to be gained by it. The rule was stated in the ICRC report more generally to be that the concepts of "unnecessary suffering" and "superfluous injury" called for weighing the military advantages of any given weapon against humanitarian considerations.

19. While it was difficult to discuss the degrees of suffering and injury caused by different weapons, it was not much easier to measure the "military advantage" of a weapon. Perhaps the gist of the concept was the effectiveness with which a weapon achieved its legitimate task of placing combatants hors de combat. It was not, on the other hand, legitimate military advantage that a weapon caused more or more severe injuries than were needed to disable a combatant.

20. A general prohibition of the use of "indiscriminate weapons" could be deduced from the general duty of belligerents to distinguish between combatants and civilians, and between military and civilian objectives. Such a rule would fit in well alongside article 33, paragraph 2, of draft Protocol I, forbidding weapons which uselessly aggravated the sufferings of disabled adversaries. Since, however, article 46, paragraph 3, prohibited "the employment of means of combat, and any methods which strike or affect indiscriminately the civilian population and combatants or civilian objects, and military objectives", a special rule on weapons was perhaps redundant. What were not redundant were rules on specific categories of weapons which governments might agree to ban or restrict the use of on grounds of their indiscriminate effects.

21. All weapons could be used indiscriminately, but some were incapable of being directed at military objectives alone. One example was bacteriological weapons: germs could not distinguish between soldiers and civilians. The Military Manual of the Federal Republic of Germany laid down that the use of flying bombs was not permissible if they could only be so imprecisely directed that their main impact fell on the civilian population. Some of the incendiary weapons had turned out to be quite indiscriminate.

22. In cases where indiscriminacy was advanced as the ground for legal action, it might be tempting to propose legal restraints on use instead of a total ban. That approach had serious drawbacks. Bans on a particular use of a weapon would constantly be subject to strain, a total ban on the type of weapon was safer.

23. With regard to weapons which might be deemed to cause unnecessary suffering or superfluous injury, it was hard to see why only civilians should be spared such suffering or injury. The dum-dum bullet had been banned because it caused excessive injury to soldiers. The same ban should apply, in the view of the Swedish delegation, to high-velocity small arms projectiles, fléchettes and incendiaries.

24. Mr. BINDSCHEDLER (Switzerland) said that he entirely agreed with the Swedish representative. Two basic principles provided the starting point for the Committee's discussions: the prohibition of arms which caused unnecessary suffering, and the distinction between the civilian population and armed forces. Those principles belonged to customary law. They were already in force, and were to be found in the Declaration of St. Petersburg and the Hague Conventions. The ICRC had taken over those principles in articles 33 and 46 (3) of draft Protocol I. The proposals put forward by a number of delegations in document CDDH/DT/2 and Add.1 were merely executing rules; they were not aimed at creating new law, but at clarifying and illustrating the rules already in force.

25. It had been said that the present Conference was not competent to deal with the problems of banning or restricting the use of certain categories of weapons; but if the ICRC had already introduced the principle in article 33, there could be no obstacle to the discussion of the various aspects of that principle or to supplementing it with detailed executing rules. It was a question of the codification of existing law rather than the creation of new legal norms, of removing all possible doubts and rendering the practical effects of the general principles intelligible to all; for the rules to be formulated by the Conference would have to be applied not merely by jurists but by soldiers and officials. To establish rules governing the use of certain weapons or prohibiting others would be of the greatest value in eliminating possible disputes concerning the interpretation of the general principles.

26. The weapons it was proposed to discuss gave rise to no far-reaching political or strategic problems. The question of the "balance of terror" between the great Powers, which was essential for the maintenance of peace, was not involved. The weapons in question - incendiary or fragmentation weapons, high-velocity projectiles, fléchettes, etc. - were small weapons and could have no decisive impact on the outcome of a conflict; but there was a grave disparity between the suffering they caused and the military advantage they might confer. Even if they were used in defiance of a ban, the advantage of surprise thus gained would be ephemeral.

27. Mr. FLEMMING (Poland) said that all the documents published so far which had a direct bearing on the work of the Committee referred to the idea of "unnecessary suffering" and of weapons and methods of combat having indiscriminate effects. He feared that the idea of "unnecessary suffering" might tend to restrict the future work of the Committee to weapons and methods of combat which caused physical and moral suffering, but there were weapons which could inflict extremely serious wounds which were not necessarily accompanied by unbearable suffering, such as certain chemical substances which caused death or disablement. An example was lasers, which could blind anyone coming within their range of action. It was his delegation's opinion that it was not from the point of view of those who inflicted unnecessary suffering that weapons whose use should be restricted or forbidden should be defined, but from the point of view of the victims.

28. The working paper submitted by seven delegations (CDDH/DT/2 and Add.1) proposed that the Committee should examine simultaneously many different types of conventional weapons. Other documents submitted to the Ad Hoc Committee invited it to make a detailed study of certain methods of combat. His delegation considered that the Committee should proceed by stages. It might begin by examining the effects of the use of napalm and other incendiary weapons, which should be banned.

29. On the question of reprisals, he considered that they should be forbidden by international law since they led to an increase in atrocities and it was always the civilian population which suffered most. The annex to General Assembly resolution 2625 (XXV), which had

been adopted unanimously, stated that "States have a duty to refrain from acts of reprisal involving the use of force".

30. Mr. MILLER (Canada) said that the Conference had been right in establishing the Ad Hoc Committee on Conventional Weapons, and he was pleased that its agenda included an item referring to the convening by the ICRC of a Conference of Government Experts on Weapons, to be held in June 1974.

31. The Canadian authorities had read with close attention the report on the work of a group of experts published by the ICRC - Weapons that may cause unnecessary suffering or have indiscriminate effects - as well as other reports submitted by the United Nations. The information contained in those reports was valuable but not as internationally acceptable and conclusive as his delegation would wish if the eventual aim was to find common ground for the consideration of the question of the prohibition or restriction of the use of specific categories of conventional weapons which might be deemed to cause unnecessary suffering or have indiscriminate effects. Agreement was lacking on standards by which "unnecessary suffering" or "indiscriminate effects" could be measured. According to paragraph 21 of the ICRC experts' report, there were two concepts - even different approaches based on language differences which appeared to have guided some governments' interpretation of The Hague Regulations, article 23 e) of which dealt with unnecessary suffering. The question of indiscriminate effects remained open to varying interpretations, since all weapons might be deemed indiscriminate by their very nature.

32. Certain representatives had referred to "perfidious weapons" and others to "cruel weapons". The criteria laid down by the Committee would require attention by government experts and it was against those criteria that particular weapons should be measured. It would be better if the Committee endeavoured to reach agreement on what was meant by the "undesirable effects" of certain weapons and produced an interpretation which could be accepted by governments, instead of concentrating on how particular weapons might be employed indiscriminately. It would also be necessary to define along universally acceptable lines the standards by which "unnecessary suffering" and "indiscriminate effects" could be measured. Such a task might be one of the first to be tackled by the government experts later in 1974 before they examined the various categories of weapons which had been or might be suggested. He would be interested to learn whether other delegations shared that view.

33. His delegation was unable to accept the suggestion that the studies to be carried out by the experts should be related to the work of the Diplomatic Conference, nor could he accept the argument that specific weapons should be enumerated in the Protocol and thereby prohibited.

34. His delegation wished to see a clear separation between the work on weapons which it recognized as timely and most important, and the work being done on humanitarian law. His delegation looked forward to hearing the views of other delegations on document CDDH/DT/2 and Add.1. Such a document would stimulate discussion and the authors should be congratulated on their contribution.

35. He agreed that in the final resort the judgment whether any particular weapon should be restricted would be a political one. It was therefore very important that governments should be given adequate time to reflect carefully on the reports of the experts.

36. With regard to the statement of the representative of Switzerland, he (Mr. Miller) considered that there were serious political questions that must be taken into account in connexion with the prohibition or restriction of any weapon. Any agreement reached on prohibition or restriction must be universally applicable.

37. Mr. KEVIN (Australia) said that his delegation saw a natural connexion between the Diplomatic Conference's work on the draft Protocols and the preliminary consideration of the question of inhumane weapons. It saw dangers, however, in seeking to move ahead too quickly on the weapons issue. Many governments had not had time to give mature consideration to such questions, which involved a complex balancing of military, medical, humanitarian, legal and technical factors. It was for those reasons that his delegation considered that the Ad Hoc Committee's mandate (CDDH/23) provided for an appropriate division of responsibilities between that Committee and the Conference of Government Experts to be convened later in 1974.

38. Australia welcomed the basic reports on which the Committee had been invited to comment, the ICRC's report and the United Nations reports (A/8803/Rev.1, A/9207 and Corr.1 and Add.1 and A/9215). It also welcomed the working paper submitted by seven delegations in document CDDH/DT/2 and Add.1, and the Swedish Working Group's 1973 study.

39. With regard to the draft rules set out in the two last-mentioned papers, it should be made clear that the Committee was not as yet engaged in drafting rules. One of its most important tasks would be to achieve a consensus on the mandate and programme of the Conference of Experts which would meet later in 1974.

40. Australia was in favour of a multilateral agreement on weapons, but it was essential that it should be acceptable to the major Powers and the major arms producers of the world, otherwise it would be no more than an empty moral gesture. Difficult problems would arise of verification and control, both as regards possible prohibition and to possible restriction on mode of use.

41. On the question of weapons that might cause unnecessary suffering, humanitarian principles in weapons design, which Australia wished to see universally accepted, should not be selectively disadvantageous to any country. One factor that should be kept in

mind was the differing capacity of countries to maintain high technology or capital-intensive defensive weapons systems, as opposed to manpower-intensive defensive weapons systems at a relatively lower level of technology. It must not be assumed that high-technology sophisticated weapons, if correctly used, were necessarily more inhumane than simpler weapons. He hoped that in the work of the Ad Hoc Committee and the conference of experts those issues would not be confused. The Committee's efforts should be concentrated on existing specific weapons, rather than on attempts to ban broad categories of weapons systems, in some of which there might well be in store technical advances that would be desirable from the viewpoint of humanitarian law.

42. His delegation felt that there might have been a tendency in recent studies to place undue emphasis on unnecessary suffering as manifested in wounds of a complex or serious nature, and perhaps in that way to lose sight of the initial and basic St. Petersburg principle that it was better to wound than to kill an enemy combatant. The Committee should consider whether, from the point of view of the soldier involved, it was doing him a service if it fell into the error of giving preference to weapons that tended to kill cleanly, rather than to weapons that wounded, but did not kill. That would seem to be false humanitarianism. The fullest attention should be paid to the views of men with combat experience.

43. A point that required investigation was the correct interpretation of the expression "propres à", used in the phrase "propres à causer des maux superflus" in the authentic French text of the Hague Regulations, article 23, sub-paragraph (e); did the words "apt to", used in the generally accepted English translation of the same article - "apt to cause unnecessary suffering" - have precisely the same meaning?

44. Australia believed that there were areas where weapons designers must take better account of humanitarian principles. It would only be by paying proper regard to the mode of use aspect that the Committee could in the long run hope to put forward realistic solutions that would attract the necessary international support.

45. Mr. JOHNSON (Togo) said that the Conference should take account of the idea of unequal conflicts, especially the use of combat aircraft in situations where one side had no air facilities. It should prohibit the use of weapons such as napalm, incendiary and area weapons, as well as measures such as the bombing of dams to cause starvation which were employed for the purpose of breaking the morale of the civilian population.

46. His delegation could not accept the concept of "unnecessary" suffering. It considered that suffering could not be divided into categories. The Committee's report should state solemnly that the infliction of suffering was immoral and incompatible with human dignity.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE SECOND MEETING

held on Thursday, 14 March 1974, at 10.25 a.m.

Chairman Mr. D. GARCES (Colombia)

TRIBUTE TO THE MEMORY OF MRS. PIERRE GRABER, WIFE OF THE PRESIDENT OF THE CONFERENCE.

On the proposal of the Chairman, the members of the Committee observed a minute's silence in tribute to the memory of Mrs. Pierre Graber, wife of the President of the Conference.

GENERAL DEBATE (item 1 of the Committee's agenda)(continued)

1. The CHAIRMAN invited the Committee to continue the general debate.
2. Mr. OULD MINNIH (Mauritania) said that the experience of recent conflicts had shown that there was an urgent need to study the legal problems involved in the prohibition or limitation of use of certain categories of weapons that might cause unnecessary suffering or have indiscriminate effects, especially since the military value of many such weapons was questionable.
3. Mr. KUSSEBACH (Austria) said that his country had always supported consideration of the prohibition or limitation of use of such weapons. He was convinced that the understandable initial hesitations on the part of some Governments would be dispelled as the discussion proceeded. His delegation could support generally the proposals contained in document CDDH/DT/2 and Add.1, but reserved the right to suggest certain technical and legal amendments. It agreed with the representative of Sweden that the limitation of use of such weapons finally depended on the good-will of States. Austria supported the suggestions put forward by the ICRC (CDDH/42) and was ready to send experts to the proposed Conference of Government Experts. It would be preferable for the terms of reference of that Conference to be established by the present Conference. Since the duration of the Conference was limited and it would have a very full programme, he suggested that the participation of legal experts and the consideration of legal problems be limited to the last two weeks of that Conference.
4. Mr. WILLIAMS (New Zealand) said that his Government was in favour of restricting the use of weapons which might be deemed indiscriminate and inhumane. It hoped that the Committee's discussions would lead to some form of enforceable multilateral weapons agreement acceptable to the major Powers and the major arms producers, which provided for evaluation of military requirements against the suffering entailed. The complex issues involved must be clarified in order to give the ICRC the necessary guidance for preparing a mandate for the forthcoming Conference of Government Experts.

5. It was difficult to determine criteria for unnecessary suffering, except in the case of the indiscriminate use of weapons. One should not fall into the error of giving preference to weapons that killed cleanly rather than to weapons that wounded but did not kill.

6. New Zealand, like most small nations, had neither the raw materials nor the technology to produce significant weaponry and was therefore dependent in that respect on the major Powers and the armaments producers. If those Powers could agree to ban certain categories of weapons, some real progress would be achieved. In view of the time and cost involved in developing and producing a new generation of weapons, it would be difficult to ban certain categories already under development, but agreement might be reached on restricting their use.

7. Mr. DUNSHEE de ABRANCHES (Brazil) said that Brazil had consistently supported the two basic principles of the limitation or prohibition of conventional weapons, namely, that the means and methods of combat were not unlimited and that the only legal objective of war was to weaken the military forces of the enemy. In principle, all available weapons could cause unnecessary suffering or have indiscriminate effects, depending on how they were used. There were good humanitarian reasons for the international community to agree at least on restricting the use of incendiary weapons against targets which were not exclusively military. Such measures could be agreed upon during negotiations on disarmament and arms control, but were also traditionally associated with international humanitarian law and could therefore be considered by the Conference also.

8. Sir David HUGHES-MORGAN (United Kingdom) said that although, at the twentyeighth session of the General Assembly, the United Kingdom Government had expressed the opinion that the subject was not appropriate for discussion at the present Conference but should rather be considered by an arms control body, such as the Conference of the Committee on Disarmament, it had changed its attitude at the XXIIInd International Conference of the Red Cross, where it had supported resolution XIV. The United Kingdom delegation had voted in plenary in favour of the terms of reference of the Ad Hoc Committee on Weapons, and would now participate in the Conference of Government Experts.

9. The Committee's task was not to take decisions but to adopt a report which would assist the ICRC in identifying the problems to be considered by that Conference. The preparatory work for the Conference could include first of all the drafting of precise definitions of some of the terms employed, such as "unnecessary suffering" and "indiscriminate effects", or proposals for alternative terms or standards.

10. With regard to the point raised by the Egyptian representative, the list of weapons for study by the experts should be regarded as illustrative rather than exhaustive. The items listed under item 3 of the Committee's agenda should be left for consideration by the experts. His delegation could not agree that all the necessary evidence, on the wounding power of various weapons, for instance, on which to base possible new rules was yet available. The experts should consider the results of restricting the operational use of certain weapons in the light of the possible alternatives.
11. Mr. MANGALMURTI (India) said the Committee should adopt a progressive approach to the subject and leave detailed examination to the Conference of Government Experts, in which his country would be glad to participate. Precise definitions of "unnecessary suffering" and "indiscriminate" were very necessary. The two requirements for the success of any prohibition or restriction were reciprocity and universal acceptance. The question of the harm done by weapons often depended on where and how they were used. Unless the discussions took into account new categories of weapons which might be developed to circumvent regulations, the technologically advanced countries would have an unfair advantage, particularly since they also had the possibility of developing new weapons to replace the older and often less accurate generations of weapons used by developing countries, which might be considered indiscriminate.
12. Mr. ABDUL MALIK (Nigeria) said that, despite certain doubts as to the competence of the Conference to pronounce on matters more appropriate to a general discussion on disarmament, his delegation at the 1972 Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts had supported the final draft resolution, believing that it would serve as a basis for further discussion on two related subjects: general disarmament and - more relevant to the present discussion - the limitation of the use and production of certain lethal weapons. The Ad Hoc Committee was the first serious gathering on a wide platform to discuss conventional weapons since the nineteen-thirties. The wars of liberation now being waged in Africa, the Middle East, South-East Asia and elsewhere were being fought with conventional weapons, with the weaker side, particularly the freedom fighters, as the exclusive targets of lethal and indiscriminate weapons. His country was therefore anxious for restrictions to be imposed on such weapons as soon as possible. He realized how complex were the issues involved: for example, the major arms producers would have to be actively involved in the formulation of policies and the taking of decisions at all stages.
13. His delegation was in favour of limiting discussions to the types of weapon listed in the Committee's agenda, because nuclear weapons were being discussed elsewhere.

14. Mr. SORIANO (Philippines) said that the Ad Hoc Committee's task had far-reaching military, medical, technical and legal implications. As an army officer, he realized that it would be almost impossible to conduct military operations with humanitarian considerations constantly in mind. It was obvious that the Ad Hoc Committee would not have time to deal with the problem in depth. He suggested that the Conference of Government Experts be asked to prepare a list of conventional weapons known to cause unnecessary suffering or to have indiscriminate effects and a list of those whose use should be banned or restricted. It was essential that Governments should be allowed adequate time to study the report of the Conference.

15. Mr. ALDRICH (United States of America) said that his delegation welcomed the establishment of the Ad Hoc Committee and hoped that it might make a start on considering the question of prohibiting or restricting the use of certain conventional weapons, as far as possible without impeding or delaying the work on the two draft Protocols. The process would be long and complex. The studies available were valuable, but far from comprehensive: in particular, they did not set forth the views of Governments concerned with the weapons in question - possibly because those views had not yet been decided.

16. His Government welcomed the decision to convene the Conference of Government Experts and would take part in it. His Government was conducting a thorough study of the problems involved, which were likely to prove complex and delicate and to involve arms control rather than the laws of war.

17. He welcomed the intention of the ICRC to submit a report on the work of the experts to all Governments participating in the present Conference, but thought that that could only be an interim report. The necessary preparatory work at the expert level would have to be done thoroughly before informed decisions on restrictions or prohibitions could be taken at the diplomatic level. It would be a mistake to launch a premature diplomatic effort based on inadequate preparation.

18. He had been concerned to note from the general debate that some delegations took it for granted that, as the outcome of the work of the Conference, certain weapons would be prohibited or their use restricted, and that the only questions remaining to be considered were the details and phrasing of the treaty provisions. His Government, on the contrary, had an open mind and would accept whatever direction the work of the experts indicated. He was concerned that they were confronted with a fixed, and in some cases emotional, prejudice that certain weapons must be banned. Such an implied prejudice threatened the success of the Conference's work, and he would not be prepared to place matters important to his

national security in the hands of those who seemed so certain of the results beforehand, regardless of whatever facts might emerge. He would urge members of the Committee to show more openness of mind and less conviction that the whole purpose of the exercise was to legislate prejudices into law. Subject to those considerations, his Government would give its full co-operation and support.

19. Mr. SAHOVIĆ (Yugoslavia) said that the real value of the Committee's work depended on its success in solving the problems raised by the existence and use of new weapons, both conventional and nuclear as well as weapons of mass destruction. In his opinion, it would not be possible to devise measures to protect the victims of armed conflict while ignoring the problem of prohibition or limitation of the use of such arms. The Committee must bear in mind the needs of present-day situations. In that respect, articles 33 and 34 of draft Protocol I were far from satisfactory, being drafted in too general a form to be applicable to particular categories of weapons.

20. There was a lack of balance, in the relevant ICRC and United Nations reports, between the destructive quality of modern conventional weapons and the content of legal regulations, which suggested that the aim should be the adaptation and development of the traditional principles and rules of humanitarian law, in the light of the appearance of new categories of conventional weapons. The problems of prohibition and restriction of modern conventional weapons must be considered in depth, without prejudice and without any psychological or political restriction resulting from the consideration of disarmament problems in other international bodies, and a report submitted to the second session of the Conference.

21. Mr. OGOLA (Uganda) said that his delegation had voted in favour of the establishment of the Ad Hoc Committee in the conviction that the subject before it was urgent and was at the core of the humanitarian considerations before the Conference.

22. Discussions should be concentrated on Africa. In the coming decades, struggles involving the use of military weapons would increase in number and ferocity in Africa, since the fight for raw materials and high profits, following the defeat of imperialism in the Far East, showed that the forces of reaction now looked to that continent as the place on which to focus their full attention.

23. His delegation was satisfied that the Conference was the proper forum for considering the prohibition of indiscriminate weapons, since it was a humanitarian matter.

24. Mr. ANEMAET (Netherlands) said that he shared the views of the representatives of Canada and Australia (CDDH/IV/SR.1). In his opinion, it might well be decided to ban certain conventional

weapons which caused unnecessary suffering or had indiscriminate effects, but it was essential to reach agreement on the grounds on which weapons were to be banned. The approach adopted to that question must be realistic and unemotional. The Netherlands was positively considering participating in the Conference of Government Experts.

25. Mr. GUILLOT (France) said it would be helpful to determine which weapons were likely to cause unnecessary suffering or have indiscriminate effects, but it would be a delicate task and must be approached without prejudice. It was absolutely imperative that humanitarian law should enjoy credibility. Studies of the type proposed could be carried out only by technically-qualified experts and then referred to the governments concerned. It might prove useful to proceed by stages in the examination of various weapons and to begin with a study of incendiary weapons. But there was a great danger of subjectivity in discussing weapons with indiscriminate effects.

26. Mr. KABUAYE (United Republic of Tanzania) believed that document CDDH/DT/2 and Add.1 was too restricted and the analysis it contained was based on the false assumption that the parties to any armed conflict were on an equal footing. Present-day wars were in the main of an anti-colonial, anti-racist and anti-imperialist nature and the Conference should deal with the problems of weapons within that context. It was impossible to imagine that liberation forces would ever use napalm or other incendiary weapons against their own population, but the adversary was employing such weapons. A ban should be imposed on all weapons designed to break the morale of the population as well as on aircraft combat in unequal conflicts. There should also be a ban on all nuclear testing, since it had harmful effects, either directly or indirectly, on the civilian population, and a ban on chemical weapons and on any weapons adding to the pollution of the environment.

27. Mr. Di BERNARDO (Italy) felt that careful consideration should be given to the problem of the use of weapons causing unnecessary suffering or having indiscriminate effects. To achieve progress in dealing with that problem, however, called for realism and commonsense. First, there must be no overlapping between the task of the Ad Hoc Committee and that of the other Main Committees, lest the very success of the Conference itself be jeopardized. Secondly, the study of the effects of conventional weapons had been started only very recently, and neither the United Nations nor the ICRC reports could be considered exhaustive. Thirdly, the prohibition or restriction of conventional weapons raised problems connected with disarmament and required an international mechanism to control their application. The banning or restriction of certain weapons could not be artificially separated from the adoption of appropriate disarmament measures. He therefore hoped that the work of the Ad Hoc Committee and of the ICRC Conference of Government

Experts would make some progress in that direction, since Governments would be unable to take any decision on the question of banning or restricting certain weapons until and unless they were in possession of those preliminary studies.

28. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that the development of international law had given rise to a number of prohibitory rules imposing certain obligations on States in the conduct of their international relations, which had culminated in the renunciation, in the United Nations Charter, of "the threat or use of force". One consequence had been that an overwhelming number of States had accepted the need for disarmament, the principle of which had in recent years received concrete expression. What was important now was to concentrate on bringing about the implementation of that principle. From the standpoint of presentday international law, it might be described as an interrelated process of the implementation of the principles of prohibition of the use or threat of force, prohibition and limitation of the use of various weapons, and general and complete disarmament. That process was influenced to a marked degree by the scientific and technological revolution and the development of new weapons of mass destruction, as well as the increasing scale of conventional warfare. The most important question therefore was not what particular weapon was being used, but whether or not it was being used indiscriminately. The issue was set out clearly in United Nations General Assembly resolution 2932 A (XXVII), deploring the use of napalm and other incendiary weapons in armed conflicts.

29. Present-day international law could be said to prohibit the use of weapons aimed directly at the civilian population or the destruction of the human environment. However, science and technology had reached a stage of development which made it difficult to differentiate clearly between humane and inhumane methods of warfare. The destructive power of even conventional weapons had increased to such an extent that their large-scale use could destroy entire cities or peoples. It also increased the danger of an outbreak of nuclear war. Armed conflict between any two States might lead to the use of weapons of mass destruction, drawing in other States or affecting neighbouring countries not otherwise involved. The close correlation between conventional weapons and weapons of mass destruction had been emphasized in the United Nations General Assembly resolution 2936 (XXVII), solemnly reaffirming the renunciation of the use or threat of force. The simultaneous prohibition of conventional and nuclear weapons would ensure an equal measure of security for all States.

30. Referring to article 33 of draft Protocol I on prohibition of unnecessary injury, he said it was the Conference's task to adopt such principles. While the Soviet delegation still wished to have

some clarification regarding the concept of weapons which might cause unnecessary suffering or have indiscriminate effects, it supported the regional approach expressed by the representatives of Nigeria and Uganda.

31. The Soviet delegation agreed with the representative of France that the reports of the Ad Hoc Committee and the ICRC Conference of Government Experts be forwarded to Governments, as well as with the point made by another representative that the work of the Ad Hoc Committee must not be linked with that of the other main Committees of the Conference.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE THIRD MEETING

held on Friday, 15 March 1974, at 3.20 p.m.

Chairman: Mr. D. GARCES (Colombia)

GENERAL DEBATE (item 1 of the Committee's agenda) (concluded)

1. Mr. TRANGGONO (Indonesia) said that in any armed conflict it was unnecessary to aggravate suffering directly or indirectly. Consequently the choice of means and methods of combat should not be unlimited. That point had already been laid down in the St. Petersburg Declaration of 1868, The Hague Declaration of 1899 and the Geneva Protocol of 1925. It should be borne in mind, however, that technology had advanced tremendously, especially during and after the Second World War, and that mankind was faced with the possibility of partial or total extermination.
2. His delegation welcomed the initial steps taken by the Conference to start discussion on that vital issue. The report by the ICRC on the proposed Conference of Government Experts would provide a sound basis for further deliberations.
3. Mr. CHOINKHOR (Mongolia) stated that his Government stood for the complete prohibition of all kinds of weapons and for general and complete disarmament under strict international control. It fully supported the timely and useful recommendations in the report by the United Nations Secretary-General entitled Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1). The destructive power of such weapons was such as to blur the dividing line between so-called conventional weapons and weapons of mass annihilation.
4. He doubted, however, whether it was appropriate for the Conference to deal with the question of banning such weapons, which he felt should be considered as part of disarmament in its entirety. Secondly, the matter required detailed consideration and could be dealt with more practically in some such forum as, for example, the Conference of the Committee on Disarmament. His delegation hoped, however, that the Conference of Government Experts scheduled for June 1974 would result in some progress in the consideration of that complex issue.
5. Mr. KHATTABI (Morocco) said that recent armed conflicts had shown beyond all doubt that the civilian population and non-military objectives were often the main target of so-called conventional weapons which caused indescribable destruction to countries which had little or no protection. The limitation or prohibition of such weapons would, of course, depend on the political will of militarily powerful States, but an exchange of views among government experts would throw light on the problem and would help towards its solution.

His delegation therefore welcomed the ICRC's useful suggestions put forward in document CDDH/42, as also the ideas in document CDDH/DT/2 and Add.1.

6. Mr. TIEN Chin (China) said that a distinction should be made between just and unjust wars. The aggressor used cruel and genocidal weapons, while just wars fought for national independence were directed against the use of such weapons. Since, however, the super-Powers were accumulating nuclear weapons to be used for purposes of nuclear blackmail, he suggested that the Conference, in order to protect the civilian population, should discuss also the prohibition of nuclear weapons.

7. Mr. PATHMARAJAH (Sri Lanka) said that it would be pointless to hold a mere exchange of views, without the possibility of making recommendations or taking decisions, and then to refer the matter to another meeting of experts. At the United Nations General Assembly the question of the prohibition of conventional weapons had been referred to the Diplomatic Conference, which was now again referring it to experts who had been discussing such matters since 1949. There was an urgent need for certain decisions to be taken and the seven-Power working paper outlined four areas in which work could be done. A beginning should be made with regard to certain weapons causing terror and destruction to the civilian population. If the Conference did nothing more than limit the use of napalm and other incendiary weapons, it would achieve more than the Conference of the Committee on Disarmament had done in two decades. Those weapons were now being used against countries unable to retaliate. Circumstances might change, however, and it would seem preferable to take decisions now on the banning of certain weapons, decisions which were certainly humanitarian in concept. He agreed with the representative of China that non-conventional weapons should also be banned and he endorsed the views expressed by the representative of Sweden in his opening statement (CDDH/IV/SR.1).

8. Mr. BELOUSOV (Ukrainian Soviet Socialist Republic) said that the problem of disarmament had been before the world community for a long time. Meanwhile new weapons of mass destruction were constantly being perfected which would cause increased suffering. The need to halt the armaments race and to devote the resources thus saved to peaceful purposes was widely felt. Aware of that need, the United Nations General Assembly had at its twenty-eighth session adopted a Soviet proposal for the reduction of the military budgets of States permanent members of the Security Council by 10 per cent. (General Assembly resolution 3093 (XXVIII)). He hoped that that resolution would be implemented.

9. The proposal for general and complete disarmament comprised all the weapons listed in the working document before the Committee (CDDH/DT/2 and Add.1). The complexity of the problem was such as

to prompt various approaches to its solution. Partial steps along the road to disarmament, such as the Strategic Arms Limitation Talks, were extremely valuable.

10. While his delegation did not challenge the motives of the sponsors of the working paper, it was not convinced that it would be possible to prohibit the use of certain weapons without insisting on their destruction. The Geneva Protocol of 1925 prohibiting the use of chemical weapons had been violated repeatedly by the Nazis during the Second World War. That Protocol was still a valuable document, but now that there was well developed machinery for disarmament negotiations it did not seem wise once again to separate the prohibition of the use of some weapons from their destruction. The work proposed in the working paper was of a complex nature and its outcome depended, first and foremost, on the continuation of détente. Some speakers had pressed for a speedy conclusion of the work started, but his delegation felt that it was essential to avoid undue haste in the complex field of inter-governmental disarmament negotiations.

11. Mr. EL MISBAH EL SADIG (Sudan) said that the Declaration of St. Petersburg had been a great step forward in the promotion of humanitarian law. The agreement reached between the Powers of that time to work together to prohibit the use of inhumane weapons should be implemented. The provisions of subsequent legal instruments on the same subject had been endorsed by the United Nations General Assembly and recent experience had shown the untold sufferings produced by the use of biological, chemical and incendiary weaponry. His country was ready to co-operate with the ICRC in its endeavours to ensure respect for all the rules laid down concerning their prohibition.

12. Mr. PLAKA (Albania) said that a discussion of the question was essential, since all peoples of the world were increasingly exposed to the indiscriminate use by the imperialist and colonialist Powers of weapons which caused unnecessary suffering. It was regrettable that the Conference had been prevented from discussing the prohibition of the use of weapons of mass destruction, and in particular nuclear weapons. The two super-Powers had used various pretexts, such as that advanced by the representative of the Soviet Union that the matter was already under discussion in the United Nations. They understandably preferred nuclear weapons to be discussed in the United Nations rather than at an independent conference of sovereign States and peoples.

13. So long as imperialism and socio-imperialism existed there could be no real disarmament in the world. The super-Powers could only prove their good faith by accepting China's constructive proposal, undertaking never to be the first to use nuclear weapons,

supporting the prohibition of the manufacture and use of such weapons and the destruction of existing stocks, and dismantling their foreign military bases.

14. His delegation supported the representatives of peace-loving countries who had advocated the prohibition of the use by the imperialist and colonialist powers of the special category of weapons under discussion and the reaffirmation and development of the Geneva Conventions of 1949 to reflect the profound changes which had taken place since their signature.

15. The definition of "just" and "unjust" wars was a basic criterion for the development of humanitarian law, and unjust wars of aggression should be condemned. International humanitarian law must be based on the interests of peoples and the avoidance of the adoption of any provisions which favoured the aggressor. Although his delegation had no illusions about the implementation of such provisions, they would constitute a positive instrument in the struggle of peoples to denounce the crimes of imperialism, socio-imperialism and colonialism. The discussion of the matter in plenary meetings of the Ad Hoc Committee would prevent any efforts of the super-Powers to postpone it indefinitely.

16. Mr. CRETU (Romania) said that the use of weapons with indiscriminate effects, including weapons of mass destruction, nuclear, bacterial and chemical weapons, was prohibited by international law and by the legal conscience of peoples. Such weapons produced far more devastating effects than other weapons, the use of which had already been declared an international crime. His delegation was convinced of the urgent need to reach universal agreement on general, and particularly nuclear, disarmament and on the prohibition and destruction of all weapons of mass destruction. It was the duty of the Conference to prohibit the use of any weapons which had indiscriminate effects.

17. Mr. NODA (Japan) said that his Government had long recognized the importance of prohibiting the use of certain weapons and had constantly worked towards that end. Decisions on the categories of weapons to be prohibited required careful analysis by experts in various fields. The question should therefore be studied in depth by military, medical and legal experts and included in the agenda of the next session of the Conference. His delegation therefore supported the convening of the Conference of Government Experts; it was prepared to send an expert and to co-operate in the work of the Conference.

18. Mr. MARTIN HERRERO (Spain) said that his country's great interest in the limitation of arms was due to its geographical situation and the rapid increase in urbanization, particularly along its periphery, which rendered it especially vulnerable.

19. The discussion had shown some divergence of views between those who wanted rapid decisions and those who preferred to work slowly and surely. Agreement must be reached between those who possessed specific weapons and those who did not. He supported the ICRC's proposal for the convening of a Conference of Government Experts and hoped that the apparent differences would be resolved in the common interests of humanity.

20. Mr PALACIOS TREVINO (Mexico) said that the discussion had been useful in clarifying the positions of delegations, the rigidity of some of which had surprised him. Out-dated arguments and over-complicated technicalities which might indefinitely postpone any possibility of agreement had been advanced by Powers which possessed the greatest technical knowledge and the most advanced weapons of mass destruction. His delegation was prepared to co-operate actively in the Committee's work.

CONSIDERATION OF THE PLAN PROPOSED BY THE ICRC FOR THE CONFERENCE OF GOVERNMENT EXPERTS ON WEAPONS TO BE HELD IN 1974 (item 2 of the Committee's agenda)(CDDH/42).

21. Mr. CAYLA (International Committee of the Red Cross) introducing document CDDH/42, said that the representatives of the ICRC would welcome comments and proposals from delegations either at meetings of the Committee or preferably between them in order to give the Committee more time to discuss other matters.

22. The suggested dates in June 1974 seemed the most suitable if governments were to have time to study the report before the second session of the Diplomatic Conference. Four weeks appeared the minimum for any discussion in depth. The holding of two sessions of two weeks each appeared to present organizational and representational difficulties. It had been suggested that the Conference should be held at Lucerne, firstly because no offer had been received to hold it in another country, and, secondly, because many other conferences were being held in Geneva at that time and prices at Lucerne were lower than at Geneva.

23. The Conference of the Committee on Disarmament was discussing the elimination of weapons and the prohibition of their manufacture, proliferation and storage, whereas the Conference of Government Experts convened by the ICRC would be studying possible prohibition or restriction of use of specific conventional weapons in relation to the present work on international humanitarian law in armed conflicts.

24. With regard to participation, although a small conference might achieve results more rapidly, it seemed however, that it was the general opinion that the number to be invited should not be restricted and that the Conference should be open to all.

25. The ICRC had considered the possibility of dividing the work between a number of committees, but had rejected that idea because the main aim of the Conference of Government Experts would be to enable experts of different specialities to analyse a number of questions jointly. The setting up of working groups as the need arose would enable progress to be made more rapidly than if all the questions were discussed in plenary.
26. Towards the end of the Diplomatic Conference, the ICRC would submit a plan of work for the Conference, which would take into account comments received and the report of the Ad Hoc Committee.
27. It was for Governments to decide on future work. With regard to the report of the Conference, the ICRC was ready to follow a procedure similar to that adopted the previous year for the Group of Experts.
28. The ICRC regretted that it was unable to finance the Conference from its regular budget. Unless substantial amendments were made to the proposals, the cost should amount to some 500,000 Swiss francs. It could be covered in three ways: firstly - a suggestion that he hoped would be given serious consideration - governments could announce at the present Conference the amount they would be willing to contribute towards the expenses; secondly, the Conference could decide to divide the expenses among the States; thirdly, and perhaps the simplest method, States could be asked to participate in the expenses in proportion to the number of experts they intended to send.
29. The CHAIRMAN invited members of the Committee to comment on the memorandum in document CDDH/42. The Committee was not required to make any decisions: a report on its discussion would be submitted to the ICRC to help it in preparing the Conference of Government Experts.
30. Mr. PALACIOS TREVINO (Mexico) said that he proposed to make a few preliminary comments in response to the wish expressed in the second paragraph of the ICRC communication dated 11 March 1974 reproduced in document CDDH/42. He was satisfied with the proposals in paragraph 4 of the ICRC memorandum and thought that there was no need for a long debate on the present item. The Committee would then have more time to deal with agenda item 3.
31. His Government would participate in the Conference of Government Experts but would find July or August more convenient than June as proposed in paragraph 1 of the memorandum. He would transmit to his Government the ICRC representative's comments on financing the Conference.

32. He looked forward to receiving a report from the ICRC on the Experts' mandate and plan of work, taking into account the Committee's discussions, before the end of the present session of the Conference.

33. Mr. ROWE (Canada) said that his Government would prefer the Conference of Government Experts to be held at Geneva. In the first place, it maintained an official mission at Geneva and could thus provide a delegation with all the necessary facilities, such as office space, secure communications, transport and secretarial, clerical and documentation services. Secondly, the Canadian authorities had intended to associate officers at the permanent mission who were experienced in the subject matter with the Canadian delegation to the Conference of Government Experts. The choice of Lucerne would mean that the delegation would have to be composed almost entirely of officials and supporting staff from Ottawa, which would inevitably increase the cost.

34. In connexion with financing, he would like to know whether the Conference of Government Experts would be paid for by all Governments participating in the present Conference or only by Governments participating in the Conference of Experts. He noted from paragraph 2 of the memorandum that the Conference would be open to experts from all countries. In principle, his delegation would welcome the attendance of qualified experts from any country to ensure that the subject matter of the Conference was discussed thoroughly. If, however, the present Conference was going to decide that financing should be shared by States invited to participate in the Diplomatic Conference, or only by Governments which sent delegations to the Conference of Experts, the matter of attendance would have to be clarified before invitations were sent out.

35. His delegation reserved the right to speak later on the other points in the memorandum, in particular the experts' mandate and plan of work which the Committee should discuss thoroughly in order to help the ICRC to prepare and hold a Conference of Experts which would meet the requirements and expectations of the Diplomatic Conference.

36. In the event of general agreement that the Conference should be held at Lucerne, Canada would still participate. His Government would be prepared to consider making a fair and reasonable contribution to the ICRC to ensure the success of the envisaged Conference.

37. Mr. ABOU EL NASR (Arab Republic of Egypt) said that he, too, thought that the Committee should not spend too much time on the consideration of document CDDH/42. He would submit detailed proposals in writing to the ICRC if necessary.

38. He was in favour of the Conference being held at Geneva, for similar reasons to those given by the Canadian representative. He had an open mind about the date. On attendance, he favoured the

principle of universality and was glad to note that the Conference would be open to experts from all countries. He hoped that the ICRC would invite any national liberation movements that wished to participate. If the Conference should decide to restrict attendance, he would insist on the maintenance of a balance between the different views expressed during the general debate.

39. Regarding the mandate and plan of work, his delegation might submit some suggestions to the ICRC, but at the present time he had no difficulty in accepting the five categories of weapon set forth in item 3 of the Committee's agenda as the basis for discussion and report to the ICRC. He was glad to note from paragraph 5 of the ICRC memorandum that the working documents of the Conference would include reports of previous work, such as the United Nations documents on napalm and other incendiary weapons (A/8803/Rev.1 and A/9207) and the ICRC report on Weapons that may cause unnecessary suffering or have indiscriminate effects. He hoped that the report of the present Committee would also be a working document.

40. With regard to the report of the Conference of Government Experts, he was not in favour of including only the items on which agreement had been reached, but would hope to see a report which summarized the discussions, including the points on which there were opposing views as well as the points on which there was agreement.

41. With regard to financing, he thought that the ICRC representative's third suggestion would impose an unfair burden on Governments which sent experts and that the costs should be shared by all Governments participating in the present Conference, possibly on the basis of the United Nations scale of contributions.

42. Mr. BRILLANTES (Philippines) said that the Committee was faced with a situation that was a departure from generally accepted practice, since normally the convener of a conference bore the expenses. He had noted the views of the Canadian and Egyptian representatives. His Government was anxious to send experts to the Conference and thought that the main financing problem was the experts' expenses, including secretarial and other services. The idea of a common fund would give rise to difficulties about the number of experts to be invited and their regional distribution. In the opinion of his delegation, Governments or other participants wishing to send experts should pay all the expenses of those experts. He was confident that the more affluent countries would be willing to help to ensure a proper balance between experts in the different subjects of discussion.

43. Regarding the place of the Conference, he agreed with the Canadian representative on the advantages of Geneva, especially for the smaller developing countries like his own. If that were not

feasible he suggested that the possibility of holding the Conference at Lausanne might be explored, for that would make it possible for the Berne embassies as well as the Geneva missions to be used.

44. Mr. PASCHE (Switzerland) said that representatives had come to the present Conference to discuss humanitarian matters and were not in a position to decide on matters of finance and organization. He suggested that discussion should be postponed until the end of the Conference, which would give representatives time to consult their Governments.

45. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that there were other matters as well as finance to consider. He proposed that the Committee should continue its discussion of the memorandum (CDDH/42) at its next meeting, leaving the question of finance until the end of the Conference.

46. Mr. EIDE (Norway) supported the Swiss representative's proposal. As far as the date and place were concerned, participants could transmit their views direct to the ICRC and the ICRC could inform Governments of its decision at a later date. The only other item requiring discussion was the mandate and plan of work and that, too, would be better dealt with later.

47. Sir David HUGHES-MORGAN (United Kingdom) supported the USSR representative's proposal.

48. The CHAIRMAN said that the Committee would continue its discussion on agenda item 2 at the next meeting, except for the question of finance, which would be postponed until the end of the Conference.

It was so agreed.

The meeting rose at 5.45 p.m.

SUMMARY RECORD OF THE FOURTH MEETING

held on Monday, 18 March 1974, at 3.25 p.m.

Chairman: Mr. D. GARCES (Colombia)

CONSIDERATION OF THE PLAN PROPOSED BY THE ICRC FOR THE CONFERENCE OF GOVERNMENT EXPERTS ON WEAPONS TO BE HELD IN 1974 (item 2 of the Committee's agenda) (CDDH/42) (continued)

1. Mr. BLISHCHENKO (Union of Soviet Socialist Republics), referring to the memorandum prepared by the ICRC on the subject of the Conference of Government Experts (CDDH/42), said that it seemed to him to be difficult to take up a final position there and then with regard to the programme of work and the terms of reference of that Conference. He suggested that the Diplomatic Conference should proceed to hold an exchange of views on the subjects the ICRC considered useful. He was in favour of broad participation, and especially of participation by the national liberation movements, whose experience would be invaluable. It would, moreover, be expedient to reconsider the participation of countries excluded from the Diplomatic Conference. For practical reasons, his delegation would have preferred the Conference of Government Experts to be held at Geneva, or even at Berne.
2. With regard to financing, he hoped that the Diplomatic Conference would refrain from taking any final decisions; it might, however, consider authorizing acceptable solutions, possibly that of voluntary contributions on the part of certain States. The Conference could, in a general way, take the opinions expressed into consideration.
3. Sir David HUGHES-MORGAN (United Kingdom) said that he had listened with interest to the explanations given by the representatives of the ICRC on the forthcoming Conference of Government Experts on weapons which might cause unnecessary suffering or have indiscriminate effects. He would make a few brief remarks, reserving the right to speak again, at a later meeting, on the financing of the Conference.
4. His delegation supported the views expressed by the ICRC regarding the venue of the Conference and it understood the view of the representative of Mexico, who would have preferred it to be held in July or August, so that the experts might have more time in which to prepare their work. Nevertheless, his delegation was prepared to agree with the ICRC proposals on time and place.
5. In common with a majority of delegations present, he did not think that the Diplomatic Conference should specify the number and names of States invited to send experts, but rather that the

Conference of Experts should be open to any State invited to attend the Diplomatic Conference which wished to participate.

6. Concerning working method and purpose, his delegation accepted paragraph 3 of document CDDH/42, it being understood that the composition of each delegation must be a matter for each State to decide and that the way in which the Conference of Experts would be organized in detail would be decided by the Conference itself.

7. His delegation considered that resolution XIV adopted by the XXIInd International Conference of the Red Cross, held at Teheran in November 1973, which invited the experts to study in depth the question of the prohibition or restriction of the use of certain weapons and to report to all Governments participating in the Diplomatic Conference, should form the general basis for the work of the Conference of Experts. His delegation was, however, ready to consider any proposals submitted to the Committee on what the terms of reference might be.

8. He did not think that the experts could reach conclusions or draft rules in four weeks and he doubted whether it would be possible for a report to be produced during that period; for that reason he supported the proposal of the ICRC in paragraph 8 of document CDDH/42.

9. In conclusion, he pointed out that the Ad Hoc Committee had already heard several interesting views on definitions and terms which could usefully be studied and discussed further, both in the Committee and at the forthcoming Conference of Government Experts.

10. Mr. BLIX (Sweden) said that his Government was prepared to agree to a meeting of about four weeks, in June, at Lucerne. It would have preferred Geneva or Berne. The Conference of Experts should be open for broad participation.

11. The debate on item 3 of the agenda of the Ad Hoc Committee would give the ICRC an idea of the problems to be examined. He supported the point made in paragraph 5 of the ICRC memorandum, about providing experts with documents, but said that the formulation should be clearer.

12. He regretted that delegations had devoted most of their attention to the financing of the Conference of Experts; he agreed with the Soviet representative that the Diplomatic Conference should not decide on the distribution of the costs. He was ready to promise that his country would provide at least a basic contribution of \$800 for each of the six experts which it expected to send to the Conference.

13. Regarding paragraphs 7 and 8 of the memorandum, on continued work and the Conference of Experts, he agreed with the United Kingdom representative: a second session would perhaps be needed for the adoption of the report and for the elimination of any difficulties that might remain.

14. It had been suggested that the criteria for banning certain categories of weapons should be examined by the Conference of Experts; he did not think that they would be able to reach a consensus, but it might perhaps be desirable for that Conference to know from the outset the criteria upon which the various delegations based their further discussions of categories of weapons.

15. Mr. KEVIN (Australia) said that his country would participate in the Conference of Experts, whatever the venue, although Geneva would have been preferable. He would like the plan of work, and its distribution among committees, sub-committees and working groups, to be defined more precisely. He also asked whether the five categories of weapons would be studied simultaneously or consecutively.

16. Mr. OULD MINNIH (Mauritania) said that his delegation approved of the plan drawn up by the ICRC and that it supported the idea of participation open to all, in particular to the liberation movements, which had been among the first victims of the weapons to be studied by the Conference of Experts.

17. The CHAIRMAN said that the list of speakers on item 2 of the agenda was exhausted. He suggested that the Committee should pass on to item 3.

18. Replying to Mr. ROWE (Canada), who reserved his delegation's right to speak on item 2 when the ICRC was in a position to submit a plan concerning the Conference of Experts, the CHAIRMAN said that the debate on that item could be resumed towards the end of the Committee's work.

EXAMINATION OF THE QUESTIONS OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS, (item 3 of the Committee's agenda)(CDDH/IV/1/Rev.1).

19. The CHAIRMAN suggested that the Committee should consider the first category of weapons, namely, incendiary weapons.

20. Mr. BLIX (Sweden), commenting on some points which had been made during the general debate, said that, in the matter of weapons that might cause unnecessary suffering the aim was to prohibit at least those which were particularly cruel or lethal, pending the

prohibition of all weapons; that that category of weapons included some very simple weapons, whereas there were some highly sophisticated weapons capable of reducing the risk of civilian losses; and that the modest working paper (CDDH/DT/2 and Add. 1) which had been submitted by seven countries, including Sweden, was purely tentative and was subject to improvements and additions in the light of any further facts that might become available.

21. The first category of weapons whose prohibition had been proposed by the authors of the working paper were incendiary weapons, which were those that aroused the greatest horror. In fact, incendiary weapons, particularly napalm, were sometimes used as weapons of mass destruction. They spread terror among civilians and military alike and, even if they did not necessarily strike indiscriminately, they inevitably inflicted injuries which were difficult to treat and likely to result in death or permanent disfigurement.

22. The rules on the subject already in existence in certain countries such as the United Kingdom and the Federal Republic of Germany bore witness to the hesitation of Governments with regard to the permissibility of the use of certain incendiary weapons, and it was the duty of the Conference to take the matter further.

23. Incendiary weapons appeared to have their greatest effects where their use was the least justified, namely, against urban areas and unprotected persons. Their effects diminished progressively when they were used against armoured vehicles and fortifications, which were being made increasingly proof against fire.

24. It would be necessary to examine closely whether some weapons were so indispensable from the military point of view that their prohibition was virtually impossible. In the working paper it was proposed that the prohibition should not apply to incendiary projectiles designed for defence against aircraft or armoured vehicles, provided that they were used exclusively for that purpose. The Mexican Government, however, had stated that it would prefer total prohibition. The Swedish Government would also be prepared to accept a fixed rule, without exception, since that would make it possible to avoid the controversies and reprisals which might result.

25. Mr. PALACIOS TREVINO (Mexico), referring to articles 33 of draft Protocol I and 20 of draft Protocol II, concerning the prohibition of unnecessary injury, said that those texts merely served to reaffirm existing law and should be followed by other texts relating to the prohibition of certain conventional weapons. There was already detailed and complete documentation on the subject, which would help in the consideration of the question:

the report of the United Nations Secretary-General on Napalm and Other Incendiary Weapons and All Aspects of their Possible Use (A/8803/Rev.1) and governments' comments thereon (A/9207 and Corr.1 and Add.1); the report of the ICRC entitled Weapons that may cause unnecessary suffering or have indiscriminate effects, and the report on Napalm and Incendiary Weapons submitted by the Stockholm International Peace Research Institute in 1972.

26. Several Governments had stated that it would be desirable that the use of certain incendiary weapons should be officially prohibited.

27. His Government considered that the use of certain weapons which caused unnecessary suffering, should be prohibited without further delay, category by category.

28. His Government had proposed that paragraph B2 of document CDDH/DT/2 and Add. 1 should be deleted, in order that the prohibition governing incendiary devices should be total.

The meeting rose at 4.25 p.m.

SUMMARY RECORD OF THE FIFTH MEETING

held on Wednesday, 20 March 1974, at 10.35 a.m.

Chairman: Mr. D. GARCES (Colombia)

CONSIDERATION OF THE PLAN PROPOSED BY THE ICRC FOR THE CONFERENCE OF GOVERNMENT EXPERTS ON WEAPONS TO BE HELD IN 1974 (item 2 of the Committee's agenda) (CDDH/42) (continued)

EXAMINATION OF THE QUESTIONS OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS (item 3 of the Committee's agenda) (CDDH/DT/2 and Add.1) (continued)

1. Mr. GUILLOT (France) said he considered that further discussion was necessary on a number of points concerning the arrangements for the proposed Conference of Government Experts on Weapons. It was not yet clear, for example, what should be the field of competence of the experts invited - should they be technical experts specializing in weapons and their medical effects, or in the use of weapons? Should they be historians specializing in war subjects or in photographic documentation? It would facilitate the work of the Committee if States could communicate the possible composition of their delegations to that Conference.
2. He did not think that the Ad Hoc Committee had made enough progress in establishing precise terms of reference for the Conference. It was most important to draw up, before the end of the present session, a definitive list of the weapons or categories of weapons to be examined with reference to their use and effects. It should also be made clear that digressions or arguments of a political nature should not be permitted at a conference of experts.
3. He supported the Polish suggestion that the Conference should discuss each category of weapons fully before moving on to the next. That progressive method of work would also make it possible to stagger the attendance of the various experts throughout the duration of the Conference. He reserved the right to refer again later to item 2 of the agenda.
4. The CHAIRMAN said that the questions raised by the French representative would be taken into account in the ICRC's detailed programme for the Conference.
5. Mr. DUNSHEE de ABRANCHES (Brazil), commenting on the ICRC's proposals for the programme of the forthcoming Conference (CDDH/42), said that his delegation would prefer the Conference to be held in Geneva, but could accept the proposed dates. It was a conditio sine qua non that the Conference should be open to all countries,

10. A further problem to be settled was that the banning of certain weapons could lead to the development of others which, although not specifically prohibited, were nevertheless indiscriminate or cruel. He suggested two possible solutions, first, to provide that before a new weapon was brought into use, it should be submitted to a competent international body set up for the purpose of determining whether it was permissible or not, and secondly, to draw up a list of prohibited weapons and to convene a competent international body every three or four years to revise or add to the list.

11. Mr. BLIX (Sweden), referring to item 3(b) of the Committee's agenda - small calibre weapons - which was covered by section IV of the working paper submitted by seven States (CDDH/DT/2 and Add.1), said that governments were facing crucial decisions in that area. If high velocity ammunition that was already standard in some countries were adopted, a major escalation in the wounding power of the most common weapon used by all armies would result, and would not be limited to any group of countries. Such a development should be avoided, and it was the duty of the Conference and of the experts who would meet in June to face that problem. His delegation was not referring to one particular well-known weapon, the M 16, but to all others of the same or similar calibre with wounding effects far beyond those of the rifles which had been standard up to and including the Second World War. Some examples were the Swiss 530/1, the Netherlands Stoner XM 22, the Haeckler and Kock 33 of the Federal Republic of Germany, the Soviet Union's 5.56 millimetre cartridges, based on the 7.62 short, the Israeli Galil and Uzi, the Italian Beretta AR 70 and the United Kingdom Parker Hale .223 rifle. Those names marked the latest evolution in a chain which had begun long ago and which related principally to the velocity with which projectiles were launched.

12. The way in which the various missiles developed caused casualties had not been scientifically fully understood until fairly recently. There were two somewhat conflicting reasons for the recent investigations - one being the military need for producing ever more effective weapons and, the other, the need for surgeons of the armed forces to know more about the wounds inflicted in order to make treatment of the wounded more effective. The scientific investigations made clearly pointed to the conflicting interests of placing the combatant out of action by effective means, on the one hand, and of avoiding excessive injury, on the other.

13. The St. Petersburg Declaration of 1868 had been an admirable effort to fix the technical limits at which the necessities of war should yield to the requirements of humanity. In 1899, when the Hague Declaration concerning the Prohibition of Dum-Dum Bullets had been adopted, there had been fairly extensive knowledge about the degree of injury which would be caused by various small

projectiles. It had been found that an impact energy of approximately 80 joules was sufficient to produce a human casualty in every case. A speed of 50 m/sec. was considered necessary to make a steel sphere penetrate human skin. High-velocity rifles had an impact energy at muzzle range a little short of 2,000 joules and, at a hundred yards, of about 1,400 joules. The impact force of such weapons far exceeded the 80 joules needed to place a combatant hors de combat.

14. The dimensions of a wound channel depended upon the diameter of the projectile, the energy contained in it, its behaviour upon impact and during its passage, and the characteristics of the tissues it penetrated. At high velocity a conical wound cavity was formed behind the bullet. Such a cavity might expand as much as 30 times the diameter of the projectile, and that expansion might be compared to a small explosion. Extensive damage was thus caused to tissues even at a considerable distance beyond the actual track of the missile and, through pulsation-like movements creating sucking effects, bacteria were implanted in the excellent growth medium constituted by the damaged tissues.

15. Modern small calibre bullets, for instance the Remington .223, were launched with a velocity of around 1,000/sec. and with such a spin as to cause a yaw which normally made them tumble upon entering human flesh, thereby presenting a broad face against the tissue and releasing most of their energy. Since the hard metal jackets covering the core of such bullets were usually rather thin, the bullets tended to break into small fragments. If they hit bone, they would set in motion bone fragments which would act as secondary projectiles with considerable wounding power. Other bullets, owing to their construction, flattened or disintegrated in the human body. That was the case with the dum-dum bullet which was not entirely jacketed, and bullets with pierced jackets. They had been prohibited in 1899 because of the terrible wounds they caused.

16. The current United States and United Kingdom military manuals made it clear that not only the use of dum-dum bullets but also the use of irregularly shaped bullets was considered illegal, doubtless because of the tumbling effect they would have on impact.

17. Had suggestions made by the United States and Russian delegates to The Hague Peace Conferences been accepted, the result would have been a ban which would have explicitly covered the use of high-velocity projectiles. But it was clear that the ban that had been adopted was directed against bullets which, because they expanded or burst, created an excessively large wound. Exactly that effect was achieved by a projectile which invariably tumbled on impact owing to its shape, spin and velocity, or whose jacket was so thin as invariably to break. Those were the characteristics of the

modern high-velocity small arms projectiles which States throughout the world were discussing with the idea of incorporating them in their arsenals.

18. Mr. PALACIOS TREVINO (Mexico) said he wished to reaffirm his delegation's view that napalm and other incendiary weapons had been sufficiently studied and that there was no reason to wait until the experts had completed their examination of all categories of weapons before prohibiting their use.

19. The views of the international community had already been clearly expressed in General Assembly resolution 3076 (XXVIII) and in the replies sent by governments to the Secretary-General of the United Nations (A/9207 and Corr.1 and Add.1). The prohibition of weapons which caused unnecessary suffering and had indiscriminate effects was a matter of urgency. His delegation was disturbed at the fact that, despite those precedents, the Diplomatic Conference had not yet reached agreement on the banning of napalm and other incendiary weapons or of other conventional weapons which caused unnecessary suffering, as the General Assembly had invited it to do in resolution 3076 (XXVIII).

20. The Conference should at least adopt a position in favour of banning the category of weapon which caused unnecessary suffering or was indiscriminate in its effects. To that end, his delegation proposed that the Committee should adopt a declaration along the following lines:

"The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts,

Reaffirms the existing rules of international law prohibiting the use of specific conventional weapons which cause unnecessary suffering and have indiscriminate effects and the use of which is repugnant to the conscience of mankind,

Recalls the resolutions of the Red Cross to this effect,

Affirms the urgent necessity for governments to seek, by the available legal means, the banning or restriction of the use of such weapons,

Recommends to States that, pending the adoption by the Diplomatic Conference of agreements prohibiting or restricting the use of conventional weapons causing unnecessary suffering or having indiscriminate effects they should suspend the use of napalm and other incendiary weapons."

21. The CHAIRMAN said that the terms of reference of the Ad Hoc Committee were to reflect the opinions of delegations and to identify the problems and possibilities which must be carefully examined by the Conference of Government Experts. The Mexican proposal might be submitted to Committee I, which was considering article 33 of draft Protocol I on the prohibition of unnecessary injury.

22. Mr. ALDRICH (United States of America) said that the scarcity of comments on the subject before the Committee indicated that the necessary preparatory work had not yet been done. The fact that the United States delegation had not spoken in the debate should not be interpreted as lack of interest in the topic. It was looking forward to the June Conference of Government Experts in which it would participate with experts in all the relevant spheres. That Conference would begin the complex and extensive process of examining the facts about various types of conventional weapons and would try to reach conclusions as to whether the weapons in question caused unnecessary suffering or had indiscriminate effects. Only then would his delegation be prepared to discuss the various proposals which had been or would be submitted.

The meeting rose at 11.30 a.m.

SUMMARY RECORD OF THE SIXTH MEETING

held on Friday, 22 March 1974, at 10.35 a.m.

Chairman: Mr. D. GARCES (Colombia)

CONSIDERATION OF THE PLAN PROPOSED BY THE ICRC FOR THE CONFERENCE OF GOVERNMENT EXPERTS ON WEAPONS TO BE HELD IN 1974 (item 2 of the Committee's agenda) (CDDH/42) (continued)

EXAMINATION OF THE QUESTIONS OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS (item 3 of the Committee's agenda) (CDDH/DT/2 and Add.1) (concluded)

1. Mr. BLIX (Sweden), after referring to his earlier statements on the various proposals in the seven-Power working paper (CDDH/DT/2 and Add.1), said that he wished to take up the question of fragmentation weapons, fléchettes and certain other weapons. As the working paper stated, anti-personnel cluster warheads with bomblets which acted through the ejection of a great number of small calibre fragments or pellets should be prohibited.

2. A number of weapons for use against matériel with or without armour protection depended for their effect upon fragmentation or a combination of blast and fragmentation. They were not of primary concern, except when the incidental effects upon military personnel were excessively cruel or the effects upon civilians considerable.

3. After describing the effects of anti-personnel fragmentation weapons, such as shrapnel, he said that similar more modern weapons had much more serious effects. One specific characteristic of most of the newer weapons was that they were intended to cover a considerable area by the ejection of a vast number of very small fragments or pellets. Such weapons comprised a great variety of designs, such as artillery projectiles, bombs and rocket warheads, and the Conference of Government Experts should study them from the technical, operational and medical point of view in order to determine which of them had indiscriminate effects or caused unnecessary suffering. Armament firms tended to make fragments increasingly smaller with better ballistic properties. Even a fragment weighing less than one gramme would put a combatant out of action if the velocity of the weapon was sufficiently high. If such weapons were put together in clusters and so constructed that their explosive action released fragments, pellets or fléchettes covering a wide area, they would have a high incapacitating effect. A single cluster bomb covered an area of 300 by 900 metres, and a fighter-bomber could carry four to eight such bombs; thus the risk of their indiscriminately wounding combatants and civilians might be very great.

4. Wounds caused by such weapons were apt to be serious and of a multiple character: they increased the degree of suffering and the risk of death since the predominant factor in multiple wounds was the number of organs affected in an individual. The risk of death would increase by 15 per cent for each additional abdominal organ injured; and the more tissue damaged the greater the intensity of pain. Suffering would be further increased if some of the fragments hit with a high velocity, say about 800m/sec.

5. The military utility of anti-personnel cluster bombs did not appear to be so great as to outweigh the risks of indiscriminate effects and excessive suffering, and a rule should be adopted prohibiting their use.

6. Referring to fléchettes, he said they could be used in small arms projectiles or as a substitute for fragments or pellets in different kinds of fragmentation weapons. When fléchettes were used in attack rockets, they had a very high velocity and, depending on their aerodynamic performance, kept their velocity and their high penetrating power much longer than fragments or pellets used under similar conditions. Fléchettes caused a high degree of suffering. The proposal that they should be banned was based on the view that their utility was not so great as to outweigh the suffering they were likely to cause.

7. The final proposal in the seven-Power working paper concerned land-mines. It would not be realistic to suggest a ban on them but one might adopt an operational rule stipulating that they should not be laid by aircraft. That would help to avoid some indiscriminate effects.

8. In conclusion, he emphasized that the list of prohibitions or restrictions in the working paper was not exhaustive.

9. Mr. JOENNIEMI (Finland) said that he shared the view of the speakers who had identified the task of the Committee as an effort to reduce the level of human suffering caused by the use of modern conventional weapons in armed conflicts. At the present stage there was no need to state any final views on how to achieve that aim, but the Committee should give general guidelines for future work on the subject.

10. The immediate task was to prepare the way for the Conference of Government Experts, which would study in depth many of the questions upon which the Committee had had a first exchange of views. The outlines provided by the ICRC in various documents seemed to his delegation to be satisfactory and the present agenda could be used at the Conference of Experts for discussions on specific weapons, weapon systems, means of warfare and aspects of weapon development, in the context of international humanitarian

law. The experts should start their preparations as soon as possible, so that important material could be distributed to the Conference at an early stage. Such expertise had already proved valuable in the preparation of the reports of the United Nations Secretary-General (A/8803/Rev.1, A/9207 and Corr.1 and Add.1 and A/9215), and that of the ICRC.

11. Mr. KONINCKX (Belgium) said that the task of the Committee was to prepare the work of the Conference of Government Experts, the results of which would constitute the prolegomena for agreements on the banning or restriction of the use of weapons. It was well known that disarmament negotiations were apt to be long and tortuous; there were far more instances of arms races than of successful disarmament. The criminality of weapons lay not so much in the weapons themselves as in the human spirit which used them; fire and water might be put to atrocious uses. Any eventual agreements would arise out of the will of Governments and as a result of a process of reflection and increased sensitivity. The Belgian delegation would support any serious attempt to enable real progress to be made in that direction and favoured all efforts to define precise terms of reference for the conference of experts.

12. Mr. ABOU-ALI (Arab Republic of Egypt) stressed that his delegation was still in favour of complete prohibition of the use of all weapons that might cause unnecessary suffering or have indiscriminate effects. The main object was to humanize war as far as possible by imposing a certain discipline on belligerents.

13. In order to draw a dividing line between acceptable and unacceptable weapons and methods of warfare, it would be necessary, first, to rely on the two criteria of unnecessary harm or suffering and indiscriminate effects, and, secondly, to strike a fair balance between humanitarian and military considerations. He hoped that the forthcoming Conference of Government Experts would continue the examination of that question and complete the work already carried out in that field.

14. It was generally agreed that time-delay weapons such as anti-personnel weapons, land-mines and aircraft, artillery and naval gun-delivered mines and booby traps, often placed far from the combat areas, could injure civilians as well as combatants and were therefore indiscriminate. Moreover, such devices generally exploded close to the victims, causing grave injuries; they also slowed up the evacuation of the sick and wounded from mined areas, thus increasing their suffering. His delegation called for prohibition of the use of weapons of that category.

15. Booby traps, often disguised as harmless devices such as pens or transistor radios, exposed civilians as well as combatants to the danger of injury from explosion and should therefore be banned.

16. His delegation hoped that the Conference of Government Experts would provide the opportunity for his country to develop its ideas in detail.

17. Mr. DUNSHEE de ABRANCHES (Brazil) said that the ICRC report on weapons which caused unnecessary suffering or had indiscriminate effects stated that the military attractions of incendiary weapons lay in their area effectiveness and in their utility both against personnel and against many types of material; when those properties had been exploited on a large scale against enemy cities during the Second World War, they had caused immense devastation and loss of life. The injuries caused by incendiary weapons were much the same as any other burn wounds: they caused shock, were difficult to treat and were likely to result in permanent deformity and disablement. In addition to burn injuries, incendiary weapons - and particularly napalm - could cause widespread asphyxiation by consuming oxygen and generating carbon monoxide.

18. The Brazilian delegation wished to reaffirm the view it had expressed before the United Nations General Assembly, that incendiary weapons must be included in any study of conventional weapons with a view to their prohibition or the restriction of their use. There were good humanitarian reasons for restricting the use of incendiary weapons against targets which were not of an exclusively military character. The damage they caused was of such a nature that it was imperative for the international community to agree upon measures against their use. The Brazilian delegation accordingly urged that the Conference of Government Experts should give priority to the examination of incendiary weapons.

19. Mr. FLECK (Federal Republic of Germany) said that his delegation was glad to have had the opportunity of listening to the debate in the Committee, which would help his Government to consider a number of the questions raised and to prepare an appropriate contribution, in the form of military, technical and medical expertise, for the Conference of Government Experts, which he hoped would take place in June.

20. Mr. GUILLOT (France) associated his delegation with the statement of the Brazilian representative and considered that incendiary weapons should be given priority by the Conference of Government Experts. The terms of reference of that Conference should be set out clearly and the list of items to be considered should be restricted.

The meeting rose at 11.20 a.m.

SUMMARY RECORD OF THE SEVENTH (CLOSING) MEETING

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

Chairman: Mr. D. GARCES (Colombia)

ADOPTION OF THE REPORT (item 5 of the Committee's agenda)
(CDDH/IV/3)

1. The CHAIRMAN invited the Committee to consider item 5 of its agenda, - adoption of the Committee's report.
2. Mr. KALSHOVEN (Netherlands), Rapporteur, said that the Ad Hoc Committee's draft report (CDDH/IV/3) was an analytical and succinct document. Further details of what had taken place in the Committee's discussions would be found in the summary records of the meetings. The report would be brought up to date when the discussions had been concluded.
3. The CHAIRMAN suggested that the Committee consider the report paragraph by paragraph.

Paragraphs 1-5

Paragraphs 1-5 were approved.

Paragraph 6

4. Mr. OGOLA (Uganda) said that the passage at the end of the fourth sentence gave the erroneous impression that speakers had referred to armed conflicts in general as being a regular feature of the African region in particular. The paragraph should be redrafted to show that it was specifically wars of national liberation which were a regular feature in that region.
5. Mr. OULD MINNIH (Mauritania) said he supported that proposal.
6. Mr. KALSHOVEN (Netherlands), Rapporteur, said that the purpose of the report was to reflect the views expressed by speakers during the debate and not to give an account of a particular situation.
7. Mr. ALDRICH (United States of America) said that the words "armed conflicts in" might be inserted before the words "the African region", the rest of the sentence thereafter being deleted.
8. Mr. OGOLA (Uganda) said that he would prefer the passage in question to read "some made express reference to the case of wars of national liberation in Africa whereas others referred in more general terms to armed conflicts elsewhere".

9. Mr. KALSHOVEN (Netherlands), Rapporteur, said that the best solution might be to end the sentence after the words "wars of national liberation".

It was so agreed.

Paragraph 6, as amended, was approved.

Paragraph 7

10. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) suggested that the following sentence be added at the end of the paragraph:

"It was also pointed out that the regional approach to the prohibition of the use of certain conventional weapons should be studied and could be accepted as one of the practical ways of prohibiting the use of those weapons."

11. Mr. JOHNSON (Togo) supported by Mr. ABDUL MALIK (Nigeria) and Mr. OULD MINNIH (Mauritania), said that the paragraph should be amended to remove the connexion with the preceding paragraph. The reference to weapons used mainly to break the morale of the civilian population was not related specifically to the African region.

12. Mr. BLIX (Sweden) suggested that the words "to weapons used mainly to break the morale of the civilian population, and" be deleted. The reference had been made in a general, rather than in an exclusively African context. It should be made clear that the reference to the regional approach which the USSR delegation wished to have included had been made by one delegation only.

13. Mr. KALSHOVEN (Netherlands), Rapporteur, said the words "should confine its attention to" in the first sentence might be replaced by the words "pay special attention to".

14. Mr. JOHNSON (Togo) said he could accept that suggestion, provided the Swedish representative's suggestions were also taken into account.

15. Mr. EIDE (Norway) said that the substance of paragraph 7, as amended, might usefully form two separate paragraphs.

16. Mr. KALSHOVEN (Netherlands), Rapporteur, said that the first sentence of paragraph 7, as amended, might be moved to the end of paragraph 6, to be followed in the same paragraph by the additional sentence proposed by the USSR representative. Paragraph 7 might begin with the words "Special reference was made", the words "in this respect" being deleted, and then continue as it stood to the end of the paragraph.

It was so agreed.

Paragraph 7, as amended, was approved.

Paragraphs 8 and 9

Paragraphs 8 and 9 were approved.

Paragraph 10

17. Mr. EIDE (Norway) said that reference should be made in paragraph 10, or at some other suitable point, to his comments on the review machinery.

18. Mr. BLIX (Sweden) said that such a reference was made in paragraph 20. He suggested that the words "For one thing," at the beginning the second sentence of paragraph 10, be replaced by the words "It was pointed out that".

It was so agreed.

Paragraph 10, as amended, was approved.

Paragraph 11

19. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that the word "some" between the words "expressed" and "doubts" in the second sentence should be deleted.

It was so agreed.

Paragraph 11, as amended, was approved.

Paragraph 12

Paragraph 12 was approved.

Paragraph 13

20. Mr. ROWE (Canada) said that the expression "It was suggested from some quarters" gave the impression that there had been a division into groups. He suggested that the phrase be replaced by the words "Some speakers suggested".

It was so agreed.

Paragraph 13, as amended, was approved.

Paragraphs 14 - 19

Paragraphs 14 - 19 were approved.

Paragraph 20

21. Mr. JOHNSON (Togo), supported by Mr. GUILLOT (France), said that the first sentence was incomprehensible, at least in the French version.

22. The CHAIRMAN suggested that the Rapporteur consult the French representative, with a view to producing an acceptable text.

It was so agreed.

Paragraph 20 was approved subject to re-drafting of the first sentence.

Paragraphs 21 and 22

Paragraphs 21 and 22 were approved.

Paragraph 23

23. Mr. BELOUSOV (Ukrainian Soviet Socialist Republic) proposed that the words "and resolution 2932 A (XXVII)" be inserted after the words "United Nations Charter".

24. Mr. ALDRICH (United States of America) proposed that the Ukrainian amendment be replaced by the phrase "and as reflected in resolution 2932 A (XXVII)".

It was so agreed.

Paragraph 23, as amended, was approved.

Paragraphs 24-26

Paragraphs 24-26 were approved.

Paragraph 27

25. Mr. BLIX (Sweden) proposed the addition at the end of the paragraph of the following sentence: "As stated in the ICRC report, the concepts of 'unnecessary suffering' and 'superfluous injury' would always call for weighing the military advantages of a given weapon against humanitarian considerations."

It was so agreed.

Paragraph 27, as amended, was approved.

Paragraphs 28-37

Paragraphs 28-37 were approved.

Paragraph 38

26. Mr. KALSHOVEN (Netherlands) Rapporteur, suggested that the words "pointed out" in the last sentence be replaced by the word "asserted".

27. Following an exchange of views between Mr. OGOLA (Uganda), Mr. KALSHOVEN (Netherlands), Rapporteur, and Mr. BLISHCHENKO (Union of Soviet Socialist Republics), Mr. ALDRICH (United States of America) proposed that the word "stated" be substituted for "pointed out" in that sentence.

It was so agreed.

Paragraph 38, as amended, was approved.

Paragraph 39

28. Mr. FLECK (Federal Republic of Germany) proposed that the words "One delegation" in the second sentence be replaced by the words "Some delegations", and that "His Government was" in the third sentence be replaced by the words "Their Governments were".

29. Mr. ALDRICH (United States of America) proposed that the phrase "and the fact that the necessary preparatory work at the expert level had not yet been done" be added at the end of the second sentence.

30. Mr. BLIX (Sweden) proposed that the phrase "as far as they were concerned" should be inserted after the words "explained that", in the second sentence.

It was so agreed.

Paragrph 39, as amended, was approved.

Paragraph 40

31. Following a comment by Mr. ROWE (Canada), Mr. KALSHOVEN (Netherlands) Rapporteur, suggested that the first part of the third sentence be amended to read: "This delegation stressed the strong public reaction provoked by their use,".

It was so agreed.

Paragraph 40, as amended, was approved.

Paragraph 41

32. Mr. PALACIOS TREVINO (Mexico), referring to the second sentence, said that his delegation did not consider that incendiary projectiles designed for defence against aircraft or armoured vehicles should be excepted from the prohibition on the use of incendiary weapons; he drew attention to the foot-note in document CDDH/DT/2 which stated his Government's position in that regard. The Swedish delegation had associated itself with his own delegation on that particular point. The second sentence of paragraph 41 should therefore be redrafted and a new sentence added to indicate that one delegation had associated itself with the Mexican rejection of the exception in question.

33. Mr. OULD MINNIH (Mauritania) said that anti-aircraft or anti-armour projectiles could miss their targets and strike human beings.

34. The CHAIRMAN suggested that the Rapporteur be requested to redraft the paragraph in consultation with the Mexican representative.

It was so agreed.

Paragraph 41 was approved, subject to redrafting.

Paragraph 42

35. Mr. PALACIOS TREVINO (Mexico) proposed that the phrase "by the Conference" be added at the end of the second sentence.

It was so agreed.

Paragraph 42, as amended, was approved.

Paragraphs 43-45

Paragraphs 43-45 were approved.

Paragraph 46

36. Mr. BLIX (Sweden) proposed that paragraph 46 be amended to read: "The same delegation, introducing the subject of fragmentation weapons, explained that many anti-matériel weapons which are designed to fragment or to have a blast effect, may cause incidental injuries to personnel. These weapons were not a primary source of concern. It was a different matter, however, with some anti-personnel fragmentation weapons, which could cover large areas, especially when delivered in clusters, and could put out of action a great many persons. These weapons, in the view of that delegation, raised the risk of affecting civilians and combatants alike".

It was so agreed.

Paragraph 46, as amended, was approved.

Paragraphs 47-53

Paragraphs 47-53 were approved.

Paragraph 54

37. Mr. OULD MINNIH (Mauritania) proposed that the phrase "would also be useful" at the end of the second sentence be replaced by the phrase "would be very useful".

It was so agreed.

38. Mr. BLISHCHENKO (Union of Soviet Socialist Republics), referring to the first sentence, said that during the Committee's discussion many delegations had expressed the view that the Conference of Government Experts should be open to experts from all countries and not only to governments participating in the present Conference. The sentence therefore required re-drafting in order to give a true picture of the discussions.

39. After an exchange of views in which Mr. ALDRICH (United States of America), Mr. BLISHCHENKO (Union of Soviet Socialist Republics), Mr. ROWE (Canada), Mr. KALSHOVEN (Netherlands, Rapporteur) and Mr. GUILLOT (France) participated, Mr. BLIX (Sweden) proposed that the first sentence be replaced by the following two sentences: "Several delegations expressed the view that the Conference should be open to all countries. Other delegations suggested that it should be open to all governments participating in the present Conference".

It was so agreed.

Paragraph 54, as amended, was approved.

Paragraphs 55 and 56.

Paragraphs 55 and 56 were approved.

The draft report (CDDH/IV/3) as a whole, as amended, was adopted.

CONSIDERATION OF THE PLAN PROPOSED BY THE ICRC FOR THE CONFERENCE OF GOVERNMENT EXPERTS ON ARMS TO BE HELD IN 1974 (item 2 of the Committee's agenda)(CDDH/IV/4) (concluded)

40. The CHAIRMAN invited the representative of the ICRC to introduce the programme of work for the Conference of Government Experts.

41. Mr. CAYLA (International Committee of the Red Cross) said that the work plan proposed by the ICRC for the Conference of Government Experts on weapons which might cause unnecessary suffering or have indiscriminate effects (CDDH/IV/4) was to be considered in conjunction with document CDDH/42 and paragraphs 52 to 56 of the Ad Hoc Committee's draft report.

42. In view of the difficulties of holding the Conference in Geneva in June, the ICRC was maintaining its proposal to hold it in Lucerne, since otherwise it would have to be postponed. The ICRC had not yet established the list of invitations.

43. There were three possible ways of financing the meeting: voluntary contributions; allocation by the Diplomatic Conference or payment of a fixed sum per expert. The two second possibilities had raised so many objections that the ICRC had opted for the voluntary contribution system. Clearly, then, the Conference could take place only if and when sufficient voluntary contributions had been pledged.

44. In establishing the detailed work programme for the meeting, the ICRC had taken into account suggestions by delegations and had provided a detailed timetable, for discussion of certain types of weapon. However, it was still open to further suggestions.

45. Mr. ABOU-ALI (Arab Republic of Egypt) said he withdrew his delegation's support for the idea of allocating the cost of the Conference among governments. It was now in favour of the method of voluntary contributions (CDDH/IV/4).

46. Mr. KEVIN (Australia) said he supported the draft programme prepared by the ICRC.

47. The ideas contained in the Australian reply to the report of the Secretary-General on napalm and other incendiary weapons (United Nations document A/9207) might provide a useful basis for discussion when the experts came to the item on incendiary weapons.

48. His delegation appreciated the considerable efforts made by others, especially that of Sweden, in opening up the subject and in supplying the Committee with valuable material.

49. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said he wished to thank the ICRC for preparing the draft work programme. It would, however, be for the Conference of Experts to adopt the programme, of which the Ad Hoc Committee should merely take note.

50. Mr. SAHOVIC (Yugoslavia) said that it was still uncertain whether the Conference of Experts could be held. His delegation felt that the idea deserved special attention because of the importance of the subject. It had proposed a number of limitations on the use of the weapons in question to be included in draft Protocol I, and reserved the right to request a discussion on the basis of those proposals at the second session of the Diplomatic Conference.

51. Mr. CAYLA (International Committee of the Red Cross) said he agreed that there was still some uncertainty about the Conference of Experts, since if contributions did not come in by mid-April, it would have to be postponed. Nevertheless, the ICRC was optimistic.

52. Mr. TASWELL (South Africa) said he supported the idea of the Conference of Experts, but opposed the suggestion that representatives of national liberation movements should be invited to attend at the expense of the ICRC. Those movements were financed by various governments and organizations and were well able to bear their share of the cost involved. Moreover, since the Diplomatic Conference claimed to be interested in humanity and in the principle of universal participation of all parties to a conflict whether representing governments or not, all parties to the conflict in South Viet-Nam should be invited to the Lucerne conference, as should many other liberation movements throughout the world.

53. Mr. PILLOUD (International Committee of the Red Cross) said that he did not know how the South African representative had received the impression that the ICRC would be paying the expenses of national liberation movements, since States and movements would be paying their own. The expenses borne by the ICRC were for renting the conference hall, paying staff, and so on. The ICRC would of course take account of the present discussion in issuing invitations to the Conference.

54. Mr. WILLIAMS (New Zealand) said the ICRC was to be commended for its draft programme. It might be necessary to re-schedule discussion of the more complex problems, but that matter could be decided by the Conference of Experts itself.

55. Although no final decision had yet been taken, New Zealand hoped to be able to play a full role at the Conference, and would include medical, weaponry and legal experts in its delegation. If able to participate, his Government would communicate with the ICRC concerning a possible contribution.

56. Mr. FELBER (German Democratic Republic) said he agreed that the question of invitations should be left to the ICRC. His own delegation was in favour of inviting representatives of the liberation movements and of the Provisional Revolutionary Government of the Republic of South Viet-Nam.

57. Mr. CABRAL FIDEUS (Guinea-Bissau) said that it was essential that the liberation movements, which had to suffer the devastating effects of certain weapons, should take part in the proposed conference. The concern - doubtless humanitarian - of the South African representative about the finances of the liberation movements was unnecessary.

58. Mr. OGOLA (Uganda) thought that in view of the time-consuming debate at the beginning of the present Conference it would be advisable for the ICRC to extend invitations to all delegations eligible to attend that Conference. That would avoid a similar debate at the beginning of the Conference of Experts and would spare the ICRC from any criticism.

The draft work programme (CDDH/IV/4) was approved.

59. The CHAIRMAN suggested that the Rapporteur be authorized to complete the report by summarizing the discussions at the present meeting. No further meeting of the Committee would then be necessary.

It was so agreed.

60. The CHAIRMAN declared the work of the Committee completed.

The meeting rose at 5.55 p.m.

SECOND SESSION

(Geneva, 3 February - 18 April 1975)

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

SUMMARY RECORDS OF THE EIGHTH TO TWENTY-FIRST MEETINGS

held at the International Conference Centre, Geneva,

from 12 February to 15 April, 1975

Chairman: Mr. H.D. GARCES (Colombia)
Rapporteur: Mr. F. KALSHOVEN (Netherlands)

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SUMMARY RECORD OF THE EIGHTH (OPENING) MEETING

held on Wednesday, 5 February 1975, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

TELEGRAM OF CONDOLENCE TO MR. PIERRE GRABER, PRESIDENT OF THE CONFERENCE

1. The CHAIRMAN announced that he had sent a telegram to the President of the Conference expressing the condolences of all members of the Committee on the death of his mother, Mrs. Paul Graber.

PROGRAMME OF WORK OF THE COMMITTEE (CDDH/IV/Inf/201)

2. The CHAIRMAN drew attention to the proposed programme of work (CDDH/IV/Inf/201). He suggested that the Committee should meet on the afternoon of Monday, Wednesday and Friday each week.

3. Sir David HUGHES-MORGAN (United Kingdom) recalled that at the first session of the Conference the Ad Hoc Committee had completed its work in seven meetings. He felt that the programme of three meetings weekly would interfere with the work of the Working Group of Committee III, in which much valuable work was being done. He therefore suggested that at the outset the Ad Hoc Committee should meet only twice weekly.

4. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) supported that suggestion and pointed out that many small delegations would have difficulty in attending three meetings of the Committee weekly.

5. Mr. KUSSBACH (Austria) suggested that for the time being no decision should be taken on the number of weekly meetings.

6. The CHAIRMAN said that, if there were no further objections, he would take it that the programme of work was approved and that the Committee would meet on Monday, Wednesday and Friday of the following week.

It was so agreed.

DEPARTURE OF MR. MUSTAPHA CHELBI (TUNISIA), VICE CHAIRMAN OF
THE AD HOC COMMITTEE

7. The CHAIRMAN announced that Mr. Mustapha Chelbi (Tunisia) had had to return suddenly to his country and preferred to leave the task of filling the vacancy caused by his departure to the African Group. An announcement would be made concerning his successor at the ninth meeting of the Committee.

INTRODUCTION OF THE REPORT OF THE CONFERENCE OF GOVERNMENT
EXPERTS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS

8. Mr. KALSHOVEN (Netherlands), Rapporteur, introducing the report of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne from 24 September to 18 October 1974, said that his introduction would be divided into three parts: firstly, a brief reference to some of the most recent events leading to the convening of the Lucerne Conference of Government Experts; secondly, a brief description of the Conference itself; and, thirdly, a somewhat more extensive discussion of the report.

9. Referring to the events immediately preceding the Conference, he said that the XXIInd International Conference of the Red Cross had adopted resolution XIV requesting the ICRC to convene a conference of government experts to study the question of conventional weapons that might be deemed to cause unnecessary suffering or have indiscriminate effects. The Conference had been the first occasion on which representatives of the most diverse Governments had met to discuss such a question.

10. At the seventh meeting of the Ad Hoc Committee on Conventional Weapons, the International Committee of the Red Cross had introduced a programme of work for the proposed conference, which it had declared itself ready to convene. That action had been a major step forward and the result of prolonged and delicate negotiations. No mention had been made in the report of the Ad Hoc Committee at the first session of the Diplomatic Conference (CDDH/47/Rev.1) of the adoption of that programme nor had it been within the power of the Ad Hoc Committee to adopt it.

11. Experts of all types from about fifty countries and various organizations had taken part in the Conference of Government Experts. A fair amount of work had been accomplished, in part thanks to the documentation submitted to that Conference, including a report entitled Weapons that may Cause Unnecessary

Suffering or have Indiscriminate Effects, prepared by the ICRC on the work of a meeting of experts it had convened in 1973, and the report of the United Nations Secretary-General on Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1).^{1/} Many documents had been submitted during the session by participants in the Conference.

12. The Conference had not set up any working groups; the entire debate had taken place in plenary session. The only exception had been an informal Working Group on Incendiary Munitions Classification which had reported back to the Conference on its deliberations. The report of that Group was attached to the report of the Conference as annex 5.

13. In following the order of the chapters of the report, he would endeavour to bring out the salient features of those chapters. He would, of course, have to leave aside many technical details which might have seemed of special importance to the experts and he asked the understanding and forgiveness of the experts concerned.

14. The first chapter of substance (chapter II) dealt with legal criteria. The debate on that subject had been inconclusive in that it had not resulted in any agreed formulations. It had certainly been disappointing to the few experts who had aimed at identifying legal parameters so that they could be applied almost automatically to any given weapon. For those who had been more modest in their expectations, the debate had helped to clarify the various criteria discussed, which were the following: unnecessary suffering, indiscriminateness, perfidy, and the dictates of the public conscience.

15. On the question of unnecessary suffering, the matters discussed had included the very concept of suffering, which was generally considered to include such factors as mortality rates, the painfulness or severity of wounds, the incidence of permanent damage or disfigurement, and the elements to be taken into account in assessing what suffering should be considered unnecessary. Some had held that the element of military necessity in that equation consisted solely of the capacity of a weapon to put an enemy hors de combat; even then, however, the question how much injury was required to disable an enemy combatant

^{1/} United Nations publication, Sales No.E.73.I.3.

would remain open. Other experts had held that military necessity as an element of choice of weapon included completely different requirements, ranging from the destruction or neutralization of enemy matériel to the enhancement of the security of friendly forces.

16. The discussion of the criterion of indiscriminateness had centred around the question whether there existed, in the category of conventional weapons, types of weapons which were inherently indiscriminate. Certain experts had felt that that was not the case and that all conventional weapons could be used indiscriminately or with discrimination, so that the method of use rather than a weapon's properties would in general be the decisive element in determining whether the requirement of discrimination had been respected or violated.

17. A similar difference of opinion had become apparent with respect to perfidy. Some experts had advocated that it should be given a separate place in the list of legal criteria, while others had felt that it did not deserve such a place.

18. The "dictates of the public conscience" were mentioned in the Martens Clause in the preamble to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land. Many experts attributed importance to the element of "public conscience", although different approaches were taken to the question of what effect it should be given. To some it constituted an independent legal criterion, while for others it was a political rather than a legal factor that Governments should take into account in deciding about the deployment and use of modern conventional weapons.

19. As a result of the debate on legal criteria, experts had considered that they should obtain further clarification, both as a result of discussions on military and medical aspects of the use of specific weapons and of the work of legal experts.

20. Referring to chapter III on incendiary weapons, he quoted the definition on which the consensus had been reached in the informal Working Group (paragraph 49). The Group had recognized the existence of certain munitions which might have secondary or incidental incendiary effects, but which did not fall within the definition in paragraph 49, for instance illuminants, tracers, smoke, signalling systems and fuel-air explosives.

21. Some difficulty had arisen in the Working Group with respect to munitions such as certain armour-piercing and anti-aircraft projectiles, which had both incendiary and other destructive effects. No agreement had been reached on whether those projectiles fell within the category of incendiary munitions.

22. In a further section of chapter III much pertinent information had been provided concerning the use of incendiary weapons, their military characteristics, substitutes and medical effects. Some of it was in direct refutation of information published earlier, for instance in the report of the United Nations Secretary-General on Napalm and other incendiary weapons and all aspects of their possible use.

23. A correction should be made in paragraph 65 of the report: a semi-colon should be placed after the phrase "and rather better than artillery;". The figures cited later on in the phrase related to the delivery accuracy of fire bombs and not to artillery.

24. Turning to the evaluation of incendiary munitions, he said that a difficulty had arisen in the debate owing to the conflicting nature of the information supplied in the course of the debate on the military and medical aspects. That had led to radically opposite conclusions about the admissibility of the use of such weapons. To some experts incendiary weapons caused unnecessary suffering in that they caused exceptionally severe wounds, were of limited military value and could be substituted by other weapons. Other experts, who had admitted that a burn wound was probably the worst possible type of wound, had not been convinced that the use of incendiary weapons resulted in all cases in an exceptionally high incidence of casualties, let alone of seriously wounded; they had considered that the military value of those weapons was far from negligible and they had feared that replacement of those weapons by others might even cause an increased number of casualties and of severely wounded.

25. On the question of indiscriminateness, some experts had held that incendiary weapons were inherently indiscriminate, while others had been of the opinion that that depended entirely on the method of use of such weapons. One method of use unanimously condemned had been the massive use of incendiary weapons against civilian population centres. Certain experts had considered that attention could more usefully be focused on the anti-personnel use of such weapons than on their anti-matériel role.

26. Views regarding the prohibition of incendiary weapons had fallen into two groups - the one advocating their outright prohibition and the other holding that insufficient grounds for such a sweeping conclusion had been shown. One interesting detail in the debate had concerned the possibility of attacks on military objectives situated within population centres. While an expert from the first group had pointed to the risk that incendiary weapons when used in such attacks might start fires spreading over the whole area outside the target, an expert from the other group had pointed to the responsibility of the authorities of a country, who should ensure that no vital military objectives were situated in civilian population centres.

27. The discussion on small-calibre projectiles (chapter IV) had been even more technically complicated. The difficulty had resided not so much in differences of opinion on their military utility or characteristics as in the uncertainty about the wound ballistics and medical effects of those and other projectiles. Data supplied had been derived from computer modelling, from gelatine-block experiments, from experiments on anaesthetized animals and from gunshot casualties. It had been generally agreed that the data available at present indicated that earlier publications had over-stated the significance of velocity as a determinant of wound severity, other physical parameters such as yaw-angle, angle of incidence, projectile geometry and projectile spin-rate were also likely to have a significant influence.

28. It had been generally agreed among the military and medical experts that much more study was necessary, particularly in the search for common ground between experimental and clinical data, and it had been suggested that research on a co-operative basis conducted by experts from different countries might be desirable.

29. In the evaluation of small-calibre projectiles, there had been great hesitancy on the part of the experts concerning the question of unnecessary suffering. The high military value of those weapons had been recognized in all quarters. On the question whether that element of military value was as yet insufficient to compensate for the suffering caused, most experts had found it impossible to express a definite opinion. The general conclusion had therefore been that further study and research were required in order to arrive at more definite conclusions.

30. Turning to chapter V, on blast and fragmentation weapons, he said that the experts had placed the accent on the latter category. Weapons discussed in that category had ranged from artillery to the more recently developed types of pre- or controlled-fragmented weapons and fléchettes. The military utility of those weapons had been discussed, as also the possibility of their replacement by other weapons - a possibility which had been estimated to be poor indeed for those weapons as a class. In the evaluation of those weapons no suggestion had been made that blast and fragmentation weapons should be banned as a class. Some experts had considered, on the other hand, that certain specific types of such weapons were indiscriminate or caused unnecessary suffering, and ought therefore to be prohibited. Other experts had not been convinced that even those specific weapons did in effect cause unnecessary suffering or have indiscriminate effects.

31. A wide range of delayed-action and treacherous weapons had been discussed, and attention had been focused on mines and booby traps. While some experts had considered that at least certain types of anti-personnel mines should be prohibited, others had felt that mines, like other weapons, could be used with or without discrimination. Several experts had noted the possibilities which existed for marking mine deposits and for the application of reliable self-destroying devices.

32. Some experts had felt that booby-traps should be banned. Others had considered that the question at issue was the use of such devices rather than their inherent nature. The President of the Conference of Government Experts had suggested that booby traps which seriously endangered the civilian population should be banned.

33. The discussion of future weapons (chapter VII) had ranged over subjects such as laser weapons, microwave and infrasound devices, light-flash devices, geophysical and environmental warfare and certain novel modes of electronic warfare. The debate had shown the need for constant awareness of the dangers of unrestrained weapon development. That had led the experts to advocate both national and international procedures for the timely review of new weapons and weapon developments - a task which had been recognized as long ago as 1868 and which would remain an urgent necessity for a long time to come.

34. Mr. FRICAUD-CHAGNAUD (France) said that, as one of the experts who had attended the Conference of Government Experts, he wished to thank the Rapporteur for the excellent work which he had done on an extremely complex subject.

35. Mr. MILLER (Canada) said that his delegation had been among those which in 1974 had sought to have a meeting of Government experts convened to consider the question of weapons which might cause unnecessary suffering or have indiscriminate effects. In his opinion, the Ad Hoc Committee on Conventional Weapons had been most successful in its work and had recommended a logical and comprehensive work programme to the ICRC for its guidance in convening the Lucerne Conference.

36. He himself had attended that Conference as an expert. Despite his fears that it might prove impossible to produce any positive results, the Lucerne Conference had been successful in ways which might not be readily apparent to those who, for sincere humanitarian reasons, wished to have a large number of conventional weapons prohibited immediately. Although it had not led to those immediate prohibitions, it had provided Governments with a considerable amount of data which could help them to judge whether or not certain weapons or uses of weapons did in fact cause unnecessary suffering or, in some cases, have indiscriminate effects on the civilian population. For example, it had revealed the difficulty of drawing up sound legal criteria for the assessment of those weapons. Several experts had demonstrated the need for a more precise English translation of the French term "propre à causer des maux superflus", while others had shown that "indiscriminate effects" were not as yet fully defined in law.

37. His delegation's experts at the Lucerne Conference had supported its President's suggestion that the newly presented facts needed to be digested, that further study and research was necessary, and that many experts doubted whether the Ad Hoc Committee would be ready at the current session to adopt new conventional regulations concerning the prohibition or restriction of the use of any particular conventional weapon.

38. In reviewing the report of the Conference, his Government had concluded that the consensus reached had been correct. Useful as was the data submitted, his Government did not think that the international community was yet able to arrive at a collective decision on how the legal criteria might be applied to some of those weapons. Nevertheless, it had identified certain areas in which there appeared to be a broad degree of willingness to proceed with the discussion of concrete measures.

39. His delegation considered that the Committee should be guided by the consensus reached at the Conference that another Conference of Government Experts under ICRC auspices could usefully be convened in September 1975. At that Conference, the experts should, in the words of paragraph 282 of the report, "focus on such weapons as have been - or may become - the subject of proposed bans or restrictions of use, and . . . study the possibility, contents, and form of such proposed bans or restrictions". On the basis of that study, Governments would have to decide what further steps should be taken, whether the time had come for negotiation and what would be the appropriate forum for such negotiation.

40. His delegation did not intend to comment in depth on proposed restrictions during the meetings of the Ad Hoc Committee. It would prefer that the Committee should direct its attention to the programme of work for the next meeting of experts, which might then be able to reach certain conclusions with regard to specific weapons.

41. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that the Conference of Government Experts had marked a serious step forward in the difficult task of defining the juridical, medical, military and technical criteria which had to be considered in connexion with the question of weapons which might cause unnecessary suffering or have indiscriminate effects.

42. It was not surprising that the legal experts at that Conference had been unable to reach the same conclusions, since some parts of the law relating to the use of conventional weapons had been drafted as far back as the end of the nineteenth century, so that there was a great variety of legal instruments to be studied. His Government's experts had done their best to make a positive contribution but had found that even the medical experts had been unable to agree on certain medical criteria.

43. His delegation wished to thank all those who had organized the Conference and the delegations which had participated. It hoped that a second Conference of Government Experts would be able to achieve the best possible final results.

44. Mr. BLAKENEY (Australia) said that his delegation realized that the issues confronting the Ad Hoc Committee were complex and that its task was not easy. Since, however, it was also convinced that the international community could only benefit from the establishment of widely accepted and effective measures of disarmament, it strongly supported the expansion and updating of international agreements on human rights in armed conflicts, as also efforts to develop agreed restrictions on weapons which in their use might offend agreed criteria.

45. The Conference of Government Experts had established a basis for future progress and had made public for the first time a significant body of data on the use and effects of weapons. There had seemed to be broad agreement that it should continue its work in order to make up as far as possible for the deficiencies in information by considering additional technical studies on the use and effects of weapons. His delegation agreed that more technical studies were required and that, before effective steps could be taken, a greater degree of agreement on facts and on the implications to be drawn from those facts was necessary.

46. His delegation had voted in favour of General Assembly resolution 3255 A (XXIX) concerning the Lucerne Conference but it had not co-sponsored that resolution because it felt that the resolution might have reflected more adequately the summary of conclusions which the President of the Conference had drawn from the Lucerne proceedings. He drew special attention to operative paragraph 3 of the resolution and emphasized the importance of the implications of the words "search", "agreement" and "possible rules" in that paragraph. The objective was to obtain effective international instruments on weaponry. History had indicated that such instruments would not be effective unless they were so constructed as to gain the widest international acceptance. In order to do so they should, while taking their fundamental inspirations from humanitarian ideals, recognize that national security interests, which varied from State to State, were also involved. That recognition implied mutual respect. With such mutual respect, and taking a deliberate and practical approach to the problem confronting it, the Committee should be ultimately successful.

47. He wished to place particular emphasis on the Ad Hoc Committee's important task of establishing an acceptable programme of work for the proposed second Conference of weapons experts. His delegation was confident that it was in that forum that further substantive progress could best be made.

48. Mr. YOKO (Zaire) said that his delegation had been somewhat disappointed with the results of the Lucerne Conference. It felt that the time allowed for the current session of the Ad Hoc Committee should be more than sufficient for the competent experts to submit their proposals and complete their work, without it being necessary to convene a second Conference of experts.

49. Mr. BLIX (Sweden) drew attention to paragraph 10 of the Introduction to the report of the Conference of Government Experts, which said that the statements made at the Conference, which amounted to a confirmation or an endorsement of earlier documents, were rendered in the report in a somewhat summarized form. For that reason, the Lucerne report suggested that it should be supplemented by a reading of earlier documents, inter alia the ICRC report of 1973 entitled Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects and the reports of the United Nations Secretary-General on Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1).

INTRODUCTION OF PROPOSALS

50. Mr. BLIX (Sweden) said that in 1974, he had had the honour to introduce on behalf of seven States a working paper (CDDH/DT/2 and Add.1) containing a discussion of five types of conventional weapons and proposals which had emerged from those discussions. Those proposals had not been intended to be exhaustive but had been submitted with a view to compensating for the lack of any proposals by the ICRC on weapons issues and thus to provide a basis for discussions in the Committee. The sponsors had thought it desirable to bring their working paper up to date in the light of the discussions at the Lucerne Conference. He now formally submitted a revised working paper (CDDH/IV/201).

51. There was a fairly substantial change in section I (Incendiary weapons). Bearing in mind the vital importance of definitions in prohibiting the use of any weapon, it had been considered desirable to use the definition of incendiary weapons on which a consensus had been reached at the Conference of Government Experts. The substance of the proposed prohibition and of the exceptions was similar to that in working paper CDDH/DT/2 and Add.1. The word "munition" had been used on the advice of the military experts.

52. The word "anti-personnel" had been introduced in the text of section II and not only in its title to qualify fragmentation weapons. A reference to devices with many bomblets - apart from cluster bombs - which acted through the ejection of a great number of small calibre fragments or pellets had been added.

53. There was no change in section III (Fléchettes).

54. The heading of section IV (Especially injurious small calibre projectiles) was new. There was no significant change in the substance of the section. Neither the original nor the revised proposal had been directed exclusively to high velocity projectiles. Although much discussion had centred on such projectiles, the idea had been to give a broader definition, covering bullets which caused explosive type wounds, whether through velocity or other

characteristics. The proposals were an elaboration on The Hague Declaration of 1899 concerning the prohibition of using bullets which expand or flatten easily in the human body. There were some minor modifications in the definitions of the effects of the projectiles. Since all projectiles tumbled to some extent, the word "significantly" had been added in definition (b). Similarly, in definition (c) the word "extensive" had been inserted, since some tissue damage near the trajectory could be caused by any projectile.

55. There was no substantial change in section V (Anti-personnel land-mines).

56. The only changes in the annex (Explanatory memorandum) were those made as a consequence of changes in the proposals, together with some additional argument.

57. The sponsors of the working paper had hoped that other delegations might take the initiative of using the conclusions of the Lucerne Conference of Government Experts on such matters as booby traps and the marking of minefields as a basis for further proposals. They were conferring with a view to making proposals at a later stage on machinery for the review of new weapons that might cause unnecessary suffering or have indiscriminate effects.

58. Referring to the Canadian representative's comments, he said the sponsors of the working paper hoped that other delegations would, as United Nations General Assembly resolution 3255 A (XXIX) on the matter suggested, continue to seek agreement on rules to prohibit or restrict the use of such weapons, to study the results of the first Conference of Government Experts on the Use of Certain Conventional Weapons and to consider what programme of work the second such conference should follow. Although the compilation of data should be continued, a considerable quantity already existed, particularly on incendiary weapons. While patience was necessary for achieving results, the necessary political will would have to be tested at some stage.

59. Mr. ABADA (Algeria) said that his country had taken part in the Conference of Government Experts on the Use of Certain Conventional Weapons in a desire to reaffirm its interest in considering the question under discussion. The discussions had brought to light many difficulties in the way of an in-depth study of the question. There was, however, a growing awareness of its importance which delegations had a duty to encourage.

60. Working paper CDDH/DT/2 and Add.1 of the first session of the Diplomatic Conference had helped to provide a correct approach to the problem. His delegation had worked in constant co-operation with its sponsors. The revised version (CDDH/IV/201), which was a perfect follow-up of its predecessor, would provide a useful framework for the Ad-Hoc Committee's discussion and a means of bringing together all those who desired international humanitarian law to cover effectively the use of weapons which caused unnecessary suffering or had indiscriminate effects.

61. His delegation would like to be added to the list of delegations submitting the working paper.

62. Mr. GOZZE-GUCETIĆ (Yugoslavia) said that, as one of the sponsors of working papers CDDH/DT/2 and Add.1 and CDDH/IV/201, his delegation had stressed the advantages that the Diplomatic Conference could offer to the international community if its ideas were translated into mandatory provisions of international humanitarian law. It was more convinced than ever of the need to take decisive steps to prohibit or control the use of certain weapons under rules of warfare that were fully accepted by all States.

63. The revised version of the working paper (CDDH/IV/201) differed little in substance from its predecessor. Its sponsors had endeavoured to provide more detailed and precise wording that would be more acceptable to the majority of delegations. His delegation would welcome any suggestions for improving the text. It would, in particular, like to see a more precise formulation of section I.B.2, to make it applicable to incendiary weapons for defence not only against aircraft or armoured vehicles but also against warships or other military objects in the strict sense of the term.

64. His delegation hoped that other delegations would support the proposals in the working paper and that the Ad Hoc Committee would be able to work constructively.

65. His Government had been somewhat disappointed with the results of the Conference of Government Experts on the Use of Certain Conventional Weapons. If another such conference was to be convened it should be given more precise terms of reference and should endeavour to reach more specific results. The Ad Hoc Committee should ensure that all the items on its agenda received adequate coverage so that true progress could be achieved.

The meeting rose at 5.10 p.m.

SUMMARY RECORD OF THE NINTH MEETING

held on Friday, 14 February 1975, at 3.20 p.m.

Chairman. Mr. GARCES (Colombia)

ORGANIZATION OR WORK

1. The CHAIRMAN announced that Algeria and the Sudan had joined the sponsors of working paper CDDH/IV/201.

2. With regard to a suggestion made at the eighth meeting to the effect that meetings of the Ad Hoc Committee should be limited to two a week, in order to avoid overlapping with the meetings of the Working Group of Committee III, and following comments by the United Kingdom and USSR representatives, he said that the Ad Hoc Committee's officers would, with the assistance of the Secretariat, endeavour to find a solution to the problem that would meet with general approval.

INTRODUCTION OF PROPOSALS (concluded)

3. Mr. TAYLOR (United Kingdom) said that his delegation supported the conclusions of the Conference of Government Experts on the use of Certain Conventional Weapons appearing in chapter VIII of its report, in particular the conclusion in paragraph 282, sub-paragraph 3, which stated that "it was doubted that the Ad Hoc Committee would, at its next session, be ready to adopt new treaty rules concerning the prohibition or restriction of the use of any conventional weapons", and that appearing in sub-paragraph 6 of the same paragraph, where it was stated that "Another conference of government experts could, under ICRC auspices, and preferably in September 1975, usefully be convened". He therefore did not think that it would be appropriate at the present time for the Ad Hoc Committee to analyse deeply any proposed prohibitions. He did on the other hand, consider it would be useful to continue the studies initiated at Lucerne at a second weaponry conference of experts. The United Kingdom delegation would certainly co-operate with the Ad Hoc Committee in an examination of the broad field of prohibitions already submitted. The United Kingdom was in fact already considering whether there were areas in which both sufficient knowledge and a sufficient measure of international agreement existed to justify that country putting forward certain practical proposals. Although his delegation had abstained in the vote on United Nations General Assembly resolution 3255A(XXIX), it was ready to contribute to the search for agreement on possible rules prohibiting or restricting the use of certain conventional weapons. It also considered that

it would be useful to pursue the consideration of a programme of work which a second Conference of Government Experts might follow.

4. Mr. KELTANEN (Finland) said that he was of the opinion that the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne in September/October 1974, had achieved positive results. For instance, the acceptance, by consensus, of the definition of incendiary weapons, a definition which was also used in the working paper submitted by Sweden and other countries (CDDH/IV/201 and Add. 1 and 2).

5. Again, consideration by that Conference of the United Nations Secretary-General's report entitled Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1)^{1/} and of information supplied by military and medical experts, usefully complemented various aspects of the questions studied. The report of the Conference of Government Experts was not only useful for the work of the Ad Hoc Committee because it drew attention to the different factors requiring special consideration; it also constituted an important step forward in the efforts made to formulate new and effective rules of international law acceptable to all, concerning weapons which might cause unnecessary suffering or have indiscriminate effects.

6. In resolution 3255A (XXIX), the United Nations General Assembly to which the report of the Conference of Government Experts had been made available, invited the Diplomatic Conference to continue its consideration of the question of the use of certain specific conventional weapons and its search for agreement on rules prohibiting or restricting the use of those weapons. That resolution was evidence of a real political will on the part of the international community to achieve progress in the matter.

7. His delegation was much interested in working paper CDDH/IV/201/and Add.1 and 2 which was a revision, based on the debates held at the Lucerne Conference, of document CDDH/DT/2/and Add.1, submitted at the first session of the Diplomatic Conference; it provided an excellent starting point for the work of the Ad Hoc Committee, and dealt with categories of weapons which were of serious concern throughout the world. It should already be possible at the present stage to discuss the possibility of the legal prohibition and

1/ United Nations publication, Sales No. E.73.I.3

and restriction of those weapons. It was also important that the Ad Hoc Committee should provide clear guidelines for the second Conference of Government Experts which it was proposed to organize.

CONSIDERATION OF THE QUESTION OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUCERNE CONFERENCE AND OF PROPOSALS

(a) Napalm and other incendiary weapons

8. Mr. KALSHOVEN (Netherlands), Rapporteur, said that he wished to draw the attention of the representative of Finland to paragraph 51 of the report of the Conference of Government Experts on the Use of Certain Conventional Weapons which, referring to incendiary munitions, stated: "As for the definition submitted by the working group, while several experts considered it to be an adequate one and while no views to the contrary were presented, no attempt was made to reach general agreement in the Conference".

9. Mr. KUSSBACH (Austria) said that his delegation attached great importance to the preparatory work accomplished by the Conference of Government Experts and wished to express its appreciation of the work of the technical experts, both military and medical, whose assistance had been invaluable to the diplomats and jurists. It was nevertheless important to avoid the error of assuming that technical experts could relieve diplomats of their responsibilities as international legislators; technical competence could not take the place of the political will to act, which was a matter for sovereign States.

10. The Conference of Government Experts had resulted in the gathering of substantial data concerning the effects of the use of incendiary weapons, on which the experts, and particularly the doctors, were in general agreement. In support of that statement he quoted a number of passages from the report of the Conference of Government Experts, in particular paragraphs 85 and 87 which referred to burns. He also quoted paragraph 88, where it was stated that the mortality rate among burn victims varied greatly, depending among other things on the quality of medical treatment and the rapidity with which medical treatment commenced. That served to underline the primary importance of the technical equipment supplied to armies and to show the inequality in that respect between the large wealthy countries and the small poor countries.

11. If military experts were to be believed, the effectiveness of incendiary weapons appeared to be more than doubtful, except in two cases, namely in the case of close air support operations, where napalm incendiary bombs seemed very efficient, and in attacks on armoured vehicles. Another point to be stressed was the definition of incendiary munitions by the Conference of Government Experts, for it provided useful guidance for the work of the Ad Hoc Committee.

12. Referring to the working paper (CDDH/IV/201 and Add.1 and 2), he pointed out that the sponsors, of whom Austria was one, had taken the results of the work of the Government Experts into account; they had endeavoured to draft a proposal for the prohibition of all forms of incendiary weapons. That rule should allow for only two exceptions: firstly, munitions which might have secondary or incidental effects, such as illuminants, tracers, smoke, or signalling systems; secondly, incendiary munitions designed and used specifically for defence against aircraft or armoured vehicles, since military requirements must be taken into account. In the latter case, the risk of striking indiscriminately appeared to be neither excessive nor unacceptable. The exception would not, however, apply to incendiary bombs launched by aircraft, for in such cases humanitarian considerations must be paramount.

13. The Austrian delegation considered that working paper CDDH/IV/201 and Add.1 and 2 was both reasonable and well-balanced, and could serve as a basis for the work of the Ad Hoc Committee, on the understanding that any suggestion designed to improve the text would be considered with all the necessary attention.

14. Mr. OKA (Japan) said that he thought that the report of the Conference of Governments Experts on the Use of Certain Conventional Weapons should be taken as a starting point for the consideration of item 3 of the Committee's work programme (CDDH/IV/Inf.201). The report was indeed very well documented; it contained the most up-to-date information on the characteristics of the weapons under discussion, and presented the points of contention in a precise way.

15. With regard to incendiary weapons, he noted with satisfaction that consensus had almost been reached in the Working Group on Incendiary Munitions Classification of the Conference of Experts on the definition of incendiary munitions, though it had left a certain imprecision concerning the classification of certain categories of munitions. There had also been agreement among the experts that large-scale area bombing by incendiary munitions, such as had taken place during the Second World War, was indiscriminate in its effects.

16. On the other hand, the Conference of Government Experts had succeeded in bringing to light a wide-ranging difference of opinions on whether certain categories of weapons caused unnecessary suffering or indiscriminate effects and should therefore be banned.

17. As was stated in sub-paragraph 3 of paragraph 282, the newly presented facts needed to be digested and further study and research were needed. While, therefore, his delegation would be interested to listen to any new proposals, it hoped that no other Conference of Government Experts could be convened, as suggested in sub-paragraph 6 of the same paragraph of the report. His delegation supported the statement made by the United Kingdom representative on that subject.

18. He wished to repeat the comment made by his delegation at the Lucerne Conference that, when the time came to study the characteristics of weapons and to draw up rules, it would become absolutely necessary to establish the definitions of technical terms, as had been done in the case of incendiary weapons. As an example, he quoted the term "target" used in Section I, "Incendiary Weapons", paragraph A of document CDDH/IV/201/and Add. 1 and 2. The definition of "target" might eventually be identical with the definition of "military objectives", which Committee III was trying to draw up. He would like some enlightenment on that point in due course.

