

**OFFICIAL RECORDS**

OF THE

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

GENEVA (1974 -1977)

VOLUME V

## 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.

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\*Document circulated in French only.

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**DIPLOMATIC CONFERENCE  
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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**

VOLUME V

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FIRST SESSION

(Geneva, 20 February - 29 March 1974)

PLENARY MEETINGS

SUMMARY RECORDS OF THE FIRST TO TWENTY-SECOND MEETING

held at the International Conference Centre, Geneva

from 20 February to 29 March 1974

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



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SUMMARY RECORD OF THE FIRST PLENARY MEETING

held on Wednesday, 20 February 1974, at 10.30 a.m.

Acting President: Mr. Pierre GRABER Vice-President of the  
later Swiss Federal Council,  
President Head of the Political  
Department

OPENING OF THE CONFERENCE (item 1 of the provisional agenda)(CDDH/5)

1. The ACTING PRESIDENT said that the present occasion was the sixth time in a century that Switzerland and Geneva had been privileged to welcome a diplomatic conference whose task was to relieve the sufferings of the victims of war. The fact that 117 States and 35 governmental and non-governmental international organizations had accepted the Federal Council's invitation showed that the concern was widely shared today. He welcomed particularly the presence of Mr. Mokhtar Ould Dada, President of the Islamic Republic of Mauritania; Mr. André Chavanne, Vice-President of the State Council of the Republic and Canton of Geneva; Mr. Winspeare Guicciardi, Director-General of the United Nations Office in Geneva; Mr. Eric Martin, President of the International Committee of the Red Cross (ICRC), and Mr. Claude Ketterer, Mayor of the City of Geneva.
2. A great deal had changed since the eighteenth century, when an illustrious son of Geneva, Jean-Jacques Rousseau, had declared that war was not a relationship between man and man but a relationship between States, and that while those who defended their State could be killed as long as they continued to bear arms, as soon as they laid down their arms they ceased to be enemies or instruments of the enemy and became once again just human beings. Since Rousseau's time, it had often happened that that rule had not been respected, so that nowadays civilians were exposed to the same dangers as armed forces. One thing that had not changed was man, who had to be protected from his own folly.
3. The ICRC, with the assistance of both governmental and non-governmental experts from many countries and from a number of international organizations, including the United Nations, had prepared the two draft Protocols (CDDH/1) to the Geneva Conventions of August 12, 1949, for the protection of war victims. Those drafts provided the basis for the discussions of the Conference. The Federal Council had learnt with satisfaction of the successful conclusion of the preparatory work undertaken by the ICRC and had accordingly decided to convene the Plenipotentiary Conference to which all States Parties to the Geneva Conventions and all Member States of the United Nations had been invited. Switzerland considered it a very great privilege to have been able to contribute in that way to the development of such an important branch of internat-

ional law; it had always supported the work of the Red Cross, and the Federal Council was ready, if need be, to convene a second session of the Diplomatic Conference in 1975 at the same time of the year.

4. International humanitarian law had evolved slowly since 22 August 1864, when the plenipotentiaries of 13 States had met, also in Geneva, and adopted the ten articles of the first Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, prepared by Henry Dunant and Gustave Moynier. Since that time, legal protection had been extended to other categories of war victims - the shipwrecked, prisoners of war, inhabitants of occupied zones and interned civilians. Those were covered by the four 1949 Geneva Conventions to which almost all States were parties. The voice of that resolute visionary, Henry Dunant, was now heard in the remotest corners of the world, and States had since undertaken to codify even further the law applicable in armed conflicts, with which the name of the Netherlands was also closely associated. But the work which had been going on for a century, which did honour to the whole international community and testified to an increasingly clear realization of the need to give better protection to the human person, was unfortunately still unfinished, since the continual recurrence of violence and the constant development of new armaments had led to an extension of human suffering. That fact could be seen from a comparison between certain articles of the Geneva Conventions of 1864 and 1949, and explained the indispensable additional efforts that were being undertaken elsewhere for the peaceful settlement of disputes and for the solving of the complex problems of disarmament.

5. The four Conventions of 1949 retained their full force and it was more necessary than ever to respect their provisions. Existing law must be developed and further provisions be added to the Geneva Conventions because of the development of methods and means of combat and of the experience gained during the international and non-international wars of the last quarter of a century.

6. When the Geneva Conventions of 1949 were adopted, such was the international community that it could be said that they had been drawn up by a relatively limited number of States, most of them European, although the scope of the Conventions was universal from the first. Today all continents were represented at the Conference. That development was to be welcomed since it enabled humanitarian law to be set on a broader basis.

7. He urged representatives, who were the spokesmen of their Governments and whose concern therefore reflected the problems facing their countries, to set above those various problems the ideal of charity, so clearly proclaimed beyond all frontiers and ideologies by the emblem of the Red Cross, and not to lose sight of the humanitarian aim of the Conference. Although it was still

not possible to save the world from the scourge of war, the participants in the Conference at least had the power to make war less implacable and less indiscriminate, and to reach an agreement that would be instrumental in relieving much terrible suffering, in sparing innocent lives and in giving better protection to the weak.

8. That was his earnest wish as he declared open the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.<sup>1/</sup>

9. Mr. CHAVANNE, Vice-President of the State Council of the Republic and Canton of Geneva, said that the authorities of the Canton and City of Geneva had learned with pleasure that a Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was once again to be held in their city. Everyone hoped that it would be possible to find formulae applicable to the novel and alarming forms of conflict afflicting mankind, to the alleviation of suffering and to the relief of the victims. The citizens of Geneva saw the Conference as a continuation of the work of one who, with Jean-Jacques Rousseau, was the most illustrious of their fellow citizens, Henry Dunant, the founder of the Red Cross, which he had conceived on the battlefield of Solferino and which had since rendered such great services to mankind.

10. It was in August 1864, at the first Geneva Conference, that 13 plenipotentiaries had signed a Convention relating to the care of the wounded, nursing staff and ambulance services, and there was already a considerable body of humanitarian law which applied to civilian war victims, wounded soldiers and subject peoples. The ever-increasing destructiveness of weapons and the incredible damage that modern warfare could inflict made it essential to lay down more general and more effective rules which must receive universal acceptance.

11. The realism of the Red Cross had been born of the idealism of Henry Dunant, who had been immortalized by the fulfilment of his task. He hoped that the efforts of the participants in the Conference would lead to the extension of Dunant's work, ensuring for all victims of armed conflicts, whether internal or external, the protection and hope to which they were entitled as human beings overwhelmed by fate and crushed by the violence of war.

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<sup>1/</sup> For the complete text of the Acting President's statement, see document CDDH/7.

12. Mr. WINSPEARE GUICCIARDI, Director-General of the United Nations Office at Geneva, said that he had been asked by Mr. Kurt Waldheim, Secretary-General of the United Nations, to convey his best wishes for the success of the Conference. He paid a tribute to the Swiss Government, the depositary of the Geneva Conventions, for having undertaken the task of organizing the Conference, and thanked that Government and the ICRC for having invited the United Nations to be represented at it.

13. Geneva had been the venue of the first diplomatic conference on international humanitarian law convened by the Swiss Federal Council in 1864, and of the subsequent conferences held in 1906, 1929 and 1949. The fact that the number of States participating in the present Conference was almost double that of the 64 States represented at the 1949 Conference was proof of the permanent and universal nature of the principles of a movement begun by Henry Dunant over a century ago.

14. Until complete observance of the Charter of the United Nations and world-wide, total disarmament had been achieved, it was for the international community to ensure that the existing legal rules to relieve the suffering caused by armed conflicts were generally and effectively applied, and to supplement those rules by new ones better adapted to the exigencies of the times.

15. The work undertaken by the United Nations to that end had included the International Conference on Human Rights held at Teheran in 1968, which had requested the General Assembly to invite the Secretary-General to study the steps that could be taken to secure the better application of existing humanitarian conventions in all armed conflicts and had stressed the need to revise those conventions where necessary, or to draw up additional ones. The General Assembly had subsequently adopted a series of resolutions reaffirming certain important general principles dealing with such matters as the protection of the civilian population, the treatment of prisoners of war, and the protection of combatants captured in the course of armed struggles against colonialism.

16. One characteristic of those resolutions was that they applied to all armed conflicts, irrespective of the distinction traditionally drawn between "international" and "non-international" conflicts. The General Assembly had thus reaffirmed the existence and primacy of the inalienable rights of the human person by dissociating them from political, military or other considerations. The same tendency was apparent in the draft protocols prepared by the ICRC.

17. Moreover, the General Assembly had laid down a number of basic principles on the legal status of combatants fighting against colonial and foreign domination and against racist regimes, and had declared that such armed conflicts should be regarded as international armed conflicts under the 1949 Geneva Conventions.

18. The Secretary-General of the United Nations had transmitted to the Conference, for consideration and comment, some draft articles on the protection of journalists engaged in dangerous missions in areas of armed conflict (A/9073, annexes I and II), and had also invited the Conference to seek agreement on rules prohibiting or restricting the use, inter alia, of napalm and other incendiary weapons and all aspects of their possible use (General Assembly resolution 3076 (XXVIII)).

19. The work of the United Nations and that of the ICRC on the development and reaffirmation of international humanitarian law was converging to an increasing extent, and it was clear that the spirit and letter of the United Nations Charter and the spirit and letter of the Geneva Conventions were but two aspects of the same ideal: a mutual belief in human dignity.

20. Mr. Eric MARTIN, President of the International Committee of the Red Cross, said he wished to thank the Swiss Government for having convened the current Diplomatic Conference, which was designed to adapt humanitarian law to the existing requirements of armed conflicts. The Conference had entailed a large amount of preparatory work which had been carried out by the ICRC, the United Nations and many international experts. He welcomed the plenipotentiaries and representatives and expressed the hope that their deliberations would be brought to a successful conclusion.

21. Although the principles of humanitarian law constituted the common heritage of all nations, irrespective of their ethnic, religious or political background, the application of that law had sometimes been hampered by the inadequate protection of civilian populations against the effects of war: the preparation of Additional Protocols to the Geneva Conventions of 1949 was designed to remedy that shortcoming. It should be borne in mind that the purpose of those Conventions was not to serve individual or national interests or to deal with economic, still less with political, problems, but to protect human life in the interests of the entire international community. It was therefore urgent and essential that those instruments should be applied in all circumstances to the victims of all armed conflicts, whether resort to force was regarded as just or unjust.

22. The instruments, which had to be adapted to developments in types of conflicts, must uphold the unswerving principle of absolute and unconditional respect for the enemy hors de combat - the wounded, the prisoner or the civilian - who was no longer an enemy, but only a human being. In those circumstances, the lawful or unlawful nature of the use of force, the controversial status of the parties to the conflict, the conditions for the application of humanitarian law and its reciprocity were no longer pertinent.

Nevertheless, the ICRC in no way under-estimated the value of parallel efforts to eliminate all armed conflicts, and considered that the scrupulous application of humanitarian law was likely to facilitate the settlement of such conflicts.

23. The ICRC had pursued its mission for over one hundred years in all parts of the world and had been able to alleviate the suffering of millions of victims. The ICRC and its experts were prepared at all times to facilitate the work of the Conference and to supply any information that might be required.

24. In conclusion, he expressed the hope that political problems would not delay or interfere with the normal progress of the Conference since the world was relying on it to bring about an improvement in the condition of the victims of conflicts.

#### ELECTION OF THE PRESIDENT (item 2 of the provisional agenda)

25. Mr. HAMBRO (Norway), speaking not only as the representative of Norway, but also on behalf of all the representatives present, proposed as President of the Conference, Federal Councillor Pierre Graber, Vice-President of the Swiss Federal Council, not only on account of his personal qualifications, and devotion to their common aspirations which he had just expressed in his inaugural speech, but also as a tribute to Switzerland for the services it had rendered, for over a century, to humanitarian law and human rights, as well as for its traditional hospitality.

Mr. Pierre Graber was elected President of the Conference by acclamation.

26. The PRESIDENT thanked the representative of Norway for his generous words and all participants in the Conference for the trust they had placed in his country.

27. He was happy to serve as President and would spare no effort to ensure that the Conference was a success. Its task was heavy, but it was also a noble one. He hoped therefore that all would devote to it their best efforts and fullest wisdom, for only thus would solutions be found to all the problems before them. He then called on the Head of State who had honoured the meeting with his presence and who had expressed the wish to address the Conference.

#### STATEMENT BY THE PRESIDENT OF THE ISLAMIC REPUBLIC OF MAURITANIA.

28. Mr. OULD DADA, President of the Islamic Republic of Mauritania, said he was grateful to the Swiss Government for inviting him to attend the opening of the Conference and for its warm welcome to him and his delegation, and to all those who had helped to prepare

the Conference which was an extremely important one. For, although war was becoming more and more savage and monstrous, the fact that so many countries had assembled under the auspices of the ICRC showed that there was no reason to feel discouraged.

29. The countries of the third world, which were the victims of crying injustice, hoped that there would be an understanding of their sufferings and that account would be taken of their legitimate rights. They sought freedom and human dignity. It was high time that recognition was given to certain values and elementary rights which went beyond the Universal Declaration of Human Rights. Millions of men were still under colonial oppression in the African continent, while international Zionism had placed the Palestinian population in an impossible situation.

30. True, the Conference had before it a clear agenda, but effects could not be considered if their causes were ignored. It was undeniable that there were such things as just wars. When a nation was driven to the wall, it could not forget its right to self-determination. In Europe, during the Second World War, millions of resistance fighters had shed their blood to protect their freedom. Their memories made for a better understanding of the tragic situation of oppressed peoples who could not tolerate the indifference of mankind.

31. The Palestinian people, expelled from its homeland, tortured and decimated, could not be expected to stand by with arms folded. It was quite obvious that it was the Zionists who wanted to throw the Arabs into the sea, for the Palestinian Liberation Organization had asked all the inhabitants of that country, including the conquerors, to join together, on a basis of equal rights, in building a new democratic State.

32. All those who were fighting for their rights in Africa, in the territories under Portuguese domination, in Namibia and in Rhodesia, were not moved by a desire for extermination: they were fighting because the white minority put them in reserved areas, and made them work in remote and dangerous mines, and then pretended that slaves were happier than men who had achieved independence. That was a violation of individual and national rights, and was condemned by various United Nations resolutions. The same applied to Cambodia and Viet-Nam. National liberation movements did not want to shed blood, only to secure recognition of their rights.

33. Indeed, the countries of the third world were asking very little: only that the Conference should not exclude freedom fighters from protection. Such fighters would never renounce their rights. Representatives at the Conference would be preparing rules to enable the ICRC and the various relief agencies to secure respect for human rights. If, for one reason or another, the

Conference did not grant freedom fighters the same protection as the oppressors, it would be making a serious mistake, for it would be contravening the principles set out in the Charter of the United Nations, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, (United Nations General Assembly resolution 1514 (XV)), and in the Geneva Conventions of 1949 which the Conference was designed to supplement. 2/

The meeting rose at 11.40 a.m.

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2/ For the complete text of the statement by the President of the Islamic Republic of Mauritania, see document CDDH/15.

SUMMARY RECORD OF THE SECOND PLENARY MEETING

held on Wednesday, 27 February 1974, at 10.45 a.m.

President: Mr. Pierre GRABER Vice-President of  
the Swiss Federal  
Council; Head of  
the Political  
Department

QUESTION OF INVITATIONS (CDDH/11, CDDH/12 and Add.1 and 2,  
CDDH/13/Rev.2, CDDH/14, CDDH/21, CDDH/22 and Corr.1)

1. The PRESIDENT said that during the numerous informal consultations held since the opening meeting, complete agreement had been reached between the geographical groups of countries on the designation of the officers of the Conference.
2. With regard to the other subject on which consultations had taken place, namely, that of invitations to participate in the Conference, a consensus had been reached (CDDH/22 and Corr.1) which should enable the question of the national liberation movements recognized by the regional intergovernmental organizations concerned to be settled by the Conference, but it had proved impossible to agree on the problem of the participation of Guinea-Bissau and the Provisional Revolutionary Government of the Republic of South Viet-Nam. The question, and that of the majority required for the approval of such invitations, would therefore have to be submitted to the Conference for a decision. He therefore asked whether representatives agreed that priority should be given to the question of invitations. Once that matter had been settled, the Conference would be asked to confirm the appointment of the officers agreed upon by the Regional Groups. It would then discuss item 3 of the provisional agenda - approval of the rules of procedure.
3. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam) said that the Provisional Revolutionary Government of the Republic of South Viet-Nam had informed the President of the Swiss Confederation of its speedy accession to the Geneva Conventions of 1949 on 23 December 1973. On 18 January 1974, the Swiss Government had taken note of that statement and had informed the other Parties to the Conventions accordingly.
4. The Provisional Revolutionary Government of the Republic of South Viet-Nam should therefore have been invited to attend the Conference as a full participant, especially since the series of abominable crimes committed by the United States imperialist aggressors in Viet-Nam, which had been universally condemned, had given rise to so many humanitarian problems. But that invitation had not been issued, because the United States Government was using every means in its power to prevent it. That was evident from the fact

that an invitation had been sent to the Saigon administration. Yet those two Governments should have been treated alike, because the 1973 Paris Agreement on ending the war and restoring peace in Viet-Nam, and, in particular, article 3(b), recognized the existence of two Governments in South Viet-Nam, each with its own territory and army. Consequently, both Governments should have been invited or both should have been excluded. The United States was taking the line that the Saigon administration was "an old-established State", whereas - so the argument ran - the Provisional Revolutionary Government, by its very name, was a new and provisional Government. But the whole world knew that the so-called "State of Saigon" was a creature of United States neo-colonialism.

5. All countries which believed in peace and justice demanded that invitations to Guinea-Bissau, the Provisional Revolutionary Government and the national liberation movements should be accepted by acclamation on the proposal of the President, as the representative of the depositary of the Geneva Conventions. The United States delegation, however, had been resorting to every possible manoeuvre to secure enough votes against the Provisional Revolutionary Government, under a certain rule of the rules of procedure.

6. In view of that state of affairs, his delegation could not take part in the Conference. That decision was in no way intended to prejudice the vote, but merely to draw attention to the serious threat to the Conference's true humanitarian work constituted by the United States Government's endeavours to influence its composition.

7. The Government of the Democratic Republic of Viet-Nam, in close co-operation with the Provisional Revolutionary Government had been prepared to contribute fully to the work of the Conference and still hoped to be able to do so.

The delegation of the Democratic Republic of Viet-Nam withdrew.

8. The PRESIDENT said that before statements could be made on the subject of invitations, the Conference must decide whether that question was to be given priority.

9. Mr. CISSE (Senegal) said he accepted that suggestion on behalf of the African group of countries.

10. Mr. GRIBANOV (Union of Soviet Socialist Republics) said he regretted that the important work of the Conference had been delayed by discussions on invitations to participate, which should have been issued by the Swiss Government as host country and depositary of the Geneva Conventions of 1949. None of the experts in international law participating in the Conference could approve the discrimination shown in issuing invitations, which was contrary to elementary principles of human rights and of humanitarian law and could create a very dangerous precedent.

11. The Provisional Revolutionary Government of the Republic of South Viet-Nam, which had diplomatic relations with over 40 States and had seen its country devastated and its population decimated in so many years of war, had not even been invited to a conference on humanitarian law in armed conflicts.

12. The 1973 Paris Agreement, which had been endorsed by the United States of America and the Soviet Union, specifically recognized two administrations, with separate territories, in South Viet-Nam, yet only one of those administrations had been invited to participate in the Conference. His delegation therefore appealed to representatives to reach an equitable decision which would contribute to the smooth working of the Conference, and to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate.

13. Mr. LECHUGA (Cuba) said that his delegation understood the decision of the delegation of the Democratic Republic of Viet-Nam to withdraw in protest against the failure to invite the Provisional Revolutionary Government of South Viet-Nam to participate in the Conference. The Swiss Government should have invited the Provisional Revolutionary Government not only because it was a Party to the Geneva Conventions, but also because it was recognized by a large number of States and by the Fourth Conference of Heads of State or Government of Non-Aligned Countries, as the legitimate representative of the people of South Viet-Nam. His delegation strongly protested against the issuing of an invitation to the aggressor in the continuing conflict in South Viet-Nam and the withholding of an invitation from the victim of that aggression.

14. Mr. de ALCAMBAR PEREIRA (Portugal) said that his delegation considered that priority should be given to the approval of the rules of procedure, rather than to the problem of invitations to participate, since rules of procedure were essential to the smooth working of the Conference.

15. The PRESIDENT noted that no other delegation had suggested that approval of the rules of procedure should be given priority over the problem of invitations.

16. Mr. BOUDJAKDJI (Algeria) said that the Swiss tradition of neutrality was too well established to lend itself to any situation which would be contrary to its ideals. Certain difficulties which had arisen and had led to some unpleasantness should be dealt with as soon as possible. If there was any conference which should not be confined within narrow and out-of-date limits, it was the present Conference on Humanitarian Law. Over the past twenty-five years so many changes had occurred that it was high time a new framework was established for international humanitarian law applicable in case of

armed conflict. The solution to problems of world-wide interest could no longer be left to a charmed circle but was a responsibility which should be shared by all.

17. The view was widely held that the Conference could not begin to function until certain conditions had been met with regard to participation. The Conference, in fact, could not exist until those prerequisites had been met. In order to overcome those difficulties, the Algerian delegation would formally support the President's proposal to give priority consideration to the question of extending invitations to certain countries and organizations to participate in the Conference. It deplored the absence of the Provisional Revolutionary Government of the Republic of South Viet-Nam and wished to protest against the presence of the Government of Saigon. It asked that resolution CDDH/13/Rev.2 be voted upon without any amendment, such as that put forward by the United States, Monaco and Italy in document CDDH/21.

18. Mr. WITEK (Poland) proposed that the Conference adopt by acclamation the President's proposal to deal first with the question of invitations to participate in the Conference.

19. Mr. MISHRA (India) said he supported that proposal.

20. Mr. KASASA (Zaire), speaking on behalf of the African Group of countries, said that he was in favour of priority being given to the question of invitations.

21. Mr. RATTANSEY (United Republic of Tanzania) said that he, too, considered that priority should be given to the question of invitations and that a decision should be made by acclamation. Guinea-Bissau and the Provisional Revolutionary Government of the Republic of South Viet-Nam had both acceded to the Geneva Conventions of 1949 and failure to invite them would be contrary to international law; in his opinion, the Provisional Revolutionary Government represented the majority of the people of South Viet-Nam. He also thought that an invitation should be extended to those national liberation movements which represented the true sovereign power in their respective countries. The Swiss Government's action in not extending an invitation to them was not in keeping with its traditional reputation for neutrality.

22. Mr. CRISTESCU (Romania) said that his delegation strongly supported the right of the Provisional Revolutionary Government of the Republic of South Viet-Nam, the Government of the Republic of Guinea-Bissau and the national liberation movements to participate in the Conference. The two former had acceded to the Geneva Conventions of 1949 and the participation of the national liberation movements was also essential to the work of the Conference and to

ensure the effective application of the Additional Protocols. He supported the President's proposal that the Conference should give priority to the question of invitations and considered that a decision should be taken by acclamation.

23. Mr. MILLER (Canada) said that, although it was an extraordinary procedure, the Canadian delegation would agree, in a spirit of compromise, to the proposal that the Conference should deal first with the question of invitations. There was some justification in the present case for departing from the normal procedure of adopting the rules of procedure first.

24. He felt that criticisms of the Swiss Government over its handling of invitations, in particular concerning the Provisional Revolutionary Government of the Republic of South Viet-Nam were unjustified; the Swiss Government had been right in suggesting that a decision on the Provisional Government's request for full participation was too great a burden for the host Government and should be left to the Conference. Canada firmly believed in universal accession to and application of the Geneva Conventions and had consistently refrained therefore from entering reservations to the accession of countries which it did not recognize but which it nevertheless wished to abide by the Conventions. The Canadian representative at the meeting of Heads of Delegations had expressed the view that the attitude of each Government represented at the Conference should be determined by its recognition or otherwise of the Provisional Revolutionary Government. Since Canada accepted the Republic of Viet-Nam as the sole legal Government of South Viet-Nam and did not recognize the Provisional Revolutionary Government, it could not accept full participation of the latter in the Conference.

25. Canada was deeply concerned with the progressive development of humanitarian law and appreciated the problems of all who were subjected to oppression and misery. In that spirit it would not oppose an invitation to the Republic of Guinea-Bissau although, as in the case of the Provisional Revolutionary Government of the Republic of South Viet-Nam, it did not regard accession to the Geneva Conventions of 1949, coming as it did after the opening of the Conference, as a logical argument for saying that the Swiss Government should have also invited Guinea-Bissau.

26. With regard to the national liberation movements, his country appreciated the measure of agreement reflected in draft resolution CDDH/22 and Corr.1 and accepted that those movements recognized by regional intergovernmental organizations could make a positive contribution to the work of the Conference, particularly in relation to situations of non-international armed conflict. His delegation would therefore welcome the presence of such movements with full participation, short of voting rights. It would therefore accept

draft resolution CDDH/22 and Corr.1 as a compromise but considered that the third preambular paragraph should refer to the progressive development as well as the codification of international humanitarian law.

27. Mr. KIDRON (Israel) said that, having just received draft resolution CDDH/22 and Corr.1, he hoped that representatives would be allowed time to study it and, if necessary, obtain instructions from their Governments. He also hoped that, immediately after the voting on the question of invitations, there would be an opportunity for a general discussion on the whole question of invitations to groups applying for them.

28. Mr. ALDRICH (United States of America) said that he associated himself fully with the Canadian representative's sympathy over the Swiss Government's position. He recognized that the barriers of twentieth century political ideology could be quite impenetrable and regretted the loss of valuable time in resolving political issues concerning invitations. He understood the strongly held feelings in support of some invitations but wished that those invitations could have been handled in such a way as to enable the Conference to proceed with its substantive work. His delegation had tried its best to bring about compromise solutions in regional groups at the earliest possible moment so that the Conference would not be held hostage to political demands.

29. He had some reservations about the Conference dealing with the question of invitations before adopting the rules of procedure and, perhaps even more important, the appointment of officers, but he would support the President's proposal if the President considered that that was the best way to proceed. He hoped that the question of invitations to the Republic of Guinea-Bissau and the national liberation movements could be settled speedily; it was important to find a way of enabling Governments which did not agree with the solutions adopted to state briefly their reservations. The question of the invitation to the Provisional Revolutionary Government of the Republic of South Viet-Nam, however, would need considerable discussion.

30. Mr. ALLAF (Syrian Arab Republic) said that he supported the President's proposal that the Conference should deal with the question of participation before embarking on its other business. While agreeing with other speakers that it would be normal to start with the rules of procedure, he would not be in favour of postponing a problem which affected the Conference's action on other matters.

31. Mr. CISSE (Senegal) said he wished formally to introduce the resolution asking that the Government of the Republic of Guinea-Bissau be invited to participate in the Conference (CDDH/12 and Add.1 and 2).

32. Guinea-Bissau had acceded to the Geneva Conventions of 1949 and had been recognized by the United Nations General Assembly in resolution 3061 (XXVIII) of 2 November 1973. In his introductory speech at the first meeting the President of the ICRC, Mr. Eric Martin, had expressed the hope that political problems, though they were bound to arise, would not impede the Conference's work or compromise its results. But in the case of the national liberation movements, he (Mr. Cisse) felt that even without being full participants, they should be more than mere observers; though they might not have the right to vote, they ought to be able to ask for votes to be taken. For humanitarian reasons, invitations should be extended to Guinea-Bissau and the Provisional Revolutionary Government of South Viet-Nam, as well as to national liberation movements.

33. Mr. PLAKA (Albania) said he regretted that the Conference's work was being delayed by obstructionist American attempts to exclude the Provisional Revolutionary Government of the Republic of South Viet-Nam, Guinea-Bissau and the national liberation movements from participation. The Provisional Revolutionary Government was the only legitimate representative authority in South Viet-Nam; the Saigon authorities represented nothing but American colonial interests. Considering the mass destruction, devastation and genocide by the American imperialists of which the people of South Viet-Nam had been the victims, it was only right they should be represented by the Provisional Revolutionary Government at international gatherings such as the present one, where their experience would contribute to the general understanding and to the future protection of civilian populations which, like them, had been the victims of aggression. Since it had acceded to the Geneva Conventions, the Provisional Revolutionary Government of South Viet-Nam should be granted full participation in the work of the present Conference and the same rights should be extended to the Republic of Guinea-Bissau and the national liberation movements. Albania had always supported the heroic struggle of the people of South Viet-Nam against American aggression and for the national welfare. American opposition to the Provisional Revolutionary Government's participation was based on Washington's desire to maintain its foothold in South Viet-Nam.

34. National liberation movements, whether in Africa, Palestine or Puerto Rico, were a characteristic feature of the time and were entitled to legal protection. He deplored the conspiracy of American and Soviet imperialism to try to strangle national liberation movements. The United States had threatened to walk out of the Conference if certain parties were invited to participate, while the Soviet Union considered that only States should participate in the Conference. Thus, the two super-Powers were obstructing the Conference's work. Participation in the Conference should be non-discriminatory, so that all victims of aggression and colonial oppression might be protected without distinction.

35. The PRESIDENT said it seemed to him that, apart from a few reservations, there had been no substantial opposition to his proposal to deal first with the question of invitations.

36. Mr. LEGNANI (Uruguay) said he felt that the present Conference differed substantially, both in nature and scope, from Conferences held within the United Nations framework, where the presence of groups from outside the ring of normally established government authorities was often desirable. When the purpose of the Conference was confined to the improvement of certain legal provisions, to the study and approval of amendments and revisions of humanitarian law, it was surely for the plenipotentiaries of established governments to deal with such matters which in the last analysis would require ratification by States. It was for that decisive reason that the Uruguayan delegation could not support any proposal for the admission, to a diplomatic conference of plenipotentiaries with full powers, of participants not invested with authority to represent States.

37. Mr. THOMAS (Liberia) said that the principal objective of the Conference was to ensure the full application of humanitarian law to all mankind without discrimination. For that reason it was essential that all peace-loving nations be asked to participate in the Conference's work. Liberia was not opposed to any other country or nation and would therefore welcome universal participation. He regarded it as a positive contribution to the success of the Conference to lend support to the heroic people of the Republic of Guinea-Bissau who had freed themselves from colonialism. Guinea-Bissau should be invited to participate fully in the Conference, as indeed should other African liberation movements, since Liberia believed that every people had the right to self-determination. The Conference, however, should be careful to differentiate between those legitimately entitled to representation and insurgents whose purpose was more or less divisive.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE THIRD PLENARY MEETING

held on Wednesday, 27 February 1974, at 3.25 p.m.

President: Mr. Pierre GRABER Vice-President of  
the Swiss Federal  
Council, Head of  
the Political  
Department

QUESTION OF INVITATIONS (CDDH/13/Rev.2, CDDH/20, CDDH/21, CDDH/22  
and Corr.1)

1. Mr. de la PRADELLE (Monaco) said he had not been convinced by the speakers who had tried, at the second meeting, to show that the Conference was not like any other. For him, it was a diplomatic conference like those that had preceded it since 1864. In accordance with international law, those conferences had been gatherings of States represented by delegates who, once the discussions had come to a close, had committed their Governments through their signatures. Referring to the definition of the term "treaty" given in the Vienna Convention on the Law of Treaties of 1969,<sup>1/</sup> he pointed out that the object of the Diplomatic Conference was to reaffirm and develop international humanitarian law applicable in armed conflicts, which set it apart from the General Assembly and other United Nations bodies whose concern was the maintenance or preservation of international peace and security.

2. The Conference could not decide by acclamation to send out an all-inclusive invitation to groups which had not been invited. Acclamation would conceal certain reservations and a precedent might be created. Such a process would have nothing in common with normal procedure.

3. On the other hand, the President's proposal was consistent with normal procedure. Its object was to transfer to the Conference the invitation function which the Swiss Government normally assumed in respect of Conferences of the ICRC. At the 1949 Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, where invitation problems had also arisen, the delegation of the Union of Soviet Socialist Republics had proposed that invitations be extended to two States Members of the United Nations which had not been invited by the Swiss Government, namely the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic. Without entering into a discussion on the matter, the 1949 Conference had agreed to participation by those two States.

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<sup>1/</sup> United Nations publication, Sales No.: E.70.V.5.

4. In the case under discussion, one of the requests for invitation concerned a genuine State, and it was for the Conference rather than the Swiss Government to extend an invitation to that State. Nevertheless, the question was of such importance that it could not be regarded simply as a procedural matter under the provisional rules of procedure. For that reason, his delegation, jointly with others, had submitted amendment CDDH/21, with a view to replacing the word "simple" by "two-thirds" before the word "majority" in the operative paragraph of draft resolution CDDH/13/Rev.2.

5. He disapproved of comprehensive invitations of any kind. Observer status, as described in the provisional rules of procedure, permitted international organizations and other groups to express their views.

6. It was essential that the discussion on invitations to national liberation movements be absolutely free of emotion. The aim of the Conference was to supplement Conventions which had been signed by States only. The United Nations General Assembly had never invited a national liberation movement to take part in discussions relating to the recognition of such a movement. The Security Council could, under Article 32 of the Charter, grant a hearing to any national liberation movement not entitled to recognition under international law: the Security Council's duty was to preserve peace.

7. In conclusion, he expressed the hope that the Conference would be as successful as the 1949 Conference.

8. Mr. MAIGA (Mali) said that an attempt had been made in the 1949 Geneva Conventions to keep politics out of humanitarian problems. If political issues were now to be raised several invitations to the present Conference might be called in question.

9. Referring to the comments of the previous speaker, he said that international law had undergone far-reaching changes in recent years. The trend in the international community was towards open diplomacy. All those that were affected by the preparation of rules to govern relationships among States should take part in drawing up those rules. It followed that all the national liberation movements should be invited to the Conference, since it was they who were most directly concerned. He hoped that the Conference would first address itself to the question of invitations, taking into consideration more especially draft resolution CDDH/13/Rev.2.

10. Mr. RECHETNJAK (Ukrainian Soviet Socialist Republic) said that he supported the President's suggestion that the question of participation in the Conference should be given priority. Such a procedure was unusual, however, and the question of inviting Guinea-Bissau and the Provisional Revolutionary Government of the Republic of South Viet-Nam should undoubtedly have been settled by

the Swiss Government. The Provisional Revolutionary Government had all the necessary qualifications for full participation in the Conference: it was a party to the four Geneva Conventions of 1949, and several States had recognized it as the sole authentic representative of the South Vietnamese people. Failure to invite it would be an act of discrimination, the more serious since the Saigon administration had been invited. Such an attitude would be contrary to the statement made by the Secretary-General of the present Conference at the XXIInd International Conference of the Red Cross, held at Teheran in 1973, in which he had stressed the Swiss Government's desire to ensure the widest possible attendance of States at the Diplomatic Conference.

11. The struggle for independence and for liberation from the colonial yoke was an irreversible phenomenon of modern times. The Conference should profit from the experience of peoples fighting for their national liberation. For that reason, his delegation, in common with those of the other socialist countries, supported the participation of the liberation movements in the Conference, along with Guinea-Bissau and the Provisional Revolutionary Government of the Republic of South Viet-Nam.

12. Mr. WATANAKUN (Thailand) said that he had no objection to the examination, as a matter of priority, of the question of invitations to the Conference. He was in favour of the full participation of Guinea-Bissau, which had been recognized by the international community.

13. In the case of national liberation movements, his delegation considered that invitations should be extended to movements fighting against colonialist régimes, especially those recognized by inter-governmental regional organizations.

14. Lastly, in his view, the Provisional Revolutionary Government of the Republic of South Viet-Nam should not be invited to participate in the Conference, since it was not qualified to represent a sovereign State.

15. Sir Colin CROWE (United Kingdom) said he supported the President's proposal. He did not think that the delicate and controversial question of invitations could be settled by acclamation, as proposed by certain representatives. He would give his views later regarding the various invitations which had been proposed.

16. Mrs. SALL (Mauritania) said that the purpose of the Conference was to formulate rules of international humanitarian law which would be universal and would thus apply to all. She referred to the appeal in favour of the freedom fighters made by the President of the Islamic Republic of Mauritania at the opening meeting of the Conference, and said that her delegation was in favour of giving

priority to the examination of the question of participation. She earnestly hoped that Guinea-Bissau, the Provisional Revolutionary Government of South Viet-Nam and the national liberation movements would be invited.

17. Mr. ULLRICH (German Democratic Republic) said that invitations should be issued to Guinea-Bissau, the Provisional Revolutionary Government of the Republic of South Viet-Nam and the national liberation movements. Guinea-Bissau and the Provisional Revolutionary Government were parties to the 1949 Geneva Conventions and therefore possessed the necessary qualifications. The national liberation movements, which were fighting for independence, also had the right to participate in the Conference. The invitation to the Saigon régime constituted discrimination against the Provisional Revolutionary Government and was contrary to international law.

18. Mr. GARCES (Colombia) said that his country, which had signed the Geneva Conventions of 1949 and the earlier Conventions, fully approved the aims of the draft Additional Protocols (CDDH/1). It accordingly hoped that the Conference would rise above ideological disputes and turn its attention solely to the humanitarian goals of the Red Cross. Consequently, his delegation could not accept the attacks which had been made on an important country of the American continent which was doing its best to restore peace in the Middle East.

19. With regard to the invitations to be extended to the national liberation movements, it seemed to him that the case of the Provisional Revolutionary Government should be examined separately, since it was not a State and was not in a position to carry out the obligations it would be called upon to assume at the Conference. Moreover, it would be difficult for his delegation to accept, as a participant in the Conference, a movement which the Colombian government did not recognize and whose legal standing was doubtful.

20. His delegation reserved its position on the other national liberation movements recognized by regional organizations, including Guinea-Bissau. Lastly, it rejected the argument that the depositary Government should have taken the initiative of issuing the invitations in question; that was a matter for the Conference.

21. Mr. de BREUCKER (Belgium) said that if the President's proposal that priority should be given to the question of invitations would facilitate the work of the Conference, his delegation would support it. On the other hand, it did not seem to him to be possible, in so delicate a matter, to adopt a rule by acclamation. First, there was the problem of a State which was not present and which it was thought should be present. Belgium did not recognize that State, but it would not oppose the wishes of the many delegations which

hoped that it would participate in the work of the Conference. Then there were the national liberation movements. Though it did not recognize them, his country had endeavoured, by joining with another State in submitting draft resolution CDDH/20, to contribute to the solution of the problem of their participation.

22. Finally, there was the grave problem of Viet-Nam. The Conference was a conference of States, and two Governments could not represent the same State. The presence at the Conference of two Governments, one of which did not seem to him to be the lawful Government, would establish a dangerous precedent. In that connexion he drew attention to the proposal contained in document CDDH/21.

23. Mr. LE VAN LOI (Republic of Viet-Nam) said he supported the President's proposal that the question of invitations should be taken up first. In his view, the cases of Guinea-Bissau, the national liberation movements, and the so-called Provisional Revolutionary Government should be examined separately.

24. On the occasion of the Conference of the Food and Agriculture Organization of the United Nations at Rome, the Republic of Viet-Nam had supported the admission of Guinea-Bissau, and it was in favour of Guinea-Bissau being invited to the present Conference. With regard to the national liberation movements recognized by the regional intergovernmental organizations, the Republic of Viet-Nam had stated at the XXIIInd International Conference of the Red Cross that it hoped that they would be invited to participate.

25. He reserved the right to speak later on the subject of the so-called Provisional Revolutionary Government; but he wished to stress there and then that that organization, which had been created and was directed by the Hanoi régime, was merely a South Viet-Nameese front for the North Viet-Nameese army, and that it had no territory, no capital and no popular support. It had been said that the 1973 Paris Agreement on ending the war and restoring peace in Viet-Nam recognized the existence of two administrations in South Viet-Nam. That was not true because, if that had been the case, the Republic of Viet-Nam would not have signed the Agreement. It had also been said that the so-called Provisional Revolutionary Government, as a signatory to the Agreement, was entitled to participate in the Conference. He would remind the Conference that that organization had formed part of the North Viet-Nameese delegation and that its representatives had signed the Agreement in their capacity as members of the North Viet-Nameese delegation. The Republic of Viet-Nam, which had been one of the earliest members of the Group of 77 at Geneva, would not give way to a self-styled Provisional Revolutionary Government, as was desired by the countries of which that Government was the instrument.

26. Mr. BALKEN (Federal Republic of Germany) said he reserved the right to revert to the proposal concerning priorities made by the President at the second meeting, but he wished to stress immediately that international law could be created only by States, which alone were in a position to apply it. The Conference should of course take advantage of the experience of other organizations, but conclusions could be drawn only by the States which would be responsible for implementing them. It was solely on that understanding that the Federal Republic of Germany had decided to participate in the Conference.

27. He did not see how questions of the importance of those now under discussion could be decided by acclamation.

28. Mr. AUGUSTE (Trinidad and Tobago), speaking on behalf of the Latin-American Group, drew attention to draft resolution CDDH/22 and Corr.1 submitted by the representatives of regional groups, which wished to see rapid progress made with the work of the Conference.

29. In general, the Latin American countries were in agreement on that document: in other bodies, many countries had been in favour of participation by the national liberation movements. In so far as draft resolution CDDH/22 and Corr.1 reflected a practice which was already being followed, the Latin-American Group in general approved it. Nevertheless, some members of that Group might perhaps wish to suggest a few drafting changes, and even some slight changes of substance.

30. Mr. JOHNSON (Togo) said that, as a result of the statements made by certain delegations, there was a danger that the Conference, which was of a purely humanitarian character, would find itself caught in a rigid political frame. Some delegations, though making use of legal arguments, were in fact trying to raise political barriers and to make use of international law as a means of excluding those who should have a seat at the Conference. It was perfectly legitimate for the Conference, as a sovereign body, to invite them, and he was in favour of the proposal to deal in the first place with the question of participation by those whom attempts had been made to exclude.

31. Mr. PI Chi-lung (China) said that his country had always maintained that the Provisional Revolutionary Government of the Republic of South Viet-Nam, Guinea-Bissau and the national liberation movements were fully entitled to participate in the Conference. Since they were fighting against imperialism and colonialism, they were particularly well qualified to speak on the subject of the protection of the victims of armed conflicts. By inviting them immediately, the Conference would create conditions that would promote fruitful deliberations. If it did not do so, its efforts would be doomed to failure.

32. There was one point that was worth mentioning: in the past, had any delegation ever been admitted as a result of a discussion or a vote? Why then should the Provisional Revolutionary Government of the Republic of South Viet-Nam, Guinea-Bissau and the national liberation movements, be admitted after a vote and not by acclamation?

33. The Provisional Revolutionary Government in fact exercised authority over wide areas and was the true representative of their inhabitants. Having acceded to the four Geneva Conventions of 1949, it was fully entitled to participate in the Conference. The Paris Agreement on Viet-Nam recognized the existence of two administrations - the Provisional Revolutionary Government and the Saigon régime. To admit only Saigon to the Conference and delay participation by the Provisional Revolutionary Government would be unjust and unreasonable. The Conference would be heading for failure if it refused to face realities and act with impartiality.

The meeting was suspended at 5 p.m. and resumed at 5.25 p.m.

34. Mr. de MEL (Ivory Coast) moved the closure of the debate on giving priority to the question of invitations.

35. Mr. ALLAF (Syrian Arab Republic) and Mr. OSEI TUTU (Ghana) supported that motion.

36. After an exchange of views, in which the representatives of Mali, Upper Volta, Panama, Uganda, the Syrian Arab Republic, India and Cuba took part, the PRESIDENT said that no objection had been raised to the motion for the closure of the debate. He suggested that, in the absence of any rules of procedure, that motion should be considered to have been adopted.

It was so agreed.

37. The PRESIDENT said that the Conference had before it two documents concerning the question of invitations to take part in the work of the Conference, namely a draft resolution submitted by 26 countries (CDDH/13/Rev.2) and dated 25 February 1974, and a document submitted by the United States, Italy and Monaco (CDDH/21), dated 27 February 1974 and entitled "Draft amendment to document CDDH/13/Rev.2".

38. Since the Conference did not yet have any rules of procedure, he suggested that it should first determine the procedure to be used in voting on those two documents.

39. Mr. SULTAN (Arab Republic of Egypt) pointed out that document CDDH/21 was not an amendment to draft resolution CDDH/13/Rev.2 but a new draft resolution, presented after the proposal submitted by the 26 countries; it should therefore be discussed after document CDDH/13/Rev.2.

40. Mr. GRIBANOV (Union of Soviet Socialist Republics) and Mr. ALLAF (Syrian Arab Republic) said they were of the same opinion as the representative of the Arab Republic of Egypt.

41. Mr. ALDRICH (United States of America) said that document CDDH/21 was undoubtedly an amendment to draft resolution CDDH/13/Rev.2. In his view, there was no need for the Conference to decide on a voting procedure; his understanding was that a consensus had been reached in the consultations between the President and the regional groups and that it was understood that delegations which might have reservations to formulate would be able to do so orally or in writing.

42. Mr. CISSE (Senegal) said that there were in fact two distinct draft resolutions before the Conference. In one (CDDH/13/Rev.2) the question of invitations was regarded as a procedural question, which should therefore be decided by simple majority; in the other (CDDH/21) it was regarded as a question of substance, and therefore required a two-thirds majority.

43. He moved the closure of the debate on the question of the order in which the Conference should vote on the two draft resolutions and asked that draft resolution CDDH/13/Rev.2 be put to the vote first.

44. After an exchange of views in which Mr. AUGUSTE (Trinidad and Tobago), Mr. de MEL (Ivory Coast), Mr. GARCES (Colombia), Mr. ALLAF (Syrian Arab Republic), Mr. CISSE (Senegal) and Mr. GRIBANOV (Union of Soviet Socialist Republics) took part, Mr. MILLER (Canada) moved the adjournment of the meeting and suggested that the President should hold consultations with the regional groups in order to try to solve the problems which had arisen.

45. Mr. GARCES (Colombia) supported the motion for adjournment.

46. Mr. ALLAF (Syrian Arab Republic) and Mr. CISSE (Senegal) opposed the motion for adjournment.

The motion for adjournment was rejected by 63 votes to 43, with two abstentions.

47. The PRESIDENT invited the Conference to decide whether document CDDH/21 was an amendment to draft resolution CDDH/13/Rev.2 or was a separate draft resolution.

The Conference decided by 58 votes to 31, with 14 abstentions, that document CDDH/21 was a separate draft resolution.

48. The PRESIDENT invited the Conference to come to a decision on the two draft resolutions before it, in the chronological order in which they had been submitted.

Draft resolution CDDH/13/Rev.2 was adopted by 64 votes to 28, with 14 abstentions.

The meeting rose at 7.15 p.m.



## SUMMARY RECORD OF THE FOURTH PLENARY MEETING

held on Thursday, 28 February 1974, at 10.25 a.m.

President: Mr. Pierre GRABER Vice-President of  
the Swiss Federal  
Council, Head of the  
Political Department

QUESTION OF INVITATIONS (CDDH/12 and Add.1 to 4, CDDH/14, CDDH/22  
and Corr.1) (continued)

(a) Guinea-Bissau

1. The PRESIDENT said that in accordance with the decision taken at the third meeting on the adoption of draft resolutions by consensus, delegations which wished to do so could enter reservations to them for inclusion in the Protocols.

2. He invited the Conference to consider draft resolution CDDH/12, to which the delegations of Cuba, the Democratic People's Republic of Korea, Romania, Gambia and Yugoslavia had been added as co-sponsors (CDDH/12 and Add.1 to 4).

3. Mr. CISSE (Senegal), introducing draft resolution CDDH/12 and Add.1 to 4, on behalf of the African countries, said that some 75 States Members of the United Nations had already recognized the sovereign Republic of Guinea-Bissau. The African countries were confident that almost the entire world community would have followed their example by the time of the twenty-ninth session of the United Nations General Assembly. It would be a logical corollary to the adoption of General Assembly resolution 3061 (XXVIII) for the Republic of Guinea-Bissau to be invited to participate in the Conference with the same rights as all other participating States. He was sure that the inviting Government, which was noted for its fairmindedness, had not excluded it by deliberate design. The time had come to make good the omission by extending the necessary invitation to Guinea-Bissau.

4. Mr. CHOWDHURY (Bangladesh), Mr. FISSENKO (Byelorussian Soviet Socialist Republic), Mr. THOMAS (Liberia), Mr. DUGERSUREN (Mongolia), Mr. ALLAF (Syrian Arab Republic) and Mr. CRIBANOV (Union of Soviet Socialist Republics) said that their delegations also wished to co-sponsor the draft resolution.

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\* Incorporating document CDDH/SR.4/Corr.1.

5. Mr. PI Chi-lung (China) said that the Republic of Guinea-Bissau, which had won a glorious victory in its heroic struggle against colonial domination, was an independent State and a party to the four Geneva Conventions of 1949. It was well qualified to discuss such issues as the protection of war victims and had every right to participate fully in the Conference. It should be invited to do so without further delay.

6. Mr. CLARK (Nigeria), supported by Mr. CISSE (Senegal), said that a consensus had been reached on the question under discussion during consultations held by the President with various groups. It would save the time of the Conference if draft resolution CDDH/12 and Add.1 to 4 could be adopted by consensus forthwith; any delegations which wished to do so could enter their reservations afterwards.

7. Mr. LE VAN LOI (Republic of Viet-Nam) said that his delegation, which had supported United Nations General Assembly resolution 3061 (XXVIII) and the admission of Guinea-Bissau to the Food and Agriculture Organization of the United Nations, likewise supported its participation in the Conference.

8. The PRESIDENT said that there appeared to be a consensus in favour of the adoption of draft resolution CDDH/12 and Add.1 to 4. Delegations which wished to enter reservations to it could do so either orally or in writing.<sup>1/</sup>

Draft resolution CDDH/12 and Add.1 to 4, on the participation of the Republic of Guinea-Bissau, was adopted by consensus.

9. Mr. de ALCAMBAR PEREIRA (Portugal) said that his delegation dissociated itself from the consensus on the participation of the fictional Republic of Guinea-Bissau, which was a non-existent territory with neither population nor capital.

10. Mr. MAIGA (Mali), speaking on a point of order, said he appealed to the President to request the Portuguese representative not to introduce political matters into the Diplomatic Conference.

11. The PRESIDENT said that delegations had a right to make reservations on decisions taken by consensus. He invited the Portuguese representative to continue to explain his delegation's reservations.

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<sup>1/</sup> See in document CDDH/54 the text of statements and reservations communicated in writing to the President or the Secretary-General concerning the adoption of draft resolution CDDH/12 and Add.1 to 4.

12. Mr. OGOLA (Uganda), speaking on a point of order and supported by Mr. MAIGA (Mali), said that the representative of Guinea-Bissau should be invited to take his seat before any reservations were made.

13. Mr. de ALCAMBAR PEREIRA (Portugal) said that he would like first to conclude his statement.

14. Mr. CISSE (Senegal) said that the delegation of the Republic of Guinea-Bissau was waiting outside the Conference hall and should be invited to take its seat forthwith.

15. The PRESIDENT said that the Secretary-General would inform the Conference of the steps taken to ensure a speedy response to the decision just taken by the Conference.

16. The SECRETARY-GENERAL said that a telegram would be sent to the President of the Council of State of the Republic of Guinea-Bissau informing him of the decision and inviting him to send a delegation to the Conference. Meanwhile the necessary seating had been set aside and the delegation could be invited to join the Conference forthwith.

The delegation of the Republic of Guinea-Bissau took its seat.

17. Mr. de ALCAMBAR PEREIRA (Portugal) said that, with all due respect for the President, he must protest against the distortion of procedure that had been permitted.

18. Respect for the rights and obligations conferred by the four Geneva Conventions of 1949 could be guaranteed only by the international responsibility of the States Parties to those Conventions. Only States could accede to those Conventions which involved the acceptance of complex responsibilities towards other States Contracting Parties, as well as to the international community. The so-called Republic of Guinea-Bissau, which had purported to accede to the Conventions, was an abstract entity which met none of the criteria for a State required by international law. It had no territory and no capital. Bissau was in fact the name of the capital of Portuguese Guinea. The Portuguese Government exercised sovereignty, both in practice and in international law, over the whole of that territory. Portuguese participation in the Conference must not be interpreted as in any way implying an acknowledgment by Portugal that the Republic of Guinea-Bissau possessed any legal status at all.

19. Mr. LEGNANI (Uruguay) said that, in accordance with the precedents created by his Government's action in other international bodies, his delegation wished to place on record its abstention with regard to the invitation to Guinea-Bissau which had just been decided upon.

20. Mr. MOLINA LANDAETA (Venezuela) said his delegation was gratified at the presence of representatives of Guinea-Bissau at the Conference. Venezuela had always opposed colonialism in any form, just as it had always supported the principles of the Charter of the United Nations, particularly those of the self-determination of peoples and non-intervention in the domestic affairs of States. It had always sought for balanced formulas in which the rights of all parties were respected. It was for that reason that his delegation had abstained in the vote on General Assembly resolution 3061 (XXVIII) and would also have abstained if a vote had been taken on draft resolution CDDH/12 and Add.1 to 4.
21. Mr. MAHONY (Australia) said that his country did not recognize Guinea-Bissau as a sovereign State and could not therefore have voted in favour of inviting it to participate fully as such in the Conference. However, his Government had sympathy for the objectives and aspirations of the liberation movements, and welcomed the admission of Guinea-Bissau by consensus, though it had some reservations concerning the legal status of the Guinea-Bissau delegation. Guinea-Bissau had a strong interest in the work of the Conference and would have a contribution to make to the development of international humanitarian law applicable in armed conflicts.
22. Mr. TASWELL (South Africa) said he dissociated his delegation from the consensus. His Government did not recognize the Republic of Guinea-Bissau, which had neither territory nor capital and could not comply with the requirements of the Geneva Conventions.
23. Mr. SANSON-ROMAN (Nicaragua) said that, if draft resolution CDDH/12 and Add.1 to 4 had been put to the vote, his delegation would have abstained.
24. Mr. CALERO-RODRIGUES (Brazil) said that he understood participation in the Conference to mean, in principle, full participation. Such participation should be limited to States Parties to the 1949 Geneva Conventions. His delegation was satisfied that the Swiss Government, as the convening Power, had performed its duties correctly, and that no State that could properly participate in the Conference had remained uninvited. It would, of course, be open to entities other than States Parties to the Conventions to take part in the deliberations of the Conference with voice but no vote, and his delegation would not oppose such participation.
25. Mgr. LUONI (Holy See) said it was important that humanitarian law as laid down in the two Protocols (CDDH/1) to the Geneva Conventions of 1949 should be accepted by all, especially those directly concerned, and his delegation therefore welcomed the consensus on the admission of Guinea-Bissau. The delegation of the Holy See was greatly concerned at the increasing tendency to

introduce politics into international meetings which ought to be non-political and so, while it welcomed the widest possible participation in the Conference, it hesitated to take decisions on issues which seemed more political than either legal or humanitarian. It would be dangerous to introduce politics into the present Conference, which ought to be a model for other international meetings. However, the countries which today were bitter and frustrated because their viewpoints were rejected by the majority were perhaps the self-same countries which had formerly prevented weaker voices from being heard on the international scene.

26. Moderation by all parties was essential. Revenge and questions of prestige must be set aside. Admission of one party to a conference should not lead to the departure of another. The true aim of the Conference must not be forgotten, and means must be found to protect the innocent victims of armed conflict, for whom failure to agree on preliminaries would mean increased suffering. Their voices must be heard above the noise of the quarrel. The spirit behind the Geneva Conventions must never be forgotten; charity, love of mankind and a spirit of co-operation must prevail over divisiveness.

27. At the suggestion of Mr. MISHRA (India), the PRESIDENT invited the representative of Guinea-Bissau to address the Conference.

28. Mr. TURPIN (Republic of Guinea-Bissau) said he wished to express his delegation's sincere thanks to all those delegations which had helped to ensure the participation of Guinea-Bissau in the Conference, as well as to the representative of the Holy See, whose words of wisdom would be carefully pondered.

29. His delegation had wished to attend the Conference not in order to wage war on a former administering Power, but because of its desire to contribute to the formulation of humanitarian law. He reaffirmed Guinea-Bissau's opposition to colonial government by Portugal; but once the problem of the Portuguese colonial presence had been solved, Guinea-Bissau would be prepared to grant most-favoured-nation treatment to Portugal, for it was not opposed to the Government of Lisbon.

(b) Provisional Revolutionary Government of the Republic of South Viet-Nam

30. The PRESIDENT invited the Conference to consider the question of the invitation of the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate in the Conference (CDDH/14)

31. Mr. BOUDJAKDJI (Algeria) said that the arguments already advanced in favour of the participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam were irrefutable

because they were based on law, justice and equity. For the non-aligned countries, the participation of Governments Parties to the Geneva Conventions and of national liberation movements was both an absolute right and a prerequisite for the success of the Conference. The non-aligned countries grouped more than half the States members of the international community and represented a majority of the world population which had been subjected to permanent aggression and systematic exploitation for generations. In many regions of Asia, the Middle East and Africa, such aggression and exploitation persisted. The international community was now being given the opportunity of taking measures to attenuate the sufferings of peoples still under foreign domination.

32. In Algeria, the National Liberation Front had played a major role in protecting the civilian population against aggression by the occupying troops, and the Provisional Government of the Republic of Algeria had been the first to accede to the Geneva Conventions of 1949 in that capacity. The history of many of the countries represented at the Conference was similar to that of Algeria. Under those conditions, it was impossible to subscribe to legal fictions and to ignore the legitimate aspirations of those struggling to regain their liberty. The unspeakable suffering of millions of human beings fully justified their representatives' participation in the Conference.

33. Some surprising statements had been made, by one speaker in particular. It seemed clear that in certain quarters there was a desire to continue to impose a colonialist and imperialist civilization and the so-called "classic" system of international law on the peoples of the southern hemisphere, at the very time when there had been reason to hope that, at least in the humanitarian field, no further mention would be made of out-dated colonial concepts such as that of "might is right". What did the speaker to whom he had referred represent in the eyes of tens of millions of war victims engaged in a legitimate struggle to make their voice heard?

34. The time had come to adapt the rules of international law, and particularly humanitarian law, to the realities of the contemporary world in the light of the natural right of peoples to recover the security and freedom of which they had so long been deprived by colonialism and imperialism. Those peoples were now determined to reject the constraints of a system of international law conceived in bygone days. It was time that account was taken of the positive changes that had taken place in the world as a result of the accession to independence of many of the third world countries.

35. Both law and international ethics called for the presence of the Provisional Revolutionary Government of the Republic of South Viet-Nam which was necessary for the success of the work of the

Conference. Arguments which were completely irrelevant to the Conference's terms of reference had been advanced against an invitation. The Provisional Revolutionary Government had declared that its participation in the Conference would imply neither recognition by it of parties which it had not yet recognized nor the converse, and that, consequently, the question of legal status could not be put forward as an impediment. It would not be possible to draw up an acceptable system of humanitarian law without the effective participation of those who had up to the present been brushed aside. Attempts to introduce new criteria and new terms of reference for the issue of invitations must be stopped, since they implied intolerable discrimination against those waiting to take their rightful place at the Conference.

36. On behalf of the sponsors and of the delegation of Iraq, which had now joined them as a co-sponsor, he proposed the adoption of draft resolution CDDH/14 by an immediate vote.

37. Mr. DUGERSUREN (Mongolia) said it was regrettable that an invitation had not been sent at the proper time to the Provisional Revolutionary Government of the Republic of South Viet-Nam, which was a party to the 1949 Geneva Conventions. That discriminatory omission was the result of the rigid positions of some delegations and a politically motivated campaign. It was hypocritical to accuse those who favoured the Provisional Revolutionary Government's participation of introducing political questions.

38. The Provisional Revolutionary Government was fully entitled to participate in a conference which was fundamentally humanitarian in character, since it represented the true aspirations of a people which had been subjected to neo-colonialist aggression for many years. The Provisional Revolutionary Government, which could provide authoritative answers to questions concerning the application of humanitarian law in armed conflicts, could make a positive contribution to the success of the Conference. Delegations should not blind themselves to the fact that armed conflicts were still taking place in South Viet-Nam. It was wrong that the party responsible for the continuation of those conflicts should have been given a seat at the Conference while the party which was attempting to implement the 1973 Paris Agreement on ending the war and restoring peace in Viet-Nam had been barred.

39. The Provisional Revolutionary Government had been recognized by many States and had participated actively in a number of inter-governmental conferences, in particular the Fourth Conference of Heads of State or Government of Non-Aligned Countries held in Algiers in 1973, which, in one of its resolutions, had recognized the Provisional Revolutionary Government as the only genuine representative of the South Viet-Nameese people. His delegation joined with those who had spoken in favour of extending an invitation to the Provisional Revolutionary Government of the Republic of South Viet-Nam.

40. Mr. PI Chi-lung (China) said it was only natural that the Provisional Revolutionary Government of the Republic of South Viet-Nam should take part in the Conference. His delegation fully supported the position embodied in the declaration made on 14 February 1974 by the Provisional Revolutionary Government concerning its participation in the Conference and in that made on 24 February 1974 by the Vice-Minister for Foreign Affairs of the Democratic Republic of Viet-Nam condemning the United States of America for trying to prevent the Provisional Revolutionary Government from attending the Conference.

41. The South Viet-Nameese population had won significant victories in their long struggle against imperialist aggression, and had thus contributed effectively to the struggle being waged in Asia, Africa and Latin America for peace and justice. The Provisional Revolutionary Government was the authentic representative of the South Viet-Nameese people, and effectively exercised administrative authority over large areas of the country. It was therefore entitled to participate fully in the Conference. The United States opposed such participation, but had not as yet put forward any valid argument in support of its position.

42. The Provisional Revolutionary Government was a signatory of the 1949 Geneva Conventions and was therefore qualified to attend the Conference as a full participant. The Viet-Nameese people, with their long history of struggle against a cruel war of imperialist aggression, were very well qualified to discuss the 1949 Geneva Conventions and the question of protection of the civilian population.

43. The Paris Agreement on Viet-Nam provided for de facto recognition of two administrations in South Viet-Nam, namely, the Provisional Revolutionary Government and the Saigon authorities. It was therefore unreasonable that certain delegations should support the unilateral presence of the Saigon authorities at the Conference and were attempting to prevent the Provisional Revolutionary Government from attending. Such discrimination conflicted with the aims of the Conference.

44. On previous occasions, many delegations had expressed the view that the Provisional Revolutionary Government should have been invited before the Conference met. It should have been easy to settle that question, but owing to the pressure exerted by some Powers, that had proved impossible before the opening of the Conference. Participation of the Provisional Revolutionary Government was a question of principle which required immediate settlement on the basis of justice, not of "might is right". The Conference should invite the Provisional Revolutionary Government forthwith to participate officially in its work, the success of which would otherwise be jeopardized.

The meeting rose at 12.35 p.m.

SUMMARY RECORD OF THE FIFTH PLENARY MEETING

held on Thursday, 28 February 1974, at 3.20 p.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

QUESTION OF INVITATIONS (CDDH/14) (continued)

(b) Provisional Revolutionary Government of the Republic of South Viet-Nam (continued)

1. The PRESIDENT reminded the Conference that it had before it a draft resolution (CDDH/14) inviting the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate in the work of the Conference with all the rights of participants.

2. Mr. MENCER (Czechoslovakia) reaffirmed the position already adopted by his country at the preparatory meeting of Heads of Delegation. He regretted the absence of the Provisional Revolutionary Government and the presence of a delegation of the Government of Saigon. The Provisional Revolutionary Government was entitled to speak on behalf of the people of South Viet-Nam; not so, however, the Government of Saigon, which did not occupy the territory of the Republic and did not exercise any sort of power in it, whether de jure or de facto.

3. Moreover, the Provisional Revolutionary Government was a Party to the Geneva Conventions of 1949. Its participation in the elaboration of the two additional Protocols (CDDH/1) was therefore an imperative necessity. It was just not conceivable that the initial decisions of a Conference concerned with the reaffirmation and development of international humanitarian law, and which purported to be universal, should flagrantly disregard international law, in negation of the very principle of universality.

4. Furthermore, article 1, common to all four of the Conventions of 1949, laid down that "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances". Clearly, the Provisional Revolutionary Government enjoyed the same rights as the other Parties, which, in their turn, had the same obligations towards it, whether they had recognized it or not.

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\* Incorporating document CDDH/SR.5/Corr.1.

5. His delegation insisted that the Provisional Revolutionary Government should be invited to participate in the work of the Conference.

6. Mr. RATTANSEY (United Republic of Tanzania) congratulated Guinea-Bissau on its occupancy of its rightful place in the Conference. Under normal international law prevailing since the Nurnberg Trials, and consequent on the adoption by the United Nations of the Declaration on the Granting of Independence to Colonial Countries and Peoples (United Nations General Assembly resolution 1514 (XV)), the people of Guinea-Bissau constituted a sovereign entity and the spokesmen of that sovereign State were their sole representatives.

7. The Provisional Revolutionary Government of the Republic of South Viet-Nam had all the attributes of a State under international law. Had it not been for the unjustified presence of foreign armed forces in South Viet-Nam, it would have been the sole Government of that country. In addition, the Provisional Revolutionary Government had been recognized by a majority of other Governments, and it had been represented at the Paris Conference on Viet-Nam. Finally, it was a Party to the Geneva Conventions of 1949 and was continuing to fight for the independence of the Viet-Nameese people. It therefore met all the conditions for participation in the Conference on Humanitarian Law.

8. Mr. QUENTIN-BAXTER (New Zealand) said that the question of inviting the Provisional Revolutionary Government of the Republic of South Viet-Nam was a very special one. He recognized that in certain regions conflicts of interest between the Great Powers had encroached to some extent on the right of peoples to self-determination, and had given rise to the phenomenon of divided States. However, in the case of the Provisional Revolutionary Government, the matter was one of the further splitting of an already partitioned State and it would be unprecedented in international forums if the Conference were to accept the presence of two Governments for one and the same State.

9. There were two fundamental principles which the international community must respect, namely, the sovereignty and integrity of States, and the right of peoples to self-determination. When, within a country, two Governments were struggling for power, it was for individual States, not the international community as a whole, to recognize one or the other. In the event of conflict between those two principles, the practice to an ever-increasing extent was to take into consideration the views of the countries of the particular region. When a country was divided, not as a result of internal conflicts, but because of the intervention of external forces, the international community should always endeavour to help the country to preserve its unity.

10. On humanitarian grounds, the depositaries of the Geneva Conventions should accept and circulate, without comment or partisanship, the statements of any Government or other authority, in which the said Government or authority undertook to apply the Conventions. But that should not inhibit the Conference from respecting the normal practice of States in their relations.
11. His delegation would be obliged to vote against draft resolution CDDH/14.
12. Mr. ALDRICH (United States of America) said that by acceding to the Geneva Conventions of 1949 and requesting to participate in the work of the Conference, the entity called "Provisional Revolutionary Government of the Republic of South Viet-Nam" was attempting to fill a place equivalent to that of the Government of a State - the Republic of Viet-Nam - in fact, trying to obtain double representation for a single State.
13. The Provisional Revolutionary Government did not claim to be the Government of a State. It was neither a true government, since it had no governmental institutions, capital, laws or jurisprudence of its own, nor a national liberation movement, since its activities were not directed against a colonial Power. It actually aimed at controlling the people of Viet-Nam, by whom it was constantly repudiated. Those who had fled the territory which it controlled were more numerous than those over whom it exercised its authority. The Provisional Revolutionary Government nevertheless did exist, but solely due to its collaboration with armed forces from elsewhere.
14. The participation of its representatives in the Paris negotiations had been solely for the purpose of bringing an end to the war in Viet-Nam. Such participation at no time implied, on the part of the Republic of Viet-Nam or of the United States of America, recognition of the Provisional Revolutionary Government and everything had been done to ensure that the organization of the negotiations, and the formulation and signature of the Agreement, could not be used as the basis for such an allegation.
15. The delegation of the United States of America recognized that the special nature of the Conference could justify the presence of non-governmental bodies, and for that reason it had endeavoured to promote the adoption of acceptable compromises in connexion with the participation of national liberation movements. But the Provisional Revolutionary Government was attempting to obtain acceptance as a Government and not as a movement. Its aim was political advantage, not the development of humanitarian law. The Conference therefore had to have the courage to oppose its participation.

16. Mr. KITAHARA (Japan) said that the Government of Japan understood very well that the objectives of the Conference were of vital importance to the Provisional Revolutionary Government. However, it seemed to him necessary to abide by the principle that only sovereign States were entitled to participate fully in the work of the Conference. The Government of the Republic of Viet-Nam being the only legal representative of that country, he would vote against draft resolution CDDH/14. However, he would not be opposed to attendance by the Provisional Revolutionary Government without voting rights.

17. Sir Colin CROWE (United Kingdom) said that he would vote against the draft resolution because the Agreement on ending the war in Viet-Nam, which had been concluded on 27 January 1973 in Paris, assumed the existence, in Viet-Nam, of two sovereign States which were to agree between themselves regarding ultimate reunification. The British Government recognized, as the only legal government in South Viet-Nam, the Government of the Republic of Viet-Nam, which had its seat at Saigon. It denied the existence of a third State, and would therefore oppose an invitation to any other entity.

18. Mr. GRIBANOV (Union of Soviet Socialist Republics) stressed that the Provisional Revolutionary Government of the Republic of South Viet-Nam was a party to the Geneva Conventions of 1949 and the Paris Agreement of 1973 on ending the war and restoring peace in Viet-Nam, and that in South Viet-Nam there were two zones and two administrations. The Provisional Revolutionary Government exercised authority over a considerable area. More than forty countries had recognized it, and as it represented the people of South Viet-Nam there was no reason to deprive those people of representation at the Conference.

19. The Provisional Revolutionary Government's delegation could make an important contribution to the development of humanitarian law and it would be unjust to prevent it from doing so. Moreover, a refusal to invite the Provisional Revolutionary Government would raise the question of the authority of the Saigon delegation.

20. Mr. DOROCHEVITCH (Byelorussian Soviet Socialist Republic), protesting at the discrimination against one of the signatories of the Geneva Conventions of 1949, the Provisional Revolutionary Government of the Republic of South Viet-Nam, a Government which a number of countries had recognized, said that, according to the Paris Agreement on Viet-Nam, two zones and two administrations existed and that the Saigon administration could not claim to speak in the name of the entire people of South Viet-Nam. The Provisional Revolutionary Government had a right to be represented at the Conference, and the Conference should adopt draft resolution CDDH/14.

21. Mr. WITEK (Poland) congratulated the delegation of Guinea-Bissau. He said that the mistakes made when sending out invitations to attend the Conference had delayed its work and that the refusal to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam could lead to a whole series of exclusions based on non-recognition. The Provisional Revolutionary Government existed as an internationally recognized Government, as a party to the Geneva Conventions of 1949 and as a signatory to the Paris Agreement. That the Provisional Revolutionary Government, Guinea-Bissau and the liberation movements had been obliged to solicit invitations to the Conference was deplorable. The Provisional Revolutionary Government should be invited by acclamation, and those delegations opposed to such invitations could have their reservations recorded in the usual manner.

22. Mr. KIRALY (Hungary) said that in order to avoid discrimination which would adversely affect the work of the Conference, the Provisional Revolutionary Government of the Republic of South Viet-Nam, recognized by a number of States, including Hungary, should be immediately invited to the Conference. As one of the co-sponsors of draft resolution CDDH/14, the Hungarian delegation insisted that it be adopted.

23. Mr. CHOWDHURY (Bangladesh) stated that a Conference whose aim was to mitigate suffering resulting from armed conflicts, and which was concerned not with States, but with human beings, had no right to ignore the contribution that the Provisional Revolutionary Government could bring to its work. The Provisional Revolutionary Government was established in the liberated territories; it had signed the Paris Agreement and was recognized by a number of States. He recommended the adoption of draft resolution CDDH/14.

24. Mr. WATANAKUN (Thailand) congratulated the Guinea-Bissau delegation.

25. Referring to draft resolution CDDH/14, he pointed out that the Provisional Revolutionary Government did not exercise effective control in South Viet-Nam. The mere fact of accession to the Geneva Conventions of 1949 did not imply accession to independence. Only sovereign States were present at the Conference.

26. He asked whether a rebel group should be allowed to take part on an equal footing with a legitimate Government. Thailand, which was a South-East Asian country, had no wish to impose a solution. It was up to the people of South Viet-Nam to solve the question without outside interference, as was in fact laid down in the Paris Agreements. The Thailand delegation would vote against draft resolution CDDH/14.

27. Mr. CRISTESCU (Romania), after welcoming the presence of Guinea-Bissau, whose delegation would make a valuable contribution to the work of the Conference, said that to oppose the participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam would be contrary to the very principles of international humanitarian law. He supported the statement made on 14 February 1974 by the Provisional Revolutionary Government and on 24 February by the Vice-Minister of Foreign Affairs of the Democratic Republic of Viet-Nam. The Provisional Revolutionary Government, which was the real representative of the people of South Viet-Nam in their fight against imperialist interference, had the support of the socialist and non-aligned countries.

28. National liberation movements could not be considered as protagonists in internal conflicts because the colonial and Trusteeship territories, according to the United Nations Declaration on the granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), had retained a status distinct from that of the administering Power. International law had to be adapted to the realities of the international situation. He urged that draft resolution CDDH/14 be adopted.

29. Mr. Seuk Djoun KIM (Democratic People's Republic of Korea) expressed his satisfaction at seeing the delegation of Guinea-Bissau seated at the Conference.

30. He stated that his delegation had been among the originators of draft resolution CDDH/14, which proposed that the Provisional Revolutionary Government be invited to the Conference, and that it was the real representative of the people of South Viet-Nam.

31. Mr. BALKEN (Federal Republic of Germany) said that his Government, which maintained diplomatic relations with the Government of the Republic of Viet-Nam, the only legal representative of South Viet-Nam, did not recognize the Provisional Revolutionary Government. He would therefore not be able to vote in favour of its participation with full rights in the Conference, but took cognizance of the Provisional Revolutionary Government's wish to contribute to the formulation and development of humanitarian law.

32. He stressed that any invitation to the Provisional Revolutionary Government to attend the Conference should in no case be construed as modifying the position of the Federal Republic of Germany with regard to the international status of the Provisional Revolutionary Government.

33. Mr. WHANG (Republic of Korea) said that the Conference should not jeopardize the legitimate right to self-determination of the South Vietnamese people who were to decide their political future through the general elections under the provisions of the Paris Agreement of January 1973. He considered that the admission of the Provisional Revolutionary Government to the Conference at the present time would only encourage the creation of another State in the already divided State of South Viet-Nam and thus would only aggravate the sufferings of the people of South Viet-Nam. His delegation would therefore vote against draft resolution CDDH/14 on the subject of an invitation to the Provisional Revolutionary Government.

34. Mr. GUCETIĆ (Yugoslavia), after expressing his pleasure at the presence of the delegation of Guinea-Bissau at the Conference, said that the participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam was indispensable. The Provisional Revolutionary Government was recognized as the only real representative of South Viet-Nam by the non-aligned States, in particular by Yugoslavia which had also fought a war of liberation.

35. Miss MANEVA (Bulgaria) said that her delegation welcomed the presence of Guinea-Bissau at the Conference and warmly supported the draft resolution in favour of extending an invitation to the Provisional Revolutionary Government.

36. Mr. LE VAN LOI (Republic of Viet-Nam) said he wished to repeat what he had already said at the third meeting, namely that his delegation was opposed to inviting the Viet-Cong, described in draft resolution CDDH/14 as the Provisional Revolutionary Government of the Republic of South Viet-Nam.

37. At the XXIIInd International Conference of the Red Cross at Teheran, and at the preparatory meetings for the Diplomatic Conference, his delegation had stressed the need for the universal application of the Geneva Conventions of 1949 and of the proposed additional Protocols. His country believed that all Member States of the United Nations and all the States Parties to the Geneva Conventions should participate in the present Conference; for that reason, his delegation had not opposed the presence of the delegation from North Viet-Nam. But he could not accept the idea that the Provisional Revolutionary Government should be regarded as an entity, still less as a State or a Power, that was entitled to deposit instruments of accession to the Geneva Conventions and to be invited to participate in the work of the Conference.

38. The Viet-Cong was an organization created and directed by the Hanoi communist régime, a group that was waging a war of aggression against its neighbours.

39. In the wider context of South-East Asia, the Hanoi army and its various extensions were merely instruments of communist expansionist and imperialistic policy. More than a month previously, Chinese Communist forces had seized the Paracel Islands, an integral part of Viet-Nam. His Government had proposed to the Viet-Nameese Communist party that a joint protest should be addressed to Peking for the purpose of reaffirming Viet-Nameese sovereignty over those islands. Not only had the Viet-Nameese Communist party refused but, worse still, the Hanoi administration had given a triumphal welcome to the units of the Chinese fleet.

40. In South-East Asia, no free country was under any delusions as to the real nature of the Viet-Cong or considered it to be a revolutionary or liberation movement. It was universally accepted that a true liberation movement was a movement that was fighting for the legitimate rights of its people against colonial domination. The objectives of the Viet-Cong were diametrically opposed to that concept. Its objective was to overthrow the Government of an independent sovereign State, in order to impose on the South Viet-Nameese people a form of imperialist domination. Consequently, the Viet-Cong could not claim to be regarded as a liberation movement. A previous speaker had tried to draw a parallel between the Viet-Cong and the African liberation movements; but they had nothing in common. The Viet-Nameese people had acquired its independence in 1954 after a long struggle against colonialist imperialism, and today it was fighting against communist imperialism.

41. The 1954 Geneva Agreements on the cessation of hostilities in Indo-China had recognized four States, namely, Laos, Cambodia, North Viet-Nam and South Viet-Nam. North Viet-Nam was bound to respect the territorial integrity of the other three States, but it had been continually attacking its neighbours. For South Viet-Nam the war had in fact been in two stages; the first had been the anti-colonialist phase, which had been terminated by the Geneva Agreements, and the second phase had been a war against North Viet-Nameese aggression.

42. To bring that war to an end, after more than twenty years, the Paris Agreement had been signed in 1973. The Agreement did not provide a legal basis for recognizing the Provisional Revolutionary Government as a Government. It was inconceivable that the South Viet-Nameese people would sign an agreement inventing a second government in South Viet-Nam. The Paris Agreement of 1973 clearly stipulated the peace terms accepted by all the signatories, namely, relations between South Viet-Nam and North Viet-Nam and general elections with a view to implementing the inalienable right of the South Viet-Nameese people to decide its own political future. He then read out article 15 of the Paris Agreement.

43. The internal problems of South Viet-Nam, namely the reintegration of the Viet-Cong into the South Viet-Nameese nation, were covered by article 9. The creation of a completely new Government and the attempt to foist it on the South Viet-Nameese people showed that Hanoi did not respect article 9 and was already seeking to sabotage the general elections in South Viet-Nam. His country had proposed that a general election should be held on 20 July 1974, and the Viet-Cong was putting itself forward as a Government. Resort to such conduct, before the people had been consulted, showed that the Viet-Cong was not prepared to follow the path of democracy.

44. With respect to the normalization of relations between North Viet-Nam and South Viet-Nam, his Government had proposed to the Hanoi Administration that negotiations should be held at an early date with a view to the re-establishment of normal relations in a number of different spheres, in accordance with article 15(c) of the Paris Agreement.