19. Mr. BLIX (Sweden) said that the United Kingdom representative had suggested that it would not be appropriate at the present stage to analyse proposals for the prohibition or the restriction of conventional weapons, and reference had been made to the conclusions on follow-up reached by the Conference of Government Experts (paragraph 282, of the report) which expressed doubt whether the second session of the Diplomatic Conference would be ready to adopt new treaty rules on weapons and that another Conference of Government Experts was needed. He thought it would be very regrettable if that attitude was taken by many delegations. Evidently, delegations could not be enjoined to speak if they did not wish to do so. It was a fact, however, that the conclusions reached at the Conference on follow-up expressly stated that new or revised proposals could be submitted to the Ad Hoc Committee "for consideration by that Committee." (Paragraph 282 sub-paragraph 2 of the Conference report). The conclusions further expressed the hope that the Ad Hoc Committee "by its discussions will contribute to the clarification of the issues". (ibid, sub-paragraph 6). Hence, comments on proposals would be entirely appropriate. Indeed, a dialogue at the political level was needed to advance the issues.

20. Document CDDH/IV/201 and Add. 1 and 2 which was before the Committee, recommended a total ban on the use of most incendiary weapons. Although that proposal was not yet generally acceptable, part of its background was generally agreed. Incendiaries could be viewed as terror weapons when used in such a way as to affect military personnel or civilians. Statistics showed that during the Second World War and in the Korean war thousands of tons had been used, and in the Viet-Nam war hundreds of thousands of tons had been used. Much of it had undoubtedly been for anti-personnel purposes. He criticized the euphemistic judgement in paragraph 67 of the Conference report that in anti-personnel use the napalm firebomb's "psychological effect was unchallenged." He noted that there had been consensus among the experts on the suffering caused by incendiary weapons, and he quoted in support extracts from paragraphs 85 and 89 of the Lucerne Conference report. He considered the consensus significant and in line with the main conclusions in the United Nations Secretary-General's report on Napalm and other incendiary weapons and all aspects of their possible use.

21. Some other points on which there was disagreement, seemed to him of more limited significance. He was thinking for instance, of the disputed rate for mortality due to burns. The assertion by some medical experts that "there was no fundamental medical difference between burns resulting from commonly used incendiary weapons and those resulting from other thermal injury" (paragraph 90 of the Conference report) had been contested by other medical experts. It was almost pointless to say who was right in that matter. Burns caused otherwise than by weapons often constituted extremely severe injuries.

22. The arguments advanced by one military expert, as reported in paragraph 102, and the opinion expressed on the toxic effects of white phosphorus in paragraph 99, need not perhaps be taken seriously.

23. It was mystifying that none of the medical experts who had served in Viet-Nam" had ever observed a napalm casualty among the civilian patients treated" (paragraph 95). That contrasted with the statement made by the Minister of Health of the Democratic Republic of Viet-Nam, published in Le Monde of 25 November 1967, to the effect that five to ten per cent of the wounded had napalm burns.

24. Fundamentally, there was not much disagreement about the indiscriminate effects of incendiary weapons when used against cities, villages and hamlets, and it was admitted that the effects were much worse on civilians than on soldiers (paragraph 67). Incendiaries might possibly be used as anti-matériel weapons on the battlefield without the indiscriminate effects being too pronounced. Nevertheless, the principal indictment of incendiary weapons lay in the suffering they caused.

25. The revulsion of public opinion against various incendiary weapons could be traced far back, and the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime was the first instrument to prohibit the use of one such weapon.

26. He stressed the fact that flame-throwers had not been subjected to any international ban, but their acquisition by the countries vanquished in the First World War had been prohibited, and a special committee set up during the 1932-1934 Conference for the Reduction and Limitation of Armaments had recommended that their use be prohibited. The General Commission of that Conference had adopted without a vote the conclusion of the special committee that incendiary warfare should be prohibited in addition to chemical and bacteriological warfare.

27. Despite those opinions, no agreement had emerged, and incendiary weapons had been used in the Second World War with the most terrible effects ever witnessed. Since then, public opinion had reacted increasingly against incendiaries. He quoted extracts from various military handbooks in support of that statement, citing manuals issued by the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland and the United States of America, together with a statement, dated 6 July 1966, issued by the States Parties to the Warsaw Pact, condemning the use of napalm.

28. There had been differences of opinion as to the military value of various incendiary weapons. In paragraph 80 of the Conference report, it was stated that "a number of experts held the opinion that weapons which had outlived their usefulness would automatically disappear from arsenals...", and that "only those weapons were retained for which adequate substitutes did not already exist". If that philosophy had been followed in the past, presumably no ban on poison gas would have been adopted. It would seem more reasonable, indeed, to say that not all weapons in arsenals were indispensable, and then to discuss the degree of utility which

various weapons might have. Where a weapon could cause a high degree of suffering and was shown to be of relatively little military value, the case for a ban on use was obviously strong.

29. In Lucerne, the Working Group on Incendiary Munitions Classification had drawn up a definition of incendiary weapons, which was reproduced in annex 5 to the report. The Group had also listed certain munitions as falling outside the definition and thus outside any ban on incendiaries. The same had been done in document CDDH/IV/201 and Add.1 and 2 section I. Generally speaking, a ban on the continued use of such munitions - illuminants, tracers, smoke and signalling systems - had not been seriously considered by anyone. In the light of that fact, it was curious that one delegation, speaking in the First Committee of the United Nations General Assembly at the twenty-ninth session, had expressed fear that such munitions could become banned.

30. The definition given by the experts at Lucerne had been incorporated in the revised working paper (CDDH/IV/201 and Add. 1 and 2). A total ban on the whole family of incendiary weapons would clearly be the most legally viable approach. Such an approach had been adopted in respect of chemical weapons, and everyone knew the problems posed when States sought to maintain that certain such weapons were excepted from the ban.

31. The least satisfactory method would be to ban only specific types of use, such as the use of incendiary weapons in areas where civilians might be affected, or against personnel. Such bans would not affect the continued deployment of the weapons, since their application would depend on the judgement of innumerable military commanders - a system which would inevitably reveal severe inherent weaknesses.

32. If a total ban on use seemed safer than bans on certain uses, it remained to be assessed whether exceptions should be made and whether such exceptions could be satisfactorily defined. There was a feeling by some that certain munitions should be retained for use against aircraft and armoured vehicles. In the view of his delegation, such munitions could have been regarded as falling outside the definition of incendiary weapons, provided their incendiary effect was less pronounced than their other destructive effects. The majority of experts at Lucerne had preferred, however, to include them in the incendiary category, which meant that it would probably be necessary to except them from a ban on use, as in the revised working paper (CDDH/IV/201 and Add. 1 and 2)

33. During the discussions at Lucerne, some delegations had said that incendiary weapons - and especially napalm bombs - were of great military value when used for close air support (paragraphs 54, 55, 66 and 67 of the report). One expert had even stated that napalm bombs were indispensable for that purpose. When napalm bombs or other types of incendiaries were used as described, it was clear that they were used as anti-personnel weapons. The position of the delegation in question was hard to reconcile with the stand taken in the military manuals of some important countries. In the United Kingdom Manual of Military Law there was a comment which stated that incendiary weapons were lawful only when directed against military targets and that their use against personnel was contrary to the law in as far as it was calculated to cause unnecessary suffering. The United States Military Manual regarding land warfare was similar, though a little less categorical. In a recent article a United States lawyer, Captain Roger Darley, had said that if the ground commander had the choice between fragmentation bombs and napalm in neutralizing an enemy force and he chose napalm, he would commit a war crime (Field Artillery Journal, January-February 1974). Alternative weapons to napalm bombs could apparently be found, therefore, and the case for the use of napalm as indispensable in close air support was thus hard to advance as an argument against a ban.

34. Some experts at Lucerne had expressed the view that incendiary weapons were particularly useful for anti-matériel purposes (paragraph 55 of the report). But incendiaries could not be considered essential for attacks against such targets, which could probably be made with other types of weapons, such as fragmentation bombs.

35. All the medical experts at Lucerne had agreed on the serious effects of white phosphorus on the human body, but there had been conflicting views whether white phosphorus was used in weapons. There again, Captain Darley had stated that if a commander had some other weapons at his disposal it would be a war crime to use white phosphorus shells against personnel. For humanitarian reasons, the use of such weapons must be avoided so far as possible.

36. It had sometimes been suggested that if the use of incendiary weapons was banned, they might be replaced by even more inhumane weapons, possibly even by nuclear weapons. None of those suggestions appeared to have much credibility. In fact, for the bombardment of military targets, in an urban area, high-explosive bombs could be used with the same results

as incendiary bombs, but with less risk of fire spreading. For attacks upon the enemy in the open, fragmentation weapons of limited area coverage could be used.

37. It was maintained in paragraph 82 of the Conference report that poorer countries would find it hard to replace some inexpensive incendiary weapons, particularly napalm bombs, which they might need for their defence. It was interesting to note that such arguments were invariably advanced by experts from the richer countries. Moreover, though napalm bombs were inexpensive, the aircraft needed to deliver them were costly.

38. There had been some mention of Molotov cocktails, but those could not be a significant issue in a debate on incendiary weapons, since no army used them, and nowadays even guerrillas seemed to prefer other types of hand grenade.

39. It should be remembered that many countries possessed large stocks of incendiary weapons, which represented a considerable defence investment. They could not be written off overnight. There could be no denying the importance of that problem, which might also arise in respect of other weapons. Perhaps it would have to be solved by a phase-out period, preferably with an early time-limit.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE TENTH MEETING

held on Wednesday, 19 February 1975, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

ORGANIZATION OF WORK

1. The CHAIRMAN said that Lebanon should be added to the list of sponsors of document CDDH/IV/201.

2. He announced that the African Group had nominated Mr. Mkeke Ndonga Mangbau (Zaire) for the office of Vice-Chairman, to replace Mr. Mustapha Chelbi (Tunisia).

CONSIDERATION OF THE QUESTION OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUCERNE CONFERENCE AND OF PROPOSALS (continued)

(a) Napalm and other incendiary weapons (continued)

3. Mr. DUNSHEE de ABRANCHES (Brazil) said that his country had acceded to the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime, and to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, and had constantly supported the two principles set forth in them, namely, that the choice of means and methods of warfare was not unrestricted and that the only legitimate aim of States in wartime was to weaken the enemy's military forces. Since then, Brazil had supported all the resolutions of the United Nations General Assembly which reaffirmed those principles. At the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, held in 1972, Brazil, together with eighteen other Governments, had submitted a proposal that the International Committee of the Red Cross should consult experts on the use of specific categories of conventional weapons which might cause unnecessary suffering or have indiscriminate effects. In 1973, Brazil had participated in the drafting of the report of the experts who had studied that problem.

4. During the first session of the Diplomatic Conference, his delegation had stated that all incendiary weapons could cause unnecessary suffering and have indiscriminate effects, depending on how they were used. For various humanitarian reasons, the international community should agree to restrict the use of incendiary weapons against objectives which were not exclusively military.

The necessary measures could be agreed upon in the Conference of the Disarmament Committee; however, since they also came within the province of humanitarian law, they could be considered by the current session of the Diplomatic Conference. The military advantages of incendiary weapons were indisputable, but their use led to exceptionally heavy casualties in killed and seriously wounded. The wounds caused were of the same type as burns and were very difficult to treat. In addition, incendiary weapons consumed oxygen and emitted carbon monoxide, which poisoned the air.

5. His delegation considered that the question of incendiary weapons should be studied very carefully with a view to the prohibition or restriction of their use. The destruction caused by those weapons was such that the international community should at all costs adopt measures to ban their use.

6. Mr. OFSTAD (Norway) said that after a thorough examination of the various documents before the Diplomatic Conference, his Government had reached the conclusion that the time had come, at least as far as incendiary weapons were concerned, to move from the stage of technical studies to that of political decisions. He hoped that proposals for the prohibition or limitation of the use of incendiary weapons would be submitted officially during the current session and that a profitable discussion could be held on the basis of those proposals. His Government was prepared to adopt, at the current session, an international instrument limiting the use of incendiary weapons, if the broad agreement required for its implementation was achieved.

7. On the subject of the contents of such an international instrument, his Government shared the opinion expressed in paragraph 53 of the report of the Conference of Government Experts on the Use of Certain Conventional Weapons that distinctions should be made between the use of incendiary weapons in regular battlefield operations, their use in guerrilla combat situations and their use against the strategic rear.

8. Regarding the use of incendiary weapons against the strategic rear, his Government had noted the opinion of some experts, recorded in paragraph 57 of the report, that large-scale incendiary area attacks were a thing of the past. It felt, nevertheless, that such uses should be prohibited, in order to influence possible future developments of strategy in that regard.

9. With regard to the use of incendiary weapons in guerrilla combat situations, he referred to paragraph 103 of the report and said that the Norwegian experts were among those who had pointed to the example of guerrilla warfare, where counter-guerrilla

operations involving widespread use of incendiary weapons had often resulted in large numbers of casualties among the civilian population. While agreeing that such uses of incendiary weapons might offer certain military advantages, the Norwegian Government considered that they were likely to have indiscriminate effects and that consequently such uses were already prohibited by international law. The new international instrument should therefore include the same prohibition.

10. On the question of the use of incendiary weapons in regular battlefield operations, the report of the Conference of Government Experts seemed to indicate that in the circumstances an absolute prohibition of the tactical use of those weapons was neither necessary nor desirable. His Government considered that legal regulations of the tactical use of incendiary weapons was necessary and that the drafting of those rules was probably the most difficult problem that the Ad Hoc Committee would have to solve in connexion with those weapons. In order to obtain positive results, it would be useful to make a distinction between larger area weapons, which acted mainly through their incendiary effects, and weapons typically of smaller calibre, which acted mainly through their explosive and incendiary effects, and were designed for attack on military targets. The provisions in item I of working papers CDDH/IV/201 and Add.1 to 3 could form a useful basis for the examination of that difficult problem.

11. With reference to the other conventional weapons mentioned in the working paper, his Government's sponsorship should be interpreted as an expression of its desire to initiate a discussion at the international level regarding the need for prohibitions or restrictions of their use. While that desire was based on a preliminary assessment of the possible need for such prohibitions or restrictions - an assessment based on hard facts regarding the use of such weapons in some recent armed conflicts - the Norwegian co-sponsorship should not be interpreted as any final position on those difficult issues. A careful study of the report of the Conference of Government Experts and of other documents showed that additional technical information and a more detailed analysis of the humanitarian, medical and military aspects would no doubt be necessary before it was possible to work out formal proposals.

12. Turning to the question of future work, the Norwegian delegation hoped that formal proposals on international rules restricting the use of incendiary weapons would be submitted as soon as possible and that they would be studied by the Ad Hoc Committee in the same way as the draft Additional Protocols to the Geneva Conventions of 1949 were being studied by the other Committees of the Diplomatic Conference.

13. With regard to the other weapons referred to in the working paper or in the report of the Conference of Government Experts, the Ad Hoc Committee's task was two-fold. Firstly, it should obtain additional technical and medical data and, secondly, it should decide, on the basis of those data, whether it was necessary to prohibit or to restrict the use of those weapons. The search for additional data and analyses should be purpose-oriented. The aim was to draw up rules of international law prohibiting or restricting the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects.

14. While it did not underestimate the results of the Conference of Government Experts, his Government thought that the division of the work between the Diplomatic Conference and that Conference had not proved wholly satisfactory. Many of the Government experts had perhaps submitted technical data without due regard to the purpose in view, while many of the participants in the Diplomatic Conference had perhaps made assessments regarding the desirability of prohibiting or restricting the use of certain weapons without taking pertinent technical data duly into account. The best way to avoid that difficulty was to entrust the study of problems relating to conventional weapons to a single group. It would therefore be preferable for all aspects of the problem, including the further technical and medical studies, to be considered within the framework of the Diplomatic Conference. While it did not reject the idea of a further conference of experts, if that should prove necessary in order to obtain results, his delegation hoped that the whole question could be dealt with by the Diplomatic Conference.

15. Mr. ESMAIL (Kuwait) said that, in stating the views of his delegation, he would not broach the medical and legal aspects of the question of the use of napalm and other incendiary weapons.

16. There were several types of weapon which could be included in the category of incendiary weapons, and military authorities would claim that their use was necessary without concerning themselves with the humanitarian side of the question.

17. Several types of incendiary weapons such as napalm, flame-throwers and incendiary munitions, should be prohibited forthwith, regardless of military considerations. The other incendiary weapons should be classified as defensive or offensive, and as anti-personnel or anti-matériel. Incendiary weapons would thus be divided into two categories from the operational point of view.

18. His delegation suggested that incendiary weapons used indiscriminately against members of the armed forces and the civilian population should be prohibited. It also suggested that incendiary weapons used against civilian objects should be prohibited. It considered, moreover, that incendiary weapons other than napalm and flame-throwers should be used only for defence or for attacking military matériel. It would support any measure designed to prohibit or restrict the use of destructive weapons.

19. Mrs. BORODOWSKY JACKIEWICH (Cuba) said that experts from her country had taken part in the drafting of the report of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne in 1974. At the meetings of that Conference, held under the auspices of the ICRC, considerable progress had been made in studying that complex question. Even so, the objective, which was to find a common basis for prohibiting or restricting the use of incendiary weapons, was far from having been achieved. There was as yet no actual agreement on a number of concepts and standards relating to those weapons. As the Rapporteur of the Conference of Government Experts had said, the question of the use of such weapons should be defined from the standpoint of humanitarian law. Some of the opinions expressed ran counter to public opinion as reflected in, for instance, the report of the Secretary-General of the United Nations entitled Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1)^{1/}.

20. At the Lucerne Conference some participants had advocated the outright prohibition of napalm and other incendiary weapons, while others had held that the Conference had insufficient grounds for reaching any conclusions. The international community, however, had expressed its opinion in resolution 3255 A (XXIX) of the General Assembly of the United Nations. Operative paragraph 3 of that resolution read:

"Invites the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts to continue its consideration of the question of the use of napalm and other incendiary weapons, as well as other specific conventional weapons which may be deemed to cause unnecessary suffering or to have indiscriminate effects, and its search for agreement on possible rules prohibiting or restricting the use of such weapons and, in this context, also to consider the results of the first Conference of Government Experts and the programme of work which a second Conference of Government Experts might follow."

^{1/} United Nations publication, Sales No. E.73.I.3.

21. Consequently, the Diplomatic Conference, and especially the Ad Hoc Committee, should bear certain principles in mind in order to avoid assuming too general an attitude with regard to the use and/or prohibition of weapons of that kind. It was essential, for example, to take into account how far those weapons were directed against genuine military objectives, and the suffering and damage they caused as opposed to the military advantages that might result from their use. It was also necessary to examine the military considerations and the humanitarian requirements bound up with their prohibition or restriction. Strict rules should be formulated on those points.
22. In her view, the question of incendiary weapons should be discussed with the aim either of prohibiting or of restricting their use, as had been recommended in many reports and at several international conferences.
23. It was therefore clear that a wider measure of agreement should be achieved at the second Conference of Government Experts with regard to the use of napalm and other incendiary weapons in view of the number of reports on that subject and also in order to reflect the opposition of international opinion to the use of such weapons.
24. The Cuban delegation supported all the efforts that were being made to that end, because it was aware that the prohibition of the use of force, laid down by the principles of international law and in the United Nations Charter, was closely linked to general and complete disarmament, which was the hope of all peoples wishing to strengthen peace and international security.
25. Mr. ANEMAET (Netherlands) deplored the fact that there were obvious mistakes in working paper CDDH/IV/201 and Add.1 to 3, and that some delegations had not seen fit to include more reliable information in that document. For instance, page 2, section I,B.2 gave the impression that anti-tank incendiary weapons were designed and used for defence only. No expert would have made such a mistake. On the contrary, those weapons were used for attack and, when necessary, for defence, and the same could be said of anti-aircraft incendiary weapons. The mistake in question could easily be rectified by turning to page 8, line 12, but other errors might be more difficult to eliminate. He wondered whether in fact the Conference was the right place for drawing up such complicated rules on the subject of disarmament and the control of the means and methods of warfare.
26. Mr. BETTAUER (United States of America) expressed his appreciation of the work done by Mr. Kalshoven, Principal Rapporteur of the Conference of Government Experts on the Use of Certain Conventional Weapons, whose report was both objective and lucid. That document, the longest chapter of which (chapter III)

was concerned with incendiary weapons, showed that the Government experts had reached a fair measure of agreement on all the issues involved but that their evaluation differed appreciably because of gaps in the knowledge of those questions. Nevertheless, real progress had been made.

27. All the experts had agreed that serious burns were painful and life threatening (paragraph 85 of the report), but that fact did not in itself lead on to any conclusion; the suffering caused by incendiary weapons had to be considered in relation to their military utility, the proportion of the casualties they caused in comparison with other weapons and the seriousness of those casualties.

28. The military value of incendiary weapons had been generally recognized (paragraphs 53 and 54 of the report). Some experts had taken the view that in certain situations those weapons were of unique military utility, for example when used against pill boxes, bunkers, coverable foxholes, fortifications with small gun ports, enemy personnel concealed in dense vegetation, open parts, hatches and air engine intakes of armoured vehicles, combustible supplies and ammunition, and particularly in close support of troops. Military experts believed that if less effective weapons had to be employed there might be greater cost to both sides. The accuracy of incendiary weapons was described in paragraphs 65 to 67 of the report.

29. It was therefore necessary to assemble all relevant information and bases for the formulation of any prohibition or restriction on the use of incendiary weapons. Paragraph 96 of the report reviewed information supplied by United States experts with regard to accidents caused by napalm fire bombs, which stated that incendiaries caused a very small proportion of casualties and that those were not uniformly of particular seriousness. The inadequacy of existing information and the differences of opinion expressed in paragraphs 109 to 114, showed that it was impossible to reach conclusions at present and that the matter must be taken up again at a second Conference of Government Experts. It was to be hoped that by then the experts would have new data available that would make it possible to reach conclusions that were well-founded and did not decrease humanitarian protection.

30. His delegation did not intend at present to make a detailed analysis of working paper CDDH/IV/201 and Add.1 to 3, but he noted that its prohibition of incendiary weapons was not a comprehensive one; that seemed to indicate that the sponsors believed such weapons to be of military value and that it was worth retaining the right to use them. National security interests differed from country to country, and the utmost care must therefore be taken in considering incendiary weapons which certain countries believed to be of significant military utility. While other working papers

could be submitted to the Ad Hoc Committee, his delegation agreed with the consensus reached at Lucerne that it would be premature for the Diplomatic Conference to decide on such proposals, which should be considered at the next session of the Conference of Government Experts. That body could consider the possibility, content and form of proposed new restrictions. In any event, his delegation was prepared to approach the question seriously, given reasonable procedures.

31. Lastly, he said that he would be glad to supply delegations on request with the report that his delegation had drawn up following the Conference of Government Experts at Lucerne.

32. Mr. CACERES (Mexico) said that the preparatory studies, and, in particular, the report of the Conference of Government Experts, provided the Diplomatic Conference with the material needed to arrive at a decision regarding a ban on the use of incendiary weapons. He was gratified, too, to see that more delegations every day were declaring that the time had now come to deal with the question from the political angle. The Diplomatic Conference, in fact, could not conclude its work without having prohibited the use of certain conventional weapons.

33. Section I of working paper CDDH/IV/201 and Add.1 to 3, of which his delegation was a co-sponsor, provided a definition of the incendiary weapons which should be prohibited and indicated two groups of weapons which should be excepted from the ban. So far as concerned the second group, his delegation considered that anti-aircraft and anti-tank munitions should be prohibited as well as those listed immediately after the definition. The ban on incendiary weapons should, in fact, be a total one.

34. He expressed satisfaction that the United Nations General Assembly had reflected the wishes of international opinion regarding the prohibition of incendiary weapons, in particular in resolution 3076 (XXVIII), which invited the Diplomatic Conference to "seek agreement on rules prohibiting or restricting the use of such weapons", and in resolution 3255 B (XXIX), which condemned the use of napalm and other incendiary weapons where it might affect human beings or cause damage to the environment and/or natural resources.

35. Mr. KEITH (New Zealand) said that before discussing the question of the prohibition or restriction of the use of incendiary or other weapons, he wished to refer to certain long-established principles of law. According to those principles - which were also being considered in Committee III - the use of weapons apt to cause unnecessary suffering or have indiscriminate effects was prohibited. The concept of perfidy or treachery must also, however, be borne in mind.

36. The elaboration and application of those principles required a process of a particular kind: a dialogue in which there was a close assessment of the effects and advantages of the categories of weapons. The New Zealand delegation, as a co-sponsor of United Nations General Assembly resolution 3255 A (XXIX) concerning conventional weapons which might cause unnecessary suffering or have indiscriminate effects, welcomed the fact that that dialogue was now well under way. But, as that resolution made clear and as the Ad Hoc Committee's work programme strongly implied, technical or scientific studies were not an end in themselves; there was also to be a search for agreement on rules of prohibition or restriction. As the New Zealand delegation had already said in the Ad Hoc Committee at the first session of the Diplomatic Conference, it was highly important that those rules should be acceptable to the major Powers and the major arms-producers. Determination must be shown if an agreement of that kind was to be reached.

37. The decision Governments would have to take when the Ad Hoc Committee's work was drawing to an end would depend on the proposals of various bodies or institutions: the Diplomatic Conference, Conferences of Experts, the ICRC, the United Nations General Assembly and individual Governments or groups of Governments. Moreover, the decisions would depend, as the Conference of Government Experts had clearly shown, on numerous factors, including, so far as incendiary weapons were concerned, an assessment, itself debatable, of their military characteristics and medical effects. Although different kinds of specialists - military, medical and legal - obviously had a part to play, the final decision, being of a political nature, clearly rested with Governments. In making their decision, however, Governments would have to take into account public opinion, which, as reflected for instance in the General Assembly resolutions, was not confined to the expression of the rights and obligations of Governments to go by. As Oliver Wendell Holmes and Karl Marx had pointed out at almost the same time, the law reflected the felt necessities of the time. He was not saying, however, that public opinion, great though its influence could be, was for Governments the only deciding factor.

38. He drew attention to the difficulty which could arise in constructing and enforcing a rule which restricted rather than prohibited use. As the New Zealand delegation had already said in the United Nations General Assembly and as was also stated in the working paper, a rule prohibiting the use of napalm and other incendiary weapons in all circumstances was much more likely to be complied with than a restriction on particular uses. As was shown by the rules concerning speed limits on the roads and by The Hague Convention No. VIII of 1907, which forbade the laying of automatic submarine contact mines in certain circumstances, rules to be enforceable might be over broad in the sense of going beyond their rationale. In the case of incendiary weapons, that problem

might be avoided or limited by more precise classification. Some steps had been taken in that direction at the Lucerne Conference, as could be seen from paragraph 114 of its report and from annex 5 to that report.

39. So far as concerned the principle of prohibiting or restricting the use of napalm and other incendiary weapons, he recalled that on a number of occasions since 1973 his Government had stated its position, which was that, while the paramount requirement was to protect civilians, such protection should not be restricted to civilians. If the use of incendiaries was prohibited only in particular circumstances or against particular targets, there would be substantial difficulties of implementation. There was a strong case for a total prohibition of such weapons, as set forth in some detail in the working paper's first proposal. That position gained considerable support so far as both civilian and combatant personnel were concerned, from volume III of the United Kingdom Manual of Military Law, which stated that because the use of tracer and incendiary ammunition would cause unnecessary suffering when they were directed solely against people, such use was illegal.

40. Mr. EICHIN (Switzerland) said that the delegation of his country, which was a co-sponsor of working paper CDDH/IV/201 and Add.1 to 3, considered that the discussion would be facilitated if incendiary weapons were classified in three categories, only the last two of which remained outside the prohibition. The first category, comprising the weapons to be banned, called for some comment, particularly with regard to napalm bombs and flame-throwers. Swiss military experts considered napalm to be the ideal weapon for ensuring direct air support for infantry, because it offered tremendous precision and no other weapon could completely replace it. Yet his delegation wanted it to be banned, for the burns it caused clearly fell within the category of unnecessary suffering and were condemned by public opinion. The military should make a sacrifice there, as well as the other, though smaller, sacrifice of renouncing flame-throwers.

41. As to weapons not subject to the prohibition (Section I, B.1 of the working paper) he observed that smoke-producing weapons contained white phosphorus, which caused extremely painful burns; there could be no question of banning them, however, since to do so would place small armies at a disadvantage to large ones. Anti-aircraft and anti-tank weapons (Section I, B.2) were purely defensive and could not therefore be banned even if they were partly composed of shells containing an incendiary device. Molotov cocktails and similar devices, often the only weapons of the poor, could not be prohibited either. The restriction placed upon anti-aircraft and anti-tank weapons in the initial text of the working paper (CDDH/DT/2 and Add.1) had been lifted because it would have been impossible to require that they were only to be employed subject to the proviso "that they were used exclusively for that purpose".

42. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that the report of the Conference of Government Experts on the Use of Certain Conventional Weapons was an important document because the work of that Conference had been conducted at a very high level by specialists, though that in no way diminished the value of the ideas set out in the United Nations report on Napalm and other incendiary weapons and all aspects of their possible use, and at the first Red Cross Conference.

43. Since, however, the question of incendiary weapons was one of the most important issues from the points of view of both humanitarian law and State security and defence, it was reasonable to regard the Conference of Government Experts merely as a first step towards the study and rational definition of legal criteria capable of forming the basis of future political decisions.

44. His delegation at the Conference had realized that it was difficult to define the notion of "unnecessary suffering" and determine which weapons might cause such suffering, since all weapons, whether incendiary or otherwise, caused unnecessary suffering and wounds. It was therefore essential to determine the criteria on which the Ad Hoc Committee might base its study in that respect.

45. On the questions at issue, he read out paragraph 84 of the report on the Conference of Government Experts, which stated that "all experts agreed that the effect of a burn wound depended on the extent, depth and site of the burn, and on the quality and accessibility of medical facilities". In that case, he said, the notion of unnecessary suffering caused by burn wounds was contestable. On the other hand, paragraph 85 of the report stated that "all experts agreed that a burn wound could, like other wounds, be very painful, and that, generally speaking, severe burn wounds were probably the most painful type of wound and frequently remained so for long periods of time." The question arose, to what extent suffering was unnecessary, at what point it became so, and as from what degree of suffering the weapons should be prohibited.

46. In his view, that was a highly complex problem, despite the enlightened opinions of the physicians and specialists who had drafted the report on the Conference of Government Experts. If the report was to be followed to the letter, there would have to be a ban on the use of all incendiary weapons, since they all caused unnecessary suffering.

47. The problems inherent in any ban on incendiary weapons called for thorough study, for the issue was a controversial one; moreover, in the annex to the working paper (CDDH/IV/201 and Add 1 to 3), provision was made for an exception to the prohibition of such weapons.

48. International relations were based on the security of nations. Some countries manufactured low-cost incendiary weapons for their own defence. If the use of such weapons was banned, a small country would become unable to defend its territory and would be in a position of weakness vis-à-vis large countries which produced costlier and more efficient weapons. He therefore felt it was difficult to ban a particular category of weapons and he appealed to the Ad Hoc Committee to co-ordinate and draw up fair rules to govern the prohibition and restriction of certain weapons.

49. His delegation considered that prohibition or restriction could not be applied to all incendiary weapons, which should be given a comprehensive or thorough study, taking into account political and legal definitions, on the one hand, and the complex nature of international relations and principles governing contemporary life, on the other. He recalled that, when the Conference Secretariat had submitted its report to the United Nations General Assembly, it had made it quite clear that the first findings of the study on the banning or restriction of certain weapons did not allow of their being abolished or prohibited.

50. He hoped that the Ad Hoc Committee would continue its study and would draft constructive proposals which would not create additional difficulties in international relations but would make it possible to find universally valid rules guaranteeing the free development of all States. Furthermore, he considered that the matter should be referred also to Committee III, which was concerned with civilian objects, since such objects should not be attacked, no matter what class of weapon was used.

51. His delegation was participating in the study of the problem with an open mind and heart; it hoped that it would be possible to take realistic decisions acceptable to all sovereign States.

52. Mr. ZAFERA (Madagascar) said that his country had examined with great interest the report of the Conference of Government Experts on the Use of certain Conventional Weapons that might cause unnecessary suffering or have indiscriminate effects. It appreciated the improvements made to the Geneva Conventions of 1949 in the draft Additional Protocols, particularly those which concerned the prohibition of the use of "weapons, projectiles, substances, methods and means which uselessly aggravate the sufferings of disabled adversaries", as stated in article 33 of draft Protocol I.

53. Those provisions, however, were inadequate, for they reaffirmed rules that were already to be found in other international instruments and the ban which they prescribed should be extended to cover certain categories of weapons which by the manner in which they were used had indiscriminate effects.

54. He welcomed the establishment of the Ad Hoc Committee, which would enable the Conference to arrive rapidly at the stage of political decisions on the prohibition of conventional weapons that could cause unnecessary suffering or have indiscriminate effects, and draw up rules prohibiting the use of napalm and other incendiary weapons. He thought that the working paper (CDDH/IV/201 and Add.1 to 3), whose basic ideas he supported, in particular the prohibition of the use of incendiary weapons, the setting up of a body entrusted with the study of the development of armaments and of the nature of the prohibition, formed a good basis for discussion.

55. The Government of Madagascar condemned the use of incendiary weapons and all methods of destruction employing napalm or phosphorus, which caused terrible injuries. In such cases no argument or subterfuge could prevail over humanitarian law. Admittedly the Ad Hoc Committee's task was not an easy one in view of the divergence of views expressed in the Committee. It should be borne in mind, however, that international public opinion expected the Conference to take a stand on the side of humanitarian law.

The meeting rose at 5.5 p.m.

SUMMARY RECORD OF THE ELEVENTH MEETING

held on Friday, 21 February 1975, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

In the absence of the Chairman, Mr. Amir-Mokri (Iran), Vice-Chairman, took the Chair.

CONSIDERATION OF THE QUESTION OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUCERNE CONFERENCE AND OF PROPOSALS (continued)

(a) Napalm and other incendiary weapons (concluded)

1. Mr. KLEIN (Holy See) said that the special position held by the Holy See in the world compelled it to avoid taking any political attitude, so that its delegation was often obliged to abstain from voting. The statements of that delegation were therefore limited to the spiritual and moral aspects inherent in every human activity.
2. The Holy See considered that every effort should be made to prevent the difficulties that inevitably arose in human affairs from deteriorating into armed conflicts, which were not only always cruel and fraught with consequences, but only resulted in a temporary removal of difficulties and created new problems and new conflicts.
3. Jus in bello was all the more urgent, since, at the actual time when the Diplomatic Conference was being held, human beings throughout the world were destroying, wounding and killing by order of their political leaders and other human beings were consequently being wounded, killed, captured or reduced to wretchedness, deprived of shelter, food and freedom. With regard to ultra-modern weapons, the report of the Conference of Government Experts on the Use of Certain Conventional Weapons showed that the conclusions of the experts, although technically objective, were not in concordance. He hoped that the experts would quickly come to an understanding on the following points at a future meeting and that the responsible political authorities would then reach agreement on them: prohibition of all weapons not solely intended for the temporary neutralisation of the adversary; prohibition of all weapons causing extended suffering, disablement or fatal diseases, such as those of the blood or bones, after neutralisation; prohibition of all weapons or weapon systems which, for any reason

such as power, volume, dispersion, inaccuracy, perfidy, delayed action or effects on the natural environment, became weapons or weapon systems for use against non-combatants or the civilian population. The work of the Ad Hoc Committee on Conventional Weapons in that area should be closely linked with that of Committee III, to ensure better protection of the civilian population.

4. The Holy See regarded consideration for the civilian population as a strict obligation. The use of weapons which could strike at combatants and non-combatants indiscriminately was inadmissible.

5. The work of the Ad Hoc Committee could not be brought to a successful conclusion if any delegation sought to gain political advantages or to defend military advantages: success could be achieved only if that work was imbued with a true spirit of charity and humanity towards all, soldiers and non-combatants alike, irrespective of whether they were allies or adversaries.

6. Mr. EL MEHDI (Mauritania) asked that his delegation be added as co-sponsor of working paper CDDH/IV/201.

7. He strongly supported the general prohibition of all weapons that might cause unnecessary suffering.

8. For humanitarian reasons, a ban should be placed on the use of incendiary weapons, anti-personnel fragmentation weapons, fléchettes, small calibre projectiles causing serious wounds and anti-personnel land-mines which struck indiscriminately and caused unnecessary suffering through serious, terrifying and painful wounds that were difficult to treat.

9. His delegation considered that the provisions of Articles 22 and 23 e) of the Regulations respecting the Laws and Customs of War on Land, annexed to The Hague Conventions No. II of 1899 and No. IV of 1907, and which were also to be found in the Preamble to the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime, as well as in the report of the United Nations Secretary-General on Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1)^{1/}, showed that the use of certain categories of weapons should be generally prohibited for the well-being of all mankind.

^{1/} United Nations publication, Sales No. E.73.I.3.

10. Mr. NGUYEN VIET (Democratic Republic of Viet-Nam) said that for some twenty years Viet-Nam had served as a testing-ground in a neo-colonialist war waged by aggressive imperialism with the most modern weapons and means of warfare against the less-developed peoples of Asia, Africa and Latin America fighting in defence of their fundamental national rights. The American press had reported that the data of experience gained by the United States of America in the use of new weapons in Viet-Nam was being studied in fifty universities and research centres in the United States of America. The purpose of those studies was to improve existing weapons in order to use them in new wars of aggression. In that context, he quoted from a telegram stating that since early February 1975 the air force of the Khmer Republic had been using new American bombs known as CBU-55 which, apart from a greater destructive power, absorbed oxygen within a radius of thirty-two metres of their point of impact, thereby instantly destroying all human life in that area.

11. The Rapporteur of the Conference of Government Experts was to be commended for covering the various points of view in a clear and concise document. There was, however, a serious gap in the report, since it failed to refer to the use of new weapons during the recent neo-colonialist war in Viet-Nam, as described in two reports of experts of the Democratic Republic of Viet-Nam submitted to the Lucerne Conference and mentioned in annex 4 to the report of that Conference.

12. The report also did not refer to certain statements giving a general appraisal of the Conference and criticizing the way in which the problems and objectives of the study of conventional weapons had been juxtaposed with the development of humanitarian law.

13. Concerning incendiary weapons, the distinctions between "anti-personnel" and "anti-matériel" incendiaries (report of the Government Experts, para. 46), between "intensive-type" and "scatter-type" incendiary agents (*ibid.*, para. 52), and between "fire-bombs" and "incendiary bombs" were artificial and tended to confuse the minds of the public and thus to weaken condemnation of the criminal use of such weapons. His delegation shared the view of the experts, mentioned in paragraph 46 of their report, that the Conference could most usefully concentrate on the anti-personnel use of the weapons in question.

14. On the subject of the definition of weapons, he said that the expression "incendiary munitions" used in annex 5 to the report of the Conference was much too wide and could well include substances not yet transformed into weapons, whereas the terms of reference of the Conference were to consider a limited number of conventional weapons.

15. Similarly, the term "smoke munitions" used in the working paper (CDDH/IV/201 and Add.1 to 4) might include not only smoke grenades intended to prevent enemy observation (which need not be prohibited) but also white phosphorus munitions, a term which in turn might cover various kinds of phosphorus bombs and shells which had already claimed numerous civilian victims in Viet-Nam.
16. As to the category of "fuel-air explosives" mentioned in annex 5 to the report, it could range from simple bottles of petrol to gas bombs and seven-and-a-half ton bombs whose destructive power was outdone only by the atomic bomb (from 1967 to 1970, 160 super-bombs of that kind had been dropped over South Viet-Nam).
17. In Viet-Nam, the incendiary weapons most widely used by the United States army had been napalm bombs, phosphorus bombs, thermite bombs, magnesium bombs, and NPT (napalm + phosphorus + thermite) bombs, of ever-increasing thermal power.
18. Contrary to what was said in paragraph 48 of the report, white phosphorus was used in Viet-Nam in the form of artillery shells, phosphorus bombs and the explosive mixture NPT, which was enclosed in hexagonal steel tubes. Hundreds of such tubes were placed in bomb-containers which burst open and scattered hundreds of small bombs that started fires over a very wide area.
19. Those different categories of incendiary bombs were used indiscriminately by the United States army against civilian objects and military objectives and often in conjunction with high-explosive and fragmentation bombs; aircraft released high-explosive bombs unexpectedly and drove the civilian population into underground shelters, then aircraft discharged a new wave of incendiary and smoke bombs to bring the civilians out of the burning or smoke-filled shelters. Immediately afterwards a wave of fragmentation bombs killed or wounded those leaving the trenches and shelters. Thus, many victims were injured by high-explosive bombs and at the same time burned by the napalm bombs and wounded by pellet bombs.
20. By its use of such incendiary bombs, the United States army aimed at inflicting on its victims a terrible death or seriously wounding them for the rest of their lives; it aimed at intimidating not only the victims but also survivors and witnesses, and at exterminating, on the pretext of reprisals, an entire population which refused to submit to imperialist aggression.
21. The atrocious reality of the Viet-Nam war categorically gave the lie to the conclusions of certain experts (paras. 60 et seq. of the report) who affirmed that incendiary bombs aimed from a distance could be guided towards precise objectives, mainly as anti-matériel weapons, their incendiary character being a secondary

factor, and that fire-bombs (including napalm) were chiefly intended for use in a specific sector of the battlefield which could be determined beforehand, and had no deadly or highly destructive effects.

22. As to the effects of incendiary weapons on the human body, he believed that the report of the United Nations Secretary-General on the subject expressed the grave concern of the international community and deserved careful study. It provided the Conference with statistics established by experts on burn wounds caused by napalm bombs. Out of eight victims of a napalm bombardment the extent of the body surface burned was estimated at 12 per cent in one case, 25 per cent in two cases, 43 per cent in one case, 49 per cent in one case, 70 per cent in one case, 80 per cent in one case and 100 per cent in one case; in fact in seven out of eight cases the extent of the burns was at least 25 per cent of the body surface. The degree of severity of the burn wound had been estimated as follows: for twenty-four napalm casualty cases, second-degree burns in two cases, third-degree burns in eight cases, fourth-degree burns in twelve cases and fifth-degree burns in two cases. Thus the majority of the victims suffered third- or higher-degree burns. Moreover, the proportion of 5 to 10 per cent of cases of disablement following such burns, as quoted to the newspaper Le Monde by the Minister of Health of the Democratic Republic of Viet-Nam (Le Monde, 25 November 1967) was accurate. The percentage had continued to increase since 1968 as a result of improvements in weapons and techniques. Information on the subject was available everywhere, and he would particularly suggest a work by Mark Lane, an American lawyer, entitled "Conversations with Americans".

23. With reference to possible prohibitions or restrictions, his delegation wished to make a comparison between the real situation in Viet-Nam and the statement made in paragraph 100 of the report of the Government Experts that the "conflicting nature of the information supplied ... could only result in a sharp difference of opinion over the assessment of incendiary weapons in the light of applicable legal criteria". He recalled, in that connexion, the opinion of a United States lawyer, quoted by the Swedish representative at the ninth meeting (CDDH/IV/SR.9) of the Committee, describing the use of napalm bombs as a "war crime". His delegation would state its views on the subject of prohibition and restrictions when all categories of weapons had been discussed.

24. Mr. BLIX (Sweden) said he shared the opinion of the New Zealand representative that the matter should be considered from both the political and the factual points of view. Hence the value of a combination of discussions in the Ad Hoc Committee and at the United Nations with discussions in an expert forum.

25. His delegation had noted with interest the United States commitment to a continued serious approach to the item under discussion. It disagreed with the attempt to draw general conclusions from a few incidents in which the victims were given more advanced medical treatment than was normally available. Such cases might not be typical. On another point, it agreed with the United States delegation that national security interests varied from country to country. The exceptions wished for by the co-sponsors of working paper CDDH/IV/201 and Add.1 to 4 were certainly connected with the security interests of their own countries. Interest in those exceptions, however, was probably shared by a large number of other countries outside the group of co-sponsors. He did not deny that such countries might have yet other concerns. As always, it was a matter of searching, through a dialogue, to find what were absolute necessities and what were desirable options.

26. The USSR representative had spoken of the defence problems of the small countries, but no small country based its whole defence on incendiary weapons. The USSR representative was right in saying that the co-sponsors of the working paper did not seem to be in complete agreement on the difficult matter of exceptions. If, however, broad agreement was reached between all delegations, including those of the Union of Soviet Socialist Republics and the United States of America, to support the general approach on which the co-sponsors were agreed, the minor but by no means negligible question of the exceptions could be solved.

(b) Small calibre projectiles

27. Mr. BLIX (Sweden), referring to the question of small-calibre projectile, said that his delegation did not share the understanding, mentioned in paragraph 118 of the report of the Conference of Government Experts, to the effect that small-calibre projectiles were those "having a substantially smaller calibre than the 7.62 mm rounds which had been in common use since the turn of the century". Nor did it agree with those who, according to paragraph 120, used the expression "high-velocity projectiles" as synonymous with "small-calibre projectiles".

28. His delegation adhered, instead, to the meaning given to the term "small-calibre projectile" in the experts' report of 1973 entitled Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects, namely, one that covered all calibres of traditionally-used rifles, machine-guns, carbines and pistols, including weapons of 7.62 mm and 9 mm calibre and even machine-guns of 12.7 mm. The term "high velocity projectiles" was more difficult to define; 400 m s was a low velocity and 900 m s was a high velocity. Muzzle velocities between 700 and 900 m s were

border cases. He would refer only to projectiles of velocities above 800 m s as high velocity projectiles. Most 7.62 mm projectiles in current use, with muzzle velocities just below 800 m s, and all currently existing standard 5.56 mm calibre projectiles for military use had velocities well above 800 m s. They were thus termed high-velocity projectiles. It was useful to clarify that point, because the introduction to chapter IV of the report of the Conference of Government Experts might give the impression that the inquiry was exclusively concerned with projectiles of 5.56 mm and smaller calibres. True, interest had centred around projectiles of 5.56 mm and smaller calibres, which had been designed to succeed the 7.62 mm projectiles and were suspected of causing excessive injuries, but the co-sponsors of working paper CDDH/IV/201 and Add.1 to 4 had not focused their proposals on the velocity only; they had sought to build on the rationale rather than the words of The Hague Declaration of 1899 concerning the Prohibition of the Use of Bullets which Expand or Flatten Easily in the Human Body.

29. It was of great interest to note that several Governments, including the United States and the United Kingdom Governments, had avoided a narrow interpretation of The Hague ban; their current military manuals prohibited not merely soft-nose bullets, but also irregularly-shaped bullets. Ammunition which disintegrated in the human body had recently been the centre of controversy in the United Kingdom, in connexion with police use. The British Home Secretary had considered the use of such ammunition unacceptable. It was significant that The Hague ban, designed to prohibit the use of bullets causing excessive injuries, had even had a decisive influence on the choice of weapons for police use, although it was not formally applicable in the domestic sphere.

30. It seemed reasonable, and fully in line with The Hague Conventions, to propose - as the co-sponsors of working paper CDDH/IV/201 and Add.1 to 4 had done - a more comprehensive rule covering all those small-calibre projectiles which were likely to cause excessive injuries. It was obviously immaterial, from the humanitarian standpoint, whether the effects were due to the projectile's velocity, shape or material, or to a combination of those properties. At the present juncture, however, it was appropriate to discuss whether some or all of the new 5.56 mm projectiles - with velocities well over 900 m s - caused excessive injuries, and whether they or some of them should be banned under a rule based on the rationale of the 1899 Hague ban since their velocity and calibre per se would not suffice to place them within the prohibited categories. However, attention should be given to the study of their characteristics. The latter might place such weapons in the prohibited category.

31. Paragraphs 120, 127 and 147 of the report of the Conference of Government Experts showed a number of experts as thinking that the introduction of new ammunition almost invariably had been accompanied by complaints that it was worse than its predecessors. Some experts, such as Mr. Scott of the United Kingdom delegation, who had submitted a paper to the Conference of Government Experts, had displayed, in conformity with that line of thinking, scepticism regarding the degree of injury caused by the new bullets. Scepticism, too, had been shown as to the value of the parameters; and it had been submitted that, if bullets were altered, weapon usage and military tactics would also be altered, and that there would be little ultimate effect on the sufferings of the wounded. According to Mr. Scott, the United Kingdom representatives in the discussions on the dum-dum bullet at the Hague Conference of 1899 had held the same view. That philosophy would automatically lead to an a priori critical and even negative attitude.

32. Some simplification was necessary in the discussions, for example regarding ranges. The effects of various small-calibre projectiles at extreme ranges were not crucial. It was of greater relevance to study their effects at ranges of 10 - 150 metres, the commonest ones in combat. Ranges were not mentioned in the 1899 Conference or in working paper CDDH/IW/201 and Add.1 to 4. With a more reasonable calculation of maximum effective range, more in line with normal distances between combatants, lighter ammunition than the 7.62 mm might perhaps be developed without need for excessive velocities. There had been much controversy on the effects of projectiles with velocities above some 800 m/s, but the basic fact had not been challenged that a higher velocity would impart to a bullet higher striking force and greater wounding capacity. The kinetic energy of a bullet was proportional to the product of its weight and the square of its velocity (ICRC 1973 report, para. 93). That basic physical law, at least, had not been questioned at the Conference of Government Experts in Lucerne; it showed that a change in velocity affected striking energy more than did a change in calibre. No one had suggested that striking energy alone determined the severity of the wound; but all would agree that the amount of striking energy transferred to the victim was the decisive factor for the wound. A bullet that tumbled without flattening like a dum-dum bullet nevertheless presented a broad face, thereby transferring more energy and causing greater injury.

33. The energy transfer was thus dependent inter alia upon tumbling, which in turn depended on the shape of the projectile, its angle against the trajectory, its spin and speed. The rate of energy transfer depended, furthermore, upon the velocity of the projectile. Even without any tumbling, it was a function of the cube of the velocity. Thus, the rate of energy transfer was enormously increased if a projectile had a high velocity and was so designed, moreover, that it tumbled on impact.

34. Projectile break-up depended on the strength of the jacket, the velocity of the bullet and the human tissue struck. Medical data quoted in paragraph 143 of the report of the Conference of Government Experts went to show that such breaking up might already occur at impact velocities of from 500 to 600 m s. The ICRC report of 1973 had stated that jacketed bullets tended to break at velocities above some 800 m s. Those statements were not incompatible. Where the jacket broke, the effect was similar to that of a dum-dum bullet. That was why the working paper submitted by ten countries (CDDH/IV/201 and Add.1 to 4) sought to prohibit the use of projectiles producing such effects, regardless of their velocity.

35. Velocity was of very great though not exclusive importance in determining the severity of injuries. It was a major factor in determining strike energy and of great importance for the rate of energy transfer. It was further of importance to the stability of the projectile on impact. It had been reported that tests of an earlier version of the United States M-16 rifle had shown that a bullet from that rifle was less stable than one from other weapons. It had had a tendency on impact to fall off its axis and produce a large wound. That had raised the question whether the bullet was compatible with the 1899 ban on dum-dum bullets. Changes had been made in the rifle, with the result -- according to the report -- that the seriousness of the impact wound had been reduced.

36. So far as concerned cavitation, it had been found that an elongated projectile striking soft tissue at low velocity tended to make a hole of about the diameter of the bullet, known as the permanent cavity. For a dum-dum bullet which flattened, the cavity was, of course, larger. A bullet of high velocity formed a temporary cavity, resulting from the enormous forces transferred to the surrounding tissues by the passage of the projectile. That gave rise to extensive tissue damage at great distance from the trajectory. Gelatin block studies could give only slight indication of the effects produced on human tissue. At the Conference of Government Experts chapter III of the ICRC 1973 report had been strongly criticized by many experts for suggesting that at impact velocities of around 800 m s there was a discontinuity or jump in the relationship between bullet velocity and bullet wounding capacity. Yet the 800 m s velocity was no recent invention. As long ago as 1935, experiments carried out in the United States of America had enabled military writers to assert that there were critical velocities, of 2,500 f/s or more, for example, at which the character of the wound began to change radically, owing to the transmission of the bullet forces to a much greater mass of tissue. Studies had also shown that the velocity of sound in a particular medium was a "critical velocity".

37. Apart from the experiments referred to in the report of the Conference of Government Experts (paragraph 137 et seq.), he quoted others which showed that the mortality figures resulting from firing bullets on sheep were drastically higher when the projectiles had a velocity of 900 to 1,000 m s than when they had lower velocity. Against that background, the Swedish delegation could not endorse paragraph 144 of the report of the Conference of Government Experts, which said that the ICRC 1973 report "overstated the significance of velocity as a determinant of wound severity". Velocity was far more than a factor that was "by no means negligible". It was not the only factor that could cause excessive injuries, but it remained a principal one. The question was currently of the greatest importance when the velocities of projectiles of 5.56 or smaller calibre greatly exceeded 800 m s. There was even talk of a weapon of calibre between 4.3 and 4.9, now being tested by producers and being developed in the Federal Republic of Germany, whose bullets might have a velocity of 1,200 m s. He asked whether such a weapon would have to be tested in war before a wound assessment could be made.

38. He did not dispute the military advantages of small calibre projectiles of high velocity. The question was to weigh that against the severe injuries caused. He did not dissociate himself from the opinion expressed in paragraph 145 of the report of the Conference that "much more study was needed, particularly in the search for common ground between experimental and clinical data". In his view, there was ample prima facie evidence of high velocity projectiles causing excessive injuries. However, it was clear that others needed more data in order to be convinced of that conclusion. It would be tragic if only grim experience would convince the world that the new type of projectile was more injurious than the traditional ones.

39. Mr. ESMAIL (Kuwait) said that the question of small-calibre weapons needed to be more thoroughly studied, in spite of all that was known as a result of experiments already carried out. Some delegations were not convinced by the arguments put forward. Changes that had already been made, or were contemplated, in connexion with those new weapons would not alter in the slightest their inhuman aspect. The calibre of a rifle bore no relation to the rate of fire or the velocity of projectiles. Hence it was useless to take the muzzle velocity of a 7.62 mm rifle as a basis for prohibiting its use.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE TWELFTH MEETING

held on Wednesday, 26 February 1975, at 3.25 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUCERNE CONFERENCE AND OF PROPOSALS (continued)

(b) Small calibre projectiles (continued)

1. Sir David HUGHES-MORGAN (United Kingdom) noted that, according to the sponsors of the proposals in section IV of the working paper before the Committee (CDDH/IV/201 and Add.1 to 4), the rationale behind the prohibition of the use of especially injurious small calibre projectiles was the same as that which justified the ban on the use of dum-dum bullets. Since the latter were specifically and intentionally designed to release, if not all, at least a large part, of their kinetic energy on the target they struck, they inevitably inflicted, as it had been stated at the Lucerne Conference of Government Experts, wounds of a different nature from those inflicted by normal bullets. Nevertheless - and admittedly in exceptional cases - a normal bullet could produce the same effect as a dum-dum bullet if it were stopped within the victim's body, either because its velocity of penetration was insufficient, or because it had struck a bone. At that point, all the kinetic energy of the normal bullet was transferred to the human tissue, exactly as in the case of the dum-dum bullet.

2. In his opinion, to advance the same rationale for banning the use of modern small calibre high-velocity bullets as that put forward for prohibiting dum-dum bullets was misleading and appealed to the emotions rather than to reason, thus preventing a clear view of the problem. He acknowledged, however, that even if the wrong rationale was invoked, the actual proposals in section IV of the working paper were of considerable interest. Four main causes of severe wounds were mentioned in paragraphs a), b), c) and d). It would be seen that the wording of the proposals and the annexed explanatory memorandum was based on proposals contained in an earlier working paper (CDDH/DT/2 and Add.1), substantially revised in the light of the debates at the Conference of Government Experts. The deliberations of those experts had thus clearly been of assistance to the sponsors of the working paper, and that, to a certain extent, answered

those who had criticized the work of the Conference of Government Experts as being "destructive": new evidence in that field could not be "destructive" except to misconceived ideas. It was indeed vitally important to have the fullest and most correct documentary information possible.

3. Section IV of the working paper referred to four effects which contributed to severe wounds, but dealt with the symptoms of those effects without identifying the cures. Thus, it did not seem that the proposed prohibition could ever be applied in practice by weapon designers.

4. Reviewing the four paragraphs of section IV on the causes of severe wounds, he said, in connexion with sub-paragraph a), that since the effect of any bullet was normally to break or deform on impact with a bone, should not the goal of prohibitionists be to ensure that the jacket of the bullet was of adequate thickness?

5. Sub-paragraph b) referred to small calibre projectiles designed to tumble "significantly within the human body". But what was to be understood by the word "significantly"? The Government Experts had recognized that all bullets, even those of low velocity, were apt to tumble, and various factors - not all of them static - entered into account. The phenomenon was not yet fully understood, and it was therefore obvious that more detailed research would be needed before a meaningful prohibition could be formulated.

6. Sub-paragraph c), designed to prohibit the use of bullets which created shock waves capable of causing extensive tissue damage outside the trajectory, somewhat puzzled him, since to him the phenomenon of cavitation, to which the prohibition seemed to refer, was independent of and totally separate from the shock wave created by the bullet. The cavitation could admittedly increase with velocity, but tissue damage outside the trajectory of the bullet had been encountered, even in wounds from low-velocity bullets. That again could be a phenomenon which was not fully understood. In addition, it did not seem possible to define clearly the meaning of the word "extensive" in the first line of sub-paragraph c).

7. Sub-paragraph d) concerned the prohibition of the use of small calibre projectiles which were so designed or had such velocity that they produced secondary projectiles within a human body. That raised yet another difficulty, since the phenomenon occurred frequently when a bullet struck a bone. That problem might also be related to that of jacket thickness, to which he had already referred.

8. There were many other technical considerations, which it would be inappropriate for him to develop in the present forum; perhaps an opportunity would arise in the future at another and more appropriate forum.

9. Referring to the rule proposed in the earlier working paper (CDDH/DT/2 and Add.1), he drew attention to the comment of one expert at the Conference of Government Experts that the adoption of a rule on those lines would lead to the prohibition of every military rifle currently in use. A prohibition as vague as that set out in working paper CDDH/IV/201 and Add.1 to 4, which modified the proposal in working paper CDDH/DT/2 and Add.1, could mean, according to the interpretation placed on it, that either every rifle produced in the last hundred years or no rifle at all was prohibited. One thing appeared certain, as the Swedish representative had explained so clearly: the Ad Hoc Committee was concerned not only with rifles of 5.56 mm calibre and smaller, but with rifles of every calibre. In fact, the blame was placed on the rifle as a weapon. At Lucerne, surgeons who had treated, under battle conditions and in hospitals, wounds from the various rifles currently in use, had stated that they were unable to distinguish between the wounds inflicted by the modern 5.56 mm rifle and those resulting from the older lower velocity and larger calibre weapons.

10. Obviously, the difficulty with rifles was that they were designed to place hors de combat a human target at long range. It followed that a wound inflicted by a bullet fired at shorter range would be likely to be more grievous. His delegation had listened with keen interest to what the Swedish representative had said on the subject. If the effective range required was reduced sufficiently, personal armament could be restricted to low-velocity weapons which caused wounds of a comparatively benign nature, but that would involve a complete recasting of military tactics. Obviously, there might be greater use of artillery, rockets, bombs and mines and indeed of every other lethal device to incapacitate the enemy at longer ranges, and it was doubtful whether the sufferings of the soldier in the field would thereby be reduced. That was precisely the point which Mr. Scott had made at the end of the paper he had presented to the Lucerne Conference of Government Experts and which had been so strongly criticised by the Swedish representative. That could be checked if the paper was re-read with care.

11. If the rifle was to be retained as a weapon of war, it could not be envisaged, in the light of existing knowledge, that a prohibition on the lines of the one set out in section IV of the working paper would serve any useful purpose although that did not mean that there was no room for prohibition in the future. His delegation saw great value in continuing with research in order to determine whether it was possible, while preserving the effectiveness of the weapon, to reduce the tumbling, cavitation and other wounding effects of the bullets. It would continue to play its part in research, but could see little prospect of any realistic prohibition on rifles emerging until further research had been done. It was difficult to visualize States agreeing to give up rifles unless that research led to very much clearer conclusions. That was not the case with rifles, but perhaps there was hope in other areas.

12. Mr. BLIX (Sweden) said that he had listened with interest to the United Kingdom representative's statement and was glad that the delegation of that country had taken part in the discussions; it was a pity that other delegations had not expressed their opinions. As he had said at the eleventh meeting (CDDH/IV/SR.11), it seemed to him perfectly natural that the question should be broadly discussed in the Ad Hoc Committee, if it was the intention to secure the agreement of a large number of Governments to the proposals under consideration. While reserving the right to reply later in detail to the various points raised by the United Kingdom representative, he wished to make some comments forthwith on the latter's statement.

13. At the end of his earlier statement, referring to high-velocity small calibre projectiles, he had said that it would be tragic if countries brought out new weapons without making sure that they did not inflict unnecessary and ever more serious injuries. That was why he considered that further research should be conducted in that area. The United Kingdom representative had said, in effect, that countries could not be expected to forgo a weapon such as the high-velocity rifle, despite the sufferings it could cause, unless research provided more definite conclusions, and that, although some modern projectiles raised very great difficulties, some results could be hoped for in other areas; presumably, the United Kingdom representative was referring to incendiary weapons. He did not believe that it was necessary to wait for overwhelming proof to be assembled concerning the gravity of injuries caused by certain new rifle bullets before reaching the necessary conclusions.

14. He had nevertheless been pleased to hear the United Kingdom representative's statement that his country was pursuing its research into the effects of new standard small calibre high-velocity projectiles.

15. The United Kingdom representative had further criticized the sponsors of the working paper (CDDH/IV/201 and Add.1 to 4) for using the same arguments for prohibiting certain small calibre ammunition as for prohibiting dum-dum bullets. However, the same question had been raised in a letter by the Acting General Counsel of the United States Department of Defense. The question was by no means far-fetched.

16. As was mentioned on page 12 of working paper CDDH/IV/201 and Add.1 to 4, the prohibition of dum-dum bullets covered "bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions." The rationale of that rule should also apply to bullets that tumbled and tore their way through the tissue with a broad face, thus creating a very large wound.

17. With regard to the use of the term "significantly" in the working paper, he said that it was difficult to describe precisely the degree of tumbling of small calibre projectiles which would lead to excessive wounds. He would welcome any suggestion to improve the text. In any case, a broad interpretation should be given to the prohibition of dum-dum bullets, which should, for instance, apply to hollow-point bullets.

18. He agreed with the United Kingdom representative that the proposed rule in the working paper was not directed only against 5.56 mm projectiles, but must cover all bullets which were found to cause excessive injury. What mattered was not the calibre used, but the injuries caused. While admitting the military advantages of the new high-velocity projectiles, the unnecessary injuries they caused to the human body must not be ignored; it had been concluded that 5.56 mm projectiles known so far would fall within the prohibition, owing to the gravity of the wounds inflicted. Although some Governments had not reached that conclusion, there was still hope that they would eventually be of that opinion.

19. Ballistics was indeed a complex science, but should nevertheless be publicly discussed in the Ad Hoc Committee, not only in the meetings of the experts who attended the Conference of Government Experts at Lucerne.

20. With regard to the range of the weapons in question, the United Kingdom representative had said that modern small calibre projectiles were designed for use as long-range weapons, effective at a distance of, say, 400 metres, and had indicated that it might be possible to reduce their effective range. But that, in the view of the United Kingdom representative, would call for a radical change in military tactics. On that point, he wished to reiterate that it might be possible to produce projectiles of smaller calibre than the traditional ones not requiring a high velocity, provided that the maximum effective range required could be reduced. It had never been his delegation's intention to propose a revolution in military tactics by that suggestion. It was based upon the fact that 90 per cent of the time, fighting took place over a distance of less than 150 metres.

21. He intended to study the United Kingdom representative's statement more thoroughly and, if he found it necessary, to reply to it in greater detail at the thirteenth meeting. He regretted that more Governments had not stated their views during the Conference.

(c) Blast and fragmentation weapons

22. Mr. BLIX (Sweden), referring to the question of blast and fragmentation weapons, pointed out that the variety of those weapons was enormous, ranging from hand-grenades and bomblets, some weighing about 100 g, to general-purpose bombs of 500 kg or more. Those were the weapons that had claimed the greatest number of victims in recent armed conflicts. The working paper (CDDH/IV/201 and Add.1 to 4) contained draft proposals for the prohibition or limitation of a few special types of blast or fragmentation weapons.

23. Modern developments had produced some fragmentation weapons which were apt to be indiscriminate in their effects and to cause excessive suffering. One of those weapons, the cluster bomb, mentioned in paragraph 176 of the report of the Conference of Government Experts, covered extraordinarily large areas with great risks to individuals. Thus, a standard fighter-bomber, carrying 8 to 15 bombs, could cover an area of several square kilometres with 1.6 to 3 million fragments weighing about 0.7 g. A standard artillery shell yielded about 3000 fragments weighing more than 0.5 g. To produce 3 million fragments, 1000 shells would be needed, with a total weight of 40,000 - 50,000 kg - the payload of more than ten fighter-bombers. The total casualties might be lower than in the case of cluster bombs, for soldiers and civilians would have ample time to take cover. In

a cluster bomb attack, the element of surprise was greater, leading to a heavy increase in the number of victims. If, as mentioned in paragraph 174 of the report of the Conference of Government Experts, the object of attacks by cluster bombs was to neutralize the enemy by forcing him to keep his head down, that could be done with many fewer casualties than the cluster bombs would cause. Moreover, those weapons offered a temptation by their effectiveness but they were likely to cause a greater number of civilian casualties, at any rate when the attack occurred in populated areas.

24. That type of cluster bomb, which had very small fragments, could be regarded as essentially anti-personnel. Its anti-matériel effects would be very limited. The death rate from multiple injuries had been discussed at length at Lucerne. Some experts had expressed the opinion that multiple wounds were not necessarily a very serious factor. In medical literature, however, multiple injuries were commonly considered to be very serious, although to some extent the seriousness would evidently depend on the parts of the body affected and the degree of damage. Extensive studies on that subject appeared in the book Wound Ballistics, published in 1965 by the Surgeon-General of the United States Army.

25. The data clearly pointed to a different conclusion from that set out in paragraph 204 of the report, where it was suggested that multiple wounds led to mere incapacitation rather than to more serious wounding.

26. It had often been pointed out at the Conference of Government Experts that the older types of HE fragmentation missiles produced heavy, irregular-shaped, large fragments, which caused graver and more lethal injuries than did the newer types. However, the risk of being hit by those large fragments was small. That the heavy wounding power of the munitions used in the Second World War was due to small fragments, weighing 1 to 2 g, rather than to big chunks of metal, was confirmed by Burns and Zuckermann in The Wounding Power of Small Bomb and Shell Fragments (London, 1943).

27. The death-rate in correlation with the number of abdominal organs injured was a matter which seemed to have been misunderstood by several experts, to judge by paragraph 206 of the report of the Conference of Government Experts. In paragraph 146, the ICRC 1973 report - Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects, injuries to several abdominal organs had been mentioned solely by way of example to show that the risk of death rose with the number of organs affected. To take another

example, wounds in both the abdomen and the thorax would clearly be in most cases more severe than one wound in either region. His delegation believed that, even if the latest fragmentation weapons did not cause the serious wounds that single large fragments occasionally had during the Second World War, multiple wounds considerably increased the risk for the victim.

28. The proposed rule on fragmentation weapons in working paper CDDH/IV/201 and Add.1 to 4 differed somewhat from the 1974 version (CDDH/DT/2 and Add.1). The word "anti-personnel" had been expressly inserted. Moreover dispensers had been mentioned in addition to cluster warheads.

29. He concluded by summarizing the rationale for a prohibition or a restriction of the use of anti-personnel cluster bombs. Those weapons had extreme area coverage. Several square kilometres could be covered in one instant by one combat aircraft thereby raising the risk of civilian casualties when the weapons were used in populated areas. Those weapons were usually delivered in such a way that victims had little advance warning, and persons present in the area under attack had little chance to take cover. When the warheads were used for neutralization, for example, of anti-aircraft batteries, they were likely to produce casualties out of proportion to that objective. They were almost exclusively effective against personnel. Matériel in the target area was not likely to be damaged. If the fragments were small or if repeated attacks were made, the victims would suffer multiple injuries, often entailing very serious medical risks. The great number of casualties which might occur simultaneously was likely to overload the belligerents' medical facilities, thus causing unnecessary suffering to the victims who could not be adequately cared for.

The meeting rose at 4.20 p.m.

SUMMARY RECORD OF THE THIRTEENTH MEETING

held on Friday, 28 February 1975, at 3.30 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUCERNE CONFERENCE AND OF PROPOSALS (continued)

- (b) Small-calibre projectiles (concluded)
- (c) Blast and fragmentation weapons (concluded)
- (d) Delayed-action and treacherous weapons

1. Mr. MENA PORTILLO (Venezuela) said that the present Diplomatic Conference gave participants an excellent opportunity to help to improve the lot of mankind by striving to draw up an instrument establishing rules of humanitarian law through which unnecessary suffering, cruelty and treachery might be brought to an end and, to that end, by trying to prohibit the use of certain conventional weapons in armed conflicts.

2. If their efforts failed to produce positive results, all those who were taking part in the Conference might be accused of failing, either through incompetence or through unwillingness, in their efforts to establish rules of conduct calculated to put an end to unnecessary suffering. They might even be accused of showing more interest in modern armaments technology than in ways of solving the major problems facing the modern world. He therefore urged all delegations not to miss the opportunity offered by the Conference of doing constructive work and to spare no effort or sacrifice in working to that end. In its eagerness to make a positive contribution, his delegation would like to join the sponsors of working paper CDDH/IV/201 and Add.1 to 5. It congratulated the sponsors, and in particular the Swedish delegation, on their excellent initiative and reserved the right to make any suggestions designed to strengthen the proposals in that document.

3. Mr. CRETU (Romania) said that the prohibition of weapons and methods which affected military objectives, the population and civilian objects indiscriminately, and of weapons and methods which might cause unnecessary suffering, was one of the most important and most complex questions before the Conference. The complexity arose from two different causes. The first, of a political nature, was the importance attached by States to the use of a particular weapon for various reasons - military effectiveness, the possibility of replacing one weapon by another, investment and research requirements, etc. The second was technical and took the ballistic, tactical, medical and legal aspects into consideration.

4. The work carried out in recent years, especially within the United Nations and at the conferences of experts organized by the ICRC, had thrown light on the technical characteristics and the dangers of such weapons, whose effects were incompatible with the principles and rules of general international law and of the Conventions and the customary law applicable in armed conflicts. In that respect, the sponsors of working paper CDDH/IV/201 and Add.1 to 5 had done constructive work in drawing up practical proposals for the prohibition of certain conventional weapons. In the opinion of his delegation, that document constituted an excellent basis for discussion. A few passages, however, called for redrafting, and the substance of certain parts could be reconsidered, e.g. the proposal in Section I,B.2.

5. The disastrous effects of incendiary weapons, and especially napalm weapons, on the civilian population, civilian objects and the environment had been clearly recognized by most of the experts at the Lucerne Conference. The experts had laid particular emphasis on certain of those effects: the psychological effect of terror, the severe nature of the burns, the great number of deaths, the difficulty of treatment, the exceptionally painful nature of the wounds, and the extremely serious matter of the difficulty, and sometimes impossibility, of social readjustment of burn victims.

6. He was glad to see that the report of the Conference of Government Experts, which had been so brilliantly analysed in the statements by the representative of Sweden, had pointed out that other categories of weapons considered by the Conference had effects that were contrary to the current rules of international law and to humanitarian principles. He had particularly in mind small-calibre projectiles and blast and fragmentation weapons. Some delegations still seemed to have doubts about the expediency of prohibiting the use of those weapons; the Diplomatic Conference or another conference of government experts would perhaps manage to remove those doubts.

7. For the time being, what was of overriding importance was the political determination to take into consideration the danger to which the civilian population, civilian objects and, in general, the human being and his natural environment were exposed through the use of certain conventional weapons that had indiscriminate effects and caused unnecessary suffering. His delegation hoped that the positions of the various delegations might be brought closer through constructive efforts. For its part, it would work unceasingly to bring about the widest possible prohibition of such weapons.

8. The CHAIRMAN, after obtaining the Ad Hoc Committee's assent, allowed the representative of the Friends World Committee for Consultation to circulate a document on the effects of fléchettes to the members of the Committee and invited him to introduce that document.

9. Mr. DUNCAN WOOD (Friends World Committee for Consultation) explained that the non-governmental organizations that he represented had instructed him to transmit to the Committee a document showing the effects of the use of fléchettes, with special emphasis on the gravity of the multiple injuries, which were particularly painful, caused by such anti-personnel projectiles. The document pointed out that their use contravened the Preamble to the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime, confirmed by the Regulations respecting the Laws and Customs of War on Land annexed to The Hague Conventions No. II of 1899 and No. IV of 1907. The document stated that the use of fléchettes was a flagrant example of the abuse of technology for destructive purposes and a clear case of the desire for efficacy overriding all humanitarian considerations. The non-governmental organizations in question strongly urged that the use of fléchettes should be prohibited.

10. Mr. ESMAIL (Kuwait), expounding his delegation's views on blast and fragmentation weapons, said that the report of the Conference of Government Experts showed that that Conference had been unable to produce a definition of the categories of weapons that should be included under that heading. It had been noted that blast and fragmentation effects could, in varying degrees, be produced by all explosive devices, whether general-purpose bombs, warheads, rockets or artillery shells. It had also been noted that it was not possible to make a clear separation between blast weapons and fragmentation weapons, for most weapons had both effects. When such weapons were used, it was impossible to differentiate between civilians and combatants, or between human beings and inanimate objects; moreover, it was felt that any substitute weapons would be just as dangerous as the originals.

11. The Conference had not in fact reached any conclusion regarding a limitation or prohibition of blast and fragmentation weapons. Many of those weapons had indiscriminate effects and caused multiple injuries and unnecessary suffering - especially cluster bombs, which released a number of projectiles, fléchettes or needles, and which should be prohibited.

12. Mr. ANDERSON (United States of America) said that in his delegation's view, the Committee's main task was to prepare the ground for future work by promoting better understanding of the complex question of weapons which could cause unnecessary suffering. His delegation did not think that the Diplomatic Conference was the appropriate venue for a detailed examination of the multiple aspects involved - medical, military, legal, technical and other.

13. He wished, however, to make a brief statement on fragmentation weapons, which were the most important of all the weapons under consideration. It would appear that those weapons accounted for a high percentage - in some cases over 80 per cent - of victims.

14. In many cases, the casualties were due to general-purpose weapons. The casing shattered by the explosive released a quantity of fragments of varying shape and size which caused multiple injuries. Controlled fragmentation devices functioned according to the same principle, but the fragments were of regular shape and size. Generally speaking, the fragments were also more numerous and smaller. Those weapons had the advantage of consuming less ammunition in an operation, thus simplifying logistics problems.

15. Divergent opinions had been expressed at Lucerne on the nature of the injuries caused by weapons of that type, but several experts had maintained that, although they increased the likelihood of hits and therefore the likelihood of incapacitation, those weapons caused less severe wounds and less morbidity and mortality. His delegation considered that, if general-purpose weapons were given preference over controlled fragmentation devices, a heavier payload would have to be launched at the objective and the resulting injuries would be more serious, with much more extensive damage to structures in the vicinity of the objective. For that reason, his delegation held that a limitation of the use of controlled fragmentation devices would not diminish the rigours of war, but would in fact have exactly opposite effects.

16. That example sufficed to show that, without a detailed study of medical, military and technical data in that complex field, it was possible to reach dubious and even erroneous conclusions. Consequently, his Government was continuing its study of those weapons with a view to making a useful contribution at the next Conference of Government Experts.

17. Mr. ESMAIL (Kuwait) said that he was speaking again in order to deal with delayed-action and treacherous weapons, among which time-fused devices, mines and booby-traps of all types were included. He pointed out that, as a defensive measure, the practice of laying minefields - provided that they were properly marked for the benefit of the local population and friendly forces - could not be prohibited. The views on prohibition expressed by the experts at the Conference had varied considerably. Some had denounced the treacherous and inhuman character of booby-traps in the form of corpses, dolls or fountain pens, causing victims among civilians and children. Others had pointed to the tactical or defensive value of those devices, but the Conference had not reached any conclusion. He himself considered that the use of anti-personnel landmines for the purpose of paralyzing the enemy's movements was acceptable.

18. On the other hand, he stressed the danger to civilians as well as to members of the armed forces of air-delivered mines, which were likely to strike indiscriminately, especially if they were scattered over a wide area. He therefore considered that, in the case of delayed-action and treacherous weapons, it was better to make every effort to provide a rule for limiting their use rather than to try to lay stress on their inhuman aspects or the medical results they produced, and that the best course would be to regard them as defensive weapons and to prohibit their use as offensive weapons.

19. Mr. NGUYEN VIET (Democratic Republic of Viet-Nam) said that he would explain his delegation's views on blast and fragmentation weapons on the basis of the facts that had been noted during the Viet-Nam war. In the opinion of his delegation, the ideas expressed in the report of the Conference of Government Experts were unrealistic, for the definitions and classifications appearing in it tended to confuse new and extremely deadly types of weapons and the classical weapons in current use. Although incendiary weapons had been used during the Second World War and in Korea, it had been in Viet-Nam that blast and fragmentation weapons had been tried out for the first time on a massive and systematic scale. It might be said that they were the second generation of weapons of mass destruction, following incendiary bombs.

20. Looked at from the point of view of a country that had been a victim of American weapons, it would be seen that there were three different categories of weapons of that type in existence: namely, fragmentation weapons, blast bombs and fléchettes.

21. The destructive effects of the weapons in the first category were due to their being cluster bombs, with small pellets of high velocity. A comparison, for example, of the spherical-shaped pellet bomb (BLU 26/B), used for the first time by the United States of America, in Viet-Nam in 1965, with the ordinary infantryman's grenade, showed that, on exploding, the grenade released some 80 to 90 fragments and that its range of action was about 4.50 metres, whereas the spherical-shaped pellet bomb released some 300 pellets with a velocity of 500 m s. and had a range of action of 10 to 15 metres. Furthermore, the container bomb held up to 640 bomblets and each aircraft carried four such bombs, so that a single aircraft was able to release 768,000 pellets. Thus, the effects produced by the mortar and the artillery gun were in no way comparable to those produced by pellet bombs.

22. Owing to their deadly effects, those bombs were highly effective in serving the purposes of a war of terrorism and genocide. They were therefore being constantly improved by the United States Army, which up to the present had used ten categories of bombs of that type, chief among them being: (a) the cylindrical bomb (CBU 24/A), containing 360 BLU 55 cluster bomblets, each of which could release 250 pellets. (b) The spherical bomb (CBU 24/B), with which an aircraft could release up to 768,000 pellets. (c) The shell with shrapnel pellets; an artillery shell contained twenty projectiles, each of which contained 450 pellets, and could thus release 9,000 small pellets. (d) The spherical grooved bomb, a large fragmentation bomb with a plastic casing, which had tremendous destructive power and sharply pointed fragments.

23. Blast and fragmentation bombs had great destructive power. They caused death by pressure and blast, resulting in cerebral haemorrhage and heart failure. They were capable of causing the collapse of entire sections of blocks of concrete, thus obstructing the entrances to underground shelters. According to the Democratic Republic of Viet-Nam's Commission for Investigation of United States war crimes in Viet-Nam, they caused the same number of dead as of wounded, whereas in a tactical aerial bombardment, the ratio was one dead to three wounded. The explosion of a 7.5 ton (BLU 82/B) superbomb razed an area equal to that of a football field. The ambiguous and generalized terms employed in paragraphs 180 and 181 of the report of the Conference of Government Experts gave no idea of the tragic reality of the use of such bombs in Viet-Nam.

24. Fléchette shells had been employed in Viet-Nam since 1966 but since then had been improved twice. The fléchette was used in rapid-firing machine-gun bullets, in 70mm rockets, and in 105mm and 127mm shells. According to Colonel J. Wood, head of the United States Division of Weapon Research, it was a secret weapon of great importance.

25. It would be clear from his statement that the Democratic Republic of Viet-Nam was far from sharing the point of view expressed in the report of the Conference of Government Experts, which allotted eight paragraphs (160 to 167) to the traditional types of weapons and two short paragraphs (180 and 181) to blast weapons. There was reason to wonder whether there was not a conspiracy of silence with regard to the crimes committed by the imperialist aggressor in Viet-Nam.

26. Reference should be made also to two particularly dangerous weapons. The first, to which there was a rather vague reference in paragraph 167 of the report, was a small fragmentation air-to-surface rocket. It was the SHRIKE AGM 45 A rocket, which contained thousands of steel cubes, measuring 6 mm along the sides. Those rockets were launched towards the populated areas of towns, and the population had not time in which to take cover. From 1970 onwards, the United States of America had used another type of small fragmentation bomb against North Viet-Nam, which was briefly mentioned in paragraph 173 of the report. The bomb was characterized by fierce heat and a powerful hollow-charge effect. It was the anti-tank MK 20 Mod.2 perforating bomb, still called ROCKEYE. Each container bomb contained 247 bomblets, so that an aircraft transporting four container-bombs released 988 perforating bomblets. Owing to the strong pressure and the heat they gave out, those bombs were capable of destroying shelters with heavy entrance doors and of hitting the occupants with their small fragments.

27. From a medical point of view, pellet bombs obviously had particularly serious effects on the human body. They caused multiple injuries; the trajectories of the pellets were long and penetrating tunnels; the circular hole made by the entrance of the pellet was extremely small and was therefore difficult to detect, especially when the pellet penetrated the skull. Further details were to be found in the report of an expert to the Democratic Republic of Viet-Nam's Commission for Investigation of United States war crimes in Viet-Nam, which was at the disposal of the Secretariat of the Committee. Pellet bombs caused injuries hitherto unknown in medical annals. That made it all the more surprising to read in paragraph 170 of the Lucerne report that the improved munitions "caused a lower level of incapacitation." Such a point of view could become an argument in favour of the criminal use of such new small fragmentation weapons.

28. One expert had said (paragraph 218 of the report) that he had "the impression that he was at an armaments conference rather than at a conference on humanitarian law". The Ad Hoc Committee should not forget the heavy responsibility it bore for contributing to the development of humanitarian international law.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE FOURTEENTH MEETING

held on Wednesday, 5 March 1975, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUCERNE CONFERENCE AND OF PROPOSALS (continued)

(d) Delayed-action and treacherous weapons (concluded)

1. Mr. MILLER (Canada) said he thought that, on the evidence presented by experts at Lucerne and in view of the report of that Conference of Government Experts, concrete progress on the matter of delayed-action and treacherous weapons might be attainable in the near future. He therefore hoped that Government experts would, at the second session of that Conference, focus particular attention on that subject and consider more specifically the use of booby-traps and the remote delivery of minefields.
2. On the battlefield, the use of booby-traps might be a legitimate ruse of war, but the booby-trapping of civilian objects such as children's toys had caused revulsion among the experts. Nevertheless, the report of the Conference of Government Experts was cautiously worded. It suggested that a booby-trap per se was not a weapon but rather a "use" of certain weapons and that even prohibition of such use should be carefully examined. His delegation hoped that experts would consider that question soon and would at the same time study the prohibition of booby-trapping of dead and wounded soldiers.
3. With respect to the remote delivery of minefields, his delegation had submitted a working paper (CDDH/IV/202) containing a proposal, made by Canadian experts at the Conference, for the automatic and compulsory marking of minefields. Such marking would of necessity be of a random nature since for technological reasons the perimeter of the minefields could not be accurately delimited. His delegation nevertheless hoped that the second Conference of Government Experts would consider the desirability of such a rule and how it might be effectively implemented.
4. Mr. KUSSBACH (Austria) said that the sponsors of working paper CDDH/IV/201 and Add. 1 to 5 had proposed that the laying of scatterable landmines by aircraft should be prohibited and had given as an explanation the fact that certain ways of laying mines could indiscriminately injure combatants and civilians alike.

5. According to paragraph 239 of the report of the Conference of Government Experts, one expert had stated that aircraft could lay scatter-minefields with great accuracy. Most experts, however, had no illusions on that point: they were fully aware that precision depended to a large extent on the availability of sophisticated navigational and weapon-guidance systems, on user competence, on terrain, and on the prevailing conditions of combat and weather. Because of the inaccuracy caused by various factors when scatter-minefields were laid, a certain proportion of mines were lost outside the target area, and diverted or stray mines might injure civilians.

6. Moreover, a large proportion of landmines, whether laid in the usual way or else by scattering, did not cease to be dangerous once the military objective in question had been achieved. Many mines remained effective for years. In addition, they were usually difficult to detect since one of the aims was that they should not be too easy to discover or to deactivate.

7. At Lucerne, the experts had discussed at length the efficiency of the self-destructive machinery built into scatterable mines, and also the possibility of marking minefields, fencing them or registering their location and extent. With regard to the marking of minefields, the Canadian experts had even submitted a proposal which appeared in working paper CDDH/IV/202. His delegation supported that proposal and would participate in all efforts to seek a solution to that important problem. It believed that any prohibition or restriction of the use of landmines would remain incomplete unless some way was found to ensure their automatic destruction, or at least the registration of the exact location of minefields, so that the local authorities could render them harmless.

8. Mr. LINARES-SILVA (Colombia) said that his delegation's presence at the Conference was an indication of his Government's interest in maintaining peace and applying the rules of humanitarian law in armed conflicts. His Government had been one of the first to work for disarmament, and it supported all measures for the prohibition or limitation of the use of conventional weapons likely to cause unnecessary injury or to have indiscriminate effects.

9. Referring to working paper CDDH/IV/201 and Add. 1 to 5, he stated that his Government was opposed to the use of napalm and incendiary weapons. In view of the suffering inflicted on the victims, nothing could justify their use. Similarly, the use of high-velocity small-calibre projectiles designed to cause excessive injury should be absolutely forbidden. Such weapons were indeed comparable to explosive bullets or dum-dum bullets. Concerning

such weapons, paragraph 123 of the report of the Lucerne Conference of Government Experts stated that "at ranges below the maximum for which the weapon was designed, or against unprotected targets, there would inevitably be some over-incapacitation." It was thus essential to expedite the formulation of rules prohibiting their use.

10. It was difficult to establish a very clear distinction between blast weapons and fragmentation weapons; the use of either was the expression of a perverse attitude. The common denominator of those weapons was the psychological effect produced on the enemy. It was therefore extremely important rapidly to reach agreement on their total prohibition, or at least on the limitation of their use.

11. His delegation supported most of the contents of working paper CDDH/IV/201 and Add.1 to 5 and thought it would be able to support it entirely when certain points currently being studied by his Government had been clarified.

12. Mr. TAYLOR (United Kingdom) said that item 3 (d) of the Ad Hoc Committee's work programme could more usefully be described as "delayed-action weapons and booby-traps", since those were the only type of perfidious weapons identified and discussed at the Conference.

13. With regard to working paper CDDH/IV/201 and Add. 1 to 5, he pointed out that although the proposals contained in the original working paper (CDDH/DT/2 and Add.1) had changed considerably in detail, the range of weapons covered was still the same as that first discussed over a year earlier. That procedure risked giving the impression that the Ad Hoc Committee was engaged in a dialogue of the deaf. Since February 1974, the weapons and weapons systems concerned had been examined in detail, whereas it was already evident that a long road had to be travelled before even the outlines of possible agreement on them might be discernible, consensus was not perhaps far to seek on other subjects, as it would be seen from the report of the Conference of Government Experts. The Committee should therefore concentrate its efforts on questions, such as the restriction of certain arms, where there was a real possibility of consensus. Delayed-action weapons and booby-traps offered just such a possibility. The best procedure was indicated in paragraph 259 of the report of the Conference, where it was stated that "in further deliberations on the subject, stress should be laid on use against the civilian population". He reminded the Ad Hoc Committee of his statement at the ninth meeting (CDDH/IV/SR.9) to the effect that it would be more realistic to study those points on which sufficient knowledge and a sufficient measure of international agreement existed to justify putting forward practical proposals. He would follow the debate with great interest in order to determine whether such a measure of knowledge and agreement existed.

14. Mr. BLIX (Sweden) said it was true, as commented by the United Kingdom representative, that the co-sponsors of working paper CDDH/IV/201 and Add. 1 to 5 had made some modifications to take into account facts and ideas advanced in the past year. However, it was not the task of the co-sponsors to take up every idea. If a dialogue of the deaf were to be avoided, other delegations should similarly submit proposals or working papers. He welcomed the contribution made by the Canadian paper (CDDH/IV/202) as participation in the dialogue. As to the suggestion that one should begin with questions on which consensus might be reached, he warned against any preconceived notion that consensus should be easy on certain bans which happened to find favour with certain delegations. It would be necessary rather to examine the various proposals and suggestions systematically to identify areas of agreement and disagreement. With respect to the suggestion mentioned by the United Kingdom representative that accent should be laid in further deliberations on the use of delayed-action weapons against the civilian population (paragraph 259 of the report of the Conference of Government Experts), he was bound to point out that it was already forbidden to use any weapon whatsoever against civilian populations.

15. The countries submitting working paper CDDH/IV/201 and Add. 1 to 5 had stated, inter alia, that "anti-personnel land-mines must not be laid by aircraft", because those weapons tended to have indiscriminate effects. As his delegation had already observed in connexion with item 3 (c), certain types of cluster bomb could quite easily hit civilians unless they were used in unpopulated areas. The same could be said about certain scatterable mines - some weighing as little as 20 g. - which were released in large quantities: one fighter-bomber might carry up to 250,000, and heavier aircraft over one million. Contrary to what some experts had claimed at Lucerne, dropping and location of minefields with high precision was hardly feasible except by the use of advanced aircraft and in favourable weather conditions. There was a particularly high risk in the case of area-denial mines, because they would have to remain for a longer time. That was why reliable self-destruction devices should perhaps be made mandatory. The latter - which at least one country had apparently adopted - would enable the user to move his forces with greater freedom whenever he dropped the mines in or near the combat zone. Yet self-destruction devices tended to increase the weight as well as the cost of each mine. Be that as it may, any rules to that effect would be a step forward. Even if a belligerent allowed the mines to remain live for a rather long period, self-destruction devices would ease the problems arising after the cessation of a conflict. In any event, belligerents should cooperate in the clearing of minefields.

16. At Lucerne, some experts had suggested that it might be technically possible to mark air-dropped minefields, as it would be seen from the Canadian proposal (CDDH/IV/202). The suggestion was very interesting, since the primary purpose of a minefield was to delay the enemy's advance. But marking would be of no great help to the civilian population if the area covered by the minefield was very extensive. His delegation therefore supported the proposal for prohibition of air-dropping of mines, because any such prohibition would be clear-cut and easy to check.

17. With regard to booby-traps, his delegation considered the ideas advanced at Lucerne to be interesting and would welcome any proposals for affording increased protection to civilians. Agreement had been reached on a number of points relating to delayed-action weapons, but that question was to be discussed further at the next Conference of Experts. It was to be hoped that States would make every effort to communicate all available data, so that agreement could be reached on rules which would reduce the risks for civilians caught in the midst of armed conflicts.

18. Mr. NGUYEN VIET (Democratic Republic of Viet-Nam) gave particulars of the delayed-action and treacherous weapons used by the United States forces in Viet-Nam and added to the information given at the Lucerne Conference of Government Experts by citing the facts pertaining to his country. Those weapons, perfected by the latest developments in science and technology, notably in the spheres of electronics and optics, could be sub-divided into two categories, and had all been tested and developed by the United States during its war of genocide in Viet-Nam.

19. The weapons in the first category were wide area anti-personnel mines (WAAPM). They were made on the principle of cluster bombs, which increased their deadly effects. "Dragon's teeth" mines (CBU 28), of small dimensions and fitted with wings, were wrapped in a jacket of plastic material the colour of the leaves of a tree. They contained a liquid which exploded under the effects of outside pressure. A parent bomb contained thousands of them which it scattered over a wide area. "Gravel mines" (XM 41E1) were also released from a parent mine (SU 41). Square or semi-circular in shape, their colours closely resembled those of the environment. A parent mine contained thousands of them, which were scattered over the countryside and released deadly fragments that could hit peasants on the way to their fields. Distinguished brains in the Pentagon had calculated that "four people were needed to transport a wounded man to a medical centre, and that the productive forces of North Viet-Nam would thus be reduced by so many men." "Spider mines" (CBU 34 and CBU 42) resembled spherical pellet bombs and

were also released by a parent bomb. Those mines were fitted with a mechanism which, on hitting the ground, ejected eight nylon threads about 8 metres long; they formed a regular spider's web of the same colour as the surrounding foliage. Anyone catching up one of those threads triggered off the explosion of the mine, with its deadly fragmentations. The novelty of this weapon deserved mention: its ejection, positioning and operation were telecommanded by an electronic device placed in the directional bomb.

20. The weapons in the second category were magnetic bombs, which were not referred to either in the experts' report of 1973 - Weapons that may Cause Unnecessary suffering or have indiscriminate Effects - or in the report of the Lucerne Conference, despite the fact that they were formidable weapons, as the name "Destructor" (MK 36 and M 117-D) implied. Those bombs, weighing between 250 and 400 kg, were over two metres long and about 50 centimetres in diameter. They closely resembled the current MK 82 and M 117 high explosive bombs in appearance, but were fitted with a parachute brake and a magnetic detonator. The perfidious nature of those weapons lay in the fact that they remained active for a very long time and that all that was needed to make them explode was for some metal object to pass within their magnetic field. That type of bomb had been dropped on the main supply routes, the rivers and the rice fields, particularly at the time of the blockade and mining of the port of Haiphong in 1972, when Mr. Nixon had been President of the United States of America. They had again been dropped in large quantities just before the Paris Agreement on Viet-Nam was signed, with the perfidious intention of destroying the economic potential of North Viet-Nam for a long time to come.

21. To stress the disastrous effects of those two categories of weapons, it was enough to quote what Jane Fonda, the actress, had written in "Relief and Rehabilitation of War Victims in Indo-China": "During the one year following the signature of the Paris Agreement, 300 civilians and over 1,000 water buffaloes and oxen have been killed by exploding mines in the province of Quan Tri". But the devastation had not been restricted to that province. According to the Sub-Committee on Refugees, under the patronage of Senator Kennedy, there were between 150 and 300 million kg of unexploded bombs and mines in the whole of Indo-China; according to a document published in the United States of America, United States aircraft had dropped 92,725 million "gravel mines" in 1967 and 1968. Accordingly, it was not without reason that several Western military experts had spoken of a new notion of warfare - the war of mines.

22. In conclusion, he said that he would make available to delegations a folder containing photographs and descriptions of the characteristics of all the deadly weapons to which he had referred since his first statement.

23. The CHAIRMAN suggested that the Committee should suspend its work for several days, to enable certain delegations which were to take part in a future Conference of Government Experts to reach agreement on the documents that would serve as a basis for future discussions.

24. Mr. USPENSKY (Union of Soviet Socialist Republics) said that although working paper CDDH/IV/201 and Add.1 to 5, submitted by several countries, could serve as a useful reference document for the Committee's discussions, it contained certain shortcomings, notably with regard to item I,B.2. concerning "Incendiary munitions which are designed and used specifically for defence against aircraft or armoured vehicles". As a former tank crew member, he was curious as to the reason for the discrimination with respect to vehicles and aircraft. The former, in particular, were largely used in attacks: would the prohibition stated earlier also apply in such a case?

25. On the other hand, ballistic tests carried out by the military and experiments by physicians had led to the conclusion that the use of flame-throwers should be limited to a distance of 150 metres. During the Second World War, however, weapons of that type with a range of 1000 metres had been seen in action. Those weapons, like all others, could strike without discrimination. The essential point was how they would be used. He had been impressed by the statement of the representative of the Democratic Republic of Viet-Nam who had described at length the effects of the weapons used in his country. Objective and constructive research could serve to convince people of the inhuman character of many weapons of war and the delegation of the Union of Soviet Socialist Republics was ready to participate in such research. Since the art of war was constantly developing, efforts should not be limited merely to prohibiting the use of certain weapons, but also to prohibiting research into them and their production and stockpiling. The USSR Government had taken the initiative in prohibiting the development of weapons affecting the environment. Further steps should be taken in the struggle against weapons causing unnecessary injury: in that context, his country had unilaterally reduced its military budget in order to restrict the consequences of war. He reiterated his offer to take part in current and future discussions and studies.

The meeting rose at 4.45 p.m.

SUMMARY RECORD OF THE FIFTEENTH MEETING

held on Friday, 7 March 1975, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUCERNE CONFERENCE AND OF PROPOSALS (continued)

(e) Potential weapon developments

1. The CHAIRMAN invited the Ad Hoc Committee to consider the subject of potential weapon developments in connexion with the question of prohibition or restriction of specific categories of conventional weapons.
2. Mr. KUSSBACH (Austria) said that the original working paper (CDDH/DT/2 and Add.1), submitted to the Conference at its first session in 1974, had proposed that machinery should be set up for continuous control of conventional weapons so as to ensure that the humanitarian aspect was always taken into account. The same concern was evident in the revised version of that working paper (CDDH/IV/201 and Add.1 to 5), on page 6 of which it was stated that "... the question should be examined how, in the future, surveys can be made with a view to identifying weapons, the use of which should be prohibited or subjected to restrictions for humanitarian reasons". The conclusion reached was that a body should be set up to consider periodically, in the light of humanitarian principles, developments in the field of weapons. Only in that way would it be possible to ensure that general prohibition with respect to the use of certain weapons would be enforced.
3. The sponsors of the working paper also referred briefly to the danger inherent in the situation which would arise if the efforts made to prevent the use of certain weapons and to set up bodies to follow developments in the field of new weapons were to fail. If the use of certain weapons were prohibited forthwith and meetings were held periodically to follow developments in the field of new weapons, it should be possible to persuade countries not to manufacture particularly inhumane new weapons.

4. It was with those considerations in mind that the sponsors of the working paper had been meeting to discuss the practical aspects of the establishment of machinery to carry out the functions in question. Such machinery would need to be flexible in order to be acceptable and sufficiently effective in order to ensure that its humanitarian aim was achieved.

5. With regard to control of the development of new weapons and the prohibition or restriction of their use, there were two problems to be dealt with. First, that of the flow of the necessary information concerning scientific and technological developments in the field of conventional weapons and, secondly, that of the study of the information by military experts and doctors in order to determine whether the new weapons caused superfluous injuries or had indiscriminate effects.

6. Those two problems could be dealt with in two ways. Either an international institute could be set up to collect the information and study it with a view to making proposals, or the initiative could be left to the States Parties to the relevant instrument which for the sake of convenience he would call "Additional Protocol III" or simply "the Protocol". Since the setting up of an international institute would raise problems of financing, staffing, legal status and so on, it would seem advisable to entrust the initial task to States. The competent State authorities were unlikely to find any insuperable difficulty in obtaining the required information and evaluating it.

7. With regard to the concrete proposals which might be called for in the light of a continuous assessment of the situation and the information obtained, they could take either the more restrictive and precise form of amendments to the Protocol, or that of less formal suggestions for a general review of the operation of the Protocol.

8. With regard to the inter-State body in which States could express their views on the subject and take decisions, including the adoption of additional rules, the only possible solution was a conference of representatives of States, perhaps a conference of government experts, followed by a plenipotentiary conference. Many precedents existed for the procedure to be followed in the convening of such a conference, particularly in the field of multilateral conventions. Cases in point were the United Nations Charter, the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, the 1968 Treaty on the Non-Proliferation of Nuclear Weapons and the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction.

9. The sponsors of the working paper, bearing in mind past experience, had sought to find a flexible and effective means whereby such a conference might be convened. They had agreed that the Parties to the Protocol should be able to take the initiative, if they felt it desirable, but should they not do so, a conference should be convened automatically after the lapse of a specified period. With those guiding principles in mind, certain basic proposals were put forward, on the understanding that they were in no way definitive. A first paragraph might state that any Party might propose amendments to the Protocol relating to prohibitions or additional restrictions on the use of specific weapons. Such amendments might be based on the new scientific and technological developments which were the subject-matter of the Protocol, such as the development of new weapons intended to cause superfluous injuries or to have indiscriminate effects. The text of any proposed amendment would be submitted to the depositary Government, which would communicate it to all the Parties to the Protocol. If one-third of the Parties to the Protocol then so requested, the depositary Government would convene a conference to consider such amendments. All the Parties to the Geneva Conventions of August 12 1949 should be invited to such a conference, since the amendments would be to an additional Protocol to those Conventions.

10. A second paragraph might provide for the automatic convening of a conference after a specified number of years had passed. For instance, seven years after the entry into force of the Protocol, the depositary Government would convene a conference to review the operation of the Protocol and to consider any proposals relating to prohibitions or additional restrictions on the use of specific weapons. All the Parties to the Geneva Conventions would be invited to the conference.

11. Those suggestions were the result of first thoughts only and he hoped that delegations would consider them carefully with a view to their improvement.

12. Mr. ELIX (Sweden) said that he had little to add to the thoughtful statement by the Austrian representative.

13. His delegation had spoken at length on the issue of potential weapon developments in the Ad Hoc Committee at the first session of the Diplomatic Conference and his Government had expressed its views on the subject at length, through its experts, at the Conference of Government Experts on the Use of Certain Conventional Weapons.

14. Many of the weapons which could be foreseen and those which it was not possible to foresee because they were not yet on the drawing board were terrifying. He did not propose to consider the various types of weapons which were already on the drawing board or the methods of use of those weapons, nor was it possible to propose bans or restrictions on weapons which were not fully known. What was essential was to provide for some way in which States could generally contemplate bans or restrictions before weapons were produced in large quantities and before it became even harder to reach agreement on bans or restrictions. Such machinery was not easily available at the present time.

15. In the Declaration of St. Petersburg of 1868 prohibiting the use of certain projectiles in wartime, the parties reserved "to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity". It seemed, however, that the parties had not come forward with precise propositions very frequently. Indeed, the occasions on which the community of States had come together to consider the possibility of bans or restrictions on the use of specific categories of conventional weapons had been few and far between. One occasion had been the International Peace Conference, held at The Hague in 1899, when the dum-dum bullet had been banned; the next had been in 1925, when the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare had been drawn up; the third occasion had been in the course of the 1932-1934 Conference for the Reduction and Limitation of Armaments, when attention had been concentrated on the ban on the use not only of biological and chemical weapons but also of incendiary weapons. Since then, international attention had not been focused on bans or restrictions on the use of specific conventional weapons until, at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, convened by the ICRC in 1971, several experts had asked that the question be given consideration. The task assigned to the Ad Hoc Committee was thus of great importance and would not end with the closure of the Conference. It was essential to establish machinery which would ensure that reviews were more frequent in the future than in the past.

16. He fully agreed with the Austrian representative with regard to the various methods which could be adopted. He also agreed with him in principle that a permanent commission might perhaps be too ambitious a project, although he could support such a proposal if it met with general approval. In any case, provision should be made to enable States to request the convening of a review conference if a sufficient number thought that necessary; provision should also be made for a review conference to be held after a specified number of years, whether or not States had requested it. He therefore supported the Austrian proposal and hoped that it would be formally submitted at the appropriate time.

17. In Committee III, the Swedish delegation had said, in connexion with article 34 of draft Protocol I, that it was not enough that national machinery should exist to review the compatibility of new weapons with the rules of international law; that machinery needed to be supplemented by international machinery. The Pakistan amendment to article 33 of draft Protocol I (CDDH/III/11), which provided for meetings under the auspices of the ICRC, was one method of dealing with the question; another would be to insert in article 86 of draft Protocol I a provision concerning future amendments to that Protocol, while yet a third would be to insert in Protocol III a clause which would enable States Parties to that Protocol to call for the convening of a conference of the Parties to the Geneva Conventions to discuss the possibility of bans or restrictions on the use of new weapons or failing that, for the convening of the Parties to those Conventions a specified number of years after the entry into force of Protocol III.

18. It might be premature for the Diplomatic Conference to determine the precise place in the Protocols at which such a provision should appear, but it should give thought to the question of provision for such future reviews. In that connexion, the Austrian suggestions were undoubtedly worth reverting to in due course.

19. Mr. ESMAIL (Kuwait) said that his delegation had known little about future weapons systems, such as the use of lasers, microwave devices, infra-sound devices, light-flash systems, geophysical electronic weapons and environmental warfare, before the Conference of Government Experts at Lucerne. All those systems were presented as having military value but as likely to have indiscriminate effects and therefore to require close surveillance, so that if necessary their use could be banned or restricted before they were developed on a large scale. The experts had expressed the hope that States would take the necessary steps to ensure that humanitarian considerations, as well as purely military considerations, were taken into account in their future national weapon programmes.

20. He feared, however, that the great Powers attached so much importance to such weapons as a symbol of their strength that they would hesitate to join in any effort to prohibit or restrict them. He would be interested to hear the views of other delegations concerning the appropriate treatment of new conventional weapons.

21. Mr. MENA PORTILLO (Venezuela) said that, although his delegation agreed with the Austrian proposal it considered that the suggested period of seven years was too long, for the following reasons. Firstly, it was impossible to foresee what developments might take place in science and technology in that period with regard to the design of new conventional weapons; since those weapons would have been developed in secret, it would not be possible to assess the unnecessary suffering and harm that they might cause. Secondly, the old-established principle of action and reaction would ensure that, if legal action were taken against a particular weapon, that weapon would be modified in such a way that it produced the same effect as before but escaped the legal restrictions. White phosphorus could be cited as an example: if its use was restricted to the production of smoke, it would be possible to mix other substances with it which, while harmless in themselves, could combine to cause fires and have terrible effects on the human body. Those effects, however, could be regarded as secondary or accidental, and thus escape the law. Some State would then have to propose an amendment whereby white phosphorus was prohibited. Thirdly, although it was doubtful whether a nuclear war would ever occur, in view of the terrible consequences for mankind, the possibility could not be ruled out. The maintenance of peace had been due to the dissuasive power of nuclear weapons, but that could lead to greater efforts being made in the development of conventional weapons that might cause even more unnecessary suffering and were not covered by international humanitarian law. He therefore emphasized once again that the greatest efforts should be made to ensure that humanitarian law kept pace with science and technology as applied to the development of new conventional weapons.

22. Reverting to the Austrian proposal, he pointed out that, in the case of the 1963 Treaty on the Non-proliferation of Nuclear Weapons, a period of five years was supposed to elapse between its entry into force and the holding of a conference to examine its operation. On that basis, he suggested that the period of seven years proposed by the Austrian representative should be reduced to five years.

23. Mr. DUNSHEE de ABRANCHES (Brazil) said that his delegation considered that priority should be given to the study of incendiary weapons with a view to imposing limitations on their use, especially when directed against personnel or civilian objects. In the light of the problem of future weapons, however, there was no political or economic reason for limiting the prohibition to certain types of arms. It was already an accepted obligation of States to avoid the development of new weapons whose use would cause unnecessary injury. His delegation had therefore considered that article 34 of draft Protocol I was not wholly satisfactory and had submitted an amendment (CDDH/III/32) which would broaden its scope. It accordingly proposed that the next Conference of Government Experts should develop in depth the technical and legal aspects of chapter VII of the report of the Lucerne Conference of Government Experts, concerning future weapons.

24. Mr. ANDERSON (United States of America) said that two concepts that had been placed before the Ad Hoc Committee could make its task much more difficult. The first was that a criterion for prohibition of certain weapons or munitions was whether they were offensive or defensive. Most weapons were not inherently offensive or defensive but could be used for both types of mission. Secondly, the proposal that certain categories of weapons could be limited to defensive missions only would be difficult to apply. It was not always possible to differentiate clearly between defensive and offensive operations, as, for example, in the case of counter-attacks. Many military operations had both defensive and offensive elements; even if it were possible to distinguish between the two, it seemed unlikely that forces that had conducted a successful defence would, on moving to the offensive, suddenly discard the weapons that had served them so well and take up others.

25. Furthermore, as the representative of the Union of Soviet Socialist Republics had pointed out, the prohibition of incendiary weapons, as proposed in working paper CDDH/IV/201 and Add.1 to 5, would discriminate against personnel in armoured vehicles or aircraft. It would provide some immunity from those weapons to one combatant branch, namely the infantry, but not to others.

26. Some progress had been made in dealing with new weapons. In the United States of America, the Department of Defense had issued an instruction requiring a legal review of all proposed new weapons to see that their development complied fully with international law. The Secretary of each Department was responsible for ensuring that such reviews were carried out before any production contract was awarded.

27. Some progress had been made in dealing with article 34 of draft Protocol I, which was concerned with ensuring that potential weapons were designed in accordance with international law. The United States delegation supported, in principle, the amendment to that article proposed by the Netherlands, Norway and Sweden (CDDH/III/226), although there were some minor drafting problems.

28. Mr. FRICAUD-CHAGNAUD (France) stressed the importance of the efforts of the Diplomatic Conference to determine whether any of the weapons currently in use should be prohibited or their use restricted. Any civilized State would wish to participate in efforts aimed at reducing human suffering. It was for that reason that France had immediately accepted the proposal of the ICRC for the Conference of Government Experts which had been held at Lucerne. In the view of his delegation, it was the duty of the Ad Hoc Committee to draw the necessary conclusions from that Conference, and not to re-open the technical discussion; the experts required for that purpose were not available, nor had they had time to study all the data presented. It was for that reason that his delegation had so far refrained from taking part in such a discussion.

29. Nevertheless, he was anxious that the work of the Ad Hoc Committee should lead to results that were both of substantial humanitarian value and sufficiently realistic to be ratified by Governments. His delegation could not regard the process under way as a kind of negotiation. Each weapon, with its characteristics, its effects and its method of use, had to be considered separately, if specific conclusions were to be reached. The representative of the Holy See had spoken of the efforts made by the Church to restrict the use of crossbows. None of those efforts had been successful, in spite of the moral authority of the Holy See. In contrast, the international agreements on the subject of dum-dum bullets, drifting mines and poison gases had been generally observed. The practical consequences of the two types of approach should be considered.

30. With regard to the concept of defensive munitions, history showed that even a country which had been invaded and was in a position of strategic defence would have to carry out some offensive operations, at least locally. No munitions, therefore, could be purely defensive. The more important concept of indiscriminate effects might perhaps be applicable to some weapons, but related more often to their method of use. For instance, the mine became indiscriminate only when used as a drifting mine. Indiscriminateness lay much more in the use made of a weapon and in the brain of the commanding officer than in the weapon itself.

31. Another incorrect point of view was that progress in the development of weapons necessarily resulted in increased casualties. The fact was, however, that while, over the centuries, the initial velocity of a rifle bullet had increased by a factor of four and solid shot had been replaced by shrapnel, the percentage killed had decreased. That was because the development of weapons had been accompanied by a parallel development of tactics, in which the close order formations of the past had been replaced by a wide dispersion of individual soldiers over the battlefield. A pellet weighing a few grammes could kill a man, but data from the First World War showed that several hundred kilogrammes of metal had been needed to kill one soldier; in the Second World War, the figure had been three tons of metal. It was therefore necessary to ensure that prohibitions based on humane sentiments did not lead to the use of weapons or of tactics that would result in losses greater than those they were designed to avoid.

32. It was also necessary to remember that an increasingly large civilian population was exposed to the hazards of war. In emphasizing the complexity of the problems and the dangers of an incorrect approach, his delegation was trying to ensure that the provisions drawn up would be applicable in practice and based on a realistic assessment of the factors concerned. The representatives of Norway and Brazil had adopted a similar position, in particular with regard to incendiary weapons. He would be interested to hear the preliminary conclusions reached by the Joint Weapons Evaluation Committee set up a year earlier by the Swedish Government.

33. In his view, the best approach to the problems under discussion was that which led to the most lasting results. He therefore preferred the system of agreements, as used in the case of dum-dum bullets, poison gases and chemical and bacteriological weapons, to that of the ex cathedra banning of crossbows, although the moral aspects had of course to be taken into account. He therefore hoped that the experts would be asked to continue their work along the lines that the Ad Hoc Committee would lay down, in order to achieve the best possible results. He would in due course give his views on the instructions to be given to the experts and the organization of their work.

34. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that in dealing with the subject before the Committee it was essential to start on the basis of existing international machinery. The Union of Soviet Socialist Republics had taken the initiative in efforts for the preparation of a draft International Convention on the Prohibition of Action to Influence the Environment and

Climate for Military and Other Purposes Incompatible with the Maintenance of International Security, Human Well-being and Health (see United Nations General Assembly resolution 3264 (XXIX), annex), but efforts should be concentrated on all types of weapon, not only on individual weapons. Statistics showed that in recent wars, especially in Indo-China and the Middle East, the greatest losses and suffering had been caused by the use of all types of weapon even the cruellest of which did not fall under international prohibition. There had been world-wide opposition to the use of such weapons. Questions on the use of weapons, particularly conventional ones, had been raised throughout the Second World War. He considered that prohibition and more stringent limitation was essential. He also agreed with the French representative that changes in the methods of use of all types of weapons had led to sharp increases in numbers of civilian victims. That only increased the importance of humanizing the principles of armed conflict. Every effort was being made in Committee III to ensure that the principles governing methods of conducting armed conflict would be made as humanitarian as possible.

35. Working paper CDDH/IV/201 and Add.1 to 5 proposing an international machinery deserved consideration, but his delegation was not yet in a position to comment on individual points of the programme. On the other hand, it wished to stress that national machinery compatible with the rules of international law in force should not be ignored when determining the harmfulness of new weapons.

36. He could not agree that renunciation of the use of the types of weapon under discussion was tantamount to renunciation of striking power. With all the weapons at its command, the Union of Soviet Socialist Republics had taken the initiative at the twenty-seventh session of the United Nations General Assembly which had led to the adoption of resolution 2936 (XXVII) on the non-use of force in international relations and permanent prohibition of the use of nuclear weapons. His delegation considered that the optimal and most decisive solution of the problem was to seek the general prohibition of all types of weapon, for the prohibition of one type was bound to lead to the development of new, no less dangerous weapons. Since the striking power possessed by all States would suffice to blow up the world two or three times over, there could be no question of any State objecting to an over-all prohibition because it wished to retain its position of power.

37. In connexion with the international machinery suggested by the Austrian representative, it should be borne in mind that the Conference of the Disarmament Committee was already considering such machinery, which would have to be adopted by a general disarmament conference. Moreover, the United Nations General Assembly had already referred the question of the prohibition of the use of weapons affecting the environment to the Conference of the Committee on Disarmament.

38. He was in favour of continued study of the whole problem and considered that questions of prohibiting specific weapons should be kept separate from general principles and methods of warfare. The Committee's task was to concentrate on certain questions being dealt with by Committee III but from a different point of view. He could not agree that there was a parallel between working paper CDDH/IV/201 and Add.1 to 5 and articles 7 and 86 of draft Protocol I and the Pakistan amendment to article 33 of that Protocol (CDDH/III/11): those provisions took into account certain specific questions peculiar to draft Protocol I, and were not concerned with the prohibition of individual weapons.

39. On the basis of past studies and experience - in the case of the Union of Soviet Socialist Republics, on the basis of experience from the loss of 20 million lives - he was confident that joint effort would produce a generally acceptable solution.

40. Mr. EL-MISBAH EL SADIG (Sudan) said that he supported the views of the representatives of Austria and Sweden. It was high time to give practical effect to the discussions on the prohibition of certain types of weapon. The Declaration of St. Petersburg of 1868 should be brought up to date to cover incendiary weapons, for example. He agreed with the Swedish representative that the matter could be discussed within the scope of articles 33 and 34 of draft Protocol I, which were being dealt with by Committee III.