45. He emphasized the fact that the Viet-Cong representatives had always formed an integral part of the Hanoi administration; no article of the Paris Agreement referred to the Viet-Cong as an administration or a government. On the contrary, the Agreement recognized the Republic of Viet-Nam as the only lawful and legitimate Government of a single South Viet-Nameese State. His delegation therefore denounced any communist attempt to distort the Paris Agreement for the sole purpose of giving a status to the Viet-Cong.

46. The aim of the Diplomatic Conference was to promote human dignity. If North Viet-Nam really wished to respect the dignity of the Viet-Nameese nation, it was time it accepted the South Viet-Nameese proposal. The internal affairs of Viet-Nam should be handled as between North and South Viet-Nam and should not be debated before a world assembly. The Government of the Republic of Viet-Nam wished for peace, but it must be peace with liberty and dignity.

47. Mr. MAHONY (Australia) said that his Government approached the question under consideration on the basis of the established and well-known principles of international law concerning the recognition of States. It believed that those principles, which had been built up over the centuries to govern relations between States, should not be abandoned at the Conference. Australia was a country in the Asian region and for that reason draft resolution CDDH/14 was of particular interest to his delegation.

48. His Government recognized the Government of the Republic of Viet-Nam as the only Government in the territory of South Viet-Nam and it maintained diplomatic and other relations with that Government. His Government did not recognize the Provisional Revolutionary Government of the Republic of South Viet-Nam. Purely legal reasons would therefore lead the Australian delegation to vote against inviting the Provisional Revolutionary Government to participate fully in the Conference as a State. His delegation recognized, however, that there would have been some value in having the Provisional Revolutionary Government participate in the Conference in some capacity other than as a State.

49. It was regrettable that the question before the Conference had been posed as a choice between participation as a State, and non-participation. His delegation regretted that political and legal considerations had ruled out the possibility, which was attractive in the light of the humanitarian objectives of the Conference, of having the Provisional Revolutionary Government participate in it on a basis which would have been in conformity with the principles of international law.

50. As a country of the Asian region, Australia shared the views expressed in that connexion by the representatives of Thailand and Japan. His delegation would vote against draft resolution CDDH/14.

51. Mr. OGOLA (Uganda) congratulated the representatives of Guinea-Bissau on their admission as full participants in the Conference.

52. So far as inviting the Provisional Revolutionary Government was concerned, a decision should be taken quickly to associate that delegation with the work of the Conference. Legal arguments had been advanced in order to delay such a decision, but under no circumstances should law be invoked as a barrier to justice. On the contrary, law must be used as a means to strengthen justice.

53. The struggle being waged by the people of both South and North Viet-Nam was similar to that being waged against colonialism on the African continent and the time had come for his delegation to express its support for an ally.

54. If the Conference opposed the participation of the Provisional Revolutionary Government on the grounds of recognition, the result might be chaos; his delegation would therefore vote for draft resolution CDDH/14.

55. Mrs. SALL (Mauritania) expressed pleasure at seeing the representatives of Guinea-Bissau present at the Conference.

56. She reiterated her delegation's support for the Provisional Revolutionary Government, which was recognized by her Government, and said that she was whole-heartedly in favour of draft resolution CDDH/14.

57. Mr. CISSE (Senegal) congratulated the representatives of Guinea-Bissau, a neighbouring country and a friendly one.

58. His delegation would vote for draft resolution CDDH/14. The Provisional Revolutionary Government had a legitimate right to participate in the Conference: it had all the attributes of a sovereign State and was recognized by many countries. It was a party to the Geneva Conventions of 1949, and the Swiss Government had informed all other States Parties to those Conventions accordingly on 18 February 1974.

59. For all those reasons, the Provisional Revolutionary Government should immediately be invited to participate in the Conference; it would undoubtedly provide invaluable information which would be helpful in completing the laws applicable in armed conflicts.

60. Mr. HUGLER (German Democratic Republic) associated himself with the congratulations expressed by previous speakers to the representatives of Guinea-Bissau.

61. The issuing of an invitation to the Provisional Revolutionary Government was, in his view, a matter of major political and legal importance and any other decision would be contrary to existing international law. In view of the presence of representatives of the Saigon administration at the Conference, failure to invite the Provisional Revolutionary Government would be an act of discrimination. The Provisional Revolutionary Government was a party to the 1949 Geneva Conventions; it had been recognized by a number of States and, as the Paris Agreement proved, it was the legitimate representative of the South Viet-Namense people. From the point of view of international law, however, mutual recognition, or non-recognition, was completely irrelevant where accession to international treaties and participation in diplomatic conferences was concerned. The Provisional Revolutionary Government had led a hard fight against imperialist aggression and it would be desirable and legitimate for it to take an active part in discussions on the protection of the civilian population. It was evident that the Provisional Revolutionary Government would be able to make an effective contribution to the work of the Conference and it should therefore be invited to participate with full rights.

62. Mr. SANSON-ROMAN (Nicaragua) said that he considered the Government of the Republic of Viet-Nam to be the sole representative of that country, and he would accordingly vote against draft resolution CDDH/14.

63. Mr. YODICE CODAS (Paraguay) said he wished to make it quite clear that his delegation would note against the draft resolution, since the Government of Paraguay recognized the Government of the Republic of Viet-Nam as the sole legitimate representative of South Viet-Nam.

64. Mr. LISTRE (Argentina) referred to the position adopted by his country at the Fourth Conference of Heads of State or Government of Non-Aligned Countries held at Algiers in 1973 and said that, as there had been no change in the situation, he would have to abstain in the vote on the draft resolution. He nevertheless regarded it as desirable that the Provisional Revolutionary Government should participate in the Conference on the same basis as the twenty-two national liberation movements.

At the request of the representative of Algeria, the vote on draft resolution CDDH/14 was taken by roll-call.

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

In favour: Czechoslovakia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yemen, Yugoslavia, Albania, Algeria, Bangladesh, Byelorussian Soviet Socialist Republic, Bulgaria, Burundi, China, Congo, Cuba, Guinea-Bissau, Hungary, India, Indonesia, Iraq, Madagascar, Mali, Mauritania, Mongolia, Uganda, Peru, Poland, Arab Republic of Egypt, Libyan Arab Republic, Syrian Arab Republic, Democratic People's Republic of Korea, German Democratic Republic, United Republic of Cameroon, United Republic of Tanzania, Romania, Senegal, Sudan, Sri Lanka.

Against: Thailand, Uruguay, Venezuela, Federal Republic of Germany, Australia, Belgium, Bolivia, Brazil, Canada, Chile, Cyprus, Colombia, Costa Rica, Ecuador, Spain, United States of America, Greece, Guatemala, Haiti, Honduras, Israel, Japan, Liberia, Luxembourg, Malaysia, Mexico, Monaco, Nicaragua, New Zealand, Paraguay, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Dominican Republic, Khmer Republic, United Kingdom of Great Britain and Northern Ireland, San Marino.

Abstaining: Chad, Togo, Trinidad and Tobago, Turkey, Zaire, South Africa, Saudi Arabia, Argentina, Austria, Burma, Ivory Coast, Denmark, El Salvador, Finland, France, Ghana, Upper Volta, Iran, Ireland, Italy, Jordan, Kenya, Lebanon, Liechtenstein, Nigeria, Norway, Pakistan, Panama, Netherlands, Central African Republic, Holy See, Sweden, Switzerland.

The draft resolution was rejected by 38 votes to 37, with 33 abstentions.1/

65. Mrs. NARZUKI (Indonesia) said that her delegation had voted for the draft resolution since it considered the Conference to be of a purely humanitarian character, but its vote did not in any way alter the present position of the Indonesian Government with regard to the status of the Provisional Revolutionary Government.

66. Mr. ZAFERA (Madagascar) said he had voted for the draft resolution because Madagascar considered the Provisional Revolutionary Government to be the sole genuine representative of the South Viet-Nameese people and because it was a party to the Geneva Conventions of 1949.

TRIBUTE TO THE MEMORY OF MR. MAHMOUD EL AROUSSY, FORMERLY UNDER-SECRETARY OF STATE IN THE MINISTRY OF FOREIGN AFFAIRS OF THE ARAB REPUBLIC OF EGYPT AND LATE REPRESENTATIVE OF THE SULTANATE OF OMAN

On the proposal of the President, representatives observed a minute's silence in tribute to the memory of Mr. El Aroussy, the late representative of the Sultanate of Oman.

The meeting rose at 6.35 p.m.

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1/ See in document CDDH/54 the text of the explanation of vote which one delegation communicated in writing to the Secretary-General.



SUMMARY RECORD OF THE SIXTH PLENARY MEETING

held on Friday, 1 March 1974, at 10.25 a.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

QUESTION OF INVITATIONS (CDDH/14, CDDH/22 and Corr.1) (continued)

(b) Provisional Revolutionary Government of the Republic of South Viet-Nam (concluded)

1. The PRESIDENT invited the Conference to conclude its discussion of the question of the invitation to the Provisional Revolutionary Government of the Republic of South Viet-Nam.
2. Mr. PI Chi-lung (China) said that the fact that the Provisional Revolutionary Government of the Republic of South Viet-Nam, which was the authentic representative of the people of South Viet-Nam, had been deprived of its right to participate in the work of the Conference constituted an unjustifiable discrimination which ran counter to the purposes of the Conference and would seriously hamper its work. He rejected the slanderous statements of the representative of the Saigon Government concerning the People's Republic of China and would warn that Government of the disastrous consequences which would attend any violation of China's territorial integrity.
3. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the Provisional Revolutionary Government of the Republic of South Viet-Nam had a legal right to participate in the Conference's work; the decision to deprive it of that right was unlawful and would impede the progress of the Conference. His delegation officially denied the validity of the credentials of the Saigon Government, which had no right to represent the whole of the people of South Viet-Nam.
4. Mr. BOUDJAKDJI (Algeria), Mr. CRISTESCU (Romania), Mr. ANGONI (Albania) and Mr. DHELLO (Congo) supported the views expressed by the two previous speakers.
5. Mr. LE VAN LOI (Republic of Viet-Nam), exercising his right to reply, said that he wished solemnly to reaffirm that the people and Republic of South Viet-Nam, which had defended their independence and political integrity for twenty years, would not yield to threats, whether on the battlefield or at international conferences.

(c) National liberation movements

6. The PRESIDENT invited the Conference to consider draft resolution CDDH/22 and Corr.1, which represented the general consensus reached in the course of extensive consultations.

7. Mr. TASWELL (South Africa), speaking on a point of order, said that his delegation did not wish to be associated with any proposal that the so-called national liberation movements should be admitted to the Conference by consensus.

8. The PRESIDENT said that draft resolution CDDH/22 and Corr.1 had been arrived at by way of a consensus of the regional groups. Delegations were, of course, fully entitled to ask for a vote on it; if they did not do so, he would declare it adopted or rejected by consensus. It would then be open to delegations to enter reservations against whatever decision was adopted, and any such reservations would be duly recorded.<sup>1/</sup>

9. With regard to draft resolution CDDH/22 and Corr.1, it had further been agreed to delete the words "or governments" in the last line of operative paragraph 2.

10. He then requested the Secretary-General to read out the list of national liberation movements recognized by intergovernmental regional organizations and accordingly covered by draft resolution CDDH/22 and Corr.1.

11. The SECRETARY-GENERAL read out the list as follows:

Recognized by the League of Arab States: the Palestine Liberation Organization (PLO);

Recognized by the Organization of African Unity: the Mozambique Liberation Front (FRELIMO); the Angolan People's Liberation Movement (MPLA); the Angolan National Liberation Front (FNLA); the African National Congress (ANC); the Pan-Africanist Congress (PAC); the Zimbabwe African People's Union (ZAPU); the Zimbabwe African National Union (ZANU); the South-West African People's Organization (SWAPO); the Somali Coast Liberation Front (FLCS); the Djibouti Liberation Movement (MLD); the Seychelles People's United Party (SPUP); the São Tomé and Príncipe Liberation Movement (MLSTP); and the Comoro National Liberation Movement (MOLINACO).

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<sup>1/</sup> See in document CDDH/54 the text of statements and reservations communicated in writing to the President or the Secretary-General concerning the adoption of resolution CDDH/22 and Corr.1.

12. Mr. KIDRON (Israel) said that the present Conference was a Diplomatic Conference, which meant that it was a conference of plenipotentiary representatives of States empowered to undertake commitments on behalf of their Governments. The only entities capable of assuming the obligations of the proposed Protocols (CDDH/1) were States; entities which were not States had no standing vis-à-vis the Conventions or the proposed Protocols, and were not qualified to become parties to them, whatever the capacity in which those entities were invited, whether to "participate fully", as in one proposed text, or with "full rights" as in another.

13. His delegation had accordingly voted against draft resolution CDDH/14 inviting the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate in the Conference, as in its opinion, that body did not possess the necessary qualifications. For the same reason his delegation had not been a party to the consensus resolution on Guinea-Bissau. It considered, moreover, that the Swiss Government, in its capacity as depositary of the 1949 Geneva Conventions and as host to the Conference, had acted perfectly correctly in both those cases.

14. His delegation might have been prepared to support the suggestion to allow representatives of liberation movements to attend the Conference as part of the delegations of the regional intergovernmental organizations which recognized them. But that suggestion had been superseded long since and the Israeli delegation could not support the proposal in document CDDH/22 and Corr.1.

15. One of the organizations asking to participate in the Conference was the Palestine Liberation Organization, a body whose members and agents had, over the past few years, perpetrated a series of atrocious acts of terrorism, the vast majority of whose victims had been men, women and children who had not the remotest connexion with the cause which the terrorists claimed to be fighting. Under every system of law such acts of terrorism were crimes, and those who planned and committed them had no place at a conference on humanitarian law.

16. It was tragically true that in many quarters the theory and practice of terrorism had been invested with an aura of romance, and the view was put forward that a claim to fight for national liberation conferred absolution from the laws and dictates of humanity. That was an utter distortion of the humanitarian law which the Conference was asked to reaffirm and develop. The Geneva Conventions of 1949 and the draft Protocols were not a licence to murder, to sabotage, to hijack or to subvert constituted authority: they were not a device for the attainment of political advantage, or recognition, or legitimacy. They deliberately did not

characterize wars as "just" or "unjust" and did not make different rules for one or the other. They were concerned exclusively with the protection and succour of the individual victims of armed conflicts, soldiers and civilians, irrespective of race, colour, creed or political belief. That was what humanitarian law was about and those who professed and practised terrorism had no place in the making of it.

17. The delegation of Israel was therefore totally opposed to the invitation to the Palestine Liberation Organization to participate in the Conference in any capacity.

18. Mr. ZAFERA (Madagascar) said that the preamble to the draft resolution rightly stressed that the development and codification of international humanitarian law applicable in armed conflict was a universal task in which the entire international community should take part. His delegation accordingly welcomed the presence of representatives of the Republic of Guinea-Bissau and regretted the decision which had been taken concerning the Provisional Revolutionary Government of the Republic of South Viet-Nam. His Government wished to reaffirm its solidarity with the just struggles of national liberation movements, though it condemned blind and senseless terrorism.

19. In elaborating a new humanitarian law, the Conference should take into account the forms currently assumed by armed conflicts, including those between the liberation movements and the colonial and racist authorities in southern Africa. The delegation of Madagascar considered it absolutely necessary that there should be direct and effective participation by the national liberation movements in the work and decisions of the Conference.

20. Nevertheless, in a spirit of conciliation, it would support the draft resolution if that provided an assurance that the national liberation movements could be certain of enjoying the same humanitarian rights as their oppressors.

21. Mr. MILLER (Canada) said that although his Government did not recognize the Republic of Guinea-Bissau, his delegation wished to extend a warm welcome to the representatives of that country and was looking forward to hearing their constructive contributions to the discussions. It was also in favour of the admission to the Conference of representatives of national liberation movements, believing that they were in a position to make a positive contribution to the Conference's work. It therefore supported the compromise proposal in draft resolution CDDH/22 and Corr.1, which clearly indicated that while the representatives of liberation movements would be able to participate fully in the Conference's work, they would not have the right to vote.

22. He proposed that the first line of the second preambular paragraph be amended to read "Convinced that the progressive development and codification of . . ."

23. Mr. ALZAMORA TRAVERSO (Peru) said he welcomed the presence of representatives of the Republic of Guinea-Bissau, their admission by the Conference was a bold and promising step of great significance for the anti-colonialist and independence movements. The Peruvian delegation also supported the proposal to invite the representatives of the national liberation movements, as set forth in draft resolution CDDH/22 and Corr.1 and could accept the Canadian amendment.

24. Mr. Seuk Djoun KIM (Democratic People's Republic of Korea) said that the participation with full rights of the national liberation movements was entirely in accordance with the aim of the Conference and was indispensable for the success of its work. Since the aim of the Conference was to mitigate human suffering and misery, due attention must be given to those who suffered the most, the peoples of the colonial countries who were victims of the aggression and exploitation of the imperialists and colonialists. The struggle against imperialism and colonialism and the fight for national sovereignty were humanitarian in the sense that they were a fight for the affirmation of true human dignity; to trample on sovereignty was to trample on man himself. For peoples suffering from foreign aggression, nothing was more urgent than to evict the aggressors; and for supplementing and developing the 1949 Geneva Conventions, nothing was more important than to take account of that exigency of our time. A humanitarian law which failed to do so would be merely an empty form.

25. His delegation was convinced that the direct participation, with full rights, of the representatives of national liberation movements in the present Conference was of the greatest importance for the development of humanitarian law.

26. Mr. Di BERNARDO (Italy) said that the essential purpose of the Conference was to reaffirm and develop international humanitarian law.

27. First of all, therefore, it was important to be clear as to the precise meaning of the term "humanitarian" in relation to international law in force and the task before them. In the present case, the term "humanitarian" implied the necessity to increase, expand and define the protection granted to man and what was requisite to enable him to survive in a situation of armed conflict. It was the victims of such conflict, the civil population, their possessions, the combatants, prisoners, children and so on, and the assistance and protection to which they were

entitled, which constituted the essential terms of reference of the Conference, quite independently of the political camp the victims belonged to and the ideology to which they subscribed. It was in that sense that the present Conference was humanitarian.

28. But the term "humanitarian" was used in another sense, which was no concern of the present Conference, though it lay at the root of some of the crucial problems of the day. In that sense, the term "humanitarian" was used to describe the efforts of man to obtain his freedom, his national identity, and more human justice. But those were political questions, and however much one might sympathize with them, they had nothing to do with the work of the Conference.

29. Secondly, the Conference was a Diplomatic Conference, a meeting of States with full responsibilities and full powers, which alone, under the basic principles of international law in force, were entitled to expand the corpus of humanitarian law and produce new binding rules. To modify that essential framework in any way would mean changing the fundamental character of the purpose of the Conference.

30. In December 1973, the United Nations General Assembly had adopted resolution 3102 (XXVIII) urging that the national liberation movements recognized by the various regional intergovernmental organizations concerned be invited to participate in the Diplomatic Conference as observers in accordance with the practice of the United Nations, and he hoped that that recommendation would be followed faithfully. Any diversion into political polemics was not calculated to promote the success of the Conference.

31. Mr. GRIBANOV (Union of Soviet Socialist Republics), supporting draft resolution CDDH/22 and Corr.1, said that representatives of national liberation movements should be invited without delay to attend the Conference.

32. The anti-humanitarian statements made by the representatives of South Africa and Portugal could not be accepted by the Conference.

33. Mr. PI Chi-lung (China) said that the African national liberation movements and the Palestine Liberation Organization should be invited forthwith to participate fully in the work of the Conference. It was appropriate in that connexion to refer to the statement made at the opening meeting of the Conference by the President of the Islamic Republic of Mauritania. Such movements would make a major contribution to the work of the Conference.

34. Mr. SHAH (Pakistan), supporting draft resolution CDDH/22 and Corr.1, said he noted that the delegation of Israel was opposed to an invitation being extended to the Palestine Liberation Organization to participate in the Conference on the grounds that it did not represent a State and had been guilty of acts of terrorism. He would point out that Israel itself had been guilty of such acts.

35. Mr. de ALCAMBAR PEREIRA (Portugal) said that national liberation movements had no locus standi and therefore could not take part in a Conference to deal with the codification of international humanitarian law. The very character of the Conference would be changed if it discussed and approved the admission of national liberation movements. The Conference would lose its diplomatic character and become political, and the possibility of its achieving its humanitarian aims would be compromised.

36. The Portuguese delegation was not a party to the consensus which had been reached by the regional groups on draft resolution CDDH/22 and Corr.1 and could not approve of invitations being extended to national liberation movements.

37. Mr. GIRARD (France), referring to the list of national liberation movements read out by the Secretary-General, said that the Mouvement de liberation nationale des Comores (MOLINACO), the Front de liberation de la Côte de Somalis (FLCS) and the Mouvement de liberation de Djibouti (MLD) could not claim to represent the peoples of the French territory of the Comoro Islands and the French territory of the Afars and Issas.

38. His delegation had no objection to the amendment proposed by the Canadian representative to draft resolution CDDH/22 and Corr.1.

39. Mr. ALLAF (Syrian Arab Republic) said that objections to invitations being extended to the national liberation movements came only from the representatives of régimes which were committing crimes against freedom and human rights.

40. He had been surprised to hear the representative of the Zionist régime mention acts of terrorism by the liberation movements, since Israel had been founded on terrorism and had been condemned by the United Nations for its continued aggression. Israel's armed forces had shot down civilian aircraft and raided harmless villages in Syria, Jordan, Egypt and Lebanon, using napalm and fragmentation bombs.

41. The representative of Israel had referred to the Geneva Conventions of 1949 and had said that only those who were able to apply those Conventions should be represented at the Conference.

But, during the recent Middle East war, Israel had been the only combatant not to respond to the appeal of the ICRC to apply an article of the Additional Protocol relating to the civilian population. Syria, Iraq, Iran and Egypt had responded to the appeal.

42. The Palestine Liberation Organization had been recognized by the League of Arab States and by the Organization of African Unity and also by the recent Conference of Heads of State or Government of Non-aligned Countries.

43. He reserved his right to speak later on the legal rights of national liberation movements to participate in the Conference.

44. Mr. DOROCHEVITCH (Byelorussian Soviet Socialist Republic) said that his delegation deeply regretted the discriminatory decision adopted at the fifth meeting not to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate in the work of the Conference, as that decision was in clear contradiction of the noble principles of international humanitarian law.

45. His delegation was strongly in favour of the invitation of the national liberation movements recognized by the regional intergovernmental organizations concerned, as had been recommended by the United Nations General Assembly at its twenty-eighth session (resolution 3102 (XXVIII)), and by the XXIIInd International Conference of the Red Cross, held at Teheran in October 1973. It was now recognized that armed conflicts connected with the struggles of peoples against colonial domination and racist regimes should be considered as international conflicts in the sense of the Geneva Conventions of 1949. The representatives of national liberation movements directly engaged in such struggles should therefore be invited, as their views would undoubtedly promote the prestige and authority of the documents prepared by the Conference. His delegation considered that draft resolution CDDH/22 and Corr.1 could be taken as a basis for consideration of the question.

46. Mr. RATTANSEY (United Republic of Tanzania) said he felt full sympathy with the statement by the Syrian representative. If colonialists and aggressors would leave the lands which they occupied illegally and by force, and if racist regimes would learn from the history of mankind to respect the right of all peoples to self-determination, the world would then be a step nearer to peace.

47. With regard to the juridical aspects of the question, he would remind the Conference that international law had changed considerably since the end of the Second World War, beginning with the Nurnberg Principles and the establishment of the United Nations. It was now generally accepted by jurists that the international law governing

armed conflicts of the kind with which they were concerned was customary law, not statute law. United Nations General Assembly resolution 3103 (XXVIII) dealt with the legal status of the combatants struggling against colonial and alien domination and racist régimes. The armed conflicts resulting from such struggles were no longer regarded as internal conflicts but as international conflicts and as legitimate in the eyes of the United Nations.

48. It was essential that, in the context of the present Conference, colonial Powers should not speak for dominated peoples: both parties to the dispute should be allowed to state their views. His delegation regarded the national liberation movements as sovereign entities which were in a position to provide basic evidence and first-hand information on, for example, torture atrocities, suffering caused by napalm bombs, chemical defoliants, and so on. Their evidence was valuable and could not be smothered by the rigid refusal of aggressor countries to take it into account.

49. Mr. EL MISBAH EL SADIG (Sudan) said that it was tragic that the right to self-determination should still be denied to millions of people, mainly in Africa and the Middle-East. Such a situation could not continue forever. His delegation would like to see the representatives of the liberation movements invited as full representatives of their countries, but as such a step had been temporarily delayed by the intransigence of some Powers, he considered that their participation on the terms set out in draft resolution CDDH/22 and Corr.1 was the minimum that the Conference could offer.

50. The United Nations had long since acknowledged such movements, and those who were trying to drown the issue in legal sophistry should remember that the representatives of the liberation movements would bring living experience of the sufferings which the Conference was trying to alleviate. The Conference could not claim to develop humanitarian law while refusing to acknowledge the right to self-determination. His delegation did not accept the arguments of those who decried individual violence while applying state-organized terrorism. He therefore urged that an immediate invitation be given to the representatives of the African liberation movements and the Palestine Liberation Organization.

51. Mr. OGOLA (Uganda) said that his delegation supported the proposal to invite the national liberation movements whose names had been read out, to participate in the Conference. He deplored the basic injustice of inviting one of the parties involved in conflicts resulting from colonialism or racism and refusing to invite the other. The task of the Conference was a dynamic one which should be concerned with the future, not pre-occupied with the past. A broad attitude was needed which would override individual conflicts. The struggle in South Africa, Mozambique

and Angola had developed because peoples had been invaded and dominated but had refused to submit, while those attempting to dominate them had refused to acknowledge their right to independence. The struggle therefore continued and it was the responsibility of the Conference to find suitable solutions. Matters such as the treatment of prisoners of war, for example, concerned both sides and both views should therefore be given. The argument of suppression of internal disruption had been used as a reason for not inviting the representatives of the liberation movements, but such conflicts were no longer merely internal affairs - they had become matters of international concern. He therefore urged that the liberation movements should be included in the Conference.

52. Mr. KASASA (Zaire) said that as further speakers would be unlikely to add views different from those already expressed, he moved the closure of the debate.

53. Mr. MISHRA (India) and Mr. CLARK (Nigeria) supported the motion.

54. Mr. TASWELL (South Africa) said he considered that any delegation wishing to speak should be allowed to do so and he therefore opposed the motion.

The motion for the closure of the debate was adopted by 75 votes to 2 with 24 abstentions.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE SEVENTH PLENARY MEETING

held on Friday, 1 March 1974, at 3.15 p.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

QUESTION OF INVITATIONS (CDDH/22 and Corr.1) (concluded)

(c) National liberation movements (concluded)

1. The PRESIDENT pointed out that a broad consensus had emerged from the discussions held at the sixth meeting regarding the participation of national liberation movements in the work of the Conference, which was the subject of draft resolution CDDH/22 and Corr.1.

2. Two drafting changes had been made to the draft resolution, involving the deletion of the words "or governments" from operative paragraph 2 and the insertion of the words "progressive development and" before the words "codification of international humanitarian law ..." in the second preambular paragraph.

3. Mr. ESPINO GONZALEZ (Panama) said that his delegation had also proposed a drafting amendment to the first preambular paragraph of the Spanish text: the words "grande importancia" should replace "importancia suprema".

4. The PRESIDENT suggested that, since no delegation had asked for a vote on the text as amended, draft resolution CDDH/22 and Corr.1 should be adopted by consensus.

It was so decided

5. The SECRETARY-GENERAL said that cables would be sent immediately to the Secretary-General of the Organization of African Unity at Addis Ababa and to the Secretary-General of the League of Arab States at Cairo to inform them of the decision, and invited the representatives of the national liberation movements to take their seats at the Conference.

The representatives of the national liberation movements took their seats.

6. The PRESIDENT welcomed the representatives of the national liberation movements who had been invited to participate in the Conference subject to the limits laid down in resolution CDDH/22 and Corr.1.

7. Mr. MOLINA LANDAETA (Venezuela) said that he wished first of all to associate himself with the expressions of sympathy that had been voiced at the fifth meeting in connexion with the death of a member of the delegation of the Sultanate of Oman.

8. With regard to resolution CDDH/22 and Corr.1, his delegation had been consistent with the attitude it had already taken in the Sixth (Legal) Committee of the United Nations General Assembly in warmly welcoming the draft resolution prepared by the regional groups. It should be borne in mind, however, that from the legal point of view his delegation adhered strictly to the interpretation given by the United Nations, namely that those representatives could participate in the Conference only as observers, with the limitations implied thereby; that voting on and decisions regarding the allocation of official posts at the Conference were reserved for the representatives of States whose credentials had been confirmed; and that the draft resolution adopted did not apply to other territories mentioned in other draft resolutions.

9. Having thus clarified the legal scope of the decision, his delegation wished to express its gratification at the presence of representatives of the national liberation movements.

10. Furthermore, he wished there and then to make some comments regarding the order of the debate. His delegation had, in fact, agreed to support the President's suggestion that the question of invitations to the Conference should be dealt with as a matter of priority. Nevertheless, it was still concerned about the question of the rules of procedure. Pointing out that in the United Nations the general powers of the President were defined in rule 35 of the rules of procedure of the General Assembly, he proposed that in the discussions to be held under the provisional rules of procedure, the procedure adopted should be that laid down in the rules of procedure of the United Nations General Assembly.

11. The PRESIDENT said that that suggestion would be carefully noted and would be taken into account when the Conference came to deal with the question of the rules of procedure.

12. Mr. KUSSBACH (Austria) said that it was for the Conference to decide on the question of participation and that the Swiss Government, in refraining from issuing invitations itself, had only been respecting the wishes of the international community as expressed in the resolutions of the XXIInd International Conference of the Red Cross and of the United Nations General Assembly at its twenty-eighth session.

13. His delegation took the view that the question involved was much more substantive than merely procedural; for that reason it had been unable to support resolution CDDH/13/Rev.2.

14. His delegation was glad that a compromise had been reached on the participation of Guinea-Bissau. In that connexion, his Government had always supported the principle of the right of peoples to self-determination and resolutely maintained that position; nevertheless, that had nothing to do with the legal question of recognition or non-recognition of a State or government.

15. In the case of the Provisional Revolutionary Government of the Republic of South Viet-Nam, the Austrian delegation had been unable to endorse resolution CDDH/14.

16. Finally, Austria had supported the consensus on the question of the participation of the national liberation movements, since it seemed desirable that international humanitarian law should be recognized and applied as universally as possible.

17. Sir Colin CROWE (United Kingdom) said he regretted that his delegation could not associate itself with the consensus on resolution CDDH/22 and Corr.1. Some of the movements mentioned were concerned with territories for which the United Kingdom alone bore international responsibility.

18. His delegation considered it inappropriate that, at a Conference of sovereign States, entities which were not sovereign States should have the right to participate in any capacity other than that of observers, in the sense commonly understood in international practice. Resolution CDDH/22 and Corr.1 conferred greater rights than those enjoyed by such entities in the United Nations and greater rights than those which the United Nations itself or the regional organizations concerned enjoyed at the current Conference. In a spirit of co-operation, the United Kingdom had not opposed the consensus, but that in no way implied that it approved of the decision or that that decision could be regarded as a precedent. His delegation considered the situation to be exceptional, in the light of the unique character of the Conference on Humanitarian Law.

19. Mr. TASWELL (South Africa) said that his delegation had not associated itself with the consensus because there could be no question of it recognizing movements operating in the southern and other parts of the African continent with the help of foreign Governments and organizations outside the countries concerned. Those movements spread terror among the populations which they falsely claimed to represent, did not observe the Geneva Conventions and therefore had no place in the Conference. If the violent criticisms levelled at South Africa were justified and if oppression in that country was as horrible as it was alleged to be, why would one million foreign Africans now be working in South Africa? Surely there would be, instead, a mass exodus from that country to the so-called paradises of independent Africa. The fact was that the population of South Africa was stable, and although it was pointed out in a recent report by the United Nations High Commissioner for Refugees that Africa was the continent with the greatest

number of refugees, only 2 per cent of them came from South Africa and South-West Africa. South Africa, as an integral part of the African continent, was prepared to play its part in alleviating suffering in other African countries and wished to live in peace with the rest of Africa.

20. Mr. LEGNANI (Uruguay) associated his delegation with the condolences expressed to the delegation of the Sultanate of Oman on its recent loss.

21. Although his delegation considered that only representatives of States should participate in the Conference with full rights, it had not objected, either in the Latin American group or in plenary meetings, to the consensus enabling representatives of national liberation movements recognized by regional organizations to attend as observers. His delegation also agreed with the Venezuelan representative's views concerning the procedure which would ensure the satisfactory progress of the work of the Conference.

22. Mr. LECHUGA (Cuba) said that, in supporting resolution CDDH/22 and Corr.1, his delegation had done no more than give due recognition to those who constituted the vanguard of peoples fighting for their freedom. Representatives of national liberation movements, who had witnessed the crimes and brutal acts of colonialists and imperialists and been subjected to the most inhuman methods of warfare in their struggle for self-determination, would make a most valuable contribution to the deliberations of the Conference. On the other hand, his delegation had a reservation concerning operative paragraph 1 of the resolution, since it considered that all national liberation movements - not only those recognized by regional organizations - should be allowed to participate in the Conference.

23. Mr. de ALCAMBAR PEREIRA (Portugal) reminded the Conference that his delegation had dissociated itself from the consensus on the basis of which resolution CDDH/22 and Corr.1 had been adopted.

24. Mr. REZEK (Brazil) said that although his delegation had not opposed the adoption by consensus of the resolution on the participation of national liberation movements, it would have abstained if that draft had been put to the vote.

25. Mr. MAIGA (Mali) said that he welcomed the participation of the Republic of Guinea-Bissau in the Conference, but regretted the exclusion of the Provisional Revolutionary Government of the Republic of South Viet-Nam. Since the ratification of the 1949 Geneva Conventions, modern methods of warfare and the nature of conflicts had changed considerably and the world was witnessing an eruption of national liberation movements struggling against foreign domination in order to regain their freedom, independence

and dignity. All citizens, whether men or women, young or old, were involved as combatants. The 1949 Geneva Conventions had therefore become inadequate and should be not so much amended as adapted to a wider and, consequently, more exacting international community and to the social realities of the contemporary world. The new rules that the Conference had to draw up would be woefully inadequate if the national liberation movements did not contribute fully and wholly to the strengthening of international humanitarian law. Moreover, although the Geneva Conventions applied mainly to international conflicts, there were also conflicts involving a regular army and an ill-equipped population struggling against foreign domination and racist régimes. The national liberation movements could make a contribution in drafting new rules of law. That was why his delegation had found draft resolution CDDH/22 and Corr.1 acceptable, even though that text did not altogether reflect its point of view. The participation of national liberation movements was in conformity with the Purposes and Principles of the Charter of the United Nations and the decisions of the United Nations General Assembly.

26. In conclusion, although he did not wish to become involved in a political debate, he felt obliged to reply to an earlier speaker by stating that the representative of a country where apartheid and racial oppression were rife was in no position to give anyone lessons in behaviour or political morality.

27. Mr. MARTIN HERRERO (Spain) said that the Swiss Government had adopted the best procedure on the question of participation in the Conference. If resolution CDDH/22 and Corr.1 on the participation of the national liberation movements had been put to the vote, his delegation would have abstained. The status granted to representatives of the national liberation movements went slightly beyond that which was usually given to observers, but that was due to the special nature of the Conference and could in no way create a precedent. As for the list of national liberation movements which had been circulated, it quite obviously committed only the organizations sponsoring those movements. In conclusion, he hoped that the presence of the representatives of the national liberation movements would contribute to the development of international humanitarian law.

28. Mr. ALDRICH (United States of America) said that his delegation understood and respected the desire of certain national liberation movements to take part in the work of the Conference. He hoped that the participation of those movements would lead to greater respect for law and greater concern for basic precepts of humanity in the conduct of the armed conflicts in which those movements were taking part. The only justification for the participation of the liberation movements was the humanitarian nature of the Conference, and that should not be considered as creating a precedent.

29. Mr. JATIVA (Ecuador) said that he had some reservations concerning resolution CDDH/22 and Corr.1, although it should be clearly understood that that in no way altered his country's traditional anti-colonialist attitude.

30. Mr. MONTEIRO (Mozambique Liberation Front - FRELIMO), speaking on behalf of the national liberation movements which had just been welcomed by the Conference, first of all expressed his condolences to the delegation of the Sultanate of Oman in its recent bereavement. He then thanked the members of the Conference for the decision they had just taken, and expressed his gratitude to the Swiss Government for its hospitality. He conveyed his most sincere good wishes for the success of the Conference's work, for putting an end to the sufferings of mankind was the noblest of all tasks. The liberation movements, although they had not signed the Geneva Conventions, treated their enemies in a way that was far more in keeping with those instruments than did their adversaries, who were signatories to the Conventions. The struggle of the national liberation movements was now recognized as legitimate at the international level, and the peoples engaged in the struggle were consequently subject to international law: that justified their full and entire participation in the work of the Conference. The main goal was to eliminate the causes of war namely, colonialism, oppression, foreign domination and racialism.

31. In conclusion, he regretted that the Provisional Revolutionary Government of the Republic of South Viet-Nam had been excluded from the work of the Conference, and greeted the Republic of Guinea-Bissau, whose admission was a contribution to the common cause of the national liberation movements.

32. Mr. TARCICI (Yemen) said that he regretted having been prevented from attending the opening of the Conference because consultations had obliged him to postpone his journey to Geneva. On behalf of his delegation, he congratulated Mr. Graber on his election to the office of President, and noted with satisfaction that the post of Secretary-General was held by Ambassador Humbert, who enjoyed the esteem of all delegations accredited to Geneva.

33. He was glad that it had been decided to invite the national liberation movements to take part in the Conference, because he was convinced that their participation would have not only a symbolic value but also, and above all, a practical significance, and would make the work of the Conference more constructive. The words just spoken by the representative of the Mozambique Liberation Front showed the full significance of participation by the national liberation movements, he suggested that that important statement should be reproduced in full. In his opinion, the statement made by the Syrian representative at the sixth meeting also warranted reproduction in extenso, or at least in the greatest possible detail, because of its documentary value.

ELECTION OF OFFICERS (CDDH/17, CDDH/33)

34. The PRESIDENT said that, after prolonged consultations, the groups had reached full agreement on the distribution of the main Conference posts and on the countries and representatives appointed to them. It had been decided that separate votes would not be taken on those elections; the nominations would be submitted to the Conference en bloc for acceptance by consensus. That procedure would have certain repercussions on the provisional rules of procedure, which would have to be adjusted in due course to take into account the final structure decided upon by the Conference.

35. He requested the Secretary-General to read out the list of candidates for the various posts (CDDH/17), on the understanding that once they had all been confirmed any representatives who had comments to make could do so either orally or in writing.<sup>1/</sup>

36. The SECRETARY-GENERAL read out the revised list of officers of the Conference posts, to appear as document CDDH/33.

The revised list of officers of the Conference was approved by consensus.

37. Mr. SHAH (Pakistan) thanked the Conference for having nominated him to the post of Vice-Chairman of Committee II. Unfortunately, he could not take up his duties immediately, but hoped he would be allowed to designate another member of his delegation to fill the post.

38. The PRESIDENT confirmed that Mr. Shah could ask another member of his delegation to act as his substitute.

39. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said he wished to protest vehemently against the election of a representative of Chile to the post of Vice-Chairman of Committee II. Every day, the press was full of atrocities and murders perpetrated in that country. The Chilean military junta was making itself systematically guilty of violations of human rights, and particularly of article 3 common to the four Geneva Conventions of 1949.

40. Mr. LECHUGA (Cuba) associated himself with the USSR representative's remarks.

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<sup>1/</sup> See in document CDDH/54 the text of the statement which one delegation communicated in writing to the Secretary-General.

41. Mr. SALAS (Chile) said he was astonished that the Conference's decision with regard to his country should meet with criticism. He himself did not approve of all the nominations, but thought it preferable to refrain from all polemics at a Conference whose aims were essentially humanitarian. The USSR and Cuba had accused the Chilean Government of systematic violations of human rights; but on what did they base their charges? His Government had been the victim of slanderous campaigns; yet it had opened its doors wide to anyone who wished to know what was happening in the country. It was time for the USSR and its satellites to respect the elementary principles of ethics and international law by authorizing visits to their concentration camps, where thousands of people were interned.

42. Mr. GRAEFRATH (German Democratic Republic) said that he too wished to protest against the appointment of a representative of the Chilean junta to the post of Vice-Chairman of a Committee of the Conference. That appointment was in flagrant contradiction with the humanitarian aims of the Conference.

43. Mr. RECHETNJAK (Ukrainian Soviet Socialist Republic) said he was amazed that the representative of a fascist junta which had been guilty of serious violations of human rights could occupy the post of Vice-Chairman of a Conference committee, when the reasons for the existence of the Conference, its sole aim, was the defence of human rights. Summary executions, torture and terror, the imprisonment of thousands of men and women whose only crime was their devotion to freedom and democracy, all constituted an inadmissible violation of article 3 of the Geneva Conventions of 1949.

The meeting rose at 5.30 p.m.

SUMMARY RECORD OF THE EIGHTH PLENARY MEETING

held on Monday, 4 March 1974, at 10.20 a.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

In the absence of the President, Mr. Balken (Federal Republic of Germany), Vice-President, took the Chair.

CONDOLENCES TO TURKEY

1. The PRESIDENT expressed his condolences to the Turkish representative on the occasion of the air disaster which had plunged his country into mourning.
2. Mr. ARIM (Turkey) thanked the President for his expression of sympathy.

ORGANIZATION OF WORK

3. The PRESIDENT said that after the seventh plenary meeting, the President of the Conference had held a meeting of the nineteen Vice-Presidents with a view to discussing how the work would be conducted. It was decided, among other things, that, in the absence of the President, the Vice-Presidents would assume the Presidency of the Conference in rotation, in French alphabetical order of countries.

PROVISIONAL ADOPTION OF CHAPTER V OF THE DRAFT RULES OF PROCEDURE (CDDH/2)

4. The PRESIDENT said that, at their meeting, the President and the Vice-Presidents had decided that in order to enable the Conference to make progress with its work, it would be desirable to adopt forthwith, on a provisional basis, chapter V of the draft rules of procedure. That chapter should not give rise to any difficulties, since it was similar to the rules governing debates in the United Nations. In the absence of objection, he would consider that chapter V of the draft rules of procedure (CDDH/2) had been provisionally adopted by consensus.

It was so agreed.

## PROPOSAL TO ENTRUST TO THE DRAFTING COMMITTEE THE STUDY OF AMENDMENTS TO THE DRAFT RULES OF PROCEDURE (CDDH/2)

5. The PRESIDENT said that the President and the Vice-Presidents had thought it desirable that the Conference should not examine the draft rules of procedure without preliminary study; they considered that, in order to facilitate the work, the Drafting Committee might be asked to prepare a fresh version of the draft rules of procedure, taking as a basis the text submitted by the host country (CDDH/2) and Secretariat document CDDH/29, and with the help of those delegations which had proposed amendments to the draft rules.
6. If there were no objections, he would consider that the Conference agreed that the Drafting Committee should be asked to undertake that task.
- It was so agreed.
7. Mr. MILLER (Canada) asked whether the delegations which had submitted amendments would be able to participate in the work of the Drafting Committee, so that they could introduce and explain their amendments.
8. The PRESIDENT said that the reply was in the affirmative.
9. Mr. HAKSAR (India) asked whether it would not be possible for other representatives wishing to follow the work in the Drafting Committee to attend its meetings as observers, in addition to the delegations which had submitted amendments.
10. The PRESIDENT said that the sole purpose of asking the Drafting Committee to undertake that task was to speed up the work. The Committee should be allowed to work quietly, and the number of persons present should be limited. Delegations would naturally wish to be kept informed about its work, and it was anticipated that there would be a certain interval before the new text was submitted to the Conference: during that interval the regional groups would be able to study the fresh draft.
11. Mr. ALLAF (Syrian Arab Republic), supported by Mr. BRILLANTES (Philippines), said that he thought it would be useful if the Drafting Committee were asked to examine the amendments with the help of the delegations which had submitted them, on the understanding that only the amendments would be considered and not the draft rules of procedure as a whole. Once it had completed that task, the Drafting Committee would report to the Conference and representatives would then have time to submit their comments. Moreover, representatives wishing to present further amendments would certainly be free to do so and to take part in the meetings of the Drafting Committee.

12. Mr. RATTANSEY (United Republic of Tanzania) said that the Drafting Committee was being given a particularly important task since the amendments it would examine were in fact concerned with the very matters that were the subject of controversy. Once agreement had been reached on them, the most thorny points would have been dealt with. That being so, all delegations should be free to participate in the discussions and propose amendments.
13. Mr. MOLINA LANDAETA (Venezuela), supported by Mr. ESPINO GONZALEZ (Panama), said that he too attached great importance to the question of the rules of procedure and agreed with the statements just made by the representatives of India and Tanzania. The Drafting Committee had been assigned a particularly difficult task: it would not only have to make drafting changes but also to examine amendments, co-ordinate them and put them in order for submission to the plenary Conference. Delegations not represented in the Committee would therefore wish to follow its work, even if only as observers. Only in that way would they be able to make known their position at the plenary meeting, and if necessary, prepare new amendments.
14. Mr. HAMBRO (Norway), speaking on a point of order, proposed that the list of speakers should be closed.
15. The PRESIDENT, replying to a question by Mr. GRAEFRATH (German Democratic Republic) said that the speakers on the list were the representatives of Israel, the German Democratic Republic, Panama, France and Belgium.
16. Mr. MARTIN HERRERO (Spain) said he objected to the Norwegian proposal, since delegations like his own which were not members of the Drafting Committee might wish to take part in the discussions.
17. Mr. CLARK (Nigeria) said he supported the Norwegian proposal because it would speed up the work of the Conference.
18. Mr. GARCES (Colombia) proposed that the list of speakers should be closed after the name of the Spanish representative had been added to it.
19. Mr. HAMBRO (Norway) said he had no objection to that proposal.
20. The PRESIDENT said that, in the absence of objection, he would declare the list of speakers closed after the Spanish representative had been included in it. When representatives had made their statements, he would invite the Conference to decide the question before it.

It was so agreed.

21. Mr. KIDRON (Israel) said that the desire to speed up the work of the Conference was not incompatible with the Indian representative's proposal that delegations which were not members of the Drafting Committee, and which had not submitted amendments to the provisional rules of procedure, should be allowed to attend the meetings of the Drafting Committee, on the understanding that they would not be permitted to speak.

22. Mr. GRAEFRATH (German Democratic Republic) reminded the Conference that it had decided the question of invitations at its third meeting (CDDH/13/Rev.2); that decision would have to be taken into account in preparing the draft rules of procedure.

23. Mr. GIRARD (France) pointed out that the task assigned to the Drafting Committee went beyond the normal functions of such a Committee; it was being asked to achieve a compromise solution although the Conference had not come to any decision on the substance. It was thus undertaking an unusual duty, and it was of the utmost importance that delegations should be kept informed of the work done. It was understandable, of course, that only the members of the Committee and those delegations which had submitted amendments should be allowed to take part in the discussions, but it was only reasonable that all delegations should have the right to attend those discussions, so as to keep themselves informed about the course they were taking, and to enable them to reflect on the matter and prepare any statements they might wish to make in the plenary.

24. Mr. de BREUCKER (Belgium) said he considered it would be useful if the delegations which had proposed amendments to the provisional rules of procedure could take part in the discussions of the Drafting Committee. In any case, the Drafting Committee should not meet in camera; the results of its work would not be approved without discussion in plenary and it was important that its meetings should be open to any delegations which might wish to propose new amendments or to attend as observers. Care should be taken that the Drafting Committee did not become an ad hoc conference on the rules of procedure, as that would be prejudicial to the work of the Conference.

25. Mr. MARTIN HERRERO (Spain) pointed out that the Drafting Committee's terms of reference were not limited to matters of drafting, and that the Spanish-speaking delegations were not sufficiently represented on the Committee. It seemed to be generally admitted that the meetings of the Drafting Committee should be open to delegations wishing to take part in them. Some representatives were of the opinion that the meetings should be open to all delegations. Delegations with observer status would not be entitled to propose amendments, although it was precisely

during the discussions that the need for new amendments might become apparent. The Syrian delegation's proposal that the regional groups should be consulted raised the question of the increasing, and perhaps excessive, role of those groups. The Spanish delegation was in favour of as large a participation as possible in the Drafting Committee's discussions, it being understood that delegations would be able subsequently to state their views in plenary meetings.

26. The PRESIDENT reminded representatives that it was merely for practical reasons that the Drafting Committee had been given a task which was not purely drafting. After the various Committees had been set up at the seventh meeting, it had become apparent that the Drafting Committee could not begin its work before the other Committees had begun their's. Since the Drafting Committee was fully representative, it had meanwhile been entrusted with the task of revising the provisional rules of procedure, taking into account the amendments that had been proposed.

27. In short, certain delegations were in favour of participation by all delegations which so wished, either as observers or even with the right to propose new amendments, while other delegations were in favour of participation being limited to those delegations which had already put forward amendments and to those which were members of the Drafting Committee.

28. Mr. KIDRON (Israel) said that there were three possibilities: delegations which were not members of the Drafting Committee might take part in its discussions either as passive observers or with the right to put forward amendments, or they might be excluded from the discussions.

29. Mr. MILLER (Canada) said that as one of the proposed amendments to the provisional rules of procedure that were to be considered by the Drafting Committee dealt with that very point of the composition of that body, no final decision on the matter could yet be reached. It would be better if participation in the meetings of the Committee were limited to the fifteen elected delegations and to those delegations which had proposed draft amendments, and if other delegations attended only as observers.

30. The PRESIDENT said that, there being no objection, he would consider that the Conference agreed that the Drafting Committee meetings devoted to the examination of the provisional rules of procedure would be open to the delegations which had submitted draft amendments, for their comments on their texts, and to the delegations interested in the work of the Committee, which would assist as observers.

It was so agreed.

## ADOPTION OF THE AGENDA (item 6 of the provisional agenda) (CDDH/5)

31. The PRESIDENT invited the participants to consider the provisional agenda and its annex (CDDH/5). He pointed out that the Conference would be in a position to discuss provisional agenda item 5 "Credentials of representatives at the Conference" only when the rules of procedure were in their final form. It was therefore expedient, before opening the general discussion, to adopt the agenda and decide on the final version of its annex.

32. Mr. ALLAF (Syrian Arab Republic) said that he considered that the adoption of the agenda did not in any way affect the order in which the Conference would examine the various questions, and that as the annex to the provisional agenda contained nothing relating to the work programme of the proposed Ad Hoc Committee on Weapons it should be completed.

33. Mr. ALDRICH (United States of America) stated that he also was of the opinion that the Conference was not obliged to deal with the provisional agenda items in the order in which they were numbered, and pointed out that it had not previously followed that order.

34. Mr. SULTAN (Arab Republic of Egypt) said that it was not clear whether, once the annex to the provisional agenda was adopted, the Committees would have to confine themselves to the articles of the draft Protocols allotted to them. He drew attention to document CDDH/23 and Add.1, of which his delegation had been one of the co-sponsors, containing a proposal for an Ad Hoc Committee on Weapons.

35. The PRESIDENT, in reply to questions raised by Mr. CLARK (Nigeria) and Mr. HAMBRO (Norway), stated that, after the provisional adoption of chapter V of the provisional rules of procedure and of the agenda and its annex, the Conference would be able to begin the general debate. During that time, the Drafting Committee would revise the provisional rules of procedure.

36. Mr. BLIX (Sweden) said that, according to the provisional agenda, a general debate would follow the adoption of the agenda, after which the questions to be dealt with would be allotted to the various Committees. Sweden reserved the right to suggest, in due course, changes in the allotment of questions among the Committees. The question of protection for journalists should also be entrusted to a Committee. He hoped that the Ad Hoc Committee on Weapons would be set up without delay.

37. Mr. GRIBANOV (Union of Soviet Socialist Republics) said he was in favour of adopting the provisional agenda.

38. The proposal for an Ad Hoc Committee on Weapons (CDDH/23 and Add.1) should be examined by the Drafting Committee, since it was closely connected with the question of the rules of procedure.

39. His delegation agreed in principle that the Main Committees should meet after the general debate, but considered that the Drafting Committee and Credentials Committee could begin their work while the general debate was proceeding.

40. Mr. KUSSBACH (Austria) agreed with the Swedish representative on the distribution of the articles between the Committees and on the Ad Hoc Committee.

41. The date when the Ad Hoc Committee would begin its work should be decided upon as soon as possible, to enable the experts to make their arrangements.

42. Mr. BRILLANTES (Philippines) said that, in accordance with the practice of international conferences, the adoption of the provisional agenda did not necessarily mean that the various items had to be discussed in the order in which they appeared in the provisional agenda.

43. He proposed the following procedure for the Conference: it should first adopt the provisional agenda, on the understanding that items would not necessarily be discussed in the order in which they were listed and leaving aside the question of the distribution of the articles between the Committees; it should then discuss and draw up the terms of reference of the Ad Hoc Committee; finally, it should discuss the question of the distribution of the articles between the Committees.

44. Mr. HAKSAR (India) supported the President's proposal concerning the adoption of the provisional agenda.

45. In his opinion, the work on the draft Additional Protocols was not connected with the tasks assigned to the Ad Hoc Committee: accordingly, there was no need to draw up the terms of reference of the Ad Hoc Committee before distributing the articles between the Committees.

46. He suggested that the Conference should adopt the provisional agenda and should then decide on the distribution of articles between the three Main Committees, after which it could begin the general debate. Finally, when the Drafting Committee had submitted its report on the rules of procedure, the Conference could decide on the terms of reference of the Ad Hoc Committee, which could then begin its work.

47. Mr. MILLER (Canada), referring to the USSR representative's statement, said that it would be preferable to discuss the proposal to establish an Ad Hoc Committee on Weapons (CDDH/23 and Add.1) in plenary meeting, rather than in the Drafting Committee. He proposed that the Conference's procedure should be to adopt the provisional agenda, to discuss the distribution of the articles (CDDH/5, annex), to discuss the terms of reference of the Ad Hoc Committee in plenary meeting, to decide which Committees should meet during the general debate, to begin the general discussion and to suspend it for consideration of the Drafting Committee's report on the rules of procedure when that document was ready.

48. Mr. de BREUCKER (Belgium) said that the Conference could adopt the annex to the provisional agenda as it stood, on the understanding that the Committees would draw up their own agendas and make the necessary changes in the programme of work. The Conference would then discuss the establishment of the Ad Hoc Committee on Weapons.

49. The PRESIDENT proposed that the Conference should adopt the provisional agenda (CDDH/5) except for the annex, on the understanding that it would not be obliged to discuss the items in the order given in that document.

It was so agreed.

50. The PRESIDENT proposed that the Conference should first discuss the programme of work of the Committees (CDDH/5, annex), then the terms of reference of the Ad Hoc Committee on Weapons and, finally, the question of simultaneous Committee and plenary meetings.

It was so agreed.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE NINTH PLENARY MEETING

held on Monday, 4 March 1974, at 3.15 p.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

In the absence of the President, Mr. Kussbach (Austria),  
Vice-President, took the Chair.

TRIBUTE TO THE MEMORY OF MR. CARL JACOB BURCKHARDT

On the proposal of the Chairman, the members of the Conference  
observed a minute's silence in tribute to the memory of Mr. Carl  
Jacob Burckhardt, ex-President of the International Committee of  
the Red Cross, ex-Minister of Switzerland to France and a great  
historian.

ADOPTION OF THE PROGRAMME OF WORK CONTAINED IN THE ANNEX TO THE  
PROVISIONAL AGENDA (agenda item 6) (CDDH/5)

1. The PRESIDENT said that at the eighth meeting it had been decided to adopt the provisional agenda (CDDH/5), except for the annex. An amendment had been proposed to the programme of work of Committees as listed in the annex, and he would invite the representative of Sweden to explain it.
2. Mr. BLIX (Sweden) said that, in the view of his delegation, the programme of work as it stood placed a heavy burden on Committee III. He accordingly proposed that item (b) dealing with the treatment of persons in the power of a party to the conflict, to which articles 63-69 of draft Protocol I (CDDH/1) referred, should be transferred to Committee I, with the exception of article 66. Committee I was concerned with the same subject under item (b) in relation to articles 6-10 of draft Protocol II (ibid). The transfer of work under articles 63-65 and 67-69 of draft Protocol I would considerably lighten the burden of Committee III. Moreover, under Committee III's programme of work, item (a), article 32 of draft Protocol II corresponded to article 68 in draft Protocol I, and might thus also be referred to Committee I. He further proposed that the treatment of journalists in areas of armed conflict be also referred to Committee I.
3. Mr. HAMBRO (Norway), Chairman of Committee I, said he considered that his Committee had sufficient work to do already and that it was too early to know which Committee would have the heaviest workload. The question might later be referred to the General Committee.

4. Baron van BOETZELAER van ASPEREN (Netherlands) said the amendment proposed by the representative of Sweden seemed practical, provided some flexibility was allowed as suggested by the representative of Norway.

5. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said he preferred that the work programme of the Committees as outlined in the annex to the Provisional agenda be maintained.

6. Mr. CALERO-RODRIGUES (Brazil) said he sympathized with the idea underlying the amendment proposed by Sweden but feared that discussion of it might lead to further waste of time on questions of procedure.

7. Mr. SHAH (Pakistan) said he agreed with the representative of the Soviet Union.

8. Mr. de BREUCKER (Belgium) asked that either the Swedish amendment be adopted as soon as possible or that the programme of work be maintained in its present form, with freedom for the Conference to return to the point later if one of the Committees appeared to be very advanced in its work.

9. Mr. BLIX (Sweden) said that to facilitate matters he would not press his proposal provided that Committees I and III did not deal with their respective items (b) until they had consulted each other.

10. Mr. SULTAN (Arab Republic of Egypt), Chairman of Committee III, suggested that item (b) be dealt with last by each Committee, so that it might later be allotted to either Committee I or Committee III.

11. The PRESIDENT said that that suggestion seemed acceptable.

The annex to the provisional agenda was adopted.

#### PROPOSAL FOR AN AD HOC COMMITTEE ON WEAPONS

12. The PRESIDENT invited the representative of Sweden to introduce the "Proposal for an Ad Hoc Committee on Weapons" (CDDH/23 and Add.1).

13. Mr. BLIX (Sweden) said that the English version of CDDH/23 and Add.1 was correct; the correct French version was CDDH/23/Corr.1 and Add.1. The establishment of an Ad Hoc Committee on Weapons had already been agreed upon in principle and officers elected. The Committee corresponded to resolution XIV, adopted by the XXIInd International Conference of the Red Cross, held at Teheran in 1973, and to the wish expressed by the United Nations General Assembly at

its twenty-eighth session (resolution 3076 (XXVIII)) that the question should be treated without prejudice to the Conference's study of the two draft Protocols. It was not suggested that any article contained in either draft Protocol be referred to the Ad Hoc Committee. Two amendments had, however, been proposed to the text given in document CDDH/23 and Add.1. The first was to insert in the first line of the first paragraph, after the words "an ad hoc committee", the words "of the whole"; the second was to replace the words "mandate", in the penultimate line of the second paragraph, by the words "work plan".

14. While the Ad Hoc Committee would enjoy the same status as the three Main Committees, rule 47 of the draft rules of procedure would be applied only subsequent to the 1974 session of the Conference. The Rapporteur of the Ad Hoc Committee would not at present be a member of the Drafting Committee, although he might be in 1975. During the current session, the Ad Hoc Committee would not take any decisions, but would begin its examination of the "prohibition or restriction of use of specific categories of conventional weapons which may cause unnecessary suffering or have indiscriminate effects and consider all proposals ... relating to such weapons". It would not adopt any proposals during the current session, but would transmit them to the ICRC to assist the Conference of Government Experts which the ICRC was to convene in 1974.

15. Mr. RECHETNJAK (Ukrainian Soviet Socialist Republic) said that his delegation had already expressed its reservations in the First Committee of the United Nations General Assembly regarding the competence of the Geneva Diplomatic Conference to consider the problem of the prohibition of the use of conventional weapons. The present Conference was not an appropriate forum for the study of the prohibition of the use of conventional weapons, a complex problem which should be dealt with within the framework of general disarmament. Examination of the problem at the present Conference might prejudice the work of existing organs set up specifically to discuss problems of disarmament and such problems did not fall within the terms of reference of the Conference. His delegation was thus unable to support the proposal in document CDDH/23 and Add.1.

16. Mr. MAHONY (Australia) said he considered that the proposal in document CDDH/23 and Add.1 offered a sound basis on which the Ad Hoc Committee might conduct its work at the present session, providing as it did for an appropriate division of responsibilities between the Ad Hoc Committee and the ICRC Conference of Government Experts on weapons which might cause unnecessary suffering or have indiscriminate effects which would meet later in the year. The Ad Hoc Committee's mandate was of particular significance in terms of international efforts to arrive at agreements in the future

prohibiting or restricting the use of certain weapons. Australia believed that the Diplomatic Conference afforded an appropriate opportunity for the consideration of that question, and regarded the possibility of restricting or prohibiting the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects as part and parcel of the broad humanitarian objectives of the Conference. Australia had voted in favour of resolutions to that effect at the twenty-eighth session of the United Nations General Assembly and at the XXIInd International Conference of the Red Cross at Teheran.

17. He believed the Ad Hoc Committee should not be limited to procedural matters, simply setting up machinery for future discussions, but should afford all countries participating in the Diplomatic Conference an opportunity of expressing their views freely. At the same time, there was a danger in attempting to move ahead too quickly on the issue of weaponry, since many Governments had not had sufficient time to consider all the questions involved in a complex balancing of military, medical, humanitarian, legal and technical factors.

18. Mr. PALACIOS TREVINO (Mexico) said he wished to make two points. First, it was highly desirable that the Ad Hoc Committee should be equal in status to the three Main Committees. Since 1971 Mexico had insisted that the Diplomatic Conference consider the restriction and prohibition of certain conventional weapons. Secondly, the terms of reference of the Ad Hoc Committee as set out in document CDDH/23 represented the minimum acceptable to Mexico in view of the terms of United Nations General Assembly resolution 3076 (XXVIII) which invited the Diplomatic Conference "to consider - without prejudice to its examination of the draft Protocols - the question of the use of napalm and other incendiary weapons, as well as specific conventional weapons which may be deemed to cause unnecessary suffering or to have indiscriminate effects, and to seek agreement on rules prohibiting or restricting the use of such weapons." The Mexican delegation supported the amendments proposed by the representative of Sweden.

19. Mr. MUHONEN (Finland) said that increasing concern had been expressed during the past few years as to how existing rules of international law could be developed to cover modern methods of warfare. He therefore welcomed the proposal to establish an ad hoc committee to examine the prohibition or restriction of the use of specific categories of conventional weapons which might cause unnecessary suffering or have indiscriminate effects. Like many other delegations, the Finnish delegation hoped that the proposal in working paper CDDH/DT/2 and Add.1 would be given the attention it deserved.

20. His delegation also supported the proposal in document CDDH/23 and Add.1.

21. Mr. BRILLANTES (Philippines) said he regretted that his Government had not been informed of the proposal to establish an Ad Hoc Committee on Weapons before the Conference was convened, but he would not oppose it since that might further delay the work of the Conference. He was grateful to the Swedish and Mexican delegations for the clarifications they had given. It might, however, be preferable to state in the title and body of the proposal that it dealt only with conventional weapons.

22. He agreed that the Ad Hoc Committee should have the same status as the other Main Committees but wondered if the last sentence of the document meant that it was in fact to be a preparatory committee for the Conference of Government Experts and its report to be the only document used in establishing the work plan of that Conference. Surely the reports of the three other Main Committees would also be used.

23. He hoped the Ad Hoc Committee would not become a committee for lost causes. He would not be inclined to give it parity of status with the other three Committees and wished to ask the sponsors which, if any, of the articles already allocated to those Committees were likely to be affected by an amplification of the very general mandate of the Ad Hoc Committee outlined in the proposal.

24. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said he hardly needed to remind the Conference of the important contributions made by the Soviet Union to the drafting of international instruments on the prohibition or restriction of use of some very dangerous weapons and its instrumentality in convening the World Disarmament Conference. His delegation thought that the question should be considered in the relevant United Nations bodies or at the proposed Disarmament Conference rather than at the present Conference, the main task of which was to consider the two draft Protocols to the Conventions of 1949.

25. The Ad Hoc Committee should not have the same status as the other Main Committees, which had specific proposals before them, but should merely be a Committee devoted to discussion and investigation.

26. His delegation was therefore unable to support the proposal in document CDDH/23 and Add.1.

27. Mr. KHATTABI (Morocco) said that his delegation did not agree with the delegations of the Ukrainian Soviet Socialist Republic and the USSR that the prohibition or restriction of use of specific categories of conventional weapons was beyond the competence of the Conference. The composition of the bodies specifically concerned with disarmament was restricted, even some States of great military importance not being represented on them. He therefore approved

the proposal in document CDDH/23 and Add.1 and wondered if it would even be necessary to convene the Conference of Government Experts referred to in that document if the Ad Hoc Committee itself was composed of experts.

28. Mr. GIRARD (France) said that his Government's opinion that decisions concerning weapons should only be taken at Government level in the appropriate forums and its desire expressed at the twenty-eighth session of the United Nations General Assembly that their discussion should be entrusted to the United Nations were well known.

29. However, it had no objection from the humanitarian point of view to a study of the effects of some specific weapons being started at the Conference and to a report being submitted to Governments, which would take the action they considered appropriate.

30. The Ad Hoc Committee should therefore remain distinct from the three Main Committees and should not undertake any drafting, either at the current or at the second session of the Conference.

31. Mr. DOROBANTU (Romania) said that his delegation had voted in favour of resolution XIV at the XXIInd International Conference of the Red Cross on the constitution of the Ad Hoc Committee. The Committee, should, however, study the effects not only of conventional weapons but also of all weapons which might cause unnecessary suffering or have indiscriminate effects, including nuclear weapons. He therefore proposed the deletion of the word "conventional" from both paragraphs of the proposal.

32. Mr. CLARK (Nigeria) said that his delegation agreed with the Soviet delegation that the primary purpose of the present Conference was to discuss the two draft Protocols, and that measures concerning weapon control and disarmament rightly belonged to the United Nations Conference of the Committee on Disarmament. On the other hand, the proposal followed logically from a decision of the XXIInd International Conference of the Red Cross and it would not advance the work of the present Conference if that decision were now to be questioned.

33. The Committee was not being asked to reach decisions on disarmament and arms control but merely to study the effects of weapons actually being used. No time should be spent on defining its status. It had important work to do and its Chairman should be a member of the General Committee.

34. Mr. FISSENKO (Byelorussian Soviet Socialist Republic) said he supported the reservations of the representatives of the Ukrainian SSR and the Soviet Union. A discussion of the prohibition and restriction of specific weapons would be outside the competence of the Conference and prejudicial to the work of the United Nations bodies specifically concerned with disarmament.

35. Mr. SHAH (Pakistan) said the sponsors of the proposal should define precisely the intended mandate of the Ad Hoc Committee and explain how its work would affect that of the other Main Committees, especially in the light of articles 33 and 34 of Protocol I, whose purpose was very similar to that of the Ad Hoc Committee.

36. Mr. HUGLER (German Democratic Republic) said that the work allocated to the Ad Hoc Committee must not be permitted to restrict the mandate of Committee I. There was also the danger that it might impinge on the problems of disarmament being considered by other bodies. In view of the specific character of its task, it should not be given the same status as the three other Committees. His delegation was therefore unable to support the proposal.

37. Mr. HAKSAR (India) said that his delegation was in favour of discussing measures to prohibit or restrict the use of inhuman and indiscriminate weapons, particularly against civilian populations and targets, at the present Conference. It had supported the decisions by the XXIInd International Conference of the Red Cross and the twenty-eighth session of the General Assembly that they should be considered by the Ad Hoc Committee, especially since the subject had never been studied in depth. A start should certainly be made before the Conference of Government Experts met.

38. The doubts expressed by some delegations concerning the mandate of the Ad Hoc Committee and their desire that its duties should consist merely in investigating the matter and reporting its findings should be allayed by the sponsors' explanation that it was not intended that the Committee should make any decisions. Its report would certainly be of use to the forthcoming Conference of Government Experts agreed upon by the XXIInd International Conference of the Red Cross. However, in view of the opinions expressed during the discussion, it might be preferable to adhere to the language of resolution (XIV) adopted by that Conference and to amend the second paragraph of the proposal by substituting the words "and consider" by the phrase "and begin consideration of".

39. Mr. MENCER (Czechoslovakia) said that, despite the importance that his country had always attached to the prohibition or restriction of the use of some categories of weapons, he did not think that the present Conference on Humanitarian Law could achieve positive results on problems that were beyond its limited scope and its political and legal possibilities. The problems referred

to in the proposal (CDDH/23 and Add.1) seemed to him to fall primarily within the competence of the United Nations Conference of the Committee on Disarmament and other United Nations special bodies. His delegation had abstained in the voting at the twenty-eighth session of the United Nations General Assembly and at the XXIInd International Conference of the Red Cross at Teheran in 1973.

40. The PRESIDENT said he had been given to understand that China wished to support the Romanian proposal to delete the word "conventional" from the text of the proposal (CDDH/23). He would now invite a representative of the sponsors of the proposal to reply to points raised in the discussion.

41. Mr. BLIX (Sweden), speaking on behalf of the sponsors of the proposal, said that he would reply first to the question raised by the representatives of the Philippines and Pakistan concerning the relationship between the work to be done respectively by the Ad Hoc Committee and Committee III, which concerned among others article 33 of draft Protocol I. The idea was that the Ad Hoc Committee, in accordance with its terms of reference, would deal with the prohibition or restriction of the use of specific categories of conventional weapons as set forth in the proposal. Article 33 was a general prohibition and a reaffirmation of the prohibition of the use of weapons causing unnecessary suffering, a difficult question which had already been treated at the 1899 and 1907 International Peace Conferences at The Hague. Committee III would discuss the reaffirmation and precise wording.

42. Another article that was relevant to the question of the general prohibition of the use of weapons that might have indiscriminate effects was article 46 - also to be dealt with by Committee III - in particular paragraph 3. Neither article 33 nor article 46 (3) dealt with specific weapons, although at the turn of the century The Hague Peace Conference of 1899 had adopted provisions banning specific categories of weapons, such as The Hague Declaration concerning the Prohibition of Dum-Dum Bullets. It was therefore logical that, while Committee III reaffirmed the principles, the Conference should set up an Ad Hoc Committee to deal with specific cases of identified weapons. The sponsors intended that the Conference should be asked to begin consideration of proposals, although the word "begin" had been omitted from the first sentence of the second paragraph of the proposal because it had caused difficulties in the United Nations General Assembly. The intention was that no decisions should be taken at the present Conference.

43. In response to further questions by the representative of the Philippines, he said that generally speaking the Ad Hoc Committee would not be a preparatory committee for the Conference of Government Experts on Weapons to be convened later in the year. There was

no organic link between the Ad Hoc Committee and that Conference, but it was hoped that the start of discussions at the present Conference would facilitate the work of the Conference of Government Experts. The Ad Hoc Committee's report would not be a formal basis for the work of the Conference of Government Experts: the International Committee of the Red Cross would prepare the plan of work and other arrangements for that Conference in the light of the discussions at the present Conference.

44. In reply to the Moroccan representative's question whether the Conference of Government Experts was really necessary, in view of the establishment of the Ad Hoc Committee, he said that the Diplomatic Conference was very behind in its work and it would be optimistic to think that it would achieve practical results.

45. With regard to the Romanian representative's proposal to delete the word "conventional", he had noted that the representative of China could support the proposal but that one delegation had proposed the exact opposite. The resolutions of the XXIInd International Conference of the Red Cross and of the United Nations General Assembly at its twenty-eighth and previous sessions had always been limited to conventional weapons and it was made clear in the introduction to the Commentary on the draft Protocols (CDDH/3) that the latter did not refer to nuclear warfare. He appealed to the Romanian representative not to press his proposal. His own delegation's understanding was that the Conference in plenary session could discuss weapons other than conventional ones, such as weapons of mass destruction, and adopt resolutions, but the sponsors could not accept the deletion of the word "conventional". He had given the same answer when the question had arisen at the XXIInd International Conference of the Red Cross and the Romanian delegation had accepted it.

46. He had already in effect replied to the Indian representative's proposal to include the words "and begin consideration of" in the second paragraph of the proposal.

47. The PRESIDENT said that the Conference had ended its discussion of the terms of reference of the Ad Hoc Committee but had not, as he had hoped, adopted the proposal (CDDH/23 and Add.1) by general agreement. He suggested that the meeting be suspended for a short period to enable the sponsors and their opponents to endeavour to reach agreement.

48. Mr. BLIX (Sweden) suggested that if representatives who had proposed amendments did not press them, it might be possible to adopt the proposal without a vote.

49. The PRESIDENT said that he had suggested the suspension for that purpose. If no agreement was reached he would have to put the proposal to the vote.

The meeting was suspended at 5.10 p.m. and resumed at 5.40 p.m.

50. The PRESIDENT said that since it had proved impossible to reach general agreement, he would put the proposal in document CDDH/23 and Add.1 to the vote.

The proposal for an Ad Hoc Committee on Weapons (CDDH/23 and Add.1) was adopted by 68 votes to none with 10 abstentions.

51. Mr. TIEN Chin (China) said that his delegation had voted in favour of the proposal, although it thought that it was not sufficient to prohibit only conventional weapons. Failure to deal with other matters, such as weapons of mass destruction, would be contrary to the objectives of the Conference.

52. His delegation would have preferred to see the word "conventional" deleted.

53. Mr. DOROBANTU (Romania) said that his delegation had voted for the proposal, although it believed that weapons of mass destruction and nuclear weapons should be dealt with as well as conventional weapons.

54. Mr. BRILLANTES (Philippines) said that he had voted for the proposal in the light of the Swedish representative's explanations.

The meeting rose at 6.40 p.m.

SUMMARY RECORD OF THE TENTH PLENARY MEETING

held on Tuesday, 5 March 1974, at 10.25 a.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

In the absence of the President, Mr. de Breucker (Belgium),  
Vice-President, took the Chair.

GENERAL DISCUSSION (agenda item 8)

1. The PRESIDENT declared the general discussion open and, in reply to a question by Mr. NBAYA (United Republic of Cameroon), said that the list of speakers was not closed.
2. Mr. HAMBRO (Norway) said that an essential condition for the success of the Conference was the realization of the fact that law could only function within a structure of shared assumptions. That had been the case when the Geneva Conventions of 1949 were being prepared. In spite of considerable differences of opinion on the problems which had emerged, it was necessary to face up to the common enemy - cruelty, suffering and repression.
3. His Government believed that all war victims must be protected, whatever the political or legal classification of the conflict. For that reason, the Norwegian experts had proposed, at the meetings of experts organized by the ICRC, that there should be only one additional Protocol applicable to all armed conflicts. His delegation reserved the right to revert to that question later.
4. Furthermore, the four Geneva Conventions of 1949 must apply to the armed struggles of colonial peoples and to wars of liberation and independence. Provision must be made for new mechanisms that would permit national liberation movements formally to assume rights and obligations under the Conventions and the Protocol.
5. His Government also considered that it was necessary to codify humanitarian rules applicable to guerrilla warfare in which the distinction between the armed forces and the civilian population tended to become blurred.
6. Prisoner-of-war status and perfidy should be redefined, and adequate protection provided for non-combatants. His delegation would take up once again the proposals it had submitted on that subject at the Conference of Experts.

7. His country, together with six other States (Arab Republic of Egypt, Mexico, Sudan, Sweden, Switzerland and Yugoslavia), had submitted a working paper (CDDH/DT/2 and Add.1) on weapons that might cause unnecessary suffering or have indiscriminate effects. His delegation would place at the disposal of representatives at the Conference the report and recommendations of an international seminar on humanitarian relief in armed conflicts, organized in 1973 by the Norwegian Red Cross with the support of the Royal Norwegian Ministry of Foreign Affairs.

8. Mr. SULTAN (Arab Republic of Egypt) said that, in his delegation's view, it was essential to adopt the two draft additional Protocols (CDDH/1) simultaneously, since it was important to avoid differences in the treatment of victims depending on the nature of the conflict.

9. The general principles of Islamic law applicable to armed conflicts included the following obligations: the obligation to distinguish clearly between combatants and non-combatants, the latter to be given general and complete protection; the obligation to establish a clear distinction between civilian property and military objectives and to give special protection to goods essential to the survival of the civil population and installations containing dangerous forces; the prohibition of mutilation, which was an affront to the dignity of the human person; the prohibition of methods and means of combat likely to cause unnecessary suffering, and the prohibition of perfidy and perfidious weapons. All those principles were set out in parts III and IV of draft Protocol I, and in parts IV and V of draft Protocol II. His delegation would support those texts and, if necessary, propose any improvements that it deemed necessary.

10. The weak point of the Geneva Conventions of 1949 lay in their implementation machinery. There must be greater protection, covering all categories of States, combatants and non-combatants alike, and not, for instance, only States with advanced technical resources. His delegation also attached special importance to the question of the Protecting Power and its substitute. The ICRC should be given all the necessary powers to enable it to perform that function in all armed conflicts. Where the ICRC was unable to do so, it should be possible to entrust that task to another international humanitarian body.

11. It should be borne in mind that, at the 1949 Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, Africa had been represented by three States only - Ethiopia, Liberia and Egypt - whereas the current Conference was attended by more than thirty African States. In conclusion, he welcomed the presence of the representatives of the liberation movements.

12. Mr. BANNA (Lebanon) reminded the Conference of his country's long-standing humanitarian tradition and dedication to tolerance and of the principles underlying those characteristics, namely the inviolability of hospitality and promises, even in respect of the enemy, and the priority given to the right of asylum over the duty to wage a just war.

13. The development of methods of warfare had provoked an attitude of rejection in many young people and even a desire to deal with violence by violence. The Red Cross should, without abandoning its efforts to humanize war, increasingly strive to condemn it and to render it odious to the conscience of mankind.

14. In conclusion, he welcomed the presence of the delegation of Guinea-Bissau and of the representatives of the national liberation movements.

15. Mr. LECHUGA (Cuba) stressed the extreme importance of the Diplomatic Conference. All representatives were surely aware of their responsibility. Those who were fighting for a better world in which human dignity would be respected were also quite rightly calling for adherence to a certain pattern of behaviour in cases of armed conflict. The satisfaction of that demand seemed to be a matter of conscience.

16. The physical integrity of the individual should be assured and inviolable, and the time had come for preparing new legal instruments to complement already existing international humanitarian law. But there was no getting away from the fact that the strengthening of the law would not automatically eliminate aggression against or the exploitation of man by man. For example, neither the Geneva Conventions of 1949 nor the texts which had preceded them had been able to prevent mankind from being plunged into tragic situations; the desire to strength the law was no panacea. Only by eliminating the causes of injustice could the sources of violence be eradicated once and for all. Technical advances in armaments, combined with the cruel experience of recent conflicts, had made world opinion aware of the urgent necessity of improving humanitarian law.

17. United States imperialist aggression against Viet-Nam had revealed the need to protect peoples against acts of barbarism and had aroused the world's conscience which wished to see conflicts rendered more humane. Those were facts which could not be ignored. Imperialism, colonialism and neo-colonialism were ills which had to be eliminated for ever. It was the imperialists, colonialists and their accomplices who were guilty of genocide and who were sowing terror among civilian populations. Humanitarian law could be neither safeguarded nor respected so long as concessions were made to acts of barbarism.

18. The legitimacy of struggles for self-determination and against aggression had been recognized by the United Nations General Assembly and the Fourth Conference of Heads of State or Government of Non-Aligned Countries. Under the resolutions adopted by those authorities, prisoner-of-war status should be extended to persons fighting on behalf of liberation movements and organized resistance movements.

19. His delegation was against the use of means of warfare which spread terror and caused unnecessary suffering among the civilian population, and considered that the Protocols to be discussed should mention the duty of States to settle their differences by peaceful means. International humanitarian law should help to secure respect for national independence and sovereignty and to consolidate world peace.

20. His delegation was participating in the Conference in a constructive and positive spirit, inspired by the ideals of justice common to people struggling for their emancipation.

21. He was glad to see the representatives of Guinea-Bissau and of the national liberation movements present at the Conference; however, it was deplorable that the Provisional Revolutionary Government of the Republic of South Viet-Nam, which represented the legitimate interests of the South Viet-Nameese people who were fighting to free themselves from foreign domination should have been excluded, whereas the representatives of the Saigon administration - a vassal of United States imperialism - was still present at the Conference. It was equally unbelievable that a régime such as the Chilean military junta, which was perpetrating acts condemned by the conscience of the entire world and banned by the Geneva Conventions, should be participating in the Conference; he wondered what world opinion would think of that situation which seriously undermined the moral authority of the Conference.

22. Mr. LEGNANI (Uruguay) said that he fully supported the two draft additional Protocols (CDDH/1) to the Geneva Conventions of 12 August 1949 which were the result of praiseworthy efforts to restrict military operations to encounters between the military forces of the conflicting parties and to protect war victims by developing and reaffirming the provisions of humanitarian law in force and by adopting additional rules. The necessary modifications applied to all armed conflicts, whether international or not, and the texts of the draft Additional Protocols contained the same provisions in that regard. In reality, the horrors of war, its dangers and the suffering it caused were the same in all kinds of armed conflict.

23. Although he did not intend to propose any basic changes in the line or purpose of the drafts under consideration, at the appropriate time he would submit amendments to them and for the time being would confine himself to a brief summary of some of these proposals.

24. It was stated in article 3, paragraph 2 of draft Protocol I, that "... the application of the present Protocol shall cease on the general close of military operations." Yet, in view of the fact that the consequences of war and the situations created by armed conflicts, did not automatically cease with the end of hostilities, the application of the Protocol should be extended until such situations had come to an end. Certain provisions of the Protocols, such as those concerning extradition, should, in most cases, continue to be applied after the end of hostilities. Similarly, whatever the act terminating the military operations might be - armistice or capitulation - possible violations must be allowed for and provision must be made for the rules of humanitarian law to remain in force even after the close of military operations,

25. The provisions on the protection of temporary civilian medical personnel should also be supplemented and extended to cover the movements of that personnel in the performance of their duties and return to their domicile. The existing article 15, paragraph 2 of draft Protocol I unequivocally provided that "Temporary civilian medical personnel shall be respected and protected for the duration of their medical mission".

26. In his opinion, the concept expressed in article 11, paragraph 1 of the same draft Protocol, prohibiting any acts harmful to the health or well-being of the persons protected by the Conventions or by the Protocol, should also appear in article 15, paragraph 2.

27. He further suggested that the final phrase of the first sentence of article 16, paragraph 3 of draft Protocol I, "General protection of medical duties", should be deleted. Under no circumstances could a doctor bound by the rules of professional ethics be compelled to give information concerning the sick and the wounded under his care.

28. In article 33, "Prohibition of unnecessary injury", paragraph 2, it seemed to him unnecessary to refer to "disabled" adversaries.

29. He also suggested that paragraph 2 of article 35 should be deleted, since it was difficult to ascertain whether or not the acts in question invited the confidence of the adversary. Moreover, the qualification "lawful" did not seem to be suitable.

30. Under article 38, "Safeguard of an enemy hors de combat and giving quarter", someone who had laid down his arms no longer had any means of defence. That specification seemed to be illogical, for the fact that an enemy had surrendered or had laid down his arms implied that he no longer had any means of defence.

31. In conclusion, he wished to stress that article 72, "Dissemination", should be applied as widely as possible. The aim of both the Geneva Conventions of 1949 and the Additional Protocols was to limit the effects of war and to relieve suffering. All reasonable measures should be taken to ensure the survival of the human race and to meet the requirements of its safety by eliminating unnecessary suffering and strengthening psychological resistance to war.

32. He very much hoped that the representatives attending the Conference and the members of the ICRC would give careful consideration to the amendments which he had briefly introduced.

33. Mr. OSEI TUTU (Ghana) said that the Declarations and Conventions which had been adopted since 1863, when the young Swiss philanthropist, Henry Dunant, had launched his appeal, bore witness to the progressive development of the principles of humanitarian law and to the adaptation of those principles to the realities of international life. Thus, the 1949 Geneva Conventions had taken into account experience acquired during the Second World War. In its study of the draft Additional Protocols to those Conventions, the Conference should likewise pay due regard to the changes that had taken place during the past twenty-five years.

34. In particular, the nature of warfare had been transformed as a result of rapid scientific and technical advances, which had brought about the development of highly sophisticated weapons of mass destruction. Moreover, in some regions, nationalists, and especially those peoples whose natural and legitimate rights of self-determination had been denied to them and whose political consciousness had been aroused, had adopted methods of combat very different from the traditional ones.

35. The latter kind of struggle had been recognized by the international community as the only way open for the oppressed to rid themselves of colonialist domination, and it would therefore be idle to ignore it. The draft Protocols acknowledged its existence to some extent, but very inadequately, since the articles on the prohibition of perfidy, the use of recognized signs and to the identification of prisoners of war could not be applied in that context. Accordingly, the Conference should keep the experience of the liberation movements constantly in mind when studying those articles.

36. The use of new types of weapons appeared on the agenda of two important conferences currently meeting in Geneva and in Vienna. The main purpose of at least one of them was to limit the use of strategic arms which could result in the destruction of all mankind. Consistently with the contemporary trend of political thought, the Conference should declare the complete prohibition of the use of new weapons in all conflicts. Experience had shown that the use of such weapons could affect innocent civilians some distance from the area directly attacked. Surely, prevention was better than cure.

37. In conclusion, he appealed to all participants to take due cognizance of the existing and future international situation and to be guided by their concern for the preservation of mankind, rather than by military or political considerations.

38. Mr. Seuk Djoun KIM (Democratic People's Republic of Korea) said that in the view of the Korean people, who had been subjected to every kind of suffering inherent in war, human beings were the most valuable of all assets. History had shown that aggression was the origin of all wars. Accordingly, the only way of reducing loss of life and alleviating human suffering was to prevent wars of aggression and consequently to fight against imperialism, colonialism and racism, since it had been imperialist, colonialist and racist forces that had used inhuman and barbarous methods to suppress the national liberation movements of the peoples of Asia, Africa and Latin America and had thus disrupted peace in all the parts of the world where they operated.

39. In order to limit damage as far as possible in the case of unavoidable conflicts, the concept of war crimes should be clearly defined, so that the perpetrators of such crimes should be unable either to invoke humanitarian law in their own defence or to escape the punishment they deserved.

40. It was essential that the new rules to be laid down by the Conference should faithfully reflect that salient characteristic of modern times, the legitimate emancipation of subjected peoples.

41. Mr. CALERO-RODRIGUES (Brazil) said it was regrettable that the Conference had been so delayed in beginning its work.

42. The work of a jurist often had to be that of a craftsman. Successful results depended not so much on proclaiming ideals as on transforming those ideals first into principles and then into rules, with due regard to national and international realities. Efficacy was a particularly difficult goal to attain in matters involving international law and the laws of war. Accordingly, the Conference should adopt a modest and realistic approach and should limit itself to defining rules which could be effectively applied in situations where such application was necessary.

43. The international community being what it was, it would be unreasonable to expect that restrictions could be imposed on the behaviour of States without their consent. Since the provisions of the draft Protocols were designed to make the treatment of victims of armed conflicts more humane, they should also correspond to universally acceptable principles; that should present no difficulty, to the extent to which those provisions reflected the conscience of the international community. It should also be borne in mind that other international bodies which were trying to bring about the reduction of armaments and to achieve general and complete disarmament were in a better position than the Conference to deal with problems concerning certain weapons. The insertion of new provisions which might be controversial would make adherence to the Protocols more uncertain and their application problematical. Yet it was important that as many States as possible should become parties to the Protocols and that those instruments should be effectively and fully applied. Their wording should therefore be exemplary in its clarity and precision. The documents prepared by the ICRC fulfilled that requirement to some extent, but needed further improvement.

44. Moreover, the two draft Protocols before the Conference, like the Geneva Conventions and the general category of international instruments concerned with humanitarian law, differed from most international conventions in that they were binding not only on States parties and their agents, but on other entities and groups and on individuals belonging to those entities and groups. On the other hand, the draft Protocols also granted certain rights, as in the case with article 10 of draft Protocol II concerning penal prosecutions, which placed the courts of States on an equal footing with the courts of groups engaged in a conflict. The Brazilian delegation was convinced that harmful consequences might result from the unduly general or vague application of that principle.

45. It was essential, moreover, to study certain provisions very carefully, especially article 39 of draft Protocol II, which was liable to prejudice the vitally important principle of non-intervention, one of the foundations of international life. That principle might also be threatened if it was not made clear in both the draft Protocols, especially Protocol II, that they would in all cases be applied with the consent of the State concerned.

46. Mr. KHATTABI (Morocco) said that his Government was pleased to be able to participate actively in the work of the Conference, which was responsible not only for adapting the Geneva Conventions of 1949 to the realities of the current international situation, but also for ensuring that international humanitarian law was more closely associated with the efforts of other bodies to achieve peace and to eliminate the causes of all armed conflicts.

47. During its discussions, the Conference should in all circumstances attach greater importance to human dignity and the protection of civilized values than to political, military or even legal considerations.

48. The problems to be solved were indeed complex: they involved providing essential guarantees of respect for the human beings who were still suffering from colonial oppression, apartheid and military occupation; putting an end to the humiliating, degrading and discriminatory treatment that was still being suffered by peoples fighting for the right to self-determination or merely for the right to return to their own country, and ensuring, in adequate conditions, the protection of the civilian population and of the objects necessary for its survival in the context of the new weapons which were being used unrestrictedly and indiscriminately in armed conflicts.

49. In that connexion, it must be emphasized that contemporary international humanitarian law was largely inadequate and even ineffectual.

50. In conclusion, his delegation was essentially motivated by the following principles: that human rights constituted an integral part of international humanitarian law and should therefore be respected and protected in all circumstances and without any restrictions; that since the struggle waged by the national liberation movements represented an aspect of the right to self-determination, armed combat against colonialism, racism and foreign military occupation should be deemed to be of the same nature as international conflicts and, finally, that the fundamental rule according to which the parties to a conflict did not have unlimited rights in their choice of methods of harming the enemy should be defined and elaborated in such a way as to ensure better protection and applicable guarantees for the civilian population.

The meeting rose at 12.35 p.m.



SUMMARY RECORD OF THE ELEVENTH PLENARY MEETING

held on Tuesday, 5 March 1974, at 3.15 p.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

GENERAL DISCUSSION (agenda item 8) (continued)

1. The PRESIDENT invited the Conference to continue the general discussion.
2. Baron van BOETZELAER van ASPEREN (Netherlands) said that the two draft Additional Protocols (CDDH/1) constituted an important step forward in the development of humanitarian law. His Government attached equal importance to both of them and considered that they were inter-related to the extent that to weaken one of them would be to impair the value of the other to the detriment of the whole.
3. During the Conference, his delegation would deploy its efforts in favour of solutions acceptable to a large majority of participants. Universal acceptability was a prerequisite for the promotion of humanitarian law. It would be preferable to seek consensus, even in controversial matters, rather than to force issues to a vote, and his delegation would actively support all efforts made to reach decisions by consensus.
4. Although it was determined to follow a course of moderation and indulgence, his delegation would not lose sight of the fact that the Conference was dealing with legal matters such as the rights and obligations of those involved in armed conflicts, and had the task of improving the quality of legal protection in a variety of situations, some of which were covered by the existing Conventions and some of which were not.
5. Those who had been actively involved in the development of humanitarian law over the past century had realized that it could only serve its purpose if no discrimination was made between the parties to armed conflicts. The application of humanitarian law should on no account be made dependent upon the cause of the conflict as perceived by the respective parties. To admit that considerations of the justness of a war could govern the application of humanitarian law would be to embark upon a very dangerous course and could result in the destruction of the very body of law which the Conference was endeavouring to reaffirm and develop. His delegation did not intend to lose sight of the fact that the Conference's task was to legislate for the cause of humanity, not of particular parties to particular conflicts.

6. Mr. ECONOMOU (Greece) said that his delegation pinned high hopes on the successful outcome of the Conference. The large number of participating countries bore witness to the importance attached by the international community to the reaffirmation and development of international humanitarian law applicable in armed conflicts

7. His delegation was anxious that all victims of armed conflicts, whether international or non-international, should be adequately protected against the sufferings of war. In the context of draft Protocol I, it attached particular importance to the protection of the civilian population and to the status of prisoners of war. The field of application of the relevant provisions should be studied in the light of recent experience.

8. It was indispensable that special measures should be taken in favour of the protection of cultural property, in particular works of art belonging to the cultural heritage of the countries engaged in the conflict. The same applied to the question of the appointment of Protecting Powers and of their substitute, which should be clearly and unequivocally defined.

9. Mr. CRISTESCU (Romania) said that it would not be possible to ensure effective application of the instruments drawn up by the Conference unless they were the fruit of the efforts and agreement of all States and all the elements that might be involved in their application. The illegal obstacle placed in the way of participation by one of the Parties to the Geneva Conventions of 1949, namely, the Provisional Revolutionary Government of the Republic of South Viet-Nam, was an impediment to the Conference's work and undermined the very foundations of humanitarian law applicable in armed conflicts.

10. His delegation welcomed the presence of the national liberation movements which, as the authentic representatives of their peoples, had the right to participate fully in the Conference, should be protected by humanitarian law, and had much to contribute to its development.

11. At the international level, Romania followed a consistent policy based on the strengthening of peace and international security, the establishment of new relationships between States having regard to the principles of international law and national sovereignty and independence, equal rights of States and non-interference in domestic affairs, and the obligation of States to refrain from the use or threat of force and to settle all their international disputes by peaceful means.

12. Humanitarian law and the protection of individuals during armed conflicts could only be effective within the framework of over-all protection of peoples and nations based on respect for the rules of contemporary international law. The right of peoples resisting aggression in the exercise of their right to self-determination to seek and receive support in accordance with the aims and principles of the Charter of the United Nations was embodied in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States contained in the annex to General Assembly resolution 2625 (XXV). Consequently, humanitarian law must distinguish between the aggressor and the victim of aggression and must guarantee greater protection for the victim in the exercise of his sacred right of self-defence.

13. Nuclear, bacteriological, chemical and biological weapons as well as all weapons of mass destruction should be banned. A universal agreement on general disarmament and, in particular, nuclear disarmament, was an urgent necessity.

14. International humanitarian law must provide for effective protection of the civilian population and civilian objects. Indiscriminate bombing, reprisals, taking of hostages and all acts of terror must be prohibited. Particular attention should be given to the protection of objects necessary to the survival of the civilian population, and to precautionary measures to spare the civilian population during attacks in international armed conflicts.

15. With regard to non-international armed conflicts, account must be taken of the need to respect the right of all peoples and States to defend the political, economic, social and cultural system of their choice. States must refrain from all action designed to overthrow another State's system and must not intervene in the internal conflicts or domestic or foreign affairs of another State. The automatic application to internal conflicts of regulations applicable in international conflicts might have negative results and entail violation of international law and national sovereignty. Any future international regulations relating to non-international armed conflicts must be based on recognition of, and respect for, the sovereign rights of each State within its boundaries.

16. Mrs. MARZUKI (Indonesia) said that the principle of humanity should be upheld and applied at the national and international levels. In conformity with the Indonesian national philosophy, Pancasila, her delegation welcomed every effort to enlarge the field of application of that principle.

17. Many international and non-international armed conflicts still took place in developing countries. In the view of her delegation, a more realistic approach was needed to the formulation of new rules applicable in such conflicts, in line with the realities of international practice, and based on the principles of respect for the sovereignty and integrity of all nations. The principle of non-interference in the domestic affairs of States was most important. In that respect, certain conditions would have to be met before the provisions of draft Protocol II could be applied to non-international armed conflicts. Those conditions included elements such as duration, degree of intensity of the conflict, and area of occupation by the adverse party.

18. In regard to the provisions relating to civil defence contained in draft Protocol I, it should be noted that the character and objectives of national civil defence systems were not the same in all countries.

19. The final provisions of draft Protocol I should not include any express prohibition on reservations to certain articles, subject of course to the generally accepted principle that such reservations must not be incompatible with the object and purpose of the agreement.

20. Mr. GUCETIC (Yugoslavia) said that the 1949 Geneva Conventions marked a significant advance in humanitarian law. However, war and aggression had continued during the past twenty-five years, not only against States but also against peoples. Frightening progress had been made in the development of both nuclear and classic weapons. At the same time, the international community had made considerable progress in the promotion of human rights. There was an inherent contradiction between those two human activities, and the task of the Conference was to eliminate as far as possible the consequences of the former while endeavouring to extend the latter to the exceptional circumstances of armed conflict.

21. General Assembly resolutions 3032 (XXVII), 3076 (XXVIII) and 3103 (XXVIII) formed an adequate basis for the Conference's work. They emphasized certain basic problems and pointed the way towards certain solutions. Among the questions to be considered were those of methods to ensure fuller application of legal provisions in force, the definition of military objectives and protected works, protected persons and combatants, guerrilla activities, the prohibition or limitation of the use of certain weapons and methods of combat affecting indiscriminately the civilian population and combatants or causing unnecessary suffering, and the protection of the victims of armed struggle for affirmation of the right of peoples to self-determination.

22. The body of law to be drawn up should prohibit wars of aggression and facilitate all forms of armed and political struggle against aggression. Special attention should be paid to effective protection of all categories of combatants and the civilian population, the wounded and sick, and medical and civilian protection services. Combatants and military objectives needed to be redefined, and methods and means of combat to be reconsidered. Weapons of mass extermination as well as certain categories of conventional weapons should be banned. Biological and ecological warfare, as developed more particularly in Viet-Nam, should be placed under the ban of the new body of international humanitarian law.
23. The question of combatants fighting to free their peoples from the colonial yoke deserved close consideration, since the existing Conventions were not adapted to that particular form of armed struggle. The Fourth Conference of Heads of State or Government of Non-Aligned Countries had recognized the need to encourage such forms of struggle and to protect the victims thereof, and the necessary provisions must be embodied in the new international humanitarian law. The best way of doing so would be to state that such struggles were international conflicts, as had already been recognized in many United Nations documents.
24. The two draft Additional Protocols formed a sound basis for the Conference's work but should be re-examined carefully in the light of the needs of the international community as a whole. When preparing the final version of draft Protocol II, account must be taken of the general principles of international law, including those of non-interference in the domestic affairs of States and respect of the sovereignty and territorial integrity of States.
25. The new international humanitarian law must reflect the needs and ideas of all States irrespective of their size or military or economic power. It would not be possible to supplement the 1949 Geneva Conventions satisfactorily unless a common denominator acceptable to all could be found. Armed conflicts would not cease overnight, because the world was undergoing a crisis which the international community was unable to solve because of the differences between the powerful and privileged countries and the weaker but far more numerous countries. The Fourth Conference of Heads of State or Government of Non-Aligned Countries had put forward some ideas for remedying that situation. The task of developing international humanitarian law would be long and difficult, but the Conference could succeed in its task if all delegations were determined that it should do so.
26. Mr. SHAH (Pakistan) said that the Geneva Conventions of 1949, which constituted the most up-to-date and complete set of rules for ensuring the protection of victims of armed conflict, codified principles which had first been enunciated in the laws of Islam.

The lesson of contemporary armed conflicts was that there was an urgent need to supplement the 1949 Conventions and to improve the means of applying them; his country's experience after the 1971 war had shown the need for further provisions to ensure their observance. The role of the Contracting Parties, the Protecting Power and the ICRC should be strengthened. The present provisions governing the release and repatriation of prisoners of war (article 118 of the Third Geneva Convention), and civilian internees (articles 132-134 of the Fourth Geneva Convention) could be breached with impunity and the lack of any effective check on breaches of the provisions for humane treatment of prisoners of war made it possible even for the cold-blooded murder of prisoners to go unchallenged. The procedure laid down in article 11 of the First Geneva Convention of 1949 for the settlement of disputes through the mediation of the Protecting Power had also proved inadequate.

27. The duty of the High Contracting Parties to respect and to ensure respect for the Conventions in all circumstances as required by article 1 common to the four Geneva Conventions, should be elaborated on, to provide that efforts were made by the other Contracting Parties to restore any party which failed to fulfil its obligations to an attitude of respect for the Conventions. In that connexion, his delegation, which welcomed in principle the provisions of article 7 of draft Protocol I, considered some reformulation necessary and would submit an amendment for the purpose at the appropriate time.

28. Pakistan would like the role of the Protecting Power in implementing the Conventions and Protocols to be strengthened. The right of a Protecting Power to intervene to verify the application of the Conventions should be made real and effective. His delegation intended to submit proposals to that end.

29. The conciliation procedure provided for in article 11 of the First Geneva Convention of 1949 could be totally frustrated when one Party refused to recognize the Protecting Power designated by the other Party; steps should be taken to remedy that weakness.

30. With a view to strengthening the obligation on the part of the Contracting Parties to release and repatriate prisoners of war and civilian internees, Pakistan experts at the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, had proposed the introduction of a new article 73A - Implementation of essential provisions - to read:

"The Contracting Parties shall not delay the implementation of article 118 of the Third Convention, relative to the treatment of prisoners of war, and articles 132 and 134 of the Fourth Convention, relative to the protection of civilian population in time of war, and shall in no event use the question of the release and repatriation of prisoners of war and civilian internees in order to extract any political or other advantage".

31. The proposed article had been supported by the overwhelming majority of members of the relevant Commission but had unfortunately not been included in the draft Protocol.

32. Failure to comply with the provisions of article 118 of the Third Geneva Convention of 1949 and articles 132 and 134 of the Fourth Convention should be regarded as grave breaches of the Convention which could lead to the right to claim damages and punishable in the same way as other grave breaches.

33. With regard to arbitrary internment of civilians, it might be stipulated that a civilian internee would have the right to make a habeas corpus petition.

34. The inquiry procedure covering cases of death of prisoners of war, provided for in article 121 of the Third Geneva Convention, was unsatisfactory: the Detaining Power, on which that article placed the responsibility for inquiry, was seldom willing to disclose shortcomings on the part of its own military personnel. The procedure provided for in article 132 of the same Convention was likewise inadequate, depending as it did on the consent of both parties, which was seldom forthcoming.

35. His delegation welcomed the provision in article 33, paragraph 2 of draft Protocol I, and in article 20, paragraph 2 of draft Protocol II prohibiting the use of weapons which caused unnecessary suffering. The choice of weapons by combatants should be limited and those which were particularly inhumane should be banned. His delegation wished the new Ad Hoc Committee every success in that connexion.

36. His delegation approved generally the extension of humanitarian standards provided for in draft Protocol II but felt that the most important question to be considered in each case was whether the conflict was really one of a non-international character within the meaning of the Protocol. In his delegation's view, the concept of armed conflict of an international character would be applicable to an armed conflict for national liberation and for overthrowing colonial domination, but the concept of armed conflict of a non-international character would not be applicable to armed conflict on the part of a racial or ethnic group against its own central

government. Nor could any group of the people of a country which had successfully overcome foreign domination and gained its national independence legitimately claim that a movement for secession from the national government was a struggle for self-determination. The necessary distinction would have to be made in such cases.

37. Now that article 3 common to the four Geneva Conventions of 1949 was to be supplemented by the 47 articles of draft Protocol II, it might be appropriate to consider that article as a fifth Geneva convention and to designate it as the "Geneva convention for ensuring the protection of victims of non-international armed conflicts."

38. The Conference was called upon to perform the noble and humanitarian task of providing protection to the unfortunate victims of armed conflict. His delegation earnestly hoped that it would achieve the high objectives for which it had been convened.

39. Mr. de la PRADELLE (Monaco) said that he wished to make two observations; the first, of a general nature, related to the two drafts before the Conference as a whole, while the second concerned a particular point in draft Protocol I.

40. From a general standpoint, it was desirable that the two Protocols should be kept and remain entirely separate. The first applied to the situations referred to in article 2 common to the four Conventions of 12 August 1949, while the second was based on their article 3, which some representatives and commentators, both in 1949 and 1973, had not hesitated to describe as a fifth Convention. To establish a close relation between one Protocol and another, as was suggested by article 42, which was intrinsically dependent on Protocol II, would lead indirectly to the study of a possible revision of the Conventions, and that was a matter which fell outside the competence of the Conference.

41. Not all international humanitarian law was the exclusive monopoly of the Geneva Conventions. The two International Covenants on human rights of December 1966 (International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI))), each of which contained in part I, reduced to the solemnity of a single article, a proclamation of the right of self-determination, restricted the exercise of the powers of constraint by States - powers also recognized as a part of national public order - by means of fundamental obligations safeguarding the essential human rights.

42. With regard to particular points, his delegation would follow carefully the debates on those provisions of Protocol I and of its technical annex which related to medical transport by air. In 1949, the delegations of Finland and Monaco had submitted and supported amendments on the subject, but there had not been an opportunity for a thorough discussion of them.

43. The texts adopted in 1949 for the First and Fourth Conventions requiring a flight plan approved by all the parties to the conflict, had not led to any progress either permanent or temporary, in the use of medical aircraft. His delegation hoped that the Conference would be able, at the present session, to take up that question again with the help of experts from the intergovernmental transport and telecommunication organizations.

44. Mr. ALDRICH (United States of America) said that throughout the years of preparatory work for the Conference his Government had emphasized two fundamental objectives: better implementation of and compliance with existing international law and development of new rules of law that were clear, capable of being accepted by States and capable of being applied in practice. Failure to adhere to those objectives would create an illusion of progress which could only obscure the reality.

45. In recent years, compliance with the law had not been as general as might have been desired. There had been repeated refusals to comply with the four Geneva Conventions of 1949 and to treat military personnel captured in battle as prisoners of war, and efforts had been made to hold prisoners - in effect to hold them to ransom in order to obtain political advantages. Forms of warfare had been employed which seemed to make a target of the civilian population. There seemed to have been a reversion to an earlier age when the ransoming of prisoners was standard practice and the taking of hostages and the use of terrorism were accepted methods of bargaining.

46. The argument that the end justified the means was the sole defence advanced for those distressing developments. That argument was the antithesis of international humanitarian law and in particular, of the Geneva Conventions, the philosophy of which was concern not for who was right and who was wrong, but for the protection of all victims of armed conflict, irrespective of the cause they supported. His Government firmly held the view that the Conference should reaffirm the philosophy of the Geneva Conventions and reject any efforts to introduce into the law discriminatory levels of protection based on subjective criteria such as the justness of the cause for which a particular group was fighting. Agreed humanitarian standards must be applied equally to the victims of war whichever cause they supported.

47. The introduction into international humanitarian law of "just war" concepts would inevitably result in a lowering of the standards of protection accorded to war victims. Rare was the man who thought his enemy right and even rarer the State which, when combating a rebellion, could afford to apply international standards to captured rebels if by so doing it implicitly acknowledged the justness of the rebels' cause or their right to self-determination. If the Conference was to succeed in the development of the Protocols it must make a law to protect all war victims, friend and foe alike.

48. The Conference was a test of the possibility of making responsible and acceptable law in a universal forum. The forthcoming Third United Nations Conference on the Law of the Sea would be a similar test. Some sceptics said that the world community had become too large and its interests too diverse for such conferences to succeed and that only through conventions drawn up by like-minded States could real progress be made. As examples they pointed to the recent conventions dealing with threats to international civil aviation. No doubt they might also point to the first two weeks of the present Conference as proof that States were unable to resist the temptation to pursue short-term political interests at the expense of the substantive work of the Conference.

49. He would urge delegations to keep those concerns in mind, to concentrate on the substance of the work of the Conference and to cease treating the Conference as an extension of the United Nations General Assembly, where special interests could be pushed. He was disturbed to learn, for example, that certain delegations were still trying in the work on rules of procedure to promote further the status of national liberation movements at the Conference. Those movements were represented at the Conference and had the right to participate; that should suffice. The efforts of those delegations were a perfect example of the type of effort to extract from the Conference the maximum of political advantage without regard to the cost to the future of international law-making. Governments representing hundreds of millions of people and showing a serious interest in the development of international law would not, in the end, permit their co-operative efforts in law-making to be frustrated by Governments that showed little interest in the subject and might well finish by refusing to become parties to the agreements ultimately achieved.

50. The law-making task before the Conference was to develop and improve standards intended to reduce suffering and to protect those who could not protect themselves. But the task had also a broader purpose, that of ensuring that feelings of compassion were not destroyed in the violence of modern war. That task deserved the best efforts of which delegations were capable. Future generations might not thank them if they succeeded, but would certainly pay the price if they failed. He appealed to the Conference to strive wholeheartedly for the cause of humanity.

51. Mr. KAKOLECKI (Poland) said that although war was banned by contemporary international law, the reality had to be faced that armed conflicts still occurred. It was thus necessary to develop means of protecting war victims and, as far as possible, of limiting the horrors of military operations.

52. Poland, whose national territory twice in the present century had become a battlefield, had particular reason to be interested in the noble aims of the Conference. The methods employed against his country during the Second World War, in which six million Poles, most of them civilians, had been killed and 40 per cent of the national wealth had been destroyed, had contravened the laws of humanity on an unprecedented scale.

53. His delegation fully sympathized with those peoples who, in the legitimate exercise of their right to self-determination, were fighting for their independence. It was one of the great achievements of the international community, and particularly of the United Nations, that armed conflicts involving the struggle of peoples against colonial and alien domination, and against racist régimes were now regarded as international armed conflicts within the meaning of the Geneva Conventions and that the legal status of lawful belligerent was consequently to be applied in full to persons engaged in such struggles. That principle, which had been set forth in United Nations General Assembly resolutions, reflected contemporary world juridical opinion.

54. Persons taking part in partisan warfare to defend their country and free their territory should be given explicitly the full status of combatant and the traditional rigid conditions for the enjoyment of that status should be made more flexible. The humanitarian traditions of the host country in that respect were well illustrated by the statement of the Swiss representative at The Hague Peace Conference of 1899, when he had referred to love of country as a virtue the defence of which should not be punished.

55. He welcomed the participation in the Conference of the delegation of Guinea-Bissau and the delegations of liberation movements, which would no doubt have a precious contribution to make as a result of their experiences. It was a matter for regret that the Conference had failed to take the just decision to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate as the only true representative of the heroic people of South Viet-Nam.

56. His delegation was convinced that the majority of delegations shared the view that until armed conflicts were entirely eliminated from the life of nations such conflicts should be made as humane as possible. The Conference rightly placed emphasis on the

protection of human rights in armed conflicts. With all due respect for the protection of human rights in peace-time, the aspect which had hitherto received the major emphasis, it was in time of war that human rights were exposed to the greatest danger.

57. His delegation was confident that the Conference would take an important and much needed step towards bringing up to date and developing international humanitarian law.

58. Mr. RECHETNJAK (Ukrainian Soviet Socialist Republic) said he welcomed the presence of representatives of the national liberation movements, whose armed struggle against colonialism and racism, now widely recognized as legitimate, was one of the reasons why additional principles of international humanitarian law applicable in armed conflict had become necessary. The exclusion of the Provisional Revolutionary Government of the Republic of South Viet-Nam was a gross act of discrimination.

59. His delegation believed that any additional protocols should confirm and develop existing conventions such as The Hague Conventions of 1907, the Geneva Conventions of 1949 and others limiting the use of certain methods of warfare, and should establish provisions to reflect new conditions, but that such provisions must be in accordance with the rules for the conduct of warfare already laid down in international law. It was regrettable that previous conventions had often been disregarded, for instance by Israel in the occupied Arab territories and in its bombardment of civilian populations in Egypt and Syria in the October 1973 war, as well as by the Portuguese in Angola, Mozambique and Guinea-Bissau and by the racist regimes in southern Africa which were continuing their crimes against peoples struggling for independence. Unfortunately, not all States were guided by the solemn declaration of the United Nations General Assembly (resolution 2734 (XXV)) concerning the non-use of force in international relations and the permanent prohibition of the use of nuclear weapons. It was therefore important to reaffirm the validity of the 1949 Geneva Conventions and to adopt the draft Protocols.

60. Imperialist States trying to preserve their domination over colonized territories were mercilessly annihilating civilian populations and members of national liberation movements. Clearly the provisions designed to prevent such acts needed strengthening; and the additional Protocols should extend the rules and customs of warfare to cover participation in national liberation struggles.

61. At the twenty-eighth session of the General Assembly of the United Nations, his country's delegation had sponsored resolution 3103 (XXVIII) entitled "Basic principles on the legal status of the combatants struggling against colonial and alien domination and

racist régimes". That resolution had proclaimed that such armed conflicts were to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions, and that the legal status envisaged for combatants under that and other international instruments should apply to persons engaged in such struggles. That resolution also provided that prisoners captured in such struggles were to be accorded the status of prisoners of war in accordance with the provisions of the Geneva Convention relative to the treatment of prisoners of war, of 12 August 1949, and stated that the use of mercenaries by colonial and racist régimes against national liberation movements was considered to be a criminal act and that mercenaries should accordingly be punished as war criminals. Indeed, the General Assembly had repeatedly stressed the need to reinforce sanctions against mercenaries. His delegation was convinced that the Conference would pay the fullest attention to the General Assembly's views.

62. Recognition in the additional Protocols that participants in the struggle for national liberation had the rights of combatants would not create any particular status for them or constitute discrimination in law. Such recognition was merely designed to define the rights of those struggling against colonialism and racism and to ensure that the provisions of the 1949 Geneva Convention were applied to them.

63. With respect to the draft Protocols, his delegation would work to strengthen the protection accorded to the civilian population during armed conflict, and to prohibit warfare against civilian populations as such. It was important to work out provisions on non-international armed conflicts and to bear in mind that intervention in the internal affairs of States under any pretext was inadmissible.

64. While it agreed on the need to work for the prohibition of weapons which caused unnecessary suffering, his delegation felt that that was not a matter for the Conference but rather for the United Nations Conference of the Committee on Disarmament or the World Disarmament Conference.

65. Mr. de BREUCKER (Belgium) said that during the hundred years which had elapsed since the Brussels Declaration of 1874 concerning the laws and customs of war, many provisions relating to armed conflicts had been accepted as objective and universal rules of international law. The culmination of that development had been the adoption in 1949 of the Geneva Conventions.

66. The tragic recurrence of armed conflict had, however, now revealed the inadequacy of the protection granted to victims and the need to reaffirm and develop existing law, particularly since States had not always respected the Conventions and had avoided using the control machinery which they provided. Women and children had been subjected to the same cruel treatment as combatants. Atrocious weapons and methods of retaliation had been employed to compel them to take part in warfare and to blur the capital distinction between combatants and civilians.

67. The two draft additional Protocols now provided further written rules to supplement and clarify the existing texts.

68. His delegation had listened with sympathy to the views of those who had spoken of the struggle of the liberation movements against foreign and colonial domination. Belgium itself had been attacked and invaded twice in 25 years, and had fought two just wars. But Belgium believed that the question of whether wars were just or not must not be allowed in any way to influence the application of rules designed to protect the victims of war. Belgium would continue to apply those rules even if it were attacked again. Any other course of action would lead to arbitrary treatment of combatants and civilians.

69. The Conference had to decide what was permissible in armed conflict and what was not, how war victims could be better protected, and how the control machinery could be reinforced. As a special branch of international law, humanitarian law could not make a distinction between the categories of armed conflict. The 1949 rules, which would remain unchanged, applied to both categories of conflict and the additional proposals should follow their classification. However, the Conference must be careful not to make those instruments restrictive. Written international law in no way diminished the legitimate right of States to insist upon a wider application of humanitarian law whenever the gravity of the situation so required. That was nothing new: it was a practice that had been observed during the struggle for independence of the Balkan peoples, and no one had felt the need to change international law because of it. As far as the present-day colonial wars were concerned, the universal conscience of nations should and must continue to ensure optimum use of humanitarian law and in the future the conscience of nations must continue to act in conflicts other than those of a colonial nature.

70. Mr. KIRALY (Hungary) said his delegation was gratified at the presence of the delegation of the Republic of Guinea-Bissau and of representatives of the liberation movements, but regretted that a delegation from the Provisional Revolutionary Government of the Republic of South Viet-Nam had not been allowed to take part in the Conference.

71. The aim of the Conference was to reaffirm and develop international humanitarian law. Its task would be to help in working out an international system that strongly condemned aggression and the use of force in all international relations. With that principle in mind, his delegation would oppose the increasing erosion of certain long-standing provisions of international law, the danger of which had been mentioned by many speakers. The Conference must not forget the tragic experience of armed conflicts over the past twenty-five years, especially during the war against Viet-Nam. Moreover, those long-standing provisions must be reaffirmed and developed so as to impose a more effective ban than at present on those methods of warfare from which the peoples of Viet-Nam had suffered for years.

72. The difference between civilians and the armed forces must be emphasized. The two Protocols must strongly condemn economic and ecological warfare, and at the same time ensure the protection of the human environment. Moreover, increased support should be given to civil defence activities and organizations, without which the civilian population and their essential possessions could not be adequately protected. The Additional Protocols must aim to subordinate military advantage to basic humanitarian principles, and to lay down definitive provisions for the punishment of war criminals.

73. The Conference should, however, differentiate between what was desirable and what it was possible to achieve. It was obviously desirable to prohibit weapons which caused unnecessary suffering, but that was a problem that could not be solved at the present Conference: it had to be dealt with by international conferences on disarmament.

74. Mr. BANYIYEZAKO (Burundi) said that in 1949, when the Geneva Conventions had been adopted, Africa had been represented by only three States, whereas at present it was represented by over thirty. His delegation was particularly gratified at the presence of the delegations from the Republic of Guinea-Bissau and the national liberation movements. However, it regretted the absence of a delegation from the Provisional Revolutionary Government of South Viet-Nam, whose experience would have been particularly useful to the Conference.

75. His delegation would like to see it made clear, either in the preamble or in article 1 of draft Protocol I, that wars of national liberation were international in character.

76. Draft Protocol I had been drafted with only States in mind. But national liberation movements did not have the same economic resources as States, and the Conference should take account of the special conditions of the struggle for self-determination - recognized as lawful by the international community - in article 42 of draft Protocol I. Moreover, the Conference should list the weapons that were prohibited in international armed conflict.

The meeting rose at 5.35 p.m.

SUMMARY RECORD OF THE TWELFTH PLENARY MEETING

held on Wednesday, 6 March 1974, at 10.15 a.m.

President: Mr. Pierre GRABER Vice-President of the  
- Swiss Federal Council,  
Head of the Political  
Department

GENERAL DISCUSSION (agenda item 8) (continued)

1. The PRESIDENT announced that, lacking express regulations the Conference would follow the rule that the right of reply was exercised at the end of the meeting in which the right to reply arose. He called on the representative of Morocco who had been unable to exercise that right at the eleventh meeting through lack of time.
2. Mr. KHATTABI (Morocco), replying to the statement by the representative of Monaco, said that he thought it necessary to point out that at the tenth meeting he had said that human rights were an integral part of international humanitarian law. What he had had in mind was more than a simple allusion to the Universal Declaration of Human Rights. In that context, his delegation placed its trust in the eminent jurist, Mr. Jean Pictet, who, in his book on The Principles of International Humanitarian Law and the protection of war victims, had said that international humanitarian law in its wide sense was made up of all international legal provisions, written or customary, which guaranteed respect for the individual and his personal development.
3. Mr. CLARK (Nigeria) noted with satisfaction that, thanks to consultations within the regional groups, it had been possible to draw up a well-balanced list of members of the General Committee. He especially welcomed the appointment of a member of the delegation of the Republic of Guinea-Bissau as one of the Vice-Presidents of the Conference.
4. The convening of the present Conference was proof that the international community acknowledged the need to make a concerted effort to reaffirm and develop the rules of humanitarian law applicable in armed conflicts. The Conference was going to base its work on the 1949 Geneva Conventions, which represented the most comprehensive set of rules applicable in armed conflicts. However, those Conventions needed updating. Thanks to the studies and consultations undertaken by the ICRC the Conference now had before it two draft additional Protocols which offered a point of departure for fruitful work.

5. During its discussions, the Conference should not forget that the Geneva Conventions were a product of European experience and history. But nearly half the countries invited to the present Conference, including Nigeria, had not participated in the drafting of those Conventions. Newly independent States had not hesitated to accede to those Conventions, while even during the national liberation struggles the colonizing Powers which had signed those very Conventions had often failed to observe them. His country wished to reaffirm its faith in the humanitarian principles of the Conventions and to contribute, so far as possible, to the development of new texts that would better conform with contemporary needs.
6. Nigeria had experienced civil conflicts in which it had endeavoured to apply strictly the rules of humanitarian law. An Operational Code of Conduct, drafted and issued in vernacular languages by the highest authority of the land, had been widely disseminated among all the Nigerian armed forces. Nothing had been done to make the task of national reconciliation difficult. The only objectives were military ones. A team of international military observers had visited the zones of conflict and reported on the conduct of the Federal Nigerian Army. The Nigerian Government would therefore be able to provide more than a theoretical contribution to the Conference. It was nevertheless important that the new international humanitarian law should be universally applicable.
7. Modern law had come a long way since the adoption of the Universal Declaration of Human Rights. The right of peoples to self-determination had been recognized, as had the lawful nature of peoples' struggles for independence. The new international humanitarian law would have to take account of new concepts embodied in various conventions and international instruments, as well as in certain United Nations resolutions.
8. The Conference would have to take into consideration a number of situations that had not been foreseen by the authors of the 1949 Geneva Conventions. The rights of national liberation movements had been recognized and it was gratifying that the Conference had decided to invite them to participate fully in its deliberations. South Africa, on the other hand, should not participate in the Conference since it was not complying with the principles of humanitarian law.
9. He hoped that all the participating delegations would try to ensure the success of the Conference.
10. Mr. MARTIN HERRERO (Spain) said that the Conference would have to deal with particularly difficult subjects, as had been demonstrated by the obstacles it had already had to overcome. There had been much talk of "consensus", but it seemed to him that that procedure

involved a certain risk since the results obtained were sometimes very tenuous and frequently constituted a way of postponing solutions to problems. The system of regional groups represented a certain advantage to the extent that it enabled ideas to be exchanged and points of view to be harmonized, but that procedure should be resorted to only in the preparatory work since, in the final analysis, it was essential that States indicate explicitly their opinions and approve texts that were clear. During the preparatory conferences, his delegation had stressed the necessity of defining the fundamentals with clarity. That was not always possible, but, in that case, it was essential to produce provisions that would be as precise as possible.

11. The Conference had before it two draft Protocols additional to the 1949 Geneva Conventions. In view of the lack of time, his delegation hoped that the examination of draft Protocol II would be postponed until the second session of the Conference. He recognized that the two instruments were based on the same principles, but that did not constitute a reason for confusing them. They should be dealt with separately. Furthermore, the new instruments should go beyond the principles contained in the Geneva Conventions.

12. He expressed his satisfaction with the proposal concerning the setting up of an ad hoc Committee on Weapons which would be responsible for examining the question of prohibition or restriction of use of specific categories of particularly destructive conventional weapons. His country, in view of its geographic situation, was especially desirous that that question be examined with considerable attention. In general, his delegation, which had already participated in the work of the two Conferences of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, hoped to be able to make a useful contribution to the discussions.

13. Mr. PI Chi-lung (China) said he was glad that the representatives of Guinea-Bissau, the Palestinian Liberation Organization and the national liberation movements had obtained the right to participate in the Conference. The oppressed nations and peoples of the world were awakening and the third world was playing an increasingly important role in international affairs. China regretted, however, that the Provisional Revolutionary Government of the Republic of South Viet-Nam had not been admitted to the Conference.

14. Since the conclusion of the Geneva Conventions in 1949, the world situation had undergone great changes. Many countries had achieved independence and had thrown off the colonial yoke. It was therefore essential to supplement and develop the 1949 Geneva Conventions in order to adapt them to contemporary requirements.

15. Wars were divided into two kinds, just and unjust. Imperialism was at the root of all wars of aggression. While imperialism persisted in the world, there would always be the danger of war. The two world wars launched by imperialism had inflicted tremendous losses of life and property on the peoples of the world. The first step in protecting victims of international armed conflicts was therefore to condemn imperialist policy of aggression and to mobilize the people of the world in a resolute struggle against the policies pursued by the imperialist countries. Moreover, a distinction between just and unjust wars, should be made in the new Protocols.

16. Another major issue was the affirmation of the legal status of wars of national liberation. Since the Second World War, many oppressed nations had overthrown the criminal domination of imperialism and colonialism and a whole group of newly independent States had emerged one after another. Armed struggles for national liberation had developed in Asia, Africa, and Latin America. Wars for national liberation were just and should be supported by all countries that upheld justice.

17. The legal status of wars for national liberation had been acknowledged in the principles of the Charter of the United Nations and in resolutions of the United Nations General Assembly. The Conference should heed the wishes expressed by the representatives of many third world countries, since otherwise the Protocols would not reflect the requirements of the times.

18. The imperialists and colonialists had used inhuman genocidal weapons and barbarous methods of combat. The super Powers, which were contending for world hegemony, were mass-producing lethal weapons, particularly nuclear weapons, which must be prohibited. Yet the super Powers were frantically opposing the complete prohibition and total destruction of nuclear weapons, because they wished to act as overlords in the world. They preached disarmament while continuing to increase their arsenals. The new Protocols should unequivocally provide for the prohibition and destruction of nuclear weapons and the nuclear Powers, primarily the two super Powers, the Union of Soviet Socialist Republics and the United States of America, should guarantee that they would in no circumstances use nuclear weapons, particularly against non-nuclear countries and nuclear-weapon-free zones.

19. Being fully aware of the importance of the principle of respect for State sovereignty and non-interference in the domestic affairs of other countries, his delegation considered that all measures concerning the protection of the victims of war should be based on that principle.

20. In view of the ambiguity of the phrase "non-international armed conflicts", which was open to different interpretations, his delegation could understand the questions and doubts that had been expressed in that regard and therefore considered that draft Protocol II, which applied to civil war, gave rise to fundamental problems. Accordingly, the Conference should concentrate its discussion on draft Protocol I and leave draft Protocol II, aside for the time being.

21. In conclusion, he pointed out that the Royal Government of National Union of Cambodia under the leadership of Prince Norodom Sihanouk was the sole legal Government of Cambodia and that the Lon Nol "clique" had no right whatsoever to take part in the Conference.

22. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that the development of humanitarian law was now entering a decisive phase, at a time when the international situation was favourable. Progress had been achieved in checking the armaments race, the numbers of bilateral and multilateral agreements and political consultations between States with different social regimes were increasing, and peaceful coexistence and economic, scientific, technical and cultural co-operation were being strengthened. Peace had been or was on the way to being re-established in Viet-Nam and in the Middle East. The international situation was marked by an easing of tension. At the same time, it must be admitted that acts of aggression and violations of humanitarian law were still being perpetrated in the Middle East and in territories remaining under colonial domination, and also in Chile, which was undergoing a reign of terror condemned by the whole world.

23. There were shortcomings in both the draft Protocols, particularly the omission of provisions to strengthen the protection of guerrillas and fighters in national liberation movements. His delegation considered that the Geneva Conventions of 1949 should be applicable to that category of combatants. The texts should also be more explicit on the subjects of the status of prisoners of war, the punishment of war criminals, civil defence, the protection of civilian objects and the protection of the environment.

24. His delegation was of the opinion that problems concerning various types of weapons were beyond the competence of a Diplomatic Conference on Humanitarian Law, but should be dealt with by United Nations organs and by a World Disarmament Conference. The parties to a conflict did not have an unlimited right to choose the methods and means of combat. The Soviet delegation would submit specific proposals on that subject at the appropriate time; it considered that war criminals should not be entitled to the status of prisoners of war, that measures to prohibit weapons for use against civilian populations should be strengthened and that those populations should be protected against torture and internment.

25. It was regrettable that the Democratic Republic of Viet-Nam and the Provisional Revolutionary Government of the Republic of South Viet-Nam were not taking part in the work of the Conference.

26. Finally, a certain delegation had asserted that the Soviet delegation had opposed the prohibition of weapons of mass destruction. That statement was an absurd and false fabrication. On the contrary, it had been at the initiative of the USSR and other socialist countries that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and Their Destruction (General Assembly resolution 2826 (XXVI), annex) had been adopted. Moreover, the USSR had declared itself in favour of convening a world disarmament conference and of the prohibition of nuclear weapons: it might well be asked why China had stubbornly opposed the convening of a disarmament conference and why it had not signed the Treaty banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water of 5 August 1963.<sup>1/</sup> While setting themselves up as advocates of disarmament, the rulers of China were trying to hamper all measures directed towards checking the armaments race and were continuing to pollute the atmosphere by nuclear tests.

27. Mr. GIRARD (France) said that in widening the scope of the Geneva Conventions of 1949, the ICRC had undertaken the complex task of reconciling the humanitarian needs of nations and the requirements of national security. His country took those contradictory requirements into account in its search for a solution of the new problems which had arisen in the past twenty-five years.

28. Without dwelling on the merits and shortcomings of the rules of law currently in force, he emphasized that those rules had been developed over a long period by States which themselves had experienced many vicissitudes. Indeed, the fight for independence was as old as the world and international law represented a gradual victory by nations that had carried on that fight over the centuries.

29. He considered it essential that the new rules should be accepted by all States. Nevertheless, the special character of the humanitarian sphere might justify introducing a certain freedom of procedure which would not be suitable in traditional international instances. While he appreciated the need for the universal application of international humanitarian law, he considered that the Conference should adhere to the fundamental principles of that law. The first of those principles was the normative character of humanitarian law: humanitarian standards should be capable of being applied in all circumstances. Furthermore, those standards

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<sup>1/</sup> United Nations Treaty Series, vol. 480, No. 6964.

must be realistic and everyone who subscribed to them must be determined to observe them and should be capable of applying them. It was also essential to avoid half-measures which allegedly settled a problem but in fact merely provided a sham solution.

30. Mr. ABU-GOURA (Jordan) said that the fundamental task of the Conference was to explore means of alleviating human suffering. It was essential, first, to ensure the application of the Geneva Conventions and the Protocols by all those who had signed them; secondly, to strengthen the position of the ICRC by giving it more extensive powers to enable it to carry out its humanitarian tasks as effectively as possible; thirdly, to support the national Societies in the exercise of their humanitarian activities; and lastly, in the event of delay in the appointment of the Protecting Power, to entrust those responsibilities to the ICRC.

31. Mr. ALI (Iraq) said it was distressing that technical developments had led to the production of biological and nuclear weapons capable of destroying mankind.

32. In the opinion of his delegation, the principles that had to be stressed were the protection of the civilian population in armed conflicts; the prohibition of nuclear, biological and chemical weapons and of certain conventional weapons of mass destruction; the definition of the distinction between military objectives and civilian objects; the formulation of rules which would be flexible enough to enable members of the national liberation movements, when taken prisoner, to be considered as prisoners of war; and the need to ensure that the principles of humanitarian law were respected by all parties to armed conflicts and to establish machinery for that purpose.

33. Mgr. LUONI (Holy See) said that his delegation gave absolute priority to the preparation of international legal instruments for the protection of the civilian population in armed conflicts. The Church, through its universal mission of service to mankind and the experience of humanitarian aid that it had acquired over the centuries, was prepared to collaborate in all efforts to protect the human person. It reaffirmed that it was in favour of the widest possible participation in the Conference and sincerely regretted any derogation from the principle of universality.

34. War could never be a just solution of problems. Peace must be sought through negotiation. The problem of the just or unjust war was a thing of the past and it would be extremely dangerous to introduce such a distinction into the Protocols.

35. Although it had to be recognized that wars still existed, their character had changed and the proportion of civilian victims was currently four times higher than that of combatants. It was therefore essential to draw up international instruments which would put an end to the massacre of innocent people.

36. While congratulating the ICRC jurists on the texts they had prepared and commending the work of the League of Red Cross Societies, his delegation did not wish a monopoly to be created in relief activities in cases of armed conflict. It would like the usefulness and necessity of other voluntary relief organizations - religious and other - to be clearly recognized.

37. His delegation, like some others, thought it might be advisable to provide for a substitute for the Protecting Power which could undertake certain important duties in co-operation with that Power and by agreement with the parties to the conflict.

38. Mr. BRILLANTES (Philippines) considered that the fundamental task of the Conference should be to achieve a realistic, dynamic and acceptable balance between humanitarian law and the exigencies of military operations. But if it were to be decided that in order to achieve that balance humanitarian law should prevail over the exercise of national sovereignty and the protection of national interests and territorial integrity, was there not a risk of encouraging recourse to violence and armed conflicts? It was not within the reach of the Conference - and it was not its task either - to abolish the instruments of war. But at least it should, in all good faith and good will, and with the exercise of moderation by all its members, endeavour to minimise the sufferings and horrors which lay in the wake of armed conflict, and of which, in the final analysis, only man was the victim.

39. Mr. RECHNAGEL (Denmark) said that, in the opinion of his delegation, the two draft Additional Protocols to the Geneva Conventions of 1949 represented a constructive and realistic working basis. Draft Protocol II represented a major effort to meet the need for further development of the existing rules with regard, for instance, to conflicts which were not clearly of an international character. Contrary to what had been argued, his delegation believed that the distinction between international and non-international conflicts not only followed from the way in which the international community was currently organized, but was also based on practical considerations. To extend the scope of the rules applicable in certain armed conflicts beyond what the parties to the conflict were able to observe would have the effect of weakening confidence in international law as a useful means of promoting respect for human rights in armed conflicts.

40. It should be borne in mind that the Geneva Conventions in no way affected the legal status of the parties to a conflict or that of the territories over which they exercised authority. The purpose of those instruments was the protection of individuals, not the settlement of disputed questions of sovereignty or the legal status of the parties under international law; that principle had been reaffirmed in the two draft Protocols.

41. With regard to the substantive rules in the two drafts, his delegation considered that since modern warfare had considerably increased the suffering of non-combatants, the Conference should concentrate on those provisions which dealt with the protection of the civilian population. In so doing, a balance had to be struck between humanitarian considerations and demands and military realities. The rules governing the behaviour of combatants and methods of warfare should be formulated with due regard for those who did not take part in the hostilities. The distinction between combatants and non-combatants and between military objectives and civilian objects should therefore be maintained. That was the purpose of article 43 of draft Protocol 1.

42. With regard to restriction or prohibition of certain means of combat, the ICRC confined itself to the basic rules of the Law of The Hague. In that respect, his delegation considered that the efforts already undertaken to restrict or prohibit the use of certain conventional weapons that might cause unnecessary suffering or have indiscriminate effects should be continued with a view to reaching wide agreement on the adoption of certain control measures. It might be advisable to have a separate instrument to regulate the use of certain conventional weapons.

43. Where control was concerned, the question was whether a realistic solution could be found to compensate for the system of Protecting Powers, which had unfortunately failed to function satisfactorily. The ICRC was suggesting that in some cases it could act as a substitute for the Protecting Power and that the parties should be bound to accept its offer. The proposed procedure might considerably strengthen the system of scrutiny provided for in the Geneva Conventions. If agreement could not be reached on the ICRC proposals, it might be possible to set up an international body similar to the Office of the United Nations High Commissioner for Refugees for performing the functions normally incumbent on Protecting Powers.

44. In the view of his delegation the draft Protocols were vitiated by the fact that they contained no provisions concerning the establishment of procedures for inquiry into and settlement of disputes arising from violations of either the existing rules or the proposed new rules.

45. Mr. ALZAMORA TRAVERSO (Peru) said he hoped that the participation of the countries of the whole world would provide the work of the Conference with a wider and firmer basis. The presence of newly-independent countries, such as Guinea-Bissau, and of the national liberation movements was significant in that respect.

46. The development of weapons and advances in science and technology placed at the service of destruction made it essential for the Conference to extend still further the protection offered to victims of war. It should not, however, confine itself to attempts to contain and humanize conflicts, but should also put an end to the escalation of material means of destruction. With that object in mind, the President of Peru had recently proposed that the Latin American Governments should freeze their purchases of armaments for the next ten years and devote the resources thus released to economic and social development programmes.

47. Mr. PROM (Khmer Republic), speaking in exercise of the right of reply, said he regretted that the representative of Communist China had raised the Khmer problem, thus diverting the Conference from its noble humanitarian purpose and interfering in the affairs of the Khmer Republic.

48. Quoting from a statement made by the Chinese Minister for Foreign Affairs at the twenty-sixth session of the United Nations General Assembly in which China itself had stigmatized the interference of foreign countries in its internal affairs, he pointed out that, by defending the interests of the former Cambodian Head of State, Norodom Sihanouk, who had been legally deposed by the Khmer people, China was not practising what it preached.

The meeting rose at 12.35 p.m.

SUMMARY RECORD OF THE THIRTEENTH PLENARY MEETING

held on Wednesday, 6 March 1974, at 4.10 p.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

In the absence of the President, Mr. Miller (Canada), Vice-President, took the Chair.

GENERAL DISCUSSION (agenda item 8) (continued)

1. The PRESIDENT invited the meeting to continue the general discussion.
2. Mr. JOHNSON (Togo) said that the world situation had evolved and radical changes of attitude had taken place since the Second World War. Modern weapons had become increasingly complex and frighteningly effective, indeed, the whole nature of war had become more brutal, barbaric and unjust, striking men, women, children, the aged and the sick indiscriminately. Belligerents using the latest weapons of mass destruction could now wipe out all vegetation and life over vast areas. It was therefore obvious that the Geneva Conventions of 1949 needed to be brought up to date to deal with such a situation.
3. His delegation wished to draw attention to the plight of tens of millions of people in various parts of the world, especially in southern Africa, who were victims of colonialism and apartheid to which they were subjected by regimes which had nevertheless signed the 1949 Geneva Conventions and which continued to deny individuals their fundamental human rights. Those people, who were now fighting for freedom, justice and human dignity, must be helped to assert their inalienable right to self-determination. He welcomed the presence of the representatives of Guinea-Bissau and of the national liberation movements, whose hard-won experience would contribute to the strengthening of international humanitarian law.
4. Mr. OGOLA (Uganda) said that the presence of so many African countries at the Conference was especially gratifying, since they represented the new Africa which, having shed the yoke of colonialism, was now able to play its true role in the formulation of international humanitarian law.

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\* Incorporating document CDDH/SR.13/Corr.1

5. The past twenty-five years had witnessed wars of aggression in Korea, Viet-Nam and the Middle East, the last of which had caused an entire generation of Palestinians to be born and bred in refugee conditions. In such circumstances, war was inevitable and peace could only be achieved under conditions of justice. The aim of any international humanitarian law must therefore be to obtain justice for all. His delegation therefore regretted the absence of the Provisional Revolutionary Government of the Republic of South Viet-Nam, which would have provided invaluable information on modern warfare, but welcomed the representatives of Guinea-Bissau and of the national liberation movements, whose struggle for freedom indeed represented conflicts of an international nature, although he would have preferred the articles on the status of liberation movements to be included in draft Protocol I rather than in draft Protocol II.

6. He strongly supported the view that in defining the condition and status of prisoners of war, no distinction should be made between regular armies and freedom fighters. He hoped, on the other hand, that a clear distinction would be made between civilian objects and military objectives and that the Conference would ensure maximum protection for civilian populations. He therefore welcomed the establishment of the Ad Hoc Committee on Weapons, since the use of such weapons as napalm, defoliants and incendiary bombs should be prohibited.

7. Mr. ALVAREZ-PIFANO (Venezuela) said that his delegation was of the same opinion as other delegations that it was necessary to reaffirm and develop international law at present in force concerning human rights in armed conflicts in order to complement already existing norms by new ones which would take into account the evolution that had taken place in the technique and methods of warfare.

8. Since the establishment of the international humanitarian rules contained in The Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949, the destructive power of weapons had achieved notable proportions, at the same time as human rights had attained considerable progressive development in accordance with the principles laid down in the Charter of the United Nations. It was therefore in the light of those two factors that international rules concerning human rights in armed conflicts must be developed and defined.

9. Another factor of special importance in the examination of that branch of humanitarian law was the experience gained from the difficulties encountered in the effective application of the existing rules. Indeed the ICRC had acknowledged the existence of a number of gaps where the application of that right was concerned.

10. The delegation of Venezuela also recognized the necessity to humanize in increasingly greater measure the rules applicable in armed conflicts, and considered it essential to find appropriate formulas for alleviating the suffering caused by such conflicts and to protect non-combatants and civilian objects. In particular, it considered it desirable to promote the restriction of the use of certain weapons which caused unnecessary suffering or might produce indiscriminate effects.

11. As regards the strengthening of procedures for the execution and control of the application of international humanitarian law, his delegation welcomed the suggestion of the ICRC that that organization might act as Protecting Power, and felt that the Red Cross, as was well observed in the introduction to the draft Additional Protocols to the Geneva Conventions of 1949, had remained steadfast to the spirit in which, since 1864, it had demanded for the benefit of individuals guarantees consistent with the dictates of humanity.

12. Venezuela, in conformity with its anti-colonialist position and its support for peoples fighting against racial discrimination and apartheid, viewed with sympathy the proposal that the rules applicable in armed conflicts should be extended to peoples under a colonial régime fighting for their independence. That attitude would be in accordance with the United Nations General Assembly resolutions which recognized the right of peoples to fight for self-determination and the progressive development of human rights.

13. His delegation considered that the draft Additional Protocols to the Geneva Conventions of 1949 constituted a solid basis for the work of the Conference.

14. Mr. PALACIOS TREVINO (Mexico) said he also agreed that the draft Additional Protocols provided a sound basis for the work of the Conference. The existing law should be strengthened and new additions and improvements made, so as to make a real contribution towards the alleviation of suffering caused by armed conflict. He was gratified at the participation of the Latin American countries and of the national liberation movements, whose struggle had become a matter of international concern.

15. Important points for consideration were the appointment of a Protecting Power to ensure the application of humanitarian law, the definition of military objectives, the protection of the civilian population, in the light of the new methods of warfare, problems of guerrilla warfare and the definition of armed conflicts of an international character. What was more important than seeking to improve the conditions of the wounded was to restrict the use of weapons which caused unnecessary suffering or had indiscriminate effects. For that purpose, the communication from the

Swedish Government contained in working paper CDDH/DT/2 and Add.1 might assist the work of the Ad Hoc Committee on Weapons. It was important to agree on texts which were realistic and would help to alleviate suffering while safeguarding each State's right to conduct its own affairs.

16. Mr. WHANG (Republic of Korea) said that despite the non-political nature of humanitarian law, there were still vast differences in the views of delegations on many important issues. The Conference must try to reach the highest level of agreement on those issues.

17. Severe sanctions should be provided to deal with persons who committed breaches of international humanitarian law. The ICRC should be given a more positive and broader role in the appointment of Protecting powers and their substitutes and in the recruitment, employment and training of qualified personnel. There should be maximum guarantees and protection for medical aircraft in all areas of military operations, regardless of which forces occupied those areas. Special attention should be given to the protection of the civilian population and a clearer distinction made between the civilian population and guerrilla fighters. Humanitarian principles should take precedence over the sovereignty of States and beyond all frontiers and ideologies, irrespective of race, religion and politics.

18. Mr. de ALCAMBAR PEREIRA (Portugal) said that both the preliminary meetings of experts and the previous discussions in the Conference had revealed certain divergencies of view concerning the procedures to be followed to make international humanitarian law effective. It was to be hoped, however, that the attachment of all parties to the ideals of humanitarian law would enable an attitude of good sense and realism to prevail. Practical humanitarian law could only represent a balance between the dictates of humanitarian ideals and the military necessities of States. It would not be realistic to expect Governments to renounce their concern for the internal and external security of their countries.

19. Neutrality and impartiality were essential prerequisites of humanitarian law and any infraction of those basic principles would reduce it to a mere political instrument. His delegation believed that the ICRC had adopted the right approach and that the majority of States were unwilling to change the basic structure of the 1949 Geneva Conventions but wished to preserve the distinction between conflicts which had and those which had not an international character, a distinction which was reflected in the two draft Additional Protocols. That distinction was valid because it was based on an objective difference between the two types of conflict. Any attempt to depart in the Additional Protocols from the philosophy which had inspired the Geneva Conventions would lead to inconsistencies.

20. Any development of international humanitarian law must respect the principles of the sovereign equality of States and non-intervention in internal affairs; but those principles must not be invoked in an opportunistic manner, demanding their application in certain cases and refusing it in others which were essentially similar.

21. Article 43 of draft Protocol I seemed to impair the clarity of the distinction between combatants and the civilian population which could only harm international humanitarian law. His delegation could not support any decisions of the present Conference which involved a weakening of that distinction. The privileges granted to the civilian population must be counter-balanced by obligations on its part; to slur over such obligations could only encourage acts of perfidy, as a result of which both combatants and the civilian population would suffer.

22. If humanitarian law was to be applicable, it must not only aim at an ideal justice, but must take account of existing facts and be acceptable by all.

23. His delegation would defer its more detailed comments on the Protocols to a later stage of the discussions.

24. Mr. BALKEN (Federal Republic of Germany) said that world public opinion expected important results from the work of the Conference: a substantial reaffirmation and development of international humanitarian law, an impressive demonstration of the universal character of the Geneva Conventions by the participation of so large a number of States, and the implementation of resolution XIII unanimously adopted by the XXIInd International Conference of the Red Cross at Teheran demanding the adoption in substance of the two draft Additional Protocols. Special emphasis should be attached to three substantive questions that called for every effort to reach agreement.

25. The first was the problem of the protection of the civilian population. The defenceless human being, while at all times the victim of armed conflicts, had never been exposed to such imminent and grave dangers as he was today. In that connexion article 46 of draft Protocol I and article 26 of draft Protocol II should be regarded as key provisions and should be adopted.

26. The second question was the strengthening of humanitarian protection in non-international conflicts. The second Protocol, which dealt with those matters, raised entirely new problems for the Conference. The delegation of the Federal Republic of Germany considered its adoption as a matter of particular urgency, since at least forty of the fifty-odd armed conflicts which had taken place since the end of the Second World War had not been of an

international character. In addition, the character of an armed conflict - whether international or non-international - might often be a controversial political issue. Draft Protocol II was designed to establish, in all such cases, a minimum standard of humanitarian protection in order to safeguard, in time of armed conflict, fundamental human rights on a level in accordance with the international covenants on human rights. That applied in particular to wars of national liberation - a special problem of the present time.

27. The third question was that posed by the use of weapons which caused unnecessary suffering or might have indiscriminate effects. The Government of the Federal Republic of Germany supported the continued work of international experts dedicated to the problem of the use of specific conventional weapons. That work might lead to the framing of a third Additional Protocol or of a special international instrument banning or limiting the use of such weapons.

28. The development of international humanitarian law would be merely theoretical unless vigorous efforts for a better dissemination, application and enforcement of international humanitarian law were undertaken at the same time. His Government believed that it was by no means unrealistic to demand that armed forces and civil defence organizations should be thoroughly familiar with the rules of international law applicable in armed conflicts and was keenly interested in a mutual exchange of experience on that subject between the various countries.

29. With regard to the supervision of the observance of the international law applicable in armed conflicts, the ICRC proposals for the appointment of Protecting Powers were of considerable significance. The Conference should accept those proposals in order to reaffirm the institution of Protecting Power in future international State practice.

30. The planned Additional Protocols could cover only part of the body of international humanitarian law applicable in armed conflicts. Essential questions would remain within the scope of unwritten international law. That made it even more necessary to ensure that the hitherto acknowledged rules of unwritten international law were not impaired by specific clauses embodied in the Additional Protocols. His delegation, therefore, considered that the Martens Clause 1/ was of special importance for the reaffirmation and development of international humanitarian law.

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1/ See The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land, eighth preambular paragraph.

31. The principal aim of the Conference should be to ensure the humanitarian protection of the individual in times of armed conflict. Such protection should be assured irrespective of the origin of individual victims of war and of the aims pursued by the State to which they belonged. The principles advocated and implemented by the ICRC had made it clear that the rules governing humanitarian protection must benefit every human being, without any discrimination whatsoever.

32. Sir COLIN CROWE (United Kingdom) said that the practice in armed conflicts during the last twenty years had shown that the Geneva Conventions had often been violated and that the existing procedures for supervising the implementation of those Conventions were inadequate, with the result that violations had taken place unchecked and with impunity. He hoped that the adoption of draft Protocol I would help to rectify that state of affairs and in particular that a satisfactory Protecting Power system with improved ancillary machinery for implementation and enforcement could be worked out.

33. It was an important development that draft Protocol I sought to combine in one instrument and to expand both The Hague Regulations concerning the Laws and Customs of War on Land <sup>2/</sup> and the Law of Geneva for the protection of war victims.<sup>3/</sup> There were convincing reasons for effecting that link and his Government welcomed the sections of the Protocol relating to combat law and the protection of the civilian population from the effects of combat. It was essential, however, to ensure that the Protocol contained adequate provisions to enable armed forces to distinguish combatants from civilians taking no part in hostilities, otherwise the valuable protection given to the latter might be lost.

34. In drafting the Protocols, it was important to make quite clear who was protected and in what circumstances, and to do so in a way that was practicable and capable of being observed in the heat of battle by the military authorities and the forces under their control. The French adage that "le mieux est l'ennemi du bien" must be borne in mind continuously. If standards were pitched too high they might be regarded as unattainable and consequently be ignored.

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<sup>2/</sup> See The Hague Convention No.IV of 1907 concerning the Laws and Customs of War on Land, annex.

<sup>3/</sup> See the four Geneva Conventions of 1949.

35. In framing new rules to govern the conduct of combat law, the ICRC had been careful to ensure that articles governing the use of specific weapons had not been included in the draft Protocols. His Government agreed with that approach because it considered that it would only prejudice progress towards the universal acceptance of the Protocols if such highly controversial articles were included in the Protocols. Much detailed work remained to be done before the drafting of articles in a form suitable for binding rules of international law on the prohibition or restriction of the use of certain neo-conventional weapons could be begun. His Government accordingly considered that the ICRC was adopting the right course in calling a Conference of Government Experts on "Weapons that may cause Unnecessary Suffering or have Indiscriminate Effects" later in the year to study the question in greater depth and with the benefit of a wider range of available expertise, and it would work for an agreement on a satisfactory programme of work for those discussions on weaponry. But it would not be appropriate for substantive discussion of the question to be conducted in the context of the present Conference.

36. His delegation also endorsed the ICRC's view, expressed in the Introduction to the draft Protocols, that they were not intended to broach problems concerned with atomic, bacteriological or chemical warfare, which were the subject of existing international agreements and current delicate negotiations by Governments elsewhere. It was on the assumption that the draft Protocols would not affect those problems that the United Kingdom Government had worked and would continue to work towards final agreement on the Protocols.

37. Some speakers had suggested that political motivation for the resort to armed conflict should be made a relevant criterion in the draft Protocols. The same idea appeared to be the basis of the proposed paragraph 3 of article 42 of draft Protocol I, as set out in the foot-note on page 14 of that document. Some delegations had even divided wars into just and unjust wars. Those were extremely dangerous approaches and totally alien to all the principles of international humanitarian law. They struck at the very heart of the Geneva Conventions and the philosophy of equality of rights and non-discrimination which inspired them. Humanitarian protection for the individual could not depend on the subjective and political views of the party to the conflict in whose power an individual victim of war happened to find himself. A Detaining Power was not entitled to deny to prisoners of war conventional humanitarian protection, merely because it considered they were fighting for unjust cause. Likewise, parties to a conflict were not entitled to claim that protection for their personnel solely on the grounds that the cause for which they were fighting was just. Humanitarian law was concerned not with who was right or wrong, but with the unfortunate victim of events, the human being who was caught in the jaws of fate.

38. The general debate had revealed many divergent views, not only on the precise texts of the draft Protocols but even on the fundamental principles which should underlie them, and the discussions had unfortunately descended on occasion into political controversy. He was convinced, however, that, with sufficient patience and determination, those difficulties could be overcome during the next few weeks. The Conference must fix its sights on the ideals of the protection of victims of war, which must surely unite all participants. If it did so, he believed that substantial agreement on the draft texts before the Conference could be attained.

39. Mr. ULLRICH (German Democratic Republic) said that the present Conference could achieve its aim only if it contributed to hindering potential aggressors in planning, preparing and waging criminal wars, an aim which covered the more comprehensive protection of the civilian population, the guarantee that war criminals could never claim the same protection as their victims, and the prohibition of weapon systems which caused unnecessary suffering or had indiscriminate effects. Of particular importance was the need to secure the legal status of the national liberation movements and their combatants. National liberation movements were parties to international conflicts and they and their combatants must therefore be placed under the full protection of the Geneva Conventions.

40. His delegation cordially welcomed the representatives of the Republic of Guinea-Bissau and of the national liberation movements present at the Conference. At the same time it deplored the fact that the Provisional Revolutionary Government of the Republic of South Viet-Nam could not yet occupy the seat at the Conference to which it was entitled. In his view, the regrettable result of the vote did not dispense the host of the Conference from its obligation to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam.

41. The success of the Conference depended not only on establishing new rules for the development of international humanitarian law, but also on ensuring that the existing rules were strictly observed. While war crimes and crimes against humanity such as had been committed in more than thirty wars of aggression since the end of the Second World War could not be prevented by rules of international law alone, the common concern of delegations should be to fill existing gaps in international humanitarian law.

42. His delegation had carefully examined the draft Additional Protocols to the four Geneva Conventions prepared by the ICRC and had noted with satisfaction that they contained many of the constructive proposals put forward at the conferences of experts.

That, however, should not blind the Conference to the fact that there were no other, more complicated, problems to solve. For example, the Additional Protocols must not contain any regulation which enabled an aggressor to misuse international humanitarian law for criminal acts. It would also be necessary to elaborate unambiguous rules for a more comprehensive protection of the civilian population.

43. In conclusion, he wished to draw the attention of the Conference to the serious violations of article 3, common to the Geneva Conventions, by the military junta in Chile. The inhuman prison treatment of followers of the overthrown legitimate Government testified to the flagrant violation of human rights in Chile. It would be a noble and humanitarian task of the Conference to help save the lives of the Chilean patriots and ensure that article 3 was also applied in that country.

44. Mr. ZAFERA (Madagascar) said that his delegation supported the expansion of the membership of the Conference and warmly welcomed the delegation of Guinea-Bissau and the representatives of the national liberation movements recognized by regional inter-governmental organizations.

45. The two draft Additional Protocols before the Conference would have to be supplemented to take account of present-day realities and the development of modern weapons, and to ensure the better protection of civilians and prisoners of war. The two Protocols made a new distinction between international and non-international armed conflicts - a distinction which did not, however, give complete satisfaction to his Government. His Government which was concerned at the situation and fate of freedom fighters in southern Africa, condemned indiscriminate and senseless acts of terrorism, but, on the other hand, supported and approved the just struggles of the national liberation movements, victims of armed aggression by their oppressors.

46. In many of its resolutions on decolonization, the United Nations had recommended the application of the Geneva Conventions to those who were fighting for their freedom against colonial domination. His delegation maintained that armed conflicts involving the struggles of peoples against colonial and alien domination and racist régimes constituted international armed conflicts within the meaning of the Geneva Conventions, and that freedom fighters who fell into the hands of their oppressors must be considered as prisoners of war within the meaning of those same Conventions. It would, in consequence, support the extension of the field of application of article 1 of draft Protocol I to national liberation movements in addition to the situations referred to in article 2 common to the four Geneva Conventions. It would also support the

inclusion in article 42 relating to the new category of prisoners of war of an additional paragraph covering members of national liberation movements. Such movements should have the right to accede to the Geneva Convention of 1949 and any subsequent protocols.

47. With regard to the term "Power", used in the Conventions, he wished to point out that it had been accepted in international practice that it could be used to describe entities other than States. There could, therefore, be no objection to accession to the Conventions by the liberation movements.

48. The provisions relating to the protection of civilians, their possessions and objects indispensable to the survival of such populations, marked an important step forward in international humanitarian law, which his delegation welcomed.

49. The delegation of Madagascar welcomed the fact that the XXIInd International Conference of the Red Cross, held at Teheran, had paid particular attention to the problem of the limitation of conventional armaments which caused unnecessary suffering or which had indiscriminate effects. His delegation welcomed the provisions included in the Additional Protocols in that connexion and also the affirmation that parties to conflicts and their armed forces had not an unlimited choice as to the methods and means of combat. His delegation also welcomed article 35 of draft Protocol I, relating to the prohibition of perfidy.

50. His delegation appealed to the humanitarian feelings of all parties to armed conflicts to renounce the use of incendiary weapons, especially napalm, and supported the provisions of article 72 of draft Protocol I concerning the dissemination of humanitarian rules applicable in armed conflicts.

51. Mr. BINDSCHIEDLER (Switzerland) said that delegations had come together at the present Conference in order to develop international humanitarian law applicable in armed conflict. He wished to emphasize the word "develop".

52. He would not refer to political questions at the present stage but merely to certain basic principles which must guide the Conference's work. Representatives must be pragmatic and the rules laid down by the Conference must be clear, co-ordinated and not contradictory. They should be based on terms to be found in existing conventions, and be so drafted that ordinary civilians and members of the armed forces could understand them. Any term which might open the way to arbitrary decisions should be avoided.

53. The idea of "just" or "unjust" wars had no place in the work of the Conference. The Conference must endeavour to limit violence in armed conflict, regardless of the motives which had provoked such conflict.

54. In drawing up the rules to be applied, there was one supreme guiding principle, namely, the welfare of man - man who was so often the victim of the use of force, irrespective of the party he belonged to. Such rules would be applied only if they were based on the principles of a proper balance between duties and obligations of the parties and their equality before the law. It would be illusory to adopt rules which favoured one category of combatant as opposed to another. The restrictions imposed by the rules must be unbiased. If certain categories of combatants were granted prisoner-of-war status, they must consequently play their part and conform to the rules governing combatants. Any rules which did not comply with those principles would certainly not be applied and there would be a return to barbarism.

55. The distinction between armed forces and civilians was a basic element of the law of armed conflict and an essential principle of civilization.

56. With regard to non-international conflicts, the Conference was faced with a dilemma: it could adopt either a precise but restricted definition of such conflicts, bearing in mind the sovereignty of States, or a broad definition: or it could abandon the idea of such a definition and adopt some humanitarian standards by developing article 3 of the 1949 Geneva Conventions.

57. The Protecting Power system could be improved; the automatic guarantee of a minimum relationship between parties to a conflict being highly desirable.

58. Mr. MENCER (Czechoslovakia) said that he welcomed the delegation of Guinea-Bissau and those of the national liberation movements whose presence was fully justified. The Conference had been extremely unjust in deciding to exclude the Provisional Revolutionary Government of the Republic of South Viet-Nam and by so doing had acted in a discriminatory manner in violation of international law.