41. Mr. EIDE (Norway) said that, from the Ad Hoc Committee's preliminary discussion of the weapons suggested for prohibition in working paper CDDH/IV/201 and Add.1 to 5, he had noted that while there were some basic differences of opinion and many countries had not yet stated their views, there were encouraging indications of an increased willingness to discuss the substance of the issues.

42. The fundamental difficulty was that armaments problems were closely related to those of national security and military strategy as defined by the national authorities concerned. A country's total armaments system was normally regarded as a basis for defence planning. His delegation realized that to intrude into that system by prohibiting specific weapons would create difficulties. He hoped, however, that the efforts now being made could result in humanitarian principles influencing the armaments systems of individual States.

43. With regard to the statement just made by the representative of France, some additional figures would be useful, such as the proportion of civilians to combatants killed during different periods and with different technology, and the number killed at given periods in history.

44. He was encouraged by the efforts made in the Ad Hoc Committee to influence the development of future weapons. Even if such weapons were not more cruel or indiscriminate than existing ones, they might still become unacceptable if legal standards were more strictly applied in future.

45. On the question of influencing and controlling the future development of weapons, an encouraging development at the national level was that several countries had stated that they had set up or were planning organs for the review of all new weapons at an early stage in their development. That would lead to the development of national standards and provide an opportunity for public opinion to make its influence felt.

46. A number of delegations, including that of his own country, had submitted amendments to articles 33 and 34 of draft Protocol I which would make it obligatory for the High Contracting Parties to determine whether new weapons would fall under the prohibitions in the Protocols or any other rules of international law applicable in armed conflict. He was pleased to note that there seemed to be no opposition to the principle; he hoped that such investigations would be conducted with thoroughness and that in the application of the international legal rules humanitarian concerns would be given a central place.

47. His delegation's amendment to article 34 (CDDH/III/226) was not concerned solely with weapons that did not exist in the armaments system of any State: even if some States had incorporated into their armaments system weapons whose use might violate the rules of international law, other States which contemplated acquiring such weapons would be obliged to make the determination called for in the amendment.

48. International, as well as national, effort was needed, both in order to increase moral and political awareness of the effects of the use of certain weapons and to obtain further agreed prohibitions. In connexion with the prohibition of certain specific weapons which would eventually result from the present negotiations, it would also be necessary to deal with future weapons. His Government would prefer to see a continuous system of review, for example under the United Nations, with a wide scope of investigation and control. Since, however, that was not at present acceptable to a number of States, he supported the more modest approach suggested by the Austrian representative.

49. The fact that armaments systems were regarded as a whole and that the prohibition of certain weapons might therefore cause difficulties, did not render the task of prohibiting or restricting the use of certain weapons impossible. In the first place, there were weapons which had not yet been integrated into the armaments systems of many States, while they were considered obsolete or unsuitable by other States. Secondly, the national development of review mechanisms might lead to greater concern about inhuman weapons and a willingness to make greater efforts to remove them from armaments systems. In both cases, specific international prohibitions would help considerably in guiding such internal rearrangements. He felt that events were moving in a direction which would encourage more humanitarian considerations and that current difficulties might prove to be only temporary.

The meeting rose at 5.5 p.m.

SUMMARY RECORD OF THE SIXTEENTH MEETING

held on Wednesday, 12 March 1975, at 3.15 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF PROHIBITION OR RESTRICTION OF USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS WHICH MAY CAUSE UNNECESSARY SUFFERING OR HAVE INDISCRIMINATE EFFECTS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUCERNE CONFERENCE AND OF PROPOSALS (concluded)

(e) Potential weapon developments (concluded)

1. The CHAIRMAN invited the Ad Hoc Committee to continue its consideration of the subject of potential weapon developments in connexion with the question of prohibition or restriction of specific categories of conventional weapons.
2. Mr. EICHIN (Switzerland) said that his delegation supported all efforts to prevent the manufacture, introduction or use of new weapons which might cause unnecessary suffering or have indiscriminate effects. The main objective of any prohibition or restriction should be to prevent the introduction of new weapons that conflicted with humanitarian aims: it was easier to take preventive action than to reverse a process once begun. The Austrian proposal, made at the fifteenth meeting (CDDH/IV/SR.15) had so far been the only one submitted on the subject. His delegation would welcome others based on the possibilities discussed in the Ad Hoc Committee.
3. Mr. ABOU ALI (Arab Republic of Egypt) said that Egyptian experts at the Conference of Government Experts had expressed their views on the development of weapons and on the need to prohibit those which might cause unnecessary suffering or have indiscriminate effects. They had considered the rapid strides being made in science and technology to be at once satisfying and disturbing: satisfying because any victory of the human mind called forth admiration and disturbing because of the military uses to which certain scientific and technological discoveries were being applied, particularly in the development of increasingly terrifying and inhuman weapons.
4. His delegation saw considerable merit in the Austrian proposal for the periodic adjustment of any prohibition of such weapons to take account of subsequent scientific and technological developments in the military sphere, and welcomed the idea that provision should be made for continuous assessment, as had been done in a number of recent conventions, including those on disarmament. He agreed with the Austrian representative that the system should be based on principles of periodicity, technicality and automaticity.

5. Mr. BRECKENRIDGE (Sri Lanka) said that his country had consistently stood for total and complete disarmament and for a ban on all weapons of mass destruction, including nuclear, chemical and biological weapons. Discussions in the Ad Hoc Committee and at the Lucerne Conference of Government Experts had shown that there were ample grounds not only for negotiating and concluding draft articles for a protocol on weapons that might cause unnecessary suffering, but also for establishing machinery for the regular and automatic review of weapon development, as proposed by the Austrian representative. His delegation supported that proposal, not only because of the present and potential uses of weapons but also for another reason which had hitherto received too little consideration, namely, because countries such as Sri Lanka needed such guidance when deciding what weapons should be purchased for their defence. That point was well illustrated by a quotation from a statement made at a symposium on armed conflict and aggression, held at Washington in 1968:

"Finally, warfare involves immense ranges and vast quantities of strategic resources, material, personnel, tools and equipment and money. In contemporary warfare such resources involve any warring country in a world ecology, and consequently in world politics - worldwide institutions such as aid programmes and service programmes ...".

6. Countries such as Sri Lanka were inevitably confronted by such considerations when determining their attitude towards weapon development. Analysis of the type of weapons in recent use and of their consequences had shown what the future pattern was likely to be. It was in the interest of countries such as Sri Lanka to ensure that vast resources were not taken up on the production or purchase of such weapons.

7. Some speakers had argued that the Ad Hoc Committee was not a negotiating committee and that the Diplomatic Conference was in no position to consider the question of weapons. In the context of the relevant articles of the Geneva Conventions of 1949 and in particular of articles 33 and 34 of draft Protocol I, the Diplomatic Conference was a forum in which a position should be taken on the question of weapons that caused unnecessary suffering and on their potential development. The Swedish representative had rightly drawn attention at the fifteenth meeting to the last paragraph of the Declaration of St Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime, which emphasized the need for periodical reviews "in view of future improvements which science may effect in the armament of troops ... in order to conciliate the necessities of war with the laws of humanity". In the intervening century, such "improvements" had indeed been

effected in weapons which produced a devastating "overkill". It was wrong to argue that negotiation to prevent such "overkill" was untimely. There could be no better forum than the Diplomatic Conference in which to declare that the world had engaged in "overkill", that the weapons available to the international community were capable of causing indiscriminate suffering and that there was a determination to grapple with the problem.

8. There was too great a tendency to differentiate on mathematical or technological grounds between conventional and other forms of warfare. Why was not the same horror expressed about the so-called "conventional" weapons in current use as about nuclear, biological or chemical weapons? Another participant in the Washington symposium had stated:

"The new weapons used in Viet-Nam today, with the exception of defoliants, are merely an extension, albeit a terrible one, of "conventional" weaponry. But their vast destructive power, combined with our efficient, varied and numerous delivery systems, used over and over again, year after year, is bound to have new and unhappy consequences for the entire ecology of Viet-Nam and for the majority of its civilian population."

9. Examples cited to show that the numbers of dead or injured in wars which had taken place a thousand years earlier were similar to those in modern warfare were an irrelevant mathematical exercise. The Ad Hoc Committee's task was to consider the effects of present and future weapons.

10. Yet another passage from the Washington symposium, and one of great relevance to the Ad Hoc Committee's discussion, read:

"Modern military forces both nuclear and conventional can be used to threaten or destroy, but no longer to defend or to win a politically meaningful victory. Thereby, the innovators of military technology and the operators of military systems have checkmated themselves as a consequence of their own success in the search for more lethal military technologies."

11. Mr. ABADA (Algeria) said that, while other Committees were trying to draw up provisions which would take account of the legitimate requirements of the international community with respect to humanitarian law in situations of modern armed conflicts, it was natural that the Ad Hoc Committee should be given the task of harmonizing the use of certain weapons with those requirements. Would it not, in fact, be useless to include such provisions as those contained in article 33 about the prohibition of unnecessary injury and in article 34 about new weapons if the Ad Hoc Committee proved to be too hesitant in taking a concrete approach to those provisions?

12. The Ad Hoc Committee had an exceptional opportunity to carry out a truly humanitarian task in the tradition of the Declaration of St. Petersburg of 1868 and The Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, which had resulted in the prohibition of the dum-dum bullet and poison gases. If the current Diplomatic Conference was to take its rightful place in the history of humanitarian law, there was no better place than in the Ad Hoc Committee for the purpose of mobilizing its efforts, its determination and its hopes. Many representatives, especially those from the countries with the highest armament potential, had recognized that the Lucerne Conference of Government Experts had made a great step forward in studying the question of weapons, since that had been the first time a large number of countries had agreed to discuss those question.

13. His delegation did not believe in forcing the march of events. The Ad Hoc Committee should accordingly proceed with due deliberation, and take the utmost care to prevent any ambiguities. As his delegation had stated at Lucerne, it thought that the study of the prohibition or limitation of certain weapons should be a joint task and should not be directed against any particular party but against a particular form of warfare. A conference such as the present one should not attempt to calculate the precise weight of moral scruples in questions dominated by power relationships involving the technology, policy and security of States. The Ad Hoc Committee's work should be limited to clarification. After all, were there some weapons which were more cruel than others? Were there some weapons which came under the heading of the prohibitions laid down in the past? Were the weapons referred to in the present agenda subject or not to the principles of humanitarian law?

14. His delegation hoped that it would be possible to receive clear replies to those questions, since while it might be necessary to be realistic, it was also necessary to be frank. If it was not really possible to lay down rules concerning the use of certain weapons, such as dum-dum bullets and poison gases, it would still be beneficial to admit that fact unequivocally and not draft texts which would already be a dead letter when the time came for their application.

15. The weapons now being discussed were not large-scale, strategic weapons intended for the purpose of maintaining a power relationship, a status quo or some desired political situation; on the contrary, most of them were characterized mainly by an anti-personnel element, involving consequences which went beyond the objective of rendering the adversary hors de combat. They were sometimes of a very sophisticated nature and were used in highly unequal conflicts, such as the war in Viet-Nam. If, therefore, there was any reasonable possibility of legislating against their use, some immediate action should be taken.

16. His delegation supported working paper CDDH/IV/201 and Add.1 to 5 and hoped that it would be adopted as a basis for discussion at the current Diplomatic Conference and possibly at a second Conference of Government Experts. His delegation also felt that the present agenda was closely related to that assigned to other bodies dealing with weapons, such as the Conference of the Committee on Disarmament, although there were certain fundamental differences between them. However, in a spirit of compromise, it was prepared to agree that the questions now under discussion should be placed on the agendas of future bodies, together with the conclusions arrived at by the present Diplomatic Conference. In any case, he hoped that those questions would not be delayed ad kalendas graecas, since much unnecessary suffering might occur before the Conference of the Committee on Disarmament completed its work.

17. Certain arguments had been advanced at Lucerne and at the present Conference that there were some studies which would have to be continued further. For example, in connexion with so-called indiscriminate weapons, it had been said that some of those weapons might be more or less indiscriminate depending on the use made of them in the field. That argument certainly deserved attention, but it was also obvious that there were some weapons which were more likely than others to be used in a non-discriminatory way so as to cause superfluous injuries.

18. With regard to the Ad Hoc Committee's future work, his delegation, like many others, found it difficult to accept the idea of a second session of the Conference of Government Experts which would be a mere repetition of the first session. The Lucerne Conference had undoubtedly accomplished an immense amount of work at the technical level, but it would still be necessary to make practical use of that work and to take further steps. For that purpose, it would be necessary to specify the working methods, objectives and terms of reference of any new conference of experts. In particular, with regard to methods of work, there should be greater flexibility in the general procedure. In order to avoid the delays which inevitably occurred in a single plenary committee, due to the monopolization of the services of the Conference experts, thought should be given to the establishment of committees or working groups to study those items which had already been studied in depth and which had gone beyond the technical stage. For example, in connexion with the question of napalm and incendiary weapons, the technical discussion had been almost exhausted and it was necessary to pass on to the further stage of prohibiting or limiting the use of those weapons. The same thing, of course, was true in the case of booby-traps and similar weapons.

19. Lastly, the second Conference of Government Experts ought to constitute the second stage of the Ad Hoc Committee's work, as suggested in paragraph 282, sub-paragraph 6 of the Lucerne Conference report concerning follow-up, and its proposals should be submitted to Governments for their comments and subsequently to the third session of the Diplomatic Conference on Humanitarian Law itself.

20. Mr. MUKHTAR (United Arab Emirates) said his delegation considered that the report on the Lucerne Conference of Government Experts was a most realistic and valuable one. He hoped the Ad Hoc Committee would study carefully the recommendations contained in that report, with a view to dealing with the problem of conventional weapons as a part, if only one part, of the other problems of humanitarian law. He himself would be grateful if the Diplomatic Conference succeeded in prohibiting certain deadly weapons which were already condemned by world public opinion, such as napalm and other incendiary devices.

21. Mr. MARTIN HERRERO (Spain) said that the present session of the Ad Hoc Committee had brought out certain contrasts in the points of view of the various delegations. Those contrasts, however, could only be described as beneficial, since they were not only directly connected with the subject as a whole but also with its general interest and importance. He recalled that Spain had been one of the eight countries which, at the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, had sponsored the resolution which had raised the urgent question of the prohibition or limitation of certain conventional weapons. Spanish experts had also participated in the first small committee or working group which had studied the subject for the first time. Lastly, his country had been among the first to state its readiness to participate in the Conference of Experts at Lucerne when the proposal to convene that Conference had been made by the International Committee of the Red Cross. His country's interest in the question was due not only to its traditional attachment to the doctrine of the Law of Nations but also to its geographical situation between two seas and two continents, a fact which alone was bound to influence its attitude.

22. His delegation wished to pay a tribute to the comprehensive and very clear working paper provided (CDDH/IV/201 and Add.1 to 5), although it might be wondered whether it did not go beyond what was feasible for the time being. Apart from any considerations of practicability, it was certain that military technology had not yet reached any decisive conclusions about certain types of weapons.

It was true that there were some weapons, such as incendiaries, which were generally repudiated, but there were others about which there was not yet complete agreement, such as high initial velocity projectiles; not all experts agreed that it was their initial velocities which made them harmful. Nor should it be forgotten that in the present world situation, when no general rules on disarmament had been drawn up, there were certain more effective weapons in the possession of the weaker countries which might be referred to as "poor man's weapons".

23. In his opinion, the question of ways and means was just as important as the question of substance. Some scepticism had been expressed with regard to the results of the Lucerne Conference of Government Experts. Those feelings were quite understandable and it was possible to sympathize with them, but it did not seem that they should be maintained in the future. What was needed was more confidence and, above all, more prudence; it was essential "to make haste slowly". His delegation, therefore, was among those which would gladly join the majority if the latter should decide to hold a second Conference of Government Experts.

24. It had also been argued that the present forum was not the proper one for dealing with the question and that it should be brought before some other international meeting of a political character. However, his delegation wondered what forum and location could be more suitable for dealing with the limitation of those weapons which caused unnecessary suffering and which might unnecessarily lead to so many injuries than a conference on humanitarian law? He would even venture to say that, if the Diplomatic Conference did not continue to deal with that matter, it would no longer be worthy of its name, since the matter was one of concern to all, particularly to those who possessed the weakest technical and economic facilities for producing and using such weapons.

25. Mr. ANEMAET (Netherlands) said that, at its fifteenth meeting (CDDH/IV/SR.15), the Ad Hoc Committee had listened to a very interesting statement by the representative of Austria on possible national and international controls on weaponry. The Netherlands Government considered that, since technology was continually producing new weapons and suggesting new possible uses for them, it was advisable that systems should be provided for supplying information to Governments to enable them to evaluate such developments before new weapons were introduced into the armaments of their armed forces. National Governments should be invited to set up committees of experts to report to them on weapons developments so that the possible use of new weapons might be weighed against accepted legal criteria of humanitarian law.

26. It might, however, be more important to establish an international body to ensure the application of such criteria on a world-wide basis.

27. The Netherlands Government felt that it was necessary to consider the possibility of instituting procedures for the examination of complaints about the use of certain conventional weapons inconsistent with the rules of international humanitarian law. A decision on such international procedures need not await or depend on the outcome of the Conference of Government Experts on the Use of Certain Conventional Weapons. As far as national procedures were concerned, his own Government had already instituted such procedures.

28. The Netherlands Government shared the views of the Austrian representative concerning an international weapons review and would prefer that question to be covered by a separate protocol, independent of those already under consideration.

29. As he had stated at the first session of the Diplomatic Conference, his delegation was opposed to mixing the development of humanitarian law with the prohibition and restriction of the use of weapons, first because progress in one field should not be hampered by lack of progress in the other and, second, because disarmament and weapons control required a technology of their own. That had been repeatedly demonstrated both at Lucerne and at Geneva.

30. Mr. BLISHCHENKO (Union of Soviet Socialist Republics), said that some important and valuable ideas had been expressed in the Ad Hoc Committee and they required careful study. In particular, a very interesting statement had been made by the Austrian representative at the fifteenth meeting and by the Algerian representative at the present meeting. In his opinion, the idea of submitting for solution at the proposed World Disarmament Conference the problems at present before the Ad Hoc Committee had not been rejected. That would obviously call for a careful examination of the summary records by all delegations. Many of the provisional summary records, however, did not correctly reflect the statements made on the various items before the Conference, and it was physically impossible for delegations to submit the necessary corrections to those records before the end of the session.

31. Some delegations had handed the texts of their statements to the Secretariat, but the ensuing summaries had been so abbreviated that they failed to reflect the main points of statements. The same applied to the summary records of other Committees. He hoped that all delegations would give their views on the provisional summary records at some stage of the Conference, perhaps at the end of the session.

32. The CHAIRMAN said that the Secretariat would take note of the statement by the representative of the Union of Soviet Socialist Republics and take the necessary action.

33. The debate on item 3 was now closed and at its seventeenth meeting the Committee would discuss item 4 of its programme of work "Consideration of future work, including the question of a second Conference of Government Experts, and of the programme of work which it might follow" (CDDH/IV/Inf.201).

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE SEVENTEENTH MEETING

held on Friday, 14 March 1975, at 3.25 p.m.

Chairman: Mr. GARCES (Colombia)

In the absence of the Chairman, Mr. Amir-Mokri (Iran), Vice-Chairman, took the Chair

CONSIDERATION OF FUTURE WORK, INCLUDING THE QUESTION OF A SECOND CONFERENCE OF GOVERNMENT EXPERTS AND OF ITS WORK PROGRAMME

1. The CHAIRMAN invited the Ad Hoc Committee to begin the discussion of item 4 of its programme of work (CDDH/IV/Inf.201): "Consideration of future work, including the question of a second Conference of Government Experts and of its work programme".
2. Mr. de GRAFFENRIED (Switzerland) referred to the various reports before the Committee: the United Nations report on Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1)^{1/}; the report of the ICRC on Weapons that may cause unnecessary suffering or have indiscriminate effects (1973); the report of the Ad Hoc Committee on its first session (CDDH/47/Rev.1); the report of the Conference of Government Experts on the Use of Certain Conventional Weapons, and a number of technical papers circulated at the various meetings.
3. At the current session the Ad Hoc Committee had reverted to questions which had been the subject of lengthy discussion at its first session and, while the approach to problems had differed slightly, the results obtained so far made it doubtful whether the Ad Hoc Committee's report on its second session would include many new and constructive elements.
4. That state of affairs caused his delegation some concern, for it thought that the Ad Hoc Committee should concentrate more upon the task entrusted to it, namely, to consider the problem of the prohibition and restriction of weapons which caused unnecessary suffering or had indiscriminate effects. The Ad Hoc Committee's debates should be directed as far as possible to the production of practical proposals in that direction: it should not merely produce a report.

^{1/}

United Nations publication, Sales No. E.73.1.3.

5. So far, only two detailed written proposals had been submitted to the Committee for consideration: working paper CDDH/IV/201 and Add. 1 to 5, and the draft working paper submitted by Canada on the marking of minefields (CDDH/IV/202). Judging by the statements made for and against the two proposals, it would not be possible to approve them by consensus in their present form. While it was clear that some representatives did not endorse the proposals in working paper CDDH/IV/201 and Add. 1 to 5, no reasons had been given for their attitude, since there had been no discussion on the substance of the question and no counter-proposals had been submitted.

6. At the Lucerne Conference of Government Experts, many delegations had not been ready or in a position to speak on non-technical questions. Technical experts were in the minority at the current session of the Diplomatic Conference and representatives with a legal or political background did not wish to discuss such subjects because they considered that there were not enough technical data available yet.

7. His delegation considered that it was a waste of time to revert to technical discussions when what was required was a decision at the political level. Public opinion demanded that progress should be made in the matter.

8. It might be feared that the time was not ripe for finding a complete solution to the problem. In view, however, of the rapid developments in the production of armaments, the Committee would never reach the stage where it could claim to have all the necessary data. It was for that reason that the first draft of a control system worked out by the sponsors of working paper CDDH/IV/201 and Add. 1 to 5, proposed that a conference should be convened whenever a certain number of States so requested, in order to adopt and develop the rules which he hoped the Ad Hoc Committee would draw up. It was therefore essential that the Ad Hoc Committee should continue its studies, but that should not prevent it from taking certain decisions at the present session.

9. Mr. KELTANEN (Finland) said that the exchange of opinions that had taken place in the Ad Hoc Committee had shown the political interest that Governments in all parts of the world took in establishing new legal rules on the prohibition or restriction of the use of certain conventional weapons. On the other hand, there was still some hesitation about the possibility of achieving rapid results. At least some of the conventional weapons on which attention had been focused might be seen to offer a distinct military advantage to the user. There were few international agreements prohibiting weapons which had been in common use before their prohibition. The step

the Diplomatic Conference was preparing to take would mean that both civilians and combatants in future wars would be spared the effects of weapons which had hitherto caused tremendous suffering and destruction. The question of possible military advantage should not be approached from the narrow military point of view of a particular belligerent. The Conference's concern was with the common interests of belligerents and the humanitarian interests of mankind.

10. It was with those considerations in mind that the Ad Hoc Committee should approach its task of planning its future work. There were two main issues to be dealt with: firstly, the over-all long-term plan, preferably with a built-in timetable and, secondly, a programme of work for the second Conference of Government Experts to be convened under the auspices of the International Committee of the Red Cross. With regard to the long-term strategy, his Government supported the idea of convening a second session of the Conference in 1975 or early 1976, from which Governments would no doubt obtain sufficient scientific and technical information to support the necessary political decisions. Final conclusions should then be drawn from the facts available, particularly with regard to incendiary weapons. Those conclusions should include the adoption of legal rules which would command broad acceptance, to be included preferably in a separate treaty and not in draft Protocol I. That procedure would both facilitate the rapid adoption of the draft Protocols and help in the effort to prohibit and restrict cruel and indiscriminate weapons.

11. The second session of the Conference of Government Experts should not be a mere repetition of the first, which had been useful in providing additional information on the military and medical issues involved. The goal of the second should be somewhat higher. There was no need for it to go into all the questions on which there had not been great disagreement at the first in detail. It need not, therefore, devote extensive study to the definition of incendiary weapons or their medical effects. Furthermore, even among the issues on which there had been disagreement, the second session of the Conference of Government Experts should single out those of primary importance for reaching final conclusions on prohibitions or restrictions and should not waste time in detailed discussion on every technical problem that might be claimed to have some bearing on its work. It should not be seen as an exercise in itself but as an important phase in an international process towards a ban on the use of certain conventional weapons.

12. He wished to draw particular attention to paragraph 282, sub-paragraph 6, of the report of the Lucerne Conference of Government Experts, in which it was stated that the second

Conference of Government Experts should "focus on such weapons as have been - or may become - the subject of proposed bans or restrictions of use, and ... study the possibility, contents and form of such proposed bans or restrictions". That aspect should be given high priority and should be reflected in all phases of the work of the second session of the Conference of Government Experts. It was to be hoped that many experts would submit specific proposals in the form of draft rules for the consideration of the Conference and ultimately of Governments.

13. The study of the possibility, contents and form of the prohibitions or restrictions envisaged should not entail an abstract discussion on the value and interpretation of such general criteria as the prohibition of the causing of unnecessary suffering and the waging of indiscriminate warfare, since considerable study of those principles was already taking place in Committee III. While it was necessary to have comprehensive information on the general legal criteria, on the medical aspects and on considerations of national security, the legal rules would be produced, not through mathematical or logical deductions from general principles, but by political decisions based on humanitarian aspirations.

14. The second session of the Conference of Government Experts should not set up standing committees dealing with one particular aspect, but it might with advantage establish working groups to study particular problems, such as those relating to the definition of various types of weapon. Working groups might also be established to co-ordinate and amalgamate different proposals and suggestions which might be put forward during the Conference.

15. Particular attention should be paid to the question of incendiary weapons, the prohibition of which on humanitarian grounds was urgently demanded by public opinion. Three alternatives to be studied were, firstly, a total prohibition of incendiary weapons; secondly, a prohibition with some exceptions, for example with respect to anti-tank or other anti-matériel weapons; and, thirdly, a prohibition of air-delivered incendiaries.

16. There was room for further study and discussion, even from a technical and medical point of view, on the question of high-velocity weapons and it was to be hoped that clear data would be available on them at the second session of the Conference of Government Experts. Close attention should also be paid to the type of weapons to be dealt with specifically under that heading: should an attempt be made to define them solely on the basis of their effects on the human body, such as significant

tumbling or the creation of shock waves, or to link such effects with certain technical characteristics, such as the velocity of the bullet or the calibre of the weapon? Only on the basis of exact definitions would it be possible to formulate a rule which would have any practical value. There were similar difficulties with respect to blast and fragmentation weapons, which it would be impossible to ban altogether. An example in which the problems of definition were relatively small was that of the suggested ban on the laying of landmines from aircraft - a question which should not call for extensive technical studies before the necessary political decision could be taken.

17. An assessment had to be made of the possibilities for legal prohibition or restriction of use of some or all of the weapons to be studied at the second session of the Conference of Government Experts. It might then be possible to single out those categories in respect of which the prospects for speedy results were most apparent. An order of priority would have to be agreed upon, since it seemed unlikely that all conventional weapons which could be regarded as inhumane or indiscriminate could be prohibited in the near future. Once agreement had been reached on those of the highest priority, the search for new rules on other inhumane or indiscriminate weapons, including weapons in process of development, should be continued.

18. He wished to reiterate the high hopes which his Government attached to the question of prohibiting or restricting the use of conventional weapons. Everything possible must be done to ensure the success of the second session of the Conference of Government Experts. His Government hoped that its own experts would be able to contribute to its successful outcome.

19. Mr. HAGI (Japan) said that, although the Diplomatic Conference had not been intended to adopt new treaty rules on the prohibition or restriction of the use of any conventional weapons, the Ad Hoc Committee's discussions on the subject had not been meagre and it would undoubtedly continue to be concerned with the revised draft proposals and the explanatory memorandum in working paper CDDH/IV/201 and Add. 1 to 5. Statements on the question of distinguishing defensive from offensive weapons in relation to the paragraphs on incendiary munitions in that document had shown the need to consider the characteristics of certain weapons in further detail. It had also been suggested that new kinds of weapons should be kept under constant review. Such considerations pointed to the need for a second Conference of Government Experts, with which his delegation would co-operate in every possible way.

20. Mr. MENA PORTILLO (Venezuela) said that his delegation wished to make some comments in order to ensure that the proposed second session of the Conference of Government Experts would not be a mere copy of the first. He did not wish to imply that the 1974 Conference of Government Experts had been a failure; on the contrary, it had been a success in many ways. But the delegation of Venezuela hoped that the second session of the Conference of Government Experts, if it took place, would give members of the third session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law a clear idea of the unnecessary suffering and indiscriminate effects that might be caused by certain conventional weapons. Such a Conference could become a Court of Appeal on matters of humanitarian law and could resolutely condemn the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects, and could draw up a protocol to serve as an example to future generations. Those attending the second session of the Conference of Government Experts should bear in mind the suffering caused by the use of certain conventional weapons and the experiments that had been or were being carried out. The careful study of each weapon and munition would help to establish technical criteria for judging their performance and limitations. A detailed examination should be made of the effects of the weapons and munitions concerned on the physiological and psychological well-being of man. That was a difficult problem to solve, since human beings could not be used for experiments, and the results of experiments on animals and of the experience gained by doctors in wartime must therefore be awaited.

21. It was important that the second session of the Conference of Government Experts should bear in mind also the effect on the environment of the use of certain weapons and munitions such as defoliants and incendiary weapons, which killed animals and destroyed vegetation.

22. Legal criteria should also be discussed, the principles and rules of international law being strictly applied in order to ensure that weapons that caused unnecessary suffering or had indiscriminate effects were prohibited.

23. Another question which should be discussed was that of the compilation of a glossary of technical, medical and legal terms on a world-wide basis. All papers submitted in writing to the second session of the Conference of Government Experts should be translated into the official languages of that Conference in order to avoid misunderstanding and consequent loss of time.

24. His delegation proposed that the following items might be discussed at the second session of the Conference of Government Experts:

- I. Analytical study and technical evaluation of the capacity and limitations of weapons and munitions:
 1. Incendiary weapons;
 2. Portable or small calibre weapons;
 3. Blast weapons:
 - (a) General purpose;
 - (b) Fragmentation;
 - (c) Shock or violent disturbance;
 - (d) Time-fused weapons.
 4. Perfidious weapons;
 5. Other weapons and munitions systems;
 6. New weapons.
- II. Analytical medical studies of the effects of weapons and munitions:
 1. On the physiological well-being of man;
 2. On the psychological well-being of man;
 3. Unnecessary suffering.
- III. Qualitative and quantitative analysis of injuries:
 1. Discriminate;
 2. Indiscriminate;
 3. Superfluous or unnecessary.
- IV. Study of effects on the ecological balance:
 1. Flora;
 2. Fauna;
 3. Other constituent elements.

V. Legal studies:

1. Application of existing international legislation;
2. Application of humanitarian principles;
3. Study and development of applicable rules;
4. Correlation of humanitarian rules laid down in the legislation of different countries;
5. Consideration of public opinion.

VI. Prohibition and restriction of the use of conventional weapons.

VII. Other pertinent matters.

VIII. Preparation of the report.

IX. Evaluation of the report.

X. General conclusions.

25. In order to carry out such a programme, it would of course be necessary to set up working groups and sub-groups. That would enable a thorough analysis to be made of the technical, medical, legal and other problems and would help to establish the principles and rules of international humanitarian law.

26. It would save time if the date for the holding of the second session of the Conference of Government Experts could be fixed, if only provisionally. Invitations to States and to non-governmental organizations and other institutions should be sent out as soon as possible. If the Diplomatic Conference could decide, before the end of its current session, on the organization and structure of the Conference of Government Experts and the allocation of responsibility for the various questions, the duration of that Conference could be set tentatively at thirty-two days.

27. Lastly, an important question was that of the financing of the proposed Conference. The funds might be provided by voluntary and equitable contributions from Governments, based on their respective budgets; from voluntary contributions made by each Government; and from voluntary contributions made by private institutions which were especially interested in the application of humanitarian law in armed conflicts, whether or not such bodies participated in the Conference.

28. He expressed the fervent hope that man in his wisdom would one day succeed in putting an end to all armed conflicts and would no longer need to apply the humanitarian law which the Diplomatic Conference was endeavouring to reaffirm and develop.

The meeting rose at 4.5 p.m.

SUMMARY RECORD OF THE EIGHTEENTH MEETING

held on Wednesday, 19 March 1975, at 3.25 p.m.

Chairman: Mr. GARCES (Colombia)

ORGANIZATION OF WORK

1. The CHAIRMAN drew attention to document CDDH/JC/216 (Conference Journal), which included a note by the Secretary-General with regard to "certain criticisms by delegations regarding the quality of the summary records". The Secretary-General stated:

"The Secretariat is fully aware of its duty to reflect accurately in the summary records the words and thoughts of representatives. Errors may, however, creep into the text now and then and, when this happens, the Secretary-General trusts that he can count on the understanding and indulgence of delegations. He will try to put matters right as soon as his attention has been drawn to such errors".

The Secretary-General added that

"The practice of handing over written texts of statements, or even notes, to the précis-writers, as many delegations do, is of considerable help in the drafting of summary records, as is also the delivery of statements at a moderate speed".

CONSIDERATION OF FUTURE WORK, INCLUDING THE QUESTION OF A SECOND CONFERENCE OF GOVERNMENT EXPERTS AND OF ITS WORK PROGRAMME (CDDH/IV/203) (continued)

2. Mr. TODORIĆ (Yugoslavia) said that his delegation attached special importance to the work of the Ad Hoc Committee. Ever since the middle of the nineteenth century, the international community had shown its determination to make the use of certain weapons subject to the rules of international law and to reconcile the exigencies of armed conflicts with the principles of humanitarian law. Unnecessary suffering had already been condemned in the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime, and dum-dum bullets had been prohibited by the International Peace Conference, held at The Hague in 1899. To that list should be added the Geneva Protocol of 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.

3. Draft Protocol I at present under study included some general provisions in article 33 prohibiting unnecessary injury and in paragraph 3 of article 46 the employment of means and methods of combat which struck indiscriminately was prohibited. Article 34 dealt with the question of the development of new weapons that would not cause unnecessary injury. The general rules referred to called for further rules on the prohibition or restriction of certain weapons. That was why the Ad Hoc Committee should study everything relating to certain categories of conventional weapons that might cause unnecessary suffering.

4. By 68 votes to none the Diplomatic Conference at its first session had adopted the proposal to set up the Ad Hoc Committee, in view of the urgent nature of the study with which it was to be entrusted. That decision was a response to resolution XIV adopted at the XXIInd International Conference of the Red Cross, held at Teheran in 1973, and to United Nations General Assembly resolution 3255 A (XXIX) inviting the Diplomatic Conference to continue its consideration of "the question of the use of napalm and other incendiary weapons, as well as other specific conventional weapons which may be deemed to cause unnecessary suffering or to have indiscriminate effects, and its search for agreement on possible rules prohibiting or restricting the use of such weapons and, in this context, also to consider the results of the first Conference of Government Experts and the programme of work which a second Conference of Government Experts might follow".

5. A number of Governments had submitted to the Ad Hoc Committee working papers CDDH/DT/2 and Add.1 and CDDH/IV/201 and Add.1 to 5, bearing in mind the Committee's terms of reference and precedents concerning the use of specific weapons and the request made by the United Nations General Assembly. In the course of its work, the Ad Hoc Committee had considered the humanitarian, technical, military and legal aspects of the problems before it and the possibility of setting up machinery for the periodic consideration of the development of weapons. The protection of combatants and of civilians was a first priority, without prejudice to the security and defence of States. The Yugoslav delegation supported working paper CDDH/IV/201 and Add.1 to 5, unreservedly and requested that the expression "pour la défense" be inserted in the French text of section I.B.2, and that the second sentence of the foot-note on page 2 be deleted. The document itself was satisfactory and offered a good working basis. Should the Diplomatic Conference decide to establish a permanent supervisory body in the form of an international commission, a

useful precedent might be the case of the Permanent International Small Arms Commission established under the International Convention regarding the establishment of uniform regulations for the reciprocal recognition of official proof marks on fire-arms and regulations annexed thereto, signed at Brussels, 15 July 1914. The setting up of such a body seemed indispensable.

6. Incendiary weapons had been studied by the United Nations, the ICRC and the Conference of Government Experts which had met in Lucerne. The same applied to bacteriological and chemical weapons.

7. In the study of new weapons, a certain hesitation was to be expected, owing to the special character of the Ad Hoc Committee and the importance of the subjects dealt with for the international community. He regretted that some delegations had not shown any great enthusiasm during the debates. Yet, those who had suffered from the terrible effects of war in their own flesh were impatient to obtain the banning of certain conventional weapons.

8. As regards the programme of the second session of the Conference of Government Experts, the French delegation had made the interesting suggestion that each weapon should be studied, with its characteristics, its effects and mode of utilization, with a view to reaching realistic conclusions. The Finnish delegation had submitted a proposal along the same lines. The Canadian proposal (CDDH/IV/202) put forward some interesting ideas on the subject of minefields. The delegation of Kuwait took the view that the use of anti-personnel mines was lawful in order to paralyse the adversary's movements. The second session of the Conference of Experts would have to take into consideration sub-paragraph 6 of paragraph 282 of chapter VIII (Follow-up) of the report on its first session. A general assent with regard to the use of weapons causing unnecessary injury and striking indiscriminately was needed urgently. Against such weapons no nation, big or small, was protected. The cause of peace overrode all considerations as to weapons.

9. Mr. KUSSBACH (Austria) said that his delegation was strongly in favour of a second session of the Conference of Government Experts, which would, it was hoped, make a decisive contribution to the progress and aims of the Diplomatic Conference. The Government Experts should meet in the period between the current session and the third session of the Diplomatic Conference. As regards the date of the Conference of Government Experts, he considered that preferably it should not be scheduled too soon, so as to enable Governments to complete the additional studies

and research in which they were engaged. On no account should delegations be placed in the situation where they would be unable to take a position on the issues dealt with during the second session for the sole reason that the research undertaken in their countries had not been finalized. Furthermore, there ought to be a sufficient gap between the second session of the Conference of Experts and the third session of the Diplomatic Conference to enable Governments to study the conclusions reached by the Conference of Experts and to define their position in time for the Diplomatic Conference.

10. The Austrian delegation considered that four weeks should in any case be sufficient for completing the work of the Conference of Experts. But the agenda ought to be effectively exhausted, and not simply on paper. That meant, of course, that a strict watch had to be kept on how the time was used; hence, the way in which the work was organized would be extremely important. He attached great importance to that question, for the idea of a third session of the Conference of Government Experts should not be allowed to arise. Such a third session would offer no advantage and its sole effect would be to prolong discussions unnecessarily and to lead to the final abandoning of any agreement on the prohibition or restriction of the use of specific conventional weapons.

11. With regard to the programme of work of the second session of the Conference of Experts, he considered that the conclusions reached by the Lucerne Conference of Government Experts were sufficiently specific. He accepted them without reserve. He hoped, on the other hand, that the unnecessary repetition of technical discussions would be avoided. The Austrian delegation made no secret of the fact that it attached rather more importance to the study of the possibility of making concrete proposals for the prohibition or restriction of the use of specific weapons. The fundamental task of the second session of the Conference of Government Experts would no doubt be to draw up concrete proposals or - if it appeared impossible to reach agreement on a generally acceptable text - of alternatives, which would provide Governments with an opportunity to reflect on the proposals put forward and, where there were alternatives, to indicate their preferences.

12. Reverting to the question of the organization of the work, he emphasized that the programme should be more flexible than at the first session. Apart from plenary meetings, he considered it essential that working groups should be set up and, preferably, there should be one standing working group, and possibly others as required. In the light of experience at Lucerne, the Austrian delegation considered that it would be desirable to set up even professional working groups to enable military experts and

medical practitioners to exchange views on subjects on which it was difficult to reach agreement, not only between experts in general, but also between experts in the same field. Apart from the working groups, more time should be devoted to informal consultations. He proposed, moreover, that all possible facilities should be provided for contacts and "off the record" exchanges of opinion rather than formal sittings.

13. It was generally appreciated that the programme of work of the second session of the Conference of Government Experts was a very full one. That meant that the Conference would only achieve satisfactory results if it kept strictly to its agenda and if care was taken to apportion time for discussion of the various questions, within the time scheduled. The organization of work involved not only the division of work between plenary meetings and working groups, but also a judicious allocation of time.

14. At Lucerne, the delegation of Government experts of Austria had emphasized the importance of publicising the work. His country maintained that position, since some degree of publicity would contribute to the success of the Conference. The Press should be briefed. In addition, some plenary meetings might be open to the public. The Austrian delegation earnestly hoped that as a result of that session it would be possible to adopt a number of rules for the prohibition or restriction of the use of specific conventional weapons at the third session of the Diplomatic Conference, in 1976.

15. Mr. de BREUCKER (Belgium) noted that all delegations, even those not fully in agreement with the proposals and observations contained in working paper CDDH/IV/201 and Add.1 to 5, had the same desire to reach the best possible results regarding the "humanisation" of the terrible scourge of war.

16. Belgium was too small a country and too peace-loving to be power-hungry and its objective would be general disarmament, had not past events counselled prudence. While Belgium had in the past been plunged into war solely through the actions of megalomaniacs, the country had nevertheless been obliged to return fire by fire.

17. The Belgian delegation had appreciated the sensible and thoughtful statement of the representative of Algeria, especially his judicious remark that the study should be a common task and in no way an exercise directed against anybody. The Belgian delegation likewise thought that the Ad Hoc Committee should make as much headway as possible towards its objective.

18. All weapons were cruel. To a mother at the grave of her son, it was immaterial what weapon had killed him. The Ad Hoc Committee would hardly achieve its objective if a weapon it had prohibited were to be replaced by another even more frightful one. He wondered how a choice could be made between a weapon which, in a given combat situation, neutralized the offensive potential of an enemy by killing or wounding a number of enemy soldiers whilst sparing the large majority, and another weapon which, to obtain the same advantage, killed all the adversaries, but in an absolutely irreproachable manner. That was a dilemma to be resolved, no doubt at the price of a restriction of use, the terms of which should be carefully weighed, rather than through an unconditional prohibition. A further question was whether the Ad Hoc Committee should impose on the armed forces a wide panoply of weapons adapted to the slightest variations of circumstances, at the risk of constraining small countries to infringe prohibitions so categorical as to render them powerless to defend their own freedom. The Ad Hoc Committee should show moderation, and a realistic approach did not rule out the political determination which should guide its work.

19. Before ordering any prohibitions or restriction whatsoever, the Ad Hoc Committee should ascertain whether the measures it recommended were in conformity with its objectives: to humanize war, not to make it impossible, which would be Utopian. The Committee could only legislate in the narrow domain of jus in bello and whoever disregarded that limitation would ill-serve the legitimate cause the Committee was defending.

20. The Lucerne Conference of Government Experts had produced tangible results and the study it had undertaken deserved to be continued. The Belgian experts had supported the views expressed by many other experts, which appeared in paragraph 282 of the report of the Conference. His delegation agreed that those conclusions were a sound basis for establishing the terms of reference of a second conference, but ventured to point out that it was better to achieve a limited but sure result rather than to submit Utopian proposals or moral censures without practical significance. Preferably the experts should concentrate on those weapons on which studies were nearest completion. The order in which weapons had been discussed by the Conference of Government Experts and by the Ad Hoc Committee did not seem to be absolutely final. As the second session of the Conference of Government Experts would be of no longer duration than the first, it would be prudent not to hope for definitive conclusions concerning all the categories of weapons envisaged. The experts would have to endeavour to observe the time-limits assigned to them but it would be unfortunate if, for

lack of time, the second session arrived either at hasty conclusions or at no conclusions at all. His delegation hoped that the experts would be able to formulate specific and viable conclusions that would be widely acceptable and in keeping with the aims of the Diplomatic Conference.

21. Mr. MILLER (Canada) recalled that at the beginning of the current session his delegation had stated that it shared the conclusion of the President of the Lucerne Conference of Government Experts that newly presented facts needed to be digested, that further study and research were required and that it was doubtful whether the Ad Hoc Committee would be able at the current session to adopt new provisions for the prohibition or restriction of the use of certain conventional weapons. New ideas and suggestions had been put forward, however, and his delegation would examine them carefully since they could facilitate the work of the second session of the Conference of Government Experts.

22. His Government believed that a second session of the Conference of Government Experts was needed and should be convened under ICRC auspices, not merely to continue the work already undertaken, but also with new terms of reference, to make a study in depth of certain conventional weapons, in the light of new data available.

23. The terms of reference of the second session should derive directly from the consensus of the Lucerne Conference which stated inter alia that the second conference "would focus on such weapons as have been - or may become - the subject of proposed bans or restrictions of use". (See report of the Lucerne Conference of Government Experts, para. 282, sub-para. 6).

24. The Committee seemed to be in agreement as to the manner in which the work of the second session of the Conference of Government Experts should be organized, and the ICRC had no doubt taken into account the observations submitted in preparing document CDDH/IV/203, which it had just circulated.

25. With reference to the site of the Conference, his delegation had some reservations as to the ICRC's proposed choice of Lugano. During the first session the Conference had appreciated not only the excellent facilities that Lucerne offered but also its close proximity to Berne, which enabled his delegation to utilize the services of its Embassy there. Since the second session would not be of a mainly technical nature like the first but would have to deal also with the political and legal aspects of the prohibition

or restriction of the use of certain conventional weapons, the various delegations would have to consult their Governments regularly. Most of the diplomatic missions had their seat in Geneva, and he asked the ICRC to consider Geneva as its first choice for the site of the second session. His delegation would be interested to hear other delegations' views on the subject.

26. Mr. EIDE (Norway) said that his Government would have preferred that the problem in its entirety - the legal, technical, medical and military aspects - be discussed within the framework of the Diplomatic Conference. Singling out individual aspects for special attention might cause delegations to lose sight of the over-all purpose. He noted, however, that there was a consensus for another session of the Conference of Government Experts.

27. That Conference should be clearly oriented to the prohibition of the use of certain conventional weapons. It was within that framework that the technical, military and medical discussions must take place. The Conference should come to a decision regarding the scope of the prohibitions and the technical definitions in the legal provisions, and determine which weapons should be covered by the prohibitions.

28. His delegation fully supported the Austrian representative's suggestions concerning the agenda of the conference. The draft programme of work in the ICRC document (CDDH/IV/203), just distributed, appeared to be in conformity with the suggestions made by the members of the Ad Hoc Committee. His delegation, however, reserved the right to return to that matter. For the time being, it would limit itself to certain general observations.

29. Some delegations had argued that it would be inappropriate to prohibit the use of certain weapons, since such a prohibition could undermine the prohibition of means and methods which caused unnecessary suffering or had indiscriminate effects on soldier and civilian alike. That argument was untenable. On the contrary, the different approaches supplemented each other.

30. The prohibitions could be said to be on three levels of specificity. First, there were the basic rules in articles 33, 43 and 46 of draft Protocol I, and in the corresponding articles of draft Protocol II. Then came the more specific prohibitions set out in Part IV of draft Protocol I and Part V of draft Protocol II, on protection of the civilian population. The latter spelled out in some detail the methods to be prohibited and the precautions to be taken. Finally, in the light of the work of the Ad Hoc Committee and during the third session of the

Diplomatic Conference, the third level would be reached, that of the prohibition of the use of certain weapons. The latter prohibitions could be made even more precise than those pertaining to methods in the Protocols. Therefore, by virtue of their level of specificity, those prohibitions would supplement the first two levels.

31. It had also been argued that if the use of certain weapons were prohibited, then the door would be opened to the use of weapons even more cruel or indiscriminate. That was a mistaken argument. The two lower levels of prohibition would apply in any case, even when a given weapon was not specifically prohibited. The weapons to be included in the list of prohibitions should be those apt to have indiscriminate effects or to cause unnecessary suffering in their normal use. If, therefore, a weapon was deemed to be even more perfidious and indiscriminate than those on the list, the prohibition of its use would automatically follow from the first two levels of prohibition. Hence, it would be in the interests of all concerned that the prohibitions should comprise three levels of specificity: that would reduce uncertainty and make the system more complete.

32. It had also been frequently argued that the crucial question was, not the nature of the weapon itself, but the way in which it was used. There was considerable truth in that argument. The way in which a target was identified and located was of paramount importance, as were the methods and means of delivery and the equipment used to guide delivery. The indiscriminateness of a weapon could result from a combination of several factors: imprecise location of targets, incorrect handling of the information pertaining to that location resulting in imprecise firing data and, finally, from effects out of proportion with those necessary with respect to the target attacked. Committee III had made considerable progress in respect of target location, both in space and in time; it was nevertheless important that all those factors be examined together by the Conference of Government Experts with a view to securing improved target identification and delivery guidance systems. The Conference of Government Experts and the Diplomatic Conference at its third session should draw the appropriate conclusions from the work of Committee III and outlaw those weapons or weapons systems which did not permit accurate targeting on legitimate military objectives. In that way a consistent system would be created - more important still - more effective protection would be given to the civilian population.

33. Mr. MENA PORTILLO (Venezuela), commenting on the Austrian representative's statement, regretted that the rules of procedure of the Conference of Government Experts had been a veritable sword of Damocles suspended over the participants, forbidding the mention, in the Lucerne report, of all the reservations formulated during the discussions. Those rules, which had been drafted by ICRC, laid down that meetings could not be public (rule 4, paragraph 1); that experts spoke in their personal capacity (rule 8, paragraph 1); that the Conference could not adopt any resolution or recommendation and should not vote (rule 8, paragraph 2); and, finally, that the Conference should abstain from any discussion of a controversial or political nature (rule 8, paragraph 3). Consequently, the experts had not, unfortunately, been able to proceed beyond technical matters, or to formulate recommendations which would have eased the task of the Diplomatic Conference. His delegation deplored that state of affairs, which would certainly lead to delays.

34. Moreover, document CDDH/IV/203, likewise drafted by the ICRC, laid down that "The main provisions of the rules of procedure will not be changed" for a second session (CDDH/IV/203, annex, paragraph 8). For that reason, his delegation would like the Ad Hoc Committee to make a careful study of the rules of procedure so that the experts would at least be able to elaborate recommendations for the prohibition or limitation of the use of certain weapons.

35. Mr. HERNANDEZ (Uruguay) agreed with the Venezuelan representative, whose argument was confirmed by a cursory perusal of document CDDH/IV/203, especially paragraph 8. But that paragraph also stated that "The rules of procedure will, however, be adapted to allow for the fact that it will be a second session of the Conference". It was to be hoped that the latter sentence would open the way to a satisfactory solution, in keeping with the wishes of the delegations of Venezuela and Uruguay.

36. Mr. ABDUL-MALIK (Nigeria) said he regretted that his delegation had not the resources to enable it to participate fully in the work of the Ad Hoc Committee. At the first session of the Diplomatic Conference, his delegation had stated quite clearly that it approved the working paper submitted by Sweden and several other countries (CDDH/DT/2 and Add.1, revised and reissued as document CDDH/IV/201 and Add.1 to 5) and it noted with regret, therefore, that the Diplomatic Conference had made no further progress towards the prohibition of certain categories of weapons. The Conference of Government Experts had fortunately arrived at a large measure of unanimity concerning incendiary

weapons, particularly napalm. Accordingly, the current session of the Diplomatic Conference might have been expected to consummate the efforts made by the Conference of Government Experts, but, since that did not appear to be the case, his delegation was in favour of convening a second session of the latter, provided that it was the last and that it succeeded in completing the work begun by the first session of that Conference. Such a Conference should have a clear mandate to make specific proposals which would be submitted for consideration and adoption to the third session of the Diplomatic Conference. Draft regulations for the prohibition of incendiary weapons might, for instance, be proposed, rather than a reconsideration of the entire question. With that qualification, his delegation approved the proposed programme of work contained in document CDDH/IV/203.

37. He shared the view of the Canadian delegation that Geneva or a town fairly near Geneva would be preferable as the location of the second session of the Conference of Government Experts.

38. Mr. TAYLOR (United Kingdom) said he saw no problem in the selection of a location reasonably near Berne or Geneva for the second session of the Conference of Government Experts. He did not, however, oppose the choice of Lugano or any other main centre which offered the requisite facilities and means of communication. Experience had shown that Lucerne was sufficiently small to encourage contacts between delegations, at meetings and elsewhere. That ease of "concentration" was one of Lucerne's main assets, and might not be found in Geneva or Lugano. His delegation thought the ICRC should be left to fix the site for the Conference, since it had had much experience in that matter and would no doubt be able to choose a city where the conditions were satisfactory to all delegations, large and small.

39. Mr. ABADA (Algeria) said he reserved the right to comment on document CDDH/IV/203 at a later stage and wished for the time being to make a number of remarks on the questions raised by earlier speakers. First, his delegation, like the Austrian delegation, hoped that the second session of the Conference of Experts would be less "clandestine" than the Lucerne Conference and that the general public would be informed about its work, without of course excessive publicity which might hamper the smooth conduct of its business. That matter should not create major difficulties. Furthermore, his delegation agreed with the Venezuelan delegation that the rules of procedures should be adapted to the needs of the second session of the Conference and that experts should not be obliged to confine themselves to a purely technical field.

40. He had no objection, in principle, to any of the towns proposed as the location of the Conference. The first session of the Conference had, however, proved that it was preferable not to bring experts together in a city as large as Geneva. Lucerne had been small enough to enable delegations to pool their efforts and had also made it possible for them to meet on numerous occasions outside the Conference premises. The so-called "spirit of Lucerne" was no doubt due to that favourable combination of circumstances. On balance, he thought it would be preferable for the experts to meet next time in a "diplomatic ghetto" and no doubt that was what the United Kingdom representative had meant when he had talked of "concentration". Although, for the time being, his delegation did not wish to state its views about the choice of Lugano, it considered that Geneva was not the ideal place and would prefer to return to Lucerne.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE NINETEENTH MEETING

held on Friday, 21 March 1975, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF FUTURE WORK, INCLUDING THE QUESTION OF A SECOND CONFERENCE OF GOVERNMENT EXPERTS AND OF ITS WORK PROGRAMME (CDDH/IV/203) (continued)

1. The CHAIRMAN invited the Committee to consider document CDDH/IV/203, which contained a letter from the International Committee of the Red Cross together with a proposed programme of work for a second session of the Conference of Government Experts on the Use of Certain Conventional Weapons.
2. Mr. ANEMAET (Netherlands) said that his delegation fully agreed with the programme of work proposed in the annex to document CDDH/IV/203, which provided for the submission of new data and the study and drafting of new proposals. It also welcomed the provision for discussions in plenary meetings and in working groups.
3. His Government would have preferred a special working group of legal experts to be set up during the Conference to consider legal criteria, but would not press the idea at the present stage in view of the lack of support - indeed in some cases opposition - it had met. His delegation might submit a proposal on the subject to the Conference.
4. His delegation would strongly advise his Government to participate in the second session of the Conference.
5. With regard to the proposals in paragraph 6 of the comments in the annex to document CDDH/IV/203, his delegation agreed to the dates and had no strong feelings about the place, provided it was sufficiently far from Geneva and that adequate means of communication were available, including telex. Obviously delegations would need to consult their Governments, but many matters could be decided beforehand in their home capitals. He would recommend his Government to contribute to the cost of the second session, as it had done for the first session.
6. Regarding the rules of procedure, he saw no need for any change in the main provisions. He would not oppose any suggestion that the opening and closing meetings should be open to the public and would welcome statements by representatives of the non-governmental organizations.

7. Mr. ANDERSON (United States of America) said his delegation considered that the proposed plan of work for the second session of the Conference of Government Experts was a reasonable and workable approach to further study of the issues. It reflected the statement in paragraph 282 of the report of the first session of the Conference which, among other things, called for the consideration of new information on the subject and concentration on weapons that had been or might become the subject of proposed bans or restrictions.
8. The detachment and concentration engendered by the atmosphere at Lucerne had been beneficial to the work of the Conference of Government Experts and he would be in favour of the second session being held in either Lugano or Lucerne. The matter could safely be left to the ICRC.
9. He could not support the suggestion that some meetings should be open to the public, since that would detract from the serious work before the Conference and be disruptive to discussions.
10. Mr. FRICAUD-CHAGNAUD (France) said that he fully supported the proposed programme of work in document CDDH/IV/203. With regard to the site, although he had at first supported the Canadian representative's proposal at the eighteenth meeting (CDDH/IV/SR.18), now in the light of the comments of the United Kingdom and Algerian representatives, in particular concerning the merits of the atmosphere at Lucerne, he supported the ICRC proposal. His only concern was that the Conference should be held near the centre of the town and he agreed with the Netherlands representative on the importance of means of communication.
11. Regarding the organization of work, he was confident that the existing rules of procedure, with a few minor amendments, would be satisfactory. They had proved perfectly adequate at the first session and he saw no reason to spend time discussing them.
12. He would have no objection to the opening and closing meetings being held in public, if there were a consensus in favour of it.
13. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the question of the prohibition or restriction of the use of certain types of conventional weapons liable to cause unnecessary suffering or of an indiscriminate nature was one of great importance, as was shown by the remarks of the representative of the Democratic Republic of Viet-Nam, who had described the terrible effects of such weapons both on the population and on the environment. The discussion on those weapons had shown the lack of any agreement among representatives, who had expressed the most

widely differing views. The majority had not even taken part in the discussions, no doubt because they were not ready to express an opinion on specific questions requiring specialized knowledge. Delegations that had discussed particular weapons had expressed contradictory views; differences of opinion could be found even in the working paper (CDDH/IV/201 and Corr.2 and Add.1 to 6).

14. The Committee now had to consider the work programme for the second session of the Conference of Government Experts, and had heard the valuable suggestion of the representative of Algeria that the recommendations made by those experts should be of interest to the World Disarmament Conference. They must not forget the world-wide efforts being made to prevent war, and to prohibit the use of weapons of mass destruction. For that reason it was impossible to agree with those delegations that appeared to believe that the Diplomatic Conference was the only means of prohibiting the use of conventional weapons; that question was also the concern of the United Nations Conference of the Committee on Disarmament.

15. As far as the Union of Soviet Socialist Republics were concerned, its position with regard to the prohibition of the use of certain types of conventional weapons was set out in the peace programme adopted by the twenty-fourth Conference of the Communist Party of the Soviet Union. Among the steps taken by the USSR in recent years to prevent war and to prohibit the use of weapons of mass destruction were the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Prevention of Nuclear War, and the Interim Agreement between the United States of America and the Union of Soviet Socialist Republics on Certain Measures with respect to the Limitation of Strategic Offensive Arms. Conversations were at that moment in progress in Geneva between the delegations of the two countries on a new agreement on the limitation of strategic arms, arising out of the USSR - United States summit meeting at Vladivostok. An agreement of great importance had been concluded between the USSR and France on the strengthening of world peace; the visit to the USSR of the French Prime Minister, M. Chirac, would also help to strengthen peace and develop co-operation on the basis of the peaceful co-existence of States with different social systems. An important agreement had also been recently signed between the USSR and the United Kingdom of Great Britain and Northern Ireland following the visit of the British Prime Minister, Mr. Wilson; the communiqué issued after that visit had indicated the need for measures to reduce the burden of armaments and to achieve complete disarmament, including both nuclear and conventional weapons. That communiqué also stressed the role to

be played in the solution of the problems of disarmament by the World Disarmament Conference. The two countries attached great importance, in addition, to the talks on mutual balanced forces reduction in Central Europe. The Conference of the Committee on Disarmament, meeting in Geneva, was also considering measures for the prohibition of chemical warfare and of military techniques liable to harm the environment or the climate. In May 1975, an international conference would be held in Geneva to consider the operation of the Treaty on the Non-proliferation of Nuclear Weapons. All the agreements and meetings that he had mentioned constituted important measures for the strengthening of peace and the preservation of humanity from the horrors of war.

16. With regard to the question of the direction to be followed by the experts in their work, the Diplomatic Conference on Humanitarian Law had been asked by the United Nations General Assembly at its twenty-eighth session (General Assembly resolution 3076 (XXVIII)) to consider the question of the use of napalm and other incendiary weapons, as well as other specific conventional weapons. In his report to the twenty-ninth session of the General Assembly (A/9669 and Add.1), the United Nations Secretary-General had indicated that, as examination of that question was only in its initial stages, any immediate prohibition or restriction of the use of certain types of conventional weapons was not to be expected; he had also referred to the need for a second session of the Conference of Experts to continue that examination. For that reason, the General Assembly did not expect from the Diplomatic Conference any such prohibition or restriction; further detailed study was necessary before that would be possible.

17. His delegation agreed with the point of view of the ICRC as to the tasks of the Conference with regard to the prohibition of weapons. As was pointed out by the ICRC in the introduction to the draft Additional Protocols: "Problems relating to atomic, bacteriological and chemical warfare are subjects of international agreements or negotiations by Governments, and in submitting these draft Additional Protocols the ICRC does not intend to broach those problems." As far as the so-called conventional weapons were concerned, the ICRC advocated study and research in that field; that was an understandable and correct point of view. Nevertheless, the experts would still be able to do useful work that would be of assistance to the various international bodies concerned with the problem. In the view of the USSR delegation, they should devote themselves mainly to the development of objective legal criteria that could be used by those bodies in the solution of problems associated with the prohibition or restriction of the use of certain types of conventional weapons.

In so doing, the main task of the experts would be to determine the conditions under which the use of particular weapons should be prohibited or restricted. The recommendations as to the work programme for the experts should therefore be concerned with the methods and means of use of conventional weapons; the aim should be to increase the protection of the civilian population, prevent the destruction of the environment, and reduce to a minimum the damage done to civilian installations. The experts should also work out legal criteria that would serve to prohibit or restrict the use of conventional weapons causing unnecessary suffering or of an indiscriminate nature.

18. Of course, in developing those legal criteria, the experts must avoid illusions and utopianism; to propose such criteria for the prohibition or restriction of blast and fragmentation weapons would be unrealistic, since such weapons constituted the essential conventional armament of the armies of the majority of countries. The experts could make use of the relevant provisions of the Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land which, in Article 23 e), prohibited the use of arms, projectiles, or material calculated to cause unnecessary suffering. They could also make use of the generally accepted provision of international law whereby the parties to a conflict were limited in their right to choose methods of harming the enemy. The task of the experts was thus to develop legal criteria for determining the conditions under which the use of a given type of conventional weapon should be prohibited or restricted. Such a work programme was the natural consequence of the task assigned to the Diplomatic Conference, namely, the further development of international humanitarian law.

19. In the view of the USSR delegation, it was impossible to solve in isolation the problems of the prohibition of particular types of conventional weapons; such problems could be solved only as part of the whole complex of problems associated with disarmament. The Diplomatic Conference was not competent to solve them, as they were the concern of various international organizations. For that reason, the report of the second session of the Conference of Government Experts should be transmitted to those organizations. The summary records of the Ad Hoc Committee should be given to the experts to study.

20. Experts of the USSR had taken an active part in the work of the first session of the Conference of Government Experts and were ready to co-operate in the further study of the problem of conventional weapons. His delegation believed that a valuable contribution to the work of the experts could be made by representatives of the Provisional Revolutionary Government of South Viet-Nam, if they were allowed to participate on an equal footing; the Conference of Government Experts was open to all.

21. Certain delegations had suggested that the Press, radio and television should be allowed to be present at the Conference of Government Experts; in his view, that would prevent the creation of an atmosphere of constructive collaboration. The Press should, of course, be kept informed of the progress of the work of the conference, but that could be done by means of Press releases, approved at the various meetings.

22. The representative of Canada had said that the programme of work of the second session of the Conference had been already determined; in his (Mr. Gribanov's) view, that programme was now being determined by the Ad Hoc Committee. He could not agree with the view that the Conference of Government Experts was a part of the Diplomatic Conference; the two Conferences had different tasks, different aims, and were conducted at different levels. Another representative had suggested that the recommendations of the second session of the Conference of Government Experts should constitute a third Protocol. His delegation could not accept that proposal; the task of the Diplomatic Conference was to consider the two Additional Protocols to the Geneva Conventions of 1949 and to adopt agreed versions of them, and that task must be completed; until that had been done, it would be difficult to talk about a third Protocol. The report of the experts, and any recommendations that they might make should be transmitted to the international organizations concerned with disarmament. Increasing the number of protocols ad infinitum would only harm the essential work on the two Additional Protocols.

23. His delegation agreed with the Belgian representative, who at the eighteenth meeting (CDDH/IV/SR.18) had called for realism and said that the experts should aim at reaching widely applicable conclusions in harmony with the aims of the Diplomatic Conference; the development by the experts of legal criteria for the conditions under which particular conventional weapons could be prohibited or their use restricted would be in harmony with those aims.

24. The work programme for the experts proposed by the ICRC was acceptable (CDDH/IV/203), but it was doubtful whether they would be able to deal with all the matters listed in twenty-two working days. The Conference should itself decide such matters as the number of plenary sessions, the setting up of working groups and sub-groups to deal with particular questions.

25. As far as the location of the Conference was concerned, it was clear that the choice of Lugano would increase the difficulties faced by the experts in their work.

26. Mr. BLAKENEY (Australia) said that the Committee's discussions had shown that, whatever the differences of opinion, there was a common seriousness of purpose and desire for progress in expanding and updating international agreement on human rights in armed conflict and in trying to develop agreed restrictions on weapons whose use might offend agreed criteria. His country strongly supported those efforts and had already declared its intention with regard to the use of certain types of incendiary weapon.

27. His delegation believed that further substantive progress could best be made at a second session of the Conference of Government Experts and that one of the Ad Hoc Committee's main tasks was to establish an acceptable programme of work for that session. He understood but did not share the disappointment expressed by some delegations at the lack of significant progress at the current session. His delegation saw the situation differently. All the members of the Ad Hoc Committee were concerned with reducing the suffering caused by war. The will to engage in their common task had brought them together to find ways and means of accomplishing it effectively. The agreement which that involved was all the more difficult to achieve because the issues to be dealt with were not solely humanitarian: they could not be divorced from the national security interests of individual States, which in the last resort meant their very survival. Moreover, defence problems, policies and capabilities often differed widely, and many of the facts about the use and effects of weapons were themselves in dispute.

28. In such circumstances, progress towards sound, realistic and lasting agreement which would attract general international acceptance was necessarily slow, but progress was certainly being made. The process of eliciting the facts about weapons and their uses, which had started with the United Nations Secretary-General's reports - Napalm and Other Incendiary Weapons and All Aspects of Their Possible Use (A/8803/Rev.1 and A/9207 and Corr.1 and Add.1) and the meetings of the group of experts in 1973 and had continued at Lucerne - had now become established. The report of the Lucerne Conference of Government Experts had demonstrated, however, that much of the data presented as factual was contradictory or at least inconclusive. The report was valuable precisely because it gave an unvarnished picture of the situation in which the work had to be done and set out clearly many of the facts, analyses and judgments that were in dispute. Individual States were thus in a better position to judge the areas in which there seemed little prospect at present of widely agreed and effective restrictions; but they were also able to discern more clearly the areas in which there seemed a real prospect of agreement.

29. A second session of the Conference of Government Experts should be able to carry that process forward; it could begin with further frank exchanges of information and then consider the possibility, content and form of any proposed restrictions. Such an approach would be in line with the President's summary of the conclusions, appearing in paragraph 282 of the report and would, he felt, offer the best prospect of arriving at agreements that would be generally acceptable.

30. His delegation accordingly supported the proposed work programme for the second session (CDDH/IV/203). In general, it also supported the comments which accompanied it, but it had some suggestions to make on the procedures proposed. In the first place, it agreed with certain other speakers that good communication facilities would be required and it therefore thought that a place nearer to Berne or Geneva would be preferable to Lugano. Secondly, his delegation hoped that voting would be avoided and that the consensus procedure would be used. It was clear that, in a matter involving the national security of individual States, further progress could be made only by agreement. Thirdly, though he agreed that it was desirable that the public should be better informed about the work of the Conference, he thought that, at the present stage, it would not be conducive to progress if meetings were open to the public.

31. Mr. MAIGA (Mali) said that man, as never before in his history, was master of the means that would enable him to achieve living conditions hitherto undreamed of; yet those means might be used by nations for their own purposes to bring about his destruction.

32. The Diplomatic Conference was faced with two main problems: to try to reduce the causes of conflict between States, and to seek the tangible progress demanded by Governments and international public opinion in prohibiting the use of weapons and methods of warfare that caused unnecessary injury or had indiscriminate effects, as set forth in articles 33 and 34 of draft Protocol I.

33. His delegation welcomed the creation of the Ad Hoc Committee as a further step in the sequence marked by the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime, the Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, the Geneva Protocol of 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or other

Gases and of Bacteriological Methods of Warfare, and the Geneva Conventions of 1949. The work done in recent years by the United Nations and the International Committee of the Red Cross had confirmed the danger of incendiary weapons both to the civilian population and to the environment.

34. He had therefore been greatly surprised to hear certain representatives say that the current Diplomatic Conference was not the proper place for discussing the prohibition of conventional weapons causing unnecessary suffering and indiscriminate effects but that they should rather be dealt with in the context of general and complete disarmament.

35. In his opinion, the current Conference provided an opportunity for the great Powers to demonstrate their sincerity and to state their true intentions. The development of humanitarian law should not be considered in terms of particular interests, or of the controlling position of certain States on the current international scene. Humanitarian law should look to the future and should be concerned with the protection of man, the removal of the spectre of conflict and universal peace.

36. The law to be applied should be based on a true understanding of the international scene. It was necessary to learn from the past, from the centuries of deception and humiliation of the weak by the strong, relying on their scientific and technical superiority. In connexion with incendiary weapons, there was a danger of colonialism in an acute form, which could wreck all the efforts to create a climate of understanding. The task called for a determination to succeed, since failure would mean a future full of danger and uncertainty for mankind.

37. His delegation wished to join the sponsors of working paper CDDH/IV/201 and Corr.2 and Add.1 to 6, which was constructive and in conformity with the task set by United Nations General Assembly resolution 3076 (XXVIII). The second session of the Conference of Government Experts should not conduct theoretical discussions, but transform principles into reality and devise sound rules for the future on the basis of the working paper.

38. Mr. CAYLA (International Committee of the Red Cross) said that the ICRC was glad to note from the opening comments made in the Ad Hoc Committee on the communication from the ICRC (CDDH/IV/203) that the proposals which it contained for the continuation of the work on weapons and more particularly for the organization of the second session of the Conference of Government

Experts were very widely accepted. Though some delegations attached special importance to certain items in the proposed work programme, there was no doubt that that programme as a whole, as well as the first five comments by the ICRC on it, seemed to be generally acceptable.

39. The ICRC would not press its comments on finance in paragraph 7, but it would be grateful if Governments would announce the amount of their voluntary financial contributions before 31 October 1975 and make them available in whole or in part by that date. It hoped that all Governments would help to meet the cost of the second session.

40. It was clear that the dates of the second session would depend to a large extent on the decision concerning the dates of the third session of the Diplomatic Conference, which would be taken shortly. The dates mentioned in paragraph 6 of the comments would only be suitable if the Diplomatic Conference did not meet before 20 or 26 April 1976 at the earliest. If that were not the case, it would not be easy to fix other dates for the second session of the Conference of Government Experts, since it seemed to be the generally accepted view that it should not take place either in November and December, because the United Nations General Assembly would be in session, or in the early autumn, because several delegations considered that that would be too early.

41. With regard to the place in which the second session should be held, the ICRC had noted that no specific proposal had been made that it should be held elsewhere than in Switzerland. It had also noted that many, indeed most, delegations did not seem to attach great importance to the choice of town and were therefore prepared to leave the decision to the ICRC. Some representatives had stated that Lugano was too far from the communications facilities available at an Embassy, for instance. Many had expressed the view that it would be better to hold the conference elsewhere than at Geneva. The suggestion had been made that it should again be held at Lucerne; the ICRC was prepared to inquire whether it would be possible to hold the second session in Lucerne itself and not outside the town, as on the previous occasion. It should be remembered, however, that several of the largest hotels in Lucerne were closed in January. Indeed, it had been mainly because of winter climatic reasons that the ICRC had suggested another place.

42. The rules of procedure would need to be slightly adapted, although their main provisions would remain unchanged. The ICRC had noted with interest the suggestions already made and would like to have the views of other delegations on the subject before the Committee concluded its work, so that the amended rules of procedure could be made available to delegations before the end of the current session of the Diplomatic Conference.

43. The ICRC hoped that the appeal that it had made at the end of document CDDH/IV/203 would be endorsed by all the members of the Ad Hoc Committee, by the experts and by all the Governments with which lay the final responsibility for deciding whether or not the use of certain weapons should be prohibited or restricted.

44. Mr. AGUDO (Spain) said that his delegation's reaction to the proposed work programme set out in the annex to document CDDH/IV/203 was generally favourable, although it found it perhaps rather too ambitious. It would be better to concentrate on those weapons concerning the prohibition or restriction of which the greatest measure of agreement had already been achieved.

45. His delegation considered that the proposed method of work, in plenary meetings and working groups, was sound. Like other delegations, it did not think it desirable that meetings should be open to the public.

46. His delegation would be agreeable to the second session of the Conference being held either at Lugano or at Lucerne; however, any city of comparable size would be satisfactory. It did not favour either Geneva or Berne.

47. The proposed dates were in principle acceptable, although they of course depended on the dates of the third session of the Diplomatic Conference.

48. With regard to the rules of procedure, he thought it would be worth while to study the proposal made by the Venezuelan representative at the seventeenth meeting (CDDH/IV/SR.17). He hoped the ICRC would make certain that the Spanish version was accurate.

49. Mr. ROWE (Canada) thanked the ICRC for its comprehensive proposal, which his delegation accepted, with one reservation as to the venue of the Conference, a subject on which it had expressed its views at the eighteenth meeting (CDDH/IV/SR.18).

50. His Government would certainly welcome the fact that there was a credit balance of approximately 60,000 Swiss francs in hand.

51. With regard to the rules of procedure, his delegation could agree to those minor changes necessitated by the fact that they would relate to a second session, but it opposed any changes of substance and was glad to note that the ICRC did not consider such changes necessary.

52. One important reason for the success of the Lucerne Conference had been the atmosphere of privacy in which it had been held. He hoped that the second session would be held in the same atmosphere.

53. His delegation would recommend to the Canadian Government that it should send a delegation to the second session and make an appropriate contribution towards the ICRC's expenses.

54. Mr. DUNSHEE de ABRANCHES (Brazil) said that his delegation had carefully considered the programme of work for the second session drawn up by the ICRC, as well as the proposals on the same subject made by Austria, Venezuela and other delegations. The presentation of the proposals by the ICRC representative had been particularly enlightening.

55. His delegation agreed that the agenda of the second session should include new information, facts and arguments on the issues already discussed at Lucerne. In its view, however, most of the time available at the second session should be devoted to the study of the possibility, substance and form of any prohibition or limitation of the use of incendiary weapons, with emphasis on the legal and technical aspects.

56. If that priority task could be completed before the end of the session, his delegation agreed that the remaining time could be used for the discussion, on the same lines, of other categories of weapons, especially the question of the inhumane use of new weapons.

57. His delegation supported the ICRC proposal that the second session should be held in Lugano but it was prepared to agree that it should be held at Berne or Geneva if the majority of delegations favoured one of those places because of the existence of better technical facilities.

58. Concerning the amendment of the rules of procedure, his delegation proposed the following plan of action. All delegations should be invited to submit to the Secretariat, before 18 April 1975, any amendments they wished to make to the rules of procedure adopted at Lucerne. Those amendments should be communicated to Governments for comment within a time limit of thirty days. The ICRC should be asked to prepare a new set of rules of procedure, taking into account the proposed amendments. The draft rules of procedure drawn up by the ICRC would then be discussed and put to the vote during the first two days of the second session.

59. Mr. BLIX (Sweden) said that, as one of the sponsors of working paper CDDH/IV/201 and Corr.2 and Add.1 to 6, his delegation welcomed Mali as a co-sponsor and thanked the representative of Mali for his very interesting and constructive statement.

60. The proposed programme of work set out in the annex to document CDDH/IV/203 was acceptable. His support for it was based on the assumption that all the participants in the second session intended to work specifically towards the prohibition or limitation of the use of certain conventional weapons and not merely to undertake an academic survey of the subject. That was not what the United Nations General Assembly had had in mind when it had discussed the problem year after year; what it had been interested in was agreement on possible rules prohibiting or restricting the use of conventional weapons which caused unnecessary suffering.

61. He welcomed the approach adopted by the Canadian representative at the eighteenth meeting, namely that the political and legal content of the second session would be paramount.

62. Most of the basic work on the gathering of facts had already been completed; it was true that some of the facts were still controversial and therefore more views regarding them would have to be put forward and discussed. All those present at the Lucerne Conference of Government Experts had agreed that at the second session the experts should focus their attention upon weapons concerning which proposals had been made. The conclusions of the experts were not binding on Governments, but they were very important. It was not necessary for the experts to be empowered to make formal recommendations. The proposed method of work should yield positive results. The working groups would identify possible areas of agreement and reach conclusions on which political action could be taken subsequently at the Diplomatic Conference. It was possible that the experts would not see eye to eye; in that case they would have to state their respective points of view.

63. He did not think that the experts should try to formulate further legal criteria with respect to certain conventional weapons. Committee III had already adopted article 33 of draft Protocol I, which dealt with weapons that caused unnecessary suffering and with article 46 which dealt with indiscriminate methods of warfare; what the experts had to do was to identify the weapons that came into those categories. His understanding was that after the second session of the Conference of Government Experts a report would be submitted to the Ad Hoc Committee on Conventional Weapons, which would consider it and draw political conclusions.

64. He agreed that it was desirable to avoid utopian aims. That required some knowledge of where Governments stood. It was important that Governments made that clear.

65. He shared the view expressed by the Austrian representative at the eighteenth meeting that work at the second session should be both in plenaries and in working groups. There should be two types of working group: a general working group and small working groups to deal with topics such as that proposed by the Austrian representative, namely the question of future weapons. Another special working group could be composed of lawyers to discuss reciprocity or machinery for future review. Another might have a membership of doctors to discuss the casualty rate caused by incendiary weapons or the medical effects of fragmentation weapons or various types of projectiles.

66. He did not consider that meetings of working groups should be open to the public but hoped that the plenaries would be. There was nothing clandestine about the work of the Government experts. He certainly did not think that the businesslike atmosphere of the first session would be replaced by a theatrical atmosphere as a result of the meetings being held in public.

67. He agreed with the statement in paragraph 3 of the annex to document CDDH/IV/203 that there should be flexibility in the work schedule, so long as the programme of work was completed.

68. He stressed the importance of the statement in paragraph 1 of that annex that the second session should focus on weapons regarding which proposals already existed or would subsequently be placed before that session. Thus, there was no need for a systematic survey of blast and fragmentation weapons, since no suggestion that they should be prohibited had been made. There had only been a proposal concerning anti-personnel weapons of the cluster-bomb type. He considered it important that the experts should know before the second session the types of weapon upon which they would have to concentrate. Working paper CDDH/IV/201

and Corr.2 and Add.1 to 6 indicated a number of such weapons. Some delegations had expressed keen interest in delayed-action weapons and the possibility of a rule concerning self-destruction devices. Sweden was interested in discussing fuel-air explosives.

69. The comments on the work programme (CDDH/IV/203, annex) indicated that the substance of the report would be formed by the reports of the working groups and the summary records of the plenary meetings, so that no analytical report of statements made in plenary would be necessary.

70. He suggested that the ICRC should consider what changes in the rules of procedure were necessary for the second session.

71. He did not think that voting was necessary or even desirable. Agreed conclusions or a statement of differences of opinion was more appropriate to a conference of experts.

72. For practical reasons, he preferred Geneva or Berne as the venue of the second session. He was not sure that a small-town atmosphere was particularly important.

73. He agreed that the second session should last at least 22 working days and would have no objection to a slightly longer session.

74. With regard to the date of the session, he felt that it was important that there should be sufficient time between the end of the second session of the Conference of Government Experts and the opening of the third session of the Diplomatic Conference to enable Governments to study the report on the former thoroughly. If the Conference of Government Experts was to begin in January 1976, he hoped that the third session of the Diplomatic Conference would not start until after Easter 1976. He also hoped that good advance notice would be given of the date of the second session of the Conference of Government Experts.

75. With regard to the financing of the session, he had noted the ICRC comment. He was sure that the Swedish Government would contribute to the cost, as it had done for the Lucerne Conference of Government Experts.

The meeting rose at 5.10 p.m.

SUMMARY RECORD OF THE TWENTIETH MEETING

held on Monday, 24 March 1975, at 3.10 p.m.

Chairman: Mr. CARCES (Colombia)

CONSIDERATION OF FUTURE WORK, INCLUDING THE QUESTION OF A SECOND CONFERENCE OF GOVERNMENT EXPERTS AND OF ITS WORK PROGRAMME (CDDH/IV/203) (concluded)

1. The CHAIRMAN said that it was his understanding that the members of the Ad Hoc Committee were in agreement regarding the date set by the International Committee of the Red Cross for the convening of a second session of the Conference of Government Experts on the Use of Certain Conventional Weapons. The Conference would take place from 26 January to 24 February 1976. There was apparently agreement also on the date of the third session of the Diplomatic Conference to open in the second fortnight of April 1976.
2. Accordingly, if the Ad Hoc Committee so agreed, he would propose those dates at the meeting of the General Committee which was to be held immediately after the current meeting.
3. Mr. TAYLOR (United Kingdom) said that he considered it essential to allow at least two months between the end of the second session of the Conference of Government Experts and the opening of the third session of the Diplomatic Conference. That would enable Governments to consider in detail the conclusions of the Conference of Government Experts and to determine their position with a view to the Diplomatic Conference.
4. Mr. MANGALMURTI (India) supported the views expressed by the representative of the United Kingdom.
5. He would prefer the second session of the Conference of Government Experts to be held at the beginning of January 1976, in view of the date of the Conference of the Committee on Disarmament planned for February 1976. If, however, there was a consensus on the dates proposed by the Chairman, his delegation would not oppose it.

6. The CHAIRMAN noted that, taking into consideration the comments made by the representative of India and the United Kingdom representative the members of the Ad Hoc Committee found the date proposed by the ICRC for the second session of the Conference of Government Experts acceptable, it being understood that the third session of the Diplomatic Conference would be held two months after the end of the Conference of Government Experts, namely in the second half of April 1976.
7. Mr. McDEVITT (Ireland) said that, since his Government had supported resolution 3255 A (XXIX), in which the General Assembly of the United Nations had invited the Diplomatic Conference to consider the "programme of work which a second Conference of Government Experts might follow", his delegation was glad that the ICRC was willing to convene and organize a "second session of the Conference of Government Experts on the Use of Certain Conventional Weapons."
8. His delegation also approved of the draft programme of work for the second session (CDDH/IV/203), which provided for the results of the first session to be considered in the light of new information, facts and arguments.
9. His delegation hoped that Governments would make available to the second session all the relevant information on the different weapons systems and the tests they had carried out to determine whether certain weapons might cause unnecessary suffering or have indiscriminate effects. Much of that information could probably be made available in advance to the Governments which had participated in the Diplomatic Conference. That would assist the experts in their task.
10. The requirements of national security would be the only valid reason for withholding such information.
11. His delegation considered that the system of having working groups was excellent, for it made it easier to concentrate on the questions under consideration and to take a more spontaneous approach to them.
12. His delegation held that rule 4, paragraph 1, of the rules of procedure of the Lucerne Conference of Government Experts, according to which meetings were not to be public, should not be changed, for if the discussions were open to the public, experts might be inclined to withhold certain facts or to indulge in propaganda. If the scientific, objective and technical work which formed the basis of the draft programme was to be effective, the experts must be free from any external influences, political, ideological or other.

13. Rule 8, paragraph 1, of the rules of procedure of the Lucerne Conference should certainly be retained. The rest of rule 8 might have to be amended slightly to take into account item 2 (b) of the draft programme of work in document CDDH/IV/203 (Study of the possibility, contents and form of any ban or restriction on use), which was calculated to encourage the experts to work "with the determination to achieve definite and substantial results". That was the earnest hope of the ICRC, as also, his delegation was convinced, of every delegation.
14. Mr. ZANOTTO (Italy) said that he was certain that a reasonable solution would be found for the problem under consideration by the Ad Hoc Committee, namely, the discriminate use of, or the ban on conventional weapons that might cause unnecessary suffering or have indiscriminate effects.
15. His delegation would do its best to ensure that the Italian authorities thoroughly studied the results of the Diplomatic Conference as well as of the Lucerne Conference of Government Experts in order to prepare Italian participation in the second session of the latter Conference. The date and place proposed by the ICRC, as also the choice of town, the work programme and the rules of procedure, seemed acceptable. The ICRC should, however, give priority to Geneva in selecting the venue of the Conference of Government Experts, in view of the facilities available there. If, however, the majority of delegations preferred a different town, his delegation would not oppose them.
16. Mr. ABADA (Algeria) said that, in his statement at the sixteenth meeting (CDDH/IV/SR.16), he had not dismissed the possibility of the conclusions reached by the Diplomatic Conference being considered by other bodies studying related questions. He wished to make it clear, however, that the Diplomatic Conference was still the most appropriate body for the consideration of the experts' reports on the prohibition or limitation of the use of certain weapons and for the formulation of recommendations and the taking of decisions on the subject.
17. Mr. ROWE (Canada) agreed with the United Kingdom representative that there should be a two months' interval between the second session of the Conference of Government Experts and the third session of the Diplomatic Conference.

18. Mr. ABOU ALI (Arab Republic of Egypt) said that his Government was in favour of convening a second session of the Conference of Government Experts and intended to take an active part in that session. He hoped that the second session would reach more specific conclusions than had the first session. To that end, its terms of reference would have to be carefully defined, its working methods would have to be more efficient and more States would have to participate.

19. His Government thought that the second session of the Conference of Experts should be held sufficiently early to enable its results to be examined in detail before the third session of the Diplomatic Conference. It would prefer the session to be held at Geneva but would not oppose the choice of another town.

20. Mr. MENA PORTILLO (Venezuela) said that he did not think that the participation in the Conference of Government Experts of persons designated under rule 2, paragraphs 1 (b) and 1 (c), of its rules of procedure (see report of the Conference of Government Experts on the Use of Certain Conventional Weapons, annex 2) gave rise to any difficulties. On the other hand, he had some misgivings about the "technical experts" who were to take part in the work of the Conference as "advisers" (rule 2, paragraph 2). He wondered which bodies were sufficiently qualified to designate such experts and in what capacity those experts would participate in the Conference. Those questions must be settled so that their status as advisers could be taken into consideration if they spoke at plenary meetings or in working groups or sub-groups.

21. Referring to rule 4, paragraphs 1 and 2 of the rules of procedure of the Conference, under which the meetings of the Conference were not to be public but information on the progress of work was to be regularly supplied to the Press, he pointed out that some delegations considered that there was nothing secret about the Conference's deliberations. He, personally, thought that, if the meetings were made public, that might create political problems and problems for the safety of the participants. The most that could be done was to give journalists access to the Conference, but only as Press observers. That would help to dispel the doubts harboured about the nature of the work of the Conference of Government Experts. Of course, the Secretariat of that Conference would continue to give the Press any information it might deem fit on the progress of the work.

22. The CHAIRMAN declared the discussion of item 4 of the programme of work of the Ad Hoc Committee closed and suggested that the ICRC representative, who had taken note of the comments made at the nineteenth and twentieth meetings, should report to the twenty-first meeting of the Ad Hoc Committee on the amendments which the ICRC intended to make to the draft programme of work for the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons (CDDH/IV/203). The ICRC representative had also noted the suggestions made regarding the rules of procedure of the Conference of Government Experts.

23. Regarding the date of the second session, he noted that, on the whole, the Ad Hoc Committee would like it to take place in January 1976, towards the end of the month or perhaps even at the beginning, and to last for four weeks so that it would end by mid-February at the latest; the Ad Hoc Committee would like an interval of two months between the end of that session and the beginning of the third session of the Diplomatic Conference, so that the latter could open in the second half of April, immediately after Easter - for instance, on 20 April. He would inform the officers of the Diplomatic Conference of the wishes of the Ad Hoc Committee.

24. Mr. BLIX (Sweden) said that his delegation supported the working paper submitted by the ICRC (CDDH/IV/203). Most delegations seemed to think it impossible to hold a second session of the Conference of Government Experts in September 1975, since a great deal of preparation was required. The date of that Conference might none the less be brought forward slightly so that it might meet, for instance, from 20 January to 20 February. He did not, however, wish to question the consensus.

The meeting rose at 3.50 p.m.

SUMMARY RECORD OF THE TWENTY-FIRST (CLOSING) MEETING

held on Tuesday, 15 April 1975, at 10.25 a.m.

Chairman: Mr. GARCES (Colombia)

TRIBUTE TO THE MEMORY OF H.M. KING FAISAL OF SAUDI ARABIA, MR. TIMOTHY HORAN, PERMANENT REPRESENTATIVE OF IRELAND TO THE UNITED NATIONS OFFICE AND THE SPECIALIZED AGENCIES AT GENEVA, AND LIEUT. COLONEL KJELL MODAHL, MEMBER OF THE NORWEGIAN DELEGATION

On the proposal of the CHAIRMAN, the members of the Committee observed a minute of silence in tribute to the memory of H.M. King Faisal of Saudi Arabia, Mr. Timothy Horan, Permanent Representative of Ireland to the United Nations Office and the specialized agencies at Geneva, and Lieut. Colonel Kjell Modahl, member of the Norwegian delegation.

Adoption of the report of the Ad Hoc Committee (CDDH/IV/204)

1. Mr. KALSHOVEN (Netherlands), Rapporteur, said that the brief report (CDDH/IV/204) followed the lines of the Ad Hoc Committee's programme of work with the addition of a section entitled "General" under "Consideration of the question of prohibition or restriction of use of specific categories of conventional weapons".

2. He proposed to change the full stop at the end of the second sentence of paragraph 62 to a semi-colon and to add the words "other delegations expressed a contrary view".

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

Paragraphs 4 to 6

3. Mr. AGUDO (Spain) observed that the Legal Secretary had pointed out that the Spanish version of the report of the Lucerne Conference of Government Experts contained a great many errors of translation. One delegation had submitted corrections to that report and had asked other Spanish-speaking delegations to make their views known. Mention should be made of the matter in paragraph 6.

Paragraphs 4 to 6 were adopted.

Paragraphs 7 to 12

4. Mr. ZIMMERMANN (Legal Secretary) said that in the Spanish version of paragraph 7, Norway should be included among the co-sponsors of working paper CDDE/IV/201.
5. In the eighth line of paragraph 11 of the English version, the word "as" should read "at", and in the tenth line of that paragraph, the word "for" should read "of".
6. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that there were several mistakes in the Russian translation which he would communicate to the Rapporteur after the meeting.

Paragraphs 7 to 12, as amended, were adopted.

Paragraphs 13 to 21

7. Mr. ZIMMERMANN (Legal Secretary) said that in the third line of paragraph 14 of the French version, the words "qu'examinerait la Commission III" should read "examinés par la Commission III".
8. In the ninth line of the French version of paragraph 15, the words "résolution 3255 A (XXXIX)" should read "résolution 3255 A (XXIX)".
9. In the Spanish version, the word "solución" at the end of the fourth line of paragraph 16 should read "relación".
10. Mr. BLIX (Sweden) said that he was puzzled by the second sentence of paragraph 21, which read: "Another delegation, on the contrary, felt that it was better to concentrate on the various proposals introduced in working papers and, in doing so, to identify the areas of disagreement". The last words might be amended to read: "... agreement and disagreement".
11. Mr. KALSHOVEN (Netherlands), Rapporteur, said that he was willing to clarify the sentence. An acceptable form of words could be worked out after the meeting.
12. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) thought that the last sentence of paragraph 20 was not clear. The Ad Hoc Committee had been talking about the methods, not the form of warfare. Perhaps the Rapporteur could clarify the matter after the meeting.
13. Mr. KALSHOVEN (Netherlands), Rapporteur, pointed out that the last sentence of paragraph 20 was a direct quotation from a speech made by the representative of Algeria, which he was not at liberty to change.

14. Mr. ABADA (Algeria) said that his delegation would be happy either to leave the wording as it stood or to change it if any member of the Committee so desired.
15. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that if the words were quoted, his delegation would have no problem about accepting them, although the Ad Hoc Committee had in fact discussed not a form of warfare but methods of warfare.
16. The CHAIRMAN suggested that the USSR and Algerian representatives should discuss the matter with the Rapporteur after the meeting.
17. Mr. FRICAUD-CHAGNAUD (France), referring to paragraph 19, said that his delegation had expressed the view that neither the Diplomatic Conference nor the Conference of Government Experts had any mandate to enter upon the legislative phase. He wished the paragraph to make that viewpoint clear.
18. Mr. KALSHOVEN (Netherlands), Rapporteur, said that a sentence to that effect could be included. He suggested that the French representative should discuss the matter with him after the meeting.
19. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) endorsed the French representative's view. Several delegations had made the same point.
20. Mr. BLIX (Sweden) said that his delegation had no objection to delegations' statements being reflected in the report in the context in which they were made. However, the section under discussion was a general one. He trusted that the Rapporteur would ensure that the comments in question were put under the right heading.
21. Mr. LONGVA (Norway) thought that if the words "several delegations" were used, that would give the impression that support for what was in fact a minority view had been much wider than had actually been the case.
22. The report should state that two views had been expressed, one of which was a minority view.
23. Mr. KALSHOVEN (Netherlands), Rapporteur, said that it would be bad practice to count heads on insufficient evidence. He suggested that the words "some" and "others" be used in paragraph 19.
24. Mr. ROWE (Canada) suggested that a new paragraph 22 be inserted in which the opinions expressed could be made clear.

25. Mr. LONGVA (Norway) said that since a considerable number of representatives had spoken in favour of the competence of the Conference, it would be more appropriate to use the formula "several delegations" and "some delegations". However, in a spirit of compromise, he could accept "some" and "other". He had no objection to a new paragraph being inserted.

26. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) endorsed the Rapporteur's suggestion.

27. Mr. GENOT (Belgium) also endorsed the Rapporteur's suggestion. The same type of discussion had taken place in Committee III and the same conclusions had been reached on similar issues.

28. The CHAIRMAN suggested that the Rapporteur and interested representatives should draft a suitable text.

It was so agreed.

Paragraphs 13 to 21 were adopted, paragraph 19 being amended as suggested by the Rapporteur.

Paragraphs 22 to 31 - Incendiary weapons

29. Mr. BLISHCHENKO (Union of Soviet Socialist Republics), supported by Mr. FRICAUD-CHAGNAUD (France), said that the last sentence of paragraph 26 appeared to state the opinion of the Ad Hoc Committee, which was not in fact the case. It would be better to start the sentence with the words "This delegation stated that ...". Moreover, it was not the form of use of incendiary weapons that had been discussed, but the methods.

30. Mr. BLIX (Sweden) said that the paragraph reflected a statement by the Swedish delegation. He had no objection to the suggested amendment, although he considered it redundant. He suggested the substitution of the word "types" for "forms" at the beginning of line 6.

Paragraphs 22 to 31, as amended, were adopted.

Paragraphs 32 to 41 - Small-calibre projectiles

Paragraphs 32 to 41 were adopted.

Paragraphs 42 to 45 - Blast and fragmentation weapons

31. Mr. ZIMMERMANN (Legal Secretary) pointed out a translation error in the French text of paragraph 45. The second line should read: "l'emploi de certaines armes à effet ...".

Paragraphs 42 to 45, as amended, were adopted.

Paragraphs 46 to 49 - Delayed-action and treacherous weapons

32. Mr. ZIMMERMANN (Legal Secretary) said that in paragraph 47, the penultimate sentence of the French text should read: "Dans ce contexte, cette délégation a appuyé la proposition de règle du document ...".

Paragraphs 46 to 49, as amended, were adopted.

Paragraphs 50 to 55 - Potential weapon developments

33. Mr. ZIMMERMANN (Legal Secretary) drew attention to various corrections. In the English text of paragraph 51, line 6, "ever" should be substituted for "even" and in the French text, line 6, the word "toujours" should be substituted for "encore". There was also a typing mistake in paragraph 52 of the Spanish text: the last word of line 7 should read "podría".

34. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that it was not clear which delegation had suggested the future weapons Protocol referred to in paragraph 52. The whole end of the paragraph was, in fact, far from clear.

35. Mr. KALSHOVEN (Netherlands), Rapporteur, suggested that line 9 of that paragraph should be amended to read "in amendments to a future Protocol on conventional weapons ...". Since the end of the paragraph was a quotation from a statement made by the Austrian representative, he suggested that the wording should be maintained unless the Austrian representative wished to clarify it.

36. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that he was ready to accept the wording used, since it was clearly the opinion of a single delegation.

37. Mr. KABUAYE (United Republic of Tanzania) asked which delegation was referred to at the beginning of paragraph 52, line 3.

38. Mr. KALSHOVEN (Netherlands), Rapporteur, explained that paragraphs 51, 52 and 53 referred to a statement by one single delegation.

39. Mr. BLIX (Sweden) suggested that the words "some" and "other" should be used, since various delegations had supported the Austrian point of view.

40. Mr. ROWE (Canada) suggested that the sentence might be clarified by reversing the order of the phrases.

41. Mr. BLIX (Sweden) said that he had no objection to the Canadian proposal but that it should be made clear that at least one other delegation had endorsed the Austrian point of view.

42. Mr. KALSHOVEN (Netherlands), Rapporteur, agreed to the Canadian proposal. It might be clearer if the beginning of paragraph 54 were to read: "While some delegations supported the above suggestions, others welcomed them; ...".

43. The CHAIRMAN suggested that the Rapporteur should redraft the two paragraphs.

On that understanding, paragraphs 50 to 55, as amended, were adopted.

Paragraphs 56 to 63 - Consideration of future work

44. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) asked whether the dates given in paragraph 60 were a new proposal, since he had understood that the dates agreed upon by the ICRC had been 20 January - 20 February 1976.

45. The CHAIRMAN replied that the representative of the ICRC would make a statement on arrangements for the Conference after the adoption of the report.

46. Mr. LONGVA (Norway) proposed the deletion of the words "the need and" at the beginning of paragraph 56, because his and some other delegations had said that they saw no need for another Conference of Government Experts and had only accepted its convening with reluctance.

47. Mr. KALSHOVEN (Netherlands), Rapporteur, said that he had tried to express delegations' disagreement by using the word "broad" instead of "general". He was, however, ready to delete the reference to "need".

48. Mr. MENA PORTILLO (Venezuela) pointed out that paragraph 58 said that the ICRC was prepared to convene and organize the Conference on the same conditions as on the previous occasion. How could that be reconciled with the reference to adaptation of the rules of procedure in paragraph 62? He wondered whether those adaptations would be substantial and if they would be adopted by consensus. If not, they should be annexed to the report.

49. The CHAIRMAN reminded the Committee that it was at present considering its report and any possible amendments. The representative of the ICRC would outline later the arrangements to be made for the second session of the Conference of Government Experts.

50. Mr. AGUDO (Spain) said that paragraph 61 should mention the fact that at least one delegation - his own - had been opposed to the session's being held in Berne or Geneva.

51. Mr. FRICAUD-CHAGNAUD (France) said that all the places suggested by the ICRC had been criticized by one delegation or another. The French delegation had not been in favour of Lugano; it had stated, nevertheless, that it was ready to accept the choice of the ICRC.

52. Mr. BLIX (Sweden) said that he agreed with the French representative. Many, if not most, delegations had expressed their willingness to abide by the ICRC's choice.

53. Mr. KALSHOVEN (Netherlands), Rapporteur, proposed that the following passage should be added at the end of paragraph 61: "... but none of these suggestions went uncriticized. Many delegations stated their willingness to accept the choice which the ICRC would eventually make".

It was so agreed.

54. Mr. AGUDO (Spain) said that he wished to insist once more on the need for accuracy in the Spanish translation of the report; his delegation accordingly requested that some words to that effect should be included in paragraph 62. The wording might be: "With regard to the report, one Spanish-speaking delegation requested that due care should be taken in preparing the Spanish version of that document".

55. Mr. MENA PORTILLO (Venezuela) supported the Spanish representative.

56. The CHAIRMAN proposed that paragraph 62 should be amended along the lines proposed by the Spanish representative.

It was so agreed.

57. Mr. KABUAYE (United Republic of Tanzania) said that, in paragraph 63, the use of the words "some" and "other" delegations to refer to the two schools of thought represented at the Ad Hoc Committee did not really reflect the true balance of forces, which was that the great majority held the first view, while the second was supported only by a small group of diehards.

58. Mr. KALSHOVEN (Netherlands), Rapporteur, said that no vote had been taken on the question and only a relatively small number of delegations had spoken on either side, so that it was impossible to have an exact idea of the numbers supporting either view. Since the subject of the discussion involved an extremely delicate political question and since the Rapporteur's task was to produce a widely acceptable text, he had preferred to use the most neutral expression he could find. He would not be in favour of an amendment containing a reference to "diehards".

59. Mr. KABUAYE (United Republic of Tanzania) agreed with the Rapporteur that a very delicate political issue had been involved.

60. Mr. LONGVA (Norway) said that precisely because the issue was of such an important and delicate nature, it was essential for the Ad Hoc Committee to ensure that its position was stated as clearly as possible. He thought that, in view of the recent resolution of the United Nations General Assembly (resolution 3255 A (XXIX)), the Ad Hoc Committee would be entitled to say in its report that there was "broad agreement" that the work of the second session of the Conference of Government Experts should be continued by the Diplomatic Conference, and to describe the opposite standpoint as a "minority view". The Norwegian delegation had accepted the idea of a new Conference of Experts on the clear understanding that the results would be submitted to the Diplomatic Conference and that it was for the Diplomatic Conference at its third session to draw up whatever international instrument it saw fit. However, in view of the Rapporteur's explanation, he would be prepared to accept the existing text of paragraph 63.

61. Mr. BLIX (Sweden) said that while he agreed that the substance of the question referred to in paragraph 63 was an extremely delicate matter, the Rapporteur's task was merely to outline what had been said in the Ad Hoc Committee and to state whether many or few speakers had said it. As no vote had been taken, it might be inappropriate to speak of a "majority" and a "minority", but paragraph 63 would be more accurate if it said that "several" delegations held that the texts should be placed before the Diplomatic Conference and that "a few" delegations did not accept that. The United Nations General Assembly had in fact adopted, by 100 votes to none, with 14 abstentions, a resolution (resolution 3255 A (XXIX)) containing an operative paragraph which invited the Diplomatic Conference to continue to search for agreement on possible rules prohibiting or restricting the use of specific categories of conventional weapons. He did not wish to insist, however, on any change in paragraph 63 being made.

62. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that his delegation considered that the existing wording of paragraph 63 was the most objective that could be found: in adopting it as it stood, the Ad Hoc Committee would not be presenting a false picture of the actual discussions.

63. The CHAIRMAN said that unless certain delegations wished to insist on amendments, he would suggest that paragraph 63 be adopted unchanged.

It was so agreed.

Paragraphs 56 to 63, as amended, were adopted.

64. The CHAIRMAN proposed that the Committee adopt its draft report (CDDH/IV/204), as amended, as a whole.

The report (CDDH/IV/204) was adopted.

PLACE, DATE AND RULES OF PROCEDURE OF THE SECOND SESSION OF THE CONFERENCE OF GOVERNMENT EXPERTS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS

65. Mr. CAYLA (International Committee of the Red Cross), after drawing attention to paragraph 6 of document CDDH/IV/203, said that the ICRC, having taken into consideration the various statements that had been made in the Ad Hoc Committee, had decided that the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons should be held in Lugano. One of the objections to the choice of Lugano had been that it would be impossible to hold the Conference there before the end of January 1976; but that consideration had been weakened by the decision of the General Committee of the Diplomatic Conference not to hold the third session of that Conference before 20 April 1976. That would leave a reasonable interval between the end of the Conference of Government Experts and the beginning of the third session. Another objection had been that Lugano was comparatively remote from centres of communication. The Swiss Government, however, had decided to accord to the second Conference of Government Experts a status analogous to that of a Diplomatic Conference, which meant that communications between experts and their Governments would be facilitated, in particular by the use of coded messages. Lugano's technical facilities were in fact superior to those of the other Swiss towns that had been mentioned, and in particular Lucerne. The new Congress Centre in Lugano offered excellent working conditions. Among other considerations, the climatic factor should not be overlooked.

66. As for the date, it had been decided, in view of the wishes expressed by certain delegations, that the Conference should start on Wednesday, 28 January and continue until 26 February 1976.

67. Turning to the rules of procedure, he said that experience had revealed the need to make certain minor changes in the existing rules and he thanked those delegations that had communicated suggestions to the ICRC, all of which had been taken into consideration. In general, the ICRC had taken account of the fact that the Lugano Conference was not a new Conference, but would be continuing work which had already been started. The new rules strengthened the powers of the General Committee so that it could take the decisions necessary to ensure the smooth progress of the work.

68. Rule 1 had had to be adapted so as to express more adequately the purposes of the second session in the light of the general agreement achieved at the Lucerne Conference of Government Experts, as set forth in paragraph 282 of the report on that Conference, of United Nations General Assembly resolution No. 3255 A (XXIX) and of document CDDH/IV/203, which had been discussed by the Ad Hoc Committee in March.

69. The only change in rule 2 was a clarification about interventions by technical advisers.

70. Rule 3 mentioned some additional documents, in particular the report of the Lucerne Conference of Government Experts and the report of the Ad Hoc Committee (CDDH/220/Rev.1). Governments were invited to submit the findings of any research, studies, or experiments they had conducted in all the working languages of the Conference.

71. In view of the nature of the Conference's work, the ICRC had thought it undesirable for the working meetings to be held in public. The rule, therefore, would be that the Conference's meetings would be private; rule 4, paragraph 1, however, stated that the opening meeting would be public.

72. The only new appointments to be made to the General Committee would be to fill posts that had fallen vacant. That Committee would take decisions by the simple majority of its members (i.e., six votes out of eleven) and records of the General Committee's decisions would be communicated to the Conference. In accordance with the wishes expressed at Lucerne and during the current session of the Diplomatic Conference, the rules of procedure would also state that summary records of the plenary meetings would be prepared. Provision would be made for the setting up of a general working group and of special working groups as necessary.

73. Rule 8 had been newly drafted. It now read:

"1. Experts shall speak in their personal capacity, and their statements shall not bind in any way the Government that appointed them.

"2. The Conference shall not adopt any resolution; it may, however, formulate proposals or express wishes to Governments or to the CDDH. The Conference shall reach its conclusions by consensus; when this procedure is not possible, the different opinions expressed shall be reflected in the report.

"3. Questions relating to procedure, organization of work and working methods are within the competence of the General Committee.

"4. The purpose of the Conference, under the auspices of the ICRC, is humanitarian and it shall therefore abstain from any discussion of a controversial or political nature."

74. He particularly hoped that the spirit recommended in paragraph 4 would be observed.

CLOSURE OF THE SESSION

75. The CHAIRMAN thanked the representative of the ICRC and the ICRC itself for their untiring efforts on behalf of humanitarian law, and the members of the General Committee, the Ad Hoc Committee and the Secretariat for helping him to bring the work of the Committee to a successful conclusion. He declared the second session of the Ad Hoc Committee closed.

The meeting rose at 12.20 p.m.

THIRD SESSION

(Geneva, 21 April - 11 June 1976)

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

SUMMARY RECORDS OF THE TWENTY-SECOND TO THIRTY-FIFTH MEETINGS

held at the International Conference Centre, Geneva,

from 27 April to 9 June 1976

Chairman: Mr. D. GARCES (Colombia)

Rapporteur: Mr. F. KALSHOVEN (Netherlands)

later Mr. R. J. AKKERMAN

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SUMMARY RECORD OF THE TWENTY-SECOND (OPENING) MEETING

held on Tuesday, 27 April 1976, at 2.45 p.m.

Chairman: Mr. GARCES (Colombia)

ORGANIZATION OF WORK

1. The CHAIRMAN extended a cordial welcome to all the members of the Ad Hoc Committee on Conventional Weapons, especially the new members. Noting that the organization of the Committee's work would necessarily depend on the report of the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in January and February of the current year, he invited Mr. Cayla of the International Committee of the Red Cross to report on the results of that Conference.
2. Mr. CAYLA (International Committee of the Red Cross) said that the report of the Lugano Conference was now in preparation in the three official languages of that Conference, namely, English, French and Spanish. It should be possible for the final proofs of the English version to reach the printer by Wednesday, 28 April, but since that version comprised 230 printed pages, the completed texts would probably not be available before the week beginning 10 May. The French and Spanish versions would be ready somewhat later.
3. The ICRC regretted that it had not been possible to respect the time-table set out in the rules of procedure of the Lugano Conference and to send copies of the report to participants in the Diplomatic Conference before the beginning of its third session; but no one expected at the time that the document would prove twice as long as the report of the first session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne in 1974.
4. The Ad Hoc Committee might decide to begin its work solely on the basis of the English text of the report of the Lugano Conference; or to defer its work until it had at least the French text before it; or to begin by considering problems other than those of the Lugano Conference; or to work on the basis of the proposals which had already been submitted by Government Experts at Lugano, pending the appearance of the Conference report.

5. The CHAIRMAN asked whether the Committee would be prepared to begin its work on 12 May on the basis of the English text of the report of the Lugano Conference, with the understanding that the proposals made by the Government Experts at that Conference would be available in all the working languages of the Diplomatic Conference.
6. Mr. de ICAZA (Mexico) said that in view of the urgent need to prohibit or restrict the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects, the Committee should, in his opinion, begin its work with the least possible delay. He hoped that the Secretariat would circulate the proposals made at Lugano as soon as possible, in all languages, and in any case not later than 10 May, and he suggested that the Committee should begin its work on the basis of these proposals.
7. Mr. CAYLA (International Committee of the Red Cross) said that he had already discussed the problem with the General Committee and that it should be possible to distribute the Lugano proposals in all the working languages of the Diplomatic Conference.
8. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that his delegation could not agree to the suggestion that the Committee should begin its work on the basis of proposals made to the Lugano Conference. There was no formal link between that Conference and the present Diplomatic Conference, and his delegation must insist that the report of the Lugano Conference be submitted to it in the Russian language.
9. Mr. de GABORY (France) said that only about forty States had been represented at Lugano, while the present Diplomatic Conference comprised some 130 delegations. It would seem wiser, therefore, to wait until the report of the Lugano Conference was available in English, French and Spanish. However, in a spirit of compromise the French delegation was prepared to support the Chairman's suggestion that the Committee might begin its work on or about 12 May, provided that as a minimum, the proposals made at Lugano were available in all the working languages.
10. Mr. MILLER (Canada) feared that the Committee's work would be of little value if the report of the Lugano Conference was not before it. The proposals made at that Conference would not, by themselves, be sufficient without the report and the summary records of the proceedings. He agreed, therefore, with the representative of France that the Committee should not plan to begin its work before 12 May, by which time the French and Spanish versions of the report should be available as well as the English. He sympathized

with the wish of the representative of the Union of Soviet Socialist Republics that a Russian version of the report be made available to his delegation, but hoped that he would not press the point, particularly since the USSR delegation had played such a useful and constructive role at the Lugano Conference, although Russian had not been one of the official languages at that Conference.

11. Mrs. DARIIMAA (Mongolia) said that delegations could not be expected to study fractions of a report, such as the bare proposals submitted to the second session of the Conference of Government Experts held at Lugano. It would be impossible for Russian-speaking delegations to take a position on those proposals unless a Russian version of the report was also before them.

12. Mr. BLIX (Sweden) agreed that the Ad Hoc Committee was faced with a serious problem. While the English text of the Lugano Conference would most likely be available on 10 May and the French and Spanish versions shortly thereafter, no Russian text would be available since Russian had not been a working language of the Lugano Conference. If the Ad Hoc Committee had to wait for a Russian translation it would not have time to discuss the report at the present session. He was sure that the representative of the Union of Soviet Socialist Republics did not wish that to happen.

13. The work of the Lugano Conference was not directly linked with that of the Diplomatic Conference, but the Ad Hoc Committee was interested in the results of that Conference.

14. He suggested that the Ad Hoc Committee might begin its work with further consideration of item 3 of the programme of work adopted at the second session (see CDDH/220/Rev.1, para. 2) and conclude the debate on working papers CDDH/IV/201 and CDDH/IV/202, both documents having been submitted in the working languages of the Diplomatic Conference.

15. Since the report of the Lugano Conference was of general interest it might be unwise for the Ad Hoc Committee to begin discussing it before 12 May.

16. The CHAIRMAN agreed that the first working meeting of the Ad Hoc Committee should be held on 12 May, when the English version of the Lugano report and the proposals (in the three working languages) of the ICRC under whose auspices the Lugano Conference had been held, could be discussed. The ICRC representative had informed him that it might be possible to have the proposals translated into Russian. He asked whether the USSR representative still maintained his request that the Ad Hoc Committee should not begin its work until the Lugano report was available in Russian.

17. Mr. GRIBANOV (Union of Soviet Socialist Republics) pointed out that the report of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne in 1974, had been submitted to his delegation in time for a Russian translation to be made before the second session of the Diplomatic Conference. On the contrary, the report of the Lugano Conference had so far not been submitted to the USSR authorities.

18. The question of having a Russian translation made was a matter of principle and of political significance. It would be impossible for his delegation to discuss the proposals included in the report unless a Russian translation was available.

19. The CHAIRMAN said that the question of a Russian translation of the Lugano report could be discussed by the Secretariat and the USSR delegation.

20. Mr. FELBER (German Democratic Republic) said that it would be impossible for the Ad Hoc Committee to begin its work by discussing proposals which were merely an annex to the Lugano report. Two-thirds of the delegations attending the present session of the Diplomatic Conference had not been present at the Lugano Conference and they would get a false impression of the work done by that Conference if the proposals made were discussed separately from the report.

21. Mr. van der KLAUW (Netherlands) agreed that there was no formal link between the Lugano Conference and the work of the Ad Hoc Committee.

22. Referring to the proposals introduced at the Lugano Conference, he would welcome an opportunity to introduce a proposal made by the Netherlands delegation as a working document of the Ad Hoc Committee.

23. Mr. KUSSBACH (Austria) agreed with the Netherlands representative that the Ad Hoc Committee's work should not be formally linked with the Lugano Conference. There should be no difficulty in placing the proposals submitted at that Conference before the Ad Hoc Committee as conference documents. If the English text of the report of the Lugano Conference was to be made available in printed form by 10 May, would it not be possible for photocopies of the French and Spanish versions to be provided and for the Russian-speaking delegations to have the report translated by that time if they so wished, so that the Ad Hoc Committee could start work on it by 12 May? Unless that could be done it would be impossible to carry out any useful work on the report during the present session, since at least three or four weeks were required for the purpose.