59. He wished to express his sympathy with the people of Chile who in recent months had been the victims of the most regrettable violations of fundamental human rights by the Government of that country.

60. With regard to the two draft Additional Protocols, his delegation did not consider that all the articles were acceptable. The Conference must not only reaffirm international humanitarian law but must develop it, and it was in that respect that the Protocols did not fully satisfy his delegation. Development must keep pace with reality and efforts must be made to reduce the gap between law and reality as reflected in the international situation.

61. The protection of civilians was a legal obligation assumed under the Universal Declaration of Human Rights and the two Covenants on human rights (International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI))). The protection of the civilian population and their possessions and the protection of objects indispensable to the survival of the civilian population were closely related to the protection of the human environment and to the prohibition of the use of means and methods of warfare which might prove disastrous to the environment. That point should be brought out in the appropriate sections of draft Protocol II.

62. Members of national liberation movements should enjoy the same protection as members of the regular armed forces, but such protection was not clearly defined in the articles of the draft Additional Protocols. Armed struggles for national freedom and the achievement of their right to self-determination by colonial dominated nations were in conformity with the provisions of the United Nations Charter and the many resolutions adopted by the General Assembly.

The meeting rose at 6.10 p.m.



SUMMARY RECORD OF THE FOURTEENTH PLENARY MEETING

held on Thursday, 7 March 1974, at 10.20 a.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

In the absence of the President, Mr. Turpin (Guinea-Bissau),  
Vice-President, took the Chair

GENERAL DISCUSSION (agenda item 8) (continued)

1. The CHAIRMAN said that the next plenary meeting would be devoted to consideration of the report by the Drafting Committee on the provisional rules of procedure (CDDH/37).

2. Mr. LIDBOM (Sweden) said that the Geneva Conventions of 1949, which resulted from the work of two conferences convened by the Swiss Government and prepared over a long period by the International Committee of the Red Cross (ICRC), had led to considerable progress in humanitarian law. Perhaps there was no other legal instrument that had secured such wide acceptance as the Conventions relating to the sick, wounded and shipwrecked, to prisoners of war and to the protection of civilians in armed conflicts. Like the Statute and Judgment of Nurnberg and the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 (III), annex) they were a direct outcome of the Second World War.

3. For the past twenty-five years, there had been a reluctance to examine the rules relating to armed conflicts, lest that undertaking be deemed inconsistent with the United Nations Charter's prohibition of resort to armed force. Efforts had rather been directed to prohibiting resort to armed force and - with no great success - to promoting disarmament, especially nuclear disarmament. Since 1945, some hundred internal or international armed conflicts had occurred, with characteristics unforeseen by the Geneva Conventions and by earlier legal instruments, such as total war, ecological and electronic warfare, and saturation bombing.

4. Disarmament efforts must be supplemented by efforts to adopt rules designed to mitigate the suffering caused by armed conflicts. The Swedish Government was convinced that the Conference would achieve substantial results in humanitarian law. The Hague Conventions of 1899 and 1907, 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 Nurnberg Principles, as affirmed by the United Nations General Assembly

(resolution 95 (I)), the 1949 Geneva Conventions and customary law combined to protect both soldiers and civilians in cases of armed conflict. Yet the most important element in that body of law, namely The Hague Conventions, badly needed bringing up to date.

5. The two Additional Protocols prepared by the ICRC, were narrower in scope. Although described as "additional" to the Geneva Conventions, they in fact served rather to supplement The Hague Conventions and customary law relating to the protection of civilians during hostilities. Human beings suffered in all conflicts and additional rules must be drawn up to reduce the sufferings caused by international and non-international conflicts, whether just or unjust, whatever their circumstances and theatre might be. Oppression, aggression and war crimes must be resisted and not condoned. Violence might sometimes provide the sole solution.

6. Non-international armed conflicts, although the most frequent, had not been considered. Their victims also needed protection. Human rights were guaranteed within States in peacetime, but that guarantee became even more necessary in armed conflicts, where there was no protection against the effects of treacherous and inhumane weapons.

7. All armed conflicts, whatever their magnitude, should be subject to the same humanitarian rules. Since the existing conventions were limited to international armed conflicts, non-international conflicts were sometimes claimed to be international so that the humanitarian law in force might apply. One set of legal rules for all conflicts would obviate allegations of foreign intervention. That approach had not been accepted by the majority of countries. The most appropriate solution would be to define rules relating to non-international armed conflicts which would closely resemble the rules applicable in international conflicts. It was absolutely vital for combatants in the field to be protected by clear and uncomplicated rules.

8. What disturbed the Swedish Government in draft Protocol II on non-international armed conflicts was that captured combatants remained subject to the death penalty, even in circumstances where, in an international conflict, they would fulfil the necessary conditions for enjoying prisoner-of-war status. The idea advanced in the draft that during a non-international conflict the death penalty against such a combatant must not be carried out and that at the end of the conflict amnesty should be granted might sound ingenuous, but it did not serve any purpose to retain the possibility of execution after the conflict. Prisoners should not be subjected to the threat of execution. It should not be impossible to suspend the application of internal penal provisions relating to rebellion during civil wars. Imprisonment should replace the death penalty.

9. Humanitarian laws must not be regarded as well-meaning statements of intent often disregarded during battle. Violations of the law and the need for improved implementation must not be ignored, but all belligerents should be aware of the fact that their acknowledged interest lay in mutual observance of the rules. So-called "military necessity" must never provide an excuse for infringing those rules.

10. As the President of the Conference had pointed out, humanitarian law had deep roots in the age of enlightenment, when it had been recognized that wars were fought between States, not between individuals. Victory, not suffering, was the aim of the struggle. Any gratuitous brutality spread further brutality to the detriment of the belligerents, in whose mutual interest it was to show forbearance and to ignore marginal gains attended by disproportionate ills. All armed conflicts caused suffering and devastation. Civilians, the injured and the prisoners, who played no part in the struggle, could and should in consequence be spared. The least cruel means should be chosen in putting an enemy out of action - capture rather than wounding, minor rather than major injury, disablement rather than killing.

11. The philosophy underlying the rules protecting the armed forces, the sick, wounded and shipwrecked, prisoners of war and civilians also applied to civilian objects of secondary importance in conflicts; to the limitation of attacks to military targets; and to the prohibition of indiscriminate weapons and those causing undue suffering.

12. Some of the major problems to be solved by the Conference called for new rules based on belligerents' mutual interests. Protection of the civilian population was paramount. According to the Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of certain Projectiles in Wartime, "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy". Yet an increasing proportion of civilians were killed in wars: 5 per cent of deaths in the First World War, 50 per cent in the Second, and about 60 per cent during the Korean War. It had been recognized that in Viet-Nam, 70 per cent of the disabled were civilians.

13. Air warfare, which had not existed in 1868, had caused heavy casualties in the nineteen-thirties in China and Spain. Intensive bombing of major cities on both sides had occurred in 1939-1945. Atomic bombs had been dropped on Hiroshima and Nagasaki. Korea and Viet-Nam had, in their turn, been subjected to air warfare. The Conference must discuss to what extent that was inevitable.

14. Many civilian installations sometimes constituted legitimate targets. Civilians had always produced essentials of warfare, from shoes to butter. The greater destructive capacity of modern States was alone to blame. Mankind was wasteful, even in its use of bombs. Yet many authorities, including Sir Winston Churchill, had questioned the effectiveness of such large scale bombardments as that which had destroyed Dresden. The military value of bombing in Indo China was also dubious: only the human suffering it had caused was unquestionable. Attacks on large areas with dispersed targets brought only marginal military gains and must be prohibited, especially since technological advances made it possible to pinpoint targets.

15. The Swedish Government lent its full support to the draft provisions prohibiting indiscriminate terror attacks, particularly area bombardment, which had already been banned by the Federal Republic of Germany. It was important to draw up specific, not general, rules. His Government also supported the ICRC's proposals for the definition of "military targets" in order to avoid unnecessary destruction of goods and human lives. Attacks upon foodstuffs for human consumption, crops and livestock caused considerable suffering and must be prohibited, as must the destruction of dams, dykes and nuclear power stations. Belligerents should have a shared interest in establishing rules of immunity.

16. He introduced a working paper submitted by Sweden, together with the Arab Republic of Egypt, Mexico, Norway, Sudan, Switzerland and Yugoslavia (CDDH/DT/2 and Add.1) on the prohibition of certain weapons such as napalm and other incendiary substances, fragmentation bombs, high-velocity small arms ammunition, fléchettes and the laying of land-mines by aircraft. Technological advances in weaponry had caused catastrophic losses of civilian life and increased brutality. The prohibition of indiscriminate, treacherous and cruel weapons must be supplemented by specific bans, such as those applying to gas, poison, dum-dum bullets, unanchored mines and bacteriological and chemical weapons.

17. The United Nations General Assembly (resolution 3076 (XXVIII)) and the XXII<sup>nd</sup> International Conference of the Red Cross (resolution XIV) had asked the Diplomatic Conference to tackle the question of prohibiting certain specific conventional weapons. That examination should lead, not to mutual accusations, but rather to the establishment of legal restraints and of machinery for joint study of weapons that might be invented in the future. Certain objections had been raised: it had been asserted that only the Conference of the Committee on Disarmament had the necessary technological expertise, that the question was not ripe for discussion and that its introduction might jeopardize the success of the Diplomatic Conference and the adoption of the draft Additional Protocols submitted to it. Yet humanitarian law must be extended to cover

the use of specific arms. That view had been strongly endorsed by a great authority on the matter, the late Judge Lauterpacht of the International Court of Justice.

18. It had been suggested that the question of specific weapons was the responsibility of the Conference of the Committee on Disarmament, but the issue was the non-use of weapons rather than prohibition of their manufacture, their non-proliferation or the prohibition of stock-piling them; the elimination of weapons was not the issue. Moreover, it had been pointed out that that Conference was not fully representative and had made little progress on certain vital subjects. Yet the Diplomatic Conference must not be afraid to tackle controversial questions, but must seek solutions in 1974 or 1975. The results obtained might form the subject of a separate Protocol.

19. It was alleged that the problem had been insufficiently studied, but it had been explored in great depth in the United Nations report on Napalm and other incendiary weapons and all aspects of their possible use (A/8803/Rev.1), published in 1972, in the comments of Governments on that report (A/9207 and Corr.1 and Add.1), published in 1973, in the United Nations survey on existing rules of international law concerning the use of specific weapons (A/9215, vols. I and II), in the ICRC report on Weapons that may cause unnecessary suffering or have indiscriminate effects, published in 1973, and in two Swedish reports on the same subject - the preliminary report on Napalm and Incendiary Weapons by the Stockholm International Peace Research Institute and the report by a working group on conventional weapons, their deployment and effect. Those reports indicated that certain frightful weapons were most devastating where their military value was least. It would be tragic if a common weapon like the rifle were to be transformed into a high-velocity weapon causing increased suffering.

20. In view of the mutual benefits of restraints for all concerned, countries must expend as much energy on seeking solutions as they had on inventing new weapons. The list of weapons submitted for discussion was not exhaustive; some delayed-action or treacherous weapons might be added. It had been pointed out that certain weapons were designed to cause severe injuries and thus to over-burden the enemy's medical potential.

21. The proposals did not cover atomic, bacteriological and chemical weapons. The Swedish Government believed that discussion should be confined to conventional types of warfare, but the Conference might well express its views on the former issue. Universal adherence to the 1925 Geneva Protocol warranted a comprehensive interpretation that would help to prevent damage to the environment. Nuclear weapons had been constantly discussed,

although never used since the Second World War; but the reverse was true of conventional weapons, for despite the considerable advances recorded in that connexion, they had only recently become the subject of Government proposals regarding their non-use.

22. Mr. PLAKA (Albania) said that it was the task of the Conference to reaffirm the validity of the Geneva Conventions of 1949, to supplement those Conventions and to define new rules to take into account the profound changes that had occurred in the world during the past twenty-five years.

23. In point of fact, contemporary international life was characterized, not by détente, which was merely the circumstantial collaboration between American imperialism and Soviet social imperialism, but by political, military and economic aggression perpetuated by the two super Powers against peace-loving peoples in Europe, the Middle East, Asia, Africa and Latin America. Those peoples were therefore lawfully justified in offering resistance in order to safeguard or regain their independence and in striving to secure their protection and to defend their rights. The assistance given them by the People's Republic of China was particularly note-worthy.

24. The reaffirmation and development of humanitarian law was all the more urgent in view of the monstrous crimes which the imperialist Powers had committed, in violation of the Geneva Conventions, in Korea, in Viet-Nam, in Cambodia, in Czechoslovakia, in the colonial territories and in the territories occupied by the Zionists, where they had used methods of mass destruction. It was no mere coincidence that their representatives were preventing any real progress towards disarmament and that they were opposing the prohibition of the use and manufacture of non-conventional weapons, especially nuclear weapons. The two super Powers were seeking to maintain their technical and scientific superiority in armaments, at the same time undermining the vigilance of the peoples by their pacific gestures, with a view to imposing their will upon them.

25. The Conference should therefore call for strict observance of the Geneva Conventions. The text it would draw up should above all make a clear distinction between just wars and unjust wars of aggression and should provide for condemnation of the aggressors.

26. The Conference should also recognize the lawfulness of the struggle of the national liberation movements and should insist that the 1949 Geneva Conventions and the rules that it would define should be applied to those movements.

27. The protection of civilians should be covered by specific provisions prohibiting such actions as the concentration of the population in so-called strategic villages, deportation of indigenous inhabitants with a view to annexation and colonization, mass bombing with bacteriological or chemical weapons, napalm etc., bombardment of vital civilian objects, naval blockade, economic blockade and so forth.

28. But in order that the Conference might attain its objectives, all peace - and freedom - loving States and all national liberation movements should take part in its work; the Albanian Government therefore strongly protested against the discrimination to which the Provisional Revolutionary Government of the Republic of South Viet-Nam had been subjected, considered the presence at the Conference of the Saigon puppet regime to be illegal and demanded that the Provisional Revolutionary Government be invited immediately. It was also opposed to the participation of the representatives of the Lon Nol clique, since the only lawful representative of the Cambodian people was the Government headed by Norodom Sihanouk. Finally, he associated his delegation with the reservations expressed by certain African States concerning the Pretoria Government, which did not represent the majority of the people of South Africa.

29. Mr. ABADA (Algeria) said that the convening of the Conference bore witness to the fact that law had become a reality and a necessity in the conscience of peoples and Governments. The latter now recognized the urgent need to amend the existing principles of humanitarian law to cover all new situations.

30. His delegation had invoked the principle of universality with a view to increasing the number of participants and had been guided by the same principle in endeavouring to refrain from casting discredit on certain delegations attending the Conference, but it was not entirely satisfied with the decisions that had been taken. Although it welcomed the participation of the representatives of Guinea-Bissau and the national liberation movements, it deplored the rejection of the Provisional Revolutionary Government of the Republic of South Viet-Nam. Far from reflecting a clear decision by the international community, that vote seemed to reveal a profound malaise. His delegation could not believe that the Conference found it natural for the Saigon Government alone to represent the people of South Viet-Nam.

31. He then read a message addressed to the Conference by Mrs. Binh, Foreign Minister of the Provisional Revolutionary Government, which stated, in substance, that that Government, as a victim of the North American war of aggression and a party to the 1949 Geneva Conventions, considered it to be its duty and its right to participate in the Conference, but would not be represented because

of manoeuvres by the United States Government which ran counter to the universal and humanitarian aims of the Conference. Nevertheless, the Provisional Revolutionary Government wished to contribute to the work of the Conference and ventured to make a few comments. In the first place, the concept of humanity and of the protection of all victims must be extended to cover all kinds of conflicts. International legislation on war crimes was inadequate and new war crimes, such as those perpetrated in Viet-Nam, must be prevented.

32. The Provisional Revolutionary Government considered that the Geneva Conventions treated war criminals and their victims on an equal footing. But, although it was correct to accord equal treatment to combatants, it was not just to accord the same treatment to war criminals and to their victims. Since the signature of the 1949 Geneva Conventions, the nature of war had been transformed and conditions had changed. The new instruments to be drawn up by the Conference must therefore reflect the existing situation, in which unarmed or ill-armed and underdeveloped peoples confronted an imperialistic aggressor equipped with the most up-to-date and cruel weapons.

33. Mr. THOMAS (Liberia) said his Government had always strictly observed humanitarian principles at both the national and the international levels and had always supported the activities of the Red Cross. He was glad that the storm which had marked the beginning of the Conference had died down.

34. Contrary to what some speakers had suggested, his delegation considered that the adoption of any measure to outlaw or eliminate destructive weapons of any kind would be a step in the right direction and would diminish the suffering of human beings. Similarly, all disputes should be settled by peaceful means.

35. His country fully endorsed what the United States representative had said concerning the draft additional Protocols: there should be less talk and more action.

36. It was deplorable that man, despite all his scientific and technological advances, could still behave inhumanly; that people of the same ethnic origin should still be fighting in the Middle East; that unity should still be unachievable in South-East Asia; that certain powers in Africa were still oppressing populations in violation of fundamental human rights; that acts of violence, kidnappings and the hijacking of aircraft should still be possible, and that the world should still be so far from the perfect States dreamed of by Sir Thomas More and Plato.

37. He suggested that the Conference should adopt the golden rule of "Do unto others as you would wish them to do unto you".

38. Mr. MAHONY (Australia) said that his Government had lodged with the Swiss Government a notification of withdrawal of Australia's reservation concerning the death penalty referred to in article 68 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.

39. He hoped that when the time came to take a stand on substantial issues, delegations would be guided primarily by humanitarian considerations.

40. Although it was preferable to conduct negotiations on two separate Protocols, his delegation would none the less be prepared to accept a single text containing realistic principles applicable to all the armed conflicts covered by the drafts before the Conference.

41. His delegation attached special importance, inter alia, to the following provisions: achievement of an effective system of appointment of Protecting Powers; prohibition of unnecessary suffering or injury, and the indiscriminate use of weapons; extension of prisoner-of-war status to captured members of organized resistance movements; protection of persons, especially women and children, in territories over which a Power exercised control; specification of grave breaches committed against protected persons or protected objects; the right to refuse to obey superior orders which, if carried out, would constitute a grave breach of the Conventions or the Protocols; and extradition for grave breaches of the Geneva Conventions or the Protocols.

42. His delegation would suggest the insertion in the Protocols of a new article seeking to prohibit ecological damage as a technique of war. Then again, draft Protocol II should be extended to apply at least to identifiable combatants occupying some territory and carrying on an armed conflict with an obvious degree of intensity.

43. It was gratifying to see Guinea-Bissau participating in the Conference, despite certain legal reservations concerning the status accorded to its delegation. His delegation requested that its reservation be noted. It was most regrettable that no way had been found of allowing the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate.

44. Although the prohibition or restriction of the use of detrimental or indiscriminate weapons formed part of the humanitarian objectives of the Conference, its first task should be to examine the draft Protocols.

45. Mr. DOROCHEVITCH (Byelorussian Soviet Socialist Republic) welcomed the presence of the delegation of Guinea-Bissau and of the representatives of the national liberation movements. His delegation deplored the fact that the Provisional Revolutionary Government of the Republic of South Viet-Nam had been denied the right to attend the Conference and did not recognize the right of the delegation of the Saigon administration to represent the entire population of South Viet-Nam.

46. Like others, his delegation believed that the draft Additional Protocols should clearly specify the status of combatants fighting against colonial domination or racist régimes, as well as that of guerrillas, all of whom should be covered by the Geneva Conventions and Protocols. It was in favour of proposals to ban incendiary weapons and other cruel means of warfare, but considered that those issues should be examined at meetings on arms limitation and disarmament.

47. His delegation also attached great importance to the punishment and extradition of offenders against the Conventions. In that respect, there was an analogy between the provisions of the Geneva Conventions and those of international instruments adopted since 1949, particularly the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 (III), annex) and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (General Assembly resolution 2391 (XXIII), annex).

48. He added that the Albanian delegation's statement on Soviet foreign policy belied the facts and was meaningless.

49. Mr. KUSSBACH (Austria) said that, although methods and means of combat had evolved in a way which had been unforeseeable in 1949, it would nevertheless be inadvisable to question anew the validity of certain fundamental institutions.

50. Ways and means should be sought to ensure the proper functioning of the institution of the Protecting Power; that raised the question of strengthening the power of the ICRC to enable it to play such a role more effectively in the case of non-international armed conflicts. Collaboration between several impartial international humanitarian bodies might prove essential.

51. The scope of the protection afforded to the civilian population and civilian objects must be extended. The so-called Martens clause should appear in the operative, rather than in the preambular, part of the two Protocols. An enumeration of the articles on which the Parties to the Conventions could enter reservations would be preferable to the list in article 85 of draft Protocol I.

52. The texts of the Protocols, which would most often be applied by persons having no legal training, should be as simple and uniform as possible. His delegation was prepared to participate in the work of the Committee which would deal with the prohibition or limitation of certain weapons likely to cause unnecessary suffering.

53. Mr. PROM (Khmer Republic), speaking in the exercise of the right of reply, protested against the Albanian representative's references to his country and said that Prince Norodom Sihanouk, who was living in exile in Peking, had no authority over the Khmer Republic.

54. Mr. PLAKA (Albania), speaking in the exercise of the right of reply, said that the Byelorussian representative was seeking to disparage the words of the Albanian delegation at the very time when the two super Powers were pursuing their imperialist designs and engaging in the arms race.

The meeting rose at 12.50 p.m.



SUMMARY RECORD OF THE FIFTEENTH PLENARY MEETING

held on Thursday, 7 March 1974, at 3.25 p.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

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

REPORT OF THE DRAFTING COMMITTEE ON THE RULES OF PROCEDURE AND  
ADOPTION OF THE RULES (agenda item 9) (CDDH/2, CDDH/18, CDDH/29,  
CDDH/35, CDDH/36, CDDH/37)

1. The PRESIDENT said that the Drafting Committee had now completed its task and he would accordingly invite its Chairman to introduce the Committee's report (CDDH/37). In addition to that report, the Conference had before it the provisional rules of procedure (CDDH/2) and the comparative table of proposed amendments (CDDH/29).

2. Mr. CHOWDHURY (Bangladesh), Chairman of the Drafting Committee, said that, after two days' discussion of the provisional rules of procedure and the amendments submitted by delegations, the Drafting Committee had completed its task. It had been possible to agree on a number of the amendments, sometimes with slight changes, but others had given rise to lengthy debate and had been opposed by a minority which had entered a number of reservations. In expressing its opinion, the Drafting Committee had always been guided by concern that the rules of procedure should enable the Conference to conduct its business smoothly and expeditiously.

3. When the Committee had almost finished its report, he had been handed two proposals for amendments concerning rules 35 (CDDH/36) and 46 (CDDH/35), respectively, but as there had not been time to circulate those proposed amendments to the members of the Committee, it had been decided that they should be submitted directly to the Conference for a decision.

4. The PRESIDENT invited the Secretary-General of the Conference to read out a number of corrections to the English and French versions of the Committee's report.

5. The SECRETARY-GENERAL said that a number of corrections should be made to the Drafting Committee's report. The symbol of the document referred to in the first paragraph, dealing with rule 1, should read "CDDH/9". In the English version the beginning

of the fifth line on page 2, relating to rule 3, should read "Affairs and, in the case of ...". In the French version, the end of the second line of the addition to rule 19 should read "... à moins qu'il ne soit".

6. The agreement reached by the Conference on the designation of its officers had also entailed amendments to the provisional rules of procedure themselves. It had been agreed that the Credentials Committee (rule 4) should consist of ten, not nine members. There were to be nineteen, not six, Vice-Presidents (rule 6). The end of rule 13 should read "the chairmen of the Main Committees, the Drafting Committee and the Ad Hoc Committee of the Whole, and the Secretary-General." In rule 47, the end of the first sentence should be amended to read "... including the Rapporteurs of the Main Committees and two Vice-Presidents."

Rule 1 (CDDH/2, CDDH/37)

7. Mr. MOLINA LANDAETA (Venezuela) said that his delegation's comments on rules of procedure were always based on legal rather than political interpretations. He was not opposed to the wording proposed for rule 1, but had some reservations from the legal point of view. In all other international conferences the participants were representatives of States duly accredited and empowered to sign the final instruments. He understood that the reason for departing from that principle at the present Conference was because of its purely humanitarian nature and the intention to discuss civil as well as international conflicts. He was, however, very concerned lest that should be regarded as establishing a precedent.

8. Mr. BAXTER (United States of America) said that his delegation had had some reservations on the wording of that rule, but it had withdrawn them in a spirit of compromise and in order not to delay the work of the Conference or re-open the discussion on the participation of the national liberation movements.

9. Mr. de ALCAMBAR PEREIRA (Portugal) said that his delegation was unable to accept the present wording of rule 1.

10. The PRESIDENT said that he noted the reservations by the representatives of Venezuela and Portugal and the withdrawal of the United States reservation.

Rule 1 was approved, with the reservations noted by the President.

Rule 3 (CDDH/2, CDDH/37)

11. Mr. URQUIOLA (Philippines) asked whether the word "forwarded" in the last phrase of rule 3 meant that the regional inter-governmental organizations concerned were merely to act as post offices for forwarding the credentials or whether they also had to certify that they recognized the entities concerned.
12. Mr. CHOWDHURY (Bangladesh), Chairman of the Drafting Committee, said that there had been some discussion in the Drafting Committee concerning the word to be used but it had been decided to leave the Secretariat to co-ordinate the three language versions. There had been no discussion of the scope and function of the inter-governmental organizations' action in that respect.
13. Mr. MOLINA LANDAETA (Venezuela) asked for clarification of the meaning of the word "credentials" as used in the rule. Did it cover full powers to sign the instruments produced by the Conference, or merely authority to participate?
14. Mr. RATTANSEY (United Republic of Tanzania) said that since the national liberation movements had been admitted to participate in the Conference in their own right, his delegation considered that their competent authorities should have been empowered to authorize their credentials. However, since that had not been the opinion of all members of the Drafting Committee, the Tanzanian delegation had accepted the present wording in a spirit of compromise.
15. Mr. ABDINE (Syrian Arab Republic) said that the idea of the sponsors had been that the representatives of national liberation movements should submit two documents: a certificate of recognition by a regional international organization and a document of accreditation from the authority they represented. After much discussion, the Committee had hoped that they had produced a wording which would answer all the objections raised.
16. With regard to the legal question concerning the meaning of "full powers" and "credentials", the 1969 Vienna Convention on the Law of Treaties <sup>1/</sup> concerned only the conclusion of treaties between States. It contained in article 3 an explicit reservation concerning agreements concluded between States and other subjects of international law, a topic which was being considered by the International Law Commission. The original provisional rules of procedure for the Conference (CDDH/2) had been based on participation by States and had therefore required amendment in order to cover other entities.

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<sup>1/</sup> United Nations publication: Sales No: E.70.V.5

17. Mr. BRUM (Uruguay) said that his delegation could accept the present wording of rule 3, if, as the representative of the Syrian Arab Republic had just explained, it implied two different types of credentials, namely, full powers for participating Governments and a special type of accreditation for the national liberation movements. However, if those movements had full powers, including authority for their representatives to sign and even ratify the Protocols, his delegation would have to consider the matter more fully.

18. Mr. URQUIOLA (Philippines) said that his delegation assumed that the term "forwarded" in rule 3 as proposed by the Drafting Committee, included recognition by the intergovernmental organization concerned.

19. Mr. ABDINE (Syrian Arab Republic) said that there were in fact no legal distinctions between the types of credentials. In adopting resolution CDDH/22 and Corr.1, the Conference had authorized the national liberation movements to participate fully in the Conference, except for the right to vote. That meant that they had the right to sign any instruments produced by it. There were various precedents in international law for the signature of treaties and other instruments by entities which were not recognized as States. For instance, the Algerian Government, although not recognized at that time by France, had signed the Evian Agreement of 1962.<sup>2/</sup>

20. Mr. CLARK (Nigeria) said that, in his delegation's opinion, the text of rule 3 as presented in document CDDH/37 had been adopted by general agreement and the Conference should not now attempt to change it.

21. To remove a slight ambiguity, however, he suggested that the last sentence be divided into two parts. The first would read "The credentials shall be issued by the Head of State or Government or by the Ministry of Foreign Affairs", while the second would read "In the case of the representatives of national liberation movements, the credentials shall be issued by their competent authorities and forwarded by the regional intergovernmental organizations concerned".

22. Mr. ROSENNE (Israel) said that since the question had been raised, he wished to reserve his delegation's position on any question of recognition, or of the construction of the Vienna Convention on the Law of Treaties in relation to the matter with which the Conference was now faced.

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<sup>2/</sup> United Nations, Treaty Series, vol. 507, No. 7395.

23. Mr. BLIX (Sweden) said that the Nigerian amendment would make the text clearer without changing the substance.

24. Regarding the comments of the Venezuelan representative, he thought it would be premature to try to settle matters which concerned the final clauses of the Protocols. Rule 3 referred to credentials, not to full powers. Credentials required a statement by the competent authorities that the representatives were empowered to negotiate; it was not necessary to state that representatives had power to sign on behalf of the Government or national authorities. Full powers to sign or accede to the Protocols would be needed at the appropriate time, in accordance with international conference practice, and would be dealt with in the final clauses.

25. Mr. MBAYA (United Republic of Cameroon) said he thought that the only words in rule 3 likely to cause any difficulty were: "forwarded by the regional intergovernmental organizations concerned". The wording in the French version was perfectly clear and would not require the Nigerian amendment. In any case the clarification by the Chairman of the Drafting Committee seemed to have resolved the problem. He proposed, in the light of the resolution on the participation of national liberation movements (CDDH/22 and Corr.1), that rule 3 be approved.

26. Mr. MISHRA (India) said he supported the Nigerian amendment but thought that the second sentence should be made into a separate paragraph.

27. Mr. MOLINA LANDAETA (Venezuela) said that his delegation had not made any objection of substance; it had merely asked for an interpretation of the word "credentials" in order to understand the position of national liberation movements.

28. The representative of the Syrian Arab Republic had replied only in part. He could accept the explanation given by the representative of Sweden whose legal competence was well known in the United Nations. His delegation would accept the interpretation of the term "credentials" given by the Swedish representative, leaving the question of full powers to be dealt with later. On that understanding he would support the Nigerian amendment.

29. Mr. KIRÇA (Turkey) said that rule 3 could be interpreted only in the light of the Conference's decision to invite the national liberation movements to participate (CDDH/22 and Corr.1). Operative paragraph 1 of the resolution embodying that decision gave those movements the right to participate fully in the deliberations of the Conference and its Main Committees; and operative paragraph 2 stated that their participation did not

entitle them to vote. His delegation had supported that decision which had been taken by general agreement. Whatever powers were given by the relevant authorities would be limited by the Conference's decision.

30. His delegation supported the Swedish representative's view that the question of full powers should be dealt with in the final clauses of the draft Protocols.

31. Mr. RATTANSEY (United Republic of Tanzania) said he thought that the Nigerian amendment would cause drafting problems. The text was perfectly clear as it stood.

32. The PRESIDENT said that he would invite the Conference to vote first on rule 3 as amended by the Drafting Committee and then on the Nigerian amendment to that text.

33. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said he would support that procedure.

34. Mr. YOKO (Zaire) said it was his impression that the Nigerian representative was ready to accept the text himself but had proposed his amendment as a solution to other delegations' difficulties. He suggested that the Nigerian representative be asked if he maintained his amendment. Otherwise the rule could be adopted by general agreement.

35. The PRESIDENT asked the representative of the Syrian Arab Republic if he accepted the Swedish representative's interpretation of rule 3.

36. Mr. ALLAF (Syrian Arab Republic) said that the issue was not the meaning of the word "credentials" but the reservations of some delegations concerning the provision on national liberation movements. A previous speaker had rightly cited resolution CDDH/22 and Corr.1, which gave those movements full rights in the Conference except for voting rights. Whether he agreed or not with the Swedish representative's explanation concerning credentials was irrelevant. The Conference could now accept rule 3 by general agreement unless any delegations had any objection, in which case it should be put to the vote.

37. Mr. MAIGA (Mali) said he thought there was no need to vote on rule 3. Any doubts concerning the powers of national liberation movement representatives should be covered by the second paragraph of the Drafting Committee's report on rule 1. All that remained was to see whether the rule could be accepted by general agreement.

38. The PRESIDENT asked if anyone wished for a vote on rule 3 or whether it could be approved by general agreement.

39. Mr. de ALCAMBAR PEREIRA (Portugal) said that, while not asking for a vote, his delegation could not be associated with any general agreement.

40. Mr. YODICE-CODAS (Paraguay) asked whether the Drafting Committee's text included the last sentence in the original version of rule 3 of the provisional rules of procedure (CDDH/2): "In the absence of a contrary indication, credentials shall have effect also for a second session of the Conference, if one is held, unless they are withdrawn or superseded by new credentials."

41. Mr. CHOWDHURY (Bangladesh), Chairman of the Drafting Committee, said that the Drafting Committee had not decided to exclude that sentence. The amendment of the Syrian Arab Republic (CDDH/18) stated: "The rest of the rule remains without change." The Drafting Committee had considered the Syrian amendment, and the wording concerning national liberation movements had been included following a proposal from the floor. If the rule were considered as a whole, much of the concern expressed regarding the scope of powers of the national liberation movements would disappear. That part was clearly set out in the revised rule 58 and in resolution CDDH/22 and Corr.1. It seemed to him, therefore, that the Conference might accept the rule by general agreement.

Rule 3, including the last sentence in the original version (CDDH/2), and the amendments read out by the Secretary-General, was approved.

42. The PRESIDENT asked if the Nigerian representative maintained his amendment.

43. Mr. CLARK (Nigeria) said that it was normal to vote on an amendment first. In any case his amendment only approved the drafting.

44. Mr. CHOWDHURY (Bangladesh), Chairman of the Drafting Committee, replying to a question from the PRESIDENT, said that since the rule had been adopted by general agreement, he should not be asked to accept any changes.

Rule 13 (CDDH/2, CDDH/37)

Rule 13, including the amendments read out by the Secretary-General, was approved.

Rule 19 (CDDH/2, CDDH/37)

45. Mr. MOLINA LANDAETA (Venezuela) said that by parliamentary tradition, the President of any assembly was endowed with a certain amount of authority lest his position collapse altogether. Rule 19, as originally worded, corresponded to rules applicable to the

United Nations General Assembly. However, the paragraph added to rule 19 by the Drafting Committee would totally erode the President's authority and the Venezuelan delegation would be unable to accept such an amendment.

46. The PRESIDENT asked whether the Venezuelan delegation merely reserved its position or whether it opposed the amendment.

47. Mr. MOLINA LANDAETA (Venezuela) said that in case of a consensus his delegation would reserve its position, while in case of a vote, it would vote against the amendment. Adoption of the amendment would be contrary to the rules of procedure of any known international organization and was bound to lead to obstruction at almost every stage of the proceedings.

48. Mr. ABDINE (Syrian Arab Republic) said that the amendment proposed by his delegation had merely been for the purpose of shortening the procedure, since in substance the matter was already covered by rule 21.

49. Mr. MOLINA LANDAETA (Venezuela) repeated his objections to the amendment curtailing the President's authority, and asked that the amendment be put to a vote.

The amendment to rule 19 (CDDH/37) was adopted by 48 votes to 27 with 14 abstentions.

Rule 19, as thus amended, was approved.

Rule 30 (CDDH/2, CDDH/18, CDDH/37)

50. Mr. CARIAS (Honduras) suggested that since the meeting was now considering the report of the Drafting Committee (CDDH/37) and the Drafting Committee had reached no conclusion as to the amendment proposed in document CDDH/18, it should merely take note and reconsider rule 30 later, together with all other rules to which no amendments had been proposed in the Drafting Committee's final report.

51. Mr. KASASA (Zaire) asked why it was thought that discussion of rule 30 should be deferred.

52. Mr. YODICE-CODAS (Paraguay) asked that a decision be taken on the proposal put forward by the representative of Honduras.

53. The PRESIDENT asked the representative of Honduras for clarification of his proposal.

54. Mr. CARIAS (Honduras) said that as a matter of procedure, and since the meeting was now concerned with the adoption of the final report of the Drafting Committee, which contained no formal amendment to rule 30, he had proposed that it go on to consider rule 34 and defer consideration of rule 30 until it came to consider the remaining rules not covered by the Drafting Committee's report. He had no objection to rule 30 being discussed forthwith.

55. Mr. ALDRICH (United States of America) said that his delegation had come to the Conference with a clear understanding as to its work programme and certainly regarded decisions on the competence of the Conference as matters of substance. The United States delegation would therefore vote against the amendment to rule 30 as proposed by the Syrian Arab Republic in document CDDH/18, if the amendment were put to the vote.

56. Mr. LISTRE (Argentina), on a point of order, requested that the amendment to rule 30 be put to a vote.

57. Mr. YODICE-CODAS (Paraguay) said that his delegation would vote against the proposed amendment.

58. Mr. MISHRA (India) suggested that the meeting vote first on the amendment to rule 35 put forward by the delegation of Zaire (CDDH/36) which read: "Decisions of the Conference shall be taken by a majority of the representatives present and voting." That amendment, if adopted, would automatically result in the amendment of rule 30.

59. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said he was opposed to combining rules 30 and 35. Rule 30 was of significance regarding decisions on the competence of the Conference. That competence had been decided on long ago and it would seem difficult to effect changes in competence now by a simple majority. Changes could only be effected if desired by the overwhelming majority of the Conference.

The amendment to rule 30 (CDDH/18) was rejected by 51 votes to 31 with 8 abstentions.

The meeting rose at 6.15 p.m.



SUMMARY RECORD OF THE SIXTEENTH PLENARY MEETING

held on Friday, 8 March 1974, at 10.20 a.m.

President: Mr. Pierre GRABER Vice-President of the Swiss  
Federal Council, Head of  
the Political Department

REPORT OF THE DRAFTING COMMITTEE ON THE RULES OF PROCEDURE AND  
ADOPTION OF THE RULES (agenda item 9) (CDDH/2, CDDH/8, CDDH/10,  
CDDH/26, CDDH/32, CDDH/35, CDDH/36, CDDH/37) (continued)

Rule 34 (CDDH/2, CDDH/37)

1. The PRESIDENT, after requesting delegations to avoid getting involved in discussions of secondary importance on procedure, and expressing the hope that examination of the rules of procedure would be concluded rapidly, said that the Drafting Committee was of the opinion that rule 34 should not be changed. No opinion to the contrary had been expressed.

Rule 34 was adopted

Rule 35 (CDDH/2, CDDH/36, CDDH/37)

2. The PRESIDENT proposed that the Conference first consider the Drafting Committee's suggestion that the operative paragraph of draft resolution CDDH/13/Rev.2 be added to rule 35, and then the amendment submitted by the delegation of Zaire (CDDH/36).

3. Mr. DIXIT (India), supported by Mr. MOLINA LANDAETA (Venezuela), recommended that, in accordance with the decision taken the previous day at the suggestion of the Canadian representative, the Conference consider first the Drafting Committee's report and then the amendments that that Committee had not examined.

4. The PRESIDENT replied that that would cause time to be lost, and would be repetitive.

5. Mr. NAHLIK (Poland), whose opinion was shared by Mr. KASASA (Zaire), said that the proposal submitted the previous day by the representative of Canada was designed to ensure discussion of all amendments to the rules of procedure - not only those which had been examined by the Drafting Committee but also the few that had not. The Conference would then come to a decision on the rules of procedure as a whole. There would in fact be no point in discussing those rules to which amendments had not been submitted.

6. The PRESIDENT suggested that the Conference keep to the first interpretation of the decision reached on the previous day, which was that the rules to which reference was made in the report be dealt with consecutively, and that decisions be taken on amendments submitted. That applied in particular to rule 35, to which the delegation of Zaire had submitted an amendment (CDDH/36), and the Drafting Committee an additional paragraph (CDDH/37). He noted that there was no objection to the additional paragraph proposed by the Drafting Committee.

The additional paragraph was approved.

7. Mr. KASASA (Zaire) said that his delegation had based its proposal, in connexion with rule 35, that the decisions of the Conference should be taken by the majority of the representatives present and voting, on the fact that the 1949 Geneva Conventions had been adopted by a simple majority: it could not see why the Additional Protocols which were designed to supplement those Conventions should be adopted by a two-thirds majority. His delegation quite understood the concern of those who believed that the adoption of the Protocols by a two-thirds majority would secure their wider acceptance and would facilitate their application, but it also considered that no obstacles should be put in the way of the development of international humanitarian law. The countries which had recently acquired their independence and which had acceded to the 1949 Conventions should be able to make their voices heard. Moreover, the Universal Declaration of Human Rights had been adopted by a simple majority.

8. Sir Colin CROWE (United Kingdom) said that the issue was substantive, not procedural. The two-thirds majority rule for substantive questions had become current practice at international conferences on treaty law, as in the case of the 1969 Vienna Convention on the Law of Treaties. The reason why certain United Nations resolutions were adopted by a simple majority was that they merely represented recommendations and did not have binding force; but when States were expected to fulfil the obligations they had decided to accept - as in the case of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (General Assembly resolution 3166 (XXVIII), annex) - the decision was taken by a two-thirds majority. The representative of Zaire had cited the 1949 Geneva Conventions as a precedent, but apart from the fact that the subject matter of the present Conference was quite different and very much more controversial, the partial failure of those Conventions could to some extent be ascribed to the failure on the part of the simple majority to take into account certain minority interests on essential questions. The adoption of texts relating to controversial questions by a simple majority did not suffice to ensure their proper application.

9. Mr. ALDRICH (United States of America) said he agreed with the United Kingdom representative's remarks. To the best of his knowledge, no international convention since 1949 had been adopted by a simple majority: the Universal Declaration of Human Rights was not a convention. The adoption of the draft Additional Protocols by a simple majority would not help to attain the desired goal of enabling the largest possible number of countries to accede to those instruments and would still further widen the rift between the members of the world community. If the amendment proposed by the representative of Zaire was adopted, his Government would be obliged to reconsider the question of its participation in the Conference.

10. Mr. RATTANSEY (United Republic of Tanzania) said that, by admitting the national liberation movements, the Conference had recognized that the problems which it would be called upon to settle were of interest not only to States, but also to other entities involved in armed conflicts. From the humanitarian point of view, it was necessary to alleviate the sufferings of all those who participated in those conflicts. No restrictions should be imposed when drawing up a set of humanitarian rules. If it had been possible to adopt the simple majority rule in 1949, when the number of colonial Powers had been at its highest, why should a different course be taken today, when national liberation movements were fighting for self-determination and the recognition of their lawful rights? International humanitarian law should be progressive, and the rules to be prepared by the Conference should contribute to the development of that law by protecting all combatants, whether they were involved in just or unjust wars. For that reason, the formula proposed by the delegation of Zaire should be accepted.

11. Mr. ARDINE (Syrian Arab Republic) said he supported the Zaire amendment and observed, in connexion with the points of international law which had been raised, that the 1969 Vienna Convention on the Law of Treaties which had been invoked as a precedent in favour of the adoption of the two-thirds majority rule, had not yet entered into force for lack of the required number of ratifications. Reference to international practice narrowed the choice to two solutions. The first would be to adopt the simple majority rule for all decisions, on substantive and procedural questions alike, as the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva in 1949, had done; there was also the case of the United Nations, where, with some exceptions, no distinction was made between substantive and procedural questions. The second solution was that adopted for the 1969 Vienna Convention on the Law of Treaties, which did not lay down binding obligations at the international level. His delegation considered, however, that a question of principle was at stake and that one or two votes should not be allowed to represent an obstacle to the adoption of a humanitarian rule. That was why, contrary to the rule generally accepted in

international law, it was provided that two ratifications would suffice for the Protocols to enter into force. That decision was designed to ensure that those humanitarian rules would be applied as rapidly as possible.

12. Mr. PICTET (Switzerland) said that although his country had proposed that Conference decisions on all matters of substance be taken by a two-thirds majority, it had realized that the rules of procedure of the 1949 Diplomatic Conference had provided for a simple majority. It had suggested a departure from that precedent, firstly, because international practice over the past twenty-five years clearly showed that the two-thirds majority rule had become established in fact and in the Vienna Convention on the Law of Treaties and, secondly, because the Swiss authorities considered that only if adopted by a two-thirds majority in the event of a vote, would the articles of the draft Additional Protocols secure the nearest possible approach to universal acceptance. That was the objective, and the adoption of the articles by a simple majority - which it was far too easy to obtain - would offer no adequate guarantee of its achievement.

13. Mr. THOMAS (Liberia) said he could not support the amendment proposed by Zaire because at all international conferences the important decisions were taken by a two-thirds majority; moreover, he was not certain that the simple-majority rule was in the interests of the third world. Zaire should withdraw its amendment.

14. Mr. de BREUCKER (Belgium) said there was no denying the interest of the proposal by Zaire, which might help the Conference to adopt a greater number of provisions. It was doubtful, however, whether such an achievement would be of real value since important decisions taken by a simple majority did not mean that they were universally accepted. The task of the Conference was to lay down rules which would help to foster the protection of victims of armed conflicts and be widely applied. In other words, the consensus should be such that ratification of the Protocols raised as few difficulties as possible. He therefore requested the Zaire delegation to reconsider the question.

15. Mr. GIRARD (France) agreed with the observations made by the United Kingdom representative. In practical terms, it was not so much the figure of two-thirds which mattered; a mechanism guaranteeing the application of the rules adopted had to be found, whereas the simple majority rule could usher in provisions to which almost half of the States might not subscribe. If the texts were endorsed by only a slight majority, the entire apparatus of humanitarian law would be in question again. It therefore seemed essential to apply the two-thirds-majority rule in the very interests of humanitarian law.

16. Mr. ABOU EL NASR (Arab Republic of Egypt) supported the Zaire amendment. Admittedly, previous plenipotentiary conferences had applied the two-thirds-majority rule, but the present Conference was a special case in that its purpose was to reaffirm and develop humanitarian law. The admission of national liberation movements had confirmed its special nature. Then again, the two-thirds-majority rule had not been applied when the Geneva Conventions of 1949 were drawn up and there was no reason why it should be applied in respect of the Protocols intended to supplement and improve upon those Conventions. If the Zaire amendment were put to the vote, his delegation would vote for it. In view of the objections just made, however, he requested the delegation of Zaire not to insist, in the circumstances, that its amendment be put to the vote.

17. Mr. MAIGA (Mali) said that he supported the comments made by the Egyptian representative, and asked the delegation of Zaire to withdraw its amendment in view of the difficulties to which it might give rise.

18. Mr. MILLER (Canada) said that he wished to stress the importance of the matter under discussion, and joined the two previous speakers in requesting the withdrawal of the amendment in document CDDH/36.

19. Mr. ABDINE (Syrian Arab Republic) proposed as a compromise that rule 35 be amended merely by substituting the words "by an absolute majority of the States participating in the Conference" for the words "by a two-thirds majority of the representatives present and voting" in paragraph 1.

20. Mr. de la PRADELLE (Monaco), speaking in his individual capacity, said that he had helped to draw up the 1949 Conventions. He thought the rules which had been applied to the voting procedure in 1949 retained their value as a whole, whether the voting was by simple majority or by secret ballot. The voting rules applicable were undoubtedly important, but their possible effects should not be exaggerated as, generally speaking, they were applicable only at the stage of the drafting of the texts in the form of treaties. A country voting in favour of a text was still free to withhold its signature. There was therefore no serious risk in accepting the simple majority rule.

21. It should not be forgotten that the practice which had apparently been adopted between 1949 and 1974 for important conferences, that was to say the two-thirds majority rule, had sometimes produced negative results. The International Conference on Air Law, convened by the International Civil Aviation Organization and held at Rome in September 1973 for the purpose of preventing air piracy, was a case in point: the two-thirds majority rule had

on that occasion resulted in the rejection of all the proposals submitted one after another at that Conference. Could the Conference on Humanitarian Law be expected to take that risk?

22. Speaking on behalf of his delegation, he said that it would be necessary to state whether the two-thirds majority rule would apply to important questions or to all questions of substance, and whether, if there was any difference of opinion on whether a question was one of substance and a vote became necessary, that vote would or would not be taken by simple majority. In that case the Conference would lose a lot of time. Participants in the Conference should leave aside considerations of prestige and political ideology that distracted them from the fulfilment of their task, which was to alleviate the sufferings of human beings in the event of armed conflict. The rules applicable to the vote were of little importance in the light of the fact that, once the stage of drafting texts which preceded the preparation of the final Act was over, unanimity, the traditional rule of diplomatic conferences, was again required.

23. Mr. NODA (Japan) said he associated himself with the delegations which had opposed the Zaire amendment.

24. Mr. MOLINA LANDAETA (Venezuela) said that he was in favour of adopting rule 35 as amended by the Drafting Committee. He requested a closure of the debate under rule 25. In his view, the Conference should then come to a decision on the two amendments submitted, beginning with the Syrian amendment which was furthest removed from the original draft. Since a question of substance was involved, he asked for a roll-call vote on both amendments.

25. Mr. KASASA (Zaire) said that he was not convinced by the arguments against his delegation's amendment (CDDH/36). In his opinion, the procedure to be applied in studying the Additional Protocols should be the same as that used for the 1949 Conventions, to which they were in fact supplementary. Nevertheless, he would withdraw his amendment in a spirit of conciliation in order to avoid delaying the work of the Conference.

26. Replying to a question by the PRESIDENT, Mr. ABDINE (Syrian Arab Republic) said that he intended to maintain his amendment.

27. Mr. ABOU EL NASR (Arab Republic of Egypt) urged the Syrian representative to withdraw his amendment so that rule 35 could be adopted by consensus.

28. Mr. ABDINE (Syrian Arab Republic) withdrew his amendment.

Rule 35, with the addition of the paragraph proposed by the Drafting Committee, was adopted by consensus.

29. Mr. de ALCAMBAR PEREIRA (Portugal) said that his delegation had been unable to join in the consensus because of the paragraph which had been added to rule 35 at the proposal of the Drafting Committee.

Rule 37 (CDDH/2, CDDH/8, CDDH/37)

30. The PRESIDENT reminded the Conference that the Drafting Committee had recommended acceptance of the Egyptian amendment (CDDH/8), proposing the deletion of paragraph 2 of rule 37.

Rule 37, as amended, was adopted by consensus.

Rule 46 (CDDH/2, CDDH/26, CDDH/35, CDDH/37)

31. The PRESIDENT pointed out that two amendments to rule 46 had been submitted. The first, by Sweden (CDDH/26), proposing the deletion of the last phrase beginning with the word "provided", had been recommended by the Drafting Committee for adoption; the other, by the United Republic of Tanzania (CDDH/35), to the effect that the word "States" should be replaced by the word "delegations", had been submitted after the time-limit had expired.

Rule 46, as amended by Sweden and the United Republic of Tanzania, was adopted by consensus.

Rule 47 (CDDH/2, CDDH/10, CDDH/32, CDDH/37)

32. The PRESIDENT pointed out that, with one reservation, the Drafting Committee had considered that the paragraph suggested in its report (CDDH/37) should be added to rule 47.

33. Mr. CRISTESCU (Romania) read out his delegation's proposed amendment (CDDH/10) and the one submitted jointly by his own and five other delegations (CDDH/32); the texts had been referred to the Drafting Committee, but had not been taken into account in the wording proposed by the Drafting Committee in its report. If that text was adopted, a representative who was not a member of the Drafting Committee and had submitted a proposal would be at a disadvantage vis-à-vis representatives who were members of the Committee in the same situation: that would run counter to the principle of the sovereign equality of States. The Conference had already followed the procedure proposed by his delegation (CDDH/10) when it had asked the Committee to draft a text in co-operation with the sponsors of amendments. That procedure did not appear to have caused any difficulties.

34. Mr. CHOWDHURY (Bangladesh), Chairman of the Drafting Committee, replied that when the two amendments (CDDH/10 and CDDH/32) had been examined by his Committee, the majority had considered that it would be preferable to add to rule 47 the paragraph set out in its

report (CDDH/37), which limited the scope of participation by States non-members of the Committee and clearly gave them no right to vote. It was, however, for the plenary meeting to decide on the participation of States non-members of the Drafting Committee in the work of that body.

35. Mr. MILLER (Canada) pointed out that it had been decided to limit the membership of the Drafting Committee to fifteen because that body should be relatively small, although properly representative of the geopolitical structure of the Conference. In reply to the Romanian representative, he added that in supplementing the rule the Drafting Committee had borne in mind that the sponsors of amendments should be able to assist the Drafting Committee in its technical functions; however, an extension of the scope of their participation might artificially encourage States to submit proposals in order to acquire a certain status in the Committee. Conceivably, a proposal submitted by ten or twenty States might even entitle them all to speak in the Committee. Accordingly, if it was recognized that the Drafting Committee was essentially a technical body, not a mini-Conference, the apprehensions of certain delegations must be dispelled. Nevertheless, to avoid giving the unhappy impression that the Committee was a closed shop, his delegation, after having consulted the interested parties, proposed the addition of the following sentence to the Drafting Committee's text of rule 47: "In addition, the Chairman of the Drafting Committee may, if he sees fit, permit other delegations present to speak in the Committee on the specific topics under study."

36. The PRESIDENT asked that the addition be submitted to him in writing.

37. Mr. ESPINO GONZALEZ (Panama) said that the Canadian sub-amendment was acceptable, since delegations submitting proposals should be able to attend the relevant meetings of the Drafting Committee and participate in its discussions, but without the right to vote.

38. Mr. BRILLANTES (Philippines) said that the debate had already reassured him on certain points, especially on the voting procedure in the Drafting Committee. Nevertheless, the terms of reference of that body seemed to be rather unusual. Indeed, if his experience of conferences was any guide, the task of a drafting committee was generally to prepare draft texts, to give advice on editorial problems, to co-ordinate the decisions of the Conference and its Committees and to harmonize the various texts, but not to deal with questions of substance which, as he saw it, were beyond the competence of a drafting committee. He therefore urged that all delegations should be given the right to attend meetings of the Drafting Committee to make sure that their proposals were properly rendered in the texts, but that the right to vote should be limited to members of the Committee.

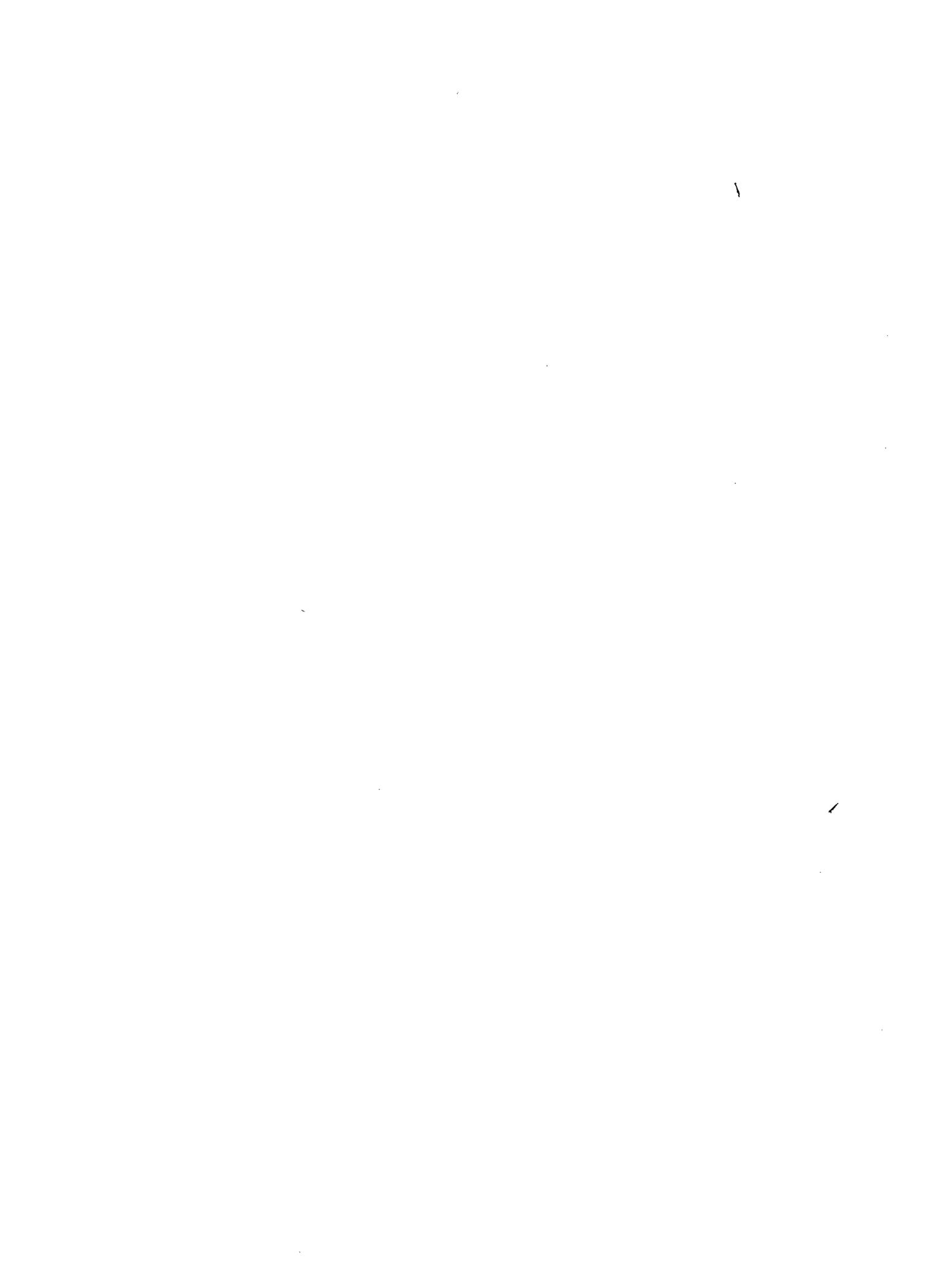
39. Mr. NAHLIK (Poland) said that the text proposed by the Drafting Committee was an attempt to find the happy medium between two opposing schools of thought, one in favour of limiting participation in the work of the Drafting Committee to its elected members, and the other of admitting with full rights all the delegations wishing to attend it. He regarded the text of rule 47 proposed by the Drafting Committee (CDDH/37) as a compromise formula and was inclined to accept it, but with a slight amendment specifying that the explanations in question could be given orally. He therefore proposed that the phrase "to provide explanations concerning such proposals" should be replaced by "to explain their proposals orally at meetings of the Drafting Committee."

40. In any case, his delegation would be able to support the Canadian sub-amendment.

41. Mr. DUGERSUREN (Mongolia), speaking on a point of order, observed that the Conference had before it two sub-amendments presented orally by the representatives of Canada and Poland. He requested that those texts be submitted in writing and suggested that the meeting be adjourned.

It was so decided.

The meeting rose at 12.45 p.m.



SUMMARY RECORD OF THE SEVENTEENTH PLENARY MEETING

held on Friday, 8 March 1974, at 3.20 p.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

REPORT OF THE DRAFTING COMMITTEE ON THE RULES OF PROCEDURE AND  
ADOPTION OF THE RULES (agenda item 9) (CDDH/2, CDDH/18, CDDH/25,  
CDDH/27, CDDH/28, CDDH/32, CDDH/37, CDDH/38, CDDH/39)(concluded)

Rule 47 (CDDH/2, CDDH/32, CDDH/37, CDDH/38, CDDH/39)

1. The PRESIDENT invited members to continue the discussion of  
the provisional rules of procedure (CDDH/2) and the amendments  
submitted to rule 47 (CDDH/32, CDDH/37, CDDH/38, CDDH/39).

2. Mr. ABDINE (Syrian Arab Republic) said that he could support  
the amendment submitted by Canada (CDDH/39).

3. Although a drafting committee was normally not supposed to  
deal with matters of substance, Main Committees often referred to  
that body problems which they could not solve themselves, and such  
action in some cases led to disputes in the drafting committee.  
He therefore thought that sponsors of amendments who were not  
members of the Drafting Committee should be allowed to participate  
fully in its work on those amendments, and suggested that the  
phrase "and to participate fully in the Committee's discussion of  
their amendments" should be substituted for the phrase "to  
provide explanations concerning such proposals" in the amended text  
suggested by the Drafting Committee (CDDH/37).

4. Mr. BETTAUER (United States of America) said that his delega-  
tion considered rule 47 to be acceptable as it was set out in  
document CDDH/2. In a spirit of compromise, however, the United  
States delegation to the Drafting Committee had agreed to that  
Committee's version (CDDH/37). His delegation had no difficulty  
with the Polish amendment (CDDH/38), but could not support the  
amendment submitted by Canada (CDDH/39): to allow delegations which  
were not members of the Drafting Committee and were merely attending  
a meeting to explain their proposals to take part in the Committee's  
proceedings would retard its work, would encourage the raising of  
substantive issues and would bring unwarranted political pressure  
to bear on the Chairman to persuade him to allow non-members to  
address the Drafting Committee.

5. The PRESIDENT said that as the Syrian oral amendment was furthest removed from the text proposed by the Drafting Committee, he would put it to the vote first.

At the request of the Romanian representative the vote was taken by roll-call. Bahamas, having been drawn by lot by the President, was called upon to vote first.

In favour: Bangladesh, Burma, Burundi, China, Cyprus, United Arab Emirates, Guinea-Bissau, India, Indonesia, Iraq, Jordan, Kuwait, Lebanon, Madagascar, Morocco, Mauritania, Uganda, Arab Republic of Egypt, Libyan Arab Republic, Syrian Arab Republic, Democratic People's Republic of Korea, United Republic of Tanzania, Romania, Sudan, Sri Lanka, Thailand, Trinidad and Tobago, Yugoslavia, Zaire, Albania, Algeria.

Against: Belgium, Brazil, United Republic of Cameroon, Colombia, Denmark, United States of America, France, Guatemala, Haiti, Israel, Italy, Japan, Liechtenstein, Monaco, Nicaragua, Norway, New Zealand, Panama, Netherlands, Poland, Portugal, Republic of Korea, United Kingdom of Great Britain and Northern Ireland, Sweden, Switzerland, South Africa, Federal Republic of Germany, Australia.

Abstaining: Byelorussian Soviet Socialist Republic, Bulgaria, Canada, Congo, Ivory Coast, Cuba, Spain, Finland, Ghana, Greece, Hungary, Iran, Ireland, Mexico, Mongolia, Nigeria, Peru, Philippines, Central African Republic, Republic of Viet-Nam, German Democratic Republic, Khmer Republic, San Marino, Holy See, Czechoslovakia, Togo, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Argentina, Austria.

The Syrian oral amendment was adopted by 31 votes to 28 with 33 abstentions.

6. The PRESIDENT said that as a result of the adoption of the Syrian amendment, the Polish amendment (CDDH/38) would not be put to the vote. On the other hand, the Canadian amendment (CDDH/39) was still before the meeting.

7. Mr. ALLAF (Syrian Arab Republic), replying to a question by Mr. GIRARD (France), said that if a large number of delegations non-members of the Drafting Committee were to submit an amendment, he was sure that they would do so through one spokesman.

8. Mr. NAHLIK (Poland), explaining his vote, said that the Syrian amendment could be interpreted to mean that a delegation which was not a member of the Drafting Committee but submitted an amendment should have the right to vote in that Committee, a procedure which would cause grave difficulties in its work.

9. The PRESIDENT said that such delegations would not have the right to vote in the Drafting Committee.

10. Mr. MISHRA (India) pointed out that at the fifteenth plenary meeting the Conference had approved an amendment read out by the Secretary-General, to the effect that the words "and two Vice-Presidents" should be added at the end of the first sentence of rule 47.

There being no objections, the Canadian amendment (CDDH/39) was adopted.

11. Mr. ALLAF (Syrian Arab Republic) suggested that the opening words of the second sentence of the additional paragraph proposed by the Drafting Committee (CDDH/37) should be changed to "Sponsors of proposals or proposed amendments ...", as the Drafting Committee might have to deal with proposals as well as amendments.

12. Sir Colin CROWE (United Kingdom) pointed out that the Drafting Committee would not be dealing with new proposals, which had to be considered by the Main Committees.

Rule 47, as amended, was adopted.

Rule 48 (CDDH/2, CDDH/18, CDDH/37)

13. Mr. ALLAF (Syrian Arab Republic) said he could not agree that the amendment submitted by his delegation (CDDH/18) was unnecessary, since much time had been wasted through insufficient consultation with regional groups on the appointment of members of committees. He was willing, however, to withdraw that amendment.

Rule 48 was adopted by consensus.

Rule 51 (CDDH/2, CDDH/25, CDDH/27, CDDH/37)

14. The PRESIDENT invited the Conference to consider the amendments in documents CDDH/25 and CDDH/27, which the Drafting Committee had recommended for adoption. He also invited the Conference to take note of the second paragraph under the heading "Rule 51" in the Drafting Committee's report (CDDH/37).

Rule 51 was adopted by consensus, with the additions recommended by the Drafting Committee.

Rule 55 (CDDH/2, CDDH/37)

15. The PRESIDENT drew attention to the Drafting Committee's recommendation that the word "Main" should be inserted before the word "Committee".

Rule 55, as amended, was adopted by consensus.

Rule 58 (CDDH/2, CDDH/37)

16. The PRESIDENT drew attention to the additional text proposed in the Drafting Committee's report.

Rule 58, as amended, was adopted by consensus.

Rule 60 bis (CDDH/28, CDDH/37)

17. The PRESIDENT invited the Conference to consider rule 60 bis, as set out in document CDDH/28 and recommended by the Drafting Committee for adoption.

Rule 60 bis was adopted by consensus.

18. The PRESIDENT invited the Conference to adopt the remaining rules of procedure as a whole.

The remaining rules of procedure, as a whole, were adopted by consensus.

GENERAL DISCUSSION (agenda item 8) (continued)\*

19. The PRESIDENT invited the Conference to resume the general discussion.

20. Mrs. SALL (Mauritania) said that her delegation attached great importance to the role that the Conference could play in eliminating unjustified war. There was no doubt that peoples struggling against colonialist and racist régimes occupying their territories were fighting in a just cause, which was recognized as such by the international community. She welcomed the representatives of Guinea-Bissau and the national liberation movements and deplored the absence of the Provisional Revolutionary Government of the Republic of South Viet-Nam.

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\* Resumed from the fourteenth meeting.

21. She stressed the importance of respect for human dignity and urged that all victims of armed conflict should unconditionally be given humanitarian assistance. The criteria laid down in the nineteenth century and revised in 1949 were no longer applicable to contemporary situations and improvements were therefore necessary. Her delegation urged that freedom fighters should be given the status of prisoners of war and their cause internationally recognized. Military objectives should be clearly distinguished from civilian objects and support should be given to national societies for assistance to war victims. Her delegation also supported the establishment of the Ad Hoc Committee on Weapons.

22. Mr. SALEM (United Arab Emirates) said that the countries which he represented had only recently signed the 1949 Geneva Conventions and begun to play a part in international affairs.

23. He regarded the invitation of the representatives of Guinea-Bissau and the national liberation movements as a just measure and was sure that the Conference would contribute greatly to the development of humanitarian law.

24. Mr. KIDRON (Israel) said it was regrettable that the Conference had started off with some difficulty, owing to the introduction of political considerations into a conference on a branch of the law which, both ideally and practically, should have nothing to do with politics. Humanitarian law was concerned with the alleviation of the suffering of the individual victims of armed conflicts, both soldiers and civilians, regardless of their nationality, race, religious beliefs, class or political opinions, the side they were on or the cause that they espoused, and the same rules applied unconditionally to all. In that system there was no differentiation between just and unjust wars. Moreover, international humanitarian law was not synonymous with the law of human rights as developed in the United Nations, but had its own origins and methods of work, characterized by a high degree of neutrality, objectivity and discretion, and began to operate after the outbreak of international violence, with the sole purpose of mitigating the effects of that violence on the victims.

25. With regard to the institution of the Protecting Power, dealt with in draft Protocol I, he pointed out that that institution had rarely been resorted to, and never in the Middle East, where the ICRC had operated on a de facto basis, avoiding all the complications, mainly political, which could arise from its formal appointment as a substitute for a Protecting Power.

26. Referring to distinctive emblems, he said that there were deep historical and religious reasons why Israel could not use the Red Cross, the Red Crescent or the Red Lion and Sun as emblems for its military and civilian medical services. The Red Shield of David,

however, had narrowly missed being given international standing in the 1949 Conventions, which had led to an incongruous situation in medical services in the Middle East, one side enjoying the use of a recognized emblem and the other not. Moreover, the Red Shield of David Society, which was the national relief society of Israel, was unable to take part in the work of the League of Red Cross Societies although otherwise qualified to do so. Such anomalies should be corrected.

27. The articles on prisoners of war in draft Protocol I were intended to relax some of the provisions of the Third Geneva Convention of 1949 relative to the treatment of prisoners of war. Since the purpose of the Conference was to reaffirm, no less than to develop, humanitarian law, it should examine the existing situation before embarking on any far-reaching modification. The Third Geneva Convention had manifestly failed to protect prisoners of war as it should or to prevent their exploitation for political purposes.

28. Finally, with regard to Israel's alleged rejection in October 1973 of an ICRC appeal concerning articles in the first draft Protocol on the protection of civilians and civilian objects, he reminded the Conference that clear explanations of what had actually occurred had been given in the November 1973 issue of the International Review of the Red Cross.

29. Mr. GIARDI (San Marino) said that the Conference should make no distinction between large and small States in its debates, since its purpose was to mobilize the conscience and solidarity of the whole world. The real subject of the Conference was the human being, irrespective of ideology, race or religion, as the innocent and often defenceless victim of violence and war, which were becoming ever more cruel and horrible under the impetus of technical and scientific progress. The rules laid down in the 1949 Geneva Conventions were no longer sufficient, owing to the evident imbalance between methods of warfare and measures of protection.

30. The Republic of San Marino had survived five centuries of turbulent history, despite the fact that it had no armed forces and had never resorted to war. It had not, however, been spared the horrors of war. During the Second World War its neutrality had been violated and there had been numerous victims among its 15,000 inhabitants and among the 100,000 refugees who had sought asylum in its small territory.

31. His country wished to go beyond the official topic of the Conference and talk about peace and the will to peace, because it was only if such a will existed that the Conference's task could be successfully accomplished.

32. Despite the rapid social, political and economic changes taking place in the world, the principles of humanitarian law remained a permanent heritage of mankind, the same for all nations and peoples. Their application, however, constantly had to be brought up to date in the light of technical developments. The principles of humanitarian law should not favour some countries over others or create discrimination between rich and poor countries. San Marino hoped that the Conference would not be manipulated for particular ends totally alien to the spirit of humanitarian law, but that all the States and organizations represented would collaborate to ensure that human freedom, dignity and right to life were more fully recognized and protected.

33. Mr. LISTRE (Argentina) said that his delegation was in general agreement with the two draft Protocols prepared by the ICRC. While he would reserve his detailed analysis of the drafts for the meetings of the relevant Committees, he wished to make a few general comments.

34. In accomplishing its task of laying down generally acceptable legal rules the Conference must apply the greatest possible scientific rigour and objectivity. It must avoid the pitfalls of cynical negation of the possibility of change or progress and of excessive idealism resulting in perfectionist texts which would be impossible to apply.

35. A clear and incisive distinction had to be made between combatants and the civilian population, in order to ensure the maximum protection of the latter. It was also necessary to strengthen the provisions of the 1949 Conventions concerning the role of Protecting Powers - or of impartial international organizations, such as the Red Cross - in ensuring that the provisions of international humanitarian law were observed.

36. While his delegation supported the proposal in document CDDH/23 and Add.1 on the establishment of an ad hoc committee for the question of the prohibition or restriction of the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects, it did not think that the present Conference was the proper forum for a full discussion of the question. What was needed was not a partial or fragmentary agreement, but an agreement on general and complete disarmament, beginning with nuclear weapons. His delegation supported articles 33 and 34 of draft Protocol I and article 20 of draft Protocol II.

37. The question of non-international conflicts was a new subject which must be handled with great care and caution. The scope of draft Protocol II must be more clearly defined than it was in the existing article 1. His delegation was also in favour of strengthening the commentary on article 4 on sovereignty.

38. Mr. QUENTIN-BAXTER (New Zealand) said that the Conference must seek to combine the Red Cross tradition of objectivity and impartiality with the more political concern of the United Nations with human rights and the improvement of life for the individual. It would be something of a tragedy if any incompatibility was seen between those two attitudes.

39. His Government was satisfied with the decisions taken concerning the invitation of participants to the Conference. The question of "just" or "unjust" wars had no place in the deliberations of the Conference, for reasons which should be obvious to all. No State or movement ever believed that it was engaged in or about to engage in an unjust war: it was always the enemy who was unjust. But every State or movement was anxious to protect its own people by laying down rules which, it was hoped, the unjust enemy - for the very same reason - would be prepared to observe. That was where the need for objectivity and realism became apparent. On a basis of reciprocity, even the unjust enemy might be willing to avoid the use of weapons which caused unnecessary suffering, disproportionate to the military aim involved.

40. The New Zealand delegation congratulated the ICRC on the drafts it had produced; it was particularly glad to see that some of the most important principles of The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land had been incorporated in the texts. It also supported the proposal to set up an ad hoc committee of the Conference to deal with the question of conventional weapons. It was essential to choose criteria which would leave the smallest possible room for differences of interpretation. While great historical value was attached to the concept of an "international conflict", experience had shown that various warlike situations arose in which that concept lent itself to different interpretations, tending to limit the applicability of the Geneva Conventions. The New Zealand delegation thought that the definitions to be adopted should relate the applicability of the Protocols to the nature of the combat itself, not merely to the status of the parties involved. Many speakers had drawn attention to cases of warfare which might not fall within the definition of classical international conflicts, but which caused the same suffering and misery to the individuals concerned as did wars between States. The principles of objectivity, impartiality and realism required the parties to be prepared to apply the Protocols to such conflicts, just as the Conventions were applied to classical conflicts between States.

41. The achievement of such impartiality would be greatly facilitated if the role of the Protecting Power was strengthened. That was the best way of making the existing rules and the new ones to be adopted as effective as possible. In addition to adopting the institution of the Protecting Power from the Red Cross

tradition, the Conference should also take over from the United Nations law on human rights the concept that governments owed an international duty to their own subjects. If the Conference scrupulously followed those two traditions - of the Red Cross and the United Nations - his delegation was convinced that it could succeed in drawing up Protocols of an impartiality and precision which would win them general acceptance.

The meeting rose at 5.30 p.m.



SUMMARY RECORD OF THE EIGHTEENTH PLENARY MEETING

held on Monday, 11 March 1974, at 10.30 a.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

In the absence of the President, Mr. Ogola (Uganda),  
Vice-President, took the Chair.

GENERAL DISCUSSION (agenda item 8) (continued)

1. The PRESIDENT invited the Conference to continue the general discussion.

2. Mr. MILLER (Canada) said that, with respect to draft Protocol I, there were three points which the Canadian delegation considered to be extremely important.

3. First, his delegation was deeply concerned about the suggestion that the Protocol should contain provisions that could result in the standard of humanitarian protection becoming dependent upon the declared purpose of an armed conflict. A case in point was the proposed new paragraph 3 appearing in a foot-note to article 42, which would accord extraordinary protection to persons captured in conflicts relating to self-determination. Yet no single principle was more necessary to humanitarian law than that of non-discrimination, and the Conference should reflect carefully before incorporating a concept totally alien to both the spirit and the letter of humanitarian law.

4. Secondly, the Canadian delegation was apprehensive about the insertion of rules governing the means and methods of combat into any Protocol to the Geneva Conventions. Rules relating to combat were likely to be breached first and disrespect for them might easily lead to disrespect for other humanitarian provisions. The rules governing the conduct of combatants inter se and the rules governing the protection of those who were hors de combat should be kept quite separate.

5. Thirdly, his delegation considered it important to provide for the effective implementation of the Geneva Conventions of 1949 and the Protocols. Substantive rules were worthless if not strictly observed. The key lay possibly in a strengthened system of Protecting Powers or substitutes.

6. In his delegation's view, the main purpose of draft Protocol II was to serve as a practical addition to article 3 common to all four Geneva Conventions, which provided a good measure of protection for those who were hors de combat. But the situations covered by that article were by no means clear, and the protection it afforded was inadequate in the context of modern warfare. That had led to a lack of protection for those caught up in non-international conflicts. It was essential to produce a protocol which clarified what was meant by non-international conflicts and contained clear, simple humanitarian provisions of a kind that any responsible government would willingly apply. There was no need to mirror the provisions of draft Protocol I. Indeed, several of the complexities of draft Protocol II were attributable to their having been discussed by experts too familiar with similar provisions in draft Protocol I. At the second session, the Conference should establish a separate main committee for Protocol II and make it responsible for preparing a simplified text that would be more readily acceptable to States and easier to apply by all the adverse parties in an internal armed conflict. For instance, it seemed questionable whether the combat provisions in draft Protocol II were appropriate in a protocol to be applied mainly within the territory of a single State.

7. Consequently, the Canadian delegation could not accept the suggestion that draft Protocol II should not be discussed at the current session. A frank and constructive debate on its scope of application and content was a necessary prerequisite to more detailed drafting in 1975. What was urgently needed was a protocol designed for the protection of the victim. Over 80 per cent of the conflicts of the past decade or so had been mainly non-international in character, and most of them had not been struggles against colonialism or racism or foreign domination, so that it was not sufficient to say that the internationalization of wars of national liberation would adequately meet the problem.

8. With regard to weapons, his delegation had supported the efforts to give international consideration to the prohibition or restriction of the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects, and it welcomed the establishment of the Ad Hoc Committee on Weapons. That Committee should seek to establish a work programme for the meeting of government experts which the ICRC had stated it would be willing to convene. His delegation firmly believed that careful consideration by experts would be required before governments would be able to assess the merits of proposals to restrict or prohibit certain weapons.

9. Mr. EL MISBAH EL SADIG (Sudan) said that the international community had not only failed to eliminate war: it had not even succeeded in lessening the sufferings of those engaged in war. Conflicts of a non-international nature were more often than not the result of the selfish pursuit of big Power interests in the small countries. By the time they had started their "scramble for Africa" in 1885, the European Powers had sown the seeds of division in most of their future colonies. Even though most of the African and Asian countries had eventually gained their freedom after an arduous struggle, they faced internal disturbances, in other words what were now referred to as "non-international armed conflicts".
10. The period following the adoption of the Geneva Conventions in 1949 had been characterized by wars of liberation. The horrifying crimes committed with impunity by the remaining colonialists, racists and Zionists should be forbidden by the Conference. The least that the international community could offer to the freedom fighters in Africa and Palestine was to ensure that they were given humane treatment and that they enjoyed full protection under the 1949 Geneva Conventions. Conditions had changed since the Second World War, and an attempt should be made to reach a consensus on the articles contained in the two draft Protocols.
11. The Sudan attached great importance to the prohibition of the use of napalm and other incendiary weapons, and had supported General Assembly resolution 3076 (XXVIII). In order to give effect to that resolution, the Sudanese delegation had joined in sponsoring working paper CDDH/DT/2 and Add.1.
12. Mr. WARRAS (Finland) said that although the intellectual power of man should address itself to the limitation of the use of force, new methods of destruction causing unnecessary suffering or having indiscriminate effects were being invented, and complete disarmament remained a distant goal. Every effort should therefore be made to safeguard human rights and diminish suffering. It followed that attention must be given to certain indiscriminately lethal conventional weapons, which should be either prohibited altogether or restricted.
13. In his delegation's view, the two draft Protocols should offer increased protection to the civilian population and safeguard it from indiscriminate and inhumane forms of modern warfare such as terror and area bombardment. The Protocols should also guarantee to the victims certain basic human rights from which there should be no derogation even times of armed conflict. That principle would be further strengthened if the Martens clause were incorporated into both Protocols.

14. As had been urged by several countries at the XXIIInd International Conference of the Red Cross, at Teheran in 1973, national Red Cross Societies and international Red Cross organizations should be given an enhanced role.

15. The question whether there should be one or two Protocols had been much discussed. In his view, the same level of protection should be given to the civilian population in all conflict situations. The special conditions of non-international conflicts would require different rules, but whenever possible the two protocols should be on identical lines. The Finnish Government supported the peoples of Africa still fighting for their freedom, and hoped that their goal would be reached through a process of peaceful change instead of by violence. But if violence could not be avoided, then the rules of international humanitarian law and the general principles of humanity should be respected.

16. Mr. CHOWDHURY (Bangladesh) said that, as his country knew from experience, the existing international Conventions were unable to safeguard human lives and protect the civilian population from oppression and persecution. Indiscriminate bombing was resorted to even in non-international armed conflicts.

17. Although the four Geneva Conventions were binding on the Contracting Parties, they had been found inadequate for the protection of human lives. Additional rules were necessary for the mitigation of suffering in international and non-international armed conflicts.

18. His Government was firmly committed to the principle of disarmament, but until that goal had been achieved, the use of certain specific weapons, including napalm and other incendiary weapons and gas, must be prohibited, together with that of weapons which unnecessarily aggravated human suffering. Moreover, world public opinion must also be enlisted to ensure that those prohibitions were enforced. Apart from its task of formulating the essential legal principles, the Conference would be instrumental in creating such an attitude of human solidarity.

19. His delegation strongly urged the extension of the scope of the Geneva Conventions to armed conflicts involving movements fighting for national self-determination. It had therefore been a sponsor of resolution CDDH/12 and Add.1 to 4 regarding the participation of Guinea-Bissau as a full member of the Conference and had supported the participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam and of the national liberation movements. It noted with satisfaction that Guinea-Bissau and the liberation movements had been accorded their rightful place in the Conference, in conformity with the principle of universality enshrined in the Charter of the United Nations.

20. Draft Protocol II was of particular significance since it supplemented article 3, which was common to all four Geneva Conventions and dealt with non-international armed conflicts within the territory of one of the Contracting Parties. Articles 1 and 3 of that Protocol should therefore be made more precise and more effective. The provisions on the appointment of the Protecting Powers and their substitutes should be reformulated in order to include the idea of having a permanent body to act as a substitute within the framework of the United Nations.

21. The provisions relating to prisoners of war should be made applicable to guerrilla fighters. Provision should also be made for penal action against any party which failed to implement the provisions of the Protocols.

22. Mr. KITAHARA (Japan) said that the experience of the innocent civilian population on both sides in the Second World War and the persistence of armed conflicts at the present time made the work of the Conference all the more urgent. The "reaffirmation" mentioned in its title implied not only recognition of the merits of the Geneva Conventions but also their full implementation. His delegation therefore welcomed a number of the provisions in the draft Protocols. The role of a Protecting Power to co-operate in the implementation of the Conventions was indispensable, and his delegation hoped that the discussions at the Conference would lead to the establishment of a system under which the expeditious designation of a protecting power would be ensured.

23. The development of international humanitarian law had become a matter of acute concern to the whole world as the means and methods of combat and consequently the degree of suffering resulting therefrom had multiplied during the past few decades. It was therefore appropriate that the authors of the draft Protocols had gone beyond the realm of the Geneva laws and had entered that of The Hague laws. It should be noted in that context that it was bombardment that caused the greatest harm to the civilian population. The principle of military objectives had been customarily recognized in that connexion, but he was glad to see that substantial progress had been made in the draft Protocols in developing that principle.

24. His delegation would co-operate in every way to ensure the success of the Conference and would submit suggestions on specific points in the appropriate Committees.

25. Mr. Di BERNARDO (Italy) said that the draft Protocols prepared by the ICRC contained just and balanced solutions to several complicated problems, in other words solutions which reconciled two fundamental requirements: the need to ensure the greatest possible protection for man in armed conflicts and the need to safeguard the fundamental interests of States as politico-territorial and military entities.

26. During the preparatory work of the Conference, the Italian experts had supported every attempt to strengthen the system of guarantee and control laid down in the Conventions and had submitted proposals to that effect. In particular, his delegation attached great importance to the establishment of an effective system for designating the Protecting Powers and if necessary their substitutes, since the effectiveness of much of international humanitarian law depended on the existence of a proper system of guarantees. The ICRC had an important role in that respect and the Italian delegation hoped that provision would be made for it to assume that role automatically.

27. His delegation was also deeply concerned in the development of international humanitarian law concerning internal conflicts, which however must first be defined. The application of humanitarian law to such conflicts gave rise to extremely difficult problems, since it might call in question the freedom of action of States in their internal affairs; but the Universal Declaration of Human Rights should help the international community to go beyond the limits traditionally set by the concept of the internal affairs of States.

28. Mr. AMIR-MOKRI (Iran) said that the two draft Protocols constituted a useful basis for the discussions at the Conference and would make an important contribution to the development of humanitarian law. His delegation supported most of the principles upon which they were based; some of their provisions were immediately acceptable, whereas others could be improved. The distinction between combatants and non-combatants had always been a basic principle of humanitarian law. His delegation therefore wished to emphasize the importance of the provisions relating to the protection of the civilian population contained in part IV of draft Protocol I. As a result of the development of modern weapons, civilians were now exposed to at least the same dangers as combatants. His delegation fully supported the proposals in that connexion contained in the draft Protocol, which were a considerable improvement over earlier versions.

29. It was essential to strengthen the system of Protecting Powers and their substitutes in order to ensure the impartial supervision of the application of the provisions of the Conventions, as recommended in General Assembly resolution 2852 (XXVI) - Respect for human rights in armed conflicts. The system of Protecting Powers could be considerably improved if some provision was made for the introduction of automatic machinery for the designation of those Powers or their substitutes and he agreed with a number of previous speakers that an impartial body such as the ICRC should be designated as substitute.

30. His delegation supported the provisions concerning the prohibition of the use of weapons which might cause unnecessary suffering or have indiscriminate effects and hoped that the Ad Hoc Committee on Conventional Weapons established by the Conference, would complete its work satisfactorily.

31. With regard to draft additional Protocol II relating to the protection of victims of non-international armed conflicts, his delegation agreed in principle that humanitarian measures should cover the victims of conflicts of that kind, but considered that special care should be given to defining those conflicts. It agreed with the representative of Pakistan (CDDH/SR.11) that the term "international armed conflict" could be applied to armed struggles for liberation from colonial domination and the acquisition of national independence, but that the term "non-international conflict" could not be applied to armed campaigns by a racial or ethnic group against the central government of its own country.

32. His Government considered that political and ideological considerations should not be introduced into discussions on humanitarian law. It was accordingly not in favour of establishing a distinction between "just" and "unjust" wars, which would necessarily be an arbitrary one. His delegation's position on that point was in fact very close to those of the delegations of Switzerland and the United Kingdom.

33. Mr. SEMEDO (Guinea-Bissau) said that at a time when the entire international community was meeting to consider ways and means of alleviating human suffering, the people of his and other countries were engaged in a grievous, but victorious, armed battle for national liberation.

34. His delegation was happy to see the national liberation movements participating in the work of the Conference, but regretted that the Conference had decided not to admit the Provisional Revolutionary Government of the Republic of South Viet-Nam, the true representative of the people of South Viet-Nam.

35. To ensure the success of the Conference and the implementation of its decisions, everyone present must recognize that the Geneva Conventions of 12 August 1949 embodied provisions which were no longer appropriate to the kind of conflict taking place in countries where the people were obliged to take up arms and fight to regain their freedom, sovereignty and dignity.

36. It was not his delegation's intention at the Conference to question the existing bases of international humanitarian law, but to consolidate them by introducing qualitative changes. That was why his Government had decided to accede to the four Geneva Conventions, although with certain reservations to which his delegation would refer in the Committees.

37. At the 13th plenary meeting the representative of Portugal had implied that the Conventions should be considered as they stood. He well understood the desire of the colonialist Portuguese Government to maintain the status quo, and thus to continue to dominate the African peoples and to exploit their wealth. In referring to non-international conflicts, some speakers had referred to the principle of respect for sovereignty and non-interference in the internal affairs of States. It was Portugal itself that was behind those ideas. But was it interference in the internal affairs of Portugal to speak of Portuguese colonialism? Was it an infringement of the sovereignty of the colonial Powers to regard the armed struggles for national liberation as conflicts of an international nature? Surely not. The Portuguese representatives who had come to try to defend a lost cause for Portugal knew better than anyone that their Government had failed to honour its commitments ever since its accession to the Geneva Conventions. He wondered whether the Portuguese representative would have the courage to deny that Portuguese aircraft were dropping napalm, fragmentation and incendiary bombs on his country and on Angola and Mozambique, and using defoliants in order to bring about famine. Would he deny that the people of Guinea-Bissau, Cape Verde, Angola and Mozambique had taken up arms to free themselves from Portuguese colonial domination? The situation of the Portuguese colonialist Government did no honour to the European peoples; and it was essential that Portugal's allies should use their influence to persuade the Portuguese Government to put an end to its colonial wars.

38. Despite the war situation in which his country was in conflict with the Portuguese colonialist Government, he wished to make his country's position clear. Its fight was political: it was not directed against the people or the régime of Portugal, but essentially against the Portuguese colonial presence. His country therefore appealed to the conscience of mankind to bring Portugal to its senses and make it understand that its interests lay in the peaceful solution of the problem. His Government was ready for such a solution on the basis of a cessation of all forms of aggression against his country.

39. He had spoken of Portugal not in anger or in hatred, but in order to explain to the supporters of Portuguese colonial policy that the principle of the immutability of a law or of a convention must be carefully reviewed. His country wished to see humanitarian law developed in a way that would be acceptable to all the parties to the Conventions and to all those concerned.

40. Mr. DUGERSUREN (Mongolia) said that the fact that more than forty newly-independent African and Asian countries and fourteen national liberation movements were participating in the Conference was striking testimony of the great progressive changes that had taken place during the past twenty-five years or so. The decision,

by only one vote, to exclude the Provisional Revolutionary Government of the Republic of South Viet-Nam from participating showed that the opponents of justice and democracy no longer wielded the power they had enjoyed not so long before. Had certain newly-independent countries been fully aware of the importance of the question for the common cause, the Provisional Revolutionary Government, and consequently the delegation of the Democratic Republic of Viet-Nam, would have been participating in the Conference with the full rights they deserved. The Saigon régime could not represent the whole population of South Viet-Nam, still less their legitimate will and aspirations.

41. It was his Government's policy that coercion and the use of force in international relations should be prohibited and all wars eliminated. That idea stemmed from the very nature of socialist countries, which had no interest in dominating and exploiting other peoples. It was the imperialist, colonialist and racist forces that were responsible for armed conflicts and for the violation of human rights and fundamental freedoms. The neo-colonialist aggressions which until recently had raged in Viet-Nam and the Middle East, the colonial wars in Mozambique and Angola, the inhuman racial oppression in South Africa and Southern Rhodesia and the massacre in Chile of people fighting for human rights and fundamental freedoms, all had the same root. It would be well to ponder the wise advice of the President of Mauritania at the opening meeting of the Conference not to set aside the causes and treat only the effects.

42. His Government regarded wars of national liberation as international conflicts, since they involved parties that were seeking to dominate others and parties fighting for their inalienable right to self-determination and national independence upheld in the Charter of the United Nations and in many General Assembly resolutions. It was right that freedom fighters who had fallen into the hands of their adversaries should be treated as prisoners of war. General Assembly resolution 3103 (XXVIII) recognized that the legal status of combatants under the 1949 Geneva Conventions and other international instruments applied to persons engaged in armed struggle against colonial and alien domination and racist régimes. He accordingly hoped that the provisions of the draft Additional Protocols would comply with the will of the General Assembly and strengthen the protection of the right of freedom fighters to humane treatment.

43. The international situation, characterized by detente and a strengthening of peaceful co-existence between States of differing social systems, was conducive to the favourable outcome of the work of the Conference.

44. The Conference should take full account of the fact that, in the neo-colonialist wars of aggression, not only were the provisions of the Geneva Conventions being systematically violated but new and more cruel methods and means of warfare were being employed. The methods of combat used by the United States forces in Viet-Nam had brought untold loss and suffering upon the civilian population. In that connexion the provisions of articles 48 and 49 of draft Protocol I and the corresponding ones in draft Protocol II constituted a moral condemnation of those responsible for crimes against the innocent civilian population.

45. His Government attached great importance to the protection of the civilian population and civilian targets during armed conflicts and thought that the provisions of the draft Additional Protocols on those questions needed considerable improvement. More precise distinctions should be made between the civilian population and combatants and between civilian objects and military objectives.

46. His delegation was in favour of strengthening the provisions concerning the status of prisoners of war and of making a clear distinction between the treatment of ordinary combatants and of war criminals. The Protocols should contain safeguard clauses which would ensure that such distinctions were effectively made.

47. His Government was opposed to the use of weapons causing indiscriminate destruction and unnecessary suffering, especially among civilian populations, and was in favour of their complete prohibition. The Mongolian delegation appreciated the humanitarian motives of the sponsors of the proposal in document CDDH/23 and Add.1, but it would prefer the question of such weapons to be dealt with in its entirety as a disarmament matter in an appropriate body such as a world disarmament conference.

48. His delegation shared the view that the two draft Additional Protocols should be dealt with simultaneously, but wished to make it clear that the application of humanitarian law in the case of non-international armed conflicts should in no way permit the infringement of national sovereignty or interference in internal affairs.

49. Mr. ABDINE (Syrian Arab Republic) said that his country had an age-old tradition of humanitarian law and practice. A comparison between the humanitarian law proposed at the Conference and the justice and practice of Islam would show that little progress had been made in 1,300 years. The precise instructions given by the Caliph Abou Bakr to his military chiefs and soldiers yielded nothing to international humanitarian law of the present day, and indeed went further, since severe penalties were imposed for violation. A clear distinction was made between combatants

and the civilian population; the killing of children, the old and the sick was prohibited, as were slaughter or devastation beyond the minimum necessary; prisoners were to be well treated; and in order to limit temptation for conquering soldiers, booty was to be handed over to the government.

50. In his Government's view, humanitarian law should be regarded as coming under jus cogens. No State, entity or individual was permitted to deviate from it on any pretext whatsoever. The logical conclusion to be drawn was that violations of humanitarian law were crimes against humanity.

51. The indivisibility of humanitarian law should be stated and confirmed. That raised the problem of reservations to the 1949 Conventions and the two additional Protocols. His Government was in favour of prohibiting reservations to provisions that formed the very basis of humanitarian law. Its experience in the Israel-Arab war provided solid support for that point of view. The adversary was violating the Geneva Conventions under cover of the divisibility of the provisions of those Conventions; more specifically, on the pretext of not applying the Fourth 1949 Convention. Thus States or entities were freely choosing, through reservations or divisibility, the provisions which served their own selfish interests, while refusing those relating to objective situations.

52. There could be no progress unless humanitarian law was removed from the sphere of politics. Facts were often misrepresented for propaganda purposes at international gatherings. A case in point was the outcry about the communication to the ICRC of the names of Israeli prisoners taken by Syria during the October 1973 war of liberation. When that outcry was contrasted with the discreet whispers, and even silence, which greeted the serious crimes and violations committed by the adversary, the impression was gained that a certain international body's humanitarian ideas operated in one direction only. The essential point was that prisoners should be well treated, and Syria had complied with that requirement.

53. Another point was the inadequacy of the proposed penalties. There was a complete legal vacuum where guarantees for the effective application of the provisions of the Conventions were concerned. The Conference must find a remedy for that state of affairs and provide for a system of enforcement.

54. It was unfortunate that there were two draft Protocols, providing for two kinds of treatment. But surely humanitarian law was concerned with man; why then should there be two sets of rules? There was no excuse for such a differentiation. His Government considered that a way out of the difficulty would be to make changes in draft Protocol I.

55. The decision to invite the national liberation movements to participate in the Conference was to be welcomed, but the Syrian Government was nevertheless not entirely satisfied, since those movements had not been given the right to vote. That was not in conformity with international law or with the requirements of the draft Protocols. Moreover, certain delegations were seeking to place a restrictive interpretation on the resolution in document CDDH/22 and Corr.1. To remove any misunderstanding, he wished to emphasize that the national liberation movements were participating fully in the Conference with the same standing as States, except for the right to vote.

The meeting rose at 12.35 p.m.

SUMMARY RECORD OF THE NINETEENTH PLENARY MEETING

held on Monday, 11 March 1974, at 3.20 p.m.

President: Mr. Pierre GRABER Vice-President of the Swiss  
Federal Council, Head of  
the Political Division

In the absence of the President, Mr. Espino Gonzalez (Panama),  
Vice-President, took the Chair.

GENERAL DISCUSSION (agenda item 8) (concluded)

1. Mr. TASWELL (South Africa) said that his country had acceded to the 1949 Geneva Conventions in 1952. His delegation approved of most of the provisions of the draft Additional Protocols and would submit its comments on some of the articles at an appropriate time.
2. Although the South African delegation saw no objection to combining the two draft Protocols in a single text it believed that such a course would make a great deal of work for the Conference and that it might be preferable to study the two texts separately.
3. The Conventions and Protocols were based on reciprocity, but that had not been the opinion expressed by certain delegations and organizations, which considered that one of the parties to a conflict could use all available means, even terrorism, whereas the other party was obliged to observe strictly all the provisions of the Conventions and Protocols. Yet how could a State be expected to treat as prisoners of war those of its citizens who had committed acts of violence contravening the most elementary principles of humanitarian law?
4. Mr. KASASA (Zaire) said he welcomed the participation of Guinea-Bissau in the Conference, but regretted that the national liberation movements were represented only by observers. That anomaly should be remedied, and Zaire had therefore submitted an amendment to the provisional rules of procedure of the Conference.
5. His delegation wished the Conference to give particular attention to the following points: the need to grant prisoner-of-war status to captured combatants of the national liberation movements; prohibition of the use of weapons liable to inflict unnecessary suffering on civilians, especially bacteriological, chemical and nuclear weapons; the distinction between just and unjust wars; strengthening of the Protecting Power in the application of international humanitarian law - which implied the existence of an international authority with sufficient prestige and means of action; and the prohibition or limitation of the use of conventional weapons having an indiscriminate effect or liable to cause unnecessary suffering.

6. Human solidarity was a fundamental principle of Black African civilization; that humanism excluded no race and set the human being above all other values. That was why the African States had subscribed to the United Nations Charter, the Universal Declaration of Human Rights and the 1949 Geneva Conventions. But those States also deemed it their duty to render assistance to the national liberation movements, which they sometimes welcomed in their own territories. Those two obligations were difficult to reconcile. Indeed, the international community had called for strict observance of the Geneva Conventions with respect to prisoners captured by those movements; from the point of view of the latter, however, that appeal might often be interpreted as support for the colonialist powers, which regarded such struggles as internal conflicts, and did not hesitate to massacre the combatants they took prisoner. It was the duty of the international community to protect the populations of southern Africa and to recognize the national liberation movements as regular armies engaged in an international war for the liberation of their countries.

7. Mr. BRECKENRIDGE (Sri Lanka) said that the Conference had acted wisely in admitting Guinea-Bissau, but he deplored the exclusion of the Provisional Revolutionary Government of the Republic of South Viet-Nam.

8. Turning to the two draft Protocols, he noted with satisfaction the creation of a new category of prisoners of war in paragraph 3 of article 42 of proposed draft Protocol I. That was an important development in the field of humanitarian law. The reference made in that paragraph to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (United Nations General Assembly resolution 2625 (XXV)) and its application to the right of self-determination in turn made the application of the law of international armed conflicts to national liberation movements unavoidable.

9. There was a fundamental connexion between humanitarian law and the indiscriminate use of weapons and methods of warfare. Disarmament considerations were relevant to the Conference and expeditious conclusions on the question of the use and range of weapons employed in armed conflicts were desirable. The protection of civilians in armed conflict, whether international or non-international, was of primary concern to Sri Lanka.

10. In conclusion, it was his view that the two Protocols had separate identities and should be treated separately.

11. Mr. LE VAN LOI (Republic of Viet-Nam) pointed out that his country had endured a war of imperialist expansion for twenty-five years and said that there was an urgent need to develop the rules of humanitarian law with a view to relieving the sufferings of civilian populations.

12. The means and methods of combat used in South Viet-Nam were primarily intended to terrorize and massacre the civilian population. That form of warfare was prohibited by the Geneva Conventions, and was justified by the aggressor in terms of an ideology entirely foreign to the traditions of individual liberty of the people of Viet-Nam.
13. His delegation had proposed amendments to the draft Protocols at the XXIInd International Conference of the Red Cross, inter alia, on the appointment of Protecting Powers, the prohibition of perfidy and independent missions.
14. Certain representatives had attempted to give a distorted image of the war in Viet-Nam by reversing the roles and suggesting that the northern forces and their local auxiliaries were armies of liberation, not of aggression. Such views were often expressed by the representatives of countries which had constantly encouraged the rulers of Hanoi to continue the war; they were the countries that had expressed concern regarding draft Protocol II, in the fear that it might be prejudicial to their national sovereignty.
15. Throughout the war of aggression in Laos, Cambodia and South Viet-Nam, the Hanoi régime had never applied the Geneva Conventions and no representative of the ICRC had been allowed to operate in the communist zones.
16. He read out a short report that had appeared in the Western press to the effect that, during a mortar attack by the communist forces, 23 schoolchildren had been killed and 40 wounded in a primary school in the Mekong delta, 65 kilometres from Saigon.
17. Mr. BARRO (Senegal) welcomed the delegation of Guinea-Bissau and those of the national liberation movements.
18. Combatants in the national liberation movements should enjoy the same protection as the combatants of any party to a conflict between States. Conflicts resulting from colonial occupation should not be dissociated from so-called international conflicts. That was a point of substance, not only of terminology, and the relevant provisions of Protocol II should therefore be inserted in Protocol I.
19. Nevertheless, care should be taken to avoid any interference in the internal affairs of States, and the humanitarian activity of international bodies should be exercised with the approval of the State involved in the conflict, even if the opposing party did not recognize its authority.
20. Mr. MISHRA (India) welcomed the presence at the Conference of the representatives of Guinea-Bissau and of the national liberation movements.

21. Since the adoption of the 1949 Geneva Conventions, the ICRC had convened several meetings of experts, thanks to which the Conference had before it two draft Additional Protocols providing an excellent basis for discussion.

22. Twenty-five years had passed since the signature of the Geneva Conventions. Although the humanitarian principles were still valid, the world situation had undergone considerable changes. Many countries had gained independence and were determined to preserve and consolidate their freedom and sovereignty. Other countries were still fighting for independence. The national liberation movements were the first to respect the principles of humanitarian law because they were well aware of the misery and suffering caused by the armed conflicts of which they were the victims. It was therefore essential to supplement and develop the Geneva Conventions in order to adapt them to contemporary needs.

23. India had participated in the Diplomatic Conference of 1949 and in the Conference of Government Experts recently convened by the ICRC. It recognized the importance and complexity of the task before the Conference and the need to revise the principles of humanitarian law set forth in the 1949 Geneva Conventions.

24. The draft Additional Protocols submitted to the Conference had been the result of much preparatory discussion, but there were still many problems to be solved. Efforts must be made to find precise and unambiguous wording, so that those engaged in armed conflicts might have clear and accurate texts at their disposal. They should use the wording of the 1949 Conventions and should, for example, clearly define the difference between a just and an unjust war, between a combatant and a non-combatant and between cultural and economic civilian objects. It should above all be borne in mind that the aim of the Conference was to reaffirm universally recognized principles and that the letter of the law could be distorted or misinterpreted.

25. In conclusion, he hoped that decisions would, as far as possible, be adopted by consensus.

26. Mr. CHELBI (Tunisia) said that in the twentieth century, which claimed to be civilized, it was deplorable to have to specify clearly in legal instruments who was the aggressor and who the victim and to define the difference between a just and an unjust war.

27. It was to be hoped that all concern for hegemony on the part of certain countries or groups would be dispelled during the Conference, so that it could adopt the best possible method of work.

28. Mr. de FISCHER-REICHENBACH (Sovereign Order of Malta) recalled that the Order had been founded 900 years earlier, first of all to care for pilgrims and subsequently for the wounded and sick who were victims of conflicts. It had carried on that humanitarian activity uninterruptedly right up to the present day. It was thus one of the earliest promoters of the Red Cross movement. In the course of its long history, it had constantly adapted itself to changing circumstances and it still possessed a structure that enabled it to meet the needs of the times.

29. From the legal point of view, it was a subject of public international law, endowed with functional sovereignty and the right of legation since the year 1113. From the moral point of view, it was based on the principles of complete independence and neutrality, as also of equality of treatment for those in need without distinction of race, religion or status. From the practical point of view, it currently maintained diplomatic relations with 40 Powers in Europe, Latin America, Africa, the Middle East and Asia, and it sent observers to numerous inter-governmental or international organizations such as the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, the International Committee for European Migration, the World Health Organization, the Council of Europe and the United Nations Education, Scientific and Cultural Organization.

30. Its working resources and its experience in the humanitarian sphere might prove useful when it came to achieving the aims of future humanitarian law. In that context, the Order would be able to offer its good offices, should the need arise, as a substitute for the Protecting Power and to fulfil, as far as its resources permitted, one or more of the obligations to be assumed by the latter within the framework of the 1949 Geneva Conventions and the future Protocol I. It could also contribute, always to the extent that its resources permitted, to relief action in favour of the civil population, in accordance with articles 60, 61 and 62 of draft Additional Protocol I. Lastly, it would be able to co-operate with the ICRC in those two realms, should the occasion arise, in particular by placing qualified personnel at its disposal.

31. Mr. VIGNES (World Health Organization) said that his organization was particularly interested in the work of the Conference in view of the principles and objectives of the WHO Constitution.

32. WHO had made a number of contributions to the development of humanitarian law in such areas as international medical law, the physician's role in the maintenance and development of peace and the use of chemical and bacteriological weapons. It had also co-operated closely with the ICRC since 1948.

33. WHO had participated in the work of various bodies concerned with humanitarian matters. It would try to make a positive contribution to the work of the Conference and hoped that international humanitarian law would be applied and respected by all, in order that the victims of armed conflicts might enjoy the protection which was indispensable for them.

34. Mr. MONTEIRO (Mozambique Liberation Front - FRELIMO) said that the struggle of the people of Mozambique against oppression, injustice and violence was not an isolated struggle, but a part of the general movement of peoples to achieve their independence. On several occasions FRELIMO had appealed to the Portuguese Government to try to settle their differences by peaceful means and to enable the people of Mozambique to enjoy their fundamental rights. Yet, the Portuguese Government had turned a deaf ear to those appeals.

35. He deplored the policy of repression that the colonialist Portuguese Government was pursuing in spite of the fact that it had signed the 1949 Geneva Conventions.

36. The revision of humanitarian law should not be allowed to become an academic debate; it was essential to establish a distinction between the aggressor and the victim and between the oppressor and the oppressed.

37. The draft Additional Protocols were mainly concerned with the traditional type of war between technically advanced countries and seemed to ignore the humanitarian rules applicable to guerrilla warfare, which had often - and wrongly - been considered as illegal and irregular. The texts should pay greater attention to the characteristics of that type of struggle and to the resulting needs. For example, the Conference should take into account the necessity of self-defence on the part of the civilian population and should examine the conditions required for enjoyment of prisoner-of-war status and the protection of civilian objects indispensable to the survival of the civilian population.

38. A clear definition should also be given of the field of application of draft Protocol I, and it should be stated explicitly that the Protocol applied also to wars of liberation, which were confirmed as international armed conflicts in United Nations General Assembly resolution 3103 (XXVIII).

39. He hoped that the Conference would discuss the question of the weapons - such as napalm, fragmentation bombs and incendiary weapons - that should be prohibited or subjected to restrictions for humanitarian reasons. If the work of the Conference led to the prohibition of those cruel and deadly weapons, considerable progress would have been made towards putting an end to the suffering inflicted by the forces of oppression on the peoples struggling for their independence.

40. In conclusion, he greatly regretted the absence of the representatives of the Democratic Republic of Viet-Nam and of the Provisional Revolutionary Government of the Republic of South Viet-Nam.

41. Mr. VIEIRA (Angola National Liberation Front - FNLA) said that the presence of Guinea-Bissau as a State was a stinging rebuttal of Lisbon's allegations that the Portuguese colonies, and Angola in particular, were overseas provinces of Portugal. He regretted, however, the absence of the Provisional Revolutionary Government of the Republic of South Viet-Nam, which was the rightful representative of the South Viet-Nameese people and would have been able to make a significant contribution to the work of the Conference.

42. It was imperative that the national liberation movements, which could give the Conference the benefit of their experience, should take part in the formulation of new humanitarian rules.

43. His delegation considered that the safeguards provided for the victims of armed conflicts were insufficient. In particular, the nature of the struggle waged by the national liberation movements - in which the whole population took part - had not been taken into account. Moreover, the FNLA condemned not only the use of prohibited weapons, but the use of force as a means of settling disputes.

44. The FNLA delegation agreed that the Conference was not the appropriate forum to sit in judgment on Portuguese colonialism, but wished to emphasize that Portugal, which was entitled to participate in the Conference as a signatory to the 1949 Geneva Conventions, constantly violated those Conventions and practised a policy of systematic oppression in its colonies.

45. Mr. MACDERMOT (International Commission of Jurists), speaking on behalf of the 49 non-governmental organizations signatories of the Memorandum on the two draft Additional Protocols, said that those organizations represented a significant fraction of world public opinion.

46. He stressed the need to put an end to the massacre of civilians which was a feature of modern warfare and was due to the total absence of discrimination in the choice of weapons and objectives and to the development of military techniques. The following principles must be observed: the civil population must have special protection ensuring its survival in all armed conflicts; the parties to a conflict and their armed forces must not have an unlimited right as to the choice of methods of combat and the objectives to be attacked; and the use of weapons, means and methods of combat which had indiscriminate effects, were exceptionally cruel and caused particularly grave suffering, should be

prohibited. In that respect, moreover, it was essential to go beyond mere general declarations which were of little effect: the weapons, means and methods of combat in question must be explicitly specified in the Protocols or become the subject of another additional protocol, and machinery must be set up to keep the list of prohibitions up to date.

47. Two other points were of capital importance. In the first place fundamental humanitarian principles must be applied in all armed conflicts whether internal or international. In that connexion, the non-governmental organizations welcomed the provisions of draft Additional Protocol II, but considered that they should be modelled more closely on those relating to international conflicts. Since the Second World War, there had been many controversies concerning the international or non-international character of most of the conflicts which had arisen. It therefore seemed desirable to envisage a system under which the protection given to combatants and to the civil population depended less on the assessment of the legal nature of the conflict in question. In particular, the combatants of resistance and liberation movements should be entitled to prisoner-of-war status and it should be possible to appeal to an international body on their behalf against any refusal to recognise that the conditions entitling a person to prisoner of war status had been satisfied.

48. Secondly, it was essential to provide guarantees for ensuring the effective application of the provisions of the humanitarian conventions. The non-governmental organizations were fully aware of the difficulties involved, but took the view that if the signatories to the 1949 Geneva Conventions and the Protocols intended to honour their signatures, they could not oppose the application of effective international procedures for ensuring their implementation. It was important not only to strengthen the role of the Red Cross, but also to set up, under the auspices of the United Nations, a permanent and impartial commission which would investigate complaints and publish its conclusions thereon.

49. Mr. NYATHI (Zimbabwe African Peoples Union - ZAPU) said that it was essential to keep the facts in mind when considering either international or localized conflicts. The guiding principle of the Conference's work should be the safeguarding and protection of human life.

50. There were always two parties to a conflict, the aggressor and the victim. It was the duty of the Conference to seek ways and means of alleviating the suffering of the victims and punishing the aggressors.

51. Despite repeated appeals to the United Kingdom by many international authorities, the people of Zimbabwe were in the throes of a bloody colonial war which had been further intensified: indeed, since 1965, over a hundred patriots had been hanged and over two hundred were awaiting death in prison.

52. Referring to the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly in 1960 (General Assembly resolution 1514 (XV)) and to the Convention concerning the Abolition of Forced Labour, adopted by the General Conference of the International Labour Organisation at its fortieth session in June 1957, he deplored the existence of "protected villages" in which the civil population whose property had been confiscated or destroyed was guarded by the police and the army and subjected to forced labour. The Conference should examine that question.

53. The racist policy of the colonial régime in Zimbabwe ran counter to the annex to United Nations General Assembly resolution 3068 (XXVIII), according to which apartheid was a crime against humanity, to the International Convention on the Elimination of all Forms of Racial Discrimination (General Assembly resolution 2106 (XX) annex) and to the Universal Declaration of Human Rights. Since the colonial régime was also violating the Charter of the United Nations and the 1949 Geneva Conventions by using force and destroying livestock and crops, the struggle of the people of Zimbabwe was fully justified by the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI)), and the combatants involved, like those of other national liberation movements, were entitled to enjoy prisoner-of-war status.

54. In conclusion, he regretted that the Conference had admitted as full participants in its work such aggressor countries as South Africa, Israel, Chile and the so-called Republics of Korea and Viet-Nam.

55. Mr. KATJAVIVI (South West African People's Organization - SWAPO) pointed out that Namibia was an international territory illegally occupied by the Government of South Africa, whose mandate had been revoked in 1966 by the United Nations General Assembly (resolution 2145 (XXI)) and which had paid no attention to the Advisory Opinion 1/ handed down by the International Court of Justice in 1971.

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1/ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p.16.

56. The justice of the Namibian people's cause had been borne out by various declarations and resolutions adopted by international bodies, whereas the policy of the South African Government had been universally condemned.

57. Namibian guerrillas were struggling against an oppressor who possessed vast economic resources, a highly developed police system and both conventional and non-conventional weapons.

58. It was important to ensure that the unequal conditions under which liberation movements were fighting were taken into consideration and that the rights of these movements were protected by international bodies. International humanitarian law must be adapted to the conditions of guerrilla warfare. Captured guerrillas must be regarded as prisoners of war; the use of chemical weapons and poisonous substances such as gas and napalm must be prohibited; any person injured by enemy action or during imprisonment must receive immediate care; and any person killed by the enemy must be given a decent burial.

59. Mr. ARMALY (Palestine Liberation Organization - PLO) said the Conference's decision to invite the national liberation movements undoubtedly reflected the desire of the international community to give satisfaction to the peoples which were conducting a just struggle for their right to self-determination. It was that very struggle which had revealed the inadequacies of the 1949 Geneva Conventions and had made their re-examination a matter of urgency. Those who had expressed reservations concerning the admission of the national liberation movements had shown quite clearly that their political interests outweighed humanitarian considerations. The PLO bitterly regretted the non-admission of the Provisional Revolutionary Government of the Republic of South Viet-Nam, whose experience would have been a great help to the Conference.

60. The PLO represented a people which had been the victim of colonialism and Zionist racism since 1948 and which, in view of Israel's attitude towards the resolutions of the United Nations General Assembly, had since 1965 taken up arms to regain its rights to life and liberty. The world was well aware of the motivations and the legitimacy of Palestinian resistance and a growing number of peoples and governments were lending it moral and material support. Since 1965, and especially since the war of 1967, Israel had been guilty of daily crimes against humanity, in flagrant violation of the 1949 Geneva Conventions. The PLO, on the other hand, had always offered its co-operation to international humanitarian bodies and the Palestinian Red Crescent worked in close collaboration with the ICRC. The PLO wished to put forward certain fundamental principles which the Conference might take into consideration in drawing up the new international humanitarian law: confirmation of the international character of wars fought

by national liberation movements; recognition of the prisoner-of-war status of combatants in national liberation movements; protection of the civilian population against the atrocities committed by colonialist and racist powers, such as arbitrary detention, collective reprisals, forcible displacements of persons, destruction of dwellings or any other objects having no military value, and use of cruel weapons.

61. The Geneva Conventions in fact already contained provisions based on those principles, but it was necessary to reaffirm them and to supplement them by clauses which would deprive the oppressors of the means of evading their obligations under cover of fallacious arguments.

62. Mr. PESTANA HEINEKEN (People's Liberation Movement of Angola - PLMA) welcomed the admission of the Republic of Guinea-Bissau to the Conference, but deplored the absence of the Provisional Revolutionary Government of the Republic of South Viet-Nam.

63. The international community should put pressure on the Portuguese Government to respect the 1949 Geneva Conventions in Angola, where it perpetrated acts of unspeakable barbarism. For its part, the PLMA had always taken care to spare the civilian population, as it would be seen from the measures taken in 1964 by its officers, who were always anxious to abide by humanitarian principles. Where the PLMA had resorted to violence, it had been compelled to do so by the Portuguese Government's refusal to solve the problem of Angola's independence by peaceful means.

64. He did not intend to go into the details of the draft Protocols before the Conference, since he would be able to do so at Committee meetings, but wished to emphasize that if the instruments drawn up by the Conference were to be adapted to contemporary realities, it was essential to provide effective implementation machinery. Indeed, those new instruments must not be allowed to remain a dead letter, as had the 1949 Geneva Conventions, which were constantly being violated.

65. Mr. NOKWE (African National Congress - ANC) said he fully endorsed the statement made by the representative of FRELIMO on behalf of the liberation movements and thanked all those who had worked so hard to secure the participation of those movements in the Conference.

66. The people of South Africa who had been oppressed for so long were convinced that one day their cause would triumph, especially in international institutions: that conviction had already been justified by the admission of the ANC to the Conference. The ICRC was to be commended for the great service it rendered to mankind and to the United Nations, which had been established after a

particularly deadly war. Although the disasters of the Second World War had particularly affected Europe, all the peoples of the world had combined to crush nazism and fascism, particularly peoples that had been under colonial rule at that time. Yet South Africa had maintained discrimination even on the battlefield, native Africans being assigned the hardest and most dangerous tasks. It had taken twenty-five years to change the situation, twenty-five years of suffering and of massacres assuming the proportions of systematic genocide.

67. The question of the representation of the people of South Africa seemed to have been finally settled at the twenty-eighth session of the United Nations General Assembly. The ANC was grateful to the Organization of African Unity and to all the nations which on that occasion had voted in accordance with the Charter.

68. The international community had supported the cause of the South African people in General Assembly resolution 3151 (XXVIII) on the policy of apartheid of the Government of South Africa. It was to be hoped that the question of the representation of the people of South Africa was now settled once and for all, despite the bitter opposition of the Pretoria régime.

69. The activities of the white racist régime of South Africa had rightly been condemned in the International Convention on the Suppression and Punishment of the Crime of Apartheid which had been adopted by the United Nations General Assembly; in that connexion, the preamble to General Assembly resolution 3068 (XXVIII) unequivocally laid down the duties of the international community in that respect. In accordance with that Convention and many conventions and resolutions of the United Nations and other international legislative bodies, the so-called Government of South Africa should be brought before an international tribunal to answer for its crimes against humanity. As some representatives had suggested and according to the precedent established at the Nurnberg Trial, the Conference must study means of punishing the South African criminals.

70. The ANC, for its part, would counter with revolutionary violence the racist violence of a régime which categorically rejected any possibility of peaceful change. It was not the Africans who were the terrorists, but the Pretoria Government, as the size of its military budget clearly proved. Its crimes even extended to annexation and aggression in Namibia, in defiance of international law and United Nations resolutions.

71. For several months, the racist regimes of Rhodesia and South Africa had been harassing Zambia by placing bombs at its frontiers; yet that form of aggression had not gone unnoticed since it had been referred to in the United Nations Security Council. For some

time, letter bombs and bombs in parcels had caused casualties in Botswana and Zambia. The activities of the South African racist régime extended throughout southern Africa, under the pretext of fighting communism.

72. In conclusion, he hoped that the wrong done to the Provisional Revolutionary Government of the Republic of South Viet-Nam by excluding it from the Conference would be righted.

73. The PRESIDENT announced that, in pursuance of resolution 3068 (XXVIII), adopted by the United Nations General Assembly, the General Committee had asked Committee I to consider that resolution.

74. Mr. MTAMBANENGWE (Zimbabwe African National Union - ZANU) said it was regrettable that, owing to political manoeuvres, the Provisional Revolutionary Government of South Viet-Nam had not been admitted to the Conference and that the Democratic Republic of Viet-Nam had withdrawn from it, although they had been parties to one of the most horrible conflicts the world had ever known.

75. The Conference had been convened for three reasons: the contradiction between States' declarations of intent and their actual attitude in armed conflicts, which often ran counter to the Geneva Conventions of 1949; the armaments race; and the use of methods of warfare which resulted in the indiscriminate destruction of property and human lives. In that connexion, there was an important omission in the Geneva Conventions with regard to sanctions. Indeed, States as well as individuals should be answerable for their criminal acts. International humanitarian law should not be reduced to mere declarations of intent. That was why his delegation welcomed the establishment of the Ad Hoc Committee on Weapons.

76. The Geneva Conventions should be amended to take into account the new situation created in the twentieth century by the struggle of peoples for their independence. In particular, the concept of war must be redefined and freedom fighters must be granted the status of combatants and, where necessary, prisoners of war: they must not be treated as criminals or traitors. Moreover, that treatment should be accorded to all combatants captured, irrespective of the army to which they belonged. Combatants should not be accused of crimes which were in fact committed by the entities of which they were only the agents.

77. In any case, it was not the aim of the liberation movements to destroy society; on the contrary, they sought to promote respect for fundamental human rights. It was the minority racist and colonialist régimes that were threatening world peace. In that connexion, he wished to dispel certain misunderstandings with regard to terrorism: the racist régimes were in fact perpetrating terrorism when they subjected to brutality and torture the freedom fighters

whom they captured or the unarmed civilian populations which they deported, shut up in camps, bombed or deprived of all means of survival. The ICRC could bear witness to the humane way in which the liberation movements treated the soldiers they captured.

78. The oppressors had at their disposal not only a formidable war machine, but also financial resources which enabled them to organize subtle propaganda campaigns to distort the truth and dissimulate their crimes.

79. Wars of national liberation were certainly international armed conflicts, as it was unequivocally recognized in several United Nations resolutions and declarations. His delegation would make every effort to ensure that the concept of armed conflict was clearly defined in the Conventions. The States which opposed the recognition of the international character of struggles for self-determination at the Conference were those which supported the minority racist régimes of south Africa. It was to be hoped that the duplicity of those States would be brought to light. The Geneva Conventions must not be allowed to remain a dead letter.

80. Mr. GRIBANOV (Union of the Soviet Socialist Republics) said he wished to protest strongly against the slanderous charges levelled against the policy of the Government of the Democratic Republic of Viet-Nam and the Provisional Revolutionary Government of the Republic of South Viet-Nam by the representative of the Republic of Viet-Nam, whose right to represent the whole of the Viet-Nameese people could not be recognized. The unmentionable conditions in which civilians were detained in South Viet-Nam must not be passed over in silence. Terror reigned in that part of Viet-Nam, as it did in Chile, and honest men could not fail to denounce facts which were condemned by world public opinion.

81. Mr. PI Chi-lung (China), speaking in the exercise of the right of reply, said that the Government of the Union of Soviet Socialist Republics had opposed the total prohibition and destruction of nuclear weapons and had engaged in preparations for war. Yet, in his statement at the 12th plenary meeting on 6 March 1974, the Soviet representative had tried to conceal those facts and to slander China.

82. The Chinese Government was in favour of disarmament, provided that it was genuine, and not a mere mockery. The super Powers which possessed vast stocks of nuclear weapons, should be the first to disarm. In fact, other countries which had inadequate defence potential should strengthen that potential to protect their sovereignty and independence. China refuted the allegations of the Soviet representative, who had tried to make it responsible for the threat which hung over the peoples of the world.

83. The Chinese Government intended, when the necessary conditions prevailed, to convene a real disarmament conference, with the specific aim of eliminating the nuclear threat created by the super Powers and bringing about nuclear disarmament.

84. Indeed, the much-vaunted World Disarmament Conference, so often mentioned by the Union of the Soviet Socialist Republics, was a mere fraud. The Soviet Union was playing a double game: while declaring itself to be in favour of disarmament, it refused to undertake not to be the first to use nuclear weapons; it advocated the prohibition of nuclear tests, but made considerable efforts to develop its nuclear potential. In fact, it sought to secure hegemony in that field, in order to compel the peoples of the world to yield to its blackmail.

85. When the Diplomatic Conference had been asked to consider the question of nuclear weapons, the Union of the Soviet Socialist Republics had opposed the suggestion on the grounds that that matter could only be discussed by the Conference of the Committee on Disarmament - although that body had achieved no results in twenty years.

86. The PRESIDENT declared the general discussion closed, the list of speakers being exhausted.

The meeting rose at 7.30 p.m.



SUMMARY RECORD OF THE TWENTIETH PLENARY MEETING

held on Thursday, 28 March 1974, at 10.25 a.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

REPORT OF THE CREDENTIALS COMMITTEE (agenda item 10)  
(CDDH/51 and Corr.1)

1. Mr. SANSON-ROMAN (Nicaragua), Chairman of the Credentials Committee, read out the report of the Committee (CDDH/51 and Corr.1). The credentials of the delegations of the Governments of Gabon, Pakistan, Paraguay and the Arab Republic of Yemen had arrived after the drafting of the report, and the Government of the Central African Republic had sent a telegram dated 20 March 1974 stating that it would not take part in the Conference. A representative of the Central African Republic had, however, attended the Conference.
2. The PRFIDENT suggested that the Conference should approve the report of the Credentials Committee, it being understood that delegations could formulate reservations.
3. Mr. PI Chi-lung (China), supported by Mr. MBAYA (United Republic of Cameroon), Mr. SHAH (Pakistan) and Mr. RATTANSEY (United Republic of Tanzania), proposed the deletion of paragraph 13 of the report.
4. Mr. SANSON-ROMAN (Nicaragua), Chairman of the Credentials Committee, pointed out that the text of paragraph 13 had been proposed by one of the members of the Committee and approved by all the others. It had seemed important to draw a distinction between the question of invitations and that of credentials.
5. Mr. MENCER (Czechoslovakia) said that his delegation had no objection to the report but could agree to the deletion of paragraph 13. He proposed that, in the French version, the words "en tant que coauteurs" should be added in paragraph 5, in order to bring the three texts into line.
6. Mr. MISHRA (India) said that he did not think it was necessary to put the question of deleting paragraph 13 to the vote.
7. Mr. MOLINA-LANDAETA (Venezuela) said that he would prefer that paragraph to be retained. He suggested that the proposal to delete paragraph 13 should be put to the vote.

It was so decided.

The proposal was rejected by 38 votes to 36, with 29 abstentions.

8. The PRESIDENT suggested that the Conference should adopt the report of the Credentials Committee.

The report of the Credentials Committee was adopted.

9. The PRESIDENT asked whether any delegations wished to express reservations.

10. Mr. CRISTESCU (Romania) said that he questioned the validity of the credentials of the delegation of the Saigon Administration and pointed out that the sole legitimate representative of South Viet Nam was the Provisional Revolutionary Government of the Republic of South Viet-Nam, which was a Party to the 1949 Geneva Conventions.

11. Nor did he recognize the right of the Phnom-Penh Administration to speak on behalf of the Khmer people, whose rightful representative was the Government of Prince Norodom Sihanouk.

12. Mr. CLARK (Nigeria) said that his delegation refused to recognize the Pretoria régime, which represented only a small minority of the population of South Africa and had established a system of concentration camps which constituted a perpetual violation of humanitarian law. The only rightful representatives of Namibia were the African National Congress (ANC) and the Panafrikanist Congress (PAC).

13. Mr. ROSENNE (Israel) protested against the unprecedented statement of the Iraqi delegation quoted in paragraph 8 of the report. He deplored the exploitation of the Credentials Committee for propaganda purposes and the violent animosity of certain governments towards Israel.

14. He wondered, moreover, whether the Iraqi delegation, whose Government had for more than 30 years been carrying on a colonialist war of aggression against a minority living within its borders, was in any position to question the representative capacity of any other delegation. His delegation was able to approve only those parts of the report which did not contain abusive political assertions.

15. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that his delegation had never recognized and would never recognize the credentials of the Saigon delegation which was illegally representing the Republic of Viet-Nam. It regretted the discrimination shown by the Conference against the Provisional Revolutionary

Government and would do everything in its power to ensure that that Government would participate in the second session of the Conference on an equal footing with other governments.

16. Nor did his delegation recognize the credentials of the Chilean delegation, which represented a military junta governing in violation of the rules of humanitarian law.

17. Only the representatives of the Government of Prince Norodom Sihanouk were entitled to speak on behalf of Cambodia.

18. Finally, his delegation contested the validity of the credentials of the South African and Portuguese delegations.

19. Mr. ABADA (Algeria) said that his delegation fully associated itself with the reservations formulated by Czechoslovakia, Senegal, Madagascar, and Iraq as recorded in the report (CDDH/51).

20. Mr. El Mehdi ELY (Mauritania) said that he associated himself with the reservations formulated by Senegal, Madagascar, the United Republic of Cameroon, Czechoslovakia and Iraq (ibid).

21. Mr. DUGERSUREN (Mongolia) said that he associated himself with the reservations with regard to South Viet-Nam formulated by Czechoslovakia and supported by Iraq, Senegal and Madagascar, as also those formulated by Senegal, Madagascar and the United Republic of Cameroon with regard to the credentials of South Africa and Portugal (ibid).

22. Finally, he reserved his position with regard to paragraph 13 of the report, which, in his opinion, opened the way to recognition of the credentials of the Saigon Administration.

23. Mr. PLAKA (Albania) protested against the recognition of the credentials of the representatives of the Phnom Penh clique, which, with the help of the American aggressor, was massacring the Cambodian people who were struggling for their independence. Their only legitimate representative was the Royal Government of National Unity of Prince Norodom Sihanouk. The decision taken by the Conference constituted interference in the affairs of that people and an injustice to them.

24. The credentials of the representative of the Saigon régime, which had been set up by the United States of America when the latter had occupied the territory of South Viet-Nam and which did not represent the South Viet-Nameese people, were unacceptable. The injustice inflicted on the Provisional Revolutionary Government, the sole legitimate representative of the Viet-Nameese people and a Party to the 1949 Geneva Conventions, should be repaired and a delegation of that Government should participate in the second session of the Conference.

25. Lastly, he protested against the recognition of the credentials of the Pretoria Government, which was depriving all the non-whites of their rights and was continuing to exploit them.

26. Mr. RATTANSEY (United Republic of Tanzania) associated himself with the reservations formulated by Senegal and Madagascar, on the one hand (CDDH/51, paragraph 4) and by Czechoslovakia on the other (ibid, paragraph 3).

27. He considered that the Portuguese delegation represented only the metropolitan territory of that country and that Mozambique was represented by the Mozambique Liberation Front (FRELIMO), Angola by the People's Liberation Movement of Angola (MPLA) and Guinea-Bissau by the representative of the Government of Guinea-Bissau, while Rhodesia was represented by the Zimbabwe African National Union (ZANU) and the Zimbabwe African People's Union (ZAPU)

28. As for the South African delegation, it represented only a minority of the population of South Africa.

29. Mr. PI Chi-lung (China) said that the participation in the Conference of representatives of the Lon Nol clique, which had usurped the name of Cambodia, was entirely illegal and that the Royal Government of National Unity alone had the right to represent the Cambodian people.

30. Similarly, both the absence of a delegation of the Provisional Revolutionary Government, which was the sole rightful representative of the population of South Viet-Nam and was a Party to the four Geneva Conventions of 1949, and the participation of the Saigon Administration, were unjustifiable and unreasonable.

31. The delegation of South Africa represented a racist minority régime and was in no way entitled to represent the people of that country.

32. The delegation of Portugal was not entitled to represent Angola or Mozambique, or Guinea-Bissau which had already achieved independence.

33. Finally, his delegation reserved its position with regard to paragraph 13 of the report.

34. Mr. APDINE (Syrian Arab Republic) associated his delegation with the reservations formulated by Czechoslovakia, Senegal, Madagascar and Iraq. He wished to make it clear that his reservation with regard to Israel was based solely on a conception of international law founded on the principle of legitimacy with regard to the recognition of Governments and States. The Syrian Arab Republic could in no way accept the fait accompli, and Israel owed its existence to a violation of international law.

35. Mr. AL-ADHAMI (Iraq) said that the false allegations made against Iraq were part of the propaganda designed to conceal the crimes perpetrated against the Arab and Palestinian peoples, as was attested to by the report of the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (A/8828), submitted to the twenty-seventh session of the United Nations General Assembly. He would like the author of those allegations to give some details about the Libyan civilian aircraft which had been shot down, the children who had been massacred in Egypt and the exploits of the special services which had executed a Moroccan citizen in Norway.
36. Mr. LECHUGA (Cuba) expressed reservations on the credentials of the delegations of the Saigon Administration, which was occupying the place of the Provisional Revolutionary Government of the Republic of South Viet-Nam, the so-called "Khmer Republic", which had been set up by foreign troops, the minority Government of South Africa, which violated human rights and had, moreover, been condemned by the United Nations, and the Chilean military junta, which did not represent the Chilean people and had chosen to dominate by murder and lies, in violation of the four Geneva Conventions of 1949 and all the articles of the draft Protocols considered by the Conference.
37. Mr. TASWELL (South Africa) said, in reference to the accusations made by delegations against his Government, that his delegation's credentials had been accepted and recognized by the Credentials Committee. In its statements his delegation had made no reference to certain Governments which had come to power as a result of military coups d'etat and which were none the less represented at the Conference.
38. He thought that the reservations formulated by certain delegations were prompted by political manoeuvres. A dialogue should be opened between the various groups in order to solve the racial problems which had not yet been settled.
39. In reply to the Nigerian representative, who had said that the African National Congress (ANC) and the Panafricanist Congress (PAC) should represent Namibia, he pointed out that those movements were merely two terrorist movements which represented only a small proportion of the population.
40. Mr. de ALCAMBAR-PEREIRA (Portugal) said that the reservations expressed by certain delegations were not, in his opinion, in conformity with the Committee's terms of reference.
41. Mr. ULLRICH (German Democratic Republic) reaffirmed his country's position and deplored the presence of the representatives of the Saigon Administration, who were not entitled to speak for the South Viet-Nameese people. The Provisional Revolutionary Government of the Republic of South Viet-Nam was a Party to the four

Geneva Conventions and was thus entitled to participate in the work of the Conference. He hoped that that Government would be able to exercise that right at the second session of the Conference.

42. He supported the reservations expressed by the delegations of Senegal and Madagascar appearing in paragraph 4 of the report.

43. He could not recognize the credentials of the delegation of Chile, whose Government violated the rules of international law.

44. Mr. KASASA (Zaire) said that he supported the statements made by the previous speakers regarding paragraph 4. It was obvious that the credentials of the delegation of South Africa were not acceptable, since that country did not represent Namibia. The credentials of the Portuguese delegation were acceptable only to the extent that they applied to that country's European territory.

45. Mr. Seuk Djoun KIM (Democratic People's Republic of Korea) welcomed the participation of the representatives of Guinea-Bissau and of the national liberation movements in the deliberations of the Conference. Those movements had struggled and were continuing to struggle against imperialist aggression.

46. He deplored the absence of the Provisional Revolutionary Government, which was the legal representative of the people of the Republic of South Viet-Nam, and the absence of the Royal Government of National Unity of Cambodia, which was the only authentic representative of the people of Cambodia. He hoped that those two Governments would participate in the work of the second session of the Conference.

47. He could not recognize the validity of the credentials of the South African delegation.

48. Mr. NCOH (United Republic of Cameroon) said that he reaffirmed the reservations made by his country, which appeared in paragraph 6 of the report, with regard to the credentials of the South African and Portuguese delegations.

49. He deplored the absence of the Provisional Revolutionary Government at the present session and hoped that it would participate in the work of the second session.

50. Mr. KRISHNADASAN (Zambia) associated his delegation with the reservations expressed by the delegations of Senegal and Madagascar.

51. He could accept the credentials of the Portuguese delegation if they were restricted to that country's European territory, as indicated in paragraph 5(b) of the report. With regard to the credentials of the South African delegation, which were referred to

in paragraph 5(a), he pointed out that the Government of that country was following a policy not only of racial discrimination but also of terrorism, both within and outside the country. For that reason, he could not accept the validity of that delegation's credentials.

52. Miss BOA (Ivory Coast) said that she questioned the validity of the credentials of certain delegations and associated her delegation with the reservations recorded in paragraph 5 of the report. However, her Government would like to see a dialogue opened in that connexion.

53. She hoped that the representatives of ZAPU and ZANU would participate with full rights in the work of the second session of the Conference.

54. Mr. HERCZEGH (Hungary) supported the reservations expressed by the delegations of Czechoslovakia, Senegal and Madagascar regarding the credentials of the delegation of the Republic of Viet-Nam. He considered that the Provisional Revolutionary Government was the sole authentic representative of the people of South Viet-Nam and he hoped that that delegation would be able to participate in the work of the second session of the Conference, and to contribute to the formulation and development of international humanitarian law.

55. Mr. CABRAL FIDEUS (Guinea-Bissau) said that he shared the opinion expressed by the representatives of Czechoslovakia, Senegal and Madagascar regarding the validity of the credentials of certain delegations. He hoped that all the national liberation movements would be able to participate with full rights in the work of the second session of the Conference.

56. Mr. KAKOLECKI (Poland) said that he agreed with the preceding speaker with regard to the validity of the credentials of certain delegations.

57. He drew the attention of the organizers of the second session of the Conference to the fact that no discrimination should be exercised in connexion with the Provisional Revolutionary Government and the Royal Government of National Unity of Cambodia.

58. He associated his delegation with those which had condemned the crimes committed by the military junta in Chile. His delegation did not recognize the validity of the credentials of that country's delegation.

59. Mr. LE VAN LOI (Republic of Viet-Nam) said that he rejected all the statements that had been made in connexion with paragraph 4 of the report. They were based on false propaganda designed to support the cause of Communist aggression against the Republic of Viet-Nam.

60. His delegation had already stressed the fact that the Provisional Revolutionary Government represented only a group of rebels who had been used as a front for the Hanoi army of aggression, and that the Viet-Cong had no control over the people of South Viet-Nam, who continued to oppose the aggression of the North Viet-Nameese Communists.

61. His delegation was unable to accept paragraphs 4 and 5 of the report of the Credentials Committee.

62. Mr. PROM (Khmer Republic) said that he would not reply to the offensive allegations of certain delegations, but he would like to offer a comment, make an appeal and express a hope.

63. He recalled the statement by Danton, which he had quoted at earlier meetings: "You cannot take your country with you if you abandon it".

64. He earnestly besought those who were concerned with the problem of his country to help in finding a solution which would bring peace to the Khmer people.

65. In conclusion, he expressed the hope that none of the countries represented at the Conference would ever have to face a situation similar to the one obtaining in Cambodia.

66. Mr. FISSENKO (Byelorussian Soviet Socialist Republic) said that he shared the opinion expressed by the representative of the Soviet Union.

67. His delegation was unable to accept the validity of the credentials of the representatives of the Saigon Administration, the Chilean military junta or the Phnom-Penh régime, or of the delegations of South Africa and Portugal.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE TWENTY-FIRST PLENARY MEETING

held on Thursday, 28 March 1974, at 3.40 p.m.

President: Mr. Pierre GRABER Vice-President of the Swiss  
Federal Council, Head of the  
Political Department

REPORTS OF COMMITTEES AND OF DRAFTING COMMITTEE (agenda item 11)

Report of the Ad Hoc Committee on Conventional Weapons (CDDH/47)

1. Mr. KALSHOVEN (Netherlands), Rapporteur of the Ad Hoc Committee on Conventional Weapons, said that that Committee's report (CDDH/47) differed from those of the other Main Committees in that its discussions had not been based on specific articles in the draft Protocols.

2. Its task had been to start a preliminary discussion at the intergovernmental level on the problems raised by the existence of certain conventional weapons which might cause unnecessary suffering or have indiscriminate effects. The most important part of the discussions had therefore had the character of an open debate, which the report reflected by giving an analytical description of the various ideas expressed and the trend of the discussion.

3. The first part of the report described the work programme of the Ad Hoc Committee. The second part, containing an analysis of the general debate, consisted of four main sections. The first, comprised in paragraphs 5 to 20, related to such general aspects as the relationship between the subject of the Committee's work and non-conventional weapons - nuclear and other weapons of mass destruction; the question of disarmament the role of certain conventional weapons in modern armed conflicts and the impact of their use on the protection of the civilian population. The second section - paragraphs 21 to 24 - set out the fundamental premises of the whole discussion of the issue of conventional weapons, as they had emerged from the debate. The third section - paragraphs 25 to 35 - gave the outcome of the debate concerning the criteria for assessing the permissibility of use of specific weapons; the main emphasis had been laid on the criteria of unnecessary suffering and indiscriminate effects. Finally, the fourth section - paragraphs 36 to 38 - set out the views expressed on the political character of any decision to prohibit or restrict the use of a specific weapon or category of weapons, together with reference to the enforcement of any such prohibition or restriction.

4. It would be seen that the part of the report devoted to the discussion of specific conventional weapons (paragraphs 39 to 51) was largely a reflection of what had been said by one delegation. In that connexion, he drew attention to the explanation by other delegations referred to in paragraph 39.

5. The discussion on the forthcoming Conference of Government Experts (paragraphs 52 to 63) had been generally constructive and it therefore seemed possible to look forward to that Conference with some optimism. He hoped that the Ad Hoc Committee's discussion and report would be of assistance to the Conference.

6. The PRESIDENT invited delegations to comment on the report of the Ad Hoc Committee on Conventional Weapons.

7. Mr. BLIX (Sweden) said that his delegation appreciated the ICRC's willingness to organize the Conference of Government Experts at Lucerne in June 1974. It was to be hoped that as many Governments as possible would be able to send experts to that Conference.

8. It was stated in paragraph 57 of the Ad Hoc Committee's report that unless sufficient voluntary contributions were pledged by the middle of April 1974, the Conference would have to be postponed. He therefore hoped that Governments would be as willing to share in the financing of the Conference as they were to participate in it. His Government was prepared to contribute a maximum of 30,000 Swiss Francs, or 6 per cent of the estimated cost.

9. Mr. PALACIOS TREVINO (Mexico) said that one of the most urgent humanitarian tasks of the current Conference was to identify categories of weapons whose use should be prohibited. His delegation was among those which had proposed the establishment of the Ad Hoc Committee and welcomed the convening of the Conference of Government Experts in June 1974. Napalm and other incendiary weapons needed priority attention; in fact, his delegation considered that the current session of the Conference should provide for suspension of their use pending a final decision on the matter. It was to be hoped that the second session would be able to reach such a decision.

10. Mr. DAYAL (India) said that efforts to ban the use of certain weapons could not succeed unless a balance was struck between humanitarian principles and the sovereign right of States to defend themselves. Since all weapons could be used to increase human suffering, it was unlikely that any list compiled would ever be complete. Careful consideration must therefore be given to the identification of criteria and of the categories of weapons to be included. His delegation intended to comment on that and other aspects of the problem at the Conference of Government Experts in June 1974, and hoped that participation in that Conference would be sufficiently wide to form a basis for general agreement.

11. Mr. KUSSBACH (Austria) said that his Government was ready to participate in the Conference of Government Experts in June 1974 and would give favourable consideration to the question of making an appropriate financial contribution to that Conference.

12. Mr. GIRARD (France) said that his Government would participate in the Conference of Experts at Lucerne and had already earmarked the sum of 18,000 Swiss Francs as its voluntary contribution to that Conference.

13. The PRESIDENT invited the Conference to take note of the report of the Ad Hoc Committee on Conventional Weapons (CDDH/47).

It was so decided.

Report of Committee III (CDDH/50 and Corr.1)

14. The PRESIDENT invited the Rapporteur of Committee III to introduce that Committee's report (CDDH/50 and Corr.1).

15. Mr. BAXTER (United States of America), Rapporteur of Committee III, said that some corrections should be made to the report. In paragraph 13, the fourth sentence should be replaced by the following: "Other delegations were of the opinion that the voting on articles of Protocol II did not depend on a decision on the scope of Protocol II, since the articles dealt with the protection of the victims of non-international armed conflict, which should be ensured whatever the scope of Protocol II might be". In the first sentence of paragraph 21, the phrase beginning with the words "pointed out that ..." should read: "pointed out that the words 'military operations' or 'attacks' should be substituted for the word 'warfare' appearing in the English text submitted by the ICRC". In the annex, under the heading "Article 49", the Syrian Arab Republic should be added as a co-sponsor of documents CDDH/III/65 and CDDH/III/76.

16. The Committee had discussed seven articles, which had then been referred to an open-ended Working Group consisting of the sponsors of the amendments submitted and other interested delegations. The Working Group had been able to submit proposals to the Committee with regard to five articles, namely, articles 43, 44 and 45 of draft Protocol I and articles 24(1) and 25 of draft Protocol II. The Committee had succeeded in adopting approximately two-thirds of those proposals, mainly without voting, but had encountered substantial difficulty with regard to article 44, paragraph 1, which had been referred back to the Working Group for further consideration. The Working Group had been unable to do more than identify the nature of the problem. In that connexion, he drew attention to the report of the Working Group to Committee III (CDDH/III/78/Add.1) which raised a number of questions requiring further consideration before the second session of the Conference.

17. In addition to the articles he had just mentioned, the Committee and its Working Group had begun to consider article 46 of draft Protocol I and article 26 of draft Protocol II, but had been unable to complete its work on them.

18. Section IV of the report dealt with each article in turn. An attempt had been made to identify some of the main issues raised during the Committee's discussion, to reflect the Working Group's discussions, and to record the decisions taken by the Committee. The Committee had understood that the subsequent adoption of other articles might entail changes in those already adopted.

19. The reservations expressed by a number of delegations about the expediency of considering draft Protocol II before a consensus had been reached concerning its scope and field of application were recorded in the Committee's report (CDDH/50 and Corr.1) and summary records.

20. The PRESIDENT invited delegations to comment on the report of Committee III.

21. Mr. ALVAREZ-PIFANO (Venezuela) said that Spanish interpretation services had not been provided for the meetings of the Working Group of Committee III. That constituted a violation of rule 51 of the rules of procedure and was detrimental to the progress of work. It was to be hoped that such a situation would not occur again.

22. Mr. MARTIN HERRERO (Spain) endorsed the comments made by the previous speaker. It would be recalled, however, that Spanish interpretation had been provided towards the end of the Working Group's meetings. The Secretariat might try to speed up the distribution of Spanish documents in the future.

23. Mr. TODORIĆ (Yugoslavia) said that there was an error in the French text of paragraph 40 of the report. In the fourth sentence, the word "accordée" should be replaced by "considérée".

24. The PRESIDENT invited the Conference to take note of the report of Committee III (CDDH/50 and Corr.1), as amended.

It was so decided.

#### CONSIDERATION OF DRAFT RESOLUTIONS

##### Draft resolution CDDH/40

25. The PRESIDENT asked whether the sponsor of draft resolution CDDH/40 wished the Conference to discuss that text at the current session.

26. Mr. VIEYTE (Uruguay) said that his delegation would prefer the draft resolution to be discussed at the second session of the Conference.

27. The PRESIDENT said it would be noted that the Uruguayan delegation had withdrawn draft resolution CDDH/40, with the intention of submitting it to the second session of the Conference in 1975.

Draft resolutions CDDH/I/60 and CDDH/I/69

28. Mr. KHATTABI (Morocco), speaking on behalf of his own delegation and those of Australia and Lebanon, introduced draft resolution CDDH/I/60, which dealt with the protection of journalists engaged in dangerous missions.

29. In resolution 3058 (XXVIII), the United Nations General Assembly had requested the Diplomatic Conference to submit its comments and advice on the draft articles on the protection of journalists engaged in dangerous missions in areas of armed conflict (A/9073, annexes I and II). The Conference had not had time to consider the matter in detail, and draft resolution CDDH/I/60 therefore requested the United Nations Secretary-General to allow additional time for the purpose, and provided that the question should be considered as a matter of priority at the second session of the Conference.

30. On the other hand, the sponsors had no intention of requesting absolute priority for the protection of journalists, to the detriment of Protocols I and II. He therefore asked the Swiss delegation whether it could not withdraw its amendment (CDDH/I/69), so that the Conference could adopt draft resolution CDDH/I/60 by consensus.

31. Mr. PICTET (Switzerland) withdrew his delegation's amendment in view of the Moroccan representative's explanation.

Draft resolution CDDH/I/60 was adopted by consensus.

Draft resolution CDDH/52 and Add.1

32. The PRESIDENT invited the Conference to consider draft resolution CDDH/52 and Add.1.

33. Mr. SULTAN (Arab Republic of Egypt) said that his delegation agreed with that resolution in principle but thought it preferable to defer its discussion until the reports of Committees I and II were available.

It was so decided.

The meeting rose at 4.45 p.m.



SUMMARY RECORD OF THE TWENTY-SECOND (CLOSING) PLENARY MEETING

held on Friday, 29 March 1974, at 10.30 a.m.

President: Mr. Pierre GRABER Vice-President of the  
Swiss Federal Council,  
Head of the Political  
Department

REPORTS OF COMMITTEES AND OF DRAFTING COMMITTEE (agenda item 11)  
(concluded)

Report of Committee II (CDDH/49)

1. Mr. MALLIK (Poland), Chairman of Committee II, introduced the report of that Committee (CDDH/49) in the absence of the Rapporteur. It had been the task of Committee II to consider the provisions of draft Protocols I and II concerning wounded, sick and shipwrecked persons, civil defence and relief, and the identification and marking of medical personnel, units and means of transport, and of civil defence personnel, equipment and means of transport. The Committee had begun by examining part II, section I, of draft Protocol I; it had completed its examination of articles 8 to 10, but not of article 11. Its efforts had been mainly concentrated on the various concepts which had not been defined in the 1949 Geneva Conventions. The definition of wounded and sick persons had been the subject of a long debate and had given rise to the following questions, among others: should only those whose injury or sickness was of a certain gravity be regarded as "wounded" within the meaning of the Protocol? What were the other categories of person who should be included in that term in order to be entitled to the special protection provided under part II? With regard to shipwrecked persons, the Committee had wondered whether the scope of that term should be extended to cover persons who should be assimilated to shipwrecked persons if they were in peril on land. With regard to medical units, the Committee seemed to be inclined to extend the definition proposed by the ICRC by specifying that medical installations designed for diagnostic purposes or for the prevention of disease were covered by that definition. With regard to the definition of medical personnel, the Committee had considered whether the term "chaplain", too, should be defined in article 8.

2. The Committee had also studied in considerable detail the problem of the specific field of application of part II as defined in article 9, since that provision was of fundamental importance in the application of the provisions of part II wherever hostilities occurred.

3. Article 10, which defined a basic principle of humanitarian law as far as respect and protection for the wounded and sick were concerned, had been the subject of considerable discussion. One amendment proposed to that provision had been designed to prevent any surgical intervention being carried out without the prior consent of the person concerned.
4. In view of the complexity of the problems and the large number of amendments submitted, the Committee decided to set up a drafting committee to study the proposals and draw up new proposals. A working group had drawn up a new version of articles 8 and 9, which had been submitted to the Drafting Committee. The Drafting Committee had then submitted to the Committee the proposals relating to those articles. The Committee had taken note of the proposals but had not wished to approve the draft articles, since they could not be definitively formulated until articles 8 to 20 had been examined as a whole. The consensus of the Committee had been that certain drafting questions relating to articles 8 and 9 should be taken up again at the second session of the Conference.
5. With regard to the draft Regulations concerning the Identification and Marking of Medical Personnel, Units and Means of Transport, and Civil Defence Personnel, Equipment and Means of Transport, submitted by the ICRC as an annex to Protocol I, the Committee had decided, in view of the technical nature of that draft, to set up a Technical Sub-Committee to study it. The Sub-Committee had drawn up a new version of the draft Regulations (CDDH/49, annex II), which had been submitted to Committee II for approval. A report had been drawn up by the Rapporteur of the Sub-Committee, but, owing to lack of time, had not been submitted to the Sub-Committee. At the twelfth plenary meeting of Committee II (CDDH/II/SR.12) several delegations had stated that the examination of the new version of the draft Regulations required government consultation. Accordingly the Committee, while taking note of the report and of the new version of the draft Regulations, had decided to postpone their examination until the second session of the Conference. The Technical Sub-Committee had drawn the attention of delegations to the recommendations submitted by the International Telecommunication Union and other international specialized agencies which had stressed the need to submit proposals relating to radio frequencies, signals and international codes to the competent international conferences.
6. Mr. MATTHEY (International Telecommunication Union) said that he would transmit in writing to the Secretariat a note pointing out a number of differences between the English and French texts of the report under consideration.
7. The PRESIDENT asked the Conference to take note of the report of Committee II. He thanked the Committee for the work it had done.

It was so decided.

Report of Committee I (CDDH/48)

8. Mr. MARIN-BOSCH (Mexico), Rapporteur, introduced the report of Committee I (CDDH/48), which had been adopted by 59 votes to none, with 22 abstentions. He pointed out that in paragraph 36 of the report the words "3 abstentions" should be replaced by "9 abstentions" and that, in the English and Spanish versions, the document numbers appearing in paragraph 31 required the insertion of the figure I. He drew the attention of the Conference participants to the recommendation in paragraph 37.

9. Mr. MISHRA (India) said that the Conference had so far confined itself to taking note of the reports of the Committees. The report of Committee I differed from the others by virtue of the recommendation appearing in paragraph 37. For that reason, he suggested that the Conference should adopt that report in its entirety in the form of a resolution (CDDH/53) reading:

"The Conference,

"Adopting the report of Committee I, containing its recommendation in paragraph 37,

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

10. On the basis of the consultations it had held with a large number of other delegations, his delegation considered that it should be possible for the draft resolution to be adopted by consensus, with possible reservations.

11. Mr. CLARK (Nigeria), Mr. CHOWDHURY (Bangladesh), Mr. SAHOVIC (Yugoslavia), Mr. RATTANSEY (United Republic of Tanzania), Mr. TARCICI (Yemen) and Mr. KASASA (Zaire) supported the draft resolution submitted by the representative of India.

12. Mr. MURILLO RUBIERA (Spain) said that his delegation had voted against article 1 in its amended form and would therefore not be able to welcome the adoption of that article by Committee I. His country's opposition to that article was based on questions of substance, for it could not agree that permanent and immutable categories of the law should be replaced by conceptions which lent themselves to various interpretations. Nevertheless, in a spirit of co-operation and compromise, his country would abstain if the draft resolution was put to the vote.

13. Mr. ABDINE (Syrian Arab Republic) supported the Indian draft resolution. As the report (CDDH/48) had been adopted by a large majority in Committee I, he did not think that there was any need to vote on it in plenary meeting. A minority of countries had been

against the adoption of article 1 as amended on the pretext that it was incompatible with the principle of universality. On the contrary, that principle was inherent in article 1, which aimed at expanding the scope of draft Protocol I by extending protection to new entities.

14. Mr. CUTTS (Australia) said that he supported the draft resolution submitted by the representative of India, thus changing the position that his delegation had adopted at the 13th meeting of Committee I (CDDH/I/SR.13), when it had abstained in the vote on article 1 as amended. At that time his delegation had explained that, although it favoured a broadening of the field of application of draft Protocol I, it feared that the terms used in paragraph 2 of the amendment (CDDH/48, paragraph 14) might be too restrictive and exclude all conflicts other than those enumerated. After due consideration, his delegation had realized that if paragraphs 1 and 2 were taken together and if the word "include" in paragraph 2 was taken literally, the list could be interpreted as not being exhaustive. On the basis of that interpretation, his delegation supported the text of article 1 which appeared in paragraph 14 of the report, as also the Indian draft resolution (CDDH/53).

15. Mr. ALDRICH (United States of America) noted that the draft resolution submitted by India represented an effort towards co-operation. In those circumstances, the United States delegation - which could not vote in favour of the draft resolution because of the contents of its preamble - would be prepared to accept it if it was adopted without a vote.

16. Mr. LEGNANI (Uruguay) said that he approved of the report (CDDH/48), which accurately reflected what had taken place in Committee I, but that he would vote against paragraph 37 in accordance with the position taken earlier by his delegation.

17. Mr. ESPINO GONZALEZ (Panama), noting that some delegations were expressing reservations with regard to the operative part of draft resolution CDDH/53, proposed that the words "Welcomes the adoption" should be replaced by "Decides to adopt".

18. Mr. MILLER (Canada) said that his delegation had not been able to support the new wording of article 1, since it could have been improved in such a way as to make it more universally applicable. Nevertheless, the draft resolution submitted by India seemed appropriate in the sense that it brought out the fact that it concerned one of the most important decisions of Committee I. Canada hoped that delegations would make good use of the interval that would elapse between the two sessions in order to consider the consequences of the adoption of article 1. In a spirit of

compromise, therefore, he could accept the Indian draft resolution if it was not put to the vote. In the same spirit, he asked the representative of Panama whether he would agree to withdraw his amendment in order to avoid giving rise to fresh controversies.

19. Mr. ESPINO GONZALEZ (Panama) withdrew his amendment.

20. Mr. DENG (Sudan) said that he supported the draft resolution submitted by India and welcomed the attitude that Australia had just adopted, as also the spirit of compromise which the United States representative had shown. He proposed that draft resolution CDDH/53 submitted by India should be adopted by consensus.

21. The PRESIDENT said that, if there were no objections, he would consider that the Conference adopted draft resolution CDDH/53 submitted by India by consensus.

It was so decided.

22. Mr. de ALCAMBAR PEREIRA (Portugal) said that, if the amendment to article 1, as it appeared in paragraph 14 of Committee I's report (CDDH/48), had been put to the vote, his delegation would have voted against that amendment.

23. The lines along which the Conference's proceedings had developed had served to reinforce the doubts felt by the Portuguese delegation about the Conference's resolve to develop humanitarian law in the direction of universality, impartiality and neutrality. That being so, the Portuguese delegation was not sure that it would be able to go on extending its co-operation to an undertaking that had been diverted from its original purpose.

CONSIDERATION OF DRAFT RESOLUTIONS (concluded)

Draft resolution CDDH/52 and Add.1 (concluded)

24. Mr. SULTAN (Arab Republic of Egypt) said that his delegation was now in a position to support draft resolution CDDH/52 and Add.1 without reservations.

25. The PRESIDENT said that, if there were no objections, he would consider that the Conference adopted draft resolution CDDH/52 and Add.1 by consensus.

It was so decided.

## CLOSURE OF THE SESSION (agenda item 13)

26. Mr. Eric MARTIN, President of the International Committee of the Red Cross, said that the ICRC was glad that the Conference had brought together such a large number of participants and welcomed the fact that some who had been unable to participate in the earlier proceedings had been able to make their voices heard.

27. The ICRC greatly hoped that the universality of the Geneva law would be preserved. The discussions that had taken place at the current session had indeed shown a real determination on the part of all the parties to maintain that universality; that constituted a positive result of the work done.

28. At that first session, the Conference had already considered a number of fundamental questions, and the ICRC sincerely hoped that, from the very outset of the second session, the Conference would continue to study the subject and would make rapid progress. He recalled that the International Conferences of the Red Cross, of which States were members, and the United Nations General Assembly had stressed the urgent need to reaffirm and develop the Geneva Conventions for the protection of victims of war.