24. Mr. CAYLA (International Committee of the Red Cross) said that the Austrian representative's proposal appeared reasonable, but would have to depend on the Secretariat's ability to perform the necessary work in the time available. Photocopies of the first printers' proofs might be preferable to photocopies of the original texts. The Russian-speaking delegations might already have had translations made for use at the Lugano Conference, in which case those texts could also be photocopied.

25. Mr. de ICAZA (Mexico) agreed that the Lugano Conference and the Diplomatic Conference should not be linked too closely, and that the report of the former was not indispensable to the Ad Hoc Committee's work. The essential point to be settled was the Committee's agenda, which should concentrate, in accordance with its terms of reference, on restricting the use of certain conventional weapons. An early meeting should be held to draw up such an agenda.

26. Mrs. DARIIMAA (Mongolia) said she had been astonished to hear the suggestion that private documents of delegations should be used at the Conference. Russian was an official language of the Conference and the Russian-speaking delegations should not be expected to produce their own translations. It was essential to adhere to the rules of procedure. The French and Spanish-speaking delegations could not forgo their right to have documents provided in their working languages; such a procedure could set an undesirable precedent.

27. Mr. de ICAZA (Mexico) said that his delegation had not relinquished its right to have documents in Spanish. The point he had made was that the text of the Lugano report, in any language, was not indispensable to the Committee's work.

28. Mr. MENA PORTILLO (Venezuela) agreed with the Mexican representative's comments.

The meeting rose at 3.55 p.m.

SUMMARY RECORD OF THE TWENTY-THIRD MEETING

held on Friday, 30 April 1976, at 3.15 p.m.

Chairman: Mr. GARCES (Colombia)

ORGANIZATION OF WORK

1. The CHAIRMAN said that, since the Ad Hoc Committee's twenty-second meeting, informal contacts had taken place, as a result of which a draft programme of work (CDDH/IV/Inf./217) had been drawn up and circulated in the four working languages. Before introducing it, he would call on the representative of the International Committee of the Red Cross to make a statement.
2. Mr. PILLOUD (International Committee of the Red Cross) said that the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in January/February 1976, had been of a scientific and technical nature, which had made the drafting of the report a long and difficult process, particularly as concerned the equivalence of the terms used in the three working languages of the Lugano Conference: English, French and Spanish. It had, moreover, been decided to include in the report the summary records of the plenary meetings. Since such meetings had been held in the last two days of the Conference, it had been impossible to submit the provisional summary records in question to the experts at Lugano; the records had been forwarded to them from Geneva on 10 March, the end of March having been fixed as the time limit for the submission of comments by the experts. The text of the report itself had been sent to the printer in the three languages on 19 March but it had not been possible for the final summary records of the last plenary meetings to be sent before the beginning of April, after the amendments requested by the experts had been inserted and translated in the three languages.
3. The decision to publish the summary records of the plenary meetings, together with most of the documents submitted by experts at the Conference, had resulted in a report of some 230 pages instead of the 100 or so pages anticipated. There would be attendant financial implications.
4. It was hoped that the English version of the printed report would be available by 10 May and that the French and Spanish versions would follow. To facilitate discussion, photocopies of the report itself in English, French and Spanish would be made available to delegations on Monday, 3 May. The Secretary-General of the Diplomatic Conference had agreed to have the report

translated into Russian by the language services of the Conference; chapters would be made available to Russian-speaking delegations as the work proceeded. The budget of the Lugano Conference, which had been organized by the ICRC, had been established on the basis of the three working languages of the Red Cross. The ICRC understood the desire of delegations at the Diplomatic Conference to have working documents in their own working languages and appreciated the Secretary-General's co-operation. It hoped that the discussion could accordingly take place in the best possible conditions.

5. The CHAIRMAN said that the draft programme of work was on the same lines as that of the second session, but there were some changes. Since the report of the Lugano Conference would probably not be available in all languages when the Ad Hoc Committee began its work, it was proposed, under programme of work item 1, that the Rapporteur should present an oral report on the work of that Conference. In item 3, the reference to weapons which might cause unnecessary suffering or have indiscriminate effects had been dropped. Item 3 (b) (delayed action weapons and treacherous weapons including mines and booby traps) replaced item 3 (d) of the second session (delayed action and perfidious weapons). The order had been changed to conform with that used at the Lugano Conference. The French and Spanish versions of item 3 (e) should be amended respectively to read "évolution possible des armes" and "evolución potencial del armamento", which was the wording that had been used at the second session of the Conference. Under item 4 of the programme of work, which had been changed to "Other questions", the Ad Hoc Committee could discuss, inter alia, the possibility of convening further conferences of Government experts.

6. Mr. SHELDON (Byelorussian Soviet Socialist Republic) said that his delegation attached considerable importance to the provision of documents in Russian and that the steps taken by the Secretariat to make chapters of the report of the Lugano Conference available in Russian were fully in accordance with rule 51 of the rules of procedure of the Conference.

7. In a press release circulated at the second session of the Diplomatic Conference by the ICRC, it was stated that the report of the Lugano Conference would be transmitted to Governments in time for them to study it before the opening of the third session of the Diplomatic Conference. That, regrettably, had not been done. His delegation would be unable to participate usefully in the Ad Hoc Committee's discussion without a Russian version of the report in question.

8. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the ICRC and the Secretariat had assured his delegation that the first chapter of the Russian version of the report would be available by 10 May for use by Russian-speaking delegations at the Ad Hoc Committee's meeting which might be held on 12 May, Russian being both an official and working language of the Conference. It was assumed that further meetings of the Ad Hoc Committee would be scheduled so as to allow Russian-speaking delegations two or three days to study further chapters of the report as they became available. Those delegations were not claiming special privileges; they merely wished to have the same advantages as other delegations in accordance with rule 51 of the rules of procedure. It was in a spirit of compromise that they had agreed to receive the Russian translation of the report chapter by chapter. They hoped that other delegations would understand their position.
9. The CHAIRMAN welcomed the spirit of co-operation and understanding shown by the delegations of the Byelorussian Soviet Socialist Republic and the Union of Soviet Socialist Republics. Several delegations had mentioned 12 May as a possible date on which the Ad Hoc Committee might start work, bearing in mind the need to await the translations of the report of the Lugano Conference and to allow experts time to travel to Geneva in order to take part in the discussion. The draft agenda was before the Ad Hoc Committee for adoption on that understanding.
10. Mr. MARK (Switzerland) said that his delegation could not agree that the Ad Hoc Committee should start work as late as 12 May. That would presumably make it impossible to reach any conclusion at the present session. His delegation regretted that the report of the Lugano Conference had not been available at least in the official languages of that Conference by the beginning of the third session of the Diplomatic Conference. It therefore recommended that the Ad Hoc Committee should start work during the coming week by introducing proposals; it welcomed the Netherlands delegation's statement at the twenty-second (CDDH/IV/SR.22) meeting that it was prepared to do so. The introduction of proposals should be followed by the verbal report by the Rapporteur of the Ad Hoc Committee on the work of the Lugano Conference. There was no reason why the Ad Hoc Committee's effective work should not start during the coming week.
11. Mr. de ICAZA (Mexico) said that, notwithstanding its view that the work of the Ad Hoc Committee should begin as soon as possible with the submission of proposals, his delegation recognized the difficulties of delegations which had no text in their own working language for use as a technical basis for discussion. As a compromise, therefore, his delegation would accept 12 May as the starting

date for the Ad Hoc Committee's work in the hope that it would then go forward with all possible speed. He appealed to all delegations to accept that compromise.

12. Mr. ANDERSON (United States of America) said that his delegation agreed that 12 May would be a reasonable starting date, since it would undoubtedly be most helpful to have the documents of the Lugano Conference available as a basis for discussion.

13. Mr. KUSSBACH (Austria) said that his delegation was inclined to sympathize with the position taken by the delegation of Switzerland. As a compromise, however, he was prepared to accept 12 May as a starting date, in the hope that no further procedural difficulties would arise during the remainder of the Conference.

14. The CHAIRMAN said that it was his understanding that the Committee would require at least three, or possibly four, meetings in order to make any substantial progress in its work. He therefore shared the concern expressed by previous speakers that there should be no unnecessary delay. In view of the special circumstances obtaining at the present Conference, however, he wondered whether the Swiss representative would still urge that work should start immediately.

15. Mr. MARK (Switzerland) said that his delegation must still insist that the Committee should begin its work not later than the following week.

16. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that he could only repeat that, as long as the relevant chapters of the report of the Lugano Conference were not available in the Russian language, his delegation and the other Russian-speaking delegations would be unable to participate in the Committee's work. He must insist that the Swiss delegation should respect the rules of procedure which had been formally adopted.

17. The CHAIRMAN said that he was forced to note that, while one delegation wished the Committee to begin its work the following week, four delegations, including that of the Union of Soviet Socialist Republics, did not think that it should begin before 12 May. Accordingly, he felt that it would be advisable to agree on the date of 12 May.

18. Mr. MILLER (Canada) said that he fully sympathized with the views expressed by the Swiss representative, but in view of the many practical difficulties, as well as for reasons of principle, he had to inform the Committee that his own delegation's experts would not be available before 12 May.

19. Mr. FELBER (German Democratic Republic) said that the Lugano Conference had introduced a change in the rules of procedure, inasmuch as it had decided to submit its report to the participants in the Diplomatic Conference. That meant, in effect, that that report would have to be submitted to the Governments of all the participating delegations in advance and it would be unrealistic to expect the Committee to begin work until delegations were fully aware of the reactions of their Governments. As a practical compromise, therefore, he supported the proposal made by the delegations of Canada, Mexico, the Union of Soviet Socialist Republics and the United States of America that the Committee should begin work on 12 May. He hoped that the Swiss representative would not press his point.

20. The CHAIRMAN suggested that the Secretariat, while noting the reservation expressed by the Swiss delegation, should plan to hold the first working meeting of the Committee on 12 May.

21. Mr. de ICAZA (Mexico) said that he wished to state for the record that his delegation considered it a great concession to agree to wait until 12 May for the report of a Conference which was only vaguely connected with the present Diplomatic Conference.

22. The CHAIRMAN suggested that the Committee should adopt its programme of work, on the understanding that its next meeting would be held on 12 May, the exact time and place to be determined by the Secretariat.

It was so agreed.

The meeting rose at 4 p.m.

SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

held on Wednesday, 12 May 1976, at 3.5 p.m.

Chairman: Mr. GARCES (Colombia)

ORAL REPORT BY THE RAPPOREUR ON THE WORK OF THE CONFERENCE OF GOVERNMENT EXPERTS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS (SECOND SESSION, LUGANO, 28 JANUARY 1976 to 26 FEBRUARY 1976)

1. The CHAIRMAN invited the Rapporteur to introduce his oral report.
2. Mr. KALSHOVEN (Netherlands), Rapporteur, said that the report of the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano from 28 January to 26 February 1976, amounted to twice as many pages as, and was at least three times more complicated than that of the first session, held at Lucerne in 1974. The Lucerne Conference had been primarily a meeting of Government Experts, while at the Lugano Conference the emphasis had been on Governments rather than on experts. That change in emphasis derived from the fact that at Lugano the focus had no longer been on conventional weapons in their generality, but on such conventional weapons as had been, or might become, the subject of proposed bans or restrictions. That approach, based as it was on proposals, had involved Governments far more directly than had been the case at the Lucerne Conference. Communications to the capital cities of delegations had been of prime importance, and among the participants the ratio of diplomats to other experts in the field of conventional weapons had shifted markedly in favour of the former.
3. He could not illustrate that point better than by recalling the first meeting of what had probably been the most highly specialized Sub-Group of the Lugano Conference: the Technical Experts Working Sub-Group on Small-Calibre Projectiles. Rather contrary to expectations, that meeting had been a gathering of ambassadors, with some technical specialists hovering in the background, and the subject they had debated had been neither the calibre nor any other of the many relevant properties of small-arms munitions, nor such effects as tumbling or projectile break-up, but the agenda which the technical experts would be permitted to discuss.
4. It had already been decided at the first session of the Conference of Government Experts, held at Lucerne in 1974, that the Lugano session would be split up into plenary meetings and a general Working Group. The idea had been that summary records

would be taken for the plenary meetings, so that statements made in that forum would be reflected as delivered and it would not be necessary to rely exclusively on a rapporteur's report, with the inevitable distortions that such a report entailed.

5. Nevertheless, the Rapporteur had written a report, which constituted the first part of the report of the second session of the Conference of Government Experts.

6. The General Working Group had not been covered by précis-writers, since it had been felt that in their absence the experts would be better able to speak freely and hold a real debate. That had not, however, come about. The speeches written by the experts in the General Working Group had been just as lengthy as those which they had been wont to deliver in the plenary meetings; in effect, what they had said in one forum had often been hardly distinguishable from what they had stated in the other. As a result, there had been a considerable overlap between the discussions in the two forums, as also in the reports of the plenary on the one hand and of the General Working Group on the other.

7. Another basic aspect of the whole exercise had been that working groups would seek to identify possible areas of agreement or, at least, decide upon different, main conclusions. They had done so, but more often than not the result appeared to have been the identification of areas of disagreement rather than of agreement. The arguments advanced during that process, grouped together as logically as had seemed feasible within the limited time available, were faithfully reflected in the report. There had been a slight malentendu between the Rapporteur and some experts, the latter having understood that there would be no report, properly speaking, of the plenary meetings and that the task of the Rapporteur would be confined to recording the areas of agreement of the different main conclusions which might emerge from the Conference as a whole. It was his belief that the report, in its final form, did in fact disclose those outcomes of the debate and that the inclusion of the arguments on which those outcomes rested, far from doing damage to the report as a whole, had added to its value as a basis for future discussions. He hoped that his opponents on that point would be prepared to agree to that. He, for his part, was ready to admit that the report of the Lugano Conference, viewed as a whole, was far from constituting easy reading.

8. Attendance at the Lugano Conference, in terms of the number of delegations taking part, had been somewhat reduced, as compared with the first session, held at Lucerne in 1974. In particular, the third world had been less well represented numerically, although in so saying he was not disparaging the quality of its contribution.

9. A general debate had been held in the plenary which had ranged over a wide variety of subjects. To begin with, the question of military security, which had to be balanced against humanitarian considerations, had presented complex features and it had been explained that the requirements of military security might differ from State to State and from one armed conflict to another. It might be said that reciprocity and universality, two elements which many experts considered to be of paramount importance for any effective ban on, or restriction of, the use of specific conventional weapons, was only one aspect of that fundamental requirement of military security. An awareness of that fact had also been apparent in the discussions in the Working Sub-Group on General and Legal Questions, where the question of reciprocity and the related concept of reprisals had been examined in somewhat greater detail.

10. Another question of major importance in the general debate had been that of the respective advantages and disadvantages of total bans and restrictions on use. The upshot of the debate on that issue had been that no one had really denied the practical advantages of total bans, as the ones likely to be the most effective, but that not all experts had been equally convinced that total bans were within reach. It had been argued that an approach to each weapon individually promised better results than an attempt to deal with entire classes of weapons at the same time. That controversy had constituted a recurrent feature of the subsequent debate on specific categories of weapons.

11. Several experts had expressed themselves on the question of the legal principles governing the permissible use of weapons in armed conflicts. Of the various aspects discussed, he would mention only the well-known dispute about the meaning of Article 23 (e) of The Hague Regulations respecting the Laws and Customs of War on Land annexed to the Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land. Actually, that dispute was all but settled, since Committee III of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts had adopted, during the second session, the text of article 33 of draft Protocol I, which prohibited the use of weapons "of a nature to cause superfluous injury or unnecessary suffering". Perhaps not fully aware of that fact, some experts had expressed their preference for the term "superfluous injury" rather than "unnecessary suffering". Moreover, in a document which had been circulated towards the end of the Lugano Conference, an informal working group of medical experts had supported those participants who held that "injury" was the better term. That demonstrated that the links between the Lugano Conference and the Diplomatic Conference, although not wholly absent, had not been too close either.

12. Among the various categories of conventional weapons discussed at the Lugano Conference, he would refer first to incendiary weapons. As on previous occasions, two extreme positions had been taken and defended with tenacity, while some experts had favoured a middle position. One extreme position had been that the use of incendiary weapons should be banned completely; excluded from that prohibition would be certain means of warfare which were not primarily designed to cause fire, although they might have that effect, such as illuminants and tracers. While a large group of experts whose countries were sponsors of working paper CDDH/IV/201 and Corr.2 and Add. 1 to 6, wished to exclude also "munitions which combine incendiary effects with penetration effects and which are specifically designed for use against aircraft, armoured vehicles and similar targets", the delegation of Mexico had not accepted that exemption and had submitted a working paper containing a complete draft Protocol on the prohibition of the use of incendiary weapons (CDDH/IV/217).

13. At the other extreme there had been those who had wished to do no more than express a reaffirmation of the rules for the protection of the civilian population which Committee III had adopted at the second session of the Diplomatic Conference. Their position had amounted to a readiness to state expressly that in so-called areas of civilian concentration, incendiary weapons could not be used directly against the civilian population or, in case of attacks on military objectives, in such a manner that disproportionate damage or losses might be sustained by the civilian population.

14. The Netherlands delegation had been among the few that had taken a clearly defined intermediate position by submitting a working paper (CDDH/IV/206) containing a proposal which comprised two elements: rules for the protection of the civilian population that went somewhat farther than the rules already adopted at Geneva, and rules for the protection of combatants against the effects of napalm in particular. At a later stage of the discussions, that delegation had introduced an amended version of the first part of its proposal, the purpose of which had been to provide increased protection for the civilian population against the use of flame munitions, such as napalm. The proposal had been received with considerable sympathy and even support from various quarters, but it had not led to real negotiations between the opposing sides, since the positions had apparently been too rigidly fixed and the will to enter into negotiations had been largely lacking.

15. The Swedish delegation, which was a strong proponent of a categorical prohibition along the lines set out in document CDDH/IV/201 and Corr. 2 and Add.1 to 6, had suggested that such a prohibition might perhaps become operative only after a specified period of time, such as five years. Such a period, it had felt, might make the idea of a total ban more acceptable.
16. To sum up, the debate on incendiary weapons could be said to have yielded some interesting ideas, as also some preliminary attempts to explore the middle ground. He hoped that that exploration would be pursued with increased energy and will.
17. As far as the category of delayed-action weapons and treacherous weapons was concerned, working paper CDDH/IV/201 contained only one proposal (V) which stated that "anti-personnel land mines must not be laid by aircraft". A far more comprehensive proposal had been introduced at the Lugano Conference by the United Kingdom and Netherlands delegations, joined later by France. That proposal (CDDH/IV/213 and Add.1) had served as a basis for the discussions, which for the most part had taken place in a Working Group of Military Experts on Mines and Booby-traps established by the General Working Group.
18. The recording of minefields, a long-standing practice in many countries, had been recognized as an important means for reducing the hazards for the civilian population. A point at issue had been whether the military could be expected to do that at all times. The debate had eventually led to a formula to the effect that the recording of pre-planned defensive minefields would be obligatory in all circumstances and that the location of other minefields containing more than twenty mines would be recorded as far as possible. That formula had found wide support in the Working Group.
19. Improved protection of the civilian population had also been the aim of the suggestions to prohibit the use of remotely delivered mines, unless such mines were fitted with a neutralizing mechanism or the area in which they were delivered was marked in some distinctive manner. Neither of those proposals nor that in document CDDH/IV/201 and Corr. 2 and Add.1 to 6 had led to agreement in the Working Group, but the proponents of the latter document had been prepared to admit that the proposal of France, the Netherlands and the United Kingdom (CDDH/213 and Add. 1) constituted a step forward as compared with existing law.

20. There had been much discussion in the Working Group of Military Experts about the suggestions in the joint proposal concerning the use of manually emplaced mines and similar means of warfare in populated areas and the use of booby-traps. Many ideas had been advanced concerning the desirability and feasibility of prohibitions or restrictions on the use of those means of warfare, and widely divergent amendments had been introduced. Although, in the course of discussions in the Working Group, new formulae had been found that were acceptable to the original proponents, that had not led to general acceptance of the final result other than as a "good basis for further discussion". In its final version, the proposal comprised two elements: on the one hand, prohibition of the use of treacherous means and, on the other hand, prohibition of what was intolerably cruel.

21. A proposal had been introduced by Mexico and Switzerland to prohibit the use of time-fused weapons equipped with a fuse or other trigger mechanism of the long-delay type which exploded twenty-four hours or more after impact (see Lugano report, p. 189). The idea behind that proposal had been to provide protection not only to the civilian population but also to rescue workers, who could be hampered in their work by the presence of such time-delayed devices. There had not been ample discussion of that proposal, nor had it received broad support, apparently because it was considered of limited practical significance.

22. In the interval between the Lucerne and Lugano Conferences small-calibre projectiles had been the subject of various experiments in a number of countries. For example, Sweden had studied a series of tests at Göteborg, the results of which had been presented to the Conference. It would be going too far to suggest that all those experiments had led to any clear result. It was, of course, beyond dispute that bullets would at times cause extremely grave damage to the human body, but it seemed equally incontestable that a number of factors could contribute to the occurrence of that phenomenon and that research into those factors was no easy task. It was precisely with respect to that latter aspect of the matter that the Technical Experts' Working Sub-Group on Small-Calibre Projectiles had been set up to determine whether it would be possible to arrive at agreed standards for experiments, so that the results of such experiments would at least be comparable. Even that attempt had failed, although the failure had been partly due to the acknowledged difficulty and complexity of the questions involved. For the time being, the only safe conclusion on that subject seemed to be that the experiments should be continued, both unilaterally and in co-operation among interested Governments.

23. With regard to the category of fragmentation weapons, there had been little inclination among the participants in the Lugano Conference to defend any sweeping prohibitions in that area. In particular, there had been only a few attempts to maintain that the new pre-fragmented munitions would cause more serious injury than traditional bombs or shells. On the contrary, many experts had emphasized that the new munitions rather tended to cause less serious injury.

24. The Swedish experts had advanced the suggestion that perhaps the use could be prohibited of munitions whose individual area of effectiveness would exceed a specified threshold, such as one square kilometre. They had argued that a greater area of effectiveness would all too often endanger the civilian population. The suggestion had attracted scant support; arguments against it had been that the effect of such a limitation would be nil, since the mere use of an increased number of munitions would provide the effectiveness required in a given situation and the element of risk for the civilian population did not depend on the weapon chosen but on the place where, and the circumstances in which, it was employed.

25. More attention had been paid to the question of fuel-air explosives, about which relatively little appeared to be known. It was feared by some that the anti-personnel use of such devices could result in an extremely high death toll, but others had contested that idea and had argued that such weapons were designed for the clearance of minefields and similar operations rather than for anti-personnel use. However that might be, the existing uneasiness had led to the introduction of two proposals: one, by Sweden, which was to prohibit the anti-personnel use of weapons which relied exclusively on shock waves in the air for their effects (see Lugano report, p. 167), and the other, by Switzerland, which would forbid the detonation for military purposes of gas-air and dust-air mixtures (see Lugano report, p. 182), which released gas pressure. Neither of those proposals had attracted sufficient support; the Swedish proposal had been criticized mainly because its language seemed to include certain hand grenades and land mines, and the Swiss proposal because it was not confined to anti-personnel use. The fundamental question was whether a prohibition, in one form or another, of the use of fuel-air explosives seemed desirable. That question had remained unanswered by many of the experts at the Lugano Conference, mainly because they had not felt that sufficient information was available. Against that point, it had been argued that it seemed hardly justified to wait until future battlefields yielded the information required. Thus, while the question remained unresolved, the problems posed by fuel-air explosives seemed worthy of further attentive consideration.

26. More success had been achieved with a final proposal in that category of the blast and fragmentation weapons; that proposal, introduced by Mexico and Switzerland (see Lugano report, p. 188), had sought to prohibit, in its original formulation, the use of weapons producing fragments which in the human body escaped detection by usual medical methods. Weapons could produce such non-detectable fragments either by the choice of material - such as fragments of certain plastics having a density comparable to that of connective tissue - or by the choice of size - such as, for steel and denser substances, fragments smaller than about 0.6 mm in diameter. While the proposal had attracted the widest possible support in principle, the language in which it had been couched had given rise to certain criticisms. The original sponsors had finally proposed an amended form of words reading: "It is prohibited to use any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays". That version, too, had not gone uncriticized and other formulas had been suggested. The obvious conclusion was that that proposal could be said to constitute a good basis for further discussion.

27. There was a correction to be made to the report of the Lugano Conference. Paragraph 83 on pages 123 and 124 of the English version gave an account of experiments and calculations carried out by an expert in the matter of fuel-air explosives, and on the sixth and seventh lines of page 124 the account concluded with the statement that the death probability could increase even to the upper limit of 100 per cent killed. The next sentence, which stated that size was not the only problem, obviously no longer dealt with the same subject matter but with that of non-detectable fragments. It was, in fact, the opening sentence of the second part of a statement by an Australian expert, in which he had described the capabilities of current radiographic methods for detecting small fragments in the human body. By an unfortunate coincidence, the entire first part of his important statement had become lost in the final production of the report. That would, of course, be corrected and the text of his statement would be made available to delegations in a Committee document. The last item on the work programme of the Conference had been "Other categories of weapons and new weapons." Apart from a few illuminating exposés of the potentialities of laser applications in the military field, the main subject discussed under that item had been internal and international mechanisms for monitoring new weapon developments. Since the Lucerne Conference, several countries had built into their weapons development or acquisition procedures guarantees that the legal and humanitarian aspects of such developments would not be overlooked. Not everyone was convinced that such internal procedures were sufficient, however, and there had been some

discussion of the possibility of setting up an international review mechanism for that purpose. The functions of such a mechanism would obviously be somewhat different from those of the internal ones. It was hardly to be expected that international inspectors would be allowed to look into the work of weapon designers, and even weapons that had already been incorporated in armaments were at times the object of a certain secretiveness. Yet it was hard to deny that an international monitoring mechanism could perform a useful watchdog function in that area.

28. One proposal that merited particular mention had been introduced by the Mexican delegation and it recommended that the Conference of Government Experts should be given permanent status (see Lugano report, p.183). The proposal had not been prompted by undue optimism; rather, it had been born of a certain pessimism regarding the possibility of setting up, in the near future, an international review mechanism. He, himself, had welcomed the Mexican suggestion, especially in view of rule 6 of the rules of procedure (see Lugano report, p.229), which provided that the Rapporteur appointed at the first session should remain in office. If the Mexican idea were to be adopted, he would suggest that another rapporteur might perhaps be appointed for the General Working Group. The decision taken at Lugano to have one and the same rapporteur for the plenary and for the General Working Group had never seemed to him the most happy solution.

29. In conclusion, he had some comments to make on the Working Sub-Group on General and Legal Questions, set up at the request of the Swiss delegation. The Sub-Group had discussed a whole range of interesting topics, such as the numbers and types of agreement that should be made and their relation to the existing Conventions and Protocols; the relation of weapon agreements to existing customary law, and the question whether they would themselves be or become part of customary law; the question whether unmitigated reciprocity or rather the right of reprisals would have to apply in case of violations; and the consequences for one party of violations by an ally. Notwithstanding the interesting character of those topics, however, the whole debate had been somewhat unreal in that it had not been related to any concrete draft agreements. Several of the participants had made it clear, therefore, that they were merely thinking aloud about questions which for the time being they considered abstract. At all events, the meetings of the Group had provided the participants with a useful opportunity to ventilate their sometimes widely divergent views on the various matters. For example, in discussing the question of reciprocity or reprisals, some had taken the position that reciprocity would always have to be applicable, since national security was at stake, while others had expressed a preference for the somewhat more circumscribed right of

reprisals. When reprisals had themselves been the subject of discussion, it had appeared that others rejected them emphatically as all too inhumane. That one example would demonstrate that much time would still have to be devoted to those and similar aspects when the stage of discussing draft agreements was reached.

30. Mr. MENA PORTILLO (Venezuela) said that although his delegation welcomed such progress as had been made at the Lugano Conference, the over-all results were disappointing. He therefore called on all members of the Diplomatic Conference to ensure that the time remaining was devoted to reaching agreement on recommendations concerning the prohibition or restriction of the use of certain conventional weapons. There were undeniably obstacles in the way of such an agreement, including the requirements of national security and the fact that in certain countries the armaments industry was an important part of the economy. It would be necessary to strike a proper balance between military and humanitarian considerations. Recommendations should be adopted which would act as moral brakes on scientific and technological progress in the field of armaments - progress which could only bring suffering and misery to present and future generations, and desolation to the ecology.

31. Mr. MILLER (Canada), referring to the Rapporteur's statement that there had been more Government representatives at the Lugano Conference than experts, said that while the statement might be true, any criticism was not justified. Apart from that, he did not disagree with any of the Rapporteur's comments about the progress made at Lugano. The work done concerning the various categories of weapons had been positive. Useful discussions had been held on mines and booby traps, but more research was needed into small-calibre weapons. On the question of fragmentation weapons, the Rapporteur had been right in saying that at the Lugano Conference there had been little indication of a desire to defend any sweeping prohibitions in that area.

32. As regards future weapons, his delegation had announced at Lugano that Canada had decided to set up a national body to consider the question from the point of view of international law, and it hoped that other countries would follow suit. His delegation considered that such weapons should not be placed under international supervision, but some could possibly be the subject of periodic review at appropriate intervals, perhaps through the mechanism of a review clause in the final document.

33. The discussions in the Working Sub-Group on General and Legal Questions had been very valuable. Although there had been considerable differences of view on reprisals and reciprocity, there had been much agreement on the form any proposals relating to an international agreement should take.

34. He did not think that the results of the Lugano Conference had been disappointing. There had been at least four areas of potential agreement, on which the Ad Hoc Committee should focus its attention.

35. Mr. de ICAZA (Mexico) said that it was difficult for him to comment on the report of the Lugano Conference while the Spanish version was still not available.

36. He could not agree that the proposal of the Mexican and Swiss experts to prohibit the use of time-fused weapons, which appeared in the annex to the report of the Lugano Conference, had not received sufficient support (see Lugano report, p. 198). As regards the Mexican-Swiss proposal concerning non-detectable fragments, (see Lugano report, p. 198), his recollection was that it had been about to be adopted when one expert had raised a linguistic question, with the result that a consensus had not been reached.

37. He regretted that in his introduction the Rapporteur had referred only to the divergent opinions expressed at the Lugano Conference. Some might be disappointed with the results of the Conference, but progress had been made and the Ad Hoc Committee should proceed to consider the various proposals put forward. More than twenty documents from different parts of the world had been submitted, at Lugano, and they should provide an ample basis for the Ad Hoc Committee to draft recommendations.

38. Mr. de GRAFFENRIED (Switzerland) agreed with the remarks of the representative of Mexico, especially as regards the proposal of the Mexican and Swiss experts concerning the use of time-fused weapons.

39. Mr. BLIX (Sweden) said that the question before the Committee had been amply studied. The dossier of data available was as good as could reasonably be expected. Any additional information required could be produced at the national level and through normal scientific work. The only exceptions might be certain kinds of information that Governments would not release or would only release on a basis of reciprocity.

40. What now had to be done was to reach agreement. The reason sometimes advanced for the lack of results so far was that the major military Powers were not really interested in achieving them. If that were so, it would be as well not to waste further resources on the endeavour. While sharing the impatience of other smaller countries, however, his delegation could not believe that there was a lack of goodwill in any quarter. The prohibition or restriction of specific conventional weapons was difficult, but possible.

41. The Lugano report encouraged some cautious optimism. There had been a broader engagement in the substantive debate than on earlier occasions, even though some delegations had indicated a desire for a more forthcoming attitude on the part of others; for example, with regard to a standard test of small-calibre projectiles (see Lugano report, p. 156). He had been encouraged by the Rapporteur's statement that the first meeting of the Working Sub-Group on Small-Calibre Projectiles had been attended largely by diplomats. East-West and North-South participation with regard both to data contribution and indication of positions were vital starting points in the search for agreement in that area. The indication of more specific positions given by a number of experts at Lugano was valuable, although his delegation regretted the timid approach sometimes taken.

42. He hoped that delegations would seek to make use of the weeks ahead to advance the work. He would be interested to hear the comments of delegations that had not participated in the Lugano Conference. His delegation would submit new working papers both on incendiary weapons and on small-calibre projectiles as a contribution to the joint search for new rules. It feared that the efforts made so far would be jeopardized if agreements were not concluded within the next year or two, but with goodwill success could be achieved.

43. Mr. SALEEM (Pakistan) said that the Ad Hoc Committee now had before it three reports which differed in emphasis: the summary records of the Lugano Conference, the remainder of the report and the Rapporteur's introduction, in which he had passed judgement on certain issues that had not been passed in the printed report. His delegation had a fourth version in the form of its own assessment of what had taken place at Lugano. It reserved the right to revert to the question after comparing the four different versions.

INTRODUCTION OF PROPOSALS

44. Mr. ØSTERN (Norway), introducing document CDDH/IV/207, said that none of the proposals submitted at the Lugano Conference on incendiary weapons had seemed likely to command the broad support necessary to make an international instrument effective. Before such support could be won, the different points of departure had to be brought closer together. His delegation, considering that more should be done to explore the area between the extremes, had been seeking possible alternatives. It now submitted a formal proposal (CDDH/IV/207) for six substantive articles of a draft Protocol on the prohibition of the use of incendiary weapons. It had considered it unnecessary to draft texts for the preamble or the final provisions at the present stage, but it would revert to the matter if and when such texts might be required.

45. The proposal should be seen against the background of his delegation's co-sponsorship of the proposals in document CDDH/IV/201 and Corr.2 and Add. 1 to 6 and in document RO 610/4b submitted at the Lugano Conference (see Lugano report, pp. 206 and 207), to the principles of which it remained committed. The present proposal took a somewhat different approach so as to make it possible to permit the use of incendiary weapons in certain tactical situations in which the humanitarian arguments against their use seemed no stronger than they were in the tactical situations for which exception was allowed in document RO 610/4b. It was hoped by the new approach to maintain essentially the same level of humanitarian protection while making the proposal less objectionable militarily.

46. The point of departure had been the relevant articles of a general nature in draft Protocol I, in particular articles 46 and 50. That should avoid any possible doubt as to whether the provisions dealing with incendiary weapons represented further restrictions compared with the general rules. Any international instrument on incendiary weapons must represent a further narrowing down of the general prohibitions and restrictions decided upon by the Diplomatic Conference.

47. On the other hand, although the draft Protocol on incendiary weapons submitted by the Norwegian delegation was linked to draft Protocol I, it had been necessary to state in article 1 that it should apply to the situations referred to in Articles 2 and 3 common to the Geneva Conventions of 1949, in order to cover all armed conflicts, whether of an international or non-international character.

48. His delegation would have preferred to delete the last sentence of article 2 of the proposed Protocol or to insert the word "may" between the words "munitions" and "include", but since the definition had been agreed upon at the Lucerne Conference it had decided not to reopen the discussion.

49. The prohibition on the use of incendiary weapons against personnel, in the second paragraph of article 3, was the cornerstone of the proposal. The principle of proportionality in the third paragraph of that article was considerably narrower than the general principle of proportionality in articles 46 and 50 of draft Protocol I adopted by Committee III at the second session of the Conference. The first paragraph of article 3 of the proposed Protocol restricted the use of incendiary weapons to objects that were military objectives within the meaning of article 47, paragraph 2, of draft Protocol I, including those "in close support of friendly forces". It followed from that wording that incendiary weapons could be used in combat situations in which combatants had a certain degree of protection, for example against fortifications, pill-boxes and armoured vehicles.

50. The purpose of article 4 was to give better protection to the civilian population than was afforded by article 46 of draft Protocol I.

51. The second paragraph of article 5 supplemented article 50 of draft Protocol I with regard to precautions in attack, and the requirement for increased precaution was a general one, with no distinction between civilians and combatants.

52. A specific precaution was provided by article 6, in which the obligations imposed by article 48 bis of draft Protocol I were developed further.

53. By linking the proposed Protocol on incendiary weapons to the general provisions of draft Protocol I while developing those provisions further, and by making no distinction between the various incendiary weapons, his delegation had sought to emphasize the humanitarian character and objectives of its proposal. It had at the same time carefully considered the military and security necessities which it would be unrealistic to ignore if a generally acceptable international instrument on incendiary weapons was to be arrived at.

54. Mr. van der KLAAUW (Netherlands), introducing working paper CDDH/IV/206, said that the Netherlands delegation at the Lugano Conference had submitted two proposals, one on the massive use of incendiary weapons and the other on possible restrictions on the

use of napalm in combat (see Lugano report, p. 176). The first proposal, which had won considerable support, was now annexed to working paper CDDH/IV/206. It had been drafted after long discussion and was directed towards the maximum possible protection of civilians against attack by incendiaries, in particular flame munitions, including napalm. It could be considered as a means of strengthening the rules for the protection of civilians against indiscriminate attack.

55. The definition of incendiary munitions in paragraph 1 was the same as that given in document CDDH/IV/201 and Corr.2 and Add.1 to 6. Such incendiaries included flame munitions, for which a definition was also given, and which in turn included napalm, for which a specific rule was formulated in paragraph 2 (c). Rules with respect to the use of incendiaries against civilian concentrations were suggested in paragraph 2. In paragraph 2 (a), the words "As a consequence of the rules of international law applicable with respect to the protection of the civilian population against the effects of hostilities" were used to make it clear that the rules of international law referred to implied not only a number of duties of the attacker but also duties of the adversary, such as that of avoiding the location of military objectives in towns and of safeguarding the civilian population against the effects of attacks if such objectives did exist. The phrase was also used to rule out any a contrario argument that attacks by means other than incendiaries would be permitted.

56. The term "provided that the attack is otherwise lawful" in paragraph 2 (b) implied that the target must be a legitimate one and not, for instance, a dam, a dyke or an installation containing dangerous forces.

57. Paragraph 2 (c) implied that attacks with napalm or other flame munitions against military objectives in towns or other areas of civilian concentration outside the combat zone would in future be prohibited.

58. A difficult discussion had developed at Lugano on the possible restriction of the use of specific incendiaries such as napalm in combat situations. For humanitarian reasons, his Government would like to see the use of napalm on the battlefield restricted. It realized, however, that there were certain military situations in which napalm could be used with great accuracy and discrimination and in which the use of alternative weapons could be less discriminate or cause more suffering for the combatants. It had also become clear that the total prohibition of the use of incendiaries on the battlefield was unacceptable to a number of

important countries. In paragraph 4, therefore, his delegation had tried to formulate a number of exceptions to a possible ban on the use of napalm in combat. At Lugano, however, the proposal had not been widely supported. Some expert delegations had considered it too far-reaching, while others had thought that it failed to go far enough. Some had also considered that several of the terms used were not well defined and could give rise to difficulties of interpretation. His delegation therefore realized that discussion on the subject had to continue with a view to finding a more generally acceptable solution. It had an open mind on possible improvements and would welcome the comments and suggestions of other delegations.

The meeting rose at 5.50 p.m.

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

held on Thursday, 13 May 1976, at 3.15 p.m.

Chairman: Mr. GARCES (Colombia)

INTRODUCTION OF PROPOSALS (CDDH/IV/201 and Corr. 2 and Add.1 to 6, CDDH/IV/206, CDDH/IV/207, CDDH/IV/208, CDDH/IV/209, CDDH/IV/210, CDDH/IV/211/Corr. 1, CDDH/IV/Inf.220) (concluded)

1. Mr. de GRAFFENRIED (Switzerland) said that his delegation, together with various others, had submitted three proposals (CDDH/IV/209, CDDH/IV/210 and CDDH/IV/211), which he would summarize briefly now and explain in greater detail when the Committee discussed each category of weapon. The English versions, notably 1/ of document CDDH/IV/211, did not fully correspond to the French. 1/
2. Document CDDH/IV/210, submitted by Austria, Mexico, Norway, Sweden, Switzerland and Yugoslavia, contained a draft article on non-detectable fragments. The Mexican and Swiss delegations had submitted a similar proposal (see Lugano report, p. 188) at the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons held at Lugano, which had received almost unanimous support. The new version took into account the comments made at Lugano.
3. The proposal was essentially a humanitarian one, designed to reduce unnecessary suffering. Fragments which could not be extracted from the human body soon enough produced severe medical complications, which were not justified by military necessity, since they went beyond the minimum required to put the enemy out of action. The sponsors therefore believed that any weapon whose primary effect was to injure by fragments which in the human body escaped detection by X-rays should be prohibited.
4. Any substance composed wholly or mainly of elements of low atomic weight did not differ appreciably from human tissues from the point of view of X-ray absorption. Wood, glass and especially plastic were extremely hard to detect with X-rays, which was the type of equipment likely to be available in field hospitals. Clearly, there might be better methods of detection than X-rays, but they would long remain the simplest and cheapest.

1/ A corrected English version was subsequently circulated as document CDDH/IV/211/Corr. 1.

5. Explosive devices in a glass, wooden or plastic casing were widely used, but the sponsors felt that such weapons had treacherous effects which should be banned. The draft article made it clear, however, that the aim was not to prohibit a category of weapons, but only to prohibit certain effects. Such a provision would not entail insurmountable difficulties for national defence. By adding elements of higher atomic weight to the materials mentioned, the fragments could be made detectable by X-ray, though not by mine detectors. Thus the balance between military necessity and humanitarian requirements would be restored.

6. The other two proposals (CDDH/IV/209 and CDDH/IV/211/Corr.1) concerned weapons which had also been discussed at length in the Committee and at the first and second sessions of the Conference of Government Experts. They represented an attempt to summarize previous proposals. At the Lugano Conference, for instance, an interesting working paper by the delegations of France, the Netherlands and the United Kingdom on mines and booby-traps (see Lugano report, p. 167) had been thoroughly discussed and some optimism had been expressed. The sponsors had decided that it was better to deal with mines and booby-traps separately.

7. Document CDDH/IV/211/Corr.1, submitted by Mexico and Switzerland, dealt with anti-tank and anti-personnel mines. Paragraph 1 stated the principle that it was forbidden to lay mines in an area containing a concentration of civilians. However, to meet military needs, an exception was made for mines placed on or in the close vicinity of a military objective, on condition that effective precautions were taken to protect civilians from their effects.

8. Paragraph 2 dealt with the recording of methodically laid minefields. The expression "methodically laid" was not, of course, commonly used among the military, but the sponsors felt it useful to identify the problem without having to define the size of a minefield in figures. They were not convinced of the practicability of marking minefields.

9. As regards paragraph 3, the sponsors attached great importance to limiting the use of delayed-action devices which exploded long after impact. However, they had no set ideas on the number of hours to be laid down for the self-destruct or neutralization mechanisms mentioned in paragraph 3 (a).

10. Draft article CDDH/IV/209, submitted by the delegations of Mexico, Switzerland and Yugoslavia, dealt with booby-traps. The sponsors felt that "booby-trap" in English and "piège" in French were not clear enough and did not fully correspond to the terms used in the other Conference languages. That was why they had provided a definition in paragraph 1.

11. Paragraph 2 stipulated that booby-traps might be used only inside or outside military objects as defined in article 47, paragraph 2 of draft Protocol I, already adopted by Committee III, on condition that the civilian population in the proximity of such a site were given warning of the danger.

12. Paragraph 3 prohibited certain uses of booby-traps that were particularly repulsive and treacherous and must not be tolerated.

13. Mr. GOZZE-GUCETIĆ (Yugoslavia) said that the most significant aspect of the Lugano Conference was the number and range of the proposals put forward. The fact that some of the proposals conflicted was not discouraging, but rather the contrary. However, any conclusion as to the degree of support for those proposals was premature at the present stage; it would be for the Diplomatic Conference, representing 140 nations, rather than the Conference of Government Experts, representing 43, to pass final judgement on them.

14. His delegation favoured a realistic approach, namely, one that took account of States' national security needs as well as of humanitarian considerations. The proposals in documents CDDH/IV/201 and Corr. 2 and Add.1 to 6 and CDDH/IV/Inf.220, of which it was a sponsor, met those requirements. They were not intended to eliminate entire categories of weapons, but only to prohibit the use of such weapons in specific ways that were contrary to generally accepted principles of international law; and they would not endanger national security. His delegation realized, however, that some Powers still found it difficult to agree to such a prohibition, and it would therefore welcome new proposals in the hope that they would make it easier to find a solution to the problem. It would not insist unduly on the wording in documents CDDH/IV/201 and Corr.2 and Add.1 to 6 and CDDH/IV/Inf.220, but it was not prepared to abandon the spirit behind those proposals. It would be ready to support and even sponsor any new proposal based on a realistic balance between national security and humanitarian law. It would also give serious consideration to any other proposals, even those that ran contrary to its own desires, in order to find possible areas of agreement, and it hoped that other delegations would do likewise.

15. His delegation believed that the Committee now had enough information to start taking decisions on restrictions and prohibitions. What it still needed was the political will to do so. It was in the interest of all countries to call a halt to the dangerous trends in present-day technology. It was difficult, but not impossible, to draw a line between technological developments

that served the legitimate interests of national security and those that were contrary to the general principles of international law. That consideration would govern his delegation's comments on the various proposals submitted when the Committee began its discussion on specific categories of weapons.

16. Mr. DI BERNARDO (Italy) said that the Lugano Conference had achieved laudable results and that the interesting contributions and new information provided by many delegations had been particularly useful. Despite the complexity of the technical problems, the work done at Lugano provided a solid foundation for the Ad Hoc Committee's deliberations.

17. Some important proposals concerning incendiary weapons had been examined. The experts had adopted a flexible and co-operative approach, attempting to reconcile divergent views and to seek a basis for agreement in order to ensure better protection of the civilian population.

18. With regard to delayed-action and treacherous weapons, several delegations had expressed the view that progress could be made and that the documents submitted to them could be a first step towards future agreement.

19. It had emerged from the discussion on small-calibre projectiles that more thorough technical studies were required before measures for limiting the use of such weapons could be envisaged. Tests carried out in several countries showed that the various parameters considered - in particular, angle of yaw, tumbling, velocity and transfer of energy of the projectile - did not make it possible to determine conclusively whether bullet design was likely to cause unnecessary human suffering. Furthermore, it had been demonstrated at the symposium on wound ballistics, held at Göteborg, that muzzle velocity was not the main factor which determined the gravity of an injury.

20. Some progress had been achieved in respect of fragmentation weapons, particularly those dispensing fragments that were difficult to detect when lodged in the human body, but the discussions on cluster-bombs, fléchettes and fuel-air explosives had produced no results.

21. Very little had been said about future weapons, and it was not easy to form an opinion on the possible effects of their use. The subject required further study and scientific analysis, since prohibition or limitation of the use of any specific weapon was

difficult to envisage at the present stage. Once the Committee had completed its discussion of the categories of weapons on its programme of work, it should consider the proposal for the establishment of a permanent body to pursue the study of conventional weapons (see Lugano report, p. 183). His delegation would state the serious objections it had to that proposal at the appropriate time.

22. Although the Committee's work should be guided by humanitarian considerations, national security requirements should also be taken into account. The aim should be to strike a proper balance between those two aspects.

23. Mr. MENA PORTILLO (Venezuela) said that his delegation would be prepared to support the proposal in document CDDH/IV/210 if the sponsors agreed to add the words "the use of" before the word "X-rays" in order to improve both the content and style of the text. It might also be prepared to support the proposals in documents CDDH/IV/209 and CDDH/IV/211/Corr.1, if improvements could be made in the text of both proposals.

24. Mr. AKRAM (Afghanistan) said that although the results achieved by the Lugano Conference were not entirely satisfactory, it must be recognized that the task had been no easy one. The participants had given high priority to humanitarian considerations, and the exchange of views held on the limitation and prohibition of the use of certain types of weapon would no doubt be most useful to the Ad Hoc Committee.

25. He stressed the need to lay down provisions that would protect the victims of aggression, check the arms race and the development of ever deadlier conventional weapons and prevent unnecessary suffering in armed conflicts. His delegation would like to co-sponsor both the working paper originally submitted by Austria, Egypt, Mexico, Norway, Sweden, Switzerland and Yugoslavia (CDDH/IV/201 and Corr.2 and Add.1 to 6) and the modified proposal submitted on behalf of the sponsors by the delegation of Sweden (CDDH/IV/Inf.220).

26. Although his country had had no cause to use incendiary weapons, his delegation was fully aware of their indiscriminate nature and the adverse effects of their use. But if those which existed were completely prohibited, substitutes that were much more dangerous and deadly would certainly be developed within a very short time.

27. Mr. BLIX (Sweden) said he wished to introduce the proposals in documents CDDH/IV/Inf.220 and CDDH/IV/208.

28. Document CDDH/IV/Inf.220 contained a letter which he had been authorized to transmit to the ICRC after the second session of the Diplomatic Conference and which expressed the readiness of some twenty delegations to support a comprehensive ban on incendiary weapons. The draft proposal contained in the letter developed with greater precision the basic position stated in working paper CDDH/IV/201 and Corr.2 and Add.1 to 6. At the Lugano Conference the New Zealand delegation had withdrawn as a sponsor of the letter in order to support the proposal submitted by the Netherlands delegation (see Lugano report, p. 176), and the Romanian delegation had announced its support of the letter. He was pleased that the delegation of Afghanistan wished to join in sponsoring both the working paper (CDDH/IV/201 and Corr.2 and Add.1 to 6) and the modified proposal in the letter (CDDH/IV/Inf.220).

29. The approach taken in both the working paper and the letter had certain advantages. It would guarantee a substantial reduction in burns caused by weapons. Furthermore, the humanitarian effects of the provisions would not be limited to civilians but would extend also to soldiers.

30. His delegation had tried to explore other avenues leading in the same direction and the result of its efforts was to be found in the working paper on flame weapons (CDDH/IV/208), which proposed that the use of one important category of incendiary weapons should be completely prohibited. The approach to and definition of flame weapons suggested in the working paper differed in several respects from those in the proposals submitted by the Netherlands (CDDH/IV/206) and Norway (CDDH/IV/207), both of which aimed only at specific restrictions on their use. The working paper offered a definition of flame weapons that also covered the "scatter-type" sub-category of incendiary weapons, which included not only napalm and its substitutes but also white phosphorus.

31. His delegation would continue to argue in favour of completely prohibiting the use of other sub-categories of incendiary weapons, but considered it desirable to provide a separate basis for the discussion of the sub-category which was currently causing most concern. To prohibit the use of weapons in that sub-category would be to prevent in practice any use of incendiary weapons against people. Furthermore, that would be achieved through a total ban on the use of a type of weapon rather than through the unreliable method of permitting general use of a weapon but prohibiting its use against people.

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE, AND OF PROPOSALS:

(a) Napalm and other incendiary weapons (CDDH/IV/206, CDDH/IV/207, CDDH/IV/217)

32. Mr. de ICAZA (Mexico) welcomed the Norwegian delegation's action in submitting a draft Protocol relative to the prohibition of the use of incendiary weapons (CDDH/IV/207). He noted that, with the Mexican delegation's draft additional Protocol (CDDH/IV/217), the Committee now had before it two draft Protocols on the subject. There was thus ample technical and legal material for consideration.

33. The actual content of the Norwegian proposal, however, was discouraging in so far as it appeared to constitute a further attempt to restrict the use of incendiary weapons on the basis of the targets attacked, whereas negotiations thus far had been directed towards the total prohibition of incendiary weapons, or at least of some of them. The extensive information considered at previous meetings of the Committee and at the two sessions of the Conference of Government Experts showed that incendiary weapons were particularly cruel and caused wounds which were difficult to treat. The same sources also showed that the military effectiveness of such weapons was limited, that their tactical value lay mainly in the terror which fire inspired in everyone except trained troops, and that substitutes could be used in practically all the circumstances for which incendiary weapons were employed. Moreover, such weapons were par excellence weapons which caused superfluous injury.

Committee III had adopted article 33 of draft Protocol I, paragraph 2 of which read: "It is forbidden to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering" (CDDH/226 and Corr.2, p.69). That prohibition was absolute. To accept restrictions on the use of incendiary weapons on the basis of the targets attacked would entail the acceptance of one of two assumptions: either incendiary weapons did not cause superfluous injury and therefore did not fall within the meaning of the absolute prohibition laid down in article 33, paragraph 2; or else the Ad Hoc Committee was going to limit the scope of what had already been approved in Committee III. His delegation could accept neither of those assumptions.

34. Article 1 of the draft Protocol (CDDH/IV/207), which established the broadest possible field of application, was acceptable to his delegation as was article 2, which reiterated the definition of incendiary weapons adopted at Lucerne, without making any exception.

35. In article 3 only the heading - "General prohibition" - was acceptable, the body of the text being at variance with the heading. The first paragraph restricted the use of incendiary weapons to objects which were military objectives in the sense of article 47, paragraph 2, of draft additional Protocol I. That definition was so broad that virtually any object, depending on the circumstances and on the judgement of the attacking party, constituted a military objective. The absence, in the Norwegian proposal, of any reference to paragraph 3 of article 47 increased the attacking party's discretionary powers to decide what constituted a military objective, since the provision whereby an object would be presumed to be civilian in case of doubt had been omitted. Thus the first paragraph of article 3 of the Norwegian proposal not only prohibited nothing; it was even less restrictive than article 47 of draft Protocol I.

36. The second paragraph of article 3 of the Norwegian proposal, by prohibiting the use of incendiary weapons against personnel, authorized their use against matériel. The third paragraph contradicted the second paragraph, since it permitted the use of incendiary weapons against people, including civilians, when they were within or in the vicinity of military targets - in other words, of any target considered to be legitimate by the attacking party. If the purpose of the paragraph was to reflect the idea contained in article 46, paragraph 5, of draft Protocol I, which prohibited the use of civilians in order to restrict military operations, that purpose had not been achieved; on the contrary, a wording had been introduced that was harmful to the humanitarian aims shared by all delegations.

37. Article 4 added nothing to article 46 of draft Protocol I, except that incendiary weapons might be used in populated areas only when they were combat zones. There was some merit in that, but it was repugnant to think that the special form of cruelty caused by incendiary weapons would be added to the usual destruction and horror experienced when fighting took place in populated areas.

38. Article 5 added nothing to article 50 or to article 46, paragraph 3, of draft Protocol I. Article 6 added nothing to article 48 bis and detracted from the provisions of article 33, paragraph 3, which prohibited the use of methods or means of warfare intended to cause damage to the natural environment. In short, the Mexican delegation preferred articles 1, 2 and 3 of its own draft Protocol, which should replace articles 3, 4, 5 and 6 of the draft Protocol in document CDDH/IV/207.

ORGANIZATION OF WORK

39. After a brief procedural discussion in which Mr. DI BERNARDO (Italy), Mr. TOOGOOD (Canada) and Mr. MARTIN HERRERO (Spain) took part, the CHAIRMAN announced that at its next meeting the Committee would complete its discussion on the work of the Lugano Conference and would continue with its consideration of item 3 (a) of the programme of work.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

held on Tuesday, 18 May 1976, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE, AND OF PROPOSALS. (continued)

(a) Napalm and other incendiary weapons (CDDH/IV/201 and Corr.2 and Add.1 to 7, CDDH/IV/206, CDDH/IV/207, CDDH/IV/208, CDDH/IV/217, CDDH/IV/Inf.220) (continued)

1. Mr. MARTIN HERRERO (Spain) noted that the Ad Hoc Committee on Conventional Weapons had already met three times since the beginning of the current session of the Diplomatic Conference to study the question of the limitation of conventional weapons apt to cause unnecessary suffering. The two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons, held respectively at Lucerne and Lugano, had also studied the subject.
2. The report of the Lugano Conference provided an excellent basis for work and dealt with the question under consideration with a certain realism not, however, free from pessimism. In that connexion, he quoted a Spanish proverb which said that facts had to be faced squarely. The report nevertheless contained positive features warranting some optimism. The Rapporteur had drawn attention to the fact that the Lugano Conference of Government Experts had revealed and identified the points of disagreement. Obviously, that was most important. Would it be possible, starting from there, to bring about a meeting of minds?
3. As the Rapporteur and the representative of Canada had pointed out, at an earlier meeting, the Lugano Conference had imposed no obligations or limitations; it had merely recognized the limitations set by the facts. Those limitations arose largely from the constant progress and development of military technique.
4. As the representative of Italy had observed at the twenty-fifth meeting (CDDH/IV/SR.25), the experience gained at the Lugano Conference and on other occasions had not been very conclusive. For example, it could be asked which were the most cruel and deadly weapons: weapons with a slightly larger calibre which made a wider neck to the cavity on entering a block of soap, or smaller calibre weapons which made a narrower neck, but caused greater damage on their way through the interior of the block.

5. In any case, it should be noted that some progress respecting mines and booby-traps had been made at the Lugano Conference. He therefore believed that the Ad Hoc Committee should not have any major difficulty in regulating their use.
6. The Diplomatic Conference and the Ad Hoc Committee were entering upon an advanced stage of their work, and ought to reach a conclusion. If they were to do so, there must be an effort to avoid repeating the same arguments and the same views.
7. He reminded the Committee of the well-known saying "Politics is the art of the possible". That saying should be applied to the work of the Diplomatic Conference, and the Ad Hoc Committee, which already had several proposals before it, could try to reach agreement and prepare a document that gave an account of the progress made. He believed that the working group formula might provide a useful solution.
8. Mr. DAVINIĆ (Yugoslavia) said that he could confirm the view expressed by his delegation at the Lugano Conference that incendiary weapons represented one of the most inhumane categories of conventional weapons. Admittedly, although that conclusion had been supported by many of the experts attending the Lugano Conference, others had contended that the use of incendiary weapons was not more inhumane than that of other weapons, and that the risk of their indiscriminate use had been considerably reduced by the improvement in the means of delivery. However, the requests for the prohibition of the use of incendiary weapons had withstood criticism based upon those arguments. It was a fact that incendiary weapons were inhuman and caused unnecessary suffering. Consequently it would be more logical also to ban other weapons that had similar inhumane effects, rather than to oppose the prohibition of any such weapons, including incendiary weapons. Similarly, it was true that the means of delivery had improved so that the risk of indiscriminate use of incendiary weapons had been considerably reduced. But, despite those improvements, the main characteristic of those weapons remained the same, namely, that they could be used as weapons of mass destruction, and could pose a serious threat to the environment.
9. The only way to solve the problem was to regulate the use of incendiary weapons, as proposed in working papers CDDH/IV/201 and Corr.2 and Add.1-7 and CDDH/IV/Inf.220. The sponsors had been particularly encouraged by the fact that a number of countries had not only supported the two documents but had even decided to become sponsors themselves. That support could not be disregarded by those who opposed the control of those weapons.

10. As the Yugoslav experts had already pointed out at the Lugano Conference - a position which his delegation had reaffirmed at the current session of the Diplomatic Conference - the Yugoslav Government was prepared to accept a realistic approach which would take into consideration the views of all the countries concerned. However, it was unable to accept the assertion that incendiary weapons did not cause unnecessary suffering and did not produce indiscriminate effects. Those weapons were inhumane and were often used indiscriminately. If, however, some countries continued to believe that for various reasons they still had to rely on incendiary weapons for their security, his delegation was prepared to enter into negotiations in order to determine the borderline which must be drawn between military interests and humanitarian requirements. That was why his delegation welcomed the proposals which approached the use of incendiary weapons from a point of view other than the one which document CDDH/IV/Inf.220 was based, although those proposals fell short of his delegation's expectations.

11. For example, while the Netherlands working paper (CDDH/IV/206) appeared to his delegation to offer a possible basis for further discussion, the provisions contained in the annex did not seem to be stringent enough. For that reason his delegation would welcome further improvement of the draft, in particular of paragraph 2 (b) of the annex with a view to restricting the conditions under which incendiary weapons could be used against military objectives in populated areas. His delegation also considered that the provisions dealing with the protection of civilians should be accompanied by a similar clause in respect of combatants.

12. He commended the Norwegian proposal (CDDH/IV/207) for the stress it gave to the protection of civilians and combatants. It laid the foundation for a possible compromise between various approaches. However, his delegation took the view that it set the dividing line between military interests and humanitarian requirements at a somewhat low level. If several countries intended to accept that proposal, the dividing line must of necessity be set at a higher level of protection.

13. Of all the proposals which approached the problem from a different angle from document CDDH/IV/Inf.220, the one which his delegation considered most satisfactory was that put forward by Sweden (CDDH/IV/208). That paper provided the elements of a Protocol on incendiary weapons, while taking into account all the problems involved. If the Swedish delegation considered it opportune to submit it as a formal proposal, his delegation could co-sponsor it.

14. His delegation awaited the commentaries and proposals of the other delegations with great interest, especially those which had maintained a different position. It would welcome suggestions from delegations which had not been represented at the Lugano Conference, convinced that their contributions could be very useful.

15. Mr. KLEIN (Holy See) said that since the time had come to deal from the strictly humanitarian standpoint with the problem raised by the use of incendiary weapons, he wished first to express his delegation's thanks to the experts who had participated in the work of the Lugano Conference, which enabled some hope to be entertained for humanitarian progress in the sphere of armaments.

16. It was not the mission of the Holy See to take part in a debate on the tactical repercussions of the prohibition or limitation of incendiary weapons as compared with other means of combat. However, his delegation felt obliged to put the case of civilians, not because it did not care about the sufferings of combatants, but because it considered that incendiary weapons had an even more cruel impact on the civilian population. His delegation therefore welcomed the proposal for total prohibition submitted by the Mexican delegation (CDDH/IV/217) and noted the importance of the provisions contained in document CDDH/IV/Inf.220.

17. There were several official texts urging the need for sparing civilians, such as Papal and Conciliar texts, United Nations documents, and documents of the Diplomatic Conference, including, in particular, articles 33, 46, 47 and 48 of draft Protocol I and articles 20, 26, 26 bis and 28 of draft Protocol II.

18. All those texts seemed aimed at incendiary weapons. First there were their cruel effects on mankind, effects which were terrifying and long-lasting. Often no discrimination was exercised between military and civilian objectives. There was above all the fact that civilians, ignorant of how to protect themselves, unorganized from the point of view of equipment, without camouflage and grouped together in families or villages, were more dangerously exposed to incendiary weapons than soldiers trained, commanded, equipped, camouflaged and relatively well-covered in their foxholes and machines. It was also true that wooden dwellings, houses, schools, blocks of buildings, town centres were much more liable to catch fire than were a good many military buildings, installations and machines when scattered and camouflaged.

19. A concentration of incendiary substances or projectiles, combined with dry conditions, wind and the blast from explosions, had in the past produced inordinately serious effects on towns, out of all proportion to the purely military effects alone.

20. His delegation accordingly considered that it was necessary to eliminate completely any risk of the deliberate, accidental or irresponsible use of incendiary weapons against the civilian population. It hoped that when a decision was taken on the subject, all the representatives present would bear in mind the intolerable spectacle of children who had been blinded and burnt through the fault of adults - a spectacle which might be repeated if the Conference was unwilling to assume its rightful share of the responsibility in that sphere.

21. Mr. KUSSBACH (Austria) observed that he had acted as Chairman of the General Working Group of the Conference of Government Experts at Lugano, and that in a final statement he had summed up his personal impressions of the session and the future prospects. He had stressed the difficulties experienced in arriving at a consensus on prohibiting or restricting the use of incendiary weapons. He considered, however, that for the first time serious efforts had been made to bring opposing views closer together, to seek common ground for understanding and to display greater flexibility.

22. The Ad Hoc Committee on Conventional Weapons currently found itself in a position to some extent comparable with that reached at Lugano. Several proposals had been submitted, each of which was concerned from varying angles with the prohibition or restriction of the use of incendiary weapons. Fresh proposals had recently been put forward on the same subject.

23. All the proposals expressed divergent views. It was normal that different countries should have different views on such a thorny subject. Yet, two basic principles must be borne in mind: the humanitarian idea on the one hand, and national security on the other. Each had its own value. The Committee's task was to reconcile the two in the interests of mankind, in the interests of the victims of those cruel and terrifying weapons. The task was undoubtedly difficult, but one that must be accomplished.

24. With respect to incendiary weapons, the opposing positions that were irreconcilable at the outset, now belonged to the past. Some divergences remained, but they were certainly not insurmountable.

25. The Austrian Government had explained its position on incendiary weapons on many occasions. That position was reflected in working paper CDDH/IV/201 and Corr.2 and Add.1-7 and in the proposal by twenty-one countries (CDDH/IV/Inf.220). The Austrian delegation was seeking a compromise that would both be realistic

and effective. Obviously a purely cosmetic formula would not be in line with Austria's humanitarian intentions. It was in that spirit that his delegation had studied the proposals submitted to the Ad Hoc Committee, namely, those by the Netherlands (CDDH/IV/206), Norway (CDDH/IV/207), and Sweden (CDDH/IV/208), all of which had unarguable merits. His delegation would express its preference for the proposal submitted by Sweden, although it had some reservations on each one of the proposals.

26. In his delegation's view the task must be to seek a compromise by means of consultations and discussions at all possible levels: in the Committee, in a small sub-group, perhaps even in a restricted working group; but above all after the end of the current session of the Conference, if they did not succeed in reaching a general agreement.

27. His delegation did not underestimate the difficulties which prevented the Committee from reaching agreement on incendiary weapons. They were so great that the possibility of total failure could not yet be discarded. Nevertheless, his delegation was not pessimistic. Very much to the contrary, it sincerely hoped that the international community would be able to overcome the difficulties and reach an agreement.

28. Mr. SALEEM (Pakistan) said that many representatives appeared to be bent on producing a Convention or Protocol at all costs. If some delegations honestly felt that incendiary weapons were humane and discriminate, the idea of imposing a ban should be given up altogether. That was better than having an illusory text adopted.

29. The draft Protocol on the prohibition of the use of incendiary weapons submitted by Norway (CDDH/IV/207), while undoubtedly the result of much hard work, was based almost entirely, from article 3 onwards, on various articles relating to incendiary weapons in draft Protocol I, although presenting them in clearer terms. In fact, the draft showed remarkable candour and could be summed up as follows: "If you intend to use incendiary weapons, go ahead by all means and you have our blessing, but do be careful and read the following articles of Protocol I." The text had nothing to do with prohibition.

30. The Conference should attempt to go beyond the provisions of draft Protocol I and existing humanitarian law. It should break new ground and not take shelter behind mere window-dressing.

31. He suggested that the Committee consider each incendiary weapon separately and draft a Convention only in respect of those weapons which fell into the category being considered for prohibition.

32. Mr. DI BERNARDO (Italy) said that his delegation could not but congratulate the Netherlands delegation for having given, in the working paper it had submitted, (CDDH/IV/206), a set of rules designed to prevent the massive use of incendiary weapons which might inflict widespread suffering on the civilian population. His delegation accordingly subscribed fully to the rule set out in paragraph 2 (a) of the annex to the document. It considered, further, that paragraph 2 (b) provided a satisfactory means of dealing with the problem of military objectives within populated areas. It kept in mind that at the Lucerne and Lugano Conferences, the Italian experts, supported by numerous other experts, had expressed the view that incendiary weapons in general, and napalm bombs in particular, could be used discriminately. As for paragraph 2 (c), the proposed restraint on aerial attacks by means of napalm or other flame-throwing weapon could seriously hamper the course of military operations.

33. With regard to the draft Protocol submitted by Norway (CDDH/IV/207), he questioned the appropriateness of referring to articles of the draft Protocols at present under discussion by the Diplomatic Conference, given that the prime purpose of any legal instrument regulating the use of certain conventional weapons was to provide the commander in the field with a clear picture of the rules applicable to armed conflicts. Possibly all that was required was to reproduce the relevant wording from the draft Protocols.

34. With regard to substance, his delegation fully concurred in the rationale behind the text. Needless to say, it was imperative to afford civilians the widest possible protection during attacks on military objectives situated in heavily populated areas. It should be remembered that some eleven countries, including Italy, had submitted a proposal on the subject (see Lugano report, p. 181) to the Lugano Conference.

35. His delegation noted that the Norwegian delegation intended protection to extend to combatants as well as civilians, on the assumption that both should be spared injuries by burning. The point at issue was a controversial one, which had been left unsettled at both the Lucerne and Lugano Conferences.

36. In the view of a number of delegations, including his own, attacks directed against military objectives (and that included military personnel) could only be effective, at least in certain instances if incendiary weapons were used. The last paragraph of

article 3 of the Norwegian proposal appeared to take that element into account. On the other hand, the last paragraph of article 4 did not have due regard to the fact, repeatedly stressed, that incendiary weapons could be used most discriminately.

37. As to the working paper on flame weapons (CDDH/IV/208), submitted by Sweden, his delegation considered that, although fully justified from the humanitarian standpoint, the suggested total ban was unrealistic. If the Diplomatic Conference was endeavouring to devise international instruments which would be effectively applied throughout the world, it must have regard to what was both desirable and possible, taking account of the demands of security. Furthermore, it should be reiterated in that connexion that incendiary weapons were the most effective and discriminate means of warfare in certain situations.

38. Mr. SOEGARDA (Indonesia) said that his delegation fully endorsed the efforts made by the Diplomatic Conference to prohibit or restrict the use of incendiary weapons.

39. Everyone hated war, but experience had shown that it was sometimes inevitable. One should therefore be prepared at least to limit the damaging effects of conflict and to lessen the sufferings of those affected by war. While there had been some differences of opinion at the Lugano Conference on the medical aspects of burn wounds, the experts had unanimously agreed that such wounds could be difficult to treat, might require long-term cure, and might result in permanent disability, including physical, functional, visible, social and psychological damage. In the circumstances, the effects of incendiary weapons, if used in densely-populated areas, and whether there were military targets in those areas or not, defied the imagination. The aim of the Conference was primarily humanitarian and therefore the humanitarian aspects of the use of incendiary weapons were those that should receive priority.

40. He was happy to note that certain proposals provided for the protection of densely-populated areas, although they contained reservations with which his delegation did not entirely agree. Those proposals could form a sound basis for further work.

41. He hoped that with the co-operation, good-will and mutual understanding of the members of the Committee, the discussions which had begun at the first two sessions of the Diplomatic Conference and at the two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons at Lucerne and Lugano, would culminate in a successful conclusion.

42. Mr. KELTANEN (Finland) said that while his delegation's hopes that the Lugano Conference would reach agreement on realistic ways of banning or restricting the use of various conventional weapons on humanitarian grounds had not been realized, a number of proposals before the Committee had been made for the first time at that Conference. Emphasis had been placed on the criterion of indiscriminate use. Article 46 of draft Protocol I took that criterion into account and the Ad Hoc Committee should do the same. With respect to categories of weapons, progress had been made, particularly regarding incendiary weapons, and perhaps also mines and other treacherous weapons. The category of small-calibre projectiles, on which the Lugano Conference had failed to achieve any result, deserved special attention, since it was essential to avoid escalation in that area.

43. It had been pointed out that different viewpoints on incendiary weapons should be taken into account. From the humanitarian standpoint the total prohibition of such weapons certainly seemed to be the best solution. However, the Conference must recognize the relevance of the arguments relating to alternative weapons systems, and ask which weapons would be more compatible with the rules of international law. In his view the possibilities of achieving total prohibition were very limited. His delegation considered that the anti-personnel uses of incendiary weapons should be prohibited, and that they should be primarily directed against material targets.

44. Working paper CDDH/IV/206, submitted by the Netherlands, was entirely acceptable, in that it was a specification of the rules of article 46 of draft Protocol I and dealt with the protection of the civilian population and the prohibition or indiscriminate use of incendiaries. It was, however, regrettable that it did not deal explicitly with the battle-field use of incendiaries, and might give the impression that there were no limitations in that respect. Accordingly, it could serve as a basis of discussion but should be supplemented by regulations on battle-field use.

45. The draft Protocol submitted by Norway (CDDH/IV/207), took satisfactory account of a number of the viewpoints and requirements presented at the Lugano Conference, as well as of the criterion just mentioned. It should pave the way for a realistic proposal.

46. To sum up, the Committee had before it proposals stemming from two different approaches. Some proposals started from the notion of a general ban on the use of incendiary weapons, to which there would be some exceptions. Other proposals aimed at defining rules for the protection of personnel and of the environment, as well as rules regarding battle-field use. The Conference must now decide on one or other of those approaches, and then go on to further consideration of the substance of the problem.

47. Mr. de GRAFFENRIED (Switzerland) drew attention to the fact that the proposals referring to incendiary weapons reflected roughly three currents of opinion: first, the essentially humanitarian approach aimed at prohibiting the use of incendiary weapons whose primary effect was to spread fire; secondly, the idea of sparing the civilian population the effects of those weapons, in accordance with Part IV of draft Protocol I and, thirdly, the essentially military approach which would make no change in the existing situation.

48. Views regarding the military value of those weapons were widely divergent, however, despite the Lugano Conference, which had actually been intended to give jurists and diplomats a clearer idea of what a burn injury caused by napalm or other incendiary weapons meant, for the fact was that, since countries did not all have the same experience and States no longer all attached the same importance to those weapons, experts on the subject did not all use the same parameters. Several of the sponsors of the proposal in document CDDH/IV/Inf.220 did in fact possess those weapons, including napalm. Their military authorities would not have acquired or kept them if they had considered them ineffectual and replaceable by others. Those weapons were, indeed, well known for their tactical value and psychological effect, and they would be used as long as they had not been formally prohibited, unless a country decided on its own initiative to forgo them. Their military potency was indisputable, but they were known to cause terrible burns which, in that their effects went far beyond the desired aim, must be regarded as unnecessary suffering.

49. That being the case, the Conference could only make further progress by adopting a humanitarian approach to its work. Now was the time for the lawyers and diplomats to intervene; the arguments of a military nature, so often put forward, were no longer relevant. On the basis of the reports of the Diplomatic Conference and of the Conference of Government Experts, each State should be able to form a clear opinion and vote on proposals which could be studied more closely in a working group. The cards must be laid on the table. A clearly defined statement of the position was better than an intangible and confused result.

50. The position of Switzerland was well known: a formal prohibition of incendiary weapons whose primary effect was to spread fire. Since fire could not be spread within defined limits, the idea of sparing the civilian population from its effects was unrealistic. As the representative of Mexico had said at the twenty-fifth meeting (CDDH/IV/SR.25), and as the representative of Pakistan had just reaffirmed, proposals with that in view would

only be repeating provisions already adopted by Committee III, and even then only for a single category of weapons. That would be a dangerous course, and it was unthinkable to draw any distinction, in that respect, between the sufferings of combatants and those of civilians. The whole point was to make armed conflicts less murderous and less inhuman.

51. Mr. AL SUGAIR (Saudi Arabia) said he thought the Committee could already take decisions on the question under consideration; they could be based on resolutions adopted by the international community and, in particular, by the United Nations. His delegation wholeheartedly subscribed to the principles contained therein.

52. It seemed difficult to draw a distinction between military objectives and civilian objects, especially in enemy territory. Attention should therefore be concentrated on prohibiting weapons causing unnecessary suffering. The Committee's discussion had led to a better understanding of the problems raised, and it should be possible to arrive at a compromise text.

53. Mr. CRETU (Romania) said that he attached special importance to the problem of weapons which caused unnecessary suffering and were non-discriminatory in their effects. Efforts to secure the prohibition of certain weapons should be considered within the context of general disarmament.

54. His delegation had explained its position on several occasions, both at the Diplomatic Conference and at the Lucerne and Lugano Conferences of Government Experts. It was defined in the report of the Lugano Conference (pages 33 and 34). Incidentally, the English version of that report contained, at the end of paragraph 7 on page 34, an addition which did not correspond to the ideas expressed by the representative of Romania.

55. As to incendiary weapons, he recalled that Committee III, basing itself on the principle, laid down in Article 22 of the annex to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land that the right of belligerents to adopt means of injuring the enemy was not unlimited, had agreed on a general prohibition of the use of weapons, projectiles, and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering (article 33 of draft Protocol I), or widespread, long-term, and severe damage to the natural environment. There was thus a sound moral and legal basis for prohibiting incendiary weapons, and it was for the Ad Hoc Committee to discover the means of implementing the principles laid down. While it was true that the prohibition of a particular category of weapons exceeded the scope of humanitarian law, an example could be drawn from the work of the United Nations, the sessions of the Diplomatic Conference, and the numerous technical, moral and legal arguments that had been advanced on the subject.

56. Some thought must be given, in particular, to the effects of incendiary weapons on human beings, to the nature of the burns inflicted, to the very high rate of mortality among their victims, to the problems involved in treating burns, to the especially painful character of the wounds and to the very great difficulties inherent in the social readaptation of persons who had sustained burns. Furthermore, it was difficult to control the effects of such weapons, in particular on the natural environment. For those reasons, his delegation was among the sponsors of proposal CDDH/IV/Inf.220.

57. The proposals submitted deserved very close attention; and they had elements in common which would doubtless make it possible to consolidate them.

58. With reference to the proposal made by the Norwegian delegation (CDDH/IV/207), he said he considered that, although the text was based on the principles laid down by Committee III, it contained so many exceptions that its enforcement would raise questions of interpretation, and the prohibition would thus be stripped of much of its scope and practical value.

59. The Netherlands proposal (CDDH/IV/206) contained elements that were useful but of limited scope. The mere fact that it would authorize the use of incendiary weapons in areas containing a concentration of civilians gave much food for thought.

60. In the negotiations on the different texts, due regard must be paid to the interests of all the parties. Document CDDH/IV/Inf.220 had already been agreed to by twenty-one countries. Concrete negotiations must be entered into on the proposals already submitted.

61. Mr. SHAABAN (Egypt) recalled that his delegation was a sponsor of proposal CDDH/IV/Inf.220. He considered that the Committee had sufficient information at its disposal on weapons that had indiscriminate effects, and he advocated their total prohibition.

62. The CHAIRMAN said he would consult with the other officers of the Committee and consider whether it would be desirable to give a working group the task of studying the proposals concerning incendiary weapons.

63. Mr. MENA PORTILLO (Venezuela) said that his delegation also thought that a working group should analyse the proposals that had been put forward and submit a report on the subject, upon which the Ad Hoc Committee could draw for its own report to the plenary Conference.

The meeting rose at 5 p.m.

SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

held on Wednesday, 19 May 1976, at 3.10 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE AND OF PROPOSALS (continued)

(a) Napalm and other incendiary weapons (CDDH/IV/201 and Corr.2 and Add.1 to 7, CDDH/IV/206, CDDH/IV/207, CDDH/IV/213 and Add.1, CDDH/IV/Inf.220) (continued)

1. Mr. BLIX (Sweden) said that it had not been possible to add much in the way of new facts or arguments about incendiary weapons at the Lugano Conference and there was regrettably still a large area of disagreement even at the expert level, undoubtedly linked to some extent to the wish of Governments not to prejudice their position on the kind of rules that should eventually emerge.
2. One disagreement related to the question of casualty rates. Some experts had maintained that the use of napalm would result in fewer casualties, and fewer grave casualties, than would the use of fragmentation weapons. Others had reported, however, that statistics on the latest war in the Middle East had shown that 74 per cent of burn injuries had been deep. Yet another expert had reported that data from the Korean war had indicated a high mortality rate and a high rate of relatively severe injuries.
3. In his delegation's view, the pertinent humanitarian question was the severity of injuries rather than the number of soldiers affected by a particular weapon. Even a weapon that would rarely strike would stand condemned if it caused death or a high proportion of severe injuries in all circumstances, while a weapon with a high strike probability would not stand condemned if it did not lead to grave injury or death in a high percentage of cases. That argument applied to incendiary weapons. It was the cruelty of burn injuries, not the casualty rate, that was an argument against them.
4. The medical data given tended to show that the mortality rate among napalm casualties was similar to that in other cases of burn injury of comparable extent. It was of no comfort, however, to hear that injuries from a napalm attack might be the same as those sustained in a burning motor vehicle. Nor did such data contradict the opinion of several experts that burn wounds generally were considerably more difficult to treat than bullet or fragment wounds.

5. The medical expert of the Federal Republic of Germany at the Lucerne Conference had stated that the treatment of a deep and extensive burn required more nursing personnel than any other disease or injury. Summing up his views, he had said that a burn was not in every case a severe or particularly painful injury, but that each flame coming into contact with the skin or clothes of a human being was a potential cause of such injury and of high mortality or long illness, lifelong disfigurement and social isolation. An Austrian medical expert at the Lugano Conference had endorsed those views. Although the Lugano report recorded that there had been no consensus on whether injuries from incendiary weapons were likely to impose more suffering than any other type of traumatic injury, he had heard no statement to contradict the views of those two medical experts.

6. He had stressed the matter because it was the medical consequences of incendiary weapons that were the main ground on which the prohibition of the use of such weapons was mainly argued and the main reason for the widespread public reaction against them. The fact that the medical consequences of burn injuries were the same for soldiers as for civilians argued in favour of rules to protect soldiers and civilians alike against such injuries.

7. While it was realized that burn injuries resulting from military operations would not be eliminated even with a complete ban on the use of incendiary weapons, that was no argument against endeavouring to reduce their occurrence as much as possible. The obvious way to do so was to refrain from using weapons directly designed to cause such injuries.

8. The question of indiscriminateness should be uncontroversial. All would agree that fire could spread and that heavy attacks with incendiary weapons over populated areas would fall under the prohibition in article 46 of draft Protocol I. That was presumably the intention of rules (a) and (b) in the annex to the Netherlands proposal (CDDH/IV/206). On the other hand, no one contended that incendiary weapons were indiscriminate in all circumstances. Napalm bombs were a weapon of choice in close air support, not because their effects on the adversary were humane but because they could be delivered with such accuracy that the risks to the troops of the side using them were minimal.

9. Nor had the military value of various incendiary weapons ever been denied. The Swiss representative had rightly observed that several sponsors of working paper CDDH/IV/201 and Corr.2 and Add. 1 to 7 had incendiary weapons in their arsenals but were prepared to accept an agreement banning their use. While some incendiary

weapons clearly had military value, it had not been maintained that any but a few, whose characterization as incendiary weapons was somewhat debatable, were indispensable. With the necessary political will it should be possible, without sacrificing any important security interests, to ban the use of most incendiary weapons completely, provided the ban took effect a few years hence to enable States gradually to move to substitutes. It had been argued at Lugano that the substitutes might have even worse effects than incendiaries. Since that might be so if such replacements as fuel-air explosives were used, there should be rules on the use of those weapons too. Although the number of casualties caused by the use of fragmentation weapons might be greater than that caused by a corresponding use of incendiaries, it was by no means certain that the combined effects of all weapons used at the time would be greater. While it was lawful to put the greatest possible number of enemy soldiers hors de combat, that should not be done in a way that caused unnecessary suffering to the victims. No question had been raised about the ability of fragmentation weapons to cause unnecessary suffering and he understood that most States would be unwilling to accept far-reaching limitations of their use. The arguments used against those weapons related to the area they covered. His delegation's conclusion was that, while an almost complete ban on incendiary weapons should be possible, no such simple approach would be feasible in the case of fragmentation weapons.

10. The Vice-President of the International Committee of the Red Cross, referring to an instrument on weapons, had stated at Lugano that such an instrument should be as simple and clear as possible, since, even more than the Geneva Conventions, rules on weapons were meant for soldiers in the field who had to take spot decisions, as well as for those responsible for the arming and training of troops. He had added that a lesson must be taken from precedents and that the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of certain Projectiles in Wartime, The Hague Declaration concerning the prohibition of using bullets which expand or flatten easily in the human body, and the Geneva Protocol of June 17, 1925, for the prohibition of the use in war of asphyxiating, poisonous or other gases and of bacteriological methods of warfare, owed much of their success to their exemplary clarity and brevity. All the rules referred to by the Vice-President of the ICRC laid complete bans, not restrictions, on the use of categories of weapons. The difficulties of the restriction approach were clearly seen in the Norwegian text (CDDH/IV/207), which was essentially a ban on the anti-personnel use of incendiary weapons. There were precedents in military manuals for such an approach. The United Kingdom Manual of Military Law stated that the use of flame-throwers and napalm bombs when directed against military targets was lawful, but that their use against personnel was

contrary to the laws of war in so far as it was calculated to cause unnecessary suffering. That was generally interpreted as a ban on the anti-personnel use of such weapons. The corresponding section of the United States Army Manual stated that the use of weapons which employed fire, such as tracer ammunition, flame-throwers or napalm, and other incendiary agents, against targets requiring their use did not violate international law but that they should not be employed in such a way as to cause unnecessary suffering to individuals. Unless soldiers were to be characterized as targets requiring the use of napalm bombs, such bombs should presumably not be used for anti-personnel purposes under that rule.

11. The internal rules of States might be somewhat complicated. Simpler rules for relations between belligerents would be needed if accusations and counter-accusations were not to result.

12. Reverting to the Norwegian text (CDDH/IV/207), he asked whether it was to be understood that napalm bombs could be dropped on tanks but not on the infantry behind them, or on pill-boxes but not on trenches. The approach was far too complex. In attempting to preserve freedom of action, the proposal would lead to an unrealistic rule. A more categorical rule, while undoubtedly imposing certain militarily unwelcome limitations on the choice of weapons, would function more realistically.

13. He had similar objections to the Netherlands suggestion for combining a ban on the use of flame weapons with a long list of exceptions, beginning with the use of napalm in close-combat support (CDDH/IV/206). The attempt to reconcile some military desiderata with humanitarian considerations could not work in practice. The inevitable breakdown of the rules in question would prejudice the authority of the other rules on armed conflicts. To ensure the non-use of incendiaries against civilians and against soldiers in the open, it would probably be necessary to have a categorical ban on the use of incendiary weapons, or at least on important categories of such weapons.

14. He understood that the Norwegian and Netherlands proposals reserved the right to the use of napalm in close-combat support because a few highly sophisticated armed forces which were able to deposit napalm bombs closer to their own troops than they could deposit any other weapon wished to retain that right. According to the Norwegian and Netherlands approach, other armed forces would be forbidden to deposit such bombs where they, with their less sophisticated equipment, could drop them, namely, on troops in the open. There was an evident inequity in that approach which should be overcome, not by giving freedom to both sides but by prohibiting both kinds of action.

15. Reference had been made to the fact that many States supported far-reaching new rules against incendiary weapons. More than twenty States had supported document CDDH/IV/Inf.220. The Political Consultative Committee of the States Members of the Warsaw Pact, meeting at Bucharest on 6 July 1966, had declared its condemnation of the use of napalm; the views expressed at Lugano by the expert teams of the Union of Soviet Socialist Republics, Poland and the German Democratic Republic had been consistent with that statement.

16. Government comments submitted to the Secretary-General of the United Nations or made in debates in the First Committee of the United Nations General Assembly also showed broad support for new and far-reaching rules. The Australian Government had stated in 1973 that it did not possess aerial or mechanized napalm-type weapons and did not intend to acquire them and that Australia agreed that international study was required in order to bring about effective measures to prevent their use, especially in circumstances when civilians could be affected. That same year, the Australian representative had stated in the First Committee of the General Assembly that his delegation shared the international concern about the use of napalm and that the over-riding concern was to give priority to the humanitarian aspects of the subject.

17. In the debate in the First Committee in 1974, the representative of Bangladesh, referring, inter alia, to incendiary weapons, had stated that, in spite of general disapproval of those weapons, they continued to be used because of lack of agreement on their elimination or restriction. Chile, China, Cyprus, Czechoslovakia, France, Greece, Guatemala, Iran, Jamaica, Kenya, Mongolia, Pakistan, Somalia, the Syrian Arab Republic and Turkey had all in varying degrees expressed their support in the United Nations for a ban on the use of such weapons. The Ad Hoc Committee should be aware that a large number of Governments favoured far-reaching rules on incendiary weapons and in particular a ban on the use of napalm and would not be satisfied by modest restrictions that could quickly break down in time of war.

18. His delegation's new working paper on flame weapons (CDDH/IV/Inf.220) was evidence of its willingness to discuss approaches that fell short of a complete prohibition of the use of all incendiary weapons, but it could not agree to what were termed "optical" solutions. If realism meant being aware of what others might not accept, he must caution against such solutions, which would be unrealistic on two counts: firstly, they might not prove acceptable to all who wanted significant rules and, secondly, they would not work. If agreement could be reached on a complete ban on

the use of most incendiary weapons, or the most important category, namely the flame weapons, that would be of tremendous encouragement to the international community. The sacrifice in terms of military advantage would not be so great as to make such a ban impossible.

19. Mr. OKA (Japan) said that although the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano, had produced less information than had the first session of the Conference, the second session had proved extremely useful in suggesting new approaches to the question of the prohibition or restriction of the use of various types of weapons.

20. Some new information had been provided on the effect of the use of incendiary weapons (see Lugano report, pp. 109 to 112), but experiments carried out with napalm on human beings and animals had not shown clearly whether the use of incendiary weapons was indiscriminate or caused unnecessary suffering. Caution was therefore necessary in exploring how and to what extent their use should be prohibited or restricted.

21. A consensus had been reached at the first session of the Conference of Government Experts that attacks in which incendiary weapons were used against cities with a concentration of civilians were indiscriminate and should be prohibited.

22. The working paper on incendiary weapons (see Lugano report, pp. 181 and 182), submitted by the experts of eleven countries, including Japan, had been intended to start the prohibition or restriction of the use of such weapons from the point at which a minimum consensus had been reached, and had therefore been completely realistic.

23. Some of the other proposals submitted to the Lugano Conference were worthy of careful consideration, such as the working paper submitted by the Netherlands experts, which had become a document of the Ad Hoc Committee (CDDH/IV/206). While he had not yet made a detailed study of that document, he noted with keen interest the wording of rule (c) in the annex, concerning the prohibition of aerial attacks by napalm or other flame munition against military objectives within the area of civilian concentration. He suggested that, for the sake of consistency, the term "flame weapon" should be replaced by "flame munition" throughout the proposal, unless there was a specific reason for using the term "flame weapon".

24. He considered that the provisions of article 50 of draft Protocol I (Precautions in attack), as revised and adopted by Committee III at the second session of the Diplomatic Conference (see CDDH/215/Rev.1, p. 54), were applicable in the case of the rules in paragraph 2 of the annex to the Netherlands proposal, since paragraph 2 (a) ii of revised article 50 provided that those who planned or decided upon an attack should "take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects". Thus, those who planned an attack by incendiary weapons were required to weigh carefully beforehand whether some other means of attack could be used in order to minimize civilian casualties.

25. He suggested that the wording of rule (c) of the Netherlands proposal should be brought into line with that of revised article 50, paragraph 2 (a) ii, the words "risks posed to civilians" being replaced by "incidental loss of civilian life and injury to civilians".

26. His delegation was ready to consider any constructive proposal aimed at restricting the use of incendiary weapons. Any agreement reached on such use should be flexible and realistic enough to win the support of as many countries as possible, and especially that of the principal military Powers.

27. Mr. AL-KARAGOLI (Iraq) said that, although his delegation had not attended the Lugano Conference, it had followed the proceedings with much interest. Since there appeared to be a considerable divergence of views on the use of conventional weapons, he would merely state that his Government considered incendiary weapons to be completely inhumane. The sufferings caused by their use could not be minimized, especially as such weapons did not discriminate between civilian and military objectives. There was a tendency for military forces to be more cautious in employing them in attacks, out of regard for the protection of their own forces, but in cities incendiary weapons could present a serious danger to the civilian population.

28. Some delegations seemed to favour criteria which would not prohibit the use of incendiary weapons altogether. In his opinion it was impossible to establish such criteria because of the inherently lethal nature of those weapons. That point had already been brought up by the Secretary-General of the United Nations in his 1972 report entitled "Napalm and other incendiary weapons and all aspects of their possible use" (A/8803/Rev.1, United Nations publication, Sales No. E.73.1.3). His delegation was in full agreement with the conclusions in that report to the effect that all efforts should be made to prohibit the use of incendiary weapons in warfare.

29. Mrs. MAZEAU (United States of America) said that the question of the prohibition or restriction of the use of incendiary weapons was a complex problem for which it had so far been difficult to find a solution acceptable to all delegations. The United States delegation had, however, been encouraged by the progress made at the Lugano Conference in identifying possible compromise approaches and in reaching a measure of consensus wherever that had proved possible. His delegation was particularly pleased that the participants in the Conference had reaffirmed their general agreement on the definition of incendiary weapons which had been produced at the Lucerne Conference and had expressed broad support for measures to protect the civilian population from the effects of such weapons.

30. A number of delegations in the Ad Hoc Committee had said that the time had come for all parties to offer genuine concessions in the hope of reaching a mutually acceptable formulation on the subject of incendiary weapons. It was clear, however, that such a compromise could only be reached if adequate attention was paid both to humanitarian concerns and to military requirements.

31. Incendiary munitions were of important military value in a wide variety of uses; in many situations they were far more effective than any available alternative weapons in accomplishing the required military mission and could do so at less cost in lives and resources.

32. Air-delivered napalm was highly useful against enemy ground forces where friendly and enemy troops were in close contact. Because napalm munitions had a relatively predictable and precise area of effect, they could be used to break up an enemy attack with relative safety for friendly forces in the immediate vicinity. They were thus highly useful weapons in the close-support role.

33. Incendiary munitions in the form of flame-throwers or incendiary rockets could be used against bunkers and other fortifications, thus reducing the risk to friendly forces by neutralizing enemy strong-points. They were also particularly effective in destroying fuel and ammunition storage areas and military convoys. The prohibition of such uses of incendiary weapons would in some cases require an increase in the use of other munitions, with a corresponding increase in casualties.

34. As against their military advantages, the effects of such uses of incendiary weapons must be considered from a humanitarian point of view. The use of napalm against troops in close-contact situations might produce painful and disabling wounds requiring considerable time for treatment. The evidence available, however, indicated that the mortality rate for napalm casualties was less than that for most other conventional weapons and that use of alternative munitions in a close-support role would result in a higher level of casualties and fatalities and therefore a higher level of suffering. It was thus far from clear whether the prohibition of napalm in that highly effective military role would yield any over-all humanitarian benefit.

35. Similarly, the use of flame weapons against bunkers and fortifications might cause fatalities or serious injuries to the occupants. Experience had shown, however, that the threat of the use of such weapons could often result in the surrender of a military position without casualties. In any case, the prohibition of the use of such flame weapons would probably result in the use of explosive munitions, often with increased casualties among both enemy and friendly personnel.

36. That being so, the United States delegation could not accept any proposal which would have the effect of precluding the use of napalm or similar weapons in close-combat situations. It could therefore not accept total prohibition of the use of such weapons or prohibition of their anti-personnel use.

37. Her delegation recognized, however, that special limitations were appropriate in areas populated by civilians. It had carefully studied the proposal in the working paper submitted to the Lugano Conference by the Netherlands experts and introduced again in the Ad Hoc Committee (CDDH/IV/206) that the use of air-delivered flame weapons should be prohibited in populated areas, except for the zone in which combat between ground forces was taking place or was imminent. Such a prohibition would preclude the use of air-delivered napalm against military targets in cities, towns or villages, such as ammunition and supply dumps, vehicle parks, convoys and barracks. Acceptance of that proposal would involve the abandonment of lawful uses of napalm against legitimate military targets. In view, however, of the concern that the use of air-delivered napalm in populated areas might prove dangerous to civilians, the United States delegation was prepared to accept the Netherlands proposal as a basis for serious negotiation, and was also prepared to consider any other proposals for protecting the civilian population from the effects of incendiary weapons.

38. Mr. SANCHEZ BAYO (Spain) said that his delegation considered that the effects of incendiary weapons were more indiscriminate than those of other weapons: he noted, however, that there had been no complete agreement on that point at the Lugano Conference.

39. The replacement of incendiary weapons by other weapons was not always easy, for both tactical and economic reasons. Substitute weapons, for example, might call for the use of more material in order to achieve the same military effect and would be costly for countries which lacked sufficient funds or technological resources. On the other hand, the manufacture of incendiary weapons was a relatively simple matter which would raise no difficulty for the less developed countries.

40. As far as tactical efficiency was concerned, there was no doubt that incendiary weapons could be useful in ensuring the close support of attacking forces, whereas fragmentation weapons might prove dangerous to friendly troops. Since, however, public opinion was opposed to the use of incendiary weapons, some compromise was obviously necessary. Some delegations called for a total ban on the use of incendiary weapons, while others merely felt that the ban should be restricted to such weapons as napalm and the like. There would obviously be many difficulties in classifying the types of weapons and determining the military targets against which they could properly be used. In certain circumstances, almost any target might be a legitimate military target. His delegation felt that, in the interests of arriving at the desired compromise, military targets should be clearly defined as such things as air-fields and advancing troops, while every effort should be made to protect the civilian population when that population was not actually within the combat area.

ORGANIZATION OF WORK

41. Mr. van der KLAUW (Netherlands), speaking on the subject of the Committee's organization of work, noted that there had been proposals to establish certain working groups. Since consultations would obviously be required in order to determine the terms of reference of those working groups, he proposed that the Committee should first complete its discussion on the report of the Lugano Conference and then decide whether the establishment of working groups was really necessary.

42. The CHAIRMAN suggested that the Committee should continue its general discussion on incendiary weapons and then take up the question of delayed-action and treacherous weapons, including mines and booby-traps, as presented in the United Kingdom working paper (CDDH/IV/213 and Add.1).

It was so agreed.

The meeting rose at 4.10 p.m.

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

held on Thursday, 20 May 1976, at 3 p.m.

Chairman: Mr. GARCES (Colombia)

In the absence of the Chairman, Mr. Amir-Mokri (Iran), Vice-Chairman, took the Chair.

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE, AND OF PROPOSALS (continued):

(a) Napalm and other incendiary weapons (CDDH/IV/206, CDDH/IV/207, CDDH/IV/Inf/220) (continued)

1. Mr. RUIZ PEREZ (Mexico) said that, on the basis of the very detailed information at its disposal, his delegation considered that incendiary weapons were of limited military value and had indiscriminate effects. They were cruel weapons which caused unnecessary suffering, especially to those with least protection, namely, innocent victims not participating in military operations. The primary objective of the Conference was the reaffirmation and development of international humanitarian law. It would be difficult to find weapons that were more inhumane or more gratuitously cruel, designed to spread terror among combatants and civilians. Moreover, the medical treatment which the victims needed was extremely painful and very protracted, not to mention the psychological consequences, which were often fatal.
2. While his delegation appreciated the Netherlands efforts to find a compromise solution, it could not accept the proposal set out in the working paper submitted by that country (CDDH/IV/206). In all logic, his delegation could not now reject article 33 of draft Protocol I, which had been adopted by consensus by Committee III at its thirty-eighth meeting (CDDH/III/SR.38) on 10 April 1975. Under that article, the right of parties to the conflict to choose methods or means of warfare was not unlimited, and it was forbidden to employ weapons, projectiles, and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering, and to employ methods or means of warfare which were intended or might be expected to cause widespread, long-term, and severe damage to the natural environment. In other words, that article forbade the use of incendiary weapons.

3. Admittedly, the Netherlands proposal would restrict the use of incendiary weapons to combat areas and to military targets; nevertheless, it was difficult to conceive that incendiary weapons would always be used with discernment and never in circumstances or against targets that were prohibited by an international instrument. Furthermore, in combat conditions it was very difficult to distinguish between military targets and non-military targets. That being so, his delegation would continue to press for a total prohibition of incendiary weapons and felt convinced that that prohibition must be embodied in international humanitarian law.

4. Mr. KURUP (India) pointed out that, among the various proposals submitted to the Committee, some were designed to achieve a total prohibition of all types of incendiary weapons, whereas others would prohibit some types of such weapons, or would restrict their use to certain types of target. Two other proposals had been submitted, one advocating the total prohibition of incendiary weapons after a certain period, and the other the continued use of weapons of that type on the grounds that they would indirectly minimize the number of casualties and the extent of human suffering on both sides.

5. His delegation was happy to note that all the delegations agreed in recognizing the need to avoid unnecessary suffering and that differences of opinion concerned solely the extent to which countries were prepared to restrict their choice of that type of weapon for their defence, in order to avoid unnecessary suffering to civilians and combatants. His delegation, for its part, was of the opinion that a country should not be placed at a disadvantage when the defence of its territory was at stake. It should accordingly be entitled to use incendiary weapons against the enemy on its own soil. Once the enemy had been driven back beyond the international borders, however, the use of incendiary weapons against him would be illegal. His delegation therefore proposed a complete prohibition of the use of incendiary weapons by the armed forces of a country outside that country's own borders or the borders of its allies. It thought that that proposal would provide a fair solution to a very complicated problem.

6. Mr. BLAKENEY (Australia) observed that his Government had always supported disarmament and the promotion of humanitarian controls limiting human suffering. Its aim was to achieve international agreement on conventional weapons control. To be genuinely effective, such an agreement would have to be both practicable and generally acceptable. That required the striking of a balance between humanitarian objectives and the different - and sometimes conflicting - security requirements of individual

nations. It was therefore not surprising that the Committee should have widely differing proposals before it. A national decision to retain a particular weapon need in no way imply disregard for humanitarian considerations: one State might have over-riding national security reasons for such retention which another had not.

7. With regard to napalm and other incendiary weapons, the Australian national position - recently reaffirmed by the Australian Minister of Foreign Affairs - had been stated in its reply to the Secretary-General of the United Nations in September 1973: "Australia does not possess aerial or mechanized napalm-type weapons and does not intend to acquire them". At the national level, therefore, Australia had gone much further in that sphere than the majority of countries. At the international level, Australia would place continued emphasis on the need for practical and realistic proposals which could be accepted by the widest range of States, even though such proposals, with respect to aerial and mechanized napalm-type weapons, were less far-reaching than his country's national position. In other words, the Australian Government thought that the step-by-step approach to new law in that field offered the best prospects for progress. Even though the scope of such new law would be less extensive than the existing Australian national position, it would represent progress internationally.

8. After carefully considering the various proposals submitted to the Committee, his delegation thought that those set out in the Netherlands working paper (CDDH/IV/206) would at the present stage offer the best prospect of progress. They represented a positive step towards achieving one of the humanitarian objectives of the Conference, namely, to afford the civilian population the greatest practical protection against the effects of incendiary and flame weapons. Those proposals provided a promising basis for the development of wide agreement. His delegation welcomed and supported them.

9. Mr. ØSTERN (Norway) recalled that under the terms of article 33, paragraph 2 of Protocol I, adopted by consensus by Committee III at the second session of the Conference, it was forbidden to employ weapons, projectiles, and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. It had been said that that prohibition was absolute and should accordingly be applied also to the use of incendiary weapons regardless of the target attacked. Either incendiary weapons came within the prohibition laid down in article 33 - in which case the matter was settled and there was no point in discussing

it further - or, as the various statements and comments suggested, they were of such strategic and tactical importance as to warrant a number of exceptions - a more realistic point of view which was shared by his own delegation.

10. After all, what was the meaning of "inhumane", "superfluous injury" and "unnecessary suffering" in the context of incendiary weapons? Such terms suggested relative standards and it would be as wrong to try to over-define them as it would be to lose sight of the realities they represented; since those realities were manifold and not concurrent, nobody had the right to interpret the text according to his own preferences.

11. The problem of incendiary weapons was admittedly a complex one on which it often seemed difficult to reconcile opposing but equally legitimate views. The upholders of humanitarian law could hardly oblige those concerned with their own defence and security to disregard the strategic or tactical aspects of the question, any more than the humanitarian aspects should be expected to take second place.

12. Nor should it be forgotten that the task of the Conference however noble, was a limited one. The objective was not to abolish war and demolish weapons but to alleviate the suffering of the victims of war. Consequently, the more closely the question of weapons was approached from the standpoint of disarmament, the less chance the Committee would have of accomplishing its task.

13. Accordingly, the solution lay in seeking a compromise between all the conflicting views expressed; however limited the room for manoeuvre, it should be possible to strike a balance which would to some extent satisfy even those most eager to defend humanitarian considerations.

14. It was in that spirit that his delegation had submitted the proposal in document CDDH/IV/207. While it agreed that a total prohibition of incendiary weapons would be preferable, it had come to the conclusion that such a course would be unrealistic: the main thing was that the Committee should agree on the rules applicable to incendiary weapons, even if those rules were less than perfect, as a means of making headway in a much longer process.

15. So far as the Norwegian proposal itself was concerned, the reference in article 3 to the provisions of Protocol I should, of course, be interpreted as relating to all the relevant provisions of that Protocol, including paragraph 3 of article 47. The subsequent reference to paragraph 2 of article 47 merely recalled a definition that had already been adopted.

16. Mr. van der KLAUW (Netherlands) said that the interest shown in the Netherlands working paper on incendiary weapons (CDDH/IV/206), including the annex, encouraged him to think that the proposal could be considered as a basis for serious negotiations. He thanked the delegations which had supported it. For humanitarian reasons his Government would like to see certain restrictions on the use of napalm in combat situations. The Netherlands position on that question was clearly explained in paragraph 4 of the introduction to document CDDH/IV/206 and, contrary to what the representative of Finland seemed to think, it was quite unambiguous about restricting the use of incendiary weapons. It was clear, however, that more thought would have to be given to the subject, in view of its complicated nature and its security implications.

17. The Swedish representative had said at the twenty-seventh meeting (CDDH/IV/SR.27) that the use of napalm in combat might not necessarily be more inhuman than the use of alternative weapons, but that the great difficulty was to draw the line between allowed and prohibited activities. The Swedish representative had concluded that in actual combat situations only a complete ban on the use of napalm would be effective. Such reasoning had a certain logic, but one might ask why napalm should be used with less discrimination than other weapons. The function of the present Conference was to work out rules of behaviour which commanders in the field and air crew officers would have to observe, balancing strategic necessity against humanitarian considerations. There was no specific reason why flame weapons should not come under those rules. It might very well be that the rules prepared at the present Conference would be breached sometimes in actual combat situations, but that was no reason for not providing maximum safeguards for the civilian population. An all-or-nothing approach was no way out of the problem. The different proposals before the Committee should therefore be considered with all due flexibility, so that a good solution could be found.

18. Mr. TAYLOR (United Kingdom) said that his country had at present no requirement for napalm, but that it possessed other weapons capable of causing death by burning. Although the latter were not included in the list of flame weapons which the Swedish delegation wished to prohibit (CDDH/IV/Inf.220), his delegation could not subscribe to that prohibition.

19. The United Kingdom, which was seriously concerned about the suffering caused by flame weapons, was participating actively in negotiations designed to ascertain ways in which the international community might reduce such suffering.

20. The discussion at the twenty-seventh meeting (CDDH/IV/SR.27) had brought to light a number of facts. Firstly, the great majority of countries still wished to retain weapons which could cause death by burning. They included all but one of the sponsors of document CDDH/IV/Inf.220. Secondly, it was clear that the great majority of burn wounds that occurred in modern warfare were not due to the use of flame weapons. Statistics from the Second World War had been quoted at the Lugano Conference. No statistics were available for more recent conflicts, e.g. in the Middle East, and the countries that possessed them were of course reluctant for reasons of security to release them. But the fact was that burn wounds caused in combat by tanks and aircraft were probably four to five times as frequent as burn wounds caused by flame-weapons. The findings were in line with some of the arguments which had been heard, namely, that burn casualties were going to occur in modern warfare in any event and in large numbers. To deal with the problem humanely, States would obviously need adequate medical services; but it was doubtful if the need for such services would be reduced if flame weapons were banned.

21. Lastly, incendiary weapons could be both effective and discriminating. The United States delegation had supplied ample evidence of that. Those, however, who chose to look elsewhere for corroborative evidence might perhaps have been moved by the arguments put forward by the Swiss representative which made precisely the same point. None the less, unlike Switzerland and perhaps many other countries, the United Kingdom was not at all certain that other weapons might not cause even graver casualties than incendiary weapons, or that ten men mutilated by high explosives would suffer less than five wounded by flame.

22. The issue at stake was the right of States to use incendiary weapons when they felt their security threatened. It was not easy to deny them that right; but at the same time there was good reason to believe that the great majority of delegations at the current Conference would be happy to see some limitation on the use of such weapons. It was with that in mind that his delegation had looked at the various proposals which had been submitted. As it had already pointed out, the Swedish proposal (CDDH/IV/Inf.220) did not seem altogether acceptable. Some points in the Norwegian proposal (CDDH/IV/207) had given rise to various criticisms, with which his delegation was in agreement. On the other hand, the Netherlands proposal (CDDH/IV/206) provided an excellent basis for negotiation, and it was greatly to be hoped that the Committee would reach agreement along these lines.

(b) Delayed-action weapons and treacherous weapons (including mines and booby-traps) (CDDH/IV/209, CDDH/IV/211/Corr.1, CDDH/IV/212, CDDH/IV/213 and Add.1)

23. Sir David HUGHES-MORGAN (United Kingdom) introduced, on behalf of the French and Netherlands delegations and his own, a working paper on the regulation of the use of land-mines and other devices (CDDH/IV/213 and Add.1) which was similar to a working paper submitted at the Lugano Conference (COLU/203). The proposals contained in that document and the discussion on them were fully recorded in the report of that Conference (pages 54 - 56 and 167 - 179). The aim of the new proposal was again to place restrictions upon the use of mines and booby-traps so as to afford better protection for the civilian population, though the sponsors had done their best to avoid proposing restrictions which would be unrealistic on the battlefield. The new text was not wholly identical with the paper submitted at Lugano to a Working Sub-Group of Military Experts on Mines and Booby-traps, whose report was to be found on pages 146 - 154 of the Lugano report. During the Sub-Group's discussion certain refinements had been made both of the ideas themselves and of the wording used to express them and his delegation had felt that they should be incorporated in the new proposal. Perhaps the most important change in the new proposal was the omission of the expression "booby-trap". It had been discovered at Lugano that the term caused such linguistic and semantic difficulties that it could not be used in any proposals which were to receive general acceptance. That was not to say, however, that all prospect of controlling the use of booby-traps had been abandoned. The other changes made in the wording and lay-out of the paper were designed simply to make it more precise. For example, definitions appropriate only to one article now appeared in the relevant article.

24. Article 2 of the present working paper was identical with that on page 147 of the Lugano report. It required the location of minefields to be recorded. It should, however, be noted that the amount of detail in which the recording was made would depend on the type of minefield in question. Where mines were laid by engineers, it might be possible to record the location of each one; in minefields laid by artillery, however, it would only be possible to record the area covered.

25. The text of article 3 of the working paper was identical with its equivalent in working paper COLU/203, and it was discussed on pages 148 and 149 of the Lugano report.

26. The texts of articles 4 and 5 were, save for certain changes on the lines set out above, generally equivalent to the proposed articles D and E on pages 150 and 151 of the Lugano report. In relation to article 5, paragraph 1 had been changed so as to restrict it to those objects specifically designed and manufactured as the type of perfidious booby-trap which had been found abhorrent in the past. The paragraph was thus formulated so as to prohibit the emplacement on the field of battle of devices such as imitation fountain pens and cameras. The text of article 5, paragraph 3, on non-explosive devices, was identical with the proposal discussed at Lugano. Certain experts had maintained at Lugano that that proposal went too far. It had been retained in order to reaffirm a rule of international law derived from Article 23 (e) of The Hague Regulations annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land. His delegation would welcome comments from other delegations which would contribute to making the proposal acceptable to all.

27. It was obvious from the Lugano discussions that a substantial amount of work remained to be done on the proposal of the three countries. It might, perhaps, even be necessary to establish a working group to continue the work done by the experts, which might require a substantial amount of time. His delegation had always felt that there seemed to be in the area of mines and booby-traps a real possibility of reaching agreement, as was indicated in the text presented by Mexico and Switzerland (CDDH/IV/211/Corr.1), which to a large extent followed the format of his delegation's Lugano proposal. The new proposal sought to establish a balance between humanitarian ideals on the one hand and the realities of armed conflict on the other. He trusted that the Conference would accept that concept of balance between humanitarian ideals and the realities of armed conflicts.

28. Mrs. RUESTA DE FURTER (Venezuela) read out a statement by the Venezuelan member of the Ad Hoc Committee - Mr. Mena Portillo. The delegation of Venezuela considered that the various proposals submitted would lighten the task of the delegations, but recommended the establishment of a working group in order to ensure that the Committee succeeded in its task. The proposals submitted, individually or jointly, by Mexico, Norway, Sweden, Switzerland and Yugoslavia, the first to come out, would carry great weight in the discussions.

29. The proposal of Mexico, Switzerland and Yugoslavia (CDDH/IV/209) would have to be improved on the lines of the format of the Venezuelan proposal (CDDH/IV/212), which was more explicit, more precise and more realistic, from both the technical and humanitarian points of view. In any event, the Venezuelan delegation was willing to support the proposal of those three countries.

30. Mr. DE ICAZA (Mexico) pointed out that the proposal of Mexico, Switzerland and Yugoslavia (CDDH/IV/209) was based on the proposal introduced at Lugano by France, the Netherlands and the United Kingdom (see Lugano report, pages 167 - 171). After having studied working paper CDDH/IV/213 and Add.1 and heard the exposé of the United Kingdom representative, his delegation felt that it would need a certain amount of time in order to make a sound contribution to the discussions. His delegation reserved the right to take the floor again at the twenty-ninth meeting.

The meeting rose at 4.10 p.m.

SUMMARY RECORD OF THE TWENTY-NINTH MEETING

held on Tuesday, 25 May 1976, at 3.15 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE, AND OF PROPOSALS (continued)

(b) Delayed-action weapons and treacherous weapons (including mines and booby-traps) (CDDH/IV/201 and Corr.2 and Add.1-8, CDDH/IV/209, CDDH/IV/211/Corr.1, CDDH/IV/212, CDDH/IV/213 and Add.1) (continued)

1. Mr. GRIBANOV (Union of Soviet Socialist Republics) said he had listened to the report on the results of the work of the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held in Lugano. His delegation had greatly appreciated the experts' report, in which their findings were outlined impartially and accurately. Nevertheless, only part of the report had appeared in Russian. Consequently, it was difficult for his delegation at the present stage to form a complete view of its contents or of the arguments put forward by the various experts.
2. He had also listened attentively to all the statements by representatives in the Committee, and had sincerely appreciated the efforts of those delegations that had submitted proposals.
3. The Union of Soviet Socialist Republics had always actively striven to promote peace, security, and the freedom and independence of peoples, and the first Decree of the USSR Government, signed by Lenin, had concerned peace. Throughout the almost sixty years of its history, the USSR had constantly contributed to the strengthening of peace in the world, and had championed disarmament and détente, with the aim of excluding war from the lives of men. Together with other socialist States, the USSR was pursuing a policy of peaceful co-existence to facilitate collaboration between States in the interests of all.
4. At its Twenty-Fifth Congress, in February-March 1976, the Communist Party of the USSR had reaffirmed that the cessation of the arms race and disarmament were still among the main aims of

the Soviet Communist Party and Government in the sphere of foreign policy. The "Programme of further efforts to secure peace and international co-operation, and the freedom and independence of peoples", adopted by the Congress, called for a halt to the arms race and to all nuclear-weapons tests, a ban on the use of chemical weapons and of weapons of mass destruction, and on the creation of new such weapons, a reduction in military expenditure, the conclusion of a universal treaty on non-use of force in international relations, and the convening of a world disarmament conference.