29. The proceedings of the first session of the Diplomatic Conference had provided an opportunity of comparing the various opinions, and the approximately 250 amendments tabled represented a rich store of material which it would be well to study closely and to elucidate.

30. The ICRC remained entirely at the disposal of delegations for any information that they might wish to receive and for any task that they might care to entrust to it. It was preparing forthwith to convene a Conference of Government Experts on Weapons, which the present Conference had wished to see held. The Ad Hoc Committee on Conventional Weapons had made it possible for the ICRC to draw up a programme of work and to specify the terms of reference of the Government experts who were to meet at Lucerne from 4 to 28 June 1974.

31. The ICRC urged delegations to make good use of the interval that would elapse between the two sessions of the Diplomatic Conference to continue with their consideration of the problems and to endeavour, by means of contacts, to bring their points of view closer together and to resolve such differences as existed. It was convinced that, even in the most difficult cases, solutions were possible, for the proceedings had demonstrated that good will existed on the part of all the nations. Whatever happened, the universality of the Geneva law must be maintained, as one of the most precious assets.

32. In conclusion, he expressed the ICRC's deep gratitude to the delegations, not only because they had taken the two draft Protocols prepared by the ICRC as the sole basis for their discussions, but also because they had given renewed proof of their confidence in the ICRC, which was essential to it.

33. The PRESIDENT announced, in agreement with the officers of the Conference, that the Swiss Government intended to invite the participants to meet again the following year, on 3 February 1975, for a session which would probably last until mid-April, with a recess of one week at the most, at the end of March, for the Easter holidays. Several of the officers of the Conference had stressed that the second session must not, and could not, be a mere continuation of the work which had just been concluded and that, that being so, even if circumstances made it impossible to desist from holding a general debate, that debate should be as brief as possible in order to enable the Committees to resume their work as speedily as possible.

34. After thanking all those who had contributed to the smooth functioning of the proceedings during that first stage of the Conference, he said that, although the number of articles approved by the Committees was very small, the work performed during the session must not be assessed from the standpoint of volume alone, and that it had been necessary, in view of the magnitude of the task entrusted to the Conference and the importance of its aims, to define the starting-points very distinctly and to trace clearly the directions to be followed. That having been done, all the participating States would be able, in the interval until the following year, to ponder the matter in such a way as to ensure the success of their joint enterprise.

35. Mr. SULTAN (Arab Republic of Egypt), speaking on behalf of all the delegations and of all those participating in the Conference, thanked the Swiss Government, as the depositary of the Geneva Conventions of 1949, for having taken the happy initiative of convening the Conference and for the efforts it had made to ensure its success. Their thanks were due also to the City of Geneva for its hospitality, to Mr. Jean Humbert, Ambassador, Secretary-General of the Conference, for the successful organization of the Conference, and to the representatives of the ICRC for the help they had extended to the various committees during their discussions. Finally, speaking on behalf of all the delegations, he paid a tribute to Mr. Pierre Graber for the dignity, competence, objectivity and wisdom with which he had guided the proceedings of the Conference.

36. The PRESIDENT declared closed the first session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

The meeting rose at 12 noon

FIRST SESSION

(Geneva, 20 February - 29 March 1974)

TEXT OF STATEMENTS AND RESERVATIONS COMMUNICATED  
IN WRITING TO THE PRESIDENT OR THE SECRETARY-GENERAL OF THE  
CONFERENCE CONCERNING THE FOLLOWING DECISIONS ADOPTED IN  
PLENARY MEETING

(These statements and declarations are annexed in  
their original language and in alphabetical order.)

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1. Adoption by consensus of draft resolution CDDH/12 and  
Add.1 to 4 on the participation of the Republic of  
Guinea-Bissau (fourth plenary meeting)

Argentina  
Belgium  
Chile  
France  
Germany (Federal Republic of)  
Italy  
Liechtenstein  
Luxembourg  
Netherlands  
Paraguay  
Spain  
Switzerland  
Turkey  
United Kingdom of Great Britain and Northern Ireland  
United States of America

2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr.2 (French) on the participation of the national liberation movements (seventh plenary meeting)

France  
Germany (Federal Republic of)  
Liechtenstein  
Nicaragua  
Paraguay  
Spain  
Switzerland  
Turkey  
United States of America

3. Approval by consensus of elections of officers of the Conference (seventh plenary meeting)

Portugal

4. Rejection by the Conference of draft resolution CDDH/14 on the participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam (fifth plenary meeting)

Denmark

1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting)

Argentina

*Misión Permanente  
de la República Argentina*

*ante los*

*Organismos Internacionales en Ginebra*

Ginebra, 5 de marzo de 1974.

Sec.II

Nº 38

A S.E. el señor Embajador Jean HUMBER  
Secretario General de la Conferencia  
sobre la reafirmación y el desarrollo  
del derecho internacional humanitario  
aplicable a los conflictos armados

G i n e b r a .-

Señor Secretario General:

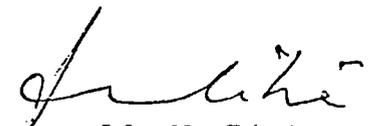
Tengo el agrado de dirigirme a V.E. con el objeto de hacer referencia a la resolución CDDH/12 relativa a la invitación formulada a la República de Guinea-Bissau y que fuera adoptada por consenso durante la 5a. sesión plenaria de la Conferencia.

Al respecto, el Gobierno de la República Argentina desea expresar que considera que el reconocimiento de Estados es un acto de carácter unilateral y expreso con proyección bilateral. Las decisiones de naturaleza multilateral, como fue el caso del consenso citado, no pueden interpretarse en esta etapa, en lo que a la República Argentina concierne, como reconocimiento de un Estado ya que dicho acto no admite interpretaciones por vía analógica.

Nuestro Gobierno otorga a esta comunicación el carácter de reserva, dentro de cuyo contexto debe interpretarse la adhesión de la Delegación argentina al consenso mencionado

Hago propicia la oportunidad para saludar a V.E. con mi consideración más distinguida.



  
~~Arnoldo M. Listre~~  
Ministro Plenipotenciario  
Jefe de la Delegación Argentina

1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Belgium

Admission de la Guinée-Bissau

Le représentant de la Belgique exprime la réserve que l'admission de la Guinée-Bissau aux travaux de cette Conférence par voie de consensus n'implique pas, aux yeux de son gouvernement, reconnaissance de la Guinée-Bissau en tant qu'Etat.

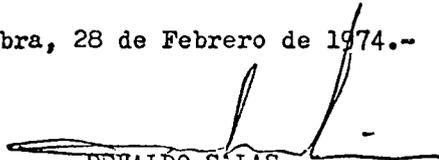
1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Chile

D E L E G A C I O N D E C H I L E

En relación a la admisión del Gobierno de la República de GUINEA(BISSAU) a participar en la Conferencia, conforme a la Resolución CDDH/12, aprobada por consenso en la sesión de la mañana de hoy, la Delegación de Chile debe hacer presente que, de haberse sometido a votación dicha Resolución, habría debido manifestar su abstención, por lo que le rogamos pedir al Sr. Secretario General tenga a bien dejar constancia en acta de la presente reserva.

Ginebra, 28 de Febrero de 1974.-

  
SEVALDO SALAS  
Presidente

AL SENOR  
PRESIDENTE  
DE LA CONFERENCIA SOBRE DERECHO HUMANITARIO  
G I N E B R A

1. Adoption by consensus of draft resolution CDDH/12 and Add. 1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

France

*Ministère  
des  
Affaires Etrangères*

DECLARATION DE LA DELEGATION FRANCAISE

°  
° °

En raison du caractère humanitaire de la Conférence et en vue d'en faciliter les travaux, la Délégation Française a pris acte du consensus dont le projet de résolution CDDH/12 a fait l'objet au cours de la séance plénière du 26 Février 1974.

La Délégation Française tient toutefois à marquer que si ce projet de résolution avait été mis aux voix, elle se serait abstenue./.

1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Germany (Federal Republic of)

Communication of the Federal Republic of Germany

The Government of the Federal Republic of Germany declares on the occasion of the admittance of Guinea - Bissao to the Diplomatic Conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts that it does not recognize Guinea - Bissao as a State nor its delegates as representatives of a legitimate government. The Government of the Federal Republic of Germany, however, takes note of the declaration of Guinea - Bissao to be prepared to contribute positively to the development of international humanitarian law.

Geneva 27 February 1974



1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Italy

RAPPRESENTANZA PERMANENTE D'ITALIA  
ALLA CONFERENZA DEL DISARMO

GINEVRA, LI

10, CHEMIN DE L'IMPÉRATRICE

Relativement à l'admission par consensus de la Guinée-Bissau à participer à la Conférence Diplomatique, la délégation italienne rappelle que son gouvernement ne reconnaît pas la Guinée-Bissau.

D'autre part, la délégation italienne ne peut ne pas se réjouir de toute contribution positive qui pourrait être apportée au succès de notre Conférence et par la même au développement du droit international humanitaire.

Il s'ensuit de cela que, si la résolution concernant cette admission avait été mise au voix, la délégation italienne aurait dû s'abstenir.

Genève, le 28 février 1974



1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Liechtenstein

DÉLÉGATION  
DE LA

Genève, le 4 mars 1974

PRINCIPAUTÉ DE LIECHTENSTEIN  
à la Conférence Diplomatique  
sur le Droit Humanitaire

DECLARATION DE RESERVE

En acceptant le consensus sur la participation de la République de Guinée Bissau à la Conférence Diplomatique, la Principauté de Liechtenstein ne se prononce pas sur le statut juridique de la Guinée Bissau qu'elle n'a pas reconnue.



1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Luxembourg

Grand-Duché du Luxembourg  
Délégation auprès de la  
Conférence sur le droit  
humanitaire

Admission de la Guinée-Bissau

Le représentant du Grand-Duché du Luxembourg exprime la réserve que l'admission de la Guinée-Bissau aux travaux de cette Conférence par voie de consensus n'implique pas, aux yeux de son gouvernement, reconnaissance de la Guinée-Bissau en tant qu'Etat.



1. Adoption by consensus of draft resolution CDDH/12 and Add. 1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Netherlands

Déclaration de la Délégation des Pays-Bas  
concernant l'admission de la Guinée-Bissau.

La Délégation des Pays-Bas exprime la réserve que l'admission de la Guinée-Bissau aux travaux de cette Conférence par voie de consensus n'implique pas, de la part de son gouvernement, reconnaissance de la Guinée-Bissau en tant qu'Etat.

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1/3) Genève, le 28 février 1974.

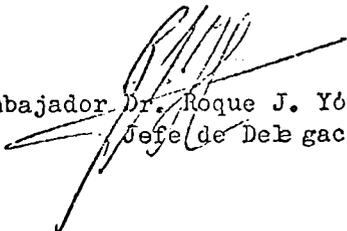
1. Adoption by consensus of draft resolution CDDH/12 and Add. 1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Paraguay

Febrero 28 de 1974

RESERVA DE LA DELEGACION DE PARAGUAY

La Delegación del Paraguay deja constancia de que no se asocia al consenso de mayoría por el que se resolvió invitar al "Gobierno de la República de Guinea (Bissau)" a participar en las deliberaciones de esta Conferencia.

  
Embajador Dr. Roque J. Yódice Codás  
Jefe de Delegación

I. Adoption by consensus of draft resolution CDDH/I2 and Add.I to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Spain



DELEGACIÓN PERMANENTE DE ESPAÑA  
CERCA DE LAS ORGANIZACIONES INTERNACIONALES  
GINEBRA

Ginebra, 28 de febrero de 1974

Señor Presidente:

De conformidad con lo decidido por V.E. al tratarse el proyecto de resolución "sobre la participación de la República de Guinea (Bissau) en la Conferencia Diplomática de Ginebra" (documento CDDH/12), tengo la honra de manifestarle lo siguiente:

La delegación española manifestó ya en las Reuniones preparatorias de Jefes de Delegación que España se ha atendido siempre al principio y práctica del Derecho Internacional de que sólo los Estados que posean de modo indiscutible los atributos de tales, pueden participar en una Conferencia Diplomática.

El Gobierno de España no ha reconocido a Guinea Bissau como Estado, y por consiguiente la Delegación española debe formular su reserva a la adopción de la resolución arriba mencionada.

Reciba, Señor Presidente, el testimonio de mi más atenta consideración.

A handwritten signature in dark ink, appearing to read 'Ramón Martín Herrero', written over a horizontal line.

Ramón Martín Herrero  
Presidente de la  
Delegación Española

S. E. Monsieur Pierre Graber,  
Presidente de la Conferencia  
Diplomática sobre el Derecho Humanitario  
Ginebra

1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Switzerland

Délégation Suisse  
à la Conférence Diplomatique  
sur le Droit Humanitaire

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Genève, le 28 février 1974

DECLARATION DE RESERVE

En acceptant le consensus sur la participation de la République de Guinée Bissau à la Conférence Diplomatique, la Suisse ne se prononce pas sur le statut juridique de la Guinée Bissau qu'elle n'a pas reconnue.



1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

Turkey

MISSION PERMANENTE DE TURQUIE

<sup>GENÈVE</sup>  
(100.318)-915

Genève, le 8 mars 1974

Son Excellence  
Monsieur Pierre Graber  
Vice-Président du Conseil Fédéral, Chef du Département Politique  
Président de la Conférence sur la Réaffirmation et le  
Développement du Droit International Humanitaire  
Applicable dans les Conflits Armés  
G e n è v e

Excellence,

J'ai l'honneur de vous prier de bien vouloir faire le nécessaire afin que les explications de vote suivantes de la part de la délégation turque figurent en bon lieu dans les documents officiels de la Conférence.

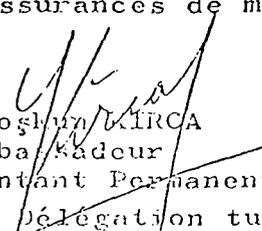
1. Doc CDDH/12: Projet de Résolution sur la participation de la République de Guinée-Bissau à la Conférence Diplomatique de Genève:

La délégation turque se serait abstenue dans le cas où le projet en question aurait été mis aux voix.

2. Doc. CDDH/22: Projet de Résolution sur la participation des mouvements de libération nationale à la Conférence Diplomatique de Genève:

La délégation turque, dans le cas où les paragraphes dudit projet de résolution avaient été mis aux voix séparément, aurait voté contre le troisième paragraphe du Préambule. La raison en serait que dans ce paragraphe il n'était pas spécifié que les mouvements de libération nationale dont il s'agissait seraient ceux qui étaient reconnus par les organisations gouvernementales régionales intéressées, comme il était spécifié dans le premier paragraphe du dispositif. Néanmoins, la délégation turque, s'il était mis aux voix aurait voté pour l'ensemble de ce projet de résolution.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

  
A. Coşkun MİRCA  
Ambassadeur  
Représentant Permanent  
Chef de la Délégation turque

1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (continued)

United Kingdom of Great Britain and Northern Ireland

GUINEA-BISSAU

The Government of the United Kingdom was unable to take part in the consensus because they do not recognise Guinea-Bissau as a State. They did not however object to the consensus because Guinea-Bissau has now acceded to the Geneva Conventions and in conformity with the criteria for invitation to this Conference laid down by the Swiss Government it is therefore eligible to attend. The United Kingdom Delegation's continued participation in the work of the Conference does not imply any recognition of Guinea-Bissau.

1. Adoption by consensus of draft resolution CDDH/12 and Add.1 to 4 on the participation of the Republic of Guinea-Bissau (fourth plenary meeting) (concluded)

United States of America

Reservation by the Delegation of  
the United States of America

The Delegation of the United States of America states that, had there been a vote on the question of an invitation to the Government of Guinea Bissau to participate in the Conference, the United States would have been obliged to oppose the invitation. The United States does not recognize this Government of Guinea Bissau and believes an invitation to it should not be given.

2. Adoption by consensus of draft resolution CDDH/22 and Corr. 1 (English) and Corr. 2 (French) on the participation of the national liberation movements (seventh plenary meeting)

France

Déclaration de la délégation française

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En raison du caractère humanitaire de la Conférence et en vue d'en faciliter les travaux, la délégation française a pris acte du consensus dont le document CDDH/22 intitulé "Projet de résolution sur la participation des mouvements de libération nationale à la conférence diplomatique de Genève" a fait l'objet au cours de la séance plénière du 1er mars 1974.

La délégation française tient toutefois à marquer que si ce projet de résolution avait été mis aux voix, elle se serait abstenue ./.

2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr.2 (French) on the participation of the national liberation movements (seventh plenary meeting) (continued)

Germany (Federal Republic of)

Communication of the Federal Republic of Germany

On the occasion of the adoption of Resolution CDDH/22 concerning the presence of Liberation Movements at the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in armed conflicts the Delegation of the Federal Republic of Germany declares the following:

The Delegation of the Federal Republic of Germany is not in a position to support Resolution CDDH/22 which confers on National Liberation Movements more rights than they can claim under International Law and are accorded to them by United Nations practice.

The Delegation of the Federal Republic of Germany understands that Resolution CDDH/22 is exclusively based on the specific humanitarian purpose of this Conference and without prejudice to decisions to be taken on other occasions.

The continued presence of the Delegation of the Federal Republic of Germany cannot be construed to confer on National Liberation Movements any legal status under International Law which they do not have at the present time.

Geneva, 1st March 1974



2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr.2 (French) on the participation of the national liberation movements (seventh plenary meeting) (continued)

Liechtenstein

DÉLEGATION  
DE LA  
PRINCIPAUTÉ DE LIECHTENSTEIN  
à la Conférence Diplomatique  
sur le Droit Humanitaire

Genève, le 4 mars 1974

En acceptant le consensus sur l'invitation des mouvements de libération nationale à la Conférence, la Principauté de Liechtenstein ne se prononce pas sur les questions politiques et juridiques en relation avec ces mouvements.



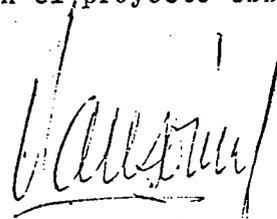
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2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr.2 (French) on the participation of the national liberation movements (seventh plenary meeting) (continued)

Nicaragua

MISION PERMANENTE DE  
LA REPUBLICA DE NICARAGUA  
ante la Oficina de Naciones Unidas  
y las organizaciones internacionales  
en Ginebra

La Delegacion de NICARAGUA desea dejar constancia que de haberse llevado a votacion el proyecto CDDH-22, se hubiera abstenido.



Danilo Sanson Roman

Embajador

Jefe de la Delegacion

Genève, 3 de marzo de 1974

2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr.2 (French) on the participation of the national liberation movements (seventh plenary meeting) (continued)

Paraguay

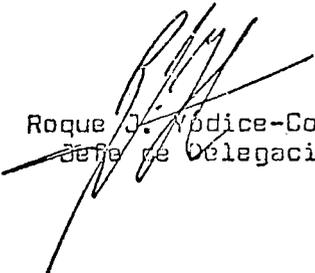


*Embajada del Paraguay en Alemania*

Ginebra, 1<sup>o</sup> de marzo de 1974

RESERVA DE LA DELEGACION DE PARAGUAY

La Delegación del Paraguay deja constancia de que, en caso de haber sido sometido a votación, no hubiese apoyado el proyecto de resolución, aprobado por consenso, en virtud del cual se resolvió invitar a ciertos Movimientos de Liberación Nacional a participar en las deliberaciones de esta Conferencia.

  
Roque J. Yodice-Codas  
Jefe de Delegación

2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr. 2 (French) on the participation of the national liberation movements (seventh plenary meeting) (continued)

Spain



DELEGACIÓN PERMANENTE DE ESPAÑA  
EN LAS ORGANIZACIONES INTERNACIONALES  
GINEBRA

Ginebra, 5 de marzo de 1974

Excmo. Señor  
Jean Humbert  
Embajador, Secretario General  
de la Conferencia Diplomática  
de Derecho Humanitario  
GINEBRA

Excmo. Señor,

Me es grato remitirle adjunto el texto de mi intervención en la sesión de la Conferencia Diplomática sobre la Reafirmación y el Desarrollo del Derecho Internacional Humanitario, de la tarde del viernes 1 del corriente, al ser aprobada la resolución CDDH. 22. Ruego considere ese texto como expresión de la reserva oralmente formulada por mi delegación respecto a la resolución citada.

Con tal ocasión me complazco en reiterar a V.E. las seguridades de mi alta consideración.

Ramón Martín Herrero

2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr.2 (French) on the participation of the national liberation movements (seventh plenary meeting) (continued)

Spain (continued)

DELEGACIÓN PERMANENTE DE ESPAÑA  
CERCA DE LAS ORGANIZACIONES INTERNACIONALES  
GENEVA

"Más vale tarde que nunca", dice un proverbio español, fácilmente traducible al francés y siendo ésta la primera vez que esta Delegación hace uso de la palabra ante el Pleno de la Conferencia, sean también mis primeras palabras, Señor Presidente, para expresarle nuestra felicitación por su elección para presidir las deliberaciones de esta asamblea y nuestros mejores deseos y augurios en el desempeño de su difícil cometido. Hecho esto, me cumple ahora dar igualmente expresión a la conformidad que nos merece la línea de conducta seguida por el Gobierno de la Confederación Helvética en cuanto a las invitaciones cursadas inicialmente para participar en esta Conferencia Diplomática.

En cuanto a la cuestión que ahora nos ocupa, esta Delegación ha de manifestar lo que sigue: Tenemos ante nosotros un documento calificado de "consenso" y aprobado como tal -en otras palabras- el texto de la Resolución CDDH 22, por el que se proponen sean invitados a participar en las tareas de la Conferencia, a representantes de los llamados Movimientos Nacionales de Liberación. En ocasión similar -similar pero no idéntica- planteada ante la Organización de las Naciones Unidas, la Representación española en aquella coyuntura se abstuvo. Y si ahora se hubiera votado, nuestra actitud habría sido también de abstención. España ha sido siempre fiel, y en esto su postura no ha variado; tuve ya el honor de manifestarlo en el curso de las reuniones preparatorias de Jefes de Delegación y este criterio ha sido reafirmado ayer dos veces, una por escrito y otra con nuestro voto -España ha sido siempre fiel, repito, al principio tradicional (que no veo motivo para abandonar) de que sólo los Estados que posean inequívoca e indiscutida la condición y características de tales, tienen título para participar, con pleno derecho, en una Conferencia Diplomática. Ciertamente que la resolución aprobada respeta este principio en cuanto no concede a los representantes de los Movimientos invitados derecho a voto (y es de celebrar que el "addendum" que ha venido a modificar el texto originariamente propuesto ha eliminado la equívoca alternativa "o Gobiernos") pero también lo es que se les reconocen facultades mayores que las habitualmente atribuidas a los observadores, propiamente llamados. No obstante, nuestra actitud sigue siendo de expectante abstención, bien entendido que sin que sirva de precedente para otras ocasiones que esta. Algo hay que añadir todavía. Esta misma mañana se nos ha leído y luego repartido una relación de los Movimientos que serían invitados en virtud de la Resolución. Entendemos que se trata de una comunicación a efectos puramente informativos, no incluida en la Resolución adoptada. Nos damos por enterados y tomamos nota sin que ello implique la aprobación de una relación hecha bajo la exclusiva responsabilidad de las Organizaciones de que procede y que la han autorizado.

Sólo resta a esta Delegación manifestar su esperanza y su confianza, o cuando menos el vivo deseo, de que la presencia aquí de los nuevos participantes recién invitados sirva efectivamente de contribución al progreso del Derecho Humanitario.

2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr.2 (French) on the participation of the national liberation movements (seventh plenary meeting) (continued)

Spain (concluded)

7 8 MARS 1974



Ginebra 14 de marzo de 1.974

DELEGACIÓN PERMANENTE DE ESPAÑA  
CERCA DE LAS ORGANIZACIONES INTERNACIONALES  
GINEBRA

Excmo. Sr. Jean Humbert  
Embajador,  
Secretario General, Conferencia Diplomática  
Derecho Humanitario  
GINEBRA

Excmo. Sr.

Me refiero a mi escrito de fecha 4 de marzo, puntualizando el criterio de la Delegación española respecto a la resolución CDDH/22, aprobada por "consenso". Con posterioridad a la aprobación de dicho documento, ha sido también aprobado en sesión plenaria el informe del Comité de Redacción que modifica algunos artículos del proyecto de Reglamento inicialmente propuesto. La delegación española al comprobar que la tarea de revisar dicho proyecto se ha confiado a un organismo, en su opinión, no lo bastante amplio o representativo para un cometido que no era el suyo propio, comprueba también que el citado informe aborda problemas sustantivos, particularmente en los Artículos 1º y 60 directamente relacionados con el "consenso" primeramente aludido, y lo hace además en forma que va implícitamente más allá de lo previsto en tal "consenso". En consecuencia esta Delegación reafirma frente a los citados artículos 1º y 60 del Reglamento ahora aprobado, la posición en su día mantenida respecto a la Resolución CDDH/22.

Aprovecho esta oportunidad para reiterar a V.E. las seguridades de mi más alta y distinguida consideración.

Ramón Martín Herrera

2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr.2 (French) on the participation of the national liberation movements (seventh plenary meeting) (continued)

Switzerland

Délégation suisse  
à la Conférence Diplomatique  
sur le Droit Humanitaire

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Genève, le 4 mars 1974

En acceptant le consensus sur l'invitation des mouvements de libération nationale à la Conférence, la Suisse ne se prononce pas sur les questions politiques et juridiques en relation avec ces mouvements.

*fr*

2. Adoption by consensus of draft resolution CDDH/22 and Corr.1(English) and Corr. 2 (French) on the participation of the national liberation movements (seventh meeting) (continued)

Turkey

MISSION PERMANENTE DE TURQUIE

<sup>GENÈVE</sup>  
(100.318)-915

Genève, le 8 mars 1974

Son Excellence  
Monsieur Pierre Graber  
Vice-Président du Conseil Fédéral, Chef du Département Politique  
Président de la Conférence sur la Réaffirmation et le  
Développement du Droit International Humanitaire  
Applicable dans les Conflits Armés  
Genève

Excellence,

J'ai l'honneur de vous prier de bien vouloir faire le nécessaire afin que les explications de vote suivantes de la part de la délégation turque figurent en bon lieu dans les documents officiels de la Conférence.

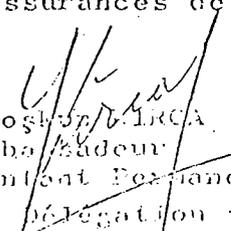
1. Doc CDDH/12: Projet de Résolution sur la participation de la République de Guinée-Bissau à la Conférence Diplomatique de Genève:

La délégation turque se serait abstenue dans le cas où le projet en question aurait été mis aux voix.

2. Doc. CDDH/22: Projet de Résolution sur la participation des mouvements de libération nationale à la Conférence Diplomatique de Genève:

La délégation turque, dans le cas où les paragraphes dudit projet de résolution avaient été mis aux voix séparément, aurait voté contre le troisième paragraphe du Préambule. La raison en serait que dans ce paragraphe il n'était pas spécifié que les mouvements de libération nationale dont il s'agissait seraient ceux qui étaient reconnus par les organisations gouvernementales régionales intéressées, comme il était spécifié dans le premier paragraphe du dispositif. Néanmoins, la délégation turque, s'il était mis aux voix aurait voté pour l'ensemble de ce projet de résolution.

Veuillez agréer, Excellence, les assurances de ma très haute considération.

  
A. Coşkun/IRCA  
Ambassadeur  
Représentant Permanent  
Chef de la Délégation turque

2. Adoption by consensus of draft resolution CDDH/22 and Corr. 1 (English) and Corr. 2 (French) on the participation of the national liberation movements (seventh plenary meeting) (continued)

United States of America

Mr. Chairman:

The Delegation of the United States of America understands and respects the desire of certain national liberation movements to take part in the work of this Conference. The Delegation expresses the hope that the participation of these groups will lead to greater respect for law and concern for basic precepts of humanity in the conduct of the armed conflicts in which these movements are taking part. It is with these considerations in mind that the Delegation of the United States is prepared to accept the adoption of this resolution (CDDH/22) by the Conference by means of a procedure that avoids a vote on the resolution.

Nevertheless, the Delegation of the United States believes that it should state its reservations to this resolution and its conviction that this extraordinary access to an international conference by these movements should not be considered a precedent for any other conference. The consistent view of the United States has been that the participation of such movements in a diplomatic conference is inappropriate. The uniquely humanitarian concerns of this Conference justify an exception to this position, but it should be understood that it is limited to the facts of the case before us.

2. Adoption by consensus of draft resolution CDDH/22 and Corr.1 (English) and Corr. 2 (French) on the participation of the national liberation movements (seventh plenary meeting)(concluded)

United States of America (concluded)

- 2 -

The Delegation of the United States wishes, in particular, to register its dissent from those parts of the second operative paragraph of the resolution which require the circulation of proposals and amendments submitted by delegations of these movements and which imply that such proposals and amendments will be voted on. In the view of the Delegation of the United States, such proposals and amendments should require action by the Conference only when a delegation of a State is a cosponsor.

If this resolution had been put to the vote, the Delegation of the United States would have voted to reject it.

3. Approval by consensus of elections of officers of the Conference (seventh plenary meeting)

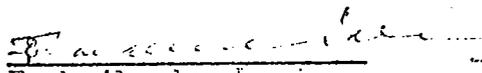
Portugal

Le 1er mars 1974

Monsieur le Secrétaire Général,

Je vous saurais gré de faire inscrire dans les documents pertinents de la Conférence que la Délégation portugaise se dissocie du consensus relatif aux désignations pour les postes de la Conférence.

Très respectueusement,

  
F. de Alcambur Pereira  
Chef de la Délégation du Portugal

4. Rejection by the Conference of draft resolution CDDH/14 on the participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam (fifth plenary meeting)

Denmark

Explanation of Vote on the Admittance of the Provisional Revolutionary Government of South Vietnam, submitted by the Delegation of Denmark

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The Danish Delegation has abstained on the vote to invite the Provisional Revolutionary Government of South Vietnam to take part in the Diplomatic Conference.

This abstention does not change the Danish Government's policy of recognition which is based on the customary principles of international law. In accordance with these principles the Danish Government recognizes the Government of the Republic of Vietnam.

In view of the humanitarian purpose of the Conference, the Danish Government has, however, considered it important that those who have a special interest or experience in the subjects before the Conference, should be allowed to participate in an appropriate form.





SECOND SESSION

(Geneva, 3 February - 18 April 1975)

PLENARY MEETINGS

SUMMARY RECORDS OF THE TWENTY-THIRD TO THIRTIETH MEETING

held at the International Conference Centre, Geneva

from 3 February to 18 April 1975

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



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REPORT BY THE PRESIDENT ON THE MEETING OF THE GENERAL COMMITTEE  
HELD ON 31 JANUARY 1975

6. The PRESIDENT said that the General Committee of the Conference had met on 31 January and the agenda contained in document CDDH/201 was the result of its discussions. He had been informed that one delegation intended to raise a point of order concerning agenda item 3 but he would suggest that it be presented after the report he wished to make concerning the meeting of the General Committee.
7. The General Committee had been unanimously of the opinion that the second session of the Conference should and could only be a continuation of the work accomplished at the first session; that should any debate begin in plenary it should be kept as brief as possible; and that the various Committees should resume their work without delay. The General Committee had thus confirmed the proposals he himself had made in consultation with that Committee at the twenty-second (closing) meeting (CDDH/SR.22) of the first session. The General Committee had considered that at its second session the Conference ought to make decisive progress in the task assigned to it, by making every effort to reach agreement on the draft articles so as to lay down the new rules needed for the protection of the victims of armed conflicts.
8. The General Committee had also considered that the Committees should resume their work where they had left off, and not reconsider, at any rate for the time being, any articles of the draft Protocols which they had already discussed or adopted.
9. The General Committee was of the opinion that articles adopted by Committees should not at the present stage be referred to the plenary. The complex subject-matter distributed among the various Committees formed a whole. In accordance with the practice of other Conferences on the elaboration of international law, Committees would wish no doubt to cover the whole of their programme, as laid down at the ninth plenary meeting (CDDH/SR.9), before referring articles back to the plenary.
10. The General Committee had next considered the working methods of the Conference. As he had indicated at the first session, the Secretariat would be pleased to receive suggestions from delegations for any improvements in the organization of the Conference. Those already received indicated that delegations wished meetings of Committees to be less frequent so as to allow time for smaller groups to meet, and therefore the Main Committees and the Ad Hoc Committee on Conventional Weapons would meet once daily only, the rest of the day being set aside for meetings of sub-committees, working groups, regional groups and so forth. He referred in that connexion to document CDDH/4/Rev.1 entitled "Organization and Procedures."

11. The General Committee felt that it was desirable that Committees should adopt working methods which would lead to maximum progress in the examination of the work assigned to them. First, the Chairmen of Committees should establish a time-table for their work. Second, Committees should adopt methods which would enable debates to be curtailed, and amendments submitted by many delegations should be introduced by one sponsor only.

12. Third, the amendments submitted at the first session and during the interval between sessions would be found in document CDDH/56 and Corr.2, and Add.1 to 3. Many of those amendments were very similar and the General Committee considered that they should be discussed first by small groups of interested delegations before being introduced in the Committees, thus saving time.

13. After having pointed out that agenda item 2 - "Filling of vacancies" could doubtless be settled rapidly, he said that he wished to add certain observations on behalf of the General Committee concerning agenda item 3 - "Consideration of the draft resolution entitled 'Question of the participation of South Viet-Nam in the Conference'" (CDDH/202 and Add.1 to 3). After having studied the draft resolution the General Committee had decided to include the question on the agenda.

14. The draft resolution had been accompanied by a letter from the representative of Algeria dated 30 January 1975, requesting that the matter be considered by the Conference at the opening of the second session. The General Committee had recognized the importance of the question raised by the draft resolution and was convinced that the Conference should try to solve it without polemics and as rapidly as possible. The General Committee felt that it would not be appropriate to reopen discussion of the substance, the question having been discussed at length at the first session; it was the problem of procedure only that should be examined. The General Committee had considered also that the question called for time for reflection as provided under rule 29 of the rules of procedure of the Conference. He therefore proposed, on behalf of the General Committee, that the rest of that day be left free for consultations and that the item be considered at the twenty-fourth plenary meeting. He hoped that discussion of item 3 would be completed at that meeting, unless the plenary should decide to delete the item from the agenda.

15. The General Committee wondered whether, in the circumstances, it would be possible for certain Committees, in particular Committees II and III, to begin work on the following day. Some delegations considered that the Committees could begin sitting immediately while others thought they could not begin until the question of the participation of South Viet-Nam had been decided.

16. He, personally, considered that Committees II and III should begin work on 5 February, whatever the state of the discussions in the plenary. Committee I and the Ad Hoc Committee on Conventional Weapons should begin to meet at the end of the debate in plenary. That was a compromise that he hoped would be accepted.

CONSIDERATION OF THE DRAFT RESOLUTION ENTITLED "QUESTION OF THE PARTICIPATION OF SOUTH VIET-NAM IN THE CONFERENCE" (CDDH/202 and Add.1 to 3)

Point of order

17. The PRESIDENT stated that a point of order had been raised by a delegation which did not wish item 3 to be included on the agenda.

18. Mr. ALDRICH (United States of America), speaking on a point of order, said that the draft resolution was deceptively entitled in that, although it purported to invite both the Governments in South Viet-Nam it had no relevance - and, indeed, could have no relevance - to the Government of the Republic of Viet-Nam. That Government was already present at the Conference and needed no new invitation. He doubted that the sponsors of the resolution intended to give it a second seat by virtue of their proposed additional invitation. And certainly it was clear that neither the adoption nor the rejection of the proposed resolution would have any effect on the right of the Government of the Republic of Viet-Nam to continue to participate in the Conference.

19. The conclusion was therefore unavoidable that the only effect of the adoption of the proposed resolution would be to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate in the Conference. However, that was precisely the proposal which had been considered and rejected at the first session of the Conference.

20. It was, of course, possible for the Conference to reconsider that question, but under rule 32 of the rules of procedure it could be reconsidered only if the Conference decided to do so by a two-thirds majority of the representatives present and voting. Therefore, as a point of order under rule 21 of the rules of procedure, he requested a ruling from the President that a two-thirds majority was required by rule 32 for the adoption of item 3.

21. In support of that request, he noted that there could be no doubt that rule 32 applied to reconsideration during subsequent sessions of the Conference, as well as during the same session. That was the plain meaning of the words and was supported by contrast with the comparable rule (rule 81) of the rules of procedure of the United Nations General Assembly which added the phrase "at the same session" after the words "it may not be reconsidered". He would also point out that the continuing nature of the Conference was demonstrated by the continuation of officers and committees from one session to another, and in many other ways by the terms of the programme of work for the second session set forth in document CDDH/4/Rev.1.

22. He was aware that some might suggest the applicability of rule 35, paragraph 4 of the rules of procedure concerning invitations on the grounds of its greater specificity. But surely the same reasoning would apply to rule 35, paragraph 2, concerning procedural questions. Either both could be reconsidered by a simple majority or both could be reconsidered only by a decision taken by a two-thirds majority. The only way in which rule 32 and rule 35, paragraphs 2 and 4 could be reconciled was to interpret them in their normal way - that decisions on procedure and decisions on invitations were taken by a simple majority vote in the first instance, but that once taken they could be reconsidered only if the Conference decided by a two-thirds vote to do so. Moreover, it seemed to him that there was every reason to avoid construing rule 35, paragraphs 2 and 4 as exempt from the two-thirds requirement of rule 32 in order to prevent situations in which questions of invitation and questions of procedure could continually be reopened many times during a session and during later sessions whenever the presence or absence of various representatives seemed to offer opportunities for different results. That was exactly the kind of chaos that rule 32 was designed to prevent.

23. He therefore proposed that the President rule on the applicability of rule 32. However, in view of the fact that under rule 21, the President's decision should be taken immediately, he suggested that a short recess might be beneficial for all parties.

24. Mr. SULTAN (Arab Republic of Egypt) said that, in his opinion, the question of the draft resolution, of which he was a co-sponsor, was not covered by rule 21 but by rule 35, paragraph 4 of which clearly provided that "any decision relating to invitations to participate in the Conference shall be adopted by a simple majority of votes of the representatives present and voting".

25. After some further discussion, in which the PRESIDENT, Mr. ALDRICH (United States of America), Mr. MILLER (Canada), Mr. GRIBANOV (Union of Soviet Socialist Republics) and Mr. BOUDJAKDJI (Algeria) took part, the PRESIDENT suggested that the meeting adjourn for a brief informal discussion.

the meeting was suspended at 11.45 a.m. and resumed at 12.10 p.m.

26. The PRESIDENT said it had been agreed that at the next plenary meeting the United States delegation would be free to raise a point of order concerning agenda item 3 - "Draft resolution entitled 'Question of the participation of South Viet-Nam in the Conference'" (CDDH/202 and Add.1 to 3): the item would remain on the agenda.

#### FILLING OF VACANCIES

27. The PRESIDENT said that having dealt with agenda item 1 and deferred agenda item 3 for consideration at its twenty-fourth meeting, agenda item 2 - "Filling of vacancies" - should now be examined.

28. The SECRETARY-GENERAL drew the attention of the Conference to document CDDH/33/Rev.1 concerning appointments to the various posts at the Conference. There was an error in item 11 since Mr. Espino Gonzalez had not been replaced but was continuing in office.

29. Mr. SULTAN (Arab Republic of Egypt), referring to Committee III, said that the Rapporteur, Mr. Baxter, would be absent for several weeks and would be temporarily replaced by Mr. Aldrich. It should be understood that Mr. Baxter would resume his functions upon his return.

30. Mrs. DARIIMAA (Mongolia) said she regretted that Mr. Dugersuren, Vice-Chairman of Committee III, would be absent for some time, but she could assure the Conference that he would return as soon as possible. While he was absent, Mr. Damdindorj would temporarily replace him.

31. Mr. EL MEHDI (Mauritania), referring to item 9, said that as deputy Head of delegation he would temporarily replace Mrs. Sall, but that the latter might resume her functions at a later stage.

32. The PRESIDENT suggested that the Conference approve the list of appointments (CDDH/33/Rev.1) by acclamation.

It was so agreed.

STATEMENT ON BEHALF OF THE DELEGATIONS OF THE AFRICAN COUNTRIES

33. Mr. CLARK (Nigeria), speaking on behalf of the delegations of African countries, said he wished to congratulate the President on his election to the Presidency of the Swiss Confederation. The importance of the present Conference was considerably enhanced by that circumstance and the African countries could assure him of their fullest support and co-operation.

34. South Africa's withdrawal from the Conference was regrettable. Although at the previous session it had been unable in good conscience to accept, for wartime, principles of humanitarianism and civilized behaviour which it did not respect in peacetime, the African delegations had hoped that the democratic environment of the Conference might teach South Africa that it was out of step with the rest of the world and might lead it to mend its ways.

35. The African delegations were concerned that, in withdrawing from the Conference, South Africa might no longer pretend to respect the principles of international humanitarian law applicable in armed conflicts. In the light of events in the southern part of Africa, whose people had resolved that man's inhumanity to man should cease, that was a serious development.

36. The racial situation in South Africa could no longer be tolerated. It would be resolved, preferably by peaceful means, but if not, by other means. The African delegations demanded an assurance that South Africa would abide by the provisions and principles of the Geneva Conventions. South Africa, unlike the People's Republic of China had given no valid reason for its absence. Its intentions were therefore unmistakable.

37. The PRESIDENT said that he took note of the statement by the representative of Nigeria.

The meeting rose at 12.25 p.m.



SUMMARY RECORD OF THE TWENTY-FOURTH PLENARY MEETING

held on Tuesday, 4 February 1975, at 10.35 a.m.

President: Mr. Pierre GRABER President of the  
Swiss Confederation

CONSIDERATION OF DRAFT RESOLUTION ENTITLED "QUESTION OF THE PARTICIPATION OF SOUTH VIET-NAM IN THE CONFERENCE" (CDDH/202 and Add. 1 to 3, Add.3/Corr.1, CDDH/202/Rev.1) (continued)

1. The PRESIDENT pointed out that the agenda for the current meeting contained one item only, namely "Consideration of draft resolution entitled 'Question of the participation of South Viet-Nam in the Conference'". He explained that, as agreed, the existence of that agenda item did not deprive any delegation of the right to oppose its consideration. He recalled that a reservation in that sense had been made by the representative of the United States of America at the twenty-third meeting (CDDH/SR.23) who considered that the question dealt with in draft resolution CDDH/202 and Add.1 to 3, Add.3/Corr.1, and CDDH/202/Rev.1 had already been the subject of a decision at the first session of the Conference and that it could therefore be reexamined only by a two-thirds majority decision in accordance with rule 32 of the rules of procedure. He also recalled the opposite opinion expressed by the representative of the Arab Republic of Egypt at the twenty-third meeting (CDDH/SR.23) who considered that any invitation to participate in the work of the Conference was covered by rule 35, paragraph 4 of the rules of procedure and should be decided by a simple majority. That was, moreover, the point of view expressed by the representative of Algeria and other co-sponsors in document CDDH/202.
2. He wished to inform the Conference that, in the circumstances, if he was requested to rule on which rule of procedure applied in the matter - rule 32 or rule 35, paragraph 4 - he would not reply immediately to such a request but would submit the question to the Conference. It was for the latter to interpret rules which it had adopted, especially when there was some doubt on the scope and the meaning of the rules in question.
3. Moreover, it seemed to him that participants could not come to a decision without examining the various views. The discussion must, however, be confined to procedural matters, and be restricted to the question whether rule 32 or rule 35, paragraph 4 should be applied. The substance of the joint draft resolution under discussion would not be considered until the prior question

of procedure had been settled, and that decision, which was itself procedural, would be taken by the Conference by simple majority. As had been agreed at the twenty-third meeting (CDDH/SR.23) the United States representative could again submit his request concerning the consideration of the joint draft resolution.

4. Mr. ALDRICH (United States of America) pointed out that the Conference was in fact re-opening for discussion a decision it had taken the previous year, since the only effect of the Algerian proposal would be to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam. The Conference could, of course, decide to reconsider the question, but by what majority would it take that decision?

5. There seemed to be some contradiction between rule 32 and paragraph 4 of rule 35. The only way of reconciling them was to assume that rule 35, paragraph 4, was applicable only in the case of an initial invitation and that reconsideration was possible only under the terms of rule 32 and following a decision taken by a two-thirds majority.

6. It seemed to him that the drafters of paragraph 4 of rule 35 of the rules of procedure had not envisaged the possibility of reconsidering a decision relating to an invitation; they had been concerned with invitations extended for the first time, in particular those to national liberation movements.

7. The purpose of rule 32, on the other hand, was to avoid any repetition of discussions the outcome of which might depend on the presence or absence of representatives. Its text differed from a similar provision of the rules of procedure of the United Nations General Assembly only by the words "at the same session", which appeared in the latter.

8. The question at issue might be posed in the following form: did the Conference consider that the proposal involved the reconsideration of a question on which a decision had been taken at the preceding session?

9. Mr. BOUDJAKDJI (Algeria) said that the question had been raised whether the joint draft resolution should be considered under rule 32 of the rules of procedure since, according to one speaker, the proposal put forward was one on which the Conference had already given a decision. It should be stated without hesitation in that connexion that the arguments advanced not only were untenable but arose from some confusion of thought, since the Conference was faced with an entirely new situation which should be considered solely under rule 35, paragraph 4.

10. Rule 32 was essentially designed to cover questions of substance, such as the consideration and adoption of the draft Additional Protocols to the 1949 Geneva Conventions. Rule 28 made that perfectly clear. Rule 29 applied to other proposals such as those concerning the consideration and adoption of final texts.

11. The new agenda item concerned participation by the two components of the State of South Viet-Nam in the proceedings of the Conference and not, as was the case at the first session, participation by one of the parties only.

12. The sponsors of the joint draft resolution simply intended to fill a gap and to deal with the question in its entirety, since neither of the two parties could claim to be the sole representative of the State of South Viet-Nam. In consequence, rule 32 could not be applied to the question of invitations, which was covered by rule 35, paragraph 4. There was no doubt about that: indeed, rule 35, paragraph 4, should have been a separate rule.

13. Any decision taken or to be taken under rule 35, paragraph 4, was essentially a procedural decision and could not be dealt with on the same footing as decisions taken or to be taken by the Conference, namely decisions on the clauses of the Conventions and their amplification. It was therefore indisputable that the risk which had been mentioned with regard to the rules of procedure was non-existent and that the position was completely clear.

14. Mr. NGUYEN CO THACH (Democratic Republic of Viet-Nam) said that he shared the views of the Head of the delegation of the Arab Republic of Egypt. He stressed the specific nature of decisions relating to invitations to participate in the proceedings of the Conference covered by rule 35, paragraph 4, of the rules of procedure, which constituted a separate question; they were neither questions of substance nor questions of procedure. He agreed with the Head of the delegation of the Arab Republic of Egypt about the meaning to be given to the expression "any decision". The conclusion to be drawn was that rule 32 was inapplicable. Furthermore, no reservations relating to that rule appeared in paragraph 4 of rule 35.

15. The proposed provisions were based on the principle of the universality of humanitarian law, which it was the purpose of the Conference to apply. It was necessary that participation in its proceedings should be as broad as possible, in order to ensure that the texts adopted fully reflected the requirements of humanitarian protection in a given historical situation. Moreover, the more numerous the participants in the Conference, the more would differing opinions be taken into account and the more widely would the

Geneva Conventions be applied. Any interpretation of the rules of procedure that would have the effect of restricting invitations to participate in the Conference ran counter to the principle of the universality of humanitarian law.

16. The joint draft resolution submitted by Algeria and twenty-five co-sponsors was very different from the draft resolution (CDDH/14) submitted at the first session, in that it was designed to secure the invitation of South Viet-Nam, which was temporarily represented by two Governments, and not merely to invite one Government.

17. It was important to remember that the situation had greatly changed in one year in South Viet-Nam, where the United States Government was waging a cruel war in order to maintain the Saigon Government and annihilate the Provisional Revolutionary Government in violation of the 1973 Paris Agreement on ending the war and restoring peace in Viet-Nam which clearly recognized the equal rights and obligations of both the provisional governments existing in the area until genuinely free democratic elections had been held. The Saigon Government could not claim to represent the whole of South Viet-Nam and, from the legal point of view, it was not present at the Conference.

18. It was only through the reconciliation of the two Governments of South Viet-Nam and the ending of intervention by the United States of America that a lasting peace could be established. The Conference was under an obligation to work towards that goal, and in doing so it should refrain from supporting one Government to the detriment of the other.

19. Since the signing of the 1973 Paris Agreement, and especially since the last summit conference of non-aligned countries, representing two-thirds of mankind, the number of countries recognizing the Provisional Revolutionary Government had risen from 31 to 44. There was also a clear tendency towards non-discrimination between the two Governments in the Western countries and in the United Nations. Certain United Nations organs and the International Committee of the Red Cross had established relations with both Governments for humanitarian questions, and a Provisional Revolutionary Government liaison office had recently been set up in connexion with the United Nations Office at Geneva.

20. Such auspicious international developments, taken in conjunction with the hostility to the Thieu Government, which had spread to every level of the population in South Viet-Nam, showed that the two Governments of the region should be invited to take part in the Conference.

21. Mr. YODICE CODAS (Paraguay) said that he was against the Conference reopening the discussion on the proposal to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam, which had been rejected at the fifth plenary meeting of the first session, on 28 February 1974 (CDDH/SR.5). Rule 32 of the rules of procedure dealt with the reconsideration of a proposal of any kind which had been adopted or rejected, whereas rule 35, paragraph 4, did not.

22. The wording of the first operative paragraph of the joint draft resolution was contrary to the facts, since the Government of the Republic of Viet-Nam was already taking part in the work of the Conference by right.

23. Mr. CRISTESCU (Romania) said that he, like the United States representative, thought that the political aspects of participation by South Viet-Nam in the Conference were important both for that country and for the Conference itself.

24. His views were the same as those of the representatives of Algeria and of the Democratic Republic of Viet-Nam. Referring to Conference resolution 1 (I) on decisions relating to invitations to take part in the Conference adopted at the first session (CDDH/55, p.3), he said that the item placed on the agenda of the second session was a new one from the legal point of view and was in accordance with the spirit of the Paris Agreement of January 1973. Both parts of South Viet-Nam must be represented at the Conference. In his view, it was incumbent upon a conference concerned with humanitarian law not to reject the important contribution South Viet-Nam could make. He urged the Conference to adopt a realistic attitude.

25. Mr. GRIBANOV (Union of Soviet Socialist Republics) requested that the draft resolution submitted by Algeria and twenty-five co-sponsoring countries should be carefully studied. He shared the opinion of the representatives of Algeria, the Democratic Republic of Viet-Nam and Romania with regard to the interpretation to be given to the rules of procedure.

26. Paragraph 4 of rule 35 explicitly stated that any decision relating to invitations should be adopted by a simple majority. Some participants had said that the question of the participation of South Viet-Nam in the Conference was governed by rule 32. It was, however, a new question. At the first session, the Conference had had before it a draft resolution concerning the participation of the Provisional Revolutionary Government in the Conference (CDDH/14). The question at the present session was that of the participation of the two Governments of South Viet-Nam, in conformity with the spirit of the Paris Agreement of 1973.

27. Contrary to what the United States representative had said, the question of the participation of South Viet-Nam had not been settled from the legal point of view and profound differences of opinion had been expressed in the Credentials Committee at the first session.

28. It was now necessary to find a solution to that problem in the context of paragraph 4 of rule 35.

29. Mr. LE VAN LOI (Republic of Viet-Nam) said that the Conference now had a set of rules of procedure which it had not had the previous year and which should enable it to carry out its work in a legal framework.

30. The proposals in the joint draft resolution were presented in an insidious manner and were designed to place a rebel Government which served as a cover for an army responsible for a war of aggression on an equal footing with the lawful Government of the Republic of Viet-Nam. The Government of the Republic of Viet-Nam had been invited to participate in the Conference in the same way as all Member States, and there was no need for that step to be repeated; the other so-called Government, to which paragraph 4 of rule 35 was alleged to apply, was in a different position. The participation of the Provisional Revolutionary Government had been rejected at the first session of the Conference, as was clear from the records of the meetings at that session, and that was a decision which could only be changed under rule 32. The effect which the adoption of the joint draft resolution would have on the application of rule 34 of the rules of procedure of the Conference according to which "each State represented at the Conference shall have one vote" should also be borne in mind. "New facts" had been mentioned in order to justify an invitation being sent to the Provisional Revolutionary Government. But the so-called Provisional Revolutionary Government was not a liberation movement according to the definition given by the United Nations in one of its resolutions and, so far, no regional organization of South-East Asia had recognized it as such. Nor was it an autonomous rebel group, since it was only a screen to hide the presence of the North Vietnamese armed forces.

31. The only new factor relating to South Viet-Nam was the number of illegally introduced Hanoi forces which had increased from 400,000 to 570,000 since the previous year.

32. Mr. GRAEFRATH (German Democratic Republic) said that at the first session his country had recommended that decisions relating to invitations to the Conference should be adopted by a simple majority. That had been the position from the third plenary meeting onwards: resolution 1 (I), which had been adopted well in advance of the rules of procedure, established a lex specialis with regard to invitations.

33. The matter under discussion concerned a special case, which could not be incorporated in a more general framework, and that first resolution could not be called in question by a procedural decision.

34. The United States representative was trying to place paragraphs 2 and 4 of rule 35 on the same level and to subordinate them to rule 32. That was not the meaning of resolution 1 (I). The Conference had adopted a special decision concerning the majority required for "any decision relating to invitations" to participate in its proceedings.

35. Rule 35, paragraphs 1 and 2 referred to proposals which were covered by rules 27 and 29. When a proposal had been adopted or rejected in accordance with rule 32 it could not be reconsidered unless the Conference so decided by a two-thirds majority vote.

36. Rule 32 was part of chapter V of the rules of procedure and could not be held to relate to any decisions for which special provision was made in a later rule.

37. As distinct from proposals concerning matters of substance and procedure or proposals which should be treated as such, rule 35, paragraph 4, unequivocally provided that any decision relating to invitations to participate in the Conference should be adopted by a simple majority. His delegation therefore believed that, in trying to subject a decision relating to an invitation to a two-thirds majority vote, the United States representative was in effect moving an amendment to the rule of procedure - in the event, to rule 35, paragraph 4 - and not making a proposal for a decision on which of two existing rules should be applied. A motion entailing reconsideration of the rules of procedure could not be put forward as a point of order, but was subject to rule 32; accordingly, the United States proposal could be discussed only after the Conference had decided to do so by a two-thirds majority.

38. He recommended that the proposed joint draft resolution should be adopted.

39. Mr. Woo Young CHUNG (Republic of Korea) said that, in his opinion, the Conference was continuing the work it had started the previous year and was therefore not required to reconsider questions on which it had already ruled. It could, of course, do so if it so decided, but in that case it would be obliged to comply with rule 32 of the rules of procedure.

40. Mr. SULTAN (Arab Republic of Egypt) said that he had stated at the twenty-third plenary meeting (CDDH/SR.23) that he was speaking as the sponsor of paragraph 4 of rule 35 and not as Chairman of Committee III. He was not in disagreement with the Rapporteur of that Committee whom he held in high esteem, but it seemed to him quite natural that two people could interpret a legal text in different ways.

41. Rule 32 and rule 35, paragraph 4, did not seem contradictory to him; only their fields of application were different. In his opinion, it was obviously still a simple majority that was needed under rule 35, paragraph 4, which prevailed over rule 32.

42. He believed that, since questions of invitations had been made the subject of a separate paragraph in rule 35, the intention had been that they should constitute a distinct category.

43. At the twenty-third plenary meeting, the United States representative had affirmed that to say that rule 35 prevailed over rule 32 implied that questions of procedure might likewise be reconsidered and adopted by simple majority vote. He did not share that view and he pointed out that the wording of paragraphs 2 and 4 of rule 35 was significant. Paragraph 2 stipulated that "Decisions of the Conference ..." and paragraph 4 that "Any decision ...". That language was clear and left no room for differing interpretations. There was in fact no call for interpretation: it was simply a matter of applying or not applying the rules.

44. Mr. ELIX (Sweden) said he thought it would be unreasonable to apply the reconsideration rule from one session to another with respect to invitation issues. Accordingly, rule 35, paragraph 4, should apply in the present instance.

45. Mr. WITEK (Poland) said he agreed with a number of earlier speakers in thinking that the question of the participation of South Viet-Nam could not be settled under rule 32.

46. The Conference must decide on the participation of two delegations from South Viet-Nam, one being the delegation of the Provisional Revolutionary Government, which had not been admitted to the first session, and the other the delegation of the Saigon administration, whose powers had been challenged in 1974. It was thus a new question that had to be decided, and it could only be settled under rule 35, paragraph 4.

47. In conclusion, he paid a tribute to the representative of Algeria who had submitted a draft resolution couched in conciliatory terms so that the Conference would be able to start its work in good time.

48. He expressed surprise that the Secretary-General of the Conference should have circulated document CDDH/203, whose contents were not in accordance with the spirit of the Conference.

49. Mr. KARASSIMEONOV (Bulgaria) said that the special situation prevailing in South Viet-Nam made it necessary for the two governments exercising control over that region to be represented. Any discrimination against either of them would be contrary to the Paris Agreement and would jeopardize the success of all attempts at reconciliation. Like the delegation of Algeria among many others, he believed that that was a new question which must be considered under rule 35, paragraph 4. Unlike rule 32, which related to matters of substance and was closely linked to rule 28, rule 35, paragraph 4, was a specific provision dealing with a particular case.

50. Mr. KIRALY (Hungary) was also of the opinion that the joint draft resolution, of which Hungary was one of the co-sponsors, came under rule 35, paragraph 4. When it was a question of interpreting legal texts specific provisions always prevailed over more general ones.

51. Mrs. DARIIMAA (Mongolia) was also of the opinion that the question raised in the joint draft resolution was a new one, that it concerned participation in the work of the Conference and that it must be settled in accordance with rule 35, paragraph 4, i.e. by simple majority vote. Though physically present, the delegation of the Government of Saigon was not participating legally in the Conference's work. At the first session, it had not been recognized by all delegations.

52. A conference on humanitarian law must take the general interests of the international community into account, and the draft resolution fulfilled that requirement.

The meeting rose at 12.30 p.m.



SUMMARY RECORD OF THE TWENTY-FIFTH PLENARY MEETING

held on Tuesday, 4 February 1975, at 3.10 p.m.

President: Mr. Pierre GRABER President of the  
Swiss Confederation

CONSIDERATION OF THE DRAFT RESOLUTION ENTITLED "QUESTION OF THE PARTICIPATION OF SOUTH VIET-NAM IN THE CONFERENCE" (CDDH/202 and Add.1 to 3, Add.3/Corr.1, CDDH/202/Rev.1) (continued)

1. The PRESIDENT invited the Conference to continue its discussion of the preliminary question of procedure which had to be settled before the Conference could embark on the substance of the joint draft resolution before it.
2. Mr. MAIGA (Mali) said that the Conference was faced with the question of deciding which rule of procedure - rule 32 or rule 35 - was applicable in the circumstances. Although the rules of procedure of the Conference were well conceived, the difficulty was one of interpretation of rule 32. The addition of a new item to the agenda had been requested by one delegation and the Conference had agreed to discuss that item. That purely procedural operation would now have to be followed by a discussion of substance on the question of the invitation to the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate and in his opinion it was clearly rule 35 and not rule 32 which was applicable.
3. Mr. TARCICI (Yemen) said he agreed that the Conference was faced with two conflicting interpretations of the question, based on rule 32 and rule 35, paragraph 4, respectively. It was in the interests of the Conference to decide which interpretation would best serve its aims and he considered that a decision on such a delicate question could only be taken by a simple majority.
4. Both Governments of South Viet-Nam were widely recognized and represented populations who were undergoing great suffering. Their contribution could not fail to be valuable. His delegation considered that the only possible interpretation was that which enabled both Governments to participate in the Conference without encumbrance. That was the more positive choice and the more consonant with the fundamental objectives of the Conference.

5. Mr. EL MEHDI (Mauritania) said that, as a co-sponsor of the joint draft resolution he endorsed the interpretation based on rule 35, paragraph 4, given by the representative of the Arab Republic of Egypt and other representatives. The content of rule 35, paragraph 4, was sufficiently eloquent and references to other rules only confused the issue. His delegation took the view that the question facing the Conference was one of procedure and should be resolved by a simple majority vote. His delegation supported the proposal to invite the representative of the Provisional Revolutionary Government of the Republic of South Viet-Nam.

6. Mr. GOZZE GUCETIĆ (Yugoslavia) said that his delegation considered that the only rule of procedure applicable to the question was rule 35, paragraph 4. It was also convinced that in the present international context such a question should be decided by a simple majority. He felt that the discussion was in danger of becoming over-abstract, whereas the right of the Provisional Revolutionary Government to participate in the Conference was a question of fundamental international law.

7. It was the duty of the Conference to respect the rights of both Governments, without discrimination against either.

8. Mr. MILLER (Canada) said that there were two questions before the meeting, the relationship between rule 32 and rule 35, paragraph 4, and the substance of the joint draft resolution itself.

9. It was only logical that rule 35, paragraph 4, which concerned voting procedure, should follow rule 32, which dealt with the conduct of business. He submitted, therefore, that rule 35, paragraph 4 was subject to rule 32, and that once any decision on participation had been taken by a simple majority under rule 35, paragraph 4, it then became subject to rule 32 if the matter was to be reconsidered.

10. The second question was whether or not the joint draft resolution was in substance the reconsideration of an issue settled in 1974. Had the proposal been to extend observer status to the Provisional Revolutionary Government, he would have been inclined to consider it a matter which had not been decided at the previous session, but if it was really an invitation to "both Governments of South Viet-Nam", the only effect of the decision would be - since one of those Governments was already present - to empower the President to invite the Provisional Revolutionary Government, and that was indeed the very issue decided last year. Even if the resolution was defeated, its only effect would be not to invite the Provisional Revolutionary Government, since it was doubtful that it could be considered to have expelled the Republic of Viet-Nam.

11. Because of that indirect attempt to question the participation of a delegation whose credentials had been adopted in 1974 by the Credentials Committee under rule 3, he considered that the proposal was out of order. Moreover, if both Governments were invited, they would presumably both have the right to vote, and that would violate rule 34, which stipulated that each State represented at the Conference should have one vote. His delegation therefore opposed the inclusion of that item.

12. Mr. MENCER (Czechoslovakia) said that the Conference was faced with a question of procedure and his delegation considered that only rule 35, paragraph 4 should be applied to that question. The proposal was a completely new one and only a simple majority was required. In his view the representative of Canada was very much mistaken, because the previous year in the Credentials Committee, of which he was a member, the credentials of the Saigon Government and of the delegation now present had been called in question.

13. Mr. WATANAKUN (Thailand) said that the proposal contained in the joint draft resolution was equivalent to the proposal to invite the Provisional Revolutionary Government contained in document CDDH/14, which had already been rejected after lengthy debate in the Conference. The Republic of Viet-Nam had a rightful seat in the Conference and to provide another seat for South Viet-Nam would be to offer an unasked-for privilege. The proposal to invite the Provisional Revolutionary Government had already been rejected and the joint draft resolution was in reality only a reintroduction of that original proposal. It could therefore only be dealt with under rule 32, which required a two-thirds majority.

14. Mr. LOUKYANOVITCH (Byelorussian Soviet Socialist Republic) said that, in common with most of the previous speakers, he felt that rule 35, paragraph 4, with the simple majority, was applicable to the Algerian proposal. That rule pertained to "any decision relating to invitations to participate in the Conference". Resolution 1 (I), adopted at the first session of the Conference, stated that "any decision relating to invitations shall be adopted by a simple majority", and of the six resolutions adopted at that Conference, none mentioned the question of the participation of the Provisional Revolutionary Government of South Viet-Nam. Some delegations had tried to suggest that rule 32 applied in that connexion, but the two rules covered quite different situations.

15. Mr. CAMEJO-ARGUDIN (Cuba) said there were certain affinities between his country and the Provisional Revolutionary Government and there was no doubt in his mind that rule 35, paragraph 4, was applicable to the case under discussion. Contrary to certain documents which had been circulated at the Conference, the question had absolutely nothing to do with the expansion of communism.

16. Mr. FREELAND (United Kingdom) said that the joint draft resolution submitted by Algeria and twenty-five other delegations was essentially a matter of the relationship between rule 35, paragraph 4 and rule 32. It had been argued that rule 35, paragraph 4, had some independence or primacy which exempted it from the effect of the wholly general words of rule 32, but, in the view of his delegation, rule 35, paragraph 4 was included in order to remove any doubt whether decisions relating to invitations to participate in the Conference were to be regarded as matters of substance, requiring a two-thirds majority by virtue of rule 35, paragraph 1 or as decisions on matters of procedure, requiring a simple majority under rule 35, paragraph 2. The effect of rule 35, paragraph 4 was to put it beyond any doubt that decisions on invitations to participate were decisions to be adopted by a simple majority. But that did not mean that when such a decision had been taken it could be reversed the next day or the next week, or even at the next session by a simple majority also. Decisions taken under rule 35, paragraph 4 were no more intended to be exempted from the general effect of rule 32 than were any others referred to in rule 35. Were all the decisions referred to in rule 35 to be regarded as so exempted, the result could be chaotic.

17. It had also been suggested that, because it was reasonable that the Conference should be able to reconsider a decision on an invitation to participate after a lapse of time and after some possible evolution in the circumstances of the particular case, the simple majority rule should be regarded as applicable to the question of the reconsideration of invitations. But that suggestion confused two different issues. The reasonableness or otherwise of reconsideration in a particular case would no doubt condition the way in which delegations would vote when the question whether to reconsider or not was put. But it was not a factor which should determine whether, under the rules, it was a two-thirds majority or a simple majority by which that question should be decided.

18. Lastly, there was the question whether what was involved was indeed reconsideration; and in the view of his delegation it undoubtedly was.

19. In so far as the joint draft resolution implied a decision to extend an invitation to the Government of the Republic of Viet-Nam, the reconsideration would be particularly superfluous. That Government had already been invited to participate and was represented in the Conference. Adoption or rejection of the draft resolution could not change that situation. In so far as the draft resolution implied a decision to extend an invitation to the "Provisional Revolutionary Government of Viet-Nam", a proposal in that sense had been rejected at the first session and it was clear from the draft resolution that the issue was, in effect, the reconsideration of that rejection.

20. In the circumstances the United Kingdom delegation considered that the inevitable conclusion must be that rule 32 should be regarded as governing the point at issue and that a two-thirds was required.

21. Mr. NISHIBORI (Japan) said that the current session was a continuation of the previous session, so that any decision made at the first session of the Conference was valid for the current and any future sessions, and rule 32 should apply.

22. Mr. ZAFERA (Madagascar) said he supported the view of Algeria and other delegations that rule 32 did not have any specific reference to invitations to participate, so that rule 35, paragraph 4 should be applicable to consideration of the joint draft resolution.

23. Mr. CRESPIE (Senegal) said that the suggested invitation to the Provisional Revolutionary Government was a question of procedure and not a question of substance. Since the application of rule 32 would not therefore be justified, there was no alternative but to deal with the matter under rule 35, paragraph 4.

24. Mr. RECHETNIAK (Ukrainian Soviet Socialist Republic) said that there was a clear difference between rules 32 and 35, paragraph 4, and it was a mistake to interpret the latter as being subject to rule 32, as had been suggested by the United States delegation. The question of an invitation to a country to participate was one that could be taken at any stage of the Conference. Rule 35, paragraph 4 was clear and unequivocal in its wording and should be applied. There had been no opportunity at the first session to listen to the views of the two Governments of South Viet-Nam but the Conference was now faced with the very real fact that there were two Governments in that country.

25. Mr. MILLER (Canada), exercising his right of reply, said that he wished to explain the grounds for his conclusion that the credentials of the delegation of the Republic of Viet-Nam had been accepted by the Credentials Committee under rule 3 of the rules of procedure. It was true that the delegations of Czechoslovakia, Senegal and Madagascar had expressed reservations about those credentials, but they had stated in paragraph 10 of the report of the Credentials Committee (CDDH/51/Rev.1) that they would not ask that any decision be taken during that session on the proposal not to recognize the credentials of the Saigon Administration and had agreed to recommend to the Conference that it approve the report of the Credentials Committee. Among the countries whose credentials were found to be in order was the Republic of Viet-Nam.

26. At the twentieth plenary meeting (CDDH/SR.20), the representative of Czechoslovakia had been recorded as saying that he had no objection to the report but could agree to the deletion of paragraph 13. A vote was taken and the proposal to delete paragraph 13 was rejected, whereupon the report was adopted. It was clear that the representative of Czechoslovakia and others had reservations about the credentials of the Republic of Viet-Nam, but in an annex to the report of the Credentials Committee (CDDH/51/Rev.1), it was stated that that country's credentials were found to be in good and due form.

27. Mr. BOUDJAKDJI (Algeria), on a point of order, requested that a letter dated 3 February 1975 (CDDH/203) regarding certain decisions taken at a Conference of Heads of State or Government of non-aligned countries should be withdrawn from circulation.

28. The PRESIDENT said that the circulation of a document at the Conference did not mean that everyone agreed with its contents.

29. Mr. BOUDJAKDJI (Algeria), speaking on behalf of the co-sponsors of the joint draft resolution, said it had been decided to rephrase operative paragraph 1 of the resolution to read "Decides that all the parties in the armed conflict in South Viet-Nam that have acceded to the Geneva Conventions of 1949 should be invited to participate in the Conference."

30. The PRESIDENT said that the procedural question before the Conference was whether the decision to consider the joint draft resolution should be taken under rule 35, paragraph 4, of the rules of procedure as proposed by the sponsors of the draft resolution, or under rule 32 as proposed by the delegation of the United States of America. Since proposals submitted to the Conference must be considered in their chronological order, that of the sponsors of the draft resolution would be put to the vote first.

31. Mr. ALDRICH (United States of America) said he thought that it would be fairer to ask each representative in turn which of the two rules it preferred.

32. The PRESIDENT said that such a procedure would depart somewhat from standard voting practice at international conferences. If there were no objection, however, he was prepared to adopt it because it seemed practical. It meant that, when voting, representatives would state whether they were in favour of rule 35, paragraph 4, or in favour of rule 32, or whether they abstained.

33. Mr. CRISTESCU (Romania) said that, although he preferred the President's first proposal regarding the method of voting, he requested a vote by roll-call.

34. The PRESIDENT, after again explaining, in reply to a request for clarification by the representative of India, the method of voting he had just proposed, said that there appeared to be no objection to a roll-call vote.

A vote was taken by roll-call on the question whether rule 32 or rule 35, paragraph 4 should be applied.

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

In favour of rule 32: Republic of Korea, Central African Republic, Republic of Viet-Nam, Dominican Republic, Khmer Republic, United Kingdom of Great Britain and Northern Ireland, Chad, Thailand, Turkey, Uruguay, Federal Republic of Germany, Saudi Arabia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Cyprus, Costa Rica, El Salvador, Spain, United States of America, Gambia, Greece, Guatemala, Honduras, Ireland, Israel, Italy, Japan, Jordan, Liechtenstein, Luxembourg, Malaysia, Nicaragua, New Zealand, Sultanate of Oman, Paraguay, Netherlands, Philippines.

In favour of rule 35, paragraph 4: Arab Republic of Egypt, Libyan Arab Republic, Syrian Arab Republic, Yemen, Democratic People's Republic of Korea, German Democratic Republic, Democratic Republic of Viet-Nam, Romania, Sudan, Sri Lanka, Sweden, Czechoslovakia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Algeria, Australia, Bangladesh, Byelorussian Soviet Socialist Republic, Bulgaria, Congo, Cuba, Finland, Gabon, Ghana, Guinea, Hungary, India, Indonesia, Iraq, Madagascar, Mali, Malta, Morocco, Mauritius, Mauritania, Mongolia, Nigeria, Uganda, Peru, Poland.

Abstentions: Qatar, San Marino, Holy See, Switzerland, Trinidad and Tobago, Tunisia, Venezuela, Zaire, Argentina, Colombia, Ivory Coast, Denmark, United Arab Emirates, Ecuador, France, Upper Volta, Iran, Kuwait, Lebanon, Mexico, Norway, Pakistan, Panama, Portugal.

The result of the vote was 41 in favour of rule 32 and 41 in favour of rule 35, paragraph 4, with 24 abstentions.

35. The PRESIDENT stated that the method of voting chosen had not produced any result, since forty-one delegations had voted in favour of rule 35, paragraph 4 and forty-one delegations in favour of rule 32. According to standard voting practice, in the event of an equally divided vote, the proposal was considered to have been rejected.

36. He saw no alternative in the present instance, since both proposals had been rejected, to returning to the first more traditional voting method he had originally proposed, namely, to vote on a proposal. What should now be voted on was whether the question of opening a discussion on the substance should be decided in accordance with the provisions of rule 35, paragraph 4.

37. If there was once again an equally divided vote, he would be obliged to take note that the proposal was rejected under rule 45 of the rules of procedure, but he earnestly hoped that the second vote would produce a result.

38. Mr. MISHRA (India) asked that the meeting be suspended for a short time before the vote was taken so as to allow the various groups to meet and express their views, but at the request of the PRESIDENT he said he would not press his request for a suspension.

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

The Ukrainian Soviet Socialist Republic, having been drawn by lot by the President, was called upon to vote first.

In favour: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Algeria, Australia, Bangladesh, Byelorussian Soviet Socialist Republic, Bulgaria, Congo, Cuba, Finland, Gabon, Ghana, Guinea, Hungary, India, Indonesia, Iraq, Madagascar, Mali, Malta, Morocco, Mauritius, Mauritania, Mongolia, Nigeria, Uganda, Peru, Poland, Arab Republic of Egypt, Libyan Arab Republic, Syrian Arab Republic, Yemen, Democratic People's Republic of Korea, German Democratic Republic, Democratic Republic of Viet-Nam, Romania, Sudan, Sri Lanka, Sweden, Czechoslovakia,

Against: Uruguay, Federal Republic of Germany, Saudi Arabia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Cyprus, Costa Rica, Spain, United States of America, Gambia, Greece, Guatemala, Honduras, Ireland, Israel, Italy, Japan, Jordan, Liechtenstein, Luxembourg, Malaysia, Nicaragua, New Zealand, Sultanate of Oman, Paraguay, Netherlands, Philippines, Republic of Korea, Central African Republic, Republic of Viet-Nam, Dominican Republic, Khmer Republic, United Kingdom of Great Britain and Northern Ireland, Chad, Thailand, Turkey.

Abstentions: Venezuela, Zaire, Argentina, Colombia, Ivory Coast, Denmark, Ecuador, El Salvador, France, Upper Volta, Iran, Kuwait, Lebanon, Mexico, Norway, Pakistan, Panama, Portugal, Qatar, San Marino, Holy See, Switzerland, Trinidad and Tobago, Tunisia.

39. Mr. PONS (El Salvador) asked to be allowed to correct his vote. He said he had abstained by mistake and would like his vote to be recorded as against the proposal.

40. Mr. ADDOR (Haiti) said he had been absent when his turn came to vote, and that he wished to vote against the proposal.

41. Mr. MAIGA (Mali) said that if a delegation was absent when its turn came to vote, all it could do was to state how it would have voted had it been present. There could be no question of its taking part in the vote.

42. The PRESIDENT said that, in his opinion, though he acknowledged that participants might be of a different opinion, it was the practice that if a delegation was absent when called upon to vote, it could not vote later on. What it could do was, before the result of the voting was known, to do what El Salvador had just done and correct its vote.

43. Mr. ALDRICH (United States of America) said that he saw nothing in the rules of procedure to prevent a delegation which had been absent at the time of voting from having its name added subsequently.

44. Mr. BOUDJAKDJI (Algeria) said that, if the voting had not been declared closed and the closure was to be deferred, he wished to propose that the meeting be suspended and that the credentials of the representative who had added his name be examined.

45. The PRESIDENT said he noted that the Conference shared his opinion that a delegation which arrived late was no longer entitled to vote.

46. He then announced the result of the voting, which was as follows:

41 in favour, 41 against, with 23 abstentions.

47. Mr. MAIGA (Mali) said he questioned whether the change of vote announced by one delegation, which it had been decided should be permitted, was valid. That was not the opinion of his delegation.

48. The PRESIDENT said he must make it clear that the El Salvador delegation had informed the Secretary-General of its correction of its vote well before the end of the voting, although he (the President) had waited until the end of the roll-call before announcing the change. He had made the announcement before anyone knew the result of the vote.

49. The result of the vote meant that, pursuant to rule 45 of the rules of procedure, the proposal must be rejected since it had not obtained a majority of the votes. The question whether the joint draft resolution submitted by Algeria and twenty-five co-sponsors, should be discussed would have to be decided by a two-thirds majority. That was the result of the vote by the Conference and as the voting rule had thus been established by the Conference, the next question to be decided was whether the joint draft resolution submitted by Algeria and twenty-five co-sponsors should be discussed or not. Obviously it could only be discussed if two-thirds of the delegations voted accordingly.

50. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that although the proposal relating to paragraph 4 of rule 35 must be considered as rejected, that did not mean that the Conference had pronounced in favour of rule 32. The proposal relating to rule 32 should also be put to the vote.

51. The PRESIDENT said he must point out to the representative of the Soviet Union, and indeed to all the participants, that if the Conference followed his suggestion it might find itself in a most embarrassing situation. It could happen that the vote was equally divided on the two proposals, or that after one proposal had been rejected the other was also rejected, with the result that it would then be impossible for the Conference to vote because it had no rule for voting. Looked at objectively and impartially, the result of the vote could be interpreted only in the following way: the Conference having rejected, in accordance with the rules of procedure, the proposal to apply rule 35, paragraph 4, all that could be done now was to apply the provisions of rule 32.

52. Mr. CAMARA (Guinea) said that, since the Conference had not agreed to apply either rule 35, paragraph 4, or rule 32, it was only logical that it should attempt to find a solution to the problem.

53. The PRESIDENT said that, in his opinion, the situation was quite clear. He would come back to it after hearing the representative of Algeria, who had asked to speak.

54. Mr. BOUDJAKDJI (Algeria) said that he did not think the situation was quite clear. He felt very strongly that the same treatment should be accorded to both proposals, and formally moved that a vote be taken, but only after examination of the credentials of certain delegations.

55. The PRESIDENT, after referring to the provisions of the rules of procedure concerning the credentials of representatives, particularly rule 5, said that delegations present were participating in the Conference in accordance with the rules and that their participation implied the right to vote. He believed he was entitled to state that the vote had been carried out in full conformity with the rules of procedure and that it was therefore not possible to request the annulment of the vote on the pretext that certain credentials needed to be examined. However, the Conference was master of its own procedure and if it decided against the opinion he had just expressed, he would be forced to conclude that the vote should not be considered as valid because the credentials of some delegation had not been examined. In that case, a fresh vote would have to be taken.

56. He appealed to participants to begin discussing the substance and to give up disputes over procedure.

57. Mr. BOUDJAKDJI (Algeria) said that he had already asked for a vote to be taken on rule 32 and for the credentials of representatives to be examined. He suggested that the meeting be adjourned, unless the Secretariat could give an assurance that all the delegations were entitled to vote.