5. He quoted a statement made at the Congress by Mr. Brezhnev, who had said that the Parties to a universal treaty on the non-use of force would undertake to refrain from employing any kind of weapon, including nuclear weapons, as a means of settling disputes between themselves and that the USSR was ready to consider, together with other States, the practical steps needed to implement that proposal. He also quoted a communiqué recently issued after the visit to the USSR of the Swedish Prime Minister, Mr. Olof Palme, in which the USSR and Sweden had declared their support for the efforts of the United Nations and other international agencies to secure the prohibition of especially cruel means and methods of waging war.

6. His delegation was therefore prepared to adopt an understanding attitude towards the proposals submitted. That did not mean, however, that the essential purpose for which the Diplomatic Conference had been convened should be forgotten. Governments had sent their delegations to the Conference with specific instructions - to draft and adopt two additional Protocols to the Geneva Conventions. In deciding to take part in the Conference, Governments had had no other task in mind.

7. He considered that many delegations had been right in maintaining that there was no direct link between the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts and the Lugano Conference of Government Experts on the Use of Certain Conventional Weapons.

8. In its introduction to the two draft additional Protocols in June 1973, the International Committee of the Red Cross had noted that its "sole aim was to provide an adequate basis for discussion at the forthcoming Diplomatic Conference" (see CDDH/1, page 2). That had been the aim taken into account by Governments when they had accepted the proposal of the Swiss Government to convene a conference to draft the two additional Protocols. His Government had, at one of the first plenary meetings

of the Conference, stated its position of principle on that matter. The main task of the Conference was to draft two Protocols designed to strengthen the protection, under international law, of the civilian population, the wounded and the sick, partisans, fighters in national liberation movements, fighters resisting foreign occupation and fighters against apartheid and racist régimes, and to secure the punishment of persons guilty of war crimes and crimes against humanity.

9. Regarding the adoption by the Conference of a decision on the prohibition of the use of certain conventional weapons or on the restriction of their use, he said that those questions did not come within the terms of reference of the Conference and should be examined by the international organs concerned with disarmament. If the Conference were to examine those questions, it would be diverted from its main objective, which was to bring to a conclusion its work on the two additional Protocols.

10. His country had stated its position at the second session of the Diplomatic Conference; it now reaffirmed it, as it had also done at the thirtieth session of the General Assembly of the United Nations.

11. The report of the Lugano Conference of Government Experts should be handled in the same way as that of the Lucerne Conference of Government Experts, which had likewise been convened under ICRC auspices. On that occasion, the Conference had studied neither the substance of the questions, nor the findings of the experts; it had merely taken note of the report, just as the General Assembly of the United Nations had taken note, at its thirtieth session, of the report of the Secretary-General of the United Nations on the second session of the Diplomatic Conference (United Nations document A/10195). It had requested the Secretary-General to report to it at its thirty-first session on aspects of the work of the Diplomatic Conference on International Humanitarian Law and of the Lugano Conference.

12. Judging from parts of the report of the Lugano Conference which he had received, the experts had not reached agreement on any of the questions discussed, whether on incendiary weapons, delayed-action weapons, small-calibre projectiles, blast and fragmentation weapons or new weapons. Nor had it been possible to reach any agreement during the work of the Working Sub-Group on General and Legal Questions. That clearly showed how complex those questions were, and even if the Diplomatic Conference had been empowered to consider the question of the prohibition or

restriction of the use of certain types of weapons and take decisions or make recommendations on the subject, it would have been unable to do so.

13. Besides, the question could not be considered in isolation from the problem of disarmament as a whole and without paying due regard to the principles of universality and reciprocity. That could only be done by the appropriate international bodies concerned with disarmament.

14. In the rules of procedure of the Lugano Conference there was a provision to the effect that its findings should be communicated to all Governments, including those of countries participating in the Diplomatic Conference. That decision was fully justified. The competent ministries would study the documents in question and decisions as to specific categories of weapons could be taken more easily at the political level. The Ad Hoc Committee would therefore take note of the report of the Lugano Conference and, as in 1974, the ICRC would inform the Secretary-General of the United Nations of the results of the work in question. The representative of the United Nations Secretary-General at the third session of the Diplomatic Conference would report to the latter on the results of that Conference concerning matters connected with the work of the Lugano Conference. Some of the proposals submitted deserved serious consideration on the part of the appropriate international bodies, but the Diplomatic Conference could neither take decisions nor make recommendations on this or that type of conventional weapon. That was outside its scope.

15. Some important decisions had been adopted at the current session of the Diplomatic Conference concerning rules of humanitarian law relating to weapons causing unnecessary injuries, the protection of the civilian population and the destruction of the environment. A report should be sent to the General Assembly of the United Nations on the articles in question, but it was not possible to isolate the consideration of particular types of weapons from the general context of disarmament. Such consideration could only be carried out successfully by the international bodies directly concerned with disarmament.

16. Referring again to the drafting of the two Protocols, he said that it was a slow task but that progress had been made and the end was in sight. A contribution of considerable value would have been made to the development of humanitarian law and a step forward would have been taken in the protection of victims of armed conflicts.

17. Mr. GONZALEZ GALVEZ (Mexico) thought that, of all the statements made so far on the subject under consideration, that of the representative of the Union of Soviet Socialist Republics was one of the most negative. He was astonished that such a statement should have come from the representative of a country that was Co-Chairman of the Conference of the Committee on Disarmament. To refer the matter back to that Committee would be to put off reaching any decision for at least ten years. All that could be discerned in a proposal of that nature was a delaying tactic, whose purpose was to prevent the Diplomatic Conference from adopting any proposal whatever on the prohibition or restriction of the use of certain conventional weapons. His delegation considered that one of the tasks of the Diplomatic Conference was precisely to reach agreement on the prohibition or restriction of the use of certain categories of conventional weapons whose effects were more indiscriminate than others.

18. The argument that the Diplomatic Conference was not competent to deal with the question, had already been put forward at Lugano and elsewhere, in order to prevent recommendations being made on the subject. His delegation considered that argument unacceptable. Some countries had made real efforts to discover a formula acceptable to all and no delegation could claim the right of veto.

19. He reserved the right to speak again when the Committee considered the question of the use of certain specific weapons, and reminded members that his delegation had co-sponsored proposals concerning booby-traps (CDDH/IV/209) and anti-tank and anti-personnel mines (CDDH/IV/211/Corr.1).

20. Mr. VALDEVIT (Italy) congratulated the United Kingdom delegation on having submitted a working paper on the protection of the civilian population (CDDH/IV/213 and Add.1) containing constructive rules concerning the regulation of the use of land-mines and other devices. Wide agreement might be reached on that document as it took into account both humanitarian considerations and military needs. The proposed regulations formed a realistic and satisfactory solution. In particular, the obligation to record the location of minefields and to fit a neutralizing mechanism on remotely delivered mines provided a satisfactory guarantee for the civilian population.

21. Article 4 of the United Kingdom paper dealt with the use of manually emplaced mines and other devices in populated areas. As the United Kingdom representative had pointed out, the term "booby-trap" had not been used in the text in order to avoid the

difficulties which the experts at Lugano had been unable to overcome. The United Kingdom paper could help towards a better understanding of the substantive problem of regulating the use of mines and other devices.

22. He expressed his appreciation to the sponsors of documents CDDH/IV/209 and CDDH/IV/212, who had sought to lay down exact criteria governing the emplacement of booby-traps.

23. All the proposals deserved careful consideration. Their provisions were not very different in substance, and further progress was likely to be made if the experts were given an opportunity to continue the constructive debate they had embarked upon at the Lugano Conference earlier in the year.

24. Mr. TOOGOOD (Canada) expressed his delegation's appreciation to the delegations which had submitted proposals at the present session on restricting the use of certain conventional weapons. The proposals represented useful approaches to the common goal of achieving agreement on restricting the use of certain conventional weapons. That agreement would have to be meaningful, realistic and practical for battlefield application. The various proposals submitted were being studied by the Canadian authorities with those three criteria in mind. Until those studies were completed his delegation would not comment on the wording of the documents before the Committee.

25. He wished, however, to stress the particular importance which Canada attached to the question of mines and booby-traps. The Canadian population was relatively small - and so therefore was the size of the Canadian armed forces - for the geographical size of the country. Thus, defence of Canadian territory would require extensive use of mines and other devices delivered chiefly from the air. Therefore, suggested steps for reducing the corresponding risk to innocent civilians were warmly welcomed by his delegation.

26. The United Kingdom paper (CDDH/IV/213 and Add.1) had considerable merit. It satisfied the three criteria he had mentioned earlier.

27. As for the future work of the Ad Hoc Committee, it had been suggested that a working group might be formed. His delegation did not quite see what might be accomplished by such a group at the current session. It agreed with the Netherlands delegation that the establishment of a working group was perhaps premature. However, it was not opposed to it if other delegations could see prospects for useful work in such a body.

28. The outcome of the general debate now taking place in the Ad Hoc Committee was also uncertain. The proposals received were of great value and all national authorities would, of course, study them in detail. However, useful results from such a study at the present session were unlikely to be achieved. His delegation felt, therefore, that the purpose of the current session was to allow studies in the main capitals to proceed productively and thus enable the Committee to narrow down the focus of its attention at the fourth session.

29. He wondered whether further written proposals would be made at the current session. Delegations intending to submit additional texts should do so as soon as possible. The Secretariat could then decide whether to prepare a comparative document setting out the various proposals.

30. Mr. ØSTERN (Norway), reviewing the documents before the Committee on the subject of mines and booby-traps, said that in his view document CDDH/IV/213 and Add.1, which took into account the comments and proposals made during the Lugano Conference, was a technically-improved version of document COLU/203 (see Lugano report, pp.167-171). The sponsors of the proposals in documents CDDH/IV/209, CDDH/IV/211/Corr.1 and CDDH/IV/212 had sought to be more explicit on some of the questions being considered by the Ad Hoc Committee. Document CDDH/IV/201 and Corr.2 and Add.1-8 sought to ban the laying of anti-personnel land mines by aircraft. The problem appeared to be as follows: mines were effective as a means of combat but represented a danger for the civilian population even when military operations were over. The same applied to booby-traps, the definition of which seemed to present difficulties. His delegation preferred document CDDH/IV/213 and Add.1, which was more comprehensive and precise than the others, although it would like to see some improvement regarding the extent of the restrictions proposed. Elements for such improvement could be found in the other proposals mentioned. The question was how far one could go in seeking to give better protection to the civilian population. Marking mines in a distinctive way or providing them with a neutralizing mechanism might provide important safeguards.

31. In article 3, paragraph 2, of document CDDH/IV/213, on the other hand, some more exact wording might be used than "when it is anticipated that the mine will no longer serve the military purpose for which it was placed in position". The phrase "to destroy itself" was ambiguous, since it could mean destruction by explosion. Any doubts could be removed by changing the wording to "which is designed to cause a mine to destroy itself or otherwise render it harmless".

32. As in Lugano, the Norwegian delegation wished to raise the question why a range of over a fixed number of metres was necessary to define remote delivery of mines. It appeared that that question, which was important had not been discussed in any detail at the Lugano Conference.

33. As for the use of the conjunction "and" instead of "or", in paragraph 2 (a) of original article D (see also article 4, paragraph 2 (a) of document CDDH/IV/213) to which reference was made on page 151 of the report of the Lugano Conference concerning the conditions in which manual emplacement of mines and similar devices might be permitted in areas containing a concentration of civilians, his delegation was satisfied with the explanations given at the Lugano Conference, but it would have liked to see the words "due precautions" in paragraph 2 (b) exemplified.

34. Mrs. MAZEAU (United States of America) said that it had been encouraging, at the Lugano Conference, to see that the well-thought-out United Kingdom proposal, co-sponsored by France and the Netherlands, on mines and booby-traps (CDDH/IV/213 and Add.1) had appeared to be broadly acceptable as a starting point for serious work in that area. It was also encouraging that the other proposals introduced in the Ad Hoc Committee demonstrated a genuine desire on the part of the sponsors to find a reasonable basis for compromise. She believed that the Committee should be able to accomplish something of genuine humanitarian value by carefully examining and refining those various proposals.

35. It was clearly desirable to place certain restrictions on the use of land mines and other devices, including booby-traps. Her delegation supported reasonable and feasible requirements for recording the location of minefields. In that respect she agreed with the statement of the United Kingdom representative at the twenty-eighth meeting (CDDH/IV/SR.28) that the nature and extent of the recording would depend on the type of minefield in question and the circumstances and method of its emplacement.

36. She also supported a prohibition on the use of remotely delivered mines unless such mines were fitted with a neutralizing mechanism or the area in which they were delivered was clearly marked. Furthermore, her delegation welcomed and shared the concern evidenced in the various proposals for the protection of the civilian population against the effects of mines and similar devices, and believed that those proposals constituted a good basis for the formulation of an effective agreement.

37. In concluding, she supported the provisions in article 5 of working paper CDDH/IV/213 and Add.1, and expressed the belief that the proposal would help significantly to enhance the protection of civilians from the effects of certain types of explosive and non-explosive devices.

38. Mr. de GRAFFENFRIED (Switzerland) said that two weeks earlier the Swiss delegation had submitted two proposals on mines and booby-traps (CDDH/IV/209 and CDDH/IV/211/Corr.1), the first together with Mexico and Yugoslavia, and the second with Mexico. Those proposals had been partly based on the text resulting from the lengthy and fruitful discussions of the Working Sub-Group of Military Experts on Mines and Booby-Traps at the Lugano Conference, because the Swiss delegation had wished to submit a text of which at least part could be accepted by a large number of delegations. When the Swiss delegation had submitted its proposals, it had not been certain that the delegations of the United Kingdom, the Netherlands and France would submit, at the present session, an amended version of their Lugano proposal (CDDH/IV/213 and Add.1), and it had wished to be sure that the Committee would have before it specific and detailed proposals on mines and booby-traps, and to emphasize the point that views on the subject were not diametrically opposed. There were, of course, still many differences, some minor, others more basic, but the Swiss delegation hoped that some reconciliation of views would prove possible. He believed that if that was to be achieved, different working methods would have to be adopted.

39. It had often been observed that, because of the formal character of the Committee's meetings, its discussions did not always permit a full and free expression of views such as was possible in less official meetings, during which, for example, the various provisions of each existing or new proposal could be compared with a view to arriving at a compromise formula that could satisfy all delegations, as was the procedure in all the other Committees of the Conference. It must be remembered that all the articles which it had proved possible to adopt in committee had been prepared by working groups. There was no reason, then, why the Committee should continue to believe that any tangible result could be obtained at a full meeting of its members. He was convinced that no time should be lost in establishing working groups, particularly as the Committee had only six meetings left in which to complete its work. It seemed to him that if a number of delegations accepted the idea of setting up working groups the time had come to take a decision. The terms of reference of the group or groups should not present serious difficulties; it would

be a matter of noting the various points of agreement or disagreement and studying the possibility of composite solutions without prejudging the subsequent discussions of the Committee. In that connexion the Canadian suggestion for drawing up a comparative table of proposals was a most valuable one.

40. The CHAIRMAN said that following the Canadian proposal supported by Switzerland he would examine with the officers of the Committee and the Secretariat the possibility of drawing up a comparative table of the proposals submitted so far and all those which might be submitted by the end of the week. The table would provide a basis for the work of the working group which it was proposed to establish. He wondered, however, whether the proposal to set up a working group, to which in itself he saw no objection, had the necessary support of the Committee. The Netherlands delegation, for instance, seemed to be against it.

41. Mr. FELBER (German Democratic Republic) suggested that when the Chairman discussed the matter with the other officers of the Committee and the Secretariat, the documents submitted since work on the question began should be carefully examined, as well as the question of the terms of reference and the rules of procedure of the proposed working group.

42. Mr. van der KLAAUW (Netherlands) explained that he was not against setting up a working group. He had merely suggested that the decision to set up such a group should be postponed. In his view that decision could have been taken - not at the end of the session - but, say, during the following week.

43. As the Canadian representative had said, the working group could assemble for comparison all the proposals relating to the question under consideration, and it would therefore be desirable that delegations intending to submit proposals should do so as soon as possible. The working group would then be able to meet on the following Friday, for example, and submit its report during the following week. In reply to a question from the CHAIRMAN, he added that all sponsors of proposals and other delegations particularly concerned with the question would be able to participate in the work.

44. Mr. BLIX (Sweden) said that he thought it advisable for the Chairman and other officers of the Committee to consult each other on the terms of reference and rules of procedure of the proposed working group, so that the plenary Committee could then take a decision based on the rules established at the first session

of the Conference and applicable at the current session. All the sponsors of proposals and all delegations particularly concerned with the question should be able to participate in the working group. Whether the group should confine itself to drawing up an analytical table of proposals was a question that remained to be considered.

45. Mr. GONZALEZ GALVEZ (Mexico) suggested that, if the working group was established with wider terms of reference than the mere drawing up of a comparative table of proposals, a small group should be set up, consisting of the officers of the Committee and the sponsors of proposals, which would extract the common features of those proposals and then submit a document for the consideration of the Committee. It might be necessary, in order to facilitate the task of that small group, to fix a time-limit for submitting proposals.

46. Mr. van der KLAAUW (Netherlands) thought the implication was that delegations which were not sponsors of proposals would not be represented in the small group although they might be keenly interested in the question under consideration. He thought that the working group should be open to all.

47. The CHAIRMAN said that the discussion would continue at the thirtieth meeting and that he hoped to be in a position to submit to the Committee, after all the necessary consultations, draft terms of reference and rules of procedure for the proposed working group, taking into account the suggestions and comments made during the debate.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE THIRTIETH MEETING

held on Wednesday, 26 May 1976, at 3.15 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE, AND OF PROPOSALS (continued)

(b) Delayed-action and treacherous weapons (including mines and booby-traps (CDDH/IV/201 and Corr.2 and Add.1 to 8, CDDH/IV/209, CDDH/IV/211/Corr.1, CDDH/IV/212, CDDH/IV/213 and Add.1) (concluded)

1. The CHAIRMAN announced that he was holding consultations with the other officers of the Ad Hoc Committee concerning the possibility of setting up a working group to study the various proposals before the Committee, as suggested by the Canadian and other representatives. He requested all delegations which wished to submit proposals to do so as soon as possible.
2. Mr. FELBER (German Democratic Republic) said that although the report of the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held in Lugano in January/February 1976, had not yet been received by his Government, his delegation was prepared, on humanitarian grounds, to regard it as a basis for discussion in the Ad Hoc Committee.
3. While no generally acceptable draft agreements had resulted from the work of the Lugano Conference, progress had been made. The Conference had shown in which categories of weapons there was already a basis for working out agreements.
4. His delegation attached special importance to the questions dealt with by the Conference's Working Sub-Group on General and Legal Questions, which had done valuable work. The problem of the relationship between any future instruments, other international agreements and the Protocols was not a narrowly legal one, but was one of relating the humanitarian essential object with political reality. He quoted from paragraph 3 of the Sub-Group's report (see Lugano report, page 142). The opinion that new instruments could be related to the principles of disarmament had been expressed in particular by the experts from the Union of Soviet Socialist Republics and of the German Democratic Republic.

5. The prohibition or the restriction of the use of certain conventional weapons had implications going beyond the humanitarian scope of the Diplomatic Conference since the security of all States was affected. It would be detrimental to the aims of that Conference if the political facts were passed over in silence. An "all or nothing" approach would only result in less progress.
6. It would also be detrimental to disregard the interrelationship between the prohibition or the restriction of certain conventional weapons and the efforts being made to conclude further international agreements on the limitation of arms and armed forces and on disarmament. He referred in that connexion to the Conference on Security and Co-operation in Europe, which had demonstrated the close connexion between peace and security in Europe, the Mediterranean and the world as a whole. The political détente achieved at Helsinki must be followed by military détente. At the thirtieth session of the United Nations General Assembly, the delegation of the German Democratic Republic had therefore called for a World Disarmament Conference, since effective disarmament measures and the total prohibition of existing weapons and of the development of new ones would constitute the best protection for mankind.
7. While protection of the civilian population must be increased, the main effort should not be directed towards formulating new rules of warfare but towards securing full implementation of the generally recognized principles of international law, especially the prohibition on using force or threatening to use it. The USSR proposal for the conclusion of a world treaty on the renunciation of force in international relations was in conformity with that requirement. Such a treaty would be an effective safeguard against the use of all categories of weapons, including nuclear ones.
8. In a recent statement the Secretary-General of the Socialist Unity Party in his country had emphasized that the German Democratic Republic wished to eliminate war as a means of settling international disputes, and supported the USSR initiatives, especially as regards the convening of a World Disarmament Conference, the prohibition of all nuclear weapons tests, and the prohibition of the development and production of new weapons of mass destruction. Like all other Socialist States, the German Democratic Republic was ready forthwith to prohibit already in the relevant bodies even more weapons than were mentioned in the proposals before the Committee.

9. Referring to the statement made by the representative of Mexico at the twenty-ninth meeting of the Ad Hoc Committee (CDDH/IV/SR.29), he rejected that representative's description of the USSR statement at the same meeting as negative. It had on the contrary been very appropriate. He regretted to state that the statement of the representative in question discriminated against the active policy of peace, security and disarmament pursued by all Socialist States.

10. Having made those general remarks, he stressed that his delegation regarded the Lugano Conference as a contribution to further partial steps in the field of arms limitation and disarmament. His delegation had carefully studied the statements of the Austrian, French, Netherlands, Norwegian, Mexican, Swedish, Swiss, United Kingdom and Yugoslav representatives, and also the proposals submitted to the Lugano Conference by the Australian, Indonesian, Mexican and Spanish experts (see Lugano report, pp. 167 et seq.). The basic aim of the Diplomatic Conference, however, should not be to lay down rules on how, against which objects and in what circumstances the weapons under consideration might be used, nor should it spend time discussing how effective they were. Such an approach would mean the recognition of war as an unavoidable phenomenon in international relations. The Diplomatic Conference should instead consider the most effective ways of achieving the prohibition or the restriction of the use of those weapons so that it could make proposals for further action to Governments and the United Nations.

11. The Diplomatic Conference's task was to reaffirm and develop existing international law in order to strengthen the protection of the civilian population, to prohibit certain criminal methods of warfare and to ensure the necessary protection for national liberation movements. Through the adoption of articles 33, 34 and 46 of draft Protocol I alone, it had done in that field what was necessary and within its competence. The proposals before the Committee were useful as a basis on which generally acceptable agreements could be worked out in the appropriate bodies. His delegation agreed with the suggestion by the Canadian and Netherlands representatives that a working group should be set up to elaborate an analysis of all the proposals submitted or a comparison thereof. Its activities should, however, be strictly governed by the terms of reference of the Ad Hoc Committee and of the Diplomatic Conference.

12. The CHAIRMAN reminded speakers that although they might make general statements on the report of the Lugano Conference at the present stage of the Ad Hoc Committee's work, he hoped that they would concentrate more on item (b) of the programme of work - delayed-action weapons and treacherous weapons including mines and booby traps,

13. Mr. FROWIS (Federal Republic of Germany) said that his delegation supported the three-Power working paper on the regulation of the use of land mines and other devices (CDDH/IV/213 and Add.1), which was a sound, realistic and practicable proposal that struck a balance between humanitarian considerations and security needs. While providing protection for the civilian population, it would not significantly impair the military utility of land mines and related devices, which were indispensable weapons for a defending party. His delegation therefore supported the comments made at the twenty-ninth meeting (CDDH/IV/SR.29) by the representatives of Canada, Italy and the United States of America.

14. Mr. DAVINIC (Yugoslavia) said that his delegation had been encouraged by the number of proposals submitted concerning mines and booby-traps. The proposal submitted by Mexico, Switzerland and Yugoslavia (CDDH/IV/211/Corr.1) contained a number of elements similar to those in the proposal submitted by France, the Netherlands and the United Kingdom (CDDH/IV/213 and Add.1). It should not therefore be too difficult to work out a joint draft which would be acceptable to the great majority of States. Similarly, the Venezuelan proposal (CDDH/IV/212) had much the same features as the proposal on booby-traps submitted by Mexico, Switzerland and Yugoslavia (CDDH/IV/209). Those proposals should be carefully examined for the purpose of broadening the areas common to all of them.

15. His delegation's approach to the question of mines and booby-traps was based on two principles. First, an aggressor should be bound by strict observance of regulations based on humanitarian considerations that might be agreed upon with regard to those weapons. Secondly, such regulations should in no way favour technologically advanced countries by imposing requirements which the less developed countries could not possibly meet.

16. Those principles governed his delegation's approach to working paper CDDH/IV/213 and Add.1. The paper was well drafted and well-thought-out and the changes introduced since the Lugano Conference were to be welcomed. Encouraged by the fact that the authors had taken note of a number of comments, his delegation wished to offer some additional comments. Article 2 on the recording of minefields gave the impression that only a defending country was under the obligation to record its pre-planned minefields. Such an impression would be removed if the word "defensive" was deleted in the first sentence of the article. The obligation would then be equally shared by both parties to an armed conflict.

17. With regard to the recording of other minefields of more than twenty mines, it would be necessary to specify firstly, the area within which twenty mines could be placed without being properly recorded and, secondly, the minimum distance between one such area and the next. That would prevent the placing of too many mines not subject to recording requirements close together.

18. Article 3, on the use of remotely delivered mines, appeared to favour the technologically advanced countries which possessed a neutralizing mechanism. Other countries would either have to mark such minefields in a distinctive manner, thus disclosing their military plans unduly, or to refrain from using remotely delivered mines. More consideration should be given to the protection of civilians, preferably by prohibiting the use of such weapons, as suggested in working paper CDDH/IV/201 and Corr.2 and Add.1 to 8. Restriction of the use of remotely delivered mines to the combat zone of the ground forces, or to areas in which combat was imminent, might also be contemplated. The time after which a neutralizing mechanism would go off would also have to be specified. Paragraph 3 of the proposal by Mexico and Switzerland (CDDH/IV/211/Corr.1) offered a possible solution in that respect.

19. Article 4 of working paper CDDH/IV/213 and Add.1 should be broadened in scope to cover not only manually laid mines and devices but also those delivered by rocket, mortar or similar means, regardless of range.

20. Was it to be inferred from article 5, paragraph 1, that items of military equipment or supplies which were specifically designed and constructed to contain explosives were to be excluded from the prohibition of booby-traps?

21. Further efforts by all countries, and in particular by the sponsors of various proposals, should make it possible to reach positive results that would be acceptable to a great majority of States.

(c) Small-calibre projectiles (CDDH/IV/201 and Corr.2 and Add.1 to 8, CDDH/IV/214)

22. Mr. BLIX (Sweden) said that the question of particularly injurious small-calibre projectiles had been under consideration since the spring of 1973, when the ICRC study on Weapons that may cause Unnecessary Suffering or have Indiscriminate Effects had been prepared. As a result of the ensuing expert research and discussions, there was now a reasonably good understanding of the question. Although some technical matters still had to be clarified, the most important problems remaining were in the political and economic spheres.

23. There was a tendency to reduce the calibre and weight of weapons and ammunition from the most common calibre of 7.62 mm, and to raise muzzle velocity. Those new features offered the military advantage of enabling a combatant to carry more ammunition and, with the flatter trajectory, of making it easier to aim.

24. It would be undesirable from the humanitarian point of view if there were to be a new generation of standard small-calibre weapons and ammunition with a greater injuring effect than those at present in most common use, thus bringing about a universal increase in injuries caused by the most common weapons in use throughout the world. The President of the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons had expressed his conviction that no Government would tolerate new weapons which had considerably more serious effects on human beings than earlier weapons, and had urged that everything possible should be done to ensure that there was no escalation in that sector.

25. It seemed technically possible to reduce weight and calibre and to increase muzzle velocity without increasing the injuring effect. The Hague Declaration of 1899 concerning the Prohibition of Using Bullets which Expand or Flatten Easily in the Human Body should be observed in both letter and spirit. Since many new countries might soon be procuring new small-calibre weapons, an agreement to supplement The Hague Declaration was urgently needed.

26. The rule contained in The Hague Declaration had been formulated because bullets which flattened or mushroomed when they hit the human body would tear their way through with a broad face, transferring all their energy and thereby causing much greater injury than a bullet which pierced its way through. The ban it imposed disregarded complications such as the hitting of buttons or bone. It had sought the humanitarian gain of preventing increased injury in casualties wherever possible.

27. The formulation of the rule had been criticized at the first International Peace Conference held at The Hague in 1899, as covering a single detail of construction, of which the dum-dum bullet had been the existing example, and failing to cover technical ways of increasing the injuring power. The Russian delegate at the Conference had repeatedly stated, however, that his country would prohibit only what was known to it at that time, and that future developments would have to be faced as they arose.

28. So far as concerned technical developments, reports on war casualties and extensive experiments indicated that some of the newest small-calibre weapons and projectiles generally caused much severer injuries than did the common 7.62 mm bullet. What was to be avoided was the production and use of new bullets that caused worse injuries in uncomplicated hits in soft tissue than did those at present in most common use.

29. Swedish experts had spared no effort to establish the facts by scientific experiments in the form of tests on soap blocks and on live tissue in anaesthetized dogs and pigs. All the data obtained and conclusions drawn had been made public, as had been those of experts in Austria, Indonesia, Japan and Switzerland. Other countries had undoubtedly carried out many experiments, although they might be unwilling to divulge the results for security reasons.

30. It was difficult to measure injuries from projectiles even in uncomplicated cases of soft-tissue injury. Swedish experts had used a number of approaches, the simplest being to weigh the amount of tissue which a surgeon would have to excise after a hit. Comparisons between the immediate effects of various bullets were possible when the shooting conditions, distances, lengths of wound channels and ages of test animals were as nearly equal as could be arranged. It seemed probable that bullet effects demonstrated on pigs would allow conclusions to be drawn as to the effects of the same bullets on human beings; it was impossible to go further, since experiments could not be carried out on human beings. The evidence of war surgeons might be vitiated, however, by lack of knowledge of the weapon or its range, or a tendency to disregard the recording of statistics in favour of saving life.

31. An unsatisfactory feature of the experiments carried out at the Göteborg Symposium had been that the pigs used had wound channels somewhat shorter than those calculated to be average in war casualties, namely about 14 cm. Efforts had been made to remedy that shortcoming in subsequent experiments.

32. While experiments on live or dead animals might offer a method of testing new projectiles with a view to avoiding the adoption of projectiles with greater injuring effects than those used at present, the method was a complicated one and was not permitted everywhere; no international rule could therefore be tied to it.

33. Though the adoption of the 1899 Hague Declaration had been preceded by extensive experiments on dead bodies, the rule had not referred to any standard test. It had referred only to "bullets which expand or flatten easily in the human body", the word "easily" presumably meaning in soft tissue. Although the extent or frequency of expansion or flattening was unspecified, there appeared to be agreement that the rule had been effective.

34. Simple standard tests for the various features which appeared to make some of the latest generation of bullets more injurious than their predecessors had been said to be desirable. Such tests had to be made on non-living material, such as blocks of soap or gelatine. The experts at the Lugano Conference had discussed the merits and demerits of various materials.

35. The experiments carried out by the Swedish experts had indicated that there was a correlation between the form and size of the cavities formed by a bullet hitting a soap block and the injury that would be caused in soft live tissue by the same bullet at the same distance. That point would be the main subject for examination and discussion in the second Symposium that was to be held at Göteborg and which was designed, not to demonstrate differences in the injurious effects of different projectiles, but to provide a basis for discussion on whether certain standard experiments on soap or gelatine could be relied upon for the purpose of drawing conclusions as to the injuring capacity of projectiles in soft tissue. It would seem strange if States which relied upon such standard tests for determining whether a new bullet had sufficient injuring capacity to be of military use could not be satisfied with such tests for establishing whether a bullet had excessive injuring capacity. Experts might give their views on the subject at the Göteborg Symposium during the last week of August 1976. Delegations wishing to receive invitations for their experts to attend should contact his delegation.

36. A rule that sought to prevent the use of bullets with particularly injurious effects might be related to the cavity made in soap or other tissue-simulant in a standard test, or to the amount of energy deposited per unit of length in such a simulant, but a rule like that would be highly technical. His delegation had thought it wiser to be more specific and to indicate some features in the behaviour of bullets which should be forbidden, as likely to cause severer injuries than the bullets at present in commonest use. While the approach might be subject to the same criticism as the 1899 rule, namely that it dealt only with a technical detail and left designers free to make more injurious projectiles by giving them other features, the features

now indicated were certainly those of greatest potential interest at present, and the Diplomatic Conference ought perhaps to follow the example of The Hague Conference of 1899 in leaving other theoretical features for future discussion.

37. The rule contemplated should be simple and short, even if tied to a standard test. A rule to be used by weapon designers need not, however, be as simple as rules to be interpreted by military commanders in the field. His delegation had revised its working paper CDDH/IV/201 and Corr.2 and Add.1 to 8 in the light of criticisms and of his country's experiments. The new text was now before the Ad Hoc Committee in working paper CDDH/IV/214.

38. The draft in document CDDH/IV/201 had been criticized for its specific reference to velocity. Although nobody doubted that the velocity of a bullet was one of the most significant features for its behaviour and impact energy, the suggested rule was not based on the velocity factor. The features which the rule sought to proscribe - bullet breaking, tumbling, etc. were the decisive criteria, and were unrelated to velocity.

39. In the new draft the introductory reference to velocity had been deleted altogether. On the other hand, a separate prohibited feature had been included, namely, bullet velocities of 1,500 m/sec, approximately equal to the velocity of sound in live tissue. So far, no small-calibre projectiles of such velocities were known to exist, even in the planning stage. As indicated on page 117 of the Lugano report (report of the General Working Group, paragraph 60), several experts had thought that that might constitute a critical velocity which could independently lead to excessive injury. Not much had been written about the effects of such velocities, although in an article by Major Albert Beer in the journal "Der Truppendienst" (2/1975) it was reported that tests with a rifle of about 2 mm calibre, a projectile weighing 0.25 g and a charge of 11 g, giving a muzzle velocity of 2,800 m/sec, had literally ripped sheep to pieces. Although that was undocumented evidence, it would seem desirable to establish an absolute upper limit of velocity in order to discourage technical experimentation along lines which many persons thought might have dire consequences.

40. Turning to the other two types of bullets which his delegation considered should be prohibited, he said that the first was that of bullets which "deform or break easily in the human body". It was not difficult to see the close relation between that characteristic and that contained in

the 1899 ban on bullets which "expand or flatten easily in the human body". The rule in The Hague Declaration of 1899 was not limited to any particular calibre or velocity, but was based exclusively on the empirical knowledge that bullets which expanded or flattened were likely to deposit more energy, especially in short wound channels, and cause greater injury than those which, in the same conditions, merely pierced. The word "easily" presumably referred to hits in soft tissue. The same was true of bullet deformation and break-ups, since flattening and expansion were a form of deformation. For greater precision, it was suggested that a very simple standard test should be attached to the rule.

41. The second type of bullet to be prohibited was that which rapidly tumbled, i.e. presented its broad face to the tissue, in the human body. Although the combination of technical features, such as shape, weight, balance, speed and rotation, which led to rapid tumbling on impact was a complicated one, there seemed to be general agreement, first, that sooner or later all bullets tumbled upon impact and, second, that early tumbling was likely to lead to severer injuries in most instances than late tumbling. To give a concrete example, bullets which did not tumble significantly within 14 cm in soft tissue would be much less injurious than those which tumbled within the first four centimetres, since the average human wound channel was 14 cm. The more stable bullets would in many cases have time to go straight through without tumbling and creating a big wound. In the tests reported by the Indonesian experts at Lugano, 7.62 mm bullets had caused greater cavities in soap blocks than 5.56 mm bullets. Those blocks, however, had been 30 cm thick, while the average human wound channel was only 14 cm. His delegation considered, therefore, that the most appropriate thickness for test blocks would be that of the average human wound channel, i.e. 14 cm.

42. The injurious effect of tumbling was hardly contested by anyone, and some weapons manufacturers had even pointed to the tumbling effect as a merit in increasing the deadliness of the bullet.

43. There could be no doubt that bullets could be designed so as to tumble and so as to avoid tumbling. In many cases, tumbling would result in bullet deformation or break-up, and such bullets would fall under the first prohibition his delegation had suggested. That might not necessarily be so, however, and for that reason the feature in itself, which was similar in its functioning to the flattening of a bullet, should be the subject of an independent provision. The formulation offered in the joint working paper

in document CDDH/IV/201 and Corr.2 and Add.1 to 8 - "tumble significantly within the human body" - had been criticized as too imprecise. In the new Swedish working paper (CDDH/IV/214), the text had been amended to read "tumble rapidly in the human body", which seemed more pertinent. His delegation had also suggested that a relatively simple standard test could be attached to the rule; for the time being, it had left open the question of the degree of angle of tumble. As in the case of the test of bullet break-up and deformation, it considered that soap blocks could be an adequate soft-tissue simulant, but other materials might also be found acceptable.

44. In conclusion, he pointed out that his delegation had omitted two other grounds for prohibition which had been covered by the 1975 working paper (CDDH/IV/201 and Corr.2 and Add.1 to 8), namely, the creation of shock waves and the production of secondary projectiles in the human body. Both had been criticized and neither seemed essential. His delegation also believed that a new rule, supplementing The Hague rule, should take effect only after some years, to enable all States to adapt their current weapons and bullets to it. His delegation would welcome any constructive suggestions regarding its working paper.

45. Mr. ØSTERN (Norway) said that the Swedish working paper (CDDH/IV/214) had introduced a new element into the debate on small-calibre projectiles and had helped to bring up to date the relevant parts of document CDDH/IV/201 and Corr.2 and Add.1 to 8. He noted, however, that the Swedish working paper still focused on the same aspects of the behaviour of a projectile in the human body as had the earlier document, and he was sure that all delegations could agree on the importance of those aspects, even if there had been some change of opinion as to their relative weight.

46. On the basis of the data collected and presented up to and during the Lugano Conference, including the results of the Göteborg Symposium, his Government's experts considered that the following classifications had been achieved. Shock waves did not seem to play any decisive role in incapacitating the target by causing damage to brain or heart, at least as long as the velocity of the projectile did not considerably exceed 1,000 m/sec. Fragmentation of the projectile would clearly increase considerably the energy deposit in the human body and cause a type of wound that from a humanitarian point of view should be avoided. The risks of fragmentation could be reduced by giving a projectile sufficient mechanical strength.

Tumbling upon impact seemed to play a decisive part in the transference of energy to the target. All common small-calibre projectiles would probably tumble sooner or later in the course of their trajectory, and test results seemed to indicate that that would also happen on penetration of the human body. On the other hand, tumbling could be induced by design, particularly if the projectile was assymetrical or would undergo deformation on impact.

47. Nevertheless, after the Lugano Conference, his delegation had concluded that it was doubtful whether sufficient data had been obtained to provide the necessary foundation for agreement on regulations. Moreover, though considering that the Swedish working paper would be most helpful in future efforts, he thought that it would be premature to express any definite opinion as to whether the criteria it contained could be adopted when drawing up specific provisions. He hoped that those matters would become clearer when more data and test results were available, particularly after the second Göteborg Symposium. Lastly, his delegation was most grateful to the Swedish Government for the many initiatives it had taken in the efforts to reduce the suffering caused by small-calibre projectiles.

48. Mr. GONZALEZ GALVEZ (Mexico) said that his delegation welcomed the Swedish working paper (CDDH/IV/214), which, as the Norwegian representative had pointed out, was not aimed at limiting the scope of the working paper submitted in 1975 by Austria, Egypt, Mexico, Norway, Sweden, Switzerland and Yugoslavia (CDDH/IV/201 and Corr.2 and Add.1 to 8), but rather at bringing it up to date.

49. He noted that while the latter working paper had suggested that the maximum impact velocity of the new small-calibre projectiles should be about 800 m/sec (CDDH/IV/201, p. 13), the Swedish working paper recommended that States Parties to the Protocol should abstain from the use of bullets which had a velocity exceeding 1,500 m/sec. He himself thought that that aspect of the question should be left pending until additional tests had been carried out. He further noted that the Swedish working paper, in its annex and especially in the final paragraph thereof, seemed to call for a separate Protocol on small-calibre projectiles.

50. With reference to the statement of the representative of the German Democratic Republic, he said that in the meetings of experts, even prior to the beginning of the current Diplomatic Conference, all military Powers, including the United States of America, had called for a broader definition of the status of prisoners of war, the wounded and the sick. A new trend, however, was to be seen in the case of those countries which were not

nuclear Powers and which held that the protection of the civilian population was the most important issue at stake. He pointed out in that connexion, that a survey carried out by the Stockholm International Peace Research Institute had revealed that since the Second World War more than 100 armed conflicts had taken place in developing countries, a fact which certainly underlined the need for States to refrain from the use of force, as called for in the Charter of the United Nations, and in any case to place restrictions on the use of weapons which caused the civilian population unnecessary suffering.

51. The representative of the German Democratic Republic had referred to the Mexican delegation's description of the statement made by the representative of the Union of Soviet Socialist Republics at the twenty-ninth meeting (CDDH/IV/SR.29) as a negative one. He wished to make it clear that in his view a negative attitude had been displayed, not only by the USSR delegation, but by certain other, non-socialist, delegations as well. He had been particularly surprised, however, by the negative attitude of the USSR, which on all previous occasions had spoken out strongly in favour of general and complete disarmament and the decolonization of all colonial peoples.

The meeting rose at 4.35 p.m.

SUMMARY RECORD OF THE THIRTY-FIRST MEETING

held on Thursday, 27 May 1976, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

ORGANIZATION OF WORK

1. The CHAIRMAN reported that the consultations on the establishment of a working group had not led to a consensus. Some delegations had felt that there was too little time left before the end of the session for such a group to produce results. Others had felt that because many countries, especially developing countries, did not participate in the Committee's work, their views would not be adequately represented. The general feeling had been that a working group should be established at the beginning of the fourth session of the Diplomatic Conference, when Governments would have examined the proposals submitted and given instructions to their representatives. Any decision to that effect would have to be taken at the next session.

2. There had been agreement that it would be useful if the Secretariat could draw up an analytical comparative table of the proposals submitted to the Committee.^{1/} If he heard no objections, he would ask the Secretariat to prepare such a document and to make it available before the end of the current session.

It was so agreed.

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE, AND OF PROPOSALS (continued):

(c) Small-calibre projectiles (CDDH/IV/201 and Corr.2 and Add.1 to 8, CDDH/IV/214) (continued)

3. Mr. GRIBANOV (Union of Soviet Socialist Republics), speaking in exercise of his right of reply, said that at the thirtieth meeting (CDDH/IV/SR.30) the Mexican representative had asked why, if the Union of Soviet Socialist Republics was actively pursuing a disarmament policy, his delegation had adopted a negative attitude in the Ad Hoc Committee.

*/ Incorporating document CDDH/IV/SR.31/Corr.1

1/ Subsequently circulated as document CDDH/IV/218

4. At the twenty-ninth meeting of the Ad Hoc Committee (CDDH/IV/SR.29) the USSR delegation had clearly set out its position, which was quite logical. It was firmly in favour of halting the arms race, forbidding all nuclear weapons tests and the development of new types of weapons of mass destruction, and prohibiting chemical weapons. It was in favour of reducing defence budgets, of concluding a world treaty on the non-use of force in international relations and of convening an international conference on disarmament. It was in favour of measures to prevent the spread of nuclear weapons.

5. The USSR had made specific proposals concerning further limitations on strategic weapons, which were in Mr. Brezhnev's report to the Twenty-Fifth Congress of the Soviet Communist Party. At the Vienna talks on balanced force reductions, (Conference on Mutual Reduction of Forces and Armaments in Central Europe) in co-operation with other Socialist countries, the USSR had submitted a proposal for troop reductions by both the USSR and the United States of America. It had also proposed a reduction in the number of tanks, aircraft carrying nuclear weapons, rocket launching pads and warheads. Those proposals had also been published. On 22 May 1976 a USSR Government statement had been published affirming that if the question had depended on that country only, negotiations on all aspects of disarmament would long ago have been concluded by specific agreements. On the basis of reciprocity and without prejudice to the security of participating countries, the USSR was ready to adopt radical solutions in the matter of disarmament and its position on the question was well known.

6. In his statement at the twenty-ninth meeting (CDDH/IV/SR.29) of the Committee he had said that the USSR favoured a careful examination by Governments of the report of the Lugano Conference and of the proposals submitted in the Ad Hoc Committee, so that the questions involved could be settled at the political level. In particular, the USSR had never opposed the proposals to ban booby-traps and the use of napalm against civilians. It believed that those matters could be dealt with without difficulty in the appropriate international body within the general context of disarmament.

7. It was his delegation's view, however, that the question of the prohibition of certain weapons did not fall within the competence of the Diplomatic Conference on International Humanitarian Law. It seemed to him that the Ad Hoc Committee was being turned into a kind of symposium where technical lectures on various types of weapons were given which were of interest to specialists, but irrelevant to the main task of the Conference, that was to draw up and adopt two additional Protocols to the 1949 Geneva Conventions.

8. Mr. KUSSBACH (Austria) said that document CDDH/IV/214, submitted by the Swedish delegation, showed that Swedish experts had made substantial progress in the study of small-calibre projectiles. Since the second session of the Diplomatic Conference a whole series of experiments had been carried out by experts in various countries with the aim of obtaining new data on the decisive factors conditioning the particularly serious effects of small-calibre projectiles. Several reports and statements had been made at the Lugano Conference containing much new and valuable information. Thus, the Ad Hoc Committee was in possession of considerably more information than had been available a year earlier. The problems presented by those weapons were complex and merited further study.

9. It was now essential to establish a standard test to determine in an objective, scientific and simple way the main factors influencing the particularly serious impact of certain small-calibre weapons. It should not be too difficult to agree on such a test although it would admittedly have to be based on a certain number of assumptions: such assumptions were constantly made in scientific experiments. It should be possible to follow a procedure similar to the method regularly applied to the development, production and evaluation of new weapons and weapons systems.

10. In the first place, it should be easy to reach agreement on the properties necessary for the target material. It would be more difficult to determine decisive parameters for an objective study of the effect of bullet tumbling and disintegration but it should not be impossible. The velocity of 1500 m/s was the critical limit of a somewhat theoretical value, which could be accepted, although projectiles of 5.56 mm calibre did not usually reach that velocity.

11. By way of illustration, he referred to the experiments conducted in his country as part of a series carried out in co-operation with experts in Sweden and Switzerland. As they were only part of an international project, the results obtained in his country were necessarily incomplete and definitive general conclusions could not be drawn from them. The preliminary results, however, largely supported the conclusions drawn by the Swedish and Swiss experts from their own experiments.

12. It seemed evident that the particularly serious effects of certain small-calibre weapons were due to the factors of velocity, design of the weapon, and shape and material of the ammunition.

It was essential that those factors should be studied together, since no one alone appeared to be the determining cause of the tumbling, deformation or disintegration of bullets, with the consequent increase in the seriousness of the wounds they caused.

13. Future experiments, therefore, must aim to determine as precisely as possible the appropriate parameters for measuring the complex relationships between the factors mentioned and the phenomena of tumbling, deformation and disintegration of the projectiles in human tissue. He would not enter into technical details at the present moment, but his delegation had a number of copies of the report prepared by the expert chiefly responsible for the experiments conducted in his country and would make them available to the representatives present and any others interested.

14. Mr. FROWIS (Federal Republic of Germany) said that his delegation appreciated the Swedish delegation's attempt to meet the criticisms that had been made of document CDDH/IV/201 and Corr.2 and Add.1 to 8. Its new document (CDDH/IV/214) was based on The Hague Declaration of 1899 concerning the Prohibition of Using Bullets which Expand or Flatten in the Human Body, and he wished to stress the continuing validity of that Declaration.

15. With the aim of preventing excessive injuries caused by small-calibre projectiles, the new document proposed that some of the technical parameters of those projectiles should be limited. But as one of the technical experts from the Federal Republic of Germany had pointed out at Lugano, the limitation of only some technical parameters would not necessarily reduce the wounding capacity of a weapons system used by the infantry. Moreover, as the work of the Lugano Technical Experts Working Sub-Group on Small-calibre Projectiles has shown, the test methods required were elaborate and complex. He doubted whether the problems involved could be solved with the rather limited test arrangements suggested by the Swedish delegation. He therefore concluded that The Hague Declaration of 1899 remained a valid basis for protecting combatants from unnecessarily severe injuries and considered that for humanitarian reasons future projectiles should be designed in conformity with the wording and spirit of that Declaration.

16. Mr. MENA PORTILLO (Venezuela) said that three basic attitudes could be distinguished among delegations with regard to the work of the Ad Hoc Committee and of the two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons held respectively at Lucerne and Lugano: those which stated explicitly that the Diplomatic Conference was not the place to deal with questions relating to the prohibition or restriction of certain conventional weapons, which were a matter rather for the

Conference of the Committee on Disarmament or the United Nations; those which, on the contrary, thought that the Diplomatic Conference was competent to establish such prohibitions or restrictions; and those which, while expressing an interest in the question by attending the meetings of the Committee, appeared to adopt an attitude of passivity or indifference.

17. The Venezuelan delegation took the view that questions of humanitarian law should not be dealt with in a context of disarmament. Disarmament conferences were a forum for political negotiations concerning the production and stockpiling of armaments or for seeking to establish a fair balance between the armaments and forces of different Powers. Disarmament further involved the inspections necessary to ensure that it had taken place which, so far, had constituted the most serious obstacle to achieving disarmament and accounted for the fact that the numerous discussions that had taken place for many years past seemed to have reached an impasse, while the armaments race continued at an alarming and ever-increasing rate. The fact that the Diplomatic Conference was the appropriate forum for dealing with the humanitarian aspects of the use of certain weapons which caused unnecessary suffering and produced indiscriminate effects or irreparable damage to the environment, had been established by consensus in articles 33 and 34 of draft Protocol I. It was also supported by the St. Petersburg Declaration of 1868 to the Effect of Prohibiting the Use of certain Projectiles in Wartime and The Hague Declaration of 1899, which were eminently humanitarian in content, by international positive law, and by public opinion, which repudiated the use of such weapons on humanitarian grounds. The prohibition or restriction of the use of such weapons was fully within the competence of the Diplomatic Conference. What went beyond its competence was the prohibition or restriction of the manufacture or stockpiling of those weapons and of new weapons with similar effects with a view to their eventual use. The prohibitions or restrictions in question had a purely moral significance, constituting standards of conduct for the States which made up the international community. They did not involve questions of inspection, which rendered agreement difficult or almost impossible, as had occurred in the field of disarmament. While differences of opinion might exist as to the methods of solving the problems raised, he believed there were no such differences with regard to the moral issue.

18. While there were many delegations which, like his own, had without hesitation expressed their support for the second attitude, he believed that there were others which intended to do so later; he hoped that they would not put it off until it was

too late. His delegation appealed most strongly to those delegations which, so far, had adopted a passive attitude to take a decision one way or the other and to take part in the discussions in such a way as to clarify and strengthen the position of the Committee and of the Conference, so that it could reach an appropriate agreement which could be incorporated in a Protocol. Mankind would be grateful to them.

19. With regard to small-calibre projectiles (of less than 12.7 mm), the Swedish proposal in document CDDH/IV/214 deserved very careful consideration by the Committee in view of its technical and humanitarian content. It was, moreover, in line with document CDDH/IV/201 and Corr.2 and Add.1 to 8, of which his delegation was a co-sponsor.

20. The Mexican delegation had expressed concern about the limit of bullet velocity of 1,500 m/sec contained in the Swedish proposal. His delegation did not share that concern since, with the present design of small-calibre weapons and with the propellants which, for metallurgical reasons, it was necessary to employ with them, such velocities could not at the moment be attained. His delegation would be satisfied if there was no reference to velocity in the proposal. That did not mean, however, that the question of velocity was unimportant from the standpoint of ballistics or of effects on the human body, nor did it exclude the possibility that weapon and projectile technology might in future revolutionize existing knowledge on the subject.

21. Mr. ANDERSON (United States of America) said that the wounding power of small-calibre weapons had been studied in some detail in the Ad Hoc Committee, in the meetings of Government Experts and at the International Symposium on Wound Ballistics, Göteborg; considerable research had also been done by the military, medical and ballistics specialists of many countries. Problems, however, still arose in evaluating the data: United States ballistic tests using gelatine blocks as the target medium indicated that 7.62 mm ammunition had, at all ranges, greater wounding power than 5.56 mm ammunition. Indonesian tests using a different target medium led to similar results. Another country, however, had reached different conclusions.

22. At the Lugano Conference various delegations had explored such matters as the difficulty of measuring energy transfer to the target upon break-up of the bullet; determination of a bullet's flight pattern characteristics; and the advantages and disadvantages of the various target media: soap, clay, gelatine, wood and live tissues. The views expressed had led his delegation to conclude that much work remained to be done on technical considerations of wound ballistics before any accurate conclusions could be drawn.

23. Another point of difference turned on what constituted a reasonable combat range. The answer depended, in part, obviously, upon terrain: combat ranges would be shorter in forests than in desert or mountain areas. It would also depend on tactical doctrine and the presence or absence of alternative weapons.
24. His delegation could not draw any conclusions about the complex proposals in document CDDH/IV/214, submitted by Sweden, until its experts had made a careful study of that document. In contrast to what was said in that document, United States tests showed that the break-up or deformation of military ammunition currently in use did not have nearly as severe an effect as dum-dum ammunition. His delegation also had problems about the last page of the document.
25. He had been extremely interested to hear that the Swedish Government proposed to hold a second International Symposium on wound ballistics; he hoped that, like the last, it would be primarily a meeting for military, medical and technical specialists rather than for legal and diplomatic personnel.
26. Mr. BLIX (Sweden), referring to the remark of the representative of the Union of Soviet Socialist Republics that the discussion should not be allowed to develop into a technical symposium, said he would remind the Ad Hoc Committee that its mandate, as agreed in 1974, was to consider the question of the prohibition or restriction of the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects. Since there was no limitation on that mandate and the rules of procedure of the Main Committees of the Diplomatic Conference applied equally to the other committees, it was clearly within the Ad Hoc Committee's mandate to discuss any matters relevant to that question. Further, by General Assembly resolution 3464 (XXX) of 11 December 1975, paragraph 2, the United Nations had invited the Conference to "search for agreement for humanitarian reasons on possible rules prohibiting or restricting the use of such weapons". That was precisely the task in which the Ad Hoc Committee was now engaged, and a discussion of complex technical matters was an essential part of that task. The Ad Hoc Committee would be well advised, in his opinion, to make use of all the time available to it in pursuing the search for such agreement.
27. Commenting on the remarks made by the representative of the Federal Republic of Germany, he said that the Swedish proposal (CDDH/IV/214) did not define tumbling and break-up as one parameter but rather as the result of many parameters, for instance, velocity, rotation and substance of the bullet. It was therefore incorrect

to speak of only one parameter. The Swedish delegation's main concern was with any characteristic liable to cause greater damage than a bullet which did not tumble or break up.

28. He was grateful to the United States representative for his positive reaction to the Swedish intention to hold a second Symposium in Göteborg. He had also been interested to hear that tests conducted in the United States of America had revealed that dum-dum bullets had a far worse effect than break-up and tumbling, which confirmed the finding that a number of modern bullets did break up and tumble. He wished to point out, however, that The Hague Declaration of 1899 did not refer to the quantity or size of injuries but simply prohibited any characteristic that would cause a bullet to have greater wounding capacity than a traditional bullet. The quantity and size of injuries depended, of course, on a number of factors, including calibre, but it could be assumed that tumbling and break-up had effects similar to those of flattening and expansion and would inevitably aggravate any injuries.

(d) Blast and fragmentation weapons (CDDH/IV/201 and Corr.2 and Add.1 to 8, CDDH/IV/210)

29. Mr. de GRAFFENRIED (Switzerland) said that he wished to amplify his earlier comment on the draft article on non-detectable fragments, proposed by Austria, Mexico, Norway, Sweden, Switzerland and Yugoslavia (CDDH/IV/210).

30. A similar proposal had already been submitted by Mexico and Switzerland at the Lugano Conference reading: "The use of weapons producing fragments which in the human body escape detection by the usual medical methods shall be forbidden" (COLU/212) (see Lugano report, p. 188). While that proposal had been well received, a number of suggestions for improving the text had been made. They related, in particular, to the words "the usual medical methods", which several experts had considered too vague, and also to the scope of the provision. The expert from Australia had proposed (COLU/216) (*ibid*, p. 190) that the word "producing" be replaced by "which rely for their injurious effect on ...", with a view to excluding from the proposed prohibition certain weapons referred to in the report on the Plenary Meeting Proceedings of the Lugano Conference (*ibid*, p.19). Although several delegations also felt that the original proposal was unduly restrictive, the Australian amendment had not met with general approval.

31. The Swiss delegation's preference was for the original proposal in COLU/212, which was not limited by the words "primary effect". To meet the criticisms voiced, however, the sponsors of that proposal had submitted an amendment in the form of the proposed draft article now before the Committee (CDDH/IV/210), which had received virtually unanimous support. Only one delegation had entered a reservation, on the ground that the amended text referred only to the radiographic method of detecting fragments and therefore did not take account of other methods of detection already available, or to be developed in the future, which might be superior to present X-ray techniques and possibly easier to use (report of the General Working Group of the Lugano Conference - see Lugano report, para. 80). It had been explained that X-ray equipment, which was in common use in field hospitals, would undoubtedly continue for a long time to be the easiest and cheapest method of detecting foreign bodies in human tissue. More advanced methods of detection were of course conceivable, but they were unlikely to be generally available or easy to use. In addition to the other delegations sponsoring the proposed draft article, the delegation of Venezuela had indicated its readiness to support the text provided that a slight amendment was made which, he understood, related to a purely linguistic matter.

32. The main purpose of the proposal was to reduce needless suffering. Fragments which were not removed from the human body in time could cause severe medical complications that were not justifiable on the ground of military requirements. Moreover, fragments of material consisting solely or mainly of atoms of low weight, such as wood, glass and particularly plastic, could only be detected with difficulty, if at all, by the X-ray equipment that was generally used in wartime. Those were the very materials that were often used in modern weapons, for instance in mine casings so that mines could not be discovered by detectors. The intention was not to prohibit such weapons but simply to eliminate some of their effects. That could be done by adding atoms of higher weight to the materials in question to render fragments detectable by X-ray but not by mine detectors. Thus, the balance between military needs and humanitarian requirements would be achieved. The proposed article should not present any major difficulty from the point of view of national defence, and he trusted that it would receive the same support as at the Lugano Conference. As Mr. Erich Kussbach, Chairman of the Working Group of that Conference had stated, the proposal would provide an excellent basis for the future development of an instrument relating to a prohibition of the kind in question.

33. Mr. RUIZ PEREZ (Mexico) said that his delegation, encouraged by the wide measure of agreement reached at the Lugano Conference, had co-operated in drafting the proposed article on non-detectable fragments. Every important and relevant view expressed at that Conference had received careful consideration, while matters that could have given rise to unnecessary discussion had been avoided.

34. The Venezuelan delegation had proposed that, in the third line of the Spanish text of the draft article, the words "la aplicacion de" should be added after "por". That was purely drafting amendment and did not affect the substance of the proposal.

35. His delegation wished to reiterate its support for document CDDH/IV/201, now sponsored by fourteen countries, which related to the prohibition of the use of certain conventional weapons. In particular, it considered that anti-personnel fragmentation weapons, such as cluster warheads and bomblets that acted through the ejection of a great number of small-calibre fragments or pellets, had indiscriminate effects and caused unnecessary pain and suffering. His delegation also wished to call again for a prohibition of the use of fléchettes, the victims of which suffered multiple injuries which caused intense pain. In addition, the wounds were aggravated when fléchettes bent or broke upon high-velocity impact.

36. Mr. TOOGOOD (Canada) said that the results of the initial study of the proposed draft article (CDDH/IV/210) carried out by his delegation were most favourable and the text was a distinct improvement over that in Lugano document COLU/212 (see Lugano report, p. 188). His authorities would consider the matter in a most positive spirit during the period before the fourth session of the Diplomatic Conference.

37. He agreed that the Venezuelan amendment did not affect the substance of the proposal; but from the linguistic point of view, he would prefer the English text to remain as it stood.

RESIGNATION OF THE RAPPORTEUR

38. The CHAIRMAN announced that Mr. Kalshoven (Netherlands) was obliged by his academic commitments to surrender the office of Rapporteur which he had filled since 1971. All members of the Ad Hoc Committee, the General Committee and the Diplomatic Conference would undoubtedly wish to convey their appreciation to Mr. Kalshoven for the impartial and skilful way in which he had

performed a difficult task, and to wish him every success for the future. Mr. Kalshoven would be replaced as Rapporteur by Mr. R. J. Akkerman of the Netherlands delegation.

39. Mr. KALSHOVEN (Netherlands) Rapporteur, thanked the Chairman and Ad Hoc Committee for the assistance he had received in carrying out his task.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE THIRTY-SECOND MEETING

held on Tuesday, 1 June 1976, at 3.15 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE, AND OF PROPOSALS (continued)

(c) Small-calibre projectiles (CDDH/IV/214) (concluded)

1. Mr. VALDEVIT (Italy) commented on the proposal to ban the use of small-calibre projectiles put forward in the working paper submitted by the Swedish delegation (CDDH/IV/214). The bullets covered by the proposed ban would be first, those which deformed or broke easily in the human body, or secondly, tumbled rapidly in the human body, or thirdly, had a velocity exceeding 1,500 m/sec. Such a ban would make it possible to draft a rule very similar to and supplementing the one contained in The Hague Declaration of 1899 Concerning the Prohibition of Using Bullets which Expand or Flatten in the Human Body, in which States agreed "to abstain from the use of bullets which expand or flatten easily in the human body".
2. He shared the doubts voiced by other delegations whether the effects of bullet deformation and breaking were very similar to, or even partly identical with, those of bullet expansion and flattening. Some further clarification of the present state of the art might be helpful. The Swedish delegation appeared to be suggesting that a ban on the use of the aforementioned small-calibre projectiles should be based more on humanitarian considerations than on the technical appraisal that such projectiles were more injurious than those in most common current use. His delegation was convinced that States would more readily accept a proposal to ban small-calibre projectiles based on technical evidence.
3. To explain what he had in mind, he considered in detail the suggested criterion of velocity, namely over 1,500 m/sec. It should be realized that there was no certainty that small-calibre projectiles with a muzzle velocity of 1,500 m/sec could be made in the near future, nor that such a velocity could be attained by the 4.32 mm and 4.6 mm projectiles now at the experimental stage in some countries.

4. In any event, the Lugano Conference had concluded that while a projectile's muzzle velocity was an important feature in determining its kinetic energy, it could not be considered the decisive wounding factor. Consequently, the experts at Lugano had taken the view that bullets of 5.56 mm calibre were not likely to cause injuries disproportionate to the expected military advantage. He recalled the shooting demonstration carried out by the Swiss Army on 12 February 1976 at Izone, near Lugano, which had proved the existence of a close link between the striking velocity and the cavity volume produced with bullets of 5.56 mm and 7.62 mm calibre when fired at a range of 30 metres into blocks of soap. When the same projectiles were shot at a range of 100 metres from the block of soap, however, it had not been possible to establish any such definite relationship.

5. Where real close-combat situations were concerned, it could be assumed that the distance from weapon to target was 300 metres. It was known that the velocity of a 7.62 mm bullet fired at a range of 300 metres was 600 m/sec when it hit the target, whereas the muzzle velocity of that same projectile was 870 m/sec. A 5.56 mm bullet, however, fired at a range of 300 metres, would hit its target at 490 m/sec, as against a muzzle velocity of 980 m/sec. The kinetic energy lost in the trajectory in the case of a 5.56 mm bullet was thus relatively greater than in that of a 7.76 mm bullet.

6. On the basis of the foregoing data, it could be argued that if a projectile was fired at a muzzle velocity of 1,500 m/sec, its striking velocity would in all probability be inferior to that of a 5.56 mm bullet.

7. While his delegation was in favour of any proposal aimed at strengthening humanitarian international law, it thought that more studies should be carried out in order to dispel any doubts which States might have as to the humanitarian character of any given proposal.

(d) Blast and fragmentation weapons (CDDH/IV/201 and Corr.2 and Add.1 to 8, CDDH/IV/210, CDDH/IV/215, CDDH/IV/218) (concluded)

8. Mr. JANZON (Sweden), referring to fuel-air explosives, said that there was so far no evidence of their extensive anti-personnel use and that the fact that they were still in a fairly early stage of development warranted special scrutiny from a humanitarian point of view.

9. A blast of pure high-explosive charge in the open air had a surprisingly short radius of risk to a human being: it was possible to remain standing at a distance of 35 metres from a 125 kg charge of TNT without much risk of being injured, provided one was not hit by stones hurled by the detonation. The pure blast effect of such a 125 kg charge could be compared with that of a 450 kg (or 1,000 lb) general-purpose bomb. From a military point of view, it was far more effective to replace about three-quarters of the explosive charge by a metal casing, which, bursting on detonation, scattered a great many fragments. Such fragments might be dangerous at much greater range than the blast. Munitions relying mainly on blast effects had only been used in the past when they could be made to explode in a confined space, such as inside a ship or aircraft.

10. For all those reasons, pure blast injuries had so far been quite uncommon, often leaving no external trace on a human being. One of the less serious effects was eardrum rupture. Much more serious were injuries to the lungs and intestines. Although individual variations could occur, it was possible to estimate the probability of survival on the basis of the over-pressure and duration of the blast wave sustained. In that connexion he quoted the figures given by his delegation at the Lucerne Conference (see Lucerne report, para. 188). Death from blast injuries was probably one of the most terrible deaths, surpassed only by death from burn wounds.

11. He recalled the properties of fuel-air explosive charges, pointing out that, for persons exposed to a blast wave of 1 MPa amplitude lasting 10 milliseconds, the probability of being killed within the cloud was close to 100 per cent. Furthermore, because air oxygen was used as the oxidant, the far-field blast effect would be approximately that of a TNT charge weighing three to four times as much, or of a general-purpose bomb weighing 10 to 15 times as much. Because of their effectiveness, fuel-air explosives were well suited for such tasks as the release of pressure-sensitive mines, or the destruction of buildings of unsound construction. He quoted the comments on that subject submitted by his delegation at the Lugano Conference (see report of the General Working Group, para. 33; Lugano report, p. 110). If fuel-air explosive charges were used in certain conditions, the killed-to-wounded ratio would move towards an upper limit of 100 per cent.

12. According to a statement made by Admiral Gaddis in connexion with the United States Department of the Navy appropriations for the fiscal year 1975, the use of fuel-air explosive cluster-bomb units for anti-personnel purposes had already been contemplated.

Already in 1973, official United States sources had confirmed that the Union of Soviet Socialist Republics, too, was in the process of developing such devices. They had also been tested in Sweden, and it was clear that their usefulness for purposes such as the clearance of minefields was considerable.

13. Because of the grossly inhumane effects of such weapons when used against troops, the Swiss delegation and the Swedish delegation had proposed the adoption of a Protocol (CDDH/IV/215), whose operative part would read as follows: "The States party to this Protocol have agreed to abstain from the use of munitions which rely for their effects on shock waves caused by the detonation of a cloud created by a substance spread in the air, except when the aim is exclusively to destroy material objects, such as the clearance of minefields." The Protocol would be in line with the 1868 Declaration of St. Petersburg to the Effect of Prohibiting the Use of certain Projectiles in Wartime. In conclusion, he urged that rules be adopted before such weapons became a "military necessity".

14. Mr. ANDERSON (United States of America), replying to remarks made at the thirty-first meeting (CDDH/IV/SR.31), reminded the representative of Sweden that at Lucerne the United States delegation had stated that probably all military ammunition currently in use would break up on occasion, depending on the target, the range and other factors. It had also shown slides of the radiography of wounds which delineated the break-up of bullets fired from the M-16, the AK-47, the M-14 and also some low-velocity weapons.

15. His delegation approved the draft article on non-detectable fragments, endorsed by six countries (CDDH/IV/210).

16. With regard to fléchettes, the United States experts had shown that they broke up less than any comparable projectiles when striking their target, that they were quite stable and that they were less likely to tumble.

17. The question of anti-personnel fragmentation weapons had been discussed at length at Lucerne and Lugano. It was difficult to determine whether or not multiple, small-fragment injuries were more painful than a single wound of greater magnitude, but the available data indicated that the lethality ratio in the first case was lower than in the second.

18. The subject of fuel-air explosives was one of the more difficult ones, primarily for the reason that existing data on those weapons were incomplete. Research conducted by United States experts had shown that such weapons could inflict injuries, including ear-drum

rupture and pulmonary damage, on persons who happened to be near the immediate blast area, and that they had a mortality ratio approximating closely to that recorded in the case of standard high explosives. Wounds caused by fuel-air explosives, however, needed much less medical attention and were likely to heal more quickly than wounds caused by fragmentation weapons, which often required extensive surgery that was time-consuming and dangerous.

19. Admittedly, fuel-air explosives were likely to kill unprotected personnel, but that was also true of standard artillery rounds and of most other weapons. In fact, in the view of United States experts, the highest killed to wounded ratio was caused by machine-gun fire.

20. With regard to the pain suffered, death on the battlefield could often be painful no matter how it was caused, and death caused by fuel-air explosives, which resulted primarily from pulmonary rupture, followed by haemorrhage, was at least speedy, unlike the death frequently caused by fragmentation weapons.

21. All those facts provided evidence that fuel-air weapons did not make death inevitable and did not cause unnecessary suffering.

22. Mr. ØSTERN (Norway) said that his country was particularly concerned about the indiscriminate effects of certain pre-fragmented weapons, namely the anti-personnel cluster-bomb units, in densely populated areas. There would seem to be two alternative courses of action.

23. The first would be a total prohibition on the use of such weapons, as advocated in document CDDH/IV/201 and Corr.2 and Add.1 to 8. Many delegations had, however, expressed the view that that would be going too far, since the prohibition would also apply in combat situations where their use would not endanger the civilian population.

24. The other course would be to try to assess specific weapons, like anti-personnel cluster-bomb units, in the light of the criteria laid down in article 46, paragraph 3, of draft Protocol I, whose text had already been adopted by Committee III. Only on the basis of detailed analysis would it be reasonable to come to a final conclusion. Nevertheless, it would seem that on certain specific points the Committee should already be in a position to make up its mind, for instance with regard to the use of weapons the primary effect of which was to injure by fragments which in the human body escaped detection by X-ray. His delegation was among the sponsors of document CDDH/IV/210, calling for the total prohibition of the use of such weapons. He hoped that the Committee would be able to arrive at a consensus.

25. At Lugano, his delegation had put forward a working paper (COLU/218) (see Lugano report, p. 191) concerning especially injurious pre-fragmented elements. In view of the reservations expressed by many other delegations about the implications of the text, his delegation had decided not to present any proposal on the question until it had worked out a new wording which would be acceptable to all.

26. So far as blast weapons were concerned, even though many problems remained to be solved, his delegation welcomed the working paper on fuel-air explosives (CDDH/IV/215) submitted by Sweden and Switzerland and considered that it constituted a concrete basis for discussion.

(a) Napalm and other incendiary weapons (CDDH/IV/206 and Add.1, CDDH/IV/207, CDDH/IV/208) (concluded)*

27. Mr. FRÖWIS (Federal Republic of Germany) said that his delegation had followed the debate on incendiary weapons with great interest and had noted that the need to approach the question not only from a humanitarian, but also from a military, point of view was generally accepted. The sole remaining question was how to strike a balance between humanitarian and security needs.

28. The working paper submitted by the Netherlands (CDDH/IV/206 and Add.1) and the draft Protocol relative to the prohibition of the use of incendiary weapons submitted by Norway (CDDH/IV/207) were designed to restrict the use of incendiary weapons in order to protect the civilian population. The Norwegian proposal started from the assumption that the use of incendiary weapons should be generally prohibited and that exceptions could be made only under certain conditions. The Netherlands proposal, although not speaking of a general prohibition of incendiary weapons, would ban their use against civilians and even against military objectives in certain circumstances. The Swedish delegation, in the working paper which it had submitted (CDDH/IV/208), took a different view. It favoured a general ban on certain categories of incendiaries, namely those weapons which produced flames by dispersing a chemical agent on the target.

* Resumed from the twenty-eighth meeting.

29. His delegation saw some merit in the Swedish argument about the classification into anti-personnel and anti-matériel weapons. That classification did indeed appear to be unrealistic. His delegation shared the Swedish view that field commanders should be given rules easy to follow and to apply.

30. He did not think, however, that the time had come to renounce flame weapons. Security considerations prevented not only his country, but many others, from doing so.

31. He had taken due note of two remarks made by the Swedish representative at the twenty-seventh meeting (CDDH/IV/SR.27), who had acknowledged that the military value of various incendiary weapons could not be denied and that they could be targeted in a discriminate way, and had said that he would be prepared to accept a phasing-out period of several years in an agreement prohibiting the use of certain incendiary weapons.

32. Those were all valuable elements, which he thought might constitute a useful basis for discussion. Although his country had to look for solutions which were sound from a security point of view, it did not wish to minimise the seriousness of wounds caused by napalm and other flame weapons. Although he agreed with the United Kingdom representative, who had pointed out that with the elimination of napalm the number of burn casualties would be reduced by only a fairly small percentage, he favoured the widespread endeavours to prohibit the sources of those grave injuries.

33. After several weeks of deliberation, it seemed that no comprehensive proposals were likely to gain general approval. It was accordingly essential that the discussion should be pursued in a spirit of compromise and conciliation. The Netherlands proposal (CDDH/IV/206 and Add.1) could be used as a basis for discussion, although the wording of paragraph 2 (c) presented some difficulties, since there was still no generally accepted definition of the expression "combat area".

34. With regard to the Norwegian working paper (CDDH/IV/207), while appreciating the spirit of compromise behind it, he shared the doubts expressed by the Italian delegation.

35. Lastly, he stated that despite the slow rate of progress, his delegation was much encouraged by the results of the Lugano Conference.

ORGANIZATION OF WORK

36. The CHAIRMAN drew the attention of members of the Committee to document CDDH/IV/Inf.232, concerning the Secretariat's proposal to include certain proposals in a comparative table. He asked members to inform the Secretariat by 6 p.m. on Wednesday, 2 June, of any changes they might wish to propose.

OTHER QUESTIONS

Weapons that may cause unnecessary suffering or have indiscriminate effects

37. Mr. ANEMAET (Netherlands) said that he had some suggestions to make in connexion with the debate on weapons that may cause unnecessary suffering or have indiscriminate effects.

38. Several countries, such as Canada, had described the procedure they followed domestically in order to give due weight to humanitarian considerations when deciding on the acquisition or development of new weapons or weapon systems. The Ministry of Defence in his own country followed a similar procedure. For humanitarian reasons, it seemed necessary that all countries should do the same, basing their decisions on the known or probable effects of the weapons in question. It would accordingly be important that international conferences should be held at regular intervals, or whenever it seemed necessary, to draw up common rules on the use of certain new conventional weapons.

39. His Government therefore wished to make a suggestion designed to help both the adoption by all countries of domestic procedures that would allow for the humanitarian aspects, and the organization of conferences on the subject. It would be a good idea to set up some sort of independent institute to collect information on the possible and actual effects of certain conventional weapons. The institute could organize conferences at regular intervals, or whenever a certain number of countries thought it desirable, in order to decide upon common rules. There were various possibilities with regard to the institute's status and structure. It could be connected with the International Committee of the Red Cross, the World Health Organization or the United Nations Secretariat. It could also be an independent United Nations institute and have its headquarters in a neutral State. His Government did not think it necessary yet to state a preference for any one of those possibilities. It was merely putting forward the suggestion so that it could be looked into in the coming year, in the belief that it would be desirable to have an objective evaluation of the effects of certain conventional weapons.

The meeting rose at 4.5 p.m.

SUMMARY RECORD OF THE THIRTY-THIRD MEETING

held on Wednesday, 2 June 1976, at 3.15 p.m.

Chairman: Mr. GARCES (Colombia)

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE, AND OF PROPOSALS (concluded)

(e) Potential weapons developments

1. Mr. MATHESON (United States of America) said that at the first and second sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons, held respectively at Lucerne in 1974 and in Lugano in 1976, the discussions on the possible future application of certain types of advanced technology for weapons purposes had been of a very theoretical nature. He did not think that enough was known about such possible application to make consideration of prohibitions or restrictions worth while, but it might be desirable to include a provision in any agreement on conventional weapons for the review of future weapons developments from a humanitarian point of view. His delegation did not consider that new international bodies or permanent international machinery should be created for that purpose but it could support a requirement that each party should conduct a national review of any new weapons systems which it proposed to develop or acquire, to ensure their conformity with international humanitarian obligations. The United States had already instituted such a procedure.
2. His delegation could also support a procedure for the joint consideration, by the parties to an agreement, of proposals for modifications of existing restrictions or for new restrictions on weapons. Those questions could be discussed in more detail at the fourth session of the Diplomatic Conference. In the meantime, his delegation would carefully study the relevant proposals made at Lugano and those discussed by the Ad Hoc Committee.
3. Mr. JANZON (Sweden) said that at the thirty-second meeting (CDDH/IV/SR.32) the United States representative had indicated that fuel-air explosives, in circumstances which he had not described, were likely to cause a mortality rate of about 20 per cent and for normal drop patterns the mortality rate would possibly be much higher. He hoped that the United States representative would elaborate on the information which he had given, since the estimates

of the experts of their two countries differed so greatly. That would give the Committee an opportunity to judge which figures were the most realistic; he feared the Swedish figures were.

4. At the two preceding sessions of the Diplomatic Conference and at the two sessions of the Conference of Government Experts, his delegation had referred to the possible nature and effects of some potential weapons developments and new methods of combat. Such developments included laser weapons, microwave weapons, infrasound weapons, light flash weapons, geophysical warfare, environmental warfare and the "automated battlefield" concept, as also a more gradual evolution of the present means of combat.

5. Those developments could result in the production of increasingly effective and inhumane weapons. Even if they were produced only as deterrents, they might be put to use if their effects differed only marginally from systems already in use or if a party possessing them faced a desperate situation. The cost of such developments was enormous and in the long run they might not prove advantageous to any of the potential adversaries because it might be possible to find effective counter-measures. It was difficult to deal with such developments by prohibitions or restrictive rules. Moreover, disarmament negotiations were concerned primarily with nuclear weapons and little attention was paid to conventional weapons.

6. It might be thought that the mere suspicion that a new or improved type of weapon might cause greater suffering or have more indiscriminate effects than its predecessor would constitute a basis for serious negotiations on the prohibition of such weapons on humanitarian grounds. It might be argued, for instance, that because laser weapons, if used against personnel, were likely to cause permanent damage to, or a complete loss of eyesight, they should be considered unnecessarily cruel. His delegation was inclined to that opinion and accordingly urged the great Powers to desist from further work in that direction and to agree on rules prohibiting the use of such weapons. If that were not possible, because some countries might consider that laser weapons would prove to be of considerable military value, for instance, in combating attacking missiles, it might still prove possible to negotiate an agreement prohibiting their use against any target other than a material target. It was possible that laser weapons would never be used against personnel because of their relative complexity and high cost, but there could be no certainty of that. It would therefore be worth while to prohibit such use.

7. There were obviously many weapons developments about which the Ad Hoc Committee knew nothing. In 1868 the Parties to the Declaration of St. Petersburg to the Effect of Prohibiting the Use of certain Projectiles in Wartime had agreed to maintain the principles which they had established by reaching an understanding whenever developments in the armament of troops made it necessary, but only on a few occasions had they faced the question of possible bans or restrictions for humanitarian reasons. He was glad therefore, that there was now considerable support for an effective and practical review mechanism.

8. His delegation was of the opinion that bans on, or restriction of the use of various conventional weapons could be supplemented by formal clauses on review, although they might not be necessary if provision was made for a more general review mechanism. It saw merit in the idea advanced at Lugano that a meeting should be convened periodically, if a specified number of States approved of it, or whenever a relatively large number of States requested it. Such meetings should be authorized to discuss both modifications in existing rules and entirely new rules, at either government or expert level as circumstances required.

9. His delegation thought that the idea of establishing an independent institute for data collection merited further consideration.

10. Mr. GONZALEZ-RUBIO (Mexico) said that he wished to give his delegation's views on what should be done in the future in the field of humanitarian law with respect to the prohibition or restriction of the use of certain conventional weapons that might cause unnecessary suffering or have indiscriminate effects or that were by their nature treacherous.

11. The Ad Hoc Committee had so far concentrated on considering weapons which were covered by proposals for bans or restrictions on use, on determining on which weapons some kind of international regulation could be drawn up and on studying the possibility of agreement on prohibitions or restrictions on use.

12. As had been agreed in 1974, the Ad Hoc Committee's terms of reference had no specific limits. The Committee should therefore concern itself with all aspects of the subject.

13. At the current session some delegations had made a little more progress with regard to certain conventional weapons but it was negligible in relation to what had still to be achieved. The progress which had been made, however, showed that it was not only desirable but possible to agree on proposals for prohibitions or restrictions and that appropriate machinery should be established to enable the studies on the subject to continue.

14. At the second session of the Conference of Government Experts, a number of representatives had spoken of the need to establish an international review mechanism to ensure the continuing development of international humanitarian law. At that time the Austrian experts had submitted an informal proposal on review mechanism (see Lugano report, p. 146), which provided for the convening of a review conference at a specified period after the entry into force of the Convention or Protocol, provided that a specified proportion of the Contracting States approved.

15. On that occasion the Mexican experts had proposed that review conferences should be automatically convened at regular intervals but that other review conferences could be convened if a specified number of States so requested.

16. At that same session the Mexican experts had submitted a working paper (COLU/210 - see Lugano report, p. 183) recommending that the Conference of Government Experts should be given permanent status. The Mexican delegation had participated actively in that Conference in the conviction that it was essential to draw up rules which would reaffirm and develop international humanitarian law and ensure observance of the human rights applicable in armed conflicts.

17. The prohibition or restriction of the use of certain conventional weapons already had a broad legal basis and there was sufficient technical data available to enable an agreement to be reached on the legal position with regard to the use of conventional weapons, as was clear from the preamble to the Declaration of St. Petersburg of 1868, articles 22 and 23 (e) of the Laws and Customs of War on Land set out in the annex to the Hague Conventions of 1899 and 1907; the Geneva Protocol of 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare; article 48 of part four of the British draft Disarmament Agreement of 1933; resolution XXIII of the International Conference on Human Rights held in 1968; resolution XIV of the XXIIIrd International Conference of the Red Cross; articles 33, 34 and 35 of the draft additional Protocol to the Geneva Conventions of 1949 relating to the protection of the victims of international armed conflicts, approved by consensus in Committee I of the

Diplomatic Conference on International Humanitarian Law; the Conference of Government Experts held at Lucerne in 1974; the second session of that Conference held at Lugano in 1976; resolutions 2444 (XXIII), 2597 (XXIV), 2674 and 2675 (XXV), 2852 (XXVI), 2932A and 3032 (XXVII), 3076 and 3102 (XXVIII), 3255 (XXIX) and 3464 (XXX) of the General Assembly of the United Nations; the 1973 ICRC report on Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects and the survey prepared by the Secretariat of the United Nations entitled "Existing rules of international law concerning the prohibition or restriction of use of specific weapons" (document A/9215).

18. It was therefore desirable that the present Conference should reach agreement on the prohibition or restriction of the use of certain conventional weapons and adopt one or more Protocols on the subject. Such instruments should provide for a review mechanism which would enable a continuing study to be made of conventional weapons which caused unnecessary suffering or had indiscriminate effects. A mechanism could be provided along the lines proposed by the Austrian or the Mexican experts at the second session of the Conference of Government Experts, or a formula could be found which incorporated both concepts.

19. Should it prove impossible to draw up such a Protocol, the most suitable formula might perhaps be to include in article 86 of draft additional Protocol I a provision for the ICRC to organize at regular intervals and on a permanent basis, or in the intervening period at the request of a specified number of the High Contracting Parties, a meeting open to all the Parties to the Conventions and the Protocol to review the provisions of articles 33, 34 and 35 of draft Protocol I and the possible prohibition or restriction of weapons that caused unnecessary suffering or had indiscriminate effects or were by their nature treacherous.

20. After holding meetings of that type the depositary of the Conventions would be able, at the request of a specified number of High Contracting Parties or the ICRC, to convene a Diplomatic Conference with a view to the adoption of amendments or the reaffirmation and development of the articles in question through the adoption of instruments which would prohibit or restrict the use of the conventional weapons under consideration.

21. That was how the Mexican delegation envisaged a dynamic, continually developing humanitarian law. It intended to go on working and stressing the need for a suitable mechanism to put a brake on the destructive ingenuity of mankind. It was essential that the prohibition or restriction of the use of conventional weapons which caused unnecessary suffering or had indiscriminate effects should be embodied in international humanitarian law, which itself could not develop without such prohibition or restriction.

22. Mr. KUSSBACH (Austria) said that the problem of a suitable review mechanism was one of great importance. His delegation had made an informal proposal at the Lugano Conference but had thought it premature to submit it formally at the current session of the Diplomatic Conference. The original intention had been to suggest that provision for a review mechanism should be inserted in the instrument or instruments prohibiting or restricting certain categories of conventional weapons, but as the Conference had not yet begun work on the final text of a Protocol to that effect, any formal discussion of a text concerning a review mechanism would be premature. His delegation would like to study in depth the suggestions made by the representatives of the Netherlands, Sweden and Mexico, and was ready to collaborate with them in the preparation of a revised text when the time came. If, as he hoped, texts on the prohibition or restriction of certain categories of weapons were submitted to the fourth session of the Diplomatic Conference, the time would then be ripe for the formal submission of a text on a review mechanism.

23. Mr. VAN LUU (Democratic Republic of Viet-Nam), speaking on behalf of his own Government and that of the Republic of South Viet-Nam, said that they felt it their duty to state their views on the question of the prohibition or restriction of certain types of conventional weapons, the more so since Viet-Nam had been the victim of a neo-colonial war of aggression, waged with the most modern weapons. The two Governments had always supported the struggle for disarmament but, since that was a long-term task, they had always stressed the need for nations to be on guard against the aggressive forces of imperialism, the only possible source of war at the present time.

24. In their view, it would be an unthinkable anachronism for the four Geneva Conventions of 1949 not to cover war as waged under modern conditions. The first step was for humanitarian law to be embodied in modern positive international law, which condemned aggression as a crime and accepted only wars of self-defence or for the right of self-determination. If that were so, all the military techniques of the aggressor and his use of every type of weapon, old or new, would be prohibited and punished. That had been the ruling of the Nürnberg Military Tribunal, and that would have solved the problems considered at the Lucerne and Lugano Conferences and by the Ad Hoc Committee, since it would have struck at the root causes of war. That was the essential problem on which attention should be focused.

25. Once wars of aggression had been condemned, the problem of prohibiting or restricting certain conventional weapons was largely solved by the principles of the Declaration of St. Petersburg and The Hague Conventions and the Regulations annexed to the Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, which prohibited the use of weapons that might cause unnecessary suffering or that had indiscriminate effects. Those principles had been reaffirmed and developed in the new articles 33 and 34 adopted by consensus in Committee III at the second session. No purpose would be served by suggesting the prohibition or restriction of specific categories of weapons, since such suggestions amounted only to the classical criteria of the Declaration of St. Petersburg and The Hague Conventions.

26. In addition, the prohibition or restriction of the use of specific categories of weapons would have a number of disadvantages. Firstly, in neo-colonial wars of aggression, which were the most likely to occur in the future, the aggressor did not need to fear reprisals, so that it would be illusory to think that he would respect any such prohibition or restriction, in practice, therefore, prohibition or restriction would tie the hands of the defending Party, which was always the weaker and less well-armed, as well as basically inclined to respect the law. Secondly, the criteria and technical conditions for restriction or prohibition were often impossible to verify on the battlefield; even the experts were unable to agree on that point, as could be seen from the reports on the Lucerne and Lugano Conferences. It was impossible to believe that the aggressor would meekly admit to having broken the rules. The result would be that, in the absence of any tangible proof, the use of those weapons by the aggressor would in fact be legalized. The classical criteria of unnecessary suffering and indiscriminate effects were more easily understood by the public, and therefore more effective. The international explosion of indignation denouncing the use of criminal weapons by the aggressor in the Viet-Nam war had been based on those criteria. Thirdly, to prohibit or restrict certain categories of weapons would give the impression that they alone were dangerous. In fact, by the large-scale use of permissible weapons, or even of industrial equipment such as the bulldozers used in Viet-Nam, the aggressor could produce effects that were just as dangerous and cruel, if not more so.

27. The problem was one of great complexity but the two Governments hoped that the considerations they had put forward might make some small contribution toward its solution. No good work accomplished by the Committee would ever be lost to the cause of humanity.

OTHER QUESTIONS (concluded)

Statement by the representative of Denmark

28. Mr. SERUP (Denmark) said he wished to make some general remarks on past, present and future work on the prohibition or limitation of the use of certain conventional weapons.

29. Many delegations, including his own, had expressed concern at the meagre results of the Conference of Government Experts at Lugano, and some had expressed similar concern regarding the Ad Hoc Committee's work at the current session. Despite a weak and confusing start, however, the Committee now had before it a number of interesting practical proposals on which several delegations had made statements of position. He felt there had in fact been some progress, inasmuch as the ideas and suggestions presented at Lugano had been clarified and had begun to take shape. A better understanding of the problems had been reached, and a start could be made with considering possible directions for future work. The Committee was only at the beginning of a long and winding road, but it was dealing with a subject that had been left aside since before the First World War and had now become much bigger and more widely ramified.

30. The time had come to concentrate on the specific proposals before the Ad Hoc Committee and how to deal with them. His delegation felt that preference should be given to proposals which were humanitarian, realistic internationally and applicable in practice. The least controversial ones should be considered first. They might not have the widest scope, but they could be put through a stage of step-by-step development during which their humanitarian consequences would be continuously watched.

31. The proposals his delegation preferred were those of the Netherlands, on limiting the use of incendiary weapons (CDDH/IV/206 and Add.1 and 2), of Switzerland and others, on non-detectable fragments (CDDH/IV/210), and of the United Kingdom, on regulating the use of landmines and other devices (CDDH/IV/213 and Add.1). All three met the qualifications he had indicated, and his delegation had decided to join the sponsors. He hoped those proposals would be carefully studied in the near future in the step-by-step way he had suggested.

32. Other proposals before the Ad Hoc Committee which did not fully meet his qualifications might nevertheless be very helpful in the detailed consideration of the three he had mentioned.

33. He welcomed the new Swedish proposal on small-calibre weapons (CDDH/IV/214), with its pragmatic approach. He also welcomed the Swedish delegation's arrangements for another round of testing in Göteborg, which among others to come he hoped would help to clarify some of the difficult problems concerning the wounding capacity of small-calibre projectiles.

34. His delegation attached great importance to the Ad Hoc Committee's future task and the right methods of work. It was not satisfied that present methods were ideal and would like to hear the views of other delegations on possible new procedures.

Statement by the representative of the International Committee of the Red Cross

35. Mr. CAYLA (International Committee of the Red Cross) said he first wished to thank the States and national organizations which had helped to finance the Lugano Conference and the printing of its voluminous report.

36. The 750,000 Swiss francs budgeted for had been reduced to 600,000 by the following savings: there had been no need to re-issue the report of the 1974 session at Lucerne, existing supplies having been sufficient both for the Lugano Conference and for the current Conference; and it had not been necessary to hold a special meeting after the Lugano Conference to approve the report. The Lugano Conference had still cost about 200,000 francs more than the Lucerne Conference, because - as a result of decisions by the Ad Hoc Committee at the second session - it had lasted longer, it had required two teams for simultaneous interpretation, and it had also needed précis-writers.

37. Contributions promised or paid now totalled 636,000 francs. The following contributions had since been announced and should be added to the list on page 231 of the report of the Lugano Conference: Argentina, 10,000 francs; Saudi Arabia, 70,000 francs; and Italy, 17,570 francs. There should now be a credit balance of 35,000 francs.

38. As the President of the Lugano Conference had said, the ICRC was ready to contribute to the continuation of the work. He was confident that, with the careful management that had produced credit balances on both the Lucerne and Lugano Conferences, it would be possible to continue the work, even though it was not yet known what form it would take or what the cost would be.

39. Throughout the current session, and even at earlier meetings, many representatives had been surprised at the ICRC's silence. The time had come to explain the International Committee's position on the weapons question.

40. The ICRC had never been indifferent to suffering. It earnestly hoped that States would agree to give up the use of the cruellest weapons, and indeed of all conventional weapons whose effects went far beyond what was needed to put a man out of action. That was why the ICRC had agreed to organize the Lucerne and Lugano Conferences and would continue to work for the prohibition or restriction of the use of certain conventional weapons. It was a long road, but progress had already been made, and it now seemed certain that there would be one or more legal instruments on the use of conventional weapons.

41. The ICRC had not felt called upon to make proposals itself, and any it might have made must necessarily have been along the lines of a general prohibition of most of the weapons the Committee was dealing with. That was obviously the best humanitarian solution. It was Governments, not the ICRC, that were concerned with considerations such as national defence and the risk that replacement weapons might have worse effects than the weapons it was sought to prohibit. What the ICRC asked of Governments was that they should never lose sight of the essential humanitarian aspect of the problem and that they should not justify the use of a weapon merely on grounds of its military value. Whatever provisions were proposed, the aim should be to produce rules that were as clear and simple as possible.

42. As for the future, the current session of the Diplomatic Conference was probably too close to the Lugano Conference for delegations to be able to take a stand on definite proposals; but proposals now existed, and Governments seemed to have enough information on most subjects to be able to reach decisions. If any further information was necessary, the Göteborg meeting in August would provide it. That meeting, and any other preparatory work there might be, was essential if the Diplomatic Conference was to achieve useful results on weapons at its final session.

43. It mattered little, in the final analysis, whether the task was completed at the fourth session or elsewhere, for example at a conference solely on weapons. The main thing was that present and future work should lead as soon as possible to the decisions which the conscience of mankind required to be taken on the use of certain weapons.

Statement by the representative of Finland

44. Mr. KELTANEN (Finland) said that, although the Ad Hoc Committee had not been able to achieve final results at the current session, it had held some useful discussions on the proposals made, and on the conclusions to be drawn from work of the Lugano Conference. A more concrete and forward-looking approach was now possible.

45. While efforts to secure the prohibition or restriction of the use of certain inhuman or indiscriminate weapons were generally supported, it was recognized that the problem was not only humanitarian, but involved considerations of national security. Nevertheless, the discussions in the Committee had revealed a political will on the part of States to continue the search for solutions to the problem.

46. As to future work, there seemed to be general agreement that a third Conference of Government Experts would be neither necessary nor useful. The problems could be discussed at the thirty-first session of the United Nations General Assembly and, of course, at the fourth session of the Diplomatic Conference. He hoped there would also be national and inter-governmental discussions and studies, with special emphasis on incendiary weapons, mines and delayed-action weapons. At its fourth session, the Ad Hoc Committee would thus have the benefit of some useful technical data and the necessary political conclusions. He welcomed the Swedish arrangements for holding a symposium on small-calibre weapons in Göteborg in August.

47. The legal rules that the Committee was seeking should be included in a separate instrument, not in the two additional Protocols. That would speed up work on the additional Protocols and help in the search for agreement on the weapons issue.

48. His delegation attached great importance to the Committee's work. It was confident that the consultations to come would improve mutual understanding and help to resolve differences of view. Before the fourth session opened, it should be possible to reach the necessary conclusions regarding substance and procedure. On incendiary weapons, mines and booby-traps at least, concrete results might be achieved at that session. Solutions should be sought which would provide a means of reaching general agreement on cruel or indiscriminate weapons in the near future. His Government was prepared to take part in all constructive efforts to achieve that end.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

held on Thursday, 3 June 1976, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

STATEMENTS ON PROGRESS OF WORK

1. Mr. MARTIN HERRERO (Spain) said that he wished to sum up his delegation's impressions in respect of the progress achieved by the Ad Hoc Committee at the current session. A certain degree of disappointment could be detected in some of the statements made about the Committee's work and the results it might have been expected to achieve. It should be borne in mind, however, that the more important and urgent problems were, the more patience and perseverance were required in order to solve them. It was encouraging to note that almost all the speakers who had taken part in the instructive discussion held that morning in Committee I on the limitation of the use of certain conventional weapons had stated that they did not wish the Ad Hoc Committee's work to be interrupted.
2. The Ad Hoc Committee had achieved progress that was appreciable even though it might not be spectacular. Everybody had known at the outset that the time had not yet come to convene further large meetings or to conclude solemn diplomatic agreements. While his delegation might not be entirely in agreement with all the proposals which had been submitted to the Ad Hoc Committee, it considered that there were useful elements in all of them. It was perhaps regrettable that a working group had not been set up to try to identify areas of agreement, as had been done in other Committees of the Conference. The Secretariat had announced that it would draw up a synoptic table of the proposals made 1/; that had not yet been done, but his delegation hoped that at the fourth session of the Conference the Ad Hoc Committee would be able to put forward more ideas and reach conclusions that would ultimately enable agreement to be reached on an appropriate international instrument.
3. Among the practical suggestions made at the current session was that by the Netherlands delegation regarding the establishment of an institute to collect information on the effects of certain conventional weapons. The collaboration of those with experience in that field - in particular the military Powers - would be a prerequisite for the success of such a venture. His delegation also welcomed the symposium which it was proposed to hold at Göteborg on small-calibre weapons and which he hoped could be attended by a Spanish expert.

1/ Subsequently circulated as document CDDH/IV/218.

4. Mr. de GRAFFENRIED (Switzerland) said that his delegation noted with satisfaction that at the current session, unlike the two previous sessions, there was an adequate number of working documents, draft articles and draft protocols relating to weapons issues and that there had also been a welcome increase in the number of countries sponsoring documents - an indication that many Governments were continuing to seek formulae conducive to progress in the Committee's deliberations. Some delegations had already shown a spirit of compromise by amending the original text of their proposals in order to arrive at a new text which provided for an even better balance between humanitarian and military considerations or which took greater account of the views which had been expressed. It was in that spirit of compromise that his delegation had contributed to the increase in the number of proposals.

5. Such an enlargement of the Ad Hoc Committee's working base would have been most valuable if the introduction of the texts concerned had given rise to discussions, led delegations to adopt positions and produced tangible results reflected in the drafting of minimal texts incorporating those items in respect of which a common denominator had been found. Yet the further the Committee had advanced with its agenda, the more had the statements introducing new proposals become mere monologues to which no real response had been made. While his delegation fully realized that fundamentally new proposals required a certain length of time for reflexion, or even for the receipt of instructions, it was astonished that proposals which had obtained considerable support at the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in 1976, had, with a few very satisfactory exceptions, been almost totally ignored.

6. In its previous statements his delegation had never concealed its concern - even its disappointment - that the Ad Hoc Committee's meetings were being held up by general issues or were becoming entangled in details. Such a result was not, however, surprising when the Committee met only in plenary session. In the absence of working groups a real dialogue was impossible. It was regrettable that his delegation's suggestion that one or more working groups should be established had not been accepted when it had seemed that a substantial number of delegations would have welcomed such a decision. His delegation still took the view that official but less formal meetings, without summary records, were an essential prerequisite for any future work, and it would make a statement to that effect at the initial meetings of the fourth and final session of the Conference.

7. Since no really substantial progress had been made at the third session, it had been possible to deal only very superficially with the legal questions connected with the problem. For example, the discussion of a review mechanism, which was essential for the supervision and review of the implementation of any future arrangement concerning the weapons in question, would have to wait until the following year, as would all the other legal questions - namely, those relating to the types of agreement, the nature of the obligations and entry into force. Those were issues to which his delegation attached special importance, as it had shown at Lugano by proposing that an ad hoc working group should be set up to deal with legal questions (see Lugano report, p. 140). Those questions would have to be thoroughly discussed at the fourth session, since the proposal made by the Mexican delegation at Lugano to the effect that the Conference of Government Experts should be placed on a permanent footing (see Lugano report, p. 183) had not had much success and the fourth session of the Diplomatic Conference would definitely be the last. There was thus a great deal of work to be done, but with goodwill the Ad Hoc Committee would be able, at the fourth session, to fulfil the mandate conferred upon it, provided that it began work on the very first day.

8. Mr. ABADA (Algeria) said that, although the activity of the Ad Hoc Committee had been reduced to a minimum, his country had always attached special importance to its agenda and work, as was evidenced by the fact that Algeria, together with many like-minded countries, was associated with document CDDH/IV/201 and Corr.2 and Add.1 to 9; Algeria was also associated with the proposal, sponsored by twenty-one countries, to prohibit the use of incendiary weapons (CDDH/IV/Inf.220).

9. His delegation had not been able to make an adequate study of the new proposals submitted to the Lugano Conference or to the Ad Hoc Committee, but it had noted them with interest and often with satisfaction.

10. After considering the report of the Lugano Conference, his delegation had feared that the accumulation of technical data, often with contradictory intentions and interpretations, might weaken the Ad Hoc Committee's will to advance towards the prohibition or restriction of the use of certain conventional weapons. Two positive points, however, had emerged from that Conference: firstly, new proposals had been put forward, showing that some resistance to progress had been overcome and that a first step had been taken towards a dialogue; secondly, there was no longer any need for the experts on weapons to meet and thus one phase of the Ad Hoc Committee's work had been completed.

11. After both the Lucerne and the Lugano Conferences the need to study the reports had imposed upon the Ad Hoc Committee a rather unusual style and rhythm of work, which had made many delegations somewhat uneasy. The meetings of the Committee had often been attended by only a handful of members, notwithstanding the skill and patience with which the Chairman had presided. It was to be hoped that that stage was over and that at the fourth session the Committee would engage in serious work, like the rest of the Conference, and shoulder its full responsibilities. In his delegation's view, the next stage could only be one in which the political will of all those who were not indifferent to the importance of humanitarian principles and to the use of certain conventional weapons must be clearly affirmed. If the political will existed, it would be possible to prohibit or restrict the use of certain conventional weapons and a balance would come about automatically on the basis of reciprocity guaranteed by general agreement.

12. It was clear that the weapons being considered by the Committee were of a special nature as far as their effects on human beings were concerned and the Conference was the most appropriate forum to give them priority consideration and to take reasonable and relevant decisions. The conclusions arrived at in the Diplomatic Conference might be taken up in other forums and incorporated in a wider framework of measures. In particular, the Conference would perform a valuable service for the international community if it adopted specific measures on such matters as napalm and incendiary weapons without delay.

13. His delegation had always endeavoured to take into account the views of other delegations. At the first session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne in 1974, and at the second session of the current Diplomatic Conference it had, with other delegations, responded to the desire of some delegations for a cautious and measured advance in the Committee's work. His delegation was now entitled to expect equal consideration for its point of view. It hoped that in the interval between sessions there would be a positive development in the thinking of all delegations, so that at the fourth session the Ad Hoc Committee could finally begin its work and fulfil the humanitarian role expected of it. The technical background was already sufficiently documented. All that remained was to open the real debate, to embark on serious discussions with the sense of responsibility which was more essential in the field of weapons than in any other.

14. Mr. AL-HASHIM (Kuwait) said that his delegation welcomed the positive results achieved by the Lugano Conference and thanked all those who had contributed to its work.

15. His delegation, which supported prohibition of the use against both military and civilians of all the weapons with which the Ad Hoc Committee was concerned, associated itself with the constructive proposals made for the relief of human suffering. That was a noble humanitarian objective to which great importance was attached in his country, where the ultimate objective was the prohibition of all forms of war.

16. Although his delegation opposed the principle on which the statement made by the United States representative at the twenty-seventh meeting (CDDH/IV/SR.27) had been based, it appreciated the positive step taken by that delegation to contribute to the success of the Ad Hoc Committee's work. It supported the first part of the statement made by the representative of the Union of Soviet Socialist Republics at the twenty-ninth meeting (CDDH/IV/SR.29) but disagreed with the second part, although it recognized that the statement had been prompted by worthy intentions.

17. His delegation was not pessimistic about the differences of opinion that existed; on the contrary, it considered that appropriate solutions could only be worked out by comparing points of view and approaching the subject from different angles, and it was convinced that positive results would be achieved at the fourth session of the Diplomatic Conference.

18. He reiterated his delegation's support for the prohibition of all weapons, including biological weapons, which caused mass destruction and genocide, and appealed to all the countries that manufactured such weapons, particularly the major Powers, to limit their production, since it was the developing countries which suffered most from their use. In that connexion, he supported the statements made at the thirty-third meeting (CDDH/IV/SR.33) by the representatives of Mexico and Sweden.

19. Mr. ABOU-ALI (Egypt) supported the statement made by the representative of the ICRC at the thirty-third meeting. It was because his delegation considered that the widest possible ban should be placed on the use of certain conventional weapons that it had co-sponsored documents CDDH/IV/201 and CDDH/IV/Inf.220. For humanitarian reasons, the general prohibition of the use of such weapons should be based on reciprocity of commitments and a system should be provided for periodic review of the instrument in the light of developments in the field of weaponry.

20. Although some of the proposals submitted to the Ad Hoc Committee were divergent, they were all constructive and worthy of consideration and they could form the basis for the Committee's work at the fourth session of the Conference.

21. Mr. ANDERSON (United States of America) complimented the Chairman on his leadership of the Committee. Replying to a question asked by the Swedish representative at the thirty-third meeting, said that his delegation's statement that the killed-to-wounded ratio for fuel-air explosives was likely to be approximately 20 per cent was based on a series of experiments which had measured mortality rates among unprotected test animals exposed to the blast effects of such munitions. The results of those experiments had then been adjusted to take into account the difference in body weight between the test animals and humans, and the resulting data had shown that the probable ratio of death to injury, including all incapacitating wounds such as non-fatal pulmonary damage and eardrum rupture, would be less than 20 per cent.

22. His delegation had great difficulty in understanding many aspects of various proposals which would prohibit the use of certain weapons against personnel but allow their use against material targets. He wondered how a material target would be defined and whether, if a tank was a material target, a greater variety of weapons could be used against it than against infantry advancing alongside it. Which weapons could be used if the tank hatches were open? What would happen if infantry were riding on the tank? How was the opposing party to determine whether or not the tank was a material target in any of those circumstances? The same questions could be asked about other vehicles, field fortifications, barracks and many other possible targets.

23. Since very few weapons were used more or less exclusively against personnel, his delegation considered that proscriptions based on a distinction between anti-matériel and anti-personnel use were illogical, legally unsound and militarily unfeasible.

24. Mr. ABDUL MALIK (Nigeria) said that despite the fact that his delegation had been unable to play a full part in the work of the Ad Hoc Committee, owing to lack of personnel, it in no way underestimated the importance of that work and hoped to be able to play a fuller part in future.

25. His delegation had always been optimistic about the outcome of the Committee's work, despite the failure to achieve progress, especially on incendiary weapons. In an effort at compromise, his delegation and that of Finland had submitted an informal proposal on the partial ban of such weapons by distinguishing between "high capacity" and "low capacity" weapons (see Lugano report, p. 105). Unfortunately his delegation had not been able to develop that proposal but hoped to do so at the fourth session of the Diplomatic Conference.

26. Although no definite proposals had been adopted either on mines and booby-traps or on fuel-air explosives, his delegation was confident that the fourth session would bring the Committee's discussions to a successful conclusion.

27. With regard to the future work of the Ad Hoc Committee, his delegation was in favour of the Netherlands proposal for the establishment of an international secretariat to carry out further studies and thought that active consideration should be given to that proposal in the intersessional period. Several delegations, including those of Canada and Sweden had said that their countries had national bodies which constantly reviewed new weapons and their conformity with international military and humanitarian law. Those countries were arms producers, but for most developing countries such review bodies would be impracticable, for technological, financial and other reasons. There was obviously need for an international body to conduct research and establish technical and legal standards. It would be useful, moreover, if such a body could lay down standard test methods.

28. In conclusion, he reaffirmed his delegation's stand in support of the ban on the use of weapons that had indiscriminate effects and caused unnecessary suffering and its hope that agreement could be reached on the proposals before the Committee. It still supported document CDDH/IV/201 and Corr.2 and Add.1 to 9 and would strive for adoption of at least some of its salient features.

29. Mr. BLIX (Sweden), replying to the point made by the United States representative concerning the difficulty of distinguishing between the use of certain weapons against personnel and against material targets, said that there was probably no great difference between the Swedish and United States points of view and he did not think that the difficulties of defining anti-personnel uses were insuperable. The United Kingdom Manual of Military Law in fact made use of the concept in the context of incendiary weapons. The Swedish expert at the Lugano Conference had put forward a proposal for the prohibition of anti-personnel uses of fuel-air explosives. For the very reason given by the United States representative - the difficulty of definition - a joint proposal by Sweden and Switzerland (CDDH/IV/215) had now been submitted which spoke of the exclusive use of such weapons against material objects.

30. Mr. JANZON (Sweden) thanked the United States representative for giving some of the bases for the mortality estimate carried out on fuel-air explosives. Animals, however, were not very satisfactory as models for humans where blast injury was concerned. The United States data were none the less interesting and his delegation would like to have a more detailed report on the question before the fourth session of the Diplomatic Conference.

31. The Swedish estimates were based on extensive investigations, carried out in the 1950s, mainly in the United States of America, in connexion with the study of the effects of nuclear blasts, and the results of those investigations were generally regarded as reliable. Many of them, carried out on animals, should be familiar to the United States delegation. His delegation believed that its figures were not entirely wrong but it certainly hoped that the United States figure of 20 per cent mortality was more correct than its own figure of 50 per cent.

32. It was true that for the majority of systems it was difficult to make a distinction between anti-personnel and anti-material weapons, though it was easy to see that some, such as cluster-bomb systems with small fragments, were almost entirely anti-personnel, since they could not inflict damage on a material target. Most targets, however, consisted of personnel as well as material and in such cases weapons which affected both categories would probably be employed. Nevertheless, there were exclusively material targets against which fuel-air explosives might be used, for instance minefields, where it was unlikely that any enemy soldiers would remain. Another example of an exclusively material target would be attacking ground-to-ground or air-to-ground missiles, against which a laser weapon might be used. In such cases there was a negligible risk of personnel being affected and thus no humanitarian reasons for banning the use of any category of weapon. That was why the words "except when the aim is exclusively to destroy material objects" had been introduced in the proposal by Sweden and Switzerland on fuel-air explosives (CDDH/IV/215, annex).

33. With regard to the problem of attacking aircraft, he pointed out that, as there would be certainly a pilot on board, such an aircraft could not be defined as an exclusively material target, but since without the aircraft the pilot's destructive capacity would be negligible, it should be considered a predominantly material target and might justify means of combat that would be disallowed against the pilot considered as an individual soldier. That argument applied also to tanks.

34. Agreement must be reached on the nature of targets and military necessity must be taken into account. Was a tank surrounded by infantry a material target as long as the effects of the weapons employed were aimed only at the destruction or damaging of the tank? It was true that soldiers might be killed when the tank was attacked, but the essential point was that the damage done should not be out of proportion to the military task to be performed. It might not be necessary to kill or injure so many of the enemy soldiers provided that the tank was destroyed, for once that was gone they would tend to withdraw and thus fail in their military objective.

The meeting rose at 4.20 p.m.

SUMMARY RECORD OF THE THIRTY-FIFTH (CLOSING) MEETING

held on Wednesday, 9 June 1976, at 3.20 p.m.

Chairman: Mr. GARCES (Colombia)

ADOPTION OF THE DRAFT REPORT OF THE AD HOC COMMITTEE (CDDH/IV/216)

1. The CHAIRMAN said that before proceeding with the consideration of the draft report, he would call upon the Rapporteur.
2. Mr. AKKERMAN (Netherlands), Rapporteur, read out a number of minor changes of spelling and wording to be made in the English and French versions of the document.
3. The CHAIRMAN invited members of the Ad Hoc Committee to examine the draft report paragraph by paragraph.

Paragraph 1

4. Mr. CRETU (Romania) suggested that the names of the ICRC representatives and of the Legal Secretaries should appear in paragraph 1.

Paragraph 1, so amended, was adopted.

Paragraph 2

Paragraph 2 was adopted.

Paragraph 3

5. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that it was incorrect to say, in the second sentence of paragraph 3, that "some delegations stressed that they had made a major concession in agreeing to start work at such a late date". He pointed out that the USSR representative had been unable to consider the report of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano, as the Russian version was not available. He therefore suggested that the second sentence of paragraph 3 should be deleted.

6. Mr. AKKERMAN (Netherlands), Rapporteur, said that the second sentence had been inserted in the report in order to show that certain delegations had made concessions in agreeing that the work of the Ad Hoc Committee should begin at a later date. The representative of the German Democratic Republic, speaking on behalf of other delegations, had stated at the time that it was a concession on the part of certain delegations to begin consideration of the Lugano report before that document had reached their Governments.

7. Mr. RUIZ PEREZ (Mexico) requested the retention of the third sentence beginning with the words "Another delegation added ...", since that point had been made by the Mexican delegation at the twenty-third meeting of the Ad Hoc Committee (CDDH/IV/SR.23).

8. Mr. van der KLAUW (Netherlands) said that he remembered the words "major concession" being used in the Ad Hoc Committee. Therefore the report should reflect that fact.

9. The CHAIRMAN said that he agreed with the representative of the Union of Soviet Socialist Republics that the main reason why the Ad Hoc Committee had had to postpone its work was because all language versions of the Lugano report had not been available. The draft report would be amended accordingly.

Paragraph 3 was adopted on that understanding.

Paragraphs 4 to 8

Paragraphs 4 to 8 were adopted.

Paragraph 9

10. Mr. BELOUSOV (Ukrainian Soviet Socialist Republic) suggested that the words "International and internal" should be replaced by the words "international and non-international", which were used in the draft Protocols.

Paragraph 9, as amended, was adopted.

Paragraphs 10 to 14

Paragraphs 10 to 14 were adopted.

Paragraph 15

11. Mr. MENA PORTILLO (Venezuela) said that in introducing his proposal (CDDH/IV/212) he had mentioned technical, humanitarian and military points of view. He suggested that the paragraph should be amended accordingly.

Paragraph 15, as amended, was adopted.

Paragraphs 16 to 19

Paragraphs 16 to 19 were adopted.

Paragraph 20

12. Mr. BLIX (Sweden) said that the word "warranted" in the second sentence should be replaced by "undertaken".

Paragraph 20, as amended, was adopted.

Paragraph 21

13. Mr. BLIX (Sweden) said that when introducing working paper CDDH/IV/201 he had stated that velocity was no longer seen as a basic element of a rule, but was regarded as one of three criteria. He therefore suggested that the first sentence of paragraph 21 should be amended to read: "In the revised draft rule three criteria were relied upon: easy deforming or breaking, rapid tumbling within the human body and extreme velocity." The word "now" in the second sentence should be deleted. The third sentence should be amended to read "Another basis for prohibition would be for a bullet to deform or break easily in the human body, this characteristic being closely similar to the 1899 Hague Declaration concerning the Prohibition of Using Bullets which Expand or Flatten Easily in the Human Body. The fifth sentence should be amended to read "Yet another basis for prohibiting a bullet would be rapid tumbling within the human body." The last sentence of paragraph 21 should be amended to read: "The creation of shock waves and the production of secondary projectiles in the human body had been deleted from this paper, since these criteria had been criticized and were not considered essential."