58. The SECRETARY-GENERAL, speaking at the request of the PRESIDENT, said that, in conformity with the decision taken by the Conference at its first session, credentials that had been accepted for the first session were valid for the second. He confirmed that, to his knowledge, all the delegations present at the meeting were entitled to vote.

59. Mr. CRESPIN (Senegal) said that, as one of the co-sponsors of the joint draft resolution the position of his delegation was known. He regretted having been, for reasons of State, unavoidably absent when the vote was taken.

60. Mr. GRIBANOV (Union of Soviet Socialist Republics) quoting rule 41, requested that a vote be taken on rule 32. That, however, was a question of procedure and did not settle the question of substance which should be discussed as soon as possible. He proposed that the Conference approve the proposal to adjourn until the following day.

61. The PRESIDENT said that some delegations had requested that a vote be taken on rule 32, although under rule 45 the equal division of votes had meant the rejection of rule 35, paragraph 4. He felt he was entitled to ask those delegations what would happen if - and the possibility was quite conceivable both proposals were rejected. He noted that there was a proposal to vote on the application of article 32. The Conference was sovereign and could decide the question - did it or did it not wish to vote on rule 32?

62. Mr. MENCER (Czechoslovakia) said he wished to remind the Conference that his delegation, together with other delegations, had stated in 1974 that it did not recognize the credentials of the Saigon administration, with regard to which, in his opinion, no decision had been taken.

63. Mr. NGUYEN CO THACH (Democratic Republic of Viet-Nam) proposed that a second vote be taken on rule 32. He noted that the President had asked what would happen if the result were the same as for the two previous votes, but he thought the President had been considering only one possibility. The opinions of all those present should be respected. Furthermore, the President had himself contemplated at the beginning, two kinds of vote, in chronological order. It was only right therefore that a vote should be taken on rule 32.

64. The PRESIDENT, replying to the representatives of the Democratic Republic of Viet-Nam, Algeria and the Soviet Union, said he wished to remind the Conference of the situation in which it was placed. In his capacity as President, on the vote on the applicability of rule 35, he had given the only interpretation which appeared to him appropriate, namely, that the equally divided vote meant that, under rule 45 of the rules of procedure, the proposal was rejected. He did not see how it could be disputed that, once the proposal to apply rule 35, paragraph 4 had been rejected, rule 32 applied. That was how he had decided as President. Obviously anybody could appeal against his decision. He noted that that was the case, and that his decision was challenged; he would, therefore, have to put to the vote the question whether, contrary to the decision he had taken, rule 32 should now be put to the vote.

65. Mr. MISHRA (India), speaking on a point of order, moved the adjournment of the meeting in accordance with rule 26.

The motion for adjournment was adopted.

The meeting rose at 6.30 p.m.



SUMMARY RECORD OF THE TWENTY-SIXTH PLENARY MEETING

held on Wednesday, 5 February 1975, at 10.20 a.m.

President: Mr. Pierre GRABER President of the  
Swiss Confederation

In the absence of the President, Mr. H. Brillantes  
(Philippines), Vice-President, took the Chair.

CONSIDERATION OF THE DRAFT RESOLUTION ENTITLED "QUESTION OF THE PARTICIPATION OF SOUTH VIET-NAM IN THE CONFERENCE" (CDDH/202 and Add.1 to 3, Add.3/Corr.1, CDDH/202/Rev.1) (continued)

1. The PRESIDENT announced that Mr. Graber, the President of the Conference, had had to leave for Berne to attend to his duties as President of the Swiss Confederation. He requested the Secretary-General of the Conference to sum up the situation at the time of the adjournment of the preceding meeting.
2. The SECRETARY-GENERAL said that, after the second roll-call vote on the application of rule 35 of the rules of procedure, the President of the Conference had ruled that in accordance with rule 45, the proposal to apply rule 35, paragraph 4, to the opening of discussion of the draft resolution submitted by Algeria and twenty-five co-sponsors had been defeated, and that the terms of rule 32 therefore applied.
3. Some delegations had challenged that ruling and had proposed that the Conference should also take a second vote on the application of rule 32.
4. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that, as a result of the first roll-call vote, the application of both rule 35, paragraph 4, and rule 32 had been rejected. In the absence of a second vote on the applicability of rule 32 the result of that first vote should stand.
5. The PRESIDENT said that if there was an appeal against the President's ruling to the effect that the rejection of the proposal to apply rule 35, paragraph 4, implied approval of the application of rule 32, he would put the appeal to the vote. There should be no discussion of any matters other than the manner of voting on the President's ruling.
6. Mr. BOUDJAKDJI (Algeria) said that, since a first vote had been taken on both rules and the voting on each of them had been equally divided, the second vote should likewise be taken on both rules. No presidential ruling was required in such a case.
7. The PRESIDENT said that he intended to put the President's ruling to the vote. Any further discussion would be out of order.

8. Mr. AMETONOU (Dahomey) said he regretted that he had been unavoidably absent when the votes had been taken. If he had taken part in the vote on the applicability of rule 35, paragraph 4, he would have considered his vote to be without prejudice to his position on rule 32. Only by a second vote on both rules could the question of applicability be decided. Any other solution would be inequitable.

9. The PRESIDENT said that he, too, regretted that certain representatives had been unable to take part in the voting. Their presence might have made it possible to take a clear decision. Statements such as that of the representative of Dahomey should be made only in explanation of vote after the vote had been taken. Once the intention to take a vote had been announced, only points of order on that specific issue could be allowed until the voting had been completed.

10. Mr. SANSON-ROMAN (Nicaragua) requested a roll-call vote in accordance with rule 37 of the rules of procedure.

11. Mr. MISHRA (India) said that the President's ruling had undoubtedly been made in an effort to break the deadlock. If a vote was taken on the ruling and it was not upheld, the Conference would still be in the situation from which it was trying to extricate itself. Without any reflection on the President's capacity to make a ruling, the situation might be saved by taking a vote on the applicability of rule 32. He appealed to the President to apply a solution which would make it unnecessary for delegations to take political measures.

12. The PRESIDENT reiterated his appeal to representatives to make their observations in accordance with the rules of procedure. The fact that the President's ruling had to be put to the vote was not of his own choosing but was a consequence of the rules of procedure. He would do everything in his power to ensure compliance with those rules.

13. In reply to a question by Mr. BOUDJAKDJI (Algeria), the SECRETARY-GENERAL said the President had stated that, in accordance with rule 45 of the rules of procedure, the result of the second roll-call vote meant that the application of rule 35, paragraph 4, had been rejected and that consequently the question of the discussion of the joint draft resolution would have to be settled by a two-thirds majority.

14. The PRESIDENT said he had noted that requests for the floor had been made by a number of delegations. In addition to the requirements of the rules of procedure to which he had drawn attention, recognition of the right to speak was among the powers and duties of the presiding officer in the exercise of good order.

15. Mr. GOZZE-GUČETIĆ (Yugoslavia) said that he had requested the floor at the twenty-fifth meeting to explain his delegation's position on the applicability of rule 32, but that the meeting had been adjourned before he had had an opportunity to speak. Since the applicability of rule 35, paragraph 4, had been put to the vote a second time, it would be only reasonable and equitable for the applicability of rule 32 to receive the same treatment.
16. The PRESIDENT said the Yugoslav representative's statement had not related to the manner of voting on the President's ruling.
17. Mr. NGUYEN CO THACH (Democratic Republic of Viet-Nam) said that the voting at the preceding meeting had begun on the basis of rule 41 and had ended on the basis of rule 45. He failed to understand why two different voting procedures had been applied to the same issue.
18. The PRESIDENT said that that statement was also irrelevant to the issue under discussion.
19. Mr. MISHRA (India) said he agreed that the rules of procedure were intended to ensure the orderly conduct of proceedings. When the issue was put to the vote, it should be understood that his delegation was voting, not against the President, but against the applicability of rule 32.
20. The PRESIDENT said he would proceed to take a vote by roll-call.
21. Mr. CAMARA (Guinea) said that he had been requesting the floor for a considerable time and should have been recognized earlier. To vote against the arbitrary ruling that the rejection of the application of rule 35, paragraph 4, meant that rule 32 should be applied would imply censure of the President. He wished to know whether the successful challenge of the ruling would entail automatic rejection of the application of rule 32.
22. The PRESIDENT said that the position would be made clear by the result of the voting.
23. Mrs. DARIIMAA (Mongolia) said that she, too, had tried unsuccessfully for some time to be allowed to speak. There had been discrimination in the way that speakers had been given the floor. The summing-up of the President's comments during the preceding meeting had been incomplete. At an international diplomatic conference every delegation had the right to speak. The President had adjourned the meeting with the intention of taking a vote later on the applicability of rule 32. For the benefit of representatives who had been absent during that meeting, the Conference should be given the President's ruling in full.

24. Mr. PINEDA (Venezuela) said he could not agree with the President that the result of the vote would make the situation clear. His delegation would have to know what the situation was before it could vote. He wished to know, first, whether rejection of the applicability of rule 32 would mean that the application of both rules had been rejected and, if so, what solution would then be applied; and, alternatively, what the situation would be if rule 35, paragraph 4, were deemed to be applicable.

25. Mr. CRISTESCU (Romania) said he agreed with the Indian representative's comments on the need to preserve the President's authority. It was customary for votes in connexion with presidential rulings in international conferences to be taken on challenges to those rulings, not on the rulings themselves. The questions raised by the Venezuelan representative should be settled before a vote was taken.

26. Mr. AMETONOU (Dahomey) said that, unless it was confirmed that the President's intention had been that described by the Mongolian representative, the President's interpretation of rules 41 and 45 would have been erroneous.

27. Mr. MAIGA (Mali) said he realized that a president would find it difficult to reverse a ruling once he had made it. He would be glad to hear again the last words spoken by the President before the adjournment of the preceding meeting.

28. The SECRETARY-GENERAL said he had taken notes on the President's statement, which had been on the lines he had indicated earlier in the meeting. There had also been a confused discussion on which he had taken no notes.

29. Mr. MAIGA (Mali) said that representatives could not take a decision on the ruling made by the President at the twenty-fifth meeting until they had seen the summary record of that meeting.

30. Mr. AMETONOU (Dahomey) pointed out that the somewhat confused discussion at the end of the preceding meeting had not been taken into account in the notes read out by the Secretary-General.

31. Mr. BRECKENRIDGE (Sri Lanka) said it was clear to all who had been present at the twenty-fifth meeting that there had been no ruling from the Chair and that the meeting had reached an impasse. Rule 41 of the rules of procedure had been lost sight of in the voting, and the President had referred to rule 45 to explain the effect of the result of the vote.

The meeting was suspended at 11.15 a.m. and resumed at 11.30 a.m.

32. The PRESIDENT said that the President's ruling at the twenty-fifth meeting had been that, in view of the tied vote on the proposal that rule 35, paragraph 4, should apply to the discussion of the joint draft resolution, that rule did not apply, and that the applicable rule was therefore rule 32. The ruling had been challenged and in the roll-call vote which would be taken immediately those who upheld the challenge should vote in favour and those who were against it should vote accordingly.

A vote was taken by roll-call.

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

In favour: Niger, Uganda, Peru, Poland, Arab Republic of Egypt, Libyan Arab Republic, Syrian Arab Republic, Yemen, Democratic People's Republic of Korea, German Democratic Republic, Democratic Republic of Viet-Nam, Romania, Senegal, Sudan, Sri Lanka, Sweden, Czechoslovakia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Algeria, Australia, Bangladesh, Eyelorussian Soviet Socialist Republic, Bulgaria, Congo, Cuba, Dahomey, Finland, Gabon, Ghana, Guinea, Hungary, India, Indonesia, Iraq, Madagascar, Mali, Malta, Mauritius, Mauritania, Mongolia.

Against: Nicaragua, New Zealand, Sultanate of Oman, Paraguay, Netherlands, Philippines, Republic of Korea, Central African Republic, Republic of Viet-Nam, Dominican Republic, Khmer Republic, United Kingdom of Great Britain and Northern Ireland, Holy See, Switzerland, Chad, Thailand, Turkey, Uruguay, Federal Republic of Germany, Saudi Arabia, Argentina, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Cyprus, Costa Rica, Ivory Coast, Denmark, El Salvador, Spain, United States of America, Gambia, Greece, Guatemala, Haiti, Upper Volta, Honduras, Ireland, Israel, Italy, Japan, Jordan, Liechtenstein, Luxembourg, Malaysia.

Abstaining: Nigeria, Norway, Pakistan, Panama, Portugal, Qatar, San Marino, Trinidad and Tobago, Tunisia, Zaire, Colombia, United Arab Emirates, Ecuador, France, Iran, Kuwait, Lebanon, Morocco, Mexico.

33. The PRESIDENT announced that the result of the vote was as follows:

In favour of the challenge .....	43
Against the challenge .....	48
Abstentions .....	19

The President's ruling was therefore upheld.

34. Mr. BOUDJAKDJI (Algeria), speaking in explanation of vote, said the co-sponsors of the joint draft resolution and all those who believed in the fair application of the rules of procedure wished to protest energetically against the illegal nature of the procedure adopted, which was wholly contrary to the spirit that should prevail at the Conference. In particular, they were surprised by the results of the vote that had just been taken, since it seemed to reveal an attitude which was clearly in favour of maintaining and even spreading the war in South-East Asia. In his opinion, a valuable opportunity had been lost to apply a policy which might have led to a genuine dialogue between the protagonists, whether friends or foes, in which purely humanitarian interests could have been discussed. The obstacles that had been placed in the way of achieving any real universality in humanitarian law augured poorly for the future work of the Conference.

35. It should be borne in mind that the major conferences on humanitarian law during the past century had been held either during or immediately after events which had sadly shaken the world. The nations had now reached another crossroads in the history of mankind, a time when certain systems were disappearing gradually, while others were emerging. It was their clear duty, therefore, to face up to their responsibilities, not to turn their backs on them. The international community should forget short-term strategies and should give predominance to broader moral considerations.

36. He wished to pay a tribute to Portugal and to the Portuguese people, which had finally recognized the justice of the cause of freedom and decolonization. However, other centres of tension still continued to exist, and that situation also called for courageous and timely action if the existing fragile balance of the world political situation was not to be upset.

37. In connexion with the development of humanitarian law, a famous Genevese publicist, Dr. Freymond, had said that the character of war was being changed not so much by the type of weapons as by the combination of conventional action and revolutionary action; unless that fact was borne in mind, the West might be in danger of isolation through exaggerated ethnocentrism and of alienating the countries of the third world, especially the revolutionary countries, and there might be a risk of intensifying antagonisms during the preparatory phase of the Diplomatic Conference, to the extent of jeopardizing its results.

38. Accordingly, his delegation and many others had thought that the cause of peace and humanitarian law could best be served by following the spirit and letter of the 1973 Paris Agreement on ending the war and restoring peace in Viet-Nam and submitting the joint draft resolution. Even if rule 32 of the rules of procedure was strictly applied to the discussion of that draft, the problem of the validity of the participation of the Saigon régime alone would still be in question; the co-sponsors therefore proposed that the words "as observers" should be added at the end of operative paragraph 1. His delegation intended to submit that proposal to the Secretariat, in the form of an entirely new draft resolution, in the immediate future.

39. Mgr. LUONI (Holy See), speaking in explanation of vote, said his delegation had voted in favour of the President's ruling because it felt that to challenge that ruling might endanger the Conference itself. It hoped, however, that some way could be found for the widest possible participation in the Conference.

40. Mr. SULTAN (Arab Republic of Egypt), speaking in explanation of vote, said his delegation fully endorsed the view expressed by the representative of India; it had voted not against the decision of the President, but rather against the interpretation of that decision. He wished to make it quite clear that his delegation's vote was not intended to cast any reflection, either directly or indirectly, on the President himself, in whose integrity, competence and authority it had complete confidence.

41. Mrs. DARIIMAA (Mongolia), speaking in explanation of vote, said that the President had taken a number of decisions at the preceding meeting. Without wishing to doubt the Secretary-General's honesty or integrity of conscience in any way, she nevertheless felt forced to observe that he had succeeded in noting only a single sentence. Surely, the fair and proper procedure would be for him to record all decisions and not merely the ones he personally had happened to take note of and had succeeded in recording.

42. It was her own impression that when the President had adjourned the meeting, it had been his intention to give the Conference the right to take a decision on the applicability of both rule 32 and rule 35, paragraph 4, and that a decision against the applicability of the latter would not have meant the automatic application of the former. She suggested that the Secretariat get in touch with the President of the Conference and ask him to confirm his position.

43. Mr. CAMARA (Guinea), speaking in explanation of vote, said that his delegation had come to the Conference in the belief that it was seriously dedicated to the reaffirmation and development of international humanitarian law applicable in armed conflicts. It had thought that the purpose of the Conference was to bring all peoples together so that they could speak of their own experience and sufferings; yet the proceedings at the current meeting seemed to indicate that some members were more interested in defending aggression and brute force than in upholding the lofty virtues of humanitarian law. But there could be no doubt that the Provisional Revolutionary Government of the Republic of South Viet-Nam represented a courageous, freedom-loving people and that its presence would do much to emphasize the universality of the aims of the Conference.

44. Lastly, it was painful for him to have to criticize the President in any way, but, like the representative of Mongolia, he considered that the Conference should be fully informed of the President's decisions and not given a truncated version of them.

45. Mr. BLIX (Sweden), speaking in explanation of vote, said that his delegation had voted against the President's ruling, not out of any desire to challenge his authority or the competence of the Secretariat, whose task was difficult enough, but because it did not believe that rule 32 had any application to the question of invitations before the Conference.

46. Mr. GRIBANOV (Union of Soviet Socialist Republics), speaking in explanation of vote, said that his delegation, in supporting the joint draft resolution, had been guided by the Paris Agreement of 1973 on ending the war and restoring peace in Viet-Nam, which had underlined the equality of the two Governments in South Viet-Nam. The Provisional Revolutionary Government of South Viet-Nam had fully carried out the terms of the Agreement, and its right to establish a permanent office in Geneva had been acknowledged both by the United Nations and by the Government of Switzerland. The Provisional Revolutionary Government had been elected by the will of the people of South Viet-Nam and now controlled 80 per cent of its territory. It had been engaged in a serious armed conflict for over twenty years and its experience should be of the greatest value to the Conference.

47. Mr. PINEDA (Venezuela), speaking in explanation of vote, expressed his delegation's conviction that the Conference should proceed in accordance with purely humanitarian, not political considerations. Any obstacles it encountered should be overcome by means of dialogue and consensus, or, failing a consensus, by a democratic majority vote which should be accepted by the minority.

48. His delegation was greatly concerned by the lack of any positive results so far; its affirmative vote therefore should be interpreted not as in any way prejudging questions of substance or impugning the authority of the President, but merely as an attempt to expedite the debate.

49. Mr. NGUYEN CO THACH (Democratic Republic of Viet-Nam), speaking in explanation of vote, said his delegation had the greatest respect for the President, but hoped that in the future, in order to avoid confusion, all delegations would be given an opportunity to speak before the vote.

50. Mr. CHOWDHURY (Bangladesh), speaking in explanation of vote, said his delegation had cast its vote in the belief that the question at issue was whether or not rule 32 should apply. That vote therefore should not be regarded in any way as a reflection on the President or on the Secretary-General. After all, the dignity of the President was the dignity of the Conference as a whole. He was sure that he was speaking for all delegations in saying that he held the President in the highest esteem, regard and affection and looked to him as a guiding star in the formulation of legal principles vitally necessary for the welfare of mankind.

51. Mr. MAHONY (Australia), speaking in explanation of vote, said that the Australian delegation considered the President's ruling concerning the application of rule 35, paragraph 4, to have been correct, but took exception to the second part of that ruling, in the light of rule 41. It had therefore voted against that part of the ruling, and considered that a vote should be taken on the applicability of rule 32 to the discussion of the draft resolution.

52. Mr. WITEK (Poland), speaking in explanation of vote, said he endorsed the Algerian representative's protest against the manner in which the draft resolution had been handled. His delegation considered that there had been no ruling by the President at the twenty-fifth plenary meeting and deeply regretted that a draft resolution which had been worded in conciliatory terms could not be discussed.

53. The Polish delegation considered that discussion of the Algerian representative's proposal concerning observer status for the two delegations of South Viet-Nam should be given priority.

54. Mr. TARCICI (Yemen), speaking in explanation of vote, said that he fully understood the difficulties with which the President had been faced at the twenty-fifth meeting and had the highest esteem for the integrity and exceptional qualities of Mr. Graber and of the Secretary-General of the Conference. His delegation nevertheless considered that when the President had adjourned the twenty-fifth meeting, he had not taken a final decision with regard to the procedure to be followed.

55. In supporting the challenge in the roll-call vote, his delegation had not voted against the ruling by the President for whom it had the highest esteem.

56. Mr. KARASSIMEONOV (Bulgaria), speaking in explanation of vote, expressed his delegation's regret at having had to vote against a presidential ruling. He did not think that such a ruling was a useful way of settling any dispute, and considered that all delegations should have been allowed to express their views.

57. The Bulgarian delegation was deeply convinced that the development of international humanitarian law and the creation of new rules to protect victims of war and to reduce their sufferings was a universal duty.

58. All the peoples of South Viet-Nam who had suffered from war for thirty years should be represented at the Conference: for that reason his delegation supported the draft resolution originally submitted by Algeria and the amendment which the representative of that country had proposed.

The meeting rose at 12.50 p.m.

ADDENDUM

After the twenty-sixth plenary meeting, held on 5 February 1975, the Secretary-General of the Conference received from Mr. Ely Ould Sidi El-Mehdi, Head of the delegation of Mauritania, the text of the explanation of its vote, of which the following is a summary:

1. Mr. EL-MEHDI (Mauritania), speaking in explanation of vote, said that his delegation had been surprised and distressed at the morning plenary meeting, on finding itself obliged to vote against a decision taken by the President, for whom his delegation had the greatest regard. It would have welcomed, however, an opportunity to speak on the procedural question before the vote was taken.
2. Unfortunately, not having been placed on the list of speakers, his delegation had had to vote as its conscience dictated without being able to explain its views. It had wished to make a positive contribution to a just cause, within the context of humanitarian law, in support of the Provisional Revolutionary Government of the Republic of South Viet-Nam, which was being denied the right to attend the Conference.
3. His delegation had intended to call for a vote on rule 32 of the rules of procedure, for in its view that would have been the only way of breaking the deadlock.
4. Now that a vote had been taken, which it regarded as inopportune and which weighed heavily on the general atmosphere of the Conference, his delegation, as co-sponsor of the new draft resolution (CDDH/207) to be submitted by Algeria, requested that the new draft, which was not subject to the President's ruling, should be adopted in the interests of justice, peace and reconciliation.



SUMMARY RECORD OF THE TWENTY-SEVENTH PLENARY MEETING

held on Wednesday, 5 February 1975, at 3.10 p.m.

President: Mr. Pierre GRABER President of the  
Swiss Confederation

In the absence of the President, Mr. R. Balken (Federal Republic of Germany), Vice-President, took the Chair.

DRAFT RESOLUTION SUBMITTED BY NIGERIA REGARDING THE OBSERVANCE BY SOUTH AFRICA OF THE GENEVA CONVENTIONS OF 1949 (CDDH/205)

1. Mr. CLARK (Nigeria), introducing draft resolution CDDH/205, said that it had been suggested that the Conference should ask the Government of the Republic of South Africa for an assurance that, although it was not participating in the current session of the Conference, it undertook to observe the principles and provisions of the four Geneva Conventions of 1949. The purpose of the draft resolution was to facilitate the Conference's work on that point.
2. His delegation considered that South Africa should continue to adhere to the Geneva Conventions of 1949; the provisions of those Conventions were universally applicable and the results of the Conference's discussions, which were designed to reaffirm and develop those Conventions, were also of universal application.
3. In associating itself with the decision of the United Nations General Assembly taken at its 2281st plenary meeting on 12 November 1974, concerning the Government of the Republic of South Africa<sup>1/</sup>, his delegation had been fully convinced that that

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1/ Extract from the Official Records of the United Nations General Assembly, Twenty-ninth Session, (Supplement No.31 (A/9631), pp. 10 and 11).

"Credentials of representatives to the twenty-ninth session of the General Assembly 29/

At its 2281st plenary meeting, on 12 November 1974, the General Assembly, after considering the letter dated 31 October 1974 from the President of the Security Council concerning the relationship between the United Nations and South Africa, 30/ upheld the ruling of the President of the Assembly regarding the position of the delegation of South Africa.

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29/ See resolutions 3206 (XXIX) and 3207 (XXIX).

30/ Official Records of the General Assembly, Twenty-ninth Session, Annexes, agenda item 3, document A/9647."

decision would leave the Government of South Africa free to observe the United Nations Charter and the Universal Declaration of Human Rights. His delegation also wished to protest against the hypocrisy of those nations which condemned the policy of apartheid while continuing to profit from a cheap labour force and to encourage the degradation of the human person from whom apartheid drew "the price of blood".

4. It was therefore logical to request South Africa to observe the Geneva Conventions to which it was a Party.

5. The Government of South Africa ought to apply the provisions of the Geneva Conventions to the occupied territories of Namibia, yet it continued to defy United Nations resolutions, the principles on which the International Court of Justice was based and the conscience of mankind as a whole by refusing to apply those provisions to Namibia. It would continue to do so if no one reminded it of its international obligations.

6. Nor must it be forgotten that what South Africa called its "security forces" were all the time present in Zimbabwe (Rhodesia), fighting alongside Mr. Ian Smith's illegal and racist minority army. It should be asked whether that situation was compatible with the Geneva Conventions of 1949. The question had been partly answered by the non-participation of the Government of South Africa in the Conference. All the African liberation movements, on the other hand, attached great importance to the observance of the Geneva Conventions.

7. There could be no denying that the already-disturbing situation in South Africa was liable to become explosive. Being desirous of seeing the problem settled peacefully, the participants in the Conference must see to it that the Geneva Conventions were scrupulously observed.

8. It was therefore in the spirit of the Geneva Conventions that his delegation was submitting a draft resolution (CDDH/205), which was intentionally short and simple. The first preambular paragraph recalled the fact, mentioned by the President of the Conference, that South Africa was not taking part in the Conference. The second preambular paragraph drew attention to the concern felt by the Conference about the possible implications of such non-participation. On the third preambular paragraph there was no need to comment. Operative paragraph 1 requested the President to seek assurances from the Government of South Africa regarding its continued adherence to the Geneva Conventions, and paragraph 2 expressed the desire of Conference members to be informed about the implementation of the resolution.

9. After discussions with representatives of other countries, his delegation had decided that operative paragraph 1 might be amended by deleting the words "which may emerge from the Conference" at the end of the paragraph.

10. Mr. MENCER (Czechoslovakia), speaking as a sponsor of draft resolution CDDH/202 and Add.1 to 3, Add.3/Corr.1, CDDH/202/Rev.1, and a member of the Credentials Committee, requested what he considered to be an important clarification. On page 2 of the provisional summary record of the twenty-third plenary meeting (CDDH/SR.23), it was said that the President had been informed by four delegations which had taken part in the first session, among them the Gambia, that they would not be attending the second session. Yet it appeared that the Gambia had attended the previous day's meeting and had taken part in two votes.

11. Mr. WITEK (Poland) said he would like the matter to be clarified before the end of the meeting.

12. The PRESIDENT gave the assurance that every effort would be made to do that.

13. Mr. MILLER (Canada), referring to the same document, asked what was to be understood by the President's announcement regarding the statement by South Africa that it would not be taking part in the work of the second session.

14. With reference to draft resolution CDDH/205, submitted by the Nigerian delegation, he said his delegation was also deeply concerned at the policy of South Africa and at the illegal occupation of Namibia. It supported draft resolution CDDH/205, particularly the third preambular paragraph. It was also grateful to the Nigerian representative for having suggested an amendment to operative paragraph 1. He considered that such a resolution could be adopted by consensus.

15. The SECRETARY-GENERAL, replying to the representatives of Czechoslovakia and Poland, said that, after the Swiss Government had sent all countries an invitation to the second session of the Conference, the Gambia had first replied that it could not take part; it had then reversed its decision, but the lists of participants had already been prepared, which explained the error in document CDDH/SR.23.

16. Replying to the Canadian representative, he said that South Africa had merely stated that it would not be participating in the second session; that did not imply that it had withdrawn from the Conference.

17. Mr. CLARK (Nigeria) said that his proposed amendment to draft resolution CDDH/205 arose from a desire for conciliation. He suggested that, in operative paragraph 2, the words, "its President" should be replaced by "its Secretary-General". He also requested that the draft resolution be adopted unanimously.

18. Mr. MENCER (Czechoslovakia) thanked the Secretary-General for his reply, but said he was still not fully satisfied, for the provisional summary record (CDDH/SR.23) stated that the Gambia would not be taking part in the Conference.

19. The SECRETARY-GENERAL pointed out that the Czechoslovak representative was basing his remarks on the distributed documents, which were provisional in character. A corrigendum would be made in the final summary record.

20. Mr. FREELAND (United Kingdom) said he did not wish to raise an objection, but merely to ask a question. He had listened carefully to the Nigerian representative's remarks and the subsequent comments. He fully understood the concern which had prompted the draft resolution but the wording of the text submitted to the Conference presented certain problems. His delegation had misgivings about its drawing of implications from non-participation, and about its singling out of one non-participant. As he understood the position, the reference to a withdrawal by South Africa in the first preambular paragraph was in any event erroneous. It was really a case of non-participation in the second session. If a correction was made, he would not oppose a consensus.

21. Mr. CLARK (Nigeria) said he was agreeable to the replacement of "withdrawal" by "non-participation".

22. Mr. de BREUCKER (Belgium) said that while supporting the intentions of the draft resolution's sponsor, he doubted whether, from the humanitarian point of view, there was anything to be said for adopting a resolution concerning implementation of the Conventions by a particular State. He felt, moreover, that the text presented difficulties. The word "withdrawal" in the first preambular paragraph did not conform to the actual situation. The second preambular paragraph, on the possible implications for South Africa's continued adherence to the Conventions, seemed to be ill-founded since the High Contracting Parties must apply, and take steps to ensure the application of, the Conventions in all circumstances, even if they deemed it advisable not to participate in a Conference designed to develop them. In other words, there was no link between non-participation in the present meetings and the application of the four Geneva Conventions of 1949. Consequently, it would be better if the proposed text merely referred to article 2 common to those Conventions. He would raise no objection to adoption of the text by consensus.

23. Mr. GIRARD (France) said that in all conferences on humanitarian law the French delegation refrained as a matter of principle from voting for any resolution censuring a particular State by name. Furthermore, like the previous speaker, he did not see any link or that it was necessary to establish one between participation in the Conference and the application of the 1949 Geneva Conventions. With those reservations he would not oppose the adoption of the text in question by consensus.

24. The PRESIDENT concluded that the first preambular paragraph should be worded as follows: "The Conference, having received the information from its President regarding the non-participation of the Government of the Republic of South Africa in the Conference,".

25. Mr. MILLER (Canada), speaking on a point of order, proposed: "Having been informed by its President that the Government of the Republic of South Africa will not be participating in the second session of the Conference,".

26. Mr. CLARK (Nigeria) supported that proposal, and said that the last part of operative paragraph 1 ("which may emerge from the Conference") was to be deleted. In paragraph 2, "President" was to be replaced by "Secretary-General".

27. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said he supported the views expressed in the draft resolution submitted by the Nigerian delegation, together with its amendments. He considered it very important that non-participating States should not be released from the obligations laid down in the four Geneva Conventions of 1949, the application of which was mandatory for all signatory countries.

Draft resolution CDDH/205, as amended, was adopted by consensus.

CONSIDERATION OF THE DRAFT RESOLUTION ENTITLED "QUESTION OF THE PARTICIPATION OF SOUTH VIET-NAM IN THE CONFERENCE" (CDDH/207) (concluded)

28. Mr. ULLRICH (German Democratic Republic) said that he regretted that the request relating to the participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam had not been granted at the present session of the Conference. The decision taken was contrary to rule 35, paragraph 4, and rule 41 of the rules of procedure of the Conference. It would have been logical to allow all the parties to the armed conflict in South Viet-Nam that had acceded to the four Geneva Conventions of 1949 to make their contribution to the work of the Conference. The delegation of the German Democratic Republic was

convinced that the last word had not been said concerning the participation of the Provisional Revolutionary Government. The Saigon administration was not entitled to be the sole representative of the population of South Viet-Nam. A new draft resolution in conformity with the Paris Agreement on ending the war and restoring peace in Viet-Nam would be submitted. He hoped that the majority of delegations would vote in favour of it.

29. Mr. MARMARA (Malta) said that his delegation's vote should not be interpreted as being contrary to the previous one. His delegation simply recommended the application of rule 32 of the rules of procedure.

30. Mr. NASSAR (Observer for the Palestine Liberation Organization - PLO) said that he was happy that the PLO could participate in the work of the Conference.

31. The PLO, which was eager to promote the ideals of humanitarian law, was afraid that the Conference might not give due consideration to the struggle waged by oppressed peoples to gain their freedom and their right to self-determination in the period following the Second World War. The presence at the Conference of all the parties engaged in conflicts was essential in order to safeguard the universal character of the Conventions and of the Protocols under consideration.

32. The PLO failed to understand why the Provisional Revolutionary Government of the Republic of South Viet-Nam, which had been one of the principal signatories of the Paris Conference, which was in control of a vast area in Viet-Nam and which was the interpreter of the political, social and economic aspirations of the people living in that territory, was not allowed to defend their rights at the Conference, while the opposing party was admitted to the Conference.

33. Furthermore, since other national liberation movements had already made their appearance and still others would appear, the Conference would no doubt be faced with similar situations in the future. It should therefore, once and for all, adopt a formula which would enable it to deal with such problems. The PLO wished to make it clear that the purpose of its presence at the Conference was not to give the international community a clear conscience. On behalf of all the national liberation movements at present exerting an influence on political and military events in the world, it asked that those movements should have the right to play a similar part in the humanitarian domain.

34. With regard to the Provisional Revolutionary Government, the PLO considered that, if it was refused participation in the Conference, it should be admitted, together with the Government of the Republic of Viet-Nam, as an observer.

35. Mr. Seuk Djoun KIM (Democratic People's Republic of Korea) said that his delegation considered that the absence of the Provisional Revolutionary Government was contrary to the humanitarian spirit which should inspire the Conference in its work. The Provisional Revolutionary Government should take part in the Conference as representative of the population of South Viet-Nam. The refusal to admit it was the result of an aggressive policy emanating from North American imperialism. If the Saigon administration participated unilaterally in the Conference, it would be unable to represent the true situation in South Viet-Nam.

36. Mr. ROSENNE (Israel), speaking on a point of order, said that under rule 58 of the rules of procedure only delegations representing States were entitled to vote. It therefore followed that they were the only delegations qualified to give explanations of vote.

37. The PRESIDENT pointed out that the Algerian delegation had withdrawn the draft resolution in documents CDDH/202 and Add.1 to 3, Add.3/Corr.1, CDDH/202/Rev.1 and had replaced it by draft resolution CDDH/207.

38. Mr. MENCER (Czechoslovakia) said that he regretted having to revert to the subject of the Gambia. The reply given to his question was unsatisfactory. According to the annex to the report of the Credentials Committee at the first session (see CDDH/51/Rev.1, p.9), the credentials of 111 countries had been verified and found valid. The Gambia was not one of those countries. Page 11, however, contained the names of six other States, including the Gambia, which had submitted the credentials of their delegations by telegram. He drew attention to the passage in paragraph 3 of the report of the Credentials Committee stating that the Committee had provisionally accepted credentials sent by telegram, while expressing the hope that, by the second session, those countries would submit the credentials in conformity with rule 3 of the rules of procedure which stated that credentials were to be submitted if possible not later than forty-eight hours after the opening of the Conference. That time-limit had already expired. Had the Gambia's credentials been submitted?

39. The SECRETARY-GENERAL said that he could not give a categorical answer to that question. He had been in touch with the Chairman of the Credentials Committee, who had said that some latitude was being allowed in the matter of the 48-hour time-limit. Steps would be taken to see that every delegation submitted the necessary credentials.

40. Mr. SANSON-ROMAN (Nicaragua), Chairman of the Credentials Committee, said that credentials had not yet been submitted in twenty-nine cases. The position was similar to that at the first session of the Conference. That was because Heads of delegations had frequently been changed.

41. Mr. BETTAUER (United States of America) said that he wished to raise a point of order with regard to draft resolution CDDH/207. A great deal of time had been spent discussing the applicability of certain rules of the rules of procedure. It had been decided that the matter in question came under rule 32, which meant that the decision to take up the item required a two-thirds majority. The subject and title of draft resolution CDDH/207 were identical with those of the earlier draft resolution (CDDH/202 and Add.1 to 3, Add.3/Corr.1, CDDH/202/Rev.1). Of course it was always possible to formulate articles afresh by continually changing their wording. The President should decide that the text could not be discussed at the next meeting unless a decision were taken by a two-thirds majority. The rules of procedure provided that the President should give a ruling immediately.

42. The PRESIDENT drew attention to the obligations imposed upon him by rule 21 of the rules of procedure which he read out. In order to speed up the work he would have to give an immediate ruling. Operative paragraph 1 of draft resolution CDDH/207 requested that all parties should be invited, one of which had already participated in the Conference since the outset. The resolution therefore raised again a matter which had already been decided at the first session of the Conference and was therefore subject to rule 32 of the rules of procedure; that was to say it required a two-thirds majority.

43. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) expressed surprise at that interpretation. Draft resolution CDDH/202 and Add.1 to 3, Add.3/Corr.1 and CDDH/202/Rev.1 did not say the same thing as draft resolution CDDH/207, and consequently a matter of substance was involved. A new discussion would therefore be necessary under rule 35 of the rules of procedure. Rule 32 was ambiguous and did not apply in the case in question.

44. Mr. BOUDJAKDJI (Algeria) said it seemed to him that the President's decision related to draft resolution CDDH/202 and Add.1 and 3, Add.3/Corr.1 and CDDH/202/Rev.1 and to the debate and the vote on it; a new draft was now being considered which should be discussed at the next meeting.

45. The PRESIDENT put to the vote the motion of the representative of the Union of Soviet Socialist Republics challenging the President's ruling on draft resolution CDDH/207.

At the request of the representative of Nicaragua, the vote on the Soviet Union representative's motion was taken by roll-call.

The Republic of Korea, having been drawn by lot by the President, was called upon to vote first.

In favour: Arab Republic of Egypt, Libyan Arab Republic, Syrian Arab Republic, Yemen, Democratic People's Republic of Korea, German Democratic Republic, Democratic Republic of Viet-Nam, Romania, Senegal, Sudan, Sri Lanka, Sweden, Czechoslovakia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Algeria, Australia, Byelorussian Soviet Socialist Republic, Bulgaria, Congo, Cuba, Dahomey, Finland, Gabon, Ghana, Guinea, Hungary, India, Iraq, Madagascar, Mali, Malta, Mauritius, Mauritania, Mongolia, Nigeria, Uganda, Peru, Poland.

Against: Republic of Korea, Central African Republic, Republic of Viet-Nam, Dominican Republic, Khmer Republic, United Kingdom of Great Britain and Northern Ireland, Switzerland, Thailand, Turkey, Uruguay, Federal Republic of Germany, Saudi Arabia, Argentina, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Cyprus, Costa Rica, Ivory Coast, El Salvador, Spain, United States of America, Gambia, Greece, Guatemala, Haiti, Upper Volta, Honduras, Ireland, Israel, Italy, Japan, Jordan, Liechtenstein, Luxembourg, Malaysia, Nicaragua, New Zealand, Paraguay, Netherlands, Philippines.

Abstaining: San Marino, Holy See, Chad, Trinidad and Tobago, Tunisia, Venezuela, Zaire, Bangladesh, Colombia, Denmark, United Arab Emirates, Ecuador, France, Indonesia, Iran, Kuwait, Morocco, Mexico, Monaco, Niger, Norway, Panama, Portugal, Qatar.

The Soviet Union representative's motion was rejected by 44 votes to 40, with 24 abstentions.

The President's ruling was therefore upheld.

46. Mr. NGUYEN CO THACH (Democratic Republic of Viet-Nam) said he wished to make a strong protest against the United States delegation which had, through procedural methods, prevented the Provisional Revolutionary Government from exercising its legitimate right to participate in the Conference as a party to the four Conventions of 1949.

47. He noted with satisfaction that many delegations which had not adopted a definite position in support of the Provisional Revolutionary Government in 1974 now gave it their support.

48. The Provisional Revolutionary Government wished to participate in the Conference so that it could speak in the name of the hundreds of thousands who had died and of the hundreds of thousands of human beings who had been disabled as a result of the crimes against humanity perpetrated by American imperialism, and so that it could serve the cause of humanity and thus spare future generations from still more inhuman massacres.

49. It was inadmissible that the United States, which was guilty of crimes against humanity, should be able to express its views at the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law while its victims had no right to attend that Conference.

50. Mrs. DARIIMAA (Mongolia) said she deplored the procedural stratagems which had prevented the Conference from studying draft resolution CDDH/207, as they had already prevented the study of draft resolution CDDH/202 and Add.1 to 3, Add.3/Corr.1 and CDDH/202/Rev.1. Though she had great respect for the Secretary-General and admired his personal qualities, she felt it incumbent on her to say that she had unfortunately not yet received a satisfactory answer to her request with regard to the precise terms of all the decisions taken the previous day by the President of the Conference, Mr. Graber, in order that those representatives who had been absent might have a complete idea of the discussion that had taken place.

51. Mr. BOUDJAKDJI (Algeria) said he wished to emphasize the fact that his delegation had at no time suggested that any particular delegation should be excluded from the Conference; on the contrary, it had invariably recommended that participation should be as wide as possible. His delegation remained convinced that participation by the Provisional Revolutionary Government would have made a valuable contribution to the work of the Conference and to its successful outcome. That participation had not been achieved under the required conditions. The presence of the Provisional Revolutionary Government remained indispensable. Furthermore, in view of the Paris Agreement on

ending the war and restoring peace in Viet-Nam, the two parties involved should have exactly the same obligations, rights and privileges so far as their international status was concerned. It had been for that reason that the sponsors of draft resolution CDDH/207 had recommended that the Conference should invite the two parties to participate in the proceedings as observers; that would have enabled an element of justice to be introduced into the Conference without changing its structure - in particular, rule 34 of the rules of procedure.

52. However, as a result of disgraceful procedural manoeuvres the Conference had deliberately refused to side with justice and the cause of humanity. Consequently, the sponsors of draft resolution CDDH/207 withdrew their proposal.

53. Mr. LE VAN LOI (Republic of Viet-Nam) said that the Provisional Revolutionary Government was nothing but a label attached to the Viet-Cong in order to make a separate entity out of the communist army of aggression and legitimize those territories illegally occupied by North Viet-Nam.

54. The Viet-Cong, in other words the Provisional Revolutionary Government, could not be included in either of the two categories of participants admitted by the Conference at its first session, namely, representatives of States (rules 1, 2, 3, 4, and 34 of the rules of procedure) and liberation movements (as observers). The aims of the Viet-Cong were totally at variance with those of a liberation movement, since it was trying to impose an imperialist domination on the South Vietnamese people. Moreover, no intergovernmental organization in Asia had recognized the Provisional Revolutionary Government as a liberation movement, still less as a provisional revolutionary government.

55. There was no mention in any provision of the Paris Agreement of the existence of two governments or two administrations in South Viet-Nam, or of any territorial partition whatsoever. On the contrary, article 9 of the Act of the International Conference on Viet-Nam, dated 2 March 1973, stipulated that "signature of this Act does not constitute recognition of any Party in any case in which it has not previously been accorded".

The meeting rose at 5.50 p.m.



SUMMARY RECORD OF THE TWENTY-EIGHTH PLENARY MEETING

held on Wednesday, 16 April 1975, at 3.25 p.m.

President: Mr. Pierre GRABER President of the  
Swiss Confederation

ADOPTION OF THE AGENDA FOR THE CLOSING PLENARY MEETINGS (CDDH/217)

On the proposal of the President, the agenda for the closing plenary meetings was adopted.

EXPRESSION OF CONDOLENCES IN CONNEXION WITH RECENT DEATHS

On the proposal of the President, the members of the Conference observed a minute's silence in tribute to the memory of Faisal Ibn Abdul Aziz, King of Saudi Arabia, and of Lieutenant-Colonel Kjell Trygve Modahl, representative of Norway.

1. Mr. SULTAN (Arab Republic of Egypt), speaking on behalf of all the delegations of the Arab States, thanked the members of delegations and all the participants in the Conference for their expressions of sympathy and condolence on the occasion of the death of the King of Saudi Arabia. The late monarch had been a man of fine qualities - sagacious, distinguished, level-headed and resolute, endowed with great political foresight; his personality had far transcended the frontiers of his own country and he had scrupulously applied the humanistic principles of Islamic law and all the precepts of traditional Arab chivalry. King Faisal had been keenly interested in all the work relating to the reaffirmation and development of international humanitarian law, for the study of which he had set up a special committee in his Government. It was for those reasons, among others, that the Arab nation and the Islamic world had been so deeply affected by his death.

2. As spokesman for the delegations of all the Arab countries, he expressed the profound sympathy and condolences of the Arab States to the Ambassador of Norway and to the Head and all members of the Norwegian delegation.

3. Miss BOA (Ivory Coast), on behalf of the African Group, Mr. HUSSAIN (Pakistan), on behalf of the Asian Group, Mr. GARCES (Colombia), on behalf of the Latin-American Group, and Mr. BALKEN (Federal Republic of Germany), on behalf of all the delegations belonging to the Western European Group and others, expressed the deep sentiments of sorrow that they all felt on the occasion of the

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\* Incorporating CDDH/SR.28/Add.1.

death of King Faisal of Saudi Arabia, followed by that of Lieutenant-Colonel Kjell Trygve Modahl. They offered their most sincere sympathy and condolences to the Conference, the delegations and Governments of Saudi Arabia and Norway, and to all who mourned the death of those outstanding personalities.

4. Mr. DABBAGH (Saudi Arabia), speaking for himself and on behalf of his delegation, thanked the representatives who had offered their sympathy and condolences on the death of King Faisal of Saudi Arabia. He recalled the work undertaken from his early youth by that great sovereign, man of God and statesman who for the last fifty years had made every possible effort to achieve peace for mankind.

5. Mr. HAMBRO (Norway), on behalf of his delegation, thanked all those who had expressed their sympathy on the occasion of the death of Lieutenant-Colonel Kjell Trygve Modahl, who, struck down by death in the midst of his work, would leave behind an indelible memory.

The meeting was suspended at 3.50 p.m. and resumed at 4.5 p.m.

#### REPORT OF THE CREDENTIALS COMMITTEE (CDDH/218)

6. Mr. SANSON-ROMAN (Nicaragua), Chairman of the Credentials Committee, read out the report of that Committee (CDDH/218).

7. Mr. ZAFERA (Madagascar) said that his delegation, as a member of the Credentials Committee and in agreement with its Chairman, proposed the insertion, after paragraph 15 of the report, of the following new paragraph, which might become paragraph 15 bis: "The representative of Madagascar endorsed the reservation to paragraph 15 expressed by the representative of Czechoslovakia."

8. Mr. CLARK (Nigeria) said that he fully endorsed the reservations expressed by the delegations of Madagascar and Senegal in paragraph 9 (c) of the report. He had noted, however, that paragraph 14 stated that the representatives of Australia, Nicaragua and the United States of America had said that they had no reservations concerning the credentials of any delegation - including, presumably, that of South Africa. In view of the President's announcement at the twenty-third plenary meeting, held on 3 February 1975, that the South African Government was not participating in the work of the second session, he wondered whether the Credentials Committee had had to examine the credentials of a non-existent delegation.

9. Mr. MENCER (Czechoslovakia) thanked the Malagasy delegation for its support of the reservations and of the proposal of the Czechoslovak delegation concerning the absolute invalidity of the

credentials of the Saigon administration. He agreed with the Malagasy representative that its support should be indicated in a new paragraph to be inserted immediately after paragraph 15 of the report.

10. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam) expressed great appreciation of the just position adopted by all the delegations which, in the Credentials Committee or in the plenary meeting, had contested the legality of the representation of the Saigon administration and, on the legal basis of the Agreement on ending the war and restoring peace in Viet-Nam, signed at Paris on 20 January 1973 and the four Geneva Conventions of 1949, had supported the legitimate right of the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate in the present Conference as the genuine **representative** of the population of South Viet-Nam in its struggle for self-determination, or the maintenance and strict application of the Paris Agreement, and as a party to the Geneva Conventions.

11. The recent brilliant victories of the Provisional Revolutionary Government, which progressive Governments and peoples throughout the world had acclaimed with joy, were eloquent proof that any policy of military engagement or intervention of any sort in the internal affairs of South Viet-Nam was doomed to failure. The South Vietnamese population could be genuinely, legitimately and legally represented only by a government which practised a policy of peace, independence, democracy and national harmony along the lines of the Paris Agreement; for that policy alone could put an end to the state of war and to the unspeakable sufferings being endured by the people of South Viet-Nam.

12. Mr. RATTANSEY (United Republic of Tanzania) said that he supported the point of view expressed by the representative of Nigeria. It was perhaps inappropriate for the Credentials Committee to examine the credentials of the South African delegation, since that delegation was not attending the Conference. It should be possible to settle that issue by reference to the rules of procedure. For that reason, his delegation would support the adoption of the report with reservations.

13. His delegation wished to reiterate that the Saigon régime had really no status de facto or de jure. It was the Provisional Revolutionary Government which was the rightful government to represent the people of South Viet-Nam at the present Conference. He did not wish to repeat once again the reasons which had induced his Government to adopt that position. He was quite convinced that, by the time the Conference reassembled for its third session, events would already have created a fait accompli. The Conference would then be able to proceed successfully with its work. That also applied to the illegal régime of Lon Nol, whom history would soon expose.

14. The delegation of the United Republic of Tanzania wished to state publicly that 2½ million Whites had no right, legally or morally, to rule over 20 million Africans in South Africa. The South African Government must realize that the days of segregation were gone, and that the time had come for self-determination, in the interests of world peace.

15. Mr. YOKO (Zaire) supported the position taken by the delegations of Senegal and Madagascar in the Credentials Committee, as truly representing the opinion of the peoples and Governments of Africa, namely that the Republic of South Africa was a régime of political and military occupation, of which, in the relations between human beings and between nations, apartheid was the manifest expression. As long as that occupation lasted, the Republic of South Africa would not be able to represent the peoples whom it oppressed, as such oppression was patently contrary to the spirit of international humanitarian law.

16. He supported the views expressed on the subject by the representatives of Nigeria and the United Republic of Tanzania.

17. Mr. ABADA (Algeria) said he fully supported the reservations regarding paragraphs 6 and 7 of the report expressed by the representative of Czechoslovakia concerning the power and representativity of the Saigon administration. He had nothing to add on that point to the statement by the representative of the Democratic Republic of Viet-Nam, which he fully supported. He also supported the opinion of the representative of Czechoslovakia regarding paragraph 15, and consequently he did not think that the view expressed in paragraph 16 by the representative of the United States of America was acceptable.

18. He likewise supported the reservations expressed in paragraph 9 by the delegations of Madagascar and Senegal, as well as those put forward by the representatives of Nigeria, the United Republic of Tanzania and Zaire. His delegation, furthermore, withdrew its reservations expressed at the first session (CDDH/SR.20, para.19) with regard to Portugal; it also supported the view expressed in paragraph 11 of the report by the delegation of Iraq concerning the delegation of Israel.

19. Mr. KIDRON (Israel) noted that the representative of Iraq had once again made use of the Conference to launch a mendacious attack on Israel.

20. He endorsed the views of the representatives of Australia, Nicaragua and the United States of America, as expressed in paragraph 14 of the report (CDDH/218), and categorically rejected the statements made by the representative of Iraq. He deplored the use of the discussions of the Credentials Committee, a body with a specific technical mandate, for purposes of political propaganda.

Such a practice was out of place at the Conference. His delegation would not follow the example of the representative of Iraq. It did, however, wish to indicate that it would approve only those parts of the report which did not contain abusive and irrelevant political assertions such as those to be found in paragraph 11 of the report.

21. Mr. SANSON-ROMAN (Nicaragua), Chairman of the Credentials Committee, said that the credentials of the delegation of South Africa had been considered at the first session and had not been reconsidered at the current session. Paragraph 9 (c) had been included at the request of the delegations of Madagascar and Senegal, which, although aware that the delegation of South Africa would not be attending the second session, had wished to reiterate the reservations they had expressed at the previous session (See CDDH/51/Rev.1, para. 5 (a)).

22. He had no objection to the additions proposed to the report.

23. Mr. CRISTESCU (Romania) reaffirmed that, as a Party to the Geneva Conventions, the Provisional Revolutionary Government of the Republic of South Viet-Nam, the authentic representative of its people, had a legitimate and inviolable right to representation at the Conference.

24. He also stated that Prince Norodom Sihanouk's Royal Government of National Unity was the sole lawful representative of Cambodia.

25. Lastly, he agreed with the statements of the delegations of Nigeria, the United Republic of Tanzania and Zaire.

26. Mr. MAIGA (Mali) said he fully endorsed the reservations expressed in paragraphs 6, 7, 9 and 15 of the report.

27. Mr. GRIBANOV (Union of Soviet Socialist Republics) associated himself with the reservations expressed by Czechoslovakia in connexion with the credentials of the delegation of the Saigon administration (See CDDH/218, paras. 6 and 7).

28. At the beginning of the current session, his delegation had protested at the presence of the representatives of Saigon, since the Provisional Revolutionary Government of the Republic of South Viet-Nam alone had the de jure and de facto right to represent the people of South Viet-Nam.

29. His delegation did not recognize the credentials of the representatives of the Khmer Republic since they could not be said to speak for the people of Cambodia.

30. Mr. EL-FATTAL (Syrian Arab Republic) associated himself with the reservations expressed by the representative of Czechoslovakia in connexion with the credentials of the delegation of the Saigon administration (ibid., paras. 6 and 7), and with those expressed by Madagascar and Senegal concerning the credentials of the racist régime of South Africa (ibid., para. 9).

31. He also associated himself with the reservations expressed by the representative of Iraq concerning the aggressive Israeli régime (ibid., para. 11). The presence of the Israel delegation was an insult to the Conference; that delegation could not claim to be contributing to the reaffirmation and development of international humanitarian law when, at every conference, it stated publicly that the fourth Geneva Convention of 1949 was not applicable to the occupied Arab territories. Since July 1967, the International Committee of the Red Cross (ICRC) had received written statements to say that Israel would not apply the fourth Geneva Convention. That was a flagrant breach of the principle of the inviolability of treaties and conventions.

32. He challenged the representative of Israel to declare openly that his Government was prepared to apply the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

33. Mr. LECHUGA HEVIA (Cuba) expressed reservations regarding the credentials of the representative of the Saigon régime. In view of the events of recent weeks there was no need to return to the question of who was the legitimate representative of the people of South Viet-Nam.

34. He also expressed reservations regarding the credentials of the Khmer Republic. They were an insult to the Conference, since the rulers who had issued them to their representatives at the Conference had already fled with their foreign protectors under the fire of the liberation forces.

35. Mr. Seuk Djoun KIM (Democratic People's Republic of Korea) associated himself with the reservations expressed by Czechoslovakia, Madagascar and the Democratic Republic of Viet-Nam.

36. He deeply regretted the fact that the Provisional Revolutionary Government of the Republic of South Viet-Nam, the authentic representative of the South Vietnamese people, had been unable to take part in the Conference. Developments in South Viet-Nam showed that the desire of the South Vietnamese people to liberate their country had prevailed.

37. The representatives of peoples struggling against imperialism, colonialism and racism ought to be able to attend the Diplomatic Conference on Humanitarian Law.

38. The sole genuine representative of the Cambodian people was the Royal Government of National Unity of Prince Norodom Sihanouk. He hoped that at the third session of the Conference the Provisional Revolutionary Government of the Republic of South Viet-Nam and the Royal Government of National Unity would take part in the Conference with the same powers as other delegations.

39. He supported the proposals concerning credentials made by the representatives of Nigeria and the United Republic of Tanzania.

40. Mr. CLARK (Nigeria) said that, in view of the explanation given by the Chairman of the Credentials Committee, he would suggest that the beginning of paragraph 9 (c) should be amended to read: "The credentials of the delegation of South Africa, had it been present at this session, again would not have been acceptable...". The last sentence of paragraph 9 would become sub-paragraph (d).

41. Mr. DUGERSUREN (Mongolia) said that his delegation fully supported the reservations concerning the credentials of the Saigon and Phnom-Penh régimes expressed by the representatives of Czechoslovakia, Madagascar and Senegal in the report (CDDH/218).

42. It likewise associated itself with the statement made at the current meeting by the representative of the Democratic Republic of Viet-Nam.

43. His delegation, which had always given its full support to the heroic struggle of the people of South Viet-Nam for their independence and freedom, considered that that people should be represented by the Provisional Revolutionary Government of the Republic of South Viet-Nam.

44. Miss MANEVA (Bulgaria) said she associated herself with the reservations made by the delegations of Czechoslovakia, Madagascar and Senegal in paragraphs 6, 7, 9 and 15 of the report and supported the statement by the representative of the Democratic Republic of Viet-Nam.

45. Mr. ULLRICH (German Democratic Republic) said he associated himself with the reservations made by the representative of Czechoslovakia and with the comments of the representative of the Democratic Republic of Viet-Nam. The Saigon administration was not qualified to represent the people of South Viet-Nam, and the credentials it had submitted could not be recognized by the Conference. The Provisional Revolutionary Government of the Republic of South Viet-Nam was the sole authentic representative of the people of South Viet-Nam.

46. Mr. LOPUSZANSKI (Poland) said he supported the reservations set out in paragraphs 6, 7, 9 and 15 of the report. He regretted that the legitimate representatives of South Viet-Nam and Cambodia were not participating in the Conference.

47. Mr. RABARY (Madagascar) said he could accept the formula proposed by Nigeria for paragraph 9 (c).

48. Mr. GOZZE-GUČETIĆ (Yugoslavia) said he fully supported Czechoslovakia's reservations concerning the Saigon administration's credentials. The Provisional Revolutionary Government, the sole legitimate and authentic representative of the people of South Viet-Nam, should be present at the Conference. He associated himself with the reservations by Madagascar and Senegal concerning Prince Norodom Sihanouk and South Africa's credentials, in paragraphs 9 (b) and (c).

49. Mr. HERCZEGH (Hungary) said he, too, regarded the Provisional Revolutionary Government as the sole legitimate representative of South Viet-Nam. He therefore supported the reservations by the Czechoslovak representative concerning the validity of the Saigon administration's credentials.

50. Mr. LE VAN LOI (Republic of Viet-Nam) said that his delegation rejected the statements made by certain representatives, which were a tissue of lying propaganda in support of the cause of the aggression by the Hanoi régime against the Republic of Viet-Nam. His delegation likewise protested against the reservations expressed in paragraphs 6 and 7 of the report.

51. The representatives of the Republic of Viet-Nam had already drawn the attention of the Conference to the fact that the Hanoi régime, taking advantage of the cease-fire established by the Paris Agreement, had illegally introduced into South Viet-Nam an expeditionary force of 570,000 men. In order to conceal that army's North Vietnamese origin, the Hanoi régime had given it a South Vietnamese disguise as the Provisional Revolutionary Government. In the past five weeks, that expeditionary force had launched a general offensive throughout the territory of the Republic of Viet-Nam. Thus, after two years of continuous violation of the cease-fire agreement, the North Vietnamese communists had openly ridden roughshod over the Paris Agreement of 1973 on ending the war and restoring peace in Viet-Nam, and had repudiated the Geneva Agreement on Viet-Nam of 20 July 1954. That was a typical case of aggression and it was contrary to international law and to United Nations resolutions, in particular General Assembly resolution 3314 (XXIX) of 14 December 1974, in which the act of aggression was defined.

52. The Government of the Republic of Viet-Nam solemnly proclaimed that the portions of the territory of the Republic of Viet-Nam temporarily occupied by North Vietnamese communist troops could in no sense be regarded as forming the "territory" of the so-called "PRG", which was merely a screen for the North Vietnamese expeditionary force. Under the Paris Agreement of 1973, the armed forces of the belligerent parties were required to bring all hostilities to an end and to remain in their positions as on 27 January 1973 at 2400 hours GMT. Consequently, any territorial encroachment that had taken place after that date was illegal. The North Vietnamese Communists and their auxiliaries in the South consequently had no rights over the territories illegally occupied by them since 27 January 1973 at 2400 hours GMT, and any State or international organization recognizing any such right over those portions of territory would be violating the Paris Agreement, the United Nations Charter and United Nations resolutions.

53. The Republic of Viet-Nam considered any political or administrative arrangements that might be set up by the North Vietnamese Communists in those illegally occupied portions of territory as null and void. The Republic of Viet-Nam solemnly reaffirmed its sovereignty over all territory lying between the 17th parallel and Pointe Camau, within the limits established by the Geneva Agreement of 20 July 1954 and confirmed by the Paris Agreement of 20 January 1973.

54. Furthermore, the North Vietnamese Communists and their auxiliaries in the South could not claim that they represented the people inhabiting those illegally-occupied portions of territory.

55. Throughout recent weeks, despite threats and coercion by the communists, hundreds of thousands of inhabitants, including whole villages, had abandoned all their possessions and had braved danger and suffering in order to flee from the Communist aggressors, and make their way to areas under the control of the Government of the Republic of Viet-Nam.

56. Never in the history of Asia had there been such a massive population exodus in order to escape from troops of the invader. The Hanoi regime's cruelty and terror, its executions and persecutions were too well known for anyone to believe that such a régime could possibly abide by the most elementary rules of humanitarian law. The people and armed forces of the Republic of Viet-Nam were determined to fight on for as long as the North Vietnamese Communists continued to violate the Paris Agreements and had not ceased their aggression.

57. Mr. AKRAM (Afghanistan) said he supported the reservations appearing in paragraphs 6, 7, 8, 9, 11 and 15 of the report.

58. Mr. SANSON-ROMAN (Nicaragua), Chairman of the Credentials Committee, drew attention to the changes it would be necessary to make in the report so as to take account of the comments made at the present meeting. Paragraph 9, sub-paragraph (c) would begin with the words: "The credentials of the delegation of South Africa, had it been present at this session, again would not have been acceptable, since the Government of that country...", with the rest of the sentence remaining unchanged. The last sentence of paragraph 9 would become sub-paragraph (d).

59. After paragraph 15, a new paragraph numbered 16 should be inserted. It would read as follows: "The representative of Madagascar endorsed the reservation to paragraph 15 expressed by the representative of Czechoslovakia". The existing paragraphs 16 and 17 would thus become paragraphs 17 and 18.

60. The PRESIDENT suggested that the Conference should adopt the report of the Credentials Committee (CDDH/218), as amended.

It was so decided.

#### DATES OF THE THIRD SESSION OF THE CONFERENCE

61. The PRESIDENT recalled that that question had been considered on several occasions by the General Committee of the Conference; following a thorough exchange of views that Committee had been led to propose that the third session of the Conference should take place from 21 April to 11 June 1976.

62. Those dates took two wishes into account: that the third session should open immediately after Easter, and that it should last for eight weeks.

63. He would convene the General Committee for 20 April, the day before the opening of the third session.

64. Those proposals had been approved by the General Committee, and he hoped that they would meet with the approval of the Conference.

In the absence of any objection, it was decided that the third session of the Diplomatic Conference on the Reaffirmation and Development of International Law applicable in Armed Conflicts would be held from 21 April to 11 June 1976.

65. Miss BOA (Ivory Coast) said that she regretted that those dates did not suit her delegation. The Ivory Coast delegation, which had not had many members in 1974, was still smaller at the present session and was likely to have even less members in 1976. Moreover, the World Health Assembly would be meeting in May 1976 and the International Labour Conference in June 1976, so that the Ivory Coast might well be unable to send anyone to the third session of the Conference.

66. The PRESIDENT said that he himself regretted that it should be so. Any choice of date, however, would entail some sacrifices and some dissatisfaction, but he hoped that the Ivory Coast would find a way of participating in the third session.

67. He added that the convening of a third session necessarily called for the amendment of the rules of procedure (CDDH/2/Rev.1) which did not provide for a third session. Four rules only would have to be amended, namely rules 3, 4, 6 and 47, paragraph 1. Since only a purely technical amendment was necessary, the General Committee had requested the Secretariat to make the necessary changes, and had approved the suggestion made by the Secretary-General that the words "second session" should be replaced by the words "subsequent sessions" in the rules mentioned.

The meeting rose at 5.30 p.m.



SUMMARY RECORD OF THE TWENTY-NINTH PLENARY MEETING

held on Thursday, 17 April 1975, at 10.25 a.m.

President: Mr. Pierre GRABER President of the  
Swiss Confederation

CONSIDERATION OF THE REPORTS OF COMMITTEES

1. The PRESIDENT recalled that, in accordance with what had been decided by the General Committee, the Conference would not at the present session adopt the articles of draft Protocols I and II but would merely take note of the reports approved by the various Committees.

2. As regards statements which representatives might wish to make concerning the reports of the Committees, the General Committee hoped that a repetition in plenary of statements referring to special points or of relative importance which had already been made in Committee would be avoided. He also asked all delegations to restrict their statements to general remarks on the work accomplished during the current session. It was also understood, of course, that if some delegations wished to make specific reservations, they could always submit them in writing to the Secretary-General, who would transmit them to all the participating States.

Report of the Ad Hoc Committee on Conventional Weapons (CDDH/220 and Add.1, CDDH/IV/204)

3. The PRESIDENT invited the Rapporteur of the Ad Hoc Committee on Conventional Weapons to introduce the report of that Committee.

4. Mr. KALSHOVEN (Netherlands), Rapporteur, said that the report of the Ad Hoc Committee on Conventional Weapons was contained in documents CDDH/IV/204 and CDDH/220 and Add.1. In its final version, the report would contain two additional paragraphs concerning its adoption and a statement by the International Committee of the Red Cross (ICRC) on the decision taken at the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne in 1974, and on certain changes which had been made in the rules of procedure of that Conference.

5. The discussion in the Ad hoc Committee had been influenced by the fact that a second session of the Conference of Government Experts would be held in Lugano in January and February 1976. That Conference would be particularly concerned with item 3 of the Ad hoc Committee's present work programme, namely the question of the prohibition or restriction of the use of specific categories of conventional weapons which might cause unnecessary suffering or have

indiscriminate effects. That fact had undoubtedly prevented some delegations from commenting in depth on proposals concerning such prohibition or restriction, so that the discussion of item 3 had necessarily been somewhat fragmentary.

6. It was clear, however, that there did exist a general political will to continue the work, which might eventually lead to the adoption of widely-accepted and effective prohibitions or restrictions on the use of certain types or categories of conventional weapons. Thus, the debate on item 3 constituted the major part of the Ad hoc Committee's report, as given in paragraphs 13 to 55.

7. In accordance with the historical order of events, the report was preceded by a reference to the Lucerne Conference and an assessment of its relative success, and followed by a consideration of the work to be done at the second session of that Conference. Although some delegations had hesitated over the necessity and desirability of a second meeting of experts, there had been broad recognition that such a meeting would indeed be indispensable. A programme of work for the second session had been worked out in informal discussions, and the ICRC had finally been able to submit document CDDH/IV/203 in which it had set out the work programme in detail and stated its willingness to convene the second session. That session would not only discuss the technical aspects of the question, but would also concentrate on the possibility of placing restrictions and prohibitions on the use of specific conventional weapons.

8. Mr. GARCES (Colombia), Chairman of the Ad hoc Committee on Conventional Weapons, wished to compliment the Rapporteur on his very clear report and to state that he personally would be glad to give any necessary explanations.

9. Mr. AL-FALLOUJI (Iraq) wished to state, on behalf of his delegation, that it fully supported the Chairman's appeal to all delegations to limit their statements to general observations. Nevertheless he also wished to stress the importance of learning the general reactions of delegations to the work which had been done so far. He assured the President that he could count on the full co-operation of his own delegation, both at the present session and in the future.

10. Mr. DAYAL (India) said that his delegation had associated itself with efforts to secure restrictions on cruel and indiscriminate weapons ever since the adoption of resolution XIV of November 1973, by the XXII<sup>nd</sup> International Conference of the Red Cross, and was still optimistic about the eventual success of those efforts. The prevention of cruelty and suffering was one of the cherished national ideals of his country and was part of its ancient heritage.

11. The four Geneva Conventions had been drawn up in 1949 and the international community was now meeting after twenty-five years to discuss how to ensure their enforceability. Those Conventions had been relatively easy to apply, since they had dealt with such post-war events as the treatment of prisoners of war. The proposed restrictions on conventional weapons, however, would be applied when tension was high and when the situation was entirely within the discretion of military commanders.

12. Since, in that case, the political existence and security of the country would be at stake, his delegation did not believe that there was any point in pursuing the ideals of weapons control as divorced from the strategic and military realities faced by the nation. Those realities were specific; they arose from the threatening environment in which the nation might find itself. They were also dependent on the state of technical development achieved by a country. Any effort, therefore, to separate the question of weapons from such considerations might only lead to an international agreement which would be unenforceable.

13. In his opinion, the treatment of those aspects during the present discussion had so far been very inadequate. His delegation took the view that it was necessary to avoid such pitfalls at an early stage. That was particularly relevant for countries which felt that they were still engaged in external or internal conflicts, or both. It had been stated that the next session of the Conference of Government Experts on the Use of Certain Conventional Weapons should focus on specific weapons which might have to be banned. He wished to add that at the same time each country should carefully consider its willingness, in terms of its own position, to be subjected to such prohibitions. Further studies along those lines seemed to be called for. The Conference should aim at creating only such laws as would be politically and militarily practical for all States, especially those States which were mainly dependent upon conventional, and accordingly less efficient and less accurate, weapons.

14. Another practical aspect of the problem related to the principles of universality and reciprocity. Those aspects had been stressed by his delegation at the previous session and continued to reflect the policy of his Government. They were, in fact, so intensely practical that they deserved to be incorporated in the body of the new law instead of being relegated to the area of reservations. The discussion of all those implications had so far been inadequate.

15. Lastly, if the realistic aspects of the problem were adequately covered, the chances of working out a practical law on the prohibition of conventional weapons would be much better. His delegation was prepared, as before, to associate itself with such efforts and to recommend to its Government that it should participate in the next session of the Conference of Government Experts, to the expenses of which it was also prepared to contribute.

16. Mr. MAIGA (Mali) wished to draw attention to his delegation's support of working paper CDDH/IV/201 and Add.1 to 6, as referred to in paragraph 9 of document CDDH/IV/204.

The Conference took note of the report of the Ad hoc Committee on Conventional Weapons.

Report of Committee I (CDDH/219; CDDH/I/284)

17. The PRESIDENT invited the Rapporteur of Committee I to introduce the report of that Committee (CDDH/219; CDDH/I/284).

18. Mr. de ICAZA (Mexico), Rapporteur, briefly reviewed the work of Committee I as described in document CDDH/I/284, with the changes and corrections given in document CDDH/219. A great effort had been made to engage in full discussion of all articles of fundamental importance. Since, however, the Committee had experienced some difficulty in drafting its texts correctly in all four official languages, the necessary work of concordance had been left to the Drafting Committee.

19. Mr. HAMBRO (Norway), Chairman of Committee I, wished to express his appreciation of the fine spirit of compromise in which the debates of Committee I had been conducted. He hoped that all delegations would devote the interval between the present session and the third and final session of the Conference to deep and careful reflection on the real meaning and significance of its great work for the alleviation of human suffering.

20. Mr. MENA PORTILLO (Venezuela), referring to the question of the protection of journalists engaged in dangerous missions in areas of armed conflict, drew attention to paragraph 190 and new paragraph 190 ter in document CDDH/219, which contained amendments to the report of Committee I (CDDH/I/284). Although his delegation had voted for the text of the new article 69 of draft Protocol I, it wished to reserve its right to refer again at the third session of the Conference to the amendment (CDDH/I/242) it had submitted to annex I to the report of the Ad Hoc Working Group on the Protection of Journalists engaged in Dangerous Missions (CDDH/I/237 and Corr.1 and 2). His delegation was firmly convinced that journalists engaged in dangerous missions should be given certain facilities and protection but should not be allowed into the firing zone. Such a provision would be a step forward in humanitarian law. He hoped that his delegation's amendment would be fully reflected in the records of the Conference.

The Conference took note of the report of Committee I.

Report of Committee III (CDDH/215 and Add.1; CDDH/III/286 and Add.1, Add.1/Corr.1)

21. The PRESIDENT invited the Rapporteur of Committee III to introduce the report of that Committee (CDDH/215 and Add.1; CDDH/III/286 and Add.1, Add.1/Corr.1).

22. Mr. ALDRICH (United States of America), Rapporteur, introducing the report of Committee III, said that the report was a joint product of two Rapporteurs - Mr. Richard Baxter and himself. Mr. Baxter was unfortunately unable to be present owing to other pressing duties.

23. Committee III had worked exceedingly hard, especially in the Working Group, in order to reach agreement to the extent possible on the articles of the draft Protocols allocated to it for consideration. It had succeeded to the satisfaction of most representatives. It had concluded consideration of most of the articles concerning the civilian population and some of the articles on methods and means of combat. The Committee had faced and surmounted some of the difficult problems placed before it at the beginning of the Conference. Equally difficult problems still remained, however, for solution at the third session of the Conference.

24. The Committee's report focused on the articles that had been adopted and gave some indication of the trends of thought and of concepts which had produced the texts, and of the feelings and interpretations which had been predominant in the discussions in the Working Group.

25. He drew attention to an omission in the modifications and corrections submitted to the report in document CDDH/215, and pointed out that the last sentence of paragraph 133 of the report (CDDH/III/286) should be redrafted to read: "Several representatives suggested that the Drafting Committee should consider whether ... and urged that the terminology be made consistent throughout Protocol II."

26. Turning to article 42, he said that he had been asked to state that representatives who wished the full text of their statements concerning that article, as made in the Committee, to be circulated should submit them to the Secretary-General of the Conference not later than 31 May 1975.

27. Mr. SULTAN (Arab Republic of Egypt), Chairman of Committee III, referring to the Committee's work on the two subjects of protection of civilian population and methods and means of combat, paid a tribute to the work done by the two Rapporteurs and emphasized the spirit of co-operation and understanding which had reigned during

the discussions in the Committee. It was possible that certain reservations might be made concerning the wording of the report, but it had none the less been adopted.

28. Mr. BLISHCHENKO (Union of Soviet Socialist Republics) said that his delegation had only just received document CDDH/III/286/Add.1 giving the texts of articles as adopted by the Committee and pointed out that, perhaps for technical reasons, the wording of several articles as adopted by the Committee had not been faithfully reproduced. He referred in particular to article 33 in the Russian version which did not refer to "superfluous injury or unnecessary suffering" but merely stated "without unnecessary suffering". The English version reproduced the wording adopted in the Committee. All language versions should faithfully reflect the texts adopted, as reference would be made to them at the third session of the Conference.

29. The PRESIDENT said that the errors made in reproducing the texts adopted would be remedied by the Secretariat.

30. Mr. HAMBRO (Norway) said that his delegation wished to give a short explanation of its vote at the time when it had accepted the report of Committee III. The report contained a certain number of interpretations of the various articles adopted by the Committee. His delegation felt it necessary to stress that such interpretations were in no way authentic and did not bind anyone. The articles adopted by the Committee merely represented the consensus of the Committee. His remarks should not be interpreted as affecting his regard for the two Rapporteurs.

31. Mr. PICTET (Switzerland) said that his delegation also considered that paragraphs of the report were interpretations of the articles adopted by Committee III, in particular draft Protocol I, article 49.

32. Although approving the report which was excellent, he expressed reservations concerning the paragraphs which went beyond statements made by members of delegations who had participated in the work of the Committee.

33. Mr. ALDRICH (United States of America), Rapporteur, said that he had not yet received document CDDH/III/286/Add.1 to which the representative of the Union of Soviet Socialist Republics had referred; but together with the Secretariat, he would try to ensure that articles which had been adopted by the Committee were correctly reproduced in that document. It would be useful, in that connexion, if representatives would carefully examine documents and point out any linguistic errors or omissions to the Secretariat, so that the texts could be amended before the end of the Conference.

34. Referring to the various interpretations set out in the report, he agreed that the document did go beyond what certain representatives might have said. To some extent that was due to the fact that much discussion had taken place in the Working Group, which had no summary records. He agreed that each delegation knew better what it had said than did the Rapporteurs, and that the interpretations appearing in the report might differ. Those interpretations, however, had not been intended to be binding on participants in the Conference.

35. Mr. BLIX (Sweden) supported the statement made by the Norwegian representative.

The Conference took note of the report of Committee III.

Report of Committee II (CDDH/221; CDDH/II/300 and Add.1 to 3, Corr. 1, 3 and 4)

36. The PRESIDENT invited the Rapporteur of Committee II to introduce the report of that Committee (CDDH/221; CDDH/II/300 and Add.1 to 3, Corr.1, 3 and 4).

37. Mr. MAIGA (Mali), Rapporteur, introducing the report of Committee II, drew attention to the various addenda and corrigenda and pointed out that the report consisted of three parts. He also drew attention to draft resolution CDDH/II/308 relating to the need for national co-ordination on radio-communication matters raised in the technical annex to draft Protocol I. A further document would shortly be circulated under symbol number CDDH/221, recapitulating all corrections made to the report of Committee II which had been adopted by the Committee on the previous day. All amendments would appear in the final report.

38. Committee II had held fifty-five meetings during the second session and had adopted twenty-nine articles pertaining to both Protocols.

39. He then paid a tribute to the spirit of understanding and co-operation that had reigned during the meetings of the Committee.

40. Mr. GIRARD (France) said that his delegation wished to express reservations concerning the wording appearing in the French texts of the articles adopted by Committee II. He urged that the wording should be examined by the Drafting Committee of the Conference when the time came. His delegation hoped that if Committee II set up a drafting committee at the third session of the Conference, linguistic qualifications would be taken into account when members of that Committee were appointed.

41. His delegation had further reservations on articles where the phrase "subject to existing national legislation of the High Contracting Parties" appeared. The French delegation considered that it was the aim of the Diplomatic Conference to set standards to which High Contracting Parties would consent to subscribe in the free exercise of their sovereignty. To subject such standards to provisions of existing national legislation was tantamount to subtracting from their scope and making the Protocols useless.
42. His delegation extended its congratulations to the Chairman and Rapporteurs of Committee II on the remarkable work they had done.
43. Mr. LONGVA (Norway) supported the statement of the French representative regarding "existing national legislation".
44. Mr. AL-FALLOUJI (Iraq), referring to the phrase "existing national legislation", emphasized that any provisions adopted must not constitute a threat to national sovereignty.
45. Mr. NAHLIK (Poland), Chairman of Committee II, said that he had been proud to preside over the work of Committee II, which had gone forward in a spirit of full mutual understanding and co-operation on the part of all delegations.

The Conference took note of the report of Committee II.