Paragraph 21, as amended, was adopted.

Paragraph 22

14. Mr. BLIX (Sweden) suggested that the phrase "had shown interest" should be amended to read "Which were interested".

Paragraph 22, as amended, was adopted.

Paragraph 23

15. Mr. de GRAFFENRIED (Switzerland) suggested that the words "in the opinion of the Swiss delegation" should be inserted after the word "Nevertheless" in the last sentence.

16. Mr. GRIBANOV (Union of Soviet Socialist Republics) referring to the last sentence, said that there had not been unanimous support for the joint proposal (CDDH/IV/210 and Add.1), and suggested that the sentence should be amended to state that several representatives had supported the proposal.

17. Mr. AKKERMAN (Netherlands), Rapporteur, said that the sentence in question recorded what the Swiss representative had said concerning the general feeling that had existed at the Lugano Conference concerning the proposal in question.

18. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the last sentence should therefore be amended to show that the Swiss delegation considered that the proposal had received virtually unanimous support.

Paragraph 23, as amended, was adopted.

Paragraphs 24 to 29

Paragraphs 24 to 29 were adopted.

Paragraph 30

19. The CHAIRMAN pointed out that, as in past reports, no mention had been made of delegations by name, since anyone wishing to do so could identify them by consulting the summary records.

20. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the second sentence of paragraph 30 failed to reflect the view that the Conference was not competent to rule on the matters discussed. He suggested that the sentence should be deleted.

It was so agreed.

Paragraph 30, as amended, was adopted.

Paragraph 31

Paragraph 31 was adopted.

Paragraph 32

21. Mr. van der KLAUW (Netherlands), supported by Mr. RUIZ PEREZ (Mexico), suggested that the words "since those present were forced to recognize that no consensus existed on the issue", in the second sentence, should be deleted.

It was so agreed.

Paragraph 32, as amended, was adopted.

Paragraph 33

22. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the Ad Hoc Committee as a whole had not expressed keen satisfaction at the submission of proposals. He suggested that the words "The Ad Hoc Committee" should be replaced by the words "Some delegations" or "A number of delegations".

23. Mr. BLIX (Sweden) said that he could accept the words "A large number of delegations".

That wording was agreed.

Paragraph 33, as amended, was adopted.

Paragraphs 34 to 55

Paragraphs 34 to 55 were adopted.

Paragraph 56

24. Mr. ANDERSON (United States of America) said that a more specific reference should be made to the statistics which the first representative referred to in the paragraph had given in response to the question expressed by the second.

25. Mr. AKKERMAN (Netherlands), Rapporteur, said if that were done it would be necessary to add that the second representative had still pressed for the detailed report referred to in the last sentence.

26. Mr. ANDERSON (United States of America) said that he could agree to such an addition.

27. Mr. AKKERMAN (Netherlands), Rapporteur, suggested that the Swedish and United States representatives should contact him with a view to agreeing on a suitable text.

It was so agreed.

Paragraph 56 was adopted on that understanding.

Paragraph 57

28. Mr. GRIBANOV (Union of Soviet Socialist Republics), referring to the last sentence of the paragraph, said that it was incorrect to say that many representatives had advocated the idea. He suggested that the words "Many representatives" should be replaced by the words "A number of representatives".

It was so agreed.

29. Mr. SIMARD (Canada) said that since the paragraph referred to a specific proposal and not to a mere statement of views, the Netherlands delegation, which had made the proposal, should be identified.

30. Mr. van der KLAUW (Netherlands) said that he was not opposed to the adoption of the Canadian suggestion, but that since the Netherlands proposal had been made orally it would in that case be necessary to identify other delegations which had made oral proposals.

31. The words "suggested that an independent institute be set up", in the first sentence, gave the impression that his Government had already taken a decision in favour of the establishment of such an institute, which was not the case. He proposed that they should be replaced by the words "suggested that consideration should be given to the idea of setting up an independent institute".

It was so agreed.

32. Mr. AKKERMAN (Netherlands), Rapporteur, said that it had been the practice throughout the three sessions of the Conference to mention by name only the delegations that had made formal written proposals. He suggested that the same practice should apply to the present case.

33. Mr. SIMARD (Canada) withdrew his proposal.

Paragraph 57, as amended, was adopted.

Paragraph 58

34. Mr. GONZALEZ-RUBIO (Mexico) said that some reference should be made to his delegation's suggestion that consideration should be given to the establishment of review machinery. He suggested that two sentences should be added, on the following lines:

"One delegation suggested that if no protocol on conventional weapons was adopted, provision should be made in draft Protocol I for continuing the study of a possible prohibition or restriction of certain conventional weapons within the over-all development of humanitarian law. Several delegations supported this suggestion and referred to the Austrian proposal for review machinery appearing in the Lugano report."

35. Mr. AKKERMAN (Netherlands), Rapporteur, said that he could accept the first sentence. The substance of the second sentence, however, appeared to be covered by the second sentence of paragraph 58 as it stood.

The first sentence of the Mexican proposal was adopted.

36. Mr. GONZALEZ-RUBIO (Mexico), while agreeing that the second sentence of the existing text bore some relationship to the second sentence of his delegation's proposed addition, pointed out that at the Lugano Conference document COLU/210 (see Lugano report, p.183) had been submitted by the Mexican delegation, the Austrian delegation having submitted a further document.

37. Mr. AKKERMAN (Netherlands), Rapporteur, suggested that the Mexican representative and he should together draft a suitable text combining the second sentence of the existing text with the second sentence of the Mexican proposal.

It was so agreed.

Paragraph 58 was adopted on that understanding.

Paragraph 59

38. Mr. ANDERSON (United States of America) proposed the addition of the following sentence at the end of paragraph 59: "Other delegations noted that more data were needed in many areas before conclusions could be made".

39. Mr. GRIBANOV (Union of Soviet Socialist Republics) supported the United States proposal. He himself proposed that the words "a sufficient amount of data had been gathered" should be replaced by the words "some data had been gathered". Moreover, the words "could now be agreed on" at the end of the sentence should be replaced by the words "could be considered".

40. Mr. AKKERMAN (Netherlands), Rapporteur, suggested that the wording proposed by the United States representative should be preceded by the word "However".

41. Referring to the USSR proposal to replace the words "agreed on" by "considered", he noted that the words "There was a widespread feeling" were perhaps a little strong, and suggested that they should be replaced by some such wording as "A number of delegations stressed that in their view ...". That sentence should then be followed by the one proposed by the United States representative.

42. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that he could agree to the Rapporteur's suggestion.

It was so agreed.

Paragraph 59, as amended, was adopted.

Paragraphs 60 and 61

Paragraphs 60 and 61 were adopted.

Paragraph 62

43. Mr. SIMARD (Canada) said that future work would be facilitated if the Secretariat could prepare a comparative table of proposals. He suggested, therefore, that a sentence to that effect should be included in paragraph 62.

44. Mr. van der KLAAUW (Netherlands) said that the Canadian suggestion was a good one, but that, in his opinion, it should be inserted in paragraph 32, in connexion with the proposal to set up a working group to discuss the proposals submitted to the Ad Hoc Committee.

45. The CHAIRMAN said that the idea of including a comparative table was so important that it might perhaps deserve a separate paragraph after paragraph 32.

46. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that, while agreeing with the Canadian proposal, he thought that the proposed sentence should be included in the paragraph which referred to the Ad Hoc Committee's future work, namely paragraph 62.

47. Mr. SIMARD (Canada) said that the proposal to establish a comparative table was not really connected with the suggestion to set up a working group.

48. Mr. MARK (Switzerland) said that his delegation agreed fully with the views expressed by the Netherlands representative. At the time, there had been a suggestion to set up a working group, but since no consensus had been reached, there had been an agreement to prepare a comparative table. It was only proper, therefore, that the reference to the comparative table should be included in paragraph 32.

49. Mr. van der KLAUW (Netherlands) asked the USSR representative if he would be satisfied if the reference to the comparative table was inserted in a separate new paragraph after paragraph 32.

50. Mr. GRIBANOV (Union of Soviet Socialist Republics) said he could accept that solution.

It was so agreed.

51. Mr. de GABORY (France) said that one reference to the comparative table should be enough and that it was unnecessary to repeat it in paragraph 62.

It was so agreed.

Paragraph 62 was adopted.

Paragraph 63

52. Sir David HUGHES-MORGAN (United Kingdom) said he feared that paragraph 63 might be understood as referring to the opinion of the Committee as a whole. It might, therefore, be better to insert some such expression as "One delegation thought" or "Some delegations felt".

53. Mr. BELOUSOV (Ukrainian Soviet Socialist Republic) supported the United Kingdom suggestion.
54. Mr. AKKERMAN (Netherlands), Rapporteur, suggested that, since paragraph 63 referred to the same number of representatives as those referred to in paragraph 62, paragraph 63 might be introduced with some such expression as "These same delegations".
55. Mr. ANDERSON (United States of America) said he could not agree that the delegations referred to in paragraph 62 were necessarily the same ones referred to in paragraph 63. The report, in his opinion, would be more accurate if paragraph 63 was deleted altogether.
56. Mr. CRETU (Romania) supported the United States proposal to delete paragraph 63.
57. Mr. AKKERMAN (Netherlands), Rapporteur, suggested that paragraph 62 should be left as it was and that paragraph 63 should begin with the words "Some delegations felt that, while the results of the Lugano Conference had been somewhat meagre, etc.". Paragraph 64 could then be amended to begin with the words "However, their representatives regretted, etc.", thus giving a more balanced account of what had actually taken place in the discussions.
58. Mr. FELBER (German Democratic Republic), after drawing the Committee's attention to paragraph 5 of the report, said that he agreed with the United States and Romania that paragraph 63 should be deleted.
59. Mr. GRIBANOV (Union of Soviet Socialist Republics) said he supported those delegations which had proposed the deletion of paragraph 63, since it added nothing to the substance of the report.
60. Mr. ABDUL MALIK (Nigeria) and Mr. MENA PORTILLO (Venezuela) supported the wording suggested by the Rapporteur.
61. Mr. van der KLAUW (Netherlands) said he also agreed that paragraph 63 should be retained, if only because of paragraph 64.
62. Mr. GRIBANOV (Union of Soviet Socialist Republics) suggested that a compromise solution might be to merge paragraphs 63 and 64 since they were closely connected.

63. Mr. ANDERSON (United States of America) said that, although his delegation saw no value in paragraph 63, it would be satisfied with the wording suggested by the Rapporteur. He did not, however, recall any statement to the effect that the Ad Hoc Committee had made "a rather timid start to its work"; if that statement were not true, it should be deleted.

64. Mr. AKKERMAN (Netherlands), Rapporteur, suggested that it might be better to merge paragraphs 62, 63, 64 and 65. Concerning the reference to "a rather timid start", he recalled that that had been the feeling of one delegation and had been shared by others.

65. Mr. ANDERSON (United States of America) said that, as far as he could recall, no-one had actually used the words "a rather timid start". However, if that expression had been used by only one delegation, that fact should be made clear.

66. Mr. AKKERMAN (Netherlands), Rapporteur, pointed out that in the French version of the summary record of the thirty-third meeting (CDDH/IV/SR.33, para. 29), the Danish representative's statement contained the phrase "Bien qu'elle ait commencé ses travaux avec lenteur". It might, therefore, be appropriate in English to say "made a slow start".

67. The CHAIRMAN suggested that if there were no objections, the last four paragraphs of the report should be merged together and the words "a rather timid start" replaced by the words "a slow start".

It was so agreed.

Paragraphs 62, 63, 64 and 65, as amended and merged in a single paragraph, were adopted.

The draft report as a whole, as amended, was adopted.

CLOSURE OF THE SESSION

68. Mr. GRIBANOV (Union of Soviet Socialist Republics), speaking on behalf of all the Socialist countries in the Ad Hoc Committee, thanked the Chairman for the skill and objectivity with which he had guided the Committee in its efforts to achieve a generally acceptable compromise.

69. The CHAIRMAN declared the third session of the Ad Hoc Committee closed.

The meeting rose at 5.25 p.m.

FOURTH SESSION

(Geneva, 17 March - 10 June 1977)

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

SUMMARY RECORDS OF THE THIRTY-SIXTH TO FORTY-SECOND MEETINGS

held at the International Conference Centre, Geneva,

from 19 April to 24 May 1977

Chairman: Mr. H. CHARRY SAMPER (Colombia)

Rapporteurs: Mr. J.G. TAYLOR (United Kingdom of
Mr. M.R. EATON Great Britain and
Northern Ireland)

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SUMMARY RECORD OF THE THIRTY-SIXTH (OPENING) MEETING

held on Tuesday, 19 April 1977, at 3.15 p.m.

Chairman: Mr. CHARRY SAMPER (Colombia)

OPENING STATEMENT BY THE CHAIRMAN AND ADOPTION OF THE PROGRAMME OF WORK

1. The CHAIRMAN, greeting members as the new Chairman of the Ad Hoc Committee on Conventional Weapons, said that he had a legal background and was a national of a country which had never committed aggression. For both those reasons he considered that every effort must be made to protect the innocent from the horrors and suffering inflicted by war.

2. Referring to the draft programme of work (CDDH/IV/219), he said that if there were no objections, he would assume that the Committee wished to adopt it.

It was so agreed.

ELECTION OF A NEW RAPPORTEUR

3. Mr. van der KLAAUW (Netherlands) said that Mr. Kalshoven, the Rapporteur of the Ad Hoc Committee, had returned to the Netherlands in order to take up a university post and was therefore unable to attend the fourth session of the Diplomatic Conference on International Humanitarian Law. To replace him, the Western Group of States wished to nominate Mr. J.G. Taylor of the United Kingdom.

4. Mr. de ICAZA (Mexico) and Mr. KUSSBACH (Austria) seconded the nomination.

Mr. J.G. Taylor (United Kingdom) was elected Rapporteur of the Ad Hoc Committee by acclamation.

5. Mr. TAYLOR (United Kingdom) said that he was conscious of the honour done his delegation by the members of the Ad Hoc Committee in electing him Rapporteur, an important and challenging post, the duties of which he and any colleague who might replace him in his absence would endeavour to carry out efficiently and objectively.

* Incorporating document CDDH/IV/SR.36/Corr.1.

ESTABLISHMENT OF A WORKING GROUP

6. The CHAIRMAN said that if there was no objection, he would take it that the Committee wished to establish a Working Group to discuss the various proposals relative to the prohibition or restriction of the use of certain conventional weapons introduced in the Committee.

It was so agreed.

7. The CHAIRMAN then read out the draft terms of reference of the Working Group (CDDH/IV/220).

8. Mr. de ICAZA (Mexico) said that in the Spanish version of the document the words "mecanismo de examen" in the first sentence of paragraph 2 should be replaced by "mecanismo de revisión" and the words "acción ulterior" in the last sentence of the same paragraph should be replaced by "continuación de los trabajos".

9. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the terms of reference of the Working Group were unclear and that the reference to "a review mechanism" should be deleted.

10. Referring to the words "follow-up" in paragraph 2, he said that it was impossible to determine what was meant. He therefore suggested that the last sentence of paragraph 2 should also be deleted.

11. Mr. MILLER (Canada) said that in its terms of reference the Working Group was merely being instructed to consider proposals relating to various categories of conventional weapons, together with questions coming under the heading of "review mechanism" and procedural questions covered by the phrase "follow-up". His delegation interpreted that last phrase to mean procedural action by the Ad Hoc Committee as the result of the Working Group's studies, which might entail a recommendation by the Ad Hoc Committee to the plenary Conference and to the international community at large.

12. In his delegation's view, the Working Group should consider all questions covered by paragraph 2.

13. The question of a "review mechanism" had been discussed at previous sessions of the Ad Hoc Committee and also at the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in 1976, and was mentioned in that body's report.

14. Mr. van der KLAUW (Netherlands), supporting the previous speaker, emphasized that the terms of reference of the Working Group must be flexible. The Group would have to decide on what suggestions it should make to the Ad Hoc Committee and how work on the prohibition or restriction of the use of conventional weapons should be continued in the future.
15. Mr. ABOU-ALI (Egypt) asked whether the words "incendiary weapons" in paragraph 2 included napalm.
16. Mr. de GABORY (France), referring to the French version of the terms of reference of the Working Group (CDDH/IV/220), suggested that in the first sentence of paragraph 2 the words "mécanisme de révision" would correspond more closely to the English than "mécanisme d'étude". He considered that the French expression "suite à donner" corresponded to the English "follow-up".
17. On the substance, his delegation shared the doubts expressed by the representative of the Union of Soviet Socialist Republics concerning the reference to a "review mechanism". That was a type of procedure which took place after the adoption of an international instrument. The question of a "review mechanism" should therefore not be dealt with by the Working Group at the present stage.
18. The "follow-up" should merely consist of recommendations by the Working Group to the Ad Hoc Committee.
19. The CHAIRMAN said the linguistic amendments suggested would be incorporated in the revised version of the terms of reference of the Working Group.
20. Mr. VAN LUU (Socialist Republic of Viet Nam), referring to the first sentence of paragraph 2 of the terms of reference (CDDH/IV/220), asked why the particular weapons mentioned had been selected for consideration by the Working Group and why "mines and booby-traps" had been given priority. There were many other categories of conventional weapons which caused unnecessary suffering.
21. Mr. CLARK (Nigeria) considering that the terms of reference were unclear and likely to be misunderstood, suggested that they should be redrafted along the following lines:
 - "1. A Working Group of the Ad Hoc Committee is set up to consider in detail the various proposals relative to the prohibition or restriction of the use of certain conventional weapons introduced in the Ad Hoc Committee, commencing with those of mines and booby-traps, fragments not detectable by X-ray and incendiary weapons.

2. The Working Group will also examine proposals on other categories of weapons and define areas of agreement or disagreement with respect to each particular set of proposals.

3. Furthermore, the Working Group will also consider the question of follow-up.

4. The sessions of the Working Group will be open to all participants in the Conference."

22. He hoped that his proposed text would not only make the terms of reference of the Ad Hoc Committee clear but would eliminate the reference to "review mechanism", a concept which he felt was premature at the present stage.

23. Mr. SKALA (Sweden) stressed that the proposed terms of reference aimed at reflecting the continuity of the debate on conventional weapons which had been going on for several years. The debate should now be carried on from the point where it had stopped at the third session with the ultimate aim of reaching agreement on the prohibition or restriction of the use of certain weapons. Obviously, it would have been possible to enumerate a number of weapons which had attracted attention in this context. The reason mines and booby-traps, fragments non-detectable by X-ray and incendiary weapons had been singled out for priority discussion was simply that they were those on which the Ad Hoc Committee had made most progress during earlier sessions or, as in the case of incendiary weapons, which had attracted the particular attention of the United Nations General Assembly and of the Conference of Heads of State or Government of Non-Aligned Countries, held at Colombo in August 1976. That Conference had in fact urged the Diplomatic Conference to accelerate negotiations with a view to securing as rapidly as possible the prohibition, in particular, of incendiary weapons. He wished to confirm in that context to the representative of Egypt that the item "incendiary weapons" included napalm.

24. His delegation had an open mind on the explicit mentioning in the terms of reference of the Working Group of a review mechanism which might not be an essential question at the present stage of the discussions. The Committee and Working Group would, however, have to concern themselves with the question of a follow-up, since there might be some categories of weapons about which agreements could not, in all likelihood, be reached at the current session.

25. Lastly, he thought that the amendments proposed by Nigeria were chiefly of an editorial nature and did not affect the substance of the draft proposed.

26. Mr. DI BERNARDO (Italy) said he had serious doubts about the advisability of including the questions of a review mechanism and follow-up in the terms of reference. The Working Group was not a negotiating body; its conclusions would be embodied in the Committee's report, which would have to be submitted for the consideration of governments. It would be for the latter to decide on the question of follow-up, and at the present stage the whole issue was premature.

27. Mr. KUSSBACH (Austria) said the draft terms of reference (CDDH/IV/220) had the full support of his delegation. He particularly endorsed paragraph 2, since it was very important that the Working Group should have the possibility of discussing matters which had already been discussed for many years by the ICRC and the Committee itself.

28. He understood the difficulties mentioned by the representative of Viet Nam, but would point out that the weapons referred to in paragraph 2 were those on which the Committee had already done considerable work. That did not necessarily mean that other weapons would be excluded.

29. Concerning the question of a review mechanism, he agreed that that question was perhaps not very important at the moment, since it would be covered by any instrument that might be adopted at a later stage. Nevertheless, he did not think it should be excluded from the terms of reference.

30. Lastly, the question of follow-up, in his opinion, was one which the Working Group could discuss, even if it was not competent to take any decision in the matter.

31. Mr. GENOT (Belgium) said that his delegation fully supported the draft terms of reference (CDDH/IV/220), which in his opinion were very flexible.

32. Mr. FELBER (German Democratic Republic) said he supported the views expressed by the representatives of the Union of Soviet Socialist Republics, France and Italy. He proposed that the latter half of the first sentence in paragraph 2 should be amended to read: "taking up thereafter the other proposals introduced in the Ad Hoc Committee and to define the areas of agreement or disagreement with respect to each particular set of proposals". The last sentence in paragraph 2 should be deleted, since the question of follow-up was one which only the Committee could decide.

33. Mr. MARTIN HERRERO (Spain) said he could agree to the deletion of any reference to a review mechanism, but thought that the question of follow-up was one of the main aspects of the Committee's task. The Committee could obviously deal with it more effectively if it had the benefit of the Working Group's conclusions, which it could then submit to governments.

34. Concerning the particular weapons referred to in paragraph 2, he thought that they deserved priority, since they were the ones on which the Ad Hoc Committee had already worked.

35. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that a number of the previous speakers had stressed that the terms of reference should be flexible; in his opinion, however, it was even more important to have a mandate which was clear, well defined and not likely to give rise to different interpretations.

36. With regard to the question of a review mechanism, the suggestions made by various delegations should be studied with a view to determining their points of agreement and disagreement. His own view was that it was premature to speak of a review mechanism at the present stage.

37. Mr. de ICAZA (Mexico), noting that the representative of Egypt had asked whether napalm would be included among incendiary weapons, said he assumed that the Working Group would consider all proposals concerning incendiary weapons, some of which certainly referred to napalm. Those proposals included document CDDH/IV/201 and Corr.2 and Add.1-9, which was co-sponsored by the Egyptian delegation and his own.

38. The representative of Viet Nam had asked why the list of weapons in paragraph 2 began with "mines and booby-traps". He (Mr. de Icaza) did not think that priority should be given to any particular weapon, but that the order in which they were discussed should be decided by the Chairman of the Working Group in consultation with the Chairman of the Ad Hoc Committee.

39. He supported the Nigerian proposal, which would make the terms of reference clearer.

40. Some speakers had objected to the inclusion of the question of a review mechanism, but it should be borne in mind that the Working Group would be working in a very pragmatic way; the possibility that it might wish to consider a review mechanism should not be excluded.

41. He supported the views expressed by the Austrian and Swedish representatives, but could not support the proposal of the representative of the German Democratic Republic to delete the reference to the question of follow-up.

42. He agreed with the representative of the Union of Soviet Socialist Republics that flexibility should not be gained at the expense of clarity; perhaps paragraph 2 should be redrafted. He suggested that the words "in particular" should be inserted after the word "commencing" and that the words "taking up thereafter" should be omitted.

43. Mr. GOZZE-GUČETIĆ (Yugoslavia) said that the weapons to be studied by the Working Group should be those that had been discussed by the Ad Hoc Committee at its earlier sessions and by the Government Experts at their Conferences at Lugano and Lucerne. No attempt should be made at the final session of the Conference to extend the discussion to new categories of weapons.

44. The Ad Hoc Committee might adopt either the text proposed by the Nigerian representative or a wording to the effect that the task of the Working Group would be to examine the various proposals, commencing with those on weapons that had been discussed during the past three sessions of the Conference, and on which there was the greatest likelihood of agreement.

45. While it considered that the question of a review mechanism would have to be dealt with, whether by the Working Group or by the Ad Hoc Committee, his delegation could, in a spirit of compromise, agree that the reference to such a mechanism should be deleted.

46. Mr. ABADA (Algeria), supporting the comments made by the Mexican and Yugoslav representatives, said that the views so far expressed on the draft terms of reference of the Working Group did not appear irreconcilable. He could accept the Nigerian proposal and could also agree with the representative of the German Democratic Republic that the Ad Hoc Committee should itself consider the question of follow-up, although many of its participants would be the same as those in the Working Group. What was essential was to begin the substantive work in a logical and realistic manner.

47. On the question of incendiary weapons, the Heads of State or Government of Non-Aligned Countries at their Conference in Colombo in 1976 had urged all States to pursue their negotiations at the Diplomatic Conference with a view to the prohibition of certain cruel weapons, particularly napalm and other incendiary weapons.

That question deserved to be discussed as seriously and responsibly as possible. While it was necessary to be realistic and recognize that there were limitations as far as the study of certain categories of weapons was concerned, there should be a clarification of positions to show what progress could be made. It would then be possible at a later stage to determine the important question of follow-up.

48. The CHAIRMAN suggested that there should be a short suspension during which delegations might confer with a view to producing an agreed text reflecting the various proposals that had been made.

The meeting was suspended at 4.45 p.m. and resumed at 5.30 p.m.

49. Mr. CLARK (Nigeria) said that during the suspension he had held consultations with as many delegations as possible, as a result of which he wished to submit the following text:

"1. A Working Group of the Ad Hoc Committee is set up to consider in detail the various proposals relative to the prohibition or restriction of the use of certain conventional weapons introduced in the Ad Hoc Committee, such as those on mines and booby-traps, fragments not detectable by X-ray and incendiary weapons, with a view to defining the areas of agreement or disagreement with respect to each particular set of proposals.

2. The Working Group will also consider proposals on other categories of weapons.

3. Furthermore, the Working Group will consider the question of follow-up and submit it for further consideration to the Ad Hoc Committee.

4. The sessions of the Working Group will be open to all participants in the Conference."

50. Mr. GRIBANOV (Union of Soviet Socialist Republics) suggested that the word "conventional" should be inserted between the words "categories of" and "weapons" in paragraph 2.

It was so agreed.

51. Mr. KUSSBACH (Austria), Mr. SHERIFIS (Cyprus), Mr. de GRAFFENRIED (Switzerland), Mr. SKALA (Sweden) and Mr. de ICAZA (Mexico) supported the new Nigerian text, as amended.

The text, as amended, was adopted as the terms of reference of the Working Group.

ELECTION OF THE CHAIRMAN OF THE WORKING GROUP

52. The CHAIRMAN suggested that the Ad Hoc Committee should follow its usual practice of electing its Rapporteur as Chairman of the Working Group.

It was so agreed.

Mr. Taylor (United Kingdom) was elected Chairman of the Working Group by acclamation.

The meeting rose at 5.45 p.m.

SUMMARY RECORD OF THE THIRTY-SEVENTH MEETING

held on Thursday, 21 April 1977, at 2.50 p.m.

Chairman: Mr. CHARRY SAMPER (Colombia)

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE
RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL
WEAPONS AND OF PROPOSALS

Introduction of new proposals. (CDDH/IV/222 and CDDH/IV/223)

1. Mr. RUIZ-PEREZ (Mexico), introducing the draft article on the use of land mines and the use of certain explosive and non-explosive devices (CDDH/IV/222) on behalf of the sponsors, said that it was based on documents CDDH/DT/2 and Add.1, CDDH/IV/201 and Corr.2 and Add.1-9, CDDH/IV/209 and CDDH/IV/211 and Corr.1. The subject was not a new one: it had been discussed in detail since before the first session of the Diplomatic Conference. The sponsors had carefully considered the comments made, always bearing in mind the need to protect civilians against indiscriminate attacks, and had eliminated all aspects which could give rise to lengthy and unnecessary discussion. The subject was one on which there had been some community of opinion at previous sessions, and the sponsors were submitting the draft in the hope that something positive could be achieved at the present session. They believed that it struck a reasonable balance between military and humanitarian requirements.

2. The draft article covered both mines and booby-traps. The wording of its title had been chosen in the light of comments at previous sessions and because the terms "booby-trap" in English, "piège" in French and "trampa" in Spanish were not clear enough and did not correspond to the terms used in other languages of the Diplomatic Conference.

3. Paragraph 1 forbade the use of mines in areas containing a concentration of civilians but, as a concession to military needs, made an exception where effective precautions were taken to protect civilians from their effects. In paragraph 2 a distinction was drawn between pre-planned minefields, where recording was compulsory because there was time for it, and minefields laid during combat, which were to be recorded "as far as possible". In both cases it was vital for records to be preserved, in order to facilitate subsequent removal of minefields and to enable the information to be made public when necessary. That would eliminate any danger of minefields having indiscriminate effects. In the Spanish text of

paragraph 2, the word "si" in the last line should be replaced by the words "cuando sea". Paragraph 3 prohibited the use of remotely delivered mines except on the two conditions stated. Paragraphs 4 and 5 banned the use or location of explosive and non-explosive devices, i.e. booby-traps. To meet military needs, however, the provision was subject to the same exception as in paragraph 2, which would remove any indiscriminate effect.

4. Mr. ANDERBERG (Sweden) speaking as a sponsor of the draft article, referred in particular to paragraphs 2 and 3, which in addition to giving the civilian population some protection during war also aimed at giving protection after the cessation of hostilities.

5. One of the major problems for Governments after the cessation of active hostilities was undoubtedly the dangerous objects left behind, particularly mines, which represented a long-term hazard for the civilian population and the environment. Mines constituted a real danger for people and animals and hampered recultivation of former arable land. The United Nations Environment Programme (UNEP) was preparing a study on the problem, to be submitted to the next (thirty-second) session of the General Assembly, and had asked Member States of the United Nations for information. Poland reported that nearly 15 million mines had been disposed of since the end of the Second World War and that between 300,000 and 400,000 different types of ordnance were still being cleared and destroyed every year. In Norway, about 1.7 million landmines had been laid by the end of the war. Austria reported 23,000 tons of munitions remaining from the war. The civilian population had suffered heavily, Poland recording nearly 4,000 killed, including more than 3,000 children, and more than 8,000 injured, including nearly 7,000 children. Even over the past five years, between 30 and 40 people a year had lost their lives. Those figures were no more than a sample.

6. While the problem of mines could not be solved merely by rules on recording minefields and fitting neutralizing mechanisms to remotely-delivered mines, the adoption of such rules would certainly lessen the hazards to the civilian population. Records would enable the local authorities to locate and mark the dangerous areas and, whenever possible, dispose of the mines. Remotely-delivered mines could not be recorded accurately, but if they were all fitted with a reliable neutralizing mechanism, the number of dangerous devices lying about would be reduced.

7. Mr. CHASPURI (Indonesia), introducing his delegation's proposal on incendiary weapons (CDDH/IV/223), said that it was primarily concerned with the humanitarian aspect. His delegation considered that it was imperative to prohibit the use of incendiary weapons on towns, villages and other centres of population, because of the indiscriminate nature of their effects. It was sometimes argued that it was permissible to use incendiaries against military objectives located within populated areas provided such attacks were otherwise lawful and that due precautions were taken to avoid casualties among civilians. He doubted, however, whether it was possible to guarantee adequate protection of civilians against the effects of incendiaries, since once an area had been set on fire, the fire would inevitably spread to other areas. That was especially so in places where buildings were mainly of wood, as was the case in many developing countries. On the other hand, his delegation recognized the military value of incendiary weapons against military objectives, such as military airfields and munition and weapon stores, and therefore had no difficulty in exempting such objects from the prohibition, provided they were not situated in or near centres of population.

8. Paragraph 1 (b) of the proposal was designed to give protection to military personnel. Only those taking up positions in field fortifications such as bunkers or pill-boxes could be attacked with incendiary weapons, and then only if alternative weapons would cause more casualties. It was not, of course, permissible to use incendiary weapons against military personnel in the open.

9. His delegation was not proposing definitions for "incendiary weapon" or "munition", because good ones had already been proposed by others, such as the delegations of the Netherlands and Norway.

10. Mr. LIKO (Austria) said that his delegation had co-sponsored draft article CDDH/IV/222 because it was a generally accepted fact that mines and booby-traps were particularly dangerous for the civilian population and, as recent wars had shown, remained so for a long period after the cessation of hostilities. On the other hand, such devices had proved to be a very effective means of defence and were particularly useful to the weaker and less well-armed party in defending its territory. The aim of the draft article was to achieve a very careful balance between the two aspects of the problem, and that should also be the Ad Hoc Committee's aim.

11. With regard to paragraphs 4 and 5, the means and methods referred to in them were inhumane and treacherous and, in his opinion, without any real military value.

12. Mr. ANDERSON (United States of America) said that draft article CDDH/IV/222 had much to commend it and in many respects the mine warfare proposals were the most humane proposals put forward with respect to conventional weapons. He fully agreed with what the representative of Sweden had said with regard to civilian casualties and felt that it was desirable to agree on some workable instrument which might be considered in some other forum later.
13. He had one or two minor problems with the text; for instance, all minefields were pre-planned. He would, however, raise those points in the Working Group.
14. Sir David HUGHES-MORGAN (United Kingdom) said that his delegation welcomed draft article CDDH/IV/222. The weapons with which it dealt did present a very real danger for the civilian population. It was the more welcome in that it followed so closely the proposal on the prohibition of the use of landmines put forward by the United Kingdom delegation at the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons and submitted to the Ad Hoc Committee in document CDDH/IV/213 and Add.1 and 2, which had been sponsored by the delegations of Denmark, France, the Netherlands and the United Kingdom. He hoped that any small differences in wording between the two texts could be resolved.
15. Mr. DIAZ DE AGUILAR Y ELIZAGA (Spain) said that he could support both the draft article (CDDH/IV/222) and the Indonesian text on incendiary weapons (CDDH/IV/223), which had a very high humanitarian content.
16. Mr. HERNANDEZ (Uruguay) congratulated the sponsors of document CDDH/IV/222, both because of the humanitarian spirit behind it and because it took into consideration the realities of the present-day world. His delegation wished to co-sponsor it.
17. Mr. de ICAZA (Mexico) agreed that the text of document CDDH/IV/222 was very similar to the one submitted at Lugano by a number of delegations, including that of the United Kingdom. At that time he had had some disagreement with the United Kingdom representative but most of their differences had since disappeared. He thanked the United Kingdom and Spanish representatives for their support and welcomed Uruguay as a co-sponsor.
18. He had understood the United States representative to say that the article could perhaps be adopted in another forum, but it was the sponsors' intention that it should be adopted by the Ad Hoc Committee and not elsewhere.

19. The CHAIRMAN said that the proposals submitted in documents CDDH/IV/222 and CDDH/IV/223 would be transmitted to the Working Group.

20. Mr. EATON (United Kingdom) said that he would be deputizing for Mr. Taylor, the Chairman of the Working Group who would be absent for the next two weeks. The intention was to start work on Tuesday, 26 April, on the question of fragments not detectable by X-ray, on which there was only one proposal (CDDH/IV/210 and Add.1 and 2), and it should be possible to reach agreement relatively quickly. It might be possible to begin the discussion on mines and booby-traps on the same day. He suggested that representatives should study the report of the Ad Hoc Committee on its third session (CDDH/IV/237/Rev.1) and the comparative table of proposals submitted at that session (CDDH/IV/218).

The meeting rose at 3.25 p.m.

SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

held on Thursday, 5 May 1977, at 2.45 p.m.

Chairman: Mr. CHARRY SAMPER (Colombia)

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND OF PROPOSALS (continued)

Introduction of new proposals (continued)

1. Mr. SKALA (Sweden) drew the attention of participants to CDDH/IV/Inf.241, prepared by the United Nations Environment Programme (UNEP) - "Study of the problem of the material remnants of wars, particularly mines, and their effect on the environment" - and to the brochure mentioned in CDDH/IV/Inf.242 (Acta Chirurgica Scandinavica - Local Effects of Assault Rifle Bullets in Live Tissues - Part II). He would analyse those two studies, which were of direct concern to the Committee's work, in greater detail at a later meeting.

OTHER BUSINESS

Proposal to insert a new Article 86 bis in draft Protocol I (CDDH/I/340 and Add.1-3)

2. The CHAIRMAN announced that certain delegations would like to discuss what action should be taken on the proposal to insert a new Article 86 bis in draft Protocol I (CDDH/I/340 and Add.1-3).

3. Mr. DIAZ DE AGUILAR Y ELIZAGA (Spain) said he had been surprised to note, first in the Working Group, then at the current meeting of the Ad Hoc Committee, that certain delegations, clearly going beyond the agenda and the Working Group's terms of reference, were intent on considering proposal CDDH/I/340 and Add.1-3, which had been submitted to and studied by Committee I. That matter was obviously within the province of Committee I, and could not therefore be properly taken up by the Ad Hoc Committee.

4. Moreover, the change in the agenda would affect the agreements validly reached in the Ad Hoc Committee. His delegation would therefore be entitled to rise to a point of order, under rule 30 of the rules of procedure. It would not do so at the present stage, however, for that would interrupt the Ad Hoc Committee's work, and thus seriously jeopardize its progress. In the spirit of conciliation and co-operation it had always displayed, it was

prepared to listen to those delegations which wished to express their views, but would suggest that on the present occasion no attempt should be made to elaborate, or consequently conclude, agreements. Otherwise, his delegation would be obliged to rise to a point of order.

5. Miss BOA (Ivory Coast) said that, if her delegation had been larger, and had been represented on Committee I, it would have opposed the adoption of the new Article 86 bis.

6. Mr. de ICAZA (Mexico), speaking on a point of procedure, said he considered that the consideration of Article 86 bis did not lie within the Ad Hoc Committee's province. He asked that the meeting be suspended, or that a vote be taken by roll-call on the matter.

7. The CHAIRMAN, after authorizing the suspension of the meeting, said that Article 86 bis did not lie within the competence of the Ad Hoc Committee.

8. Miss BOA (Ivory Coast) said that it was not her intention to broach the substance of Article 86 bis, or the question of the competence of the Ad Hoc Committee. She might deal with proposal CDDH/I/340 and Add.1-3 in greater detail in Committee I or in plenary.

9. Mr. FROWIS (Federal Republic of Germany) observed that discussion of the prohibition or restriction of the use of specific categories of conventional weapons had been preceded by in-depth preparatory work at the two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons, held respectively at Lucerne and Lugano. Most Government experts had then agreed that the legal criteria of "unnecessary suffering" and "indiscriminate effects" could not serve as a basis for the formulation of rules in that field, since the injuries caused by a weapon had to be judged in relation to its military effect. Most experts had further agreed that it would be easier to ensure that a weapon was banned if the treaty did not spell out the underlying motives. It appeared wise to combine initiatives based on humanitarian motives with disarmament efforts so that the humanitarian endeavours would be furthered by political, economic and other motivations connected with concrete action for the control of weapons. It would be advisable therefore to deal with the question of weapons in the wider context of disarmament instead of broaching it in the Protocol. Although States had a long way to go to achieve their ultimate objective of general and complete disarmament under effective international control, the fact should not be overlooked that Governments had been able to agree on a series of important steps in that direction, e.g.

the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water; the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Sub-soil thereof; Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction; the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco). In 1976 the Conference of the Committee on Disarmament had adopted the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques.

10. It was logical, therefore, that Yugoslavia had suggested placing an item relating to measures for the prohibition of napalm and other weapons on the agenda of the special session of the United Nations General Assembly on Disarmament. It would then be possible to decide at the close of that session where such work could be continued.

11. Mr. SKALA (Sweden) said that he did not wish at present to enter into a detailed discussion of the follow-up question. However, he welcomed the fact that the Federal Republic of Germany seemed to have an open mind with regard to the continuation of the work initiated by the Diplomatic Conference.

12. Mr. DI BERNARDO (Italy) stated that the draft new Article 86 bis (CDDH/I/340 and Add.1-3) proposed the establishment of a committee and specified its terms of reference.

13. For a long time, his delegation had spoken at the Diplomatic Conference, and elsewhere, against the establishment of committees dealing with one or another aspect of the issues related to disarmament such as prohibition or restriction of the use of certain weapons. It was indeed of the utmost importance that the international community should have at its disposal for the aims it had in view, one single committee responsible for all such questions. Obviously, there was no question of shirking the obligations which every State should assume, but only a single committee would be in a position to draw up, in full knowledge of the facts, conventions or other international instruments of real significance, by following a progressive disarmament programme and dealing with all aspects of the question.

14. In a few months' time, the United Nations General Assembly was to hold a special session in New York at which all aspects of disarmament would be studied. The problem of conventional and non-conventional weapons would doubtless be examined; it was therefore important not to prejudge the outcome of that special session.

15. Draft Article 86 bis did not introduce anything new from the humanitarian point of view. Apart from the fact that the establishment of the proposed committee would be an arduous task, the proposal was not in line with the humanitarian principles on which the draft Protocols were based. It would result in an increase in the number of supervisory bodies and might complicate their actions by interference. Finally, it did not seem calculated to prevent the illegal use of conventional arms. For all those reasons, his delegation was opposed to the draft new Article 86 bis.

16. Sir David HUGHES-MORGAN (United Kingdom) said that he shared some of the views and fears expressed by the representatives of the Federal Republic of Germany and Italy.

17. His delegation took most seriously the work of the Ad Hoc Committee and hoped that it would be able to reach a fruitful conclusion. It awaited with interest a full debate on follow-up action to the work and would take part in any follow-up forum work.

18. It must be borne in mind that the Ad Hoc Committee's work was built on very carefully laid foundations established after a great deal of reflection at the Conference itself and at the meetings of Government Experts at Lugano and Lucerne. Part of the results of the Committee's work would be a carefully thought-out and well-considered review mechanism. It was to be feared that the constitution of a review mechanism built on totally different and very difficult criteria could only serve to confuse and prejudice the functioning of the review mechanism which would result from the Ad Hoc Committee's work. For those reasons, and in order to avoid proliferation of review mechanisms of different composition operating according to different criteria, his delegation was not in favour of the draft new Article 86 bis submitted to Committee I.

19. Mr. GENOT (Belgium) said that at that stage of the work his delegation was not able to state its precise position on the best procedure for bringing international law on the prohibition or restriction of the use of certain arms up to date.

20. That question could be studied in better conditions, either by the Ad Hoc Committee itself, or by some other appropriate body, in the light of the results of the Ad Hoc Committee's work on the substance of the matter.

21. Nevertheless, a proposal on the matter had been submitted to Committee I. It should be pointed out, for the benefit of the members of that Committee, that interesting discussions had taken place on the subject particularly at the Conference of Government Experts at Lugano, and that proposals had been made there. Committee I could usefully base its discussions on that earlier work, which might provide various interesting possibilities for finding a generally acceptable solution, if it thought that the question should be settled forthwith in Protocol I.

22. Mr. FELBER (German Democratic Republic) said that, as a result of the consultations which had taken place during the preparatory stage of the Diplomatic Conference, aimed at the establishment of favourable preconditions for the work of the Ad Hoc Committee and other Committees, a working method acceptable to all delegations had been found and a mandate in keeping with the character of the Conference and the subjects it had to discuss had been adopted.

23. The consultations had proceeded in a spirit of mutual understanding and confidence, and the deliberations had begun in the same atmosphere. Despite differing opinions on certain matters of substance, it had been the conviction of his delegation that there was unanimous agreement that the work of the Conference was not to be burdened in its final stage with problems outside its competence. It regretted to have to state, however, that since 26 April there had been a fundamental change in the situation. Committee I had been presented with a proposal which had an extremely negative influence on the work of the Ad Hoc Committee, in particular with regard to the forthcoming discussions on the follow-up in the field of the prohibition or restriction of certain conventional weapons.

24. That proposal, which had been initiated by one delegation and, unfortunately, supported by several others, might seriously jeopardize the success of the Diplomatic Conference and nullify not only several years of work by the International Committee of the Red Cross but also the efforts of many Government experts and of the host country itself. Draft Article 86 bis, which aimed at embodying a non-existent agreement on certain conventional weapons, had no basis either in the Geneva Conventions or in the draft Protocols.

25. Since the prohibition of certain definite kinds of weapon had never been the concern of the Diplomatic Conference, a negotiating instrument of that nature could not be linked to Protocol I. Moreover, it was as unrealistic to claim that the draft did not prejudice the work of the Ad Hoc Committee as to see in it a logical consequence of Articles 33 and 34.

26. His delegation was not willing to work in such conditions. Moreover, it was not authorized to agree to provisions in a Final Act which were outside the competence of the Diplomatic Conference. Nevertheless, it would continue to participate in the work of the Committee while awaiting instructions from its Government.

27. Mr. CHENIER (Canada) agreed and endorsed the remarks of the United Kingdom representative. His delegation wished at the present time only to add to those remarks that it was ready to discuss the topic of conventional weapons in any other forum to which the Ad Hoc Committee might recommend that it be referred. The Canadian delegation wished to emphasize the work done by the two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons, held respectively at Lucerne and Lugano, on the question of follow-up, and its concern at the introduction of Article 85 bis in Committee I and the results which that action might have concerning the future of the work of the Ad Hoc Committee on that particular question.

28. Mr. MATHESON (United States of America) recalled that at the meetings of the Ad Hoc Committee during the third session his delegation had recognized that it might be useful to make some appropriate provision for the future review of conventional weapons developments from the point of view of humanitarian law.

29. In part, that objective might be met by a requirement that each Party should conduct such a review on a national basis. The United States of America had in fact already instituted such a procedure. As his delegation had indicated at the third session, the United States could also support the adoption of an appropriate procedure for the joint consideration by States of proposals to modify existing restrictions or to adopt new restrictions on conventional weapons. His delegation, while understanding the objections voiced to draft Article 86 bis, also understood and sympathized with the purpose of that article and the desire of its sponsors to continue the consideration of restrictions on the use of some forms of conventional weapons in the context of humanitarian law.

30. His delegation doubted, however, whether the inclusion of an article setting up a specific mechanism for that purpose in Protocol I was the best method. For instance, a simple resolution by the Conference recommending future consideration of new proposals for weapons restrictions might perhaps be preferable. In any case, his delegation would be willing to work with other delegations in the Ad Hoc Committee or in Committee I to study a mutually acceptable procedure.

31. Mr. de ICAZA (Mexico) said that his delegation, too, would refrain from taking part in a discussion on draft Article 86 bis, for two reasons. In the first place, the draft would be referred to Committee I for consideration, and in the second place the problem of prolonging the work on conventional weapons would be raised at other meetings at which participants would be better able to express their views.

32. His delegation had shown the interest that it took in the Ad Hoc Committee, which it had helped to set up at the first session when other delegations had been against it. It would continue to participate in its work on the questions which came within its competence.

The meeting rose at 3.40 p.m.

SUMMARY RECORD OF THE THIRTY-NINTH MEETING

held on Wednesday, 11 May 1977, at 10.20 a.m.

Chairman: Mr. CHARRY SAMPER (Colombia)

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND OF PROPOSALS (continued)

Introduction of new proposals (CDDH/IV/206/Rev.1, CDDH/IV/Inf.237, CDDH/IV/GT/6) (concluded)

1. Mr. van der KLAAUW (Netherlands) introduced document CDDH/IV/206/Rev.1 on behalf of the sponsors. The document introduced a revised text of the annex to document CDDH/IV/206, based on certain comments made with respect to that document at the third session.
2. The notion of "a concentration of civilians" had been taken up in rules (a) and (c) of the new text by the addition of a sentence designed to make it clear that, where the rule applied to concentrations other than towns or villages, they were concentrations of a similar level, such as columns and camps of refugees, and nothing below that level. At the end of rule (c) the words "is imminent" had been replaced by "appears to be imminent", so as to place the responsibility for making such an assumption upon the person who had to decide whether or not to use the type of weapon concerned.
3. The sponsors would welcome comments and criticisms and were confident that the discussion of the document would lead to a text that could be a basis for agreement on the limitation of the use of the incendiary weapons in question.
4. Mr. BERLIN (Sweden) introduced document CDDH/IV/Inf.237, sponsored by Austria, Switzerland and Sweden, the object of which was to present some ballistic parameters of major importance to the creation of tissue damage and the effects of missile penetration in live tissue. The document also discussed the kind of material that could be used to simulate biological targets.
5. The document was the outcome of research in furtherance of the recommendations in paragraph 61 of the report on small-calibre projectiles by the General Working Group of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in 1976. In August 1976 Sweden had convened a second international symposium on wound ballistics, at which the

main emphasis had been on eadeavours to find a non-biological material in which projectile behaviour and energy transfer would be comparable to that in live muscle tissue. Subsequently, Austrian, Swiss and Swedish expert groups of physicians and engineers had established scientific co-operation in that area.

6. The extent and severity of wounds caused by missile penetration depended mainly upon the amount of energy transferred to and absorbed by the tissues. Consequently, ballistic parameters affecting the rate of energy transmission and the amount of energy transmitted at each instance along the missile trajectory seemed to be more important than the calibre of the projectile or its total kinetic energy at impact.

7. The tumbling of a projectile within the target tissues greatly increased energy transfer and caused the break-up of projectiles in soft tissue, without a bone or any other denser medium being hit. Projectiles should therefore not be allowed to tumble or break up within an average trajectory in the human body if superfluous injuries were to be avoided. Although every spin-stabilized projectile was bound to tumble sooner or later after entering a medium denser than air, it was quite possible to design weapon and ammunition systems even of rather small calibre with projectiles which would not tumble within the average trajectory in a human body.

8. With regard to break-up, in a Swiss series of tests at a range of 30 metres against a soap target, all projectiles of ten shots with one type of 5.56 mm calibre bullet had broken during penetration. Against the same type of target and at the same range, none of twenty shots with two types of 7.62 mm calibre had been damaged. A Swedish series of shots against the same type of soap target, but at a range of 100 metres, had shown similar results, all the 5.56 mm calibre bullets having broken, while those of 7.62 mm calibre had passed through undamaged.

9. Velocity at impact was important since increasing velocity produced higher rates of energy transmission. That justified some upper limit to muzzle velocity. The damage caused by missiles penetrating a human body was not limited to the immediate area around the missile trajectory; there might also be regional circulatory changes and the central nervous system and the centres controlling circulation and/or respiration might be affected. The extent of those more far-reaching effects seemed also to be related to the amount of energy transferred to the tissues.

10. It had been found in the Swedish test series that soap simulated live tissue better than the commonly used gelatin. Details of the Swedish and Swiss test series had been published in the Acta Chirurgica Scandinavica Supplementum 459, which had been submitted to the Lugano Conference, and in the Acta Chirurgica Scandinavica Supplementum 477, one copy of which had been circulated to delegations at the present Conference as document CDDH/IV/Inf.242. If any delegations would like more copies, he would be glad to supply them.

11. The results of the tests series therefore provided strong support for the ideas behind the Swedish working paper just circulated (CDDH/IV/GT/6). He hoped that the documents to which he had referred would help to bring about a better understanding of the complex mechanism of missile wounding and its effects.

12. Mr. BLAKENEY (Australia) said that, as a sponsor of the proposal in document CDDH/IV/206/Rev.1, he supported the remarks of the Netherlands representative.

13. It was well known that Australia shared international concern about the use of napalm and that it was a party to international agreements prohibiting the employment in war of weapons calculated to cause unnecessary suffering. It did not possess aerial or mechanized napalm-type weapons and did not intend to acquire them.

14. While some delegations felt that the revised proposal (CDDH/IV/206/Rev.1) did not go far enough and that nothing less than a total ban on flame weapons was the way to make progress in that important field, his delegation had become convinced from a close analysis of previous conferences that restrictions on use were the way to make progress because they held out the prospect of widest international agreement. Although for some delegations the forward step the sponsors were proposing was too modest, in his opinion it was both forward and realistic, and capable of attracting wide support as a basis of formal international agreement in due course.

15. Mr. CHASPURI (Indonesia) pointed out two main differences between the proposals in document CDDH/IV/206 and in document CDDH/IV/206/Rev.1. Firstly, the revised version gave descriptions and examples of concentrations of civilians. Secondly, in rule (c) the words "or is imminent" had been replaced in the revised version by "or appears to be imminent". That amendment was not an improvement, for it did not offer greater protection to civilians since "is imminent" was more positive than "appears to be imminent".

16. Mr. PEXA (Austria) welcomed the paper on terminal ballistics and wounding effects of small calibre projectiles (CDDH/IV/Inf.237) and congratulated the group of experts which had submitted it. The paper summarized the results of experiments carried out in Sweden and other countries and provided valuable new information. That tremendous work had made it possible to analyze the various parameters of the wounding effects of a projectile, especially the technical characteristics of weapons and ammunition which influenced that effect. The aim of all those efforts was to prevent an increase in the wounding effect of small calibre weapons and the development of new such weapons.

17. Mr. RUIZ-PEREZ (Mexico) congratulated the countries that had participated in drawing up document CDDH/IV/Inf.237, which would be of great help to the Committee in its work.

18. His delegation supported Working Group document CDDH/IV/GT/6, which was drafted in reasonable terms, for it was essential that no weapons causing more severe injuries than those already in existence should be developed. His delegation was prepared to co-operate in studying the document in greater detail in an appropriate forum.

19. He congratulated the delegations of Australia, Denmark and the Netherlands on their working paper (CDDH/IV/206/Rev.1) but could not agree to all aspects of rules (a) and (b), since it was extremely difficult to leave the decision on whether an attack was lawful to commanders and field units.

20. His country had always deplored the use of napalm and was in favour of its total prohibition.

The meeting rose at 10.50 a.m.

SUMMARY RECORD OF THE FORTIETH MEETING

held on Thursday, 19 May 1977, at 11.5 a.m.

Chairman: Mr. CHARRY SAMPER (Colombia)

APPROVAL OF THE REPORT OF THE WORKING GROUP (CDDH/IV/224)

1. Mr. TAYLOR (United Kingdom), Rapporteur, said that the Working Group's discussion of the first draft of its report (CDDH/IV/224) had only just been concluded; it had been impossible therefore to reproduce the amended draft 1/ in the time available. He hoped that, in the meantime, delegations would be able to proceed with their annotated copies of the original text.
2. The terms of reference of the Working Group (CDDH/IV/221) had been to define the areas of agreement or disagreement with respect to the various proposals submitted to the Ad Hoc Committee. The energy of delegations had made it possible to carry out that task with reasonable despatch. There had been agreement on the proposal (CDDH/IV/210 and Add.1 and 2) relating to fragments non-detectable by X-ray; with regard to the proposal in document CDDH/IV/GT/4 and Corr.3 concerning mines, there had been areas of both agreement and disagreement; there remained the question of incendiaries concerning which problems had arisen during the discussion by the Working Group of its draft report (CDDH/IV/224).
3. The second sentence of paragraph 42 of that report reflected a question he had addressed to the Group during the discussion on incendiaries in an effort to see whether a measure of agreement could be found. Following a number of statements on the proposal in working paper CDDH/IV/206/Rev.1, he had asked if he was right to assume that it was agreed that that proposal offered a useful basis for further discussion. No contrary views had been expressed. He had commented that that was of interest.
4. Nobody disputed what had happened; but it had become clear in the Working Group that his question had been interpreted differently by different members of the Group, who had also interpreted differently the silence that had followed it.

1/ See the annex to the report of the Ad Hoc Committee (CDDH/408/Rev.1).

5. There were broadly two interpretations: one, that the proposal in working paper CDDH/IV/206/Rev.1 offered a useful basis for further discussion in the Working Group and at that time; the other, that it offered a useful basis for discussion not only in the Working Group, but in future forums. Those interpretations reflected two schools of thought in the Group: some considered that all the proposals submitted on the subject should be considered on an equal footing in any future work thereon, and some thought that it would be preferable to concentrate initially on a more modest proposal.

6. It had proved impossible to arrive at an agreement regarding the reflection in the report of that division of opinion, primarily because neither interpretation had been voiced in the Working Group, and so could not justifiably be expressed in the report.

7. He was therefore making the present statement to draw attention to the existence of those different interpretations of his question and of the silence which had followed it, which was reflected in paragraph 42 of the report. It was clear that the silence could not be interpreted as indicating a unanimous agreement on either of the positions described above.

The Working Group's report (CDDH/IV/224) was approved.

CONSIDERATION OF THE QUESTION OF FOLLOW-UP AND OTHER QUESTIONS

8. Mr. AKRAM (Afghanistan) said that the time had come to take stock of the positive and negative results achieved by the Ad Hoc Committee. Those results might appear somewhat meagre, but there were no grounds for discouragement or disappointment. While it had not been possible to delimit clearly the areas of agreement and disagreement on questions of the banning or limitation of certain categories of weapons, some progress had been made as compared with the confusion that had reigned at the time the Ad Hoc Committee started its work. In view of the importance of the mandate entrusted to the Ad Hoc Committee and the complexity of the problems to be solved, it was quite normal for delegations to adopt positions with a certain prudence and only after mature reflection.

9. His delegation considered that most of the proposals submitted to the Ad Hoc Committee were concrete and constructive; the variety of the viewpoints expressed, and of the measures and methods of application proposed, in no way reduced the value of the documents submitted to the Committee. The eagerness with which participants had sought to amend and improve the various documents submitted was a matter of encouragement for his delegation. The discussions had clarified the position of delegations on the banning or limitation of certain categories of weapons, incendiary and other.

10. His delegation thought that a continuation of such discussions - as had been recently decided in Committee I - would be for the benefit of mankind as a whole. It did not, however, wish to make any specific proposals concerning the place or forum of the future discussions: that was a matter for consensus among all delegations present at the Diplomatic Conference. What it wished to stress, however, was that such discussions must be based on the results, clarifications and partial agreements achieved by the Conference. All mankind would suffer if the next round of discussions were to fail.

11. If the future discussions were to succeed, the measures and methods recommended must be practical and applicable everywhere by everybody; otherwise, the law of the strongest would prevail and respect for humanitarian measures would be exacted only from the weak.

12. As one of the co-sponsors of documents CDDH/IV/201 and Corr.2 and Add.1-9 and CDDH/IV/Inf.220, his delegation had urged the banning in all circumstances of incendiary weapons which were indiscriminate and caused unnecessary suffering. After four years of discussion it had appeared, however, that the total and immediate banning of weapons of that type, however murderous they might be, was not acceptable to all participants in the Conference. His delegation had accordingly supported a strict limitation of certain categories of such weapons: first, because it had been led to recognize the military value of certain types of incendiary and explosive weapons; and second, because it feared that, with the headlong progress of armaments technology, the banning of certain categories of such weapons would result in the armaments manufacturers producing weapons even more dangerous and murderous than the existing types.

13. The objective to be attained was the protection of the civilian population and the reduction of unnecessary suffering among combatants. His delegation earnestly wished for a logical follow-up to the work of the Conference, the success of which would not only coincide with the intentions of the organizers of the Conference, but fulfil the hopes placed in it by the whole of mankind.

14. Mr. TODORIĆ (Yugoslavia) expressed his satisfaction at the unanimous support given to the proposal to ban the use of any weapons the fragments of which in the human body were not detectable by X-ray (CDDH/IV/210 and Add.1 and 2).

15. As a co-sponsor of document CDDH/IV/222 and Add.1 on the use of land mines and of certain explosive and non-explosive devices, the Yugoslav delegation had welcomed the identity of views revealed by the co-sponsors of several amendments to that document. In his view, the new proposal contained in Working Group document CDDH/IV/GT/4 constituted a compromise solution which should meet with general acceptance similar to that achieved in the case of weapons producing fragments non-detectable by X-ray.

16. The proposal in working paper CDDH/IV/GT/5, submitted by Sweden and Switzerland, for a possible ban on the use of fuel/air explosives which were particularly cruel and caused unnecessary suffering, was useful and deserved further attention.

17. However, the proposal on incendiary weapons submitted by Australia, Denmark and the Netherlands (CDDH/IV/206/Rev.1) did not provide satisfactorily for a definitive ban on the use of those weapons, which caused unnecessary suffering. The proposal did not offer sufficient humanitarian protection against napalm attacks, either for combatants or for the civilian population. For those reasons, the proposal did not constitute a useful basis for the search for a generally acceptable solution aimed at the banning of incendiary weapons.

18. In his delegation's view, a compromise solution must be based on a total prohibition of the weapons in question, with the exceptions that might be specified in virtue of documents CDDH/IV/201 and Corr.2 and Add.1-9 and CDDH/IV/Inf.220, the Mexican and Indonesian proposals (CDDH/IV/222 and Add.1 and CDDH/IV/223), and the Swedish document (CDDH/IV/GT/3) on flame weapons. Those exceptionally valuable documents were not only in conformity with United Nations General Assembly resolutions, but reflected the standpoint of the non-aligned States, adopted by the Conference of Heads of State or Government of Non-Aligned Countries at Colombo in 1976, on the banning of certain indiscriminate conventional weapons and, in particular, of napalm and other incendiary weapons.

19. Mr. FROWIS (Federal Republic of Germany) said that the common endeavours of the community of nations to develop and improve the body of humanitarian law, in which the Government of the Federal Republic had always participated, should be guided by the desire to formulate rules of law that would stand the test of reality. If rules broke down easily in times of conflict, the law of war might become largely irrelevant.

20. The four sessions of the Diplomatic Conference had been to some extent successful. His delegation welcomed the agreement on the prohibition of weapons scattering fragments of plastic material, wood or glass which were not detectable by X-rays (CDDH/IV/210 and Add.1 and 2) and it trusted that governments would soon reach agreement on an extended ban on perfidious weapons and on additional precautionary measures for the protection of civilians in connexion with the laying of land mines and booby-traps, on the basis of the concept worked out in the Working Group. That proposal struck a balance between humanitarian concerns on the one hand and security needs on the other. While providing due protection for the civilian population, it did not significantly impair the military utility and effectiveness of mines and related devices, which were indispensable weapons for the defending party. On humanitarian grounds, however, armed forces would be obliged to record minefields, to fit remotely delivered mines with a neutralizing mechanism or alternatively to mark the area in a distinctive manner, and to take precautions when laying manually-emplaced mines, e.g., by evacuating the civilian population or by warning civilians to stay in their shelters for a given period of time.

21. It should be borne in mind that villages protected by minefields were sometimes spared the scourge of an enemy attack on military objectives in the vicinity, with all the injuries and damage entailed. If a mine barrier succeeded in channelling the path of the enemy task force into a less inhabited area, much was gained for the humanitarian cause.

22. Working paper CDDH/IV/206/Rev.1 was another good example of the merits of, and limitations inherent in, humanitarian law. His delegation welcomed the suggestion to insert the term "combat area", for the original wording gave an advantage to the aggressor to the detriment of the defending forces. It must be recognized, however, that the rule might still easily break down in conflict conditions, since in a moving battle, when tanks might advance 300-400 km in a few hours, drivers would have great difficulty in making out where the contact or combat area ended and where the hinterland began. Further, enemy forces might well be tempted to pass through or camp near the villages protected by the rule envisaged in working paper CDDH/IV/206/Rev.1, attracting by their presence artillery fire to the very objects which humanitarian law was concerned to protect. Nor should it be forgotten that napalm bombs could be used in a more discriminate manner than blast and fragmentation weapons, which would cause more collateral damage and more civilian casualties, owing to their wider range.

23. Commanders also had a humanitarian responsibility for the lives of their men; and aircraft crews had, as a rule, a better chance of survival when flying at a low altitude when dropping incendiaries than when using high explosives from a higher altitude. A more stringent rule was called for.

24. Where bans and restrictions on the use of weapons affected the defence capability of a State and the military relationship between States or groups of States, the effects of such measures would assume a new dimension. In that light, the most suitable forum for bans or substantial restrictions on the use of incendiary, blast and fragmentation weapons, and the control of new weapon developments, would appear to be a disarmament body such as the United Nations Conference of the Committee on Disarmament. In that sphere, step-by-step action and patient, steady work on detailed aspects would be the most promising procedure.

25. Although there was still a long way to go before achieving the ultimate objective of general and total disarmament, it should not be overlooked that Governments had been able to agree on a series of important steps in that direction: the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water; the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Sub-Soil thereof; the Convention on the Prohibition of the Development, Production and Stock-piling of Bacteriological (Biological) and Toxin Weapons and their Destruction; the Treaty on the Non-Proliferation of Nuclear Weapons; the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. It was logical, therefore, that Yugoslavia should suggest that measures for the prohibition of napalm and other weapons should be placed on the agenda of the special session of the United Nations General Assembly concerning disarmament.

26. It appeared wise to combine initiatives guided by humanitarian motives with disarmament efforts, so that the humanitarian endeavours could be furthered by political, economic and other motivations connected with concrete arms control actions.

27. That evaluation should naturally not hamper those States or groups of States whose security situation allowed it to give immediate effect to a number of bans or restrictions by unilateral or concerted actions, in the hope that their good example would eventually be followed by other countries as soon as peace and security had been strengthened throughout the world.

28. The idea of regional measures had gained ground in recent years. In 1974, eight Latin-American States had made a start in that direction in the Declaration of Ayacucho. On 17 November 1975, at the thirtieth session of the United Nations General Assembly, Ghana had suggested that regional committees on conventional disarmament should be established. In September 1976, a statement on regional measures by the Foreign Minister of Belgium had been favourably received in the United Nations.

29. War by its very nature was cruel. The only road to the elimination of unnecessary suffering was the preservation of peace. The most convincing way for Governments to observe their humanitarian obligations was therefore to pursue a consistent policy of stable peace. National interests should be pursued by peaceful means alone, not by the threat or the use of force. Governments should never neglect that fundamental commitment, enshrined in the Charter of the United Nations.

30. Mr. AL YAZIEDI (Saudi Arabia) said that when viewed in the context of over-all strategy, the question of the banning or limitation of certain conventional weapons was an extremely difficult one. It was bound up with all the other weapons used within an integrated military conception or strategy, based not only on military but on technical, political and other considerations. In order to reach a successful outcome, therefore, the question of the prohibition or restriction of the use of certain conventional weapons should, in the first place, be confined to limited international conflicts. It was clear, however, that the barbarous or indiscriminate use of such weapons in limited international conflicts would inevitably lead to new strategic conditions, thereby tending to extend the area of conflict and possibly leading - God forbid! - to a world war. He therefore proposed that the question of the prohibition or restriction of weapons should be divided into their use in a limited international conflict on the one hand, and, on the other, their use in wider or large-scale wars.

31. The international community should strive to establish a just peace in those areas in which armed conflicts were in progress or threatened. It should not abandon such areas to the destructiveness of war. A just peace was the surest guarantee for the welfare of mankind. If, however, it was found that armed conflict in certain areas seemed unavoidable, then the principles of a just peace should guide States in strengthening strategically one or other of the Parties to the conflict. The international community should refrain from aiding militarily those parties which were occupying by force the territories of other peoples and depriving them of the right to a decent life. The international community should strive to strengthen those to whom injustice was being done

so as to enable them to recover their rights. It was necessary to say that because obviously there was still a long way to go before a new code for the prohibition or restriction of certain weapons could be achieved. States which produced weapons for external use should ensure that their export policies were guided by the need to establish a just peace.

32. His delegation considered that total prohibition of incendiary weapons was the best course to follow; it also supported the principle of full protection for civilian populations, their places of worship and the cultural heritage, from weapons of mass destruction, whether conventional or non-conventional. Any progress achieved in that respect, including progress in the matter of incendiary weapons, was of vital importance for mankind.

33. Mr. BUHEDMA (Libyan Arab Jamahiriya) said that his delegation had been following the work of the Ad Hoc Committee with considerable interest for the past few years and greatly appreciated the efforts made by that Committee and by the two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons which had been held at Lucerne and Lugano. It also appreciated the efforts that had been made to provide the Ad Hoc Committee with information to render its work easier and to keep it in touch with the technical progress achieved in the matter of conventional weapons. His delegation had taken due account of all the legal and technical deliberations of the experts on the Ad Hoc Committee, as well as other experts who had attended the meetings to which he had referred and who had given that Committee a clear view of the legal and technical difficulties with which it was faced in its work.

34. His delegation found it easy to appreciate those efforts, which were based on experience and practical experiments and were designed to give the Ad Hoc Committee a clear view of such matters. The Committee had been provided with a great deal of information on that category of armaments, despite the divergence of opinions on technical matters.

35. His delegation had followed with interest the attempts made to codify the use of that category of weapons, which had come to be known as conventional weapons, on the basis of the data collected on them. His delegation had participated in the work of working groups on some specific matters of which his country had vast experience, in particular landmines, about which several documents had been submitted, such as documents CDDH/IV/213 and Add.1 and 2, CDDH/IV/222 and Add.1 and CDDH/IV/GT/4 and Corr.3.

36. In addition, his delegation had followed most of the items connected with other types of weapons, including all endeavours that had been, and were still being, discussed in other Committees to prohibit or limit the use of other types of weapons known to cause unnecessary suffering or to have indiscriminate effects.

37. In considering the question of conventional weapons, his delegation was under the impression that there were weapons that were not conventional. When it heard that there were weapons that caused unnecessary suffering, it might be led to believe that there were weapons that caused only reasonable suffering or inflicted wounds that were not unnecessary. It would therefore appear that combatants were justified in using the latter type of weapons, which might be termed non-traditional, which cause no unnecessary injuries and for which no definition had been given.

38. His delegation did not intend to indulge in a futile discourse likely to complicate the work of the Ad Hoc Committee, nor did it intend to discuss the developments leading to the proposed instrument for consultations on matters pertaining to the limitation of certain specific types of weapons to which draft Article 86 bis referred, and which his delegation fully supported as a new move towards the prohibition or restriction of certain types of weapons. His delegation had expressed its support for document CDDH/IV/213 and Add.1 and 2 submitted by the United Kingdom delegation and that support had not been given as a result of a comparison with other proposals. At the same time it fully appreciated the efforts that had gone to the production of document CDDH/IV/222 and Add.1 and the humanitarian purposes underlying it. It welcomed the consensus reached in document CDDH/IV/GT/4 and Corr.3, which it regarded as an excellent piece of work incorporating all the practical details to be found in document CDDH/IV/213 and Add.1 and 2. On the basis of its experience of one of the more important fronts of the Second World War, his delegation felt that the latter document had a number of practical advantages.

39. His delegation supported all commendable steps along the path leading to the protection of mankind against the danger of weapons and the risks of contaminating the environment.

40. His country had taken a firm position at the United Nations on the question of mines and the decontamination of the human environment from the effects of wars. President Moammer Al-Gadaffi had given frequent warnings about that problem. His delegation was prepared to exert every effort in order to advance the work of the Ad Hoc Committee and hoped that the Conference would appreciate the valuable contribution of the Committee, even if the sum total of its work amounted to no more than suggestions

or recommendations, for even those could be regarded as a step in the right direction. There was no doubt that future generations would appreciate any achievements, however modest, of the Ad Hoc Committee. His country applauded the noble efforts made to instil the spirit of peace among men.

41. There was no need for him to reiterate his country's attitude of support for anything that was calculated to limit the use of force or to prohibit it altogether in the solution of international problems. That attitude was known to all and had frequently been recorded in the United Nations, in particular at the thirtieth and thirty-first sessions of the General Assembly and on the issue of conventional weapons. He would also like to emphasize that the prohibition or restriction of the use of such weapons should be achieved at world level and not at the level of any given area.

42. In conclusion, he wished to make it clear that disarmament was not merely an ordinary process of stopping the development of highly destructive weapons, of destroying available stocks in military depots, of concluding one or more agreements on the control of arms or on disarmament measures. It was primarily a decision that must be taken at the political level by all peoples in order to stem the tide of indiscriminate destruction.

43. Mr. ANDERSON (United States of America) said that, as participants in the Working Group had expressed the desire for more information of a technical nature, his delegation proposed to give such information at the present meeting. His colleague, Mr. Scheetz, was the director of surgical research for the United States army and was an expert on the effects of various types of weapon on the human body. He had attended various international meetings concerned with wound ballistics and the third session of the Diplomatic Conference on International Humanitarian Law and would like to express his opinion on the question of small calibre projectiles.

44. Mr. SCHEETZ (United States of America) said that the introduction by the Swedish delegation of document CDDH/IV/Inf.237 at the thirty-ninth meeting of the Ad Hoc Committee, had been of great interest to him, especially as he had attended the two Swedish-sponsored wound ballistics symposia held in 1975 and 1976 as well as the Conference of Government Experts held at Lugano and the third session of the Diplomatic Conference on Humanitarian Law. He hastened to add that, as a medical officer and surgeon, with competence in wound ballistics as well as in treating casualties injured by small calibre projectiles, he interpreted the results of the wound ballistics symposia from a different and somewhat opposite point of view. That different interpretation might be

due in part to the fact that such studies were difficult and must be carefully designed with expert assistance and advice and that the results might - and in fact did - vary widely, making valid statistical or useful medical comparisons impossible.

45. Referring to document CDDH/IV/Inf.237, he noted that table 1 on page 6 presented results of the "break-up" of projectiles in studies performed by Sweden and Switzerland. He would use the words "break-up" in quotation marks in each case, since the term had not been defined in the document or in the other documents to which he would refer later. Before useful comparisons could be made, it was necessary to distinguish between the multiple fragmentation of a projectile and the breaking away of a single fragment: that problem or difference had not been dealt with in the documents submitted to the Ad Hoc Committee. The Swedish representative had referred only to the results shown in table 1 of three tests of projectiles used against soap and gelatin targets. In two of the test series all 5.56 mm projectiles had "broken up"; in the third, eleven out of twelve, or 92 per cent, of the projectiles had done so. Thus, the tests had appeared to yield an "all or none" effect when compared with the 7.62 mm projectiles against those simulants. The results of the tests on pigs, which were shown in the same table, and to which the Swedish representative had not referred, showed that only seven out of thirty-seven 5.56 mm projectiles had "broken up". Therefore, there was something very different from tests performed in non-biological simulants and subsequent results, and those performed on living tissue.

46. He submitted that tests performed in soap and gelatin did not afford a sound basis for predicting the wounding effects of projectiles in human tissue. Neither soap, nor any other simulant at present employed, would yield tests results which could be reasonably extrapolated to human tissue. That was not only his own personal opinion, but had been the conclusion of Professor Lars-Erik Gelin, a noted Swedish surgeon, who had been Chairman of the wound ballistics symposia. After all, it was the damage to, and subsequent suffering of, human beings which was important to the participants in the Diplomatic Conference.

47. He went on to comment on the results of the tests reported in the Acta Chirurgica Scandinavica, Supplementum 477, entitled Local Effects of Assault Rifle Bullets in Live Tissues, Part II, which had been submitted to the Conference as document CDDH/IV/Inf.242. That report was based on the results of the wound ballistics symposium held in Sweden in August 1976. Table 1, on page 40 of the report, entitled "Data from Pig Tests", reported on only four tests firings with the M16A1/M193 weapons/ammunition combination in pig tissue. In the first, the bullet

had not been recovered; in the second, "break-up" was reported and in the third "slight bullet deformity" was noted. The fourth test showed no comment as to the projectile status after firing. It was obvious that no significant conclusions could be drawn from such a small series in living tissue, owing to the small number of comparisons and the variable results.

48. In the next series of firings, using a United States weapon with Belgian ammunition, eleven test firings were reported. In three cases, no comment was made as to projectile status after firing; in five cases, "deformity" was noted, but in one of those the bone had been struck and fractured by the bullet, which could have resulted in the "deformity". In only one case was "break-up" noted and there again the bone had been struck and fractured. He had already expressed doubts about the propriety of the use of the word "break-up": he entertained the same doubts with regard to the word "deformity" and had failed to find a definition of that expression in any of the documents submitted. In the rest of the table, with regard to the pig tests utilizing the AK4 (Swedish weapon) and the M62 (Finnish weapon), comments on the missile status after firing were noteworthy by their absence. He submitted, therefore, that no valid conclusions could be drawn regarding any of those weapon/ammunition combinations and of their wounding effects on human tissue.

49. The same small number of samples and variability of results was revealed in table 2 on page 42 of the document, concerning the soap tests. Finally, in the gelatin tests in table 3, page 43, there had been only five tests with the M16A1/M193 combination, "break-up" being listed in two instances, with two instances of non-recovery of the bullet. Again, information on the status of the projectiles fired from the M62 and AK4 weapons was incomplete. Test firings with the M16/SS92 combination had shown "break-up" in nine, with non-recovery of one bullet. The SS92, Belgian ammunition, was not the standard ammunition used by the United States of America in its M16 weapons. Inappropriate matching of weapons and ammunition during the tests was not indicative of good experimental design and could certainly have distorted the results. Furthermore, the absence of data on projectile status after firing with the Finnish and Swedish weapons but the almost complete data with regard to the United States M16 weapons was hard to understand. In any case, the absence of such data, combined with mixing of weapons and ammunition and the very small number of comparisons, made valid statements regarding missile performance in soap, gelatin, or live tissue, in that case the pig, a futile, highly speculative and inconclusive effort. Many more rigorous and

scientific methods must be employed before useful comparisons could be made. Certainly, no interpretation of those results regarding the wounding effects in the human being was possible on the basis of either of the two symposia of wound ballistics or the test results reported in document CDDH/IV/Inf.237.

50. Turning to the working paper on small calibre projectiles (CDDH/IV/GT/6) submitted by the Swedish delegation, he stressed that the data presented in no way supported the conclusions of the paper. There were, as yet, no accepted objective criteria for defining and measuring the severity of injuries caused by particular projectiles. There was no basis for arbitrarily selecting 7.62 mm ammunition as the standard for comparison, for different types of 7.62 mm ammunition might and did have substantially different ballistic characteristics. There were no valid reasons for supposing that other types and calibres of ammunition in current use were more or less offensive from a humanitarian point of view. For example, the representative of Sweden, Mr. Blix, at a previous session of the Conference, had defined a small-calibre projectile as "one that covers all calibres of traditionally used rifles, machine guns, carbines and pistols, having in mind 7.62 mm, 9 mm, and even 12.7 mm calibre machine guns". The 12.7 mm was a type of machine gun ammunition used by many armed forces. As a surgeon who had treated complicated combat wounds, he assured members of the Ad Hoc Committee that any ammunition of that size would have far more destructive effects in man than would 7.62 mm ammunition, the standard selected in the working paper. Yet he doubted whether many armed forces would be anxious to give up that weapon, which had distinct and important military advantages.

51. Moreover, there was no way of avoiding the use of projectiles which deformed or "broke up" in the human body, since all those in current use might do so. Since all projectiles might tumble in the human body, depending on many factors such as the type of tissue struck and the distance or range to the target, there was no way of judging whether any projectile tumbled "easily". Further, it was impossible to determine what "excessive velocities" might be, since there was no basis on which to attribute unusually severe effects to any particular velocity.

52. He submitted, therefore - and on that point he agreed with paragraph (c) of the working paper - that only through additional, very extensive work on those difficult comparisons of small-calibre projectiles and weapons, along with appropriate matching of weapons and ammunition, and employing the combined talents and support of weapons, ballistics, statistical design and medical experts, would it be possible to begin to arrive at any conclusions or inferences

as to the wounding capabilities and effects of those weapons in man. Only after the completion of such well-designed studies could he conceive of any useful discussion in the area of small-calibre projectiles.

53. He hoped that the detailed analysis and presentation he had given would place the reports and suggested conclusions submitted by the Swedish delegation in their proper perspective.

54. Sir David HUGHES-MORGAN (United Kingdom) said that his delegation had always tried to take a useful part in the various matters debated in the Ad Hoc Committee and Working Group and had hoped to play a constructive part in any follow-up. Thus, together with the delegations of Canada, Denmark and the Federal Republic of Germany, the United Kingdom delegation had submitted a draft resolution (CDDH/Inf.240 and Add.1 and Corr.1) which it hoped would be adopted by the Conference, to cater for the necessary follow-up action on the work done by the Committee. The draft resolution was based on the hope that a consensus might be reached on the way in which to proceed further.

55. Unfortunately, that method of procedure had been, as it were, pre-empted by the adoption in Committee I of Article 86 bis - which might, however, be assigned a different article number. That article, which proposed the establishment of a committee to consider proposals for the prohibition or restriction, for humanitarian reasons, of the use of certain conventional weapons that might cause superfluous injuries or have indiscriminate effects seemed to leave no room for negotiation on any follow-up to the work of the Ad Hoc Committee and was not acceptable to his delegation. He hoped that the article would be voted upon at an early stage of the final plenary meetings. If it was rejected, and it might well be so, the United Kingdom delegation considered that a consensus on follow-up action to the work of the Ad Hoc Committee might still be achieved.

56. Mr. SKALA (Sweden) reserved his delegation's right to make a statement at the forty-first meeting summing up its views on follow-up. It noted with sympathy the statement made by the United Kingdom representative and hoped that some follow-up mechanism could be achieved. His colleague would comment in detail on the United States statement on small-calibre projectiles.

57. Mr. JANZON (Sweden) said that it was regrettable that the United States representative had not used his undoubted competence to present more valid material on small-calibre projectiles, rather than criticizing Swedish efforts.

58. His delegation had always endeavoured to present the results it achieved as impartially as possible so that each could make his own judgement, and it recognized that those results were open to differing interpretations. It considered that the conclusions drawn in the documents referred to by the United States representative were carefully balanced and did not prejudice the relationship between the effects of different weapons. The Swedish delegation had never claimed that the weapons which had been the subject of study at the time of the two symposia on wound ballistics were meant to represent any specific weapon or kind of ammunition; instead, it had endeavoured to arrive at representative combinations. For example, the M16 had not been used at the first symposium although it had been included at the second symposium, together with standard M193 ammunition, at the express wish of the United States delegation. The rifle had only been available shortly before the symposium, which was one of the reasons why so few tests on it had been carried out.

59. Where biological materials were concerned, results inevitably varied greatly. In the specific case of tests on pigs, the marked variation in the thickness of the legs had significantly influenced bullet behaviour. Moreover, the thickness of pigs' legs was not representative of those of humans.

60. The term "break-up", although not defined, covered cases ranging from slight deformation to deformation and break-up. Examples of typical break-up pattern were to be found in the Acta Chirurgica Scandinavica Supplementum No. 459.

61. It had been said that, in the pig tests, only seven out of thirty-seven of the 5.56 mm bullets had broken up as compared with about 100 per cent in the gelatin and soap tests. That, again, was due to the fact that the thickness of the pigs' legs was much less than in a typical human being, averaging 140 mm. Naturally, where the trajectory was shorter, the bullet had less time to tumble and there was less tendency to break up.

62. His delegation had never maintained that soap was the most suitable simulant material. There were, however, indications that gelatin, which was widely used, was not representative in simulating human tissue and that soap might be more appropriate. Obviously, no material would fully simulate human or live tissue, apart from some other live tissue. That was why Sweden had engaged in pig experiments.

63. Referring to the United States representative's comments in regard to the tables in Acta Chirurgica Scandinavica Supplementum 477, he pointed out that the omission of a note under the last column of the table on page 40 did not mean that nothing was known about the behaviour of the bullet in question but simply that it had not been deformed in any way. Also, while the number of M16 shots, as reflected in the first two tables on page 40, was admittedly low, the figures under the column headed "L" showed that the length of the trajectory in pigs was generally considerably less than 140 mm and that the tendency was for break-up to increase in proportion to the length of the trajectory. In the case of a trajectory of 130 mm or more, there was always deformation in that series.

64. An examination of the figures relating to the series of 7.62 mm shots showed that on the average the trajectories were slightly longer; there was only one case of deformation, so that, despite the limited number of shots, it could not be contended that the difference between the tables was statistically significant. The simplest way of confirming that statement, however, was to perform more tests. The same applied to the tables relating to soap tests (page 42) where, despite the limited number of tests, there was a pronounced difference between the 7.62 mm and the 5.56 mm weapon/ammunition combinations, and to the gelatin tests (page 43) where virtually all the 5.56 mm calibre bullets had been deformed or had broken up whereas none of the 7.62 mm bullet/weapon combinations had done so.

65. His delegation, which had endeavoured to respond to the need for further information by launching a modest research programme, agreed that it was difficult to produce the effect of a small-calibre bullet and perhaps impossible to predict the effect of a single shot, but it considered that the averages could be predicted and measured with reasonable accuracy: although some States had made a significant contribution to that endeavour, the United States of America had merely tried to question results which had been presented in an impartial manner. In view of the difficulty and cost, if live animals were used, of providing the large samples required to arrive at such a measurement, an effort had been made to introduce simulant materials which influenced the bullet in much the same way as live tissue. It was curious to note that some States which used simulant tests to demonstrate that the effects of a bullet were significant were ready to assert that the same tests could not possibly be used to demonstrate that the contrary was the case.

66. It was also difficult to determine the size of the effects required and there was no point in calling for absolute "stopping power" when that was not possible in any projectile of less than 105 mm calibre.

67. The purpose of the proposal submitted by his delegation in working paper CDDH/IV/GT/6 was not to incorporate a technical rule in a protocol on weapons since there had as yet been no general agreement on any such rule. Rather, the proposal was in the nature of a draft resolution - although a preambular paragraph would have to be added - which was designed to bring about a moratorium and to provide the basis for more accurate estimates of the effects of bullets as well as for design criteria. If those criteria were sound, there would be no need to codify them in an international legal instrument.

68. The basic rule, providing for a moratorium, was laid down in paragraph (a) of the proposal. It should not be taken to mean that 7.62 mm bullets were the optimum or that they were acceptable from the humanitarian point of view. Indeed, his delegation considered that it would be possible to design highly efficient small-calibre military weapons whose effects would in general be considerably less than those of the 7.62 mm family of weapons. The latter were simply the outcome of a trend which would not necessarily result in the optimum.

69. Paragraph (b), which dealt with the main causes of particularly serious injuries, was similar to the text of the prohibition on dum-dum bullets in the 1899 Hague Declaration concerning the Prohibition of Using Bullets which Expand or Flatten Easily in the Human Body. The difference between a bullet which tumbled after a few centimetres of penetration, then deformed and broke up, and a dum-dum bullet as described in that Declaration, was mainly technical and did not relate to the type of wound caused: the prohibition on dum-dum bullets did not refer to the calibre of bullet and consequently was to be interpreted as relating to the method of wounding rather than as a technical measure of the allowable degree of wounding. It could not therefore be argued that a bullet which resulted in smaller injuries than a corresponding dum-dum bullet should be allowed and that it was acceptable in humanitarian terms. Thus his delegation, which recognized the need for an accepted measure of bullet effects, was seeking to interpret not only the letter but also the spirit of the prohibition on dum-dum bullets, as the representative of the Federal Republic of Germany had repeatedly urged.

70. Paragraph (c) referred to the need for continued research and testing into wound ballistics, both nationally and internationally. As technology advanced and improved design methods became available, it would be possible to optimize weapons systems against their targets to an extent unknown a few years previously. The criteria used for that purpose had to include the humanitarian parameter. A demand for a decrease in wounding effect would be militarily advantageous in that it would result in the design of weapons and ammunition that were lighter and easier to handle.

71. Paragraph (d) was self-explanatory.

72. There was an element of urgency about the matter. Many States would soon be seeking to procure new small calibre weapons and the new standard light assault rifle being developed by the North Atlantic Treaty Organization (NATO) would probably be among the most commonly used weapons until the year 2010. It was essential that the characteristics of those weapons should not be such as to nullify any future rules on the permissible extent of wounding.

73. His delegation considered that its request for a moratorium was reasonable; it should not cause undue concern among weapons designers, and weapons would still retain sufficient effects to fulfil military requirements. It further considered that the proposals in documents CDDH/IV/201 and Corr.2 and Add.1 to 9 and CDDH/IV/214 provided a good basis for further work. If an increase in the wounding capacity of small-calibre bullets could be avoided, the effect from the humanitarian point of view would be direct and immediate.

74. Mr. AKKERMAN (Netherlands), referring to the proposal on incendiaries introduced by Australia, Denmark and the Netherlands (CDDH/IV/206/Rev.1), said that the reactions in the Ad Hoc Committee and Working Group seemed to indicate that the proposal would provide the basis for an agreement on the subject in the near future. His delegation had noted the amendment submitted by the Canadian and United Kingdom delegations (CDDH/IV/GT/7) to working paper CDDH/IV/206/Rev.1, and was pleased that the proposal appeared to be acceptable to those delegations, subject to their amendment. The sponsors of the proposal were, however, prepared to agree to the request of some delegations for more time in which to study the implications of that amendment. They would therefore urge that their proposal, together with all the amendments proposed to it, should be considered at the earliest possible time and at a place acceptable to all.

75. Mr. de ICAZA (Mexico) said that he did not think it would be possible to arrive at an agreement which had the support of the majority so long as incendiary weapons were considered from the point of view of restriction, rather than of total prohibition, on their use. He endorsed the Yugoslav representative's remarks in that connexion.

76. With regard to the follow-up work of the Ad Hoc Committee, his delegation reserved the right to make a statement at an appropriate time, and more particularly when the draft resolution which it was sponsoring on the subject came up for consideration.

77. He had been somewhat concerned to hear the United Kingdom representative state that there was little point in discussing the question of follow-up so long as Article 86 bis remained open for discussion. That was indicative of the divergence of views which had marked the Ad Hoc Committee's deliberations from the outset and which it had still not been possible to reconcile. His delegation continued to believe that the use of certain weapons should be prohibited within the context of humanitarian law: that had nothing whatsoever to do with considerations of the type normally taken into account in connexion with disarmament, for example. He could agree that, in the latter case, consensus was necessary; when dealing with international humanitarian law, however, a democratic approach had to be adopted which meant, inter alia, taking account of the view of the great majority of the international community. If negotiations on follow-up failed, it would be through no fault of his delegation and, when the plenary Conference came to consider Article 86 bis, it would certainly not raise any objections.

78. Mr. CHENIER (Canada) said that his delegation considered that the decision of Committee I on Article 86 bis had pre-empted any useful discussion on the subject of follow-up. That had not been the result which his delegation had been seeking in Committee I and it could not be held responsible for what had occurred. His delegation had in fact been ready to discuss the matter in the Ad Hoc Committee, but in the circumstances he would support the United Kingdom representative's remarks.

79. Mr. RUIZ-PEREZ (Mexico), speaking in support of the Swedish proposal on small-calibre projectiles (CDDH/IV/GT/6), said that much valuable information had been derived from the tests and studies carried out by Austria, Japan, Sweden and Switzerland, the two symposia held in Göteborg and the Conferences of Government Experts. As a result, it was now known that the wounding effects of small-calibre projectiles on the biological tissue depended on the transfer of the projectile's kinetic energy and the extent to which that energy was absorbed by the tissue, and that the maximum volume of the cavity formed behind a projectile bore a direct relationship to the kinetic energy at the moment of impact. It was also known how to determine kinetic energy and consequently what the biological consequences of the effects of such projectiles were.

80. Furthermore, many different factors determined the behaviour of a given projectile, for instance, velocity, length, shape, calibre and material of the bullet.

81. It was important to determine appropriate targets. In his delegation's view, neither soap nor gelatin targets were necessarily the best and the two substances should be regarded as complementary. Every target, however, would necessarily differ according to the temperature at the site of the test.

82. Because of the difficulties in simulating human tissue, some countries had used pigs, which had similar tissue although the effects were different. Even in human tissue, however, the effects differed, depending on such factors as thickness.

83. His delegation therefore wished to reiterate its support for the Swedish proposal (CDDH/IV/GT/6) and in particular for paragraphs (a) and (c).

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE FORTY-FIRST MEETING

held on Thursday, 19 May 1977, at 3.50 p.m.

Chairman: Mr. CHARRY SAMPER (Colombia)

CONSIDERATION OF THE QUESTION OF FOLLOW-UP (concluded)

1. Mr. SCHEETZ (United States of America), replying to the comments by the Swedish representative at the fortieth meeting (CDDH/IV/SR.40) on small-calibre weapons, took issue with the statements that "break-up" was usual, that in 50 per cent of the cases half the projectile broke away and that the casing was shaped like a banana.
2. However, if the statement of the Swedish representative was true, then it followed that in the other 50 per cent of the cases there was no "break-up" or deformation. His opinion was that in a large number of cases there was, in fact, minimal fragmentation of the projectile with only a small particle separating from the back of the bullet.
3. In addition, if the absence of any note in the table on page 40 of Acta Chirurgica Scandinavica, Supplementum 477, meant that no deformation occurred, a statement to that effect in the text would have been helpful.
4. Finally, he agreed that more tests needed to be made, a point that he himself had in fact made previously.
5. Fuel-air explosives (FAE) were relatively recent weapons, and their primary action was blast. Detonation over a target area produced blast - a combination of overpressure and duration which caused the desired effect. As with any weapons system, including small-calibre or fragmentation weapons, research and development led to improved technology and to changes in the weapon system as a result.
6. Studies had been carried out for some time in the United States of America on the action of such weapons and their effects on animals. Experimental work has been performed on sub-human primates (monkeys) and on sheep, with an average weight of 8 to 10 lb and 110 lb respectively. Rabbits or rats were not reasonable models for use in interpreting results that might occur in man. It was, however, reasonable to compare the effects of high-explosive (HE) artillery shells, since they would be an alternative weapon to FAE in use against personnel. A comparison of the blast overpressures of a 72 lb FAE charge compared with a comparable

60 lb HE artillery shell in open terrain had shown that, at the centre of the blast, the HE shell overpressure, in pounds per square inch, was almost double that of the FAE blast, namely, 823 lb per square inch as compared with 481 lb per square inch. There was a rapid fall-off at approximately 10 feet from the centre, comparable overpressure levels being achieved with HE and FAE, at 23 feet (the radius of the main FAE effect) there occurred a marked decrease in HE overpressure, to approximately 100 lb per square inch, while FAE overpressure fell to 270 lb per square inch. Beyond that radius, both levels of overpressure fell off rapidly to comparable levels; at 60 feet and 90 feet from the blast, the levels of overpressure for both were 6 to 10 lb per square inch. The overpressures of HE and FAE therefore differed significantly only at the outer few feet of the radius from the blast centre. At distances closer to the blast centres, both charges were likely to have lethal effects, as had been shown in the United States animal studies. However, if one wished to state that the HE effect at 20 to 23 feet could in fact only injure and not be lethal, at least one other fact must be considered, namely, the fragmentation wounding effect occurring with HE artillery shells. United States studies showed that fragmentation injury occurred at distances 70 to 90 feet from the blast centre and in some cases beyond. Those effects were extremely significant, approximately 65 per cent of the animals being wounded at 30 to 45 feet from the centre, and a lower percentage of wounds being received in the range out to 90 feet. Extrapolating those results to man, given severe fragmentation effects at a distance of 30 to 45 feet, and assuming a random distribution of soldiers within that area, each man would have some 45 to 50 per cent chance of being struck and wounded by a fragment in a part of the body where it might kill him, for instance in the head, chest, or abdomen. Mortality and morbidity from HE fragmentation effects would clearly far exceed those of FAEs, in view of the need for surgery and possible resultant infection.

7. Outside the area of high overpressure, FAE effects on animals, and of course man, were primarily confined to the lung, ear, and eye, the first two kinds of injury being primarily caused by overpressure, the third by debris thrown by the blast. However, such injuries were not lethal, required less medical care, and needed only minor surgery compared with that needed as a result of fragmentation injuries with which essentially no mortality was associated. Thus it was incorrect to imply, assume, or state that FAE was 100 per cent lethal and resulted in an "all or none" effect when compared with HE. In fact the Swedish representative had at an earlier meeting stated that his country's studies showed lung damage in animals at "double the distance" that had been expected. Those studies had been made in fortifications, and there might thus be other reasons for that result, such as build-up

of reflected overpressure waves from the walls of the structure. However that might be, the non-lethal effects prompted consideration of the killed-to-wounded ratio of FAE compared with that of other weapons. The details of the relevant studies had been reported at the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in 1976, and he would therefore present only the comparisons.

8. In the United States animal studies of the sub-lethal lung, ear and eye effects had been considered as wounds, and the ratio of killed to wounded was 0.16. That compared favourably with the Viet Nam killed-to-wounded ratios of random-fragmentation and improved-fragmentation munitions, which were 0.25 and 0.16 respectively. Further, the FAE killed-to-wounded ratio was markedly lower when compared with Second World War combat data of weapons effects, which revealed killed-to-wounded ratios of 0.32 for rifles and 0.58 for machine guns.

9. Those data disproved the notion that FAE was an especially cruel weapon or caused unusual and unnecessary suffering or injury as compared with other uncontested conventional weapons.

10. Critics had said that the use of FAE against unprotected personnel should be prohibited because virtually all people within the fuel-air cloud would be killed. The same logic could be applied to standard HE artillery shells, since there was a region of "sure death" surrounding their burst points as well. By a similar argument bullet wounds to the head would be prohibited because of the high mortality associated with them.

11. With regard to the manner of death with FAE blast effects, the Swedish paper maintained that "death often ensues first after prolonged suffering and great agony of the victims". The blast effect of FAE, in the lethal area, caused rupture of the lung tissue with subsequent release of air bubbles into the blood circulation. Those air bubbles, or air emboli, travelled rapidly to the heart and brain blood vessels, blocking the blood supply, and death ensued in a matter of minutes. Casualties surviving the blast had haemorrhage of varying degrees within the lung tissue. Some of those casualties would require support with mechanical ventilatory apparatus; others would require only observation and routine medical support. The lung haemorrhages would resolve in a matter of a few weeks with no lasting effects.

12. With regard to the question of indiscriminate weapons, he stressed that FAE were certainly much more discriminate and confined in their effect than an HE fragmentation weapon fired to cover a much larger ground area, with additional fragmentation

effects, concomitant wounding, and subsequent potentially lethal injuries. He therefore submitted that FAE was not a weapon with the "all or none" effect of lethality, was not indiscriminate, and did not fall into the category of weapons that might cause unnecessary suffering or render death inevitable.

13. Mr. SKALA (Sweden) said that the statement by the United States representative contained a number of elements on which his delegation would like to give its preliminary views.

14. Mr. JANZON (Sweden), enlarging on the question of the break-up of bullets, explained that the bullet, or part of its core, broke and was ejected rearwards, while the rest of the core remained either at the tip of the bullet or loose inside the jacket. The jacket then became deformed, usually taking the shape of a banana.

15. With respect to FAE, his delegation reserved its right to comment on the United States statement in detail at the forty-second meeting of the Ad Hoc Committee. One reason why his delegation had sponsored the proposal in CDDH/IV/215 (now CDDH/IV/GT/5) was that FAE might in some cases have an effect which would run counter to the principle in the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime which under all circumstances rendered death inevitable. In a combat situation, soldiers hiding in fox-holes were a very difficult target, and much HE had to be used to cause any appreciable losses. FAE, on the other hand, made it possible to attack such targets to a much greater extent than had previously been possible, with the use of far fewer aircraft. FAE made the blast wave propagate down into fox-holes or even simple shelters, and the high overpressure and relatively long duration of the blast wave would cause great damage to any human being, with consequent very high probability of death (about 99 per cent). Outside the cloud of FAE, however, there was no difference between the blast wave from FAE and that from a conventional HE charge. A person at the bottom of a fox-hole, quite near the outer limit of the FAE cloud, could go virtually unscathed.

16. It was because within the cloud the mortality rate would be nearly 100 per cent whereas outside it there was a good chance of survival that the "render death inevitable" discussion ensued, and that was the Swedish delegation's reason for taking up the proposals mentioned.

17. Mr. RYBECK (Sweden) said that he had thought that the United States representative would be well aware that rabbits had long been widely used in experimentation, and that intricate formulae were not available for comparisons between the lungs of man and rabbits. He was unaware of similar comparisons between man and sheep or monkeys but would be glad to hear of them.

18. The United States representative had said that lung injury from FAE was the same as lung injury from HE blast. He (Mr. Rybeck) would, however, recommend a study of the North Atlantic Treaty Organization (NATO) Emergency War Surgery Handbook, which stated that if, after a blast injury to the lungs, death ensued because of air embolism, it occurred within minutes, but that in a large proportion of cases the lung was greatly damaged with agonizing results for the persons hit. Monkeys were perhaps not as susceptible as men in that respect.

19. Mr. SCHEETZ (United States of America) pointed out that the data given in his earlier statement were on animals, extrapolated to soldiers in open terrain, and not with regard to soldiers in dug-outs or fox-holes. He would, however, certainly agree that in dug-outs outside the limits of the FAE cloud there would be less damage to an individual. The same would occur with HE artillery shells outside the burst point. However, being outside an FAE cloud was not the same thing as being outside the burst point and blast effect of an HE round, because of the additional fragmentation effect mentioned in his previous statement, with concomitant injury, surgery and in some cases death.

20. With respect to the animal model, he insisted that the rabbit was not a reasonable animal for study. Complicated formulae for interpreting results in rabbits would not give adequate or comparable results when applied to man.

21. With respect to the description of death given by the Swedish representative, he could only repeat that the primary cause of death from a blast injury due to FAE was air embolism. Again, outside the cloud the injuries, as submitted by the Swedish representative at the fortieth meeting (CDDH/IV/SR.40), were less severe with regard to lung tissue.

22. As regards the adequacy of the monkey as a model, it was the closest model to man and widely recognized as such in medical experimentation.

23. Mr. LIKO (Austria) said that his delegation had always supported the valuable and intensive work of the Swedish delegation. It hoped that discussions of the kind that had taken place between the Swedish and United States delegations would further the Swedish proposals for continuing research and testing, both nationally and internationally.

24. Mines and booby-traps were another aspect of the Ad Hoc Committee's work which would be important in any kind of follow-up and the one on which the Committee had come closest to achieving a common understanding. He commended the two groups of sponsors, who, after difficult negotiations, had finally produced a common solution which had met with support and interest in many other delegations. The discussions, in particular the comments by the representative of the German Democratic Republic, would undoubtedly have been useful to the sponsors.

25. The item was a difficult and a sensitive one, since mines were a necessary means of defence and attitudes differed according to strategic position, tactical doctrines and types of terrain in the different countries. It was therefore important to hear the criticisms, reservations and proposals of other delegations. The sponsors had reached a common solution by endeavouring to understand each other's positions; the next step would be for a far greater number of delegations to follow their example. The task would not be easy, but there were two points on which everyone would agree: the humanitarian basis of the task, so clearly demonstrated by the data given by the Swedish delegation at the beginning of the discussion; and the idea that every country had the right to self-defence and should endeavour to provide the proper means of defence in the light of the conditions he had mentioned. As a soldier, he would add a third point: that rules should be simple and clear, since they had to be followed by soldiers on the battlefield. Failure to find a common solution might ultimately lead to suffering by those soldiers and the civilian population.

26. Mr. BLAKENEY (Australia) said that in his delegation's view the Ad Hoc Committee had made progress during the current session in refining proposals which offered some prospect of eventual wide agreement. As a sponsor of working paper CDDH/IV/206/Rev.1, his delegation, like that of the Netherlands, was gratified that a growing number of countries considered that proposal as being at present the most promising basis for further discussions. Along with its fellow sponsors, it would carefully consider all proposed amendments in the coming months.

27. His delegation reserved the right to speak at a later stage on the follow-up question generally, depending on the outcome of the resolution adopted by Committee I. In the meantime, there was one thought which delegations might bear in mind. Some delegations apparently contemplated abandoning the consensus procedures under which all the Ad Hoc Committee's work on conventional weapons had so far been carried out, on the grounds that those procedures were to blame for the fact that despite four sessions of the Committee

and two Conferences of Government Experts, there had still not been enough progress. His delegation was convinced that it was only because the Ad Hoc Committee had patiently and determinedly followed those consensus procedures that it had made any progress at all. Abandonment of the consensus might well jeopardize all prospect of progress.

28. Mr. SKALA (Sweden) said that, at the closing stages of the work of the Ad Hoc Committee and its Working Group, it would be an exaggeration to say that the results were overwhelmingly successful. What had been achieved, after years of work outside and inside the Diplomatic Conference, was certain areas of agreement on the less important subject of fragments and the more important subject of landmines. Little progress had been made on incendiaries; and on other categories, such as small-calibre projectiles and fuel-air explosives, many delegations did not seem even to have made up their minds. Certain of the statements made at the present meeting had raised doubts on the question of follow-up. It was a matter of concern that the Ad Hoc Committee's work should have been so difficult and so unrewarding. On one issue, that of mines, the political will of only a few countries had resulted in an appreciable advance. Otherwise, political will had been manifestly lacking, or if present had been concentrated on raising procedural obstacles and hampering efforts, rather than on making positive contributions on a scale commensurate with the skills and knowledge that many delegations undoubtedly possessed on the various aspects of the weapons issue.

29. The weapons issue was a question of central importance and the problems it raised, whether relating to incendiaries, small-calibre projectiles or any other weapon, were of the highest humanitarian concern. However great the resistance or passivity it encountered, his delegation would therefore pursue its objective of achieving real results in that area, in the hope that a more co-operative attitude would ultimately be forthcoming. His delegation had been extremely patient and would continue to be so, but there were limits.

30. Summing up his delegation's position on the various issues discussed, he said that it maintained its view that a complete ban on incendiaries was desirable and necessary. With regard to paragraph 42 of the Working Group's report 1/, it had no objection to taking working paper CDDH/IV/206/Rev.1 as a starting point for discussion in the Working Group, but it could not agree to use it as the basis for future negotiation. Any such negotiation would

1/ See the annex to the report of the Ad Hoc Committee (CDDH/408/Rev.1).

have to draw equally on all existing proposals regarding incendiaries, including those sponsored by his own delegation. His delegation would, however, be willing to consider compromise in any future negotiations, provided others were willing to do the same. Further, he wished to make it clear that his delegation's submission of separate working papers in the Working Group on flame munitions, small-calibre projectiles and fuel-air explosives did not mean that it had withdrawn its existing proposals on those categories of weapon. The working papers had been submitted to meet a procedural point raised by one delegation, but had failed to elicit any comment from it.

31. It had been claimed by a few delegations that the adoption of Article 86 bis by Committee I had blocked the question of follow-up. His delegation had voted in favour of the new article because it was convinced of the need for means of ensuring that the question of prohibition or restriction of the use of specific conventional weapons would be subject to review on humanitarian grounds. His delegation had always held that since the two Protocols contained articles expressly prohibiting the use of weapons which caused unnecessary suffering or injury and means and methods of warfare which were indiscriminate in their effects, it was perfectly logical to discuss in the context of humanitarian law which those weapons were. It had insisted on such discussion at every session of the Diplomatic Conference and thought it not unreasonable that draft Protocol I should itself provide a way of ensuring that such discussions continued in the future. In view of the reluctance or outright refusal to discuss the subject, an article on review was perhaps essential. There had been no review since the 1930s. Regarding the suggestion that a resolution by the Conference on immediate follow-up of the weapons issues might be an alternative to Article 86 bis, his delegation considered that the article and the proposed resolution were complementary rather than conflicting: Article 86 bis provided a method of satisfying the long-term need for review, whereas the draft resolution submitted by the delegations of Canada, Denmark, Federal Republic of Germany and United Kingdom (CDDH/Inf.240 and Add.1 and Corr.1) was essentially an attempt to meet the short-term need for follow-up action. Neither document, however, appeared to his delegation to be an entirely satisfactory answer to the problems of immediate follow-up and long-term review.

32. His delegation had always sought progress by consensus on the weapons issues, and while there was some truth in the claim that there had been more consensus than advance, consensus was essential for genuine results. He continued to believe that the way to achieve both consensus and advance was accommodation.

33. His delegation regretted that negotiation had not succeeded in reconciling the different positions, particularly since there seemed at last to be some measure of agreement on the need for immediate follow-up action and long-term review. It hoped that before any decisions were taken in the plenary meeting, efforts could be made to work out consensus solutions to both problems. He had in mind a general provision in draft Protocol I stating in principle that there should be a periodic review of the weapons issue, the procedure for such review being set out in a separate resolution, and a further resolution on immediate follow-up. His delegation and certain others would be submitting a draft text in the next few days.

34. Although his delegation had voted for Article 86 bis in despair at the lack of progress on the weapons issue, it would still pursue its traditional role of urging negotiations. Its desire was for negotiation, reconciliation and consensus.

35. Mr. ABOU-ALI (Egypt) said that ever since the Ad Hoc Committee had started work, his delegation had striven for the humanitarian objective of the prohibition or restriction of the use of certain conventional weapons. That was why it was one of the sponsors of document CDDH/IV/201 and Corr.2 and Add.1 to 9. Unfortunately, the Diplomatic Conference was ending without any tangible achievements by the Ad Hoc Committee. Moreover, there had not been enough time for an adequate discussion of other important weapons, such as small-calibre projectiles and fuel-air explosives. He was grateful to the United States and Swedish delegations for taking up that issue. The benefit derived from the current session was that the proposals and the discussion had brought out the common ground and the divergencies, and that would be useful for the future. His delegation was interested in follow-up and had voted for Article 86 bis for the same reasons as the Swedish delegation. That would not, however, prevent his delegation from supporting other resolutions on follow-up, in which connexion he wished to make the following points. Any future conference should be a strictly diplomatic one, possibly convened by the United Nations General Assembly; it should be convened for the same reasons as the present Conference and should exclude politics, which could be discussed in other places; it should be open to all countries; and its discussions should be concerned with follow-up of the Ad Hoc Committee's work.

36. Mr. ANDERSON (United States of America) said that the Ad Hoc Committee had discussed weapons from the point of view of reducing damage, indiscriminate effects, death or maiming of civilians and other evils of war. Terms such as progress and advance were often interpreted as meaning the adoption of new instruments on prohibition or restriction of weapons, but that was not necessarily

the right approach. Such instruments could lead to more deaths, indiscriminate effects and casualties, because they could result in the use of substitute weapons. They would not then represent humanitarian progress and would not be viewed by history as humanitarian. He appealed to representatives not to confuse the adoption of measures having temporary political and diplomatic impact with the achievement of humanitarian objectives.

37. Mrs. MAZEAU (United States of America) said her delegation believed that the establishment of a Working Group at the present session had greatly furthered the Committee's substantive work. Her delegation was encouraged by the progress that had been made, particularly concerning mines and other explosive and non-explosive devices. The latest nine-power proposal (CDDH/IV/GT/4 and Corr.3) and the detailed discussion on it had led to greater understanding of the issues and brought the Ad Hoc Committee closer to its goal of finding generally acceptable solutions. As the report of the Working Group indicated, however, there was still wide disagreement on the question of incendiaries. Her delegation had already stated at the third session that it was prepared to accept the Netherlands proposal on incendiaries (CDDH/IV/206 and Add.1 and 2) as a basis for serious negotiation. It was now apparent that no progress could be made on the question and that the present stalemate would continue unless there was a willingness to give adequate attention to both humanitarian concerns and military requirements.

The meeting rose at 4.55 p.m.

SUMMARY RECORD OF THE FORTY-SECOND (CLOSING) MEETING
held on Tuesday, 24 May 1977 at 9.25 a.m.

Chairman: Mr. CHARRY SAMPER (Colombia)

ADOPTION OF THE REPORT OF THE AD HOC COMMITTEE (CDDH/IV/225)

1. The CHAIRMAN invited the Committee to consider the draft report and called on the Rapporteur.

2. Mr. TAYLOR (United Kingdom), Rapporteur, said that he thought the draft report could be considered paragraph by paragraph. He would draw attention to a few corrections to be made in the text, which had been drafted in the shortest possible time.

Contents

3. Mr. TAYLOR (United Kingdom), Rapporteur, said that in the English text it was necessary to add the following titles: after the third line, "Fragments non-detectable by X-ray" and before the last line, "General remarks". The "paragraph" column would be amended accordingly.

The table of contents, thus amended, was adopted.

Paragraphs 1 to 9

Paragraphs 1 to 9 were adopted.

Paragraph 10

4. Mr. ANDERBERG (Sweden) proposed that the word "preplanned" in paragraph 10 should be deleted.

Paragraph 10, thus amended, was adopted.

Paragraphs 11 to 15

Paragraphs 11 to 15 were adopted.

Paragraph 16

5. Mr. GRIBANOV (Union of Soviet Socialist Republics), drew attention to the fact that when a proposal on incendiary weapons submitted by Indonesia (CDDH/IV/223) had been considered by the Ad Hoc Committee, his delegation had made a long statement explaining that the document was not clear and that the proposed provisions

could be interpreted in various ways, and had asked that the question should be very seriously reconsidered. His delegation's opinion was not reflected in the report and he would like the omission to be made good. He accordingly proposed a text to be added to the report.

6. Mr. TAYLOR (United Kingdom), Rapporteur, said that the text could be translated forthwith and submitted to the Committee, but that he would prefer to look into the question with the USSR delegation after the meeting. An additional few lines could then be added at the end of paragraph 18.

The Rapporteur's proposal was accepted.

Paragraph 17

7. Mr. ANDERSON (United States of America) considered that the responsibility for the statement made in the last sentence of paragraph 17 should remain with the Indonesian delegation, and asked that the sentence should begin with the words "This delegation declared that it was already not permissible ...".

With that amendment, paragraph 17 was adopted.

Paragraph 18

Paragraph 18 was adopted.

Paragraph 19

8. Mr. SKALA (Sweden) said that a mistake seemed to have crept into the penultimate sentence of paragraph 19, where the words "so as to place no responsibility" ought to read "so as to place more responsibility".

9. Mr. ANDERSON (United States of America) thought that all that was necessary was to delete the word "no".

That proposal was accepted.

Article 19, as amended, was adopted.

Paragraph 20

Paragraph 20 was adopted.

Paragraph 21

10. Mr. TAYLOR (United Kingdom), Rapporteur, drew attention to a spelling mistake in the penultimate line of the English text, where the word "commandors" should read "commanders".

11. Mr. SKALA (Sweden) asked whether, at the end of the paragraph, the words "commanders and field units" should not be replaced by "commanders of field units".

12. Mr. EATON (United Kingdom) said that on that point the text of the report corresponded to the statement made by the representative of Mexico as recorded in the summary record of the meeting in question.

13. Mr. RUIZ-PEREZ (Mexico) confirmed that that was what he had meant.

Paragraph 21 was adopted as drafted.

Paragraphs 22 to 25

14. Mr. BLAKENEY (Australia) observed that in some parts of the report the delegations which had submitted proposals or had spoken were mentioned by name, whereas in others the reference was to "several delegations" or "several speakers". He asked for an explanation of the system adopted in drafting reports.

15. Mr. TAYLOR (United Kingdom), Rapporteur, said that he had tried to follow the system applied previously which had already been adopted for the two sessions of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne and Lugano, respectively. When a delegation was easily identifiable through being associated with a particular statement or draft resolution, it was not mentioned by name. He saw no reason why the system should not be changed. He pointed out, however, that in United Nations practice no specific mention of any delegation was made in reports.

Paragraphs 22 to 25 were adopted.

Paragraph 26

16. Mr. TAYLOR (United Kingdom), Rapporteur, said that in the English text he would like the word "fora" to be replaced by "forums".

17. Mr. ANDERSON (United States of America) asked that the following should be added at the beginning of the fourth sentence of paragraph 26: "These delegations stated that ...".

18. Mr. SKALA (Sweden) proposed that in the penultimate sentence of the paragraph, after "Colombo non-aligned Summit", the words "and of the General Assembly of the United Nations" should be added.

Those proposals were adopted.

Paragraph 26, as amended, was adopted.

Paragraph 27

Paragraph 27 was adopted.

Paragraph 28

19. Mr. SCHEETZ (United States of America) proposed that paragraph 28 should be amended in order to reflect his remarks when comparing the effects of fuel-air explosives with those of high explosives. The last three sentences of the paragraph should be replaced by the following text:

"Outside the immediate detonation area, the wounding effects of fuel-air explosives are far less than those of high explosives. Injuries outside the fuel-air explosive cloud are not likely to be lethal, and require less medical care than injuries caused by the fragmentation effects of high-explosive artillery shells, which often necessitate surgery with increasing risk of complications and mortality. They also questioned whether death from fuel-air explosives was especially cruel or caused unusual or unnecessary suffering as compared to other conventional weapons. They stated that their evidence demonstrated that death would be rapid and caused by air embolism to the heart and brain following lung rupture due to the overpressure effect."

Paragraph 28, as amended, was adopted.

Paragraph 29

20. Mr. SKALA (Sweden) submitted the following new text for paragraph 29:

"In reply, Sweden being a co-sponsor of CDDH/IV/GT/5, explained the rationale behind the proposal to prohibit the anti-personnel use of fuel-air explosives as follows. In certain situations when attack by other means might be time-consuming and wasteful, it might be highly attractive to use fuel-air explosives against personnel, such as troops concealed in open foxholes or simple shelters. Then, a very high proportion of killed might be expected. The reason for this was that the FAE blast waves propagate freely into foxholes or shelters within or very close to the fuel-air explosive cloud, whereas troops outside this area are well protected against blast effects by their shelters. The blast wave

pressures are so high within the FAE cloud that a very high probability of death ensued for any person present. This use might, in the opinion of the delegate, well fall under the 1868 St. Petersburg rule prohibiting weapons that 'render death inevitable in all circumstances'. Another representative of the same delegation did not agree that the small animals they had used were poor models for man; in fact, the rabbits used were well established as models in blast injury, rather more so than sub-human primates or sheep. He further stated that formulae for comparisons were widely recognized as valid. They continued to consider that the blast characteristics of FAEs and high explosives were different, particularly in the manner in which the FAE blast waves were propagated, both into open foxholes and field fortifications. They also disagreed on the typical manner of death from lung injuries. They cited statements in the North Atlantic Treaty Organization (NATO) Emergency War Surgery Handbook, 1975, which suggested that death following blast injury was often a prolonged and painful one."

21. Mr. SCHEETZ (United States of America) suggested, with respect to paragraph 29, that the words "In their opinion," should be inserted at the beginning of the second sentence.

22. Further, his reply to the statements made in paragraph 29 had been omitted from the report, and he would like to have the following text inserted at the end of the paragraph, or in another one, at the pleasure of the Chairman: "He stated that the rabbit is not a reasonable animal model for extrapolating results of such tests to man and pointed out that mathematical formulae, in his view, do not correct this problem. He suggested that one should use a model closer to man and that the sub-human primate, the monkey, is the appropriate model."

23. Mr. TAYLOR (United Kingdom), Rapporteur, drew attention to the fact that the proposals just submitted were more or less the continuation of a technical discussion and would be liable to upset the balance of the report if they were included in it without further ado. He suggested that the representatives of the United States of America and Sweden might get together and prepare a joint text.

It was so agreed.

Paragraph 29, as amended, was adopted.

Paragraph 30

24. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that he would like to have the words "Other delegations" at the beginning of paragraph 30 replaced by the words "Some other delegations".

Paragraph 30, as amended, was adopted.

Paragraph 31

25. Mr. JANZON (Sweden) proposed two amendments to the last sentence of paragraph 31, namely, that the words "the test series" should be replaced by the words "some test series" and the words "and was taken directly from" by the words "and was in fact a supplement to".

Paragraph 31, as amended, was adopted.

Paragraph 32

26. Mr. JANZON (Sweden) proposed that the words "relation to" should be replaced by the word "determining".

Paragraph 32, as amended, was adopted.

New paragraph 32 bis

27. Mr. RUIZ-PEREZ (Mexico) asked that a new paragraph 32 bis should be inserted to reflect the views of his delegation on document CDDH/IV/GT/6. The new paragraph should read "One delegation supported document CDDH/IV/GT/6, expressing its readiness to co-operate in a more detailed study of the document, for it considered that the information already available to the Conference would make it possible to undertake studies of the subject in greater depth."

28. Mr. TAYLOR (United Kingdom), Rapporteur, asked the members of the Ad Hoc Committee to leave it to his discretion to decide, after consultation with the delegations concerned what new texts should be inserted in the report.

It was so agreed.

Paragraph 33

Paragraph 33 was adopted.

Paragraph 34

29. Mr. TAYLOR (United Kingdom), Rapporteur, proposed some minor changes. The indefinite article "a" should be inserted before the word "correlation". In the last sentence of the paragraph, the comma after the word "required" should be replaced by a full-stop. The following word "and" should also be deleted and be replaced by the phrase: "They considered that ...". The words "would have to be ..." should be inserted after the words "controlled tests". In the French text, the last phrase in the paragraph, after the word "nécessaire", should accordingly begin as follows: "Elle a estimé que de nombreux essais soigneusement conçus et contrôlés devraient être effectués ...".

30. Mr. SCHEETZ (United States of America) recommended that the first sentence in paragraph 34 should be amended to read as follows:

"This delegation noted in particular that the tests using non-biological simulants gave very different results from tests in live tissue; in their view, this showed that non-biological simulants are unsatisfactory for predicting wounding effects in human beings. Moreover, they stated that no acceptable simulant exists at present and cited a noted Swedish surgeon as supporting this view."

31. Mr. TAYLOR (United Kingdom), Rapporteur, said that the proposal made by the United States delegation would be considered at a later stage, in accordance with the procedure laid down at the beginning of the meeting.

It was so agreed.

Paragraph 35

32. Mr. SKALA (Sweden) proposed a new wording which would defend Swedish scientific methods and answer the detailed criticisms made by the other delegation.

33. Mr. TAYLOR (United Kingdom), Rapporteur, said that he would study that text later, in consultation with the Swedish delegation.

It was so agreed.

Paragraph 30

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Paragraph 30, as amended, was adopted.

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Paragraph 31, as amended, was adopted.

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It was so agreed.

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33. Mr. TAYLOR (United Kingdom), Rapporteur, said that he would study that text later, in consultation with the Swedish delegation.

It was so agreed.

Paragraph 36

34. Mr. TAYLOR (United Kingdom), Rapporteur, drew attention to an omission in the English text: the sub-title "FOLLOW-UP" in capital letters should be inserted before paragraph 36.

Paragraph 36 was adopted.

Paragraph 37

Paragraph 37 was adopted.

Paragraph 38

35. Mr. TAYLOR (United Kingdom), Rapporteur, proposed that on grounds of style the word "such" should be deleted before the words "a rival mechanism". In reply to a question by the representative of Sweden, he confirmed that the epithet preceding the word "mechanism" in the fifth line was, in fact, "rival" and not "review".

Paragraph 38, as amended, was adopted.

Paragraphs 39 and 40

Paragraphs 39 and 40 were adopted.

Paragraph 41

36. Mr. TAYLOR (United Kingdom), Rapporteur, said that in the penultimate sentence of the English text of paragraph 41 the word "how" should be inserted before "such negotiations".

Paragraph 41, as amended, was adopted.

Paragraph 42

Paragraph 42 was adopted.

Paragraph 43

37. Mr. TAYLOR (United Kingdom), Rapporteur, drew attention to a mistake in the English text. The word "most" should be replaced by "more" before the term "detailed resolution". The French text should accordingly read: "une résolution plus détaillée" and not "une résolution extrêmement détaillée".

It was so agreed.

Paragraph 43, as amended, was adopted.

Paragraph 44

38. Mr. TAYLOR (United Kingdom), Rapporteur, proposed the following changes: in the English text, the word "previous" before the word "speaker" should be deleted, and the following phrase: "mentioned in the previous paragraph" inserted after "speaker". In the French text, the end of the first sentence should therefore be rendered as follows: "... l'orateur mentionné au paragraphe précédent". At the beginning of the second sentence, the word "first" should be inserted after "It". The French text would therefore read as follows: "Elle a tout d'abord suggéré ...".

It was so agreed.

Paragraph 44, as amended, was adopted.

Paragraph 45

39. Mr. TAYLOR (United Kingdom), Rapporteur, said that the subtitle "GENERAL REMARKS" should be inserted before paragraph 45.

It was so agreed.

Paragraph 45 was adopted.

Paragraph 46

40. Mr. SKALA (Sweden) proposed some corrections. The sixth line of the paragraph, after "e.g.", should read "On incendiaries there had been little progress", and the term "fuel-air explosives" should be inserted after "incendiaries".

It was so agreed.

41. Mr. EATON (United Kingdom) proposed that the word "reductions" should be replaced by "restrictions".

It was so agreed.

Paragraph 46, as amended, was adopted.

42. Mr. SCHEETZ (United States of America) asked why delegations were not mentioned by name throughout the report as a whole. The phrase "Another delegation ..." seemed to him vague and imprecise. Nonetheless, he paid a tribute to the work performed by the authors of the report.

43. The CHAIRMAN also paid a tribute to the Rapporteur.

The draft report as a whole, as amended, together with its annex, was adopted.

44. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the Committee's report attached considerable importance to the follow-up to the work performed by the Ad Hoc Committee and to draft Article 86 bis. Like other delegations, the USSR delegation considered that that draft article lay completely outside the competence of the Conference. It also agreed with those who deemed it premature to consider the follow-up to the Ad Hoc Committee's work.

45. Moreover, presenting the draft resolution reproduced in document CDDH/Inf.240 and Add.1 and Corr.1 would give rise to a situation which nobody could understand and which indeed involved inextricable difficulties. While it was proposed that the members of the Ad Hoc Committee should adopt Article 86 bis, a text dealing with the same question was being submitted to them simultaneously. Which of the two should be considered?

46. One thing, in any case, was clear: the attempts made by some delegations to impose their viewpoints regarding conventional weapons on other delegations by pressing matters to a vote were doomed to failure. Several delegations had spoken on that theme, and the USSR delegation gave them its full support. One delegation had spoken of proposing to the United Nations that it should convene a conference on the follow-up to the Committee's work. The Diplomatic Conference could not, however, put forward such a proposal to the United Nations, which was not subject to its jurisdiction: it could only address a request or a recommendation to that Organization.

47. So far as the substance of the question was concerned, the USSR delegation looked with disfavour on the convening of a special conference on conventional weapons for the following reasons.

48. In the first place, it would be impossible and illusory to attempt to resolve the problem of conventional weapons in isolation and divorced from the general problem of disarmament. In fact, those weapons constituted the main element in the military dispositions of some countries. How could such questions be resolved solely from the standpoint of humanitarian law, without taking into account military and political considerations as well as the need to safeguard the security of States? That was all the more unrealistic as much still remained to be done in the realm of studying conventional weapons.

49. Each country which was a Party to the Geneva Conventions of 1949 and to the Protocols would consider on its own behalf questions relating to conventional weapons in the light of the Ad Hoc Committee's report. Of course, the Conference could impose neither decisions nor measures on Governments in that sphere.

50. It was from that realistic position that follow-up should be considered. Moreover, the question of convening a conference on humanitarian law was envisaged in Article 7 of draft Protocol I.

51. On the other hand, it was more realistic to contemplate, as some delegations had done, the establishment of a technical committee, linked with the ICRC, which would continue to study conventional weapons and to convene conferences of experts on the subject.

52. Mr. FELBER (German Democratic Republic) thanked the Chairman for his circumspection, personal involvement and objectivity and welcomed the useful conclusions to which the Ad Hoc Committee had arrived in the field of fragments non-detectable by X-rays and also with respect to mines and incendiary weapons.

53. A number of problems nevertheless deserved further study. On the basis of the results achieved, the work could perhaps be continued in the appropriate bodies. The possibility of further discussions was, however, debatable, in view of the fact that the work of the Ad Hoc Committee and its Working Group had been seriously undermined. Part of the Ad Hoc Committee's terms of reference, namely, to consider the follow-up of its work, had been anticipated by the consideration of Article 36 bis in Committee I. Consideration of Article 86 bis by Committee I had therefore been a negative factor, as had the willingness to enter into substantive discussions on single types of weapons, because the formulation of rules regulating the use of specific types of weapons was not the subject of the Geneva Conventions. Article 86 bis raised more questions and problems than the number of paragraphs it contained. Some passages in it could not even be properly translated into all languages.

54. The Mexican delegation had stated its intention to differentiate between an immediate and a long-term follow-up and had said that in the Committee to be set up for that purpose certain conventional weapons should be looked at from the humanitarian point of view only. That was a dangerous approach which could only benefit the opponents of disarmament, since it prevented an over-all solution of the whole disarmament problem. He could not understand why weapons should be considered from the humanitarian point of view only. The proliferation of bodies, one for short-term measures, another for long-term measures, one for humanitarian aspects and another for political, military and security aspects, would in no way help to mobilize public opinion.

55. Article 86 bis had already seriously delayed the early ratification of the two Protocols. It thwarted the plans of the non-aligned States and jeopardized some specific proposals by Yugoslavia concerning the agenda of the proposed United Nations Disarmament Conference. It prevented an understanding from being reached on the drafting of a resolution or recommendation acceptable to all on the follow-up of the Ad Hoc Committee's work.

56. The draft resolution (CDDH/411) submitted by Algeria and other delegations merely added to the confusion, since five of its sponsors were also sponsors of Article 86 bis.

57. He urged the sponsors of Article 86 bis to show realism and objectivity by withdrawing it, since an "all or nothing" approach never produced good results at international conferences. He appealed to the delegations concerned to break the deadlock and allow a realistic and acceptable method to be found in order to pursue consideration of the results of the Ad Hoc Committee's work on a relevant basis with due regard to all the related factors.

58. Mr. de GRAFFENRIED (Switzerland) said that while the Committee's discussions had been livelier at the third and fourth sessions than at the earlier ones and the semblance of a dialogue had taken shape through the establishment, at long last, of a Working Group, the progress made should not be over-estimated, although it should be given its full due.

59. His delegation welcomed the consensus on the proposal concerning fragments non-detectable by X-rays, particularly since it had originally sponsored that purely humanitarian proposal (CDDH/IV/210 and Add.1 and 2). With respect to mines and booby-traps, the drafting of a single proposal (See Working Group document CDDH/IV/CT/4 and Corr.3) combining two related proposals submitted by two groups of delegations was in itself a major step forward. However, it appeared from the debate on that working paper that an agreement was not yet in sight. That was a matter for regret, since the objections raised to the present text in no way justified closure of the debate.

60. Unfortunately, no true progress had been achieved in the discussions on other categories of weapons. Opinions still differed on incendiary weapons. His delegation was on the side of those who, on humanitarian grounds, favoured the prohibition of weapons whose chief effect was to spread fire. In view of the fact that there might be no way of limiting the spread of fire, his delegation could not accept the view that only the civilian population should be spared its effects. Proposals along those lines were merely a repetition of provisions which Committee III

had already adopted in Part IV of draft Protocol I and could not serve as the only basis for follow-up work. Moreover, as far as suffering was concerned, those proposals made a distinction between combatants and civilians with which his delegation could not agree. Every human being suffered in the same way: that was the reason for the Swiss approach, based as it was on purely humanitarian considerations. The proposal in document CDDH/IV/201 and Corr.2 and Add.1 to 9, submitted by twenty-two countries including Switzerland, did not disregard realities and military considerations. The proposed prohibition of the use of any munition which was primarily designed to set fire to objects or to cause burn injury to persons through the action of flame and/or heat produced by a chemical reaction of a substance delivered on a target, did not apply to munitions which might have secondary or incidental incendiary effects nor to munitions which combined incendiary effects with penetration or fragmentation and which were specifically designed for use against aircraft, armoured vehicles and similar targets.

61. With regard to fuel-air explosives, his delegation continued to believe that pressures of the order of 10 to 20 atmospheres lasting 10 to 100 milliseconds were enough to cause instant death. Furthermore, people could be killed or wounded as a result of secondary effects over an area larger than the lethal pressure area. The possible use and psychological effect of fuel-air explosives could therefore be compared to those of napalm. Since those explosives had not yet become an essential part of national defence it was still quite possible to-day to ban their use for military purposes unless they were used solely for the purpose of destroying military targets, as in the case of mine clearance.

62. Finally, no serious discussion had taken place on small-calibre projectiles. That was perhaps due to the fact that the problem was a difficult one which required a thorough training in ballistics. However, the many documents submitted and discussed at the Diplomatic Conference allowed representatives to get a clear picture of that category of weapons.

63. The Swiss delegation, in submitting several proposals of an essentially humanitarian nature and in supporting other proposals of a similar character, had wished to contribute to the search for rules limiting superfluous injuries and indiscriminate effects, in order to provide humans with greater protection in periods of armed conflict. Its purely humanitarian efforts were in line with the general aim of the Diplomatic Conference. It could hardly be claimed in good faith that the subject came within the field of disarmament, which was concerned with quite different weapons and had a quite different aim, an aim certainly no less important, but one that belonged to the political and military domaine.

64. With respect to the prohibition or limitation of the use of certain weapons causing superfluous injury or striking indiscriminately, it was essential to take action in the very near future. That action must not be of the same kind - academic rather than purposeful - that had been characteristic of work in that field so far. Those who sincerely supported a regulation of weapons, realizing that a consensus on the adoption of such rules was not attainable at the present Conference, had had to give an assurance at the beginning of the present session that they would not press proposals having broad support for adoption at the Conference. In the circumstances, the results obtained could not be startling, any attempt at solid achievement having thus been automatically extinguished.

65. The delegations of the twenty-two States that had submitted document CDDH/IV/201 and Corr.2 and Add.1 to 9 at the second session had shown a great deal of patience, which would never be allowed to lapse into resignation. They understood, of course, that some time must be allowed, and that decision of such scope could not be taken hastily. But to-day Governments had the information needed for taking up a position and could no longer continue to shelter behind arguments of varying validity in order to hold up a decision in that field. The next stage of the work should therefore be decided upon at the present Conference.

66. The Swiss delegation was one of the sponsors of a draft resolution submitted directly to the plenary Conference (CDDH/411), which in many respects resembled the draft resolution submitted by the delegations of Canada, Denmark, the Federal Republic of Germany and the United Kingdom (CDDH/Inf.240 and Add.1 and Corr.1), although not identical with it. His delegation considered draft resolution CDDH/411 absolutely essential, whether or not draft Article 86 bis was adopted. Clearly, both proposals sought to ensure a follow-up on the question of weapons, but they did so in very different ways. Whereas draft resolution CDDH/411 provided for the resumption of the work in the very near future, draft Article 86 bis would establish machinery that would begin to operate only when certain conditions had been fulfilled, and would provide, at a later stage and over the long term, for the study and adoption of recommendations and the convening of special conferences with a view to adopting agreements to implement the principle that the Parties to the conflict did not have an unlimited right of choice of means of combat. The adoption of that article would therefore in no way ensure the holding of a conference in the very near future. But all the efforts made in that field at the present Conference would be nullified if an immediate follow-up - namely in 1978, or the beginning of 1979 at the latest - was not decided upon. That course must be taken.

Public opinion expected results from the Diplomatic Conference, and all Governments were in a position to accept such responsibilities.

67. Mr. CHASPURI (Indonesia) said that although it had emerged that no rule on prohibition could be adopted, although that had been previously decided, it would be wrong to say that the work of the Ad Hoc Committee had produced no result. In that connexion he wished to mention, among other things, the widely agreed proposal on prohibition of the use of fragments non-detectable by X-rays (CDDH/IV/210 and Add.1 and 2).

68. As to the other categories of weapons (incendiaries, mines, booby-traps, etc.), the Ad Hoc Committee should not be too disappointed with the outcome of the debates, in view of the many opposing factors involved - humanitarian, medical, military, economic and those relating to State security. Nevertheless, in the light of the various proposals submitted, and of the debates on the possible prohibition or restriction of the use of such weapons, the results could be considered as a step towards more positive results at future conferences.

69. As for a follow-up to the work of the Ad Hoc Committee, his delegation would consider any proposal that might be put forward on the subject.

70. Mr. BRECKENRIDGE (Sri Lanka), speaking as co-ordinator for the non-aligned countries, emphasized the useful exchanges that the delegations of those countries had had with delegations with different views on such subjects as weapons, conventional and other, humanitarian law, and general and complete disarmament, in their attempts to reach practical solutions.

71. It was not only restricted meetings of experts that could find the answers to the weighty problems facing humanity as a whole: an article in the Protocols dealing with human suffering was just as useful.

72. There was no danger that the decisions of the present Conference would prejudice either the outcome of the special session that the United Nations General Assembly was shortly to devote to disarmament, or the Organization's future work in that field.

73. Mr. SKALA (Sweden) said that his delegation had never refused to discuss problems and remained ready to seek a compromise, both in the Ad Hoc Committee and in Committee I; it had already indicated what might be the content of such a compromise. His delegation urged other delegations, too, not to break off the

discussions and not to insist on certain arguments that other delegations might find unacceptable. Sweden was keenly desirous that consultations aimed at a compromise on the follow-up to their work should begin as soon as possible, the same day or the following day, so that there could be a continuation of the useful work that had been carried out for a number of years.

74. Mr. TODORIĆ (Yugoslavia) said that his delegation attached special importance to the continuation of the Ad Hoc Committee's work in the best interests of the international community, and would remain open to any suggestion calculated to lead to a consensus within the framework of the proposals already submitted for consideration by the plenary Conference.

75. Mr. ABADA (Algeria) endorsed some of the views expressed, inter alia by the representatives of Yugoslavia and Switzerland. It was most regrettable that at the end of four years of work by the Ad Hoc Committee, and after two sessions of the Conference of Government Experts, they had come face to face with a profound misunderstanding and with the lack of any real dialogue or sincere political will. Of course, a number of proposals had been submitted to give the impression that results had been achieved. He would not deny any value to those texts, but it must be recognized that other committees of the Conference had obtained more positive results, although the problems they had been dealing with were more complex; in their case there had been a determined will to undertake real negotiations and to find common ground, which was not the case in the Ad Hoc Committee.

76. Nevertheless, the Algerian delegation was convinced that the ideas produced by the Ad Hoc Committee would re-emerge in other forums and that the work that had been begun would be continued elsewhere.

77. Proposals concerning a draft article had been submitted in Committee I because it had not been possible to achieve anything in the Ad Hoc Committee, where there had been no dialogue. Although not entirely satisfactory, those texts had the merit of showing that some ideas had nevertheless been able to emerge. What was important for the present was that the Conference should take note of the fact that some countries were opposed to the use of certain weapons.

CLOSURE OF THE SESSION

78. After the usual exchange of courtesies, the CHAIRMAN announced that the Ad Hoc Committee had completed its work at the fourth session of the Diplomatic Conference.

The meeting rose at 11.20 a.m.

Part Two

REPORTS OF THE AD HOC COMMITTEE ON
CONVENTIONAL WEAPONS

FIRST SESSION

(Geneva, 20 February - 29 March 1974)

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

REPORT

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AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

REPORT

Election of officers

1. The Conference, at its seventh plenary meeting, on 1 March 1974, elected the following officers to the Ad Hoc Committee on conventional weapons :

<u>Chairman</u> :	Mr. H. Diego GARCES	(Colombia)
<u>Vice-Chairmen</u> :	Mr. Houchang AMIR-MOKPI	(Iran)
	Mr. Mustapha CHELBI	(Tunisia)
<u>Rapporteur</u> :	Mr. Frits KALSHOVEN	(Netherlands)

Work Programme of the Committee

2. At the organizational meeting of the Committee, the Chairman in an opening statement (CDDH/IV/2) explained the task of the Committee, which was to examine the question of prohibition or restriction of use of specific categories of conventional weapons which might be deemed to cause unnecessary suffering or have indiscriminate effects, and to consider all proposals submitted to the Conference relating to such weapons (see the proposal adopted by the Conference at the ninth plenary meeting, CDDH/23 and Add.1). He proposed a draft agenda for the work of the Committee, which after some discussion was adopted with some modifications. In its final version, the agenda listed the following items (CDDH/IV/1/Rev.1) :

1. General debate
2. Consideration of the plan proposed by the ICRC for the Conference of Government Experts on weapons to be held in 1974
3. Examination of the questions of prohibition or restriction of use of specific categories of conventional weapons which may be deemed to cause unnecessary suffering or have indiscriminate effects, and consideration of proposals relating, inter alia, to :
 - a) incendiary weapons
 - b) small calibre projectiles
 - c) blast and fragmentation weapons
 - d) delayed action and perfidious weapons
 - e) potential weapons developments
4. Other questions
5. Adoption of the report

3. With respect to this programme of work, it was pointed out by several delegations that during the present session the Committee could accomplish no more than a tour d'horizon, thus aiding the ICRC in identifying the main questions which the Conference of Government Experts would be asked to study in depth.

4. Some delegations expressed their understanding that the listing of certain specific categories of weapons under agenda item 3 did not prejudge the question of whether such weapons caused unnecessary suffering or had indiscriminate effects.

General debate

5. There was general agreement that a consideration of certain modern conventional weapons in the light of such factors as the degree of suffering caused or their indiscriminateness had by now become an urgent necessity. Tremendous technological developments had led to ever more sophisticated weapons, in many cases with increasingly destructive power. Nuclear weapons and other weapons of mass destruction were, of course, the most destructive. In that connexion, some delegations rejected the view that the debate on those weapons and their possible prohibition should be left to the disarmament discussions, and they urged that the Conference include them in its programme of work. Another delegation expressed its regret at the decision not to consider these weapons. Many other delegations, however, accepted the limitation of the work of this Conference to conventional weapons. As it was pointed out by some, nuclear weapons in particular had a special function in that they act as deterrents preventing the outbreak of a major armed conflict between certain nuclear powers.

6. Conventional weapons, on the other hand, were in fact used in all armed conflicts. It was pointed out from various sides that some of the more repugnant of those conventional weapons were put to use in theatres of armed conflict where there existed great differences and, indeed, a total inequality between the technological and industrial capacities of the parties to the conflict. The technologically advanced party was seen to use napalm and other incendiary weapons, as well as other modern conventional weapons, against less developed peoples lacking these means of combat. In that context, some made express reference to the case of wars of national liberation. It was pointed out by some delegations that, whereas in those situations the military value of the weapons under consideration was often questionable, the cost in terms of loss of life and injuries inflicted was invariably high, especially among the civilian population. It was also pointed out that the regional approach to the prohibition of the use of certain conventional weapons should be studied and could be accepted as one of the practical ways to deal with that question. Bearing that in mind, some delegations suggested that the Committee should pay particular attention to the African region and the conditions of armed conflict prevailing there.

7. Special reference was made to weapons used mainly to break the morale of the civilian population, and to the use of military aircraft by a party to the conflict who possessed complete air superiority. It was suggested that the use of such weapons, and of the air force in such circumstances, should be prohibited.

8. Certain other delegations also pointed to the interrelationship of the question of prohibition or restriction of use of certain conventional weapons with the rules more specifically relating to the protection of the civilian population. As it was pointed out by some, any system of protection of the civilian population would be incomplete without a set of agreed prohibitions or restrictions of use of certain conventional weapons. One delegation pointed to the danger of escalation from the use of increasingly destructive conventional weapons, which ultimately might even entail the risk of use of nuclear weapons.

9. The draft Protocols already contained proposed articles reaffirming certain general principles which placed limits on the power of belligerents to employ weapons of their choice (article 33 of draft Protocol I, article 20 of draft Protocol II). Several delegations emphasized that such general principles, indispensable though they might be, were not in themselves enough to provide the desired result and that agreed prohibitions or restrictions of use of specific weapons were also necessary.

10. It was realized that the achievement of such specific rules prohibiting or restricting the use of certain named weapons or categories of weapons would be an important matter, which would deserve the most careful consideration and reflection by governments. It was pointed out by some delegations that a ban on one weapon might lead to the use or development of another weapon that might be even more cruel in its effects.

11. Another aspect mentioned was the relationship between the subject at issue and disarmament. In that respect, several delegations expressed doubts as to the competence of the present Conference to deal with the matter of arms limitations, which should more properly be dealt with in the appropriate fora of the United Nations and in the Conference of the Committee on Disarmament. Some other delegations although not (or no longer) making any reservations as to the competence of the present Conference and of the Ad Hoc Committee in particular, yet felt that problems of arms control were involved in the question of prohibition or restriction of use of specific weapons. Others, while accepting that prohibitions or restrictions of use of specific conventional weapons might affect the military capacity of States, pointed out that such bans on use would not entail the necessity to have corresponding bans on production, stockpiling, etc., or peacetime verification machinery. Some others, on the contrary, felt that the destruction of existing stockpiles might be an indispensable complement to prohibitions on use.

12. Some delegations pointed out that it could not be said that the Conference was the wrong forum while the United Nations organs and the Conference of the Committee on Disarmament were competent, and at the same time prevent any real progress being made in the latter.
13. Some delegations suggested that prohibitions or restricting rules could and should be adopted forthwith. At least with respect to some weapons, such as napalm and other incendiaries, there was sufficient information now available, and there was no need to wait for the results of any further expert investigations and discussions. Some others thought that at all events the second session of the present Conference, to be held in 1975, could adopt the necessary provisions, which they would prefer to see included as an integral part of the draft Protocols.
14. Other delegations were in favour of a more cautious approach. For one thing, they did not wish to tie up the work on the weapons issue too closely with the work on the draft Protocols. The latter had acquired a state of maturity which the question of conventional weapons still lacked, and progress with respect to the draft Protocols should not be held up by the examination of the question of weapons. They warned against attempts to rush ahead too quickly with the weapons issue. Much investigation was still needed, both as concerned the characteristics of certain conventional weapons and their effects, and as regards the standards by which those weapons should be assessed. Although much useful work had already been done, governments had not so far expressed their views on many of the questions involved.
15. It was pointed out in that regard that it should not at this time be taken for granted that as the outcome of the present exercise (which had in fact only just started), certain existing conventional weapons would be prohibited or their use restricted. One had to approach the matter with an open mind and it would be wrong to try to legislate prejudice into law. What was at stake was the credibility of international humanitarian law.
16. Several delegations who thought along those lines, declared themselves opposed to introducing specific weapons prohibitions into the body of the draft Protocols. They favoured a solution whereby such prohibitions or restrictions would be embodied in one or more separate instruments.
17. Such instruments, it was pointed out, should be based on reciprocity and universal acceptance. It would be especially important for the agreements to be acceptable to the major Powers and to the main arms-producing States.
18. One delegation felt that, in view of the amount of time and the cost involved in the development and production of new generations

of weapons, it might perhaps prove difficult to place a ban on categories of weapons already under development. It was suggested that in such cases agreement might perhaps be reached on provisions restricting the use of such categories of weapons.

19. As it might prove difficult to arrive at agreed solutions for all the categories of weapons at the same time, a few delegations favoured a procedure whereby separate categories would be dealt with one after another. In their view, incendiaries should be examined first, as much material was already available about those means of warfare and as a certain convergence of views might be discerned as to their nature and effects in the light of existing humanitarian criteria. Only after an international instrument concerning incendiary weapons had eventually emerged, could another category of weapons usefully be taken in hand. This idea of a step-by-step procedure was not, however, taken up by other delegations.

20. Some delegations pointed out that no matter how useful the work that had now been undertaken, one should not limit oneself to it: a machinery for periodic review would therefore have to be devised. New weapons and weapon systems would be developed in future and those might not all be acceptable from the point of view of humanitarian law.

21. Many delegations explained what they considered to be the premises on which the discussions concerning weapons should be based. In this respect, the principles enshrined in the St. Petersburg Declaration to the Effect of Prohibiting the Use of Certain Projectiles in Wartime (1868) were evoked, to the effect that the only legitimate objective of belligerents was to weaken the military forces of the enemy and that the use should be avoided of means of combat which uselessly aggravated the suffering of disabled men or made their death inevitable. Similarly, much reliance was placed on the principles expressed in The Hague Regulations annexed to The Hague Convention of 1907 concerning the Laws and Customs of War on Land, that the right of belligerents to select means of warfare was not unlimited and that the use of weapons apt to cause unnecessary suffering was prohibited, as well as on the principle that a distinction should be made at all times between the civilian population and the armed forces.

22. One delegation mentioned in that connexion the recent endeavours to promote the idea of human rights in situations of armed conflict.

23. Another delegation, approaching the matter from a somewhat different angle, pointed to the interrelationship between - and, indeed, inseparability of - the prohibition of the use or threat of force as embodied in the Charter of the United Nations and as

reflected in General Assembly resolution 2932 A XXVII, the need for general and complete disarmament and the prohibition or restriction of use of specific conventional weapons.

24. Yet another delegation, basing itself on the distinction between just and unjust wars, argued that the type of weapons used was closely related to the type of war. The aggressor, who conducted an unjust war, was likely to use cruel and genocidal weapons, whereas just wars were precisely directed against the use of such weapons. In that same vein, another delegation stated that humanitarian law should be based on the interests of the peoples and that therefore provisions which might favour the aggressor should be avoided.

25. As concerns the standards or criteria to be applied in assessing specific conventional weapons, there was some divergence of views as to whether those can be considered settled and sufficiently clear. According to some, the standards of "unnecessary suffering" and "indiscriminate effects", as mentioned in document CDDH/DT/2 and Add.1, were indeed well established in international humanitarian law and needed only to be applied to existing and possible future weapons.

26. Others argued that agreement was lacking on the standards by which concepts such as "unnecessary suffering" or "indiscriminate-ness" could be measured. The Committee was asked to define those standards and to arrive at a generally acceptable interpretation of the various criteria involved. It was pointed out in that respect that all weapons could be used indiscriminately or in such a manner that they caused unnecessary suffering.

27. The question of what constituted "unnecessary suffering" was entered into by several delegations. According to one, the underlying philosophy was that if two means of weakening the military forces of the enemy were roughly equivalent for the purpose of placing an adversary hors de combat, the less injurious should be chosen; if the choice was between killing the adversary or injuring him, then he should be injured; and a light injury should be preferred to a grave one. As stated in paragraph 23 of the ICRC report - Weapons that may cause unnecessary suffering or have indiscriminate effects - the concepts of "unnecessary suffering" and "superfluous injury" would always call for weighing the military advantages of a given weapon against humanitarian considerations.

28. In that connexion, some delegations estimated that perhaps in recent times there had been slightly too much emphasis from certain quarters on the nature of the wounds inflicted by certain modern conventional weapons. That might lead to a situation where the clean kill would be preferred to the severe wound. It would be necessary to keep that consideration in mind while discussing the gravity of suffering resulting from non-lethal injuries.

29. The question was asked against what criteria the degree of suffering inflicted was to be measured: against the military utility of the weapon alone, or also against such factors as the cost of the weapon or the cost of its replacement by another? In that respect, one delegation asserted that the question ought to be assessed from the point of view of the victim of the weapon and not of the user.

30. One delegation raised the question of whether the French formula "propres à causer" was in fact adequately translated by "apt to cause".

31. One delegation took exception to the use of the term "unnecessary suffering". It did not wish to accept that there was such a thing as "necessary suffering" and therefore proposed that it be agreed that any infliction of suffering in the course of armed conflict was immoral and incompatible with human dignity.

32. As for the criterion of indiscriminateness, it was pointed out that although all weapons could be used without discrimination, some were more indiscriminate than others. Reference was made in that respect to bacteriological and certain chemical weapons (which admittedly were outside the scope of the present debate) and certain types of incendiary weapons.

33. To determine that a certain weapon had indiscriminate effects would, according to some, be easier than to apply the criterion of unnecessary suffering. The latter criterion contained an element of subjective appreciation, whereas the criterion of indiscriminateness was said to have a more objective character.

34. It would be tempting here to aim at restrictions on use rather than absolute prohibition. Such restrictions, it was pointed out by some, would, however, be exposed to a constant strain in practice, as belligerents would be inclined to go to the very limit of what could be considered permissible use. A total prohibition would therefore be preferable.

35. There was some reference during the debate to the criterion of treacherousness or perfidy. Delayed action weapons were thought by some to come under that heading, and booby traps were also mentioned in that respect. However, the discussion provided little clarification of that concept.

36. While much importance was thus attached to the question of criteria, it was emphasized by a number of delegations that the final decision to ban, or restrict the use of, a specific weapon would always remain a political one. Such a decision would be taken in the light of available alternatives, logistical and economic considerations, and the like. It was therefore necessary to approach the matter with a sense of realism.

37. One delegation, while conceding the political character of the final decision, pointed out that governments were indeed completely free to prohibit or restrict the use of a given conventional weapon, irrespective of whether they considered such use to be in violation of one or other of the criteria involved. Hence, if they were willing to agree on such a measure of arms limitation, they could do so without having to reach prior agreement on the merits or demerits of the weapon in question.

38. The enforcement of possible new prohibitions or restrictions of use of specific weapons was discussed by some delegations. One delegation mentioned the example of the prohibition of gas warfare, where fear of retaliation in kind had deterred belligerents from employing gas. The effectiveness of that means of enforcement was contested by certain others. One delegation stated that reprisals were prohibited under general international law.

Use of specific conventional weapons

39. Few delegations contributed to the discussions on specific categories of conventional weapons. Some delegations explained that, as far as they were concerned, that was due not so much to any unwillingness on their part to discuss the problems posed as to the difficulty and complexity thereof and the fact that the necessary preparatory work at the expert level had not yet been done. Their Governments were willing to send qualified experts to the Conference of Government Experts which the ICRC was expected to convene, and they would there contribute to the work to the best of their ability.

40. One delegation spoke in some detail about the various categories of conventional weapons mentioned in the agenda of the Committee. Incendiary weapons were the first to be discussed. The delegation stressed the strong public reaction evoked by their use, their terrifying effects and the extreme suffering they caused, both for those who survived an attack with those weapons and for those who ultimately succumbed to their injuries. Incendiary weapons, of which napalm and phosphorus had attracted the most attention, were moreover often used indiscriminately against built-up areas and concentrations of persons in the open; their utility against armoured vehicles and fortifications, on the other hand, was diminishing.

41. According to this delegation, it would be necessary to examine whether from a military point of view certain incendiary weapons were so completely indispensable that they could not be included in a general prohibition on use of incendiary weapons. In the working paper (CDDH/DT/2 and Add.1), submitted by Egypt, Mexico, Norway, Sudan, Sweden, Switzerland and Yugoslavia, an exception was made e.g. for anti-aircraft and anti-armour incendiary projectiles; however, Mexico had made a reservation to that exception, so as to make the prohibition of incendiary weapons complete. The delegation

which introduced the subject could go along with a deletion of the exception. Another delegation, which was among the co-sponsors of the working paper expressed itself strongly in favour of that deletion.

42. The latter delegation urged that the use of napalm and other incendiary weapons be formally prohibited within the shortest possible time. In the meantime, the Diplomatic Conference should adopt a resolution renouncing the use of those weapons until such time as the Conference had brought about formal prohibition.

43. Some other delegations reiterated what had already been stated in the general debate, viz., that priority should be given to the question of napalm and other incendiary weapons.

44. Turning next to the category of small-calibre projectiles, the delegation mentioned in paragraph 40 expressed its fear that, unless checked, many countries would include high velocity small-calibre projectiles in their armament. That would lead to the absurd result that while the military balance would remain unaffected, the balance of human suffering would simply have been lifted to a higher level.

45. The same delegation explained in some detail the characteristics of the projectiles under consideration, their behaviour upon impact on the human body and the type of wound they caused: an explosive type wound many times larger than the projectile itself, a pulsating cavity which constituted an excellent basis for bacterial infection, shock effect, secondary projectiles caused when a bullet hit bone. In a word, the effects of those projectiles resembled closely those of the dum-dum bullet.

46. The same delegation, introducing the subject of fragmentation weapons, explained that many anti-matériel weapons which were designed to fragment or to have a blast effect, might cause incidental injuries to personnel. Those weapons were not a primary source of concern. It was a different matter, however, with some anti-personnel fragmentation weapons, which could cover large areas, especially when delivered in clusters, and which could put out of action a great many persons. Those weapons, in the view of that delegation, risked affecting civilians and combatants alike.

47. While such weapons could have indiscriminate effects depending on the conditions in which they were used, those effects might be reduced by operational rules restricting their use. Such rules would, however, be difficult to enforce and, moreover, the aspect of suffering would remain. An absolute ban seemed therefore preferable.

48. In document CDDH/DT/2 and Add.1 such a ban was proposed for one type of anti-personnel fragmentation weapons only, viz., cluster warheads. That was not to say, however, that other varieties might not deserve to be prohibited as well.

49. The same delegation briefly introduced two other categories of weapons, viz., fléchettes and anti-personnel mines. Fléchettes, especially when released in great numbers, tended to create very serious injuries which, in fact, were similar to those created by the anti-personnel fragmentation weapons discussed in paragraph 46. This delegation estimated that their military value did not outweigh the suffering they caused. It therefore suggested that the use of that type of weapon be banned before it became too attractive to weapons designers.

50. As for anti-personnel land-mines, it was especially the dispersion of large quantities by aircraft which could have indiscriminate effects. It was therefore submitted that that operative method might be prohibited.

51. Another delegation, while associating itself with the remarks of the previous delegation and with the contents of document CDDH/DT/2 and Add.1, made special mention of delayed-action weapons and booby traps. Such types of weapons acted indiscriminately and treacherously; they could be used far from the zone of combat, and could obstruct rescue operations. For those reasons, the delegation felt that the use of weapons of that type should be prohibited.

Conference of Government Experts

52. The memorandum of the ICRC concerning the organization of a Conference of Government Experts on "Weapons that may cause unnecessary suffering or have indiscriminate effects", transmitted to the Conference as an annex to document CDDH/42, evoked comments from a number of delegations.

53. Several delegations expressed a preference for Geneva rather than Lucerne, adding, however, that they would probably participate in the Conference if it was held at some place other than Geneva. As for the date, some delegations would have preferred a date in July or August, or even a later date.

54. Several delegations expressed the view that the Conference should be open to all countries. Other delegations suggested that the Conference should be open to all governments participating in the Diplomatic Conference. Several delegations added that the presence of representatives of national liberation movements would also be very useful.

55. It was urged from various quarters that the mandate which the ICRC intended to define for the Conference of Government Experts, be made known at the earliest possible moment and be as precise as possible. The Conference should not have the power to exceed its terms of reference: governments needed to know which experts to send and which matters would be discussed. They would also need to know what the cost of participation would be.

56. With regard to the financial aspect, the representative of the ICRC, in introducing document CDDH/42, mentioned three possible systems: voluntary contributions, allocation by the present Conference, and payment of a fixed sum (probably around US\$800) per expert participating. From the debate, no clear preference for any of those systems emerged.

57. In the course of the last (seventh) meeting of the Committee, the ICRC introduced a draft programme for the Conference of Government Experts, with a covering letter confirming its preparedness to call such a Conference from 4 to 28 June 1974 in Lucerne, under certain conditions which were set out in the letter (CDDH/IV/4). A representative of the ICRC explained that, although the debate in the Committee had not so far provided a clear preference for one or other of the solutions proposed for the problem of finance, the ICRC considered the only practical solution to consist in the system of voluntary contributions. In its letter, the ICRC had set the middle of April as the deadline; if by that date insufficient contributions had been promised, the Conference would have to be postponed. In reply to questions of some delegations, the representative of the ICRC emphasized that postponement would really be the very last solution and that before taking that decision the ICRC would approach particularly interested governments to see what could be done.

58. One delegation, which would have preferred a system of allocation by the Conference, now declared itself willing to endorse the system of voluntary contributions.

59. One delegation had heard it suggested that national liberation movements would participate in the Conference of Experts at the expense of the ICRC. A representative of the ICRC replied that there was no truth in that suggestion and that all participants would have to bear their own expenses.

60. The issue of participation in the Conference of Experts provoked some further discussion in the Committee. While one delegation registered its disagreement with the idea of participation of national liberation movements, several other delegations urged that those movements be invited to attend the Conference. One delegation also specifically asked the ICRC to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam.

61. A representative of the ICRC stated that the ICRC, in extending invitations to the Conference of Experts, would take due account of the discussions in the Ad Hoc Committee.

62. Several delegations expressed their support for the draft programme and terms of reference of the Conference of Government Experts set out in document CDDH/IV/4. One delegation was somewhat concerned about the time-table contained in the programme;

in its opinion, it might be found that this would need review. However, the question could be resolved as and when the Conference was under way.

63. Another delegation, co-sponsor of document CDDH/DT/2 and Add.1 stated that it would not consider itself bound by what would emerge from the Conference of Government Experts. It reserved its right to ask the second session of the Diplomatic Conference to discuss the matter on the basis of the specific proposals contained in the document mentioned.

Other questions

64. No delegation expressed a wish to speak under this item of the agenda.

Adoption of the report

65. The draft report was discussed paragraph by paragraph and, after some modifications, was adopted by the Committee.

SECOND SESSION

(Geneva, 3 February - 18 April 1975)

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

REPORT

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AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

REPORT

Officers of the Ad Hoc Committee

1. During the second session of the Conference the officers of the Ad Hoc Committee on Conventional Weapons remained unchanged, with one exception - Mr. Mustapha Chelbi (Tunisia) having had to leave Geneva at the beginning of the session, for the duration of his absence his place as Vice-Chairman was taken by Mr. Nkeke Ndongo Mangbau (Zaire). The officers of the Ad Hoc Committee were therefore as follows:

<u>Chairman:</u>	Mr. H. Diego Garces	(Colombia)
<u>Vice-Chairmen:</u>	Mr. M. Houchang Amir-Mokri	(Iran)
	Mr. Nkeke Ndongo Mangbau	(Zaire)
	(until 14 April)	
	Mr. Mustapha Chelbi	(Tunisia)
	(from 14 April)	
<u>Rapporteur:</u>	Mr. Frits Kalshoven	(Netherlands)

Programme of work of the Ad Hoc Committee

2. At the invitation of the Chairman, the Committee adopted the following programme of work for the current session of the Committee. (CPDH/IV/Inf.201):

1. Introduction of the report of the Conference of Government Experts on the Use of Certain Conventional Weapons.
2. Introduction of proposals.
3. Consideration of the question of prohibition or restriction of use of specific categories of conventional weapons which may cause unnecessary suffering or have indiscriminate effects and, in this context, consideration of the report of the Lucerne Conference and of proposals:
 - (a) Napalm and other incendiary weapons
 - (b) Small-calibre projectiles
 - (c) Blast and fragmentation weapons
 - (d) Delayed action and perfidious weapons
 - (e) Potential weapon developments
4. Consideration of future work, including the question of a second Conference of Government Experts, and of the programme of work which it might follow.

3. The Ad Hoc Committee resumed its work on Wednesday, 12 February 1975. In order to avoid, as far as possible, its meetings colliding with those of other Committees and working groups, the members of which desired to participate in the work of the Ad Hoc Committee also, meetings were regularly held on Wednesday and Friday afternoons. The Committee terminated its deliberations on Tuesday, 15 April 1975.

Introduction of the report of the Conference of Government Experts on the Use of Certain Conventional Weapons

4. The Rapporteur, who had acted as Principal Rapporteur of the Conference of Government Experts on the Use of Certain Conventional Weapons (Lucerne, 24 September - 18 October 1974), introduced the report of that Conference. After having recalled resolution XIV of the XXIIInd International Conference of the Red Cross which requested the ICRC to convene such a conference, and the memorandum introduced by the ICRC during the first session of the Diplomatic Conference concerning the organization of such a Conference of Government Experts on Conventional Weapons (CDDH/42), he gave a brief description of the proceedings of the Lucerne Conference and then introduced the report chapter by chapter.

5. He pointed out that the debate on legal criteria (Chapter II) (in the main: unnecessary suffering, indiscriminateness, perfidy, and the dictates of the public conscience), although inconclusive, had contributed to the clarification of those concepts. The ensuing discussion of the various categories of weapons (incendiary weapons, small-calibre projectiles, blast and fragmentation weapons, delayed-action and treacherous weapons, and future weapons) had yielded much information, some of which contradicted information supplied on earlier occasions and contained e.g. in the 1973 ICRC report on Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects and the report of the Secretary-General of the United Nations on Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1).^{1/} In the evaluation of each separate category of weapon, widely divergent opinions had been expressed regarding the need and desirability of prohibitions or restrictions on the use of those weapons. One general conclusion which had been widely shared was that further study and research were needed.

^{1/} United Nations publication, Sales No. E.73.I.3.

6. Several delegations, commenting on the work and results of the Conference, stated that they regarded it as having been both useful and successful, and as having established a good basis for future progress. They considered that the Ad Hoc Committee should be guided by the consensus reached at Lucerne that another Conference of Government Experts under ICRC auspices could usefully be convened, and they pointed out that they did not intend to comment in depth on proposed bans or restrictions at the current session of the Ad Hoc Committee. Another delegation, which showed itself much less satisfied with the results of the Conference, felt, on the contrary, that a second Conference of Government Experts would be unnecessary and that the current session of the Ad Hoc Committee provided ample opportunity for experts to complete their work.

Introduction of proposals

7. One delegation introduced working paper CDDH/IV/201, submitted by Arab Republic of Egypt, Austria, Mexico, Norway, Sweden, Switzerland and Yugoslavia. It explained that that document constituted a revised version of working paper CDDH/DT/2 and Add.1 submitted to the first session of the Diplomatic Conference; the changes had been made with a view to bringing the working paper up to date in the light of the discussions at the Lucerne Conference. The changes concerned mainly the sections on incendiary weapons (where the definition elaborated at Lucerne had been used) and on fragmentation weapons (the title of which was now qualified by the word "anti-personnel" and where a reference to "other devices with many bomblets which act through the ejection of a great number of small-calibre fragments or pellets" had been added to the text). While the title of the section on "especially injurious small-calibre projectiles" was new, the changes made in that section were not substantial and merely served to bring out more clearly the ideas which had already been behind the original version of the working paper and which had remained unchanged; especially as neither the original nor the revised version had been intended to cover high-velocity projectiles alone.

8. The same delegation expressed the hope that other delegations would take the initiative and make proposals on other matters, not covered in the working paper, such as the use of booby-traps and the marking of minefields.

9. Several delegations stated their support for the ideas expressed in working paper CDDH/IV/201, which they considered to be a good starting point for the discussions in the Ad Hoc Committee and the work which would have to follow. In the course of the proceedings, a number of delegations indicated their wish to be added to the list of countries submitting the working paper.

The complete list ultimately comprised the following names: Algeria, Arab Republic of Egypt, Austria, Lebanon, Mali, Mauritania, Mexico, Norway, Sudan, Sweden, Switzerland, Venezuela and Yugoslavia (CDDH/IV/201 and Corr.2 and Add. 1 to 6).

10. Some delegations, on the other hand, while paying a tribute to the working paper felt that it might perhaps go beyond what was feasible for the time being.

11. At a later stage in the proceedings, one delegation introduced a working paper on the marking of remotely emplaced minefields (CDDH/IV/202). It thought that concrete progress on the matter of delayed-action and treacherous weapons might be made in the near future and that attention could usefully be focused in particular on the use of booby-traps and the remote delivery of minefields. The idea contained in the working paper had already been proposed by experts from the same country at the Lucerne Conference. It was hoped that a second Conference of Government Experts would study the desirability of a rule such as that proposed in the working paper, and would consider how it might be effectively implemented.

12. Working paper CDDH/IV/202, was also welcomed by several delegations as a useful contribution to the work of the Ad Hoc Committee.

Consideration of the question of prohibition or restriction of use of specific categories of conventional weapons which may cause unnecessary suffering or have indiscriminate effects and, in this context, consideration of the report of the Lucerne Conference and of proposals

(a) General

13. In the course of the debate on specific weapons, many delegations made statements of a general nature. For the sake of convenience they are grouped together in the present sub-section of this report.

14. Several delegations pointed to the close interrelationship between the subject-matter before the Ad Hoc Committee and certain principles of a more general nature which were currently being considered by Committee III. The principles referred to included the prohibition of the use of weapons apt to cause unnecessary suffering or have indiscriminate effects; the prohibition of perfidy, and the principle that no means of warfare should be used which were apt to destroy the ecological balance. Some delegations described that relationship as a process, the purpose of which was to arrive at a close assessment of the various weapons or categories of weapon at issue in the light of the principles involved. They felt that those principles would be inadequate without such further elaboration.

15. Some delegations referred in that context to public opinion as a factor of prime importance. One delegation felt that some opinions expressed by experts at the Conference ran counter to public opinion as reflected in the report of the United Nations Secretary-General on Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1) and that it would now be necessary to take into account public opinion as expressed recently in United Nations General Assembly resolution 3255 A (XXIX). Another delegation, while recognizing the importance of public opinion, warned that it should not be regarded as the only deciding factor.

16. Some delegations referred to the close link between the prohibition or restriction of specific conventional weapons and the problem of general and complete disarmament. They warned against attempts to prohibit certain specific weapons without due regard being paid to that link, for such a course would only lead to the development of new, no less dangerous weapons.

17. Some delegations pointed out that the armaments of States were related to national security and military strategy as defined by the national authorities. One delegation stated that any proposed prohibitions or restrictions would therefore have to meet the requirement that they would guarantee the free development of all States.

18. Several delegations emphasized that prohibitions of or restrictions on use of specific conventional weapons, in order to be effective, would require the widest possible agreement. One delegation added that in particular acceptance by the major Powers and arms-producing States would be indispensable.

19. In order to arrive at such widely acceptable rules, further technical study and research were considered necessary by a number of delegations, although some felt that especially where incendiary weapons were concerned sufficient knowledge and factual data were available to enter immediately upon the legislative phase. Some delegations pointed out that the technical work would have to include the definition of relevant terms of art. Some delegations stated that neither the Diplomatic Conference nor the Conference of Government Experts would be the appropriate forum for legislative work in the field of prohibition or restriction of the use of specific conventional weapons.

20. While recognizing the need for further study and research of a technical nature, several delegations stressed that technical competence should not be permitted to take the place of the political will to act. They emphasized the need for constructive

work which, according to one delegation, ought to be imbued with a true spirit of charity and humanity towards combatants and non-combatants alike. One delegation described the work before the Ad Hoc Committee as a joint task, which should not be directed against any particular party but against a particular form of warfare.

21. The Ad Hoc Committee, according to one delegation, should concentrate its efforts on those specific points where there was sufficient knowledge and international agreement to justify practical proposals. Another delegation, on the contrary, felt that it was better to concentrate on the various proposals introduced in the working papers and, in doing so, to identify possible areas of agreement and, where agreement was not forthcoming, the areas of disagreement.

(b) Incendiary weapons

22. Several delegations expressed the view that a substantial body of information was now available concerning incendiary weapons, both as regards their effects and their military value, and that further technical study and research were not required for that category of weapon. In particular, those delegations were convinced that, especially among the medical experts, a consensus had been achieved with respect to the medical effects of incendiary weapons and the suffering they caused. Some delegations felt, moreover, that military experts were agreed on the doubtful military value of the weapons at issue.

23. One delegation, which described incendiary weapons as terror weapons when used against military personnel or civilians, conceded that certain types of incendiary weapon might perhaps be used on the battlefield without any too pronounced indiscriminate effects; but even then the suffering they caused would be sufficient ground for banning their use. Another delegation, speaking in the same vein, stated that the military in its country regarded napalm as the ideal weapon for close support, but that in view of the suffering it caused and the attitude of public opinion the military had to make a sacrifice and to forgo its use - as, also the use of flame-throwers.

24. Other delegations were not convinced that the use of incendiary weapons invariably caused excessive suffering not warranted by the military advantage which resulted from such use. In certain situations, they felt, the military value of such weapons might be considerable and it would be necessary, before arriving at any conclusions, to balance this carefully against the degree of suffering caused.

25. One delegation pointed out that some small countries produced low-cost incendiary weapons for their own defence and that a ban on the use of such weapons would jeopardize their defence. Another delegation stated that it was not aware of any small country that based its defence wholly on incendiary weapons.

26. As to the form and scope of a possible prohibition or restriction on the use of incendiary weapons, one delegation, supported by others, argued that the only viable way would be to have a general ban with such exceptions attached to it as would seem to be indispensable. The same delegation stated that to prohibit or restrict only specific types of use of incendiary weapons would be the worst possible solution; weapons of that category would continue to be deployed and their use in concrete situations would depend on the judgement of innumerable military commanders.

27. The same delegation and others pointed out that the formula proposed in working paper CDDH/IV/201 took into account the results achieved at the Lucerne Conference, where a Working Group on Incendiary Munitions Classification had reached consensus on a definition of incendiary munitions. In conformity with that definition, the working paper proposed a general ban with two exceptions attached.

28. With particular reference to the second exception, one delegation stated that anti-aircraft and anti-tank incendiary munitions were purely defensive and were therefore rightly excepted from the general prohibition. Some other delegations took issue with that statement; and pointed out that the weapons in question, as other weapons, could be used in offensive or defensive operations and that, therefore, the reference in the working paper to munitions "designed and used specifically for defence" was incorrect.

29. One delegation, which according to a foot-note attached to the text of working paper CDDH/IV/201 would have preferred to see the second exception formulated somewhat more broadly, withdrew that preference in the course of the debate (CDDH/IV/201/Corr.2).

30. One delegation recognized that there existed large stocks of incendiary weapons in the arsenals of a number of countries and that a sudden prohibition on their use might create difficulties for the countries concerned. That delegation therefore felt that a phase-out period would perhaps be necessary.

31. One delegation referred in some detail to the use of specific incendiary weapons which had been made in its country by one belligerent party during a recent armed conflict.

(c) Small-calibre projectiles

32. One delegation discussed in some detail the classification and properties of small-calibre projectiles and the rationale behind the ban on their use proposed in working paper CDDH/IV/201 and Corr.2 and Add.1 to 6. "Small-calibre", according to this delegation, was not limited to the recently introduced rifle ammunition with a calibre of 5.56 mm or less, but included all calibres of commonly used rifles, machine-guns, carbines and pistols. In that category, however, there were some whose properties made them more likely than others to cause excessive injuries.

33. The same delegation argued that the likelihood of excessive injuries was precisely the rationale behind the proposed ban and was, in actual fact, the same rationale as had already been behind the prohibition, contained in The Hague Declaration of 1899, on the dum-dum bullet and other bullets which expanded or flattened easily in the human body.

34. The same delegation referred to the fact that the working paper mentioned both projectile design and velocity as factors which might be instrumental in producing such adverse effects, which were in fact listed in the working paper as projectile break-up or deformation, tumbling, the creation of shock-waves and the production of secondary projectiles.

35. Although both the design of small-calibre projectiles and their velocity might be factors of paramount importance in causing excessive injuries, the same delegation laid some emphasis on the unchallenged fact that a higher velocity imparted to a bullet higher striking force and greater wounding capacity. It felt that projectiles with a smaller calibre than the current 7.62 mm rifle ammunition could be developed without the need for excessive velocities, if their maximum effective range were to be calculated more in line with the commonest ranges in combat, which the delegation thought to be from 10 - 150 metres.

36. The same delegation, finally, while not disputing the military advantages of small-calibre projectiles of high velocity, stressed the urgency of further study, particularly in the search for common ground between experimental and clinical data, so as to avoid actual battlefield experience being the first to show that such projectiles were more injurious than others.

37. Another delegation entered into the same questions broached by the first delegation. It agreed that the discussion should not be limited to calibres of 5.56 mm or less and should, thus, cover all rifle ammunition and, indeed, all rifles.

38. The same delegation did not accept the parallel with the dum-dum bullet. That bullet had been specifically and intentionally designed to release all or most of its kinetic energy on the target, and that was the ground underlying its prohibition. Normal bullets, on the other hand, were not so designed and, while they could have the same wounding effect as dum-dum bullets, that was the exception rather than the rule. Therefore, the rationale behind the prohibition of dum-dum bullets did not apply to normal bullets.

39. Reviewing the four paragraphs in the proposed prohibition on the causes of particularly severe wounds, the same delegation felt that the list drew attention to the symptoms rather than identifying the causes and, therefore, did not seem to have any practical value for weapon designers. The phenomena to which the list referred were, moreover, not all sufficiently understood, and the language in which the various paragraphs was couched left much to be desired.

40. The same delegation characterized rifles as weapons designed to place hors de combat a human target at long range. It would, of course, be possible to reduce their maximum effective range, but the delegation felt that that would inevitably lead to a greater use of artillery, rockets, bombs, mines and other lethal devices to incapacitate the enemy at longer ranges, and it doubted whether that would reduce the sufferings of the soldier in the field.

41. The same delegation felt that the prohibition proposed in the working paper was formulated in terms so vague that it would amount, either, to a prohibition of all rifles or of none. It found it difficult to visualize States agreeing to give up all rifles. It saw great value, however, in continuing with research in order to determine whether it was possible, while preserving the effectiveness of rifles, to reduce the wounding effects of the bullets. One goal of such research might be to determine the necessary thickness of bullet jackets.

(d) Blast and fragmentation weapons

42. One delegation dealt at some length with the characteristics of anti-personnel cluster bombs. Because of their tendency to act indiscriminately, the great number of casualties they were likely to cause, their tendency to cause multiple injuries and a high death rate, such weapons had been singled out for prohibition in working paper CDDH/IV/201 and Corr.2 and Add. 1 to 6.

43. Another delegation, while conceding that controlled fragmentation devices were likely to produce more hits and therefore increased the likelihood of incapacitation, said that they did create less severe wounds and less mortality. Use of such weapons meant that less ammunition was needed which simplified the logistical problem. In the view of the delegation, a limitation of the use of such weapons would not diminish the rigours of war, but would in fact have exactly opposite effects.

44. An observer for a number of non-governmental organizations, after having obtained the necessary permission, introduced a document showing the effects of the use of flechettes, which were said to contravene existing international law and to provide a flagrant example of the abuse of technology for destructive purposes, putting efficacy in front of humanitarian considerations. The organizations in question, the observer said, demanded that the use of flechettes be prohibited.

45. One delegation referred in some detail to the use of specific blast and fragmentation weapons which had been made in its country by one belligerent party during a recent armed conflict.

(e) Delayed-action and treacherous weapons

46. One delegation, referring to the use of landmines in general, stated that the defensive use of minefields, and even of anti-personnel landmines for the purpose of paralyzing the enemy's movements, was acceptable and should not be prohibited. There was, however, the danger to civilians resulting from air-delivered mines scattered over a wide area. The best course, the delegation felt, would be to prohibit the offensive use of delayed-action weapons.

47. Some other delegations dealt with remotely delivered minefields in particular. One delegation, introducing working paper CDDH/IV/202, expressed the hope that experts would consider the desirability and the possibilities for effective implementation of the rule on marking it suggested. Another delegation, referring to working paper CDDH/IV/201 and Corr.2 and Add. 1 to 6, said that, as far as the laying of minefields by aircraft was concerned, most experts had few illusions about the accuracy with which that could be performed; several factors could adversely affect the degree of accuracy, and, moreover, the mines, once laid, might remain effective for a long time after they had served their purpose and might be difficult to detect. In that context, the delegation also expressed its support for the rule suggested in working paper CDDH/IV/202. The same delegation and another also indicated the need for mines to be equipped with reliable self-destructive devices; such devices, the latter delegation felt, ought perhaps to be made mandatory.

48. Few delegations referred to the use of booby-traps. One delegation expressed the hope that experts would soon consider the idea which had been suggested at Lucerne, that the booby-trapping of certain civilian objects, such as children's toys, should be prohibited; experts might then also consider the booby-trapping of dead or wounded. Another delegation, which felt that the debate on the subject of booby-traps at Lucerne had been inconclusive, suggested that here, too, the best course might be to prohibit their use as offensive weapons.

49. One delegation referred in some detail to the use of specific delayed-action and treacherous weapons which had been made in its country by one belligerent party during a recent armed conflict.

(f) Potential weapon developments

50. Under this heading, several delegations discussed the need for a review, in the light of humanitarian principles, of developments in the field of conventional weapons. First, at the national level, some Governments had already set up procedures for such review, and that was welcomed by various delegations. Article 34 of draft Protocol I and certain amendments proposed to its text envisaged the setting up of such procedures in all States Parties to the Protocol.

51. The question of international review had been taken up in working paper CDDH/IV/201 and Corr. 2 and Add. 1 to 6. One delegation, introducing the subject, stated that those who had submitted the working paper had reached the conclusion that some sort of mechanism should be devised for that purpose, as otherwise there would be a strong temptation to produce ever more effective and inhumane weapons, if only for the purpose of deterrence. Two aspects would have to be taken into consideration, viz, the acquisition of the necessary information concerning scientific and technological developments in the field of conventional weapons, and the prima facie assessment of that information by military and medical experts in the light of existing legal criteria.

52. The same delegation felt that the establishment of an international institution for that purpose (a solution for which a few other delegations expressed a preference) would pose difficult problems of finance, staffing, legal status, competence and so on. It therefore preferred another solution, viz, to leave that task to States, and namely to a conference of representatives of States which might perhaps be preceded or accompanied by a conference of government experts and which might result, either, in amendments to a future Protocol on Conventional Weapons (which the delegation envisaged as additional to the Geneva Conventions and referred to as Protocol III) or in less formal suggestions bearing on a general revision of the functioning of that Protocol.

53. The same delegation suggested that the system for convening such a conference of representatives of States should be both flexible and effective, and that therefore the initiative should be left in the first place with the Parties to the Protocol; failing that, the conference should be convened automatically after the lapse of a specific period of time, for which it suggested seven years.

54. Some delegations supported the above suggestions, while several others merely expressed their satisfaction with them. One delegation expressed a preference for a five- rather than a seven-year period, so as to better ensure that humanitarian law kept pace with scientific and technological developments. Another delegation stressed the interest of many countries to ensure that vast resources were not taken up in the production or purchase of new weapons. One delegation felt that the decision to set up international machinery along the lines suggested above need not await or depend on the outcome of a second Conference of Government Experts on Conventional Weapons.

55. Another delegation, while acknowledging that the above ideas and suggestions deserved consideration, emphasized the need to start on the basis of existing machinery. The Conference of the Committee on Disarmament was already considering the question of machinery, and such machinery would have to be adopted by a world disarmament conference.

Consideration of future work, including the question of a second Conference of Government Experts and of the programme of work which it might follow

56. There was broad agreement in the Ad Hoc Committee on the modalities of a second Conference of Government Experts. That conference, it was stated by many delegations, should not be a mere repetition of the Lucerne Conference; instead, in conformity with the understanding reflected in paragraph 282 of the report of the Lucerne Conference, it should focus on such weapons as would have been - or might become - the subject of proposed bans or restrictions, and study the possibility, contents and form of such proposed bans or restrictions.

57. While some delegations felt that at such a second conference of experts, much further debate on the military, medical and other technical aspects of the weapons in question, or at least of some of them, would be unnecessary, other delegations thought that further clarification of those aspects should be sought first,

as an indispensable basis for a fruitful discussion of bans on or restrictions of use. One delegation saw the main task of the experts as the development of objective legal criteria that could be used by the various international bodies concerned with the problems associated with the prohibition or restriction of the use of certain types of conventional weapons.

58. On the basis of the broad agreement referred to in paragraph 56 above, the International Committee of the Red Cross, in the course of the debate on this item of the agenda introduced a Proposed Work Programme for a Second Session of the Conference of Government Experts on Conventional Weapons with annexed Comments (CDDH/IV/203). The ICRC was prepared to convene and organize that Conference on the same conditions as the previous one.

59. Many delegations emphasized the need, expressed in paragraph 3 of the Comments, of ample time being provided for working groups and informal consultations and of flexibility in the work schedule. Many delegations also supported the idea, expressed in paragraph 4 of the Comments, that working groups should seek to identify possible areas of agreement or, at least, different main conclusions, and should also seek to define concepts related thereto.

60. The dates proposed by the ICRC - 26 January to 24 February 1976 - were acceptable to many delegations, although some would prefer a somewhat earlier period. It was generally agreed that there should be a lapse of about two months between the end of the Conference and the opening of the third session of the Diplomatic Conference.

61. The site which the ICRC proposed - Lugano - encountered some more criticism. Several delegations felt that communications might be too difficult there. Other sites suggested were Lucerne, Berne and Geneva, but none of those suggestions went uncriticized. Many delegations, however, stated their willingness to accept the choice eventually made by the ICRC.

62. Several delegations made suggestions with regard to the rules of procedure, which would have to be adapted to allow for the fact that the forthcoming Conference would be a second session. Some delegations suggested that the Conference, or part of it, should be open to the public; other delegations expressed a contrary view. Some Spanish-speaking delegations urged that better services of translation for the Spanish language be available at the second session of the Conference of Government Experts.

63. As to the procedure to be followed after the second session of the Conference, some delegations held that the texts that would emerge from that Conference should be placed before the Diplomatic Conference, which would be competent to discuss and adopt them. Other delegations did not agree, as in their view the Conference of the Committee on Disarmament or other disarmament organs would be the competent bodies.

Adoption of the report of the Ad Hoc Committee

64. Following the adoption of the present report by the Ad Hoc Committee, at its twenty-first meeting, on 15 April 1975, the ICRC confirmed that the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons would be held at the Conference Centre at Lugano. The ICRC gave the main reasons for its choice and notified the dates of the Conference (28 January - 26 February 1976). The ICRC also informed the Ad Hoc Committee of the changes that had had to be made to the rules of procedure to adapt them to the requirements of the second session. Those rules of procedure had been circulated on 17 April in document CDDH/IV/205.

65. At its twenty-ninth plenary meeting, on 17 April 1975, the Diplomatic Conference, after hearing a short introduction by the Rapporteur and a statement by the Chairman of the Ad Hoc Committee, took note of the Ad Hoc Committee's report.

THIRD SESSION

(Geneva, 21 April - 11 June 1976)

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

REPORT

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AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

REPORT

OFFICERS OF THE AD HOC COMMITTEE

1. At the third session of the Conference, the officers of the Ad Hoc Committee on Conventional Weapons were the following:

<u>Chairman:</u>	Mr. Diego Garces	(Colombia)
<u>Vice-Chairmen</u>	Mr. M. Houchang Amir-Mokri	(Iran)
	Mr. Mustapha Chelbi	(Tunisia)
<u>Rapporteur:</u>	Mr. Frits Kalshoven	(Netherlands)
	(until 31 May)	
	Mr. R. J. Akkerman	(Netherlands)
	(after 31 May)	
<u>Legal Secretary:</u>	Mr. Bernard Munger	
<u>Representative of the International Committee of the Red Cross</u>	Mr. Jean-Louis Cayla	

PROGRAMME OF WORK OF THE AD HOC COMMITTEE

2. At the suggestion of the Chairman, the Committee adopted the following programme of work for the third session of the Conference (CDDH/IV/Inf.218):

1. Oral report by the Rapporteur on the work of the Conference of Government Experts on the Use of Certain Conventional Weapons (second session, Lugano, 28 January 1976 - 26 February 1976).
2. Introduction of proposals.
3. Consideration of the question of the prohibition or the restriction of the use of specific categories of conventional weapons and, in this context, consideration of the report of the Lugano Conference, and of proposals:
 - (a) napalm and other incendiary weapons
 - (b) delayed-action weapons and treacherous weapons (including mines and booby-traps)

- (c) small-calibre projectiles
- (d) blast and fragmentation weapons
- (e) potential weapons developments.

4. Other questions.

3. The Ad Hoc Committee resumed its work on Wednesday, 12 May 1976. Some delegations stressed that they had made a major concession in agreeing to start work at such a late date. Other delegations, however, stated that it was a concession on their part to start working in the Committee at any moment before the report of the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in January/February 1976 had been distributed in the official languages of the Diplomatic Conference. The Governments of many countries had for the above reason not been able to study the Lugano report beforehand.

ORAL REPORT BY THE RAPPORTEUR ON THE WORK OF THE CONFERENCE OF GOVERNMENT EXPERTS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS (Second session, Lugano, 28 January to 26 February 1976)

4. The Rapporteur, who had also served as Rapporteur at the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons (Lugano, 28 January - 26 February 1976), reported orally on the work of that session, which, unlike the first session, had had to consider the various categories of weapons on the basis of specific proposals relating to the prohibition or restriction of their use.

5. The discussion which followed the presentation of the report revealed a moderate degree of optimism regarding the results of the Lugano Conference. Some delegations expressed the view that the problem of the weapons in question had been thoroughly analysed and that the time had come to consider and negotiate specific proposals. Other delegations considered that, although the stage of concrete proposals and of negotiation had been reached in respect of some weapons, more thorough research was still needed in the case of such weapons as small-calibre projectiles, cluster-bombs, fléchettes and fuel-air explosives.

INTRODUCTION OF PROPOSALS

6. Proposals for the prohibition or restriction of the use of specified conventional weapons were introduced both under item 2 of the programme of work and in the course of the discussions under item 3. So as to provide a clear picture of this part of the proceedings, all the proposals are brought together in this section of the report, following the order of categories of weapon set out under item 3 of the programme of work.

(a) Napalm and other incendiary weapons

7. The Netherlands submitted a working paper (CDDH/IV/206) - later co-sponsored by Australia (CDDH/IV/206/Add.1) and by Denmark (CDDH/IV/206/Add.2) - containing a proposal which sought to restrict the use of incendiary munitions, and of flame munitions as defined in that proposal in particular in areas containing a concentration of civilians. Introducing the working paper, the Netherlands representative explained that the proposal was directed towards the protection of civilians against attack by incendiaries in general and flame munitions in particular. Flame munitions were defined in terms of the incendiary agent used ("based on a gelled hydrocarbon") and napalm was thus a flame munition. While the proposed rules for the restriction of the use of incendiary munitions in general were intended to supplement the general rules concerning the protection of the civilian population, the purpose of the rule on flame munitions was that aerial attack by means of such munitions would in future be prohibited in areas of civilian concentration outside the combat zone.

8. The Netherlands representative emphasized that his Government would like to see the battlefield use of napalm also restricted. In view of the discussions at the Lugano Conference, it had preferred, however, not to give its ideas on that score the form of a specific proposal but rather to see discussion on the subject continue with a view to arriving at a generally acceptable solution.

9. Norway submitted a "Draft protocol relative to the prohibition of the use of incendiary weapons" (CDDH/IV/207). This proposal sought to place restrictions both on the battlefield use of incendiary munitions (prohibiting such use against personnel) and on such use as might affect the civilian population. The Norwegian representative explained that, while his delegation remained committed to the principles of the proposals in working paper CDDH/IV/201 and Corr.2 and Add.1 to 9 and Lugano Conference

document RO 610/4b, of which it was a co-sponsor, the present proposal had been submitted in an endeavour to contribute to an exploration of the area between the extremes, viz., total ban of all incendiary munitions or no ban at all. The proposal was intended to be applicable in all armed conflicts, whether international or non-international. Its cornerstone was the proposed ban on the anti-personnel use of all incendiary munitions; attached to this was a clause on the principle of proportionality, to be observed in attacking permissible targets, which was considerably narrower than the one contained in articles 46 and 50 of draft Protocol I. The proposal, which was linked to the relevant articles of that Protocol, sought to provide an even better protection for the civilian population than those articles did. In formulating the proposal, his delegation had sought to strike a balance between humanitarian objectives on the one hand and military and security necessities on the other.

10. Sweden submitted a working paper (CDDH/IV/208), which contained a proposal to prohibit the use in all circumstances of flame munitions as defined in the proposal. The Swedish delegation was also a co-sponsor of the proposal concerning the prohibition of the use of incendiary weapons (CDDH/IV/201 and Corr.2 and Add.1 to 9), a revised version of which, communicated to the ICRC in a letter dated 15 May 1975 from the Head of the Swedish delegation at the Conference on behalf of some twenty others, had been circulated to the Conference as document CDDH/IV/Inf.220.

11. Introducing these proposals, the Swedish representative expressed his continued preference for a total ban on the use of all incendiary munitions as defined in document CDDH/IV/Inf.220. Although this would not result in an elimination of all war burn wounds, it would guarantee a substantial reduction in the incidence of such wounds. Furthermore, the humanitarian effects of such a comprehensive ban would extend to combatants and civilians alike. As, however, not all Governments seemed prepared at the present juncture to accept a ban comprising all incendiary munitions, proposal CDDH/IV/208 had been submitted as a contribution to the discussion on the sub-category which caused most concern. The proposal defined flame munitions in terms of the manner in which the active agent functions, i.e., the dispersal over the target area and flaming of the agent; this included not only napalm and its substitutes but also white phosphorus. The proposal sought a total ban on the use of flame munitions so defined, and it would therefore, like the more comprehensive ban in document CDDH/IV/Inf.220, extend protection to combatants and civilians

alike. It would, moreover, avoid the element of unreliability inherent in any rule seeking to restrict, rather than prohibit outright, the permissible uses of a given weapon.

12. In the course of the deliberations under item 3, the representatives of Australia and Denmark announced the co-sponsorship of their countries for proposal CDDH/IV/206. Afghanistan and Kuwait declared their co-sponsorship of proposals CDDH/IV/201 and Corr.2 and Add.1 to 9 and CDDH/IV/Inf.220. While New Zealand withdrew its co-sponsorship of CDDH/IV/Inf.220, Colombia became a new co-sponsor of working paper CDDH/IV/201.

(b) Delayed-action weapons and treacherous weapons (including mines and booby-traps)

13. Mexico, Switzerland and Yugoslavia submitted a proposal, on the restriction of the use of booby-traps (CDDH/IV/209) while Mexico and Switzerland submitted a proposal on anti-tank and anti-personnel mines (CDDH/IV/211 - a corrected English version of which was subsequently circulated as CDDH/IV/211/Corr.1).

14. Introducing these proposals, the Swiss representative explained that they were an attempt to summarize previous proposals, taking into account the discussions on the subject at the Lugano Conference. As for proposal CDDH/IV/209, this contained a definition of "booby-traps" and laid down restrictions on their use that would serve to protect the civilian population and to exclude particularly repulsive and treacherous uses. Proposal CDDH/IV/211/Corr.1 equally sought to afford better protection for the civilian population, by restricting the laying of mines in areas of civilian concentration and by prescribing the recording of methodically-laid minefields. The sponsors had chosen the expression "methodically laid" so as to identify the problem without having to define the size of a minefield in figures. They had not included a requirement on the marking of minefields, because they were not convinced of the practicability thereof. They had, on the other hand, added a paragraph limiting the laying of remotely-delivered delayed-action mines and similar devices which exploded long after impact, while leaving open the number of hours to be set for the self-destruct or neutralizing mechanisms to become operative.

15. The Venezuelan representative introduced his proposal (CDDH/IV/212) on booby-traps. He considered that this was more explicit, more precise and more realistic, from the technical, humanitarian and military points of view, than the proposal in document CDDH/IV/209.

16. The United Kingdom delegation submitted a proposal (CDDH/IV/213) dealing with land-mines and other devices which was later co-sponsored by France and the Netherlands (CDDH/IV/213/Add.1). Introducing the proposal the United Kingdom representative pointed out that it was a revised version of the working paper submitted at the Lugano Conference (COLU/203). The proposal sought to establish a balance between humanitarian ideals, and notably the protection of the civilian population on the one hand and the realities of armed conflict on the other.

17. The United Kingdom representative explained that the amount of detail in which the recording was done would depend on the type of minefield and the manner in which it was laid.

18. The proposal paid much attention to the use of booby-traps, although unlike its predecessor, it did not use that expression, as it had been found to cause insurmountable linguistic and semantic difficulties: instead, the present version defined the devices whose use it sought to curb. The United Kingdom representative pointed out that the paragraph on apparently harmless portable objects had been changed so as to restrict it to those objects specifically designed and constructed to contain explosive material and to detonate when disturbed or approached; this would refer to such perfidious weapons, particularly abhorrent booby traps, as imitation fountain pens and cameras. As for the paragraph on non-explosive devices, this had been criticized at Lugano by some experts who maintained that it went too far; it had been retained nonetheless in order to reaffirm a rule of international law derived from Article 23 (e) of The Hague Regulations respecting the Laws and Customs of War on Land annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land.

19. In the course of the deliberations, Denmark announced its co-sponsorship (CDDH/IV/213/Add.2) of proposal CDDH/IV/213.

(c) Small-calibre projectiles

20. The Swedish representative introduced his working paper on small-calibre projectiles (CDDH/IV/214). This paper should be seen as a revision, undertaken in the light of criticisms and of his country's own experiments, of the relevant part of working paper CDDH/IV/201. Although a rule relating to the use of small-calibre projectiles might possibly be related to the cavity made in soap or other tissue-simulant in a standard test, or to the amount of energy deposited per unit of length in such a simulant, his delegation had thought it wiser to indicate some features in the behaviour of bullets which should be forbidden as likely to cause more severe injuries than the bullets at present in most common use.

21. In the revised draft rule, three criteria were relied upon: easy deforming or breaking, and rapid tumbling within the human body and extreme velocity. The critical velocity that could independently lead to excessive injury was believed to be 1,500 m/sec, which was, however, not achieved by projectiles known to exist. Another basis for prohibition would be for a bullet to "deform or break easily in the human body", this characteristic being closely similar to the 1899 Hague Declaration concerning the Prohibition of Using Bullets that Expand or Flatten Easily in the Human Body. For greater precision it was suggested that a simple test be attached to the rule. Yet another basis for prohibiting a bullet would be "rapid tumbling within the human body". It was generally agreed that sooner or later all bullets tumbled upon impact and that early tumbling was likely to lead to more severe injuries than late tumbling. The speaker's delegation had also suggested that a standard test be added to this rule, related to a target of a thickness of 14 cm corresponding to the average human wound channel. The creation of shock waves and the production of secondary projectiles in the human body had been deleted from this paper, since these criteria had been criticized and were no longer considered essential.

22. As far as tests were concerned, the representative of Sweden explained that experiments had been carried out in his country by experts which had indicated that there was a correlation between the form and size of the cavities formed by a bullet hitting a soap block and the injury that would be caused in soft live tissue by the same bullet at the same distance. This point would be the main subject for examination and discussion in a second symposium which was to be held in Göteborg during the last week in August 1976, and to which delegations that were interested would be invited to send experts.

(d) Blast and fragmentation weapons

23. The Swiss representative introduced a proposal submitted by his country, together with Austria, Mexico, Norway, Sweden and Yugoslavia (CDDH/IV/210), later co-sponsored by Denmark (CDDH/IV/210/Add.1), dealing with "non-detectable fragments". This proposal was similar to the proposal in document COLU/212 submitted by Switzerland and Mexico at the Lugano Conference,

except that the text now submitted had been improved in order to meet criticism that had been expressed in Lugano on a few points. From the final deliberations on that subject in Lugano, it had appeared that only one delegation there present had entered a reservation, to the effect that in that delegation's view such a proposal should take account of techniques already available and to be developed that would be superior to the X-ray technique. It had, however, been the feeling of the Swiss delegation that more advanced methods were unlikely to be generally available or easy to use. Nevertheless in that representative's opinion the present draft could be considered to have received virtually unanimous support.

24. The Swiss representative went on to explain that the rationale behind the proposal was that fragments which were not removed from the human body in time could cause severe medical complications not justifiable by military requirements. Moreover, fragments of materials, plastics in particular, consisting mainly of atoms of low weight, could be detected only with difficulty, if at all, by the available X-ray equipment. The intention of the sponsors of proposal CDDH/IV/210 and Add.1 was not, however, to prohibit weapons containing such material, but simply to eliminate some of their effects, which could be easily done by adding atoms of higher weight to the materials in question.

25. Sweden and Switzerland submitted a working paper (CDDH/IV/215) dealing with fuel-air explosives (FAE). A proposal limiting the use of this type of weapon was attached as an annex to that working paper. The paper was introduced by the Swedish representative.

26. The representative of Sweden stressed that blast injuries, for example those affecting the lungs and the intestines, often resulted in great agony for the patient. It was possible to estimate the probability of survival from the overpressure and duration of the blast-wave sustained. The statement of the Swedish delegation at Lucerne "that a blast-wave with 1 MPa overpressure and 10 milliseconds duration will cause about 99 per cent mortality of unprotected persons exposed to it" (see the report of the Lucerne Conference, para. 188) had not subsequently been contested. A person within or close to a fuel-air explosive burst was also likely to be struck with burn-wounds. Finally, death from blast injuries was probably one of the most atrocious kinds of death.

27. A fuel-air explosive consisted of some inflammable liquid, gas or powder, forcibly sprayed out into a volume of air, usually by means of an explosive device, shortly after which the now explosive cloud was detonated. The probability of being killed within the cloud was close to 100 per cent, whereas the far-field blast effect would be approximately that of a TNT charge, for example, weighing 3 to 4 times as much, or of a general purpose bomb weighing 10 to 15 times as much. The representative reiterated that his country's experts had found that if one FAE bomblet, containing about 30 kg of fuel, was detonated close to the ground, the killed-to-wounded ratio would amount to about 50 per cent; if extensive areas were covered by the use of a close drop pattern for several warheads, the killed-to-wounded ratio for unprotected personnel could increase by up to 100 per cent. Moreover, unlike most other weapons, FAE would produce powerful blast waves that would be propagated into the shelters.

28. The Swedish representative furthermore explained that at least one country had apparently contemplated anti-personnel use of fuel-air explosives, thus exposing soldiers to unacceptable inhumane effects. The delegations submitting the present working paper, however, recognized the effectiveness of that weapon for such anti-matériel tasks as the release of pressure-sensitive mines. The aim of the proposal annexed to working paper CDDH/IV/215, therefore, was to restrict the use of FAE exclusively to the destruction of material objects.

29. In the course of the deliberations Denmark announced its co-sponsorship (CDDH/IV/210/Add.1) of proposal CDDH/IV/210.

CONSIDERATION OF THE QUESTION OF THE PROHIBITION OR THE RESTRICTION OF THE USE OF SPECIFIC CATEGORIES OF CONVENTIONAL WEAPONS AND, IN THIS CONTEXT, CONSIDERATION OF THE REPORT OF THE LUGANO CONFERENCE, AND OF PROPOSALS:

(a) General remarks

30. Some delegations, which in principle gave a favourable reception to the proposals submitted, nevertheless emphasized the fact that the prohibition or restriction of the use of some conventional weapons went beyond the terms of reference of the Diplomatic Conference on International Humanitarian Law, and that it was the responsibility of the competent international bodies concerned with disarmament to take decisions of that kind.

31. Other delegations, on the contrary, considered that it lay fairly and squarely within the competence of the Diplomatic Conference to discuss all questions connected with the restriction or prohibition of the use of certain conventional weapons, and that the negotiation of agreements on those questions for humanitarian reasons did not go beyond the terms of reference of the current Conference. In that connexion, one representative quoted resolution 3464 (XXX), adopted by the United Nations General Assembly on 11 December 1975, which, in paragraph 2, "Invites the Diplomatic Conference to continue its consideration of the use of specific conventional weapons, including any which may be deemed to be excessively injurious or to have indiscriminate effects, and its search for agreement for humanitarian reasons on possible rules prohibiting or restricting the use of such weapons".

32. At the current session of the Diplomatic Conference, some delegations called for the setting up of a working group to discuss thoroughly the various proposals submitted to the Ad Hoc Committee. That suggestion was not adopted in the end.

33. It was decided to ask the Secretariat to draw up a comparative table of all proposals presented in the Ad Hoc Committee throughout the sessions of the Conference and now before the Committee for consideration. 1/

(b) Napalm and other incendiary weapons

34. A large number of members of the Ad Hoc Committee expressed their satisfaction that numerous proposals on napalm and other incendiary weapons had been submitted to the Committee at the current session.

35. Although at Lugano - as one representative pointed out - the participants had for the first time made serious efforts to reconcile opposing views, to search for common ground and to display greater flexibility, the discussions in the Ad Hoc Committee had shown that there were still two different trends.

36. Some representatives emphasized that it was only the extremely serious medical consequences for the victims of the weapons in question that prompted them to ask for their prohibition and, thus, to support proposals CDDH/IV/201 and Corr.2 and Add.1 to 9, CDDH/IV/Inf.220 and CDDH/IV/208. Without denying the military

1/ Later circulated as document CDDH/IV/218.

value that the various types of incendiary weapons might have, they felt that those weapons were not an essential item in military arsenals and that, if there were the political will, it should be possible, without sacrificing major interests of national security, to prohibit the use of most of those weapons.

37. Other representatives pointed out that proposals that merely sought to restrict the use of incendiary weapons might be likely to restrict the application of the additional Protocols to the Geneva Conventions of 1949, for article 33 of draft Protocol I, for instance, did not distinguish between civilians and military in its prohibition of the use of weapons which tended to cause unnecessary suffering.

38. Another representative added that, thanks to article 33 of draft Protocol I, there was now a solid moral and legal basis for a prohibition of incendiary weapons and that it was the Ad Hoc Committee's task to devise ways and means of applying the principles set forth.

39. Yet other representatives reiterated that, from the military point of view, incendiary weapons provided very valuable support in close combat and that they could be used selectively.

40. One representative said that, according to available information, the use of replacement weapons would increase the number of dead and wounded, and that there was consequently no evidence whatsoever that the prohibition of napalm - which weapon played a very valuable role - would in the final analysis be of any advantage from the humanitarian point of view.

41. Another representative said that, in his delegation's opinion, while a total prohibition of incendiary weapons was fully justified in principle from the humanitarian point of view, it was unrealistic. As against that, it was absolutely essential to provide the greatest possible protection to civilians, through restricting the use of napalm and other incendiary weapons, in line with proposals CDDH/IV/206 and Add.1 and 2 and CDDH/IV/207.

42. Some delegations suggested that a restriction of the use of incendiary weapons based on a distinction between military and civilian objects, or between anti-personnel and anti-matériel use, would create great difficulties in an armed conflict.

43. Another representative recalled the words of a speaker at the Lugano Conference, who had said that an international instrument on weapons should be as simple and clear as possible, since the rules would be intended for combatants on the battle-field who had to take immediate decisions, and for those responsible for arming and training troops.

(c) Delayed-action weapons and treacherous weapons (including mines and booby-traps)

44. A large number of delegations that spoke on the subject of delayed-action and treacherous weapons welcomed working paper CDDH/IV/213, submitted by the United Kingdom delegation and co-sponsored by the delegations of France and the Netherlands (CDDH/IV/213/Add.1) and by that of Denmark (CDDH/IV/213/Add.2) as a marked improvement on document COLU/203 (see Lugano report, p. 167) submitted by the same delegations at the Lugano Conference, and gave their support to the new paper.

45. Other delegations, while welcoming working paper CDDH/IV/213 and Add.1 and 2, saw considerable merit in finding a way to reconcile documents CDDH/IV/209, CDDH/IV/211/Corr.1, CDDH/IV/212 and CDDH/IV/213 and Add.1 and 2 in a joint draft, since these last to a large extent contained similar elements, notwithstanding some differences of substance that might be overcome.

46. Commenting on some details of working paper CDDH/IV/213 and Add.1 and 2, a number of delegations criticized the fact that the sponsors of this paper had resorted to a range exceeding a fixed number of metres to define "remotely-delivered" mines. A few delegations considered that with respect to article 3, paragraph 2 of the working paper the time-limit after which a neutralizing mechanism would have to operate should be made more specific, as was done, for example, in document CDDH/IV/211/Corr.1. Some delegations thought that the use of remotely-delivered mines should be further restricted, namely, to the combat zone of ground forces (as in document CDDH/IV/211/Corr.1), or to areas in which a combat was imminent, thus offering more protection to civilians.

(d) Small-calibre projectiles

47. A number of representatives welcomed the Swedish working paper (CDDH/IV/214) as an improvement over document CDDH/IV/201.

48. Among them, one representative of a country sponsoring working paper CDDH/IV/201 and Corr.2 and Add.1 to 9 said that in his delegation's view the present working paper CDDH/IV/214 merely

brought the former document up to date. He himself thought that the question of the critical bullet-velocity should be left pending until additional tests had been carried out. This last view was shared by the representative of another of the countries which sponsored document CDDH/IV/201 and Corr.2 and Add.1 to 9.

49. The representative of yet another of the countries sponsoring working paper CDDH/IV/201 and Corr.2 and Add.1 to 9, said that on the basis of the data presented so far, his Government's experts considered that whereas shock waves did not seem to play any decisive role in incapacitating the target as long as the velocity of the projectile did not considerably exceed 1,000 m/sec, fragmentation of the projectile as well as tumbling upon impact of the bullet would increase the kinetic energy deposit in the human body. Those latter features, however, could be influenced by the way projectiles were designed. The representative in question went on to say, however, that his delegation thought it doubtful whether sufficient data had been obtained to provide the necessary foundation for agreement on regulations.

50. Another representative, also from one of the countries sponsoring working paper CDDH/IV/201 and Corr.2 and Add.1 to 9, said he felt it was now essential to establish a standard test to determine the main factors influencing the particularly serious impact of certain small-calibre weapons. In this regard it should be easy to agree on the properties necessary for the target material. Future experiments and studies should focus on the relationship between the factors of velocity, weapon design, and shape and material of the ammunition on the one hand, and tumbling, deformation or disintegration of the ammunition on the other hand. A report on recent tests, carried out by experts of his country, was available to delegations present.

51. The representative of one country said he would not comment on the proposal submitted by Sweden until his experts had made a careful study of the document. In reply to what had been said previously in the debate, however, one speaker drew attention to the fact that his country had already stated in Lucerne that all ammunition in current use could break up. In that respect, for that matter, his country could support the draft article on non-detectable fragments (CDDH/IV/210 and Add.1). According to his country's evidence, fléchettes showed less tendency to break up than comparable projectiles.

52. Lastly, the representative of one country expressed doubts as to whether the problems connected with this weapon could be solved by the test arrangements suggested by the Swedish delegation. His delegation was therefore of the opinion that The Hague Declaration of 1899 was still a valid basis for designing projectiles.

(e) Blast and fragmentation weapons

53. The representatives of two countries co-sponsors of proposal CDDH/IV/210 and Add.1 (non-detectable fragments) spoke in favour of that proposal. The representatives of two other countries expressed their satisfaction with the proposal as being an improvement over document COLU/212 submitted by Mexico and Switzerland at the Lugano Conference. One of those representatives declared the co-sponsorship of his country for the proposal.

54. One representative said that the proposal in question would require much more detailed consideration during the period before the fourth session of the Diplomatic Conference.

55. Regarding the restriction or prohibition of the (anti-personnel) use of fragmentation weapons, such as (anti-personnel) cluster bombs, one representative thought that anti-personnel fragmentation weapons should be prohibited because of their indiscriminate effects and of the unnecessary suffering they caused through ejection of a great number of small-calibre pellets. His delegation was also in favour of the prohibition of the use of fléchettes, which caused multiple and painful injuries that were aggravated when fléchettes bent or broke upon impact. Another representative reiterated that the lethality ratio from small-fragment wounds was lower than that for casualties resulting from large fragments. The same representative, however, stressed that fléchettes broke up less readily than comparable projectiles, that they were quite stable and that, because of their shape, they were less likely to tumble than other projectiles. A third representative representing a country co-sponsoring CDDH/IV/210 and Add.1 explained that on the basis of detailed analysis, it might prove possible to go further than that proposal. The provision contained in article 46, paragraph 3, of draft Protocol I (adopted at Committee level) could perhaps be particularized in relation to specific weapons, such as anti-personnel cluster-bomb units; a total prohibition of the weapon in question did not seem to be warranted, in particular since it could be used in situations where it would not pose dangers for any civilian population.

56. The representative of one country, though believing that the substance of working paper CDDH/IV/215, submitted by Sweden and Switzerland and dealing with fuel-air explosives, raised many questions and problems, welcomed the working paper as a concrete basis for discussion.

57. The representative of another country stated that statistics showed that the killed-to-wounded ratio of fuel-air explosives was about 20 per cent, while the ratio for high explosives was approximately 25 per cent. Medical care required for survivors of FAE wounds, and the period of incapacitation therefrom, would thus both be less than for wounds caused by high explosives. To the statement that those killed by FAE would suffer a particularly painful death, he would reply that his country's medical experts had informed him that the primary death causes prompted by FAEs, namely pulmonary rupture and exsanguination, led to a quick death and not to the lingering death which might be caused by fragmentation weapons. A representative from a country co-sponsoring working paper CDDH/IV/215 expressed doubts about the killed-to-wounded ratios indicated by the preceding representative and hoped that between the current session and the fourth session of the Diplomatic Conference a detailed report on the test results in question might be made available to his delegation. The first representative later gave some statistics on this subject. The second representative then still insisted on having a more detailed report.

(f) Potential weapons developments

58. The representative of one country, while stressing the need for internal national procedures for taking account of humanitarian aspects with respect to the acquisition or development of new weapons, as well as the need for international conferences at regular intervals with a view to reaching agreement on rules with respect to new weapons, suggested that consideration should be given to the idea that an independent institute be set up that would gather data on certain conventional weapons and that could, for example, be linked with the ICRC and the Secretariat of the United Nations, or act as an independent institute of the United Nations. The representative also said that such an institute could assist both projected conferences to be held on this subject and individual States in their internal consideration of the humanitarian aspects of weapons. This latter aspect of the suggestion was appreciated by some representatives who believed that the setting up of national agencies could be cumbersome for developing countries. Some representatives advocated the idea of the foundation of an institute for data collecting.

59. A number of representatives underlined the need for review conferences, to be held with a certain frequency at the request of a specific number of States as soon as new rules in the field of weapons had been established. Some representatives drew attention, in this connexion, to a working paper submitted by one delegation at the Lugano Conference (document COLU/210) and suggested that review conferences should be preceded by conferences

of experts similar to those held at Lucerne and Lugano. One delegation suggested that if no protocol on conventional weapons was adopted, then within the framework of draft Protocol I a provision should be adopted which would make it possible to continue the study of a possible prohibition or restriction of certain conventional weapons within the over-all development of humanitarian law. Several delegations gave their support to this idea and referred to the proposal for a review machinery made by one country at the Lugano Conference which appeared in the Lugano report.

60. A number of representatives present in the Ad Hoc Committee said that in their opinion a sufficient amount of data had been gathered at the preceding conferences and that legal rules, at least in respect of some types of weapons, could now be agreed on. Other representatives noted that more data were needed in many areas before conclusions could be reached.

OTHER QUESTIONS

61. The ICRC representative told representatives that 750,000 Swiss francs had originally been budgeted for the Lugano Conference, but that it had proved possible to reduce the figure to 600,000 francs. Contributions which had been either promised or paid now totalled 636,000 francs. The following contributions were to be added to the list on page 231 of the report of the Lugano Conference: Argentina, 10,000 francs; Italy, 17,570 francs; Saudi Arabia, 70,000 francs. There should now be a credit balance of 35,000 francs and the ICRC was prepared to contribute to the continuation of the work.

62. He then explained the ICRC's attitude to the prohibition or restriction of some conventional weapons. The ICRC had made no proposals itself; any which it might have made would of necessity have been along the lines of a general prohibition of most of the weapons with which the Committee was dealing, for that was obviously the best solution in humanitarian terms. It was the responsibility of Governments, and not of the ICRC, to take account of considerations such as national defence and the risk of replacement weapons having worse effects than those which it was sought to prohibit. What the ICRC was asking of Governments was that they should never lose sight of the fundamental humanitarian aspects of the problem and should never justify the use of any weapon solely by the criterion of military value.

63. At the close of the work of the Ad Hoc Committee, a number of representatives took the opportunity to comment on past, present and future work. Some representatives felt that, while the results of the Lugano Conference had been somewhat meagre, and while the Ad Hoc Committee had made a slow start to its

work at the current session, the various proposals submitted to the Committee were a matter for some satisfaction. However, other representatives regretted that there had been no possibility of discussing them in detail and expressed the hope that an appropriate method for giving them careful study would be found at the fourth session. Some representatives also expressed the view that after the Conferences held at Lucerne and Lugano, there was no need to organize a third session of the Conference of Government Experts on the Use of Certain Conventional Weapons.

ADOPTION OF THE REPORT OF THE AD HOC COMMITTEE

64. At its thirty-fifth meeting, on 9 June 1976, the Ad Hoc Committee on Conventional Weapons adopted the present report by consensus.

FOURTH SESSION

(Geneva, 17 March - 10 June 1977)

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

REPORT

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AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

REPORT

COMPOSITION OF THE BUREAU

1. At the thirty-fourth (opening) plenary meeting (CDDH/SR.34) on 17 March 1977, the Conference approved by acclamation the appointment of Ambassador Héctor Charry Samper as Chairman of the Ad Hoc Committee on Conventional Weapons. At the thirty-sixth meeting (CDDH/IV/SR.36) of the Ad Hoc Committee, on 19 April 1977, Mr. John G. Taylor was elected by acclamation to the post of Rapporteur. Consequently the officers of the Ad Hoc Committee were as follows:

<u>Chairman:</u>	Mr. Héctor Charry Samper	(Colombia)
<u>Vice-Chairmen:</u>	Mr. Houchang Amir-Mokri	(Iran)
	Mr. Mustapha Chelbi	(Tunisia)
<u>Rapporteurs:</u>	Mr. John G. Taylor	(United Kingdom
	(after 6 May)	of Great Britain
	Mr. Martin R. Eaton	and Northern
	(up to 6 May)	Ireland)
<u>Legal Secretary:</u>	Mr. Jean-Jacques de Dardel	
<u>Representative of</u> <u>the International</u> <u>Committee of the</u> <u>Red Cross:</u>	Mr. Jean-Louis Cayla	

2. To make for easier reading, this report has been drafted subject by subject. Under each subject heading there is a summary of action taken under that subject whether in the Committee or in the Working Group or in both. The report has also been drafted taking into account the report of the Working Group which is annexed. Frequent references to the Working Group's report have been inserted in an attempt to avoid repetitiousness.

PROGRAMME OF WORK OF THE AD HOC COMMITTEE

3. At the suggestion of the Chairman at the thirty-sixth meeting on 19 April 1977, the Committee adopted the following programme for its work at the fourth session of the Conference (CDDH/IV/219/Rev.1):

1. Adoption of the programme of work;
2. Election of new Rapporteur;

3. Establishment of Working Group. Election of Chairman of the Working Group;
4. Introduction of new proposals. Work in the Working Group;
5. Consideration of the question of the prohibition or restriction of use of specific categories of conventional weapons and, in this context, consideration of the report of the Working Group and of proposals;
6. Other questions.

ESTABLISHMENT OF A WORKING GROUP

4. At the thirty-sixth meeting the Chairman suggested that the Ad Hoc Committee might wish to establish a Working Group to discuss the various proposals relative to the prohibition or restriction of the use of certain conventional weapons. This was agreed. The Chairman then read out the draft terms of reference for the Working Group (CDDH/IV/220). The discussion on the terms of reference centred on two points. First, as to the weapons proposed for subjects of study, certain delegations asked why the terms of reference referred explicitly to three categories of weapons only - those containing fragments non-detectable by X-ray, mines and booby-traps and incendiaries. It was explained that they were the categories on which the most progress had hitherto been made, and on which detailed proposals had been submitted. The terms of reference also gave an opportunity for discussion of any other category of conventional weapon.

5. Secondly, it was queried whether the Working Group should have a mandate to discuss either follow-up of the Ad Hoc Committee's work or review mechanisms, as had been proposed in the draft terms of reference. It was eventually agreed that review mechanisms need not be discussed at that stage, since they related mainly to future agreements, but that the Group should be empowered to discuss follow-up and submit it for further consideration to the Committee.

6. One delegation submitted to the Committee revised terms of reference reflecting the discussion. These were adopted (CDDH/IV/221), and are set out in paragraph 2 of the report of the Working Group (see annex to this report). The Rapporteur was elected Chairman of the Working Group.

FRAGMENTS NON-DETECTABLE BY X-RAY

7. In response to a proposal by the Rapporteur at the thirty-seventh meeting (CDDH/IV/SR.37) of the Ad Hoc Committee on 21 April 1977, this subject was placed first on the agenda of the Working Group. Paragraphs 7 - 10 of the Working Group's report give an account of the progress there achieved. There was in fact only one proposal on the subject, namely that of Austria, Colombia, Denmark, Mexico, Norway, Spain, Sweden, Switzerland and Yugoslavia (CDDH/IV/210 and Add.1 and 2) (see appendix I). The Working Group was unanimous in finding an area of agreement in that proposal. Many delegations welcomed this advance in their closing statements in the Ad Hoc Committee.

MINES AND BOOBY-TRAPS

8. The delegation of Mexico introduced at the thirty-seventh meeting of the Ad Hoc Committee on 21 April 1977, a proposal for restrictions of the use of this category of weapons (CDDH/IV/222 and Add.1), which was co-sponsored by the delegations of Austria, Sweden, Switzerland, Uruguay and Yugoslavia. In putting forward that draft on a subject which had been discussed previously in some detail, the Mexican representative said that the sponsors had borne particularly in mind the need to protect civilians against indiscriminate attacks. They believed their proposal struck a reasonable balance between military and humanitarian requirements and hoped that something positive on the subject could be achieved at the present session, given the earlier community of opinion.

9. The representative of Mexico drew particular attention to the proposals on the use of mines in populated areas where there was a prohibition of such use but subject to an exception, as a concession to military needs, and where effective precautions were taken to protect civilians. He drew attention also to the proposals on recording of minefields which would facilitate their subsequent removal and on the prohibition of the use of remotely delivered mines except in well-defined exceptional cases.

10. Another co-sponsor of the proposal stressed the protection they had tried to give against the long-term hazards to the civilian population and the environment presented by dangerous objects, particularly mines, left behind after a war. He quoted extensively from the study prepared by the United Nations Environment Programme on this problem (see report of the Executive Director - UNEP/GC/103 and Corr.1). Numerous countries had reported that they had suffered, and were still suffering, many

casualties for this reason. Hence the sponsors laid stress in their proposal on the need for remotely delivered mines to be fitted with a neutralizing mechanism before their use could be permitted and on the requirement that minefields be recorded in order to facilitate their location and disposal after hostilities had ceased.

11. Another co-sponsor of proposal CDDH/IV/222 and Add.1 said that although mines and booby-traps were particularly dangerous to civilians they were also necessary defensive weapons. Hence their proposals sought to balance the two aspects. The delegation of Uruguay welcomed the proposal and offered its co-sponsorship (CDDH/IV/222/Add.1) which was accepted.

12. Several other delegations also welcomed the proposal, and looked forward to commenting further on it and the other proposals on the subject, particularly working paper CDDH/IV/213 and Add.1 and 2, in the Working Group. One representative who had co-sponsored that document welcomed the new proposal, all the more because it followed very closely his own proposal. He hoped that the differences in wording could be resolved. This was welcomed by one of the co-sponsors of proposal CDDH/IV/222 and Add.1. The matter was then referred to the Working Group.

13. The two main proposals referred to above were subjected in the Working Group to careful comparison and consideration in some detail (see paragraphs 11 - 34 of the annexed report of the Working Group). An informal group consisting mainly of the co-sponsors of the two main proposals also worked on the subject and produced a common proposal which was then submitted to the Working Group as a working paper (CDDH/IV/GT/4 and Corr.3) (see appendix II) with the co-sponsorship of members of each of the groups and of some other delegations.

14. The Working Group then commented on the revised proposal and the comments are recorded in the paragraphs referred to in the Working Group's report. It was clear that a wide measure of agreement existed on many of the proposals. However, many delegations still had several specific, and sometimes substantial, reservations and it could not be said that the proposal as a whole was as yet acceptable to all. Hence in reporting to the Ad Hoc Committee the Rapporteur described that part of the Group's work as having revealed certain areas of agreement but also of disagreement.

15. Many delegations in commenting on the report of the Working Group particularly welcomed the progress towards agreement which had been made on the subject. Some delegations pointed out that that had become possible mainly because of the willingness of groups of delegations holding differing views to meet informally and seek to resolve them with good will. They trusted that that example could be followed in other fields.

INCENDIARY WEAPONS

16. The delegation of Indonesia introduced a new proposal (CDDH/IV/223) on the subject at the thirty-seventh meeting of the Ad Hoc Committee on 21 April 1977. The delegation considered it was imperative to prohibit any use of incendiary weapons on centres of population because of their indiscriminate effects. It did not find satisfactory proposals which would, provided the attacks were otherwise lawful and due precautions to avoid civilian casualties were taken, permit the use of such weapons against military objectives in populated areas. Fire inevitably spread, especially where buildings were made of wood as in many developing countries. Adequate protection for civilians therefore could not be guaranteed. The proposal did, however, exempt from the prohibition attacks on military objectives which lay outside centres of population.

17. The Indonesian delegation also drew attention to paragraph 1 (b) of its proposal, which was designed to give better protection to military personnel. Only those in field fortifications could, under the proposal, be attacked with incendiary weapons, and then only if alternative weapons would cause more casualties. The delegation pointed out that it was already not permissible to attack military personnel in the open with incendiaries.

18. A number of delegations welcomed the Indonesian proposal and looked forward to commenting on it and the other proposals submitted on the subject in the Working Group. Another delegation criticized a number of the terms used in the Indonesian proposal as too imprecise - for instance the word "near" in paragraph 1 (a). They found the proposal insufficiently well-conceived and drafted to form a satisfactory basis for discussion.

19. At the thirty-ninth meeting (CDDH/IV/SR.39) of the Ad Hoc Committee, on 11 May 1977, the Netherlands delegation introduced working paper CDDH/IV/206/Rev.1, sponsored by Australia, Denmark and the Netherlands. The document represented a revision of a proposal they had submitted to the Ad Hoc Committee at the third session of the Conference (CDDH/IV/206 and Add.1 and 2). Like that proposal working paper CDDH/IV/206/Rev.1 sought to protect civilians from the effects of flame weapons. In response to comments made during the third session, they had expanded the term "concentration of civilians" in rules (a) and (c) of the proposal by the addition of a sentence designed to make clear that where the rule applied to concentrations other than towns and villages they had to be concentrations of a similar level, such as columns or camps of refugees, and not below that level. At the end of rule (c) the sponsors had replaced "is imminent" by "appears to be imminent",

so as to place the responsibility for making that judgement on the person who had to decide whether or not to use the type of weapon concerned. The sponsors were confident that their proposal could be a basis for agreement.

20. Another sponsor of working paper CDDH/IV/206/Rev.1 said his delegation had become convinced from a close analysis of previous conferences that restrictions on use were the way to make progress because they held out the prospect of widest international agreement. Although for some delegations the forward step he and his co-sponsors were proposing was too modest, in his view it was both forward and realistic, and capable of attracting wide support as a basis of formal international agreement in due course.

21. Another delegation congratulated the co-sponsors of working paper CDDH/IV/206/Rev.1 on their proposal but said it could not agree to all aspects of rules (a) and (b) since it was extremely difficult to leave the decision on whether an attack was lawful to commanders and field units.

22. The Working Group took up this subject as the third item in its order of business. Paragraphs 35 - 47 of the report of the Working Group, annexed, summarise its discussion. There were six main proposals before the Working Group and the Ad Hoc Committee. They were: documents CDDH/IV/217, sponsored by Mexico; CDDH/IV/Inf.220, co-sponsored by Afghanistan, Algeria, Austria, Egypt, Iran, Ivory Coast, Kuwait, Lebanon, Lesotho, Mali, Mauritania, Mexico, Norway, Romania, Sudan, Sweden, Switzerland, Tunisia, United Republic of Tanzania, Venezuela, Yugoslavia and Zaire; CDDH/IV/223 sponsored by Indonesia; CDDH/IV/207 sponsored by Norway; CDDH/IV/208 sponsored by Sweden; and CDDH/IV/206/Rev.1 co-sponsored by Australia, Denmark and the Netherlands, which replaced CDDH/IV/206 and Add.1 and 2.

23. In introducing the report of the Working Group to the Ad Hoc Committee at its fortieth meeting (CDDH/IV/SR.40), on 19 May 1977, the Rapporteur commented that there had been in fact no successful movement in the Group to reconcile the various proposals, embodying as they did widely differing approaches to the whole question of banning or restricting the use of incendiary weapons.

24. The Rapporteur drew attention to a problem which had arisen in connexion with paragraph 42 of the Working Group's report. The second sentence of that paragraph reflected a question he had addressed to the Group in an effort to discover whether a measure of agreement existed, asking whether it was agreed that the proposal in working paper CDDH/IV/206/Rev.1 offered a useful basis for further discussion. No one had dissented. But it subsequently

became clear that the question had been interpreted differently, by some as referring to further discussion in the Working Group itself and by others as referring to further discussion in future forums. This reflected a division of opinion in the Group, some delegations considering that all the proposals submitted on the subject offered a useful basis for discussion in future work, and others considering it would be more useful for future work to concentrate initially on a more modest proposal such as that in working paper CDDH/IV/206/Rev.1. The Rapporteur accordingly drew attention to those divergent views and to the need to avoid interpreting the second sentence of paragraph 42 of the Working Group's report as indicating unanimity on either view.

25. In the discussion which followed several speakers alluded to the same divergence of views. One of the co-sponsors of working paper CDDH/IV/206/Rev.1 expressed the hope that the proposal, which had received the support of a number of delegations, would serve as a basis for agreement on the subject in the near future. Those delegations considered the approach of restrictions rather than total bans commanded more general support and offered a better hope of progress. In the meantime they would be studying the implications of the amendment to their proposal submitted by two delegations in the Working Group (CDDH/IV/GT/7 - see paragraph 43 of the Working Group's report). Another co-sponsor expressed a similar hope and described the proposal as a realistic way of making progress. They were supported by other delegations.

26. On the other hand, several delegations emphasized that they did not consider the proposal in working paper CDDH/IV/206/Rev.1 went far enough. In their view the only satisfactory solution would have to involve a total ban on the use of incendiary weapons, subject to a few exceptions. Such a ban, in differing forms, was proposed in documents CDDH/IV/201 and Corr.2 and Add.1 to 9, CDDH/IV/208, CDDH/IV/220 and CDDH/IV/223. These delegations stated that all the foregoing proposals should be considered carefully in future forums if the appeal of the Fifth Conference of Heads of State or Government of the Non-Aligned Countries, held at Colombo in 1976, and of the United Nations General Assembly to accelerate work towards a ban on the use of such weapons were to be properly heeded. In their view civilians and combatants alike were insufficiently protected by proposals involving restrictions only.

OTHER CATEGORIES OF CONVENTIONAL WEAPONS

(a) Fuel-air explosives

27. Two delegations, Sweden and Switzerland, introduced in the Working Group a working paper containing elements of a prohibition on fuel-air explosives (FAEs) (CDDH/IV/GT/5) (see appendix II).

They explained that it was essentially the same as a proposal which they had submitted at the third session of the Conference on the subject (CDDH/IV/215). The brief discussion on the subject in the Working Group is summarized in paragraphs 46 and 47 of the Group's report (see the annex to this report).

28. At the final meetings of the Ad Hoc Committee the delegation which had taken issue with the proposal in working paper CDDH/IV/GT/5 (see paragraph 47 of the Group's report) gave, as it had promised, further details of its position. The delegation in question described experiments in its country on monkeys and sheep, which it considered better subjects for comparison with man than the smaller animals used in the experiments described by the delegations which had submitted working paper CDDH/IV/GT/5. The experiments carried out by its country had indicated that the overpressure at the burst centre of a FAE weapon differed in its effects and magnitude from that of a comparable high explosive shell only at the outer edge of that central area. At all other points the lethality of both within the area was identical, i.e. near one hundred per cent. Hence, if the inevitability of death in this area were the reason for seeking a ban on the use of FAEs it was equally valid for high explosives, which nobody was seeking to ban. Outside the immediate detonation area, the wounding effects of fuel-air explosives were far less than those of high explosives. Injuries outside the fuel-air explosive cloud were not likely to be lethal, and required less medical care than injuries caused by the fragmentation effects of high explosive artillery shells, which often necessitate surgery with increasing risk of complications and mortality. The delegation also questioned whether death from fuel-air explosives was especially cruel or caused unusual or unnecessary suffering as compared with other conventional weapons. It stated that its evidence demonstrated that death would be rapid and caused by air embolism to the heart and brain following lung rupture due to the overpressure effect.