46. Mr. MISHRA (India) said that when the second session of the Conference had been convened, it had been the hope of a large number of delegations that certain important issues which could not be solved at the first session would be settled at the second and at the very outset of the Conference, in order to create a better atmosphere of understanding and compromise. However, to the regret of his delegation, from the beginning of the second session delegations had been divided on the issue of reconsideration of the question of the participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam. For various reasons, and mainly on grounds of procedure the representative of the Provisional Revolutionary Government had not been able to attend the Conference. Events in Viet-Nam during the past two months had amply confirmed his delegation's view that the decision not to allow the Provisional Revolutionary Government to participate had been unfortunate. He hoped that the matter would be settled satisfactorily at the Conference's third session.
47. The results achieved after eleven weeks' work were not insignificant. The three main Committees and the Ad Hoc Committee on Conventional Weapons had discussed issues at great length and had worked hard to complete draft articles which had met with the maximum degree of consensus. He wished to thank the Chairman, Rapporteurs, the Chairmen of the Working Groups and all participants for the work they had done. However, his delegation considered that much

greater progress would have been achieved and the pace of the Conference accelerated had a greater degree of flexibility and compromise been shown. He then referred to a statement made by his delegation at a meeting of the Ad Hoc Committee on Conventional Weapons.

48. As far as draft Protocol I was concerned, substantial progress had been made in the various Committees, which gave members the hope that the various articles of Protocol I would be finalized and adopted in plenary at the third session of the Conference.

49. His delegation noted with satisfaction the various articles that had been adopted by the Committees, including the article relating to the protection of journalists engaged in dangerous missions in areas of armed conflict. It was gratifying to note that the Committee had been able to adopt most of the articles by consensus. His delegation was happy to note that after sustained discussions lasting more than five weeks, the article relating to Protecting Powers had been adopted by consensus. That article to a large extent filled a lacuna in the 1949 Geneva Conventions and would help in the better implementation of those Conventions in times of international armed conflicts. It was the understanding of his delegation that the International Committee of the Red Cross, or any other humanitarian organization, would offer to act as a substitute only after the consent of the parties concerned had been obtained. Further, he drew the attention of representatives to article 49 of draft Protocol I, where absolute protection had not been granted against military attacks on dams, dykes and power-generating stations. Also article 70 bis as adopted involved an inherent contradiction with article 5 pertaining to Protecting Powers.

50. As regards draft Protocol II, representatives were aware that his delegation had raised strong objections to the very idea of a second Protocol on the ground that once the national liberation movements had been included in paragraph 2 of Part I of draft Protocol I, giving them the status of international conflicts, then Protocol II would not be necessary, since any other conflict taking place within the territory of a sovereign State would be an internal conflict, and any international instrument designed to regulate non-international conflicts might in actual application impede the settlement of the conflict and lead to external interference.

51. His delegation, in spite of very serious objections to the various articles of draft Protocol II, had participated fully and effectively and had contributed to the maximum possible extent in the deliberations in the main Working Groups and the Sub-Working Groups. That had been done with the purpose in mind that India must share with other delegations its doubts regarding the actual effectiveness of Protocol II in its practical application and must help towards clarifying the issues which could face Parties to a

conflict governed by Protocol II. His delegation noted with satisfaction that its contribution during the discussions had helped to a certain extent in the reformulation and redrafting of important articles. It had been possible to draft article 1 of draft Protocol II and adopt it in Committee I. The article as it stood today clearly defined the threshold of the non-international conflict to which Protocol II would apply. It was a very important and crucial article.

52. The delegation of India had introduced an important amendment to article 4 of draft Protocol II (CDDH/I/240). The purpose of the amendment was expressly to prohibit outside interference in an armed conflict by specifically mentioning in the article that should external interference take place then Protocol II would cease to apply. That amendment deserved the fullest consideration by all delegations before the third session.

53. As already mentioned, his delegation hoped that the remaining articles of draft Protocol II would also be reformulated and redrafted at the third session. The Government of India would give full consideration to the views expressed during the entire deliberations on draft Protocol II at that session and would no doubt examine the text when the full Protocol was ready after adoption by the Conference. His delegation fully shared the anxiety of many delegations that humanitarian law should be further developed so as to lessen human suffering, especially that of women and children, in times of armed conflict. But, notwithstanding its desire to see the full development of humanitarian law applicable in armed conflicts, the Government of India could not approve of any international document which impinged upon national sovereignty and permitted outside interference, direct or indirect, financial, military or otherwise, in the internal affairs of States, especially of the younger nations of the developing world.

54. He would be failing in his duty if he did not point to the basic difficulty which probably confronted most Member States, as it certainly did India, regarding the impossibility of discriminating between its own citizens under the national Constitution and the proposed draft Protocol II. What Governments were being asked to do was to treat some perpetrators of grave crimes leniently, while the full rigour of the law would be applicable to other citizens who dared to commit similar crimes. In the case of some, conspiracy would be treated lightly, or even condoned, whereas others would be liable to extreme punishment under the law. In the case of some again, it was proposed that sentences would not be carried out immediately, whereas others would be punishable forthwith according to law. It was not possible under the Indian Constitution to discriminate between one citizen and another in that fashion. That was the basic problem in regard to accepting the various provisions of draft Protocol II.

55. He expressed his gratitude to the President, the Secretary-General and the staff for the excellent manner in which the two sessions of the Conference had been conducted.

56. He reaffirmed the desire of his Government to participate effectively and to contribute to the development of international humanitarian law applicable in armed conflicts. India was most willing to consider with the utmost sympathy any measures proposed by other delegations during the entire course of the Conference.

57. Mr. AL-FALLOUJI (Iraq) said that he wished to touch briefly on the background to international humanitarian law by referring to its founder, Henry Dunant, who had gone out to help victims carrying a cross rather than any rule of law. Everything possible should be done to ensure that the true humanitarian basis was preserved. His delegation was alarmed at the tendency to allow legal criteria to take precedence over humanitarian considerations. There had been much discussion on whether a particular conflict should be regarded as an international or a non-international conflict, as a rebel movement or a domestic insurgent movement, while the essential point of endeavouring to save the greatest number of victims appeared to have been lost. That should have been both the starting point and the underlying basis of the work of the Conference and should have taken precedence over all national or legal considerations. The distinctions which had been made between draft Protocols I and II made it difficult to determine the precise scope of humanitarian action.

58. It was not too late for the Conference to reconsider the situation with a view to affording humanitarian assistance to victims of bloodshed the world over instead of allowing political considerations to take precedence as they were beginning to do.

59. The Geneva Conventions of 1949 had been designed largely for the Western developed countries. The main concern of the Conference was to ensure the active participation of the developing countries. That objective had not so far been achieved, and he feared that the additional Protocols would have even more of a Western bias than the Conventions themselves. When the latter had been concluded in 1949, many of the present developing countries had not come into existence and could not therefore take part. It was now essential that they should participate actively in the work of the Conference. Their contribution so far had been disappointing, yet they were the countries in which the victims of conflict were mostly to be found. All countries should try to put themselves in the place of those suffering from the effects of armed conflict.

60. He wished to thank the President for his great efforts and objective attitude.

61. Mr. GRIBANOV (Union of Soviet Socialist Republics) said that participants in the work of the second session of the Conference could be satisfied with its results. Over 70 articles had been adopted and there was even greater cause for satisfaction with the atmosphere of constructive co-operation that had prevailed in the Committees and Working Groups. Such an atmosphere at the third session would guarantee its success. His delegation, together with the delegations of the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic, had contributed to the results. The President had rightly stressed the difficulty of the Conference's task and the need to make every effort to accomplish that task with all possible speed. It would be its duty at its third session to conclude and adopt draft Protocols I and II. It was essential to concentrate on that urgent task and avoid discussion of problems that were not within its competence, such as disarmament questions, which were being dealt with by other international organs. Any proposal for a third or fourth additional protocol could only prolong the work of the Conference and leave it inconclusive. The President had rightly drawn attention to the dangers of such prolongation. His delegation hoped that all parties to the Geneva Conventions of 1949, without discrimination and with the participation of representatives of the Provisional Revolutionary Government of the Republic of South Viet-Nam, would be able to discuss and adopt draft Protocols I and II. The accomplishment of that aim would make a great contribution to the development of international humanitarian law and the Conference would have fulfilled its historic mission for the benefit of all peoples.

62. He wished to join previous speakers in expressing appreciation to the President and the Secretariat for their contribution to the success of the session.

63. Mr. CRISTESCU (Romania) said that, in adopting the Committee reports, the Conference had merely taken note of the work of the Committees; its action should not be interpreted as approval of the substantive decisions contained in the reports. The documents bore witness to the important work accomplished by the Conference at its second session in examining and disposing at Committee level of a considerable number of questions which would form part of the future additional Protocols to the Geneva Conventions.

64. The desire of the international community to ensure the application of humanitarian law and to see justice prevail in the face of the cruel realities of armed conflict which still inflicted terrible suffering on peoples in many parts of the world, called for the reaffirmation and development of humanitarian law, and had had an important influence on the proceedings of the Conference at its second session. The constructive work carried out during the

session had resulted in large part from the great interest, devotion and spirit of self-sacrifice shown by the President, who had served the humanitarian cause of the Conference with wisdom, firmness and objectivity.

65. It would be premature, while the Conference was still in the midst of its work, to draw up a summary of its results. Governments should draw their own conclusions after studying the final results, which should be appraised in a realistic and reasonable manner, bearing in mind the importance and difficulty of the questions covered by the two Protocols.

66. His delegation was optimistic about the next session of the Conference, at which it hoped it would be possible not only to complete the examination of the articles left pending but also to improve those already dealt with but which required further development.

67. The work accomplished at the present session was a first step and provided a basis on which to build a fuller reaffirmation and true development of humanitarian law in conformity with the needs and aspirations of the international community. His delegation was firmly convinced that humanitarian law should develop within the framework of contemporary international law, which prohibited aggression, by ensuring protection to all victims of aggression. It should strengthen the effective protection of the civilian population and of civilian objects in all circumstances, and prohibit more explicitly the use of weapons, methods and means of combat which struck without discrimination at combatants and the civilian population. International rules governing non-international armed conflicts must be based on recognition and respect for the sovereign rights of States with respect to their internal organization; only thus could the acceptability of such rules be assured. For all peoples who had achieved their independence at the cost of long struggles and great sacrifice, the reaffirmation and development of humanitarian law must serve to consolidate their sovereignty and strengthen their protection in case of aggression. Humanitarian law would in that way contribute to the strengthening of the application of general international law.

68. The session had been useful in making it possible, through the articles drawn up in the Committees, to see the two Protocols begin to take shape and in giving a better understanding of the various positions through the discussions which had taken place. The Conference could only achieve effective results by arriving at unanimously acceptable solutions, since in so sensitive a field as the law of armed conflicts, respect for all States, both large and small, must have commanding force.

69. His delegation hoped that the more precise scope of the two Protocols which it had been possible to define at the current session would show the importance and seriousness of the questions with which the Conference had to deal, and would lead to a broader participation of States in its work of protecting the legitimate rights of peoples and bringing about a victory for the humanitarian cause. The third session, at which the legitimate right of participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam should be established, would be of decisive importance in concluding the laborious efforts for the reaffirmation of humanitarian law.

70. He wished to express his delegation's sincere appreciation and thanks to the President, the Federal Government and the people of the Swiss Confederation for their hospitality and for their great efforts to ensure the effective organization of the Conference.

71. Mr. GLORIA (Philippines) said that, since the comments of the Indian representative affected the Philippine proposal in document CDDH/214, he had some observations to make on the subject. In submitting its proposal, his delegation was perplexed by the question of whether there was a real need for draft Protocol II or whether it was not more practical to choose only the relevant provisions of that Protocol and incorporate them under a separate heading in draft Protocol I.

72. Although no type of armed conflict was clearly defined in article 1 of draft Protocol II, it might be assumed that it had been the ICRC's intention to include armed conflicts of serious proportions within the territory of a State, and not merely isolated guerrilla activities. Among such conflicts might be mentioned insurrection, which was the beginning of a rebellion; rebellion itself, which was open-armed resistance to established government or authority; and revolution, which was a forcible substitution of a new Government or ruler for the old.

73. Leaving the problem to be resolved by the Diplomatic Conference, the ICRC had omitted the types of conflict he had just mentioned. There would otherwise hardly be any necessity for article 1, paragraph 2, which clearly stated that draft Protocol II did not apply to situations of internal disturbances such as "isolated and sporadic acts of violence and other acts of a similar nature". The ICRC draft went on to emphasize in paragraph 3 that, within the scope of draft Protocol II, the provisions of article 3 common to the Geneva Conventions of 1949 would apply.

74. At the first session of the Conference, Committee I had adopted an amended article 1, which gave international status to the class of conflicts which the ICRC had intended to be within draft Protocol II.

It had been a clear case of winning a political skirmish by clever strategy. His delegation did not know whether the ICRC had been taken by surprise at the sudden change of legal concept. No report had been made between the first and second sessions of the Conference on any development brought about by the amendment to article 1.

75. At the second session of the Conference, with a view to strengthening the seriously weakened status of draft Protocol II and clarifying the extent to which internal armed conflicts were covered, the representatives of Pakistan, Indonesia, Honduras, the Union of Soviet Socialist Republics and the Ukrainian Soviet Socialist Republic had introduced the criteria of "intensity", "extent" and "duration" of the conflict so as to give at least a semblance of the real intention of the draft Protocol. At one of the plenary meetings, the Indian representative, supported by the Indonesian representative, had expressed strong objections to the development of draft Protocol II, a view just reiterated by the representative of India.

76. It was quite clear, therefore, that since the object for which draft Protocol II had been intended had been absorbed in the amended article 1 of draft Protocol I, the legal existence of draft Protocol II had been rendered doubtful if not obsolete.

77. Another purpose of the amendment adopted was to secure for the victims of armed conflicts the higher degree of protection available in international as distinct from internal armed conflicts, a provision originally intended for draft Protocol II but now incorporated in draft Protocol I. Its purpose had, however, been neutralized by comparing the provisions of draft Protocol II which were the same as those of draft Protocol I as to the ways in which the armed conflicts should be waged, the combatants should be treated, the wounded, sick and shipwrecked persons should be given aid, and the protection of civilians and civilian objects and women and children should be conducted, and as to the role of the Red Cross.

78. Of the forty-seven draft articles of draft Protocol II, only ten merited serious thought and required to be resolved by the third session of the Conference.

79. Bearing in mind the foregoing observations, his delegation appealed to the Conference and the ICRC to adopt a more realistic approach to draft Protocol II. Such a course of action might lead to a simple, practical and valuable legal instrument, in the application of which the ICRC would always play a part.

80. His delegation had no desire to offend any delegation, much less the International Committee of the Red Cross. Because it believed in the rule of law, it would abide by every agreement without rancour, even if it felt that what had been agreed upon was unfavourable to its cause, so long as the agreement was reached justly and validly and in the name of humanity. That standard of conduct required it to discuss all matters under consideration objectively, subordinating sentimental values of nationality, race or religion, since in the Conference it considered itself part of one world community, with no distinction as to race, colour or religion. That was why no member of his delegation ever spoke of oppression or used such expressions as "imperialist", "alien occupation", or "colonial rule" - expressions which, in his delegation's view, had nothing to do with the development and reaffirmation of humanitarian law.

81. The Philippines had been under Spanish rule for nearly 400 years and under United States rule for forty-eight years and had been occupied by the Imperial Japanese armed forces for three years during the Second World War. During those three régimes, all kinds of acts had been committed against the people of the Philippines, who had suffered them with dignity and fortitude. After the war, the United States of America had given them their independence, for which they would be eternally grateful. The country had thenceforth returned to normal conditions and had been among those which had ratified the four Geneva Conventions in 1949. Throughout those events, no Philippine delegate in any international meeting had attacked "foreign domination" and the Philippines still regarded the American people as their benefactors, Spain as their mother country and the Japanese people as among their closest friends. All those facts indicated that the Philippines regarded moral values as ingrained in its system. If, in its participation in the Conference, its views or positions differed from those of other delegations, they should be interpreted only as motivated by moral considerations and practical values. He appealed to the ICRC to bear with his delegation in moments of disagreement. Its proposal (CDDH/214) was before delegations for their dispassionate consideration.

82. Mr. HAMBRO (Norway) said that the second session of the Conference could justifiably be described as successful. Committees I and II had each adopted more than 20 articles, Committee III had adopted 30 articles and considerable progress had been made in the Ad Hoc Committee on Conventional Weapons. After long and hard negotiations, solutions had been found to many very difficult problems, such as that of improving the procedure for appointing Protecting Powers, which gave grounds for hoping that, despite the different conceptions and interests of the various delegations, the final result of the Conference would be a success.

83. At the same time, many important and difficult problems remained to be solved, such as the question of finding an adequate basis for the legal regulation of guerrilla conflicts. And there were highly conflicting views on articles 33, 35, 40, 41 and 42 of draft Protocol I, which would have to be harmonized during the third session.

84. While there seemed to be fairly broad agreement about the structure and scope of Protocol I, there was no such agreement about Protocol II. A fairly substantial majority, however, was ready to accept the ICRC's approach to that Protocol, and he hoped that others would agree to accept that approach as a working basis at the third session. The problems of Protocol II must be approached with an open mind and with imagination. Advantage should be taken of the period between the sessions to study those problems in depth. Special attention should be given to the crucial problem of the relationship between national and international law, which was an important problem in many fields, but especially in humanitarian law.

85. Mr. CHOWDHURY (Bangladesh) said that the representative of Iraq had expressed pessimism because politics seemed to be playing a greater role at the Conference than humanitarianism. He did not share that pessimism, but rather the optimism of the Norwegian and other representatives. The Conference was engaged in the formulation of the principles which should minimize human suffering in the case of armed conflicts, international and non-international. The need for such a Conference had been felt because of certain omissions in the 1949 Geneva Conventions. Bangladesh had suffered in 1971, as a result of those omissions, and his Government was anxious that no other people should suffer in the same way. Bangladesh, therefore, was ready to give whatever help it could in formulating principles from which all mankind would benefit. He was convinced that the Conference could solve all difficulties if delegations were guided by a spirit of consideration for others.

86. He particularly welcomed the proposed article on journalists (See CDDH/I/237, annex I) through whom the whole world came to know of the sufferings of the people in one part of the world. Journalists should be given every protection in carrying out their dangerous missions.

87. The concern of the Conference was man; delegations should ask themselves whether the laws they were drafting were reasonable and helpful for all mankind, and not merely consider what might be the interests of their own country. The laws drafted by the Conference should be applicable in all given situations for the alleviation of human suffering.

88. At the present stage of the Conference, it was too late to try and alter the structure of the two draft Protocols. In the interests of the speedy adoption of an agreed text, the Conference should keep as closely as possible to the structure proposed by the ICRC.

89. He did not think that the language problem presented any insuperable difficulty. In harmonizing the articles drafted by the different Committees, the Drafting Committee should be guided by the principle that the same wording should be used consistently to express the same ideas.

90. If delegations would approach their task without malice or hatred, but with love and friendship for all, he foresaw a brilliant future for the Conference.

91. Mr. de BREUCKER (Belgium) said that his delegation also wished to express satisfaction at the work accomplished during the session. Over seventy articles had been adopted in the two draft Protocols. The new articles were fully in line with the 1949 Conventions and The Hague Regulations concerning the Laws and Customs of War on Land annexed to The Hague Convention No. IV of 1907. The Conference should reaffirm and develop rules which were equally applicable to all Parties to a conflict and provide the same protection for all the victims of armed conflicts without discrimination of any kind.

92. The work of the Conference had proceeded in an atmosphere of co-operation and friendship. Discussions in the Committees and in the Working Groups had been on a high level. Numerous difficulties had had to be overcome, including that of ideological differences and particular prejudices. There were many articles on which it had not been possible to reach agreement, one of the most important being the article on reprisals, for which a solution would have to be found at the third session. But the fabric which had already been built stood on firm foundations, which would not be shaken.

93. The Conference carried a message of faith and hope; faith in the work the Red Cross had been doing since its foundation by Henry Dunant in 1859, and hope because it was striving to relieve human suffering pending the day when the scourge of war should be abolished. He particularly congratulated their President, Mr. Graber, the Swiss Government and the ICRC on the arrangements they had made for the smooth running of the Conference.

94. Mr. EL-FATTAL (Syrian Arab Republic) said that a noticeable feature of the session had been the absence of many delegations and the limited participation of some of those which had been able to attend. That applied particularly to the developing countries; it was not a sign of apathy, but of the inability of many countries to provide sufficient representatives and funds to cover all the numerous

conferences taking place at the same time. Such absenteeism affected not only the Diplomatic Conference; it was a general phenomenon, and it was imperative that those who were present should bear in mind the interests of those who were absent, since otherwise the latter could hardly be expected to accede to the articles eventually adopted.

95. Recent events had revealed the short-sightedness of those forces which, at the beginning of the Diplomatic Conference, had succeeded in preventing the Provisional Revolutionary Government of the Republic of South Viet-Nam from taking part in its work, thus impairing the universality of the concept of human rights and international co-operation.

96. His delegation regretted that the opponents of the proposal that the United Nations should participate in the process of appointing substitutes for Protecting Powers should have forced the issue to a vote. It hoped that the Conference would find a way of involving the United Nations in giving support to the articles which had been adopted.

97. The Syrian delegation's views on draft Protocol II would be expressed in greater detail at the third session of the Conference.

98. Mr. MILLER (Canada) said he wished to thank the Secretary-General and his staff on the excellent way in which the Conference had been organized. He did not share the doubts and pessimism that had been expressed by certain delegations. He agreed with the Indian representative about the application of the Protocols, but did not share his doubts about Protocol II. He strongly disagreed with the statements by the representatives of Iraq and Syria who had questioned whether the developing countries had taken a sufficient part in the Conference; the lists of amendments would show how many of them had been proposed by developing countries. The representatives of many developing countries, not least those of Iraq and Syria, had played a most distinguished role in the Conference. Very often the compromise solutions through which difficulties had been cleared away in the Committees and Working Groups had been proposed by the representatives of developing countries, who had every reason to be proud of the part they had played and to whom the Canadian delegation was very grateful.

99. He agreed with the Soviet and other representatives who had stressed that the adoption of seventy articles, most of them by consensus, gave grounds for optimism, and with the Romanian representative on the necessity for universality in humanitarian law; he thought, in fact, that the Conference had made progress towards that goal.

100. The difficulty concerning the national application of international standards, which had been expressed in connexion with draft Protocol II, was not peculiar to the present Conference, but affected all international conferences.

101. He wished to assure the Philippine representative that the Canadian delegation would give careful attention to the Philippine proposals in document CDDH/214 during the interval between sessions.

102. The Canadian delegation was not in agreement with the idea that there should be a single Protocol because of the practical difficulties that would be involved in the ratification and application of such a Protocol. The Conference should continue to work on the basis of the ICRC text, while keeping an open mind about the form of Protocol II.

103. He agreed with the Belgian representative that the atmosphere of the Conference was one of co-operation and friendship, and with the representative of Bangladesh that it had a brilliant future before it. The Canadian delegation was keenly conscious of the urgency and importance of the Conference's task, which was to provide practical protection for the victims of all armed conflicts and to place humanitarian restraints on man's inhumanity to man.

The meeting rose at 1.5 p.m.

SUMMARY RECORD OF THE THIRTIETH (CLOSING) PLENARY MEETING

held on Friday, 18 April 1975, at 10.25 a.m.

President: Mr. Pierre GRABER President of the Swiss  
Confederation

QUESTION OF THE ADHERENCE OF SOUTH AFRICA TO THE  
GENEVA CONVENTIONS OF 1949

1. The PRESIDENT recalled that at its twenty-seventh plenary meeting (CDDH/SR.27), on 5 February 1975, the Conference had adopted resolution 7 (II) on the question of the adherence of South Africa to the Geneva Conventions of 1949.
2. The SECRETARY-GENERAL read out the resolution, the letter from the President of the Conference transmitting that resolution to Mr. Muller, Minister of Foreign Affairs of the Republic of South Africa, and the reply from the latter to the President as follows:

Letter from Mr. Graber, President of the Diplomatic  
Conference on the Reaffirmation and Development of  
International Humanitarian Law applicable in Armed  
Conflicts, to Mr. Hilgard Muller, Minister of Foreign  
Affairs of the Republic of South Africa

"Geneva, 17 February 1975

Sir,

On the occasion of the opening of the second session of the Diplomatic Conference on Humanitarian Law, on 3 February 1975, I informed the plenipotentiaries of the decision communicated to the Federal Political Department by several Governments, including that of the Republic of South Africa, not to participate at this session.

At its 27th plenary meeting, on 5 February, the Conference, on the proposal of a delegation, adopted by consensus a resolution entitled "Question of the adherence of South Africa to the Geneva Conventions of 1949". This resolution, a copy of which is annexed hereto, requests the President of the Conference to seek urgent assurances from the Government of the Republic of South Africa regarding its adherence to the Geneva Conventions of 1949 and its commitment to the principles and rules of international humanitarian law applicable in armed conflicts.

In compliance with the Conference's request, I have the honour, as its President, to inform you of this resolution and to ask you to be good enough to communicate to me whatever reply the South African Government may see fit to make.

In paragraph 2, the Secretary-General of the Conference is invited to report on the implementation of this resolution.

Accept, Sir, the assurances of my highest consideration."

Reply from Mr. Hilgard Muller, Minister of Foreign Affairs of the Republic of South Africa, to Mr. Graber, President of the Diplomatic Conference

"14 March 1975

Mr. President,

In reply to your letter of 17 February 1975, I wish to point out that the Republic of South Africa has always honoured the precepts of international law and its obligations under treaties to which it is a party.

In regard to the Conference's resolution No. 7 (II), adopted on 5 February 1975, I wish to state that my Government sees no reason at all why South Africa should be singled out and therefore declines to comment.

Please accept, Mr. President, the assurance of my highest consideration."

3. Mr. CLARK (Nigeria) thanked the President and the Secretary-General for the prompt action they had taken to implement the resolution.

4. He regretted to note that the reply of the Government of South Africa was frankly evasive and fell short of the Conference's expectations. The fact that the South African Government had not given the categorical assurances required of it in clear and unequivocal terms confirmed that it had ulterior motives for staying away from the Conference. The South African Government had been unwilling to respect the Charter of the United Nations and the Universal Declaration of Human Rights, and had consistently defied international opinion and morality. Its reply showed that it might indeed not be adhering to the principles and provisions of the Geneva Conventions of 1949. Such a reply was not at all surprising.

5. Neither the Nigerian delegation nor the Conference had singled out the Government of South Africa for special mention or obloquy. History and circumstance had singled out that Government as the object of the resolution addressed to it.

6. It was common knowledge that the Government of South Africa, on its own territory, was fighting the majority of its nationals who were struggling for self-determination and against racial domination and apartheid, which had been condemned as crimes under the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 A (III), Annex).

7. The Preamble to the Charter of the United Nations specifically mentioned human rights, and in different articles of the Charter the peoples of the United Nations reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person. The racial policies of the Government of South Africa had been a matter of concern to the United Nations ever since its inception. In November 1972, for instance, the General Assembly had adopted resolution 2922 (XXVII) reaffirming that apartheid constituted a total negation of the Purposes and Principles of the Charter and was a crime against humanity. Subsequently it had drawn the attention of the Security Council to the grave situation in South Africa, especially with reference to Chapter VII of the Charter. Other important international organizations, including the International Labour Organization and the United Nations Commission on Human Rights, had adopted several resolutions to combat apartheid.

8. In Namibia and Zimbabwe, flouting the United Nations resolutions, the rulings of the International Court of Justice and the civilized conscience of all mankind, the racist régime of South Africa continued to perpetuate flagrant violations of the Geneva Conventions designed to ensure respect for fundamental rights and to protect the civilian population and prisoners of war.

9. How then could the Government of South Africa speak of honouring the precepts of international law and its obligations under treaties to which it was a party?

10. Conflicts likely to spread were taking place on the soil of South Africa itself as well as in Namibia and Zimbabwe. Since it was the purpose of the Conference to ensure the application of the Geneva Conventions in all armed conflicts, it was essential that international opinion should bring pressure to bear on the Government of South Africa to adhere to the basic principles and norms of international law, more particularly the Geneva Conventions and the International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 (XX), Annex).

11. In conclusion, he thanked the President and the Secretary-General for their most commendable efforts and expressed the hope that the Conference would not allow the Government of South Africa to have the last word and would not relax its efforts until it had obtained the assurances demanded of that Government.

DRAFT RESOLUTIONS (CDDH/I/293 AND CDDH/216)

Protection of journalists engaged in dangerous missions in areas of armed conflict (CDDH/I/293)

The draft resolution (CDDH/I/293) was adopted by consensus.

Submission of proposals and amendments to draft Protocols I and II and new arrangement of the two draft Protocols (to be prepared by the Secretariat) (CDDH/216)

12. Mr. BRILLANTES (Philippines), referring to the first preambular paragraph of the draft resolution said that the words "a later date" meant from 21 April to 11 June 1976.

The draft resolution (CDDH/216) was adopted by consensus.

CONTINUATION OF THE PROCEEDINGS

13. The PRESIDENT recalled that the Conference had already begun consideration of the agenda item by fixing the date of the third session and by adopting draft resolution CDDH/216 on the work entrusted to the Secretariat between the second and third sessions. Draft resolution CDDH/216 emanated from the General Committee of the Conference. In fact, the latter, at its meetings on 24 March and 14 April 1975, had held a thorough exchange of views on the state of progress of the work of the Conference and the action that remained to be taken. The General Committee had been unanimous that every effort should be made to enable the Conference to draw up, at its third session, additional texts to the Geneva Conventions of 1949.

14. Various measures had been envisaged to that effect. First, the General Committee had requested that when sending invitations to participating States to attend the third session he should repeat the wish he had already expressed at the second session, namely that the same representatives would, as far as possible, participate in the proceedings of the third session. Further, the General Committee had welcomed the proposal made to it by the Secretary-General that, for the purpose of strengthening coordination between the various Committees, their Chairmen and the Chairman of the Drafting Committee should meet each week during the third session without prejudice to the competence of the General Committee in the matter.

15. He and the Secretary-General had been requested to study carefully the organization of the third session, in order to ensure the maximum efficiency and to submit proposals to the General Committee in that connexion. The four Committees should of course continue and complete their work at the beginning of the session. The Drafting Committee would be called upon to play its full part and had requested that a sufficient number of meetings be allotted to it in order to enable it to make headway. Certain preparatory work had been entrusted to the Secretary-General which should facilitate the work of the General Committee. A sufficient number of plenary meetings should also be provided for in order that articles approved by Committees might be adopted.

16. He and the Secretary-General would pay special attention to that task and would, in that connexion, welcome all advice and suggestions that representatives might wish to communicate to them.

17. It was also the responsibility of the delegations represented at the Conference to promote the success of the third session by arranging for the texts adopted to be studied by all the Government departments concerned, as also the provisions upon which no decisions had yet been taken and the draft amendments proposed to them.

#### APPEAL IN CONNEXION WITH EVENTS IN VIET-NAM

18. The PRESIDENT said that before declaring the session closed, he wished to inform the Conference that he had received an appeal signed by a certain number of delegations. After consultations it had been agreed that there would be no discussion - one delegation would speak on behalf of the authors of the appeal - and then the delegation of another country could also speak on the subject as it had requested. At the end of the meeting he would make an appeal to the Conference prompted by the circumstances.

19. Mr. NGUYEN VAN LUU (Democratic Republic of Viet Nam) said that his delegation had been glad to note that, in general, the work of the Committees during the second session of the Conference had resulted in the establishment of a number of articles in which humanitarian law had been able to rise to certain requirements of the human conscience of the age. The discussions, both in the Committees and in the Working Groups and Sub-Groups, had been imbued with a spirit of realism and of mutual understanding. It should be noted that, during the last few weeks of the session, twenty-five delegations, prompted by the feeling of their great responsibility with regard to the reaffirmation of humanitarian law, had signed an appeal concerning the so-called "evacuation" of South Vietnamese orphans to the United States of America, denouncing that forced expatriation of children on a scale unprecedented in South Viet-Nam; that operation was part of a vast plan for the forced exodus of the South Vietnamese people which was contrary to

Articles 24 and 50 of the fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war. In view of the significance of the appeal, from the point of view of the reaffirmation of humanitarian law and of its effect on the situation in South Viet-Nam, his delegation requested the President of the Conference, to whom the appeal had been transmitted, to consider it an official document of the Conference.

20. In support of the appeal, he quoted an extract from an article which had appeared in Le Monde of 10 April 1975 and which stated that the American decision to facilitate the emigration of South Vietnamese children and adults was still giving rise to sharp criticism. A warning had also been issued by certain charitable and relief organizations against the hasty adoption of Vietnamese orphans; for instance, the British Red Cross and the Save the Children Fund had spoken out clearly against such adoptions, as had such Swiss organizations as the Catholic "Caritas", Swiss Interchurch Aid and the Swiss Red Cross.

21. His delegation was of the opinion that those facts foreshadowed a new stage in which humanitarian bodies would be more astute in detecting the false humanity which served as a pretext for forced evacuation, a method of war which had been inherent in aggressive imperialism from the "strategic villages" to the "mass exodus". The humanitarian organizations were endeavouring to prevent that masquerade of humanitarian law, which, as was rightly stated in the appeal handed to the President of the Conference, "far from helping to put an end to the state of war and the untold sufferings endured by the people of South Viet-Nam, was designed to sow confusion in world public opinion by diverting attention from the present basic problems in South Viet-Nam, namely, the halting of all foreign intervention in the internal affairs of South Viet-Nam and the restoration of peace through the Paris Agreements".

22. His delegation was, of course, well aware that at its third session the Conference would have other difficult problems to solve. Nevertheless, on the basis of the results of the second session, viewed in a new international context which had already prompted some stirrings in the world humanitarian conscience in the form of increased detection of false humanity, it contemplated the third session with optimism.

23. Mr. LE VAN LOI (Republic of Viet-Nam) said that his delegation rejected the remarks of the representative of Hanoi, as also the arguments put forward in the so-called appeal. The evacuation of the Vietnamese orphans was above all an emergency operation to save human lives threatened by the forces of Hanoi in their general offensive launched five weeks earlier.

24. In the war of attrition that Hanoi had been waging for twenty-one years against the Republic of Viet-Nam, the civilian population had always been the chief target. That being so, it was necessary to take steps to protect and safeguard the children, especially those whose parents had fallen victims to the communist bullets. Events had made it necessary to speed up their evacuation, but all the legal procedures laid down in the law of adoption had been fulfilled and that law of adoption provided the maximum security and stability for the adopted child.

25. It was only possible to understand the problem of the evacuation of those orphans by placing it in the general framework of the war of aggression waged by the Hanoi régime, whose methods of calculated terror against the civilian population were its chief weapon. Whether they were conducting operations of infiltration or of subversion in the villages, the North Vietnamese Communists had always resorted to massacre, kidnapping and the torture of hostages in order to inspire terror in the population. That, too, was the aim of the rocket attacks on densely populated areas. The Communists were still holding 70,826 kidnapped civilians who, according to the Agreement on ending the war and restoring peace in Viet-Nam, signed in Paris on 20 January 1973, should have been returned to the Republic of Viet-Nam.

26. In its recent attack on the centre of Viet-Nam, the communist army had been given orders to fire on the refugees who had been trying to reach the free zones. Of the 3 million refugees who had taken the road for South Viet-Nam since 22 March 1975, at least 120,000 had been killed by the Hanoi divisions. All those collective massacres and atrocities were a violation of the fourth Geneva Convention, in particular Articles 27 and 32.

27. The civilian inhabitants who had been unable to escape the communist encirclement were being subjected to systematic enrolment carried out by police units which would determine the different categories of persons with a view to the systematic and progressive liquidation of those whom the Communists considered to be of no use to their system.

28. It was that painful and terrifying experience which they had been enduring for the last twenty-five years that was prompting the people to flee before the merciless enemy, who had never recognized or applied the Geneva Conventions of 1949. The orphans were obviously unable to flee and it was only natural that they had been the first to be taken care of by the Government of the Republic of Viet-Nam in order to ensure their safety.

29. The problem of the application of the Geneva Conventions to the murderous war going on in Viet-Nam was one of extreme gravity, for, while the Conference was meeting to legislate on humanitarian matters and to improve the existing Conventions, hundreds and thousands of South Vietnamese were falling victims to collective massacres, summary executions and unprecedented atrocities committed by the North Vietnamese troops in their zones of temporary occupation. Hanoi had never observed the first, third or fourth Geneva Convention of 1949.

30. He wondered whether the fact that the representative of Hanoi had referred to Article 50 of the fourth Geneva Convention of 1949 gave grounds for hope that Hanoi was going to abandon its refusal to apply that Convention in the war of aggression against the Republic of Viet-Nam. Up to the present, Hanoi had always refused to consider itself bound by the four Conventions and had never authorized the International Committee of the Red Cross (ICRC) or any other humanitarian organization to visit its prisoner-of-war camps. When it was a question of saving the life of the victims of the aggressors, were it only one single human life, the delegation of the Republic of Viet-Nam must not rule out any hope, however slight.

31. The delegation of the Republic of Viet-Nam appealed solemnly, first to the President of the Conference to use his authority to put an end to the violations of the Geneva Conventions of 1949, and then to the Hanoi delegation to respect the Conventions and to allow representatives of humanitarian organizations to enter the occupied zones and to visit the prison camps and, lastly, to the ICRC to do all in its power to fulfil its mission of protection in the occupied zones.

32. Mr. NGUYEN VAN LUU (Democratic Republic of Viet-Nam) said that it was deplorable that the delegation of Saigon, insensitive to the serious problems that had just been raised in the name of twenty-five delegations, had seen fit to utter infamous slanders about the Democratic Republic of Viet-Nam, which his delegation denounced categorically and which it regarded as coming from a puppet Government that history was condemning without appeal.

33. The PRESIDENT said that the statements that had just been made would appear in the summary record of the meeting.

#### CLOSURE OF THE SESSION

34. The PRESIDENT said that no effort had been spared during the past eleven weeks in drawing up rules for the reaffirmation and development of international humanitarian law applicable in armed conflicts. Thanks to the spirit of co-operation by which the work of the Conference had always been characterized, and to the participants' eagerness to achieve results, the outcome of the

second session was definitely positive. The final aim had never been lost from sight, namely, to limit the evils of war when war could not be avoided and to render it less blind and less implacable. That aim was more present but also more pressing, than ever, because the armed conflicts, international or otherwise, which were the subject of the draft Protocols before the Conference had not ceased for all that, nor had the woes and ruin that followed in their train.

35. That was why he, as President of the Conference, appealed to all Parties to the conflicts of whatever kind now taking place in the world to observe scrupulously the provisions of the Geneva Conventions relative to the protection of victims of war and to take account henceforward of the additional rules which the Conference was drawing up, particularly those concerning the protection of civilian populations, on which wide agreement had already been reached.

36. Although words were powerless to ward off evil, respect for the principles of international humanitarian law could of itself alleviate suffering, better protect the weak and spare innocent lives.

37. He voiced his firm hope that those who had so far been privileged to remain outside conflicts would make a generous contribution towards the relief intended for all victims, without distinction.

38. Before closing the session he wished to thank very warmly the incumbents of the various offices for their active collaboration in helping him to perform his task and also to thank all those who had contributed to the smooth running of the Conference.

39. Mr. SULTAN (Arab Republic of Egypt), speaking on behalf of all delegations and participants in the Conference, addressed the warmest and most sincere thanks to the Swiss Federal Council for having been kind enough to convene the second session of the Conference for the appointed date and duration, and for all its commendable efforts to ensure the success that the Conference deserved. He requested the President of the Conference to be kind enough to transmit those thanks to the Federal Council over which he had the honour to preside.

40. He also expressed the appreciation and gratitude of all the participants to the competent authorities of the city of Geneva for their kindly welcome and traditional hospitality.

41. Nor could he pass over in silence the active and constructive part played by the International Committee of the Red Cross and the commendable efforts of its experts. From the XXIst International Conference of the Red Cross, held at Istanbul in 1969, until the convening of the present Conference, the ICRC and its experts had never failed in their assiduous, sustained and constructive work. The two draft Protocols which had been the subject of the Conference's debates were the fruit of years of effort and labour. The warmest thanks of the participants were therefore due to the ICRC authorities for their help and work.

42. The services of the Conference Secretariat, under the eminent leadership of Mr. Jean Humbert, Ambassador, had played a vital part and had made an effective contribution to the success of the second session. As spokesman for all the delegations, he tendered them his thanks.

43. To Mr. Jean Humbert, Ambassador, who had assumed the heavy responsibility of the actual practical organization of the Conference, he wished to express the admiration and esteem of all the participants. His competence, skill, patience and courtesy had been applauded by all. Although his task and that of his assistants had been no easy one, their performance had been remarkable.

44. The members of the General Committee, for the second time, had asked him to speak for all the delegations and all the participants. He deemed that decision a great honour and he assured the President of the affection, respect and gratitude of all who had taken part in the Conference. The President's devotion, integrity, objectivity, courtesy and wisdom were unanimously acknowledged and appreciated. It was those qualities which had ensured the success of the Conference.

45. The PRESIDENT thanked the representative of the Arab Republic of Egypt and declared closed the second session of the Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

The meeting rose at 11.25 a.m.

THIRD SESSION

(Geneva, 21 April - 11 June 1976)

PLENARY MEETINGS

SUMMARY RECORDS OF THE THIRTY-FIRST TO THIRTY-THIRD MEETINGS

held at the International Conference Centre, Geneva,

from 21 April to 11 June 1976

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



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Report of the <u>Ad Hoc</u> Committee on Conventional Weapons	
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Continuation of the proceedings of the Conference	
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SUMMARY RECORD OF THE THIRTY-FIRST (OPENING) PLENARY MEETING

held on Wednesday, 21 April 1976, at 10.30 a.m.

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

STATEMENT BY THE PRESIDENT

1. The PRESIDENT, declaring open the third session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, said that he was pleased to see again the representatives who had taken part in the work of the first and second sessions and to welcome the newcomers who were representing new countries or replacing representatives of their country who had been assigned to other tasks.

2. A number of delegations which had attended the second session had informed him that they would be unable to attend the current session but that they retained their interest in the work of the Conference and requested to be kept informed. The delegations in question were those representing the Governments of Albania, Botswana, China, El Salvador and Kenya.

3. The host country had seen fit to invite a number of new countries to attend the Conference. There were two criteria for invitations: the host country had invited, in the first place, all States Parties to the Geneva Conventions, whether or not they were Members of the United Nations (140 States), and, secondly, States which, although not Parties to the Geneva Conventions, were Members of the United Nations (13 States). The Swiss Government had therefore invited six new States which the United Nations General Assembly had admitted to membership at its most recent (thirtieth) session: namely, the Comoros, São Tomé and Príncipe, Papua New Guinea, Mozambique, Cape Verde and Surinam.

4. In 1975, at the same time, the Conference had come to the close of a second session of eleven weeks of arduous discussion and hard work. The net results had been positive. Half the articles of the two draft Protocols had been approved in the Committees, most of them by consensus. The participants had, of course, been aware that several difficult problems had yet to be solved and that a spirit of co-operation would be needed fully equal to that which they had displayed at the second session.

Nevertheless, they had had the feeling that they had drawn nearer to the achievement of their great goal - the codification of international humanitarian law. He reminded those present that at the thirtieth (closing) plenary meeting of the second session (CDDH/SR.30), he had stated, expressing the unanimous sentiments of the General Committee, that every effort should be made to ensure that at the third session the Conference would establish the additional Protocols to the Geneva Conventions of 1949. Indeed, circumstances had shown the urgent necessity of limiting the evils of war, short of eliminating them completely. Events since the second session had demonstrated that that aim was still of immediate importance and that increased efforts should be made to achieve it.

5. The General Assembly of the United Nations at its thirtieth session, had evidenced in several resolutions its interest in the work of the Conference, indicating in particular its conviction that a sense of urgency and a desire to achieve tangible results would prevail in the proceedings of the Conference.

6. He was sure that the delegations present, in concert with the appropriate Government departments of their countries, had used the many months since the second session to study the articles and amendments that were still on the agenda of the various Committees. To simplify the task of delegations, the Secretariat had circulated various documents, including a table of amendments (CDDH/225 and Corr.1) and a synoptic table of the texts of articles adopted by the Main Committees at the first and second sessions of the Diplomatic Conference (CDDH/226 and Corr.2).

7. The first two sessions of the Conference had generated mounting interest in numerous circles. The Conference should therefore do all in its power to avoid disappointing the peoples of the world. It should show that, in the particularly thorny field of codification of international law, the community of nations was fully aware, in drawing up the necessary texts, of its responsibility to the victims of the conflicts which it was still unable to prevent altogether, and was convinced that its work complemented the parallel activity which nations must constantly undertake for the maintenance or restoration of peace.

8. A draft agenda for the thirty-first meeting (CDDH/228/Rev.1) had been prepared by the General Committee of the Conference, which had met in the afternoon of 20 April. If there were no objections, he would consider that that agenda was adopted.

It was so agreed.

CHANGES ARISING IN THE LIST OF OFFICE-HOLDERS OF THE CONFERENCE.

9. The PRESIDENT reminded the Conference that, under rule 6 of the Conference's rules of procedure, the term of office of the officers appointed at the beginning of the first session covered any subsequent sessions, and that Governments had been recommended to send the same representatives whenever possible so as to expedite the work. Nevertheless, since some officers had been called to other duties, it had been agreed, so as not to upset the geographical distribution, that their successors should be appointed by the States concerned, with the explicit or tacit consent of their geographical group.

10. Thus, since Ambassador Edvard Hambro, Chairman of Committee I and Head of the Norwegian delegation at the first and second sessions, was unable to take part in the work of the third session, the Norwegian Government had proposed that he should be replaced as Chairman of Committee I by Ambassador Einar-Fredrik Ofstad, and the Western Group had agreed.

On the President's proposal, the Conference approved by acclamation the appointment of Ambassador Ofstad.

11. The PRESIDENT also observed that although Ambassador Abu Sayeed Chowdhury (Bangladesh), Chairman of the Drafting Committee would be unable to take part in the third session, the Government of Bangladesh did not intend to propose anyone else, and it was therefore for the Asian Group to propose someone as Chairman of the Drafting Committee. For that purpose it had been agreed that the Chairman of the Asian Group should call a meeting of the Group that same day, and the Group's nomination would be approved by the thirty-second plenary meeting.

12. The other changes in Conference officers were indicated in document CDDH/229; delegations which still had changes to propose were requested to communicate their proposals as soon as possible.

ORGANIZATION OF WORK

13. The PRESIDENT reminded the Conference that the General Committee had met the previous day to consider the organization of the session's work and had unanimously approved the plan of work proposed by the President and Secretary-General of the Conference. The plan of work had three main features: first, the Main Committees should, as far as possible on the morning of Thursday, 22 April, resume their work at the point where they had

broken off, and pursue it actively so as to finish it in about four weeks, the mornings being reserved as a rule for their plenary meetings, and the afternoons for meetings of their working groups, or, in the case of Committee II, of its Drafting Committee.

14. It was proposed that the Ad Hoc Committee on Conventional Weapons should also meet during the current week to fix the date for the actual resumption of its work.

15. Secondly, it was necessary to allow for a sufficient number of meetings of the Drafting Committee of the Conference, which would now play its full part, since many articles had already been adopted in committee. It was therefore proposed that provision should be made for one or two meetings of the Drafting Committee at the beginning of the following week; the meetings would be held in the afternoon, and would take precedence in the sense that no other meeting would be held at the same time. The Rapporteurs of the Main Committees, for instance, would thus be able to participate fully in those first meetings. The Drafting Committee would have to define its task under rule 47 of the rules of procedure and organize its work on the basis of the articles already adopted in committee and of the document which had been submitted to it for that purpose. It would also have to determine the frequency of its meetings, and regular meetings were essential. If the Drafting Committee wished to avoid night meetings, it could consider such other possibilities as enlisting the aid of alternate members from the same delegations.

16. As a rule, then, the Drafting Committee would meet in the afternoon, and it was understood that when it dealt with the articles of a particular Committee that Committee or its subsidiary bodies would not meet at the same time. From about the fifth week onwards, the Drafting Committee would meet in the morning and afternoon. It would speed up its work - possibly by setting up one or two working groups - and should, in the main, complete its task sufficiently early to permit the Conference to vote at its plenary meetings on articles adopted by the Committees and revised as to their form by the Drafting Committee.

17. Lastly, there would be two weeks left for the final plenary meetings, which would also have to be very frequent so that the Conference could vote on the texts as a whole - many articles having been adopted in committee by consensus - and thus bring to an end the considerable task it had undertaken.

18. In a word, about four weeks would be set aside mainly for the work of the Committees, then two weeks principally for the work of the Drafting Committee and the last two weeks for that of the final plenary meetings.

19. Such an ambitious plan might perhaps have to be modified, but in any event the objective was to complete the work of the Conference during the current session. He earnestly hoped that the plan would be adopted.

The Conference adopted the plan of work without comment.

CO-ORDINATION OF THE WORK OF THE COMMITTEES REGARDING THE PROBLEM OF REPRISALS

20. The PRESIDENT recalled that the General Committee, at its last meeting of the second session, had noted that co-ordination between the Committees could still be improved and had envisaged various steps that might be taken to that effect.

21. Among the problems requiring more intensive co-ordination mention had been made of the question of reprisals, which each Main Committee had hitherto discussed separately. The General Committee had therefore considered co-ordination at its meeting the previous day so that the question could be settled at the outset of the third session. It had not adopted the idea of setting up a joint working group as suggested at the end of the second session; in its view there would be more to be lost than gained by setting up yet another body, and the Conference's work would be complicated and no doubt delayed thereby.

22. The General Committee had therefore voted to assign to Committee I the problem of reprisals as a whole, as presented in the two draft Protocols. It had indeed seemed natural to entrust that question to Committee I, which was responsible for consideration of the general provisions of the draft Protocols, and which had in fact to consider an amendment of a general nature on reprisals in draft Protocol I.

23. In considering the question, Committee I would of course have to take into account the work already done on the subject by Committees II and III, and especially the provisions relating to reprisals already adopted by them. It was understood, moreover, that when Committee I dealt with the question of reprisals, representatives of the other Committees concerned would be able to join in its discussions so that it was fully informed of any progress made in the matter.

The General Committee's proposal was unanimously adopted.

ALLOCATION OF ARTICLES 63, 64, 65, 67, 68 AND 69 OF DRAFT  
PROTOCOL I AND ARTICLE 32 OF DRAFT PROTOCOL II

24. The PRESIDENT recalled that in the original programme of work of the Committees, articles relating to the treatment of persons in the power of a party to the conflict had been assigned to Committee III (see CDDH/4, p.6). It had later been agreed, however, that they could be referred to Committee I, according to the speed at which work progressed.

25. There had indeed been some question of so referring them at the second session, but since Committee III had made quicker progress with its work than Committee I, several representatives had finally urged, in Committee I, that the articles in question should be studied by Committee III.

26. At the end of the second session, the Chairman of Committee III had stated that the latter Committee was prepared to undertake consideration of the articles in question during the third session.

27. If there was no objection, he would assume that articles 63, 64, 65, 67, 68 and 69 of draft Protocol I and article 32 of draft Protocol II would now be officially included in the programme of work of Committee III.

It was so agreed.

The meeting rose at 11 a.m.

SUMMARY RECORD OF THE THIRTY-SECOND PLENARY MEETING

held on Wednesday, 21 April 1976, at 3.50 p.m.

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

CHANGES ARISING IN THE LIST OF OFFICE-HOLDERS OF THE  
CONFERENCE (CDDH/229) (concluded)

1. The PRESIDENT said that he had been informed by the Chairman of the Asian Group that no agreement had yet been reached on a nomination to replace Mr. Chowdhury (Bangladesh) as Chairman of the Drafting Committee.
2. Since, under rule 6 of the rules of procedure, the Chairman of the Drafting Committee was to be elected by the Conference, and in order to avoid any delay in the work of the Conference, he suggested that the meeting should be suspended to enable the Asian Group to continue its deliberations.
3. If, when the meeting was resumed, the Asian Group had still failed to reach agreement, he would ask the General Committee to meet immediately to consider the situation.

It was so agreed.

The meeting was suspended at 3.55 p.m. and resumed at 4.50 p.m.

4. The PRESIDENT announced that the Asian Group had reached agreement on the nomination of Mr. Iqbal Al-Fallouji, Head of the Iraqi delegation, to the chairmanship of the Drafting Committee. He suggested that the Conference should ratify the choice of the Asian Group by acclamation.

It was so agreed.

The meeting rose at 4.55 p.m.



SUMMARY RECORD OF THE THIRTY-THIRD (CLOSING) PLENARY MEETING

held on Friday, 11 June 1976, at 10.40 a.m.

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

ADOPTION OF THE AGENDA OF THE CLOSING PLENARY MEETING (CDDH/238)

The agenda of the closing plenary meeting was adopted.

REPORTS OF COMMITTEES

1. The PRESIDENT explained with reference to this item that at that stage of the Conference's proceedings there was not - as was normal - any report by the Drafting Committee. He drew attention to a note (CDDH/CR/205) concerning that Committee's work during the current session which that Committee had approved at its most recent meeting.

2. So far as the reports adopted by the Main Committees were concerned, the Conference should do no more than take note of them. The General Committee had appealed to delegations not to repeat in plenary what they had already said in Committee and to limit their statements to general comments. Any delegations wishing to make reservations could send written statements containing those reservations to the Secretary-General, who would communicate them to all the participating States.

Report of Committee I (CDDH/I/332, CDDH/234)

3. Mr. de ICAZA (Mexico), Rapporteur, said that the Committee had adopted its report (CDDH/I/332) with the amendments set forth in document CDDH/234. The latter document contained certain gaps and he asked delegations to trust the Rapporteur and the Secretariat to make any necessary drafting changes in that document.

4. Mr. MISHRA (India) stated his delegation's views concerning article 39 of draft Protocol II, which had been discussed at length during the current session. The article was based on a very vague concept, for the idea of internal armed conflict was not defined. If, therefore, a small armed band of fifteen or twenty persons challenged the lawfully established Government, the provisions of Protocol II might be applicable to that conflict.

Surely, however, it was difficult to comprehend how the provisions of article 39 could be applied without the consent of the lawfully sovereign Government. Many delegations had expressed serious reservations concerning that article, as it impinged on the sovereignty of States.

5. The newly independent developing countries which were endeavouring to consolidate their independence, won after great sacrifice, regarded as a matter of vital importance any action that might constitute an interference in their internal affairs. Aware of the powerful means of communication and propaganda which existed, but which unfortunately they did not possess, the developing countries could not rule out the possibility of misuse of the article in the case where a sovereign Government did not accept the assistance of an outside agency. It might, in such a situation, be averred that that Government had something to hide, whereas in reality only a question of principle was involved.

6. He drew attention to Article 3 common to the Geneva Conventions of 1949 which provided that "An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict" and to Article 9 of the first Convention, under which the provisions of the Convention should not constitute an obstacle to the humanitarian activities of the International Committee of the Red Cross. Under those provisions, the activities of the ICRC were established on a much broader and sounder basis. The purpose of common Article 3 was to deal with situations arising out of internal conflicts, at a time when the nationalist movements in various parts of the world had been struggling for freedom and independence and when the colonial and imperialist Powers had treated the colonies as part of their territories.

7. The adoption of article 39 of draft Protocol II would give rise to many legal problems and tend to weaken the scope of common Article 3 which was accepted by all countries. The text and hence the meaning of the two articles were not the same. Under common Article 3 any impartial humanitarian body could offer its services to the Parties to the conflict, whereas under article 39 only the ICRC could offer its services. Another legal problem was what would happen to common Article 3 when Protocol II came into force. Would it be automatically amended, or would both articles remain in force? That would give rise to many legal complications in the case of States not Parties to Protocol II. That being so, the ICRC would always be in difficulty to decide how to discharge its humanitarian task. The rebels would want the ICRC to offer its services under Protocol II, whereas the State Party which had accepted Protocol II

would object to that course of action. Would the ICRC be expected to offer its services to the rebels under Protocol II and to the State Party under common Article 3?. If it should be considered that common Article 3 was supplemented by article 39 of Protocol II, many developing countries which had opposed draft Protocol II might be forced to review their position with respect to common Article 3, a situation hardly conducive to the development of humanitarian law applicable in armed conflicts. For that reason his delegation would like article 39 to be eliminated at the fourth session of the Conference.

8. To dispel any misunderstanding he wished to reaffirm that his delegation had the highest regard for the ICRC, which had done commendable work in the field of protection of human rights in armed conflicts, and expressed the hope that the ICRC would continue its humanitarian work. His delegation had no doubt as to the impartiality of the ICRC or to its ever-present desire to avoid involvement in politics, national or international. His delegation's reservations related only to article 39 of draft Protocol II which might be used for political and propaganda purposes.

9. Mr. AL-FALLOUJI (Iraq) expressed reservations concerning all provisions of draft Protocol II concerning rules of law that affected the sovereignty of States. The articles of that Protocol as already adopted exceeded the limits of humanitarian law, which ought to have been respected if the Protocol was to be acceptable to the international community as a whole. He formulated his delegation's reservations regarding article 39 of draft Protocol II.

10. The SECRETARY-GENERAL said that the General Assembly of the United Nations had adopted on 15 December 1975 resolution 3500 (XXX) concerning respect for human rights during armed conflicts which related more particularly to the protection of journalists engaged on dangerous missions in areas of armed conflict. The resolution referred to the intention of the Conference to conclude its work on that question at its third session. He explained that the new article to follow article 69 of draft Protocol I, which dealt with that question and which had been adopted by Committee I, had not yet been submitted to the Drafting Committee. Consequently, the article could not be finally adopted by the Conference until its fourth session in 1977. In view of the interest of the United Nations in the matter a letter would be sent to the Secretary-General of the United Nations informing him of the situation.

The Conference took note of the report of Committee I.

Report of Committee II (CDDH/II/396 and Add.1, CDDH/235)

11. Mr. EL HASSEEN EL HASSAN (Sudan), Rapporteur, introduced the report of Committee II (CDDH/II/396 and Add.1), which had been adopted by consensus with the changes and corrections given in document CDDH/235.

12. Mr. NAHLIK (Poland), Chairman of Committee II, said that, while the Committee had not been able to complete its work, it had nevertheless made great progress since it had concluded the consideration of four important matters: definitions, medical transport, the technical annex to draft Protocol I, missing persons and graves. The result was all the more encouraging as originally delegations had held very different views on some of those matters. At the fourth session the Committee would continue its consideration of civil defence and begin the consideration of assistance for the civilian population.

13. With regard to the technical annex, the Committee had adopted three resolutions. The annex should be transmitted for information to three specialized agencies of the United Nations - International Civil Aviation Organization, Inter-Governmental Maritime Consultative Organization and the International Telecommunication Union. It would not, of course, become operative in law until draft Protocol I had been adopted and signed.

14. He thanked the members of the Committee, in particular those who had participated in the work of the Working Groups and the Drafting Committee, for their valuable co-operation. He thanked the Rapporteur for his excellent work, and he also thanked the Secretary-General for his wise choice of secretaries and Legal Secretaries of the Committee, who had shown the most commendable competence and devotion. In conclusion, he expressed the hope that representatives would display the same good will and the same spirit of comprehension during the fourth session of the Conference.

The Conference took note of the report of Committee II.

Report of Committee III (CDDH/III/361 and Add.1 and 2, CDDH/236)

15. Mr. BAXTER (United States of America), Rapporteur, said that the text of the fourteen articles adopted by the Committee during the current session was reproduced in annex I to the report (CDDH/236/Rev.1). The addenda to the Committee's report (CDDH/III/361/Add.1 and 2) contained a summary of the discussions on the question of mercenaries and on that of new prisoners of war, which the Committee would be expected to settle at the fourth session of the Conference.

16. Mr. SULTAN (Egypt), Chairman of Committee III, stressed the spirit of comprehension, tolerance and co-operation shown by the members of the Committee during the current session. Article 42 had not been approved because, in his opinion, it was wiser not to take a hasty decision on so important a question. He hoped, however, that the article might be put to the vote at the fourth session of the Conference.

17. He thanked the officers of the Committee and in particular Mr. Aldrich and Mr. Baxter, the Committee's Rapporteurs, whose skill and devotion to their task had been universally acclaimed. He also thanked the two Legal Secretaries and all the members of the Secretariat who had worked for the Committee.

The Conference took note of the report of Committee III.

Report of the Ad Hoc Committee on Conventional Weapons (CDDH/IV/216 and CDDH/237)

18. Mr. AKKERMAN (Netherlands), Rapporteur of the Ad Hoc Committee, introduced the Committee's report, on behalf also of Mr. Kalshoven who had been responsible for the first part of the report. He explained that the report (CDDH/IV/216) should be read together with document CDDH/237, which indicated changes and corrections.

19. Although the Committee had held about twenty-five meetings, it had not succeeded in adopting any rules concerning the use of certain weapons. Nevertheless, it had conducted a useful discussion on proposals based on the results of the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lugano early in 1976.

20. He thanked the Legal Secretary and Secretaries of the Committee for their contribution to the Committee's work and expressed his gratitude for the guidance of its distinguished Chairman.

21. Mr. de ICAZA (Mexico) said that it was regrettable that the Ad Hoc Committee had produced such meagre results; he stressed that the reaffirmation and development of humanitarian law were bound up with the parallel reaffirmation of the principle that the Parties to a conflict did not have unlimited rights to choose means of combat. He hoped that the prohibition or limitation of weapons causing unnecessary suffering would form the subject of specific decisions at the fourth session. In the absence of definite agreements on that subject, the provisions of the two Protocols could not be regarded as a progressive development.

The Conference took note of the report of the Ad Hoc Committee on Conventional Weapons.

Report of the Committee on Credentials (CDDH/233/Rev.1 and Corr.1)

22. Mr. SANSON ROMAN (Nicaragua), Chairman of the Credentials Committee, expressed the hope that the Conference would approve the Committee's report by consensus as it had done at the previous two sessions.

23. Mr. SABEL (Israel) stated that his delegation could approve only those parts of the report which did not contain unacceptable political statements. He stressed that the Credentials Committee had strictly technical functions and he deplored the attempt to introduce in that Committee a reference to a political resolution of the United Nations that had been rejected by the State of Israel, had aroused world-wide opposition and with which seventy States had refused to be associated.

24. Mr. AL-FALLOUJI (Iraq) reaffirmed the position adopted by Iraq in the Committee with respect to the legal aspect of the problem. A body responsible for verifying credentials had to take into account the legitimacy of the source of the credentials and ought to decline to recognize credentials issued from an illegitimate source.

25. Mr. HUSSAIN (Pakistan) associated himself with the position taken by the representative of Iraq and stated that in all international conferences Pakistan had expressed reservations on the credentials submitted by the delegation of Israel. He reaffirmed those reservations.

26. Mr. EL-FATTAL (Syrian Arab Republic) expressed support for the statements made by the representatives of Iraq and Pakistan.

The Conference took note of the report of the Credentials Committee.

## CONTINUATION OF THE PROCEEDINGS OF THE CONFERENCE

27. The PRESIDENT reported on the debates held in the General Committee at its meetings of 24 May and 10 June. At the latter meeting it had been noted that the Conference would be unable to complete its business by the end of the current session and the General Committee had considered the various measures needed to ensure the efficacy of the deliberations of the fourth and final session. Its recommendations concerned the following points:

- (a) Period of the fourth session;
- (b) Drafting Committee and date of the fourth session;
- (c) Duration of the fourth session;
- (d) Methods of work of the fourth session;

- (e) Preparatory work and consultations between the third and fourth sessions.

28. He explained that apparently the only period suitable for the final session was that from April to June 1977. In order to avoid overlapping with other international meetings the Secretary-General of the Conference had been asked to communicate those dates to all international organizations concerned, in particular the United Nations, stressing the importance of the final session in order that those organizations should make allowance for them in drawing up their own calendar of meetings. He appealed to all participants in the Conference capable of influencing events to see to it that no other large international meeting should be held in 1977 coinciding with the Conference.

29. The proceedings of the third session had shown the importance of the work of the Drafting Committee. It was universally agreed that what ought to be avoided at all cost was the risk that the fourth session might be jeopardized by any delay in the work of the Drafting Committee in relation to the work of the other Committees. He had held lengthy talks with the Chairman of the Drafting Committee, Mr. Al-Fallouji. It was envisaged, in concert with the General Committee, that the Secretariat would carry out between the two sessions some preparatory technical work relating to drafting questions which would facilitate to the fullest extent the work of the Drafting Committee in 1977. Those terms of reference were the subject of draft resolution CDDH/240.

30. The preparatory work to be done by the Secretariat would not suffice to enable the Drafting Committee to complete in good time the consideration of the articles already adopted. It would therefore be necessary for that Committee to meet for three weeks before the Main Committees in order to complete the drafting of all the articles adopted by the Committees.

31. Accordingly, the General Committee proposed that the Drafting Committee should begin its work in mid-March and that the Main Committees should resume their deliberations after Easter. Owing, however, to the special character of the Drafting Committee, which was open to all delegations, the General Committee considered that it would be preferable not to convene meetings of the Drafting Committee outside the period of an official session, and that the formal opening of the final session should take place immediately before the Drafting Committee began its work. He proposed, in agreement with the General Committee, that the fourth session of the Conference should begin on 17 March 1977 by a purely formal meeting at which the States participating in the Conference would be free to be represented in the manner they considered most appropriate. The Drafting

Committee would be the only body meeting during the three weeks which followed, and the Main Committees would resume their deliberations only on 15 April, after a plenary meeting scheduled for 14 April. A meeting of the General Committee would take place on 13 April.

Those proposals were approved.

#### ADOPTION OF RESOLUTIONS

32. The PRESIDENT added that, as from autumn 1976, the Secretariat would, in co-operation with the ICRC, work on the drafting of the articles already adopted. That work would be reviewed in January 1977 by technical and linguistic consultants chosen by the Secretary-General from among the delegations participating in the Conference. The technical document which would be prepared under the responsibility of the Secretariat would be circulated to all Governments before the meeting of the Drafting Committee. The preparatory work referred to in draft resolution CDDH/240 would be carried out in constant liaison with the President of the Conference and the Chairman of the Drafting Committee.

33. Mr. EL-FATTAL (Syrian Arab Republic) pointed out that operative paragraph 4 of the draft resolution (CDDH/240) apparently provided that the texts to be prepared by the Secretariat would be communicated only to the Governments of the countries participating in the Conference, whereas under the rules of procedure other bodies also were entitled to receive documents and draft amendments. Accordingly he proposed the addition of the words "and to national liberation movements" after the words "all participating countries".

34. The PRESIDENT thought the proposal was relevant, but pointed out that bodies other than national liberation movements also participated in the Conference and that perhaps broader language should be used.

35. Mr. EL-FATTAL (Syrian Arab Republic) suggested the use of the words "all participants in the Conference".

36. The PRESIDENT considered that language acceptable.

37. Mr. de ICAZA (Mexico) considered that the draft resolution outlined a very useful plan for the work of the Drafting Committee. He suggested, however, that in addition to the team mentioned in paragraph 2 reference should be made to the experts of the ICRC who were also familiar with the texts and of undoubted impartiality.

38. The PRESIDENT said that there could hardly be any misunderstanding as regards the substance, for the very first paragraph of the draft resolution mentioned the co-operation of the ICRC. It was perfectly normal that the experts of the ICRC who participated in the first phase of the work should also collaborate in the second phase.

39. Mr. MILLER (Canada), referring to the remark by the Syrian representative concerning operative paragraph 4 of the draft resolution, suggested that the words "governments of all participating countries" might be replaced by the expression "participating delegations", in keeping with the language used in the rules of procedure. He supported the Mexican representative's proposal that paragraph 2 of the draft resolution should expressly specify that the team responsible for preparing the work of the Drafting Committee should include representatives of the ICRC whose co-operation was indispensable owing to their familiarity with the subject matter.

40. Mr. AL-FALLOUJI (Iraq) likewise thought that the ICRC should be associated with the work of the preparatory team, a view which his delegation had stressed in the General Committee.

41. The PRESIDENT said that it was most encouraging that the Conference held the ICRC in such great esteem. Accordingly, he suggested that in paragraph 2 of the draft resolution the words "and of the ICRC" should be added after the word "Secretariat" in the fourth line. In addition paragraph 4 might be amended on the lines suggested by the representative of Canada, the words "the governments of all participating countries" being replaced by the words "all participating delegations".

The draft resolution (CDDH/240) as so amended was adopted.

42. The PRESIDENT, continuing his report on the deliberations of the General Committee said that, so far as the Drafting Committee was concerned, it had been considered desirable to spell out the Committee's terms of reference. Under rule 47 of the rules of procedure the Drafting Committee's function was to co-ordinate and review the drafting of all the texts adopted by all the Committees. In no case should the Drafting Committee reopen questions of substance, but should ensure the correctness of the terms from the technical point of view, correctness of grammar, uniformity of the terminology and accuracy of the translations. In addition it would be expected to suggest titles of the articles, though the titles would be only of indicative value.

43. He added that the articles adopted were the outcome of arduous debate and negotiations. Consequently, save in very exceptional cases, the Drafting Committee should not refer articles back to the Main Committees.

44. Mr. MILLER (Canada) said that at its meeting on 10 June, the General Committee had also agreed on the need for a time-table and programme of work for the first three weeks of the fourth session during which the Drafting Committee would be meeting before the Main Committees. The programme of work would obviously have to be flexible and indicate only general guidelines concerning the procedure to be followed in considering the articles already adopted. Preferably, the Drafting Committee should adopt the same methods as the various Committees, on the basis of the guidelines contained in document CDDH/4/Rev.1.

45. The PRESIDENT explained that the programme of work of the Drafting Committee would be prepared at the January 1977 meeting.

46. Proceeding to deal with the problem of the duration of the fourth and final session of the Diplomatic Conference, he stated that, apart from the Drafting Committee's three weeks of work before Easter, the General Committee considered that the work remaining to be done could perhaps be completed in eight weeks after Easter - four weeks for the Main Committees and the Drafting Committee and four weeks for plenary meetings and the signature of the Final Act and the Additional Protocols.

47. Mr. GIRARD (France) inquired whether the Protocols were to be signed simultaneously with the Final Act or whether there would be a certain time-lag between the signature of the Final Act and the signature of the Protocols. Normally, the Final Act was signed immediately, whereas, the opening of Protocols to signature was postponed by a few months in order to allow Governments to study the definitive texts and to make up their minds.

48. The SECRETARY-GENERAL replied that the Final Act and the Protocols would be open for signature at the same time. Two different kinds of credentials would be needed for that purpose. The credentials produced by the vast majority of delegations to the Credentials Committee authorized the representatives to sign the Final Act, but the signature of the Protocols would call for special powers to be issued by the Governments. Some delegations would be able to sign the Final Act immediately; others, however, would wish to affix their signature to the Protocols within a period to be specified later, in which case they would sign at a place to be specified.

49. The PRESIDENT emphasized that the programme presupposed very strict methods of work and a discipline even more strict, both on the part of delegations and on the part of the Secretariat. In the light of his conversations in the past few days he had made a number of proposals to the General Committee which had approved the following: to avoid all waste of time, Committee meetings should open punctually and not be delayed by a quarter of an hour or even more, a delay which many delegations considered regrettable. Also to avoid waste of time the Chairmen of Committees and Working Groups should limit speakers' time, subject of course to reasonable limits and with due regard to the subject matter under consideration.

50. It would be desirable for Committee I, which had a particularly difficult task, to change its procedure for dealing with articles in order to avoid repetition. Rather than referring them to a group and then to a sub-group the Committee, after a short introduction, should transmit them directly to a working group or sub-group, which would refer them back to the Committee after consideration.

51. To avoid repetition, it had also been proposed that, as regards certain subjects suitable for that procedure, statements should be limited to a few representatives per geographical group. In addition, Saturday work would be necessary.

52. The Secretariat should make a greater effort in order to ensure that documents would be available at the right time in all languages. It should also ensure the quality of translation and interpretation.

53. As in 1975, the Secretariat should prepare a comparative table of all proposals and amendments submitted to the Conference and a synoptic table of the two draft Protocols. That mandate appeared in document CDDH/239 submitted to the Conference for its approval.

54. Mr. HUSSAIN (Pakistan) suggested that paragraph 1 of the draft resolution should open with the word "invites", and paragraph 2 with the word "requests".

The draft resolution CDDH/239, as so amended, was adopted.

55. The PRESIDENT stated in conclusion that the improvement of methods of work was not enough to solve the many problems of substance which still remained.

56. It would therefore be desirable for Governments to continue and intensify between now and the final session informal negotiations which had been begun between delegations. The regional groups might also play a useful part in seeking agreed positions.

57. The Swiss Government, as the host to the Conference, would endeavour, on the one hand, to determine on what problems general agreement appeared realisable and, on the other, those problems which probably called for a fresh approach.

AMENDMENT TO THE RULES OF PROCEDURE (CDDH/2/Rev.1; CDDH/232)

58. Mr. SULTAN (Egypt), introducing amendment CDDH/232 on behalf of the Arab States, said that hitherto Arabic had been only an official language of the Conference. As the vehicle of the Arab-Islamic civilization, Arabic had influenced the West for centuries by spreading the principles of Islamic law and humanitarian law. He hoped, therefore, that the Conference would approve the amendment unanimously and so adopt Arabic as a working language.

59. The SECRETARY-GENERAL said that under rule 51 of the rules of procedure as it stood, Arabic was an official language, which meant that interpretation from and into Arabic was provided and that final reports and resolutions were translated into Arabic. If the amendment was adopted, Arabic would become a working language for the proceedings of the fourth session and all documents bearing the official symbol of the Conference would be translated into that language.

Amendment CDDH/232 was adopted.

CLOSURE OF THE SESSION

60. The PRESIDENT said that, now the third session was about to close, he wished to stress that for eight weeks the delegations had carried on with perseverance the considerable undertaking begun in 1974 and due to be completed in 1977: the reaffirmation and development of international humanitarian law applicable in armed conflicts. The number of articles adopted by the Committees during the current session was but an inadequate reflexion of the sum total of the work and willing co-operation shown by the delegations in drafting new rules, some of them relating to very difficult fields.

61. During the deliberations, delegations had never lost sight of the ultimate objective of the Conference, which was to limit the suffering caused by armed conflicts. As he had stressed at the opening of the current session, that objective was more urgent than ever, for those conflicts - whether international or not - were still tragically in evidence. Accordingly, as President of the Conference, he appealed to all Parties that were in a situation

calling for the application of the Geneva Conventions to respect scrupulously the provisions of those humanitarian conventions as stipulated in Article 1 common to the Geneva Conventions of 1949 and in keeping with the spirit of the relevant resolutions of the United Nations. The protection of those provisions should cover both military personnel and civilians who fell into the power of the enemy and also the civilian population in occupied territories. He further requested Parties to take into account the additional rules drafted by the Conference.

62. He hoped that those who had been fortunate enough not to have been involved directly in armed conflicts would make a generous contribution to the assistance to be accorded without any distinction whatsoever to all the victims of hostilities throughout the world.

63. In conclusion, he expressed his gratitude to all those who had participated in the deliberations of the third session, in particular the Chairmen and Rapporteurs of Committees, the Chairmen and Rapporteurs of Working Groups and to all those who had contributed to the smooth conduct of business, notably the technical staff.

64. Mr. SULTAN (Egypt), speaking on behalf of all delegations and all participants in the Conference, expressed sincere thanks to the Swiss Federal Council for convening the third session of the Conference and for all its constant and commendable efforts to ensure the success of the Conference. All delegations and all participants appreciated the contribution of the Federal Council to the maintenance and development of the principles of humanitarian law, and they hoped that the President of the Conference would convey their expressions of gratitude to the Federal Council.

65. He also expressed the gratitude of all participants to the responsible authorities to the city of Geneva for their traditional and hospitable welcome.

66. Nor could he fail to mention the active and constructive part played by the International Committee of the Red Cross and the devotion of its experts. Ever since the XXIst International Conference of the Red Cross, held at Istanbul in September 1969, the ICRC had ceaselessly devoted itself to the cause of humanitarian law. During the debates in Committees and Working Groups and Sub-Groups the experts of the ICRC had displayed the highest qualities of optimism, tolerance and comprehension. Accordingly, the participants thanked the authorities of the ICRC most warmly for their help, their work and their understanding.

67. The services of the Secretariat had played an important part and contributed efficiently to the success of the third session: they had all co-operated with excellent spirit in ensuring the smooth conduct of the proceedings. Speaking on behalf of all representatives, he expressed his gratitude to the Secretariat.

68. All participants had asked him to express their admiration and esteem to Ambassador Jean Humbert who was responsible for the organization of the Conference. His competence, efficiency, patience and courtesy commanded general admiration. Ambassador Humbert and his assistants had had a difficult task, but they had discharged it in a manner that evoked general gratitude and admiration.

69. At the close of the session, he expressed the view that the Conference had made great progress towards the achievement of its ultimate objective, though the fourth session, which would undoubtedly be a severe test, would be of great importance, for it would be a session of serious and weighty decisions. All participants would have to show goodwill, tolerance, patience and above all trust and belief in the cause of international humanitarian law. That session would be one of hope and of the success of a noble cause. In 1977 the participants would once again be meeting under the chairmanship of a President eminently qualified to ensure its success. With the aid of Mr. Graber's energy, his political intuition and his talent for compromise, it would be possible to overcome all difficulties in a spirit of tolerance and concord - indispensable to a constructive dialogue among the Powers. Accordingly, all delegations and all participants wished to convey to the President their profound gratitude and the assurance of their highest esteem.

70. The PRESIDENT thanked the representative of Egypt and assured him that he would convey his eloquent and touching words to the Government of Switzerland.

71. Mr. ALEXIE (Romania) expressed his delegation's gratitude to the President of the Conference and to the Government and people of Switzerland for their welcome and for the efficient way in which they had organized the Conference.

72. In the course of the third session it had been possible to settle some complex and difficult questions and the Conference's work marked an important stage in the progress towards the reaffirmation and development of humanitarian law. While the Conference had taken note of the reports of the Committees that did not mean that it had approved the decisions of substance referred

to in those reports. In his delegation's opinion it was the task of the Conference to codify the rules of humanitarian law and to reconcile them with the upheavals which had occurred since the Second World War. It was the duty of all mankind and of the Conference itself to eliminate without delay war and aggression in response to the wishes of the international community, which looked forward to the establishment of the rule of justice and of humanitarian law.

73. Humanitarian law ought to develop in the context of modern international law, which banned aggression and interference in the internal affairs of States, while guaranteeing the right of peoples to self-determination and to defend themselves against an aggressor by all means at their disposal. Humanitarian law should clearly differentiate between the victim and the aggressor and protect the victim and prohibit the weapons and methods and means of warfare that affected combatants and civilians without discrimination. The international rules applicable to non-international conflicts should be based on respect for the sovereignty of States. The reaffirmation and development of humanitarian law should consolidate the sovereignty of the peoples which had attained their independence at the cost of great sacrifice and at the same time offer them greater protection in the event of aggression. In that way the law would contribute to strengthening the application of international law as a whole.

74. In the course of the third session it had become possible to outline more accurately the shape of the two draft Protocols and to obtain a better understanding of the position of each country. Yet, the effectiveness of the Conference would be judged by the adoption of generally acceptable solutions that would be universally respected. It was, of course, for Governments to draw up the final balance sheet of the results of the session, in the light of the complexity of the questions dealt with in the Protocols.

75. His delegation looked forward optimistically to the fourth session and to a broader participation by States in its proceedings. That session, which would be the final one, should not neglect any effort to perform its historic function and should reach definitive conclusions by adopting the draft Protocols, for the development of humanitarian law and the well-being of all peoples were at stake.

76. The PRESIDENT thanked all the participants for their contribution to the progress of the Conference, expressed the hope that he would see them again at the fourth session and declared closed the third session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

The meeting rose at 12.40 p.m.