29. In reply, Sweden, being a co-sponsor of working paper CDDH/IV/GT/5, explained the rationale behind the proposal to prohibit the anti-personnel use of fuel-air explosives as follows. In certain situations when attack by other means might be time-consuming and wasteful, it might be highly attractive to use fuel-air explosives against personnel, such as troops concealed in open foxholes or simple shelters. Then, a very high proportion of killed might be expected. The reason for this was that the FAE blast waves propagated freely into foxholes or shelters within, or very close to the fuel-air explosive cloud, whereas troops outside the area were well protected against blast effects by their shelters. The blast wave pressures were so high within the FAE cloud that a very high probability of death ensued for any person present. This use, in

the opinion of the representative might well fall under the rule contained in the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime, namely that "render death inevitable in all circumstances". Another representative of the same delegation did not agree that the small animals that had been used were poor models for man; in fact, the rabbits used were well established as models in blast injury, rather more so than sub-human primates or sheep. He further stated that formulae for comparisons were widely recognized as valid. His delegation continued to consider that the blast characteristics of FAEs and high explosives were different, particularly in the manner in which the FAE blast waves were propagated, both into open foxholes and field fortifications. The delegation also disagreed on the typical manner of death from lung injuries. It cited statements in the North Atlantic Treaty Organization (NATO) Emergency War Surgery Handbook, 1975, which suggested that death following blast injury was often a prolonged and painful one.

29 (bis). The delegation mentioned in paragraph 28 replied that the rabbit was not a reasonable animal model for extrapolating results of such tests to man and pointed out that mathematical formulae, in its view, did not correct that problem. The delegation suggested that a model closer to man should be used and that the sub-human primate, the monkey, was the appropriate model.

30. Some other delegations thanked the two which had spoken for their technical information and expressed the hope that further studies and exchanges would lead to greater agreement.

(b) Small calibre projectiles

31. At its thirty-ninth meeting (CDDH/IV/SR.39), on 11 May 1977, Sweden introduced in the Ad Hoc Committee two information documents on the subject of small-calibre projectiles. One of these (CDDH/IV/Inf.237) was a joint paper by experts of Austria, Sweden and Switzerland describing co-ordinated experiments undertaken in their three countries. The other document (CDDH/IV/Inf.242) described some test series in greater detail and was in fact Supplementum 477 of the Acta Chirurgica Scandinavica where it had originally been published.

32. The Swedish representative stated that the extent and severity of wounds caused by missile penetration depended mainly on the amount of energy transferred. The results of the tests tended to show the importance of tumbling, break-up and high impact velocity of projectiles in determining the energy transferred to the living tissue. He further stated that the tests had shown that different weapons systems did have different characteristics of ballistic

performance and indicated that rifles and ammunition could be designed to minimise the characteristics of tumbling, deformation and break-up which caused excessive wounding. Hence, his delegation had submitted a working paper in the Working Group, (CDDH/IV/GT/6) (see appendix II) calling upon States to abstain from developing and producing projectiles causing more severe injuries than those in most common use, i.e. of calibre 7.62 mm, and to avoid bullets which tumbled easily, deformed or broke up when penetrating a human body or bullets with excessive velocities.

32 (bis). One delegation supporting working paper CDDH/IV/GT/6, expressed its readiness to co-operate in a more detailed study of the document, for it considered that the information already available to the Diplomatic Conference would make it possible to undertake studies of the subject in greater depth.

33. The subject was not discussed in the Working Group. However, at the final (forty-second) meeting (CDDH/IV/SR.42) of the Ad Hoc Committee another delegation criticized in some detail the scientific methods and procedures employed in the tests described above and expressed grave doubt whether their results could in any way support the conclusions drawn and the recommendations accordingly made by working paper CDDH/IV/GT/6.

34. The delegation in question noted in particular that the tests using non-biological simulants gave very different results from tests in live tissue; in its view that showed that non-biological simulants were unsatisfactory for predicting wounding effects in human beings. Moreover, the delegation stated that no acceptable simulant existed at present and cited a noted Swedish surgeon as supporting that view. Yet it was on the results from the soap block tests that most of the conclusions were based. The delegation also found the terms "break-up" and "deformation" unsatisfactorily vague. It contended that there was no basis, either in the test results or on other available data, for selecting 7.62 mm as a standard since different weapons of that calibre gave widely different results. All projectiles in current use tumbled and broke up. Moreover, the delegation knew of no valid evidence to support a correlation between severity of injury and velocity on impact. In summary, the delegation could only agree that further extensive study was required. It considered that many carefully designed and controlled tests would have to be carried out before meaningful discussion of the wounding effect of small-calibre projectiles was possible.

35. In reply, the delegation mentioned in paragraph 32 above, defended its test methods and responded to the detailed criticisms made by the other delegation. It was regrettable that the latter delegation had chosen only to try and criticize and disprove all results presented instead of having tried to supplement them with more extensive studies and greater numbers of tests. One of the weapon-ammunition combinations, for which the other delegation had considered the number of tests to be unsatisfactory, had been included in the tests at a very late stage and at the express request of that other delegation. The delegation found it puzzling that the same States which refused to consider it valid to use non-biological simulants to determine whether the wounding effects of a weapon were too great, did consider it valid to use them to determine whether a weapon had sufficient wounding effect. A typical break-up and deformation pattern had been described before in the Acta Chirurgica Scandinavica, Supplementum 459. Although the numbers of tests were rather small, it was a safe conclusion that the used 5.56 mm bullets deformed and broke up in about 100 per cent of the cases where the thickness of penetrated tissue was 130 mm or more, as compared with the 7.62 mm projectiles used, where break-up or deformation did not occur under the same circumstances. The same difference prevailed for tests against 140 mm thick soap or gelatin. That thickness was typical in the case of a human being. The formulation of their paper (CDDH/IV/GT/6) closely resembled that of the 1899 Hague Declaration concerning the Prohibition of Using Bullets which Expand or Flatten Easily in the Human Body. The paper was not intended to provide a proposed rule, but was rather to be understood as a draft resolution text aiming at a moratorium while further knowledge was being gathered. The delegation considered the difference to be small between a dum-dum bullet which expanded or flattened on impact and a bullet which tumbled very fast upon impact, then deformed and broke. The 1899 dum-dum ban might be construed as a prohibition against a method of wounding, rather than as providing a measure of the permissible degree of wounding. The delegation urged that all States take those questions into consideration before the next generation of small arms was adopted and procured, which procedure was imminent to several important States, e.g. within the NATO group.

FOLLOW-UP

36. This subject was not in fact discussed in the Working Group (see paragraph 3 of the Group's report). It was, however, discussed twice in the Ad Hoc Committee, at its thirty-ninth meeting (CDDH/IV/SR.39) on 5 May 1977 and at its fortieth and forty-first meetings (CDDH/IV/SR.40 and CDDH/IV/SR.41) on 19 May 1977. On the earlier occasion the debate was a brief one, requested by a number of delegations which wished to express their views on the subject

following the initiative taken in Committee I by a number of other delegations in proposing an Article 86 bis (CDDH/I/340 and Add.1 - 3) designed to set up a permanent weaponry review committee linked to Protocol I.

37. At the outset of the thirty-eighth meeting, one of the sponsors of the proposed Article 86 bis objected formally to the debate on procedural grounds, since he considered the matter to be solely within the competence of Committee I. He would not, however, press his objection to a vote provided the comments were of a general nature.

38. Several delegations then spoke in favour of the continuation of the work of the Ad Hoc Committee in other forums. Part of the results of that work would be the setting up of a carefully thought-out review mechanism for any agreements. They did not, however, regard it as desirable to set up a rival mechanism such as that now proposed in Article 86 bis or to link it exclusively to the Protocol. Such a link would tend to concentrate solely on legal criteria and exclude other relevant factors such as political, economic and military considerations. Some of the delegations referred to existing disarmament forums and suggested the subject might be sent there. Others drew attention to the study of review mechanisms which had already taken place at the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in 1976, and hoped Committee I would take account of the alternative solutions mentioned at Lugano. Another delegation stated that in its view draft Article 86 bis was entirely outside the competence of the Diplomatic Conference. It considered the introduction of that proposal had had an extremely negative influence on the work of the Ad Hoc Committee in the field of follow-up. Several of the delegations mentioned in this paragraph did, however, express their willingness to consider what compromise solutions might exist.

39. In reply, another of the sponsors of draft Article 86 bis said that his delegation and those of the other co-sponsors had not participated in the debate because they considered that article was entirely a matter for Committee I and because it was too early to take up the question of the follow-up of the work on conventional weapons done in the Ad Hoc Committee. They would be participating fully in the debate on that question later on.

40. The question of follow-up was taken up again and more extensively during the Committee's forty-first meeting on 19 May 1977. Once again, there were numerous references to Article 86 bis, which had the previous day been adopted in Committee I.

41. Some of the representatives who had spoken in the earlier debate spoke again in a similar sense. One of them regretted the adoption of Article 86 bis and said that so long as it remained it appeared to pre-empt meaningful discussion on follow-up. His delegation with others had submitted a resolution on the subject of follow-up (CDDH/Inf.240 and Add.1 and Corr.1, sponsored by Canada, Denmark, Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland), and had been fully open to discuss and negotiate on the proposal. But they could not see how such negotiations could now take place, unless Article 86 bis were rejected by the Plenary meeting of the Conference. His delegation saw the way ahead as through consensus, not by imposing one point of view by votes. He was supported by two other delegations.

42. Several representatives who had supported Article 86 bis spoke in its defence. One of them stated that the divergence on that article reflected one which had been apparent throughout the discussions of the subject of weapons in the Diplomatic Conference. That divergence was between those like himself who considered that prohibitions and restrictions should be reached within the framework of humanitarian law and those who considered that other forums with other considerations of a disarmament character were more suitable. The draft resolution (CDDH/Inf/240 and Add.1 and Corr.1) continued to refer to disarmament and to general agreement, which he took to mean consensus. In his view, which was shared by others, that was not producing results and it was necessary instead to adopt a democratic approach within the framework of humanitarian law. He reserved the right, as did other speakers, to take up the subject of follow-up further in a plenary meeting of the Conference when another draft resolution would be introduced by his delegation and others.

43. Another delegation said it, too, had voted for Article 86 bis. It could not accept that the subject of weaponry review was misplaced in the Protocols, and it regarded Article 86 bis as dealing with long-term review and as complementary rather than as an alternative to a resolution on immediate follow-up such as that proposed in draft resolution CDDH/Inf.240 and Add.1 and Corr.1. However, it did not find either document wholly satisfactory and wished to find some middle ground acceptable to all which might combine a general article in the Protocol on review, a more detailed resolution on the mechanism for such review, and a follow-up resolution such as they were sponsoring with the previous speaker and others. The delegation in question said it realized and regretted that its policy of advance by consensus in that field had so far produced little advance, but it continued to believe it was the right policy. Another representative supported the last point, saying that in his view such progress as had been made was due to the patient consensus procedure followed.

44. Another delegation which had voted for Article 86 bis said it had done so for the same reasons as the first speaker mentioned in the preceding paragraph. It suggested that a follow-up conference might be convened by the United Nations but on the same basis as the Diplomatic Conference. It must not be confined to certain States only. Several other delegations also expressed the hope that a conference to continue and bring to fruition the specific work done by the Ad Hoc Committee and its Working Group could speedily be convened.

GENERAL REMARKS

45. A number of delegations made general remarks or suggestions during the closing stages of the Ad Hoc Committee's work. One delegation said that though the results might appear to be meagre, the Ad Hoc Committee had in fact made progress when the confused situation prevailing at the beginning of the session was taken into account. It was reasonable to expect delegations to be cautious. Another delegation stressed the importance of formulating rules that would stand the test of time and battle. Humanitarian rules should be considered within the general framework of disarmament and peace. States whose situation permitted it should give immediate effect to bans or restrictions, perhaps on a regional basis. Another delegation stressed the importance of devising rules that would be effective in limited conflicts. He, too, stressed the importance of maintaining the framework of a just peace.

46. A further delegation observed that it would be an exaggeration to say that results were overwhelming. The achievements, after years of work, were certain areas of agreement on the less important subject of fragments non-detectable by X-rays and the more important one of landmines. On incendiaries there had been little progress. On other subjects, e.g. small-calibre weapons, fuel-air explosives and other weapons, many delegations had not seemed to have made up their minds. Political will had manifested itself on the subject of mines; on other subjects it had been lacking. Another delegation advocated caution in using such phrases as "advance" and "progress" when considering bans or restrictions. A badly conceived rule would achieve neither; but rather generate, through the use of substitute weapons, more indiscriminateness, more suffering and more deaths.

ANNEX

REPORT OF THE WORKING GROUP*

* Circulated under symbol CDDH/IV/224/Rev.1

ANNEX

REPORT OF THE WORKING GROUP

INTRODUCTION: ORGANIZATION AND METHODS OF WORK

1. The Working Group met for the first time on 26 April and for the last on 19 May. It held nine meetings in all (excluding further meetings for the adoption of the report). It was chaired by the Rapporteur of the Ad Hoc Committee, Mr. J.G. Taylor (United Kingdom of Great Britain and Northern Ireland) from 6 - 19 May and, in his absence from 26 April to 6 May, by Mr. M.R. Eaton of the same delegation.

2. The terms of reference of the Group, as established by the Ad Hoc Committee in document CDDH/IV/221, were as follows:

"1. A Working Group of the Ad Hoc Committee is set up to consider in detail the various proposals relative to the prohibition or restriction of the use of certain conventional weapons introduced in the Ad Hoc Committee, such as mines and booby-traps, fragments not detectable by X-ray and incendiary weapons, with a view to defining the areas of agreement or disagreement with respect to each particular set of proposals.

2. The Working Group will also consider proposals on other categories of conventional weapons.

3. Furthermore, the Working Group will also consider the question of 'follow-up' and submit it for further consideration to the Ad Hoc Committee.

4. The sessions of the Working Group will be open to all participants in the Conference."

3. The Group spent most of its time on the categories of weapons listed in point 1 of the terms of reference which had indeed been singled out as those on which most work had been done hitherto and where further work was likely to be most fruitful. The Group also considered much more briefly proposals on some other categories of weapons. All working papers submitted in the Working Group, (CDDH/IV/GT/1 to 7) are appended to this report (see appendix II). The Group decided at the suggestion of the Chairman that it would not be useful for it to take up the question of "follow-up" since related topics were at the time the subject of active negotiation elsewhere in the Conference. It was understood that delegations would have an opportunity of making points on that subject later in the Ad Hoc Committee.

4. At the first meeting of the Group it was agreed that its proceedings should be as flexible and pragmatic as possible and that smaller groups should be established if desirable. The only smaller group to meet informally was that on the question of mines. Its work is discussed below.

5. The functions and purpose of the Group in accordance with its terms of reference were the subject of some comment. There was no dissent from the Chairman's view that the aim of defining the areas of agreement or disagreement with respect to each particular set of proposals did not mean that it would be sufficient simply to record initial positions. On the contrary, common positions should be sought as far as possible. But where there were plainly irreconcilable positions the Group could only record disagreement.

6. Some delegations stressed that the Group had no mandate to negotiate texts and, in particular, no mandate to negotiate a further Protocol to the Geneva Conventions of 1949. Other delegations said that those points were not in dispute. They nevertheless urged the Group to make as much progress as possible in finding where areas of agreement lay.

CONVENTIONAL WEAPONS

Fragments non-detectable by X-ray

7. The Group began by discussing this subject since there was only one proposal, that by Austria, Colombia, Denmark, Mexico, Norway, Spain, Sweden, Switzerland and Yugoslavia (CDDH/IV/210 and Add.1 and 2), and in previous discussions this proposal had been found to command widespread agreement. The proposal is appended to this report (see appendix I).

8. In a brief introduction one of the co-sponsors of the proposal said that the reasoning behind it had been explained in depth at the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in 1976, where it was first introduced, and in the Ad Hoc Committee at the third session of the Diplomatic Conference. Fragments of the kind mentioned in the proposal caused unnecessary suffering since they could not be extracted from the human body except with great difficulty and delay because they were not detectable by the usual medical method of X-rays. The proposal did not seek to prohibit the use, for instance, of plastic casing for mines or shells unless the primary effect was to injure by the fragments of such casing rather than by the blast effect of the weapons.

9. In a brief discussion many delegations expressed their support of the proposal as simple, understandable and of real humanitarian value. Some initial doubts were expressed on the question of primary effects. The co-sponsors of the proposal, however, explained again that they were not concerned with components in some weapons which might as an incidental effect of the use of such weapons enter the human body and be undetectable by X-ray. They were concerned only with those weapons which were designed to injure by such fragments. Those who had expressed doubts said that they were satisfied with that explanation.

10. The Working Group was unanimous in finding an area of agreement on the proposal.

Mines and booby-traps

11. At its first reading of this category of weapons the Group gave consideration, in depth and in parallel, to two proposals. They were a proposal co-sponsored by Denmark, France, Netherlands and the United Kingdom of Great Britain and Northern Ireland (CDDH/IV/213 and Add.1 and 2), first submitted at the third session, and a proposal co-sponsored by Austria, Mexico, Sweden, Switzerland and Yugoslavia (CDDH/IV/222 and Add.1) introduced in the Ad Hoc Committee at the thirty-eighth meeting (CDDH/IV/SR.38) on 5 May 1977. The latter proposal replaced, so far as its co-sponsors were concerned, the proposals in documents CDDH/IV/201 and Corr.2 and Add.1 to 9, CDDH/IV/209 and CDDH/IV/211 and Corr.1, which had been considered by the Ad Hoc Committee at previous sessions.

12. It was early established that the recommendation of the Group was that the co-sponsors of the two main proposals should meet informally with any other interested delegations to seek to produce a common text if at all possible. An informal group of that kind met four times under the chairmanship of the Rapporteur and succeeded in producing a common text, although as it was not possible to reach complete agreement the text included some square bracketed language. The resulting text was put before the Group in working paper CDDH/IV/GT/4 and Corr.3, co-sponsored by Austria, Denmark, France, Mexico, Netherland, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland. That working paper rather than documents CDDH/IV/213 and Add.1 and 2 or CDDH/IV/222 and Add.1, became the subject of the comments of delegations in the Working Group's second consideration of that category of weapons.

13. While all delegations welcomed the effort at reaching a common position made by the co-sponsors and recognized it as valuable progress, several delegations stressed that they were not yet able to consider the text as being fully acceptable. Numerous delegations, including some of those which had co-sponsored working paper CDDH/IV/GT/4 and Corr.3, wished to have their specific reservations and doubts on particular points recorded, and they are so recorded below. Nevertheless, it was recognized that a wide measure of agreement existed on the proposals in CDDH/IV/GT/4 and Corr.3, subject to the specific reservations mentioned, and it was considered by the Group to be a good basis for future work.

14. It is convenient to record the comments of delegations on the question of mines and booby-traps in relation to the text of the proposals in working paper CDDH/IV/GT/4 and Corr.3. The headings which follow are those of that working paper. The term "booby-trap" is used sometimes (as in the title of this section, which is taken from the terms of reference of the Working Group) as shorthand. It should, however, be noted that no satisfactory translation of that English term exists in other languages and the proposals considered therefore use the term "explosive and non-explosive devices".

(a) Scope of application

15. It was generally agreed that scope of application should be treated separately from definitions, in response to a suggestion by a member of the Group. The Working Group also agreed that it would only address the question of the use of mines and other devices in land warfare and that it would not for the present address the question of their use in warfare at sea. Most delegations shared the view that the use of underwater mines in land warfare, i.e. in inland waters, should to some extent be covered. There were, however, specific reservations and disagreements as to whether and to what extent the proposals should attempt to regulate the use of anti-ship mines in inland waterways. One representative raised the difficulty of floating mines in inland waterways, which he considered should be prohibited. Another found the text ambiguous in relation to the use of anti-ship mines, and considered it should be rephrased so as clearly to exclude them from the scope of application.

(b) Definitions

16. The proposal in working paper CDDH/IV/213 and Add.1 and 2 contained numerous definitions of the terms used therein, particularly "mines", "remotely delivered mines", "military objective", etc. Proposal CDDH/IV/222 and Add.1 did not.

There was discussion in the Group on whether definitions were necessary or desirable. Most speakers considered that definitions were useful. The co-sponsors of document CDDH/IV/222 and Add.1, while reiterating their view that most of the terms in question did have a well-settled meaning, were willing to accept that there could be advantage in having definitions. The more important of those definitions, which apply to all the proposals in working paper CDDH/IV/GT/4 and Corr.3, are collected in proposal 2 of that paper.

17. In paragraph (1) the words "explosive or incendiary" were placed in square brackets at the request of one of the co-sponsors of working paper CDDH/IV/GT/4 and Corr.3. The same representative said that he would like to see all incendiary devices dealt with and considered within the context of incendiary weapons. Several other delegations stated that they would have preferred to see the square brackets round those words deleted. Whether or not another more comprehensive proposal on incendiary weapons might in the future be adopted, it was desirable in any proposal on mines to include all types in common use. It was better to risk covering incendiary mines twice than not covering them at all.

18. One delegation also suggested that the words "direct action" should be deleted since it could refer to a device detonated by remote control. Those devices were treated elsewhere in the proposal.

19. Paragraph (2) of the proposal defines "explosive and non-explosive devices", the term used in preference to "booby-trap" for the reasons given in paragraph 14 above. It was recognized that the longer phrase has its difficulties but no better alternative could be produced at that stage.

20. Several speakers commented on the range of 1,000 metres in the definition of "remotely delivered mines" in paragraph (3). They considered it was arbitrary and difficult to understand. One of the co-sponsors explained that it was chosen in order to exclude from the definition of remotely delivered mines those emplaced by short-range devices which approximated to manual emplacement in their accuracy and other characteristics. It was agreed that that was a point requiring further study.

21. In relation to the definition of "military objective" in paragraph 2(4) it was noted that the definition was identical to that in Article 47 of Protocol I. The Group agreed that the same interpretation should be given to the definition as was given to it in the summary records of Committee III and the report of its Rapporteur (CDDH/407/Rev.1).

(c) Recording of the location of minefields or other devices

22. There was general agreement that it was of considerable humanitarian importance that the locations of minefields and of other devices should be recorded so that they could be made public at a suitable time in order to reduce the dangers from the material remnants of war to the civilian population. Several speakers commented on the high casualties which had occurred and were still occurring in their countries from the explosion of mines and other devices dating from the Second World War the location of which had either not been recorded or at any rate not communicated. There were few comments on paragraphs 1 and 2 of the proposal although one representative wondered if the "shall endeavour" formula in paragraph 2 might be strengthened.

23. There were more comments on the question of making public recorded minefields and the location of other devices (paragraph 3). One delegation stressed particularly that it was not able to accept that the location of such minefields and devices in territory controlled by an adverse Party should be made public since, particularly in the case of occupied territory, it could not be said that hostilities would not reopen. There was a natural desire on the part of a country to recover national territory that had been occupied and for that purpose it could not, for national security reasons, reveal the whereabouts of minefields laid by it in that territory.

24. Other delegations considered that the time specified in paragraph 3 for the publication of such records - "after the cessation of active hostilities" - meant effectively that the war would be completely over. It was the time specified in Article 118 of the third Geneva Convention of 1949 for the release and repatriation of prisoners of war. Since all combatants would then be returning to their homes and fields the location of any mines or other devices laid there should be made known. Those delegations also considered that it would be of no military advantage to a State which had had part of its territory occupied to refuse to disclose the location of minefields it had laid therein and so endanger its own nationals.

25. One delegation suggested that it might be more appropriate to have an obligation to communicate the records to the competent authorities rather than the vague obligation to make them public.

(d) Restrictions on the use of remotely delivered mines

26. This proposal in document CDDH/IV/GT/4 and Corr.3, represents an amalgam of the proposals on remotely delivered mines (RDMs) in proposals CDDH/IV/213 and Add.1 and 2 and CDDH/IV/222 and Add.1. Like them it prohibits the use of RDMs, subject to exceptions.

The first is where a neutralizing mechanism is used. The general definition of "neutralizing mechanism" is taken from document CDDH/IV/213 and Add.1 and 2. Several delegations found difficulty in the alternative in CDDH/IV/222 and Add.1 of specifying a time limit within which such a mechanism must operate. Others would still have preferred that course, if general agreement on such a time limit could be reached. The second alternative exception of marking, which was found only in proposal CDDH/IV/213 and Add.1 and 2, is also included, expanded so as to indicate the reason for marking, i.e. to warn the civilian population. Doubts were expressed on its technical feasibility, but it was thought that, if feasible, it would be a satisfactory alternative to the use of neutralizing mechanisms. If not feasible, RDMS could only be used if they contained such mechanisms.

27. Both exceptions were, however, made subject to the restriction that the use must be in an area containing military objectives. That term was chosen in preference to the term "combat zone" used in proposal CDDH/IV/222 and Add.1 so as to include also airfields and other rear area targets.

28. The proposal in working paper CDDH/IV/GT/4 and Corr.3 was the subject of more reservations than most. One delegation said it would prefer to prohibit the use of RDMS altogether. It pointed out that the technical reliability of neutralizing mechanisms had been seriously questioned at the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano in 1976. Another delegation was unclear as to the meaning of remote control in this context and considered further study was necessary. The same delegation also pointed out that military objectives could move about, e.g. tank columns, and questioned whether the restriction in the last sentence was capable of meeting that difficulty. Other delegations supported the text and drew attention to the meaning of "military objective" as established by Committee III. They considered that mining the path of a tank column was clearly covered.

29. A number of delegations stressed that the use of RDMS was still a very novel military concept and the formulations chosen might have to be changed when their practical characteristics and tactical uses were better known.

(e) Restrictions on the use of mines and other devices in populated areas

30. The comments on this proposal related almost entirely to the words "anti-tank" which are in square brackets in the first paragraph. One of the co-sponsors of CDDH/IV/GT/4 and Corr.3, supported by other delegations, said it was their position that RDMS should not be excluded from the ambit of this proposal.

They had, as a compromise, suggested the exclusion of anti-tank RDMS, with the result that the proposal would continue to apply to anti-personnel RDMS. Other delegations said that they, on the contrary, wished to delete the words "anti-tank", and so exclude RDMS altogether from the ambit of this restriction. They considered that their use was already sufficiently regulated by the proposal in paragraph 4.

31. In relation to paragraph (2) one delegation considered that it was unrealistic to ask for "effective" precautions and suggested instead "to the maximum extent feasible".

(f) Prohibitions on the use of certain explosive and non-explosive devices

32. One representative suggested that this was perhaps the most humanitarian and generally acceptable part of the paper. There was no dissent from that view. He questioned, however, whether the objects in paragraph 1(a) covered remotely delivered objects of that type. One of the co-sponsors confirmed that that was so; the manner of delivery was immaterial in that proposal.

33. One delegation expressed reservations on the proposal in paragraph 1(b). The proposal had been placed in square brackets because certain of the co-sponsors considered that it was unnecessary and should be deleted while others wished to retain it. The same delegation suggested a redraft which would combine paragraphs 1(a) and (b). Another delegation suggested that it was important to avoid casting doubt on the strength of the rule in Article 23(e) of The Hague Regulations annexed to The Hague Convention No. IV concerning the Laws and Customs of War on Land, which paragraph 1(b) was intended to reiterate in a more detailed fashion.

34. In relation to the list in paragraph 2 the words "food and drink" had been placed in square brackets because some of the co-sponsors of CDDH/IV/GT/4 and Corr.3 were not convinced that such a general restriction could be accepted. It might be acceptable to them if an exception for military supplies were included.

Incendiaries

35. The Chairman described briefly the six main proposals before the Working Group. These were: CDDH/IV/217 sponsored by Mexico, CDDH/IV/Inf.220 co-sponsored by Afghanistan, Algeria, Austria, Egypt, Iran, Ivory Coast, Kuwait, Lebanon, Lesotho, Mali, Mauritania, Mexico, Norway, Romania, Sudan, Sweden, Switzerland, Tunisia, United Republic of Tanzania, Venezuela, Yugoslavia and

Zaire; CDDH/IV/223 sponsored by Indonesia; CDDH/IV/207 sponsored by Norway; CDDH/IV/208 sponsored by Sweden; and CDDH/IV/206/Rev.1 co-sponsored by Australia, Denmark and the Netherlands, which replaced CDDH/IV/206 and Add.1 and 2.

36. One delegation, one of the sponsors of a document which would provide for a complete ban on all incendiary weapons (CDDH/IV/201 and Corr.2 and Add.1 to 9), strongly urged that the Group should be working towards such a ban; the Fifth Conference of Heads of State or Government of the Non-Aligned Countries, held at Colombo in 1976, had endorsed that approach, as had the United Nations General Assembly in its consensus resolution 31/19. In the opinion of that delegation, the medical reasons as described at the Conference of Government Experts held at Lugano in 1976, were compelling.

37. The delegation in question had also, without prejudice to that position, submitted a proposal to ban the use of one category only - flame weapons (CDDH/IV/208). Here also it was a complete ban. The difficulty of approaching the problem by the technique of partial restrictions (as provided for in working paper CDDH/IV/206/Rev.1 and proposal CDDH/IV/207) was that it was too easy for such restrictions to break down under the strain of battle. It preferred to those approaches the proposal embodied in working paper CDDH/IV/208, which effectively ruled out anti-personnel use of those munitions. It drew attention also to the difference of definition of flame weapons as between working paper CDDH/IV/206/Rev.1 and working paper CDDH/IV/208. The latter, by concentrating on the mode of action of the weapon, rather than its active ingredient, was more comprehensive and preferable.

38. Another delegation spoke in support of the approach embodied in working paper CDDH/IV/206/Rev.1 of which it was a sponsor. A total ban was unrealistic in present conditions and unacceptable to many States. The approach advocated by his delegation, which had been modified at the current session in certain respects, offered a real measure of protection to civilians from flame weapons in time of war.

39. A number of delegations spoke in support of each of the different basic approaches mentioned in the two preceding paragraphs: a total ban on the one hand against partial restrictions on the other.

40. Another representative who had submitted proposal CDDH/IV/223, pointed to the important distinction between his proposal and that embodied in working paper CDDH/IV/206/Rev.1. His own proposal shared with that paper the proposal that the use of flame weapons should be allowed against military matériel, but in his proposal

this use was limited to military matériel situated outside civilian areas. His delegation did not believe that incendiaries should be used at all in cities or towns since fire inevitably spreads and cannot be contained. Another delegation supported that view. A co-sponsor of working paper CDDH/IV/206/Rev.1, in reply, said that they feared that a ban of any attack on military objectives in populated areas could lead to the deliberate siting of such objectives in such areas to shield them. The first-mentioned representative replied that such objectives could be attacked with other types of weapons, and that under Protocol I States would be enjoined, to the maximum extent feasible, to avoid siting such objectives in populated areas.

41. Another delegation made it clear that it was not prepared to discuss any proposal which was cast in the form of a protocol, or assumed the adoption of a protocol on weapons restrictions during the current Conference.

42. While there was general agreement that working paper CDDH/IV/206/Rev.1 did not go too far, a number of delegations believed that it did not go far enough. It was generally agreed, however, that it offered a useful basis for further discussion.

43. Two delegations offered a further amendment to working paper CDDH/IV/206/Rev.1, contained in proposal CDDH/IV/GT/7, which proposed the substitution of the words "combat area" for the passage in rule 2(c) reading "area in which combat between ground forces is taking place or appears to be imminent". They pointed out that the inclusion of the words "appears to be imminent" gave an advantage to the aggressor in the use of flame weapons. They further pointed out that the term "combat area" had been defined in a report of a mixed group of Committees II and III (CDDH/II/226 - CDDH/III/255) of 18 March 1975. This was criticized by one delegation which observed that the phrase "combat area" had already been rejected in another context as being too imprecise. Other delegations thought the substitution might be helpful, but required further study.

44. Various ideas for making progress were explored, including the setting up of a small working group, in order to try to reconcile the differences between the various proposals. There was, however, insufficient support for those suggestions.

45. One delegation, summing up its impressions of the discussions on the subject, regretted that there had not been more debate. Speaking as representative of a group of delegations which favoured comprehensive bans, it considered that it should have been possible to discuss the subject analytically and thoroughly, drawing on all

the various proposals advanced. Those proposals were valuable and, in the view of the group of delegations, offered hope that further and fuller study of those matters could produce useful results. They should all be taken into account as a useful basis for any further discussion.

OTHER CATEGORIES OF CONVENTIONAL WEAPONS

46. Two delegations introduced a proposal containing elements of a prohibition on fuel-air explosives (FAEs) (working paper CDDH/IV/GT/5). In submitting that document it was explained that there had been no essential change in position since those delegations had advanced a similar proposal at the third session of the Diplomatic Conference (see working paper CDDH/IV/215). These delegations considered that the weapon was objectionable because it produced one of the most atrocious forms of death, and that, moreover, the probability of death occurring to anyone involved in the vapour cloud was close to 100 per cent. They stated that preliminary results of recent experiments carried out with animals had tended to show the grave consequences of the use of those explosives. In a brief discussion that proposal received support from another delegation.

47. On the other hand, another delegation argued that the facts did not justify a prohibition or restriction on the above weapon. It had already presented counter-arguments elsewhere and might do so again in the Ad Hoc Committee. In the meantime the delegation concerned could not accept the proposal.

48. A working paper on small-calibre arms was submitted in the Working Group by one delegation (CDDH/IV/GT/6) (see appendix II). Another delegation indicated that it disagreed with that proposal.

APPENDICES

APPENDIX I

PROPOSAL BY AUSTRIA, COLOMBIA, DENMARK, MEXICO,
NORWAY, SPAIN, SWEDEN, SWITZERLAND, AND YUGOSLAVIA*

Draft article ...

Non-detectable fragments

It is prohibited to use any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.

* Submitted under symbol CDDH/IV/210 and Add.1 and 2 to the Ad Hoc Committee at the third session of the Conference.

APPENDIX II

WORKING GROUP DOCUMENTS CDDH/IV/GT/1 - CDDH/IV/GT/7

WORKING GROUP DOCUMENT CDDH/IV/GT/1

Article 1 - Definition of "mine"

For the purpose of these proposals, the word "mine" shall be understood to mean any explosive device placed on or below the ground, or covered by any other type of surface, including liquids, with the aim of causing an explosion through the direct action or proximity of a person or vehicle. This definition does not cover mines used in naval warfare.

WORKING GROUP DOCUMENT CDDH/IV/GT/2/REV.1

PROPOSAL SUBMITTED BY AUSTRIA, MEXICO, NETHERLANDS,
SPAIN, SWEDEN, SWITZERLAND, AND UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND

Scope of application

1. These proposals relate to the use in armed conflict on land of the mines and other devices defined therein. They do not apply to the use of anti-ship mines at sea or in inland waterways, but do apply to beach mines and mines laid to interdict waterway or river crossings.

Definition of "mine"

2. For the purpose of these proposals, "mine" means an / explosive or incendiary / munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the direct action, presence or proximity of a person or vehicle.

WORKING GROUP DOCUMENT CDDH/IV/GT/3

WORKING PAPER ON FLAME WEAPONS SUBMITTED BY SWEDEN

Possible elements of a prohibition of the use of incendiary weapons

1. Flame weapons shall be prohibited for use in all circumstances.

This prohibition shall apply to the use of any munition which is primarily designed to cause burn injury to persons or to set fire to objects through the action of flame produced by a chemical reaction of a substance dispersed over the target. Such munitions include flame-throwers, napalm bombs, white phosphorus grenades and other kinds of munitions containing scatter-type agents.

2. Munitions which may have secondary or incidental incendiary effects, such as illuminants, tracers, smoke, or signalling systems are not prohibited for the specific uses for which they are designed. Nor are those munitions prohibited for use which for their principal effect rely upon fragmentation, penetration or blast and which have, in addition, an incendiary effect.

WORKING GROUP DOCUMENT CDDH/IV/GT/4*

PROPOSAL SUBMITTED BY AUSTRIA, DENMARK, FRANCE, MEXICO,
NETHERLANDS, SPAIN, SWEDEN, SWITZERLAND, AND THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

1. Scope of application

These proposals relate to the use in armed conflict on land of the mines and other devices defined therein. They do not apply to the use of anti-ship mines at sea or in inland waterways, but do apply to mines laid to interdict beaches, waterway crossings or river crossings.

2. Definitions

For the purpose of these proposals:

- (a) "mine" means an /explosive or incendiary /munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the direct action, presence or proximity of a person or vehicle;
- (b) "explosive and non-explosive devices" mean manually-emplaced devices which are specifically designed and constructed to kill or injure when a person disturbs or approaches an apparently harmless object or performs an apparently safe act;
- (c) "remotely delivered mine" means any mine delivered by artillery, rocket, mortar or similar means at a range of over 1,000 metres or dropped from an aircraft;
- (d) "military objective" means, so far as objects are concerned, any object which by its own nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation in the circumstances ruling at the time, offers a definite military advantage.

* Incorporating document CDDH/IV/GT/4/Corr.3

3. Recording of the location of minefields and other devices

- (1) The Parties to a conflict shall record the location of:
 - (a) all pre-planned minefields laid by them; and
 - (b) all areas in which they have made large-scale and pre-planned use of explosive or non-explosive devices.
- (2) The Parties shall endeavour to ensure the recording of the location of all other minefields, mines and explosive and non-explosive devices which they have laid or placed in position.
- (3) All such records shall be retained by the Parties and the location of all recorded minefields, mines and explosive or non-explosive devices remaining in territory controlled by an adverse Party shall be made public after the cessation of active hostilities.

4. Restrictions on the use of remotely delivered mines

The use of remotely delivered mines is prohibited unless:

- (a) each such mine is fitted with an effective neutralizing mechanism, that is to say a self-actuating or remotely controlled mechanism which is designed to render a mine harmless or cause it to destroy itself when it is anticipated that the mine will no longer serve the military purpose for which it was placed in position:

or
- (b) the area in which they are delivered is marked in some definite manner in order to warn the civilian population,

and, in either case, they are only used within an area containing military objectives.

5. Restrictions on the use of mines and other devices in populated areas

- (1) This proposal applied to mines (other than remotely delivered / anti-tank / mines), explosive and non-explosive devices, and other manually-emplaced munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time.

(2) It is prohibited to use any object to which this proposal applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:

(a) they are placed on or in the close vicinity of a military objective belonging to or under the control of an adverse Party; or

(b) effective precautions are taken to protect civilians from their effects.

6. Prohibitions on the use of certain explosive and non-explosive devices

(1) It is prohibited in any circumstances to use:

(a) any apparently harmless portable object which is specifically designed and constructed to contain explosive material and to detonate when it is disturbed or approached; / or

(b) any non-explosive device or any material which is designed to kill or cause serious injury in circumstances involving superfluous injury or unnecessary suffering, for example by stabbing, impaling, crushing, strangling, infecting or poisoning the victim and which functions when a person disturbs or approaches an apparently harmless object or performs an apparently safe act /.

(2) It is prohibited in any circumstances to use explosive and non-explosive devices which are in any way attached to or associated with:

(a) internationally recognized protective emblems, signs or signals;

(b) sick, wounded or dead persons;

(c) burial or cremation sites or graves;

(d) medical facilities, medical equipment, medical supplies or medical transport;

(e) children's toys;

/ (f) food and drink; / or

(g) objects clearly of a religious nature.

WORKING GROUP DOCUMENT CDDH/IV/GT/5

WORKING PAPER ON FUEL-AIR EXPLOSIVES SUBMITTED BY
SWEDEN AND SWITZERLAND

Possible elements of a prohibition on
fuel-air explosives

Aware of the continuous development of new types of blast weapons, in particular of fuel-air explosives,

Anxious to prevent the use of weapons in a manner which may cause unnecessary suffering to combatants or render their death inevitable,

States should agree to abstain from the use of munitions which rely for their effects on shock waves caused by the detonation of a cloud created by a substance spread in the air, except when the aim is exclusively to destroy material objects, such as the clearance of minefields.

WORKING GROUP DOCUMENT CDDH/IV/GT/6

WORKING PAPER ON SMALL-CALIBRE PROJECTILES
SUBMITTED BY SWEDEN

States should undertake:

- (a) to abstain from developing and producing projectiles for small arms causing more severe injuries than bullets of the currently most common calibre of 7.62 mm; and in that respect especially;
- (b) to avoid bullets which tumble easily, deform or break up when penetrating a human body, or bullets with excessive velocities;
- (c) to continue research and testing, both on a national and international basis, in the field of wound ballistics;
- (d) to continue the work aiming at a future agreement prohibiting the use of small calibre projectiles which may cause superfluous injury in armed conflicts, taking into account the proposals to and the work carried out by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and by the expert conferences of the International Committee of the Red Cross.

WORKING GROUP DOCUMENT CDDH/IV/GT/7

AMENDMENT TO WORKING PAPER CDDH/IV/206/Rev.1
SUBMITTED BY CANADA AND THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND

Amend working paper CDDH/IV/206/Rev.1, dated 27 April 1977,
as follows:

Para.2 (c) last three lines: delete "area in which combat
between ground forces is taking place or appears
to be imminent".

and

substitute therefor "combat area".*

* "Combat area" is defined in a Mixed Group report
(CDDH/II/266 - CDDH/III/255), dated 18 March 1975.

Part Three

COMPARATIVE TABLE OF PROPOSALS AND LIST OF
INFORMATION DOCUMENTS

AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

COMPARATIVE TABLE OF PROPOSALS
AND LIST OF INFORMATION DOCUMENTS

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Explanatory Note

This document replaces and completes document CDDH/IV/218 dated 7 June 1976.

It includes three types of document:

- (a) proposals introduced in the Committee of the Whole;
- (b) working papers introduced in the Working Group of the Ad Hoc Committee set up at the fourth session of the CDDH;
- (c) references to information documents introduced in the Committee of the Whole and relating to the different categories of weapons considered.

To make this document easier to read, the symbols of proposals and working or information documents are all given in the left-hand column, together with the list of sponsors and explanatory notes. The right-hand column contains the texts of proposals or documents, and a list of references to documents where these are mentioned.

(a) NAPALM AND OTHER INCENDIARY WEAPONS

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INCENDIARY WEAPONS

CDDH/IV/201

AFGHANISTAN, ALGERIA, AUSTRIA, COLOMBIA, EGYPT, KUWAIT, LEBANON, MALI, MAURITANIA, MEXICO, NORWAY, SUDAN, SWEDEN, SWITZERLAND, VENEZUELA, YUGOSLAVIA

CDDH/IV/201 (I)

Incendiary weapons

Incendiary weapons shall be prohibited for use.

A. This prohibition shall apply to:

the use of any munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame and/or heat produced by a chemical reaction of a substance delivered on the target. Such munitions include flame-throwers, incendiary shells, rockets, grenades, mines and bombs.

B. This prohibition shall not apply to:

1. Munitions which may have secondary or incidental incendiary effect, such as illuminants, tracers, smoke, or signalling systems.
2. Incendiary munitions which are designed and used specifically for defence against aircraft or armoured vehicles.*

* The Mexican Government is in favour of eliminating the second exception in order that the prohibition of incendiary munition be total. The Yugoslav Government would prefer that the second exception be formulated somewhat more broadly.

Explanatory Memorandum

(see end of document)

Incendiary weapons

Recent international debate, particularly following publication of the United Nations Report on Napalm and other Incendiary weapons, shows that there exists a widely spread wish to examine the possibility of explicit bans on the use of incendiary weapons. The Report mentioned and other available evidence indicate clearly that the use of these weapons must be deemed to cause unnecessary suffering. Severe wounds inflicted by incendiary weapons are exceptionally frightening and painful, difficult to treat and likely to result in death or permanent deformities and disabilities. Toxic and asphyxiating effects also occur. Although a distinction is sometimes made as regards incendiary weapons, between larger area weapons and weapons of smaller calibre, it remains true nevertheless that due to their construction all these weapons may be indiscriminate in their effects. Fire is susceptible of

spreading. In some situations this risk may be limited, e.g. where smaller calibre weapons with a combined explosive and incendiary effect are used against aircraft or armoured vehicles.

There is an important body of opinion which maintains that the military value of incendiary weapons is rather low. The effects seem to be the greatest where the use is most questionable, namely, against residential areas and against unprotected persons. It is immaterial that the current military planning of many states may not envisage the use of incendiary weapons against cities. In the absence of a legal prohibition of such use current planning could evidently be changed at any moment to comprise attacks with incendiaries on cities or other densely populated areas.

It is not doubted that certain uses of some incendiary weapons may have specific military value. This has been argued as regards the use of incendiary bombs in close air support to friendly forces. It must be noticed, however, that such use of incendiary weapons may, in fact, cause injuries involving excessive suffering. Moreover, to except from a ban such methods of using some incendiary weapons might seriously reduce the reliability of the ban. With continued production and extensive deployment of the weapons in question, abuses of the permitted exceptional use might easily lead to controversies and to a breakdown of the rule.

Report - Lugano p. 198

CDDH/IV/SR.8	p. 17	Mr. Blix (Sweden)
	18	Mr. Abada (Algeria)
	19	Mr. Gozze-Gucetic (Yugoslavia)
CDDH/IV/SR.9	p. 23	Mr. Kusbach (Austria)
	24	Mr. Oka (Japan)
	25	Mr. Blix (Sweden)
CDDH/IV/SR.10	p. 32	Mr. Ofstad (Norway)
	36	Mr. Anemaet (Netherlands)
	36	Mr. Bettauer (United States)
	38	Mr. Caceres (Mexico)
	40	Mr. Eichin (Switzerland)
	41	Mr. Blishchenko (USSR)
	42	Mr. Zafera (Madagascar)
CDDH/IV/SR.11	p. 46	Mr. El Mehdi (Mauritania)
	49	Mr. Blix (Sweden)
CDDH/IV/SR.14	p. 72	Mr. Linares Silva (Colombia)
	77	Mr. Uspensky (USSR)
CDDH/IV/SR.15	p. 85	Mr. Anderson (United States)
CDDH/IV/SR.16	p. 98	Mr. Martin Herrero (Spain)
CDDH/IV/SR.17	p.107	Mr. Hagi (Japan)
CDDH/IV/SR.18	p.113	Mr. Todoric (Yugoslavia)
CDDH/IV/SR.24		Mr. Kalshoven (Netherlands)
		Mr. Oestern (Norway)
		Mr. van der Klaauw (Netherlands)

The draft proposal of 1974 was modelled upon a provision in a draft disarmament convention submitted in 1933 by Great Britain. During the 1974 Lucerne conference of government experts there was almost complete unanimity upon a definition of incendiary weapons. This definition excluded munitions which may have secondary or incidental incendiary effect, such as illuminants, tracers, smoke and signalling systems. (This category of munitions had been excluded from the ban proposed in 1974.) Most of the experts in Lucerne wished to include under incendiary munitions those which combine their incendiary effect with other destructive effects (e.g. shaped charge effect), and which are designed and used specifically for armour piercing and defence against aircraft. (This category of weapons which does not include incendiary bombs was proposed in the 1974 working paper to remain outside the proposed ban.) The revised proposal now submitted is not intended to be different in substance from the draft tabled in 1974 but merely to build upon the definition which emerged in Lucerne.

One final comment may be offered. The draft rule now submitted is one that would prohibit the use of most incendiary weapons in all circumstances. No method of using the weapons falling under the ban would remain permitted.

CDDH/IV/SR.25

Mr. Akram (Afghanistan)
Mr. Blix (Sweden)

CDDH/IV/SR.26

Mr. Davinić (Yugoslavia)
Mr. Kussbach (Austria)

CDDH/IV/SR.27

Mr. Blix (Sweden)

CDDH/IV/SR.36

Mr. de Icaza (Mexico)

CDDH/IV/SR.40

Mr. Akram (Afghanistan)
Mr. Todoric (Yugoslavia)

CDDH/IV/SR.41

Mr. Abou Ali (Egypt)

CDDH/IV/SR.42

Mr. de Graffenried (Switzerland)

Report Committee IV, 1975

Report Committee IV, 1976

It is submitted that this is a much safer construction of the rule than one which would except from the ban certain uses, as regards which there might be a reluctance to accept a ban. Such a limited ban on use should be more susceptible of breaking down than a ban which is complete and which would not justify any deployment of the weapons in question. Moreover, complete bans on use evidently constitute much better points of departure for subsequent efforts at the disarmament level for the elimination of production, stockpiling and dissemination of the weapon, than do bans on certain uses, which still justify production for other than merely retaliatory purposes.

CDDH/IV/Inf.220

AFGHANISTAN, ALGERIA, AUSTRIA, EGYPT, IRAN, IVORY COAST, KUWAIT, LEBANON, LESOTHO, MALI, MAURITANIA, MEXICO, NORWAY, ROMANIA, SUDAN, SWEDEN, SWITZERLAND, TUNISIA, UNITED REPUBLIC OF TANZANIA, VENEZUELA, YUGOSLAVIA, ZAIRE

The text of the modified proposal reads as follows:

Article ... Incendiary weapons

- 1. Incendiary weapons shall be prohibited for use.
- 2. This provision shall apply to:

Red Cross

The delegations of Algeria, Austria, Egypt, Iran, Ivory Coast, Lebanon, Lesotho, Mali, Mauritania, Mexico, Norway, Romania, Sudan, Sweden, Switzerland, Tunisia, United Republic of Tanzania, Venezuela, Yugoslavia and Zaire, attending the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in armed Conflicts, would like to inform you that, after further examination of the proposal relating to incendiary weapons included in the working paper contained in document CDDH/IV/201 of 7 February 1975, they have agreed upon a modified text, which they are ready to advance for inclusion in an international instrument relating to the prohibition or restriction in the use of certain conventional weapons.

the use of any munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame and/or heat produced by a chemical reaction of a substance delivered on the target. Such munitions include flame-throwers, incendiary shells, rockets, grenades, mines and bombs.

- 3. This prohibition shall not apply to:
 - (a) munitions which may have secondary or incidental incendiary effects, such as illuminants, tracers, smoke or signalling systems;

It is assumed that the preamble of an international instrument relating to the prohibition or restriction in the use of certain conventional weapons might contain references to the Charter of the United Nations and other relevant instruments, notably to the duty of States, in accordance with article 2(4) of the United Nations Charter, to refrain in their international relations from the threat or use of force, and to the inherent right of individual or collective self-defence in accordance with Article 51 of the Charter.

... (see amended text in the opposite column)...

The International Committee of the Red Cross is kindly requested at its early convenience to acquaint all those invited to the forthcoming second session of the Conference of Government Experts on the Use of Certain Conventional Weapons of the above by circulating copies of this letter to them and to ensure that it be included in the documentation submitted to the Conference.

I have been authorized by the delegations enumerated at the outset to communicate this letter to you on their behalf.

Stockholm, 15 May 1975

Hans Blix
Head of the Swedish Delegation

(b) munitions which combine incendiary effects with penetration or fragmentation effects and which are specifically designed for use against aircraft, armoured vehicles and similar targets.

The Government of Mexico continues to be in favour of eliminating the exception contained in sub-paragraph 3(b) in order that the prohibition of incendiary munition be total.

Report - Lugano p. 206-207

CDDH/IV/SR.24 Mr. Oestern (Norway)

CDDH/IV/SR.25 Mr. Gozze-Gučetić (Yugoslavia)

Mr. Akram (Afghanistan)

Mr. Blix (Sweden)

CDDH/IV/SR.26 Mr. Davinić (Yugoslavia)

Mr. Klein (Holy See)

Mr. Kussbach (Austria)

Mr. de Graffenried (Switzerland)

Mr. Cretu (Romania)

Mr. Shaaban (Egypt)

CDDH/IV/SR.27 Mr. Blix (Sweden)

CDDH/IV/SR.28 Mr. Taylor (United Kingdom)

CDDH/IV/SR.40 Mr. Akram (Afghanistan)

Mr. Todoric (Yugoslavia)

CDDH/IV/SR.42 Mr. de Graffenried (Switzerland)

Report Committee IV, 1976

ANNEX

1. In the framework of the search for rules that prohibit or limit the use of means of warfare which tend to cause unnecessary suffering or have indiscriminate effects, certain restrictions on the use of incendiary weapons should be explored.

2. Massive use of incendiary weapons could easily lead to widespread suffering of the civilian population because of the inherent indiscriminate effects of large area bombardments and of the spread of fire as a secondary effect. As a consequence of existing or new rules of international law in armed conflicts, the large scale bombardments of cities (as in the Second World War) will be proscribed. Nevertheless, the Netherlands Government considers it appropriate to supplement the general rules in this field with specific prohibitions of the use of incendiary weapons and more in particular flame munitions, including napalm. A proposal to this effect is attached as an annex to the present working document.

3. Consideration has also been given to possible restrictions with respect to the use of incendiaries on the battlefield. Although most incendiary weapons, like most other weapons for that matter, can be used in an indiscriminate way, it cannot be denied that a number of incendiary weapons lend themselves to a discriminate application in specific military operations. Thus, incendiary weapons should not be treated as one class. In formulating possible prohibitions on use in the battlefield, one should rather focus on specific incendiary weapons and on the specific targets they are being used against.

1. Definitions

(a) An incendiary munition is any munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame and/or heat produced by a chemical reaction of a substance delivered on the target.

(b) A flame munition is any incendiary munition in which the incendiary agent to be delivered on the target is based on a gelled hydrocarbon. Napalm is a flame munition.

2. Rules

(a) As a consequence of the rules of international law applicable with respect to the protection of the civilian population against the effects of hostilities, it is prohibited to make any city, town, village or other area containing a concentration of civilians the object of attack by means of any incendiary munition.

(b) Specific military objectives that are within such an area may be made the object of attack by means of incendiary munitions, provided that the attack is otherwise lawful and that all feasible precautions are taken to limit the incendiary effects to the specific military objectives and to avoid incidental loss of civilian life or injury to civilians.

4. In this connection, the Netherlands delegation has given some thoughts to possible restrictions of the use of napalm, without excluding rules on other specific incendiaries. For humanitarian reasons, restrictions on the use of napalm in the combat theatre, in particular with respect to unprotected personnel in the open, seem appropriate. Military situations exist, however, in which napalm can be used in a highly accurate and discriminate way and whereby the use of alternative weapons would have less discriminate effects and/or cause more suffering to the combatants. Situations could also be envisaged where the military advantages clearly outweigh the arguments against the use of napalm.

In view of the foregoing, one could for instance explore the possibilities for a prohibition of the use of napalm with a limited number of exceptions justified by one or more of the reasons set out above. The exceptions the Netherlands delegation has in mind are the use of napalm in close combat support, against fortified positions (such as bunkers and pill boxes), against military airfields, against armoured targets in an interdiction action and against seaborne attacks on the coastline as long as the attacking forces are in the water or on the beach. It may be borne in mind that in general no civilians will be involved in all those suggested exemptions. The Netherlands delegation would like to underline that it has not yet arrived at any fixed ideas on this subject and that the exemptions cited earlier are no more than an illustration of the present stage of the thought-process of the Netherlands authorities on the battlefield use of napalm.

(c) In order to reduce to a minimum the risks posed to civilians by the use of flame weapons, it is prohibited to make any specific military objective that is within such an area the object of aerial attack by means of napalm or other flame munition unless that objective is located within an area in which combat between ground forces is taking place or is imminent.

Report - Lugano p. 176-181 (COLU/205)
p. 182 (COLU/208)

CDDH/IV/SR.24 Mr. van der Klaauw (Netherlands)

CDDH/IV/SR.25 Mr. de Icaza Gonzalez (Mexico)

CDDH/IV/SR.26 Mr. Davinić (Yugoslavia)

Mr. Kussbach (Austria)

Mr. di Bernardo (Italy)

Mr. Keltanen (Finland)

Mr. Cretu (Romania)

CDDH/IV/SR.27 Mr. Blix (Sweden)

Mr. Oka (Japan)

Mr. Matheson (United States)

CDDH/IV/SR.28

Mr. Ruiz Perez (Mexico)

Mr. Blakeney (Australia)

Mr. van der Klaauw (Netherlands)

Mr. Taylor (United Kingdom)

CDDH/IV/SR.32 Mr. Fröwis (Federal Republic of Germany)

CDDH/IV/SR.33 Mr. Serup (Denmark)

CDDH/IV/SR.39 Mr. Van der Klaauw (Netherlands)

Mr. Chaspuri (Indonesia)

Report Committee IV, 1976

Report Committee IV, 1977

CDDH/IV/206 (Rev.1)

AUSTRALIA, DENMARK, NETHERLANDS

1. Taking into account certain comments made with respect to the proposal on incendiaries as contained in document CDDH/IV/206, a revised proposal is submitted for the consideration of the Conference.
2. The main thrust of the revised proposal is concentrated in rule 2 (c) which prohibits to make a specific military objective situated within a concentration of civilians the object of aerial attack by means of napalm or other flame munition. Derogation from this rule is only permitted if certain specified conditions are met.

3. The term "concentration of civilians" has been put forward as one of the crucial elements of the present proposal. In our opinion such a concentration can easily be recognised because of its physical characteristics. Towns or villages are examples of a concentration of civilians. Other examples displaying a comparable density are camps and columns of refugees or evacuees.

On the other hand, hamlets and rural dwellings are not considered as concentrations of civilians, since these forms of habitation are structured in such a way that they fall beyond what is generally understood under the notion of "concentration".

CDDH/IV/206 (Rev.1)

1. Definitions

- (a) An incendiary munition is any munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame and/or heat produced by a chemical reaction of a substance delivered on the target;
- (b) a flame munition is any incendiary munition in which the incendiary agent to be delivered on the target is based on a gelled hydrocarbon. Napalm is a flame munition.

2. Rules

- (a) As a consequence of the rules of International Law applicable with respect to the protection of the civilian population against the effects of hostilities, it is prohibited to make any concentration of civilians the object of attack by means of any incendiary munition. Concentrations of civilians can either be of a permanent character, such as cities, towns and villages, or of a temporary character, such as camps and columns of refugees or evacuees;
- (b) specific military objectives that are situated within a concentration of civilians may be made the object of attack by means of incendiary munitions, provided that the attack is otherwise lawful and that all feasible precautions are taken to limit the incendiary effects to all specific military objectives and to avoid incidental loss of civilian life or injury to civilians;

(c) in order to reduce to a minimum the risks posed to civilians by the use of flame weapons, it is prohibited to make any specific military objective that is situated within a concentration of civilians the object of aerial attack by means of napalm or other flame munition unless that objective is located within an area in which combat between ground forces is taking place or appears to be imminent.

CDDH/IV/SR.39

Mr. van der Klaauw (Netherlands)
Mr. Blakeney (Australia)
Mr. Chaspuri (Indonesia)
Mr. Ruiz-Perez (Mexico)

CDDH/IV/SR.40

Mr. Taylor (Rapporteur)
Mr. Todorčić (Yugoslavia)
Mr. Fröwis (Fed. Rep. of Germany)
Mr. Akkermann (Netherlands)

CDDH/IV/SR.41

Mr. Blakeney (Australia)
Mr. Skala (Sweden)

CDDH/IV/GT/7

CDDH/IV/GT/7

CANADA, UNITED KINGDOM

Proposal to amend CDDH/IV/206/Rev.1

Para 2 c. last three lines delete "area in which combat between ground forces is taking place or appears to be imminent";

and

substitute therefore "combat area".*

* "Combat area" is defined in Mixed Group Report CDDH/II/266 - CDDH/III/255 dated 18 March 1975.

CDDH/IV/SR.40 Mr. Akkerman (Netherlands)

Report Committee IV, 1977

Report of the Working Group of Committee IV, 1977

DRAFT PROTOCOL RELATIVE TO THE PROHIBITION
OF THE USE OF INCENDIARY WEAPONS

The High Contracting Parties agree as follows:

Article 1 - Field of application

The present Protocol shall apply in the situations referred to in articles 2 and 3 common to the Geneva Conventions of August 12, 1949 for the Protection of War Victims.

Article 2 - Definition

For the purpose of the present Protocol incendiary weapons mean any munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame and/or heat produced by a chemical reaction of a substance delivered on the target. Such munitions include flame-throwers, incendiary shells, rockets, grenades, mines and bombs.

Article 3 - General prohibition

With the further limitations spelled out in the present Protocol and subject to the provisions of Protocol I additional to the Geneva Conventions of 1949, incendiary weapons may only be used against objects that are military objectives in the sense of article 47, paragraph 2 of the said Protocol, including in close support of friendly forces.

The use of incendiary weapons against personnel is prohibited.

Nevertheless, the presence of combatants or civilians within or in the immediate vicinity of legitimate targets as described in this article does not render such targets immune from attacks with incendiary weapons.

Article 4 - Protection of the civilian population

Any use of incendiary weapons is subject to article 46 of Protocol I additional to the Geneva Conventions of 1949.

In any city, town, village or other area containing a concentration of civilians, incendiary weapons may be used only provided that combat between ground forces is taking place in that area, or the military objective is clearly separated from the civilian population.

5
6
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Article 5 - Precaution in attack

Any use of incendiary weapons is subject to article 50 of Protocol I additional to the Geneva Conventions of 1949.

In addition it is prohibited to launch attack with incendiary weapons except when:

- (a) the location of the target is known and properly recognized, and
- (b) all feasible precaution is taken to limit the incendiary effects to the specific military objectives and to avoid incidental injury or incidental loss of lives.

Article 6 - Protection against environmental effects

Before deciding upon the launching of attack with incendiary weapons, special care must be taken to ensure that environmental effects as described in article 48 bis of Protocol I additional to the Geneva Conventions of 1949, will be avoided.

CDDH/IV/SR.24 Mr. Oestern (Norway).

CDDH/IV/SR.25 Mr. de Icaza Gonzales (Mexico)

CDDH/IV/SR.26 Mr. Davinić (Yugoslavia)
Mr. Kussbach (Austria)
Mr. Saleem (Pakistan)
Mr. di Bernardo (Italy)
Mr. Keltanen (Finland)
Mr. Cretu (Romania)

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CDDH/IV/SR.32 Mr. Fröwis (Federal Republic of
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Report - Committee IV, 1976

CDDH/IV/208

SWEDEN

WORKING PAPER ON FLAME WEAPONS

1. This working paper is not meant to substitute, but to supplement the comprehensive proposal for prohibition of use of incendiary weapons as formulated in document RO 610/4b supported by a large number of States. (Annex A.22 of the Lugano Report.) That approach, while obviously not capable of eliminating those burn injuries in war which are not caused by weapons or which are caused indirectly by other weapons than incendiary weapons, is one which would result in a very substantial reduction of burn injuries. Thus, it offers a satisfactory response to the widespread international concern over the use of burn injuries to disable adversaries, a concern based on the awareness that such injuries, if serious, are particularly cruel. In this regard it is immaterial whether they affect soldiers or civilians. The comprehensive approach - as indeed any approach which is not directed merely at insignificant kinds of weapons - will inevitably affect incendiary weapons which are considered to be of value for a variety of military purposes. It has not, however, emerged, from the expert conferences that any such category of weapons should be deemed indispensable. Hence, their prohibition of use ought to be possible, at any rate if it were to take effect in a few years' time and thus to take into account the need for States to have time for acquiring substitutes.

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Possible elements of a Protocol on incendiary weapons :

Article X. Flame weapons shall be prohibited for use in all circumstances. This prohibition shall apply to the use of any munition which is primarily designed to cause burn injury to persons or to set fire to objects through the action of flame produced by a chemical reaction of a substance dispersed over the target. Such munitions include flame-throwers, napalm bombs, white phosphorus grenades and other kinds of munitions containing scatter-type agents. 570

Article Y. Munitions which may have secondary or incidental incendiary effects, such as illuminants, tracers, smoke, or signalling systems are not prohibited for the specific uses for which they are designed. Nor are those munitions prohibited for use which for their principal effect rely upon fragmentation, penetration or blast and which have, in addition, an incendiary effect.

Article Z. The rules contained in the present Protocol shall take effect when ratified by ... States and, in any case not before 1 January 198X.

2. While the comprehensive approach is the preferred one and this paper is not meant to prejudice it, the paper is intended as a contribution to the discussion of incendiary weapons, sub-category by sub-category. Proposals on the restriction of use of various sub-categories of incendiary weapons were advanced at the Lugano conference. Such restrictions may be valuable if they are far-reaching, but they will always suffer from the disadvantage that continued deployment of the weapons will take place and that an almost impossible task is placed upon field commanders to decide whether a particular use of an incendiary weapon is or is not permitted. The risk is obvious that such rules may collapse quickly.

3. This paper suggests an approach that is much less susceptible to breakdown in practice, namely, the complete prohibition of use of one important sub-category of incendiary weapons. Other sub-categories could be examined subsequently. With this approach no deployment of the prohibited category would be warranted and field commanders would never be asked to decide whether or not a particular employment of the weapon was legal. The decision whether a particular weapon fell within the prohibited category would be taken by central commands or indeed, by governments.

4. Incendiary weapons can be classified in different ways into sub-categories. The Lucerne report (1975) offers examples of this on its last page. The classification into anti-personnel and anti-matériel weapons has attracted interest

CDDH/IV/SR.25

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because of the widespread particular revulsion against the anti-personnel use of such weapons. Unfortunately, such a classification of weapons - rather than of use - proves difficult, since some important incendiary munitions can be given both anti-personnel and anti-matériel use. Building upon another classification, according to the active agent contained in the incendiary munition, it has been suggested that a rule could aim at the subcategory of oil-based incendiaries, which is termed flame weapons. Such a rule would cover the most common - and most criticized - incendiary munition used for anti-personnel purposes, namely, napalm, but it would leave untouched napalm substitutes which are not oil-based, e.g. TEA (triethylealuminum).

5. The proposal contained in this paper likewise aims at "flame weapons", but builds upon a classification not according to the active agent contained in the munition, but more precisely upon the way in which this agent functions, namely by dispersing on the target and flaming. (See paragraph 15 concerning scatter type incendiaries in the United Nations report on napalm and other incendiary weapons). It is believed that this sub-category comprises all known incendiary munitions which are designed for anti-personnel use, e.g. napalm, and that a prohibition of use of this category of weapons would, in practice amount to a prevention of anti-personnel use of incendiary weapons. It would do so, however, without reporting to the unsatisfactory distinction between incendiary anti-personnel and anti-matériel munitions. The rule suggested, covering scatter type incendiaries, would further comprise a prohibition of use of white phosphorus, except when this substance were employed in order to produce smoke.

Possible elements of a prohibition of the use of incendiary weapons

1. Flame weapons shall be prohibited for use in all circumstances.

This prohibition shall apply to the use of any munition which is primarily designed to cause burn injury to persons or to set fire to objects through the action of flame produced by a chemical reaction of a substance dispersed over the target. Such munitions include flame-throwers, napalm bombs, white phosphorus grenades and other kinds of munitions containing scatter-type agents.

2. Munitions which may have secondary or incidental incendiary effects, such as illuminants, tracers, smoke or signalling systems are not prohibited for the specific uses for which they are designed. Nor are those munitions prohibited for use which for their principal effect rely upon fragmentation, penetration or blast and which have, in addition, an incendiary effect.

CDDH/IV/217

"DRAFT ADDITIONAL PROTOCOL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 ON THE PROHIBITION OF THE USE OF INCENDIARY WEAPONS

The High Contracting Parties

Reaffirming their determination to draw up rules to strengthen and develop existing international humanitarian law and their desire to ensure the full observance of human rights applicable in all armed conflicts pending the earliest possible termination of such conflicts,

Mindful not only of the fact that all armed conflicts and the use of any weapon cause cruel suffering but also that certain kinds of conventional weapons, including incendiary weapons, may cause unnecessary suffering or have indiscriminate effects,

Pointing out that the international community has long demonstrated its repulsion at the inhuman effects of such weapons, by adopting in the United Nations General Assembly a number of resolutions specifically condemning the use of napalm and other incendiary weapons while urging States to ban their use under a general agreement,

CDDH/IV/217

MEXICO

DRAFT ADDITIONAL PROTOCOL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 ON THE PROHIBITION OF THE USE OF INCENDIARY WEAPONS

The Mexican Government has repeated on innumerable occasions its view that the prohibition or limitation of the use of certain types of conventional weapons which cause unnecessary suffering or have indiscriminate effects, including incendiary weapons which are outstanding for their cruelty, constitutes an essential element of the new International Humanitarian Law.

Even though it may appear that there is, at this time, no general consensus concerning the rules to be adopted, Mexico is convinced that sufficient information is already available on the nature and effects of these weapons for the question to be discussed and recommendations on the subject to be approved at the forthcoming third session of the Diplomatic Conference. For this reason, it is submitting the present working paper, which does not affect its position as co-sponsor of the proposal contained in working paper CDDH/IV/201, as a :

Agree as follows :

Article 1. The use of incendiary weapons shall be prohibited.

Article 2. The prohibition contained in the preceding article shall apply to the use of all ordnance intended primarily to burn objects or persons by the action of flame, heat or both, produced by chemical reaction on hitting the target. Such ordnance shall include flame-throwers, projectiles, rockets, grenades, mines and incendiary bombs.

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Article 3. The prohibition referred to in article 1 of this Protocol shall not apply to ordnance which may have accidental or incidental incendiary effects, such as flares, tracer ammunition, smoke munitions or signalling devices.

Article 4. The provisions of the Geneva Conventions on the repression of infringements shall apply to infringements of this Protocol.

Article 5. Parties to the Geneva Conventions of 12 August 1949 may sign the present Protocol before the 197., at

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Article 6. The present Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Confederation, the Depository of the Conventions.

Article 7. Any Party to the Conventions which is not a signatory to the present Protocol may accede to it. The instruments of accession shall be deposited with the Depository of the Geneva Conventions.

Article 8. The present Protocol shall come into effect six months after the deposit of two instruments of ratification. The present Protocol shall come into effect for each Party to the Conventions, or for each Party subsequently acceding to it, six months after the said Party has deposited its instrument of ratification or accession.

Article 9. Any of the High Contracting Parties may propose amendments to the Protocol. The text of draft amendments shall be communicated to the Depository of the Conventions which, after holding consultations with all of the High Contracting Parties and with the International Committee of the Red Cross, shall decide whether a conference should be convoked to consider the proposed amendment.

Article 10. The Depository of the Conventions shall inform the High Contracting Parties of:

- (a) the signatures appended to the present Protocol and of the instruments of ratification and accession deposited in accordance with articles 6 and 7 thereof,

(b) the date on which the present Protocol comes into effect, in accordance with article 8 thereof,

(c) communications and declarations received, in accordance with article 9 thereof.

Article 11. When the present Protocol comes into effect, the Depository of the Conventions shall forward it to the United Nations Secretariat for registration and publication in compliance with article 102 of the United Nations Charter. The Depository of the Conventions shall likewise inform the United Nations Secretariat of all ratifications and accessions received in connection with the present Protocol.

Article 12. The original of the present Protocol, the French, English and Spanish texts of which shall be equally authentic, shall be deposited with the Depository of the Conventions which shall send certified copies to all Parties to the Conventions. The Depository of the Conventions shall ensure that the present Protocol is officially translated into
.....".

Report - Lugano (COLU/220) p. 192-194.

CDDH/IV/223

INDONESIA

INCENDIARY WEAPONS

CDDH/IV/223

1. It is prohibited to use incendiary weapons in all circumstances except:

(a) against military matériel such as military airfields, weapons and munition stockpiles, bridges of military operational importance, provided that these objectives are not within or near civilian populated areas;

(b) against military personnel holding positions in field fortifications such as bunkers and pillboxes, where the use of an alternative weapon would inevitably render more casualties. Even so, each adversary shall undertake to choose the weapon with the least indiscriminate effect.*

2. This prohibition does not apply to:

(a) weapons which possess a combined effect of penetration, fragmentation and incendiary and which are used against armoured vehicles and aircraft;

(b) incendiaries for purposes other than damaging or injuring such as illuminants, tracers and signal munitions.

* The use of incendiary weapons referred to in 1 (b) takes advantage of the scare-effect resulting from the natural fear of men against fire, hence increasing the willingness to surrender.

CDDH/IV/SR.37

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Mr. Diaz de Aguilar y Elizaga
(Spain)

Mr. Charry Samper (Chairman)

CDDH/IV/SR.40

Mr. Todoric (Yugoslavia)

CDDH/IV/SR.42

Mr. Gribanov (USSR)

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(b) DELAYED ACTION WEAPONS AND TREACHEROUS WEAPONS
(INCLUDING MINES AND BOOBY-TRAPS)

(for reference, see)

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DELAYED ACTION WEAPONS AND TREACHEROUS WEAPONS
(INCLUDING MINES AND BOOBY-TRAPS)

CDDH/IV/201

AFGHANISTAN, ALGERIA, AUSTRIA, COLOMBIA,
EGYPT, KUWAIT, LEBANON, MALI, MAURITANIA,
MEXICO, NORWAY, SUDAN, SWEDEN, SWITZERLAND
VENEZUELA, YUGOSLAVIA

Explanatory Memorandum

(see end of document)

Anti-personnel land-mines

The use of anti-personnel mines is a generally accepted means of hampering enemy advance and of putting combatants out of action.

However, certain ways of employing anti-personnel landmines may easily lead to injuries indiscriminately being inflicted upon combatants and civilians alike. The risks for such results are especially high if such mines are laid, perhaps in very large numbers by

CDDH/IV/201 (V)

Anti-personnel land-mines

Anti-personnel land-mines must not be laid by aircraft.

Report - Lugano pp. 198-205

CDDH/IV/SR.12 p. 60 Mr. Blix (Sweden)

CDDH/IV/SR.13 p. 63 Mr. Mena Portillo
(Venezuela)
p. 64 Mr. Cretu (Romania)

CDDH/IV/SR.14 p. 71 Mr. Kussbach
(Austria)
p. 72 Mr. Linares Silva
(Colombia)
p. 73 Mr. Taylor
(United Kingdom)
p. 74 Mr. Blix (Sweden)

CDDH/IV/SR.24

Mr. Kalshoven
(Netherlands)

aircraft. The limits of the mines area will often be very uncertain with this method. The results are apt to be particularly cruel if the mines are not equipped with self-destruction devices which will function reliably after a relatively short time. The risk of indiscriminate effects may be reduced also through marking of minefields - this is not possible, however, when the mines are scattered over a vast area.

- CDDH/IV/SR.29 Mr. Oestern (Norway)
- CDDH/IV/SR.30 Mr. Davinić (Yugoslavia)
- CDDH/IV/SR.36 Mr. de Icaza (Mexico)
- CDDH/IV/SR.37 Mr. Ruiz-Perez (Mexico)
- CDDH/IV/SR.41 Mr. Abou-Ali (Egypt)
- CDDH/IV/SR.42 Mr. de Graffenried (Switzerland)
- Report, Committee IV - 1975
- Report, Committee IV - 1976

Draft article ...Booby-traps

1. For the purpose of the present article, "booby-traps" signifies means of combat, concealed or camouflaged inside or outside buildings or movable objects, designed to operate through pressure, traction, loading or unloading, or upon contact, or after a certain lapse of time. The effect of these means of combat may consist in a detonation of explosives of any kind or in the mechanical triggering off, without explosive charge, of falls, subsidences, snares and other similar devices.
2. Booby-traps may only be used when they are placed inside or outside military objects. The civilian population in the proximity of such a site shall be given warning of the danger.
3. It is prohibited in any circumstances to attach or connect booby-traps to the dead, sick or wounded, to first aid installations, equipment and supplies, to children's toys or to objects of current use among the civilian population.

CDDH/IV/SR.25	Mr. de Grafenried (Switzerland) Mr. Mena Portillo (Venezuela)
CDDH/IV/SR.28	Mrs. Ruesta de Fuertes (Venezuela) Mr. de Icaza Gonzalez (Mexico)
CDDH/IV/SR.29	Mr. Gonzales Galvez (Mexico) Mr. Valdevit (Italy) Mr. Oestern (Norway) Mr. de Grafenried (Switzerland)
CDDH/IV/SR.30	Mr. Davinić (Yugoslavia)
CDDH/IV/SR.37	Mr. Ruiz-Perez (Mexico)
Report, Committee IV, 1976	
Report of the Working Group, Committee IV, 1977	

Draft article

Anti-tank and anti-personnel mines

1. It is prohibited to lay mines in an area which contains a concentration of civilians and in which combat between ground forces is neither taking place nor imminent, unless:

- (a) they are placed on or in the immediate vicinity of a military objective; and
- (b) effective precautions have been taken to protect civilians from their effects.

2. The location of methodically laid minefields shall be recorded on sketches or plans, or shown on topographic maps. Such documents shall, so far as possible, be prepared in respect of mines laid during combat. These documents shall be preserved in order to make possible the subsequent removal of the mines without danger.

3. It is prohibited to lay remotely-delivered mines or similar explosive devices which are dropped, fired or teleguided, unless:

(a) they are equipped with a self-destruct or neutralization mechanism which becomes operative on the expiry of ... hours at most, and

(b) the area in which they are employed is inside the combat zone of the ground forces.

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CDDH/IV/SR.30	Mr. Davinić (Yugoslavia)
CDDH/IV/SR.37	Mr. Ruiz-Perez (Mexico)

Report, Committee IV, 1976

VENEZUELA

Draft articleBooby traps

1. For the purpose of the present article, "booby trap" means any device or object, explosive or non-explosive, which is concealed or camouflaged inside or outside buildings or movable or immovable objects and which is designed to operate through contact, pressure, traction or any other actuating mechanism.
2. Booby traps may only be used when they are placed inside or outside clearly defined military objectives. In all cases, the civilian population in the proximity of booby traps shall be given warning of the danger.
3. It shall be prohibited in all circumstances to set or place booby traps on the dead, wounded or sick, on installations, vehicles or equipment used for relief purposes, on children's toys or on objects of common or domestic use for the civilian population.

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CDDH/IV/213

DENMARK, FRANCE, NETHERLANDS, UNITED KINGDOM

CDDH/IV/213

THE REGULATION OF THE USE OF LAND-MINES
AND OTHER DEVICES

Article 1 - Definition of "mine"

For the purpose of these proposals, "mine" means an explosive or incendiary munition placed under, on or near the ground or other surface area and designed to be detonated by the presence or proximity of a person or vehicle but does not include an underwater mine.

Article 2 - Recording of minefields

The location of pre-planned defensive minefields shall always be recorded. So far as is feasible, the location of all other minefields containing more than 20 mines shall be recorded. Such records shall be retained until after the cessation of active hostilities, at which time the location of all recorded minefields situated in territory controlled by an adversary party shall be made public.

Article 3 - Use of Remotely Delivered Mines

1. The use of remotely delivered mines is forbidden unless each such mine is fitted with a neutralising mechanism or the area in which they are delivered is marked in some distinctive manner.

2. In this article "neutralising mechanism" means a self-actuating or remotely controlled mechanism which is designed to render a mine harmless or cause it to destroy itself when it is anticipated that the mine will no longer serve the military purpose for which it was placed in position; "remotely delivered mine" means any mine delivered by artillery, rocket, mortar or similar means at a range of over 2,000 metres or dropped from an aircraft.

Article 4 - Use of manually emplaced mines and other devices in populated areas

1. This article applies to manually emplaced mines and all other manually emplaced devices (explosive and non-explosive) which are designed to kill, injure or damage and for that purpose to be actuated:

- (a) by the presence or proximity of a person or vehicle;
- (b) when a person disturbs or approaches an apparently harmless object or performs an apparently safe act;
- (c) by remote control; or
- (d) automatically after a lapse of time.

2. In any city or town, village or other area containing a concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, devices to which this article applies may not be used unless either:

- (a) they are placed on or in the close vicinity of a military objective; or
 - (b) due precautions are taken to protect civilians from their effects.
3. In this article, "military objective" means, so far as objects are concerned, any object which by its own nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation in the circumstances ruling at the time, offers a definite military advantage.

Article 5 - Prohibitions on the use of Certain Explosive and Non-Explosive Devices

1. It is forbidden in any circumstances to use any apparently harmless portable object (other than an item of military equipment or supplies) which is specifically designed and constructed to contain explosive material and to detonate when it is disturbed or approached.
2. It is forbidden in any circumstances to use any explosive or non-explosive device or other material which is deliberately placed to kill or injure when a person disturbs or approaches an apparently harmless object or performs an apparently safe act and which is in any way attached to or associated with:
 - (a) internationally recognized protective emblems, signs or signals;
 - (b) sick, wounded or dead persons;

- (c) burial or cremation sites or graves;
- (d) medical facilities, medical equipment, medical supplies or medical transport; or
- (e) children's toys.

3. It is forbidden in any circumstances to use any non-explosive device or any material which is deliberately placed to kill or injure when a person disturbs or approaches an apparently harmless object or performs an apparently safe act and which is designed to kill or injure by stabbing, impaling, crushing, strangling, infecting or poisoning the victim.

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CDDH/IV/SR.28

- Mr. Hughes-Morgan (United Kingdom)
- Mr. de Icaza Gonzalez (Mexico)

CDDH/IV/SR.29

- Mr. Gonzales Galvez (Mexico)
- Mr. Valdevit (Italy)
- Mr. Toogood (Canada)
- Mr. Oestern (Norway)
- Mrs. Mazau (United States)
- Mr. de Grafenried (Switzerland)

CDDH/IV/SR.30	Mr. Fröwis (Fed. Rep. of Germany) Mr. Davinić (Yugoslavia)
CDDH/IV/SR.33	Mr. Serup (Denmark)
CDDH/IV/SR.37	Sir David Hughes-Morgan (United Kingdom)
CDDH/IV/SR.40	Mr. Buhidmah (Socialist People's Libyan Arab Jamahiriya)

Report, Committee IV, 1976
Report, Committee IV, 1977
Report of the Working Group, Committee IV, 1977

Draft Article on the Use of Land Mines
and the Use of Certain Explosive
and Non-Explosive Devices

1. It is forbidden to use mines and devices to which this article applies in an area containing a concentration of civilians and in which combat between ground forces is not taking place or is not imminent unless effective precautions are taken to protect civilians from their effects.
2. The location of pre-planned minefields shall always be recorded. Minefields laid during combat and the location of certain explosive and non-explosive devices shall be recorded as far as possible. These records shall be preserved in order to make possible the subsequent removal of the mines and devices and to make the records public when it is necessary.
3. The use of remotely-delivered mines is prohibited unless
 - (a) each such mine is fitted with a neutralizing mechanism which renders the mine harmless within a period of, and
 - (b) they are used within the combat zone.
4. It is forbidden in any circumstances to use any apparently harmless portable object which is specifically designed and constructed (pre-fabricated) to contain explosive material and to detonate when it is disturbed or approached.

5. It is forbidden in any circumstances to use any explosive or non-explosive device or other material which is deliberately placed to kill or injure when a person disturbs or approaches an apparently harmless object or performs an apparently safe act and which is in any way attached to or associated with:

- (a) Internationally recognized protective emblems, signs or signals;
- (b) Sick, wounded or dead persons;
- (c) Burial or cremation sites or graves;
- (d) Medical facilities, medical equipment, medical supplies or medical transport;
- (e) Children's toys;
- (f) Food; or
- (g) Religious objects.

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 Mr. Liko (Austria)
 Mr. Anderson (United States)
 Sir David Hughes-Morgan (United Kingdom)
 Mr. Diaz de Aguilar Y Elizaga (Spain)
 Mr. Hernandez (Uruguay)
 Mr. de Icaza (Mexico)
 Mr. Charry Samper (Chairman)

CDDH/IV/SR.40 Mr. Todoric (Yugoslavia)
 Mr. Buhidmah (Socialist People's Libyan Arab Jamahiriya)

Report, Committee IV, 1977

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CDDH/IV/GT/1

MEXICO, SPAIN

Article 1:- Definition of "mine"

For the purpose of these proposals, the word "mine" shall be understood to mean any explosive device placed on or below the ground, or covered by any other type of surface, including liquids, with the aim of causing an explosion through the direct action or proximity of a person or vehicle. This definition does not cover mines used in naval warfare.

CDDH/IV/GT/2/Rev.1

AUSTRIA, MEXICO, NETHERLANDS, SPAIN,
SWEDEN, SWITZERLAND, UNITED KINGDOM

Scope of Application

1. These proposals relate to the use in armed conflict on land of the mines and other devices defined therein. They do not apply to the use of anti-ship mines at sea or in inland waterways, but do apply to beach mines and mines laid to interdict waterway or river crossings.

Definition of Mine

2. For the purpose of these proposals, "mine" means an /explosive or incendiary/7 munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the direct action, presence or proximity of a person or vehicle.

CDDH/IV/GT/4

AUSTRIA, DENMARK, FRANCE, MEXICO,
NETHERLANDS, UNITED KINGDOM, SPAIN,
SWEDEN, SWITZERLAND

CDDH/IV/GT/4

1. Scope of application

These proposals relate to the use in armed conflict on land of the mines and other devices defined therein. They do not apply to the use of anti-ship mines at sea or in inland waterways, but do apply to mines laid to interdict beaches, waterway crossings or river crossings.

2. Definitions

For the purpose of these proposals:

- (1) "mine" means an explosive or incendiary munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the direct action, presence or proximity of a person or vehicle;
- (2) "explosive and non-explosive devices" mean manually-emplaced devices which are specifically designed and constructed to kill or injure when a person disturbs or approaches an apparently harmless object or performs an apparently safe act;
- (3) "remotely delivered mine" means any mine delivered by artillery, rocket, mortar or similar means at a range of over 1,000 metres or dropped from an aircraft;
- (4) "military objective" means, so far as objects are concerned, any object which by its own nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation in the circumstances ruling at the time, offers a definite military advantage.

3. Recording of the location of minefields and other devices

- (1) The Parties to a conflict shall record the location of:
- (a) all pre-planned minefields laid by them; and
 - (b) All areas in which they have made large-scale and pre-planned use of explosive or non-explosive devices.
- (2) The Parties shall endeavour to ensure the recording of the location of all other minefields, mines and explosive and non-explosive devices which they have laid or placed in position.
- (3) All such records shall be retained by the Parties and the location of all recorded minefields, mines and explosive or non-explosive devices remaining in territory controlled by an adverse Party shall be made public after the cessation of active hostilities.

4. Restrictions on the use of remotely delivered mines

The use of remotely delivered mines is prohibited unless.

- (a) each such mine is fitted with an effective neutralising mechanism, that is to say a self-actuating or remotely controlled mechanism which is designed to render a mine harmless or cause it to destroy itself when it is anticipated that the mine will no longer serve the military purpose for which it was placed in position:

or

(b) the area in which they are delivered is marked in some definite manner in order to warn the civilian population,

and, in either case, they are only used within an area containing military objectives.

5. Restrictions on the use of mines and other devices in populated areas

(1) This proposal applies to mines (other than remotely delivered /anti-tank/ mines), explosive and non-explosive devices, and other manually-employed munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time.

(2) It is prohibited to use any object to which this proposal applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:

(a) they are placed on or in the close vicinity of a military objective belonging to or under the control of an adverse Party; or

(b) effective precautions are taken to protect civilians from their effects.

6. Prohibitions on the use of certain explosive and non-explosive devices

(1) It is prohibited in any circumstances to use:

- (a) any apparently harmless portable object which is specifically designed and constructed to contain explosive material and to detonate when it is disturbed or approached, /or
- (b) any non-explosive device or any material which is designed to kill or cause serious injury in circumstances involving superfluous injury or unnecessary suffering, for example by stabbing, impaling, crushing, strangling, infecting or poisoning the victim and which functions when a person disturbs or approaches an apparently harmless object or performs an apparently safe act/.

(2) It is prohibited in any circumstances to use explosive and non-explosive devices which are in any way attached to or associated with:

- (a) Internationally recognized protective emblems, signs or signals;
- (b) Sick, wounded or dead persons;
- (c) Burial or cremation sites or graves;
- (d) Medical facilities, medical equipment, medical supplies or medical transport;
- (e) Children's toys;
- (f) Food and drink; or
- (g) Objects clearly of a religious nature.

CDDH/IV/SR.40

Mr. Taylor (Rapporteur)

Mr. Todović (Yugoslavia)

Mr. Buhidmah (Socialist People's Libyan Arab Jamahiriya)

CDDH/IV/SR.41 Mrs. Mazeau (United States)

Report, Committee IV, 1977

Report of the Working Group, Committee IV, 1977

(c) SMALL-CALIBRE PROJECTILES

(for reference, see:)

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SMALL-CALIBRE PROJECTILES

CDDH/IV/201

AFGHANISTAN, ALGERIA, AUSTRIA, COLOMBIA, EGYPT, KUWAIT, LEBANON, MALI, MAURITANIA, MEXICO, NORWAY, SUDAN, SWEDEN, SWITZERLAND, VENEZUELA, YUGOSLAVIA

Explanatory Memorandum

(see end of document)

Epecially injurious small-calibre projectiles

Small-calibre projectiles, fired for instance by infantry rifles, are an important source of injuries in armed conflicts. It is therefore of signal importance when weapon producers in many countries abandon or contemplate abandoning one common standard for such projectiles to adopt another one. Such changes occur only with very long intervals. At the present juncture there is in production - and some use - a variety of new standard

CDDH/IV/201 (IV)

Epecially injurious small-calibre projectiles

It is prohibited to use small-calibre projectiles which are so designed or have such velocity that they:

- (a) break or deform on or following entry into a human body, or
- (b) tumble significantly within the human body, or
- (c) create shock waves which cause extensive tissue damage outside the trajectory, or
- (d) produce secondary projectiles within a human body.

small-calibre projectiles. Most of these are characterized by a smaller calibre and a higher velocity than what has been common during the last 70 years. The military advantages sought by this change are lighter bullets, cartridges and weapons and a flatter trajectory.

It appears, however, that the military advantages sought by the new high velocity projectiles are outweighed by the much more severe wounds which they are apt to cause. It is urgent that the nations of the world concert with a view to avoiding the imminent risk of a general escalation in the wounding effects of some of the most common weapons in the world, effects which seem very similar to those of the so-called dum dum bullets.

Report - Lugano

pp.198-205

CDDH/IV/SR.11

p. 50 Mr. Blix (Sweden)

CDDH/IV/SR.12

p. 55 Mr. Hughes-Morgan
(United Kingdom)

p. 58 Mr. Blix (Sweden)

CDDH/IV/SR.30

Mr. Blix (Sweden)

Mr. Oestern (Norway)

Mr. Gonzales Galvez (Mexico)

It will be recalled that the Hague Declaration of 1899 prohibiting the use of so-called dum-dum bullets covered bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions. The rationale of the ban was that rather than piercing a wound channel roughly of the diameter of the bullet through human tissue, the bullets, having flattened or expanded, would tear their way through the tissue with a broad face, thereby creating a very large wound.

It is of interest that the field manuals of some important states have gone beyond the language of the Hague Declaration. One prohibits also the use of "irregular shaped bullets ... and the like". The characteristic feature of such bullets is that they are apt to tumble on impact and thereby present a broad face against the human tissue and create a much graver injury than an ordinary bullet. Such bullets would seem to be covered by the rationale of the Hague Declaration, although not by its wording.

CDDH/IV/SR.31

Mr. Fröwis (Fed. Rep. of Germany)
Mr. Mena Portillo (Venezuela)

CDDH/IV/SR.36

Mr. de Icaza (Mexico)

CDDH/IV/SR.40

Mr. Janzon (Sweden)

CDDH/IV/SR.41

Mr. Abou Ali (Egypt)

CDDH/IV/SR.42

Mr. de Graffenried (Switzerland)

Report, Committee IV - 1975

Committee IV - 1976

It would seem urgent to attain an international prohibition of use of all small calibre projectiles which achieve injurious effects which are much beyond what is needed to disable an adversary, whether such excessive injurious effects are due to the bullets' flattening, expansion, velocity or tumbling or some other feature. In the cases of the new high velocity bullets excessive injuries result from the projectile's high velocity and strong tendency to tumble fast upon impact and to present a broad face against the tissue, normally deforming and disintegrating during its penetration of the human body. This passage - due to the high velocity - also creates intense hydrodynamic shock-waves, which are the main cause of the large mutilation of tissue outside the actual trajectory. The exact figure of the impact velocity which will normally have such effect may be discussed, but many experts would place it around 800 m/sec. There seems to be ample justification for a prohibition of use of high velocity projectiles for small arms. The rationale for such prohibition is the same as for the dumdum bullet.

A new prohibitory rule should preferably avoid the limited language of the Hague Declaration and aim at all projectiles which, because of shape, velocity, material or other feature deform or tumble on or following entry into a human body or create especially injurious shock-waves or secondary projectiles, rather than aiming only at bullets of a certain technical feature, such as high velocity.

Only some minor modifications have been introduced in the draft which was presented in 1974. Since bullets which tumble only slightly on or following entry into a human body do not necessarily create a very large wound channel, it has seemed desirable to limit the formulation to those bullets which tumble significantly on impact, that is to say, to such a degree that a much larger injury is caused than would have been the case but for this tumbling effect. Lastly, since many small calibre projectiles are apt to cause some tissue damage immediately outside the wound channel without much consequent aggravation, only those projectiles have been proposed for a ban on use which have such strong effects that they cause extensive tissue damage outside the trajectory.

SMALL-CALIBRE PROJECTILES (continued)

SWEDEN

Working Paper on Small-Calibre Projectiles

1. This working paper and the proposal contained in it seeks to take into account knowledge acquired on small-calibre projectiles since the presentation of the document CDDH/IV/201 at the second session of the Conference. It also seeks to meet some of the criticism advanced against the proposal in that paper concerning small-calibre projectiles and, thereby, to advance the discussion and facilitate its focussing on elements which might, hopefully, generally be regarded as relevant.

2. Much discussion has centered earlier on the relevance of the impact velocity for the injuring effect of small-calibre projectiles. While there is no doubt that its velocity is of great importance both for the energy of the projectile and for its behaviour, it is not believed that in the present evolution of small-calibre projectiles the velocity, except in extreme cases, can be isolated as a feature leading to an aggravation of injuries. Test shootings have demonstrated that there have been made 5.56 mm projectiles with higher velocities than the current 7.62 mm projectiles but without any significant

Possible elements of a Protocol on small-calibre projectiles

Aware of the continuous development of new small-calibre arms and projectiles,

Anxious to prevent a general acceptance of small-calibre arms and projectiles which are more injurious than those in most common current use,

Desiring, for this reason, to supplement the agreement contained in the Hague Declaration of 29 July 1899 to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions,

The States Parties to this Protocol have agreed to abstain from use of bullets which:

- (a) deform or break easily in the human body, or
- (b) tumble rapidly in the human body, or
- (c) have a velocity exceeding 1,500 meters per second

increase in injuring power. (See III, paragraph 60 of the Lugano Report). This conclusion drawn from tests is welcome, since it points to the possibility of exploiting the advantage of lighter bullets and weapons and flatter trajectories without any automatic escalation in injuries by the higher velocity. The draft proposal contained in the working paper of 1975 was not based upon any velocity criterion although it referred to velocity as a factor which might lead to excessive injuries. (See also I, paragraph 34 of the Lugano Report). Even such a general reference is omitted in the text now submitted. Instead, it is suggested that an upper limit of velocity, approximately the velocity of sound in a human body, 1,500 m per second, be established. No small-calibre projectiles are presently anticipated with velocities in those ranges, but it is feared that they would cause extremely grave injuries. (See III, paragraph 60 of the report of the Lugano Conference). Hence the suggestion for an upper limit which can hardly hamper any current practical developments but might forestall undesirable future evolution.

3. The Lugano Report records - in III, paragraph 62 - that "there was general agreement that the severity of a bullet wound depended in large measure upon the amount of energy deposit per unit length of the wound track."

For the purposes of this Protocol:

- a bullet shall be deemed to deform, or break easily in a human body if, out of a series of ten test shots, performed at any range against a target made of a material of a density and softness comparable to human muscle tissue and of such thickness that the bullet stops in it, any one of the bullets deforms or breaks to an extent detectable without any measuring aids,
- a bullet shall be deemed to tumble rapidly in a human body if, in a series of ten test shots at any range exceeding 50 meters against a target of a thickness of 140 mm and made of a material of density and softness comparable to human muscle tissue, the average yaw angle on exit or during passage of the target exceeds X degrees.

This Protocol shall take effect when ratified by States, and in any case not before 1 January 198X.

CDDH/IV/SR.30

- Mr. Blix (Sweden)
- Mr. Oestern (Norway)
- Mr. Gonzales Galvez (Mexico)

This agreement could be used as a basis for a rule prescribing a maximum amount of energy transfer per millimeter of the wound channel for bullets of a calibre less than 12 mm, e.g. 1.5 joule/millimeter in a soft tissue channel of 140 millimeters. Such a rule would offer the advantage of great precision but might be somewhat complicated when it comes to testing. The draft rule attached to this paper is based instead upon the features of bullet deformation or breaking or early tumbling in soft tissue, features which are, likewise, recognized by many as connected with severe injury and high rate of energy transfer. (See the Lugano Report III, paragraph 60). Such an approach would make it possible to draft a rule very similar to and supplementing the one contained in the Hague Declaration of 1899, in which the States agreed to "abstain from use of bullets which expand or flatten easily in the human body.". Several experts - not associated with the draft rule presented in CDDH/IV/201 in 1975 - recognized, indeed, in Lugano the need for ensuring that this Hague rule should be respected both in the letter and in the spirit. (See I, paragraph 36 of the Lugano Report). The most direct way of ensuring that would be to supplement it. This is proposed in the attached draft.

4. It is evident that bullet deformation and breaking are effects very similar to, indeed in part identical with, bullet expansion or

CDDH/IV/SR.31

Mr. Kussbach (Austria)
Mr. Fröwis (Federal Republic
of Germany)
Mr. Mena Portillo (Venezuela)
Mr. Anderson (United States)
Mr. Blix (Sweden)

CDDH/IV/SR.32

Mr. Valdevit (Italy)

CDDH/IV/SR.33

Mr. Serup (Denmark)

CDDH/IV/SR.42

Mr. Janzon (Sweden)

Report, Committee IV, 1976

flattening and that the rationale which called for a rule on the latter two features calls for one on the first two features. There is no more need now than there was in 1899 to tie the rule to the specific causes which lead to such features. The 1899 rule described the so-called dum dum bullet as an example of a bullet falling under the rule and no more. In order to satisfy a high requirement of precision, however, a very simple standard test is attached to the main rule which would allow a conclusion as to whether a particular bullet would fall within the prescribed category on the grounds of deformation or break-up.

5. Early bullet tumbling in the human body is widely recognized as a reason for an increased rate of energy transfer and for an increased injuring power in a large number of cases. (See I, paragraphs 40 and 42 of the Lugano Report; and Jane's Infantry Weapons 1975, p.239). In many instances such early tumbling will lead to bullet deformation or break-up and will thus fall under the first line of the rule proposed. This is not necessarily so, however, and use should not be allowed to be made of the circumstance that a bullet can be made to present its broad face against the tissue early in the wound channel, just as use must not be made of the possibility to make a bullet which flattens fast and, thereby, presents a broad face against the tissue. A particular

difficulty in constructing a rule lies nevertheless in the fact that virtually all bullets tumble sooner or later. Hence a rule against early tumbling should preferably be tied to a simple standard test. Such a test is outlined in the attached draft rule.

CDDH/IV/GT/6

SWEDEN

CDDH/IV/GT/6

Working Paper on Small-Calibre Projectiles

States should undertake:

- 811 -
- (a) To abstain from developing and producing projectiles for small arms causing more severe injuries than bullets of the currently most common calibre of 7.62 mm; and in that respect especially;
 - (b) To avoid bullets which tumble easily, deform or break up when penetrating a human body, or bullets with excessive velocities;
 - (c) To continue research and testing, both on a national and international basis, in the field of wound ballistics;
 - (d) To continue the work aiming at a future agreement prohibiting the use of small calibre projectiles which may cause superfluous injury in armed conflicts, taking into account the proposals to and the work carried out by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and by the expert conferences of the International Committee of the Red Cross.

CDDH/IV/SR.39 Mr. Berlin (Sweden)
 Mr. Ruiz-Perez (Mexico)

Mr. Ruiz-Perez (Mexico)
Mr. Sheetz (United States)
Mr. Janzon (Sweden)

CDDH/IV/SR.40

Mr. Ruiz-Perez (Mexico)

CDDH/IV/SR.42

(d) BLAST AND FRAGMENTATION WEAPONS

(for reference see:)

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BLAST AND FRAGMENTATION WEAPONS

CDDH/IV/201

AFGHANISTAN, ALGERIA, AUSTRIA,
COLOMBIA, EGYPT, KUWAIT, LEBANON,
MALI, MAURITANIA, MEXICO, NORWAY,
SUDAN, SWEDEN, SWITZERLAND,
VENEZUELA, YUGOSLAVIA

Explanatory Memorandum
(see end of document)

Flechettes

A category of weapons which have effects akin to the ones discussed above are the so-called flechettes - small metal arrows or needles. They can be used in ammunition for rifles and guns but the most common use is instead of fragments in warheads. At burst these latter weapons eject a great number of flechettes. The victims suffer multiple injuries with the high degree of pain and suffering characteristic of such injuries. When the flechettes hit a person at high velocity they bend or break at impact and the wounds resulting are aggravated by the high velocity effect.

CDDH/IV/201 (III)

Flechettes

Munitions which act through the release of a number of projectiles in the form of flechettes, needles and similar, are prohibited for use.

- CDDH/IV/SR.12 p. 60 Mr. Blix (Sweden)
- CDDH/IV/SR.31 Mr. Ruiz Perez (Mexico)
- CDDH/IV/SR.36 Mr. de Icaza (Mexico)
- CDDH/IV/SR.41 Mr. Abou Ali (Egypt)
- CDDH/IV/SR.42 Mr. de Graffenried (Switzerland)
- Report, Committee IV, 1975
- Report, Committee IV, 1976

As in the case of the anti-personnel fragmentation weapons discussed, the medical treatment of so many injuries is difficult and the mortality risk substantial. It is queried whether the military advantage of these weapons is so great as to outweigh the humanitarian concerns which are raised by their use. It is submitted that the answer is in the negative.

CDDH/IV/201 (II)

CDDH/IV/201 (II)

Anti-personnel fragmentation weapons

A wide variety of weapons are based on fragmentation effects. Many of these weapons have been so constructed and so used that no questions have been raised as to their legality. Modern developments, however, have brought into production some fragmentation weapons which are apt to be indiscriminate in their effects and/or to cause unnecessary suffering. It would certainly be desirable to introduce a broad prohibition or restriction of use of fragmentation weapons which typically are employed against a very large area,

Anti-personnel fragmentation weapons

Anti-personnel cluster warheads or other devices with many bomblets which act through the ejection of a great number of small-calibre fragments or pellets are prohibited for use.

CDDH/IV/SR.12 p. 60 Mr. Blix (Sweden)

CDDH/IV/SR.13 p. 63 Mr. Mena Portillo
(Venezuela)

p. 64 Mr. Cretu (Romania)

CDDH/IV/SR.31

Mr. Ruiz Perez
(Mexico)

- CDDH/IV/SR.32 Mr. Oestern (Norway)
- CDDH/IV/SR.36 Mr. de Icaza (Mexico)
- CDDH/IV/SR.41 Mr. Abou Ali (Egypt)
- CDDH/IV/SR.42 Mr. de Graffenried (Switzerland)
- Report, Committee IV, 1975
- Report, Committee IV, 1976

with the substantial risk for indiscriminate effects that such use entails. The formulation of such a broad rule raises great difficulties.

A specific ban on use is less difficult to devise in regard to one type of fragmentation weapons, namely, those which are constructed in the form of cluster warheads or other devices with many bomblets and which are primarily suited for use against personnel. These anti-personnel fragmentation weapons tend to have both indiscriminate effects and to cause unnecessary suffering. At detonation a vast number of small fragments or pellets are dispersed evenly covering a large area with a high degree of probability for hitting any person in the area. The effects of such a detonation on unprotected persons - military or civilian - in the comparatively large target area is almost certain to be severe with multiple injuries caused by many tiny fragments.

Multiple injuries considerably raise the level of pain and suffering. They often call for prolonged and difficult medical treatment and the cumulative effect of the many injuries increases the mortality risk. If a person is hit by fragments in the beginning of their trajectory, the injuries may be aggravated by high velocity effects.

It is queried whether the military value of these weapons is so great as to justify the suffering they cause. It may also be noted that some important military manuals prohibit the use of projectiles filled with glass - presumably because of the risk of multiple injuries resulting.

It has been suggested that cluster bomb units may have indiscriminate effects not because of their construction but rather because of their operational use. However, when the normal weapon effect is so extensive as to cover areas of several square kilometers in an attack by a single aircraft, these weapons are hardly capable of use anywhere without hitting civilians incidentally.

In the text now submitted, the 1974 text has been subjected to the following change: The beginning of the rule is worded "cluster warheads or other devices with many bomblets" in order to cover both cluster bombs and dispensers containing bomblets. The qualifying word "anti-personnel" is added in order more clearly to exclude cluster warheads or dispensers designed for anti-material use. As the title of section II of the 1974 text indicates the original proposal, too, had regard only to anti-personnel weapons. The modification is thus not one of substance.

CDDH/IV/210

AUSTRIA, COLOMBIA, DENMARK, MEXICO, NORWAY,
SPAIN, SWEDEN, SWITZERLAND, YUGOSLAVIA

CDDH/IV/210

Draft Article

Non-detectable fragments

It is prohibited to use any weapon the
primary effect of which is to injure by fragments
which in the human body escape detection by
X-rays.

see COLU/212 and COLU/216

CDDH/IV/SR.25 Mr. de Graffenried (Switzerland)

CDDH/IV/SR.31 Mr. de Graffenried (Switzerland)

Mr. Toogood (Canada)

CDDH/IV/SR.32 Mr. Oestern (Norway)

CDDH/IV/SR.33 Mr. Serup (Denmark)

CDDH/IV/SR.40

Mr. Taylor (Rapporteur)

Mr. Todoric (Yugoslavia)

Mr. Fröwis (Fed. Republic of
Germany)

Report, Committee IV, 1976

Report, Committee IV, 1977

Report of the Working Group, Committee IV, 1977

WORKING PAPER ON FUEL-AIR EXPLOSIVES

1. This paper and the proposal contained in it deals with a specific category of blast weapons, namely the so-called fuel-air explosives.

It seeks to take into account the criticism advanced against the proposals COLU/202 and COLU/209, presented to the Conference of Government Experts in Lugano, as being too broad in scope. The proposal in COLU/202 is also, in some respects, too limited to assure the prevention of extreme suffering being inflicted to persons.

2. Fuel-air explosives function by an inflammable liquid, gas or powder being spread out like a cloud in a certain volume of air, mostly close to the ground, and being subsequently detonated. This results in blast waves of a typical magnitude of 2-3 megapascals and positive durations in the order of 3-10 milliseconds. The positive impulse affecting an object remains fairly constant within the cloud, and declines very rapidly outside it. The overpressures sustained decrease with the distance to the centre of the cloud, but the rate of decrease is much greater outside the cloud. The blast effect of a certain fuel-air explosive charge may be compared to that of a TNT charge weighing 3-4 times as much, although the latter produces much greater overpressures and positive impulses at short distance from the point of detonation.

Possible elements of a Protocol on fuel-air explosives

Aware of the continuous development of new types of blast weapons, in particular of the fuel-air explosives,

Anxious to prevent the use of weapons in a manner which may cause unnecessary suffering to combatants or render their death inevitable,

The States Party to this Protocol have agreed to abstain from the use of munitions which rely for their effects on shock waves caused by the detonation of a cloud created by a substance spread in the air, except when the aim is exclusively to destroy material objects, such as the clearance of mine fields.

CDDH/IV/SR.32 Mr. Blix (Sweden)
Mr. Oestern (Norway)

CDDH/IV/SR.34 Mr. Blix (Sweden)
Mr. Janzon (Sweden)

CDDH/IV/SR.41 Mr. Janzon (Sweden)

Report, Committee IV, 1976

3. The overpressures occurring in the cloud, with the typical durations mentioned, have a very serious effect on unprotected persons being exposed to them. Thus, within the cloud a mortality rate of close to 100% may be expected. This rate diminishes very fast outside the cloud, and at a distance of about 1.5 diameters of the cloud from its centre, the injurious capacity of the blast wave is almost none.

The blast waves also propagate into open shelters, such as fox-holes, without much attenuation within the cloud.

These properties of fuel-air explosives may make it tempting to use them for such purposes as the rapid clearing of pressure-sensitive mines and booby-traps, for use against personnel in close air support, and for use against personnel in fox-holes. In addition, structures such as naval vessels, radar installations, trucks and simple field fortifications etc. might be suitable targets for attack by fuel-air explosives. Even more resistant targets, such as armoured personnel carriers may be susceptible to attack. The relatively long duration of the blast waves may make it possible to attack such targets as bridges of considerable size and to achieve total destruction of them, as opposed to attack by missiles and general purpose bombs, which normally achieve only partial destruction of the target, unless they are used in very great quantities.

4. The nature of injuries associated with the use of fuel-air explosives against personnel, and especially the extremely high mortality rate to be expected on extensive use against a target containing personnel are important grounds for prohibiting their use against such targets. In addition, although mortality is high, death often ensues first after prolonged suffering and great agony of the victims. The effects of use of fuel-air explosives against personnel would be far in excess of what is needed to place a soldier hors de combat and would in a large number of cases render death inevitable.

5. Although there are strong reasons for a total prohibition of use of fuel-air explosives, such a prohibition may not be feasible because some uses anticipated for these munitions may be of unique military utility. On the other hand, attacks against targets consisting of matériel as well as personnel still have the consequences mentioned and this is a reason for imposing further restrictions on the use of fuel-air explosives than those contained in document COLU/202, merely stating a prohibition of their anti-personnel use.

CDDH/IV/GT/5

SWEDEN, SWITZERLAND

Possible Elements of a Prohibition on Fuel Air Explosives

Aware of the continuous development of new types of blast weapons, in particular of the fuel-air explosives,

Anxious to prevent the use of weapons in a manner which may cause unnecessary suffering to combatants or render their death inevitable.

States should agree to abstain from the use of munitions which rely for their effects on shock waves caused by the detonation of a cloud created by a substance spread in the air, except when the aim is exclusively to destroy material objects, such as the clearance of mine fields.

CDDH/IV/SR.40 Mr. Todorić (Yugoslavia)

CDDH/IV/SR.41 Mr. Janson (Sweden)

Report of the Working Group, Committee IV, 1977

AFGHANISTAN, ALGERIA, AUSTRIA, COLOMBIA, EGYPT,
KUWAIT, LEBANON, MALI, MAURITANIA, MEXICO,
NORWAY, SUDAN, SWEDEN, SWITZERLAND, VENEZUELA,
YUGOSLAVIA

EXPLANATORY MEMORANDUM

The two draft Protocols contain some essential rules regarding methods and means of warfare, in one area, however, that of weapons, the draft rules hardly amount to more than a reaffirmation of existing law. Thus, in Article 33 of the First Draft Protocol the following rule is proposed:

"Prohibition of unnecessary suffering

1. The right of Parties to the conflict and of members of their armed forces to adopt methods and means of combat is not unlimited.
2. It is forbidden to employ weapons, projectiles, substances, methods and means which uselessly aggravate the sufferings of disable adversaries or render their death inevitable in all circumstances."

These fundamental rules largely reflect the contents of articles 22 and 23(e) of the Regulations respecting the laws and customs of war on land found in the Hague Conventions of 1899 (II) and of 1907 (IV) and the preamble of the 1868 St. Petersburg Declaration. This reaffirmation of the general prohibition of use of one kind of weapons is in itself welcome.

A similar general prohibition of use of another category of weapons, namely, those which are by their nature or normal use, indiscriminate in their effects would be of interest, inter alia in response to the expressed desire for rules against weapons which may cause ecological damages. However, such rule if perhaps redundant in view of the even broader general rule proposed in article 46.3 to reaffirm the customary rule prohibiting indiscriminate warfare:

"The employment of means of combat, and any methods which strike or affect indiscriminately the civilian population and combatants or civilian objects and military objectives, are prohibited ..."

These rules of a general scope also express the philosophy behind the prohibitions of use which in the past have been adopted regarding specific types of weapons, e.g. the dum dum bullet (1899) and the automatic unanchored contact mine (1907).

It is submitted that the general prohibitions of weapons apt to cause unnecessary suffering and of means and methods of warfare which are by their nature or normal use indiscriminate - proposed for reaffirmation - should now, as in the past, be supplemented with prohibitions of use of specific weapons which are deemed to fall within the general categories prohibited. Time would seem to be ripe for an examination of specific conventional weapons the use of which currently may be questioned from the viewpoint of compatibility with the general prohibitory

rules which are to be reaffirmed. In the present working paper proposals are advanced for the prohibition or restriction of use of a number of such conventional weapons.

Proposals for the prohibition or restriction of use of other conventional weapons than those covered by this working paper could easily be added on the ground that they risk having indiscriminate effect or causing excessive suffering. The list of proposed bans is thus not exhaustive, but may well be supplemented by other proposals.

In connexion with the adoption of prohibitions of use, such as those contained in the working paper, consideration would have to be given to some related matters, viz. the question whether the rules should be absolute in character or binding only as between adversaries which have assumed the obligation to abide by the rules. Moreover, the question should be examined how, in the future, surveys can be made with a view to identifying weapons the use of which should be prohibited or subjected to restrictions for humanitarian reasons. A mechanism should be devised to facilitate such surveys to recur without too long intervals in order to ensure that weapons developments are always assessed in the light of humanitarian principles. Only in this way can there be some assurance that the broad prohibitory rules relating to the use

of weapons will in fact be applied to specific weapons. But for such periodic reviews the technological development could lead to the production of ever more cost-effective - but inhumane - weapons and weapons systems. Should the efforts fail to prohibit the use of specific weapons and to create mechanisms for review, the temptation to produce such new and cost-effective - but inhumane - weapons would be strong inter alia for the purpose of deterrence. The introduction now of prohibitions of use of specific weapons and agreement of regular reviews could discourage development of new particularly inhumane weapons.

Documents submitted to the Ad Hoc Committee for information

CDDH/IV/Inf.237

15 April 1977

AUSTRIA, SWEDEN, SWITZERLAND

Note from the Secretary-General drawing delegates' attention to the document attached:

"Terminal Ballistics and Wounding Effects of Small Calibre Projectiles."

March 1977

CDDH/IV/Inf.241

2 May 1977

Note from the Secretary-General drawing delegates' attention to the document attached:

United Nations Environment Programme

UNEP/GC/103
19 April 1977

"Implementation of General Assembly Resolution 3435 (XXX): Study of the problem of the material remnants of wars, particularly mines, and their effect on the environment."

(This document was distributed in English, French and Russian only).